

INFORMAL CONSULTATION MEETING OF THE FRIENDS OF THE HELSINKI PROCESS AND FRIENDS OF THE UNCAC ON THE IMPLEMENTATION OF THE UNCAC

LISBON, 22-24 MARCH 2006

CO-CHAIRS' SUMMARY

I. INTRODUCTION

Background

The informal consultation meeting was convened at the initiative of Finland and Portugal to discuss ways and means that the Conference of States Parties (CSP) of the United Nations Convention against Corruption (UNCAC) may employ to discharge in a successful and efficient manner its challenging mandate, outlined in paragraph 4 of article 63 of the Convention. It was understood that the meeting was intended as an opportunity for dialogue and to permit countries to prepare better for the CSP. The meeting was not geared towards the development of common positions or designed as a forum to seek agreement on issues. This is a summary of the discussions by the co-chairs and should not be considered as a negotiated text by the participants.

Preventing and controlling corruption was one of the key topics discussed by the working groups of the Helsinki Process, a joint initiative of Finland and Tanzania, as well as the Helsinki Conference of September 2005. The Conference recommended promoting the implementation of the UNCAC by ensuring that an effective monitoring mechanism is developed by the CSP.

The third Lisbon Study Tour for the Portuguese-speaking Countries of November 2005, co-organized by UNODC and the Ministry of Justice of Portugal, was on the same wave length, recommending as it did an enhanced participation in the CSP, in order to guarantee an effective implementation of the Convention.

The informal consultation meeting was held in Lisbon, from 22 to 24 March 2006. In view of the informal nature of the meeting, it was moderated by the representatives of Finland and Portugal. The representatives of Argentina and France, in their capacity as co-chairs of the Group of Friends of the UNCAC, accepted to moderate part of the discussions.

Agenda

The informal consultations meeting decided to structure its discussions along the following agenda:

1. Opening of the informal consultations.
2. Adoption of the agenda and organization of work.
3. Implementation of the United Nations Convention against Corruption and the role of the Conference of States parties

- (a) Review mechanisms of other international legal instruments;
 - (b) Preparations for the Conference of States Parties.
4. Technical assistance and implementation of the United Nations Convention against Corruption.
 5. The way forward.
 6. Closing of the informal consultations.

II. ATTENDANCE

The meeting was attended by representatives of the Friends of the Helsinki Process governments and the Friends of the UNCAC governments as well as Bolivia as the current Chair of the Group of 77 and China. Representatives of intergovernmental organisations supporting respective implementation mechanisms participated as observers. See Appendix 1: Meeting Participants for a detailed list of participants and observers.

III. SUMMARY OF DISCUSSIONS

General

The informal consultations meeting was opened by H.E. Mr. Alberto Costa, Minister of Justice of Portugal who reiterated his country's commitment to ensuring the full implementation of the UNCAC and to contributing to enhanced international cooperation to that purpose. The initiative of Portugal to act as host to the informal consultations meeting was an effort to offer to countries an opportunity to begin an active and open dialogue essential in developing considerate and informed views on such a delicate and complex matter as the review of the implementation of the Convention by the CSP.

The participants to the informal consultations meeting expressed their gratitude to the Governments of Finland and Portugal for their initiative to convene and host the meeting. They also commended the leadership role exercised by Argentina and France in their current function as Co-Chairs of the Vienna-based informal group of the Friends of the Convention. They recalled with appreciation the contribution of Norway and Peru, on whose initiative the Group was established in 2003, and of Austria and Egypt that had served as Co-Chairs of the Group.

The view was shared that the Group should be encouraged to continue acting as the rallying point of efforts to promote the Convention. Following the entry into force of the Convention, the Group should be encouraged to gear its activities towards supporting implementation of the Convention and ensuring appropriate preparations for the efficient and effective functioning of the CSP.

At the same time, it was felt that the initiative to offer countries a forum where dialogue could be undertaken at a governmental level on these issues, especially on enhancing the capacity of the CSP to consider ways and means of discharging its mandated function of reviewing and supporting implementation of the Convention were welcome and commendable. This

was particularly the case in view of the improved representation offered by extending the consultations to include the countries that participated in the Group of Friends of the Helsinki Process and further enhancing the consultations by including Bolivia as the current Chair of the Group of 77 and China. The combined composition of the informal consultations provided a good initial platform that could be used as a launch pad for a gradual expansion which would be necessary to safeguard the inclusive nature of a consultation process that would lead to in-depth discussion by the Conference of States Parties.

Key Conclusions from UNODC Regional and Sub-Regional Seminars

The meeting was briefed about progress in the promotion of the ratification and implementation of the Convention and the related activities of UNODC which included the organisation of seven regional or sub-regional seminars covering more than 100 countries and the production of a legislative guide. Key conclusions emerging from these activities included the following:

- (a) There was the need to involve experts as early as possible in the work of the CSP in view of the highly technical nature of many of its provisions. Further, the CSP should be an opportunity for representatives of anti-corruption authorities to establish working relationships and benefit from each other's expertise and knowledge.
- (b) There was need to build a solid knowledge base on corruption. In that context, there was an increasing desire to explore the feasibility of gradually moving from perception-based data to developing a scientific methodology of measuring corruption that would provide a more accurate picture.
- (c) There was a need to seek ways to ensure the capacity of the CSP to discharge its function of reviewing the implementation of the Convention. It has been concluded that the Convention calls for a much more thoughtful approach to how the mandate of the CSP would be carried out. In that context, attention ought to be devoted to lessons learned from the experience gained from the operation of the Conference of the Parties to the UNTOC Convention.
- (d) A cross-cutting question has been technical assistance as a key component of implementation and how the strong link between technical assistance and implementation established by the Convention itself could be maintained and further strengthened.

The consistency with which these issues had emerged in almost all regions of the world led to some key conclusions.

First, that there was a clear evolution in thinking among countries about the importance of focusing efforts to ensuring efficient and effective review of implementation of the Convention by the CSP. The issue remained delicate and fraught with complexity because of the broad scope of the Convention, while its global nature created the need to devise adequate but also feasible ways to achieve that goal. However, it was clear that there was a renewed sense of purpose and that certain ideas which had caused widespread scepticism during the negotiations of the Convention no longer did so.

Second, there continued to exist strong momentum for a genuinely collaborative, inclusive and pragmatic approach to implementation that was akin to the spirit that made the Convention possible and allowed negotiations to find innovative solutions to a broad range of complex issues in a way that ensured the high quality of the instrument.

Third, there was unwavering commitment of states to spare no effort in discharging their incumbent function of cooperating in implementing the Convention.

Fourth, there was a heightened sense of responsibility caused by the increased awareness of the need to join forces in fighting corruption which had been brought about by the Convention. At the same time, the successful negotiation of the Convention and its expeditious entry into force had created increased hope and heightened expectations among the public at large and the media.

Prerequisites to Ensuring the Adequate Implementation of UNCAC

The informal consultations meeting expressed appreciation for the opportunity to be informed about the essential characteristics, the operations and the results of mechanisms designed to monitor other existing international legal commitments and supported by the Council of Europe, the OECD, the European Commission, African Union and the OAS. Participants also appreciated the opportunity of receiving clarifications and engaging in dialogue with representatives of some of these organisations, who attended the meeting as observers.

Participants highlighted certain prerequisites to ensuring adequate implementation of the Convention. These included continued efforts to promote the ratification of the Convention, so as to increase and broaden the participation of States in the CSP and enable the attainment of the full potential of the Convention that stems from its global nature. There was satisfaction with the results of the regional and sub-regional seminars organised by the UNODC for that purpose, and there was encouragement to continue these activities, taking into account and building on such results. The need to make available to as many developing countries as possible legislative assistance towards ratification and implementation of the Convention was also emphasised.

Key Characteristics of UNCAC Offering a Basis for Review of Implementation

Further, participants highlighted some key characteristics of the Convention that offered a good basis for effective and efficient review of its implementation. More specifically:

- (a) The Convention was predicated on the shared realisation that corruption was a problem affecting all countries and all societies and was no longer a purely domestic issue. Thus, the Convention held the least potential of lending itself to political controversy along lines of division that might exist in other issues between developing and developed countries;
- (b) The Convention was the product of a broad and genuine global consensus that was freely entered into. That consensus was also

manifested by the high rate of signatures and the rapidly growing number of ratifications or accessions. In that light, discharging the obligations foreseen by the Convention was an established commitment;

- (c) The provisions of the Convention on implementation and, more specifically, on the mandate of the CSP, were formulated in a way that accentuated a positive, constructive and supportive approach. This formulation, further strengthened by the inclusive nature of the entire Convention, left little room for doubts about intrusiveness in the review of implementation. Rather, review of implementation had been conceived as a process of mutual support and encouragement as well as learning and sharing of experiences among peers with high regard for equality and respect for sovereignty and diversity;
- (d) The Convention was designed as a living operational tool, with purposes and objectives clearly set out in a carefully balanced manner. In that context, it was a powerful engine of partnership and provided a framework that prescribed action at the domestic level as a pillar of effective international cooperation and vice versa.

Key Elements of the Review of Implementation by the CSP

The discussion then revolved around key elements of the review of implementation by the CSP. In that context, there was discussion about lessons that had emerged from the operation of the Conference of the Parties to the UNTOC Convention. That Conference of the Parties had begun charting its course and developing its working methods without an early preparatory process that would afford the opportunity to States to exchange views, focus their attention and outline issues that required more in-depth analysis. Thus, the Conference of the Parties had taken a longer time than expected to determine how it would organise its work and discharge its functions. It established a programme of work that was intended to help it build a knowledge base about the status of implementation and challenges facing countries in such implementation. For that purpose, it instructed the Secretariat to collect information on the basis of questionnaires that it reviewed and approved.

Faced with a low rate of responses, the Conference of the Parties took important decisions that highlight the legal obligation of States Parties to furnish it with the required information. It also focussed on issues of compliance that emerged from the analysis of the information provided. Further, the Conference of the Parties decided at its second session to establish a working group on technical assistance to review needs emerging from the responses of states parties and advise the Conference on how such needs should be met.

The process of reviewing implementation of the Convention by the CSP could be structured along a multi-stage gradual approach. It was understood in that context that implementation and its review were long-term processes and had to be approached as such. That was a result of several factors, including the volume and complexity of the provisions and obligations of the Convention, the growing number of States Parties and the fact that countries were at different levels of development and had divergent levels of capacity.

Stages of Reviewing Implementation

The first stage of reviewing implementation would involve determination of the scope of the review i.e. which provisions or sets of provisions would be looked at in which order. It was pointed out that such a determination was necessary because of the broad scope of the Convention and the multitude of its provisions and consequent obligations. Caution should be exercised in making such determination in order not to upset the careful equilibrium on which the Convention was based, and the integrity of the instrument in view of the fact that the Convention had been deliberately designed in a way that its provisions were mutually supportive.

One way of approaching this issue might be to determine the scope of the basis of the level of obligations, beginning with those of directly mandatory nature. Another way might be to focus on the types of actions required by States Parties for the implementation of obligations, combined with an eventual shift from the enabling phase (e.g. legislation) to the functioning phase (e.g. institutions and application of legislation).

Once this determination was made, a three-step approach could be envisaged. Experience has shown that the point of departure for review of implementation was the accumulation of knowledge through the collection and analysis of information in a structured and systematic way.

However, an effort should be made to find ways of collecting information different than the more traditional questionnaires, as experience has also shown that in spite of their usefulness in standardising responses and thus permitting comparability and analysis, there were problems that authorities faced in providing responses. A way of avoiding questionnaires and simultaneously putting the accent on a country's sense of ownership and respect for its commitment and sense of responsibility would be to begin the process through a self-assessment report. Such a report could be prepared based on a set of guidelines, or a checklist that the Secretariat could develop under the guidance of the CSP. Technical assistance should be available to countries requesting it to perform such self-assessment and compile the relevant report. The self-assessment report would also identify gaps in implementation and include the needs in technical assistance to fill those gaps, as appropriate. The self-assessment report could be accompanied by an action plan with specific ways to address matters of compliance, including time frames for the required actions.

The second step would be the undertaking of the required actions identified in the action plan, together with the provision of technical assistance based on the needs identified, as well as action on any recommendations that the CSP may have offered.

The third step in the review process would be an assessment of progress made and achievement of the actions undertaken, together with a review of follow-up that might be required.

A process structured along these lines would permit attention to turn to other key issues associated with the review of implementation and the functioning of the CSP. Such issues could include the time frame of each step and, consequently, the periodicity of the review process, as well as the determination of the most appropriate model of a mechanism that would

support the process and the CSP in discharging its functions as the only decision-making body in matters related to the implementation of the Convention. Such determinations would in turn enable an informed debate on matters related to the financing of the process and support mechanism, as well as a more detailed description of the functions that the Secretariat would be assigned to perform and its consequent requirements.

The method described above would combine two approaches which were felt to have clear merit. These were the encouragement and the compliance approach which would need to be carefully balanced. The method was also felt to present the benefit of gradual movement from phase to phase that was considered to be important in building and sustaining confidence in the process which was a key prerequisite to full participation, credibility and legitimacy.

Methods for Reviewing Implementation

The discussion then turned to the need to ensure the involvement of experts and the review of implementation. The matter was approached in several ways.

First, there was a need to involve experts in examining a number of very technical provisions of the Convention. Such need had been identified also by the Conference of the Parties of the UNTOC Convention which had established groups of experts to consider issues related to international cooperation. In view of the cross-cutting nature of international cooperation and its key importance in the Convention, as well as the nature of asset recovery as a fundamental principle of the Conventions, there were two areas where the involvement of experts was crucial.

Second, it could be useful to foresee the involvement of a representative, yet functional group of experts that would help the CSP review the self-assessment reports in a systematic and comprehensive manner, by considering, analysing and synthesising the information contained in such reports. This aspect was deemed essential in view of the sheer volume of information that could be expected and the need to avoid flooding the CSP with raw material, an approach that would entail the risk of a superficial review of implementation. Suggestions were made about the possibility of a standing group of experts to carry out reviews on behalf of the CSP and report to it, and considerable discussion took place on the advisability, timelines and composition of such a group and whether experts should be appointed by governments or asked to serve in their individual capacity.

Considerable discussion was held also about the concept of peer review. The considerable merit of peer review was highlighted as an attribute of the review process that would lend such process credibility and objectivity. It was suggested that the CSP itself was a peer review forum and the question would then not be whether peer review should be established but how that quality of the CSP should be made to support its more efficient and effective functioning.

It was pointed out several times during the discussion that a well functioning, efficient and adequately resourced Secretariat with the requisite expertise was crucial for the success of the CSP's endeavours. It was understood that the mandate of the Secretariat was described in Article 64 of the Convention and

that its functions and requirements would need to be reviewed and taken care of depending on the way that the CSP would decide to perform its review functions, including in the event of establishment of mechanisms to support such review.

Technical Assistance

In addition to highlighting the importance of technical assistance in the preceding discussion, and its role at various stages of the implementation and its review process, the meeting discussed the need to ensure inter-agency cooperation and coordination of technical assistance.

Following questions about the nature and sources of technical assistance, it was clarified that technical assistance was provided from both bilateral and multilateral donors. For the United Nations, the bulk of technical assistance was provided through voluntary contributions by donors. The challenge ahead was how to ensure the mainstreaming of the Convention and its implementation in technical assistance activities.

Way Forward

Several suggestions were made about the way forward. The suggestions that seemed to gain most support were:

- (a) The issues discussed and ideas presented in the informal consultations meeting should be discussed in regional groups in Vienna in order to further enrich the debate and should be shared with as many delegations as possible. Delegations should be encouraged to report back to their capitals. Discussions could also be organised in the margins of coming events such as the annual session of the UN Commission on Crime Prevention and Criminal Justice in April 2006 and the Conference of the Parties of the UNTOC in October 2006.
- (b) The active and continuous involvement of Permanent Missions to the UN in Vienna is crucial for advancing consultations regarding the review of the implementation of UNCAC, especially in the framework of the Group of the Friends of the Convention. At the same time, there is merit in and benefit to be derived from including representatives from capitals in consultations. If it is deemed necessary to hold other informal consultations meetings, those should not be held too close to the Conference of States Parties and at least the last such meeting should be held in Vienna. It would also be fruitful to have broader participation in possible future meetings.
- (c) Efforts to provide issues to be taken on the agenda of the first CSP could be considered. Drafting a non-paper on reviewing the implementation of UNCAC for the Conference could also be considered.

Appendix 1: List of Participants