

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



**AN EFFECTIVE INTERNATIONAL LEGAL INSTRUMENT AGAINST
CORRUPTION**

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I. INTRODUCTION

A. Background

1. In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25) was desirable; decided to begin the elaboration of such an instrument and requested the UN Secretary-General to prepare a report analyzing all relevant international instruments and recommendations addressing corruption and to submit it to the Commission on Crime Prevention and Criminal Justice; and requested the Commission, to review and assess the report of the Secretary-General and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption.

2. Pursuant to General Assembly resolution 55/61 (2001), the meeting of Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of a Future Legal Instrument against Corruption was held in Vienna from 30 July to 3 August 2001 and recommended to the Assembly, through the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council, the adoption of a draft resolution on the terms of reference for the negotiation of an international legal instrument against corruption. The draft resolution was subsequently adopted as Assembly resolution 56/260 of 31 January 2002.

3. In its resolution 56/260 (2002), the UN General Assembly decided that the Ad Hoc Committee should negotiate a broad and effective convention against corruption. In the resolution, the General Assembly requested the Ad Hoc Committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, *inter alia*, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation.

4. The text of the United Nations Convention against Corruption was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of the Convention against Corruption, held between 21 January 2002 and 1 October 2003. The Convention approved by the Ad Hoc Committee was adopted by the General Assembly by resolution 58/4 of 31 October 2003. The Convention was opened for signature at the high-level

political signing conference in Merida, Mexico in December 2003. The first session of the Conference of State Parties (CoSP) to the Convention on Corruption was held from 11 to 14 December 2006 at Jordan and the Second session of the CSOP to the UNCAC was held in Nusa Dua, Bali, Indonesia, from 28 January to 1 February 2008.

5. This report provides a brief overview of the developments in the implementation of the UN Convention against Corruption 2003 by the Member States; Brief highlights of the Report on the work of the Conference of the States Parties (CoSP) to the UNCAC; Work of the three Working Group established by the Conference; summary of the deliberations at the Forty-seventh Session of AALCO held at New Delhi, India, 30 June to 4 July 2008; and the Secretariat comments.¹

B. Deliberations on the Item during AALCO's Forty-Seventh Session (New Delhi, 2008)

6. The item "An Effective International Legal Instrument Against Corruption" was introduced by the Secretary-General in the agenda of the AALCO at its 41st Session held in Abuja, Nigeria (2002).² It was felt that the AALCO could make useful contributions to the negotiations concerning the international convention for preventing and combating corruption. Since then the AALCO Secretariat has been reporting developments in the negotiation of the UN Convention against Corruption. Accordingly, the item was deliberated at the forty-second (Seoul 2003), Forty third (Bali (2004), forty-fourth (Nairobi 2005) forty-fifth (New Delhi 2006) and (Cape Town 2007) Sessions. The Forty-seventh Session of AALCO was held in New Delhi (India 2008).

7. **Dr. Xu Jie, the DSG of AALCO** introduced the item. After briefly explaining the way the topic had been dealt with by AALCO and giving an overview of the salient features of the UN Convention Against Corruption (UNCAC) he stated that the most serious shortcoming of the UNCAC was its failure to provide for an adequate implementation mechanism. In so far as the developing countries are concerned, the issues of asset recovery and technical assistance were of immense importance, he added. He welcomed the recommendation of some of the Member States that a Group of Legal Experts from among the Member States be established to prepare a Model Law in line with the UNCAC. This he felt, would go a long way in assisting the Member States in implementing the UNCAC. Finally, he requested the Member States to present their views and comments precisely and lucidly.

8. The delegations from Myanmar, the Republic of Indonesia, the Republic of South Africa, Japan, the Republic of Korea, Kenya, Ghana, the State of Kuwait, People's Republic of China, Cameroon, the Islamic Republic of Iran, the State of Qatar, Malaysia,

¹ A comprehensive overview of the UN Convention against Corruption had been prepared by the Secretariat and could be found in official documents nos. AALCO/43/BALI/2004/S12; AALCO/44/NIROBI/2005/S12; AALCO/45/NEWDELHI/2006/S12; AALCO/46/CAPE TOWN/2007/S12 and AALCO/47/NEWDELHI/2008/S12. See also "*Combating Corruption: A Legal Analysis*" (2005) and "*Rights and Obligations under the United Nations Convention against Corruption*" (2006) published by AALCO Secretariat.

² This suggestion was in line with the Article 1(a) of the AALCO's Statutes which provides for exchange of views and information on matters of common concern having legal implications.

Thailand, India, the Arab Republic of Egypt and Singapore presented their views on the topic.

9. The delegations generally condemned the phenomenon of corruption as a crime and insisted on eradicating the evil in all its manifestations. Almost all of the delegates agreed that corruption was no longer a purely domestic issue and that it had cross-border and international implications. Hence, they reiterated the indispensable need to cooperate with each other in various forms and ways in order to make a significant dent on the evil of corruption.

10. The delegates were of the firm view that corruption threatened not only the social, economic and political development of States but it had serious implications for the national security of them as well. They were of the unanimous view that the UN Convention against Corruption 2003 was pivotal to the fight against corruption since it was the most important and comprehensive legal instrument ever adopted on the universal level outlining in detail, various obligations to be performed and the mechanisms to foster cooperation among the State Parties.

11. The delegates generally explained their domestic legal regimes and other administrative arrangements that they had established on corruption and other related issues such as money laundering and asset recovery. They felt that their legislations were in conformity with the UN Convention against Corruption and that they had established various institutional mechanisms to confront corruption. One delegate opined that AALCO could contribute a lot with its expertise with regard to how to approach the issue of anti-corruption transitional justice. One delegate proposed that an Expert Meeting of AALCO Member States be convened to explore the various issues not adequately addressed by the UNCAC.

12. Finally, Member States adopted a Resolution encouraging States to implement the UN Convention against Corruption. It also urges the Member States to submit their national legislations on combating corruption to the AALCO Secretariat and to establish a network among law enforcement agencies.

II. DEVELOPMENTS SINCE THE ENTRY INTO FORCE OF THE UN CONVENTION AGAINST CORRUPTION (UNCAC)

A. Ratification Process

13. The High-level Political Conference held in Merida, Mexico on 9 to 11 December 2003, opened the UN Convention against Corruption for signing and ratification.³ The Convention entered into force on 14 December 2005, in accordance with article 68 (1) which reads as follows: “This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.” As on 31 March 2009, the UNCAC has been signed by 140 States and ratified by 136.

³ 111 States were represented at the Conference. Apart from States, observers from United Nations Secretariat Units, and other entities and specialized agencies of the United Nations system and intergovernmental or non-governmental organization also attended the Conference.

14. Of the State Parties who have ratified the Convention, 31 are AALCO Member States. They are: Arab Republic of Egypt, Bangladesh, Brunei Darussalam, Cameroon, People's Republic of China, Cyprus, Ghana, Jordan, Indonesia, Iran (Islamic Republic of), Iraq, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Magnolia, Mauritius, Nigeria, Pakistan, Qatar, Republic of Korea, Senegal, Sierra Leone, South Africa, Sri Lanka, Tanzania, Turkey, United Arab Emirates, Uganda and Yemen.⁴

B. First Conference of the States Parties to the United Nations Convention Against Corruption (UNCAC)

15. It may be recalled that the United Nations Convention against Corruption (UNCAC) entered into force on 14 December 2005, in accordance with article 68, paragraph 1, of the Convention. Article 63 of the Convention establishes a Conference of the States Parties to the Convention to improve the capacity of and cooperation between States parties to achieve the objectives set forth in the Convention and to promote and review its implementation. Article 63 of the Convention also provides that the Secretary-General shall convene the Conference of the States Parties not later than one year following the entry into force of the Convention.

16. Accordingly the first Conference of the States Parties to the UN Convention against Corruption was held at the Dead Sea, Jordan for 10-14 December 2006. The CoSP deliberated upon the future of the UNCAC and also to evaluate the progress achieved so far.

C. Second Conference of the States Parties to the UNCAC Nusa Dua, Indonesia, 28 January-1 February 2008

17. The Second session of the Conference of the States Parties to the United Nations Convention against Corruption was held in Nusa Dua, Bali, Indonesia, from 28 January to 1 February 2008, to discuss implementation of the Convention and to advance international efforts to prevent and fight corruption. The second Conference of the States Parties discussed ongoing efforts to establish effective asset recovery regimes and to build national capacity to combat corruption. Discussion will address other issues, such as the application of UNCAC principles to international organizations and their officials.

⁴ Many ratifying countries had made a reservation stating that they do not consider themselves bound by the provisions of article 66, paragraph 2 of this Convention, which provides that any dispute between two or more States Parties concerning the interpretation or application of the Convention that cannot be settled through negotiation shall, at the request of one of those States Parties, be submitted to arbitration or to the International Court of Justice. The following States submitted reservations in accordance with article 66, paragraph 3, stating that they did not consider themselves bound by the jurisdiction of the International Court of Justice: Algeria, Azerbaijan, China, El Salvador, Indonesia, Iran (Islamic Republic of) (signatory), Israel (signatory), Myanmar (signatory), Panama, Qatar (signatory), South Africa, Tunisia (signatory), United Arab Emirates, Viet Nam (signatory) and Yemen.

18. During the Conference, the Executive Director of the UNODC, Antonio Maria Costa urged countries to put into action the strong measures called for in the Convention. He stressed “corruption hurts us all, therefore fighting it is a shared responsibility – we all have a duty and the power to say ‘no’ to corruption”. Mr. Widodo A.S. Indonesia’s Coordinating Minister for Political, Law and Security Affairs (speaking on behalf of President Susilo Bambang Yudhoyono), underlined the need to develop a culture of integrity throughout society, describing corruption as “an unmitigated evil that every citizen must help eradicate wherever it is encountered”.⁵

19. The representative of Pakistan, speaking on behalf of the Group of 77 and China, highlighted the importance of technical assistance as an integral part and cross-cutting issue of the Convention. He noted that the provision of technical assistance should not be made subject to conditions and should be based on mutual benefit, respect for diversity and effectiveness. The representative emphasized that a core priority of the Conference should be to ensure the availability of sufficient and stable funding for technical assistance.⁶ Regarding asset recovery, the representative stressed the need to implement fully chapter V of the Convention, in particular its provisions on the return of confiscated assets. In that regard, the establishment of a consultative mechanism for asset recovery, composed of experts possessing proven expertise in disciplines relevant to asset recovery, would strengthen the ability of States to implement the relevant provisions of the Convention and thus improve asset recovery.

20. On the review of the implementation of the Convention, he highlighted that the Conference should be the only body responsible for the review and that any mechanism or body to be established should be subsidiary to the Conference. Further to the characteristics described in Conference resolution 1/1, the representative indicated that the review mechanism should base its reports exclusively on information provided by States parties and that the Conference should be the competent body to approve and issue reports on the review of the implementation of the Convention. He stressed that any mechanism for the review of implementation should be funded from the regular budget of the United Nations.

21. Other speakers called on those States that had not yet done so to ratify or accede to the Convention. Some speakers reported that their States were in the final stages of ratification or accession, citing delays related to constitutional and legal requirements. Speakers also took stock of the efforts made by their countries in the area of preventing corruption, referring in some cases to deep-rooted obstacles that had to be overcome and stressing the importance of establishing and strengthening anti-corruption authorities with broad mandates in the area of prevention. Transparency, integrity and honesty in the public and private sectors were hailed as cornerstones in the fight against corruption. Speakers reported on national measures to criminalize both the mandatory and non-mandatory offences covered by the Convention. They recalled the overarching need to adopt and update legislation to properly implement the Convention and to enable international cooperation with other States.

⁵ *UNODC Press Release* “UN Anti-Corruption Conference opens in Bali”, 28 January 2008.

⁶ CAC/COSP/2008/15.

1. Mechanism to Review Implementation

22. The effectiveness of the Convention depends on the effective follow-up mechanism, which the present convention is lacking. According to article 63 of the Convention, one of the duties entrusted upon the Conference of the States Parties is “to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation”. For this purpose the Conference “shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties”.

23. The Convention, for this purpose, requires the CoSP to

- acquire necessary knowledge of the measures taken by States Parties in implementing the Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference.
- each State Party to provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures implement the Convention, as required by the Conference.
- establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

24. At its first session, the Conference took an important step in this direction by agreeing that it was necessary to establish an appropriate mechanism to assist it in reviewing implementation of the Convention. The Conference through a resolution established an open-ended, intergovernmental expert group to make recommendations to the Conference at its second session on appropriate mechanisms or bodies for carrying out the implementation review.

25. At the second session of the Conference took note with appreciation the work of the Open-ended Intergovernmental Working Group on Review of the Implementation of the UNCAC at its meeting held in Vienna from 29 to 31 August 2007. The resolution adopted at the CoSP reaffirmed that the proposed monitoring mechanism should:

- (a) be transparent, efficient, non-intrusive, inclusive and impartial;
- (b) not produce any form of ranking;
- (c) provide opportunities to share good practices and challenges;
- (d) complement existing international and regional review mechanisms in order that the Conference may, as appropriate, cooperate with them and avoid duplication of effort;

26. It was also decided that the Working Group shall prepare terms of reference for a review mechanism for consideration, action and possible adoption by the Conference at

its third session. They also called on States parties and signatory States to submit proposals to the Working Group for the terms of reference of the mechanism sufficiently in advance of the meetings of the Working Group for its consideration.⁷

Working Group on Review of Implementation

27. In the first meeting, the Working Group⁸ considered a number of proposals including the establishment of regional mechanisms that would report to the Conference as the global review mechanism, with the role of the Conference being to coordinate, ensure consistency in and oversee the quality and uniformity of the regional reviews.⁹ The proposals also included the observance of a set of principles in establishing an appropriate and effective review mechanism, namely: (a) reporting by all States Parties, as called for by article 63; (b) review by experts from States Parties; (c) establishment of one body (art. 63, para. 7); (d) a global system that utilized available regional mechanisms (art. 63, para. 4 (d)); (e) public reports (art. 63, para. 6); and (f) the use of a variety of sources and expertise.

28. The second and third meeting of the Working Group on Review of the Implementation of the UNCAC was held in Vienna from 22 to 24 September 2008 and 15 to 17 December 2008.¹⁰ The Working Group at the second meeting had before it inter alia, the Proposals and contributions received from Governments for the terms of reference of a mechanism for reviewing the implementation of the UNCAC; Proposals and contributions received from Governments on the draft elements for the terms of reference of a mechanism for reviewing; and Position of the Group of 77 and China on the review of the implementation of the UNCAC. The Working Group proceeded with its consideration of the proposals for terms of reference of a review mechanism. The Working Group produced a rolling text of the draft terms of reference by further consolidating the proposals. In carrying out that drafting exercise, the Working Group had an opportunity to engage in a preliminary discussion of the various issues involved. In that context, suggestions were made on restructuring the draft terms of reference.

i. Draft terms of reference of the mechanism for the review of implementation of the United Nations Convention against Corruption

29. The draft terms of reference briefly reflected below is the progress achieved at the meeting of the Working Group on Review of Implementation of the United Nations Convention against Corruption at its meeting on 15-17 December 2008 and in informal consultations held on 26-27 February 2009.¹¹

⁷ Resolution 2/1.

⁸ Report on the meeting of the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption held in Vienna from 29 to 31 August 2007/CAC/COSP/2008/3

⁹ The proposals were reflected in the report of the Working Group (CAC/COSP/2008/3)

¹⁰ CAC/COSP/WG.1/2008/4 and CAC/COSP/WG.1/2008/8

¹¹ Draft terms of reference of the mechanism for the review of implementation of the United Nations Convention against Corruption, CAC/COSP/WG.1/2008/7/Rev.1, March 2009.

30. The guiding principle of the Review Mechanism for Implementation shall:
- (a) Be transparent, efficient, non-intrusive, inclusive and impartial;
 - (b) Not produce any form of ranking;
 - (c) Provide opportunities to share good practices and challenges;
 - (d) Assist States parties in the effective implementation of the Convention;
 - (e) Take into account a balanced geographical approach;
 - (f) Be non-adversarial and non-punitive and shall promote universal adherence to the Convention;
 - (g) Base its work on clear, established guidelines for the compilation, production and dissemination of information, including addressing issues of confidentiality and the submission of the outcome to the Conference, which is the competent body to take action on such outcome;
 - (h) Identify, at the earliest stage possible, difficulties encountered by States parties in the fulfilment of their obligations under the Convention and good practices adopted in efforts by States parties to implement the Convention;
 - (i) Be of a technical nature and promote constructive collaboration, inter alia, in preventive measures, asset recovery and international cooperation.
 - (j) Complement existing international and regional review mechanisms in order that the Conference of the States Parties to the UNCAC may, as appropriate, cooperate with them and avoid duplication of effort;
31. The principal goals of the review process shall be:
- (a) [To provide the Conference with factual, [reliable, and uniform] information on the status of implementation of the Convention;]
 - (b) To review [the level of] compliance with the Convention by States parties, [including] [and] [the level of] international cooperation provided and received by States parties in accordance with the provisions of the Convention;
 - (c) To help States parties identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance.
 - (d) To promote and facilitate international cooperation in the prevention of and the fight against corruption, including in the area of asset recovery;
 - (e) To identify successes and challenges of States parties in implementing and using the Convention
 - (f) To promote and facilitate the exchange of information, practices and experiences gained in the implementation of the Convention.

Conduct of the review

32. The Mechanism shall be applicable to all States parties. It shall gradually cover the implementation of the entire Convention. The phases and cycles of the review process, as well as the scope, thematic sequence and details of such review, shall be established by the Conference. The Conference shall also determine the duration of each review cycle and decide on the number of States parties that shall participate in each year of the review cycle. The selection of States parties participating in a given year of each review cycle shall be carried out by drawing lots within UN regional groups in the beginning of each review cycle. Assistance in the preparation of the responses to the checklist shall be provided by the secretariat to States parties requesting such assistance.

33. As regards who should review the concerned States, there are two options: (i) Each State party shall be reviewed by two other States parties. The review process shall actively involve the reviewed State, or (ii) The Secretariat shall conduct the reviews. Reviews shall be conducted using a set of uniform guidelines to be developed by the secretariat in consultation with States parties. In accordance with articles 5 and 13 of the Convention, the Mechanism shall provide representatives of civil society [having consultative status with ECOSOC] and the private sector with formal channels for making contributions to the review process, in line with rule 17 of the rules of procedure of the Conference of the States Parties.

Outcome of the review process

34. There are different proposals as to how the report on the review process should be handled:

Option 1

[The State party under review and the review team, assisted by the secretariat, shall prepare a [country review report] [review outcome report] containing agreed [conclusions and recommendations] [observations].] The [conclusions and recommendations] [observations] shall highlight successful experiences deriving from implementation and identify good practices employed in such implementation. They shall also address the strengths and weaknesses of relevant mechanisms in the State party under review [identify gaps recognized by the State party and highlight successful experiences and good practices and ways and means and actions necessary to remedy such gaps]. The report shall further include priorities and actions identified by the State party to improve implementation of the Convention and technical assistance needs for that purpose.

Option 2

The secretariat shall compile the [conclusions and recommendations] [observations] contained in the country reports and prepare a [thematic] [aggregate] report for submission to the Implementation Review Group. The report shall include an account of problems faced by States in using the Convention [in particular in the areas of international cooperation and asset recovery].

Implementation Review Group

35. The Implementation Review Group shall be a [mechanism] [subsidiary body] of the Conference and shall operate under the authority of, and report to, the Conference. As regards the nature and composition, there were four options:

Option 1:

The Implementation Review Group composed of 13 members and shall possess expertise in the areas covered by the Convention. The members of the Group shall serve in their individual capacity and not as representatives of Governments.

Option 2:

The member of the Implementation Review Group shall be nominated by the secretariat and be approved by the Conference. They shall be selected from a wide range of institutions, including governmental institutions, international organizations and universities. Their selection shall be based on the criterion of professional excellence and reflect regional diversity. The experts shall work independently and not as representatives of their respective Governments.

Option 3

The Implementation Review Group shall be an open-ended group of States parties [and signatories]. It shall operate under the authority of and report to the Conference.

Option 4

The Implementation Review Group shall be composed of [40] [60] governmental experts appointed by States parties on the basis of equitable geographical distribution.

36. The members of the Implementation Review Group shall be elected by the Conference for [two-][four-] year terms. The secretariat of the Conference shall be the secretariat of the Mechanism.

Funding

Option 1

The requirements of the Mechanism and its secretariat shall be funded from the regular budget of the United Nations.

Option 2

The requirements of the Mechanism and its secretariat shall be funded by the States parties through assessed contributions to be determined on the basis of the United Nations scale of assessment.

Option 3

The requirements of the Mechanism and its secretariat shall be funded through voluntary contributions by States parties, which shall be free of conditions and influence.

37. These draft terms of reference shall be further considered by the fourth Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption to be held in Vienna, 11-13 May 2009.

ii. G77 and China position on the “Review of the implementation of the United Nations Convention against Corruption”¹²

38. The G77 and China views that CoSP is the sole body responsible for the review of the implementation of the UNCAC. Any mechanism or body to be established will, therefore, have to be a subsidiary mechanism or body of the CoSP. The final recommendations and decisions on any report on the review of the implementation of the Convention will have to be made by the CoSP and not by the mechanism itself. Only CoSP will be competent to approve and issue Implementation Review Reports.

39. The review mechanism should base its reports on the information provided only by the States Parties on their respective implementation status. Any information provided by Member States can only be used for analytical purposes, and cannot be disclosed to any person or entity, without the prior consent of the State concerned. Those reports and information should not be used for purposes other than the promotion of the effective implementation of the Convention. In particular, they should not be used for other political or economic purposes, including trade-related.

40. As regards the funding of the Review Mechanism, it should be funded from the Regular Budget to ensure its efficient, continued and impartial functioning. An overly complex and resource-intensive review mechanism should be avoided and that the mechanism should be transparent and participatory. All States parties should enjoy equal footing in any review mechanism or body.

2. Asset Recovery

41. Asset recovery which was of high priority particularly for the developing countries is reflected in the following provisions of the Convention: prevention and detection of transfers of proceeds of crime (art. 52), measures for direct recovery of property (art. 53), mechanisms for recovery of property through international cooperation in confiscation (art. 54), international cooperation for purposes of confiscation (art. 55) and return and disposal of assets (art. 57).

¹² *Review of the implementation of the United Nations Convention against Corruption, Working document submitted by the Group of 77 and China, Open-ended Intergovernmental Working Group on Review of the Implementation of the UNCAC, Vienna, 22-24 September 2008, CAC/COSP/WG.1/2008/CRP.2.*

42. Accordingly, by its resolution 1/4 adopted at the first session of the CoSP, the Conference decided to establish an interim open-ended intergovernmental working group to advise and assist the Conference in the implementation of its mandate on the return of proceeds of corruption. The working group was mandated to assist the Conference in, *inter alia*, (i) developing cumulative knowledge in the area of asset recovery, (ii) encouraging cooperation, (iii) facilitating exchange of information, (iv) encourage cooperation between requesting and requested States (v) Facilitate the exchange of ideas and (vi) identifying the capacity-building needs of States parties in that area.

43. At the second session, the Conference welcomed the report of the meeting of the Working Group on Asset Recovery held in Vienna on 27 and 28 August 2007. The Conference decided the Working Group shall continue its work, to advise and assist the Conference on the implementation of its mandate on the return of proceeds of corruption, including the consideration of any further proposals, should it deem it appropriate. The Conference also decided that the Working Group shall continue its deliberations on the conclusions and recommendations of its report with a view to identifying ways and means to translate them into concrete action. It further decided that the Working Group shall explore the means of building confidence, facilitate the exchange of information and ideas on the expeditious return of assets among States and encourage cooperation between requesting and requested States.

Working Group on Asset Recovery

44. The first meeting of the Working Group on Asset Recovery was held in Vienna on 27 and 28 August 2007.¹³ After deliberation, the Working Group recommended the establishment of a database containing domestic legislation on implementing the asset recovery provisions of the Convention as a practical tool to be used in asset recovery cases.¹⁴ The database could also include the text of judicial decisions rendered in asset recovery cases and a compendium of all instances in which provisions of the Convention had been used in asset recovery proceedings.

45. There was also a general agreement that more guidance was needed on how to operationalize the asset recovery provisions of the Convention. The Working Group noted the need to increase the responsibility of financial institutions and the financial intelligence units overseeing them, including through introducing measures to prevent or deal with, as appropriate, failure to report threshold or suspicious transactions. The Working Group also recommended the establishment of a global network of focal points on asset confiscation and recovery. The Working Group also recognized the paramount importance of training and capacity-building in the area of international cooperation, particularly with regard to asset recovery. In that connection, the Working Group

¹³ Report of the meeting of the Open-ended Intergovernmental Working Group on held in Vienna on 27 and 28 August 2007 CAC/COSP/2008/4. On 28 August, the Working Group adopted the report on its meeting (CAC/COSP/WG.2/2007/L.1 and Add.1).

¹⁴ The Working Group noted that much of the information to be contained in that database was already being collected by UNODC through self-assessment reports and responses to the questionnaires on the United Nations Convention against Transnational Organized Crime.

recommended the organization of annual meetings of asset recovery focal points, experts and competent authorities as a forum for peer training, exchange of knowledge, information-sharing and networking. It was agreed that such meetings would contribute at the same time to building a relationship of trust among practitioners.

46. At the second meeting of the Working Group was held on 25 and 26 September 2008, the Working group discussed the challenges in asset recovery practice on the basis of a fictitious asset recovery case.¹⁵ Four speakers initiated the discussion by presenting their experience with respect to challenges related to preventing the transfer of illicit assets, the tracing, identification and location of funds, freezing and restraint orders and confiscation regimes. The representative of South Africa noted that there were three basic confiscation systems: object-based confiscation and value-based confiscation (both of which took place after a criminal conviction) and non-conviction-based confiscation. Proceedings on fraud, theft or money-laundering were often more successful, especially in situations with poor documentation in the country of origin.

47. It was stressed the usefulness of non-conviction-based confiscation legislation. Value-based confiscation systems were considered to have advantages compared with object-based systems since they provided a series of rebuttable presumptions regarding unexplained wealth. Further, the unexplained wealth approach might be very valuable in cases involving funds of unknown origin and cash transfers. The representative of Brazil highlighted that for the tracing, identification and location of funds to be successful, a change in the culture of combating crime had to be promoted, new investigation methods had to be applied and incentives for criminal activity had to be eliminated. International cooperation at various levels was essential. Fast and efficient cooperation among law enforcement authorities and financial intelligence institutions was important for subsequent judicial cooperation. Several speakers identified weak political will and insufficient political engagement as major impediments to successful asset recovery.

48. **Development of cumulative knowledge:** The Working Group gave high priority to the availability, creation and management of knowledge on asset recovery. It welcomed the progress made by the Secretariat on the envisaged comprehensive knowledge management centre. The Working Group recommended that such a tool should contain not only legislation but also analytical work, in particular for the better understanding of complex procedural requirements. More clarity on the requirements of procedural law, in particular of requested States, would facilitate cooperation and expeditious cooperation for asset recovery.

49. The Working Group reconfirmed the recommendation to develop practical tools for asset recovery, in particular a practical step-by-step manual. Such a manual should be tailored to the needs of practitioners in asset recovery cases as well as to be used for capacity-building measures.

¹⁵ Report on the meeting of the Open-ended Intergovernmental Working Group on Asset Recovery held in Vienna on 25 and 26 September 2008, CAC/COSP/WG.2/2008/2, annex.

50. **Building of confidence and trust:** The Working Group highlighted the importance of the work on the establishment of a network of contact points for asset recovery. A network of focal points could provide further opportunities for dialogue, which were deemed essential. Such a network would thus contribute to creating confidence and trust among requesting and requested States, which were necessary prerequisites for successful cooperation.

51. The Working Group recommended exploring the feasibility of adopting a help desk approach. Help desks for asset recovery could give advice at the initial stages of a case in an informal manner and refer requesters to counterparts who would be able to provide further assistance. The Working Group recommended strengthening the cooperation between financial intelligence units, anti-corruption authorities and national authorities responsible for mutual legal assistance, at both the national and international levels.

52. **Technical assistance:** The Working Group stressed the high demand for technical assistance for the implementation of chapter V of the Convention, especially for legal advisory services.

3. Technical assistance

53. For the successful implementation of UNCAC, the need for providing technical assistance is widely recognized. This is also recognized in the Convention, wherein the CoSP would explore ways to strengthen technical cooperation, in accordance with the relevant provisions of the Convention. In accordance with paragraph 4 (g) of article 63 of the Convention, the CoSP shall agree upon activities, procedures and methods of work for taking note of the technical assistance requirements of States parties with regard to the implementation of the Convention and recommending any necessary action in that respect.

54. In view of the scope of the Convention, it was recognized that there is a need to provide technical assistance to a larger number of countries, as well as to offer a broader range of technical assistance to meet the growing demand of Member States. The types of technical assistance that could be offered include:¹⁶ Building a shared understanding of the challenges, risks, scope and nature of corruption; Legal Advisory Services; Institution-building; Policy and technical advisory services; Training and enhancement of professional skills; Guides, handbooks and other tools; Information exchange and partnership-building; Coordination of technical assistance;

55. The CoSP adopted a resolution recalling that it was useful for recipient States to be able to define clearly their needs, in order to facilitate the provision and coordination of technical assistance. The Conference requested national, regional and international anti-corruption donors to continue their coordination efforts, as agreed in the Paris Declaration on Aid Effectiveness. The Conference urged donors to enhance their technical assistance by giving high priority to using the provisions of the UNCAC in the

¹⁶ For details see CAC/COSP/2006/9.

formulation of their general development and other relevant anti-corruption assistance policies.

56. Reaffirming that the delivery of technical assistance should be based on the needs and priorities identified by the requesting states and should respect the national sovereignty of states, the conference invited states receiving technical assistance in the framework of the UNCAC to develop, if they have not already done so, a multi-year national framework on their needs for technical assistance to prevent and combat corruption. This should be made known to the donor community, which can use it as the basis for the implementation of cooperation activities, pursuing a coordinated approach through specific allocation of tasks among donors.

Working Group on Technical Assistance

57. In its resolution 1/5 adopted at the first session, the Conference had decided to establish an interim open-ended intergovernmental working group

- (a) to review needs for technical assistance;
- (b) to provide guidance on priorities;
- (c) to consider information, including that gathered through the self-assessment checklist approved by the Conference; and
- (d) to promote coordination of technical assistance.

58. Pursuant to that resolution, the first meeting of the Open-ended Intergovernmental Working Group on Technical Assistance was held a meeting in Vienna on 1 and 2 October 2007,¹⁷ which formulated specific recommendations for the Conference's consideration, including mainstreaming the provisions of the Convention into the anti-corruption work of States that is funded or to be funded by bilateral and multilateral donor agencies or other providers of technical assistance.

59. The Working Group supported the idea that the first core area for technical assistance needed to be the provision of such assistance to States requesting it in order to become parties to the Convention and to promote the implementation of the Convention, in particular its mandatory provisions. The Working Group recommended that the provisions of the Convention should be fully mainstreamed into the anti-corruption work of States that is funded or to be funded by bilateral and multilateral donor agencies or other providers of technical assistance.

60. In the second meeting of the Working Group was held in Vienna on 18 and 19 December 2008, speakers took note with appreciation of the Secretariat's efforts to analyse information provided through the checklist and of the preliminary proposals for technical assistance activities to meet the identified needs as described in the discussion paper prepared by the Secretariat.¹⁸ The meeting also addressed the issue of identification of technical assistance needs. This need for technical assistance in implementing the Convention had to be identified by the recipient State. Speakers

¹⁷ CAC/COSP/2008/5.

¹⁸ CAC/COSP/WG.3/2008/CRP.1

expressed the hope that the work of the other working groups mandated by the Conference and the establishment of the mechanism for reviewing the implementation of the Convention would further facilitate identification and provision of technical assistance. Speakers also emphasized the importance of promoting South-South cooperation, as expertise could be utilized at different levels.

61. Finally the Working Group concluded and recommended to establish a pool of anticorruption experts and recommended that the pool should be regarded as a directory of experts and should be developed by UNODC in such a way that the Office and other technical assistance providers could consult it for the identification of expertise appropriate to the activity at hand. The Working Group gave UNODC the task of reporting on the development of such a pool of experts at the next meeting of the Working Group and requested UNODC to seek the required voluntary funding for that activity, following its established procedures.

62. The Working Group also endorsed the proposals for technical assistance activities at the bilateral, regional or global levels should be developed and further expanded in order to provide an overview of the needs identified and of the supply side of technical assistance. The Working Group, appreciating the need to accumulate knowledge and expertise in three specific areas covered by the Convention, namely prevention, criminalization and asset recovery, recommended that panels of experts in the delivery of technical assistance in those areas should be convened before the third session of the Conference.¹⁹

C. Venue of the Third Conference of the States Parties

63. The Conference of the States Parties to the United Nations Convention against Corruption welcomed the offer by the Government of Qatar, decided that its third session to be held Doha, Qatar, 9-13 November 2009.

III. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

1. The United Nations Convention against Corruption has been signed by nearly 140 countries and ratified by 133. The First and Second sessions of the Conference of the States Parties (CoSP) to the UNCAC provided the Member State a unique opportunity to initiate processes that will energize efforts to implement the Convention and strengthen efforts against corruption. While, some important stage in the right direction has been taken, in totality, both the sessions of the CoSP have not made considerable progress in the implementation of the Convention, as was expected.

2. The disagreement at the Conference means a further delay in taking concrete step till the next Conference on the Convention in November 2009. The most important failure of the CoSP was the lack of agreement on a monitoring mechanism which is crucial for the conventions success. Considerable progress has been made by the Working Groups in formulating the principles and rules on which the CoSP should

¹⁹ CAC/COSP/WG.3/2008/3

establish a mechanism. Particularly of interest is the proposal from the G77 and China. It is hoped that in the forthcoming meetings of the Working Group in May 2009 and by the third CoSP, State parties would be able to achieve consensus.

3. Another area that needs urgent attention especially for the developing country State parties is the need for technical assistance/capacity building for the effective implementation of Convention. It was indeed recognized that there was a need to provide technical assistance to a larger number of countries, as well as to offer a broader range of technical assistance to meet the growing demand of Member States. However, streamlining the procedure would require strong support from the developed countries and development agencies and the UNODC.

4. The AALCO Secretariat urges its Member States that have not ratified the Convention to do so before the third session of the Conference of States Parties in November 2009 at Qatar. Members that have already ratified, it should use their political will to take concrete actions against corruption. It is also suggested that AALCO Member States should consider organizing workshop/seminar as a capacity building measure and to discuss the impending issues in the successful implementation of the Convention.

ANNEX I

RATIFICATION STATUS OF INTERNATIONAL AND REGIONAL CONVENTIONS BY ASIAN AND AFRICAN COUNTRIES

140 States have signed the UN Convention against Corruption and 136 States has ratified it. The Convention came into force on 14 December 2005. 147 States have signed UN Convention against Transnational Organised Crime and 143 States has ratified it. 43 States have signed African Union Anti-Corruption Convention and 28 States has ratified it.²⁰

Table I: Ratification status of African Countries

Signature (S), Ratification (R), Accession (A), and Implementation (I)

Countries	UN Anti-Corruption Convention	UN Transnational Organised Crime Convention	African Union Anti-Corruption Convention
Algeria	R	R	R
Angola	R	S	S
Benin	R	R	S
Botswana	-	R	R
Burkina Faso	R	R	R
Burundi	R	S	R
Cameroon	R	R	S
Cape Verde	S	S	-
Central African Republic	R	R	-
Chad	-	-	S
Comoros	S	A	R
Congo	R	S	R
Cote d'Ivoire	S	S	S
Democratic Republic Congo (Zaire)	-	-	S
Djibouti	R	-	S
Egypt	R	R	-
Equatorial Guinea	-	R	S
Eritrea	-	-	-
Ethiopia	S	R	R
Gabon	S	A	S
Gambia	-	R	S
Ghana	R	-	R
Guinea	S	A	S
Guinea-Bissau	-	S	S
Kenya	R	A	R
Lesotho	R	R	R
Liberia	A	A	A
Libya	R	R	R
Madagascar	R	S	R

²⁰ Signature and ratification status as on 31 May 2009. The States in bold are AALCO Member States.

Malawi	S	S	R
Mali	S	R	R
Mauritania	R	-	S
Mauritius	R	R	S
Morocco	R	R	-
Mozambique	R	R	R
Namibia	R	R	R
Niger	-	R	R
Nigeria	R	R	S
Rwanda	R	R	R
Senegal	R	R	R
Seychelles	R	R	S
Sierra Leone	R	S	R
Somalia	-	-	S
South Africa	R	R	R
Sudan	S	R	S
Swaziland	S	S	S
Tanzania	R	R	R
Togo	R	S	S
Tunisia	S	R	-
Uganda	R	R	R
Zambia	R	A	R
Zimbabwe	R	R	S

Table II: Ratification status of Asian Countries

Signature (S), Ratification (R), Accession (A), and Implementation (I)

Countries	UN Anti-Corruption Convention	UN Transnational Organized Crime Convention
Afghanistan	S	R
Bahrain	S	A
Bangladesh	R	-
Bhutan	S	-
Brunei	S	-
Cambodia	R	S
China P.R.	R	R
Cyprus	S	R
Fiji	R	-
India	S	S
Indonesia	R	S
Iran	R	S
Iraq	R	-
Japan	S	S
Jordan	R	S
Kyrgyzstan	R	
Kazakhstan	-	S

Korea, Rep. of	R	S
Korea, D.P.R.	-	-
Kuwait	R	S
Kyrgyz Republic	S	R
Lebanon	R	R
Lao PDR	S	A
Malaysia	R	R
Micronesia	-	A
Mongolia	R	-
Myanmar	S	A
Nepal	S	S
Oman	-	A
Pakistan	R	S
Palestine	-	-
Philippines	R	R
Qatar	R	-
Samoa	-	-
Saudi Arabia	S	R
Singapore	S	R
Sri Lanka	R	S
Syria	S	S
Tajikistan	-	R
Turkmenistan	R	
Thailand	S	S
Timor-Leste	S	-
Turkey	S	R
U.A.E.	R	S
Uzbekistan	-	R
Vietnam	S	-
Yemen	R	S
