

## INTERNATIONAL: Asset recovery hampers UNCAC action

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**SUBJECT:** Impediments to strengthening and implementing the UN Convention Against Corruption (UNCAC).

**SIGNIFICANCE:** The UNCAC framework for the first time officially links domestic and international aspects of corruption flows. However, there is a gap between member states' rhetoric and actions. [Go to conclusion](#)

**ANALYSIS:** In Mexico in 2003, the UN established a convention to tackle corruption. Since then, state parties have sought to agree a review mechanism by which each country can assess implementation. More than six years later, with 140 states having signed the convention, a review mechanism finally was agreed at the third Conference of State Parties (CoSP) to the UN Convention Against Corruption (UNCAC), held recently in Doha.

This attempt to implement and enforce the convention's articles was a significant step in the fight against corruption. Awareness that the proceeds of corruption encourage international crime and terrorism, as well as undermine democratic institutions and development, pushed the issue up the UN agenda ([see INTERNATIONAL:Corruption fight needs internal policing - May 22, 2008](#)). However, the Doha meeting also revealed the tension between state parties' words and deeds. The fact that corruption often is international in nature limits national action.

**Negotiating priorities.** In negotiations, countries have different priorities, reflecting varying interests:

- States in favour of tightening UNCAC implementation include those that openly supported an effective review mechanism, including EU countries, South Africa and Australia. Most already participate in the OECD-based peer review process. Although they may face internal conflicts of interest, they broadly favour effective international cooperation in this area.
- States that were against imposing an effective review mechanism included China, Russia, Iran, Egypt, Cuba and Venezuela. For reasons of principle, and to preserve current state-led economic structures, these resisted external international authority in this area ([see MIDDLE EAST:Anti-corruption efforts face major hurdles - March 11, 2008](#)).
- The mechanism was a lesser priority for some state parties, particularly small developing countries, which knew little about it other than the need for funding to cover the expenses an in-country UNCAC implementation review would involve.
- Some state parties, particularly developing countries in need of judicial, political, police and industrial reform, prioritised particular aspects of negotiations, such as prevention, technical assistance and asset recovery. Their interests reflected specific corruption realities. As such, they tended to emphasise internal corruption problems rather than tackling international flows.

**Policy responses.** The UNCAC negotiation and outcomes made clear that some policy responses were easier to implement than others. Consequently, states' ability to implement parts of the convention varied considerably. Given the UN practice of agreeing by consensus, the Doha meeting sought to reconcile differences:

1. **Review mechanism.** Opt-out clauses weakened the review mechanism that was finally agreed, and ambiguous wording left room for interpretation. The document failed to reflect the fraught and drawn-out negotiations preceding it. In pursuit of consensus, awkward issues were obviated, on the assumption that the mechanism could be improved subsequently. However, in practice, the outcome will allow the least cooperative states to set a weak standard of token compliance, which then may be generalised even to the most supportive signatories.

The review framework rests on four principal pillars:

- Membership of the group established to monitor the review process remains open-ended. However, by placing no limit on the size or expertise of countries involved, the group risks becoming unmanageably large and diverse.
  - Publication of full reports is not mandatory, even among states party to UNCAC, though executive summaries will be made public. The review group will subsequently receive thematic reports.
  - Country visits from the review group are optional, and facilitation of engagement with relevant stakeholders is at each state's discretion.
  - Civil society, private sector and interest group inputs will be optional. They can occur at the self-assessment stage, prior to review, or in the event of country visits.
2. **Technical assistance.** A conference resolution encourages development of partnerships between the private and public sectors to coordinate resources required to implement the convention. The UN Office on Drugs and Crime (UNODC) will provide technical assistance for implementing UNCAC in ways that align it with activities of the Convention Against Transnational Organised Crime (UNTOC).
  3. **Preventative measures.** The UNODC will provide research into best practice and evidence-based approaches. Attempts to ground technical assistance and preventative measures on practical experience may be the most productive approach (see [INTERNATIONAL: More research needed on corruption - March 14, 2006](#)). Prevention of corrupt practices will focus on:
    - procurement activities;
    - the private sector (through greater integrity, improved regulation models and partnerships);
    - public sector financial integrity; and
    - best practice for responsible journalism.

This framework emphasises state parties' responsibility for dealing with corruption. However, by linking public- and private-sector integrity and transparency, the framework acknowledges the 'demand' as well as 'supply' sides of corruption, thereby highlighting the importance of private- as well as public-sector involvement. Private participation could increase confidence that anti-corruption initiatives are politically independent, financially efficient and innovative.

4. **Asset recovery.** For the first time, asset recovery occupied an important place on the agenda. Bias towards states with most to lose from a meaningful stance on the issue was partly redressed, though the final resolution failed to address important issues including:

- misuse of corporate mechanisms to channel corrupt assets; and
- allowing assets to be frozen through means other than criminal conviction, for example civil litigation.

The fact that the working group on asset recovery continues to operate shows recognition of the need to work on such issues. However, asset recovery through civil means is merely a technical assistance issue. This means that non-state actors wishing to achieve asset return will lack adequate tools. Following the meeting, media coverage has highlighted problems associated with asset recovery, particularly in countries where political and economic barriers are most formidable.

Mutual legal assistance (MLA) and technical expertise are available to states. However, this will not be available easily to non-state claimants, least of all private citizens seeking redress. Where there is little political will in either state involved, MLA requests are unlikely to prosper through government-to-government channels.

**CONCLUSION:** Progress on returning corrupt assets will be slow between now and the 2011 UNCAC meeting, but faster on other aspects of the convention. Review mechanism weakness means governments will not face strong pressure to fulfil existing UNCAC obligations. Nonetheless, a framework to monitor compliance now is in place.

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