

THE NEED TO ACTIVATE INTERNATIONAL COOPERATION IN CONFISCATING CORRUPT ASSETS

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Abstract:

Corruption is considered to be one of the most serious threats to the interests of individuals and the common interests of states. Therefore, most countries have focused on combating this phenomenon with all available means by developing policies and strategies aimed at unifying global efforts within a framework of international cooperation relations that seek to activate mechanisms to combat corruption, particularly with regard to the recovery of proceeds of corruption crimes through confiscation and mutual legal assistance. In this context, the United Nations Convention against Corruption serves as a legislative strategy because of its serious mechanisms based on international cooperation, especially in tracing the proceeds of corruption and working to return them to the requesting States. In order to ensure the achievement of this objective, international documents have urged parties to recognise the enforceability of foreign criminal judgments on the confiscation of criminal proceeds.

Keywords: Combating Corruption, Confiscation of Corruption Proceeds, Foreign Criminal Judgment, Management of Confiscated Assets.

INTRODUCTION

The international community operates in an interdependent system, the coexistence of which cannot be achieved without the integration and harmony of its elements. The eradication of crimes that undermine its structure can only be achieved through the concerted efforts of the international community. This examination leads us to one of the most widespread crimes in the world: corruption.

No country in the world, regardless of its strength and level of development, can fight corruption alone, especially given the difficulty of containing its various forms and the transcontinental scope of its effects. It is difficult to control the elements of corruption as an organised phenomenon, where criminal activities related to it can be committed and practised at a distance due to uncontrolled technological advances worldwide. In addition, most international efforts in this area often face obstacles related to the national borders of other states under the pretext of not violating national sovereignty, the principle of territoriality of laws and the stability of national security. The success of anti-corruption efforts always depends on the combined efforts of states working together to achieve the goal.

In this context, all countries have recognised the need to organise and unify their efforts of common interest within a framework of international cooperation aimed at activating mechanisms to combat corruption, in particular with regard to the recovery of the proceeds of corruption crimes through confiscation and mutual legal assistance. In this regard, the United Nations Convention against Corruption is considered a legislative strategy because of its serious mechanisms based on international cooperation, especially in tracing the proceeds of corruption and working to return them to the requesting States.

The importance of studying the issue of international cooperation in the fight against corruption, particularly with regard to the confiscation of the proceeds of corruption crimes, lies in the awareness of States of the need for global efforts to achieve the common interest of humanity. No State can renounce these cooperative relations in an era of globalisation, which requires the elimination of borders and relative, not absolute, sovereignty (first section). However, the need to



activate international cooperation in the confiscation of funds obtained through corruption remains conditional on the recognition of the enforceability of foreign criminal judgments on the confiscation of the proceeds of crime (second section).

This will be illustrated through a study of the principle of international cooperation in the control and confiscation of funds derived from corruption, guided by the following problem: to what extent can an effective global strategy be established to ensure the recovery of funds derived from corruption through confiscation?

In order to answer the question posed, we have attempted to study this issue by analysing the most important agreements in this field through the following elements:

First section: Provisions on the principle of international cooperation in the confiscation of proceeds of corruption.

Second section: Activation of the principle of international cooperation in tracing and confiscating the proceeds of corruption.

Section 1: Provisions relating to the principle of international cooperation in the confiscation of proceeds of corruption.

International cooperation in the fight against corruption is one of the most important contemporary priorities for States because of its impact on the stability of the economic and social life of individuals. Corruption is not only an economic problem, but also a social, ethical and political one. Consequently, international agreements have unanimously emphasised the need for concerted international efforts to enable States to recover their embezzled funds. In order to detect financial transactions linked to corruption, banks and financial institutions must take the necessary measures to prevent and detect the transfer of the proceeds of corruption. In order to define the scope of application of the principle of international cooperation in the control and confiscation of funds derived from the fight against corruption, we will attempt to identify the objective and procedural aspects related to the field of confiscation.

Section 1: Defining the content of the principle of international cooperation in the confiscation of assets acquired in the fight against corruption

The recovery of assets through confiscation is considered a fundamental principle in supporting and strengthening international efforts to combat corruption. This principle is emphasised in the United Nations Convention against Corruption, in particular in Article 54, and serves as one of its objectives, as stated in Article 55. It is therefore essential to take appropriate measures through international cooperation in the area of confiscation. This issue is of great importance in view of the continuing efforts of criminals to launder the proceeds of crime and to hide evidence of such crimes outside national borders, thereby undermining law enforcement efforts to locate and confiscate such assets. In order to consider what is contained in international agreements on confiscation, we will discuss the concept of confiscation, which will help us to determine the subject of confiscation.

Subsection 1: Concept of Confiscation

Confiscation is considered to be one of the most effective punitive measures in the fight against corruption¹, as the confiscation of assets resulting from corruption offences means the elimination of the goal that criminal organisations seek to achieve², i.e. profit. International cooperation on this form of punishment is therefore of great importance, especially since these organisations often seek to maintain their assets or investments in countries other than those where the crimes are committed³.

Confiscation is defined as “the compulsory transfer of property from its owner to the state without compensation” and as “the addition of the offender’s property to the state’s property without compensation”. In Islamic jurisprudence, confiscation is described as “a decree transferring



ownership of certain items from a person to the state treasury” or “the taking of another person’s property by the ruler without compensation”⁴.

Confiscation is a financial penalty that applies to property derived from crime, as well as to items or goods the possession, manufacture, use, sale or offer for sale of which is itself a crime, such as narcotics and counterfeit currency. Confiscation is considered a cornerstone of the criminal justice system for corruption offences, as it acts as a deterrent comparable to imprisonment, as it simply means depriving offenders of all the proceeds of their criminal activities⁵.

Confiscation involves the seizure and retention by the government of property or money used in the commission of a crime. The Algerian legislator considers confiscation to be a pecuniary penalty that affects the financial liability of a person when it relates to items that the law prohibits from being possessed, as stated in Article 15 of the Penal Code, as amended and supplemented by Law No. 06/23 of 20 December 2006. It defines confiscation as “the definitive transfer to the State of property or a set of specific assets or, where necessary, their equivalent in value”.

Confiscation thus represents an additional resource for the treasury in general, as it involves the seizure of assets or property related to the offence for the benefit of the State. Confiscation is coercive, as it is ordered by a court decision and is not subject to a system of suspension if the original sentence is suspended⁶.

Most international conventions emphasise the importance and necessity of cooperation between States Parties in the execution of confiscation orders and decisions issued in one State in respect of the proceeds of crime or the articles and instruments used to commit it⁷, which are located in the territory of another State, and the rules to be followed in this regard.

In this context, the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the “Vienna Convention”⁸) defines confiscation in Article 1(6) as “the permanent deprivation of property by a court or other competent authority”. The same paragraph states that the concept of confiscation includes⁹, where applicable, the concept of deprivation. The Arab Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopts the same definition.

The United Nations Convention against Transnational Organised Crime (“Palermo Convention”) defines confiscation in Article 2(z) as “the final deprivation of property by order of a court or other competent authority”. This paragraph also states that the concept of confiscation includes, where applicable, the concept of seizure. The intention here is to refer to confiscation as including, where applicable, deprivation, namely the permanent deprivation of property by order of a court or other competent authority. The Convention also devotes Article 31 to the sanctions of freezing, seizure and confiscation, specifically organising the subject matter to which confiscation applies and the additional measures that sometimes need to be taken to implement confiscation¹⁰.

From the above, it is clear that a foreign confiscation order is the order issued in the context of a criminal prosecution, resulting in the definitive transfer of property or a set of specific assets to the State, issued by an authority with jurisdiction in the matter on behalf of the sovereignty of a foreign State.

Section Two: Defining the Material Scope of Confiscation

From the wording of Article 31(1) of the Convention, it can be concluded that confiscation as a penalty applies to corruption offences covered by the Convention and includes the following

1. Criminal proceeds: The proceeds of crime derived from conduct criminalised under this Convention or property equivalent in value to such proceeds. The term “criminal proceeds”, as defined in Article 2(e) of the Convention, refers to “any property derived or obtained, directly or indirectly, from the commission of an offence”. For example, a bribe received by a public official or securities obtained by forgery¹¹. This means that confiscation applies not only to funds directly derived from a corruption offence, such as the money embezzled by an employee or the bribe received, but also to property equivalent to those funds. For example, confiscation may apply to real estate or vehicles purchased by the employee with embezzled or bribed funds, and generally to any property that is the result of the proceeds of corruption.



2. Property, equipment or tools: These are objects used or intended for use in the commission of acts criminalised by this Convention, and constitute a traditional form of property subject to confiscation¹². They include tools or machines used in attempts to conceal other objects, such as the use of sand in a lorry to conceal fraudulent goods, or a machine used to counterfeit currency¹³. Despite the broad definition of the scope of seizure contained in the first paragraph of Article 31, subsequent paragraphs have clearly reaffirmed this expansive concept of the scope of seizure, which at times reaches a level that is difficult to accept from the point of view of legal principles or even to imagine in reality, such as the provisions relating to the seizure of benefits:¹⁴

1. Inclusion of other property: Confiscation includes any other property that has been converted or exchanged, in whole or in part, for the proceeds of a corruption offence. In this case, such property should be subject to confiscation instead of the proceeds, together with all other measures, such as freezing and confiscation, as provided for in Article 31 of the Convention¹⁵.

2. Possibility of fragmentation of property rights: This applies to bank accounts which may consist of funds obtained through corruption from illicit sources alongside legitimate financial sources¹⁶.

3. Inclusion of income and benefits: Confiscation includes income and benefits derived from a corruption offence, which is another aspect of broadening the concept of the scope of confiscation¹⁷.

Section Two: Specific procedural aspects of confiscation

International cooperation is characterised by the exchange of assistance between two or more States in order to achieve a common interest in combating the risks and effects of corruption and everything related to the proper functioning of the criminal justice system and the pursuit of the sources of threats. This assistance may be judicial, legislative, law enforcement or procedural. Thus, we can deduce some essential elements on which any international cooperation in the fight against corruption is based, relating to the preliminary procedures for seizure and the unique nature of the entity that holds the seizure order.

Subsection One: Preliminary Procedures for Confiscation

The seizure of assets or other proceeds or property derived from a corruption offence requires certain preliminary measures, such as freezing and confiscation, or subsequent measures, such as the administration of the seized assets. This is provided for in Article 31(2) and (3) of the Convention¹⁸.

The second paragraph states that each State Party shall take such measures as may be necessary to enable the detection, tracing, freezing or seizure for the purpose of final confiscation of the property referred to in the first paragraph. The third paragraph adds: "Each State Party shall, in accordance with its domestic law, take the necessary legislative and other measures to organise the administration of the authorities responsible for the seized or confiscated property referred to in paragraphs 1 and 2 of this article.

With regard to the preliminary seizure procedures aimed at tracing and confiscating funds or proceeds of corruption offences, it may be necessary to take these measures against individuals, on the one hand, and against entities or institutions that possess information useful for tracing and tracing these funds, on the other. On the one hand, there are measures taken by the State against individuals with regard to their possession of funds and property in order to uncover those obtained from a corruption offence (Article 31(8)). On the other hand, the procedures for uncovering the illicit source of the funds or property to be confiscated may fall upon banking institutions or other persons who hold the information and records necessary to identify that illicit source (paragraph 7 of the same Article 31)¹⁹.

The Convention has clarified the preliminary measures and procedures that precede the confiscation of assets or property derived from corruption offences in paragraph 2 of Article (55) of the Convention on International Cooperation in Confiscation²⁰.

Confiscation is carried out in one of two ways: either the State refers the request to its competent authorities to issue a confiscation order for execution, or the State refers the confiscation order



received from another State directly to its competent authorities for execution as necessary. This is indicated in paragraph 1 of Article (55) of the Convention²¹.

With regard to the above procedures, the Convention provides that the assets to be confiscated must be clearly identified. If they are movable assets, such as cash or similar items, their location or the bank where they are deposited must be specified. If the confiscation order has been issued by a competent court within the jurisdiction of the requesting State, the State from which the assets are to be recovered must be provided with a legal copy of the order through the competent authorities so that it can execute the order²².

In addition, Article (55/6) of the United Nations Convention against Corruption states that temporary confiscation of the funds may be allowed instead of rejecting or postponing the confiscation request, according to a bilateral agreement with the requesting State. This article authorises the State from which recovery is sought to temporarily release the funds to the requesting State if the rights of third parties are affected in good faith or if there is a bilateral agreement between the two States. Temporary confiscation may also be used to trace the funds in order to prove an offence of money laundering or terrorist financing²³.

Section Two: The authority issuing the confiscation order

Although confiscation is a penalty and no penalty can be imposed without a judicial decision, the Convention against Corruption also allows confiscation by an administrative decision issued by a non-judicial authority. This interpretation is derived from Article 31(7) and Article 2(r) of the Convention, which allow confiscation by order of a court (i.e. a judicial decision) as well as by decision of another competent authority, which certainly includes administrative confiscation decisions.

In countries with an administrative criminal law system, the administration may confiscate objects by administrative means. The Criminal Code provides for confiscation as an additional penalty for certain administrative offences, provided that there is a provision to that effect, if the object in question poses a danger. Confiscation may be an optional subsidiary penalty, as provided for in Article 20 of the same Code, or a principal penalty, as provided for in Article 29, which states that confiscation is to be imposed for an administrative offence if the offender acts for the benefit of another party²⁴.

While the provisions of the previous paragraphs are limited to the procedures for confiscation of corruption-related assets within the same State, Article 55 of the Convention includes procedures for international cooperation for confiscation purposes. In order to achieve the objectives of cooperation, paragraph 7 of Article 31, referred to above, contains a number of provisions, including the following:²⁵ “Each State Party shall empower its courts or other competent authorities to order the production of banking, financial or commercial records, and the confidentiality of bank accounts may not be invoked to refuse compliance with such an order”.

In addition, any State Party that has within its territory criminal proceeds, funds, instrumentalities or other property related to the offence and that has received a request for confiscation from another State Party with jurisdiction over one of the offences set forth in this Convention must take the necessary measures within its legal framework to refer the request to its competent authorities, either for the purpose of issuing a confiscation order, or for the purpose of executing such an order if it has already been issued, or for the purpose of executing the confiscation order issued by the competent court in the requesting State in accordance with the request (Article 55(1) of the Convention). The requested State must take the necessary measures to trace, identify, freeze or seize, pending possible confiscation, the proceeds and funds derived from the offence.

Each State Party shall provide the Secretary-General of the United Nations with copies of its domestic laws relating to this article (Article 55) and any subsequent amendments there to.

Chapter Two: Activating the Principle of International Cooperation in the Confiscation of the Proceeds of Corruption



The United Nations Convention against Corruption has established a novel method of recovering the proceeds of corruption by organising the confiscation of property or funds derived from corruption-related offences. Such confiscation is treated like any other criminal sanction; however, the execution of this sanction in corruption cases is of particular importance and may pose unique challenges, primarily because the property or funds subject to confiscation may be located in a State other than the State where the corruption offence was committed²⁶. Consequently, it is a cross-border offence and therefore confiscation proceedings are also cross-border in nature, raising issues of recognition of foreign confiscation orders for the enforcement of the confiscation order.

Section One: Scope of recognition of foreign confiscation judgments

The rise in crime has made it necessary for States to cooperate in combating it, since offenders often cross the borders of several States. In order to ensure that they do not escape punishment simply because they reside in a State other than the one in which they were convicted, there is a principle which prohibits a defendant from being tried or punished a second time for an offence for which he has already been tried or punished in another State. This is based on the fact that foreign criminal judgments have the effect of *res judicata*, and this effect is now recognised in international legal relations and is incorporated in national laws and regulations²⁷, including Algerian legislation²⁸.

Section One: Recognition of foreign sentences in relation to confiscation

When a mutual legal assistance treaty or multilateral agreement contains an obligation to freeze the proceeds of illegal activities in preparation for their seizure, this requires a State to recognise the criminal judgments of another State at a given point in time. This is similar in effect to the execution of a confiscation order based on the provisions of a convention on the recognition of foreign judgments with executive effect, although differences remain. Experience in the latter case often reveals certain difficulties and obstacles. The Council of Europe Convention on Money Laundering shows that, in the case of mutual assistance treaties and other instruments aimed at the execution of seizure orders, the method of mutual assistance overlaps with the method of recognising the execution of foreign seizure orders²⁹.

The treaty on the recognition of foreign seizure orders is based on several principles³⁰. Under such a treaty, a State may be requested to execute any type of sanction or measure, including seizure orders, provided that it complies with a number of checks, such as the principle of dual criminality and the prohibition of double jeopardy. In order for the requested State to execute foreign confiscation orders, the convicted person must have had the opportunity for an adequate defence in a trial that recognises fundamental principles of justice and human rights. Any judgment must be final and enforceable, and the offence giving rise to the confiscation must not be of a political, military or financial nature. As a general rule, the requesting State must provide the following information when submitting a request:

1. A certified copy of the seizure order or decision.
2. A description of the crime that led to the sentence, along with a description of and specification for the penalty.
3. A copy of the text that defines the act as a crime.
4. Identification and location details of the person sought.
5. In the case of seizure, information regarding the ownership in question must be disclosed³¹.

With regard to the above procedures, the Treaty requires that the assets to be recovered be specified in a manner that leaves no room for ambiguity. If the assets are movable, such as cash or similar items, their location or the bank in which they are deposited must be specified. If the seizure order has been issued by a competent court in the requesting State, a legal copy must be sent through the appropriate authorities to the State from which the property is to be recovered so that it can execute the order³².



With regard to the Algerian legislation on the execution of confiscation orders issued by foreign judicial authorities, a confiscation order issued by a foreign authority is sent directly to the Ministry of Justice, which forwards it to the public prosecutor of the competent judicial authority, provided that the request comes from a State party to the Convention against Corruption. The request must also specify the order or decision to confiscate the proceeds of crime, property, equipment or any means used to commit one of the corruption offences specified in the law.

The Public Prosecutor's Office then sends this request (the foreign judgment), together with its requests³³, to the competent court, and the court's judgment is subject to appeal and cassation in accordance with the law. Judgments handed down on the basis of requests made by the public prosecutor are enforced by all legal means. We can therefore conclude that the Algerian legislature, in recognising foreign judgments on the confiscation of the proceeds of corruption offences, requires the fulfilment of the above-mentioned conditions, as set out in articles 67 and 68 of the Anti-Corruption and Prevention Act, which acts as a ratification of this type of judgment. These are the main measures provided for in Algerian criminal law to combat administrative and financial corruption offences, which, as we have seen, derive from the relevant international conventions on corruption. By ratifying the most important of these, the Algerian legislator has fulfilled its international obligations, and the only thing that remains to be done is to put these measures into practice³⁴.

In the event of a decision to confiscate assets, the judicial authority examining the case must order the necessary measures to protect legitimate property rights that may be claimed by another State party to the Convention. This is expressly provided for in Article 62/3 of the Anti-Corruption and Prevention Act, with which the Algerian legislator has aligned itself with the international legislator in the United Nations Convention against Corruption.

Recognising the authority of a criminal judgment relating to confiscation within the territory of the State in which it was issued does not raise any difficulties, since it is directly linked to the principle of the territoriality of criminal law. However, the question arises as to the possibility of recognising this authority at international level, i.e. recognising the effects of the criminal judgment beyond the territory of the State in which it was issued.

Section Two: The Enforcement of Foreign Criminal Judgments Relating to Seizure

The enforcement of foreign confiscation judgments is of great interest to many countries and international organisations, as it is an effective sanction in the fight against crime, especially organised crime. Enforcement can act as a deterrent to both natural and legal persons, and it also serves as an additional resource for the treasury, as it involves the confiscation of assets or property related to the offence for the benefit of the State. Confiscation is enforced by a court order and is not subject to suspension, even if the original sentence is suspended³⁵.

International instruments encourage states to recognise the enforceability of foreign criminal judgments on the confiscation of proceeds of crime and to provide mutual assistance to this end. These include the United Nations Convention against Transnational Organised Crime, which requires member states to take the necessary measures, within the limits of their legal systems, to enable the seizure of:

- Proceeds of crime derived from offences covered by this Convention, or property of equivalent value to such proceeds.
- Property, instrumentalities or other means used or intended to be used in the commission of offences covered by this Convention, where the State receives a request for seizure from another State where such offences have been committed, together with a decision to confiscate such proceeds, and more³⁶.

The Convention contains detailed provisions on confiscation, primarily through Articles 31 and 55 of Chapter Five on the recovery of assets. Decisions and procedures regarding the confiscation of assets or property derived from corruption offences covered by the Convention are made in



accordance with the domestic law of the Member State, which may include national legislation and bilateral or multilateral treaties to which the State is a party³⁷. If the State receiving the confiscation request is not bound by a bilateral treaty and its domestic law does not permit the confiscation of property derived from an offence committed in another State, except pursuant to a treaty, it may consider the United Nations Convention against Corruption as the legal basis for its confiscation procedures³⁸.

In the same vein, the Financial Action Task Force (FATF), in its Forty Recommendations, calls for the recognition of the enforceability of foreign criminal judgments with respect to confiscation, considering this to be one of the most important aspects of international cooperation in the fight against money laundering. The FATF urges countries to establish a designated authority responsible for responding promptly to foreign requests to identify, freeze, seize and confiscate proceeds and other property of equivalent value derived from money laundering or money laundering-related offences³⁹.

If the state receiving the request for confiscation is not bound by a bilateral treaty and its domestic law does not permit the confiscation of assets derived from an offence committed in another state except under a treaty, it may consider the United Nations Convention against Corruption as a legal basis for its confiscation procedures⁴⁰.

As a general rule, the enforcement of foreign judgments is organised through a treaty, taking into account the principle of reciprocity, which is the general provision on judicial cooperation established in Article 57 of the Law on the Prevention and Combating of Corruption.

Section Two: Procedural Provisions for the Enforcement of Foreign Criminal Judgments Relating to Confiscation

Enforcement of confiscation orders is an effective means of combating organised criminal groups that seek to profit from their illegal activities, which cover vast areas of the world and exploit differences in legal systems to evade punishment. In the absence of international cooperation in the enforcement of confiscation orders, crossing the borders of the State in which the crime was committed becomes an obstacle to their execution and thus contributes to impunity⁴¹.

The State is obliged to enforce the foreign criminal judgment relating to confiscation as it would any other national judgment. This obligation may derive either from national law or from international agreements, and it follows specific procedures for execution laid down in these laws. This specificity also applies to the authority responsible for executing the confiscation order, which determines how the confiscated assets are to be dealt with.

Section One: Procedures for the enforcement of foreign criminal judgments in relation to confiscation

The Palermo Convention sets out procedures for international cooperation in the execution of seizures. It requires the receiving State Party, upon receiving a request from another State Party with jurisdiction over an offence covered by this Convention, to seize, to the fullest extent possible and within the limits of its domestic legal system, any proceeds of crime or property or other instrumentalities or devices referred to in Article 12(1) of this Convention found within its territory.

- The receiving State Party shall transmit the request to its competent authorities for the purpose of obtaining a seizure order and executing it, if issued, or shall transmit the seizure order issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention, for the purpose of executing it to the extent necessary, in respect of the proceeds of crime or property or other instrumentalities or devices referred to in article 12, paragraph 1, of this Convention, located in the territory of the receiving State Party.

Receiving States shall also take the necessary measures to identify, trace, freeze or seize, in preparation for confiscation, proceeds, funds or other property related to an offence covered by this Convention⁴². To this end, the request for seizure shall contain factual data and information on the scope of the request and shall be executed in accordance with the provisions of the domestic law of the receiving State or of any treaty, convention, agreement, bilateral or multilateral arrangement⁴³.



For the execution of the request for seizure, the following conditions must be met::

1. An acceptable copy of the final confiscation order.
2. A statement of facts and information regarding the property to be confiscated.
3. A statement of the measures taken by the requesting State for the purpose of recovery.

The receiving State may refuse the request if it does not receive sufficient evidence or if the property to be seized is of no value⁴⁴.

The above-mentioned Convention does not specify a particular authority responsible for executing seizure requests, leaving this matter to the receiving State to determine in accordance with its domestic law⁴⁵.

However, the 1999 United Nations Model Law on Money Laundering was more specific in designating the authority responsible for executing seizure requests. It mandated the Minister of Justice of the receiving State to verify the validity of the request and then forward it to the competent public prosecutor in the location of the proceeds, funds or other property to be seized. The public prosecutor must notify the competent judicial authority of the content of the foreign confiscation request in order to order the necessary measures for its execution, after confirming that there are no grounds for refusal under the provisions of this legislation⁴⁶.

Section Two: The disposition of confiscated assets

What is referred to in Article 57 of the Convention as the “return of assets” or “proceeds of corruption” is the final and most important procedure for affected States where corruption offences have been committed. It was one of the most controversial and debated issues during the preparatory work and negotiations leading to the adoption of the Convention.

The Vienna and Palermo Conventions have outlined methods for dealing with the proceeds of confiscated assets⁴⁷, allowing the confiscating state to manage these assets in accordance with its domestic laws and administrative procedures. The Conventions also encourage States Parties to enter into agreements governing the disposition of seized assets⁴⁸.

When States Parties act at the request of another State Party, that State should, to the extent permitted by its domestic law, give priority to returning seized proceeds of crime or seized property to the requesting State so that it can compensate victims of crime or return the proceeds or property to their rightful owners⁴⁹. In addition, the Convention allows a State to bring a civil action in foreign courts where assets obtained through corruption are located⁵⁰.

Article 57(3)(c), which governs the return and disposition of assets, provides for various methods of return, such as the return of the assets to the requesting state or to their previous lawful owners, or the payment of compensation to the victims of the crime. This implies that the disposition of confiscated proceeds of corruption does not necessarily mean their return to the State where the offences were committed, as evidenced by the absence of a requirement to return the proceeds to the State from which they were misappropriated. The term “rightful owners” may include States, but also companies, organisations or associations that could claim to be victims of corruption⁵¹.

Furthermore, Article 57(1) clearly states that the disposition of assets confiscated as a result of corruption offences may be carried out in various ways, including the return of such assets to their previous lawful owners. This indicates that the disposition of such assets does not always have to involve the return of the assets to the State where the offences were committed, as suggested by the explicit phrase “may be conducted in various ways”, which implies that there are other methods of disposing of the seized assets that were not specified by the drafters of the Convention.

In any event, Article 57(2) emphasises that “each State Party shall, in accordance with the fundamental principles of its domestic law, adopt such legislative and other measures as may be necessary to enable its competent authorities, when acting at the request of another State Party, to return seized property in accordance with this Convention, while respecting in good faith the rights of third parties”.



In addition, a State Party, when acting at the request of another State Party, may consider entering into agreements or arrangements for the donation of the value of the proceeds of crime or of such seized property or of funds derived from the sale of such proceeds of crime, or any part thereof, to the account designated in accordance with Article 30(2)(c) of the Palermo Convention and to international governmental bodies specialized in combating crime⁵². The same applies to the sharing of proceeds of crime or property or funds obtained from the sale of such proceeds of crime or property with other States Parties on a regular or case-by-case basis, in accordance with its domestic law or administrative procedures⁵³.

It can be seen from the above that the provisions of the United Nations Convention against Transnational Organised Crime concerning the enforcement of a foreign judgment for the seizure of assets are closely modelled, even in their wording, on the provisions of the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The European Convention on the International Validity of Criminal Judgments deals in Articles 45 to 47 with the rules for the enforcement of confiscation judgments in one Contracting State in the territory of another Contracting State.

Under Article 45, when a request for the enforcement of a judgment for the confiscation of a sum of money is received from the sentencing State, the judge of the executing State or the authority referred to in Article 37 shall convert the amount ordered to be confiscated into the currency units of the executing State at the rate of exchange applicable at the time of the decision.

If the request for enforcement relates to the seizure of specific property, Article 46 provides that the judge in the executing State or the authority referred to in Article 37 may not order the seizure of that property unless the law of the executing State permits the seizure of that property as a penalty for the same offence. However, the seizure of these items may be ordered if the law of the executing State does not provide for the seizure of these items as a penalty for the offence, but does provide for more severe penalties.

According to Article 74, the proceeds of confiscation shall be paid to the treasury of the executing State⁵⁴, without prejudice to the rights of bona fide third parties who establish their rights to the confiscated funds or property without any connection to the offence committed. Some of the confiscated funds or property may be returned to the convicting State at its request if the funds or property are of particular importance to that State.

This situation has led the European Commission to propose legislation - submitted to the Council of the European Union - aimed at improving the effectiveness of freezing, managing and confiscating the assets of mafias and organised crime in Europe.

As far as the Algerian legislator is concerned, like the French legislator, it has recognised the enforcement of foreign criminal judgments relating to confiscation and has defined in its texts the procedures for implementing this judgment, but without the detailed provisions contained in the international conventions referred to above, in particular as regards the disposition of seized assets and the circumstances in which enforcement may be refused.

In cases where the return of assets is not mandatory, the law on the seizure of assets should authorise the government to share the seized assets with the jurisdictions of countries that facilitated the successful seizure, as provided for in numerous treaties⁵⁵.

One reason that could lead the requesting state to waive the final judgment requirement is situations where it is impossible to obtain a final judgment due to the death, flight or absence of the defendant, etc⁵⁶.

CONCLUSION:

This study has broadly addressed the requirements for activating the principle of international cooperation in the confiscation of assets derived from corruption. After presenting some of the procedures and measures contained in the United Nations Convention against Corruption regarding the recovery of criminal proceeds through confiscation as a means to combat corruption, we find that their effectiveness is lacking. The reality is that the assets confiscated for corruption offences worldwide represent only a small fraction of the astronomical sums involved in corruption,



indicating that the scope of confiscation operations is limited compared to the huge profits made by criminals.

Differences in legal frameworks between countries contribute to the ineffectiveness of confiscation efforts in achieving their intended goals. Moreover, the legal gaps and ambiguities surrounding these procedures are the main and most significant obstacles to the activation of this mechanism, which is crucial for the recovery of criminal proceeds and their return to requesting States. The ease and speed with which proceeds can be transferred from one country to another requires that confiscation laws be as flexible as the criminals who benefit from the proceeds of crime.

Our study of this issue has led us to the following conclusions:

- Asset recovery is essential in the fight against organised crime and corruption in order to deprive criminals of their illegal profits and to ensure that they do not benefit from crime.
- Despite the considerable efforts made at the national and international levels to confiscate the proceeds of corruption, this anti-corruption mechanism still suffers from numerous shortcomings due to various obstacles that need to be addressed, the most important of which are
 - The ineffectiveness of international and regional efforts to combat and reduce corruption and the lack of sufficient mechanisms to confiscate the proceeds of corruption.
 - The lack of international anti-corruption treaties at the regional level that organise the process of confiscating assets derived from corruption, and the ineffectiveness of the Arab Convention against Corruption.
 - The lack of harmonisation within countries, which further complicates matters by failing to incorporate or implement relevant anti-corruption conventions.
 - Weak legal expertise in the recovery of misappropriated funds through confiscation, and poor coordination at the national level between the various committees formed to address this issue.
 - The 2003 United Nations Convention against Corruption is unable to achieve its objectives due to the flexible wording of its core obligations, in particular regarding cooperation, and the lack of an effective monitoring mechanism to ensure compliance with its provisions.
 - The procedures for the recovery of misappropriated funds abroad require final and conclusive judicial decisions condemning the persons involved, as well as the concern of the States holding the funds to issue political rather than judicial decisions; these factors have hampered the recovery process in the context of political instability in these countries.

In the light of the above findings, we propose the following recommendations:

- The need for concerted efforts by the international community, national and regional authorities to combat corruption in all its forms, along with related phenomena such as organised crime and money laundering, and to accede to and ratify treaties and international conventions that facilitate anti-corruption measures to organise the recovery of funds derived from crime.
- The need for the parties to cooperation, be they States or organisations, to have autonomy linked to free will through recognition of that capacity.
- The need for political will on the part of States to combat corruption and eliminate its serious threat to development and society.
- The establishment of institutional frameworks for the fight against corruption at all international and national levels and the strengthening of investigative measures to combat this serious phenomenon.
- The strengthening and implementation of international treaties and conventions on the control and confiscation of funds derived from corruption.
- The need to develop the existing anti-corruption mechanisms in international agreements, adapting them to the specificities of the country in which they are applied, while emphasising the common objectives of achieving a high level of good governance and transparency, and not hindering the efforts of all countries to join global and regional anti-corruption agreements.
- The development and continuous review of national laws and regulations on various forms of corruption, seeking to eliminate potential conflicts within them and intensifying efforts to regulate them in line with the spread of this phenomenon.



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- ⁷- Mustafa Taher, "Legislative Responses to the Phenomenon of Money Laundering Derived from Drug Crimes," Comparative Study, Doctoral Thesis, Faculty of Law, University of Cairo, Egypt, 2001, p. 497.
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- ¹¹- Medhat Al-Dabsi, "Subsidiary and Complementary Penalties in Criminal Legislation," Dar Al-Jamia Al-Jadida, p. 94.



¹²- Hussein Hayat, "Previous Reference", p. 65.

¹³- Ahssen Bouski'a, "A Brief in General Criminal Law", Dar Houma for Publishing and Distribution, third edition, Algeria, 2006, p. 315.

¹⁴- Suleiman Abdel Moneim, "Previous Reference", p. 84.

¹⁵- As stated in the fourth paragraph of Article 31 of the Convention.

¹⁶- This image is derived from what is stated in paragraph five of article 31 of the treaty.

¹⁷- This provision is derived from what is stated in paragraph six of Article 31 of the Treaty.

¹⁸- It corresponds to Article 51 of Law 06/01 on the Prevention of and Fight against Corruption.

¹⁹- Suleiman Abdel Moneim, "Previous reference", p. 86.

²⁰- Article (55), paragraph (2) states: "Upon receiving a request from another State Party having jurisdiction over an act criminalised under this Convention, the receiving State Party shall take measures to identify, trace and freeze or seize the proceeds of crime or the property, equipment or other instrument referred to in paragraph 1 of Article 31 of this Convention for the purpose of eventual confiscation by an order issued either by the requesting State Party or by the receiving State Party in accordance with a request made pursuant to paragraph 1 of this article."

²¹- Paragraph (1) of Article (55) states the following: "The State Party that receives a request from another State Party that has jurisdiction over an act criminalized under this agreement for the confiscation of criminal proceeds or properties, equipment, or other instruments referred to in paragraph 1 of Article 31 of this agreement existing in its territory shall, to the fullest extent possible within its domestic legal system, do the following:

(a) Refer the request to its competent authorities to obtain a confiscation order and to enforce that order if issued;

(b) Or refer to its competent authorities a confiscation order issued by a court in the territory of the requesting State Party in accordance with paragraph 1 of Article 31 and paragraph 1(a) of Article 54 of this agreement, for enforcement to the extent required, as long as it relates to criminal proceeds or properties, equipment, or other instruments referred to in paragraph 1 of Article 31 existing in the territory of the receiving State Party."

²²- Paragraph (3) of Article (55) states: "The provisions of Article 46 of this agreement apply to this article, subject to what is necessitated by the difference in circumstances. In addition to the information specified in paragraph 15 of Article 46, requests made pursuant to this article must include:

(a) In the case of a request related to paragraph 1(a) of this article, a description of the property to be confiscated, including the location of the property and its estimated value, where relevant, and a statement of the facts relied upon by the requesting State Party sufficient to enable the receiving State Party to issue the order under its domestic law;

(b) In the case of a request related to paragraph 1(b) of this article, a legally acceptable copy of the confiscation order on which the request is based, issued by the requesting State Party, a statement of the facts and information on the extent required for executing the order, a statement specifying the measures taken by the requesting State Party to provide appropriate notice to bona fide third parties and to ensure legal procedures are followed, and a statement that the confiscation order is final;

(c) In the case of a request related to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party, a description of the required procedures, and a legally acceptable copy of the order on which the request is based, where available."

²³- Ahmed Mandil, "International Cooperation in the Field of Criminal Recovery and Assets Obtained from Corruption Crimes," research presented at the conference "Legislative Reform: A Path to Good Governance and Anti-Corruption," held by the Al-Nabaa Foundation for Culture and Media and the University of Kufa/Faculty of Law, July 25-26, 2018, published on the site: <https://m.annabaa.org>.

²⁴- Amin Mustafa Mahmoud, "The General Theory of Administrative Criminal Law (The Phenomenon of Reducing Punishment)," Dar Al-Jamia Al-Jadida, unlisted edition, Alexandria, Egypt, 1992, p. 242.

²⁵- Article 5/3 of the United Nations Convention (Vienna Convention) of 1988 regarding the combat against illicit drug trafficking states a similar provision.

²⁶- Rasha Ali Kazem, "Corruption Crimes (A Study on the Compatibility of Arab Legislation with the Provisions of the United Nations Convention against Corruption)," Master's thesis submitted to the Faculty of Law, Al-Nahrain University, 2012, p. 305.

²⁷- Majid Ahmed Ali Mansar, "International Cooperation in Combating Terrorism Under the Rules of Public International Law," Doctoral thesis, Faculty of Law, Cairo University, p. 664.



- ²⁸- See Articles 582 to 589 of the Algerian Code of Criminal Procedure.
- ²⁹- Mahmoud Sharif Basyouni, "Money Laundering: International Responses and Regional and National Combating Efforts," Dar Al-Shorouk, 1st edition, Egypt, 2004, p. 40.
- ³⁰- See the European Convention on the Effect of Criminal Judgments, May 28, 1970, for discussion on the recognition of foreign judgments.
- ³¹- Mahmoud Sharif Basyouni, "Previous Reference," p. 41.
- ³²- Ahmed Mandil, "International Cooperation in the Field of Criminal Recovery and Assets Obtained from Corruption Crimes," previous reference.
- ³³- Nabil Malekia, "Previous Reference," p. 103.
- ³⁴- Nabil Malekia, "Previous Reference," p. 104.
- ³⁵- Amjad Qatifan Al-Kharisha, "Previous Reference," p. 66.
- ³⁶- See Article 5 of the Vienna Convention, Article 13 of the Palermo Convention, and Articles 13 to 17 of the Strasbourg Convention.
- ³⁷- In the same context, paragraph (4) of Article (55) of the convention states: "The receiving State Party shall take decisions or actions as stipulated in paragraphs 1 and 2 of this article in accordance with the provisions of its domestic law and procedural rules or any bilateral or multilateral agreement it may be bound by towards the requesting State Party, subject to those provisions and rules or that agreement or arrangement."
- ³⁸- In this regard, paragraph (6) of Article (55) states: "If the State Party chooses to make the measures referred to in paragraphs 1 and 2 of this article conditional upon the existence of a treaty in this regard, that State Party shall consider this agreement as the necessary and sufficient treaty basis."
- ³⁹- Dalila Mbareki, "Money Laundering," Doctoral thesis, Haj Lakhdar University, Batna, 2008, p. 324.
- ⁴⁰- Ahmed Mandil, "International Cooperation in the Field of Criminal Recovery and Assets Obtained from Corruption Crimes," previous reference.
- ⁴¹- Mustafa Taher, "Previous Reference," p. 5 and following pages.
- ⁴²- Article 13/2 of the Palermo Convention and in the same sense Articles 5/4 and 5/5 of the Vienna Convention and Article 13 of the Strasbourg Convention.
- ⁴³- Article 13/4 of the Palermo Convention and in the same sense Article 5/4(c) of the Vienna Convention.
- ⁴⁴- Samia Belgraff, "Recovery of Assets Obtained from Corruption Crimes (Challenges and Mechanisms)," Journal of Rights and Freedoms, Issue Two, Mohamed Khider University of Biskra, March 2016, p. 419.
- ⁴⁵- Article 5/4(a) of the Vienna Convention and Article 13/1 of the Palermo Convention.
- ⁴⁶- Mustafa Taher, "Previous Reference," p. 501.
- ⁴⁷- Article 5/5(a) of the Vienna Convention and Article 14/1 of the Palermo Convention.
- ⁴⁸- Article 5/5(b) of the Vienna Convention, Article 14/3 of the Palermo Convention, and Article 10 of the Strasbourg Convention.
- ⁴⁹- Article 14/2 of the Palermo Convention.
- ⁵⁰- Faiza Hawam, "Recovery of Criminal Proceeds in the United Nations Convention Against Corruption: Mechanisms and Obstacles," Journal of Legal and Political Sciences, Vol. 10, No. 2, September 2019, p. 1539.
- ⁵¹- Paragraph (c/3) of Article (55) of the convention states: "According to Articles 46 and 55 of this convention and paragraphs 1 and 2 of this article, the receiving State Party... (c) in all other cases, shall give priority consideration to returning the confiscated property to the requesting State Party, or returning that property to its previous legitimate owners, or compensating the victims of the crime."
- ⁵²- This is also supported by Article 5/5(b) of the Vienna Convention.
- ⁵³- Mohamed Abdel Latif Abdel Aal, "The Crime of Money Laundering and Means of Combatting It in Egyptian Law," Dar Al-Nahda Al-Arabiya, p. 219, 220.
- ⁵⁴- Adel Yahya, "Means of International Cooperation in Enforcing Foreign Criminal Judgments," Dar Al-Nahda Al-Arabiya, 1st edition, Cairo, Egypt, 2004, p. 105-106.
- ⁵⁵- Among these conventions are: the Vienna Convention, the International Convention for the Suppression of the Financing of Terrorism, and the United Nations Convention Against Transnational Organized Crime. Faiza Hawam, "Previous Reference," p. 1540.
- ⁵⁶- Hussein Hayat, "Previous Reference," p. 70.