



Presentation of the **Informal Group of the French Branch of the Association de droit international/International Law Association on the Consideration of Victims of International Corruption** at the **United Nations General Assembly Special Session (UNGASS) against Corruption**,  
June 2-4, 2021

While Chapter V of the 2003 United Nations Convention against Corruption established an international consensus on asset recovery, the Convention does not establish an operational framework for the return of illicit assets. Launched in September 2007, the joint initiative of the United Nations and the World Bank, the *Stolen Asset Recovery Initiative* (StAR), has allowed for a better consideration of the challenges related to the implementation of Chapter V of this convention while at the same time revealing the limits of international and national actions.

Indeed, the transfer abroad of illicit assets resulting from corruption is a real scourge, especially for developing countries. When StAR was launched, the United Nations and the World Bank estimated that the cross-border flow of global proceeds of crime, corruption, and tax evasion was between \$1 trillion and \$1.6 trillion per year.<sup>1</sup> The sheer volume of this transfer of illicit assets derived from corruption “*has serious or even devastating consequences for the State of origin*”<sup>2</sup> by significantly undermining their sustainable development policies.

The development of so-called negotiated justice has not succeeded in compensating for the aporia at the international level with regard to the restitution of illegitimate assets. In a report published in 2016, entitled *Left out of the Bargain*, StAR took stock of settlement agreements, which are similar in nature to the Deferred Prosecution Agreements in the United States or judicial conventions of public interest in France, in cases of transnational corruption and their consequences for asset recovery. The main conclusion was that while “*significant monetary penalties have been imposed [...] hardly any of the respective assets [have been] returned to the countries whose officials have allegedly been bribed.*”<sup>3</sup>

The extent of international corruption is jeopardizing the achievement of the United Nations' Sustainable Development Goals, ten years away from completion. This situation increases the urgent need to propose solutions to the “*several policy*” and legal issues that are “*likely to*

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<sup>1</sup> United Nations Office on Drugs and Crime, World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan*, June 2007, p. 1.

<sup>2</sup> United Nations Office on Drugs and Crime, *Legislative Guide for the Implementation of the United Nations Convention against Corruption*, Second Edition, 2012, §660, p. 193.

<sup>3</sup> J. A. ODUOR, F. M. U. FERNANDO, A. FLAH, D. GOTTWALD, J. M. HAUCH, M. MATHIAS, J. W. PARK, O. STOLPE, *Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery*, StAR, November 2013, p. 2.

*arise during any efforts to recover assets in cases of corruption or embezzlement of public funds.*<sup>4</sup>

It is precisely this observation that motivated the creation of an informal group on the consideration of victims in matters of international corruption within the French Branch of the *International Law Association*, under the chairmanship of Mr. Nicola Bonucci, Associate Lawyer of the Paul Hastings law firm in Paris and former Director of Legal Affairs of the Organisation for Economic Co-operation and Development.

Made up of professors, lawyers, and an advocacy officer from *Transparency International France*, this group has met several times to discuss the inherent questions of the recovery of illicit assets, with a view to exploring and proposing a pragmatic and operational solution for the return of these assets through, for example, the establishment of an international mechanism for the restitution of misappropriated assets. The stakes of this work will focus in particular on the distinction between legitimate and illegitimate assets, the modalities of confiscation of illegitimate assets, as well as the modalities of return of unlawful assets to their legitimate owners.

The informal group will also address the issue of compensation for victims in international corruption cases. A debate, at this stage led by civil society but also by StAR in the framework of the report mentioned above,<sup>5</sup> is emerging around two main axes: on the one hand, the identification of the States having to recover the compensation paid in the framework of international corruption cases and, on the other hand, the identification and compensation of the victims of these corruption cases.

To enrich its work, the informal working group began to conduct, starting in February 2021, hearings of personalities, of various nationalities and backgrounds, with a specific and precise experience of the questions related to the restitution of illicit assets in the field of transnational corruption.

The work of this informal group tends to follow the same logic that motivated the holding of this Special Session of the United Nations General Assembly against corruption. Aware of the need to continue to participate in the “*effective implementation*”<sup>6</sup> of the 2003 United Nations Convention against Corruption, the members of the informal group wish to participate in the development of an operational framework that will contribute to make the international consensus on asset recovery established by this convention effective, as well as to ensure that victims of international corruption are better taken into account.

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<sup>4</sup> J.-P. BRUN, A. SOTIROPOULOU, L. GRAY, C. SCOTT, K. M. STEPHENSON, *Asset Recovery Handbook: A Guide for Practitioners, Second Edition*, StAR, December 2020, p. 11.

<sup>5</sup> J. A. ODUOR, F. M. U. FERNANDO, A. FLAH, D. GOTTWALD, J. M. HAUCH, M. MATHIAS, J. W. PARK, O. STOLPE, *Id.*

<sup>6</sup> United Nations, General Assembly, *Resolution 73/191, A/RES/73/191*, December 17, 2018, p. 1.