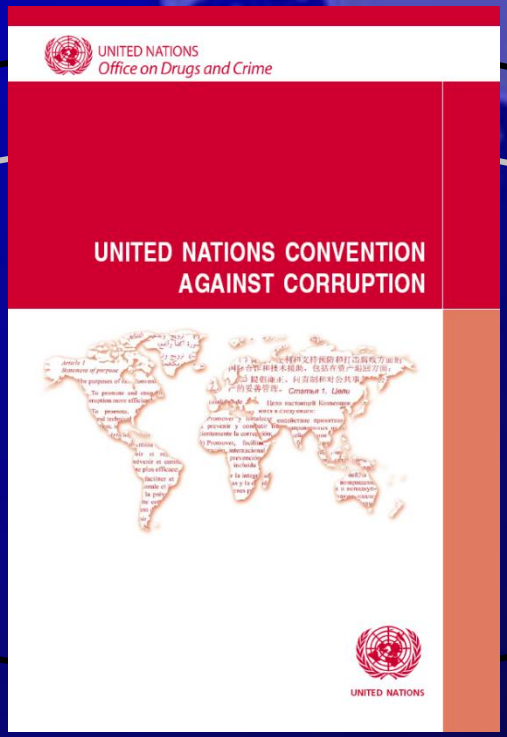
UNITED NATIONS
Office on Drugs and Crime

The legal basis of the StAR Initiative: The United Nations Convention against Corruption

Prevention

Criminalization



Asset Recovery

International Cooperation

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Chapter V, Asset Recovery - a major breakthrough

"The return of assets is a fundamental principle of this Convention…
Parties shall afford one another the widest measure of cooperation and assistance in this regard" (art. 51)

Typical steps of an asset recovery case as reflected in the UNCAC: (1)

- Tracing / identifying / locating: art. 52, 55 (2, 3), 56, 58
- Seizure / Freezing: art. 54, 2 / 55, 2, Confiscation: art. 54, 1 / 55,1
- Return / Recovery: art. 57

Prevention and detection of transfer of proceeds of corruption (art. 52)

States Parties must require their financial institutions to:

- *Verify the identity of customers*
- *Determine the identity of beneficial owners of high-level accounts*
- *Apply enhanced scrutiny to accounts maintained by prominent public officials*
- *Report suspicious transactions to competent authorities*
- *Prevent the establishment of banks with no physical presence – "shell banks"*

Typical steps of an asset recovery case as reflected in the UNCAC: (2)

- Tracing / identifying / locating: art. 52, 55 (2, 3), 56, 58
- Seizure / Freezing: art. 54, 2 / 55, 2
  Confiscation: art. 54, 1 / 55,1
- Return / Recovery: art. 57

Art. 54 para 1: Confiscation Models

CONVICTION BASED

- To give effect to a foreign confiscation order, 54 (1a) (mandatory)
- To order confiscation of foreign property, 54 (1b) (mandatory)

The confiscation follows a criminal conviction against the person.

NON CONVICTION BASED (= IN REM, = CIVIL FORFEITURE)

- Consider: Confiscation without criminal conviction (1c) (non mandatory).
- **Advantages:**
  - When no conviction is possible (perpetrator absconded, political opposition, weakened judicial system in the requested country)
  - Civil standard of proof is applied from the beginning (confiscation may be possible although the perpetrator has to be acquitted by criminal standards)
  - No need for dual criminality.

The action is against the property, not against the person.

Typical steps of an asset recovery case as reflected in the UNCAC: (3)

- Tracing / identifying / locating: art. 52, 55 (2, 3), 56, 58
- Seizure / Freezing: art. 54, 2 / 55, 2, Confiscation: art. 54, 1 / 55,1
- Return / Recovery: art. 57

The Disposal of Confiscated Property (art.57)

Embezzled public funds or laundering of embezzled public funds → ***Return to requesting Party***

Return to requesting Party if it can reasonably establishes prior ownership ← **Proceeds of other offences of corruption**

Other cases → ***Confiscated property may be returned to the requesting Party, prior legitimate owner or used for compensating victims***

Return of assets is unconditional, Parties to give special consideration to agreements for the final disposal of assets

Specifics of art. 57 UNCAC, compared to asset-sharing models

- Return of assets is unconditional, the return is not at the discretion of the confiscating State
- Convention establishes rules for the return of assets, depending on how closely the assets were linked to the requesting State Party
- Asset-sharing not foreseen in the Convention, reasonable expenses can be deducted
- Bilateral agreements on the final disposal of confiscated funds are possible, including on voluntary monitoring of the use of returned funds

CoSP Resolution 4/4

- Highlights the challenges encountered by requesting and requested States
- Calls upon States parties to give particular and timely consideration to the execution of international mutual legal assistance requests
- decides that the Working Group shall continue to consider the issue of establishing a global network asset recovery focal points

Working Group on Asset Recovery

- Development of cumulative knowledge: knowledge management center and practical tools for asset recovery

- Enhancement of confidence and trust through formal and informal networks of focal points

- Tailor-made training and capacity-building for policy makers, legislators and practitioners

For further information:

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