



Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
8 October 2010

Original: English

Open-ended Intergovernmental Working Group on Asset Recovery

Vienna, 16 and 17 December 2010

Towards an effective action in asset recovery: Progress Report on Implementation of Asset Recovery Mandates

Background paper prepared by the Secretariat*

I. Introduction

1. At its first session, held in Jordan, from 10 to 14 December 2006, the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC), established the Open-ended Intergovernmental Working Group on Asset Recovery (Working Group).
2. In the same resolution, the Conference of the States Parties decided that the Working Group was to assist the Conference of the States Parties in developing cumulative knowledge in the area of asset recovery, especially on the implementation of articles 52-58 of the Convention, such as through mechanisms for locating, freezing, seizing, confiscating and returning the instruments and proceeds of corruption. Under the guidance of the Conference of the States Parties, it was to encourage cooperation among relevant existing bilateral and multilateral initiatives and to contribute to the implementation of the related provisions of the Convention. The Working Group was to facilitate the exchange of information among States by identifying and disseminating good practices to strengthen, both at the national level and in the framework of mutual legal assistance in criminal matters, efforts to prevent and combat corruption and facilitate the return of the proceeds of corruption.
3. It was further decided that the Working Group would build confidence and encourage cooperation between requesting and requested States by bringing together relevant competent authorities and anti-corruption bodies and practitioners involved in asset recovery and the fight against corruption and by serving as a forum for them. It would also facilitate the exchange of ideas among States on the expeditious

* This document has not been formally edited.



return of assets, including ideas on plans for providing legal and technical expertise that requesting States need in order to follow international legal procedures for asset recovery. Lastly, the Working Group would assist the Conference of the States Parties in identifying the capacity-building needs, including long-term needs, of States parties in the prevention and detection of transfers of proceeds of corruption and in asset recovery.

4. At its first session, the Conference of the States Parties decided that the Working Group shall meet during the sessions of the Conference of the States Parties and, as appropriate, shall hold at least one intersessional meeting within existing resources. At its second and third sessions, held in Nusa Dua, Indonesia, from 28 January to 1 February 2008 and Doha from 9 to 13 November 2009 respectively, the Conference of the States Parties decided that the Working Group shall hold at least two meetings prior to the next session of the Conference in order to perform its mandated task, within existing resources. The Working Group held its first meeting in Vienna, Austria, on 27 and 28 August 2007.¹ The Working Group held its second intersessional meeting on 25 and 26 September 2008,² and its third meeting on 14 and 15 May 2009.³

5. The purpose of this background paper is to inform the Working Group on the progress of implementation of its mandates and the recommendations of the Conference of the States Parties relating to asset recovery. It provides an account of actions taken to implement these recommendations, highlighting successes as well as those still in progress. It is aimed at assisting the Working Group in its deliberations and in continuing to map its way towards effective action in asset recovery.

II. Overview of the discussions and recommendations of the Working Groups and the Conference of the States Parties at their prior meetings

6. Previous discussions in the Working Group may be divided according to three themes: Developing Cumulative Knowledge; Building Confidence and Trust between requesting and requested States; and Technical Assistance, Training and Capacity Building.

7. With respect to the development of cumulative knowledge on asset recovery, the Working Group noted the practical challenges and barriers faced by States parties in the implementation of Chapter V of the Convention. This includes the lack of capacity of practitioners to deal with asset recovery cases. In this context, it emphasized dissemination of good practices and the provision of practical tools such as case management systems and the expansion of the Mutual Legal Assistance Request Writer Tool to include asset recovery functions. The Working Group stressed the need for analysis on asset recovery cases in order to understand successful practices and record lessons learned.

¹ CAC/COSP/2008/4.

² CAC/COSP/WG.2/2008/3.

³ CAC/COSP/WG.2/2009/3.

8. In terms of building confidence and trust, the Working Group highlighted in its discussions the importance of communication and working together with institutions at the national and international levels. The exchange of information between investigative and prosecutorial authorities of requesting and requested States was a necessary means of enhancing international cooperation, particularly prior to the transmission of formal requests for mutual legal assistance. As a way of building and strengthening trust among cooperating States, the Working Group advocated the establishment of a network of focal points of asset recovery practitioners. These are designated officials with technical expertise in international cooperation who would be in a position to assist their counterparts in effectively managing requests for assistance.

9. In the context of its discussion on “Cooperation among relevant bilateral and multilateral initiatives”, at its first meeting, the Working Group discussed the importance of coordinating the various initiatives in asset recovery. In this regard, UNODC and the World Bank have established the Stolen Asset Recovery (StAR) initiative. Launched in September 2007, the partnership became fully operational at the end of 2008. StAR’s goal is to encourage and facilitate the systematic and timely return of assets that are proceeds of corruption and to improve global performance in the return of stolen assets. StAR is financed by voluntary contributions to UNODC (from Canada, Germany, Luxemburg, United Kingdom and the United States) and voluntary contributions to a World Bank-administered Trust Fund (from Norway, Sweden, Switzerland, Australia and France). Other discussions of the Working Group also highlighted the need to establish partnerships with the private sector.

10. Regarding technical assistance, the Working Group discussed relevant approaches to asset recovery such as capacity-building and training, identification of technical assistance needs, the drafting of new laws where necessary and the facilitation of the mutual legal assistance process. It recognized the urgent need to provide training to personnel of the authorities responsible for asset recovery, especially in the tracing, seizure and confiscation of assets.

III. Update on the Status of Implementation of the Recommendations of the Conference of the States Parties and the Working Group

A. Developing cumulative knowledge

1. Recommendation

11. 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 legal library and the comprehensive knowledge management consortium. 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 expeditious cooperation for asset recovery. The Working Group called upon States parties to regularly provide information, such as legislation and analytical

documents, for the establishment and maintenance of the envisaged UNODC products.

12. The Working Group indicated that it would be useful to analyse legal and regulatory frameworks, determine basic evidentiary requirements under domestic law and prepare model provisions to assist in the operationalization of the asset recovery provisions of the Convention. The Working Group recommended that a practical handbook for asset recovery should be drawn up by the Secretariat, tracking the asset recovery process step by step, from detection to the return of the assets. The Conference of the States Parties also urged the further study and analysis of how legal presumptions, measures to shift the burden of proof and examination of illicit enrichment frameworks facilitate the recovery of corruption proceeds. It recommended preparing a synopsis of all the various initiatives on asset recovery, expanding on the information contained in the background paper prepared by the Secretariat on innovative solutions to asset recovery (CAC/COSP/WG.2/2007/2) and including information on contact points, specialization and concrete areas of work. It was agreed that such a synopsis would be useful when embarking on the operational aspects of asset recovery.

13. 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. 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. The Working Group recommended for consideration by the Conference, means of gathering information on specific types of money-laundering cases related to corruption.

Action Taken

14. The comprehensive, computer-based self-assessment checklist is the basic tool for gathering information on the implementation measures and the backbone of the mechanism for the review of implementation of the Convention, as well as for the knowledge on technical assistance needs and ongoing activities. It was endorsed by the Conference of the States Parties in its resolution 3/1. Validated legal data submitted through the checklist, while serving the purposes of the aforementioned review mechanism, will also feed into the UNCAC Legal Library. The comprehensive self-assessment tool is the result of a wide consultative process during three expert group meetings in Vancouver, Canada (15 to 17 April 2008), Vienna (23 and 24 February 2009) and Toronto, Canada (28 September 2009) — organized in partnership with the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR). It was further tested by 37 volunteer States parties from March to June 2009. After endorsement by the Conference at its third session, the tool was finalized and is available in all six official languages of the United Nations.

15. Building on information elicited through the self-assessment checklist, the UNCAC Legal Library is designed to gather, organize, analyse and disseminate updated and validated legal knowledge. As such, the Library is developed as an electronic repository of corruption-related information and knowledge, including anti-corruption laws related to the requirements of UNCAC, regulations, administrative practices and cases. It is administered by UNODC and supported by

the Stolen Asset Recovery (StAR) initiative, thus enabling the flow and public availability of legal information generated by the mechanism for the review of implementation of the Convention. The objective of the UNCAC Legal Library is not only to collect national legislation, but also to demonstrate in a practical and user-friendly way how each State has implemented the provisions of UNCAC and which tasks still lie ahead. UNODC has collected an initial data set of laws from 97 States and has conducted a detailed analytical breakdown of how that legislation relates to the provisions of the Convention. The UNCAC Legal Library is expected to become publicly available in the last quarter of 2010.

16. Another tool is the Knowledge Management Consortium which is a web-based portal and collaborative forum designed to facilitate the collection and dissemination of other knowledge related to the Convention. Administered by UNODC and supported by the StAR initiative, the Consortium will be a platform of legal and non-legal knowledge on anti-corruption and asset recovery matters that would bring together reputable regional and international institutions. This will enable Member States, the anti-corruption community and the general public to access the anti-corruption and asset recovery knowledge generated by such institutions in a central location. A non-exclusive list of organizations active in the field of anti-corruption includes the International Association of Anti-Corruption Authorities, the United Nations Development Programme, the World Bank, the Asian Development Bank, the Organization for Economic Cooperation and Development, the Basel Institute of Governance, the U4 Anti-Corruption Resource Centre and UNODC. Like the UNCAC Legal Library, the Consortium will be fully compatible with other anti-corruption and asset recovery tools and applications, such as the INTERPOL/StAR database of asset recovery focal points and the expanded Mutual Legal Assistance Request Writer Tool currently under development. Microsoft provided the technology necessary to develop such a blueprint as a pro bono contribution to the anti-corruption work of the United Nations. UNODC is exploring the possibility of expanding its partnership with Microsoft in order to develop the entire portal, which is expected to be launched in the last quarter of 2010.

17. While existing knowledge on the implementation of Chapter V of the Convention, such as case studies, best practices and policy analyses, will be made available through the knowledge management consortium, there are still gaps in knowledge with regard to some highly relevant fields of asset recovery. In order to address those gaps, policy studies on selected topics related to asset recovery are being conducted in the framework of the StAR initiative to enrich the knowledge base for asset recovery policies. The StAR initiative is in the process of finalizing a global study on illicit enrichment as an anti-corruption tool. In order to promote greater understanding of the provision, it will include an examination of relevant legal and policy issues and will be presented for comment as a conference paper during the fourth meeting of the Working Group. Also under development by StAR is a study that will address the misuse of corporate vehicles such as limited companies, trusts or foundations for the purposes of laundering the proceeds of corruption and measures that can be taken to ensure greater transparency with regard to beneficial ownership. Another study will focus on barriers to asset recovery in requested States, in particular in financial centres. It will provide analysis aimed at informing the design and implementation of policies and action plans for lowering the barriers to asset recovery in financial centres and assisting

practitioners in requesting jurisdictions to better understand challenges in requested jurisdictions.

18. A number of other policy studies were finalized and presented at the third session of the Conference of the States Parties in Doha in November 2009. Among them is a study on the global architecture supporting asset recovery.⁴ It identifies the roles and functions of national and international bodies engaged in asset recovery in order to pinpoint gaps, overlaps and potential areas for collaboration. It draws attention to institutions ready to support, facilitate and promote international collaboration for asset recovery, and lays out some of the measures that national authorities and international bodies can undertake to accelerate the pace of asset return. The publication “Stolen Asset Recovery, Management of Returned Assets: Policy Considerations”⁵ was concluded to help States with the management of returned assets and to provide analytical elements to inform decisions by policymakers about available options and best models that can be used for this purpose. The study “Stolen Asset Recovery, Politically Exposed Persons: A Policy Paper on Strengthening Preventive Measures” (PEPs Guide).⁶ The paper reviews the obligations of States Parties under article 52 of the Convention to ensure that financial institutions are taking steps to detect and monitor politically exposed persons — individuals with prominent public functions and their family members and close associates. The study addresses the obligations of States parties, especially under article 52 of the Convention, on the prevention and detection of transfers of proceeds of corruption. It also examines the measures that financial institutions can implement to address the risks in doing business with politically exposed persons, the due diligence policies financial institutions should have in place and the interaction with financial intelligence units, law enforcement agencies and anti-corruption units.

2. Recommendation

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

⁴ “Stolen Asset Recovery, Towards a Global Architecture for Asset Recovery”, eds. Adrian Fozzard, Tim Steele, 2009 available at <http://siteresources.worldbank.org/EXTSARI/Resources/5570284-1257172052492/GlobalArchitectureFinalwithCover.pdf?resourceurlname=GlobalArchitectureFinalwithCover.pdf>.

⁵ “Stolen Asset Recovery, Management of Returned Assets: Policy Considerations” eds. Victor Dumas, Allan Gustafsson, available at <http://siteresources.worldbank.org/EXTSARI/Resources/5570284-1257172052492/ManagementReturnedAssets.pdf?resourceurlname=ManagementReturnedAssets.pdf>.

⁶ “Stolen Asset Recovery, Politically Exposed Persons: A Policy Paper on Strengthening Preventive Measures” (PEPs Study), Theodore Greenberg, Larissa Gray, Delphine Schantz, Michael Latham, Carolin Gardner, available at <http://siteresources.worldbank.org/EXTSARI/Resources/5570284-1257172052492/PEPs-ful.pdf?resourceurlname=PEPs-ful.pdf>.

Action taken

20. The guide “Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture”,⁷ from April 2009 is as a practical tool for use by different jurisdictions contemplating non-conviction-based asset forfeiture legislation, as envisaged by article 54, paragraph 1 (c) of the Convention. It is the first publication of its kind in the area of non-conviction-based asset forfeiture and the first published under the StAR initiative. The Guide identifies the key legal, operational and practical concepts that a non-conviction-based asset forfeiture system should encompass to be effective. The Guide is based on the practical experience of experts from different regions and legal systems and all phases of forfeiture. The Guide has been translated and published into Spanish, Russian, and Bahasa. Arabic and French translations are expected to be published in late 2010.⁸

21. A conference edition of the StAR guide on “Stolen Asset Recovery, Income and Asset Declarations: Tools and Trade-offs”⁹ was presented at the third session of the Conference of the States Parties. The guide seeks to provide practical advice on the design and implementation of income and asset declaration systems. The guide is currently being finalized to include the results of consultations and detailed country case studies from developed and developing countries and will be published in early 2011.

22. An asset recovery handbook is expected to be launched at the fourth meeting of the Working Group. Designed as a quick-reference “how-to” manual for law enforcement, investigating magistrates, and prosecutors, the handbook guides practitioners as they grapple with the strategic, organizational, investigative, and legal challenges of recovering assets.

3. Recommendation

23. The Working Group stressed the importance of modern information technology and gave priority to exploring the expansion of the Mutual Legal Assistance Request Writer Tool and the further development of similar products.

Action taken

24. A final review of the concept note on an expanded Mutual Legal Assistance Request Writer Tool is in progress. The objective is a computerized, user-friendly tool for the preparation, transmission and receipt of mutual legal assistance requests, including those applicable to asset recovery. The expanded version of the tool will have the same structure as the existing tool, but have additional features on asset recovery and a new operational platform. The revised tool is expected to be finalized in 2011.

⁷ “Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture”, eds. Theodore Greenberg, Linda Samuel, Wingate Grant, Larissa Gray, 2009, electronically available at <http://siteresources.worldbank.org/EXTSARI/Resources/NCBGuideFinalEBook.pdf>.

⁸ <http://siteresources.worldbank.org/EXTSARI/Resources/ActivosRobados.pdf>.

⁹ “Stolen Asset Recovery, Income and Asset Declarations: Tools and Trade-offs”, eds. Ruxandra Burdescu, Gary J. Reid, Stuart Gilman, Stephanie Trapnell, 2009, electronically available at <http://siteresources.worldbank.org/EXTSARI/Resources/5570284-1257172052492/ADincomeasset.pdf?resourceurlname=ADincomeasset.pdf>.

25. In addition, UNODC has a number of electronic tools that may be of use to the asset recovery process. These are available at a cost to all Member States. GoAML is a software application designed for use by financial intelligence units to counter the financing of terrorism and money-laundering. It can also be useful in identifying suspicious flows of money. GoCase, also a software application, is an investigative case management tool designed for use by law enforcement, investigative and prosecution agencies in conducting investigations and subsequent prosecutions. It also helps with the recording of every part of the process, including information about the parties involved and the outcomes.

26. Other electronic resources available to assist in the asset recovery process include the knowledge management consortium (cf. above para. 16), the legal library (cf. above para. 15), the self-assessment checklist (cf. above para. 14) and the database of focal points (cf. below para. 53).

4. Recommendation

27. The Working Group recommended that UNODC consider preparing a compilation of cases relating to asset recovery, building on relevant experience of the Office.

Action taken

28. UNODC has gathered relevant experience in compiling a “Digest of Terrorist Cases”.¹⁰ The digest was developed to give policymakers and criminal justice officials practical ideas and expert insight on how to deal with terrorist cases. It complements other UNODC tools that provide guidance on how to address acts of terrorism within a legal framework, like legislative guidelines. Building on this experience, the development of a compilation of cases relating to asset recovery could adopt a comparable methodology. The Secretariat sought the cooperation of all States parties and Signatories to the Convention against Corruption for this important task on 30 June 2009 and on 22 January 2010 (CU 2009/87 and CU 2010/5). It requested Governments to submit information on cases on the recovery of proceeds of corruption which originated in or involved their jurisdictions. UNODC committed to use the information submitted exclusively for the preparation of the compilation, and to fully respect confidentiality restrictions that governments may put on parts of the information submitted. The Office received 32 replies. Of those, a number of States parties informed the Secretariat that they have no information on asset recovery cases or only ongoing cases; while some provided statistical information or case lists. Ten States parties provided information on cases with some level of detail. While this material is a good starting point for the development of a case digest, it is not yet sufficient as a basis for a compilation as requested by the Conference.

29. Some other similar initiatives are under way which can be used to collect, systematize and analyse asset recovery cases. These are the comprehensive self-assessment checklist (cf. above para. 14), and the Database of International Asset Recovery Cases under development by the StAR initiative. The Database’s

¹⁰ The Digest of Terrorist Cases can be accessed in all official United Nations languages at the following page: <http://www.unodc.org/unodc/en/terrorism/technical-assistance-tools.html>.

objective is to collect and systematize information about asset recovery cases and jurisprudence, and will be made available to practitioners through StAR's website and the UNODC Knowledge Consortium. The Basel Institute on Governance — International Center for Asset Recovery (ICAR) has also developed a case database on small and large precedent-setting recovery proceedings.¹¹

5. Recommendation

30. The Working Group reiterated the need for activities aimed at developing cumulative knowledge to be carried out with broad consultation and participation of experts from different regions and legal systems.

Action taken

31. The drafting of handbooks and other products by the StAR initiative includes the inputs of expert practitioners coming from both developed and developing countries as well as different regions, and takes into account the practices of both civil and common law jurisdictions. Generally, with respect to each handbook, a core team is established to collect and analyse information and cases and develop the first draft, which is presented in a workshop or conference where practitioners are invited to discuss and comment on the draft. The core team then develops the draft in close collaboration with practitioners. For example, for the drafting of the Asset Recovery Handbook, a workshop was organized for practitioners in May 2010 in Marseille (France). In the same vein, in the drafting of "Lowering the Barriers to Asset Recovery", recommendations of practitioners were taken into consideration after a workshop in Lausanne (Switzerland) in April 2010. For the drafting of "Unravelling the Corporate Veil", answers by 25 jurisdictions in the world to a questionnaire were used to draft a report, which was discussed in three round tables in Mauritius, Washington D.C. and Miami.

6. Recommendation

32. Tools and knowledge products need to be widely disseminated and follow-up on their effectiveness and usefulness should be considered by the Conference or the Working Group.

Action taken

33. It is the policy of UNODC to widely disseminate its products. For example, the MLA Writer Tool is available online¹² as will the proposed Knowledge Management Consortium and Legal Library. Similarly it is the policy of the StAR initiative to distribute widely its products through various means. For example, the Good Practices Guide for non-conviction-based asset forfeiture (para. 25) has been presented, discussed, and disseminated at meetings of international and regional bodies (for example, the UNCAC Conference of the States Parties, the G8 Lyon/Roma Working Group, and the Financial Action Task Force), practitioner networks (for example, INTERPOL, Eurojust, CARIN, ARINSA), regional workshops and other meetings. These activities have attracted a high degree of

¹¹ <http://www.assetrecovery.org/kc/node/1698185c-4768-11dd-a453-b75b81bfd63e.html>.

¹² <http://www.unodc.org/mla/>.

interest and resulted in requests for technical assistance from States in Africa, Asia and Latin America. One State party that was provided with technical assistance has recently submitted a non-conviction-based forfeiture law to parliament. In addition, all StAR initiative knowledge products are available on the Internet through the StAR website.¹³

7. Recommendation

34. At its third session, the Conference of the States Parties underlined that financial institutions should adopt and implement effective standards of due diligence and financial disclosure. 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.

35. The role of financial institutions in fostering exchange of knowledge and data was also noted by the Working Group. Such institutions were to be included in the development of cumulative knowledge on asset recovery. Work on the preventive measures contained in Chapter V of the Convention was to be encouraged and emphasis was to be placed on effective financial investigations.

Action taken

36. “No Safe Havens: A Global Forum on Asset Recovery and Development” (Global Forum), co-sponsored by StAR and the Government of Switzerland, took place in the World Bank Paris office on 8-9 June 2010. The Global Forum brought together over 120 participants from 18 countries, including representatives of the financial and private sector, civil society organizations, and international and bilateral development agencies. The Global Forum generated high-profile agreement, by senior representatives from financial centres and developing countries, and from the public and private sectors and civil society, of the importance of measures to prevent the laundering and facilitate the recovery of stolen assets. The Global Forum highlighted asset recovery as a development issue and that the issue can only be addressed through a multi-stakeholder approach.

37. The perspective of and input from financial institutions have been included, in the development of cumulative knowledge on asset recovery, in the framework of the StAR initiative. For example, the policy paper on politically exposed persons involved consultations with financial institutions, regulatory authorities and financial intelligence units in Argentina, France, Hong Kong China, Jersey, Liechtenstein, Switzerland, the United Kingdom and the United States.

38. Under its Global Programme against Money-Laundering (GPML), UNODC has mentors working in the field to assist selected Member States in building effective systems against money-laundering and the financing of terrorism, including by strengthening financial intelligence units, the analysis of financial information and the development of financial intelligence. GPML is also working to provide investigators with skills to undertake financial investigations and trace assets.

¹³ http://www1.worldbank.org/publicsector/star_site/index.html.

39. The capacity-building activities provided in this context include training on how to conduct effective financial investigations. Other activities relate to the conduct of enhanced scrutiny of accounts sought or maintained by or on behalf of politically exposed persons, and how financial institutions can foster the effective implementation of their enhanced scrutiny based on the PEPs Guide (cf. above para. 18).

8. Recommendation

40. The Working Group recommended that products such as the Good Practices Guide on non-conviction-based forfeiture be considered for the implementation of other provisions of the Convention. With regard to legislative tools, the Working Group recommended exploring the selection of areas in which the preparation of models or best practice guides was feasible, such as for the restraint, freezing and confiscation of assets.

Action taken

41. A number of products intended to assist practitioners in the asset recovery process are useful for the implementation of the other provisions of the Convention. For example, the asset recovery handbook and the good practice guide to income and asset declaration can be useful in supporting the prosecution of cases of corruption and assisting financial institutions in identifying politically exposed persons. The asset recovery handbook will include a chapter dedicated to tracing assets that will emphasize the importance of securing stolen assets as quickly as possible.

42. Areas in which the preparation of models or best practice guides is feasible are being assessed. Model laws developed by UNODC that are closely linked to asset recovery include: the 2007 Model Law on Mutual Assistance in Criminal Matters,¹⁴ the 2005 Model Legislation on Money-Laundering and Financing of Terrorism (for civil law systems),¹⁵ and the 2009 Model Provisions on Money-Laundering, Terrorist Financing, Preventive Measures and the Proceeds of Crime (for common law systems).¹⁶ At the regional level, UNODC is developing a model law on non-conviction-based confiscation in Latin America which is expected to be finalized in spring 2011. UNODC is currently considering whether to develop model provisions for asset recovery in a single document, covering all aspects that can become relevant for the full implementation of the relevant provisions of Chapter V of UNCAC, or to develop model provisions focusing on those articles that have not yet been covered by any of the existing model laws.

9. Recommendation

43. The Working Group recommended that the self-assessment checklist be used to gather information on the implementation of the Convention on articles relating

¹⁴ For further information, it is available at http://www.unodc.org/pdf/legal_advisory/Model%20Law%20on%20MLA%202007.pdf.

¹⁵ <http://www.unodc.org/documents/money-laundering/2005%20UNODC%20and%20IMF%20Model%20Legislation.pdf>.

¹⁶ http://www.unodc.org/documents/money-laundering/Model_Provisions_2009_Final.pdf.

to asset recovery, including information on case law at the national level, both in requesting and requested States.

Action taken

44. The comprehensive self-assessment checklist was endorsed by the Conference at its third session, where the Conference decided in its resolution 3/1 that the comprehensive self-assessment checklist shall be used as the basis for the Implementation Review Mechanism of the UNCAC. The Conference decided that the implementation of Chapter V of the Convention will be reviewed in the second five-year cycle of the Mechanism. However, information on the implementation of the mutual legal assistance of the Convention will be collected during the first cycle of the Mechanism.

10. Recommendation

45. The Working Group welcomed the study undertaken by Eurojust on obstacles to asset recovery and suggested that the Secretariat prepare a summary to be submitted to the Conference for its information and conduct a similar study at the global level.

Action taken

46. The Secretariat prepared a summary of the Eurojust study which was annexed to the report presented at the third conference of States Parties (CAC/COSP/2009/7). The Secretariat does not presently have the resources to conduct a similar study at the global level, but will consider the feasibility of doing so in the future.

B. Building confidence and trust between requesting and requested States

1. Recommendation

47. The Working Group emphasized that there was a need for informal channels of communication and cooperation, either prior to making a formal request for mutual legal assistance or in cases where no formal request was required. In particular, the Working Group stressed the need to make effective use of cooperation with law enforcement agencies and financial intelligence units, while recognizing the role of the judiciary in international cooperation procedures to ensure accountability and due process. At the domestic level, the Working Group recommended close cooperation between anti-corruption agencies, law enforcement agencies and financial intelligence units. In this regard, it was pointed out that regular meetings could enhance possibilities for asset recovery.

48. The Working Group highlighted the importance of the work on the establishment of a network of contact points for asset recovery. While the Conference and its Working Group were seen as serving as a platform for the exchange of knowledge and experience, 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 prerequisites for successful cooperation. The Working Group highlighted that the full cooperation of States and international organizations was essential for the establishment and maintenance of such a network.

49. The Working Group recommended the establishment of a global network of focal points on asset confiscation and recovery. In this context, it suggested that administrative arrangements should be explored for the management of such a network, perhaps in the context of the developing partnership of UNODC with the World Bank and other organizations as appropriate. The Working Group also encouraged the establishment of close links between asset recovery focal points and regional anti-corruption networks such as the Arab Anti-Corruption and Integrity Network. It was proposed that global and regional networks might be useful in providing practitioners with legislation, data and case law.

Action taken

50. These recommendations have been addressed through two means: (1) the establishment of a database of asset recovery focal points, and (2) through the support for the establishment of regional asset confiscation networks. The StAR/INTERPOL Asset Recovery Focal Point Database was established by the StAR initiative in partnership with the International Criminal Police Organization (INTERPOL) and launched on 19 January 2009. Its primary purpose is not directed towards mutual legal assistance but to provide assistance in the furtherance of investigations. In addition to the Asset Recovery Focal Point Database, UNODC and the StAR initiative have contributed to the support, creation and strengthening of regional networks relating to asset recovery. These are mainly informal regional networks directed towards mutual legal assistance. These are discussed in detail in a separate background paper prepared by the Secretariat (CAC/COSP/WG.2/2010/3)

2. Recommendation

51. The Working Group recommended exploring the feasibility of adopting a help desk approach for asset recovery to 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.

52. The Working Group also recommended that UNODC explore how the database of asset recovery focal points could be amended with a view to making it possible to ascertain the contact details of persons in other jurisdictions.

Action taken

53. The current database of focal points provides the name and contact details of a specified individual within the police force of a participating country. The system relies on the details of a contact point being secure, which enables the contact point receiving a request for immediate assistance to have comfort that the person asking for assistance is a law enforcement official. The feasibility of making it possible for the public to know which agency a contact works for is being assessed in the framework of the StAR initiative. Such added transparency would have the advantage of encouraging Governments to appoint focal points if they have not done so already and of raising awareness about how law enforcement agencies can share information on the proceeds of corruption, but would have to comply with

INTERPOL procedures. A meeting of network members is scheduled to take place on 13 and 14 December 2010, immediately preceding the fourth meeting of the Working Group. This will provide an opportunity to discuss ways of expanding the database to include other types of contact points, such as those from existing regional networks and national competent authorities. The feasibility of adopting a help desk approach will be assessed in that context.

54. Through the study on the global architecture to support asset recovery, existing networks are explored to facilitate the exchange of information and initial recommendations are made on ways to improve the utility of those networks.

3. Recommendation

55. 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. Further cooperation with existing networks and institutions such as the Egmont Group of Financial Intelligence Units and the International Association of Anti-Corruption Authorities (IAACA) should be explored.

Action taken

56. The report on the global architecture on asset recovery includes a note to donor agencies. One of the key elements of the note is advice on linking anti-money-laundering and anti-corruption strategies. Through its Global Programme against Money-Laundering, UNODC works with financial intelligence units to assist them in joining the Egmont Group and to implement the Egmont standards of exchange of information on money-laundering and financing of terrorism. UNODC continues to work closely and support the activities of IAACA. It participates in the IAACA Executive Committee and is regularly consulted with regard to the programme of work and the formulation of strategic future plans of the Association. See also paragraph 36 above, regarding the Global Forum organized by the StAR initiative.

4. Recommendation

57. The role of the private sector in the fight against corruption continues to be regarded as crucial. The Working Group encouraged the establishment of a partnership with private sector entities in order to assist them in complying with their obligations under the Convention, facilitate mutual understanding and build confidence.

Action taken

58. The Global Forum VI on Fighting Corruption and Safeguarding Integrity: "Strength in Unity: Public-Private Partnerships to Fight Corruption" took place in Qatar on 7 and 8 November 2009 and preceded the third session of the Conference of the States Parties. The Forum placed considerable emphasis on the contribution that the private sector can make to the fight against corruption, and explored means of forging alliances between the private sector and the donor community. The outcome of the Forum was brought to the attention of the Conference of the States Parties at its third session.

59. Following the 4th meeting of the Working Group on the Implementation of United Nations Global Compact's Tenth Principle, held in February 2009, UNODC continued to contribute to the implementation of the anti-corruption principle of the Global Compact. In particular, UNODC provided input to: a guide to facilitate companies' reporting on the 10th principle; a tool to prevent and fight corruption along the supply chain; and a campaign waged by top business leaders in support of UNCAC. The 5th Working Group on the Implementation of the Global Compact's Tenth Principle, held in Doha on 5 and 6 November 2009, reviewed and advanced this work. The Reporting Guidance on the 10th Principle against Corruption and the Guide to Fight Corruption in the Supply Chain were endorsed at the third Global Compact Leaders' Summit, in New York in June 2010.

60. UNODC and the United Nations Global Compact are developing an anti-corruption e-learning tool. The programme aims at disseminating knowledge of anti-corruption matters, in particular of UNCAC, and will contribute to capacity-building and awareness raising efforts in support of the corporate community. The tool, pre-launched at the third Global Compact Leaders' Summit and expected to be released on 9 December 2010 (the International Anti-Corruption Day), will be distributed to all United Nations Global Compact business participants and will be available free of charge from both organizations' websites.

61. A joint publication by UNODC and PricewaterhouseCoopers, entitled "Anti-Corruption Policies and Measures of the Fortune Global 500", was released in September 2009. The research work was carried out by PricewaterhouseCoopers as a pro bono contribution to the anti-corruption work of the United Nations. The publication of the study was made possible by a voluntary contribution by Sweden. The study provides an overview of the measures that companies listed in the 2008 Fortune Global 500 Index have adopted to combat economic crime and corruption. It serves as an inspirational tool for companies that wish to adopt and enforce effective anti-corruption policies but may not possess the necessary "know-how", or wish to review and enhance their existing measures. Other relevant publications on the role of the private sector include the PEPs Study (cf. above para. 18) which looks at how financial institutions are taking steps to detect and monitor politically exposed persons — individuals with prominent public functions and their family members and close associates. The paper analyses some of the reasons for poor compliance with these obligations and provides recommendations and good practices to policymakers, supervisory authorities and financial institutions aimed at improving compliance with international standards and increasing supervisory effectiveness.

62. There is an ongoing dialogue with Microsoft regarding a pro bono contribution to the development of the technological infrastructure of the UNCAC Legal Library and Knowledge Management Consortium, (cf. above para. 16). UNODC is working with the private sector in order to develop and promote coordinated partnerships with the private sector to leverage resources for advancing technical assistance efforts for the implementation of the Convention, following the mandate by the Conference in its resolution 3/4. UNODC also continued to consult with Transparency International and the International Chamber of Commerce on the alignment of their business principles to the fundamental principles enshrined in the UNCAC.

5. Recommendation

63. The Working Group called upon the Conference to promote dialogue between requested and requesting States in order to promote political will and strengthen commitment to asset recovery.

64. The Working Group emphasized the importance of political will in ensuring asset recovery and encouraged States parties to adopt a critical approach to their own systems and to seek to remove barriers to asset recovery, in particular by simplifying domestic procedures and by strengthening such procedures to prevent their misuse.

Action taken

65. The Conference and the Working Group provide opportunities for dialogue and strengthening political commitment. In addition, the StAR initiative actively engages in advocacy in a number of international forums to strengthen political will. Following its endorsement of the statement released in November 2008 by the leaders of the Group of Twenty, the secretariat of the StAR initiative worked to consolidate work on key policy issues. As a result of those efforts, the recommendations of the Working Group reiterate the statement released by the leaders of the Group of Twenty at a summit held in London on 2 April 2009 and recommend the review and proposal of mechanisms to strengthen international cooperation on asset recovery, the enforcement of standards related to the identification of beneficial ownership and the monitoring of politically exposed persons. The Group of Twenty established an Anti-Corruption Working Group, co-chaired by France and Indonesia. UNODC was invited to participate in the Working Group as an observer. The Working Group held a meeting in Jakarta on 27 and 28 September and adopted an Action Plan, which it will submit to the G 20 Leaders Summit, to be held in the Republic of Korea in November 2010.

66. At the international level, the recommendations of the Global Forum are expected to be used by the StAR initiative to garner high level political support for strengthening international standards, the need for financial centres and developing countries to take the initiative in pursuing cases, the development and sharing of knowledge and information, and capacity-building in victim States. Strong political commitment for asset recovery has also been expressed at the highest political level in international forums such as the Declaration of Commitment of Port of Spain, adopted at the Fifth Summit of the Americas, held in Port of Spain from 15 to 19 April 2009, and at the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, held in Doha from 29 November to 2 December 2008.

C. Technical assistance, training and capacity-building

1. Recommendation

67. The Working Group stressed the high demand for technical assistance for the implementation of Chapter V of the Convention, especially for legal advisory services. Tailor-made approaches were required. The Working Group emphasized

the importance of strengthening the capacity of legislators, law enforcement officials, judges and prosecutors on matters relating to asset recovery.

68. The Working Group recommended that UNODC seek to forge more partnerships and coordinate additional technical assistance activities in matters related to asset recovery with other relevant organizations and bodies.

Action taken

69. Technical assistance is provided upon request in the framework of the StAR initiative in the preparatory stages of asset recovery proceedings. The goal is to help States collect and analyse information that will facilitate progress in asset recovery efforts and inform the decision-making of national authorities. Such assistance is provided by, for example, sponsoring meetings and workshops that bring together relevant parties at the national, regional and international levels as necessary, making available advisory services to support the preparation of analytical reports, legal research, assistance with audits and financial analysis; and making available advisory services to support the preparation and analysis of mutual legal assistance requests. As of September 2010, formal requests for assistance had been received from 23 States and discussions had been held with additional States. The nature of the assistance provided in the framework of the StAR initiative varies: in some cases, assistance is geared towards policy dialogue and facilitation of contacts between national authorities and financial centres; in other cases, assistance has focused on capacity-building activities and on providing advisory services to support asset recovery cases.

70. The technical assistance provided by the StAR initiative to individual States is based on the identified needs of each State. According to the responses to the self-assessment checklist received from 56 States in 2009, the technical assistance needs of States were as follows: Legal Advice — 23 per cent; Model Legislation — 20 per cent; Legislative Drafting — 19 per cent; Site visit by Anti-corruption expert — 13 per cent; Development for action plan for implementation 11 per cent; No assistance required — 10 per cent; Other assistance — 4 per cent.

71. Through the StAR initiative, a number of different training courses have been financed or co-financed including regional events in the Pacific Islands, the Middle East and North Africa Region, South and Central America, South and Eastern Europe, East and Southern Africa and in South and East Asia. Training has been delivered at two levels: introductory workshops have been organized to raise awareness about asset recovery and more advanced training courses have been organized to deal with the technical aspects of asset recovery. The introductory workshops have generally been held at a regional level, to allow practitioners to share experiences and develop contacts, including contacts in regional financial centres. Those events are designed for higher-level decision makers who do not need extensive training on hands-on asset recovery techniques and procedures. In addition, specialized training on specific topics or to specific groups has been provided through the StAR initiative.

72. Lessons learned include that there is an acute shortage of technical skills in some jurisdictions, that regional training activities have proved successful in developing informal networks of cooperation but are less successful in transferring

the skills needed for practitioners to work within their national jurisdiction, and that the selection of participants in the operational aspects of asset recovery is critical.

73. UNODC has forged more partnerships with other organizations and bodies for the purpose of coordinating technical assistance activities related to asset recovery, including with the International Association of Anti-Corruption Authorities (IAACA), the Organization of American States, the Asia-Pacific Economic Cooperation and the Organization for Security and Cooperation in Europe, as well as with the Government of Switzerland through the Lausanne process. UNODC has also been actively involved in those efforts through its work with the Development Assistance Committee of the Organization for Economic Cooperation and Development and the Anti-Corruption Task Team of the Committee's Network on Governance (GOVNET).

2. Recommendation

74. The Working Group gave high priority to training and capacity-building. In addition to activities such as seminars and training courses, the Working Group encouraged the exploration of innovative tools such as e-learning programmes.

Action taken

75. UNODC has partnered with the Government of Austria, with the support of the European Anti-Fraud Office, in the establishment of the International Anti-Corruption Academy. Asset recovery will feature prominently in the curricula of this institution. The Academy is the world's first educational institution dedicated to fighting corruption within the framework of the Convention. Hosted by the Government of Austria in Laxenburg, outside Vienna, the Academy is expected to become an institution of higher learning that will disseminate specialized anti-corruption knowledge around the world. The training provided at the Academy will be aimed at a wide variety of stakeholders. The inauguration of the Academy was held on 2-3 September 2010.

76. Currently, the Secretariat does not have the resources to establish e-learning programmes in asset recovery but is considering doing so in the future.

3. Recommendation

77. The Working Group emphasized the importance of providing technical assistance in the field of mutual legal assistance, including asset recovery, to officials and practitioners to enable them to draft requests and responses to requests.

Action taken

78. StAR provides technical assistance to improve countries' asset recovery programmes upon request. Up to now, 23 countries have requested assistance. Of these, six requests relate to assets frozen; five to mutual legal assistance on ongoing cases; two to the work of countries as honest brokers in cooperation with financial centres, and four to the development and launching of asset recovery programmes. StAR's work depends on the willingness of government. As asset recovery takes years and the process is far from linear, StAR has seen countries drop cases after changes in government, just as others have become active.

D. Reporting and follow-up

79. The Working Group called for the systematic follow-up of the implementation of its recommendations at the third session of the Conference.

80. The Working Group may wish to give an overall appraisal of progress made so far in the implementation of the asset recovery provisions and in the tackling of barriers to asset recovery. It may further wish to build on and adapt its recommendations and suggest further ways of enhancing the implementation of asset recovery provisions.

81. Specifically, the Working Group may wish to identify and discuss ways and means of further developing cumulative knowledge.

82. In order to continue to build confidence and trust between requesting and requested States, the Working Group may wish to suggest ways of enhancing collaboration between Member States and international organizations for the development of knowledge products and tools, the building of trust, and technical cooperation. It may further wish to provide guidance on further work on the creation of a global network of asset recovery focal points.

83. Regarding technical assistance, training and capacity-building, the Working Group may wish to provide guidance on the prioritizing of technical assistance needs. It may further wish to discuss ways of maximizing available resources for the provision of technical assistance and suggest means of collaboration with national and international partners in this regard.
