



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

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Open-ended Intergovernmental Working Group on Asset Recovery

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Items 2, 3 and 4 of the provisional agenda*

Challenges in asset recovery practice

Implementation of the recommendations of the Working Group

Assistance to the Conference to identify, prioritize and respond to technical assistance needs for asset recovery

Translating asset recovery into practice

Background paper prepared by the Secretariat

I. Introduction

1. Successful asset recovery depends on a number of factors: functional legal frameworks must be in place; financial intelligence and judicial systems must be able to identify the case, engage in international cooperation and swiftly execute requests; and decision-makers in both the requesting and requested States must be ready to provide the priority attention required to manage the case. With respect to the legal framework, the United Nations Convention against Corruption (General Assembly resolution 58/4, annex) sets standards as the first international corpus of regulations for asset recovery. Its entry into force on 14 December 2005 provides a unique opportunity for the international community to adapt national systems and to avail itself of a fully operational framework for asset recovery. The Convention against Corruption is rapidly realizing its potential as the first truly global instrument against corruption, with 140 signatories and 120 parties to the Convention as at 29 July 2008. However, while the Convention provides innovative solutions, the asset recovery process still presents many practical hurdles. The typical asset recovery case, from the tracing, identification and location of funds

* CAC/COSP/WG.2/2008/1.



through international cooperation for freezing, restraint and confiscation to the final return of funds, is a particularly complex process.¹

2. The Conference of the States Parties to the United Nations Convention against Corruption, at its first session, held in Amman from 10 to 14 December 2006, made asset recovery one of the priorities of its work, thereby reflecting the dynamism of the international community and confirming its political will to address the challenge. In its resolution 1/4, the Conference established the Open-ended Intergovernmental Working Group on Asset Recovery. The mandate of the Working Group is to assist the Conference in developing cumulative knowledge; encourage cooperation among relevant existing bilateral and multilateral initiatives; facilitate the exchange of information among States by identifying and disseminating good practices; help build confidence and encourage cooperation between requesting and requested States; facilitate the exchange of ideas among States on the expeditious return of assets; and assist the Conference in identifying the capacity-building needs, including long-term needs, of States parties in the prevention and detection of the transfer of proceeds of corruption and income or benefits derived from such proceeds and in asset recovery. Pursuant to the resolution, the Working Group held its first meeting in Vienna, on 27 and 28 August 2007, at which it made a number of recommendations (CAC/COSP/2008/4, paras. 36-47).

3. At its second session, held in Nusa Dua, Indonesia, from 28 January to 1 February 2008, the Conference of the States Parties, in its resolution 2/3, decided that the Working Group should continue its work, according to its mandate as set out in Conference resolution 1/4, to advise and assist the Conference in the implementation of its mandate on the return of proceeds of corruption, and should continue its deliberations on the conclusions and recommendations contained in the report on its first meeting (CAC/COSP/2008/4), with a view to identifying ways and means of translating those conclusions and recommendations into concrete action. The Conference further decided that the Working Group should explore means of building confidence, facilitate the exchange of information and ideas on the expeditious return of assets among States and encourage cooperation between requesting and requested States. Finally, the Conference requested the Working Group to continue its deliberations with a view to further developing cumulative knowledge in the area of asset recovery, especially with regard to the implementation of chapter V, entitled “Asset recovery”, of the Convention against Corruption.

4. The purpose of the present background paper is to facilitate the discussions of the Working Group and to assist it in the implementation of its mandate. To that end, it provides an update on current activities for asset recovery, takes stock of the action taken for the implementation of the recommendations of the Working Group and reflects on the technical assistance needs for asset recovery indicated by States in their self-assessment reports. This information may assist the Working Group in giving guidance to the Conference towards the creation of fully operational systems for asset recovery.

¹ B. Bertossa, “What makes asset recovery so difficult in practice? a practitioner’s perspective” in Mark Pieth (ed.), *Recovering Stolen Assets* (Bern, Switzerland, 2008), p. 19; N. Ribadu, “Challenges and opportunities of asset recovery in a developing economy”, *ibid.*, p. 29.

II. Implementation of the recommendations of the Working Group

1. Tools for developing cumulative knowledge and building capacity

5. When the first large-scale asset recovery cases emerged in the late 1980s, their specific challenges were largely unknown. Success depended greatly on the creative steps taken by prosecutors and lawyers and on the will to cooperate spontaneously and beyond established procedures. Since the Convention against Corruption was negotiated and entered into force, an intensive debate has taken place, making asset recovery a highly dynamic field of international law and cooperation. However, reliable, accurate and readily available information on legislation, good practices and case law is still scarce. For the implementation of chapter V of the Convention, it is essential to enhance research, develop new insight and widely disseminate the results available in order to build a cumulative and collective body of knowledge. Policymakers need access to that information and experience in order to adapt the laws and strategies of their countries, and they can benefit from the experience of asset recovery practitioners. At the same time, knowledge must be disseminated among practitioners in order to build their capacity to handle asset recovery proceedings.

6. In its report on its first meeting, the Working Group recommended the establishment of a database containing domestic legislation on implementing the asset recovery provisions of the Convention, to be used as a practical tool in asset recovery cases (CAC/COSP/2008/4, para. 36). It highlighted that 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. In that connection, the Working Group noted that much of the information to be contained in that database was already being collected by a number of institutions. During the consultations on asset recovery at the second session of the Conference of the States Parties, many speakers expressed support for that recommendation. Speakers underlined that the database should contain not only legislation but also judicial decisions rendered in asset recovery cases, and some speakers expressed the view that the database should contain even more information on the operational aspects of asset recovery.

7. The United Nations Office on Drugs and Crime (UNODC) is currently working with the International Association of Anti-Corruption Authorities (IAACA), supported by Northeastern University, to create a knowledge management system to be presented to the Conference at its third session. The envisaged knowledge consortium will collect anti-corruption laws, link them to the corresponding provisions of the Convention and provide related case law, as available. It will further include national anti-corruption plans and strategies and information on anti-corruption bodies. It will be structured in the form of a web portal designed to link activities, initiatives and documents related to the fight against corruption. UNODC has secured in-kind support from the private sector to develop the innovative software with which the knowledge consortium will be built.

8. A cornerstone of the future knowledge management tool is the information that UNODC currently collects through the self-assessment reports on the implementation of the Convention against Corruption. As at 18 July 2008,

71 Member States, including 62 States parties to the Convention, had submitted their self-assessment reports on implementation of the Convention (a response rate of 53 per cent of States parties within one year after the software had been implemented). However, there are a number of limitations with regard to the data collected through the self-assessment checklist in its current version, such as the limited scope of the current format and the fact that the checklist does not request Member States to provide the full text of the relevant laws.

9. At its second session, the Conference of the States Parties requested the Secretariat to explore the option of modifying the self-assessment checklist to create a comprehensive information-gathering tool (resolution 2/1). An expert group meeting was held in Vancouver, Canada, on 15-17 April 2008, on the formulation of comprehensive computer-based software to gather information on the implementation of each of the five crime-related international legal instruments supported by UNODC (the Convention against Corruption and the United Nations Convention against Transnational Organized Crime and its three Protocols²). The comprehensive information-gathering tool is expected to be finalized by the end of 2008 and be submitted to extensive consultations and test runs in cooperation with Member States during the first quarter of 2009. The final version of the comprehensive, computer-based information-gathering tool will be presented to the Conference of the States Parties at its third session. The requirements for knowledge-building and information-sharing on asset recovery will need to be taken into account when taking final decisions on the comprehensive information-gathering tool.

10. In order for the knowledge consortium to provide a comprehensive and user-friendly web portal, it is envisaged that the portal will contain links to the existing databases of partners, such as those of the United Nations Interregional Crime and Justice Research Institute, the World Bank, the Anti-Corruption Initiative for Asia and the Pacific of the Asian Development Bank (ADB) and the Organization for Economic Cooperation and Development (OECD), the International Centre for Asset Recovery (ICAR) of the Basel Institute on Governance and the U4 Anti-Corruption Resource Centre.

11. As part of the outcome of its thematic review of mutual legal assistance, extradition and the recovery of proceeds of corruption, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific established a database of the legal instruments available for granting and requesting mutual legal assistance and extradition among member jurisdictions of the Initiative and parties to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.³ The database contains the full texts of legal instruments, treaties and legislation that govern the granting and requesting of mutual legal assistance and extradition in the fight against corruption in the region. The Initiative also maintains a database on country resources to combat corruption containing information on government institutions, legal resources, analytical texts, reform projects, technical assistance and non-governmental organizations, as well as news and media reports. IAACA has begun a compilation of anti-corruption laws, and the

² United Nations, *Treaty Series*, vols. 2225, 2237, 2241 and 2326, No. 39574.

³ *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

Commonwealth Working Group on Asset Repatriation has conducted extensive research on the relevant systems of its member States, including systems for mutual legal assistance, extradition and asset recovery. ICAR has launched a web-based asset recovery knowledge centre (<http://www.assetrecovery.org>). The centre is aimed at addressing the lack of easily accessible, comprehensive and practical information on asset recovery. The knowledge centre, which was presented to the Conference of the States Parties at its second session, contains legal resources and information on cases, publications, country profiles, training opportunities and events.

12. At its first meeting, the Open-ended Intergovernmental Working Group on Asset Recovery indicated that it would be useful to analyse legal and regulatory frameworks, determine basic evidentiary requirements under domestic law and prepare model provisions. In that context, proposals to develop different forfeiture models, including for non-conviction-based forfeiture, were submitted for further consideration by the Conference (CAC/COSP/2008/4, para. 37). While model legislation – which is an innovative area – can be especially useful for asset recovery and has been requested by many reporting parties in their self-assessment reports (see para. 30 below), it remains to be determined whether all provisions of chapter V of the Convention against Corruption lend themselves to the model legislation approach and which provisions of chapter V should receive priority. Model legislation must take into account the different legal systems of recipient and requesting States. That diversity, which is not sufficiently comprehended by the concept of the polarity of the civil law and common law systems, is a product of the specific solutions of various legal systems in dealing with complex cases. It is thus essential that experts from all regions on all legal systems cooperate in the preparation of such model provisions. From a methodological standpoint, the drafting of model provisions could be oriented towards the typical stages of an asset recovery case and answer the question of what kind of legislation would be needed to comply with the provisions of the Convention and to make asset recovery more successful. That methodology could be complemented with a systematic approach using a comparative analysis of past asset recovery cases, national legislation and the experience gained by UNODC in elaborating numerous model laws in other areas of its mandate.

13. With respect to different forfeiture models, one of the first activities under the Stolen Asset Recovery (StAR) initiative encompasses the development, in cooperation with a group of practitioners, of a guide on key concepts for non-conviction-based forfeiture. Non-conviction-based forfeiture may be useful for asset recovery in a variety of contexts, in particular in cases in which the perpetrator of the underlying offence is dead or unknown, is a fugitive, has legal immunity or has been or will be acquitted due to a lack of admissible evidence, and in cases in which the relevant property is held by a third party or the forfeiture is uncontested. Non-conviction-based forfeiture as a civil procedure may further provide favourable procedural rules compared with forfeiture pursuant to a criminal conviction. Non-conviction-based forfeiture is addressed in article 54, subparagraph 1 (c), of the Convention, in which States parties agreed to consider taking such measures as may be necessary to permit the confiscation of property without a criminal conviction. While non-conviction-based forfeiture is more traditional in common law jurisdictions, a growing number of civil law countries have enacted relevant legislation in the past few years. The tool is designed to provide guidance to

countries contemplating the adoption of legislation for non-conviction-based forfeiture and provide a compilation of legal, operational and practical elements that lawmakers may wish to consider. Two expert workshops were held, one in Vienna from 11 to 13 March 2008 and the other in Cancun, Mexico, from 17 to 19 June 2008, with the participation of experts from 15 civil law and common law jurisdictions. The workshop produced a working list of more than 30 key concepts, good practices and lessons learned. The guide is expected to be finalized later in 2008.

14. At its first meeting, the Working Group recommended that the Secretariat should draw up a practical handbook for asset recovery, tracking the asset recovery process step by step, from detection to the return of the assets (CAC/COSP/2008/4, para. 38). Such a handbook would be a useful tool for practitioners working on asset recovery cases and thus constitute a valuable capacity-building resource. The handbook could also be used during training courses and other events to enhance a common understanding among practitioners from different jurisdictions. Developed in such a way as to complement the *Legislative Guide for the Implementation of the United Nations Convention against Corruption*,⁴ the handbook should follow the chronological steps of a typical asset recovery case, devoting special attention to the many possible ways of tracing, identifying and locating funds, the requirements for freezing or seizure and the confiscation of funds. The handbook should focus on the practical and operational aspects of asset recovery, give generous space to the discussion of specific or atypical scenarios and provide practitioners with best practices and lessons learned from past cases.

15. The Working Group further recommended expanding the UNODC Mutual Legal Assistance Request Writer Tool to include ways of appropriately formulating requests for asset recovery (CAC/COSP/2008/4, para. 39). The Mutual Legal Assistance Request Writer Tool was developed as part of the legal assistance services offered by UNODC to States to help practitioners draft effective requests, receive more useful responses and streamline the process. The Request Writer Tool can be downloaded from the website of UNODC (<http://www.unodc.org/mla>). In the asset recovery process, mutual legal assistance is crucial when evidence, including financial information, is requested from foreign jurisdictions, when assets must be seized or restrained or when their final confiscation is requested and when domestic confiscation orders must be enforced abroad. Assistance in the drafting of those types of requests is provided for in the current functions of the Mutual Legal Assistance Request Writer Tool.

16. Other existing tools can complement the Mutual Legal Assistance Request Writer Tool. While mutual legal assistance is essential in many cases, the preparation of the request is typically only one aspect of an asset recovery case. Many cases involve complex national and international intelligence and investigation activities that are not covered by the Request Writer Tool. For the overall management of case information of large-scale proceedings, GoCase (<http://gocase.unodc.org/>) is a software application developed by UNODC for use by law enforcement agencies, intelligence units and the criminal justice system to manage and track investigations. GoCase facilitates the collection and development of intelligence, investigation and prosecution processes. It assists with the

⁴ United Nations publication, Sales No. E.06.IV.16.

management of an asset recovery case from the first suspicion to the adjudication of a case, providing immediate access to information concerning all steps of complex, large-scale proceedings. To assist the work of financial intelligence units, UNODC has developed goAML, an application for data collection, analysis and dissemination of information.

17. Following the issuance of a confiscation order, States must exchange formal communications in order to achieve the return and disposal of confiscated assets. While such communication is not expected to be as formal or standardized as a request for mutual legal assistance, some standard information on the confiscated assets and the case history usually needs to be provided before assets are returned in accordance with domestic regulations and article 57 of the Convention against Corruption. In order to develop a systematic tool to assist in such communication, using the methodology of the MLA Request Writer Tool, it is essential to draw on from the experience of a number of relevant past cases and involve expert practitioners. That will help to obtain a clear view of the practical needs and challenges of such communication and to determine the extent to which it can be formalized.

18. At its first meeting, the Working Group recommended for consideration by the Conference means for gathering information on specific types of money-laundering cases related to corruption (CAC/COSP/2008/4, para. 41). With respect to the broader spectrum of money-laundering, in 1998 UNODC, in collaboration with external partner organizations involved in combating money-laundering, established the International Money-Laundering Information Network (IMoLIN). IMoLIN is a web resource that is administered, maintained and regularly updated through the UNODC Global Programme against Money-Laundering, on behalf of a partnership of international organizations. Part of IMoLIN is a password-protected global legal and analytical database in an easily searchable format, covering the fields of anti-money-laundering and combating the financing of terrorism. The database is the largest online legal library of national legislation in those two fields, containing the legislation of some 175 jurisdictions. Since January 2005, more than 370 new and amended laws and regulations in the fields of anti-money-laundering and combating the financing of terrorism have been included in the database. The IMoLIN website does not contain case studies on money-laundering, since those are available on government websites and in the typology reports issued by the Financial Action Task Force on Money Laundering (FATF)-style regional bodies.

19. In order to provide a better understanding of the links between corruption and money-laundering and to make recommendations on how to enhance the fight against those two interrelated crimes, FATF and the Asia/Pacific Group on Money Laundering established a project group to prepare a detailed report on the nexus linking corruption to money-laundering and terrorist-financing. It was decided that references in the report to corruption should address the offences defined in articles 15-22 of the Convention against Corruption. The resulting draft report, inter alia, provides an overview of recent international initiatives to understand the nexus between money-laundering and corruption, explores the vulnerabilities of regimes for combating money-laundering and the financing of terrorism in addressing

corruption, examines issues related to politically exposed persons and the private sector and gives a number of case examples.⁵

2. Ways to encourage cooperation among relevant existing bilateral and multilateral initiatives

20. Given the complexity of asset recovery and the progressive accumulation of knowledge, the future success of asset recovery initiatives will greatly depend on cooperation and the sharing of experience and lessons learned. While the responses to the self-assessment checklist indicate significant needs in the area of technical assistance for the implementation of chapter V of the Convention against Corruption (see para. 31 below), asset recovery has attracted great interest from international organizations and donors. Within the next few years, the political momentum must be translated into programmes that make best use of limited resources and meet the complex and diverse needs of States.

21. At its first meeting, the Working Group 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 (CAC/COSP/2008/4, para. 40).

22. That recommendation is to be considered in close connection with the work of the Conference of the States Parties on technical assistance and with the work of UNODC and its partners to establish a knowledge consortium (see para. 7 above). In the report on the International Cooperation Workshop on Technical Assistance for the Implementation of the United Nations Convention against Corruption, held in Montevideo from 30 May to 1 June 2007 (CAC/COSP/2008/6), it was highlighted that international cooperation and technical assistance were key factors for the successful implementation of the Convention at the country level and that cooperation and coordination between the providers of technical assistance needed improvement. It was recommended that the Secretariat should disseminate information, with a particular focus on bringing the supply and demand sides of anti-corruption efforts closer together. It was further noted that this could include the establishment of a central information clearing house with data on, as a minimum, donor strategies on anti-corruption work (headquarters-level strategies); donor-supported anti-corruption programmes and projects at the country level (including governance projects with anti-corruption components relevant to the Convention); national anti-corruption strategies, plans or programmes; and specific national anti-corruption policies and measures. In its resolution 2/4, entitled “Strengthening coordination and enhancing technical assistance for the implementation of the United Nations Convention against Corruption”, the Conference requested national, regional and international anti-corruption donors to continue their coordination efforts, including in forums such as the International Group for Anti-Corruption Coordination and the Network on Governance of the Development Assistance Committee of the Organization for Economic Cooperation

⁵ The draft report is available on the website of the Asia/Pacific Group on Money Laundering (<http://www.apgml.org>).

and Development, so that they could share their approaches on how to implement the needs identified by recipient States and to define guidelines and policies based on their best practices and comparative advantages.

23. There are various points from which the development of such a synopsis should depart. As the Working Group recommended, the information contained in the background paper prepared by the Secretariat for the first meeting of the Working Group (CAC/COSP/WG.2/2007/2) could serve as a basis, as could the background paper prepared by the Secretariat for the second session of the Conference of the States Parties (CAC/COSP/2008/11) and the present document (see paras. 36-47 below). The ICAR knowledge centre provides information about training opportunities on asset recovery. ICAR organized two donors' meetings, in March and May 2007, in order to exchange knowledge and experience in the field of assisting implementation of chapter V of the Convention.

24. UNODC has, on behalf of the International Group for Anti-Corruption Coordination, started collecting information on specific projects as part of the preparation of an anti-corruption database. The project database provides a platform for the exchange of views, information, experiences and best practices for the purpose of enhancing the impact of anti-corruption activities, including support for the Convention against Corruption. The format of the database is currently being revisited, and in that context, the structure of the database could take into account the special needs of asset recovery activities through the creation of a special category of projects relevant for asset recovery.

3. Ways and means of building confidence, facilitating the exchange of information and ideas on the expeditious return of assets and encouraging cooperation between requesting and requested States

25. Efficient cooperation among authorities within the State is as essential for asset recovery as is rapid international cooperation. Both levels of cooperation, national and international, require the establishment of open channels of communication, a relationship of trust and the swift exchange of information. At the first meeting of the Working Group, it was emphasized that there was a need for informal channels of communication and cooperation, both prior to making a formal request for mutual legal assistance and in cases where no formal request was required. In particular, the Working Group stressed the need for effective cooperation with law enforcement agencies and financial intelligence units, while recognizing the role of the judiciary in ensuring accountability and due process in international cooperation procedures. The Working Group recommended close cooperation at the domestic level between anti-corruption agencies, law enforcement agencies and financial intelligence units. Regular meetings could enhance possibilities for asset recovery (CAC/COSP/2008/4, para. 42).

26. The Working Group further 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 (CAC/COSP/2008/4, para. 43).

27. The Working Group highlighted the need for the fast-tracking of asset seizure, freezing and confiscation procedures. To the extent possible, States should act speedily on foreign requests for asset confiscation in order to prevent the assets

from being transferred to another destination. At the same time, the Working Group emphasized the importance of respecting the rule of law in all asset recovery procedures (CAC/COSP/2008/4, para. 44). The providers of technical assistance at the country level should make every effort to support cooperation between domestic institutions, strengthen financial intelligence systems and strengthen capacities for the fast response to international cooperation requests.

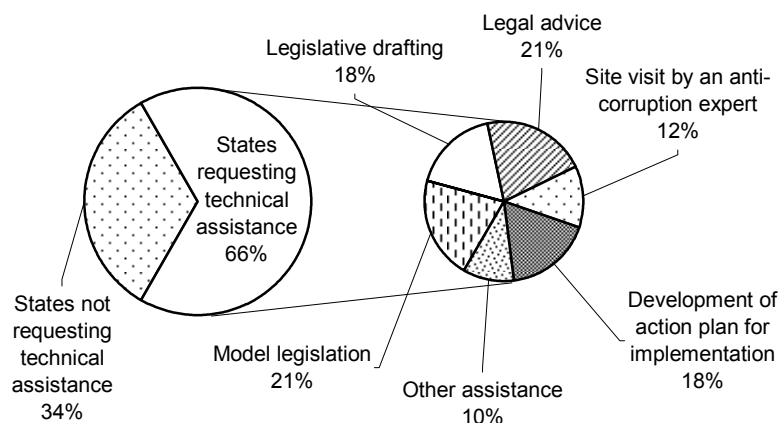
28. The Working Group also recommended the establishment of a global network of focal points on asset confiscation and recovery. The Working Group suggested that administrative arrangements should be explored for the management of such a network (CAC/COSP/2008/4, para. 45). In the context of training and capacity-building, the Working Group recommended the organization of annual meetings of asset recovery focal points, experts and competent authorities, which would serve as a forum for peer training, the exchange of knowledge, information-sharing and networking, as well as the building of a relationship of trust among practitioners. The StAR initiative is currently exploring cooperation with the International Criminal Police Organization (INTERPOL) for the establishment and management of a global network of asset recovery focal points. Discussions with the European Union with a view to creating complementarities with a network of asset recovery offices to be established by the member States of the European Union by the end of 2008 (see para. 46 below) are under way.

III. Assistance to the Conference to identify, prioritize and respond to technical assistance needs for asset recovery

29. Pursuant to article 60, paragraph 2, of the Convention against Corruption, States parties shall consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption. Technical assistance needs were taken into account when designing the self-assessment checklist. Further information was elicited from those States which indicated partial compliance or non-compliance with one or several of the provisions covered in the self-assessment checklist. In particular, States were asked which forms of technical assistance, if available, would assist them in adopting the measures described by the provision in question, and whether the assistance necessary to implement the Convention was already being provided or had been provided. If States were receiving or had received assistance, they were requested to specify by whom such assistance was provided and whether its extension or expansion would further facilitate the implementation of the provision in question.

30. A total of 66 per cent of the States completing the self-assessment checklist expressed the need for technical assistance. Global technical assistance needs are shown in figure I. The forms of assistance most frequently requested were model legislation and legal advice (21 per cent each) and legislative drafting and the development of an action plan for implementation (18 per cent each).

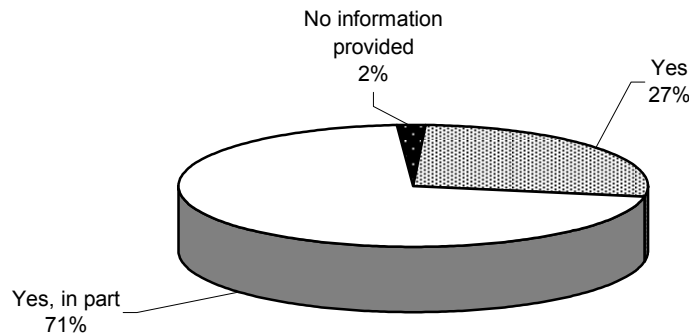
Figure I
Global technical assistance needs (44 reporting States parties)



31. States parties clearly indicated a greater need for technical assistance for the implementation of chapter V of the Convention than for the other chapters. The reported compliance rate for chapter V (less than 50 per cent) is lower than for the other chapters, and it was with respect to chapter V that the highest percentage of States parties were unable to provide any information (CAC/COSP/2008/2 and Add.1). Of the States reporting partial or non-compliance with chapter V, on asset recovery, 83 per cent requested technical assistance. The forms of assistance most frequently requested were the provision of legal advice (19 per cent), model legislation (18 per cent) and support in legislative drafting (17 per cent).

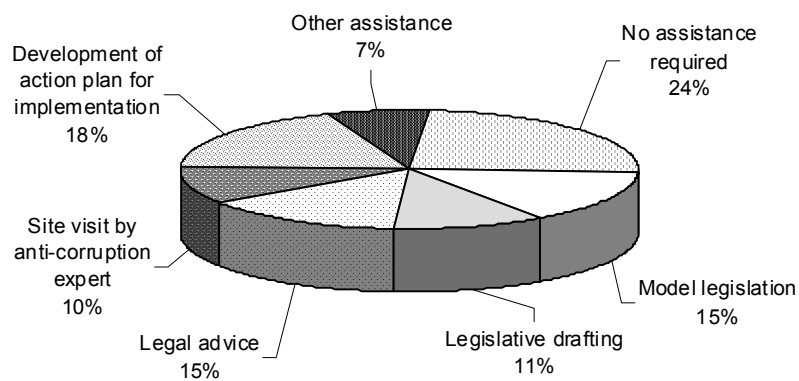
32. Statistical information can be useful to the Conference and its working groups in making an informed decision on priorities for technical assistance. Some trends can be detected using the statistical data from the replies on articles 52 and 53. On article 52, a highly complex provision, an exceptionally high rate of 71 per cent of reporting parties indicated partial implementation (see figure II). A total of 27 per cent of reporting parties indicated that they had fully implemented the provision, while 2 per cent did not provide any information. No reporting party indicated non-compliance with article 52.

Figure II
Global implementation of article 52 of the Convention



33. Three of four parties reporting partial implementation of article 52 indicated the need for technical assistance in order to fully implement the article. Responses to the self-assessment checklist indicated that the greatest need was the development of an action plan for implementation (18 per cent), legal advice and model legislation (15 per cent each) and legislative drafting (11 per cent) (see figure III).

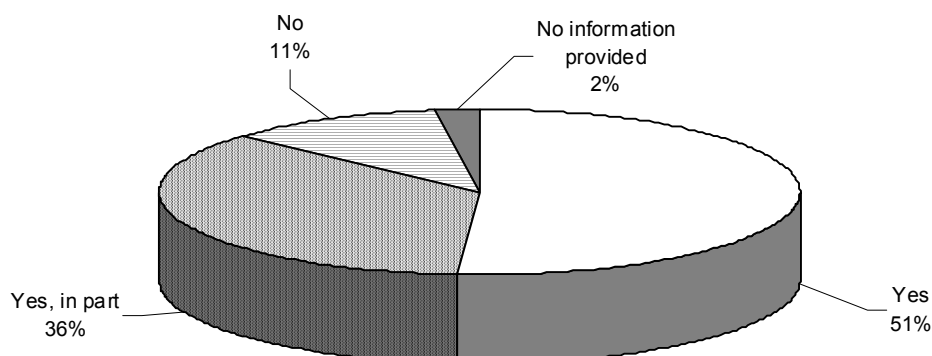
Figure III
Technical assistance needs of the 30 parties that reported partial implementation of article 52 of the Convention



34. In comparison, article 53 was reported not to be fully implemented by only 20 reporting parties. A total of 51 per cent of reporting parties indicated full compliance with article 53, 36 per cent reported partial compliance, 11 per cent

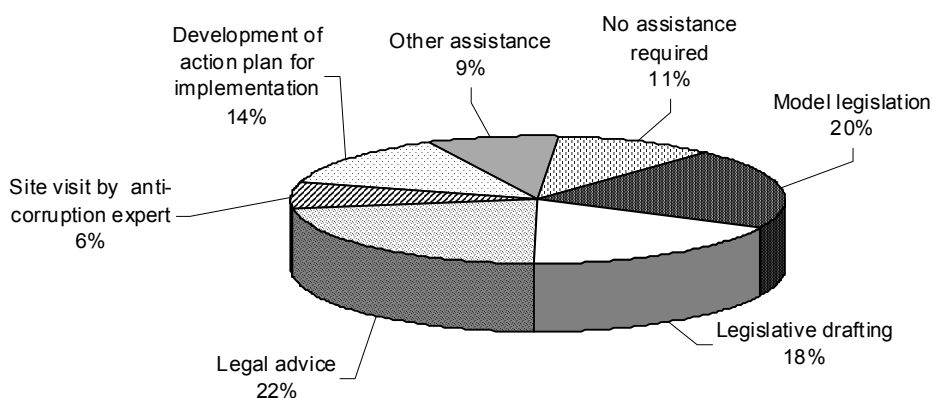
reported not having implemented article 53, and 2 per cent did not provide any information (see figure IV).

Figure IV
Global implementation of article 53 of the Convention (44 reporting States parties)



35. An exceptionally high percentage of the parties reporting partial or no implementation of article 53 of the Convention indicated the need for technical assistance (89 per cent) (see figure V). Among the assistance needs most frequently indicated by those parties reporting partial or no implementation were legal advice (22 per cent), model legislation (20 per cent) and legislative drafting (18 per cent).

Figure V
Technical assistance needs of the 20 parties that reported partial or no implementation of article 53 of the Convention



IV. Current activities for asset recovery

36. UNODC and the World Bank launched the StAR initiative in New York on 17 September 2007. The initiative was presented at the meetings of the World Bank

and the International Monetary Fund in Washington, D.C., on 12 and 13 April 2008. The StAR initiative is a collaborative effort aimed at creating a global partnership for asset recovery and ensuring that there are no safe havens for the proceeds of corruption. It was created in recognition of the fact that developed and developing countries share responsibility for combating corruption and the fact that the proceeds of corruption in poor countries are often hidden in major financial centres. In order to further shape the work programme of the initiative, a number of consultation missions have been conducted to identify possible pilot countries and determine their needs and political commitment. A conference entitled “Strategic Directions in Controlling Corruption: the Recovery of Stolen Assets” was held in Bangkok from 10 to 12 March 2008.

37. The objectives of the StAR initiative are threefold. First, the StAR initiative is intended to assist countries in recovering assets that have been stolen by public officials and hidden in other countries. Activities to achieve this goal include providing assistance to States drafting mutual legal assistance requests or responding to such requests, and assisting States to develop capacity for managing all aspects of asset recovery cases, including tracing, freezing, seizing and the return of assets. Case coordination meetings can be organized in cases in which it is necessary to bring together all parties involved at the national level, and regional StAR initiative events, with an emphasis on training in the various practical issues involved in asset recovery, are foreseen.

38. Secondly, the StAR initiative promotes the full implementation of chapter V of the Convention against Corruption and institutional reform to deter further asset theft. Specifically, the StAR initiative will help States build capacity to identify suspicious transactions and illicit income; to seek help from other States in collecting evidence on corruption; to investigate, prosecute and adjudicate corruption-related cases; and to freeze, seize and confiscate assets. To achieve that goal, experts working for the StAR initiative will help States develop and put in place the necessary legislative and regulatory framework to ensure full implementation of chapter V of the Convention. Successful and unsuccessful asset recovery cases will be analysed, capacities and vulnerabilities will be assessed, training on asset tracing, mutual legal assistance and legal tools will be provided, and model guides will be prepared. Points of contact will be created in each country involved to facilitate communication and work on asset recovery cases.

39. Thirdly, the StAR initiative is intended to reduce legal barriers obstructing international cooperation for asset recovery. The StAR initiative will help ease the legal requirements for asset recovery by carrying out advocacy and research activities and by directly engaging partners in financial centres on actions that they can take to improve the prospect of recovering stolen assets. In order to be effective, that work must be based on empirical evidence and research carried out to identify and disseminate good practices. Activities to achieve that goal include assisting States to evaluate obstacles in their legal and structural requirements for mutual legal assistance; identifying barriers to implementation of the provisions of the Convention by States that are often requested to assist in asset recovery cases; and promoting research and knowledge on asset recovery experiences in order to develop best practices.

40. At the second session of the Conference of the States Parties, a ministerial round table on the StAR initiative was held. Participants agreed that a sound legal

framework for asset recovery was important, that asset recovery required a joint effort by requesting States and requested States and that the StAR initiative could play an important role in facilitating asset recovery. As a further special event at the second session of the Conference, a workshop on the handling of mutual legal assistance was conducted by UNODC and the World Bank, co-hosted by the Government of Indonesia. Participants stressed the importance of political commitment for the successful recovery of assets and concluded the workshop with a number of practical recommendations for formal and informal international cooperation, as well as on strategies for managing asset recovery cases. The activities of the StAR initiative will be brought to the attention of the Conference at its third session.

41. UNODC and the World Bank are creating an efficient and transparent institutional framework for the StAR initiative. To oversee the work of the initiative, the two organizations have established a joint secretariat, housed in the offices of the World Bank in Washington, D.C., composed of World Bank and UNODC staff. The secretariat coordinates all activities that fall under the StAR initiative work programme, serves as a central point of contact for States seeking or receiving support and for donors providing contributions, and administers funds related to the StAR initiative. To strengthen the collective effort, the initiative benefits from the advice and guidance of the “Friends of StAR”, a small group composed of influential, experienced individuals from developed and developing countries. The group, which held its inaugural meeting on 29 February 2008, has an advocacy role in promoting the implementation of the asset recovery provisions of the Convention and cooperation between States on asset recovery.

42. Pursuant to the StAR initiative, a number of international organizations have initiated activities aimed at or relevant to asset recovery. The Group of Eight reaffirmed its commitment to asset recovery made at its summit held at Toyako, Hokkaido, Japan on 7-9 July 2008. Heads of State agreed to redouble their efforts, through national laws, to deny safe havens to public officials found guilty of corruption and agreed to strengthen international cooperation for asset recovery, including by supporting initiatives of relevant international organizations, such as the StAR initiative. They also recognized the importance of technical assistance to partner countries in their efforts to implement the Convention against Corruption. The Group of Eight has been committed to asset recovery since its summit held at Sea Island, United States of America, on 8-10 June 2004, at which ministers of justice and home affairs issued a declaration on recovering the proceeds of corruption, which was supported by the Heads of State of the Group of Eight in their declaration on fighting corruption and improving transparency, issued at the Sea Island Summit. Since then, the Group of Eight has committed itself to developing and promoting mechanisms that support the effective return of recovered assets (at its 2006 summit held at Saint Petersburg, Russian Federation); to implementing the outcome of regional workshops on the recovery of illicitly obtained assets; and to ensuring that developing countries can access and develop technical expertise to help recover illicitly obtained assets (at its summit held in Heiligendamm, Germany, on 6-8 June 2007). In preparation for the Hokkaido Toyako Summit, the Group of Eight reviewed their progress in the implementation of past Group of Eight commitments. The report entitled “Accountability Report:

Implementation Review of G8 on Anti-Corruption Commitments”⁶ assesses the achievements of each member of the Group of Eight in eight priority anti-corruption areas, four of which are directly relevant for asset recovery: ratification and implementation of the Convention against Corruption, frameworks for asset recovery, denying safe havens and fighting money-laundering.

43. The 28 States members of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific have been engaged since 2005 in strengthening their frameworks for mutual legal assistance, extradition and asset recovery and in implementing the Convention against Corruption and other anti-corruption instruments. The action plan agreed to by the States members of the Initiative contains commitments related to the support of asset recovery, such as the disclosure and/or monitoring of personal assets and liabilities, active cooperation in searching for forfeitable assets and the prompt international seizure and repatriation of such forfeitable assets. In the period 2006-2007, the Initiative reviewed the relevant frameworks of member States and supported the provision of adequate powers of investigation and prosecution and the building of relevant institutions in the region. It established a database of treaties and legislation governing mutual legal assistance and extradition and published a report on denying safe haven to corrupt individuals and the proceeds of corruption⁷ and a report on mutual assistance, extradition and asset recovery.⁸ A regional seminar of the Initiative was hosted by Indonesia on 5-7 September 2007, with UNODC acting as a cooperating partner. The seminar addressed the legal and institutional challenges of mutual legal assistance and asset recovery, the various paths for obtaining international legal assistance, challenges in the tracing, freezing, confiscation and repatriation of proceeds of corruption in requesting and requested States, lessons learned from case studies and the needs and priorities of the region of Asia and the Pacific. The proceedings of the seminar will soon be made available.

44. ICAR, which is part of the non-profit Basel Institute on Governance and a member of the United Nations Programme Network of Institutes on Crime Prevention and Criminal Justice, became operational in 2007. In addition to maintaining a web-based knowledge centre on asset recovery, ICAR conducts a training programme on tracing, confiscating and recovering the proceeds of corruption, money-laundering and related crimes. Training was delivered to officials in Indonesia (17-28 September 2007), Bangladesh (3-6 November 2007), the United Republic of Tanzania (3-13 December 2007) and Madagascar (23 June-1 July 2008). Training was also given to members of the Bangladesh StAR Inter-Agency Task Force on Tracing and Recovering Stolen Assets, in Basel, Switzerland, from 27 February to 7 March 2008.

45. IAACA was launched at the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, held in Merida, Mexico, from 9 to 11 December 2003. The primary objective of IAACA is to promote the

⁶ http://www.g8summit.go.jp/doc/pdf/0708_03_en.pdf.

⁷ Asian Development Bank, *Denying Safe Haven to the Corrupt and the Proceeds of Corruption* (Manila, 2006), available on the website of OECD (<http://www.oecd.org/dataoecd/5/1/37574816.pdf>).

⁸ *Mutual Legal Assistance, Extradition and Recovery of Proceeds of Corruption in Asia and the Pacific*, available on the website of OECD (http://www.oecd.org/corruption/asiapacific;http://www.oecd.org/document/9/0,2340,en_34982156_34982460_37892041_1_1_1_1,00.html).

effective implementation of the Convention against Corruption and, in particular, to promote international cooperation, relationship-building and coordination between anti-corruption authorities. The second annual meeting of IAACA was held in Bali, Indonesia, from 21 to 24 November 2007. Participants welcomed the StAR initiative, pledged their full cooperation with it within their respective areas of competence and called upon all States to actively support the full implementation of the Convention's provisions on asset recovery. The third annual conference and general meeting of IAACA will be held in Kyiv from 3 to 6 October 2008. IAACA carried out two further seminars, from 17 to 26 June 2007 and from 14 to 23 May 2008, both in China, on the implementation of the Convention. IAACA is currently engaged in consultations with UNODC and other partners in order to build a knowledge consortium for the collection, preparation, management and dissemination of knowledge products (see para. 7 above).

46. The Council of the European Union, in its decision 2007/845/JHA of 6 December 2007 (with a deadline for implementation of December 2008), decided that each member State of the European Union should set up or designate a national asset recovery office and should ensure that national asset recovery offices cooperate with each other by exchanging information and best practices both upon request and spontaneously. A high-level conference on establishing national asset recovery offices was held in Brussels on 6 and 7 March 2008, at which participants recommended ways and means of establishing asset recovery offices. According to those recommendations, an asset recovery office should, *inter alia*, have a multidisciplinary structure comprising expertise from law enforcement, judicial authorities, tax authorities, social welfare agencies and customs and other relevant services. Those agencies should be able to exercise their normal authority and have access to all relevant databases in order to identify and trace assets. Asset recovery offices should have access to a central bank account registry at the national level, be adequately resourced and provide a central point for all incoming requests relating to asset recovery. The offices established or designated pursuant to the decision complement the Camden Asset Recovery Inter-Agency Network, an informal network of judicial and law enforcement expert practitioners established at The Hague, the Netherlands, in 2004.

47. The Leading Group on Solidarity Levies to Fund Development is an informal intergovernmental body that explores possibilities for innovative financing for development. At the 3rd plenary meeting of the Leading Group, held in Seoul on 3 and 4 September 2007, the Government of Norway was invited to establish and chair the International Task Force on Illicit Financial Flows. The Task Force has decided to interpret the term "illicit financial flows" broadly to include all capital flows that go unrecorded and whose origin, destination and true ownership are hidden. The term also includes flows associated with public loss and public gain and national wealth permanently put beyond the reach of State authorities in the source country and funds that are not part of "fair value" transactions that would stand up to public scrutiny if all the information about them were disclosed. Although important, the proceeds of corruption are only one of the many types of illicit financial flows addressed by the Task Force. Others include the proceeds of wrongly invoiced commercial transactions, wrongly priced financial transfers, illegal wire transfers and petty smuggling. The Task Force held its first meeting in Oslo on 12 and 13 December 2007 and its second meeting, also in Oslo, on 1 and 2 April 2008. The third and final meeting will be held in Oslo on 21 and 22 October 2008 to

discuss a set of recommendations. That meeting will be followed by a research workshop on 23 October 2008, organized jointly by the Government of Norway and the World Bank. The conclusions and recommendations of the Task Force will be brought to the attention of the participants of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, to be held in Doha from 29 November to 2 December 2008.

V. Issues for further consideration and action

48. The Working Group may wish to give guidance on the further implementation of the recommendations that it made at its first meeting. It may wish to adapt and modify its recommendations and add further recommendations as it deems appropriate. Since resources will be limited, the Working Group may wish to consider establishing priorities for the technical assistance for asset recovery provided by the Secretariat, the StAR initiative and other organizations.

49. With regard to the need to develop cumulative knowledge on asset recovery, the Working Group may wish to discuss ways and means to make the envisaged knowledge management tool fully functional for the requirements of asset recovery, including through marking and highlighting resources relevant to asset recovery.

50. Given the lack of knowledge on many practical problems of asset recovery, the Working Group may wish to consider the need to involve expert practitioners in the development of cumulative knowledge and practical tools. That need may be considered when further pursuing the recommendations to draw up a practical handbook for asset recovery, expand the Mutual Legal Assistance Request Writer Tool, to determine evidentiary requirements under domestic laws, to prepare model provisions and to gather information on specific types of money-laundering cases related to corruption.

51. The Working Group may wish to give guidance on the means to promote close cooperation between anti-corruption agencies, law enforcement agencies and financial intelligence units at the national level and to increase the responsibility of financial institutions and the financial intelligence units overseeing them. In addition, the Working Group may wish to give guidance on how the fast-tracking of asset seizure, freezing and confiscation procedures can be enhanced.

Annex

Hypothetical case study to facilitate the discussion of the challenges in asset recovery practice

Cast

Mr. X, former President of country A

Mr. Y, son of the former President

Ms. Z, business associate of Mr. Y

Authorities of countries B, C, D, E and F

Situation

1. Mr. X, the former President of country A transferred millions of dollars to other countries before being forced from office. The money was transferred through a series of different accounts held under different names in different countries. Some of the missing assets were located in country B, and other assets were located in countries C, D, E and F. A substantial amount is still unaccounted for.

2. Authorities in country A have begun to investigate the origin of the money and have uncovered some relevant witnesses and documents. However, those efforts have been hampered because witnesses have not been willing to testify publicly and because the proper documentation in both the public and private sectors has been lacking. During the former President's administration, virtually no records were maintained and there was no legislation governing record maintenance, accounting and financial disclosure.

3. An initial attempt to open a criminal case against Mr. X was blocked when a judge appointed under the former President's administration dismissed all charges as baseless. The authorities of country A are seeking assistance from countries through which the money may have passed, including bank records that could help to clarify relevant transactions, as well as corporate records that might confirm payment of bribes and other relevant transactions. Based on the evidence gathered so far, the origin of the money held by Mr. X, the former President, can be broken down as follows:

(a) \$10 million taken directly from the State Treasury, over which Mr. X, the former President, during his administration, had direct signature authority by law;

(b) \$10 million accepted by the former President during his administration as bribes from foreign companies for state contracts in country A (some of that money was paid directly into foreign bank accounts and never entered country A);

(c) \$10 million in profits from a company of which Mr. Y, the former President's son, was a majority owner and to which the former President directed numerous state construction contracts during his administration;

(d) \$10 million in proceeds from a drug trafficking operation that the former President, during his administration, allowed to operate in country A;

(e) \$10 million diverted by the former President, during his administration, from various bilateral and multilateral assistance and development projects in country A;

(f) \$10 million from investments in a now defunct oil exploration venture that was partially run by the State and that, after having attracted domestic and foreign investors, failed because the former President diverted a significant part of its capital during his administration;

(g) \$60 million of unknown origin.

4. A few months later, contact has been established with the competent authorities of countries C, D, E and F, and criminal proceedings have been initiated against Mr. Y, the son of the former President.

5. The authorities of country B have been requested to provide assistance in tracing \$20 million allegedly invested by the former President in a hotel complex in country B. The letter rogatory included the evidence obtained by the internal investigations in country A. No reply has yet been received.

6. The authorities of country C, after receiving a formal mutual legal assistance request, advised that no bank accounts were held by the former President Mr. X or his family in country C. However, the authorities of country C, without being specifically requested, disclosed initial information on \$10 million in accounts allegedly held by one of the directors of a state-owned company established under the presidency of Mr. X.

7. In country D, \$20 million were traced, through the transfers of a number of intermediaries, to Mr. X. The competent authorities of country D, after receiving a mutual legal assistance request, issued a freezing order and informed the authorities of country A that this order would be lifted after two years if country A did not initiate criminal proceedings or issue a confiscation order.

8. The authorities of country E granted an interim freezing order against an account held by Ms. Z. \$5 million held in this account can be traced, through various intermediaries, to a company held by Mr. Y. The authorities of country E have announced that country A has two months to present a formal request for mutual legal assistance. Ms. Z has contested the order, presenting evidence that she acquired the funds bona fide when doing business with the intermediaries of Mr. Y.

9. The authorities of country F issued an initial freezing order against a bank account held by Mr. Y, and the authorities of country A initiated proceedings for the non-conviction-based confiscation of \$20 million in country F, based on evidence collected in the criminal procedure against Mr. Y in country A. The authorities of country F are hesitant to provide mutual legal assistance for civil proceedings and have doubts about the use of evidence obtained in a criminal case that has not yet been adjudicated.
