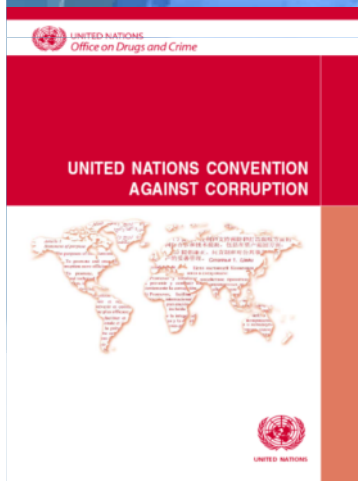


The UNCAC and International Asset Recovery



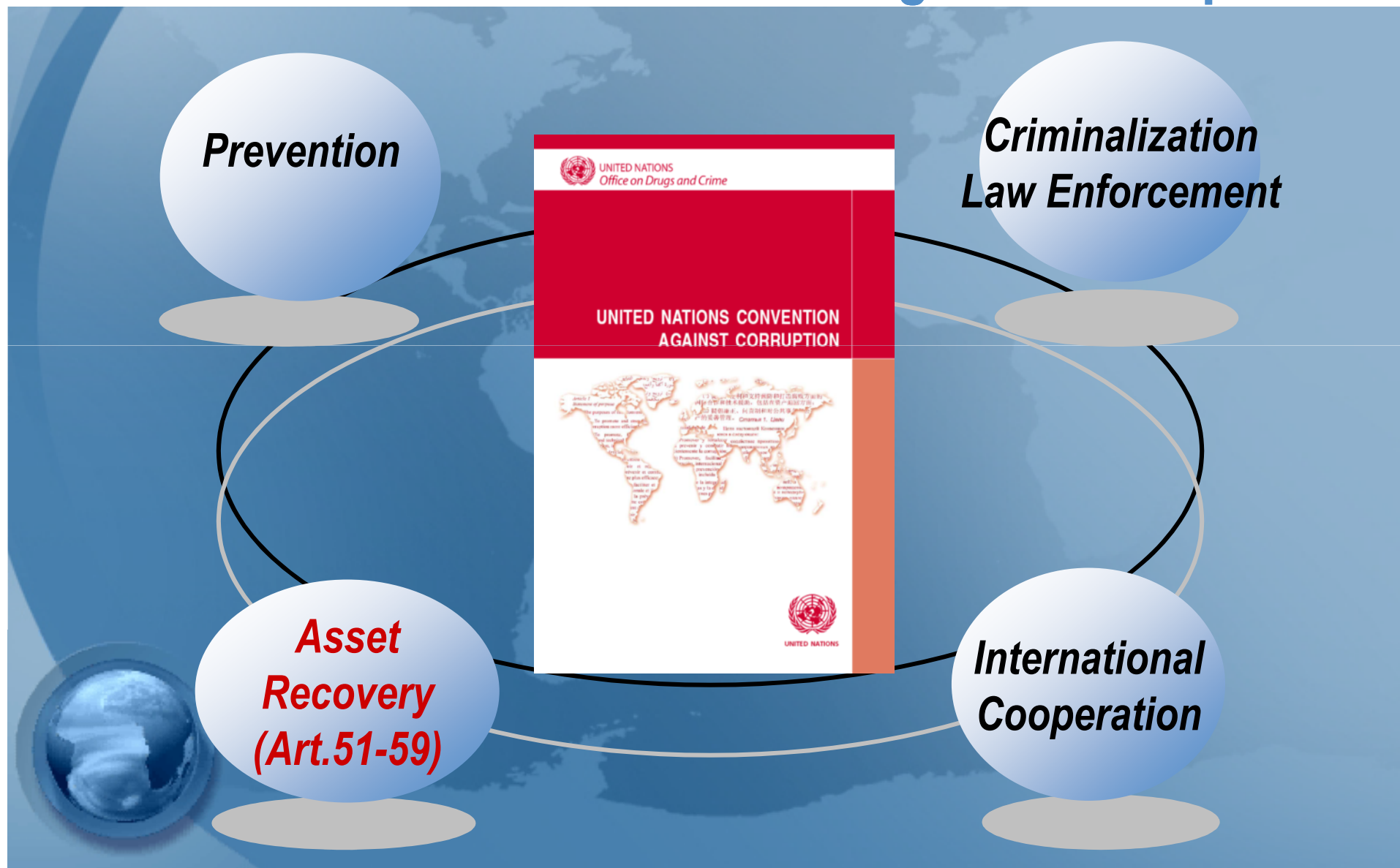
*Summer School for Junior Magistrates from South Eastern Europe:
International Standards and Cooperation in the Fight Against Corruption
7 June 2011, Slunchev Bryag, Bulgaria*

Introduction

- **UNCAC:** discussion of relevant asset recovery portions
- **StAR (Stolen Asset Recovery Initiative)**
- **Conference of States Parties to UNCAC**
- **CARIN (Camden Asset Recovery Inter-Agency Network)**
- **National Efforts**



The United Nations Convention against Corruption



Chapter V, Asset Recovery (art. 51-59)



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

➤ **Confiscation and disposal of proceeds of crime is relatively recent in international law**



- UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
- UN Convention against Transnational Organized Crime (2000)
- UNCAC breaks new grounds: parties must adjust legislative and institutional formworks to comply with it

National Domestic Asset Recovery Laws

- NOT new concept
 - Existed in Yugoslav and other regional Criminal Procedure Codes and Criminal Codes even during socialist era
 - Now expanded in virtually all revised Criminal Procedure Codes and Criminal Codes
- 3 Types
 - Freezing (Temporary, usually left where it is, i.e. bank accounts)
 - Seizure (Actually taken until final decision made)
 - Confiscation (Permanently taken)
- **Third Party / Victim Property Law Claims**
 - Often overlooked by international consultants, but key feature of asset recovery legislation in all Yugoslav successor states and other regional countries
 - BiH Experience



Scope of Chapter V: Asset Recovery

5 Mandatory Offences

Bribery of National Public Officials (Art.15)

Active Bribery of Foreign Public Officials (Art.16)

Embezzlement, Misappropriation and Other Diversion of Property (Art.17)

Money Laundering (Art.23)

Obstruction of Justice (Art.25)

6 Other Criminal Offences

Passive Bribery of Foreign Public Official (Art.16)

Trading in Influence (Art.18)

Abuse of Function (Art.19)

Illicit Enrichment (Art.20)

Bribery in Private Sector (Art.21)

Embezzlement in Private Sector (Art.22)



Prevention of transfer of proceeds of crime (art. 52)

States Parties must require their financial institutions to:

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

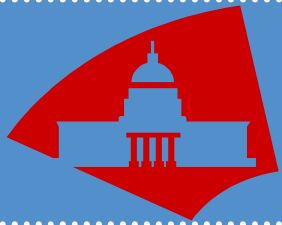
The implementation of these provisions may require legislation

Practical Discussion

- **Use of Asset Declaration Forms**
- **Use of Suspicious Transaction Forms**
- **Identifying Beneficial Owners**
- **Other Matters**



Direct recovery (art.53) – civil prosecution



States parties
shall be allowed to

Initiate civil action in another party's courts to establish ownership of property acquired through corruption



Courts
shall be allowed to

Order corruption offenders to pay compensation to another state party



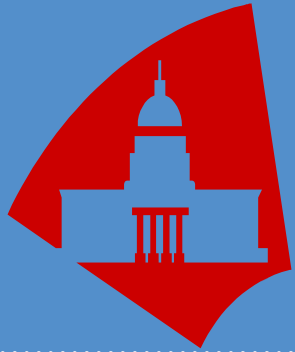
Courts
shall be allowed to

Recognize, in confiscation decisions, another party's claim as legitimate owner of property

Advantages of civil prosecution:

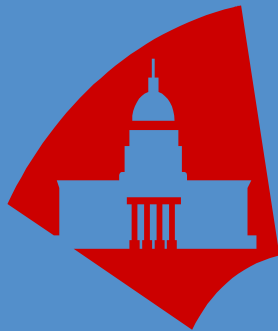
useful when criminal prosecution is not possible – death or absence of alleged offender allows to establish liability on the basis of civil standards – different evidentiary requirements

Recovery and international cooperation (art.53-54)



States Parties
shall permit their
competent
authorities to

- Give effect to an order of confiscation issued by a court of another Party
- Freeze or seize property upon a freezing or seizing order issued by a court of a requesting Party



States Parties
shall consider
measures to

- Allow confiscation **without criminal conviction** – when offender cannot longer be prosecuted because of death, flight or absence

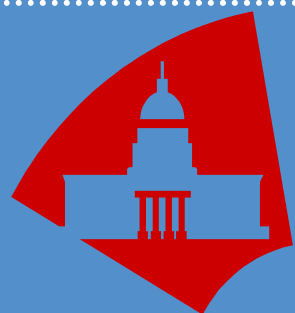
The implementation of these provisions may require legislation

Practical Discussion

- Getting your own asset recovery enforced in another country
- Filing separate action in another country
- Other issues

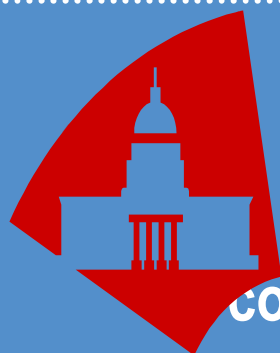


Special cooperation and Financial Intelligence Units (art.56-58)



States Parties
shall endeavour

➤ Forward information on proceeds of corruption to another Party **without request** – when believed that this may trigger investigation and prosecution by receiving Party




States Parties
shall cooperate to prevent and combat transfer of proceeds of corruption and promote recovery and shall consider

➤ Establishing Financial Intelligence Units for receiving, analyzing and disseminating to competent authorities reports of suspicious transactions

The implementation of these provisions does not require legislation
In practice, the vast majority of FIUs are established by law

Disposal of confiscated property,
no longer at the discretion of the confiscating state



Property
confiscated (art. 31-55)
must be disposed of,
including by return to
prior legitimate owners
(art. 57)



Internationally art.55



Domestically art.31

Return of assets (art.57)

Embezzled public funds or
laundering of embezzled
public funds

*Return to
requesting Party*

*Return to requesting Party if it can
reasonably establishes prior ownership*

Proceeds of other
offences of corruption

Other cases

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

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

StAR (Stolen Asset Recovery Initiative)

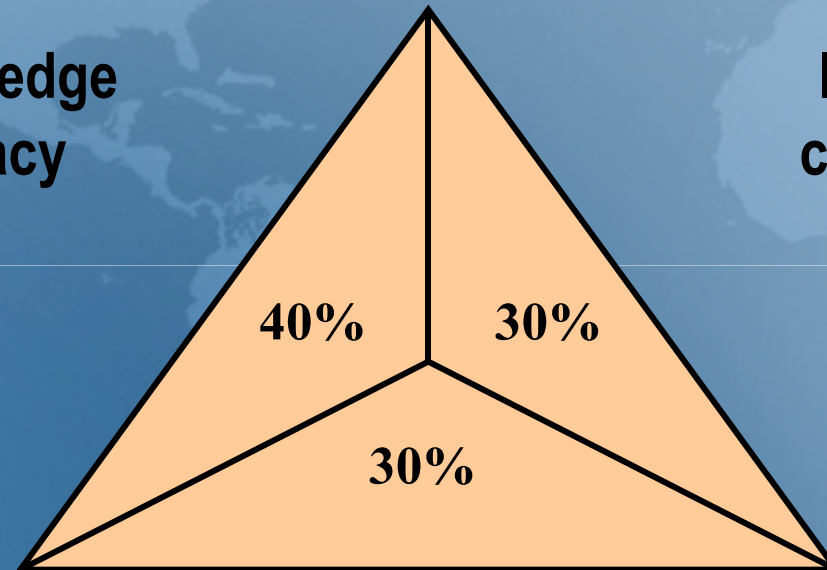


World Bank and UNODC

The Stolen Asset Recovery (StAR) Initiative

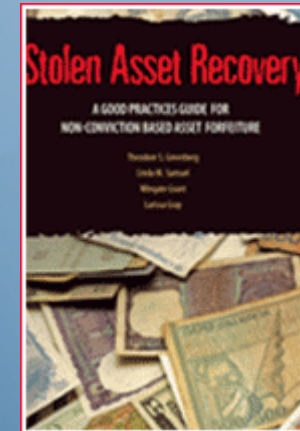
Global knowledge
and advocacy

Institutions and
capacity building



Country engagement:
recovery of stolen assets

- Lowering barriers in financial centers
- Analytic work supporting policy
- Diagnostic tools
- Guides and handbooks



Institutions and Capacity Building

- Gap Analysis
- Networks
- Training
- Advisory services
- Monitoring the use of returned assets



Country Engagement: Recovery of Stolen Assets



Country Engagement: Recovery of Stolen Assets

- Sponsoring stakeholder meetings
- Preparatory assistance:
 - audits
 - financial analysis
 - legal research
 - mutual legal assistance



StAR's assistance to national asset recovery programs

- Gap analysis, capacity building and training
 - Help countries make informed decisions in their asset recovery programs
 - Facilitate coordination between states parties through dialogue and Mutual Legal Assistance
 - Support the preparation and analysis of information on asset recovery aspects of specific cases
- Be involved in litigation or criminal proceedings
 - Finance legal representation
 - Be privy to confidential information shared by states
 - Manage cases

Other International Efforts

- **The Asset Recovery Focal Point Database**
 - established by StAR in partnership with INTERPOL
 - launched on 19 January 2009.
- **Regional conferences on asset recovery networks**
 - Bulgaria 2009 (RAI Partner)



Third Conference of States Parties



مؤتمر الدول الأطراف الثالث
لإتفاقية الأمم المتحدة لمحاربة الفساد
3rd Session of the Conference of the State Parties to
the United Nations Convention Against Corruption

٩ - ١٣ نوفمبر ٢٠٠٩، الدوحة - دولة قطر
9 - 13 November 2009, Doha - State of Qatar



Asset Recovery Resolution

- Renews commitment of States Parties to effective national action and international cooperation (including a proactive approach re chapter V) to recover the proceeds of corruption.
- States Parties to:
 - give consideration to MLA request (incl responsible central authority) and ensure that competent authorities have adequate resources;
 - promote informal channels of communication;
 - strengthen capacity of legislators, law enforcement officials, judges and prosecutors;
 - provide technical assistance in MLA, confiscation matters and where appropriate, non-conviction based forfeiture;
 - remove barriers to asset recovery;
 - where appropriate, limit domestic legal immunities;
 - remove additional barriers; document and disseminate successful asset recovery experience;
 - work in partnership with relevant international bodies; and
 - promote the use of modern information and communications technologies.

Asset Recovery Resolution

- Encourages communication, coordination and development of best practices (regional or thematic levels) and further development of initiatives.
- Urges further study and analysis i.e. results of asset recovery actions.
- Working Group on Asset Recovery to continue and consider the existing and developing bodies of studies for the development of good practices.



CAMDEN ASSET RECOVERY INTER-AGENCY NETWORK (CARIN)

- Informal Network of Contacts / Cooperative Group in All Aspects of Tackling the Proceeds of Crime
- Aim: to increase the effectiveness of members' efforts, on a multi-agency basis, in depriving criminals of their illicit profits
- EUROPOL serves as Secretariat
- 46 members / observers



БЛАГОДАРЯ

