



UNITED NATIONS
Office on Drugs and Crime



**Summer School for Junior Magistrates
from South Eastern Europe
(Kotor, Montenegro, 9-15 June 2008)**

**International cooperation provisions of
the United Nations Convention against
Corruption**

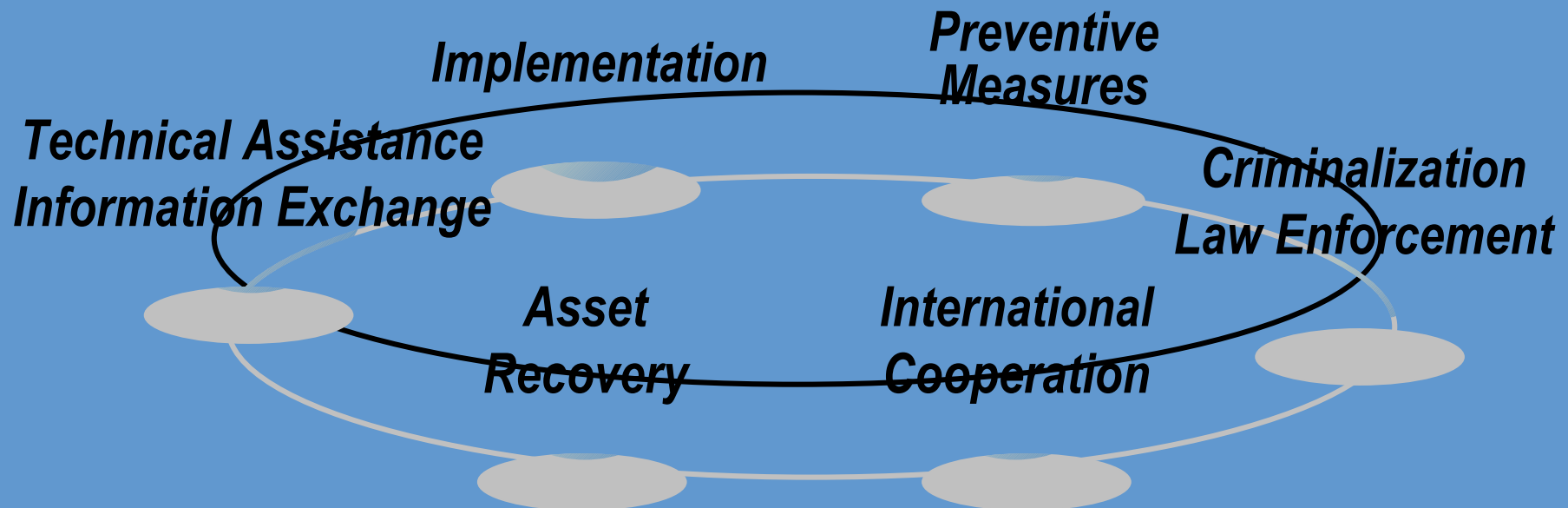


Aims and structure of Convention

1. Prevent and Combat Corruption More Efficiently and Effectively

2. International Cooperation & Technical Assistance including Asset Recovery

3. Integrity, Accountability and Proper Management of Public Affairs and Property





Use of terms (Art.2)

No Definition of Corruption

Broad and Comprehensive Definition of Public Officials

- 1. Any Person Holding a Legislative, Executive, Administrative or Judicial Office**
- 2. Any Person Performing a Public Function or Providing a Public Service**
- 3. Any Other Person So Defined in the Domestic Law of State Party**



Mandatory and other criminal offences

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 Functions (Art.19)

Illicit Enrichment (Art.20)

Bribery in the Private Sector (Art.21)

**Embezzlement of Property in the Private Sector
(Art.22)**



Jurisdiction (Art.42)





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UNCAC PROVISIONS ON INTERNATIONAL COOPERATION

Chapter IV, Art.43 - 50



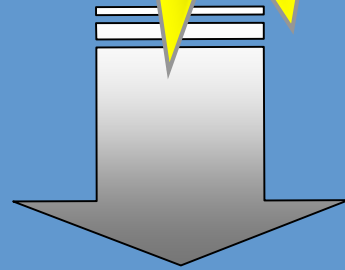


International Cooperation

*Mandatory
Offences*

**Question of
Dual Criminality**

*Optional
Offences*



**Possibility of Extending
Cooperation in Civil and
Administrative Proceedings
Related to Corruption**

**Narrow Dual Criminality
Requirements
In MLAs**



Extradition (Art.44)

Either
“Extradite or Prosecute”
Own Nationals

Enabling departure from
Double criminality



*Ensure that All
Convention Offences are
Extraditable Offence
between States Parties*

Grounds of Refusal

Consultation before
Refusal

No Refusal for
Fiscal Offences

UNCAC as legal basis:
No political offence

Expedite proceedings-
Simplify evidentiary
requirements

Fair treatment
Discrimination clause



Mutual Legal Assistance (Art.46)



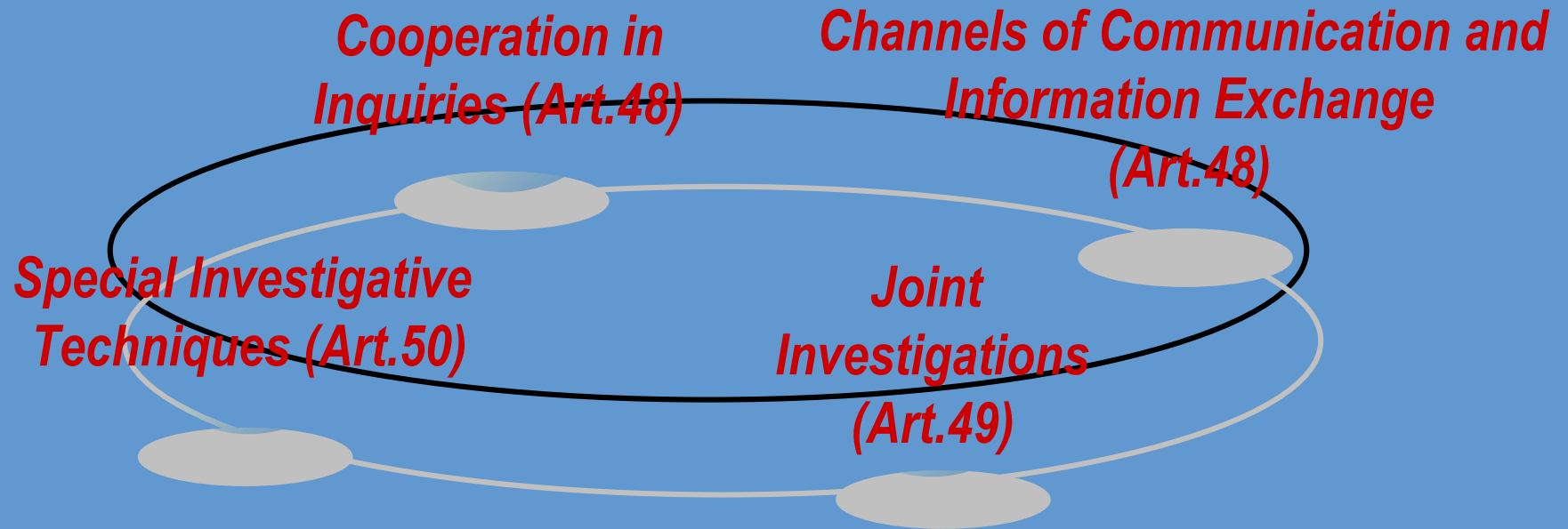
Widest Measure of Mutual Legal Assistance in Investigations, Prosecutions and Judicial Proceedings in Relation to Convention Offences

- Designation of **Central Authority** to Receive, Execute or Transmit Request
- No Refusal of MLA on the Ground of **Bank Secrecy**
- MLA can be Provided in the **Absence of Dual Criminality for Non-Coercive Measures**





Other Cooperation Measures





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UNCAC PROVISIONS ON ASSET RECOVERY

Chapter V, Art.51-59





Asset Recovery – Major Breakthrough

Measures to Prevent and Detect Transfer of Proceeds (Art.52)

Measures for Direct Recovery of Property (Art.53)

Return of Assets as Fundamental Principle (Art.51)

Measures for Recovery of Property through International Cooperation (Art.54 - 55)

Measures for Return and Disposal of Assets (Art.57)



Confiscation of Proceeds of Crime

***Obligation to Enable
Confiscation of
Proceeds of Crime***

Internationally Art.55

Domestically Art.31

***Domestically & Upon
Request from Another Party***





Domestic confiscation powers (Art. 31)

- Production orders / search & seizure powers of:
- ✓ Bank, commercial & financial records

- Bank secrecy is not an excuse

- Powers to enable:
 - ✓ Identification
 - ✓ Tracing
 - ✓ Freezing
 - ✓ Seizure and confiscation of proceeds or property

- Shifting burden of proof:
 - Offender may have to prove lawful origin of suspicious proceeds



Confiscation: Which Proceeds?

- Proceeds of crime derived from convention offences
 - Proceeds converted into/ intermingled with legitimate proceeds
 - Income or benefits derived from proceeds

- Property of corresponding value

- Property, equipment, instrumentalities
 - Used in or destined for use in convention offences

- No prejudice to rights of bona fide third parties



Prevention of Money-laundering (Art.14 & 52)

Banks & other financial institutions

➤ Customer identification

- Know Your Customer, Know Your Business
- Enhanced scrutiny on accounts of individuals with prominent public functions
- Record keeping for later tracing
- Reporting suspicious transactions

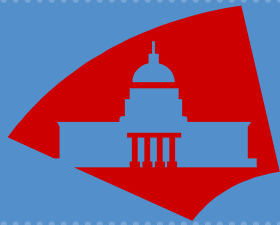
Suspicious: complex, large transactions, unusual patterns, no apparent economic purpose,
no obvious lawful purpose

➤ Prevention of establishment of banks

- With no physical presence
- Not affiliated with a regulated financial groups



Direct Recovery of Property (Art.53)



States parties
shall be allowed to

Initiate civil action in another party's courts to establish title to or 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



Direct Recovery of Property (Art. 53)

- States MUST provide other States access to civil courts
 - to establish title or ownership
 - Not dependent on mutual legal assistance request (victim State can take matters into its own hands)
- States MUST empower courts to recognize other States as possible victims for compensation
- States MUST empower courts to recognize other State's claim as legitimate owner prior to forfeiture
 - Other State intervenes in forfeiture proceeding
 - Other State establishes claim as would any third party



Recovery through International Cooperation (Art. 54)

In order to provide effective mutual assistance under Art 55

Permit authorities to give effect to foreign orders

Cooperation in Confiscation

Permit confiscation on basis of money laundering/related offence

Consider non conviction based asset confiscation





International Cooperation in Freezing/Seizure (Art. 54)

**Freeze/seize on
basis of foreign
order**

**Freeze/seize on
basis of foreign
request**

**Consider:
Preservation on
foreign
arrest/charge**

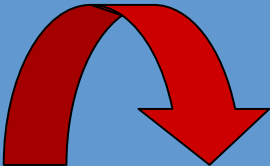


Confiscation: International Cooperation (Art. 55)

In addition to MLA provisions, Art.54-55:

- Requests to
- identify
- ✓ trace
- ✓ Freeze
- ✓ **Seize proceeds for confiscation**
- Same powers available for foreign requests as for domestic confiscation

When a party receives a confiscation request from another party:

- 
- **Either:** direct enforcement of foreign confiscation order

- 
- **Or:** obtain domestic order of confiscation & enforce it



Confiscation: International Cooperation (Art. 55)

- Provisions of art. 46 on mutual legal assistance applicable *mutatis mutandis*
- Cooperation may also be refused where:
 - Requested State does not receive sufficient and timely evidence
 - If property of a *de minimis* value



Return of Assets (Art.57)

Return Depending on **How Closely the Assets were Linked** to the Requesting State Party

Embezzled Public Funds from the State

Return to the State

Return to the State if it Establishes Ownership or Damage Recognized by the Requested State Party as a Basis for Return

Proceeds of Other Offences Covered by UNCAC

Other Cases

May be Returned to the Requesting State Party, a Prior Legitimate Owner or Used for Compensating Victims



Miscellaneous provisions

- Endeavour to transmit information to other states without request (Art.56);
- Consider establishing a Financial Intelligence Unit responsible for receiving, analyzing and disseminating reports of suspicious financial transactions (Art. 58)
- Consider concluding bilateral/multilateral agreements to enhance cooperation in recovery (Art. 59)



Mechanisms for implementation (Art.63-64)

- Promote, Facilitate and Review Implementation*
- Make recommendations*
- Facilitate Information Exchange*

COSP 1 addressed asset recovery as part of its programme of work

COSP 1

10-14 Dec. 2006, Jordan

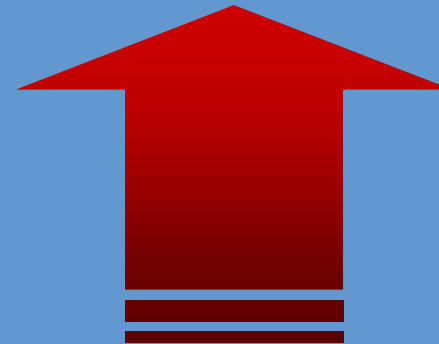
8th Ad Hoc Committee

*To Prepare Draft
Rules of Procedure*

25-27 Jan. 2006

Entry into Force

14 Dec 2005





Outcomes of COSP 1: key resolutions

**Review of
Implementation**

**Information-
Gathering
Mechanism on
UNCAC
Implementation**

Asset Recovery

**Technical
Assistance**

**Corruption
and
Development**

**Bribery of
Officials of
Public
International
Organizations**



Resolution 1/4 of the Conference of States Parties to the UNCAC on the establishment of an intergovernmental working group on asset recovery

Establishment of an interim open-ended intergovernmental working group to advise and assist the COSP on the return of proceeds of corruption

Specific functions:

- Assisting in developing knowledge in the area of asset recovery
- Encouraging cooperation among relevant existing bilateral and multilateral initiatives
- Facilitating exchange of information
- Bringing together relevant anti-corruption authorities and practitioners involved in asset recovery
- Facilitating exchange of ideas on plans for providing legal and technical expertise
- Identifying capacity-building needs

The meeting of the working group to be held in Vienna on 27-28 August 2007.
Discussions to be reported to the COSP at its second session.



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