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, Sluncev 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

- Prevention
- Criminalization
- Law Enforcement
- Asset Recovery (Art. 51-59)
- International Cooperation
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)
- 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 in not possible – death or absence of alleged offender
allows to establish liability on the basis of civil standards – different evidentiary requirements
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.
- 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
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.
- **Proceeds of other offences of corruption**: Return to requesting Party if it can reasonably establish prior ownership.
- **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)
The Stolen Asset Recovery (StAR) Initiative

Global knowledge and advocacy

Institutions and capacity building

40% 30% 30%

Country engagement: recovery of stolen assets

Work Plan
November 2, 2010
Global Knowledge and Advocacy

- 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

• 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

3rd Session of the Conference of the State Parties to the United Nations Convention Against Corruption

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