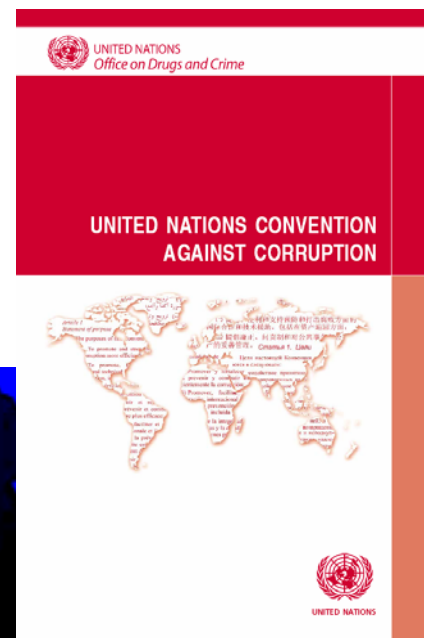




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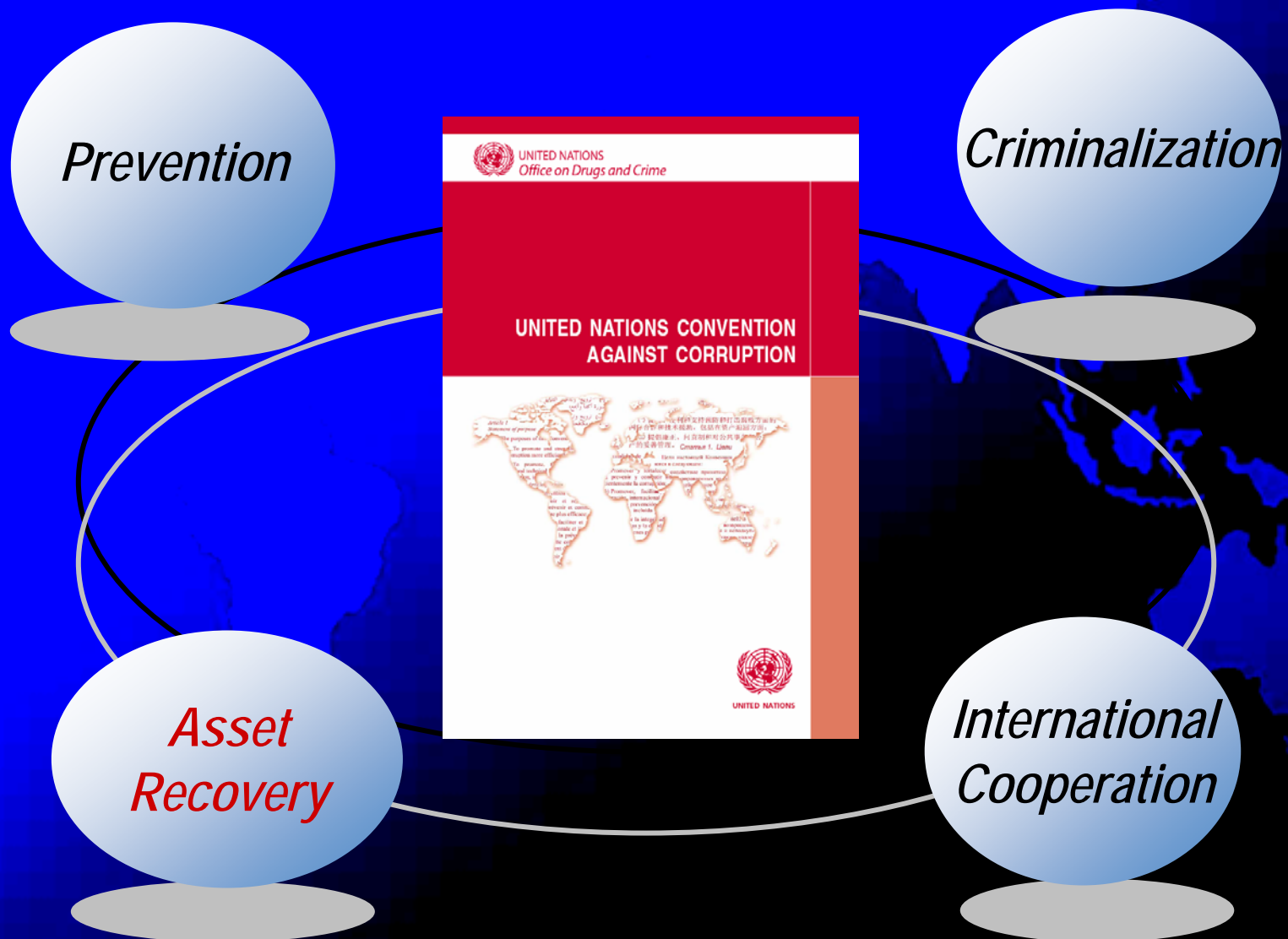


Asset Recovery and the StAR Initiative

3rd GOPAC Global Conference
Kuwait, 16-19 November 2008



Structure of the Convention





➤ 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)



Proceeds of crime, how much?

- Proceeds of crime crossing borders every year: up to \$1.6 trillion
- Bribes received by public officials every year: up to \$40 billion
- 25% of African's GDP – equal to \$148 billion – lost to corruption every year
- Suharto (Indonesia) estimated to have looted up to \$35 billion
- Marcos (Philippines) estimated to have looted up to \$10 billion
- Abacha (Nigeria) estimated to have stolen up to \$5 billion
- Seko (Zaire) estimated to have stolen up to \$5 billion



What to do?



If \$100 million were returned to any developing country:

- 10 million pesticide-treated mosquito-nets could be provided
- 600,000 people living with HIV/AIDS could receive treatment
- 100 million malaria-treatment kits could be purchased
- 4 million children could receive full immunization
- 250,000 households could be provided with water connections
- 240 kilometres of two-line paved road could be built

**How can we
bring this money
back?**



Scope of application of Chapter V: corruption offences

5 Mandatory offences

- Bribery of 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

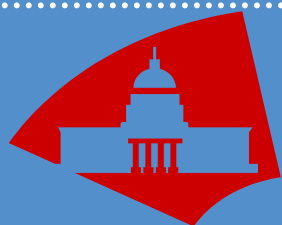


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The implementation of these provisions may require legislation or amendments to civil procedures and jurisdictional rules

Direct recovery (Art.53) – civil action



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 procedure:

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 requirements⁸

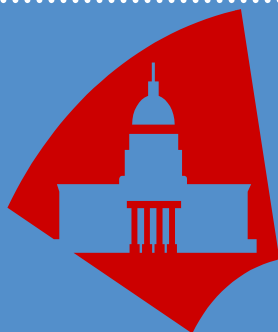


Recovery and international cooperation (Art.54-55)



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



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*



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➤ The Stolen Asset Recovery Initiative (StAR)



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Stolen Asset Recovery (StAR) Initiative

Launched in New York by the World Bank and UNODC on 17 September 2007 to:

➤ Reduce barriers in developed countries to asset recovery

➤ Strengthen the ability of developing countries to recover their wealth



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***THANK YOU FOR YOUR
ATTENTION***