

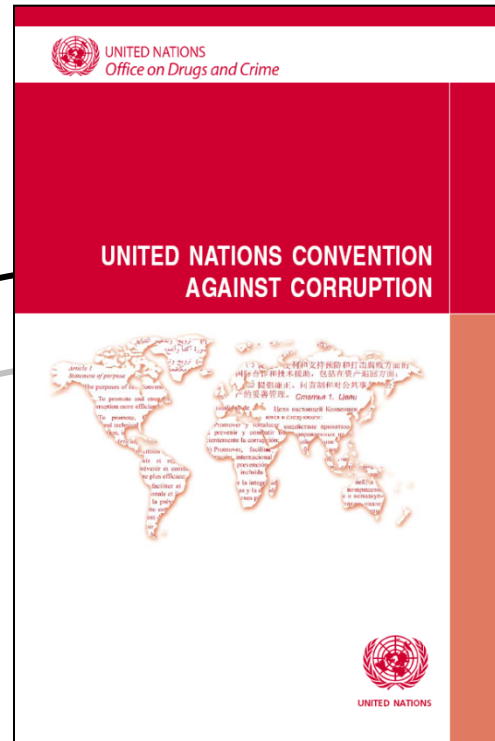
*(Notes on) International Asset
Recovery:
Origins, Evolution and Challenges*

Leonardo Borlini

Legal Rationale and Origin

- The IMF estimated that 3-5% of the worldwide GDP is laundered each year (\$600 billion to \$ 1,800 trillion) of which a considerable part originates from corruption crimes
- *Spoliation indigène, patromonicide, kleptocratie*
- Relevant previous regime establishing mechanisms for the restitution of goods originating from an illicit activity were provided almost exclusively by the treaties for the protection of cultural objects or traffic of drugs

4 key pillars of the United Nations Convention against Corruption (UNCAC)



Prevention
(Art. 5-14)

Criminalization
(Art. 15-42)

Asset Recovery
(Art. 51-59)

International Cooperation
(Art. 43-50)

United Nations Convention against Corruption (UNCAC)

Asset recovery

- “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)
- States Parties must require their financial institutions to be vigilant
- Return of assets:
 - Embezzled public funds → Return to requesting Party
 - Proceeds of other offences of corruption → Return to requesting Party
 - Confiscated property → Returned to the requesting Party or for compensating victims



Asset Recovery –Articles 51-57

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)

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

Other Mechanisms

Prevention and Detection (Art.52)

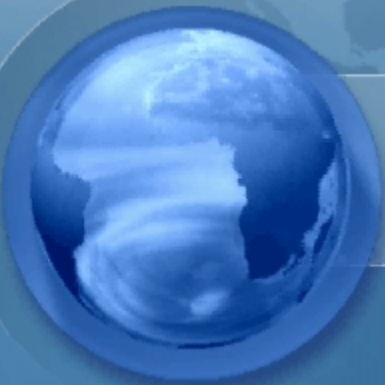
- *Prevent Illicit Transfers*
- *Generate Records for Eventual Trace and Confiscation*

Direct Recovery (Art.53)

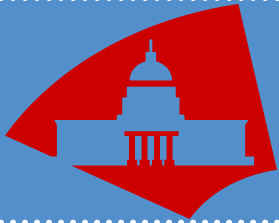
- *Provide Direct Recovery in Civil or Other Proceedings*

Comprehensive Framework for International Cooperation (Art.54-55)

- *Incorporate More General MLAs Requirements,
Mutatis Mutandis*



Direct Recovery of Property (Art.53)



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

Challenges

- **General Barriers:**
 - Political Will
 - Non-compliance with AML measures
 - Inadequate monitoring of politically exposed persons
 - Ineffective systems of income and asset disclosure
- **Legal Barriers**
 - Issues linked to non-conviction based confiscation
 - Lack of transparency in settlement of foreign bribery cases
 - Misuse of corporate vehicles
- **Operational Barriers**
 - Technical difficulties in identifying and quantifying the proceeds of corruption
 - Insufficient guidance on the management of returned assets