



Domestic confiscation powers (Art. 31)

➤ Production orders / search & seizure powers of:

- ✓ Bank, commercial & financial records

➤ Powers to enable:

- ✓ Identification
- ✓ Tracing
- ✓ Freezing
- ✓ Seizure and confiscation of proceeds or property

➤ Bank secrecy is not an excuse

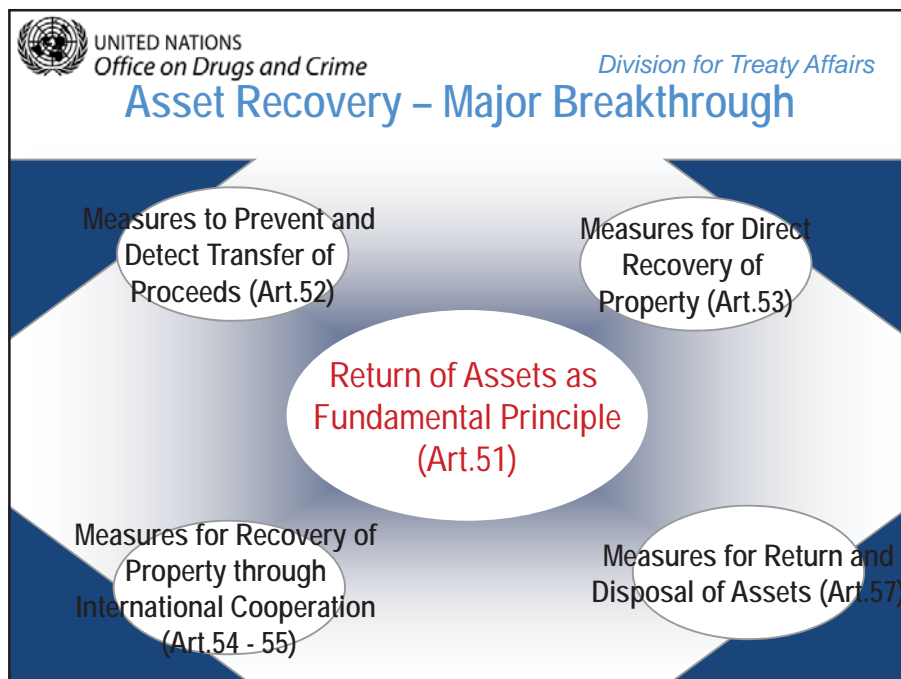
➤ Shifting burden of proof:

- 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





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

➤ Domestic capacity to identify, collect, interpret information

- Oversight of financial institutions
- Financial intelligence units to collect, analyze & disseminate information (art.58 CAC)

➤ Financial disclosure systems for public officials

- Asset declarations
- Declaration of interest over foreign financial accounts

➤ International cooperation

- Exchange information
- Monitor cross-border movement of cash & other monetary instruments



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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

➤ Prevention of establishment of banks

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

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





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







Art. 54 para 1: Confiscation Models

CONVICTION BASED

- To give effect to a foreign confiscation order, 54 (1a) (**mandatory**)
- To order confiscation of foreign property, 54 (1b) (**mandatory**)

The confiscation follows a criminal conviction against the person.

NON CONVICTION BASED (= IN REM, = CIVIL FORFEITURE)

- Consider: Confiscation without criminal conviction (1c) (**non mandatory**).
- Advantages:
 - When no conviction is possible (perpetrator absconded, political opposition, weakened judicial system in the requested country)
 - Civil standard of proof is applied from the beginning (confiscation may be possible although the perpetrator has to be acquitted by criminal standards)
No need for dual criminality.

The action is against the property, not against the person.



Confiscation: International Cooperation (Art. 55)

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

When a party receives a confiscation request from another party:

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

➤ Requests to

- identify
- ✓ trace
- ✓ Freeze
- ✓ Seize proceeds for confiscation

➤ Same powers available for foreign requests as for domestic confiscation

➤ **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



General Principles regarding return

Obligation on States Parties to have measures to allow for return of assets in accordance with provisions of the Convention

Reasonable expenses may be deducted unless otherwise agreed

Where appropriate State Parties may give special consideration to agreements and arrangements for final disposition of assets on a case-by-case basis



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)



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THANK YOU FOR YOUR ATTENTION

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