

International Cooperation in Asset Tracing and Recovery under UNCAC



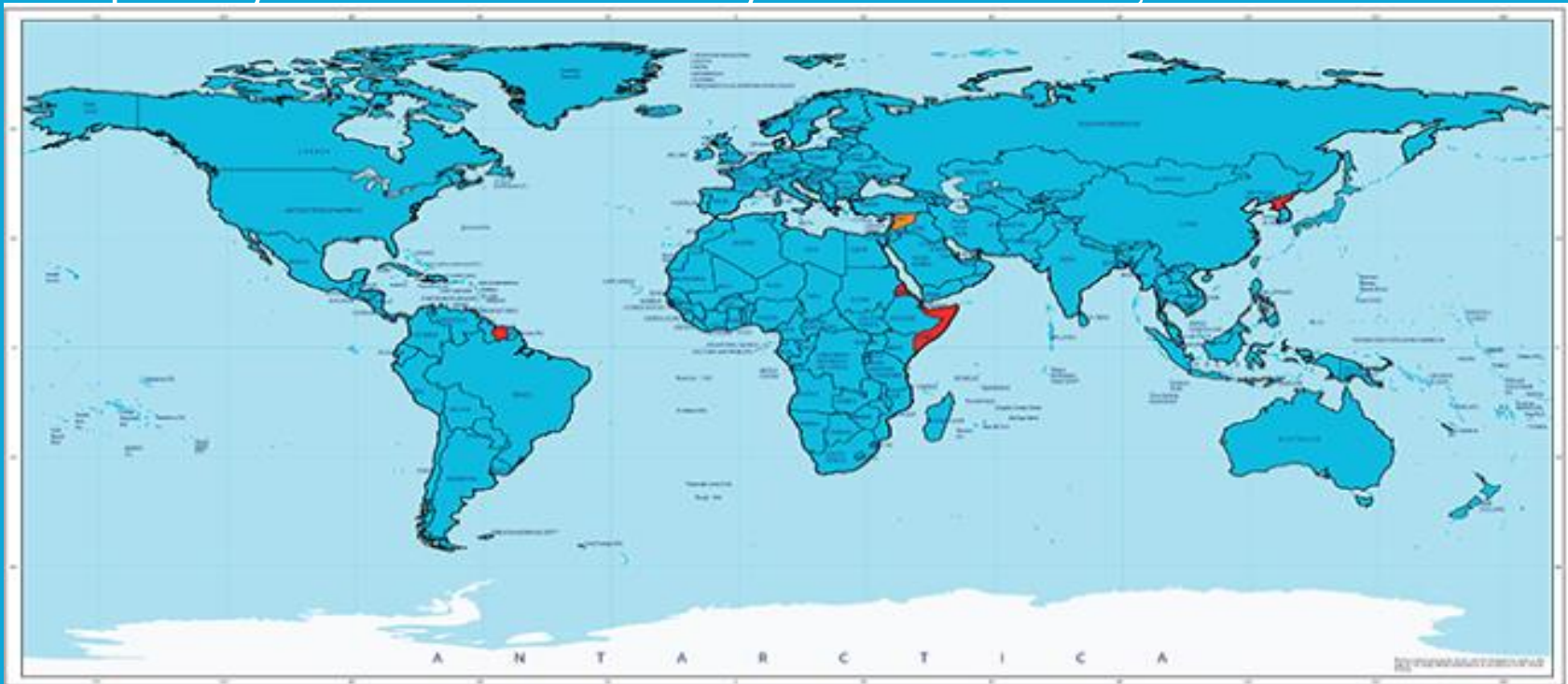


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The United Nations Convention against Corruption (UNCAC)

Adopted by the General Assembly: Resolution 58/4, 31 October 2003



Parties: **186**

Status as of: **26 June 2018**

-  States Parties
-  Signatories
-  Countries that have not signed or ratified the UNCAC



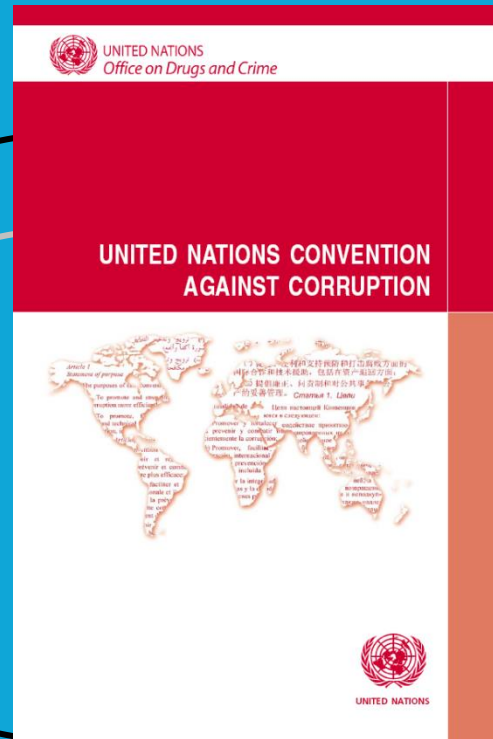
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The United Nations Convention against Corruption

Preventive measures

Criminalization and law enforcement



Asset recovery

International cooperation



The Conference of the States Parties (art. 63)

Promote and review implementation

Make recommendations

Facilitate information exchange

CoSP 7
Nov. 2017
Austria

CoSP 6
Nov. 2015
Russian
Federation

CoSP 5
Nov. 2013
Panama

CoSP 4
Oct. 2011
Morocco

CoSP 3
Nov. 2009
Qatar

CoSP 2
Jan 2008
Indonesia

CoSP 1
Dec 2006
Jordan



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Third session of the Conference of the States Parties Doha, from 9 to 13 November 2009

Resolution 3/1:

- Establishes the Implementation Review Mechanism
- Contains the terms of reference for the Mechanism
- Based on the outcome of the deliberations in the Implementation Review Group





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Subsidiary bodies to the Conference of the States Parties

- Implementation Review Group
- Open-ended Intergovernmental Working Group on Prevention
- Open-ended Intergovernmental Working Group on Asset Recovery
- Open-ended intergovernmental expert meetings to enhance international cooperation under the Convention





Mutual Legal Assistance: An Essential Element in the Asset Recovery process

Mechanisms by which States receive and provide assistance to gather evidence for investigations and criminal prosecutions

→ **Vital tool** within the criminal justice system: through request, one State authorizes another State to take measures, often coercive





Mutual legal assistance under the UNCAC

Chapter IV

- Article 43 (1): “**States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.”**

- Article 46.3: “Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
 - ... (c) Executing searches and **seizures, and freezing;**
 - (g) **Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;**
 - (j) **Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;**
 - (k) **The recovery of assets, in accordance with the provisions of chapter V of this Convention.**”



Asset Recovery under Chapter V UNCAC

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

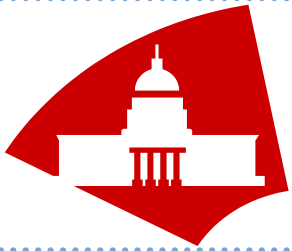
Measures for Direct Recovery of Property (Art 53)

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)

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



International cooperation for purposes of confiscation

Articles 54 and 55 complement the general provisions on **identification, tracing freezing, seizures and confiscations** (art. 31) and mutual legal assistance (art. 46) in asset recovery

- One State **enforces** a confiscation order from another State or
- One State **obtains** a confiscation order based on a request by other State
- Can also seek assistance of other State in tracing, freezing or seizing assets in view of their eventual confiscation

Can seize and confiscate:

- Proceeds of crime derived from offences
- Property, equipment or instruments used to commit offences (“instrumentalities”)





Domestic Confiscation Measures: A Brief Overview

CONVICTION-BASED (States are required to cooperate in matters related to conviction-based confiscation (article 54.1(a), 54.2(a)))

- Criminal confiscation
- The confiscation follows a criminal conviction against the person and is directed against the convicted person

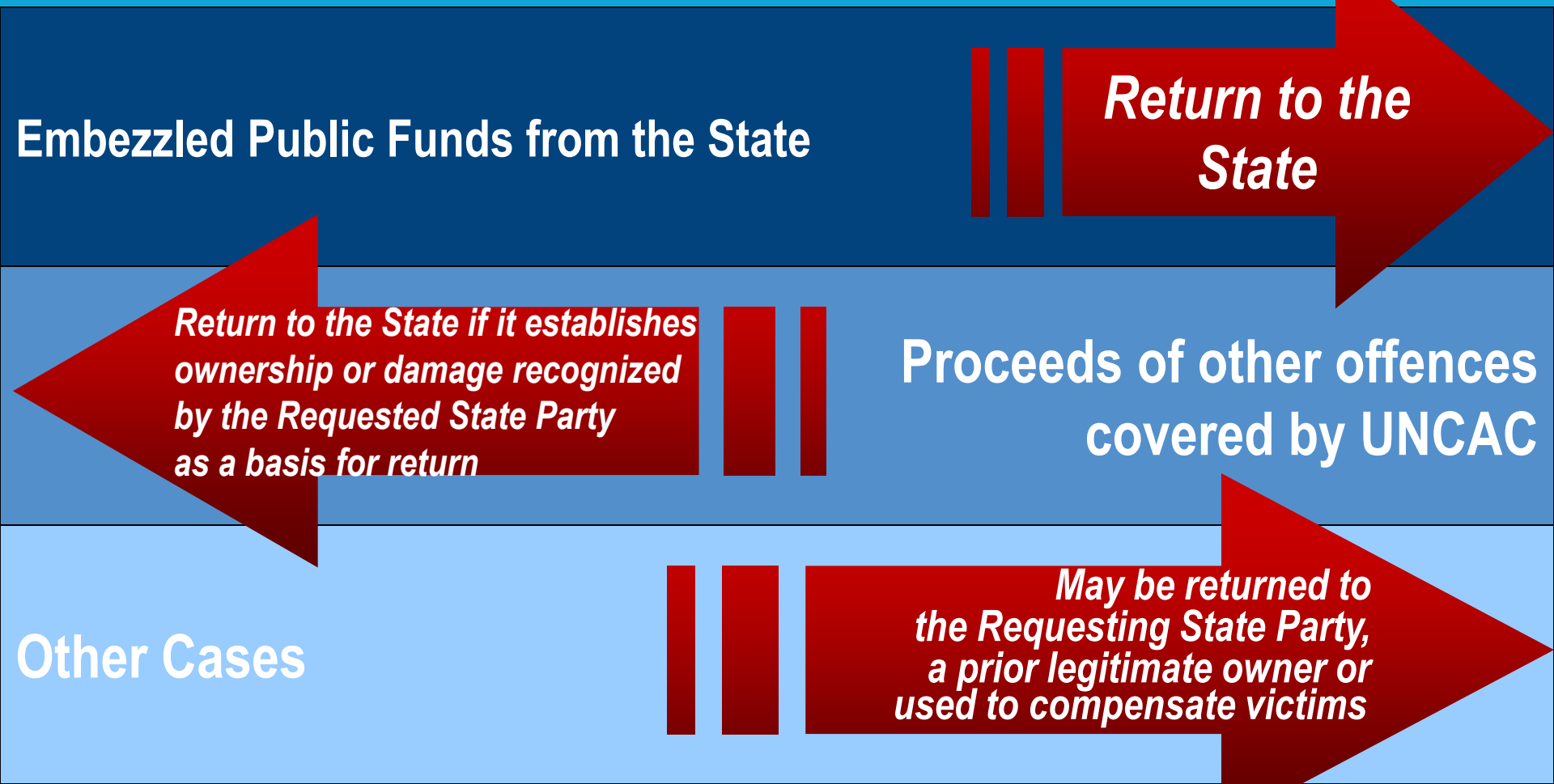
NON-CONVICTION-BASED (States are encouraged to cooperate in matters related to non-conviction-based confiscation (article 54.1(a), 54.2(a)))

- Often referred to as *in rem* or civil forfeiture
- As the title suggests, it is not dependent on a criminal conviction
- The action is against the property, not against a person



Return of Assets (art 57)

Return depending on **how closely the assets were linked** to the Requesting State





Specifics of art. 57 UNCAC, compared to asset-sharing models

- Convention establishes rules for the return of assets, depending on **how closely** the assets were linked to the requesting State Party
- **Priority consideration** shall be given to **returning confiscated property to legitimate owners or compensating victims**
- Asset-sharing not foreseen in the Convention, **but reasonable expenses can be deducted**
- **Bilateral agreements** on the final disposal of confiscated funds are possible, including on voluntary monitoring of the use of returned funds



Challenges related to cooperation in civil matters under UNCAC - general

- Most States have limited experience in the use of civil measures in the context of international cooperation. Few States reported extensive experience in the use of such measures, especially for outgoing assistance requests.
- The main challenge reported was the lack of familiarity with such types of assistance and the reluctance to accept and process such requests outside traditional channels of criminal law assistance.
- One particular technical challenge observed was the reluctance to provide information due to different confidentiality standards applied in criminal and civil proceedings.



Challenges related to cooperation in civil matters under UNCAC – coercive measures

- **UNCAC** generally requires cooperation in criminal matters, including by enforcing foreign confiscation and freezing or seizure orders
- Cooperation in civil and administrative matters is not mandatory, which poses a practical challenge where States would try to enforce their “civil” or “administrative” NCB confiscation or freezing order in a jurisdiction that follows the “criminal” NCB confiscation model. That challenge also relates to all the aspects of the assistance process including request for evidence or any procedural actions where relevant matters are regulated by different types of substantive and procedural law (i.e. criminal vis-à-vis civil).
- Good practices have been identified in cases where requested States were able to interpret the essence and purpose of the proceedings underlined in mutual legal assistance requests for the enforcement of NCB confiscation judgments and freezing or seizure orders as widely as possible to create an analogy to its own domestic proceedings despite the differences in procedure and/or legal terminology.



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Thank you for your attention!



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<http://www.unodc.org/unodc/en/treaties/CAC/index.html>