



UNITED NATIONS  
*Office on Drugs and Crime*

The United Nations Convention against  
Corruption: Basic provisions on  
international cooperation and asset  
recovery

Summer school for junior magistrates from South Eastern  
Europe

Romania, 3-8 July 2006



# International Cooperation (Art.43-50)



Extradition (Art.44)

Mutual Legal Assistance (Art.46)

Transfer of Sentenced Persons (Art.45)

Transfer of Criminal Proceedings (Art.47)

Law Enforcement Cooperation, joint investigations, special investigative techniques (Art.48-50)





# Extradition (Art.44)

Either  
"Extradite or Prosecute"  
Own Nationals

Enabling departure from  
double criminality



Grounds of Refusal

Expedite proceedings-  
Simplify evidentiary  
requirements

Fair treatment  
Discrimination clause

No Refusal for  
Fiscal Offences

Consultation before  
Refusal

UNCAC as legal basis:  
no political offence



# Mutual Legal Assistance (Art.46)



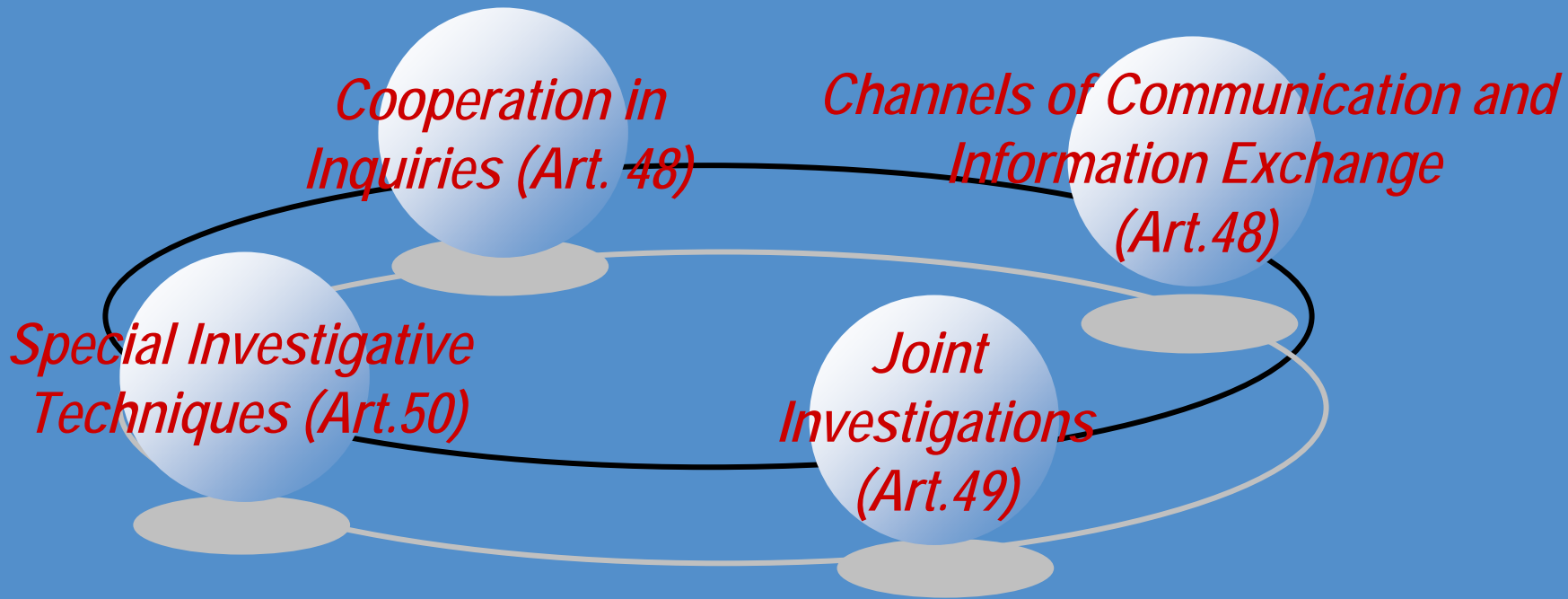
**Widest Measure of Mutual Legal Assistance** in Investigations, Prosecution and Legal Proceedings in relation to Convention Offences, including for asset recovery

- Designate **Central Authority** to Receive, Execute and Transmit Request
- No Refusal of MLA on the Ground of **Bank Secrecy**
- MLA can be Provided in the **Absence of Dual Criminality for Non-Coercive Measures**





# Law enforcement Cooperation (Art. 48-50)





# Confiscation of Proceeds of Crime

*Obligation to Enable  
Confiscation of  
Proceeds of Crime*

*Internationally Art.55*

*Domestically Art.31*

*Domestically & Upon  
Request from Another Party*



# Domestic confiscation powers (Art. 31)

## ➤ Powers to order:

- ✓ Production
- ✓ Seizure  
of bank, financial  
or commercial  
records

## ➤ Powers to enable:

- ✓ Identification
- ✓ Tracing
- ✓ Freezing or seizure
- ✓ 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



# Asset Recovery (Art.51-59)– Major Breakthrough

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)*

FIUs-Bilateral and Multilateral Arrangements (Art. 58-59)

Measures for Recovery of Property through International Cooperation/Confiscation (Art.54-56)

Return and Disposal of Assets (Art.57)



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

- **Obligation to institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions or, where appropriate, other bodies particularly susceptible to money-laundering**
  
- **Optional requirement: establishment of a financial intelligence unit (see also art. 58 UNCAC)**
  
- **Financial disclosure systems for public officials**
  - Asset declarations
  - Declaration of interest over foreign financial accounts



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

## **Banks & other financial institutions**

### ➤ **Customer identification**

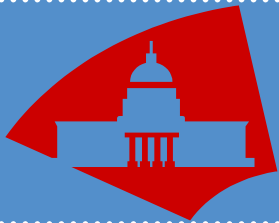
- Know Your Customer, Know Your Business
- Enhanced scrutiny on accounts of individuals with prominent public functions
- Record keeping for later tracing
- Reporting suspicious transactions

### ➤ **Prevention of establishment of banks**

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



# 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)

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- 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



# Recovery through International Cooperation (Art. 54)

**In order to provide  
effective mutual  
assistance under Art 55**

**Permit authorities to  
give effect to foreign orders**

## Cooperation in Confiscation

**Permit confiscation  
on basis of money  
laundering/related  
offence**

**Consider non conviction  
based asset confiscation**





# International Cooperation in Freezing/Seizure (Art. 54)

**Freeze/seize on  
basis of foreign  
order**

**Freeze/seize on  
basis of foreign  
request**

**Consider:  
Preservation on  
foreign  
arrest/charge**



# Confiscation: International Cooperation

## MLA provisions applying *mutatis mutandis*

When a party receives a confiscation request from another party:

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

➤ **Or:** obtain domestic order of confiscation & enforce it

- Requests to
  - identify
  - ✓ trace
  - ✓ Freeze
  - ✓ Seize proceeds for confiscation
- Same powers available for foreign requests as for domestic confiscation



## Confiscation: International Cooperation (Art. 55)

In addition to grounds for refusal related to mutual legal assistance, which are 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*



## Miscellaneous provisions

- Endeavour to transmit information to other States without request (Art.56);
- Consider concluding bilateral/multilateral agreements to enhance cooperation in recovery (Art. 59)



## For further information:

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