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Asset Recovery for Practitioners: Strengthening networks and developing innovative tools*

Background paper prepared by the Secretariat

I. Introduction

1. Five years after the entry into force of the United Nations Convention against Corruption, significant progress has been made in international asset recovery. At the same time, operational barriers to international asset recovery continue to hinder practitioners in their work. Where the proceeds of corruption have been transferred abroad, the recovery of assets requires prompt and efficient cooperation between requested and requesting States. Barriers to effective cooperation frequently cited by practitioners include limitations on the scope of informal assistance and information exchange, legal limitations on the scope of mutual legal assistance, poor understanding of evidentiary and procedural requirements in cooperating jurisdictions, lack of information regarding the appropriate gateways for cooperation and contact points, and difficulties in communication between officials owing to language and expensive translation requirements. Where practitioners seek cooperation across multiple jurisdictions, the recovery of assets is particularly challenging. These difficulties may be exacerbated by capacity constraints among practitioners in the jurisdictions involved, particularly where institutions and staff are new to asset recovery in general, or have limited experience in dealing with institutions in other jurisdictions, or lack access to efficient information and communications technology.¹

2. With a view to addressing these challenges, the Conference of States Parties and the Open-ended Intergovernmental Working Group on Asset Recovery ("Working Group"), have made a number of recommendations. These have focused

* This document has not been formally edited.

¹ See forthcoming study by the Stolen Asset Recovery Initiative on Lowering Barriers to Asset Recovery.



on the facilitation of mutual legal assistance, establishment of networks for informal cooperation, the development of the legal framework for cooperation such as model provisions and information technology tools. At its first meeting, held in Vienna on 27-28 August 2007, the Working Group on Asset Recovery reaffirmed its mandate as, *inter alia*, to build confidence and encourage cooperation between requesting and requested States by bringing together relevant competent authorities, anticorruption bodies and practitioners involved in asset recovery and the fight against corruption and by serving as a forum for them. It recommended the establishment of a global network of focal points on asset confiscation and recovery, suggesting that administrative arrangements should be explored for the management of such a network, perhaps in the context of the developing partnership of UNODC with the World Bank and other organizations as appropriate. In this context, it pointed out the paramount importance of training and capacity-building in the area of international cooperation, particularly with regard to asset recovery. The Working Group further recommended the organization of annual meetings of asset recovery focal points, experts and competent authorities as a forum for peer training, exchange of knowledge, information-sharing and networking. It was agreed that such meetings would contribute at the same time to building a relationship of trust among practitioners.²

3. At its second meeting, held in Vienna on 25-26 September 2008, the Working Group reconfirmed the recommendation to develop practical tools for asset recovery practitioners and gave priority to exploring the expansion of the Mutual Legal Assistance Request Writer Tool (MLA Writer Tool) and the further development of similar products.³

4. During its third meeting on 14 and 15 May 2009, the Working Group proposed that global and regional networks might be useful in providing practitioners with legislation, data and case law. The Working Group emphasized the importance of providing technical assistance in the field of mutual legal assistance, including asset recovery, to officials and practitioners to enable them to draft requests and responses to requests.⁴

5. At its third session, the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC) adopted resolution 3/3 in which the Conference acknowledged the important progress made towards implementation of Chapter V of the Convention, but recognized that States parties continue to face challenges in asset recovery owing, *inter alia*, to differences in legal systems, the complexity of multijurisdictional investigations and prosecutions, lack of familiarity with mutual legal assistance procedures of other States and difficulties in identifying the flow of corruption proceeds. The Conference also urged States parties to strengthen the capacity of legislators, law enforcement officials, judges and prosecutors on matters relating to asset recovery, and to provide them with the necessary technical assistance.

6. Following the above recommendations, the present background paper will give an overview of steps taken to assist asset recovery practitioners, with particular focus on those recommendations of the Working Group that are not yet fully

² CAC/COSP/2008/4.

³ CAC/COSP/WG.2/2008/3.

⁴ CAC/COSP/WG.2/2009/3.

implemented. The purpose of the present background paper is also to facilitate the discussions of the Working Group by highlighting the progress in implementation of its recommendations, concerning which it may wish to give further guidance. It takes stock of the action taken for the implementation of the recommendations of the Conference of States Parties and the Working Group and reflects on the possible needs of practitioners so that they may timely and consistently recover assets. This information may in turn assist the Working Group in giving guidance to the Conference towards the creation of fully operational systems for asset recovery.

7. To address these issues, the Working Group has previously made a number of recommendations intended to assist the asset recovery practitioner. These are found below together with a summary of the various initiatives that have been undertaken in response to each of the recommendations.

8. While there are a number of initiatives underway by UNODC to advance cumulative knowledge on asset recovery such as a legal library that will contain laws and jurisprudence relevant to the Convention and the knowledge management consortium, a Web-based portal that will facilitate the dissemination of legal and non-legal knowledge on anti-corruption and asset recovery matters, these will not be included in this discussion. Also excluded will be an overview of practical tools for asset recovery, and practical step-by-step manuals for practitioners in asset recovery cases that can be used for capacity-building. An account of progress on these initiatives is provided in a separate background paper prepared by the Secretariat (CAC/COSP/WG.2/2010/2). Instead, the focus of this background paper will be on the use of innovative tools to implement the Working Group's recommendations, which although useful, can benefit from further discussion and input by the Working Group. Hence, this discussion will focus on networks for asset recovery practitioners, the mutual legal assistance writer tool, model provisions on asset recovery and the database of asset recovery cases.

II. Overview of Recommendations Relevant for Asset Recovery Practitioners and the Implementation of these Recommendations

A. Enhancing Confidence and Trust

(i) Networks

9. The Working Group, at its second and third meetings, recommended the establishment of networks of contact points for asset recovery. While the Conference and its Working Group are seen as providing a platform for the exchange of knowledge and experience, it noted that a network of focal points could provide further opportunities for dialogue, which were deemed essential. Such a network would thus contribute to creating confidence and trust among requesting and requested States, which are prerequisites for successful cooperation. The Working Group highlighted that the full cooperation of States and international organizations is essential for the establishment and maintenance of such a network.

10. In paragraphs 12 and 13 of the report on its third meeting, the Working Group encouraged the "establishment of close links between asset recovery focal points

and regional anti-corruption networks such as the Arab Anti-Corruption and Integrity Network”. In this context, it proposed that “global and regional networks might be useful in providing practitioners with legislation, data and case law”.

11. In paragraph 43 of the report on its second meeting, the Working Group also recommended “exploring the feasibility of adopting a help desk approach [...] for asset recovery to give advice at the initial stages of a case in an informal manner and refer requesters to counterparts who would be able to provide further assistance”. It further recommended that UNODC explore how the database of asset recovery focal points could be amended with a view to making it possible to ascertain the contact details of persons in other jurisdictions.

12. In view of the foregoing recommendations, at its third session, the Conference encouraged States parties to “promote informal channels of communication, in particular prior to making formal requests for mutual legal assistance, by, inter alia, designating officials or institutions, as appropriate, with technical expertise in international cooperation in asset recovery as focal points to assist their counterparts in effectively meeting requirements for formal mutual legal assistance”. It further encouraged “those focal points and other relevant experts to come together, at the regional level or according to theme, to promote communication, coordination and development of best practices, including by taking advantage of existing networks to avoid duplication”.

13. The StAR/INTERPOL Asset Recovery Focal Point Database was established by the StAR Initiative in partnership with the International Criminal Police Organization (INTERPOL) and launched on 19 January 2009. Its primary purpose is not directed towards mutual legal assistance but the furtherance of investigations, especially those in the preliminary stages. As a result, it is a secure database containing the names of law enforcement officials who are available 24 hours a day, seven days a week, to respond to emergency requests for assistance, in situations where the failure to act immediately may cause law enforcement to lose the money trail. The database also allows members of the international law enforcement community to better coordinate their efforts in investigating and prosecuting individuals involved in the theft of public funds. It currently includes data on 74 countries, including contact details for initial enquiries, key offices involved in the recovery of foreign stolen assets, different types of requests required to initiate assistance, types of assistance available, evidence needed to open criminal investigations or initiate civil action regarding stolen or embezzled assets and information on whether States have the authority to enforce foreign forfeiture judgments. Of the different offices designated as focal points, their approximate distribution is as follows: Prosecutor’s offices — 20 per cent; Justice ministries or offices — 20 per cent; Financial Intelligence Units — 15 per cent; Police Departments and local INTERPOL offices — 20 per cent; Anti-corruption Offices — 10 per cent; others consisting of Central Banks, Foreign Affairs Offices and NCB bureaux — 15 per cent. Governments are encouraged to join this initiative, through their National INTERPOL Central Bureaux, if they have not yet done so.

14. In addition to the Asset Recovery Focal Point Database, UNODC and the StAR Initiative have contributed to the support, creation and strengthening of regional networks relating to asset recovery. These are mainly informal regional networks of judicial and law enforcement expert practitioners in criminal asset tracing, freezing, seizure and confiscation, which hold regular meetings to

strengthen informal communications intended to enhance mutual legal assistance. The networks are intended for asset recovery practitioners who may need to cooperate with their foreign counterparts, particularly investigators and prosecutors. The objective of the networks is to serve as an information exchange forum for asset recovery practitioners, and an informal means of cooperation prior to sending formal requests for mutual legal assistance. While the objective has been to include as contact points those who can assist requesting jurisdictions to follow-up on their asset recovery cases, policymakers have at times also attended the meetings. As policy-makers have the advantage of being able to advise their Governments on key issues of asset recovery, their participation can help in moving the asset recovery agenda forward.

15. To date, two networks have been established with the assistance of UNODC: the Asset Recovery Inter-agency Network of Southern African (ARINSA) and the Red de la Recuperación de Activos de GAFISUD (RRAG). Both follow the Camden Asset Recovery Inter-Agency Network (CARIN) as a model in that they each have asset confiscation practitioners as focal points from each country, and primarily address asset confiscation. CARIN is an informal network of judicial and law enforcement expert practitioners in Europe for criminal asset tracing, freezing, seizure and confiscation established in 2004. Its headquarters are based at the headquarters of the European Police Office (Europol).

16. In order to facilitate the formation of ARINSA, a meeting of senior prosecutors and investigators was convened with the assistance of UNODC in Pretoria in March 2009, marking the founding of ARINSA. The ARINSA Secretariat is hosted by the Asset Forfeiture Unit of South Africa, but it is not part of it. Its member States opted for a broader approach in terms of subject-matter and invited asset confiscation practitioners for all financial crimes, of which corruption is only one example. ARINSA is currently comprised of a prosecutor and investigator from each of the ten Southern African full members (Botswana, Lesotho, Malawi, Mauritius, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe), and Nigeria, which has observer status. The Network has plans to later include East African and other countries among its membership.

17. The first meeting of the ARINSA Steering Group consisting of six of its member States took place on 23-24 November 2009, during which key decisions were made on specific initiatives to be undertaken by the network as it facilitates informal cooperation. These included, inter alia, guidelines on the request process, questionnaires sent to members and request forms. The second annual general meeting was held in July 2010 in Pretoria. In addition to presentations on asset recovery matters, the meeting was divided into two working groups which gave detailed consideration to (a) The Establishment of an Asset Confiscation Programme in Southern Africa; and (b) International Cooperation: the Challenges for Developing Countries. These discussions produced wide ranging recommendations.

18. ARINSA has already developed links with other networks. For example, it was represented at the CARIN annual general meeting in Washington D.C. in September 2009, where it was granted observer status. Pursuant to an agreement entered into between the networks, a member of one network may transmit requests to a member of the other through their respective secretariats. This agreement reciprocally enhances the functionality of ARINSA and CARIN by extending the jurisdictions covered by both networks. Now that ARINSA is up and running, it has

identified its greatest challenge as communicating to practicing prosecutors and financial investigators at the ground level a clear message about what the Network can do to enhance their work.

19. With a view to further implementing the relevant recommendations of the Working Group, a note verbale and template was circulated to all States parties by UNODC on 15 September 2009, requesting them to nominate and indicate further information as to the nature of focal points preferred, and its functions and availability to carry out a help-desk approach. To date, 16 countries have responded to this note verbale, appointing as focal points practitioners from a number of agencies ranging from prosecutors, investigators, corruption and economic crime authorities, international cooperation officers to ombudsman officials.

20. The RRAG was formally established at the GAFISUD Plenary on 22 July 2010 in Lima, Peru, with support from UNODC together with other partners including Spain (CICO), OAS/CICAD and INTERPOL. It is comprised of the twelve member countries of GAFISUD (Financial Action Task Force of South America against Money Laundering): Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Peru, and Uruguay. However, its constitutive documents allow membership by countries outside GAFISUD. Its administrative secretariat is based within the GAFISUD secretariat. Each country is represented by two focal points. From 27 to 29 March 2010, the first meeting of RRAG focal points was held in Buenos Aires which addressed a variety of operational and procedural issues, including training needs. A follow-up training event was held on 21-23 September in Buenos Aires. The network now counts on an IT platform for the secure exchange of information between focal points. Several other operational tools have also been drawn up. The next meeting of focal points is tentatively scheduled for the beginning of 2011.

21. Other regional conferences have been convened with this objective by UNODC and the StAR Initiative. These regional conferences have provided introductory training on key aspects of the asset recovery process, as well as for providing a forum for participants to exchange experiences and address ways and means to coordinate policies and enhance cooperation, create or improve open channels for communication and prioritize technical assistance in the region, as well as to discuss other issues of regional concern. A Regional Conference on Asset Recovery in Latin America and the Caribbean was organized by UNODC from 11 to 13 August 2009, in which participants from 24 countries highlighted the importance of formal and informal contacts with institutions at the international level, which were made through liaison offices and networks. It was stressed that, both at the regional and global levels, the designation of asset recovery focal points should avoid overlap and duplication, and that focal points should create synergies with existing structures and networks. At other regional conferences convened by the StAR Initiative in December 2009 and March 2010, participants from South and Eastern European countries and countries from the Middle East and North Africa (MENA) region recognized the need to form networks for asset recovery, while making best use of existing structures. By way of follow-up to the MENA workshop, the Arab Anti-Corruption and Integrity Network (ACINET) at its annual general meeting in Yemen in July 2010, issued a resolution requesting the StAR Initiative to facilitate the coordination of member States with regard to the designation of the national focal points on asset recovery for the purpose of

establishing a network of focal points on asset recovery. Similar workshops have been held in East Africa, as well as South and Central Asia. A further regional conference intended to facilitate the formation of a regional network for asset recovery in West Africa is expected to take place in 2011 in Dakar, Senegal.

22. The geographical focus of the emerging networks has been along regional lines. Regional asset recovery networks have the advantage that member countries face similar challenges and problems in recovering assets. They generally share common languages and have similar legal systems. Consequently, countries that have well-established institutions and asset recovery mechanisms are in a position to assist those countries that are at an earlier stage of development. Regional cooperation is particularly important where there are financial flows between countries and to regional financial centres. Furthermore, regional networks can build on existing regional anti-corruption or money-laundering networks as is the case with RRAG. This has the advantage of not only avoiding duplication, but allowing the asset recovery network to take advantage of existing structures, resources and events.

23. While regional networks are helpful for the comparable exchange of countries' experiences, are manageable in their size and can thus relatively easily create trust among practitioners, they are limited in their reach. However, the proceeds of corruption are often laundered through a global financial system and so practitioners have to trace assets, undertake informal cooperation and seek mutual legal assistance requests at a global level. The Asset Recovery Working Group has therefore recommended the establishment of a global network on asset recovery. The Working Group may wish to give guidance on the best way to proceed with the networking agenda along global lines.

24. In this regard, two options are identified below. These options are not mutually exclusive:

(1) Expand on the purpose of the StAR/INTERPOL database:

(i) The mandate to undertake international information exchange through secure communication systems available to INTERPOL provides an institutional structure on which to build. The network has an operational focus, providing a framework for emergency assistance between law enforcement agencies which may be particularly helpful in tracing and preventive freezing of mobile assets. However, further efforts are needed to operationalize the network. A meeting of network members is scheduled to take place on 13 and 14 December 2010, immediately preceding the fourth meeting of the Working Group. This will provide an opportunity to discuss a joint set of activities that can facilitate information exchange and explore ways of making it more dynamic. Extensions to the StAR/INTERPOL database would however also need to conform to INTERPOL's mandate.

(2) Create a new structure of focal points. This may be done in one of two ways:

(i) Create a new network of focal points nominated pursuant to UNODC's note verbale. This would require additional time commitments from national authorities and runs the risk of further duplicating existing efforts. Furthermore, the low response rate by States parties suggests that there is limited appetite for a new structure.

(ii) Build a network of existing networks. Information exchange between regional networks may provide a means of extending their reach whilst avoiding the creation of duplicate structures, preserving the advantages of regional networks.⁵ Regional networks may be able to establish mechanisms for cooperation and information exchange on a network-to-network basis, in much the same way that ARINSA has been establishing a cooperation arrangement with CARIN. However, there are significant gaps in the coverage of regional networks, so this approach is likely to exclude some jurisdictions. Furthermore, it is unclear whether the basis, procedures and mechanisms for information exchange and cooperation will be consistent across networks, which may add to the complexity of international cooperation. These issues might be addressed through a set of common principles. (See paragraph 21 above.) Other solutions may be to include links to networks formed according to thematic, rather than regional lines.

B. Innovative Tools

(i) The Expanded Mutual Legal Assistance Writer Tool

25. In paragraph 41 of the report to its second meeting, the Working Group “stressed the importance of modern information technology and gave priority to exploring the expansion of the Mutual Legal Assistance Request Writer Tool and the further development of similar products”.

26. The MLA Writer Tool is a software application which has been designed to provide guidance to practitioners through each step of the drafting process of a mutual legal assistance request. It should be noted that this tool is most useful in conjunction with investigations and informal mutual legal assistance. It allows requests for mutual legal assistance to be generated through a structured form which helps avoid the omission of necessary information and respond to the requirements of different legal systems when these are trying to lend each other support. It guides the user to record and save the necessary information for assistance in order to generate, at the final stage, the draft request in a format ready for signature and submission.

27. The existing MLA Writer Tool is built on outdated information technology which now significantly impairs its functionality. UNODC is currently exploring the feasibility of updating the MLA Writer Tool using a Web-based information system. This would allow the system to include access to a wider range of databases, facilitate integration with other software programmes and upgrade security systems. The StAR Initiative is currently reviewing the feasibility of contributing to the development of specific functions to support the asset recovery process.

⁵ This includes, but is not limited to those networks identified by resolution 3/3 of the Conference of States Parties at its third session, para. 6, fn. 14: the Camden Assets Recovery Inter-Agency Network, the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organization of American States, the Lausanne process, the Red Iberoamericana de Cooperación Jurídica Internacional, the International Centre for Asset Recovery, the European Judicial Network, the Rede de Cooperação Jurídica e Judiciária Internacional dos Países de Língua Portuguesa, the Global Legal Information Network and other similar networks.

28. As currently conceived, the asset recovery module of the MLA Writer Tool would guide the user through the preparation of a mutual legal assistance request in a typical asset recovery case step-by-step according to the legislative requirements and practice of the requested State, where these can be accurately determined or shared and loaded to the system. The module would have its own workflow and template process that will easily be configured to national requirements and specificities by the user. In addition, through the use of Extensible Markup Language, which is a general-purpose specification for creating custom markup languages and secure communications, requests would be able to be worked on collaboratively and documents exchanged in real time.

29. The proposed tool would provide details and full contact particulars of the agency to which requests are to be referred in the requested State, typically the central authority for mutual legal assistance requests. The tool would further be linked to the legal library currently being created by UNODC and through it to useful legislation sites of other jurisdictions, as well as provide access to a number of national and regional authorities that can make available succinct summaries and manuals. It would also have the capacity to record all past processes so that these can be recalled to assist with current requests. It is expected that the documentation for making requests would be stored as templates in the system. Once all necessary information is inserted in the software, the system produces the request, in a document format such as a Word document, which can be either submitted as it is or be used as a first draft on which changes can be made before submitting.

30. In addition to assisting the user agency to prepare requests for mutual legal assistance, the tool could include a configurable workflow process for handling incoming requests for asset recovery. Such requests could be entered, managed and monitored according to agency policy and national legislative requirements. Like the current MLA Writer Tool,⁶ the expanded version would be free and available online.

31. Initial analysis of the technical specifications indicates that the software development costs for the MLA Writer Tool and the Asset Recovery functions would be substantial. Consequently, further guidance is needed from the Working Group before proceeding with the project. It would be important to determine whether there is sufficient demand for the tool, identify prospective users of the system, establish a technical group to guide product development and follow-up on implementation to ensure that the system responds to clients needs. It is expected to be finalized in 2011.

(ii) Model Provisions on Asset Recovery

32. In its resolution 3/3, the Conference of the States Parties urged States parties to strengthen the capacity of, inter alia, legislators on matters relating to asset recovery. In paragraph 37 of the report of its first meeting, the Working Group indicated that, “it would be useful to analyse legal and regulatory frameworks, determine basic evidentiary requirements under domestic law and prepare model provisions”. At its second meeting, held in Vienna on 25 and 26 September 2008, the Working Group further recommended exploring the selection of areas in which

⁶ For further information or to download the current tool, please refer to www.unodc.org/mla.

the preparation of models or best practice guides was feasible, such as for the restraint, freezing and confiscation of assets.

33. Model laws or provisions aim at assisting States to implement complex requirements of international conventions and at resolving differences between national laws. It is of paramount importance that various national approaches are taken into account in model law provisions, so that they can be adapted to meet the specific requirements of different legal systems and traditions. Model laws are a source of inspiration for States which have the option of working with all or part of their provisions and adjust specific wording to the needs and specificities of their systems.

34. For the implementation of the relevant recommendations of the Working Group, it is suggested to build on the body of existing relevant model provisions developed by UNODC that are closely linked to asset recovery: the 2007 Model Law on Mutual Assistance in Criminal Matters,⁷ the 2005 Model Legislation on Money-Laundering and Financing of Terrorism (for civil law systems),⁸ and the 2009 Model Provisions on Money-Laundering, Terrorist Financing, Preventive Measures and the Proceeds of Crime (for common law systems).⁹ These model laws partly cover the provisions of Chapter V of the UNCAC, in particular article 52 on prevention and detection of transfer of proceeds of crime, article 54 on mechanisms for recovery of property through international cooperation in confiscation, article 55 on international cooperation for purposes of confiscation, article 56 on special cooperation and article 58 on financial intelligence units. However, they may not address all aspects that can become relevant specifically in asset recovery cases. Further, they do not cover article 53 on measures for direct recovery of property and article 57 on return of assets as these provisions appear for the first time in the UNCAC.

35. The Model Law on Mutual Assistance in Criminal Matters, made available in February 2007 for both civil law and common law traditions, was developed by UNODC pursuant to General Assembly resolution 53/112 of 9 December 1998. This model law gives specific provisions for those States wishing to provide the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to criminal matters, including with respect to the freezing, seizing and confiscation of proceeds and instrumentalities of crime. It also includes options and reference material for those States wishing to include in their mutual legal assistance legislation a section listing the types of assistance to be afforded to a foreign State, such as foreseen in article 46 (3) of the UNCAC. In this respect, it may be used to implement article 55 of UNCAC which requires States parties to provide assistance to the greatest extent possible when receiving a request for confiscation of proceeds of crimes, equipment or other instrumentalities used in or destined for use in offences established in accordance with UNCAC.

36. The Model Legislation on Money-Laundering and Financing of Terrorism for civil law systems was drafted by UNODC and the International Monetary Fund

⁷ For further information, it is available at

www.unodc.org/pdf/legal_advisory/Model%20Law%20on%20MLA%202007.pdf.

⁸ www.unodc.org/documents/money-laundering/2005%20UNODC%20and%20IMF%20Model%20Legislation.pdf.

⁹ www.unodc.org/documents/money-laundering/Model_Provisions_2009_Final.pdf.

(IMF) and finalized in 2005 by an informal group of international civil law experts. It is based on relevant international instruments concerning money-laundering and terrorist financing and incorporates Financial Action Task Force (FATF) 40+9 recommendations. It may be used to support implementation of article 52 of UNCAC on preventive measures of money-laundering, article 54 on confiscation of assets and article 58 on international cooperation.

37. For the same purpose, common law countries can benefit from the Model Provisions on Money-Laundering, Terrorist Financing, Preventive Measures and the Proceeds of Crime, which was drafted by UNODC, IMF and the Commonwealth and finalized in 2009 by a group of experts from common law countries. Besides provisions on measures preventing money-laundering and conviction-based confiscation of assets, it also focuses on civil forfeiture. More specifically, it proposes the establishment of a fund for recovered assets in order to monitor the use of returned assets and possible assets sharing.

38. At the regional level, UNODC is developing a model law on non-conviction based confiscation in Latin America. The model law is being drafted by a group of experts from Colombia, Chile, Peru, Spain, the United States of America and CICAD (Inter-American Drug Abuse Control Commission). The first drafting meeting took place in Villa de Leyva, Colombia, in August 2010. The second meeting is confirmed for October 2010. It is expected to be finalized in spring 2011. The model law draws on StAR's Non-Conviction Based Forfeiture Guide.

39. One first approach to the development of model provisions for asset recovery would be to update the existing related model provisions to ensure that they cover all aspects that can become relevant for the full implementation of the provisions of Chapter V of UNCAC. This approach would generate a comprehensive model law on asset recovery.

40. An alternative approach to the development of model provisions for asset recovery, possibly complementary to the first one, would be the development of model provisions focusing on those articles that have not yet been covered by any of the existing model laws. Those are notably the articles on measures for direct recovery of property (article 53) and on return of assets (article 57). Indeed, States parties recognized that it was difficult to implement articles 53 and 57 in their answers to the 2007 experimental Self-Assessment on the Implementation of the United Nations Convention against Corruption.¹⁰ Model provisions would be useful for those States in particular as they would need to update or amend their legislation to comply with requirements of articles 53 and 57.

(iii) Compilation of Cases on Asset Recovery

41. At its third intersessional meeting, held in Vienna from 14 to 15 May 2009, the Open-ended Intergovernmental Working Group on Asset Recovery recommended that UNODC consider preparing a compilation of cases relating to asset recovery, building on relevant experience of the Office. There are a number of initiatives underway in support of this recommendation.

¹⁰ CAC/COSP/2009/9.

42. The Secretariat sought the cooperation of all States parties and Signatories to the Convention against Corruption for this important task on 30 June 2009 and on 22 January 2010 (CU 2009/87 and CU 2010/5). It requested Governments to submit information on cases on the recovery of proceeds of corruption which originated in or involved their jurisdictions. UNODC committed to use the information submitted exclusively for the preparation of the compilation, and to fully respect confidentiality restrictions that Governments may put on parts of the information submitted. The Office received 32 replies. Of these, a number of States parties informed the Secretariat that they have no information on asset recovery cases or only have ongoing cases; some States parties provided statistical information or case lists. Ten States parties provided information on cases with some level of detail. While this material is a good starting point for the development of a case digest, it is not yet sufficient as a basis for a compilation as requested by the Conference.

43. Twenty States parties submitted some information on cases relevant to Chapter V of the Convention on asset recovery in their replies to the self-assessment checklist on the implementation of the Convention. This information varies greatly in the level of detail provided on each case. However, it is expected that this will grow to a case collection as States parties start to use the comprehensive self-assessment checklist on the implementation of the Convention, which foresees the submission of relevant case law as a mandatory feature for complying with the self-assessment checklist.

44. In a parallel process, the StAR Initiative is developing a Database of International Asset Recovery Cases. The objective of this project is to collect and systematize information about finalized and ongoing asset recovery cases. The database will capture the following information: a short description of the case, amount of money involved and the alleged crime; legal status of the case (e.g. investigation ongoing, under appeal, adjudicated); jurisdictions involved; success factors; methods to identify the assets; and the amounts of funds recovered. Work on the database has started with the cases that StAR collected during its work on the StAR Study on the Misuse of Corporate Vehicles, which contains around 50 relevant cases at this time. It is planned that the database will progressively cover all those cases that StAR can collect from open sources (academic literature, Internet search engines, law reviews etc.). Information will also be gathered on ultimately unsuccessful asset recovery cases, since they are equally instructive to both policymakers and practitioners. Ongoing and ultimately unsuccessful cases will be included without names and details.

45. Other institutions have also initiated relevant work. The Basel Institute on Governance — International Center for Asset Recovery (ICAR) developed a case database on small and large precedent-setting recovery proceedings.¹¹ Its Asset Recovery Knowledge Centre currently features more than 20 cases collected from countries around the world and contains a chronology, case documents and an analysis of each case. In addition, the Centre invites countries to submit information on ongoing and past cases. The website links case descriptions with judicial, legislative and executive documents of relevant countries with a view to making the database user-friendly.

¹¹ www.assetrecovery.org/kc/node/1698185c-4768-11dd-a453-b75b81bfd63e.html.

46. UNODC is also exploring the feasibility of developing a more analytical “Digest of Asset Recovery Cases” building on the experience of its “Digest of Terrorist Cases”.¹² The “Digest of Terrorist Cases” was developed to give policymakers and criminal justice officials practical ideas and expert insight on how to deal with terrorism cases. It complements other UNODC tools that provide guidance on how to address acts of terrorism within a legal framework, such as legislative guidelines. The digest was developed by bringing together senior criminal justice experts to share experiences and good practices on how to deal with terrorism cases. Its methodology is to examine real cases dealing with terrorism and to draw operational lessons from that experience. Selected materials have been identified by judicial, prosecution and law enforcement experts. Further, research on open-source public records has been conducted. Expert Group Meetings were held in Vienna (February 2008); Medellín, Colombia (November 2008); and Rome (June 2009). In the final digest, materials are organized around seven thematic chapters, which are divided into sub-themes. Each sub-theme is introduced by a comment or a suggested operational lesson for work drawn from the examples examined in that section. The digest was developed with support by Colombia, Germany and Italy.

47. For the development of a digest of asset recovery cases, it will be essential to broaden the case collection and assemble a critical number of case studies with a certain level of detail. While the cases submitted by States parties are a suitable starting point for such a case collection, they should be complemented with further cases to allow for meaningful comparison and analysis. The Secretariat would approach concerned States parties with regard to the cases collected through the self-assessment checklist and contained in the StAR Database of International Asset Recovery Cases, the Knowledge Management Consortium and other databases. This would give concerned States parties the opportunity to verify the case, and submit additional information before the cases are included in the case collection used for the preparation of the digest. The initiation of concrete work on the preparation of the digest would depend on the availability of a sufficient base of verified and detailed case documents.

III. Proposed Issues for Consideration by the Working Group

48. The Working Group may wish to give further guidance on the development of networks of practitioners to facilitate information exchange, mutual legal assistance and other forms of cooperation between jurisdictions in the field of asset recovery. The Working Group may wish to consider whether and how to pursue the development of a global network that would complement or bring together regional networks that already exist. Alternative approaches, which are not mutually exclusive, that the Working Group may wish to consider include (1) support for the further development of the StAR/INTERPOL asset recovery focal point database, or (2) creating a new structure of focal points through, (i) a global network of specific asset recovery focal points designated by the States parties for this purpose, or (ii) a network of networks, established by linking existing regional networks and

¹² The Digest of Terrorist Cases can be accessed in all official United Nations languages at the following page: www.unodc.org/unodc/en/terrorism/technical-assistance-tools.html.

promoting the participation of countries that are not yet part of such regional networks.

49. The Working Group may wish to provide further guidance on the development of the Mutual Legal Assistance Writer Tool. UNODC proposes to update the MLA Writer Tool and expand its functions to include specific modules to support cooperation in asset recovery cases. The Working Group may wish to consider whether there is sufficient demand for this type of product to warrant such an investment. The Working Group may also wish to consider how it can guide and support the development and follow-up implementation, such as through the establishment of a technical group.

50. The Working Group may wish to give guidance to the Secretariat on the development of model legislation on asset recovery. In particular, the Working Group may wish to consider whether existing model legislation should be updated to ensure that they cover all aspects that may become relevant for the full implementation of Chapter V, whether it wishes the Secretariat to develop new model legislation for the implementation of articles 53 and 57, or whether both approaches should be adopted in parallel.

51. The Working Group may wish to provide guidance to the Secretariat on how to further proceed in the compilation of asset recovery cases. The Group may particularly wish to consider how to expand the coverage of the database of asset recovery cases and how this database can be kept up to date. The Working Group may also wish to consider whether and how it would like to collaborate in the preparation of the digest of asset recovery cases, in particular whether the Working Group would like to constitute a technical group to support this activity.
