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INTERNATIONAL LEGAL COOPERATION

nternational judicial cooperation includes the following measures:

- Extradition
- Mutual Legal Assistance (model MLA)
- Transfer of Proceedings
- Transfer of Judgements
- Transfer of Judgements, especially Transfer of Sentenced Persons
- Recovery of illegal funds (tracing, freezing and confiscation)

TOOL #42

Extradition

Extradition is the surrender by one State, at the request of another, of a person who is accused or has been convicted of a crime committed within the jurisdiction of the requesting State. It differs from expulsion, simple surrender and deportation.

Extraditable offences

- From the "list" approach to "severity"-approach
- Dual Criminality Principle
- Prospect (new instruments)

Impediments to extradition

"Political offence" and "fiscal offence" exception

Non extradition of nationals

Other bars

Speciality rule

Prospect (new instruments)

Procedural issues

- Two level-System: judicial level and political level
- Slow and cumbersome system (e.g. evidentiary rules; lack of training and resources etc.)
- Prospect (new instruments)

RELATED TOOLS

Multilateral Conventions:

Extradition Treaties:

- Commonwealth Scheme (Scheme Relating to the Rendition of Fugitive Offenders within the Commonwealth, 1966),
- European Convention on Extradition (1957); First Additional Protocol, Second Additional Protocol,
- EU Extradition Convention of 1995 and 1996, 1990 Schengen Agreement
- Benelux Convention on Extradition and Judicial Assistance in Penal Matters of 27 June 1962,
- Nordic States Scheme of 1962,
- Inter-American Conventions,
- The Arab League Extradition Agreement of 14 September 1952,
- Convention on judicial cooperation of the Union Africaine et Malagache of 1961,
- Convention on extradition of the Economic Community of West African States of 6 August 1994

TOOL #43

Recovery of illegal funds

Broadly speaking, assets stolen from national treasuries can be classed as outright theft, bribes, kickbacks, extortion and protection money, the systematic looting of the State treasury, illegal selling of national resources, diversion of loans granted by regional and international lending institutions and project funding contributed from bilateral and multilateral donor agencies.

In view of such occurrences, repatriation of assets diverted and stolen by top-level public officials and politicians through corrupt practices has become a pressing issue to many Member States. Success in repatriation, however, has been scarce so far. Most cases take years to conclude and all are extremely expensive. It is rare that more than a small proportion of the illegal funds is repatriated to the country from which they were stolen. In the Marcos case, after 15 years, only $600 million (much of that merely the interest earned on the original sum) of more than $5 billion lies in escrow in the Philippines National Bank and the case shows no signs of being concluded.

DESCRIPTION

The large-scale illegal transfer of funds by corrupt political leaders, their relatives and their close associates has long been a serious problem. The former Shah of Iran was alleged to have misappropriated some $35 billion during the 25 years of his reign, largely disguised by foundations and charities. Papa Doc Duvalier and his son, Jean Claude Duvalier, as Presidents of Haiti from 1957 to 1986, were alleged to have extracted between $500 million and $2 billion from the State, an estimated 87 per cent of Government expenditure being paid directly or indirectly to Duvalier and his associates between 1960 and 1967. The case against family members of former President of the Philippines, Ferdinand Marcos, is still ongoing almost 15 years after he left office amid allegations that he misappropriated at least $5 billion of state assets. (184)

More recently, a Pakistani court convicted the husband of former Pakistani Prime Minister Benazir Bhutto, Asif Ali Zardari, of accepting $9 million in kickbacks; he is known to have channelled $40 million of unexplainable origin through Citibank private bank accounts. In Nigeria, the late Sani Abacha and his associates are estimated to have removed funds from Nigeria of up to $5.5 billion, mainly deriving from the systematic looting of the Central Bank, as well as bribes received by foreign investors. In Peru, a congressional investigation has estimated that Vladimiro Montesinos, former head of intelligence of Peru, might have acquired as much as $800 million from activities including kickbacks from military procurement. Former Ukrainian Prime Minister Pavlo Lazarenko is believed to have embezzled around $1 billion from the State. Now under arrest in the United States on charges of laundering some $114 million, Lazarenko has admitted to having laundered $5 million through Switzerland, which has repatriated almost $6 million to Ukraine.

PRECONDITIONS AND RISKS

The problems hindering repatriation may vary depending on the countries involved. Nevertheless, current and past cases seem to share some similarities. For example, the following factors hinder the successful recovery of assets or render it impossible:

- The absence or weakness of the political will within the victim country as well as within those countries to which the assets have been diverted;

- The lack of an adequate legal framework allowing for necessary actions in an efficient and effective manner; and
- Insufficient technical expertise within the victim country to prepare the groundwork at the national level, such as filing charges against the offenders, and at the international level to prepare the mutual legal assistance request;

Specialized technical expertise is extremely limited and mainly provided by private lawyers whose services are very expensive and who normally do not have any interest in building the necessary capacities at the national level; and

The reluctance of victim States to improve their national institutional and legal anti-corruption framework, a deficiency that may not only lead to the further looting of the country, but also be seriously damaging to the credibility of the country when requesting mutual legal assistance.

LACK OF POLITICAL WILL

A strong and committed political will in both the requesting as well as the requested State is essential for the successful outcome of the recovery effort. Direct involvement in the diversion of State funds by high-level Government officials, and all too often the leaders of the country themselves, can impede any action that could be taken. Once a new Government comes into power, its credibility depends largely on how willing and capable it will prove to deal with the "grand corruption" that took place under its predecessor. Successful recovery of what has been looted from a country can be more important to the public than sanctioning and imprisonment of the offenders. The repatriation of stolen funds can not only confirm to the public a return of the rule of law, but can also provide the Government with the necessary resources to implement the reforms promised during the crucial initial phase of coming into power.

Even where a Government decides to embark on a recovery effort, however, internal political conditions may not to allow an unrestricted effort. Such a condition not only affects the credibility of the recovery initiative, but also of the new Government in general. For example, restricting recovery efforts to certain persons or circle of people may lead to difficulties in the process of gathering evidence since such evidence may help uncover assets that have been diverted by people other than those targeted. In some instances, the lack of unconditional political will to recover all funds that have been diverted may hinder the recovery effort and can lead to criticism both at the national and international level. That could eventually lead to the reluctance of some parties involved to provide their full support and collaboration.

Another common feature of many cases is that the victim States often concentrate exclusively on extraterritorial investigations while they neglect the basic preparatory work at the national level. In most jurisdictions, there is little hope of recovering assets unless a conviction is obtained for the crimes committed in the course of the looting and the connection between those crimes and the assets abroad has been established . (185)

A lack of political will on the part of the requested country is also a common barrier to successful recovery of stolen assets. Authorities may be reluctant to move against powerful interest groups, such as banks. That seems particularly obvious where the banks are not only holding the assets but were also involved in facilitating their transfer in the first place .(186) Wherever the political will is weak, there is little chance that the complex legal and factual problems typically occurring in cases of asset recovery will be overcome.

LACK OF A LEGAL FRAMEWORK

Recent examples of recovery efforts show that there is no legal framework

providing a sufficiently practicable basis for the recovery of assets diverted through corrupt practices. Multilateral and bilateral mutual legal assistance treaties are too limited in their substantial and geographical scope and are therefore often not applicable except in the context of the specific case from which they originated. As a consequence, no standard procedure is applied. Recovery strategies vary from civil recovery to criminal recovery to a mix of both. Each method has its advantages and disadvantages and the final choice seems to depend exclusively on what is expected to work best in the jurisdiction where the assets are located. Selection of the appropriate strategy, therefore, requires specialized legal expertise that is typically very costly, if available at all. The United Nations Convention against Transnational Organized Crime provides a response to some of the problems but, mainly because of its limited scope, it will be applicable only in some specific cases.

LEGAL PROBLEMS ENCOUNTERED

During the initial phase of a recovery effort, the main challenge lies in the tracing of the assets, the identification of the various players involved in the process of the looting of the assets and the determination of their potential criminal or civil liabilities. Often, the exchange of information between various jurisdictions as well as the public and the private sphere is extremely cumbersome, if impossible. In such an environment, most efforts fail in the initial phase or are not even undertaken because of the difficulties envisaged. The central legal problems are related to jurisdiction and territoriality. Where legal systems are incompatible, particularly when cases involve cooperation between continental and common law systems, cooperation is difficult. Mutual legal assistance treaties (MLATs) have proven cumbersome and ineffective when the object is to trace and freeze assets as quickly as possible. Overcoming jurisdictional problems slows down investigations, often fatally. By the time investigators get access to documents in another jurisdiction, the funds have moved elsewhere.

Legal problems encountered differ significantly depending on the jurisdiction in which the recovery effort is pursued (common/continental law) and the approach chosen (civil/ criminal recovery). Each approach and jurisdiction has its advantages and disadvantages. Civil law, allowing for confiscation and recovery based on the balance of probabilities, has the clear advantage since the evidentiary threshold is typically lower than with criminal actions. Conversely, access to information as well as investigative powers in the civil process is limited and, apart from some common law countries, the freezing of the assets can be difficult. Civil recovery, however, also opens alternative approaches as far as the civil action against third parties is concerned. For example, in some common law countries where compensation goes beyond simple economic damage and where moral and punitive damage compensation is possible, actions against the facilitators of the looting may be considered. Another advantage of civil recovery consists in the free choice of the jurisdiction in which the recovery of the proceeds of corruption is pursued. In the case of criminal recovery, prosecution must follow preset jurisdictional conditions while civil recovery can be pursued almost anywhere in the world and perhaps even more importantly, in several jurisdictions at once. That can be particularly important where there is the risk that the offender might transfer his or her loot to a "non-freezing-friendly" jurisdiction.

The criminal law approach generally provides the investigators with privileged access to information, both at the national and international level. The investigative powers of a prosecutorial office make it easier to overcome bank secrecy and to obtain freezing orders. At the same time, however, the actual confiscation and refunding to the victim may prove more complex since most legal systems still require that the illicit origin of the proceeds be established beyond any reasonable doubt. In the civil proceedings, the link between the assets and the criminal acts at

their origin must be established only on the grounds of balanced probabilities, also known as a preponderance of the evidence.

Another clear advantage of criminal recovery is the cost factor. Criminal recovery requires fewer financial resources on the part of the requesting State since most of the investigative work is undertaken by law enforcement agencies of the requested country. A clear disadvantage of criminal recovery arises from the dependency on the sometimes strict requirements needing to be met under the national law of the requested countries to obtain the collaboration of its authorities. Courts in requested countries often set preconditions to file charges or to bring forfeiture proceedings against individuals prior to agreeing to freeze assets or to keep them frozen. Repatriation in most cases can be granted only after a final decision is made on criminal prosecution or forfeiture to permit repatriation. Those proceedings must comply with the procedural requirements of due process of the requested State.. The courts might also want to establish that the proceedings in the requesting countries satisfy human rights principles. Many requesting countries have found some or all of these requirements difficult to fulfil.

Other aspects are linked to the legal tradition of the jurisdictions involved. For example, a clear advantage within many continental law jurisdictions is the possibility for the victim to participate in the criminal proceeding as a partie civile. Such status enables the victim to have access to all the data available to the prosecution and reliance on the criminal court to decide on the (civil) compensation to the victim.

In common law systems, the wide discretionary powers of the prosecution to engage in plea-bargaining has proved to be an effective tool in asset recovery cases. In particular, where the main objective is not obtaining conviction for all the single criminal acts involved but to recover the largest amounts of assets possible, offenders may be offered immunity from prosecution in exchange for their fullest collaboration in the location of the diverted assets. The impediments mentioned above, however, touch only upon a few of the most obvious problems involved. A complete inventory of all the possible scenarios is beyond the scope of the Toolkit.

SOLUTIONS AND LIMITATIONS OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (TOC CONVENTION)

In the context of asset recovery.

Because the TOC Convention is currently under consideration for ratification, the issue of asset recovery as a legal problem will receive some important attention. The Convention, even though targeted at combating offences that are transnational in nature and involving organized criminal groups, will provide for some solutions in this context. Once ratified, the Convention will also be applicable to other crimes, such as the embezzlement of State resources, fraud, thievery, extortion and other forms of the abuse of public power for private gain, as most of them will be considered as serious crimes under the national law of the State Parties.

The transnational nature of illegal transfers of stolen property will always be present in repatriation cases. Proving involvement of an organized criminal group in the activity might, however, be problematic. In view of the wide definition of the organized criminal group as a "structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain directly or indirectly a financial or material benefit", the Convention may nevertheless be applicable. In many cases of the more recent past, the main offenders relied on a network of close associates participating in and benefiting from the various criminal acts involved in the looting. For example, Mohammed Abacha, son of the late dictator Sani Abacha, and his associates have already

been charged for participating in an organized criminal group under Swiss law.

The Convention obliges the State Party requested to provide mutual legal assistance in investigation, prosecution and judicial proceeding in relation to the offences covered under the Convention. The requesting Party must, however, have reasonable grounds to suspect that such offences are transnational in nature and involve an organized crime group. In particular, the mutual legal assistance to be afforded may include measures such as the identification, tracing, freezing or seizing and confiscating of the proceeds of crime. The request shall, however, be executed in accordance of the domestic law of the requested State. That provision gives the requested State wide grounds for refusing to respond to the request.

The Convention also obliges State Parties to submit the request for mutual legal assistance in relation to the confiscation of proceeds from offences covered under the Convention to its competent authorities for the purpose of obtaining an order of confiscation and, if it is granted, to give effect to it. In addition, the requesting State is also entitled to submit an order of confiscation issued by a court of its own territory to the requested State for execution.

The new legal framework would mean that Member States handling cases of large-scale corruption would have a functioning and practical legal framework. In particular, they would be able to obtain the cooperation of other State Parties to identify, trace, freeze or seize assets deriving from a large variety of corrupt practices. Recovery of the assets, however, can remain problematic. According to Article 14, State Parties shall give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party. The provision is not mandatory and it is only applicable if the requesting State Party intends to compensate the victims or to return the proceeds to their legitimate owners. While it relatively easy to obtain repatriation where assets have been directly diverted from State resources, the situation is less clear with regard to the proceeds of corruption. In such cases, the interests at stake for the victim State are less clear unless it suffers damage directly linked to the payment of the bribe. Where the requesting State cannot show that the funds are actually owned by the State, the requested State may still confiscate the funds as criminal proceeds and keep the funds for themselves.

TECHNICAL CAPACITIES

One of the most important obstacles to seeking out illegal funds and securing their repatriation is lack of capacity in the requesting and in the requested country. The recovery of assets that have been diverted through corrupt practices is extremely complex and consequently requires top-level technical capacities. Tasks necessary to successfully mount a repatriation effort include the conducting of financial investigations, forensic accounting, requests for mutual legal assistance and a solid understanding of the legal requirements of the States where the assets have been located. There are few practitioners in either public or private practice with experience in this type of work, and in many jurisdictions, there are none at all.

In States where corruption is rampant, such capacities are often not available and it is probable that a lack of State capacity helped create the conditions that facilitated the corruption in the first place. Shortcomings in judicial, administrative and/or investigative capacity, however, seriously impede the degree to which a country can undertake such a case successfully. Necessary technical expertise is available at very high costs. Countries that have been looted by their former leaders are typically finding themselves in substantial budgetary crisis. Spending money on private lawyers based on the uncertain hope of actually being able to recover the costs may often not be an option. The private sector generally has no interest in educating the national authorities so that they will be able to conduct future recovery efforts without the help from outsiders. Consequently the lack of expertise remains

unchanged.

RESOURCES

The recovery of assets can be costly. Much of what can be done in relation to the repatriation of assets depends on the resources available to fund the case. Cases will almost certainly last for several years, and parties to the action are likely to be determined by their ability to fund litigation. In the case of criminal recovery, that might less be an obstacle. Offenders that have been looting their respective countries over a long period of time do not face the same resource problems as the victims trying to recover the assets. They can employ armies of lawyers ready to jeopardize and delay the successful recovery with all legal means available. The issue of justice being done becomes a question of how long offenders and victims are able to sustain the battle.

PREVENTION OF FUTURE VICTIMIZATION

States that have been victimised often do too little to prevent future diversion of assets. That leads not only to repeated victimization, but also negatively affects the repatriation of funds that have already been diverted. It is understandable that some countries may be hesitant to collaborate in the repatriation of assets if they must fear that the assets returned most likely will become prey to corrupt practices again. Therefore, countries embarking on a recovery effort should consider committing a certain percentage of the assets recovered in form of a "Governance Premium" to the strengthening of the national institutional and legal anti-corruption framework.

TOOL #44

Mutual legal assistance (MLA)

Mutual legal assistance is an international cooperation process by which States seek and provide assistance in gathering evidence for use in the investigation and prosecution of criminal cases, and, in tracing, freezing, seizing and ultimately confiscating criminally derived wealth. It covers a wide and ever-expanding range of assistance. They include: search and seizure; production of documents; taking of witness statements by video conference; and temporary transfer of prisoners or other witnesses to give evidence

It differs from traditional cooperation between law enforcement agencies. Law enforcement cooperation enables a wide range of intelligence and information sharing, including from witnesses providing they agree to give information, documents or other evidentiary materials voluntarily. If the witness is unwilling, coercive measures will be needed, usually in the form of a court order from a judicial officer.

It also differs from extradition, although many of the legal principles underlying mutual legal assistance are derived from extradition law and practice. Extradition involves the surrender of a person from one sovereign jurisdiction to another and fundamentally effects the liberty and possibly life of that person. Accordingly, extradition law, practice and procedure typically enable less flexibility and room for discretion in granting a request than mutual legal assistance.

DESCRIPTION

An United Nations expert working group (EWG) brought together in Vienna in December 2001 recommended that States take the following actions in order to facilitate the providing of effective mutual legal assistance:

ACTION 1. ENHANCING THE EFFECTIVENESS OF MLA TREATIES AND LEGISLATION

An effective legal basis to provide mutual legal assistance is critical to ensuring effective action. States should develop broad mutual legal assistance laws and treaties in order to create such a legal basis. Since mutual legal assistance treaties (MLATs) create a binding obligation to cooperate with respect to a range of mechanisms, States should, wherever possible, expand the number of States with which they have such treaty relationships. States or regions that would have difficulty negotiating an extensive network of bilateral MLATs should consider developing regional MLATs to create a modern legal framework for cooperation or, if that is not possible, ensure that they have an up-to-date domestic legal basis for providing legal assistance. In that context States may wish to consider relevant United Nations or regional model treaties (187) or model legislation (188) and their associated guidelines or commentaries.

In developing or reviewing treaties and legislation States should ensure that there is the greatest possible flexibility in the domestic law and practice to enable broad and speedy assistance. It is particularly important to have the capacity to render the assistance in the manner sought by the requesting State.

States should regularly review such treaties and laws and, as needed, supplement them to ensure that they keep pace with useful developments in international mutual legal assistance practice.

ACTION 2. STRENGTHENING EFFECTIVENESS OF CENTRAL AUTHORITIES

Establishment of effective central authorities

The United Nations Conventions on drugs and crime contain extensive and broadly similar provisions relating to mutual legal assistance. Included in their provisions are requirements for each Party to notify the Secretary-General of the United Nations of the central authority designated by it to receive, transmit or execute requests for mutual legal assistance. This is critical information for Requesting States in planning and drawing up requests. It must be accurate, up-to-date and widely available to those who frame or transmit mutual legal assistance requests.

States that have not already done so should establish a central authority that facilitates the making of requests under article 7 of the 1988 Convention for mutual legal assistance to other States Parties, and for speedy execution of requests received from other States Parties. Central authorities should be staffed with practitioners who are legally trained, have developed institutional expertise and continuity in the area of mutual legal assistance.

Designation of authorities with important national drug control capability in other fields (e.g., health ministries), but little if any in international mutual legal assistance should be avoided.

Ensuring the dissemination of up-to-date contact information

Parties to the 1988 Convention should ensure that contact information contained in the United Nations Directory of competent authorities under article 7 of the Convention is kept up to date, and, to the extent possible, provides information for contacting its central authority via phone, fax and Internet.

Ensuring round-the-clock availability

Both with respect to the 1988 Convention and generally, the central authority of a State should, to greatest extent possible, provide for a means of contacting an official of the central authority if necessary for the purposes of executing an emergency request for mutual legal assistance after working hours. If no other reliable means is available, States may consider ensuring that their Interpol National Central Bureau or other existing channel is able to reach such an official after working hours, with due consideration given to time zones.

Consistency of central authorities for the purpose

The EWG noted the wide and growing range of international conventions, each requiring parties to afford one another the widest measure mutual legal assistance in relation to the offences covered by the particular convention, and each requiring for that purpose the designation of a central authority.

The EWG noted the potential for fragmentation of effort and inconsistency of approach if different central authorities are designated for different groups of offences. States are therefore urged to ensure that their central authorities under the 1988 Convention and the UN Convention on Transnational Organized Crime of 2000 are a single entity of the kind described in this section, in order to make it easier for other States to contact the appropriate component for all kinds of mutual legal assistance in criminal matters, and to facilitate greater consistency of mutual legal assistance practice for different kinds of criminal offences.

Reducing delay

The EWG noted that significant delay in the execution of request is in part

caused by delays in consideration of the request by the receiving central authority and transmission of the request to the appropriate executing authority. States should take appropriate action to ensure that requests are examined and prioritized by central authorities promptly upon receipt and transmitted to executing authorities without delay. States should consider placing time limits upon processing of requests by central authorities. States are encouraged to afford foreign requests the same priority as similar domestic investigations or proceedings. States should also ensure that executing agencies do not unreasonably delay processing of requests. Appropriate coordination arrangements should be in place in federal jurisdictions where constituent States have execution responsibilities to minimize the risk of delayed responses.

ACTION 3. ENSURING AWARENESS OF NATIONAL LEGAL REQUIREMENTS AND BEST PRACTICES

Increasing availability and use of practical guides regarding national mutual legal assistance legal framework and practices (domestic manuals; guides for foreign authorities)

It is important that domestic authorities be aware of the availability of mutual legal assistance and know the procedures to follow to obtain that assistance in relation to an investigation or prosecution. It is also very useful, particularly in larger jurisdictions, where there may be several authorities involved in the making or execution of such requests, to provide for the sharing of information between those authorities.

States should adopt mechanisms to allow for the dissemination of information, regarding the law, practice and procedures for mutual legal assistance and on making requests to other States, to domestic authorities. One possible approach is to develop a procedural manual or guide for distribution to relevant law enforcement, prosecutorial and judicial authorities. Other useful mechanisms can include the distribution of a regular newsletter and the convening of domestic practitioners meetings to provide updates on cases, legislation and general developments.

The provision of information to foreign authorities was also highlighted as an important measure to facilitate effective cooperation. States should develop guidelines on domestic law and procedures relating to mutual legal assistance to inform foreign authorities on the requirements that must be met to obtain assistance. Any such guidelines should be made available to foreign authorities through a variety of methods, such as, for example, publication on a website, direct transmission to law enforcement partners in other States or distribution through the ODCCP or other international organizations.

Increasing training of personnel involved in the mutual legal assistance process

Effective implementation of mutual legal assistance instruments and legislation is not possible without personnel who are well trained with respect to the applicable laws, principles and practices. States should use a broad range of methods to provide such training, in a manner that will allow for the expertise to be sustained, for example:

- Lectures and presentations by central authorities as part of regular training courses or workshops for law enforcement, prosecutors, magistrates or other judicial authorities;
- Special workshops or seminars on a domestic, regional or multi-jurisdictional basis;

- Introducing programmes on mutual legal assistance as part of the curriculum for law schools or continuing legal education programmes; and
- Exchanges of personnel between central authorities of various jurisdictions;

ACTION 4. EXPEDITING COOPERATION THROUGH USE IF ALTERNATIVES, WHEN APPROPRIATE

Value of police channels where formal coercive measures are not required…

The EWG wanted to emphasize that, except for coercive measures normally requiring judicial authority, formal mutual legal assistance will not always be necessary to obtain assistance from other States.

Whenever possible, information or intelligence should initially be sought through police-to-police contact, which is faster, cheaper and more flexible than the more formal route of mutual legal assistance. Such contact can be carried out through ICPO/Interpol, Europol, through local crime liaison officers, under any applicable memoranda of understanding, or through any regional arrangements, formal and informal, that are available.

Particularly where evidence is voluntarily given, or publicly available…

While generally police-to-police contact can never be used to obtain coercive measures for the sole use of the requesting State, it may be used to obtain voluntarily given evidence, evidence from public records or other publicly available sources. Again, the method has the advantage of being faster and more reactive than formal requests. Certain categories of evidence or information may also be obtained directly from abroad without the need for police channels, for example publicly available information stored on the Internet or in other repositories of public records.

Or to help accelerate an effective response to very urgent formal requests…

Many States will also permit very urgent requests to be made orally or by fax between law enforcement officers so that advance preparations can be made or urgent non-coercive assistance given, at the same time as a formal request is routed between central authorities.

But always inform the Central Authority of the prior informal channel contacts…

The formal request should state that a copy has been sent by the informal route to prevent duplication of work. Similarly, where there has been prior police to police contact, the Letter of Request should state this and give brief details.

Use of Joint Investigation Teams

States should use joint investigation teams between officers of two or more States where there is a transnational aspect to the offence, for example in facilitating controlled deliveries of drugs or in cross border surveillance operations.

States should make full use of the benefits of the exchange of financial intelligence (in accordance with appropriate safeguards) between agencies responsible for the collating of financial transaction data and, where necessary, develop or enact the appropriate enabling legislation.

ACTION 5. MAXIMIZING EFFECTIVENESS THROUGH DIRECT PERSONAL CONTACT BETWEEN CENTRAL AUTHORITIES OF REQUESTING AND REQUESTED STATES

Maintaining direct contact throughout all stages of the request

The 1993 Report (189) had stressed the importance of personal contacts to open communication channels and to develop the familiarity and trust necessary to achieve best results in mutual legal assistance casework.

The EWG reaffirmed that personal contact between members of central authorities, prosecutors and investigators from the requesting and requested States remains critically important at every stage in the mutual assistance process. To facilitate that, contact details, including phone, fax and where available, email addresses, of the responsible officials, should be clearly stated within the request. Sometimes it may be desirable to establish contact with the official in the requested State before sending the request in order to clarify legal requirements or simplify procedures. Such contact can be initiated through the police-to-police means listed above, including through existing police attaché networks, or between prosecutors or staff of central authorities through the UNDCP list of competent authorities, through networks such as the European Justice Network of the European Union, or through less formal structures such as the International Association of Prosecutors or simply personal contacts.

Benefits of Liaison Magistrates, Prosecutors and Police Officers

The EWG also encouraged States to take initiatives such as the exchange of liaison police officers, magistrates or prosecutors with States with which there is significant mutual legal assistance traffic, either by posting a permanent member of staff to the central authority of that country, or by arranging short-term exchanges of staff. Experience shows that such "on-site" initiatives produce faster and more useful mutual legal assistance than usually possible through "distance" dealings.

ACTION 6. PREPARING EFFECTIVE REQUESTS FOR MUTUAL LEGAL ASSISTANCE

Preparation of a request for assistance involves consideration of a number of requirements, for instance, treaty provisions (where applicable), domestic law, the requirements of the requested State.

Too meticulous attention to detail, however, could result in a request that was unduly lengthy or was so prescriptive that it inhibited the requested State from resorting to alternative methods of securing the desired end result. Those preparing requests should apply these basic principles:

- Be very specific in presentation;
- Link the existing investigation or proceedings to the assistance required;
- Specify the precise assistance sought, and
- Where possible, focus on the end-result and not on the method of securing that end-result (for example, it may be possible for the Requested State to obtain the evidence by means of a production or other court order, rather than by means of a search warrant)
- Assist in the application of the above principles, the EWG developed checklists and tools for use in preparing requests. The checklists set out both the requirements generally expected of requests and additional specific requirements for certain areas of assistance.

ACTION 7. ELIMINATING OR REDUCING IMPEDIMENTS TO EXECUTION OF REQUESTS IN THE REQUESTED STATE

1. Interpreting legal requirements flexibly.

In general, States should strive to provide extensive cooperation to each other to ensure that national law enforcement authorities are not impeded in pursuing criminals who may seek to shield their actions by scattering evidence and the proceeds of crimes in different States. As described below, States should examine whether their current framework for providing assistance creates unnecessary impediments to cooperation and, where possible, reduce or eliminate them.

In addition, those prerequisites to cooperation that are retained should be interpreted liberally in favour of cooperation; the terms of applicable laws and treaties should not be applied in an unduly rigid way that impedes rather than facilitates the granting of assistance.

2. Minimizing grounds for refusal and exercising them sparingly

If assistance is to be rendered as extensively as possible between States, the grounds upon which a request may be refused should be minimal, limited to protections that are fundamental to the requested State.

Many of the existing grounds of refusal in mutual legal assistance are a "carry over" from extradition law and practice, where the life or liberty of the target may be more directly and immediately at stake. States should carefully examine such existing grounds of refusal to determine if it is necessary to retain them for mutual legal assistance. An area of particular concern was dual criminality. It was noted that positions were divided, with some States requiring it for all requests, some for compulsory measures only, some having discretion to refuse on that basis and some with neither a requirement nor a discretion to refuse. Because of the problems that can arise from the application of this concept to mutual assistance, the EWG recommended that States consider restricting or eliminating the application of the principle, in particular where it is a mandatory precondition.

Problems can also arise from the application of the *ne bis in idem* principle as a grounds for refusal of assistance. To the greatest extent possible, those States applying this grounds for refusal should use a flexible and creative approach to try to minimize the circumstances where assistance must be refused on this basis. For example, when necessary, they should obtain an undertaking that the requesting State will not prosecute a person who already has been prosecuted in respect of the same conduct in the requested State, to enable information to be provided to assist in investigations in the requesting State. Some States do not apply this grounds for refusal at all and States may wish to consider if it is possible to adopt such an approach.

Any grounds for refusal should be invoked rarely, only when absolutely necessary.

3. Reducing use limitations

Traditionally, evidence transmitted in response to a request for mutual legal assistance could not be used for purposes not described in the request unless the requesting State contacted the requested State and asked for express consent to other uses. In order to avoid cumbersome requirements that are often not necessary, however, many States have provided for a more streamlined approach in their mutual legal assistance practice. For example, many modern mutual legal assistance treaties require the requested State to advise that it wishes to impose a specific use limitation; if the advisory is not deemed necessary, there will be no limitation of use .

Such methods provide adequate control to the requested State in important cases while facilitating the efficiency of mutual legal assistance in the many cases that are not sensitive. States should consider adopting such modern approaches to use limitations.

4. Ensuring confidentiality in appropriate cases

Some States are not in a position to maintain confidentiality of requests and the contents of requests have been disclosed to the subjects of the foreign investigation/ proceedings, thereby potentially prejudicing the investigation/proceedings. It was noted that confidentiality of requests was often a critical factor in the execution of requests. It was recommended that where it is specifically requested, requested States should take appropriate measures to ensure that the confidentiality of requests is maintained. In circumstances where it is not possible to maintain confidentiality under the law of the requested State, the requested State should notify the requesting State at the earliest possible opportunity and, in any case, prior to the execution of the request to allow it to decide if it wishes to continue with the request in the absence of confidentiality.

5. Execution of requests in accordance with procedures specified by the requesting State

It is important to comply with formal evidentiary/admissibility requirements stipulated by the requesting State to ensure the request achieve its purpose. It was noted that failure to comply with such requirements would often make it impossible to use the evidence in the proceedings in the requesting State, or at the least, causes delay, (for example where the requested material has to be returned to the requested State for certification/authentication in accordance with the request). The requested State should make every effort to achieve compliance with specified procedures and formalities to the extent that such procedures/formalities are not contrary to the domestic law of the requested State. States are also encouraged to consider if domestic laws relating to the reception of evidence can be made more flexible to overcome problems with the use of evidence gathered in a foreign State.

6. Coordination in multijurisdictional cases

Increasingly, there are cases in which more than one State has jurisdiction over some or all of the participants in a crime. In some cases, it will be most effective for the States concerned to choose a single venue for prosecution; in others, it may be best for one State to prosecute some participants while one or more other States pursue the remainder. In general, coordination in such multi-jurisdictional cases will, inter alia, avoid a multiplicity of requests for mutual legal assistance from each State with jurisdiction Where there are multiple requests for assistance in the same case, States are encouraged to closely consult in order to avoid needless confusion and duplication of effort.

7. Reducing complexity of mutual legal assistance through reform of extradition processes

Traditionally, some States have not extradited their nationals to the State in which a crime took place. At times, such States would instead seek to prosecute their national themselves in lieu of extradition, resulting in lengthy and complex requests for mutual legal assistance to obtain the necessary evidence from the country in which the crime took place.

Recent increases in the number of States that either will extradite their nationals or will temporarily extradite them provided that any sentence can be served in the State of nationality, reduce the need for mutual legal assistance that would otherwise

be required.

States that do not extradite nationals should consider whether their approach can be reduced or eliminated. If that is not possible, the States concerned should seek to coordinate efficiently with a view to an effective domestic prosecution in lieu of extradition.

8. Cooperation with respect to confiscation (enforcement of civil forfeiture, asset sharing)

There are particular impediments to assistance with respect to the freezing/ seizure and confiscation of proceeds of crime. As noted in the report of the EWG on asset forfeiture , (190) in relation to freezing/ seizure, it can be difficult to obtain this assistance on the urgent basis required because of some of the inherent delays in the mutual assistance process.

Problems also arise because of the different approaches to the execution of mutual assistance requests and the varying systems for confiscation.

The 1988 Convention permits a State to comply with a request for freezing/ seizure or confiscation by directly enforcing the foreign order or by initiating proceedings in order to obtain a domestic order. As a result the approach taken differs between States.

Further, the States that obtain domestic orders do so on the basis of varying domestic asset confiscation regimes. In some States there is a requirement to provide evidence of a connection between the property sought to be confiscated and an offence. Other States employ a value or benefit system where there need only be evidence that the property is linked to a person who has been accused or convicted of a crime.

Experience in this area clearly demonstrates that the direct enforcement approach is much less resource intensive, avoids duplication and is significantly more effective in affording the assistance sought on a timely basis. Consistent with the conclusions of the EWG on asset forfeiture, the EWG strongly recommended that States that have not done so adopt legislation to permit the direct enforcement of foreign orders for freezing/seizure and confiscation.

In the interim, where a State is seeking assistance by way of freezing/seizing or confiscation of assets, prior consultation will be required to determine which system is employed in the requested State in order that the request can be properly formulated.

The EWG also noted that several jurisdictions have adopted or are in the process of adopting regimes for civil forfeiture (i.e. without the need to obtain a criminal conviction as a prerequisite for final confiscation). The EWG supported the use of civil forfeiture as an effective tool for restraint and confiscation. It was, however, recognized that this created new challenges because most current mutual legal assistance regimes are not yet applicable to civil forfeiture. The EWG recommended that States ensure that their mutual assistance regimes will apply to requests for evidentiary assistance or confiscation order enforcement in civil forfeiture cases.

Problems also arise in requests relating to freezing/seizure and confiscation because of insufficient communication about applications for discharge of an order or other legal challenges brought in the requested State. It is critically important that the requesting State be informed of any such application in advance so that it can provide additional evidence or information that may be of relevance to the proceedings. Once again, the importance of communication was emphasized.

The EWG noted the importance of equitable sharing of confiscated assets between the Requesting and Requested State as a means of encouraging cooperation, particularly with States that have very limited resources to execute requests effectively.

9. Reducing impediments to mutual legal assistance brought about by third parties

Accused or other persons may seek to thwart criminal investigations or proceedings by legal action aimed at delaying or disrupting the mutual legal assistance process. While it may well be fundamental to provide the opportunity for third party participation in certain proceedings arising from the execution of a request for mutual legal assistance, States should ensure that, wherever possible, their legal frameworks do not provide fortuitous opportunities for third parties to unduly delay the providing of assistance or to completely block execution on technical grounds.

In addition, a modern trend in taking witness evidence in the requested State is to defer objections based on the law of the requesting State until after the testimony is transmitted to the requesting State, so that it may decide on the validity of the objection. That avoids the possibility of an erroneous ruling in the requested State and allows the requesting State to decide matters pertaining to its own law.

10. Consulting before refusing/postponing/conditioning cooperation to determine, if necessary

Where the requested State considers that it is unable to execute the request, formal refusal should not be made before consulting with the requesting State to see if the problems can be overcome, or the request modified to enable assistance to be given. For example, where assistance cannot be given because of an ongoing investigation or prosecution in the requested State, it may be possible to agree to the postponement of the execution of the request until after the domestic proceedings are concluded. In another example, consultation may lead to the modification of a request for search and seizure that could not be fulfilled under the law of a requested State to a request for a production order, that could. Where, however, it is not possible to resolve the issue, reasons should be given for refusal.

ACTION 8. MAKING USE OF MODERN TECHNOLOGY TO EXPEDITE TRANSMISSION OF REQUESTS

States should make use of modern means of communications to transmit and respond to urgent requests for mutual legal assistance to the greatest extent possible. Where there is a particular need for speed, traditional and much slower methods of transmission of requests (such as the transmission of written, sealed documents through diplomatic pouches or mail delivery systems) can result in cooperation not being provided in time. Where there is a concern that evidence may be lost or that significant harm to persons or property may result if cooperation is not expedited, means such as phone, fax, or Internet should be utilized. The requesting and requested States should determine among themselves how to ensure the authenticity and security of such communications, and whether such communications should be followed up by a written request transmitted through the traditional channel.

ACTION 9. MAKING USE OF MOST MODERN MECHANISMS FOR PROVIDING MLA

The EWG noted the opportunities presented by modern technology to expedite the provision of assistance in criminal matters and to maximize the effectiveness of mutual assistance processes. The EWG also noted developments in international forums such as the European Union (Convention on Mutual Assistance in criminal matters between the member States of the European Union of 22 May 2000) and the Council of Europe (Convention on Cyber Crime) in relation to the taking of evidence via video-link and the interception of electronic communications.

It was recommended that States give consideration to acceding to such Conventions where possible and appropriate, and to developing the ability through their domestic legislation or otherwise to facilitate transnational cooperation in the following areas:

- The taking of evidence via video-link;
- The exchange of financial intelligence between agencies responsible for collating financial transactions data;
- The exchange of DNA material to assist in criminal investigation; and
- Interception of communications;
- The provision of assistance in computer crime investigations, including:
- Expeditious preservation of electronic data;
- Expeditious disclosure of preserved traffic data;
- Allowing interception where telecommunications' gateways are located on the territory of the requested State, but are accessible from the territory of the requesting State; and
- Monitoring electronic communications on a "real-time" basis

ACTION 10. MAXIMIZING AVAILABILITY AND USE OF RESOURCES

Providing central authorities with adequate resources

An effective mutual assistance programme needs to be properly resourced in terms of both central and competent authorities and necessary infrastructure. As an optimum position, States should ensure that appropriate resources are allocated to mutual legal assistance. For developing States with many urgent competing resource priorities, ideal resource levels may not always be attainable.

Obtaining assistance from a requesting State

There may be other creative approaches that can be adopted to deal with resource issues. Importantly, a requested State may wish to "seek assistance from the requesting State in order to provide assistance". Some examples of the types of assistance that can be sought from the requesting State include providing personnel or equipment to be used in execution of the request, paying for the use of private counsel or covering general costs in whole or in part. A number of States have found it useful to lend a staff member to a requesting State to facilitate the preparation and drafting of an effective request.

Asset Sharing

The sharing of confiscated assets between the requesting and requested States is an important way that cooperation can be encouraged and additional resources provided. The EWG noted that asset sharing arrangements between States now find support in multilateral instruments such as the UNTOC Convention (Article 14 par. 3, subparagraph b). The Group encourages States able to do so, to make greater use of asset sharing possibilities for such purposes.

Optimizing language capability

One special resource issue identified was the need for capacity for languages within the central authority. The optimum is the presence of bilingual or multilingual personnel working in the authority which enhances capacity for informal communication as well as with respect to review and presentation of requests. Access to reliable translation services is also of critical importance to ensure that translations of outgoing requests are accurate and properly reflect the original

document and to review incoming requests where the accompanying translation is of a poor quality.

At the same time, some States may be unable to employ bilingual or multilingual personnel or have easy access to translation services for geographic or cultural reasons or because of a lack of resources. In such cases, creative solutions need to be found to deal with language problems. Some examples would be seeking assistance from other Government departments and missions abroad or perhaps from the requesting or requested State as the case may be.

ACTION 11. ROLE OF THE UNITED NATIONS IN FACILITATING EFFECTIVE MLA

UNDCP and CICP have recognised and established roles in assisting requesting States to implement particular international conventions, UNDCP, relating to drug control and CICP relating to transnational organized crime. The work includes legislative drafting assistance, model legislation on, for example, mutual legal assistance, asset forfeiture, witness protection, and the domestic use of foreign evidence, training of prosecutors and judicial officers, and regional and interregional casework problem-solving workshops for practitioners.

Coordination of Technical Assistance

The EWG also recognized the essential role of UNDCP/CICP in working with its partners, first to help establish effective central authorities and, secondly, to coordinate cooperation and training efforts on a national, subregional and regional basis. In doing so, the EWG stressed the importance of drawing on the expertise of practitioners dealing with mutual legal assistance issues and casework on a daily basis, linking them to States in need of training and by networking their efforts under the scheme of wider partnerships.

Updating of United Nations Directory of Competent Authorities for Mutual Legal Assistance

In calling on States to notify accurate, appropriate and timely information particulars of their central authorities to transmit or execute mutual legal assistance requests for the purposes of Article 7 of the 1988 Convention, the EWG urged UNDCP to work with the States concerned to help ensure that the UNDCP Directory of Central Authorities is as useful as possible for day-to-day international casework cooperation.

Consistency between the 1988 Convention and the United Nations Convention against Transnational Organized Crime (UNTOC)

In noting similar basic mutual assistance requirements of the 1998 Convention and the 2000 UNTOC Convention, and the legal assistance work done by UNDCP and CICP, the EWG urged CICP and UNDCP to work closely together in assisting States to implement their mutual legal assistance obligations under the Conventions.

Development of Training Materials

The EWG noted the compilation, indexing and publication of all drug control legislation, including anti-money laundering legislation by UNDCP. The legislation is also available on the ODCCP website. The EWG recommended that UNDCP collect and compile from States any existing guidelines for foreign requesting authorities and training materials produced in this field of expertise (for example, the Commonwealth University Curriculum on International Cooperation to Combat Crime, coordinated training activities for magistrates from Spain, Portugal and France, etc.). The materials could then be posted on the ODCCP and partner websites with appropriate cross-links, subject to the agreement of the material providers.

The EWG encouraged the organization by UNDCP/CICP, Commonwealth Secretariat, EU, regional organizations and other interested partners, of regular meetings of mutual assistance practitioners to discuss developments in mutual assistance law, policy and practice.

PRECONDITIONS AND RISKS

Preconditions and risks were also discussed during the EWG and are reflected in the Report of the Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice, Vienna 3-7 December 2001 as well as the Report of the preceding EWG of 15-19 February, 1993.

Main Preconditions

Both countries should be party to the 1988 Convention if article 7 is to be used as the legal basis for the request;

Similarly, with respect to the United Nations Convention against Transnational Organized Crime;

There should be adequate domestic enabling mutual legal assistance legislation and procedures or, if treaties are self-executing in the countries concerned (i.e. the treaty itself becomes the domestic law of the country), the relevant treaty, bilateral or multilateral, enables the request or execution action concerned.

Main Risks

Absence of adequate enabling domestic legislation; lack of political will to implement the treaty or enabling legislation with adequate infrastructure and human/ financial resources;

Absence of an effective central authority to request, execute or transmit to others for execution international mutual legal assistance requests;

Delay in executing the request and transmitting the results for use by the requesting State, usually due to lack of central authorities between which regular communication can identify and resolve outstanding request execution problems;

Introspective national focus in the Requested State on sovereignty, the paramount nature of domestic mutual legal assistance law, practice and procedure, particularly procedural law and practice;

Costs of the execution of requests can lead to serious delay and even refusal of requests, unless central offices can communicate to limit excessive requests and solve cost problems for example through cost-sharing arrangements.

RELATED TOOLS

For related tools please be hereby referred to the Report of the Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice, Vienna 3-7 December 2001.

- The EWG-developed General and supplemental Checklists intended to provide general guidance in the preparation of requests for international mutual legal assistance in criminal matters.
- The General Checklist deals with the basic content of all mutual legal assistance requests. The Supplemental Checklists deal with additional content needed for the effective execution of requests for search and seizure, production of documents, taking witness statements/evidence, temporary

transfer of prisoners to give evidence, pre-judgment seizure/freezing, or post-judgement confiscation.

The EWG also reproduced two Forms with permission, including a Cover Note (Request/Acknowledgment) for mutual legal assistance requests and an Authentication Certificate for Foreign Public Documents. Further, the Legal Advisory Programme of UNDCP developed comprehensive drug-related model legislation available for all major legal systems. In the field of mutual legal assistance, the UNDCP Model Mutual Assistance in Criminal Matters Bill 2000, the Model Foreign Evidence Bill 2000 and the UNDCP Money Laundering and Proceeds of Crime Bill 2000 are available for States with a common law tradition and for States with a civil law system, the UNDCP Model Law on International Cooperation (Extradition and Mutual Legal Assistance) and the UNDCP model Law on Drug Trafficking and Related Offences.

END NOTES

(184)
A 1989 RICO claim brought in California estimated that the assets amounted to $5 billion.

(185)
In Nigeria, it was only after more than one years after the first mutual legal assistance requests had been submitted, that charges were filed against M. Abacha at the Abuja High Court. In Mexico, Raúl Salinas has been convicted of murder, but not of drug trafficking or money laundering. Peru has issued warrants for the arrest of Vladimiro Montesinos, but he has disappeared. Former Ukrainian Prime Minister Pavlo Lazarenko has been convicted in a U.S. court of money laundering but not yet in Ukraine itself, where he is suspected of having stolen or generated up to $1 billion in illegal funds

(186)
A number of further significant developments in controlling the proceeds of corruption offences that implement principles first enunciated in the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Initially, the United Nations Convention Against Transnational Organized Crime (2000) contains a number of strong measures to control the proceeds of bribery and other serious crimes committed by an organized group. Such measures are found in Articles 6 (criminalisation of laundering the proceeds of crime), 7 (regulatory regime against money laundering), 12-14 (asset confiscation), 16(15) (non-refusal of extradition for fiscal offences), 18(8), (22) (non-refusal of mutual assistance on bank secrecy or fiscal offence grounds). The Council of Europe Criminal Law Convention on Corruption (1998) also contains strong obligations pertaining to control of the proceeds of corruption, including in Articles 13 (corruption offences to be considered money laundering predicates), 19(3) (confiscation of proceeds of corruption offences), 26(3) (non-refusal of mutual assistance on bank secrecy grounds). Provisions of this sort also appear in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) (Articles 3(3) (confiscation), 7 (money laundering), 9(3) (non-refusal of mutual assistance on bank secrecy grounds); and the Organisation of American States's Inter-American Convention Against Corruption (1996), Articles XV (asset forfeiture) and XVI (non-refusal of assistance on bank secrecy grounds). See, also Recommendations of UN Expert Group Meeting on Corruption and its Financial Channels (1999) (recommending, inter alia, measures to regulate money

laundering, removal of tax benefits and bank secrecy impediments); Global Coalition for Africa, Principles to Combat Corruption in African Countries (1999) (Art. 4, 21); Global Forum's Guiding Principles for Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials (1999), Principles 8, 10; Council of Europe, Twenty Guiding Principles For The Fight Against Corruption (1997) (Prin. 4, 19); G8 Senior Experts Group Recommendations to Combat Transnational Organized Crime (1996), Recommendations 29-34 (treating money laundering, confiscation of proceeds of crime, regulation of corruption); G8 Forty Recommendations of the Financial Action Task Force on Money Laundering (1996). For a more detailed analysis of these instruments, see UN document E/CN.15/ 2001/3 (Report of the Secretary General on Existing International Legal Instruments Addressing Corruption)."

(187)
Eg, the United Nations Model Treaty on Mutual Assistance in Criminal Matters (Annex to Resolution 45/117 of 14 December 1990, and complementary provisions (Annex I to Resolution 53/112 of 9 December 1998; Model Treaty on Extradition (Annex to Resolution 45/116 of 14 December 1990, and complementary provisions (Annex I to Resolution 52/88 of 12 December 1997.

(188)
Eg, UNDCP's model laws: (a) for States of common law legal tradition Model Mutual Assistance in Criminal Matters Bill 2002, Model Foreign Evidence Bill 2002, Model Extradition (Amendment) Bill 2002, Model Witness Protection Bill 2002; (b) for States of the civil or continental legal tradition Model Law on Mutual Legal Assistance 2002.

(189)
UNDCP Expert Working Group on Mutual Legal Assistance and Related Cooperation (E/CN.7/1993/CRP.13). The EWG found that the recommendations in the 1993 Report had stood the test of time and still represented best practice. Some of them were now formally reflected in later instruments, such as Article 18 of the United Nations Against Transnational Organized Crime, 2000.

(190)
UNDCP Expert Working Group on Effective Asset Forfeiture Casewqork, Vienna, 3-7 September 2001