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RECOMMENDATIONS FOR A LEGAL FRAMEWORK FOR INTERNATIONAL COOPERATION IN FORFEITURE AND ASSET RECOVERY. CICAD INITIATIVE ISIDORO BLANCO CORDERO, UNIVERSIDAD DE ALICANTE, SPAIN		


 Universitat d'Alacant
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Recommendations for a Legal Framework for International Cooperation in Forfeiture and Asset Recovery. CICAD Initiative

Isidoro Blanco Cordero,
 Professor of Criminal Law.
 Universidad de Alicante, Spain
 ES/CICAD consultant.



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- Assets of criminal origin
- Abroad
 - Purpose: to avoid the discovery of the assets
 - And if discovered, avoid their forfeiture

A stack of several rolled-up US dollar bills, including \$20 and \$100 bills, is shown in the top right corner of the slide. The background is a blurred image of a yellow envelope.

- To locate and recover criminal assets international cooperation is **essential**.
- Seemingly there is goodwill between States.
- But there is not:
 - Appropriate legislation allowing for the forfeiture and asset recovery,
 - Nor specific legal procedures which detail what to do when a country requests assistance to others.



- Criminals take advantage of the difficulties of cooperation.
- And the States fail to intercept large amounts of wealth

SEIZURE AND ASSET RECOVERY

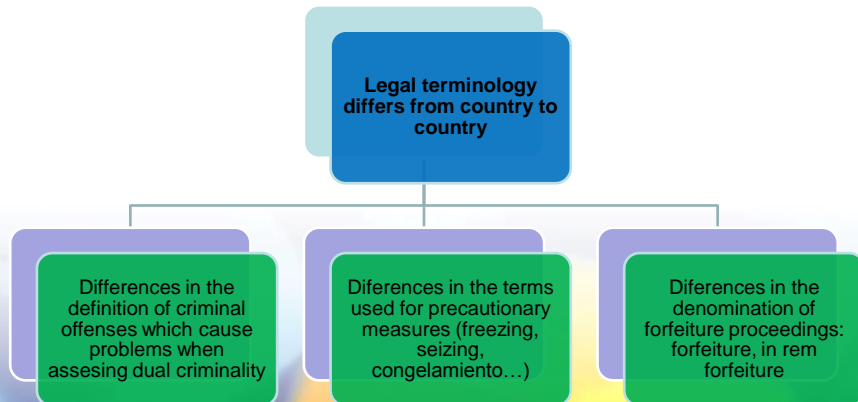
- States have many **difficulties** in **identifying** and **locating** assets hidden in other States.
- Once **located**, for years there has been a **lack of political will** of some financial centers to collaborate.
- There are **legal obstacles** related to international cooperation.



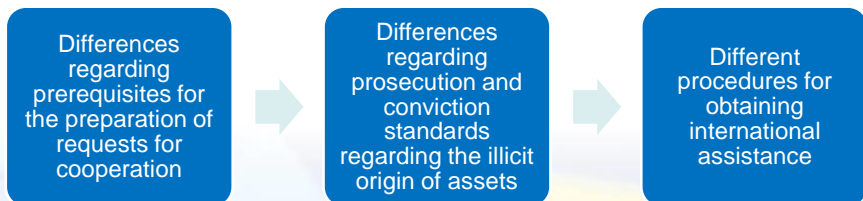
The need of a Model Law on asset recovery

- The differences in national systems obstruct cooperation in this field.
- Problems during the asset recovery procedure:
 - the **rejection of requests** for international cooperation or
 - they are **sent back**.

Difficulties in cooperation at the international level



Difficulties in cooperation at the international level



Tools for efficient international cooperation

National legislation that allows for a expeditious cooperation

Tools to know the channels for international cooperation

Staff trained in international cooperation (police, judges, prosecutors)

OAS RECOMMENDATIONS ON ASSET RECOVERY

- The need for **recommendations**: legal instruments to facilitate the creation of legal measures on asset recovery and/or update national legislation on the matter.
- Each Member State adapts the Recommendations to adequate them to its constitutional principles and fundamental premises of its internal system.

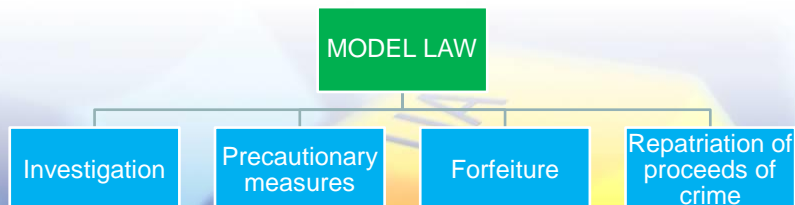


RECOMMENDATIONS

- Give **guidance** on the legal regulation that allows a foreign judicial authority to issue a freezing measure in the course of a criminal procedure and request that it be executed in another OAS Member State in order to:
 - Safeguard the objects, documents or data that can be seized and used as evidence, thus preventing its disappearance or transformation.
 - Proceed to subsequent confiscation

STRUCTURE OF THE MODEL LAW / RECOMMENDATIONS

- The stages of the recovery system that the model law should cover are:



Investigation

Investigation

Identification of assets and
connection with criminal
activities

Location of the assets

Border investigation

Formal: shipping
commission or rogatory
letter

Informal investigation:
cooperation between
police and intelligence
units to gather information
and locate assets

Precautionary measures

- Once identified and located it is necessary to secure the assets.
- **Objective:** to prevent the traffic, transmission or sale of assets and secure the evidence.
- Two measures:
 - A) preventative seizure
 - B) international cooperation for the application of precautionary measures

Administration of forfeited assets

- The request for mutual legal assistance should contain some reference to how to manage seized assets
- The assets should be managed!!!!!!
- Use of the **SE** experience in the framework of Seized and Forfeited Asset Project in Latin America – BIDAL, developed, approved and monitored by GELAVEX.
- BIDAL Best Practices Document.

International cooperation in precautionary measures and asset administration

- It is advantageous that States should apply precautionary measures to assets at the request of a foreign authority.
- A procedure for cooperation and a request model should be implemented.
- Two options:
 - The requested State issues its own resolution to freeze or seize.
 - The requested State allows the direct implementation with the direct execution by the competent authority of the requesting State.

Disposal of forfeited assets

- Classic criteria in international conventions: the assets belong to the State that executes the order.
- Practice of the States: to share the assets, one part of the assets recovered corresponds to the State that helps to recover them.
- On **corruption matters** it is the opposite:
- Fundamental principle: the product of corruption should be repatriated to its legitimate owner, who in most cases is the population of the State in which the crime occurred.
- States should adopt the necessary legislative measures to allow its competent authorities to restitute confiscated assets when complying with a request from other Member State.

Other issues

- **Agreements for each particular case:** Possibility of making agreements or mutually acceptable arrangements on the basis of each individual case for the final disposal of forfeited assets.
- **Deduction of reasonable expenses:** When appropriate, unless States involved decide otherwise, the requested State may **deduct reasonable expenses** incurred in investigations or judicial proceedings that allowed the return or disposition of forfeited assets.

Elaboration of Recommendations

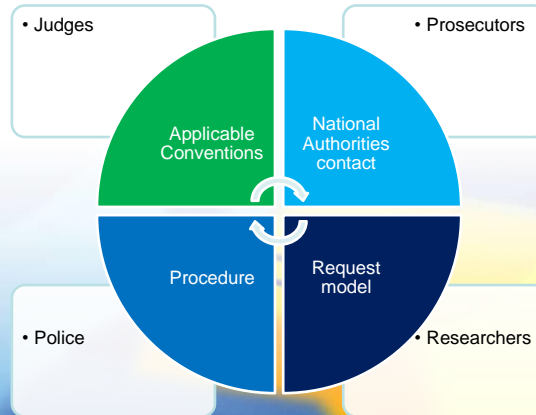
- In preparing the Recommendations it seems appropriate to establish a Working Group constituted by a Principal Consultant and by Experts in the field.



- Dissemination in order to achieve the maximum level of acceptance among the countries in the Hemisphere
- Used as a basis for legislative reform processes that would be approved.

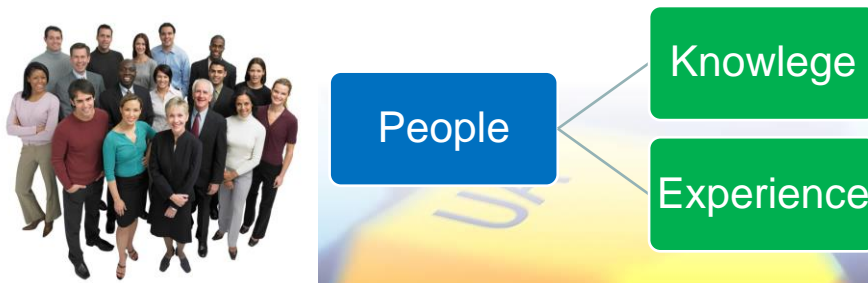
Creation of a Structured Information Repository of International Cooperation in Asset Recovery

- Structured Information Repository: tool to direct the elaboration, reception and execution of inquiries to locate and recover assets of illicit origin.



Training of competent staff

- A State may have the best legislation on international cooperation in asset recovery, but be unable to assist other States.



**THANK YOU VERY
MUCH**

Isidoro.blanco@ua.es