



# International cooperation in asset recovery



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The International Expert Meeting on the return of stolen assets in the Ethiopian capital of Addis Ababa in May 2019, which I attended as a representative of the Basel Institute’s International Centre for Asset Recovery (ICAR), focused heavily on the importance of international cooperation and lessons learnt over the past years.

In the opening words of Wedo Atto, Deputy Commissioner of the Federal Ethics and Anti-Corruption Commission of Ethiopia, *“Asset recovery is difficult and demanding, and international cooperation is essential for succeeding in recovering assets stolen through corruption.”*

What exactly does international cooperation mean in the context of asset recovery? This is a wider question than many people think. It also opens up further questions, such as not only how to return more stolen assets more quickly to victim countries, but how those returned assets can best be used to support sustainable development and strengthen criminal justice systems.

## Cooperation is about more than formal channels

There is a perception that “international cooperation” in investigations and asset recovery cases is all about mutual legal assistance (MLA) – the formal process of requesting assistance from a foreign jurisdiction. In practice however, there is an earlier step in the process that is often ignored or forgotten, and which is equally important if not more. This is mutual administrative assistance (MAA), often just described as “*informal*” cooperation.

Informal cooperation is the foundation of almost all successful MLA requests. Without it, not many cases would reach the formal stage of MLA.

Almost all cases of corruption and embezzlement have a significant international dimension, whether it’s foreign bank accounts and residences abroad or a chain of transactions that flows through multiple jurisdictions. For informal international cooperation to start, all that is needed is for a law enforcement officer or prosecutor to pick up the phone or email his / her counterpart in another jurisdiction to seek assistance in verifying information to support an ongoing criminal investigation.

Financial Intelligence Units (FIUs) already do this regularly through the Egmont Group, as my colleague Thierry Ravalomanda explained in his guide to the role of FIUs in asset recovery.

From the seeds of informal cooperation, the investigation can progress and develop. With a few exceptions, however, information shared through law enforcement networks or the Egmont Group cannot be used in a court of law. There are also limitations to the assistance that may be sought. For example, it is not possible to seek any assistance that involves the use of coercive powers like a court summons.

This informal cooperation assists the investigative team in developing a better and a more complete picture of the case. It helps them identify which formal evidence *may* be needed from abroad in order to successfully bring the matter to prosecution and ultimately recover any ill-gotten assets with the limited resources at hand.

## International standards on cooperation against corruption

Turning now to more formal channels of international cooperation in corruption and asset recovery cases:

The heavyweight international conventions on corruption and transnational organised crime are clear about the importance and need for signatories to cooperate and to offer each other the “widest measure of cooperation and assistance”. You can read more about their international cooperation focus here:

- UN Convention Against Corruption (UNCAC)
- UN Convention Against Transnational Organized Crime (UNTOC)

In practice, officials often face the difficult issue of how individual states interpret the conventions. Differences may be fundamental, like a civil law versus a common law system, or merely distinctions in the interpretation of specific provisions. Willingness to assist may be clouded by past case experiences.

Differences in a country's laws are another barrier to the type of cooperation envisaged by the conventions. For example, the lack of "dual criminality" between the requesting and receiving state. In such cases, it is the elements of the crime that can offer a solution between two parties, and it is here that informal cooperation channels can provide the necessary building blocks to facilitate discussion.

We must also not forget that a jurisdiction may also refuse a request for assistance if it believes the investigation or charges levelled against the accused are politically motivated or are perhaps in breach of his or her fundamental human rights.

## **Bilateral agreements to facilitate two-way flow**

Experience in asset recovery cases over the last 15 years has shown ICAR that it is more effective to focus on similarities, rather than differences, to bring two jurisdictions together and facilitate cooperation between them.

Beyond the broad legal framework of UN conventions, jurisdictions may also choose to sign a bilateral agreement that formally sets out the terms of the cooperation between two countries. There are many such examples. Beyond acting as a roadmap for cooperation between jurisdictions, these bilateral treaties represent something more fundamental, namely an acknowledgement of compatibility, a meeting of minds between countries and a statement of intent to reach a solution for the mutual benefit of the states.

It demonstrates a joint interest to fight crime and return criminal proceeds to their respective victim jurisdictions.

## **FRACCK: a positive platform for international cooperation?**

Participants at the Addis II meeting discussed another possible way to channel the spirit of UNCAC into a practical agreement that facilitates positive international cooperation on asset recovery.

The Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK), agreed and signed by the Governments of Kenya, Jersey, Switzerland and the UK in 2018 with support from ICAR, was called "innovative" and "novel" by Brigitte Strobel-Shaw, Officer-in-Charge of the Corruption and Economic Crime Branch of the UNODC.

Why? Well, the FRACCK not only sets out good practices for the return of stolen assets to Kenya. It crucially encourages transparency, accountability and provides a platform for dialogue between the parties to come together and discuss the use of returned assets to advance sustainable development and benefit citizens.

This agreement represents a positive change in the discussion to address the many challenges ordinarily faced when parties are looking to return the proceeds of grand corruption, like delays and agreements or disagreements around the method of return and use of the assets.

Participants of the Addis II meeting were very curious and are looking forward to how this development can be used in other examples and jurisdictions. Similar to the bilateral treaties, it also sends out a powerful message of intent amongst the parties, the positive mindset and a determination to cooperate as broadly as possible. It represents a big step forward in generating and demonstrating political will, all of which is a reflection of the spirit and intention of the original UN texts.

## **Beyond conventions, treaties and agreements**

Against the canvas of the many conventions, treaties and agreements is the critical importance of securing the underlying political will that will lead to effective legal frameworks. Namely, well-funded and supported anti-corruption and law enforcement bodies, working in tandem with an independent prosecution service overseen by an independent judiciary.

From this perspective, the purpose of international cooperation in asset recovery is wider than merely recovering assets from abroad more quickly and easily. It is about using the chance to convert the proceeds of corruption into funds for building and supporting the legal and political infrastructure that will help prevent corruption from damaging a country in the first place.

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