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COMISION INTERAMERICANA PARA EL
CONTROL DEL ABUSO DE DROGAS
CICAD

Secretariat of Multidimensional Security

**XXXVI GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING
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September 17-18, 2013
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**GUIDE FOR INTERNATIONAL COOPERATION IN ASSET RECOVERY
AREA OF CRIME PREVENTION AND STRENGTHENING OF JUSTICE - UNODC**



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Guide for International Cooperation in Assets Recovery

Crime Prevention and Strengthening of Justice

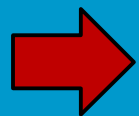
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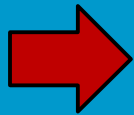
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- **General Rules for International Cooperation**



- **Bilateral Treaties – Agreements (Multilateral Instruments).**



- **Internal Legislation – Criminal Procedures Code, Laws of International Cooperation**



- **Reciprocity.**



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Usefulness of knowing the I.C

- Essential to the success of research / internal trial.
- Product Migration/instrument of crime in other jurisdictions
- Identify appropriate mechanisms for prosecution of organized crimes assets abroad
- Allow to anticipate potential obstacles and streamline the application for legal aid (case strategy)



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Scoop an application of the I.C on assets

- Identify, locate, locate goods / assets (and third parties affected).
- Precautionary Measures.
- Definitive measures (seizure – forfeiture).
- Action on equivalent goods.
- Base for the initiation of an investigation in the requested (*notitia criminis*).



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Barriers to an effective I.C. on assets

- Dual Criminality.
- Lack of approval procedures (f.ex. Forfeiture).
- Incomplete orders of assistance.
- *Non bis in idem*.
- Volatility – dissipation of assets.

Bilateral Regional Context on Criminal Cooperation

	ARG.	BOL.	BRA.	COL.	C.RICA	CUBA	CHI.	ECU.	MEX.	PAN.	PAR.	PER.	URU.
ARG.													
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URU.													

X: Central-American Convention. X: Bilateral Treaty on on criminal mutual legal assistance. XX: Drug Treaty. XXX: In the framework of MERCOSUL.

I.C Guide Content

- Multilateral agreements – provisions on assets-.
- Bilateral Treaties.
 - ▶ Mutual Assistance in Criminal Matters.
 - ▶ Cooperation against Drug Trafficking.
 - ▶ Cooperation against Anti-Money Laundering.
- Answer of each country to the Gafisud questionnaire.
- Analysis scope of agreements and treaties.

Tab by Treaty

Name of the Treaty	Convention on Mutual Legal Assistance in Criminal Matters between the United Mexican States and the Republic of Peru. (2.002)
Scoop Assistance of	Running expert, seizures, forfeitures, freezing of assets, liens, and the identification or dection of the proceeds of the property and used in the commission of a crime, visual inspections and house searches.
Central Authority	<ul style="list-style-type: none"> •For Peru: Attorney General-Prosecutor's Office and the Judiciary. •For Mexico: Attorney General of the Republic.
Proceeds of Crime and forfeiture	The Article 17 provides that either party shall notify the other of the presence of the proceeds or instrumentalities of crime in its territory. The notified party shall take any action if necessary. Similarly establishes the possibility that the parties agree to split the assets subject to forfeiture or the proceeds of sale thereof, always and when there is an effective cooperation.
Assistance denial	<p>The application <u>may</u> be refused if the person against whom it comes in the Requesting Party has been tried for the same offense that led to the request. (3.1.d)</p> <p>The Article 2 stablishes that for the implementation of forfeitures, seizures, confiscation, freezing of assets, among other measures, assistance will only be provided if the act by which we proceed in the Requesting Party also scheduled offense under the law of the Requested Party.</p>



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Treaties Timeline

- Among the 31 reviewed bilateral treaties:
 - 16.1 % were signed between 1989 and 1995.
 - 51.6% were signed between 1996 and 2000.
 - 32.25% were signed after 2000



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Grounds of Refusal

● Grounds for refusal related to goods

- Dual criminality

- Non bis in idem

- Strict requirement of dual criminality and prohibition of non bis in idem: 9 (29%)

- Discretion to offer assistance: 11 (35.4%)

- Mixed: Discretionary to non bis in idem – strict to dual criminality: 7 (22.5%)



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Recomendaciones para una cooperación efectiva

- Approval of procedures or flexibility on mutual legal assistance on assets.
 - Recognition of interim and final orders on property without limitation dual criminality and non bis in idem.
 - To aid, to the extent possible, multilateral instruments, soft law mechanisms, or others, as legal basis.
 - To use the information from regional networks to structure evidence in judicial proceedings.
 - Agile Channels to exchange the information on real time.



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THANK YOU FOR YOUR ATTENTION!

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