



Seminar on Identifying, Restraining and Recovering  
Stolen Assets in the OSCE Region  
Vienna, 3 - 5 September 2012

## **The Arab Spring and the Recovery of Stolen Assets: First Lessons Learnt and Perspectives**

**Conclusions of the Practitioners' Workshop  
held in Lausanne/Switzerland, 23/24 January 2012**

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### Background

On 23/24 January 2012, a practitioners' workshop entitled "The Arab Spring and the Recovery of Stolen Assets: First Lessons Learnt and Perspectives" brought together in Lausanne/Switzerland approximately 40 experts from 15 countries on international mutual legal assistance (MLA) and the recovery of assets. Several representatives of inter-governmental organizations as well as of international organizations were also present. The workshop was the sixth seminar as part of the Lausanne Process launched by the Swiss Federal Department of Foreign Affairs (FDFA) in 2001 to promote a dialogue between States affected by corruption and recipient States of illicitly acquired assets.

The upheavals in the Arab world in 2011 have brought the discussion on the freezing, seizing and repatriation of illegally acquired assets attributed to politically exposed persons (PEPs) and their relatives and close business associates to the centre stage. Some financial centres responded rapidly to the developments in the Arab world by freezing assets in view of facilitating international mutual legal assistance proceedings with the States concerned. The States of origin initiated proceedings against members of their former governments and their cronies and submitted MLA requests to the recipient States.

One year after the beginning of the Arab Spring, the purpose of the workshop, structured in five panels, was to summarize the progress made so far and to identify challenges with a view to examine possible avenues for future action. By doing so, the focus was aimed on the main lessons learnt so far in relation with the general conduct of the ongoing legal procedures. At the outset of the workshop, it was explicitly stated that any details of the ongoing procedures could not be discussed. Centered on the concrete experiences made by requesting and requested States in the wake of the events in Northern Africa, the panels allowed large room for the representatives from Egypt, Libya and Tunisia to voice their observations and concerns, followed by remarks from requested States and third actors and an in-depth discussion. Furthermore, the workshop also served as a platform to strengthen contacts between the actors involved in the current asset recovery cases, be they representatives of governments, of inter-governmental or of other international organizations.

## Key Findings of the Experts' Deliberations

The participants expressed their firm determination to best support and accelerate the pending procedures to recover illegal assets attributed to PEPs from the former Mubarak and Ben Ali regimes. While acknowledging the existence and possible added value of international sanctions and/or domestic criminal investigations led in requested States including the possibility for States of origin of assets to mandate law firms in the requested States and constitute themselves as party in these criminal investigations, they agreed that international cooperation through **MLA remains the prime vehicle** to achieve the recovery of such assets.

The experts furthermore agreed that the legal framework for asset recovery through international MLA exists, both at the national and international (bi- and multilateral MLA treaties, chapter V of the United Nations Convention against Corruption UNCAC) level. They found that there is no need for the creation of new legal norms, but rather for a more effective implementation of existing norms. More concretely, the experts considered that in order to address current issues with regard to asset recovery, one of the main questions is how to best make **a dynamic use of the legal framework**, which by nature is rather static.

Such a dynamic use necessarily implies to foster a **proactive approach** and to actively seek, within the existing legal framework, **creative and innovative solutions**. The experts concluded that this goal could only be achieved by building a **close partnership, based on trust and dialogue**, between requesting and requested States. Indeed, as the term "mutual" implies, MLA procedures cannot be successfully achieved by the requesting or the requested State alone. In this regard, the participants also highlighted the importance of institutionalized **communication channels** between requesting and requested States.

As an example, the workshop revealed that one requesting State has sent out dozens of MLA Requests, which, with the exception of one country, have all been refused without giving any reasons or remained unanswered.

An issue addressed repeatedly by both requesting and requested States was the challenge how to gather the necessary information to successfully build a case. The discussions showed that a considerable amount of intelligence exists, but that it is frequently dispersed between various actors in different jurisdictions. Participants hence stressed the **paramount importance of effective coordination**, both at the international and domestic level. They expressed their will to actively search for means to improve coordination mechanisms with a view to make available more rapidly and effectively the relevant information to the partners involved. Such an approach could not only contribute to significantly increase the speed and advancement of MLA procedures in general, but also respond to the concern voiced by several participants from both requesting and requested States that not all suspicious assets may have been located yet.

Finally, there was consensus on the **importance of a complementary approach** which combines the various tools at disposal, thus not limiting efforts to MLA proceedings, but if

possible, also instigating domestic criminal proceedings (e.g. for money laundering or for participation in a criminal organization), envisaging civil forfeiture, etc. Based on their experience gained in major cases in the past, several participants stressed the need to customize an approach which best fits the concrete case, recognizing that in asset recovery, there are no “one size fits all” solutions. With regard to the pending cases, for example, the obstacles to overcome with a view to recover illicit assets to Libya will be quite different from the Egyptian and Tunisian case, due to the existence of a sanctions regime put in place by the United Nations Security Council. Bearing in mind these elements, participants again highlighted the need to look for innovative solutions, recalling the fact that most major asset recovery cases in the past had showed the need to think outside the box to achieve tangible and effective results.

### Conclusions and Concrete Possibilities for Future Action

Based on their discussions, the participants to the workshop identified concrete possibilities for future action. The following recommendations can be grouped according to the main challenges addressed during participants’ discussions, namely the need for a solid partnership between requesting and requested States, the crucial importance of effective coordination among the actors involved and the need for a complementary approach.

Building and deepening effective MLA partnerships based on dialogue and trust between requesting and requested States

The following concrete possibilities for future action were identified and recommended:

- Increasing trust and mutual understanding by building personal relationships between the competent actors/individuals in requesting and requested States
- Increasing dialogue through institutionalized communication channels, e.g. regular meetings between experts of both sides, to directly address open issues and ensure a consequent follow-up to pending procedures
- Ensuring continuity of the competent actors/individuals by avoiding “wandering files”
- Improving the quality of communication, e.g.: no MLA request remains unanswered; if not all formal requirements are met or other problems exist from the point of view of the requested State, the requesting State is rapidly informed
- Deepening the partnership between requesting and requested State through the joint determination of possible fields for technical cooperation, e.g. by dispatching MLA experts from the requested State

Improving coordination mechanisms, both at international and domestic levels, with a view to make relevant information more rapidly and effectively available

The following concrete possibilities for future action were identified and recommended:

- Improving coordination at domestic level, e.g. through creating focal points and/or task forces in charge of pending asset recovery cases, with clearly attributed responsibilities for each task force member
- Using more consequently existing international practitioners' networks, e.g. in the framework of Interpol, Eurojust, Egmont, etc., to increase the flow of necessary information
- If needed, creating new, tailor-made networks and communication platforms / international task forces to share information more effectively
- Exploring ways how to increase cooperation with financial intelligence units (FIUs) with a view to exploit more effectively the information and intelligence available in FIU networks to build cases
- Collecting facts on ongoing measures of financial centres to support the requesting States, e.g. developing a matrix of assets frozen, seized and finally repatriated by (and for) each State in question.

Customizing the approach which best fits the concrete case, with particular attention to creativity and complementarity

The following concrete possibilities for future action were identified and recommended:

- Combining the various instruments at disposal, such as MLA proceedings, domestic criminal proceedings (e.g. for money laundering or for participation in a criminal organization) and civil forfeiture
- Within the existing legal framework, making use of own MLA requests in order to substantiate partner countries' MLA requests by providing relevant information
- Increasing cooperation with third actors such as the World Bank / StAR, UNODC, nongovernmental service providers such as ICAR, etc., bearing in mind the important role they can play in capacity building, but also as "matchmakers" to bridge information gaps
- Exploring the possibility of establishing international standard practices in MLA proceedings and asset recovery as a blueprint for action in current and upcoming cases (typical sequencing, main legal challenges to be addressed, etc.)
- Actively searching for innovative and creative solutions, bearing in mind that in asset recovery, there are no "one size fits all" solutions

## Follow-Up

Participants concluded their discussions by expressing the wish for a follow-up, in a similar setup, on the question of asset recovery in the context of the Arab Spring, to take stock of progress and to keep the momentum launched at the seminar. They expressed their appreciation for the Lausanne VI seminar, in particular the fact that since the seminar was not focused on one case exclusively, it served in a very fruitful way as a platform to address similar questions raised with regard to asset recovery in the context of the Arab Spring, thus fostering very useful exchange and “cross-fertilizing”.

Hence, one possible approach could consist in holding another Lausanne seminar (Lausanne VII) in the near future to deepen the discussions on the pending procedures in the context of the Arab Spring. Another option would be to convene an ad-hoc meeting of multi-stakeholder experts to discuss standard practices in MLA proceedings and asset recovery as a blueprint for action in current and upcoming cases (cf. “Conclusions and Concrete Possibilities for Future Action”). Indeed, participants felt that such standard practices could be a very valuable tool to speed up MLA proceedings and to make them easier to handle, while at the same time contributing very concretely to increasing dialogue and trust between requested and requesting States.