

Report of the Second Session of the Arab Forum on Asset Recovery



Marrakesh, 26-28 October 2013

A. Opening Session

This session was chaired by H.E. Mr. Mohamed Louafa (Morocco) and featured remarks by H.E. Mr. Abdellah Baha (Morocco), H.E. Mr. Dominic Grieve (U.K.), H.E. Dr. Ali Bin Fetais Al Marri (Qatar), and Mr. Gerard A. Byam (World Bank), as well as video messages by The Right Honorable David Cameron (U.K.) and H.E. Yuri Fedotov (UNODC).

1. High level participants expressed their appreciation to the Kingdom of Morocco for hosting the Second Meeting of the Arab Forum and reiterated their strong support for the Arab Forum process on asset recovery.
2. Speakers stressed the continuing need for Arab countries in transition to build open societies governed by the rule of law and where citizens could hold their governments to account. The creation of solid institutions, easy access to information and participation of civil society were indicated as essential elements of good governance. Citizens should participate in shaping their future and improving their lives.
3. Speakers underscored that corruption was a global problem requiring a global response. In this context, the combined efforts by the international community to recover stolen assets and return them to the Arab countries in transition were a powerful signal underscoring the global commitment to end impunity and to create a powerful deterrent for the future.
4. It was recognized that asset recovery was a lengthy and complex legal process. The path ahead would require dedicated and painstaking efforts, close collaboration between requesting and requested countries combined with strong political will. Speakers acknowledged the critical role of this Second Meeting of the Arab Forum to allow all partner countries to take stock of the progress made since the launch of the Forum in 2012. The past year had shown the need to be diligent in collecting evidence, in ensuring strong domestic mobilization and cooperation in both requested and requesting countries and in improving pre-mutual legal assistance (pre-MLA) consultations and cooperation. It had also become evident that there was an urgent need to manage expectations given the complex nature of tracing, recovering and returning assets. Speakers emphasized that while the path ahead was still fraught with difficulties, it was important to not lose sight of the imperative to act.

B. Session I – Ministerial Segment

This session was chaired by H.E. Mr. Mohamed Louafa (Morocco) and featured remarks by H.E. Mr. Mustafa Ramid (Morocco), H.E. Dr. Ali Bin Fetais Al Marri (Qatar/UN Special Advocate on Asset

Recovery), H.E. Mr. Adel Abdel-Hamid (Egypt), The Honorable Mark J. Pettingill JP MP (Bermuda), The Honorable Gilbert Licudi (Gibraltar), H.E. Mr. Veysi Kaynak (Turkey), Mr. Ali Ehfeeda (Libya) and Mr. Hazzaa Al-Yousefi (Yemen).

5. Speakers welcomed the Second Meeting of the Arab Forum as an opportunity for knowledge sharing, learning about best practices and continued cooperation among the participating countries on individual cases. They commended the United Nations Office on Drugs and Crime and the World Bank for their assistance, through the StAR initiative, in reviewing progress and helping countries in developing new measures, approaches and tools for asset recovery, including identifying legislative gaps as well as enhancing bilateral discussions between the requesting and requested countries. Overall, the Forum underscored the importance of solidarity and the development of international and regional mechanisms in advancing the return of assets to the Arab countries in transition.

6. Speakers from the transition countries concurred that there was a need for employing better strategies, learning from successful experiences as well as failures, and expanding capacity building efforts. They suggested that relying on the traditional avenues of international cooperation in criminal matters was insufficient and emphasized the need for more innovative and flexible approaches to work jointly with transition countries in meeting the legal requirements of requested countries.

7. Several speakers from financial centers emphasized the steps they had taken during past years towards enhancing their legal, institutional and operational capacities to prevent abuse of their financial systems for money laundering and terrorist financing. Among others, efforts included updating their anti-money laundering laws, updating “know your customer” rules, undertaking national money laundering and terrorist financing risk assessments, and introducing measures aimed at facilitating international cooperation for the purpose of tracing, freezing, and forfeiting the proceeds of crime. They stressed that asset recovery demanded more than political will. The cornerstone for successful cooperation in the recovery of assets is satisfying the evidentiary threshold required by national laws and courts.

8. All speakers underscored the importance of domestic coordination as a key factor for collecting evidence and building successful cases. They highlighted the need to identify a single competent domestic authority that would lead and coordinate the overall asset recovery process and be the main point of contact for international cooperation.

9. Finally, several speakers felt that better use should be made of the United Nations Convention against Corruption (UNCAC). At present, too many countries continue to insist on the use of bilateral Mutual Legal Assistance (MLA) treaties, even when such treaties do not contain specific provisions regulating the recovery of assets.

C. Session II – Overview on progress

This session was chaired by Dr. Mohamed Barakat (Egypt) and featured presentations by Mr. Dominic Martin (G8 Presidency 2013, UK), Mr. Jean Pesme (StAR) and Ambassador Vladimir Tarabrin, (G20 Presidency 2013, Russia.)

10. The G8 presidency provided an overview of activities carried out by G8 members to facilitate the implementation of the Deauville Action Plan on asset recovery. The presidency drew attention to the

roadmaps published by each of the G8 countries outlining their respective progress and intended future actions to meet the commitments undertaken (<http://star.worldbank.org/star/node/283>). Several G8 countries focused on improving domestic coordination and enhancing their capacity to carry out financial investigations in partnership with requesting countries. A number of countries had reported on proactive approaches taken, including the opening of their own domestic investigations, prioritizing requests coming from the Arab countries in transition, the opening of joint investigations as well as the reorganization of their institutional set-up dedicated to international cooperation in support of asset recovery. Furthermore, several G8 countries had modified or were in the process of considering amendments to their legal framework, in particular, with a view to lowering the evidentiary requirements for the freezing and confiscation of assets. Another useful initiative had been the production of asset recovery guides by the G8 countries, including Switzerland and Jersey (<http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery-0>). While recognizing that capacity building was not a substitute for successful asset recovery, the G8 presidency emphasized that a considerable amount of bilateral and multilateral technical assistance, including specialized training workshops and the placement of advisors within requesting countries, had taken place over the course of the year. In this context, it was proposed that Arab countries in transition develop their own capacity building needs assessment and plans in the area of asset recovery, with a view to identifying priority areas where technical assistance is needed. Moreover, since bringing together practitioners on a regular basis in the context of the Arab Forum and its various Special Sessions to discuss progress on cases had been effective, there was a suggestion to further expand such opportunities through the creation of a specialized network for asset recovery to allow more frequent and direct peer to peer engagement among practitioners from the MENA region and their colleagues from the financial centers.

11. StAR provided an overview of the activities carried out during the past year under the framework of the Arab Forum to address the core challenges to asset recovery that had been identified by the first meeting of the Arab Forum on Asset Recovery, – including:

Special Session I held at the Center for Rule of Law and Anti-Corruption, Qatar from April 02 to 04, 2013 focused on domestic coordination of asset recovery efforts and how to put into practice the asset recovery guides produced by the G8 countries and Switzerland.

Special Session II held in Sharm el Sheikh, Egypt from June 11 to 13, 2013 focused on how to conduct effective financial investigations to achieve successful asset recovery.

Special Session III held in London, UK from September 03 to 04, 2013 focused on the role of civil society in asset recovery. The session also included a media briefing of the Arab Forum.

Further information on the Special Sessions is available at <http://star.worldbank.org/star/ArabForum/special-sessions>.

12. Despite overall progress, domestic coordination remained a challenge in some of the transition countries. In several instances, it was still unclear who was in charge of coordinating the overall asset recovery effort domestically, and engaging with relevant counterparts internationally. Moreover, although financial investigation capacities have improved, it was pointed out that there is still a need to improve skills and access to relevant investigative tools with a view to enhancing the ability of investigators to create the evidentiary link between assets, individual targets and alleged offences. On a positive note, StAR indicated that pre-MLA cooperation is being used more frequently and, as a result, the quality of

MLA requests has improved. More financial centers have started to open their own domestic investigations for money laundering and related offences, though clearly this approach could be further expanded. Finally, Special Session III of the Arab Forum on Asset Recovery, held in September 2013 in London, provided a unique opportunity to engage with civil society to jointly explore its potential role in asset recovery. Drawing on internationally available experience, the event had provided CSOs from the MENA region a menu of options on how they might become constructively engaged in support of their respective Governments' efforts to recover assets. This initiative should be further followed up by Governments and civil society at country level. In conclusion, StAR highlighted areas for further action:

- Financial centers should explore more systematically the option of pro-actively opening their own domestic cases for money laundering and related offences;
- There is a need to further expand both bilateral and multilateral channels of communications in particular between practitioners working on interrelated cases across countries;
- Take advantage of existing channels for pre-MLA cooperation, such as Egmont and Interpol or other practitioners' networks;
- Transition countries should review and report on their own progress made against the Deauville action plan with a view to identifying implementation gaps as well as needs for capacity building;
- While the significant increase in bilateral case discussions is one of the key achievements of the Arab Forum, countries should more diligently ensure follow-up to such discussions outside of the formal AFAR meetings;
- Transition countries should consider preparing their own asset recovery guides providing their colleagues in the financial centers a better understanding of their legal and institutional set-up for asset recovery;
- All countries should contribute and make use of the AFAR website as a repository of information and tools on asset recovery.

13. The G20 presidency reported on the work of the G20 Anti-Corruption Working Group. The anti-corruption agenda had been prioritized by the G20 with a special emphasis on economic growth. With the support of the OECD, a study on the interconnectivity between corruption and growth had been produced and shared with G20 members for further consideration. The G20 also adopted guiding principles on enforcement of foreign bribery offenses, as well as on MLA and asset recovery, and conducted a benchmarking exercise among its members against these principles. Moreover, the G20 had finalized a model agreement for information sharing for the purpose of denying entry to corrupt officials into their countries and had established a contact list of national experts to enhance cooperation in this area. The group had also completed a mapping exercise of international requirements relating to beneficial ownership, and agreed that the Anti-Corruption Working Group would continue to work on this issue in 2014. The G20 continued to promote integrity in public procurement by compiling best practices in mitigating corruption risks in public contracting, privatization, and the extractives industries.

D. Session III – Progress Made on Asset Recovery to Arab Countries in Transition

This session was chaired by Mr. Robert Leventhal (U.S.) and featured presentations by Mr. Adel Fahmy (Egypt), Alexandra Vaillant (France), Dr. Ralf Riegel (Germany), Col. Tommaso Solazzo (Italy), Ms. Arlette Jreissati (Lebanon), Dr. Abdalla Kablan (Libya), Ms. Susanne Kuster (Switzerland), Mr. Boulbaba Othmani (Tunisia), Mr. Jonathan Benton (U.K.), and Ms. Nancy Langston (U.S.).

14. Several countries reported on successes in their asset recovery efforts, including the freezing as well as, to a lesser extent, the return of assets to the transition countries. One country described the different steps it followed to achieve the successful confiscation and return of property, which included (1) an efficient pre-MLA phase, (2) a formal MLA request that contained several listed crimes, including money laundering, (3) a letter rogatory for the recovery of the specific asset, and (4) a bilateral mutual legal assistance agreement which enabled a broad range of assistance.

15. Participants acknowledged the positive impact of numerous technical assistance programs provided by international organizations and financial center countries. These programs had focused on financial investigations, asset tracing, drafting MLA requests, analysis of bank records as well as investigating complex corporate structures. Likewise, progress has been made by deploying financial and legal experts to assist authorities in transition countries in their investigations of stolen assets.

16. Transition countries expressed some frustration with the process of seeking mutual legal assistance from financial centers. Acknowledging that asset recovery cases were inherently complex and time consuming, participants were concerned that the process remained too slow and technically too burdensome for the transition countries. Financial centers emphasized that certain information had to be provided in order to comply with their domestic legal requirements for mutual legal assistance as well as for meeting the threshold to commence a domestic investigation for money laundering or related offences. For instance it was mentioned that transition countries should make greater efforts to provide their counterparts in the financial centers with leads beyond just names and dates of birth, such as bank account numbers, phone numbers and other personal identifiers, as well as indications on the nexus between the funds traced and the offences allegedly committed in the requested country.

17. Both transition countries and financial centers discussed progress made in domestic coordination. It was described as a “whole of government approach” with the objective of bringing various agencies and departments together to focus on all the different aspects of asset recovery. Participants further identified a number of crucial building blocks of an effective domestic asset recovery system, including a dedicated financial investigation capacity, a legal framework allowing for criminal, or non-conviction based approaches to seizure and confiscation of the proceeds of crime, as well as specialized database and data-mining tools to support asset tracing and financial investigations. The challenge of transliteration of names from Arabic was acknowledged by both transition and financial center countries as an impediment in the asset recovery process. A step toward addressing this issue had been made by the G-8 through developing related principles for effective transliteration and related implementation measures.

18. Several countries discussed the need to encourage more active participation by civil society organizations in asset recovery issues, for example through the introduction of a specific legal framework allowing for the involvement of civil society, in the management of recovered assets. Along those lines, the discussion also touched upon efforts to increase transparency by publishing statistics annually about all asset seizures and confiscations.

19. Participants also stressed the importance of adopting preventive measures aimed at building transparent and accountable governance systems in the Arab countries in transition to help safeguard against corruption and the mismanagement of public finances. Examples included the design and establishment of functional systems for income and asset declaration by public officials, in particular for individuals entrusted with prominent public functions, their family members and close associates.

E. Session IV – Asset Recovery Networks

This session was chaired by Mr. Mohammed Benalilou, Judge and Advisor of the Minister of Justice and Liberties (Morocco) and featured presentations by Mr. Frederic Raffray (Camden Asset Recovery Interagency Network, CARIN) and Mr. Juan Cruz Ponce (Red de Recuperacion de Activos de GAFISUD, RRAG).

20. The representatives of CARIN and RRAG presented their respective experience in establishing functional regional asset recovery practitioner networks creating a platform for the exchange of good practices, the provision of mutual support and peer learning, the advancement of case related dialogue and pre-MLA cooperation, and IT systems providing for secure channels to transmit confidential information. Experience indicates that informality rather than formality facilitates the direct cooperation among practitioners working on related asset recovery cases. Such networks help to shorten MLA processes, increase the likelihood, speed and quality of responses to formal and pre-MLA requests, and ultimately encourage improvements to the legal, institutional and operational mechanisms of the individual countries participating in such networks. Moreover, the success of existing networks were said to be closely connected to an independent, properly functioning and sufficiently budgeted secretariat as well as the adoption of a common working language. In light of the high demand for the recovery of stolen assets in several countries in the region, the chair proposed for participants to consider whether the establishment of a similar network for the Arab region would constitute a viable option. Alternatively, they might wish to consider whether joining an existing network may help to address the apparent need for strengthening the networking among practitioners.

F. Session V – Role of Civil Society Organizations in Asset Recovery

This session was chaired by Mr. Abdeslam Aboudrar (Morocco) and featured presentations by Ambassador Dr. Muhyieddeen Shaaban Touq (Rapporteur of Special Session III) and Ms. Gretta Fenner (International Center for Asset Recovery, ICAR).

21. The rapporteur of Special Session III of the Arab Forum on Asset Recovery on the role of civil society in asset recovery provided his report on the main outcomes of the event. Special Session III brought together representatives of civil society and governments to explore how civil society can engage in asset recovery efforts and identified several areas in which CSOs could become engaged in supporting the asset recovery efforts of their respective Governments. From the discussion at Special Session III, it became evident that while there was quite some scope for cooperation between Governments and CSOs, at present this opportunity was not sufficiently exploited. The rapporteur therefore emphasized that there was a need for both Governments and CSOs to work more closely and constructively together on issues of stolen asset tracing and recovery and called on Governments to ensure follow-up to Special Session III by organizing similar encounters at the domestic level.

22. While recognizing that asset recovery was primarily a task for governments, the representative of ICAR stressed the complementary role that civil society can play in areas of awareness raising, the management of public expectations, research, advocacy, case related and legal work, as well as in the management of returned assets. ICAR in cooperation with a large group of stakeholders, including international and civil society organizations, and government representatives, developed a guide to

provide CSOs in the MENA region with an overview and practical information on available approaches, tools and resources on how they could become engaged more actively in the asset recovery agenda.

G. Work Stream 1 for Investigators, Forensic Auditors and Financial Intelligence Unit (FIU) Staff

The work stream was moderated by Mr. Kevin Stephenson (Egmont) and Judge Mohamed Askri (Tunisia).

23. Participants focused their thematic discussions on ways to tackle the pertinent challenges encountered in asset tracing, including through the creation of a network of asset recovery practitioners in the Middle East and North Africa region. Participants acknowledged that they continue to face difficulties in tracing stolen assets. Following the money trail in financial investigations proved to be especially challenging in cases where assets had been diverted decades ago, passed through multiple jurisdictions, hidden behind complex corporate structures or changed form and ownership several times over. In the context of these multi-jurisdictional cases, participants discussed the problems in obtaining information and evidence from other jurisdictions. They emphasized the need to develop a shared understanding of the distinction between ‘intelligence’ and ‘evidence’ and the use of either in support of ongoing investigations as well as court proceedings. Several participants felt that asset tracing should be considered as a shared responsibility. It was underlined that one option for sharing responsibility could be to adopt a joint task force approach.

24. Participants were eager to identify ways to improve the relationships between counterparts in different jurisdictions. They agreed that it was necessary to maintain open channels of communication and arrange for regular meetings among practitioners in order to build personal relationships and trust between counterparts. Participants deliberated the use of pre-existing platforms to encourage and assist in this information sharing process, such as the EGMONT secure web platform as well as the communication platform created in support of the StAR-INTERPOL Global Asset Recovery Focal Point Network.

25. Recalling the presentations made by the representatives of CARIN and RRAG during Session IV, participants discussed the viability and need for establishing an asset recovery network for the MENA region similar to networks existing in other regions. Such a network was considered useful by some participants with a view to promoting information sharing and establishing focal points in each jurisdiction in order to facilitate rapid advice or assistance. Some participants expressed concerns about how such a network would fit with countries’ existing legal frameworks in terms of information sharing at the international level. It was stressed that pre-MLA information sharing was designed to determine the most efficient and effective channel to obtain certain information and/or assistance and to ensure that, if required, MLA requests would meet the legal requirements of the requested country. Finally, some participants raised the importance of including practitioners from the financial centers in other regions, in particular the G-8 countries, in such a network. Participants agreed that, in moving forward, it was necessary to engage interested countries in a more in-depth debate on the possible functions of such a network: how it would work in practice, where it could be based and who might wish to champion it.

H. Work Stream 2 for Prosecutors, Investigative Judges and Lawyers in Central Authorities

The work stream was moderated by Mr. Daniel Claman (U.S.) and Judge Hatem Aly (UNODC).

The Need for Good Practices on Transliteration

26. Participants discussed the issue of transliterating names from Arabic to other languages, not using the Arabic script. They acknowledged that transliteration was still a challenge and that misspellings or multiple spelling options on occasion had complicated investigative efforts in the requested State. The need for good practices on transliteration had already been raised at the First Meeting of the Arab Forum on Asset Recovery in Doha, when several countries reported challenges concerning the proper identification of investigative targets based on information contained in MLA requests. The problem of transliteration was exacerbated when MLA requests targeted multiple suspects, the name of each of whom might be susceptible to several spelling versions. Therefore, it was critical for a successful identification of the target in question that investigative authorities had the information that allowed them to look beyond names and aliases. The importance of numerical identifiers was emphasized,¹ including dates of birth, dates of issue/expiry of passports as well as information relating to travel, bank accounts etc.

27. Under the G8 framework, the U.S. had conducted further analysis of the process of transliterating names from Arabic into languages using different scripts. Based on this analysis, it drew up five core transliteration principles ("Transliteration Principles–General Guidelines for G8 Country Implementation and U.S.-Specific Recommendations").² The three principles seek to provide financial institutions as well as law enforcement, prosecutorial and central authorities with a variety of sources of information to enhance their capacity of accurately identifying account holders, beneficial owners as well as suspects under investigation. In particular, the principles recommend that the requested countries ensure that they:

- request a copy of all MLAs or other asset recovery-related documents in their original language [e.g. copies of passports, documents containing the Arabic spelling of names], as well as in the requested country's language;
- always work to provide their financial institutions with the best identifiers possible to facilitate the identification of "false positives" in the context of carrying out customer due diligence procedures;
- enact applicable laws/regulations/policies to allow for non-exhaustive variant spellings of transliterated names to be provided in all relevant communications with financial institutions; and that their financial institutions:
 - use only transliterated names as printed on official documents (i.e., passports, visas);
 - capture, whenever possible, the original spellings (i.e., the spellings in the original language) of their foreign customers' names.

Pursuing Domestic Cases in the Arab Countries in Transition and in Financial Centers

28. Participants concurred that UNCAC, due to its almost universal applicability and comprehensive nature, represented a giant leap forward in international cooperation in criminal matters. It thus should be

¹ Numerical identifiers are also used in identifying suspects for the purposes of issuing an INTERPOL red notice.

² Copies of the Transliteration Principles document were handed out to the participants during this work stream discussion.

used more rigorously by countries to further unify and homogenize investigative procedures and approaches. It also provided a platform for technical cooperation, including for transition countries to call on the expertise of requested countries in assisting building their respective institutional and operational asset recovery capacities. Participants also raised the point that, in addition to UNCAC, transition countries could use the UN Convention against Transnational Organized Crime as a basis for seeking mutual legal assistance for the purpose of freezing, confiscating and returning stolen assets.

29. Several participants felt that the greatest challenges in asset recovery concerned providing sufficient evidence showing that the identified assets were proceeds of a crime. They emphasized there was a need for closer cooperation between the law enforcement authorities of different countries, as well as the need for greater flexibility in the enforcement of foreign freezing and confiscation orders. Other recurring problems are related to immunities enjoyed by some of the targets of investigations. However in this context, some participants pointed out that due to the international nature of most large scale asset recovery cases, there was often the possibility to provide evidence to any of the other concerned jurisdictions with a view to launching an investigation there.

30. Finally, some participants raised difficulties relating to the relative inexperience of many judges in dealing with asset recovery and felt that the establishment of a network of judges for the purpose of exchanging good practices and learning from each other about relevant developments in law and jurisprudence might help to advance the overall asset recovery effort.

Improving Mutual Legal Assistance (MLA)

31. The discussions centered on the importance of the pre-MLA stage which is often not given due consideration. Participants from the financial centers emphasized that most of the MLA requests they received came at the beginning of an investigation in the transition countries and without any prior consultation. Conversely, it was indicated that these requests should come at the later stages of an investigation, after sufficient evidence had been collected and once the authorities in the requesting and requested country have consulted on the content and form of the request. Some participants also underscored the importance of checking outgoing MLA requests for the accuracy of information contained therein (e.g. names of suspects and all possible spelling variations thereof). Moreover, some participants mentioned that judicial authorities in the transition countries were not always aware that the language used in formulating their domestic judicial decisions may have implications for the chances of success of related MLA requests. It was recommended that authorities in the transition countries would communicate informally with their counterparts in the financial centers during the investigation stage in order to make sure that both their domestic procedures and their related MLA requests comply with the requirements of the financial centers. Some participants also warned that the receipt of an MLA request may hinder or halt parallel investigations in the requested country because its domestic law required relevant authorities to give priority to the execution of MLA requests.

32. Furthermore, it was emphasized that MLA requests are primarily necessary when countries seek to obtain evidence. In some countries, information such as bank or business records may need a court-compelled production of documents, which would also require the receipt of a MLA request. However, MLA requests are not always necessary. This is particularly true when authorities in the requesting country are only seeking to obtain intelligence. The latter, in many cases, might be more expeditiously

and effectively collected via alternative avenues for information sharing, such as police to police, or FIU to FIU channels.

33. Finally, a number of participants expressed their concerns about the lack of timeliness in receiving responses to MLA requests. One option to address this challenge is to send the request directly from central authority to central authority, rather than going through the traditional diplomatic channels which may delay the process.

I. Work Stream 3 for Policy Makers, Legal Draftspersons, Staff of Foreign Affairs and Technical Assistance Providers

The work stream was moderated by Mr. Dominic Martin (G8 Presidency 2013, U.K.) and Ms. Greta Fenner (ICAR).

34. Participants discussed how to design and implement effective asset recovery strategies, including how to set up effective domestic coordination mechanisms and establish specialized task forces dedicated to the recovery of assets. Several participants stressed that even where countries had been successful in recovering some of the assets stolen by previous regimes, domestic coordination remained a challenge. They concurred that it was crucial for all domestic players to agree on shared priorities and to commit to a common strategy with a view to ensuring a coherent and consistent approach to the selection of targets, intelligence gathering, investigations, and pre-MLA cooperation as well as the preparation of MLA requests.

35. Participants underscored the need for building safer, stronger and faster communication channels between asset recovery practitioners with a view to enabling them to understand each other's legal systems, inquiring about specific legal and procedural requirements when requesting MLA and for sharing sensitive information about cases. Participants discussed, in this context, the viability of asset recovery practitioner networks (such as CARIN for example) in providing for such communication channels and in helping to establish the necessary working relationships and confidence among prosecutors and investigators working on asset recovery related cases. While some participants, in particular those already participating in such networks, were convinced of their positive contribution to cooperation among practitioners, others were more skeptical. In particular, when the proposal for the creation of a MENA asset recovery network was debated, some participants were not sure on how such a network would integrate with their respective domestic legal frameworks while others doubted the value of creating a network which would not also include practitioners from the financial centers outside the region, in particular the G8 countries.

36. The effective management of recovered assets was another topic of discussion. While several participants stressed the need to start planning for and create the necessary mechanism for the management of returned assets, others, in particular the participants from the transitions countries, felt that this debate was premature as with a few exceptions they had not even reached the first step – that is the recovery of stolen assets. Participants, however, concurred that transparency and accountability in the management of returned assets were paramount.

37. The last topic of discussion centered around the different nature of the traditional criminal justice as well as non-conviction based freezing orders, on the one hand, and administrative freezing orders on

the other (the latter of which has been issued by countries under diverse legal regimes). In the case of Libya, countries had adopted administrative freezes pursuant to UN Security Council Resolution 1970. Moreover, countries of the European Union had issued such freezing orders in execution of legal orders of the European Union. Finally, some countries (e.g. Canada and Switzerland) had legislation allowing them to administratively freeze all assets held by individual members of the past regimes in the transition countries, their associates or companies.

38. The representatives of the UN Libya Panel of Experts (UNSCR 1970) and of the Security Policy and Sanctions Division of the European External Action Service (EEAS) of the EU provided participants with a detailed overview of the legal nature and purposes of the asset freezes which had been issued subsequent to UN Security Council Resolution 1970 and EEAS legal acts. While the former had been adopted by the UNSC under Chapter VII as a measure to end the armed conflict in Libya, the latter were foreign policy instruments of the EU and as such had been adopted to prevent the members of the former regimes in Tunisia, Libya and Egypt to interfere with the political transition processes ongoing in these countries.

39. As relates to the administrative freezes issued subsequent to EU decisions, it was clarified that the EU had no competence for the confiscation and repatriation of these frozen funds. This was a competence of EU Member States and subject to relevant national proceedings. Thus EU legislation could therefore not specify, for example, how such administrative freezing orders should interact with parallel procedures for criminal or non-conviction based forfeiture nor could they specify whether and whom to inform in the countries seeking the recovery of such assets, their locations, amounts, beneficial owners, etc. As a result, transition countries might not necessarily become aware of the assets frozen in execution of such legal acts. Furthermore, the EU legal acts did not require the authorities of the issuing country to start investigating into the origin of the assets, nor did they require EU member states to inform transition countries of any procedures initiated by the respective owners of the assets for the de-freezing of such assets. However, new confidentiality rules have been brought in, enabling EU member states to share information about frozen assets, in accordance with their national law. It was also mentioned that the respective EU legal acts ordering such freezes were temporary in nature and were reviewed on an annual basis with a view to determine whether the conditions for their issuing continued to persist.

40. Administrative freezes issued based on UN Security Council Resolution 1970 against members of the former regime in Libya were also temporary in nature, though there was no specific deadline for their expiry. Thus, also in this case, the Libyan authorities are required to either prove ownership by the Libyan State or produce sufficient evidence to meet the threshold for a criminal or non-conviction based freezing as well as confiscation orders, and to initiate the mutual legal assistance procedures in order to achieve their recovery and return or alternatively pursue the recovery through civil litigation. Different though from the other forms of administrative freezes, once the civil or criminal procedures for the recovery of the respective assets had been concluded, there was a need for the UN Libya Panel of Experts to allow for the lifting of the administrative freezing order against the individual assets to be returned.

41. Only the administrative freezes adopted by individual countries, such as Switzerland and Canada, had been issued with the clear objective of securing the assets temporarily to provide the transition countries with the opportunity and time to launch investigations and initiate mutual legal assistance procedures for the freezing and recovery of any assets which could be proven to be the proceeds of corruption and related offences.

42. In conclusion, it was stated that administrative asset freezes may not be considered, in any way, as an indication of the culpability of the targeted individual or entity or of the illicit nature of the assets. As all administrative freezes were temporary in nature – even though they did not all have a specific predetermined time limit - transition countries should, therefore, prioritize prosecuting the alleged offenders, collecting, in cooperation with the financial centers, the necessary evidence to demonstrate the link between individual offences and the assets frozen and initiating, in close consultation with their counterparts in the financial centers, MLA procedures for the recovery of these assets.

J. Special Event - Beneficial Ownership: State of Play, Challenges and Policy Implications

This special event was moderated by Mr. Emile van der Does de Willebois (StAR) and featured interventions by Ms. Habiba Ben Salem (Tunisian FIU), Mr. Daniel Thelesklaf (Liechtenstein FIU), Mr. Thomas Iverson (US Treasury), Mr. Dominic Martin (G8 Presidency 2013, UK) and Mr. David Burns (private banking and corporate service professional, based in London)

43. Participants acknowledged that with a continuously growing sophistication and complexity of corporate structures, investigative authorities were becoming increasingly stymied in their efforts to establish the true identity of the natural owner ('beneficial owner') of assets and had difficulties in getting information from other countries under whose laws such entities were incorporated. Against this background, participants welcomed the emergence of new global standards on access to beneficial ownership information complementing the FATF standards. In 2013, G8 countries took action to address the opacity of company ownership by committing to ensure beneficial ownership information on companies formed within their jurisdiction was collected and could be accessed by law enforcement and tax authorities. The G20 is also undertaking action on beneficial ownership.

44. The effective implementation of international standards to tackle beneficial ownership was essential, and required coordination between the governments creating the standards, the financial institutions implementing them and the supervisors regulating them. Participants felt that implementing relevant standards should not simply be a box ticking exercise, but should provide for powerful obligations to ensure that financial institutions and trust and company service providers (TCSP) always know who their clients were and who the ultimate beneficial owner of a corporate structure was. While acknowledging the challenges associated with obtaining beneficial ownership information, especially as contained in corporate registries or collected by trust and company service providers, participants pointed out the importance of broadening the scope of information gathering as well as the access to such information. Indeed, it was indicated that information contained in corporate registries were not sufficient to achieve successful investigation and that the robustness of customer due diligence obligations by service providers was essential. In the private sector, credit search standards needed to be improved, and global institutions which have not changed in years needed to improve their practices of conducting due diligence. In accepting a client, financial institutions needed to be responsible for ensuring that the source of wealth is legitimate. It is important to ensure that this information was also more easily accessible to law enforcement and tax authorities. As an example, it was underlined that the US Foreign Account Tax Compliance Act (FATCA) has encouraged better collection and exchange of information on beneficial ownership - and it was likely that the AML regime could benefit from this. It was agreed that further discussion was needed on the concept of politically exposed persons and the way financial institutions deal with them.

45. The special event concluded with a strong call for the effective implementation of the existing international standards and policies regarding beneficial ownership through close cooperation between national legislators, the financial sector as well as regulatory and supervisory bodies. Participants noted the need to facilitate further discussion among requesting countries and financial centers to understand the complexities of investigations involving corporate structures and shell companies.

K. Session IX - Future of the Arab Forum on Asset Recovery

This session was chaired by Mr. Jean Pesme (StAR) and featured presentations by Dr. Mohamed Barakat (Egypt), Judge Mohamed Askri (Tunisia), Ambassador Vladimir Tarabrin (G20 Presidency 2013/G8 Presidency 2014, Russia), Mr. Dominic Martin (G8 Presidency 2013, U.K.).

46. The panel evaluated the progress made thus far by the Arab Forum in advancing the recovery and return of stolen assets to the Arab countries in transition and made proposals on the future of the Forum. All panelists acknowledged that the countries represented at the Forum shared a strong and common commitment to the success of the ongoing asset recovery effort. This was demonstrated by the fact that delegations included both policy makers and practitioners. However, all acknowledged that in addition to political will, concrete results were required in going forward in order to send a message to corrupt officials that they could no longer operate with impunity and benefit from their criminal conduct.

47. Some panelists expressed concern about countries not making effective use of the asset recovery related provisions of UNCAC and suggested that the Forum should take a specific look at this issue, in particular in the context of the efforts made by Arab countries in transition to recover the assets stolen by past regimes.

48. Moreover, several panelists mentioned the importance of keeping the issue of enhancing transparency of beneficial ownership, both as a policy as well as an operational issue, on the Forum's agenda. More specifically, they suggested that gatekeepers, including lawyers, accountants, corporate service providers and bankers, be included in future meetings of the Arab Forum with a view to tackling the issue of beneficial ownership identification and transparency together.

49. All panelists concurred that one of the core contributions of the Arab Forum was providing multiple opportunities (Arab Forum I, Special Sessions I and II and Arab Forum II) over the course of the year for bilateral discussions among the different delegations on both cases and other issues. In total, more than 150 bilateral meetings had been organized during 2013 to facilitate investigations and cooperation, with 81 bilateral meetings occurring during this second session of the Forum in Morocco.

50. Panelists also emphasized the value added of the ongoing technical assistance and capacity building effort which had been supported by various partners in the Forum. They felt that this effort should continue and include thematically more specialized programs customized to the individual needs of countries.

51. Furthermore, the panel concurred that civil society and other non-state actors could play a more prominent role in complementing and supporting Governments' efforts to recover stolen assets. There was an agreement that the Forum should continue to support this dialogue and cooperation.

52. Panelists recognized that the discussion during the Forum on the possible creation of a regional asset recovery practitioners' network had not been conclusive and, thus, that there was a need to further provide knowledge on existing networks with a view to informing the future policy dialogue on the matter.

L. Closing Session

This session featured closing remarks by H.E. Mr. Eric H. Holder (U.S.), H.E. Mr. Mohamed Louafa (Morocco), H.E. Dr. Ali Bin Fetais Al Marri (Qatar) and Mr. Dominic Martin (U.K.).

53. Speakers in the closing session extended their sincere thanks to the Kingdom of Morocco for hosting the second meeting of the Arab Forum, in collaboration with the United Kingdom G8 Presidency 2013 and for the support received from the Rule of Law and Anti-Corruption Center as well as the Stolen Asset Recovery Initiative of the World Bank and UNODC. They acknowledged the constructive work that had been undertaken over the last few days of the Arab Forum and expressed their continued strong commitment for the Arab Forum process going forward.

54. Speakers reiterated the importance of the asset recovery agenda for the fight against corruption in the Arab region. The consequences of corruption were devastating; they undermined trust and confidence in open markets, siphoned precious resources and bred contempt for the rule of law. To that end, the struggle against corruption could be seen as one of the greatest struggles of our time. However, corruption could be overcome when there was a collective political and institutional will to take a stand. It was important to demonstrate that there could be no safe havens for stolen assets. Despite the complexity and lengthiness of asset recovery cases, countries must not lose sight of the developmental objectives of their efforts. Asset returned should be invested in the future of the people, from whom they were stolen from. Where continued efforts were made, progress became inevitable.

55. Countries were reminded that work had to begin at home. They were the authors of their own success. Speakers commended the work of the Arab Forum since the first meeting in Doha in 2012, including three dedicated Special Sessions aimed to provide targeted training and awareness-raising on asset recovery as well as the country and case specific on-site technical assistance provided to individual countries in transition. The second meeting of the Arab Forum was proof of a growing spirit of collaboration among all partners.

56. Speakers emphasized though that work was far from over. This second meeting of the Arab Forum enabled constructive discussion on policy as well as technical issues related to asset recovery. It had allowed for an intensive stock taking exercise to take place, and as such had provided a platform for charting the way forward.

57. In their co-chair statement³, the Kingdom of Morocco and the G8 Presidency of the United Kingdom made the following recommendations for the future of the Forum:

³ http://star.worldbank.org/star/sites/star/files/chairs_statement_uk_morocco_at_afar_ii_conclusion.pdf

- i. Forum participants need to continue to build greater partnership and trust between requesting and requested jurisdictions.
- ii. Bilateral contacts on specific cases should continue wherever possible between sessions of the Forum.
- iii. Forum members who have not done so already, including those seeking the return of assets, should continue to be encouraged to publish asset recovery guides.
- iv. StAR should be asked to develop with beneficiary countries country-specific needs assessments and a multi-year work program of in-country technical assistance and capacity building.
- v. G8 countries should finalize proposals on transliteration and share practical steps with other members of the Forum.
- vi. The private sector should be included in the future dialogue on transparency aspects of asset recovery.
- vii. Forum participants shall encourage greater trust building and pre-MLA cooperation and information sharing between law enforcement officials before submitting MLA requests. This could potentially involve the use of multilateral asset recovery networks.

58. Participants looked forward to meeting again under the auspices of the Forum to discuss these and other related issues, while continuing to make progress domestically, bilaterally and through other regional and multilateral fora in the interim.