

For participants only
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Convention against Corruption**

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**Paper submitted by Spain* concerning the seminar on
return of illicit funds as proposed by Peru****

1. Programme

It seems important to introduce a structure that reflects practical situations, but at the same time highlights the legal issues involved. One way of achieving this would be to have a hypothetical case study prepared based on real events of the past. The seminar could then usefully run through the various stages of the case under consideration. Such an approach might lead to the following programme:

Phase I: The Government of a given country suspects the transfer abroad of public funds or assets of illicit origin.

This phase necessarily relates to the situation in the country itself. Under this heading, measures might be discussed, such as:

- criminal proceedings against the suspect in the country of origin;
- preparations of procedures to trace the funds or assets transferred abroad, in particular, the identification of any evidence originating in the country of origin.

Phase II: The Government tries to identify the location of the funds or assets of illicit origin abroad.

During this phase, international co-operation must become operational. Under this heading, the following subject matters could usefully be discussed:

- identification of the countries to approach with regard to the location of illicit funds and assets (including the legal framework for international co-operation) ;

* On behalf of the States Members of the United Nations that are members of the European Union.

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- tracing the funds or assets of illicit origin (role and obligations of financial institutions).

Phase III: Seizure and confiscation

The third phase presupposes that the funds or assets have been located in one or more (foreign) countries. Under this heading, the main subject matter to be discussed would relate to:

- the question of the legal framework for co-operation and other necessary conditions under which the countries concerned could take seizure and confiscation measures in order to prevent the further transfer of funds or assets, e.g., the evidence required;
- the possibility of civil and administrative action to recover the assets;
- the division of labour between the country of origin and the countries where the funds or assets have been located, including technical and other forms of assistance.

Phase IV: Return of illicit funds or assets

Although the confiscation measures discussed under the previous heading see to it that the situation is frozen, they are not sufficient in themselves to meet the overall objective of the country of origin, i.e. the return of these funds or assets. Additional questions arise, which could usefully be discussed under this heading:

- the legal requirements which have to be fulfilled so that the country/countries concerned could return the funds or assets to the beneficiaries;
- the issue of competing claims between the country of origin and natural or legal persons;
- the legal remedies applicable for the offender or (bona fide) third parties in the country/countries concerned against the return of the funds or assets;
- division of costs, imposition of taxes etc.;
- other possibilities.

2. Preparations

It would seem logical to divide the preparatory work into two, complementary segments: firstly, the development of a hypothetical case study, which might serve as a background and reference document throughout the seminar. However, it should be clear from the outset that the end result must not be related to any particular case, in order not to politicise debates.

Secondly, it seems useful to translate all the practical aspects of the hypothetical case into legal issues. The draft programme as set out above, can be seen as a first indication of any such legal issues, but the list is by no means exhaustive.

Finally, the preparatory work should be based on the understanding, that the seminar is of an informative nature and does not prejudge the negotiations on the draft Convention, and will not lead to any formal conclusions.