

COUNTERING CORRUPTION IN THE OSCE REGION: RETURNING ILL-GOTTEN ASSETS AND CLOSING SAFE HAVENS



JUNE 1, 2017

**Briefing of the
Commission on Security and Cooperation in Europe**

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The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <www.osce.org>.

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The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <www.csce.gov>.

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**Commission on Security and Cooperation in Europe
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The briefing was held at 10:30 a.m. in room G11, Dirksen Senate Office Building, Paul Massaro, Policy Advisor, Commission on Security and Cooperation in Europe, moderating.

Panelists present: Paul Massaro, Policy Advisor, Commission on Security and Cooperation in Europe; Charles Davidson, Executive Director of the Kleptocracy Initiative, Hudson Institute; Brian Campbell, U.S.-based Attorney; and Ken Hurwitz, Senior Managing Legal Officer on Anticorruption, Open Society Justice Initiative.

Mr. MASSARO. Good morning, everyone. Thank you all for coming. Welcome to today's briefing on asset recovery in the OSCE region. My name is Paul Massaro, and I am the policy advisor responsible for economic and environmental issues at the Helsinki Commission.

Combatting corruption is a critical element of the second dimension of the Organization for Security and Cooperation in Europe, the OSCE. This vital task involves a huge range of activities, all aimed at justice for perpetrators and redress for victims. In many cases, prosecuting a crime is more straightforward than recovering and returning stolen assets.

Today we will focus on asset recovery and how to strengthen the preventative measures that we rely on to fight impunity worldwide. Asset recovery is a challenging, but critical, factor of tackling global corruption. Tracing, freezing, and returning frozen assets is a tedious and complicated process. Additionally, returning the proceeds of corruption to the country of origin often requires the involvement of corrupt authorities, which can mean the perpetuation of grand corruption.

Strengthening existing mechanisms of repatriation and ensuring accountability in the process should be an integral part of mainstream anticorruption work. Successful asset recovery can not only deter future corrupt practices, but can also support democratic

development in countries where corruption remains an endemic source of human rights violations.

We are grateful to have such distinguished panelists with us here today. I look forward to hearing your thoughts and views on this important issue.

To my left, we have Charles Davidson, the executive director of the Kleptocracy Initiative at the Hudson Institute. The Kleptocracy initiative investigates and conducts research on the corrupt financial practices of authoritarian governments. In addition to his work with the Kleptocracy Initiative, Charles is the publisher and CEO of “The American Interest,” which he co-founded in 2005. He is also the co-founder of Global Financial Integrity, a research and advisory organization focused on analyses of illicit financial flows.

Far to my right, we have Brian Campbell, who is a legal advisor to the Cotton Campaign, a global coalition of over 25 labor, human rights and business organizations committed to ending state-sponsored forced labor in Uzbekistan’s cotton industry. Brian has experience representing victims of human rights abuses in legal and administrative proceedings, both in U.S. courts and before the U.S. Congress. He also serves as a legal advisor to several grassroots and community-based organizations in Africa and Asia.

Finally, we have Ken Hurwitz, who joins us from the Open Society Justice Initiative, where he is the senior managing legal officer on anticorruption. The Justice Initiative works to promote the rule of law and seek justice for human rights abuses through litigation, advocacy, research, and technical assistance. Ken is the head of the organization’s anticorruption legal work and is an expert on high-level corruption. In particular, he focuses on corruption in the national resources trade, using the law to challenge those who pay or receive bribes in exchange for illegal access to resource wealth, as well as those who assist by hiding the proceeds of corrupt dealing.

We will conclude the briefing with a Q&A session. So please start thinking of your questions now.

I’d like to now give the floor to our first panelist, Charles Davidson of the Hudson Institute.

Thank you.

Mr. DAVIDSON. Well, thank you, Paul. It’s a pleasure being here.

Our subject today, as advertised, was to start with the historical context for asset recovery. So I’m going to go into that a bit. And then we have sort of three areas after that; corruption prevention, and the U.S. national interest in countering corruption, and then methods of ensuring responsible repatriation. So I’m going to sort of leave off the last point, the subjects around repatriation, which my colleagues are going to cover in detail, and which they’re experts on.

But why are we talking about asset recovery? Well, presumably someone has stolen assets that we need to recover. So what’s going on with that? And in the OSCE region, we know that vast sums have been stolen and looted, and are being held in the West. And by the West, I mean New York City, Miami, London. So, I mean, concretely, real estate in the West, but I also mean the whole network of offshore secrecy jurisdictions and ways of secreting away and holding assets in places that are controlled by the United States and Europe.

And those places and those methods are where most of this OSCE loot is held, which is really the fundamental context we're operating in. And because it's held in places we control, we presumably have some leverage to be able to repatriate it. Period.

That's all I have to say. Are we done? No. [Laughter.] But that's the point, right? That's the overall context. And also, we're not talking about petty corruption.

If we look at a lot of these countries, we're talking about—there's a whole sort of shadow economy where nobody in a lot of these countries has a salary they can live off of. So there are all of these kind of cash payments and ways in which corruption—one might even call it something else—is part of the society. And that's lamented, this, that, and the other. But there's no asset recovery in that context. So we're talking about the grand corruption, some people call it, or kleptocracy or whatever, where assets are taken out of the country and safeguarded in places where we may have some leverage to recover them.

So, in terms of corruption prevention mechanisms—and we're supposed to speak briefly and I'm going to rifle through some of this, and I gather the richness of this event is going to be in the Q&A—one thing we have is a huge corruption services industry. And if we look at what precedes potential for repatriation, we find major Western financial institutions—law firms and all of that—helping OSCE leaders and corrupt regimes to get their money out of the country in the first place. So we play a very large role, as societies, in the looting in the first place and the problem. And I think that point has to be taken into account when we look at repatriation so that we don't end up in a vast circular, rather perverse hypocrisy.

One of the things we can do in terms of corruption prevention—and this is a bit of a parenthesis—but there's a lot of talk on the Hill right now about transparency and beneficial ownership, and curtailing anonymity in terms of how assets are held. That's an area in which a lot of progress can be made. There are many bills sort of going around. The major banks have actually come out in favor of doing away with anonymity, presumably because the compliance costs have gotten so great.

Another corruption prevention mechanism to keep in mind—I'm sort of jumping around here, just sort of putting ideas on the table—is civil society. If we look at the Maidan, that was essentially a protest against corruption, but not really the petty corruption within the society. It was against the grand corruption of the leaders and the rulers of Ukraine, if one can refer to them that way. We saw protests recently in Romania which were targeting grand corruption. So Tocquevillian civil society is certainly a corruption prevention mechanism. It's not really a mechanism, but it's a very important part of this.

And then I think it's worth throwing in the notion of an independent judiciary, because if we look at Brazil right now—which is out of our geographic zone—it's kind of interesting the way an independent judiciary can affect a corrupt political class. And that's an analogy, because I'm not suggesting that there are strong elements of grand corruption. But if we look at reform and other elements that we can push in addition to asset recovery, that might be one.

Now, the U.S. national interest in countering corruption—this is where we still under-appreciate the dangers of grand corruption and kleptocracy. First of all, it's kind of obvious when you think about it how corruption is a killer of freedom and democracy. And obviously in a corrupt society people aren't getting their fair shake. You can't just

go out there and create a business without it being stolen from you in some cases. This is depressing. You don't get happy, free people in these countries.

And yet, the nice thing is, there are a lot of people who are fighting for freedom and democracy in these countries. But it's something that we need to encourage. And on the asset recovery front, we need to do it in a way that's politically positive so that it doesn't seem as Western hypocrisy, which would be a terrible thing, but so that it's done in way that is very much supportive of, shall we say, progressive forces in those societies. I don't mean progressive in the U.S. context, political sense.

In terms of economic opportunity, just as free markets, we can certainly see how corruption perverts all of that. That's all counter to U.S. national interests. And perhaps most importantly, these corrupt regimes try to corrupt up. And we've seen a lot of recent examples of that. But when we accept all of these funds, even encourage them to come into our societies in the first place—pre-repatriation—these funds and the handlers of these funds and all need to keep a corrupt system going here, in terms of how these assets are looted and dealt with in the first place.

So they are not going to be forces for improved governance in our own societies. They're going to be corrupting influences. And we see a lot of this going on all over the place, here and in Europe. In terms of rule of law and the extent to which we want to spread rule of law and good governance, obviously this is—grand corruption is a terrible thing in terms of that.

So these are all reasons why we need to look at the asset recovery dossier very seriously. But really, as I'm stressing, as part of a much broader program opposing kleptocracy, grand corruption, and being sure that we're doing these other things and not just asset recovery.

What we would not want to end up with, I think, is the situation of grafting onto the status quo, in which a lot of the financial organizations in the U.S. and major law firms are involved in the looting, to get them very involved in the repatriation as a business. We don't want to end up with a business model where we're helping the looting in the first place, and then profiting by the return of the loot to those countries. I don't think that will fly well politically in the looted countries. And as an example, if we take Ukraine, some interesting research that's been done, Ben Judah published an article—gosh, over two years ago already—of on-the-ground research in Ukraine, and about how the average Ukrainian was quite aware of how the West facilitated the grand corruption taking place in Ukraine.

Thank you.

Mr. MASSARO. Excellent. Well, thank you very much, Charles, especially for the focus on how corrupt regimes corrupt us, a phrase that I have become immediately fond of. [Laughter.] Very good.

I'd like to turn the floor now to Brian Campbell. Brian, please take it away.

Mr. CAMPBELL. Thank you.

As you could hear in the introductions, my background really comes out of human rights and work with groups on the ground in countries around the world on human rights issues. And for 10 years I was working in China where the first thing you have to figure out is how the corrupt networks were working in those local communities through the party system, so you could figure out how to manage the political and the economic system as well. And that's just the beginning.

But what brings me here is, back in the region in Central Asia, I think we see pretty much across the board we have very large kleptocratic governments that have built within themselves throughout their economy different—for lack of a better word—syndicates that control different sections of the economy. And one of those syndicates suddenly unravels. And that was the Gulnara Karimova telecommunications syndicate.

She was a government employee throughout all of the time that was going on and she was also a daughter of the president. She used her position to block access—free access, I'll say—to the telecommunications market by securing bribes for international, multinational companies that wanted to buy into the Uzbek telecom market. And this happened over a course of many years. And over time, the bank accounts grew and grew. And they were up to \$850 million, and is what has been discovered. And that's still all just what's been discovered.

And this all came out because of the work of civil society. So, in terms of prevention, I'll just throw out that civil society was a huge role in this, because it was the media that were doing exposés, working with others in civil society to get access to individual people that were the enablers of the corruption. And in this case, these are Uzbek citizens working in banks around the world, in Dubai. Non-Uzbek citizens, Westerners—you know, every single node, as we were talking about, enabling.

And they were located around the world. They were business services, financial services, banks—you name it. You had to have multiple different layers of companies. And so she built this network. But she used her position as the government and used her influence in the government, and used the support of the SMB, which is the secret service in Uzbekistan, to extract huge amounts of bribes from the telecommunications sector.

Practically speaking, it led to quite poor telecommunication service in some areas. But more nefarious, what it did—all of that money went to support the continuance of the government that was in power, right? So each major player within that government has different patronage networks—political patronage networks that operate through corrupt financial transactions. And in this case, she had the participation of the current prime minister, who at that time was the head of the telecommunications agency, who was facilitating all of these corrupt transactions, by giving out the frequencies to the Western companies.

So all of this came unraveled. And it was a big embarrassment for the Uzbek Government. But it also led to investigations in Sweden, Switzerland, Brussels—sorry, Belgium, I'll say, because Brussels I understand is EU words. But it's all over. And including the United States, because U.S. banks were used to facilitate the transfer of the assets. The assets aren't in the United States, but we facilitated the transfer of those assets through different banks, through the U.S., and into banks across Europe.

So the United States has brought a civil case. And they are trying to—because of the jurisdiction provided to them under the FCPA, they're trying to go back and seize and get legal right to those assets that are sitting in bank accounts in three different countries—and then once they do seize those assets—and that's a current case in the southern district of New York—the question then becomes, what happens to those assets?

So if you still have the prime minister of the government who was one of the people who helped facilitate the corrupt transactions to begin with, and you have the president of a government who's been running the cotton syndicate—and this is me putting on my legal advisor to end forced labor—he's been running the cotton sector that's been

extracting resources into a missing fund of \$650 million—disappears every year from the cotton sector. This has been run by the president. We don't even have investigations into what happens to that money yet. We're just focused on telecom on this one.

And what we're trying to do is figure out, how do you return assets to the people of Uzbekistan? Because they belong to the people of Uzbekistan. And how do you return that, but in a responsible way? I've been working with Uzbeks in exile, and also getting feedback from as many as we can in the country through whatever means we can, because communications are tightly restricted, to really come up with what really could be a good solution for repatriation, so that way if the U.S. Government seizes the money—and I'll just flag this as a significant problem in U.S. laws—if the U.S. Government seizes the money, the law says it has to go to the U.S. Treasury.

So it creates an international challenge here, because Switzerland also has the money, and they want to do something—they don't want it to go to the U.S. Government Treasury. They want it to be spent in Uzbekistan under Article 57 of the convention, but with modalities, as we would say, not conditions. So, with all of that in mind, we have now multiple jurisdictions, 22, involved in a case, each of which has a different set of laws with a different set of priorities for the repatriation of assets. And so, at this point, it becomes a significant challenge in order to implement the responsible repatriation of assets.

To the extent that the governments communicate, they're doing a good job. It's our role, as civil society—and me, as the attorney for many of these civil society groups—to engage with each of the governments. But I think overall, we need to focus on—especially here in the U.S. and in the U.S. Congress—is how can we make our laws recognize what I think we've all sort of come to understand, which is that as we facilitate the use of this money, or the movement of this money, when it comes time to return it, how to do that in a responsible way, and how to get our laws to enable our government to responsibly repatriate it? I think those are the two big questions.

And in the meantime, we're going to continue to work with the Uzbek folks in exile, with the hope of convincing all the governments that until the situation in Uzbekistan is changed, they should examine creating a trust. Find some other ways, something similar to the BOTA Foundation, which was a process in Kazakhstan. But the assets here are significantly much larger. So I think we need to be very careful in how we repatriate assets in this case.

With that, I'll wait for your questions. Thank you.

Mr. MASSARO. Well, thank you very much, Brain. It sounds like you've got your work cut out for you. And thank you for illuminating this web that seems to unravel when something like the syndicate in Uzbekistan breaks down. You know, these explosions worldwide in Sweden and the USA and Switzerland just—you find out how many actors are really involved in enabling this sort of corruption.

So our final briefer today is Ken Hurwitz. Ken, take it away.

Mr. HURWITZ. Thank you, Paul. Thank you all. It's a pleasure to be here.

The way Brian ended was a good segue to what I was going to talk about, which is what is the U.S. structure for dealing with all of this at this point? What does it look like from the U.S. point of view? From my point of view, I would divide it into sort of three elements that match the three elements that, if you remember, Paul mentioned in

telling you about my official biography: the bribe payers, the bribe receivers, and those who enable the bribery to take place.

More or less, roughly the Foreign Corrupt Practices Act is, of course, designed to catch bribery, especially high-level corporate bribery, with regard to developing countries in particular.

The money laundering regimes that we have are largely designed to catch the receipt, returning of money, and can be—although have been used less than they should be—used also to target the enablers, the bankers and lawyers and accountants who largely facilitate and grease the wheels for the movement of monies from the victim countries to the financial centers of the world, including, of course, the United States.

Finally, there's an initiative in the Department of Justice called the Kleptocracy Asset Recovery Initiative, which was announced by Attorney General Eric Holder in July or 2010, speaking appropriately at the African Union summit in Kampala, Uganda. And he described this program as having the aim to, quote, "Combatting large-scale official corruption and recovering public funds for their intended and proper use, for the people." Now, when he was saying that, it was clear that the intention of the U.S. policy as articulated in that Kleptocracy Initiative is to really return money to the people.

It is a question of how do you fit the tool to the purpose. Just to give a sense of the scale of the problem, figures are extremely unreliable and difficult to pin down, but the World Bank has made an estimate that something like \$20 to \$40 billion each year leaves developing countries because of official corruption. So the strategy that is used in the Kleptocracy Initiative is basically what they call civil forfeiture, or non-conviction-based forfeiture. That is to say, seizing corrupt assets that are laundered into the U.S. system, even where a criminal conviction is not practicable.

But using the fiction, essentially, of a lawsuit against the assets—what we call an *in rem* or against the thing claim—the U.S. benefits from a reduced civil burden of proof. So it's more like a regular civil lawsuit. The balance of the probability is 51 percent, one might say—the probability that the facts as alleged are correct or true. A criminal forfeiture would require conviction using the standard of proof of beyond a reasonable doubt.

Now, in launching this program, the Kleptocracy Initiative, the U.S. was doing its part in the global effort to recover and return stolen assets that were diverted from poor, developing countries, into the world's financial centers. And the most important instrument probably is the U.S. convention against corruption, which was approved by the General Assembly in 2003, and to which the great majority of countries, including the United States, are party.

The origin of these developments goes back to the late 1990s, and perhaps even earlier, with a series of very exciting asset return exercises in a number of countries, particularly Switzerland and the United States, following the toppling of a number of notorious dictators, beginning even in 1986, with Ferdinand Marcos in the Philippines, whose some \$600 million of assets was returned to the Philippines by Switzerland and other countries. Fujimori and Montesinos in Peru were another example of this early period. And of course, the most notorious, Sani Abacha in Nigeria, where almost a billion dollars has been returned.

The lesson from these experiences—or so it was thought—was that asset recovery efforts would generally arise from requests of new and well intentioned, if weak, governments in post-regime change contexts. In other words, the early experiences were you

overthrow the dictator, you get a new ruler—not a new ruler—a new government that at least is aspiring in some sense for the rule of law and democracy, and you will work with them as a developed country to find and to return the stolen assets to help that country develop itself.

In the seven years of the Kleptocracy Asset Recovery Initiative, the U.S. has seized and returned more than \$600 million of corruption proceeds. Sounds like a lot, except remember the figure \$20 to \$40 billion diverted each year from kleptocracy, essentially. Billions more are frozen, in U.S. cases, including of course the Uzbekistan case that Brian talked about, other cases relating to Malaysia, Nigeria, Ukraine, and so on. Some of them with as much as a billion dollars at stake.

So what does DOJ do once it has seized the dirty assets? In the normal course of civil forfeiture context, the money goes into the U.S. Treasury, as Brian said. But the Attorney General has the discretion to accept claims asserted by means of petitions for remission submitted by innocent owners of the forfeited assets, lienholders, and victims. Now, to be sure, when the victimized state itself asserts a claim, it is able to satisfy the requirement to obtain return of state. The funds were stolen from the state. They are clearly a victim. The assets are theirs. They are innocent owners, et cetera. That is the very purpose of the Kleptocracy Initiative.

And the generally reasonable assumption is that in a state ruled by law, the returned assets will, indeed, in some fashion, be used to benefit the people whose interest the state is supposed to represent. But what happens when the victim country is Uzbekistan, or another one—or Equatorial Guinea, or even other countries where you have a more contested form of kleptocracy, such as Ukraine?

In the situation where it is the corrupt regime itself, or the cliques that control the state that are essentially perpetrators of the same or closely related, similar, systematic corruption, one might think that at first the proper use—as Eric Holder referred to in returning the stolen assets—would be to the people, as was the intention, and that that would be able to take place through recognition of the third category that I mentioned, victims, in the petitions for remission, which is a suitable way for the attorney general to return assets.

The bulk of the populations of kleptocracies, broadly speaking, are the real victims of corruption. However, in the U.S. rules, a definition of victim for asset forfeiture purposes basically says that a victim is someone with a pecuniary loss of a specific amount that has been directly caused by the criminal offense or related offense that was the underlying basis of the forfeiture, and that the loss is supported by invoices and receipts. So it's a very narrow concept of victim that we have in the civil forfeiture context.

When the United States, therefore—the Department of Justice—is trying to contend with its mandate under the Kleptocracy Initiative, they will be in a tough spot, essentially. The law doesn't help them. If the money is forfeited, it is rather difficult to actually return it to the people who are the victims, and who are the proper recipients under Holder's terms. However, the alternative—where you can catch the money before it gets into the Treasury, and therefore the department has much more flexibility—requires coming to an agreement with the party that claims to own the assets that are forfeited or with the government of that party.

And that may work. And Brian mentioned the Kazakh example with the BOTA Foundation, where you had three governments—Switzerland, the United States and

Kazakhstan—sharing responsibility and oversight, along with the World Bank and other entities, to distribute some \$115 million to the people—to basically poor children and mothers in Kazakhstan. However, if they negotiate, you have to assume that you have a party that's operating in good faith on the other side, and who's willing to comply with that agreement. And the parties we're talking about, kleptocracies, are precisely the ones that are least likely to be in that situation. So that's the rock and the hard place that U.S. law now puts the Department of Justice when trying to arrange a proper return of the assets for the benefit of the people.

Now, one point worth considering is that with regard to criminal asset forfeiture, they do authorize the acceptance of claims from petitions by owners or by lienholders or by victims, but victims defined in a similar narrow sense. However, there is also additional language in the statute that authorizes the attorney general to take any other action to protect the rights of innocent persons, which is in the interests of justice. This is a provision that it may be, I think it is worth considering, worth including into the statute for civil forfeiture, at least with regard to kleptocracy cases, and that might well be able to boost the ability of the Department of Justice to actually carry out the mandate that it has taken upon itself.

I'm going to stop right there.

Thank you.

Mr. MASSARO. Well, thank you very much, Ken, for illuminating the very, very deep intricacies, it sounds like, of making sure that these assets get back to who they belong to and how often that that's not the case, given the current legal situation.

So we'll move into the Q&A now. And I'll start with a couple of questions.

First of all, you all brought up the role of civil society in your talks. And I'm sure that you've all engaged with civil society in the work you do. My question would be, what is the best way for civil society to engage on asset recovery? What should they be targeting? What should they be looking at? And who should they be speaking with in order to have maximum effect?

And I'll start in the same order we spoke in. Thank you.

Mr. DAVIDSON. Well, my reflex is that perhaps within certain countries, civil society could create a political kernel that would be legitimate and powerful enough that assets might be returned to them. Now, that might involve some kind of Magnitsky-style, subjective judgment as to who is legit and who isn't, but we're going to have to do that at some point. I mean, we really are if we're talking about doing this kind of thing in the first place, so there may be some countries where we might have that.

Mr. MASSARO. Brian, you have anything to say about civil society?

Mr. CAMPBELL. I would say quite a bit. [Laughter.] You know, I think civil society plays a role at each stage that was laid out at the beginning. I think civil society is such a big word, so I'll flag the media as part of civil society, plays a vital role in doing the investigations. Attorneys or advocacy organizations, like the ones that I work with, they are the eyes and ears on the ground in many of these countries. And in the case of Uzbekistan, the government is constantly trying to shut the civil society down in order to keep them from exposing these crimes, and so it is on the exposure, but it's also on service delivery on the other end.

So some of the recommendations that we've put forward to every government and, to answer your question, civil society has to engage with every government. And the fact

that some governments are more open to that than others is a problem. And I think it's something that the U.S. Government is very open to engaging with civil society; you find that a lot less in some of the European countries because it's an uncomfortable space for them. But I think we need to find spaces to make that more comfortable.

And then lastly, just on the service delivery on the other end, once there is a way to repatriate the money—so in Uzbekistan we're hoping for a trust just to kick decisions down the line to maybe create a program like the BOTA Foundation in some ways.

And the BOTA Foundation used civil society, helped build civil society in Kazakhstan to deliver basic services, health services, women's services and such. And so I think they play a point in each because government, really, and civil society—it's there to fill in the gaps of government, but also to keep them accountable.

Mr. HURWITZ. Yes, I would certainly agree with the points that have been raised before. What I might add is a couple of things. One is that in our experience, particularly at the Justice Initiative in our anticorruption work, our view is very strongly that civil society's role actually precedes very much the return of the assets, that actually the development of investigations and cases is a process that civil society in the country from which the assets come can be an enormous benefit.

Obviously, law enforcement has many tools that civil society does not—subpoena power and the ability to wiretap and so on. However, law enforcement is also very restricted in many ways, particularly when they're trying to investigate in a foreign country that doesn't allow them to go there, or even if it did, where it's a very complicated world for Department of Justice lawyers who are not experts in Africa or in Central Asia or wherever the money is from, to learn.

Civil society from those countries and international civil society, somewhat as a mediator and an interpreter and a link, can really advise and lead investigators from the law enforcement in the financial centers how to actually track down information in the diaspora or which figures are the ones to be tracked down, for example.

Civil society in partnership with law enforcement can play a hugely important role. And we've seen that in a number of cases, particularly—I know it's not in the region—but the largest recovery that has actually been taken in a case that involved a settlement and a forfeiture, which was \$30 million that was taken from the son of the president of Equatorial Guinea in Africa where civil society, both in Equatorial Guinea and outside Equatorial Guinea, played a huge role.

Now, having done that, civil society, of course, that is a process that helps organize civil society as well and helps educate civil society about the process. Every situation is different in asset recovery when you think about some of the countries—Uzbekistan, Equatorial Guinea, Nigeria, Ukraine, they're very different political situations. And the states may or may not be capable of some or all of the functions that are needed in order to really return the assets in an accountable and transparent way.

Civil society at the very minimum must be involved in a consultative basis to at least give input to those who are planning how assets should be recovered based on their actual real knowledge of the country and the regime that they're dealing with.

At the same time, civil society must be enabled to be a monitor and to really see what is happening and to make sure that even if the country's processes and governance are not so transparent, that the asset recovery process itself can help strengthen the forces of transparency and openness within the country.

Mr. MASSARO. Great. Thank you, Ken.

Thank you, Brian.

Thank you, Charles.

I'll ask one more question and then we'll open it up to the floor.

Ken, the idea that corruption in all these countries and the former Soviet sphere, the idea that the forms of corruption are so different from one another, this is really important given that they're all part of the same international organization, the OSCE, the Organization for Security and Cooperation in Europe, which contains second-dimension commitments based on anticorruption and good governance, many of which these countries have a lot of trouble upholding.

So I'd like to ask—this is a Helsinki Commission briefing, after all—to what extent does the OSCE factor into your work? And can it play a larger role? What role can it play in asset recovery?

Thanks.

Mr. DAVIDSON. Well, I'm not sure how to respond to that except that actually I think there may be some commonality in terms of grand corruption in the OSCE countries, which is quite different from what's going on, say, in Africa, because we've mentioned other regions. So there kind of is a bit of a corruption model there. These are, for the most part, ex-Soviet Union countries, so they have something in common in terms of that. And if we look at the current threats, especially from a U.S. national security standpoint, these are all countries where the current Russian Government is very actively exporting its brand of corruption. I mean, it already has, but it's reinforcing the export and trying to keep its market share of grand corruption in these countries. So I think we do have a lot of commonality there where the disease and perhaps some of the remedies have a lot in common.

Mr. MASSARO. Thanks.

Got anything to say on that, Brian?

Mr. CAMPBELL. Yes, I'll say on the Uzbek case, the transactions went right through the OSCE countries, right? Some of them went through Russia into Latvia, which then got disbursed into Western European banks. And so I would say the OSCE has to take a stronger role in addressing the financial transactions and the transparency of those transactions that go through those countries, because they're not just going through, say, the United Arab Emirates or Gibraltar or the Cayman Islands, they're going through Latvia and Russia. And it undermines the security in the region if they continue to extract the resources without putting it back into development.

Mr. HURWITZ. I probably share Charles's reaction. I'm not sure I have that much expertise that's relevant, but I would make two points. One is that, without being a region expert in the OSCE, my sense is, even as between Africa, where I'm more familiar, and OSCE countries, while, of course, there are hugely important differences, and I alluded specifically to the political differences within the countries, but the pattern of corruption tends to veer, I think, toward very similar practices. When you launder money, there's a state of the art as to how you launder it. How do you use offshores? How do you find the locations where secrecy is most effective? How do you cover up so that it looks like you're being open, but you're not really? These things are beyond region.

Now, the way the money is stolen may be different. In Russia, obviously, the privatization and sort of primitive capital accumulation by the oligarchs is not the same

process as a country I happen to know pretty well, Equatorial Guinea, where basically you have a family that runs the oil and the other resources in the country as a private business. But once they're there, the way they move the money around is actually quite similar because it is a technical question.

Second, I would say that Russia and China, which is also relevant, although, again, not part of OSCE, are being very aggressively self-advancing in Africa and increasingly even in Latin America and bringing their techniques to certain governments that are welcoming exactly that kind of behavior. And I would say specifically two of the most important corruption cases or corruption examples in Africa, Angola and Equatorial Guinea, are in fact countries that were at one point in the Soviet sphere where the Russian influence educated a lot of the leaders.

I'll just give you an example. We are—we, the Justice Initiative—are engaged in a case addressing corruption that grew out of something some of you may remember, the Riggs Bank investigation that Senator Levin's commission uncovered in 2004, where Equatorial Guinea money was being laundered by the president into Spain. Well, it turns out the people who are running that laundering enterprise, and it is a large one, are all from the OSCE, from Ukraine, from Russia, from Lithuania and Hungary and so on. And they have these techniques and the Equatorial Guinean Government or the Equatorial Guinean family, President Obiang, were very eager to benefit from these techniques.

So we're finding increasingly that actually this process is not only international in the sense of going from, let's say, OSCE to the Western centers where they want to spend their money, where they want to live and educate their kids, but also in terms of the other economic channels. So it is really a transnational problem in almost every sense.

Mr. MASSARO. It sounds like, in many ways, the sharing of best practices in how to be corrupt has been more advanced than the sharing of best practices in how to fight corruption.

OK, with that we'll open the floor. Who would like to ask the first question? Right back there.

QUESTIONER. Tatiana Hatchin [ph] for Ukrainian Service of Voice of America. And just because I'm from Ukraine, I would like to hear more about the Ukrainian case and Ukrainian frozen money. We know the Yanukovych regime stole around \$100 billion, so what is the destiny of that money if there is any chance to bring it back again?

Mr. MASSARO. Same order?

Mr. DAVIDSON. Same order? Oh. [Laughter.]

Mr. MASSARO. Got anything to say to that, Charles?

Mr. HURWITZ. You're always the expert.

Mr. MASSARO. You can opt out. Reverse order next time?

Mr. DAVIDSON. No, no, I won't mention any names, but actually Ukraine is a classic example of a problem that we've talked about here, which is, is the current government of Ukraine equipped to worthily process repatriated funds? And is that euphemistic enough? [Laughter.]

Mr. MASSARO. Anybody else like to speak to that?

Mr. CAMPBELL. I'll just say briefly, not being an expert on the Ukrainian case, that in addition to the challenges of repatriating assets, I'll say that Ukraine has a very robust civil society engaged on these issues. And so to put out a hopeful message, I think that

it's a good model of how civil society can keep an eye on the government and keep pressure on. This case has gone on for more than 10 years, from what I understand, in the Ukraine.

And I will tell you that I recently went to the Ukraine to meet with some of these groups to learn lessons from them frankly on how to keep the civil society efforts moving forward. So while I can't speak to whether or not the money will ever return on any of the cases we're working on right now, because they're so complex, I can say that there are great organizations in the Ukraine that will keep the pressure on, and we should find ways to support them.

Mr. HURWITZ. Well, I will join my colleagues here in saying I'm not an expert at all, but I'll talk anyway.

Mr. MASSARO. Much appreciated, Ken. [Laughter.]

Mr. HURWITZ. Well, let's not jump the gun. These assets have not been seized yet. Some of these assets have been frozen, some of the frozen assets have actually been unfrozen. A lot of the difficulty, as I understand it, is that the Ukrainian Government has not been able to put together a legal regime and a legal capacity to make the proper requests and to actually work with Western countries to identify and to make demands upon the assets that have been stolen.

I am sure there's many people to criticize; there's blame that goes around quite broadly, I'm sure. But one of the problems really has been on the lack of progress in Ukraine to create the legal mechanisms that allow this.

And I might mention also that with regard to U.S. seizures, U.S. forfeitures, we have a fairly strict notion of money laundering, and money laundering is the main tool that is used here—that is, laundering introducing the proceeds or the tools of a crime, committed perhaps elsewhere, into the U.S. financial system. So the laundering is the crime, but in order to prove the laundering you have to prove that the proceeds come from an activity that is unlawful both in the country where it took place and in the United States. This is a high burden, especially in a country such as Ukraine where the legal code does not actually fully reflect or do justice to many of the kinds of crimes, particularly what I call primitive accumulation of assets in the hands of oligarchs. So this is a very real problem just in terms of setting up a legal regime.

Not all developed countries do have such a strict notion of criminality requiring that the crime actually be a crime in the country where it took place, but many do. And the United States, of course, being such a key player, is one.

Mr. MASSARO. Next question? Right there in front, yes.

QUESTIONER. Ken Meyercord, a retiree.

How about using recovered assets to pay off the foreign debt of a country? Theoretically, all the people of a country are responsible for their country's foreign debt and so this would be a way of returning the money to the benefit of the people, albeit indirectly.

Mr. MASSARO. Anyone like to address that?

Mr. CAMPBELL. I'm happy to take that. You know, it's an interesting idea. I think one of the challenges with that is in the Uzbek case. And I'll really stick to that case on this one. They are currently seeking loans of \$750 million for agriculture where the forced labor is being used, then you have the corrupt network. And that's being sought by the current president and everybody else. So that debt then gets transferred back to the people of Uzbekistan who are the forced laborers out there harvesting the cotton that then

gets sold in the international market at \$650 million annually, then, which could go to paying back the debt or whatever foreign loan, disappears into a Selkiofond that's controlled by the president and is off the books.

I think as a first step what we would need to see is a lot more budget transparency in each of these countries. And I think one of our challenges there has been that the lending institutions—and in particular I'm talking about the big ones like World Bank—they aren't taking this issue seriously. They're not taking the budget transparency issue seriously in the OSCE countries. They're giving out loans without putting budget transparency requirements. And they don't double check to see what's happening with the company revenues that are coming out of whatever they're trying to loan into.

So I think that down the road when you have your democratic governments and you have more representation, it's something that could be on the table. But in this case, what you have is, you have them doing corrupt transactions with the World Bank to steal money, frankly. And so I wouldn't necessarily think that those international loans are not themselves facilitating corruption, because I think in many cases, like in Uzbekistan, they are.

Mr. MASSARO. Charles, please go ahead.

Thanks, Brian.

Mr. DAVIDSON. Yes, the danger of that notion is that the funds that were looted in the first place—we may have facilitated, as this question we were talking about earlier—enabled the looting in the first place. And so if we then appropriate those funds, it might even be the same institutions, banks and whatnot, that have facilitated the looting in the first place that then repay the loan via this mechanism. That's probably not something with a great political future in terms of the promotion of freedom, democracy, and good governance.

Mr. MASSARO. Next question? We're up here. Thank you.

QUESTIONER. Actually, this is more of a response to your point about what the OSCE can do.

Mr. MASSARO. Great.

QUESTIONER. Here's a very concrete thing the OSCE can do. It can tell Latvia to stop laundering the money from Uzbekistan and to stop permitting all these wealthy Uzbek leaders' kids to go to school in Latvia using the stolen money from the people of Uzbekistan. If the rest of the OSCE would bring peer pressure to bear on Latvia to stop facilitating the capital flight out of Uzbekistan through Latvian banks and allowing the kids to go to school there and the secret police to have all sorts of connections through their secret police, that would be a great step forward.

Mr. HURWITZ. Can I make a——

Mr. MASSARO. Got you. Yes, please, Ken.

Mr. HURWITZ. I would just say that's a great idea, but we could expand significantly the number of countries that one might want to recommend that to.

QUESTIONER. Starting small, starting small.

Mr. MASSARO. Yes, yes. Latvia might withhold consensus, but we'll see. [Laughter.] Yes, please, please.

QUESTIONER. Thank you very much. From a national security perspective, at what point can the U.S. Congress and the Helsinki Commission weigh in and come up with

complex sanctions, given the fact that we're talking about two problems here? One is about turning dirty money back, and another one is about actually preventing the new ones from coming.

So if we have sanctions, clear sanctions, if we can have identified people from Azerbaijan, Uzbekistan, oil-rich countries, compelling articles about identifying [inaudible] if we come up with the list of those people and prevent them from entering our country and stealing our democracy, then I think half of the problem will be gone, no?

Mr. MASSARO. Would you like to speak to that?

Mr. DAVIDSON. Good idea.

Mr. MASSARO. Great.

Mr. DAVIDSON. There is perhaps legislation brewing that would go in that direction. I mean, the Global Magnitsky Act actually gives considerable discretionary powers to the U.S. Government to do such things. But there are initiatives to go further than that. The idea, I mean, it involves subjective judgment calls and some people have a problem with that. But we're either going to do something about these problems or we're not. I think we have to be comfortable with the subjectivity. And it's something Global Magnitsky proves, that we can be comfortable with that and pass legislation of that nature. So we'll see what happens.

Mr. MASSARO. Yes, please, Ken.

Mr. HURWITZ. Yes, at the risk of being repetitive, I can't overestimate the importance of beneficial ownership transparency of corporate and other similar vehicles. And this is a question that is subject to various proposals for legislation. It is a question that has broiled up many of the states that make a fair amount of money from basically offering the kinds of services that Mossack Fonseca offered in Panama. So requiring beneficial ownership to be disclosed in the incorporation and continuing, you may not always get the truth, but you do get a cause of action if there's a lie. That's something.

The second thing is there are many people who do not have a requirement under U.S. law to know who their customer is, to know who the beneficial owner of their customer, and most notoriously is the real estate industry. Real estate brokers, real estate sellers do not have to know who is buying their property. It can be an empty company from Virgin Islands or Panama or Cayman. Those kinds of inclusion of real estate and requirement across the board of beneficial ownership disclosure would go a huge way in making progress on the issue.

Mr. MASSARO. Great, thank you.

I think we can do one more question. OK, this guy got his hand up real fast, so let's give it to him.

QUESTIONER. Thank you. Hi. My name is Lloyd A. Wentz [ph], and I'm an intern with Congressman Engel's office.

Mr. MASSARO. All right. He's a good guy.

QUESTIONER. Thank you. I was wondering if you could speak briefly to existing outlays for democracy promotion programs, such as the National Endowment for Democracy [NED], the International Republican Institute and others, and what the record is for how they've been able to foster civil society and the degree to which that has helped with corruption?

Mr. MASSARO. Would you like to start?

Mr. DAVIDSON. Sure. Well, actually, I'm very happy to talk about that. On the NED front, NED has gotten extremely interested in this specific issue of anti-kleptocracy. And they have actually voted at the board level and now have to report to Congress on what they're doing about the problem. So they have a little task force that they've put together. And my group works with them very closely actually.

But they have recognized this problem of grand corruption as something that really undermines freedom and democracy and what they have been trying to promote over the years. So it goes back, their interest, a couple of years, but I think it's a positive development, and not just in terms of NED's resources, but in terms of legitimizing the notion of how important this is in the policy community, because they're quite influential as an intellectual force with their "Journal of Democracy." Their board is very prestigious and very well-connected and influential in policy circles. So NED's interest is, I think, a very positive thing.

Freedom House has also gotten increasingly interested in this question. Open Society Foundations, which is a huge organization, has gotten interested in this. And I think it's also becoming increasingly bipartisan as the national security aspects of this become more and more salient. And, of course—well, not of course, but it's not surprising, shall we say—that what's going on now with the Russia influence investigations has been goosing all of this immeasurably.

Mr. MASSARO. You guys like to say anything to that?

Mr. CAMPBELL. I'll just say, from a practical perspective, there's very little that the NED or institutions like that can do on the ground in many of these countries right now. And so I think one place where Congress could really help in the sense of getting civil society and groups like NED involved is to really highlight the human impact of corruption more. I don't think it's really talked about. It is seen more as financial transactions and, you know, rich people losing money essentially is how the world sees it.

But in truth, what we're talking about are people who have been tortured for not wanting to participate in grand corrupt schemes, people who have lost their homes, their lives, people sent into exile. And I think, to the extent that NED and the others and Congress in their democracy and human rights funding can really help draw those policies together, I think we'll have a more comprehensive solution to the problem on the ground.

Mr. MASSARO. Anything, Ken?

All right. Well, thank you all very much for coming. We will conclude the briefing there. See you later. [Applause.]

[Whereupon, at 11:32 a.m., the briefing ended.]



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