

## **SWITZERLAND: HOW CAN TRANSITIONAL JUSTICE SUPPORT ASSET RECOVERY AND THE RIGHT TO REPARATIONS?**

*(with three infographs)*

*Text prepared by avv. (attorney-at-law) Niccolò Salvioni, Locarno, Switzerland, as speaker "from the North" in occasion of the International Workshop "Truth, accountability and Asset Recovery: How Transitional Justice can fight corruption", organized by the International Center for Transitional Justice – ICTJ – NY, at the presence of distinguished delegations of Tunisia, Gambia, Kenia, South Africa and Armenia on March 2 – 3, 2020, at Hotel Africa in Tunis, Tunisia:*

### **1. Language of the procedure:**

Switzerland has four official languages, Italian with the main financial City in Lugano, French with Geneva and German with Zurich and the Romansch language. The Swiss Statutes are therefore written in these languages, and often, for the more important Statutes, also in a non-official translation into English.

You can find all the relevant statutes on internet in the website of the Swiss Confederation. The language is an important factor in the international mutual assistance in criminal matters with Switzerland: a request in Switzerland should be written in German, French or Italian, otherwise it is necessary to enclose a translation in one of these languages.

The translation costs and the difficulty of comprehension can be the first main obstacle to a request of assistance.

Switzerland by the EF EPI survey is ranked 19<sup>th</sup> in English knowledge, between Kenia and the Philippines. So, in any case, even if a translation of English documents into an official language is necessary, requests coming from countries where English is an official language might also somehow facilitate the procedure.

As a conclusion, if a requesting country has affinities to the Swiss official languages or with English, the procedure of assistance in criminal matters will be easier.

As every one of the 26 Swiss cantons of the Swiss confederation has his own full jurisdictional competence for civil, criminal and administrative matters, also the official language depends from the Canton. The Canton where a procedure will be finally opened is important in order to ascertain the language of the procedure.

As we will see, since 2002 the Confederation has a full working *Federal Prosecution office* that deals with specific serious crimes and has full work capacity in all official languages.

### **2. Ill-gotten assets**

Switzerland is a very active international wealth management center. It is still ranked number one in attracting private clients.

At the end of the 2017, the Swiss banker Association mentioned that Switzerland managed assets amounting to 2'208 billion.

Only in 2010 Switzerland recovered and transferred back about 1,7 billion to post-conflict societies<sup>1</sup>. How many others are waiting to be recovered through judicial criminal proceeding with the help of Transitional justice institutions?

Not only Switzerland manages foreign wealth. Other centers are also very active in asset management. As you will hear, in the last decades, Switzerland enacted a series of new legal mechanism and appointed new bodies in order to filter, control, seize and forfeit ill-gotten assets. These mechanisms became, with the time, more and more complex and expensive to maintain. The costs determined by the overall control system of the Swiss financial system, caused a reduction of the Swiss concurrence capacity in comparison to several competitors. Those last, maybe, now are more interesting than Switzerland as place where hide looted founds.

The enacted Swiss filter system seems to work well. Since the first cases of restitutions in 2002, it was possible to recover several big amounts ranging from the 700 Million coming from Abacha/Nigeria to the 1.3 Million from Turkmenistan<sup>2</sup>.

As you can notice, the recovered figures reduced considerably with the time. Maybe because Switzerland lost his "appeal" as safe haven for kleptocrats.

Since the enactment of those new law provisions, probably they simply prefer avoid Switzerland, at least as a chief deposit place. That means that recovery procedures today are more complex, because it is often necessary to deal with complex multi-jurisdiction litigations, languages and costs.

Often the former, deposed politicians, without any finance problem, are assisted by series of the best Law Firms on the market. At contrary, the newly born States find themselves

---

<sup>1</sup> See Swiss Federal Council: *Message 10.039 relatif à la loi fédérale sur la restitution des valeurs patrimoniales d'origine illicite de personnes politiquement exposées* (Loi sur la restitution des avoirs illicites, LRAI) du 28 avril 2010, page 3001.

<sup>2</sup> Public known cases of recovered amounts in Switzerland:

2002 Peru / Montesinos 92 million US dollars

2003 Philippines / Marcos 684 million US dollars

2005 Nigeria / Abacha 700 million US dollars

2005 Angola I 24 million US dollars

2007 Kazakhstan I 115 million US dollars

2008 Salinas / Mexico 74 million US dollars

2012 Kazakhstan II 48 million US dollars

2012 Angola II 43 million US dollars

2014 Haiti / Duvalier 5,7 million of US dollar

2107 Tunisia 3,5 million €

2017 Abacha Nigeria 321 million under the control of the World Bank;

2020 Turkmenistan 1.3 million US dollars for a United Nation Sanitary project

see *Stratégie de la Suisse concernant le blocage, la confiscation et la restitution des avoirs de potentats* (« Asset Recovery »), Département fédéral des affaires étrangères DFAE, Direction du droit international public (DDIP), 2014, page 6 of 24, and other press releases of the Federal Council.

On 2016 following amounts were still **frozen** and waiting for their future:

Egypt 570 million USD in assets from.

Tunisia / 60 million CHF.

Siria / 120 million CHF connected to Syria, and Syrian companies (EU sanctions)

Libya / 90 million CHF (UN sanctions), see NO DIRTY MONEY, The Swiss Experience, in *Returning Illicit Assets*, by Swiss Federal department of Foreign Affairs.

often in difficult economic situation, with almost empty vaults, and difficulty to find good representatives that can orient them with the different open procedures. Often the new State has to deal with “smoke screens” built through dozens of shell companies founded in exotic places with the goal to hide the real beneficial owner of the money.

### **3. The continually changing legal working frame:**

Transitional justice<sup>3</sup> is an always more important concept, not only internally in the legal *corpus* of the single States that sustained a deep political metamorphosis, but also internationally, in the relations between States.

Transitional justice deals not only with legal, but also with judicial, sociological, psychological, economic, political and diplomatic reorganization works of post-conflict societies. Without doubt, an extremely complex and delicate task.

Each post-conflict society should find independently, within his powers and social intellectual unicity, his way in order to establish his own rule of law, in the context of his own inherent self-determination and development faculty, with the collective work of their brightest minds. Each State should decide free in the context of his sovereignty how to manage the heritage of the former State structure.

Often, courageous Judges, Public Prosecutors, State officials, Politicians and Lawyers with their integrity and example, builds the backbone of the newly born social organism that gives public trust and dignity of the State and Rule of law.

In my experience, the biggest question in Judicial assistance in Criminal matters is always if a criminal prosecution abroad will be opened, if it will continue and if it will end with a trial with conviction and forfeiture, or not.

To forecast how and when a criminal procedure in Switzerland will finish it is already a difficult task. To forecast how and when a procedure abroad will finish, for a Swiss lawyer is even more difficult, if not impossible.

This difficulty is enhanced by the general aspect that in litigations about big amounts (as principle over the 100'000.- US dollars) a case becomes, at least indirectly, also “political”. When politics comes in from the door, justice steps out from the window: so, my professors told me at the Bern University: maybe a universal meta-juridical principle, South and/or North.

By evaluating the effects of “transitional justice”, from a northern perspective, it is interesting to note how conflict and post-conflict societies generated enormous judicial and legal effects outside of them, also in Switzerland, during the last forty years.

---

<sup>3</sup> The Security council of the United Nations on August 24, 2004, in the report of the Secretary General regarding “The rule of law and transitional justice in conflict and post-conflict societies” tried to give a definition of “transitional justice”. It comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.

After the "forerunner" Law on **International Mutual Assistance in Criminal Matters (IMAC)** entered on force in 1983, a multitude of new related Statutes were enacted.

Now the set of norms that tries to solve the different issues related with the application of IMAC, with their interactions, is vast and quite complicated.

Herewith I listed chronologically some of the most important Swiss legal mechanism related with international assistance in criminal matters:

1. 1983 Law on **International Mutual Assistance in Criminal Matters (IMAC)** <sup>4</sup>
2. 1994 **Money laundering** crime<sup>5</sup>
3. 1994 Unlawful association (**Criminal associations**) crime<sup>6</sup>
4. 1994 Forfeiture of assets of a **Criminal associations**<sup>7</sup>
5. 1995 Federal Act on **Cooperation with international courts for the Prosecution of Serious Violations of International Humanitarian Law (former Yugoslavia and Ruanda)** <sup>8</sup>
6. 1998 Enactment of the Federal Act **Anti-Money Laundering** and building of the **Money Laundering Reporting Office Switzerland (MROS)**<sup>9</sup>
7. 2000 **Corruption** and **bribery crimes**<sup>10</sup>
8. 2002 Building of the new jurisdictional competences of the **Office of the Attorney General of Switzerland**<sup>11</sup>
9. 2003 Institution of the **corporate Criminal Liability**<sup>12</sup>
10. 2003 **Terrorism** crime<sup>13</sup>
11. 2004 The **Federal Criminal Tribunal** in Bellinzona begins his activity
12. 2004 Federal Act on **sharing of the forfeited goods**<sup>14</sup>
13. 2005 **Traffic of stolen Cultural property** crime<sup>15</sup>

<sup>4</sup> Swiss federal law on **International Mutual Assistance in Criminal Matters (IMAC)** of 20.03.1981, RS (Recueil Systématique - Systematic collection of the Swiss federal law) 351.1, in force since 01.01.1983.

<sup>5</sup> Federal Article 305bis (now) of the Swiss federal penal Code against **money laundering** of 18.03.1994, in force since 01.08.

<sup>6</sup> Federal Articles 275ter (now) of the Swiss federal penal Code against **criminal associations**, in force since 01.08.1994

<sup>7</sup> Federal Article 72 (now) of the Swiss federal penal related to **forfeiture of assets of the organized crimes** since 01.08.1994

<sup>8</sup> Of 21.12.1995 «Loi fédérale relative à la **coopération avec les tribunaux internationaux chargés de poursuivre les violations graves du droit international humanitaire**» (former Yugoslavia and Ruanda tribunals), RS 351.20, in force 22.12.1995.

<sup>9</sup> Federal Act on Combating Money Laundering and Terrorist Financing - **Anti Money Laundering Act – AMLA** – of the 12.10.1997, RS 955.0, in force since 01.04.1998.

<sup>10</sup> Federal Articles 322ter- 322octies of the Swiss federal penal Code against bribery of 01.05.2000.

<sup>11</sup> With main seat in Bern, and branches in Lausanne, Zurich and Lugano; Federal Act on the **new procedural competences of the Confederation in the criminal organizations and economic crimes**, of 22.12.1999, in force on 01.01.2002.

<sup>12</sup> Federal Act of 21 March 2003 (Financing of Terrorism, Federal Art. 102 of the Swiss federal penal Code regarding the **Corporate Criminal Liability** - Liability under the criminal law 12.12.2002, in force since 01.10.2003.

<sup>13</sup> Federal Act of 21 March 2003 (Financing of Terrorism), in force since 01.10.2003, with Federal Article 260quinquies of the Swiss federal penal Code **against financing of terrorism** in force since 01.10.2003.

<sup>14</sup> Federal Act on **sharing of the forfeited goods** of 19.03.2004, RS 312.04, in force from 01.08.2004.

<sup>15</sup> UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of **Ownership of Cultural Property** 1970, and subsequent **Federal Law on the international export and transfer of cultural property** of 20.06.2003, RS 444.1, in force since 01.06.2005.

14. 2009 Control of the financial market through the Swiss Financial Market Supervisory Authority **FINMA**<sup>16</sup>
15. 2007 Institution of the **Swiss federal administrative tribunal** in St. Gallen
16. 2011 New unified **Swiss federal Criminal Procedure Code**<sup>17</sup>
17. 2011 **Genocide, crimes against humanity and war crimes** according to the Rome Statute of the **International Criminal Court**<sup>18</sup> in den Haag and the **Geneva Convention**<sup>19</sup> and **Additional protocols** relating to the **protection of victims of international armed conflicts** crimes<sup>20</sup>
18. 2011 **Task force dealing with the past and prevention of atrocities** of the Federal Department of foreign Affairs begins his activity<sup>21</sup>.
19. 2013 Federal Act on **extrajudicial witness protection**<sup>22</sup>
20. 2016 Federal Act on **Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act, FIAA)**<sup>23</sup>
21. 2016 **Section on restitution of illicit Assets** of the Swiss Federal Department of Foreign Affairs begins his activity<sup>24</sup>
22. 2016 Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, **(FinMIA)**)<sup>25</sup>

just to mention the main ones.

We can therefore note the existence of a sort of “*reflex transitional justice*”, meant as a set of complex mechanisms offered to help the conflict or post conflict societies to find a new balance with their past and build a more sustainable society and future.

---

<sup>16</sup> Federal Act on the Swiss **Financial Market Supervisory Authority** (Financial Market Supervision Act, FINMASA), of 22 June 2007, in force since 01.01.2009.

Federal Act on Financial Services (Financial Services Act, FinSA) of 15 June 2018, RS 955.0, in force since

<sup>17</sup> **Swiss Criminal Procedure Code** (Criminal Procedure Code, CrimPC) of 05 October 2007, in force since the 01.01.2011.

<sup>18</sup> Of 17.07.1998, **Rome Statute of the International Criminal Court**, RS 0.312.1, in force since 01.07.2002, inserted in Art. 264 – 264a SPC in force since 01.01.2011

<sup>19</sup> Of 12.08.1949 inserted in art. 264c SPC regarding **crimes of war**, in force since 01.01.2011.

<sup>20</sup> Of 08.06.1977 inserted in Art 264d - 264h SPC relating to the **protection of victims of international armed conflicts**, in force since 01.01.2011

<sup>21</sup> Established on 2011 in the Swiss Department of foreign affairs, the “*Task force pour le traitement du passé et la prévention des atrocités*” reunites the know-how of the four divisions of the FDFA of International Public Law, Human safety, cooperation and International institutions in order to coordinate and manage conflict situations and mediate the after conflict and development. According to the Federal Council dealing with the past is one of the beacon themes of the Department at it permits to prevent conflicts, grant the duration of the peace process and protects civil populations (See, “*Une Task force pour la prévention des atrocités*”, Le Temps, Geneva, 01.07.2012.

<sup>22</sup> Loi fédérale sur la **protection extra-procédurale des témoins** (Ltém), RS 312.2, of 23.12.2011, in force since the 01.01.2013.

<sup>23</sup> Of 18.12.2015, Federal Act on the **Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act, FIAA)**, RS 196.1, in force since 01.07.2016.

<sup>24</sup> «Section de la restitution d’avoirs illicites».

<sup>25</sup> Federal Act on Financial **Market Infrastructures and Market Conduct in Securities and Derivatives Trading**, of 19.06.2015, in force from 01.01.2016.

It is important to note that as principle, assistance should be granted as far as possible even if the act described in the request is not an offence in Switzerland. However, in executing a request, procedural enforcement (i.e. premises searches, seizure of evidence, summons to appear with a warning of enforcement in the event of non-compliance, interviewing of witnesses, telephone tapping, and the lifting of the obligation to keep certain facts confidential) it may be ordered only if the offence described in the request also constitutes a criminal offence under Swiss law (principle of **dual criminality**)<sup>26</sup>. So, in order to obtain measures as freezing of goods or ill-gotten assets and their subsequent forfeiture in favor of the requesting State, it is necessary that the alleged punishable act is subject to double criminality, in the requiring State and in Switzerland.

That means that with the enactment in Switzerland in the last 40 years of the listed new crimes types, the possibility to proceed with a domestic criminal procedure and then ask for assistance to Switzerland with the goal to seize and forfeit goods has been substantially extended. This relatively new possibility could be particularly interesting in connection of the crimes against Humanity since the 2011 or in case of crime of Traffic of stolen cultural identity artifacts since 2005.

#### **4. Switzerland – assistance in criminal matters and Transitional Justice:**

In a broad perspective, transitional justice, can be seen as a formal or unformal, hard or soft, approach by the post conflict society with regard to the people that are alleged to be accountable also for economic crimes, large scale corruption, intersecting with human rights violations.

As a formal, hard, approach, the post conflict State could reorganize his judiciary system, open a criminal procedure against the responsible granting to the accused the formal required minimum of procedural rights, and ask to the *Federal Department of Justice and Police* FDJP, Federal Office of Justice FOJ, *Mutual Assistance Unit* located in Berne, for assistance in criminal matter on the base of a bilateral or multilateral treaty (if existent) or on the base of the Swiss Federal Act on International Mutual Assistance in Criminal Matters (Mutual Assistance Act, IMAC) .

The request must be based on evidences. It is not possible to proceed with a pure *fishing expedition*. However, for bank enquiries, for example, if the number of the account cannot necessarily be stated in the request; depending on the gravity of the case, *circular orders*, may, however, be issued to all banks in a given area ("*bank alert*")<sup>27</sup>. This is first and foremost a question of proportionality.

Every professional on the field of judicial assistance in criminal matters experiments, from time to time, the "sparks" of hope brought by new government representatives that are considering the possibility to open a procedure of judicial assistance in criminal matters in Switzerland against removed politicians and their associates.

---

<sup>26</sup> See International Mutual Assistance in Criminal Matters, Guidelines, 9th edition 2009 (Case law as of May 2010) issued by Federal Department of Justice and Police FDJP, Federal Office of Justice FOJ, Mutual Assistance Unit, page. 26.

<sup>27</sup> See "International Mutual Assistance in Criminal Matters", Guidelines, FDJP, 9th edition 2009, page 39 note 279.

The decision to proceed criminally, or not, against whom, is always a difficult one.

From my sight, in the north, we can't do much to induce that decision.

We can only help to understand the mechanism that, in some lucky cases, can assist to obtain criminal justice and recover in Switzerland a part of looted State treasures.

The decision to proceed, with a criminal procedure, against one or more of the responsible, through a regular or special criminal tribunal, as said, it is a difficult one. Such a decision needs immediate action, continuity of operativity and of constant political will of the Nation, until to the end. Without that premise, no success can be reached.

One of the reasons of the difficulty, is that after a request of assistance in criminal matters or a criminal complaint is filed, nothing is predictable anymore. In order to have a conviction, you need also good evidences.

Also, after a criminal complaint, the alleged facts enter in a mechanism that can trigger a series of not forecasted auto-releasing mechanisms, governed by local criminal statutes that prescribes that the offender -or his helper- must be prosecuted **ex officio**. Those self-developing mechanism (for instance the opening of a Swiss inquiry for money laundering) could render more difficult the subsequent negotiations with the people allegedly accountable for it.

Furthermore, if sometimes the time and situation for a Criminal procedure seems to be favorable, suddenly a new unforeseen and unsurmountable obstacle can arise, blocking completely the way and rendering necessary to project a new "escape plan", in order to limit to the losses to the minimum, or rendering necessary to wait, for better times. Those obstacles come often -but not only- a result of sudden political changes of direction of the government or by the prevailing of the resistances built-in in the, unchanged, deep-State.

Other problems of continuity that can also arise during the inquires done by the examining magistrates in international assistance cases are: removal from their office, early pensioning, illness and invalidity, reduction of the allocated budged, not renewal of appointment or removal with appointment to a new more challenging activity, just to mention some of them.

The definition of "*criminal matters*" under Articles 1.1.b and 1.3. IMAC excludes the possibility of assistance to "*Commissions*", which represents generally alternative dispute resolution methods to criminal proceedings in the strict sense.

Certain "mediation" or "Amiable settlements" procedures may, however, fall within the typical scope of criminal procedure, for instance if those are provided for in specific Procedure Codes. That is different in cases where *ad hoc* procedures and institutions are established and codified by supranational bodies resolutions in order to overcome crisis situations.

According to the Swiss jurisprudence and doctrine, international judicial cooperation in criminal matters can only be granted for the prosecution of criminal offences for which the

judicial authorities of the requesting state are responsible<sup>28</sup>. In other words, criminal proceedings must be initiated in the requesting State<sup>29</sup>. Switzerland has, however, granted assistance for investigations conducted by administrative authorities, insofar as the activities of the administrative authorities were the preliminary stage of a procedure which then involved the criminal judicial authorities<sup>30</sup>. However, it is difficult for this example to apply to *Truth commissions* since they are not preparatory to a criminal trial but alternatives to it. The same applies to a decision of the Federal tribunal, which concerns a *parliamentary committee* of inquiry that could lead to criminal proceedings<sup>31</sup>.

In this respect, cooperation can only be envisaged if it remains in some way in the criminal justice system. As soon a procedure leaves the scope of international assistance in criminal matters, cooperation presupposes specific legislative intervention, for example in cooperation with the International Criminal Court and the International Tribunals established by UN Security Council Resolutions 827 and 955 (former Yugoslavia and Rwanda). However, there is a constitutional problem: Swiss federal Law on cooperation with the International Criminal Court<sup>32</sup> is based on Art. 123 para. 1 of the Swiss Constitution regarding the criminal law. What would be the constitutional basis for this type of cooperation, given that it is not criminal? Maybe one could look at art. 54 of the Swiss Constitution regarding the competences on foreign relations, as it did with the Federal Act of 21 December 1995 on *cooperation with international courts for the Prosecution of Serious Violations of International Humanitarian Law*<sup>33</sup>.

It is also interesting to mention that Art. 316 of the *Swiss Criminal Procedure Code* provides the possibility of a *Private settlement* but limited where the proceedings related to an offence that is prosecuted only on complaint. As often serious crimes related to departing governments should be prosecuted ex officio, the private settlement disposition may not applicable.

So, *Truth and reconciliation commissions* are not recognized as dealing *criminal matters* and therefore an international request of assistance in criminal matters from their side, will be rejected. Nevertheless, the evidences obtained through the inquiries done by those institutions, can in some cases, help to establish not only an historical record of the facts in order to elaborate the past, but also, if provided by the law, it can recommend remedial action by regular criminal tribunals<sup>34</sup>.

---

<sup>28</sup> Federal Criminal Tribunal 2010, 158 considerations 2 and references.

<sup>29</sup> Decision of the Federal Tribunal 132 II 178 consideration 2.2

<sup>30</sup> Decision of the Federal Tribunal 109 Ib 50 consideration 3

<sup>31</sup> Decision of the Federal Tribunal the 126 II 316 see also 133 IV 40.

<sup>32</sup> Of 22.06.2011, RS 351.6, in force on 01.07.2002.

<sup>33</sup> Of 21.12.1995 «*Loi fédérale relative à la coopération avec les tribunaux internationaux chargés de poursuivre les violations graves du droit international humanitaire*» (former Yugoslavia and Ruanda tribunals), RS 351.20, in force 22.12.1995.

<sup>34</sup> "But while tribunals are important, our experience with truth commissions also shows them to be a potentially valuable complementary tool in the quest for justice and reconciliation, taking as they do a victim-centred approach and helping to establish a historical record and recommend remedial action." The Security council of the United



After the enactment in 2011 of the new crimes of genocide, crimes against the humanity, war crimes and crimes against the population in the Swiss Criminal Code, the Swiss Federal Department of Foreign Affairs built the new "*Task force Dealing with the past and prevention of atrocities*". This structure has as objective to coordinate and manage conflict situations, to mediate the after-conflict development. In broad sense, this body, has as task to facilitate transitional justice. Probably a unique role, worldwide.

Also, the "*Section on restitution of illicit Assets*" of the *Swiss Federal Department of Foreign Affairs (FDFA)* has the role to support and coordinate the administrative procedure of freezing and the procedure of international assistance in criminal matters, leaded by the Justice Department.

*The Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons* provides also at Art. 10 the possibility to propose "amicable solutions" between the involved parties.

The "amicable solution" can be built trough coordination between the criminal procedure and a procedure of a *Truth and reconciliation commission*, for instance by a voluntary renounce to specific amounts of money by the foreign accused party, with, as return, the waiver and withdrawal by the new State of the rights as person suffering harm according to Art. 120 of the Swiss Criminal Procedure, with the parallel waiver and withdrawal of the criminal procedure abroad. With both waiver and withdrawal of both criminal proceeding in Switzerland and abroad, also the autonomous criminal proceedings (for instance for Money Laundering in Switzerland) can also be closed, as after the closure of the foreign criminal procedure, it will lack the needed offence abroad required in order to be able to continue the prosecution in Switzerland.

Therefore, the coordination activity of the *Task force Dealing with the past and prevention of atrocities* and of the *Section on restitution of illicit Assets*, together, with the *Division for International Legal Assistance*, with the competent Prosecution office, can offer a solution that copes also with the interests of a Transitional justice body, integrating it in the asset restitution procedure.

Finally, according art. 17 FIAA, the restitution of assets should pursue Transitional Justice objectives, as: programs of public interest, the way of use of the returned assets, the inclusion of parties in the restitution process or control and monitoring of the use made of the returned assets. In substance, through this restitution disposition, it is possible that the Tribunals locate and forfeits the assets through a criminal procedure with assistance request, and that afterward part of the recovered assets are distributed as reparation according to the evidences of violations collected in the meantime by the Transitional justice

---

Nations on August 24, 2004, in the report of the Secretary General regarding "The rule of law and transitional justice in conflict and post-conflict societies", Summary, page 2.

body. Such a solution can also be taken outside form a criminal conviction, is the defendant parties agrees to proceed with an “*amicable solution*”, in which also Transitional justice bodies can be integrated in order to proceed with the distribution to the victims.

A last interesting aspect is to note that Art. 11 of the *Foreign Illicit Assets Act* (FIAA) provides also the possibility that Switzerland gives technical support measures trough experts, in order to help the recovering of illicit assets.

## 5. Conclusion

Every post conflict society should remain free to self-determine how to cope with his past. As stated by Mr. Ruben Carranza “*An impunity gap is created when transitional justice mechanisms deal with only one kind of abuse while ignoring accountability for large-scale corruption and economic crimes.*”<sup>35</sup>.

Transitional justice structures like *Truth and reconciliation commissions*, are interesting and important hybrid mechanisms of reparation justice, with the task to conciliate, settle privately the relations between the new government, the departing Government, their relations with the different social structures and their troubled past.

As seen, now, for Transitional Justice structures, without a specific legal empowerment, it is impossible to ask for international assistance in criminal matters as known and recognized in Switzerland by IMAC.

Nevertheless, according to *Foreign Illicit Assets Act (FIAA)*, is it is possible to coordinate amicable solutions that can also include the Criminal prosecutions pending abroad and in Switzerland. It is at the stage of the distribution of the recovered assets that the inquiry work and results of the Transitional Justice body can be of great utility, giving him the responsibility to restitute for reparation to the victims shares of a dedicated part of the recovered assets.

Niccolò Salvioni, Tunis the 3<sup>rd</sup> March 2020, Locarno the 9<sup>th</sup> April 2020 - 17<sup>th</sup> May 2020.

./.

---

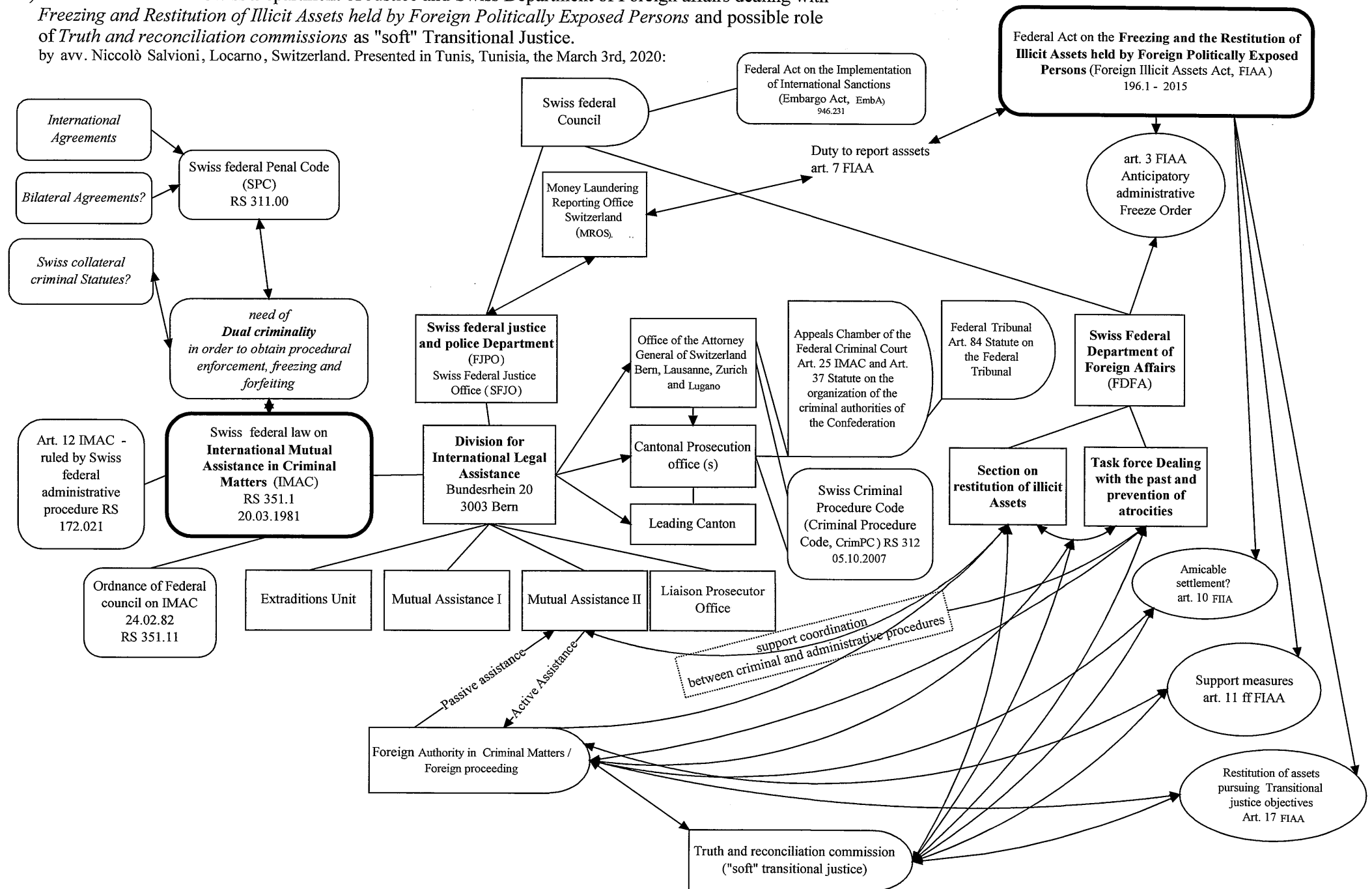
<sup>35</sup> Ruben Carranza “Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?”, *The International Journal of Transitional Justice*, Vol. 2, 2008, page 329.

Annexed infographs:

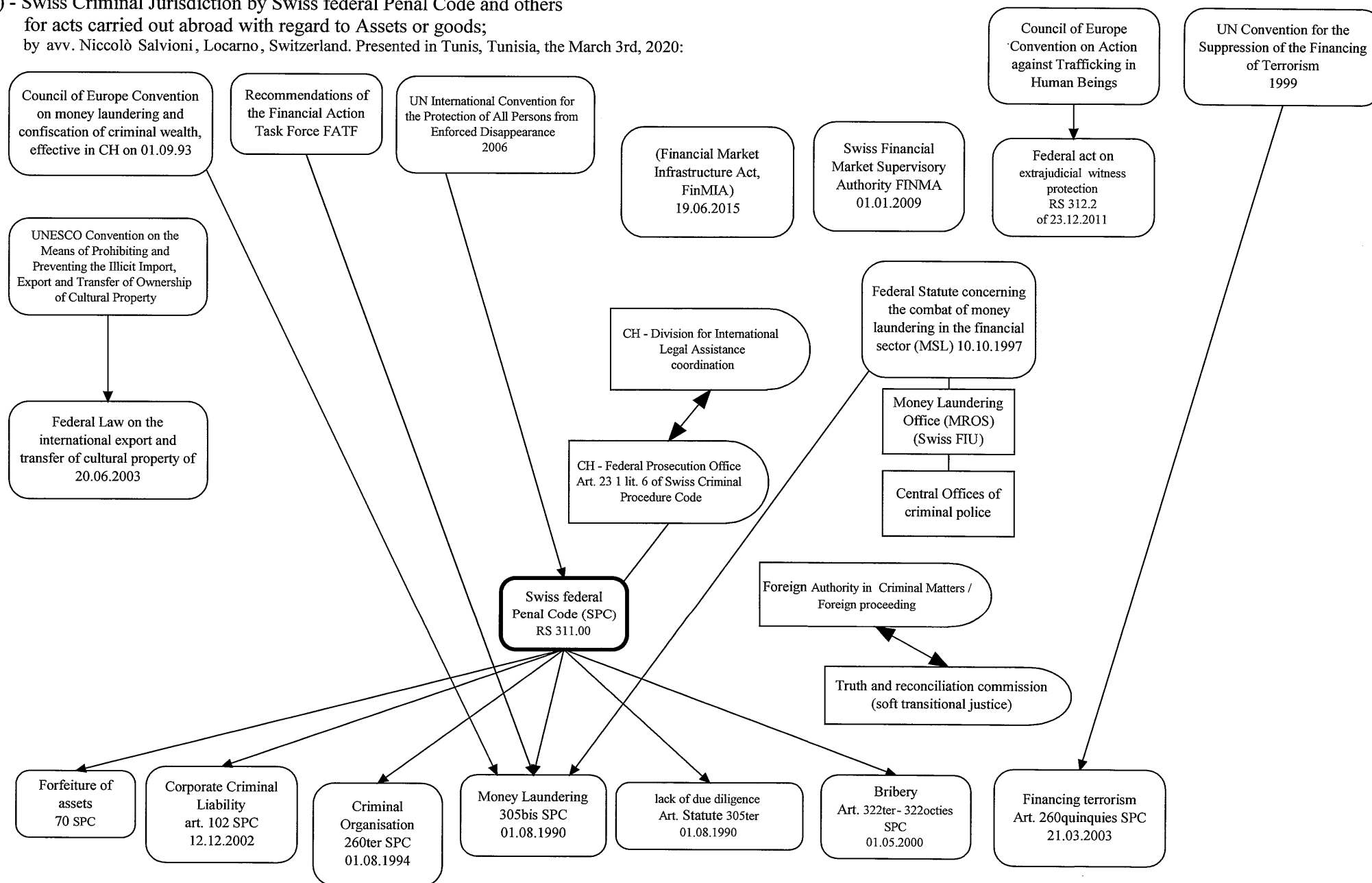
- 1 Interactions between *Swiss Department of Justice* and *Swiss Department of Foreign affairs* dealing with *Freezing and Restitution of Illicit Assets held by Foreign Politically Exposed Persons* and role of *Truth and reconciliation commissions* as “soft” *Transitional Justice*
- 2 a) Swiss Criminal Jurisdiction by Swiss federal Penal Code and others for acts carried out abroad with regard to Assets or goods
- 2 b) (Bonus) - Swiss complementary Criminal jurisdiction for acts carried out abroad as consequence of implementation of the Rome Statute of the International Criminal Court: possibility of measures to take evidences against a foreign perpetrator, limits

1 - a) Interactions between Swiss Department of Justice and Swiss Department of Foreign affairs dealing with *Freezing and Restitution of Illicit Assets held by Foreign Politically Exposed Persons* and possible role of *Truth and reconciliation commissions* as "soft" Transitional Justice.

by avv. Niccolò Salvioni, Locarno, Switzerland. Presented in Tunis, Tunisia, the March 3rd, 2020:



2 a) - Swiss Criminal Jurisdiction by Swiss federal Penal Code and others  
for acts carried out abroad with regard to Assets or goods;  
by avv. Niccolò Salvioni, Locarno, Switzerland. Presented in Tunis, Tunisia, the March 3rd, 2020:



2 b) - Swiss complementary Criminal jurisdiction for acts carried out abroad as consequence of implementation of the Rome Statute of the International Criminal Court: possibility of measures to take evidences against a foreign perpetrator, limits.  
by avv. Niccolò Salvioni, Locarno, Switzerland. Presented in Tunis, Tunisia, the March 3rd, 2020:

