

ORGANIZATION OF AMERICAN STATES



INTER-AMERICAN DRUG ABUSE CONTROL COMMISSION

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FINAL REPORT

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Meeting of the Group of Experts to Control
Money Laundering
October 27-29, 2004
La Paz, Bolivia

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FINAL REPORT

I. BACKGROUND

In May 1999, during the Twenty-fifth Regular Session of CICAD, the Commission requested the Groups of Experts to present a work plan, which, once approved by the Commission, would constitute the basis for work in these groups. In December 2002, during the Thirty-third Regular Session of CICAD, held in Mexico City, the plenary approved a work plan for 2003 and 2004. In accordance with the Commission's decision at the aforementioned session, Bolivia was to chair both meetings in 2004.

At the Thirty-third Regular Session of CICAD, held in April 2004, the Commission considered the report of the representative of Mexico, Ambassador Miguel Angel González Félix, Chair of the CICAD Ad Hoc Group on Transnational Organized Crime, prepared during the first meeting of the Ad Hoc group, which took place in Washington D.C., on March 15-17, 2004. After discussion, it was decided to refer the work plan on transnational organized crime to the Group of Experts to Control Money Laundering, for consideration as an additional agenda item for that meeting. This decision was adopted "with the request that the Group of Experts concern itself with some of the most immediate tasks and report on their progress to CICAD at its Thirty-sixth Regular Session, to be held in the Dominican Republic".

The Group of Experts to Control Money Laundering, at its meeting in Washington DC, July 13-15, 2004, requested that the Secretariat "prepare a report for consideration by the Group prior to its next meeting on those elements of the CICAD Model Regulations on Money Laundering Control that are relevant to combating organized crime within the framework of the Palermo Convention, in order to present it to the CICAD Plenary," and that the Secretariat accept information from delegations related to organized crime so as to comply with the mandate set out in AG.RES/2026. The Group also identified Special Investigative Techniques as an area that is important to proving the offense of money laundering, and requested the Secretariat to organize a special meeting with other OAS bodies.

Against this background, the Group of Experts was convened to meet in La Paz, Bolivia, between October 27 and 29, 2004. The meeting was attended by representatives of the following countries: Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Jamaica, Mexico, Panama, Paraguay, Peru, the United States, and Venezuela.

PRIOR MEETING OF THE WORKINGS OF GROUP ON FORFEITING

The working group on forfeiting, created at the Meeting of the Group of Experts in November 2003, met on October 25 and 26, 2004, under the coordination of the United States delegation. On this occasion the group consisted of: Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Mexico, and Venezuela.

II. OPENING SESSION, WORKING SESSIONS, AND CLOSING SESSION

OPENING SESSION

Opening remarks were made by the Director of Special Affairs for the Bolivian National Commission to Combat Illicit Drug Trafficking, Mr. Javier Vizcarra, who after outlining the background to the meeting urged the Group of Experts to devote their best efforts to achieving the objectives of the 2003/2004 work plan, stressing the commitment of member states to apply the Model Regulations effectively and to strengthen international cooperation.

Five plenary sessions were held, dealing with matters on the agenda:

1. Approval of the agenda and review of agenda items.

2. Comments on the new United Nations Model Legislation on Money Laundering and the Financing of Terrorism
3. Aspects of the Convention on Organized Crime currently included in the Model Regulations.
4. Special Investigative Techniques, in light of the report prepared by the Secretariat of the GAFISUD and CICAD.
5. Typology: international legal cooperation in money laundering matters
6. New challenges for the Group of Experts, Model Regulations implementation programs, and action and working plans.
7. Forfeiture
8. Conclusions and recommendations to CICAD

WORKING SESSIONS

1. Agenda, Order of Business, and general review of topics

The draft agenda was approved with an amendment proposed by delegations, whereby the plenary session would be wrapped up on Thursday, October 28, in order to ensure a quorum for adopting the conclusions and recommendations, recognizing that some delegations were unable to attend on October 29. Another amendment was to include a presentation by the delegation of Colombia on Extinguishment of Title.

2. Comments on the New United Nations Model Legislation on Money Laundering and the Financing of Terrorism

The Secretariat introduced the new draft United Nations Model Legislation on Money Laundering and Financing of Terrorism, recognizing the participation of Dr. Rafael Franzini in the working group that drafted that instrument.

The Secretariat first explained some differences between the Model Regulations and the draft Model Legislation, noting for example that the latter has a formal structure similar to that of a law, whereas the Model Regulations deal with the 40 recommendations of GAFI in a freer style. What the two instruments have in common is that they are nonbinding. Similarly, the Secretariat pointed out that the draft Model Legislation coexists with the Model Regulations, and consequently a decision would have to be taken on the future course of the CICAD instrument.

The Group of Experts has devoted a great part of its work to amending the Model Regulations, especially over the last few years, to bring it into line with new tendencies and standards in other legal instruments. The Secretariat asked the Group of Experts to consider the new draft Model Legislation, given its international importance, and to consider the new international standards established as a result of its coming into force.

The Brazilian delegation proposed that the Model Legislation be taken into consideration for possible amendments to the Model Regulations, and that this task should be included in the work plan for the coming two years. The delegations of Canada and El Salvador proposed that the Model Regulations be compared with other international instruments, including the Model Legislation and the Palermo Convention, in order to update it. Similar proposals were made by other delegations, including Mexico in the United States.

3. Aspects of the Convention on Transnational Organized Crime currently included in the Model Regulations

Pursuant to the mandate from the Group of Experts at its meeting of July 2004, the Secretariat presented a report on "aspects concerning organized crime, according to the United Nations Convention on Transnational Organized Crime, that are currently reflected in the CICAD Model Regulations for control of money laundering".

The report offered a comparative analysis of the rules contained in the Palermo Convention as they relate to money laundering and those of the Model Regulations. It addressed the following aspects:

- Definition of the offense.
- Predicate offenses.
- Autonomy of the offense.
- Evidence.
- Measures to combat money laundering.
- Responsibility of legal persons.
- Forfeiture.
- Jurisdiction and competence.
- Banking secrecy

The Chilean delegation thanked the Secretariat for its presentation, but suggested that the report should address those aspects of the Palermo Convention that are not covered in the Model Regulations, and that the mandate should be clearer and more general.

The delegations of the United States and Colombia said that the issue of transnational organized crime should be considered in a body other than CICAD, because the topic exceeded the Commission's field of action. On the other hand, the delegations of Chile, El Salvador, Mexico and Peru agreed that the Group of Experts on money laundering should deal with the issue of organized crime and its relationship to money laundering, and recommended that the Secretariat prepare a report on aspects of the Palermo Convention that are not covered by the Model Regulations.

The Brazilian delegation suggested that drug trafficking is among the most important ramifications of organized crime. CICAD experts groups should limit their intervention on organized crime to their topics of expertise. Money laundering is present in all forms of organized crime; therefore, CICAD should continue studying that issue.

4. Special Investigative Techniques as reflected in the GAFISUD and CICAD report

Mr. Esteban Fullin, Assistant Executive Secretary of GAFISUD, presented a report on Special Investigative Techniques (SIT), explaining that the project was divided into three stages:

1. Analysis of the current situation of SIT in GAFISUD countries.
2. Establishing a discussion forum to develop an adequate framework for applying SIT.
3. Training in matters relating to the application of SIT.

The report referred to techniques such as undercover operations, electronic surveillance, controlled deliveries, and effective collaboration, as they relate to international cooperation.

The report offered the following conclusions:

- There has been considerable legislative development dealing with undercover operations and controlled deliveries, but they have focused on the crime of drug trafficking and laundering of the proceeds of that crime.
- There is a lack of legal protection for undercover agents.
- There is no problem with the use of electronic surveillance (except in Bolivia).
- There is no explicit legislative recognition of reformed offenders, but penalties are reduced if the defendant agrees to cooperate during criminal proceedings.
- The use of informants is widespread, but not regulated in most countries, which poses problems for presenting evidence at trial.
- Legal assistance is not effectively applied in cases of SIT, because legislation differs so widely.

Finally, the Assistant Executive Secretary expressed GAFISUD's interest in cooperating with CICAD's activities.

The CICAD Secretariat noted that the GAFISUD presentation on SIT followed the recommendation of the Group of Experts at its July 2004 meeting, which called for a special meeting of other CICAD and OAS bodies to examine SIT issues, and asked delegations to submit information on this topic to CICAD.

The delegations of Mexico and El Salvador proposed that the Group of Experts address the SIT issues, given its importance and its relationship to transnational organized crime.

The Chilean delegation called for close cooperation between the two hemispheric bodies (CICAD and GAFISUD) to avoid duplication of efforts. It also proposed that training under the third phase of the GAFISUD project should be promoted.

The United States delegation called for a decision on which bodies should participate in the special meeting on SIT, and said that delegations that have not submitted their reports to the CICAD Secretariat should be asked to do so.

5. Typology: International legal cooperation on money laundering

The delegation of Costa Rica gave a presentation on a typology relating to international legal cooperation. This presentation dealt with the legal basis for international cooperation on money laundering. Its primary focus was on the basic legal framework that could be invoked to give effect to a request for international legal cooperation, without overlooking formal aspects or requirements of such cooperation. It also dealt with innovative rules relating to this area as contained in legislation, model regulations, and GAFI recommendations, which represent important additional factors that interested countries should take into account.

As an illustration of the problems encountered in some countries with requests for international legal assistance or cooperation, the Costa Rican delegation related a specific case in which Costa Rica was the requested country, and where judges had to be given training in the area of international cooperation. The delegation also pointed to the need for agreements or treaties between countries in this area in order to expedite such proceedings without violating domestic law.

6. Forfeiture

The United States delegate, as coordinator of the working group on forfeiture, thanked the delegations that were members of that working group and noted that they had achieved significant progress despite the short time available.

In the first place, he referred to the preparation of a cooperation manual that will identify countries' procedures for providing assistance in the area of forfeiture and contents of a proper request. He noted that, prior to the July 2004 meeting, a questionnaire was circulated, to which only nine countries responded. He reported that the working group had considered the cooperation manual and had identified an organization for the guide and a timetable for its completion. In accordance with that schedule, he invited delegations to respond to the questionnaire no later than November 30.

The coordinator also reported that the working group considered technical assistance in forfeiture and explained that the objective is to make forfeiture more practical and effective in individual cases. On this point, he asked the Secretariat to identify existing technical assistance programs relating to money laundering, in which forfeiture issues could be included. He also asked the Secretariat and the Group of Experts in general to identify possible sources of financing for technical assistance programs. On this same point, he said it would be important to identify other agencies that conduct forfeiture training, and to identify those who would receive training, in order to avoid duplication of effort. The working group noted that technical assistance would likely have to be considered on a country-specific basis, targeting different audiences and topics in accordance with identified needs.

The coordinator also reported that the working group made significant progress toward developing potential amendments to the Model Regulations for consideration by the Experts Group. As a result, he reported that the working group had concrete preliminary draft proposals for amendments concerning:

- Presumptions in criminal forfeiture cases
- Maintenance of seized assets, including provisions for liquidation of proverty
- Enforcement of foreign judgments

In addition, he reported that with respect to non-conviction forfeiture, the working group had considered options and had begun to develop a plan forward. The coordinator reported that the next step would be to circulate the preliminary drafts to the remainder of the delegations in the working group for comment and revision in order to produced consolidated consensus proposals for consideration by the full Experts Group. The working group would also continue to consider other potential revisions to the Model Regulations.

7. New challenges for the Group of Experts, Model Regulation implementation plans, and establishing a course of action

The Secretariat noted that the meeting of the Group of Experts in Bolivia marked the end of the 2003-2004work plan, and the group would need to decide whether it should continue as an advisory body to CICAD. If it is to do so, a work plan will have to be drawn up for the coming years. Delegations were invited to submit their proposals for that work plan to the Secretariat.

With respect to the Chilean proposal, for dividing the working group into subgroups, the Secretariat supported this idea, noting that this approach has produced results as could be seen in the work of the subgroup on forfeiture and that of the subgroup on autonomy of the offense. The Secretariat encouraged the Group of Experts to consider establishing other subgroups for such tasks as it might determine.

The Secretariat also referred to the profile of member experts of the group, noting that it consists of lawyers, judges, prosecutors, police officials, members of financial information units, all of whom have a very specific field of action, a fact that might be useful in establishing working groups on various issues.

Finally, the Secretariat stressed that countries represented by the experts must be completely honest and realistic in identifying their needs, and it urged the experts to try to ensure that the evaluations fully reflect reality.

The Colombian delegation suggested that technical assistance be focused on prevention, since the training conducted by CICAD had dealt for the most part with the repression of criminal activity.

The United States delegation asked that issues and sectors be identified where technical assistance could be usefully provided, and that care be taken not to repeat the training courses offered by other agencies.

The Chilean delegation suggested establishing a database on the types of technical assistance that have been provided, so that successful experiences can be compiled and different and innovative courses can be offered.

III. CONCLUSIONS AND RECOMMENDATIONS

1. Organized crime

The Group of Experts on Control of Money Laundering agreed to further consider whether specific aspects of the Palermo Convention related to money laundering would merit inclusion in or modification to the Model Regulations. The Group agreed to the following specific course of action:

1. The Secretariat shall prepare, in consultation with the Secretariat of the Palermo Convention, an illustrative list of elements of the Palermo Convention related to money laundering that are different from or not included in the Model Regulations.

2. To assist the Secretariat, member states wishing to propose elements to include in that list or specific texts for new articles or amendments to existing articles of the Model Regulations regarding money laundering matters related to the Palermo Convention, shall do so by January 31, 2005.

3. Additionally, the Group requested that the Secretariat identify and consult with those other bodies within the OAS, such as the Committee on Hemispheric Security or other Experts Groups, and those bodies outside the OAS, such as the Conference of Parties to the Palermo Convention, that are addressing or could appropriately address each item identified on the list of elements.

4. The Group further agreed that the Secretariat would circulate a report on the results of this effort in advance of its next meeting so that the Group could consider what, if any, further steps it should take on any of the specific elements identified or textual proposals.

2. Special Investigative Techniques

Consistent with the final report of the Meeting of the Group of Experts held in Washington, July 13-15, the Secretariat will need to determine the date of the special expanded meeting of the group and other OAS bodies and other agencies such as GAFISUD and the United Nations. CICAD will have to collect the information it does not already have, and countries that have not yet supplied that information should have until November 30, 2004 to do so.

3. Forfeiture

With respect to progress in the working subgroup on forfeiture, headed by the United States and Guatemala, it will continue its activities to consolidate a text of proposed amendments to the Model Regulations.

The group on forfeiture, with the support of the Secretariat, will prepare a technical cooperation manual in accordance with the following work schedule:

- November 30, 2004: deadline for receipt of responses to the questionnaire on forfeiture.
- February 1, 2005: deadline for submitting the draft technical cooperation manual.
- April 1, 2005: deadline for presenting observations on the draft manual.
- April 30, 2005: deadline for delivering the final version of the technical cooperation manual.

4. Model Regulations

The Secretariat will prepare a draft preamble to the Model Regulations with a view to indicate clearly the legal status of such a document, and will send this by e-mail to member states for consideration at a next meeting.

5. Chairmanship of the Group of Experts

While the experts recognize that the chair of their group must be selected by the CICAD plenary, recognizing the challenges that lie ahead for the group, and that its work plan is sure to extend over a period of two years, they suggest that the group should be chaired by Colombia for the year 2005, and by El Salvador for 2006.

6. Work plan 2005-2007

Given the new challenges facing the Group of Experts, countries will provide the Secretariat, no later than November 20, 2004, with their proposals for items that will make up the work plan for the period 2005/2007.