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**XLVI MEETING OF THE GROUP OF EXPERTS
FOR THE CONTROL OF MONEY LAUNDERING
June 4-5, 2019
Washington, D.C. Æ U.S.A.**

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FINAL REPORT

1. BACKGROUND

The Group of Experts for the Control of Money Laundering (GELAVEX) was created in 1990 in accordance with Article 22 of the Statute of the Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States (OAS) and, therefore, is established as one of the advisory bodies of the CICAD.

Currently, GELAVEX is made up of two Sub-Working Groups: the Sub-Working Group on Forfeiture and International Cooperation and the Sub-Working Group on Financial Intelligence Units (FIUs) and Law Enforcement Agencies (LEAs). The activities of these Sub-Working Groups are determined by: Strategic Plans that define lines of action; and Work Plans that define concrete activities, which are to be developed in accordance with the previously-defined lines of action.

The Draft Strategic Plan for the 2018-2020 ([OTOC/LAVEX/doc.7/17](#)) was approved during the 10th Regular Session ([CICAD/doc.2363/17](#)). Therefore, it serves as a guideline for the activities developed by the Group during the three-year period from 2018-2020.

In accordance with the 2018-2019 Work Plan approved by the CICAD, the **Sub-Working Group on Forfeiture and International Cooperation** will be dedicated to working on the following lines of action: a) developing a study on the self-sustainability of seized assets within the framework of duties belonging to offices specializing in asset management; and b) developing a study on the forfeiture of substitute assets and commingled assets, with the aim of identifying countries with developed legislation that considers the idea of, or need to, incorporate these provisions in their legal frameworks. **The Sub-Working Group on Financial Intelligence Units and Law Enforcement Agencies** will focus on: a) a study on cases concerning money laundering linked to human trafficking and the illicit smuggling of migrants in the region; b) a study on comparative legislation and technical guidelines of international organizations with regard to the probative value of intelligence reports in the region; and c) developing a best practices guide for expert reports in money laundering cases. Additionally, it was confirmed that Mexico, Panama, Paraguay, and Peru would participate as co-contributors to the Sub-Working Group in order to develop the proposed studies. Also, any other delegates who wished to contribute to the development of these projects were invited to do so.

2. MINUTES

i. **Opening Session**

- < The opening remarks were given by the Chairperson of the Group of Experts for the Control of Money Laundering of the Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States (OAS),

After welcoming the attendees of the meeting, Doctor Morales Olivera reminded them that their goal is to continue working multilaterally with regard to the fight against transnational organized crime and money laundering. She reminded the attendees that this approach is necessary due to the increasingly transnational nature of crime and due to the fact that the region shares common problems. She highlighted that the goal is to block the further progression of crime.

- ◀ Secretary for Multidimensional Security of the OAS, **Doctor Farah Urrutia**, provided a welcome speech to all of the delegates from the Member States and observers. She urged them to continue implementing the Work Plan approved by the CICAD and expressed her confidence that this meeting of experts would have great success.

Doctor Urrutia thanked the attendees for their continued commitment to fighting transnational organized crime. She acknowledged the importance of recognizing the link between organized criminal groups and the methods they use to conceal the illicit origins of their wealth. She emphasized the importance of a coordinated approach to fighting transnational organized crime. She thanked the Expert Group for continuing to follow through with their commitments to their Work Plan and for their cooperation.

ii. Second Session

- ◀ Approval of the agenda and review of topics . The Group approved, with no changes, the plan for the list of topics Criminal groups.
- ◀ **Mauricio Pastora**, International Affairs Advisor, Financial Crimes Enforcement Network (FinCEN)/United States Department of the Treasury

analyst can provide perspectives that would not have otherwise been provided by the Financial Intelligence Unit, adding value to the Financial Intelligence Unit Reports.

Brazil asked the United States if all law enforcement agencies have access to FinCEN databases, or if they must belong to a specialized agency.

The United States responded that law enforcement at all levels of government may have access to FinCEN databases, but that agencies must first sign memoranda of understanding. These memoranda imply that agencies agree to oversight from FinCEN. Representatives from and liaisons for law enforcement agencies also work at FinCEN. Law enforcement agencies also employ their own analysts who are able to use FinCEN information, with some aid from FinCEN as necessary.

Brazil asked Peru if prosecutors are able to choose which types of report they wish to receive.

Peru responded that there are two main types of reports: Requests for National Information, which include information from Suspicious Activity Reports; and technical assistance, with which the Financial Intelligence Unit responds to requests from prosecutors who identify someone who has traveled abroad and whose activity is a red flag for possible illegal activity. Peru highlighted the necessity for information to be transmitted digitally, which leads to quicker and more accurate information sharing.

Brazil also asked Peru about what criteria the Financial Intelligence Unit uses in determining what information gets passed on to law enforcement. Peru answered that the main criteria are whether the case involves the following: Politically-Exposed Persons; Suspicious Activity Reports; a high amount of money; open criminal investigations; and a high level of urgency.

Chile asked Peru if prosecutors are able to choose which types of report they wish to use them.

Panama answered that prosecutors are able to choose which types of report they wish to use them. However, their work is preventive and must be carried out rapidly in order to prevent money from being moved to a different location.

Colombia asked Peru if prosecutors can directly access Financial Intelligence Unit databases.

Peru answered that prosecutors cannot currently access Financial Intelligence Unit databases because prosecutors must be able to prove to the Financial Intelligence Unit that there actually exists an open criminal investigation on the person about whom information is requested. However, Peru said that granting access to prosecutors might be an attractive option for the future. It would be an attractive option for the future.

Guatemala asked Panama and Peru about: if they have time limits for requests; how many requests they receive per year; how many employees they have to handle the requests; and how they handle incomplete and erroneously-recorded names.

Panama emphasized that their financial intelligence does not have probative value and is only provided because there is already an open criminal investigation on the person about whom information is requested. Panama stated that their model is preventive, not suppressive. Therefore, there is no fixed timeframe for requests. However, the average amount of time spent on responding to a priority case is 3-4 days. Priority cases are determined based on a risk assessment. Panama currently needs 40 people and will be seeking to employ more.

Peru answered that they receive about 40-50 requests per month. The average response time is 5-10 days, depending on how many Suspicious Activity Reports are linked to the person about whom information is requested. However, the response time is never more than 15 days. Peru's Financial Intelligence Unit also has a team dedicated to handling responses to prosecutors and to handling the freezing of funds.

Trinidad and Tobago asked Peru if, hypothetically, an analyst were to be called by a prosecutor to testify in court, would they be considered experts? In addition, Trinidad and Tobago asked if those analysts would explain both the information gathered from the analysis as well as the process of the analysis itself.

Peru answered that there was confusion in interpreting, into English, the terms "Financial Intelligence Report" and "Financial Intelligence Unit Report". The latter does have probative value while the former does not. Peru explained that, if an analyst were to testify, they would simply explain the information gathered from the report (such as what the report reveals about the money flow, route, etc.); they would not explain how the report was made.

Peru added that, beyond just providing financial intelligence, its Financial Intelligence Unit is capable of freezing funds in real time by coordinating with other agencies and by using mixed, administrative/judicial action. Afterward, they are able to carry out seizures.

The United States asked Peru how they maintain confidentiality, especially in high-profile cases, and how they prevent information from being leaked to the media.

Peru answered that their Financial Intelligence Unit is capable of tracing its documents. It is able to see how the document is seen, printed, etc. Peru emphasized that there has never been a reported leak coming from the Financial Intelligence Unit, but that there was one case in which a document was leaked. The biggest weakness in the system is not with the Financial Intelligence Unit or the

prosecutors, but rather with politicians who come into contact with financial intelligence information.

< Presentation: Practical Guide for Special Investigation Techniques in Transnational Organized Crime Cases. Luis Yshii, DTOC/SMS/OAS Consultant. Ó Ö U V Đ Š Œ X Ò Ý Đ Đ [& È G F Đ

The Secretariat introduced the purpose of the Practical Guide. It aims to fulfill the Department's mandate to support member states in implementation of the Hemispheric Plan of Action against Transnational Organized Crime. It aims to comply with the preeminent United Nations conventions dealing with issues related to the fight against transnational organized crime. It also addresses three special investigative techniques: undercover operations, controlled delivery, and electronic surveillance, the implementation of which has proven problematic for some states. The Secretariat emphasized that, while this Practical Guide focuses on the civil law tradition, a future practical guide could focus on the common law tradition.

Luis Yshii explained the relevance of a Practical Guide. Modern criminality is more complex than ever, requiring the understanding of its organized and transnational nature; its use of technology and the internet; and its use of facilitators and legal personhood, among other qualities. He explained the content of the Practical Guide: it is a systematic review of the science and jurisprudence. He explained how this is problematic to study because many states have unconsolidated legal frameworks and use terminology that is inconsistent with that from other states. He emphasized a need to study the actual results of implementing international standards, especially considering that it has been years since those standards were accepted by states. He also emphasized a need for anti-transnational organized crime efforts to: be interinstitutional (including both the public and private sectors); be multilateral; respect the rights of both the individual and the collective; and respect the sovereignty of states.

The Secretariat pointed out that the Practical Guide focused on representing the geographic diversity of the civil law tradition countries in the Americas. It also relied on the expertise of both law enforcement professionals and prosecutors.

Comments from the Delegates:

The United States questioned the methodology of the Practical Guide, asking what exactly was done (e.g., a survey of jurisprudence).

The Secretariat clarified its use of the terms of the expertise of both law enforcement professionals and prosecutors. The Secretariat clarified that the Practical Guide selected countries that not only represented geographic diversity, but that also had, with respect to the fight against transnational organized crime, a better development of

investigations and more experience with using these investigative tools in the courts. The Secretariat said that the consultants collaborated by teleconferencing.

The United States asked about techniques of undercover operations, controlled delivery, and electronic surveillance, especially when those techniques are not new. The United States also inquired as to the purpose of the Practical Guide.

The Secretariat using the civil law tradition. The Secretariat clarified that the Practical Guide should not be used as a model; rather, it should be used as a point of reference or comparison for countries that have not yet developed those techniques suitably, or that have notable challenges in the effective application of those techniques, in contrast to the countries appearing in the Practical Guide. The Secretariat pointed out that all of the countries in the Practical Guide had already implemented the three special investigative techniques and dealt with both successes and failures. The Secretariat stated that these techniques simply follow standards from United Nations Conventions.

The Chairperson proposal to present, for the consideration of the CICAD, the adoption of the Practical Guide as a reference document (and not as a standard or regulatory model) at the next GELAVEX meeting, which will be held in Colombia. The States unanimously approved.

◀ **Sub-Working Group on Financial Intelligence Units and Law Enforcement Agencies .**
Progress Report for the Study on Comparative Legislation and Technical Guidelines of International Organizations with regard to the Probative Value of Intelligence Reports in the Region. Co-ordinators of the Sub-Working Group [DDOT/LAVEX/doc.4/19D](#)

Chile reminded the attendees of the meeting that the Sub-Working Group was only presenting preliminary findings; therefore, the countries still had the opportunity to make suggestions or request changes to the study. Chile made a legislation comes from their Code of Criminal Procedure. To summarize the preliminary findings of the study, Chile stated that there are three main categories explaining the status of probative value of financial intelligence information in OAS Member States: does it have probative value; does it not have probative value; and does it serve only as a lead. Chile pointed out that the United States is a unique case, in which financial intelligence information may have probative value, but only with the prior written consent of FinCEN.

Bolivia gave a summary of the most relevant recommendations that international organizations give with regard to the probative value of financial intelligence information. Bolivia mentioned, Money Laundering and Combating the Financing of Terrorism.

Discussion and Proposals:

[There were no comments by delegations]

- ◀ Presentation: The Self-Sustainability of Seized and Forfeited Assets: the Regional Situation. Dennis Cheng, Forfeited Assets in Latin America Project (BIDAL) ([DDOT/LAVEX/doc.5/19](#))

Dennis Cheng reminded the attendees that the use of public funds to maintain seized and forfeited assets has been recognized as a bad practice and they should look for ways to ensure the self-sustainability of their asset management systems. He also acknowledged that it is difficult to plan budgets for managing those assets in advance. He proposed a shift from a mere administrative mindset to an entrepreneurial mindset in order to decrease the costs and increase the profits from seized and forfeited assets that are kept. Previous practices allowed for abuses in the provisional use of such assets, or for their deterioration. He proposed that there be special forms of public contracting for the management of those assets, for two reasons: these special models work better; and seized and forfeited assets (and the profits earned from those assets) are not considered public funds. He proposed that profits be invested and that functioning businesses continue to function, so as not to cause mass unemployment. He concluded by stating that there should always be a budget for the management of seized and forfeited assets, but that the budget could be drastically decreased by using self-sustainability measures.

Comments from the Delegates:

Paraguay asked Cheng how to handle cases in which the renting of seized assets to third parties could leave those third parties open to receiving threats.

Cheng responded that information about the third party could be obscured by listing that third party using an identification number. He emphasized, however, that true transparency means that the defendant and his or her legal counsel do, in fact, have rights to know the status of a seized asset.

Costa Rica presented its experience and also commented on the stigma surrounding the rental and sale of seized and forfeited assets. However, Costa Rica added that it is also possible that assets could somehow be rented and sold to the very people from whom those assets were seized or forfeited. Costa Rica highlighted the importance of identity protection, even when there is transparency surrounding seized assets. Costa Rica suggested that people requesting information about seized assets be required to present identification.

Honduras asked what happens in cases in which the asset cannot be rented or sold, and noted that there exists a well-founded fear of danger for third parties when they rent or buy seized or forfeited assets.

Cheng responded that the rights of good-faith third parties must be recognized throughout the entire process of seizing and forfeiting assets, and not just after a judgment has been made with regard to those assets. He also noted that measures should be taken to make sure that third parties are truly good-faith third parties.

Peru expressed concern that the type of management being discussed creates an expectation that fighting transnational organized crime means generating money which can, in turn, strengthen the justice system. Peru shared its experience that, once the budget for management agencies is spent, there remains no more money to contribute to the larger fight against grand criminality. Peru expressed concern that there exists a dilemma because it may be tempting to not act at all. However, Peru confirmed that it is ultimately worth managing seized and forfeited assets, as these assets are the financial backing of transnational organized crime.

Trinidad and Tobago informed the States about a particular problem facing the smaller Caribbean & [~ } c | ã ^ • È Á Q } Á c @ ^ • ^ Á & [~ } c | ã ^ • È Á • [& ã æ | Á } ^ c , [| \ • Á æ | makes it more difficult and dangerous to dispose of assets linked to organized crime. Furthermore, when these assets are not disposed of, the money spent managing them is money diverted from providing for other national needs. Trinidad and Tobago asked Cheng for advice.

Cheng reiterated the need for the States to have specialized regimes set up to handle seized and forfeited assets. He also stressed the importance of Know Your Customer measures. He also suggested that small countries take advantage of pre-confiscation sales in order to shift rights from the asset itself to money.

Colombia reminded the attendees of the meeting that they have been working on a mass asset sale strategy È Á Ô [| [{ à ã æ Á ã } ç ã c ^ á Á c @ ^ Á [c @ ^ | Á • c æ c ^ • Á c [Á | ^ a managing and investing assets.

◀ **Sub-Working Group on Forfeiture and International Cooperation** . Progress Report for the Study on the Self-Sustainability of Seized Assets within the Framework of Duties Belonging to Offices Specializing in Asset Management. Co-Coordinator of the Sub-Working Group (DDOT/LAVEX/doc.6/19)

Bolivia explained that the Sub-Working Group's goal is to carry out an æ } æ | ^ • ã • Á [~ Á ^ æ & @ Á & standards in order to assess the results of their self-sustainability practices and decrease the administration costs of the states. The analysis will be based on responses to a questionnaire.

Costa Rica instructed states to specify, in the questionnaire, if contracting is subject to general or special laws. Costa Rica also asked states to specify if they have shifted away from the idea that the provisional use of seized assets is the best mechanism for sustaining assets. Costa Rica also reminded the States to keep in mind that there is a difference between the self-sustainability of assets and the self-sustainability of agencies.

Discussion and Proposals:

The United States criticized the Expert Group for producing too many questionnaires. The United States reminded the Expert Group that they had already published best practices on the topic at hand. The United States suggested that it would serve the Group better to identify typologies (whether successful or not) rather than sending out questionnaires that would likely not be filled out.

Costa Rica agreed that questionnaires are a general practice, but that they have not necessarily been effective. Costa Rica expressed willingness to change the approach.

The Secretariat reminded the attendees that the purpose of the Sub-Working Group presentation was to present an update of their work, and urged the delegates to be proactive so that the Sub-Working Group adopts an adequate and consensual methodology.

Costa Rica reminded the attendees that the lines of action will remain the same, but that the suggestions will be taken into account.

The Chairperson sought to confirm that the United States was expressing concern about the methodology; the repetition of work; and the logic of the questionnaires. The Chairperson also sought to confirm that the United States was proposing that the Sub-Working Group create typologies instead.

The United States added that it was interested in learning about specific cases concerning complex topics (such as the seizure and forfeiture of operating businesses). The United States also expressed its interest in knowing about real-life examples, including mistakes and discoveries. The United States pointed to Central America as a successful case, about which it would like to know more. The United States reminded the attendees that questionnaires usually create a heavy workload for the Secretariat.

Brazil expressed agreement with the United States. Brazil added that it is interested in learning about legislation and typologies simultaneously. Brazil suggested that GELAVEX delegates exchange information amongst themselves by relying more on technology and by dividing up Groups by country, rather than by subject matter.

The Chairperson expressed that the concerns of the United States and Brazil are valid. The Chairperson emphasized that the Expert Group should focus more on continuity and consistency. The Chairperson agreed that the Sub-Working Group should focus on continuity and consistency.

The Chairperson and the Secretariat confirmed that the Sub-Working Group was to change the methodology, which was to be approved the next day.

- ◁ Presentation: The Evolution of Seized Asset Management in Bolivia. Delegate from Bolivia ([DDOT/LAVEX/doc.17/19](#))

Bolivia shared its experience with its old, ineffective asset seizure and forfeiture management regime. Bolivia has since implemented a new system. The new system seeks to contribute to an integrated fight against drug trafficking. The new law assigns many new anti-drug trafficking mandates and abilities to the asset management office: the ability to gather information; the ability to seek *in rem* forfeiture for drug trafficking cases; the ability to use assets for socio-political structures (such as health and education); and the ability to use assets for law enforcement (especially against drug trafficking). In addition, the institution was generally strengthened, gaining new legal powers: the ability to sign contracts and take custody of assets; the ability to make money off of assets; the ability to request a legal change in ~~es~~ the ability to seek administrative eviction; and the ability to run seized businesses, the profits of which benefit society (e.g., by continuing to operate a seized dairy farm through sharecropping). The regime uses a more business-oriented model. In addition, its constitutionality has been proven in the courts. In general, the new regime allows the asset management office to: take a more active role in *in rem* forfeiture proceedings, assuring that assets are actually forfeited and end up belonging to the state (rather than simply losing value); maintain a relationship with the courts that allows the asset management office to leverage its experience and cut down on time spent in proceedings; and prosecute criminal organizations, rather than just the assets themselves. The most significant result of this regime change has been that the proceeds of crime have been funneled toward a good cause . they now benefit Bolivians most in need of social and financial assistance.

Comments from the Delegates:

[There were no comments by delegations]

- ◁ the Use of Virtual Currencies. Commandant Beatriz Vernet Perna, Chief of the Economic Crimes, Money Laundering, and Asset Recovery Group of the Civil Guard of Spain ([DDOT/LAVEX/doc.9/19](#))

Commandant Beatriz Vernet Perna presented information about cybercrimes related to money laundering. Her presentation approached the topic from the perspective of law enforcement, rather than from a technical perspective. After presenting some relevant definitions and concepts related to cryptocurrencies, Commandant Vernet Perna emphasized that cryptocurrencies are only tools; they are not criminal in and of themselves. Rather, cryptocurrencies may be used for good by innocent people, or for bad by criminals. Cryptocurrencies are especially attractive to criminals because they provide anonymity; they are unregulated; they have utility worldwide; they are easy to transport; they can be used instantaneously; and they are cheap to use. They may be used either as currencies or as assets. When used as money laundering tools, cryptocurrencies are problematic for law enforcement precisely because of the anonymity that they grant and because they are unregulated and intangible. However, Commandant Vernet Perna confirmed

that they can still be seized. She noted that some important factors for being able to seize cryptocurrencies include: using publically-recognized services, especially when those criminals use the regulated financial system to do so; soliciting the aid of those service providers that convert cryptocurrencies into domestic currencies; and soliciting the aid of those service providers to gain information and freeze assets. Cryptocurrencies can also be layered using specific online tools (e.g., mixers and swappers). Seizing assets involves finding the actual accounts where cryptocurrencies are kept and transferring them to a police-held account. Commandant Vernet Perna shared examples of actual money laundering cases involving cryptocurrencies. The cases were pursued using international cooperation (such as with Colombia). She pointed out that it is important to study cryptocurrencies in different countries, as the demographic groups who use cryptocurrencies seem to vary by country.

Comments from the Delegates:

Colombia noted that it is moving toward the regulation of cryptoassets. Colombia has had such cases as ATMs being used for cryptocurrency exchange. Colombia asked Vernet Perna about geographic problems and about who would regulate in the European Union.

Commandant Vernet Perna said that cryptocurrencies could be defined as either currencies or as assets. This becomes a problem for tax purposes. She noted that it is exceedingly difficult to get real data, so data itself should be regulated. Exchangers must comply with Know Your Customer- and identification regulations. Commandant Vernet Perna commented that locating exchangers is not a problem, but that it might be difficult to get exchangers outside of the European Union to provide the same data.

Colombia asked the name of the entity that would regulate. Colombia asked if Spain will restrict transactions for exchangers based out of certain regions.

Commandant Vernet Perna said that any suspicious activity should be reported, including by exchangers. This falls under regulation from the Ministry of Economy. She stated that she is very critical of any attempts at restrictions and opined that the only possible way to restrict crime related to cryptocurrencies would be to seek anti-money laundering compliance from money services businesses. She noted that it is possible to obtain cryptocurrencies anywhere in the world and to simply move them to the country in which they are to be used; in other words, there is no way to restrict cryptocurrencies based on location.

Peru asked about how to determine who the beneficial owner of cryptocurrencies is and how to tie cryptocurrencies to a crime.

Commandant Vernet Perna said that the only possible way to identify a beneficial owner is through exchangers or intercepted communications. She noted that cryptocurrency accounts are not connected to people in the same way as a bank account.

