

ORGANIZATION OF AMERICAN STATES



INTER-AMERICAN DRUG ABUSE CONTROL COMMISSION

cicad

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FINAL REPORT

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**MEETING OF THE GROUP OF EXPERTS
TO CONTROL MONEY LAUNDERING
July 13-15, 2004
Washington DC**

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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 (document CICAD/doc.1299/04). 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**" (CICAD/doc.1313/04).

In accordance with the Commission's resolution, the Group of Experts to Control Money Laundering was convened to meet in Washington D.C., on July 13-15, 2004. The meeting was attended by representatives of the following member countries: Argentina, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Dominican Republic, Saint Kitts and Nevis, United States of America, Uruguay and Venezuela.

PRIOR MEETING OF THE WORKING SUBGROUPS

At the Group of Experts' Meeting held in November 2004, the plenary had agreed to create two working subgroups: on forfeiture and on proving the nexus between money laundering and the predicate offense. Each subgroup was to present the conclusions of its study at the next Group of Experts meeting.

The day prior to the Meeting of the Group of Experts, the two working subgroups met to coordinate their presentations to the plenary. The meetings were attended by representatives of the United States (coordinator), Colombia, Guatemala, Dominican Republic, Chile, Belize, Argentina, and Bolivia in the case of the Subgroup on Forfeiture; and representatives of Uruguay (coordinator), Bolivia, United States and Brazil in the case of the Subgroup on Proving the Nexus.

II. OPENING SESSION, WORKING SESSIONS, AND CLOSING SESSION

OPENING SESSION

Opening remarks were made by the Director of the Financial Intelligence Unit of Bolivia, Mr. Víctor Hugo de la Barra, in his capacity as Chair of the Group of Experts. He underscored CICAD's efforts to find better ways to combat money laundering and urged the delegations to devote their best efforts to the items on the meeting's agenda.

Six plenary sessions were held to address the agenda items, which were as follows:

1. Approval of the agenda and review of agenda items
2. Consideration of the mandate of the Ad Hoc Group on Organized Crime
3. Consideration of Special Investigative Techniques
4. Presentation of the conclusions of the Subgroup on the Autonomy of the Offense.
5. Presentation of the conclusions of the Subgroup on Forfeiture.
6. Presentation of typologies exercise: bureaux de change and couriers.
7. Presentation on special investigative techniques.

WORKING SESSIONS

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

The draft agenda was approved with amendments proposed by the Chair, to the effect that Colombia would not give its presentation on extinguishment of title, since the delegate of that country had been unable to travel for reasons of force majeure.

2.- Consideration of the mandate of the Ad Hoc Group on Organized Crime

The Executive Secretariat gave a presentation based on the background document on organized crime. Pursuant to discussions in the plenary, the Group of Experts agreed on the following:

Not to discuss any aspect of the creation of a group of experts on organized crime, since this was a matter to be decided by the Commission and its Secretariat.

To inform the Secretariat about aspects of money laundering that *–if CICAD, according to the Action Plan presented by the Ad-Hoc Group on Organized Crime, decides that a Model Regulation on Organized Crime is to be developed–* could be included in a set of model regulations on organized crime. To that end, *CICAD, if so decides,* would be able to invite experts from different groups already established within CICAD for the purpose of analyzing the issues associated with organized crime. *Although it was proposed that* the Group would be responsible for examining possible amendments to the Model Regulations, including provisions to reflect advances made in the Palermo Convention applicable to cases of money laundering, *no agreement was reached.*¹

With reference to this last point, the Secretariat, at the request of the delegation of Colombia, presented a list of issues covered in the Palermo Convention, which could be included in the Model Regulations. The Group of Experts thanked the Secretariat for presenting the list, which would be taken into consideration in subsequent study of organized crime-related issues. The following issues were on the list:

- Definitions
 1. Organized criminal group
 2. Structured group
 3. Controlled deliveries
- Aggravating circumstances for belonging to an organized criminal group (amendment to Article 2)
- Liability of legal persons (taking into account that the definitions of the Model Regulations include both individuals and corporations)

¹ Text in bold italics reflects observations done by several delegations after the report was circulated.

- Distribution of forfeited assets
- Disposal of forfeited assets
- Joint investigations
- Special Investigative Techniques
- Witness protection
- Effect of cooperation (reduction of sentence; plea-bargaining, etc.)

3.- Consideration of Special Investigative Techniques

The Secretariat presented the item on Special Investigative Techniques within the framework of the Palermo Convention. The objective of the presentation was to refer to techniques such as undercover operations, controlled deliveries, and telephone surveillance, and report to the delegations on the treatment of this issue in the United Nations Model Law.

Michael Motta, Larry Schneider, and Jim Alsup, Prosecutors of the U.S. Department of Justice, gave a presentation on the use of Special Investigative Techniques in the United States.

Mr. Motta indicated that the special investigative techniques fell into three groups, including: use of informants, controlled deliveries, and electronic surveillance. The presentation covered each of the techniques in detail, explaining how they worked and their effect when applied to money laundering investigations.

4.- Forfeiture

The Subgroup on Forfeiture presented the results of its work, including organization of work into four areas:

- International cooperation, including enforcement of foreign restraining orders and judgments
- Evidentiary standards and legal presumptions in forfeiture proceedings
- Non-conviction based forfeiture
- Maintenance and administration of forfeited property.

The subgroup proposed to continue this work in each of the above-mentioned areas and to present a draft, to be circulated to all countries for comment prior to the next meeting of the Group of Experts, to be held in Bolivia in 2004. The Group also approved the selection of Guatemala to serve with the United States as joint coordinators of this subgroup. The experts decided that the subgroup would meet in Bolivia one or two days before the plenary of experts, to prepare the final draft for presentation to the Group.

5.- Consideration of the nexus between money laundering and the predicate offense

The delegation of Uruguay, in its capacity as coordinator of the working subgroup, presented proposals to amend Article 2 of the Model Regulations, "Money Laundering Offenses", in view of the studies conducted by CICAD, the MEM indicators, and international instruments -- specifically the Palermo Convention.

The delegation of Uruguay emphasized that the legally protected interest in the offense of money laundering was different from the legally protected interest in the predicate offense, placing the autonomy of the offense beyond question.

6.- Typologies and Case Study: Remittance Systems and *bureaux de change*

The delegation of Bolivia made a presentation on a regional case involving the use of money service businesses and bureaux de change by money launderers.

III. CONCLUSIONS AND RECOMMENDATIONS

1-About the Organized Crime Ad hoc group mandate

The Group of Experts drafted a document according to the following clause:

“The expert group requested that the Secretariat prepare a report for consideration by the Group for presentation to the Plenary prior to its next meeting of those elements of the 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. To this end, the Experts Group further requests that the Secretariat accept information from delegations related to organized crime that is also within the specific competence of the money laundering expert group, so that it complies with the mandate set out in AG.RES/2026 **and to evaluate the relevance of incorporating new aspects in the Model Regulations.**²”

The report, based on the collected data submitted by each country, will be introduced to the next Group of Experts meeting in Bolivia for its consideration and to bring their conclusions to the Plenary at its thirty sixth ordinary sessions that will be in November 2004.

2.- About the Special Investigative Techniques

The group reached the following draft agreement which was submitted to the secretariat:

- “Reaffirming its existing work plan, the Group identified special investigative techniques as an area that is important both to proving the offense of money laundering and to combating other aspects of organized crime.”
- “Recognizing that a full consideration of the development of special investigative techniques requires careful study, close coordination with other bodies of CICAD and OAS, and a further organization of work, the Group recommended that a Special Meeting on Special Investigative Techniques be hosted by CICAD and the Experts Group with the participation of the other relevant bodies of CICAD and OAS to more thoroughly examine special investigative techniques and determine priorities and a plan for development of special investigative techniques.”
- “To this end, the expert group further requested that the Secretariat solicit information from delegations taking into account available information provided to the MEM and prepare a report regarding the use of special investigative techniques in the hemisphere in advance of the Special Meeting.”

Given the written agreement, the Commission should determine at its next meeting in November, 2004, if it is necessary to convene an extraordinary meeting as recommended by the Group of Experts. If such is the case, the Secretariat shall present the requested report in that moment.

² This last phrase still under consideration to be addressed at the next meeting of the Group in Bolivia

3.- The Group of Experts suggests that the Commission, at its next ordinary session in November, approve the inclusion the following article in the Model Regulation to Control Money Laundering:

Article 3bis SPECIAL INVESTIGATIVE TECHNIQUES

In order to conduct an effective investigation against money laundering, serious criminal activities, as well as for purposes of forfeiture, specialized investigative techniques, such as wire tapping, undercover agents, informants, controlled delivery, and any other technique established in accordance with national law, should be developed and utilized in application of relevant international conventions.³

4.- About the Autonomous Offense:

The Group of Experts suggest that the Commission, at its next ordinary session in November, approve the inclusion of the following article in the Model Regulation to Control Money Laundering:

“6. The offenses referred to in this article shall be defined, investigated, tried and sentenced by a court or competent authority as autonomous offenses distinct from any other offenses. It shall not be necessary to establish that a criminal process with respect to a possible serious criminal activity has occurred.

7. A person who commits a laundering offense and a related serious criminal activity can be convicted for the commission of both.”

³ Treaties contemplated by this article are the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption. . .