

ORGANIZACIÓN DE LOS ESTADOS AMERICANOS



COMISIÓN INTERAMERICANA PARA EL CONTROL DEL ABUSO DE DROGAS

cicad

**XXV GROUP OF EXPERTS MEETING FOR
THE CONTROL OF MONEY LAUNDERING
October 30 and 31, 2008
Mexico D.F., Mexico**

**FINAL REPORT
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FINAL REPORT

I. BACKGROUND

In the XXIV Group of Experts on Money Laundering Meeting, held in Santiago, Chile, on November 2007, the group identified the following areas of actions within its scope of activities: Forfeiture, “Extinción o Perdida de Dominio”, Asset Recovery Units, Coordination and Integration between FIUs and Criminal Investigation Bodies, as well as Terrorism Financing.

For the development of these issues, the Group of Experts has decided to create two working subgroups, which focus their activities in the next Group meetings according to the agenda established by the Presidency. These subgroups will work together with CICAD’s Executive Secretariat, as follows:

The forfeiture group will be coordinated by the delegation of Costa Rica, and will be in charge of the studies on identification, seizure, freezing, administration and destination of forfeited assets, Units for Recovery of Assets, Exchange of existing experiences in administration of assets and international cooperation on the subject, identification, seizure and forfeiture of assets abroad. This group is composed by the delegations of Uruguay, Colombia, Argentina, Bolivia, Paraguay, Chile, Ecuador, Brazil, Peru and USA.

The Coordination and Integration Subgroup will be coordinated by the delegation of Chile, and will be responsible for a diagnosis on best practices, interinstitucional cooperation and projects in common. This subgroup is composed by the following delegations: Argentina, Bolivia, Ecuador, Brazil, Colombia, Costa Rica, México, Paraguay and Peru.

It was decided that the location for the next meeting would be the country that had the presidency of the Group of Experts in 2008, which is Mexico, according to the election held in CICAD’s meeting. With this background, the XXV Group of Experts Meeting for the Control of Money Laundering was held in Mexico DF, from October 30 to 31, 2008.

II. OPENING SESSION, WORK SESSION AND CLOSING SESSION

The opening words were given by Maestro César Augusto Peniche Espejel, representing México as the Group of Experts meeting, and Mr. Nelson MENA, Coordinator of the Anti Money Laundering Section, and Mr. Alexandre Addor-Neto, Secretary for the Multidimensional Security in the OAS.

Five plenary sessions were held, and the following themes were discussed:

1. Approval of agenda and theme revision.
2. Activity report from CICAD’s Executive Secretariat.
3. Coordination and Integration Subgroup Report. Best Practices Manual.
4. Forfeiture Subgroup Report. Approval of Best Practices Manual. Advances of BIDADAL Project.
5. Approval of Working Subgroups reports. Action Plan of Subgroups for 2009 - 2010

6. Review of Money Laundering Indicator Proposal by MEM.
7. Presentation of the studies: Comparative Legislation of different asset administration units in Latin America and Europe and the Asset Recovery Unit in the European Context. Discussion on the convenience of creating Asset Recovery Units.
8. Analysis and discussion in order to incorporate “Forfeiture without conviction” in CICAD/OAS Model Regulation.
9. Work Plan 2009-2010.
10. Conclusions and recommendations for CICAD’s plenary meeting. Other subjects.

The following delegations participated: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, El Salvador, USA, Honduras, México, Panama, Paraguay, Peru, Dominican Republic, Uruguay y Venezuela.

III.- CONSIDERATIONS

Approval of Agenda and theme review

The president submitted for consideration to the present delegations the project for the agenda, and it was approved without any modification.

Activity report of the Executive Secretariat/CICAD

The Executive Secretariat, according to presentation given by Mr. Nelson MENA, informed that during the year of 2008 CICAD continued to hold, with success, its activities in the fight against Money Laundering and Terrorism Financing. The training programs have taken place in different areas related to Money Laundering in order to strengthen knowledge and capacity of Judges, Prosecutors, Investigators and FIUs.

In 2008, Mock Trials were held in Brazil, Mexico, Paraguay, Venezuela and Uruguay. Also, seminars for Judges and Prosecutors were held in Guatemala, México and Venezuela. It is important to say that these two last seminars were held thanks to the financing and coordination of NAS-Mexico and Organización Nacional Antidrogas (ONA) in Venezuela, and because of the success of these events the idea is to hold similar events in the near future.

During this year the major activity of the Unit has been the Forfeiture Project (BIDAL), and in this manner it is important to mention the signature of MOU’s with Argentina, Chile and Uruguay. In relation to Terrorism Financing, a database has been created to store, organize, classify and update information on this theme. It is important also to mention two important events, one held in Colombia in April, in order to feed the database with real cases and a second one, also held in April, in Ecuador, being a Regional Seminar on Terrorism Financing typologies. Likewise, a document on this theme was created, with the help of Colombia’s FIU and another document on New typologies in Colombia, supported by the database mentioned above.

Also, software for the capture, storing, analysis and information management is in process for Uruguay’s FIU, in order to, in the future implement this same software in other countries. This Software was created as part of our program for Creation and Strengthening of FIU’s in South America.

On the other hand, in order to offer more training to experts and to advance in this area in countries such as El Salvador, Costa Rica, Honduras, Peru, Bolivia, Paraguay and Uruguay, CICAD has donated 7 laptops and projectors to these countries as a follow up to the program “Train the Trainers.”

Coordination and Integration. Report. Best Practices Manual

Chile’s delegation, in its presentation given by experts from Ministerio Publico and FIU, have informed that only 15 countries have answered the questionnaire, so they are waiting to receive the document answered by at least 1/3 of the countries, in order to elaborate the corresponding report. A new deadline has been established to hand in the questionnaires, which is November 30th of this year. Therefore, it was requested that the Executive Secretariat send the corresponding communications, although the observations made to the best practices manual will continue.

The report was submitted to consideration and no commentaries were made.

Forfeiture subgroup. Report. Approval of Best Practices Manual. Advances on BIDAL project.

Costa Rica presented the conclusions and recommendations made by the Forfeiture subgroup. Once the modifications were made, the document was approved.

The Honduran Delegation had the idea of creating a unit who would unite all the Units responsible for forfeiture, however the delegations of Chile, Argentina, El Salvador and the Executive Secretariat agreed that it would be too soon to think about creating such a unit. The idea, was however, noted.

The Executive Secretariat has presented a report on the advances of the BIDAL project that was put to consideration by the Presidency.

The delegation of the USA has the opinion that the units in charge of asset administration should dedicate themselves only to that, while the police, considering the difference between administration of assets and seizure of assets, should handle seizure. The coordinator of the project, Dennis Cheng, said the document is written in that sense, and that the project emphasizes the work of the police force in patrimonial investigation. The document tries to show what the best form to seize and administer assets in each country should be. The US delegation said they agree that forfeiture that is very important and suggests the best practices document should be divided in two: forfeiture and administration, in separate documents.

The delegation of Mexico emphasized the importance of having in the States’ legislation the investigation for the fight against Money Laundering in its early stages.

The delegate from Uruguay says the document is not confusing, in any of its parts, and separates clearly the administration and asset forfeiture, and suggested the document should be adapted to

the reality of each country. The delegate of Costa Rica agrees with Uruguay, and emphasized the importance of asset investigation in order to improve the seizure of assets, to identify the products derived from criminal offences and prevent the seizure of assets who will not be forfeited because of their weak proof value.

The delegation of Chile said that asset investigation is an investigative technique that goes with any criminal investigation, and understands, according to the European Council, that this tool has served to detect the relationship between people and assets, or vice versa, and also to determine the flow of the assets.

The US delegation has considered separating the document, one for forfeiture and the other for asset administration, and proposes to eliminate the asset investigation theme in the document, motion that was approved by the delegation of Honduras.

The Bidal Project Director, Dennis Cheng, says the document includes the investigation because through it, it's possible to identify the assets used and the effects of the offence, which will serve as basis for the judicial authority to sustain seizure and further forfeiture of the assets.

The presidency made it clear that the document is a guide for the member status, and according to their laws, may adopt it or not.

The Executive Secretariat, along with Brazil's delegate, met with the US delegate, in order to try to come up with a solution to this theme, furthermore the USA delegation presented a few modifications to the best practices document for its approval, and were not approved by the delegates of Uruguay, El Salvador, Costa Rica, Chile, Panama, Dominican Republic and Argentina.

The USA delegation asked to resend the document to the forfeiture subgroup in order to discuss the document further, because it considered the document was incomplete.

The presidency submitted the voting according to the US request, but there was no agreement between the countries. Furthermore the final document was put up for approval in the plenary.

All the delegations approved the document except for the Brazilian delegation, which abstains itself from voting, since it has tried to reach a solution with the Executive Secretariat and the other delegation in order to approve the document.

The USA delegation voted against the approval of the document, but said that it is not against the existence of a best practices manual like this one, but it suggests that the Group must offer the best possible product that serves with efficiency to all member status.

The Presidency, according to the voting that took place, approved the document of best practices in asset administration, with the observation that the document, as its use demands, will be updated and improved by the subgroup.

Approval of Subgroup reports, Work Plan for Subgroups in 2009-2010.

Action Plan – FIU and OIC Subgroup: This group’s action plan will focus on the development of a best practices document which will be structured through the questionnaires sent in by the member states. The major activities linked to the development of the document are the following:

1. According to the requirements of the Plenary Session, request once again that the countries which have not yet sent the information in the questionnaire. The deadline for sending in the questionnaire is November 30th, 2008.
2. Consolidate the information in the questionnaires and complement the draft of the document presented by the coordinators in the Subgroup meeting. This work will be done with the collaboration of the countries, which compose this Subgroup.
3. Circulate the document between the countries in order to receive comments and modifications to the document.
4. Present and introduce to the subgroups the finished document to be discussed and presented during the next plenary meeting.

The methodology used to collect information will strive to obtain a version of the document, which will be very similar to its final version. For this reason, the coordination of the Subgroup asks the countries to collaborate through their experts, and to send in as soon as possible their comments and observations.

Action plan for the forfeiture subgroup: This subgroup will focus on the following themes:

1. Exchange of experiences in relation to auctions of Seized or Forfeited assets, particularly the experience of Brazil, Colombia and Honduras.
2. Participate in the development of the study of Comparative Legislation on Forfeiture without conviction in Costa Rica and other Latin American countries, which have a similar legislation.
3. Participate in the comparative study of mechanisms of “Extinción de Dominio” in Brazil, Colombia, Honduras, México and Peru.
4. Compile, analyze and integrate the observations and comments of countries to the best practices manual on Forfeiture.
- 5.

Review of Money Laundering Indicator proposed by the MEM

The Executive Secretariat, with the expert Carlos Tambini, made a presentation related to the MEM and the need to modify the indicators that are correspondent to Money Laundering in its questionnaire for the 5th Evaluation Round. According to what was decided in the Preparatory Intergovernmental held in March 2008 in Buenos Aires, Argentina.

The eight indicators proposed, which were discussed in a meeting with GAFISUD and the delegations of Argentina and Venezuela, were put into consideration during the Plenary of the Group of Experts meeting on Money Laundering, for its evaluation and scope of new proposals and modifications.

This work is being done in order to refine the evaluation, and to capture more precisely the situation of state members, obtain a better evaluation and to have recommendations that are more useful for the member states, The GTI meeting will be held tentatively in February 2009, in which the results of the indicator review will be voted.

In this sense, new proposals were suggested by the different delegations: the first one is to reduce the number of indicators on Money laundering, taking into consideration that advantage should be taken of the specialized units in this theme like GAFI, GAFISUD y GAFIC (México and Costa Rica); and second, that the indicators contain real evaluation elements. (Uruguay and Colombia).

Taking into consideration that during this meeting the totality of people responsible for this theme was not present, the delegations agreed on sending their documents to the pre-GTI portal, which will be available on the first week of November 2008.

Presentation of the studies: Compared Legislation of the different system of Asset administration units in Latin America and Europe and Asset Recovery Units in the European Context.

Taking into account that the Group of Experts sees as one of its most important topics Asset Recovery, the Executive Secretariat is responsible for initiating a process related to a Study on the creation of specialized units in this theme.

This study should include the experiences and realities of the member states, extra regional experiences, as well as a proposal for the future treatment of this theme in the meeting.

Analysis and discussion to incorporate the legal subject “Forfeiture without conviction” in the Model Regulation on Money Laundering related to Drug Trafficking and other serious offences.

The plenary has decided to incorporate this subject in article 9 of the Model Regulation. The following text was suggested:

Article 9

FORFEITURE OF ASSETS, PRODUCTS OR INSTRUMENTS

1. When a person is convicted for money laundering, for financing terrorism or for any other illicit activity, the court or the competent authority will order the forfeiture and disposition according to the law of the goods, products or instruments related with the illicit activity.
2. When according to objective circumstances the court or the competent authority reasonably infer the illicit origin or destine of the goods or products, the forfeiture of the goods and instruments will be ordered in the condemnatory ruling, unless their licit origin is proven.

It will be regarded as objective circumstances of the case, the ones referred to the time and way of acquisition of the assets, personal and economic circumstances of the convict, and any other relevant aspect.

3. Whenever any of the goods, products or instruments cannot be forfeited due to an act or omission of the convict, the court will order the forfeiture of any other like asset of the convict or the convict will be fined.

4. The competent authority can order by firm resolution and according to the national legislation, the definite forfeiture in favor of the State of the seized assets when:

- It is not possible to identify the owner of the good, the author or accomplice of the illicit act.
- The owner of the goods did not claim the goods.
- The process is closed or finished and parties with legit legal interest over the assets did not file any claim to recover the goods.

IV.- CONCLUSIONS AND RECOMMENDATIONS

The Group of Experts identified the following areas of action with its scope of competence: Forfeiture, Extinction or Loss of control over the goods, Assets Recovery Agencies, Coordination between Financial Intelligence Units and Agencies for the Pursuit and Investigation and Financing of Terrorism.

Work Plan 2009-2010

1.- Forfeiture

1.1 Exchange of experiences regarding the auction of forfeited assets, in particular regarding experiences in Brazil, Colombia and Honduras.

1.2 Participate in the development of a comparative study of legislation regarding the forfeiture without conviction in Costa Rica and other Latin American countries with a similar legislation.

1.3 Participate in development of a comparative study of the mechanism for the recovery of assets in Brazil, Colombia, Honduras, México and Peru.

1.4 Gather, analyze and incorporate observations and comments made by the countries regarding the manual of best practices for the forfeiture of assets.

2.- Coordination and Integration of the work between the financial intelligence units and pursuit and investigation agencies.

The plan of action of the group will focus in the development of a document of best practices based on the questionnaires sent by the countries. The main activities related to the development of the document are:

According to the requirements of the Plenary Session of the Group of Experts, to request once more through the Executive Secretariat to the countries which have not sent back the questionnaire, to send them before November 30th of the present year.

To consolidate the information of the questionnaires and complete the draft of the document presented by the coordination in the Subgroup meeting. The latter will be done with the collaboration of the countries part of the work Subgroup.

To circulate the document of work among the countries to receive comments and modifications to the document of best practices.

To present and put into consideration of the work Subgroups the finished document for discussion and presentation in the next plenary meeting of the group.

3.- Initiate a Study process for the creation of Specialized Agencies for Asset Recovery.

4.- Regarding the Financing of Terrorism, the Secretariat and the Delegation of El Salvador suggest that the joint work with the Inter-American Committee against Terrorism (CICTE), should be resumed to consider the feasibility of forming a working subgroup, in which case they suggest including in its working plan the training regarding crime typologies, its exercise and regulation in member countries.

Other Projects

1. Project for the Administration of Forfeited Goods in Latin America (BIDAL)

The Executive Secretariat will continue to report the developments of the project. The group recognizes the importance of the project and the need to circulate the results of it among Member Countries for which they recommend to the Executive Secretariat to allow the participation of the Group of Experts in the workshop for the revision and diagnosis of the project.

2. Training

3. The Group of Experts recommends to the Executive Secretariat to continue with the training programs for judges and prosecutors, simulated investigations and simulated judicial proceedings regarding money laundering, notwithstanding the training of other agencies involved in the efforts against money laundering. Likewise, to continue with technical assistance activities and horizontal cooperation and to promote national training programs for public agents involved in the control of money laundering.

4. Methodology of Work

The group decided to continue with the methodology agreed in the meeting held in November 2006, which is to call an exclusive meeting for the work subgroups during the first semester and a plenary meeting including the subgroups during the second semester.

Presidency and Vice-Presidency

The groups of experts greeted the applications of Uruguay and Costa Rica for the presidency and vice-presidency respectively, and recommended to those delegations to negotiate their applications with their delegates in the next ordinary meeting of CICAD, where the elections for the presidency and vice-presidency is to be held.

Next Meeting:

The group agreed that further meetings for the subgroups of work and the plenary are to be established by the new Presidency and the Executive Secretariat, therefore they will announce the date and venue.

The group shows gratitude to the Presidency of the Group which is held by the Delegation of Mexico, for the excellent arrangement of this meeting and for the outstanding work during its mandate.