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FINAL REPORT

XIV MEETING OF THE GROUP OF EXPERTS TO CONTROL MONEY LAUNDERING

July 11 – 13, 2001

Lima, Perú

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I. BACKGROUND

Following the adoption of the CICAD Model Regulations on Money Laundering in 1992, the Ministers responsible for combating money laundering in each of the countries met in Buenos Aires, Argentina on December 2 1995, under the mandate of the 1994 Summit of Americas, and agreed to recommend a Plan of Action for adoption by their respective governments in furtherance of a coordinated hemispheric response to combat money laundering. The Plan included specific items for further action by OAS/CICAD and its money laundering control expert group in particular.

In furtherance of the foregoing, the Expert Group met in 1996 and with CICAD's approval began to meet twice yearly beginning in May 1997.

In May 1999, during the 25th Regular Session of CICAD held in Washington, D.C., the Commission decided that each Group of Experts should present a work plan and after being analyzed and adopted, the Commission would decide if the Group of Experts would meet and when. At this time, it was also decided that the Commission would select member states, not individuals, to Chair the Group of Experts.

At the last meeting of the Group, held in Washington, D.C. July 11-13, 2000, it was decided that the experts would present a work plan for the 2001-2002 period. Argentina, Bolivia, Brazil, Colombia, El Salvador, Mexico, Panama, Peru, the United States and Venezuela sent to the Executive Secretariat work plan proposals that were subsequently approved by the Commission. These proposals, which are attached as Annex A to this report, formed the basis of the agenda of this meeting.

II. INAUGURAL, OPENING, WORKING AND CLOSING SESSIONS

On July 11, 2001 at 9:30 a.m., in accordance with the Schedule of Activities, the inaugural session was held in the main conference room of the headquarters of the Andean Community in Lima Peru. Opening remarks were made by the Chair of the Group of Experts, Mr. Victor Prado of Peru, by the Unit Manager of the Anti-Money Laundering Unit of CICAD, Mr. Rafael Franzini Batlle and by Dr. Hugo Sivina Hurtado, President of Criminal Hall of the Supreme Court of Justice of Peru.

The meeting was carried out in five plenary sessions, which addressed the following matters referred to in the agenda: the report by the Executive Secretariat on the election of the Chair and the approval of the Work Plan proposed by the experts for the 2001-2002 period; presentation by the Drug Police of Peru (DINANDRO) on typology case on the exportation of fake gold and by the Prosecutor *ad hoc*, Dr. Jose Ugaz on the "Montesinos case;" studies on the operation and activities of Financial Intelligence Units (FIU) presented by the Egmont Group, Argentina, Uruguay, Colombia and Peru; consideration of the ongoing assessment of the Plan of Action of Buenos Aires and the use of the information of the Multilateral Evaluation Mechanism (MEM); report by the Executive Secretariat on its training programs on money laundering; report

on the establishment of the Financial Action Task Force for South America (GAFISUD); a study on the autonomy of the money laundering offence; as well as other matters raised by the experts, of which are reflected in the conclusions and recommendations of this final report.

The closing session was held on July 13, 2001. The Executive Secretary of CICAD, Mr. David Beall, emphasized the importance of the work of the Group within the CICAD context, as well as the importance that the Group brings forward to CICAD concrete proposals so that may be considered at the next regular session of CICAD that will be held in Caracas, Venezuela in November of this year.

The Chair and the delegations from Argentina and Mexico thanked all the participants, the organizers as well as the work of the translators.

III. AUTHORITIES AND PARTICIPANTS

The names of the attending experts are contained in the Directory of Participants, (CICAD/LAVEX/doc.4/01).

IV. DOCUMENTATION

The working documents of the meeting compiled by the Executive Secretariat are included in the list of Documents, (CICAD/LAVEX/doc.1/01).

V. CONCLUSIONS AND RECOMMENDATIONS

1. Agenda, Order of the Day and General Consideration of the issues

The draft Agenda was approved with no changes.

2. Report by the Executive Secretariat on the Work Plan and the Election of the Chair

The Executive Secretariat gave its report on the proposed Work Plan (see Annex A) and approved by CICAD at its 28th regular session held in Port of Spain, Trinidad and Tobago, October 24 – 26, 2001. Likewise, the Group of Experts was informed on the election of Mr. Victor Prado of Peru as Chair for the year 2001 – 2002 (CICAD/doc.1140/00 rev. 2 SEPARATA).

The Executive Secretariat, in accordance with the guidelines for the Work Plan of the Group of Experts as decided at the 25th regular session of CICAD and taking into account the experience of last year, requested that the proposals for the Work Plan for 2002 - 2003 be sent to it by September 15, 2001 so that these could be included in the

topics to be decided by CICAD at its 30th regular session to be held in Caracas, Venezuela in November of this year. The Group accepted this proposal.

3. Typologies

A representative from the Drug Police of Peru (DINADRO) referred to a case whereby false gold were exported from Peru to the United States. This consisted in three Peruvian companies transferring 18 million dollars to set up a country to buy gold ingots. Another company sold false gold, with a value of 6 million dollars, for 10 million dollars thus 4 million dollars was laundered. But, taking into account that the substances sold were worth approximately 30000 dollars, a total of 16 million dollars was laundered.

The Prosecutor *ad hoc* for the Montesinos Case, Mr. Jose Ugaz, presented the details of the case that involved the advisor on intelligence matters for the ex President of Peru, Mr. Alberto Fujimori. It is a case that deals with corruption, murder, the illicit trafficking of firearms and drugs, and money laundering, among others.

According to the presentation of Mr. Ugaz, the operation to conceal the funds that originated from the crimes carried out by Montesinos were made through cash deposits in various banks located in Peru which then were then transferred to foreign banks. Mr. Ugaz also indicated that with the proceeds from the illicit activities, Montesinos acquired property through strawmen.

To date, 172 investigations have been carried out involving 655 people that have led to 80 arrests. In order to carry forward the investigations, he highlighted the enactment of a law that allowed persons who could supply relevant evidence in the case were given the possibility of receiving lighter sentences. To date, 20 persons are negotiating for receiving lighter sentences based on this law.

Through these investigations, 204.5 million dollars have been frozen in various accounts and goods confiscated. Recourse was made through formal and informal processes of exchange of information of which Mr. Ugaz highlighted the effectiveness of this last method as it led to quick responses. Despite the foregoing, Mr. Ugaz indicated that they have not been able to repatriate the funds that have been frozen, as in many cases evidence is required that the funds belonged to the State of Peru and in other cases because of the self interest of the involved financial institutions.

Various delegates intervened following the presentation, above all, to inquire to what extent the criminalization of money laundering and other control measures in Peru has been useful to prevent and sanction this phenomena as well as in having precautionary measures that make possible the subsequent seizure of goods.

Many of the delegations asked on the level of cooperation received by the Government of Peru from other countries. Mr. Ugaz responded that Switzerland, the United States, Mexico and Luxembourg froze funds related to this case without the need of an explicit request by Peru. He also highlighted the cooperation received by the

Cayman Islands in the freezing of funds, even though the request was made by telephone with the promise of a subsequent official rogatory letter. The delegate from the FIU of the Bahamas, when Mr. Ugaz mentioned the possibility that her country may have been used to conceal money in this case stated that her agency would assist in the investigation if so asked. This request would have to be made with the Commissioner of Police, which would then pass on the request, as Peru does not have a FIU in place. She stressed that since her agency was a member of the Egmont Group, she could provide that information directly to other FIUs that are members of this Group. She suggested and encouraged other countries to join.

Noting the importance of international cooperation among the FIUs, the delegate from Bolivia, Director of the FIU of that country indicated that his agency discovered that money was transferred from Bolivia to Peru on seven occasions from accounts held in the name of Montesinos. Upon discovering this information, the Peruvian authorities were notified.

Mr. Ugaz indicated that the Peruvian legislation was insufficient in addressing these problems and that some modifications were necessary. The Chair indicated that this involves the topic of the autonomy of the money laundering, which would be taken up by the Group in a later session. As well, during the discussions, it was stressed the in order to effectively combat money laundering, there is a need for international cooperation.

In conclusion, the Group of Experts recommended that the criminalization of money laundering be amended to reflect that of the CICAD Model Regulations, the Plan of Action of Buenos Aires and the 40 Recommendations of the FATF to include as predicate offences those which are traditionally considered to be "serious," of which Article 2 of the CICAD Model Regulations provides as an example.

Moreover, it was reiterated the need to provide international cooperation on money laundering, for which, it was concluded, the establishment of an FIU and membership in the Egmont Group is fundamental as this allows for the rapid exchange of information through bilateral agreements. Moreover, through membership of the Egmont Group, the FIUs would benefit from the information contained in its secure web page.

4. Financial Intelligence Units

The delegations of the Egmont Group, Argentina, Uruguay, Colombia and Peru respectively, made presentations on the FIUs. Mr. Rodolfo Uribe provided information on the functions of the Egmont Group and how the countries could benefit from them. Mr. Marcelo Sain of Argentina indicated the progress made in his country in the implementation of a FIU and he commented on the circumstances and proposals made by his government in locating the FIU in the Ministry of Justice and the manner in which this agency is made up of different representatives of various governmental bodies that combat money laundering. He highlighted that the FIU would add more to the

information received for analysis so that they can be used by various competent agencies to investigate cases of money laundering.

The delegates from Uruguay, Mr. Hebert Vagnoli and Mr. Daniel Espinosa referred to the legal structure and operation of their Financial Analysis Unit (FAU), mentioning that it operates under the Central Bank and is made up of superintendents of banks, securities and insurance. They also added that the FAU solely analyzes information and if an operation appeared to be laundering money, this would be reported to the competent authorities in order to initiate an investigation. Mr. Espinosa informed the Group that Uruguay participated as an observer in the Egmont Group and that they have applied for membership for the next plenary session to be held in 2002.

The delegate from Colombia made a presentation on the operation of new software developed for those subjects required by law to report to the FIU can do electronically. The demonstration showed that the software is user friendly and that it allows for a quicker process of information, which would then be categorized by offence, in accordance with the key words typed into the system.

The delegate from Peru reviewed the advances made in the establishment of the FIU. This agency would be located within the Ministry of the Economy. She also indicated that the officials working in the FIUs would be protected in the execution of their responsibilities and that there would be a need to establish a legal mechanism in which banking secrecy would be lifted.

The delegates from Colombia, Mexico, Brazil, the Bahamas, Bolivia and the United States all suggested that, given the transnational nature of money laundering, it is fundamental that FIUs be established in countries and that they become members of the Egmont Group. The Egmont Group has a communication network in which the FIUs can access and exchange information in a rapid and secure manner. Likewise, they insisted the need that the FIUs should:

- a) have mechanisms that allow for the rapid exchange of information with other agencies within their own countries;
- b) have good relations with other competent authorities for the investigation of money laundering, of which they would contribute with their analysis;
- c) be able to complete their functions without having banking secrecy impede their work; and
- d) be exempt – itself and its officials – from criminal, civil or administrative sanctions when carrying out their functions in good faith.

5. Training Activities

The Executive Secretariat reported on the advancements of the training activities commended to it by the Group of Experts.

Reference was made to the CICAD-Inter-American Development Bank (IDB) pilot project to train bankers and regulators of the financial sector, which upon its completion in June 2000 for the original beneficiary countries (Argentina, Colombia, Chile, Peru and Uruguay), was extended to Bolivia and Ecuador. The Executive Secretariat also notified of the recent agreement entered into by CICAD, the IDB and the Banco Bilbao, Vizcaya Argentaria S.A. (BBVA) by which through reciprocal non-exclusive use license concessions the objective is to provide training to the employees of the BBVA. Moreover, it was agreed that Brazil would benefit by the development of a program to be imparted through technology. As well, a request by the Bank of Montevideo to use the program had been approved, so long as the Bank paid the costs for the training of 80 public officials of that country. Finally, it was announced that the BID had committed to provide these courses to the Central American members of the CFATF.

It was also announced that an agreement was near completion with the BID by which a training program is to be initiated this year for judges and prosecutors that are to be carried out for the seven countries that benefited from the training of bankers and regulators in order to take advantage of the materials already developed for those countries.

In respect to the training of personnel of FIUs, the Executive Secretariat informed that as a result of the mandate received by the OAS and the BID from the Summit of the Americas requesting this type of action, negotiations have been pushed with the BID to provide financing for a program of this type.

6. Plan of Action of Buenos Aires

The Executive Secretariat reported on the current state of countries' responses to the Plan of Action of Buenos Aires on-going evaluation questionnaire. The Secretariat noted that having been given permission by CICAD to use the responses of the Multilateral Evaluation Mechanism (MEM), 33 of 34 country tables were completed. The tables were distributed to each country for their review and comments. Any comments and corrections are to be received by the Executive Secretariat within 30 days for their publication on the CICAD web page on money laundering. Moreover, an electronic version of the tables were distributed to the delegates, but the Executive Secretariat emphasized that the information provided is not a definitive version until the aforementioned requirements were carried out for publication on the INTERNET.

7. The South American FATF (GAFISUD)

The Ambassador Sergio Kostritsky, representative of CONTRADROGAS in the delegation of Peru, referred to the developments in the two first plenary meetings of the GAFISUD held in Cartagena, Colombia and Montevideo, Uruguay in December 2000 and May 2001, respectively.

Ambassador Kostritsky indicated that the GAFISUD is made up Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay with

CICAD/OAS as an advisor member. Additionally, Portugal, Spain, the United States and the BID have been accepted as observer members.

In the developments of the GAFISUD, it was highlighted that Buenos Aires, Argentina has been chosen as headquarters of this entity and that that Executive Secretary would be selected in August 2000. Moreover, Uruguay and Colombia had offered to be examined and that this September, a seminar on training on mutual evaluation will be carried out in which CICAD would participate and make a presentation on the MEM, as the information found in this mechanism should be considered in the background of the evaluation of every participating country and this was approved in the meeting held in Montevideo, Uruguay.

8. The Autonomy of the Money Laundry Offence

The Executive Secretariat referred to a document that was written for the meeting on this topic that contained a study detailing the important themes that are to be considered on this topic:

- a) the relationship between the offence of money laundering with concealment and complicity;
- b) legally protected property;
- c) the possibility of a sentence and criminal proceedings for the offender of the prior crime and the crime of money laundering;
- d) the assessment of evidence in the money laundering offence and its relationship with the prior offence.

The representative from Argentina, Magistrate Patricia Llerena, made a detailed presentation on the criminal and administrative aspects of the Argentinean legislation. The Magistrate emphasized that the approach in her country to the money laundering offence as one of conditional concealment and as well as one of a fraudulent offence while taking care not to violate the guaranteed rights of the accused.

The Magistrate then provided the elements and background of the money laundering offence, mentioning the legislation from Spain, the exclusion of the money laundering offender from the prior offence, the phenomena of circumstantial evidence, and its link to unjust enrichment and how this phenomena affects the autonomy of the money laundering offence.

The delegate from Mexico, Ms. Luz Nunez Camacho, made a presentation on a case that led to a conviction, in which the autonomy of the money laundering offence was accepted, above all, in the case of circumstantial evidence. Ms. Nunez Camacho, after making her presentation on the use of circumstantial evidence, stated that it is fundamental that in order to combat this crime, new forms of international cooperation that provides for more efficient transnational collaboration.

The Chair of the Group of Experts made a summary of the topic on the evolution of the criminalization of money laundering, the successive problems of the various methods of criminalization, the method adopted by Peru to criminalize the offence and its insufficiency in other areas such as the lack of financial controls.

The Chair also referred to the degree of fraud of the offence, its deficiencies in the matters of evidence and its limitations in the confiscations of goods, as well as in the recuperation of funds found outside of the country and the deficiencies in agreements to repatriate funds that were taken outside of the country. Moreover, reference was made to obstacles to lift banking secrecy not only at the national level, but also international.

In conclusion, the Chair indicated the need to revise the Peruvian law and mentioned the new draft law in which Peru modifies the current money laundering offence in which it has come under criticism only in the reduction of the sanctions to the ones currently in place.

He also referred to the advantages of the draft law such as the provisions that facilitate the discovery period for evidence by justice officials. The Chair also expressed concerns on what is meant by 'autonomous' and how this can be a factor in facilitating the application of justice, provided some examples on the matter and concluded on legislative advancements and to make easier the evaluation of evidence.

He also referred to the difficulty on the matter of evidence on the proceeds from money laundering for which he suggested the Mexican model as an example to follow. The following suggestions were made:

- a) identify the criminalized conduct in a generic form;
- b) eliminate the need to first have a prior punishable offence;
- c) tie the illicit origin of the goods that are object of the crime with the subjective crime.

The Group proposed that the countries make comments on the proposal made by the Chair so that the Executive Secretariat can compile the responses sent so that this may be included in the Work Plan for the year 2002 – 2003 to be considered by CICAD at its 30th regular session to be held in November in Caracas, Venezuela this year. For this reason, it is requested that these proposals arrive at the Executive Secretariat before the 15th of September of this year to be included in the Agenda of said meeting.

9. Future Meetings of Expert Group

Mexico made it known its intention to host the next meeting of the Group of Experts. This proposal will be presented to CICAD for its consideration.