



17th St. & Constitution Avenue N.W.
Washington, D.C. 20006
United States of America

Organization of American States

P. 202.458.3000
www.oas.org

**INTER-AMERICAN DRUG ABUSE
CONTROL COMMISSION**

CICAD

Secretariat for Multidimensional Security

**XXXVIII GROUP OF EXPERTS FOR THE CONTROL OF MONEY
LAUNDERING
MEETING OF THE SUB WORKING GROUPS
May 22-23, 2014
Washington, D.C., USA**

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FINAL REPORT

I. BACKGROUND

The Commission, during its forty-second regular session was hosted in the City of Santa Marta (Colombia). The basis of the work of the Group of Experts for the Control of Money Laundering (GELAVEX), were areas of action identified by GELAVEX in its 34th Plenary Session held in November 7-9, 2007 in Santiago de Chile, namely, forfeiture, *in rem* forfeiture, asset recovery agencies, coordination and integration between Financial Intelligence Units (FIUs), prosecution and investigation agencies, and terrorism financing.

The Commission also agreed that GELAVEX would host two annual meetings: one during the first half of the year, exclusively for the Sub Working Groups (a Subgroup of Forfeiture and a Subgroup for coordination and integration); and another meeting during the latter half, which will feature a plenary session as well as an additional meeting for the Sub Working Groups.

The plenary of the Expert Group held in Caracas, Venezuela, September 27-28, 2011 (LAVEX 33rd), recommended that the Commission approve the proposal for the development of a Planning Process for the Group of Experts for the Control of Money Laundering. This proposal was approved by CICAD at its Fiftieth Regular Session, which took place in Buenos Aires, Argentina, November 2-4, 2011.

According to the 2013-2014 Work Plan approved by CICAD at its Fifty-Fourth Regular Session, held in Bogotá, Colombia, December 11-13, 2013, the Sub-Working Group for International Cooperation and Forfeiture should: 1) **Develop a comparative report on work plans, products and contacts of GELAVEX strategic partners** in order to find possible synergies; and 2) **Develop a complementary study on procedures and/or criteria for international cooperation in asset sharing**. Also, according to the same Work Plan approved by the Commission, the Sub-Working Group of Financial Intelligence Units and Law Enforcement Agencies should: 1) Create a document containing an **analysis of how the new FATF 40 Recommendations impact**, particularly regarding the formation of multi-disciplinary teams and deepen the work developed in **the Asset Investigation Methodology Guide**, featuring tools to implement the work developed; and 2) Develop a document that contains the points that should be addressed in a document on **security and integrity of the officials responsible for combating crimes of money laundering and related offenses**, to be presented at the next GELAVEX sub-working groups meeting.

II. AGENDA: APPROVAL AND REVIEWING OF THEMES.

1. **Inaugural session.** Opening remarks were given by the Chairman of the Group of Experts for the Control of Money Laundering of the Inter-American Drug Abuse Control Commission (CICAD), Mr. Paulo Abrão, National Secretary of Justice of Brazil, and the Executive Secretary of CICAD, Ambassador Paul Simons.

The Chairman welcomed the distinguished representatives of the Member States and informed them that in the fifty-fifth regular session of CICAD, held after the GELAVEX meeting in Brasilia, in which the Presidency encouraged the adoption of documents of

extreme relevance for the goals of the Group, the following documents were approved: **Self-Evaluation Guide for the Forfeiture and Administration of Assets**; a **Study on International Cooperation Mechanisms**; **Recommendations for the Identification and Analysis of Risk Factors Associated with Money Laundering and Terrorism Financing at the Hemispheric Level**, the **Methodological Guide for Asset Investigation**, and the **Recommendations to Improve the Anti-Money Laundering of OAS Member States**. The Chair highlighted that each approved document is a step forward for an efficient fight against money laundering. Finally, he thanked delegates for their cooperation, which is reflected in the results achieved over the past year of GELAVEX's work, especially in the fight against money laundering and asset management and asset recovery, which are crucial to fulfilling our duties against illicit practices.

The Executive Secretary of CICAD welcomed the distinguished delegations on behalf of the Secretary General of the OAS, Jose Miguel Insulza. The Secretary highlighted the important role played by Brazil in the fight against money laundering in the Americas, especially through the great leadership shown by the Chair of the Group of Experts, Dr. Paulo Abrão. He also mentioned that the work that would be developed in the sessions of the meeting will be "the starting of the end" of the three-year Work Plan proposed in the GELAVEX Meeting in September 2011, in Caracas, Venezuela. In this instance, a review of the work and products generated by the Group were made, to assure that in the next GELAVEX meeting the objectives for these three years would be successfully achieved. Finally, he thanked and acknowledged the work and dedication of the Coordinators of the Sub-Working Groups on International Cooperation and Forfeiture, and FIUs and LEA led by Costa Rica and Chile, for their efforts and for the time invested to successfully accomplish the work, with the active participation of the delegates of other Member States.

2. **Agenda.** The Group adopted, without changes, the draft agenda ([CICAD/LAVEX/doc.1/14](#)).

III. GROUP DELIBERATIONS

1. Presentation: "Recommendations for a Legal Framework for International Cooperation in Forfeiture and Asset Recovery. CICAD initiative" ([CICAD/LAVEX/doc.11/14](#)). By **Isidoro Blanco Cordero**, Professor of Criminal Law in the University of Alicante, Spain.

Professor Blanco Cordero highlighted in his presentation that international Cooperation to locate and recover assets of illicit origin is essential. Although seemingly there is goodwill between States to cooperate, there is not appropriate national legislation allowing for forfeiture and asset recovery, nor specific legal procedures which detail what to do when a country requests assistance. He also highlighted that States have many difficulties in identifying and locating assets hidden in other States; once located, for years there has been a lack of political will of some financial centers to collaborate; and that there are legal obstacles related to international cooperation. For these reasons, he emphasized the need of elaborate recommendations through a consensus instrument to facilitate the drafting of legislation on asset recovery in Member States and/or upgrade the ones that already exist. He also recommended the design of a structured information repository to facilitate efficient international cooperation in forfeiture and asset recovery.

Deliberations of the delegations:

Brazil noted with optimism the way the OAS has seriously addressed forfeiture and asset recovery through international cooperation. Brazil supported the efforts to provide guidelines and/or recommendations to ensure effective mechanisms for asset sharing. Brazil also commented that the country is prioritizing the training of officials in this area and that, so far, 13,000 staff were trained.

Costa Rica thanked Professor Isidoro Blanco for sharing his experiences through the presentation and for the support to the ES in the development of the Technical Assistance Program on International Cooperation in Asset Recovery. The delegate mentioned that it is important to include officials from the asset recovery offices in the Program, especially for the training component.

Argentina thanked Professor Blanco Cordero for the presentation. The Delegation suggested that the program should be developed as a macro-legal structure that countries can adopt in the future, made up of international best practices, taking into account the particular justice system of Argentina, where the court is responsible for the administration of assets. On the other hand, the work carried out in terrorist financing was mentioned. Argentina announced that it is complying with FATF's recommendations and is making all efforts for the effective implementation of procedures for freezing assets linked to terrorism and its financing. The delegation added that although currently Argentina has procedures that include the due process and the possibility to adopt cautionary measures in the framework of international cooperation, it does not always obtain the collaboration of third countries to freeze assets in order to prevent their use in the funding status of national fugitive terrorists reported.

Uruguay praised the work of the Presidency in charge of Brazil as well as the excellent presentation made by Professor Isidoro Blanco. The delegation stressed the importance of depriving criminal organizations of the economic benefits generated by the crimes, which is difficult because judicial systems are restricted by national boundaries and the sovereignty of the countries, while transnational criminals respect no borders in their criminal activities. It also emphasized that international collaboration is becoming an essential aspect and that jurisdictions that protect international crime should be avoided.

Chile welcomed the presentation made by Professor Blanco Cordero, highlighting how the GELAVEX is addressing issues of international cooperation. The delegation referred to the possibility of considering the incorporation of those "recommendations" in an existing CICAD/OAS document, as CICAD Model Law.

EEUU made reference to the principles of international Cooperation and forfeiture that allow for the enhancement of the capabilities of the authorities in cooperation, for example in the context of *in rem* forfeiture. In this regard, Professor Blanco explained that the proposal specifically addresses the field of formal cooperation and takes these principles into account, as well as the experience and knowledge gained by the existence of informal networks of information exchange, such as the RRAG of FATF.

2. The US delegation presented: "Invigoration and Reinvigoration of Forfeiture from the U.S. perspective", by Aixa Maldonado-Quiñones, Senior Trial Attorney of the Asset Forfeiture and Money Laundering Section.

Ms Maldonado-Quiñonez made a very comprehensive and explanatory presentation on the U.S. Confiscation Act, as well as the Asset Forfeiture Program and its practical experience. She especially focused her presentation on the objectives of forfeiture in the United States and explained the types of seizure that the government does without compensation. She extensively described the types of assets subject to forfeiture; explained the application of forfeiture within some special laws, such as the RICO Act against organized crime and terrorism, explaining that there is no a single statute that regulates seizure and confiscation, as there are more than 200 offenses to which these measures can be applied. She also made reference to the different types of seizure: administrative, criminal and civil (or *in rem*). Finally, she shared important information about the Confiscated Assets Fund, forfeited assets and the procedures to carry out seizures and share assets abroad.

Deliberations of the delegations:

Brazil welcomed the presentation and showed interest in learning more about the seized assets fund, asking the speaker for more details on this unique fund and mentioning the existence of two funds in Brazil. Also, the delegation expressed interest in the financial calculations performed by the Treasury Department. Ms Maldonado explained that in principle in the U.S. the creation of a single fund was considered, but due to the different responsibilities of the departments, they ended up being managed separately.

Mexico greeted everyone present, thanked the presentation of the U.S. delegation and asked the speaker for more information on the experience of the country regarding international cooperation.

Haiti thanked the US for the excellent presentation, requested additional information concerning asset sharing and the CATS system, through which all automated and centralized information on seized and forfeited assets in the US is handled.

The distinguished delegate of the U.S. answered the questions and gave the information requested by the delegations. The representatives were satisfied with the comments of the speaker, which were aimed specifically at the challenges that the US faces in the field of international cooperation for the forfeiture of property that is out of the country, in various countries cooperation agreements and international sharing of goods is increasing and being facilitated. She highlighted that the work of the Ministry of Justice is done very closely to the State Department, a fact that also benefits the creation of bilateral agreements.

3. The Executive Secretary of CICAD presented, within the framework of the BIDAL Project, the "Guide for Management of Seized Businesses", by Dennis Cheng, Director of the BIDAL Project ES/CICAD ([CICAD/LAVEX/doc.3/14](https://www.unodc.org/documents/cicad/publications/2014/ES-CICAD-LAVEX-3-14.pdf)).

Dr. Cheng explained that the Guide is intended to share best practices involving the management of seized companies that are still operational and to serve as a reference so that the region's various agencies specialized in the management of seized and forfeited assets can develop manuals or protocols regarding the seizure of these companies. He gave a summary of the document, explaining step by step the best practices for managing this type of assets. The document compiles experiences of specialized agencies from Honduras, Costa Rica, Mexico and Colombia. Finally, he expressed his satisfaction with the participation of the ES / CICAD in the International Expert Meeting on Management and

Disposal of Seized and Forfeited Assets convened by UNODC, in which the three documents authored by the GELAVEX as part of the BIDAL Project were used when the topic of Offices for the management of assets in European countries was discussed.

Deliberations of the delegations:

The Chair thanked Dr. Dennis Cheng for the excellent presentation and summarized the most relevant aspects and points related to asset management, taking the opportunity to give a symbolic appreciation to Dr. Cheng, on behalf of the Brazilian delegation, in order to highlight the importance of the significant contributions he has made to the Group of Experts as the Director of the Seized and Forfeited Asset Management project (BIDAL).

Ecuador expressed its appreciation for this initiative of the BIDAL project that aims to improve the management of seized companies. The delegate shared the experience and rules of the country on the matter, and urged other delegations to promote the adoption of the recommendations that have been exposed.

Paraguay welcomed the presentation made by the ES through Dr. Cheng and stressed that the country is making significant efforts to comply with international standards on money laundering. The delegation also thanked the OAS assistance and informed the other delegations that negotiations for the project to be implemented in Paraguay have been started.

Haiti welcomed the presentation on the confiscation of seized companies, shared experiences in the field and made special reference to three cases in the country in which seized companies were closed due to lack of information on the best way to proceed, as per the recommendations of the Guide.

Honduras endorsed the presentation of the ES, explained the experience of the country with seized companies that are currently managed by the agency specialized in asset management and highlighted the main challenges that these companies pose.

Trinidad and Tobago acknowledged the important presentation of the ES and reported that steps to implement the BIDAL project have been taken in the country, as well as the possibility of creating a strategic alliance with GAFIC to perform it also in other countries in the Caribbean.

4. The Coordination of the Sub-Working Group on International Cooperation and Forfeiture presented a progress report on the “Complementary Study on Procedures and/or Criteria for International Cooperation in Asset Sharing” ([CICAD/LAVEX/doc.4/14](#)). In this regard, it was agreed to welcome the proposed methodology and that the questionnaire drawn up by the ES and Sub-Working Group in order to update the Guide of Procedures for requesting mutual legal assistance for locating, monitoring and recovery of assets ([CICAD/LAVEX/doc.3/11 rev.1](#)) will be circulated soon as possible, and the deadline for responses is June 30, 2014.

Deliberations of the delegations:

Uruguay thanked the Coordination of the Sub-Working group, in charge of Costa Rica, for the excellent work. The delegation also stressed the importance of delegations providing the needed information which will support the completion of the mandate that was ratified by the Commission.

Chile expressed full agreement with the methodology proposed by the Coordination of the Sub-Group, in particular with the design of a questionnaire to be circulated by the ES with specific questions that have been suggested to supplement and update the information, which will also generate a relevant input for the Program on International Cooperation that has been entrusted to the ES.

USA expressed its agreement with updating the information to drive this ambitious project; however, the delegation asked how it fits in with the principles and recommendations already identified in a global context through informal networks to share information internationally.

Brazil underlined that it is important to create synergies between the work of GELAVEX and the work of the ES, especially with the aim of further study and recommendations, and expressed the support of the country to the proposal of the Coordination of the Sub-Working Group, entrusted with the Complementary Study.

Haiti emphasized the importance of all delegations providing supplementary information to enhance international cooperation and requested additional time to provide the information that is missing in the previous study, as the delegation was not able to provide it on time.

5. The Coordination of the Sub-Working Group on International Cooperation and Forfeiture also presented the progress of the "Comparative Report on Work Plans, Products and Contacts of GELAVEX Strategic Partners on ALD/CFT" ([CICAD/LAVEX/doc.13/14](#)). In this regard, the Group agreed to submit to the plenary the full report in September and circulate to delegations through the ES the latest version so as to forward their comments by July 31, 2014.
6. CICAD Executive Secretariat presented a progress report on the "Technical Assistance Program on International Cooperation in Asset Recovery" proposal ([CICAD/LAVEX/doc.16/14](#)). In this regard, the Plenary agreed on welcoming the report, recognizing the efforts and progress made so far, and urged the ES to continue with the design of the proposal, to be circulated in reasonable advance of the next plenary, to be held in September of this year in Uruguay.

Deliberations of the delegations:

Brazil expressed gratitude to the ES for the presented progress report, and supported the proposal to develop model legislation, as well as the implementation of a structured database. In this regard, the delegation recommended a dialogue with the Department of

International Cooperation of the OAS to explore the possibility of integrating this database into an already existing platform to facilitate international legal cooperation.

Argentina welcomed the presentation of the progress report submitted by the ES in relation to the proposed program of international cooperation regarding asset recovery. The delegation also took the opportunity to refer to the ongoing strategic training course for FIUs of Central America and the Caribbean, expressing an interest in replicating the activity for the countries of South America and offering Buenos Aires to host an event with similar characteristics.

Uruguay joined the acknowledgments of the other delegations, highlighting the work done by the ES regarding the proposed program and urged other delegations to provide the necessary inputs so that a program proposal can be presented in accordance with the needs of the Member States.

7. Presentation "Investigation of Assets related to Predicate Offences. ([CICAD/LAVEX/doc.12/14](#)), by **Isidoro Blanco Cordero**, Professor of Criminal Law, University of Alicante, Spain.

Professor Blanco Cordero spoke of the impact of the new FATF Recommendations, with special reference to the investigation of assets related to predicate offenses, basing his presentation on the main international policy strategies to combat criminal organizations. He reviewed some fundamental aspects, such as the penalties applied for the crime of money laundering, improving seizures, "Al Capone strategy" and illicit enrichment. He also highlighted that it is important to investigate the predicate offense to determine whether the assets that have been generated can be seized and to establish if crimes such as money laundering have been committed. He added that the investigation of the predicate offenses could allow for the payment of so-called "financial responsibilities", including civil liability arising from the offense, among others.

Deliberations of the delegations:

After greeting the delegations and expressing gratitude to Dr. Blanco Cordero for his presentation, the delegation of Peru shared the experience of the country on the issue of tax crime and its relation to money laundering as a predicate offense, highlighting the difficulties of investigating these complex crimes. The delegation also mentioned some obstacles to international cooperation, such as the fact that the tax offense is not considered a crime in other countries, and made particular reference to the cooperation among FIUs through the Egmont Group.

Chile also thanked Professor Blanco for his interesting presentation, and commented on the Chilean experience in the investigation of certain predicated offenses of Money Laundering, such as embezzlement and other related public corruption, and financial crimes, especially insider trading. The delegation also expressed concern over the issue of consumable assets, which if subject to forfeiture, would require the implementation of equivalent value confiscation.

Haiti noted that their legal system allows for equivalent value forfeiture, but there is yet to

be a legal precedent.

Brazil emphasized that there is no doubt about the importance of asset investigation of the predicated offense, an issue that is increasingly discussed in international forums. For that reason, the delegation considers of particular relevance the training of officials responsible for law enforcement and judicial officials, which would allow for a better response to requests made in criminal processes, for example, recognizing, through asset forfeiture, adequate compensation to victims (as might happen in a case of genocide that implies the investigation of the licit heritage, more than in cases of patrimonial nature).

Uruguay explained that the incorporation of tax offenses as a predicate offense in the national law is under consideration, which has led to an important debate because the tax enforcement authority must first complete the administrative proceedings to determine if a tax offense has been committed. In this regard, the delegation reflected on the possibility that tax offenses be included in FATF as a predicate offense, so the inclusion of this type of crime gains greater interest.

8. The Coordination of the Sub-Working Group of Financial Intelligence Units and Law Enforcement Agencies presented the progress report regarding the Analysis of the Impact of the new FATF 40 Recommendations ([CICAD/LAVEX/ doc.6/14](#)). The plenary decided that the Sub-Working Group should continue with the development of this document, in order to present the final version at the Plenary in September for consideration and approval. To this end, delegations might provide feedback, comments and suggestions, through the ES, up to July 31, 2014.

Deliberations of the delegations:

Paraguay mentioned that, in their country, law enforcement agencies (such as the police, the Office of the Public Prosecutor, the Financial Intelligence Unit, etc.) are clearly defined and each of them investigates within the scope of their competences and intervenes in formal investigations and interventions that eventually go to court, so the investigative role doesn't compete to any particular institution.

The delegation of Saint Kitts and Nevis said the issue exposed by the coordinating group can impact the effectiveness of law enforcement agencies. The delegation further stressed that FIUs should try to send information to the competent authorities and, in turn, these authorities must comply with the obligation of keeping them confidential, respecting the legal framework created for the FIUs to accomplish their original purpose, as well as the role of each agency. The delegation also reiterated that it is not a good idea for officials of the FIUs to be linked to the judicial system and/or that intelligence information be used as evidence at the judicial level, given that such information should not be considered as evidence, but only as financial intelligence data.

Ecuador shared the experience of the national system in which an entity was created to bring together all agencies related to AML, and clearly defines the roles of each of them.

Uruguay added that it is substantially relevant to summarize the discussions that have been generated in this and other forums regarding shared information between FIUs and LEA. The delegation stressed that FIUs do not provide any evidence, but merely supply it to support the investigations. Moreover, the delegate added that it is important to define the roles of these authorities to properly measure the effectiveness of the AML system as a whole. Uruguay also mentioned the creation of multidisciplinary teams and investigation teams to ensure maximum effectiveness, complying with the FATF Recommendations and facing the next evaluations. Finally, the delegation reiterated the inconvenience involving "rapporteurs" as part of the obligated bodies.

Brazil referred to issues concerning the use of information from the FIUs, sharing the experience of the country, especially at the beginning of investigations started by the FIU, as they are related to confidentiality or bank secrecy. The delegation added that there were already precedents at the judicial level, and that even the Supreme Court claimed that formal investigations initiated by FIU reports are admissible in court.

9. The Coordinating Sub-Working Group of Financial Intelligence Units and Law Enforcement Agencies presented the progress report of the document "Diagnosis regarding the safety and integrity of the officials responsible for combating money laundering and related offenses" ([CICAD/LAVEX/doc.7/14](#)). The plenary decided that the Sub-Working Group should continue with the development of this document, in order to present the final version at the Plenary in September for consideration and approval. To this end, delegations might provide feedback, comments and suggestions, through the ES, by July 31, 2014.

Deliberations of the delegations:

Saint Kitts and Nevis mentioned that it is important to consider the security challenges of FIU and LEA officers. In this regard, the delegation mentioned that the issue of their compensation should be especially considered (given their high-risk responsibilities), as well as the issue of the "publicity" of these entities, suggesting that it is best to restrict information about their facilities, personnel and systems, among other things, to entities with which they interact and not make them accessible to the general public.

IV. CONCLUSIONS AND RECOMMENDATIONS OF GELAVEX'S SUB WORKING GROUPS

1. To recognize that the "Guide for the Management of Seized Companies" ([CICAD/LAVEX/doc.3/14](#)) presented by the BIDAL Project-SE/CICAD is a major reference tool for Member States to improve their asset management systems, especially in cases that present a real challenge for the specialized units that handle this type of asset; therefore the presentation of this document is recommend at the next plenary meeting of GELAVEX to be held in September in Uruguay for its study, discussion and possible adoption as a reference document.

2. To agree on the presentation at the plenary in September of the "Complementary Study on Procedures and/or Criteria for International Cooperation in Asset Sharing". To this end, the proposed methodology presented in this meeting and the initiative of the questionnaire developed between the ES and the sub-working group will be circulated to delegations as soon as possible, granting a deadline for delegations to respond by June 30, 2014.
3. To agree on the presentation at the plenary in September, of the "Comparative Report on work plans, products of GELAVEX strategic partners" ([CICAD/LAVEX/doc.13/14](#)); the latest version will be circulated by the ES and the delegations may forward their comments by July 31, 2014.
4. To receive with approval the ES report, recognizing the efforts and progress made on the proposal for "Technical Assistance Program on International Cooperation in Asset Recovery", and to encourage the final design of the proposal by the ES, to be circulated in reasonable advance of the plenary to be held in September in Uruguay.
5. To agree to continue with the development of "Analysis of FAFT 40 Recommendations regarding operational and law enforcement" ([CICAD/LAVEX/doc.6/14](#)) for the purpose of submitting a final version to the plenary in September, for consideration and approval. To this end, delegations should provide feedback, comments and suggestions to the ES, by July 31, 2014.
6. To agree to continue with the development of "Recommendations on **security and integrity of the officials responsible for combating crimes of money laundering and related offenses**" ([CICAD/LAVEX/doc.7/14](#)), for the purpose of submitting a final version to the plenary in September, for consideration and approval. To this end, the ES will shortly circulate a questionnaire which will be circulated to delegations as soon as possible, granting a deadline for delegations to respond by 31 July, 2014.
7. To agree, considering that the Work Plan of three years will end in 2014 that the delegations send through the ES their proposals on themes to be included for the next period, that will initiate in 2015. The deadline for the submission of the proposals is 60 days after this date. It was agreed by acclamation that the delegation of Chile will support the ES to consolidate the proposals received and will submit a draft proposal at the next meeting in September 2014 in Uruguay.

V. OTHER BUSINESS

Next meeting

The group decided that the next GELAVEX's plenary meeting will be established by the Chair and the Executive Secretary, in coordination with the Vice chair, being provisionally set for September 25-26 in Uruguay. The ES will confirm the dates and city in due time.

The group thanks the Chair of the Group held by the Republic of Brazil, in the person of Dr. Paulo Abrão, National Secretary of Justice of the Ministry of Justice of Brazil, for the excellent organization of this meeting and the outstanding handling of this Plenary.

