Group 3

EFFECTIVELY TRACING THE PROCEEDS OF CRIME, FOCUSING ON COUNTERMEASURES AGAINST MONEY LAUNDERING

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I. SITUATION ON MONEY LAUNDERING

The group examined the situation of money laundering in the thirteen participating countries, based on the fact sheets prepared by the group and filled in by the participants of the 125th International Training Course.

Out of thirteen participating countries, eleven countries have legislation criminalizing money-laundering activities. In most cases, the predicate offences included drug offences and serious offences listed in the legislation. The number of serious offences listed as predicate offences varied from around ten to more than one hundred. In one country, all criminal offences are predicate offences for money laundering.

Some countries have dealt with about sixty money laundering cases since the enactment of their anti-money laundering laws. But in many states, concrete statistics on money laundering cases are yet to be established, because their money laundering legislation is quite new. However, although not formally charged, many participants stated that money laundering activities were found in their respective countries, including those countries where money laundering is not yet a criminal offence. Some participants pointed out that most money movements are made not through financial institutions like banks, but via more informal channels or by cash couriers, and thus it is very difficult to obtain information on money laundering activities.

Some countries reported that their money laundering legislation is under review to more effectively fight against it. Countries who have not yet criminalized money laundering are now working to introduce new legislation or decrees, in order to criminalize money laundering and establish a Financial Intelligence Unit (FIU).

II. PROBLEMS IN RELATION TO CRIMINAL INVESTIGATION OF TRACING MONEY, AND ITS SOLUTION, INCLUDING COOPERATION WITH FINANCIAL INSTITUTIONS

A. Problems

The group identified the following issues as problems in the criminal investigation of tracing money.

1. Procedures in Accessing Bank Data and the Issue of Bank Secrecy

It was observed that in some countries law enforcement officers are facing difficulties in obtaining the cooperation from banks and other financial institutions because these institutions decline to cooperate, invoking bank secrecy. In obtaining bank records for the purpose of criminal investigation, some countries have procedural requirements that could be a burden to law enforcement authorities, such as the consent of the central bank, or long time and high degree of evidence needed to obtain a court order for the production of bank records. Some participants stated that in practice it is not difficult to obtain the consent from the central bank, but some participants pointed out that in some cases the requirement of the consent or the court order would be a burden for law enforcement authorities dealing with transnational organized criminals, who make the best use of advanced technology and move money frequently and quickly.

2. Lack of Confidentiality among some Members of the Financial Institutions and Law Enforcement Agencies

Even if there are legal frameworks to ensure the cooperation of the financial institutions, the fact that the investigation on a certain bank account is going on could be leaked to the person holding the account. This can be done intentionally by corrupt bank officials or law enforcement officers, or inadvertently by an inappropriate processing by banks of the inquiry from investigators. For example, if a bank manager sends a copy of the investigative inquiry to its all branch offices via facsimile without any security measures, this inquiry can be seen by any employee and the risk of information leak would be very high.

3. Discretion of some Financial Institutions to Report Suspicious Transaction to FIUs

It was pointed out that if the rules governing the Suspicious Transaction Reports (STR) is not clear enough, there is a danger that this could be abused by the financial institutions. Bank officials might decide not to report a suspicious transaction by their clients by inappropriately interpreting the rules on STRs.

4. Lack of Authority to Apply New Investigative Techniques

Investigative techniques such as the interception of electronic communication, undercover operations and surveillance are very effective tools in the fight against money laundering. However, many countries lack sufficient legal provisions authorizing law enforcement agencies to conduct these measures.

5. Lack of Special Skills in Accountancy or Information Technology among Law Enforcement Agencies or FIUs

In analyzing financial documents such as bank records and accounting books of corporations, special knowledge and skills in accountancy are essential. Many participants stated that the law enforcement agencies and FIUs in their countries do not have enough staff members who have these skills. The same can be said concerning the knowledge and skills in information technology, which is also essential in dealing with sophisticated criminals.

6. Non-Bank Financial Institutions, Alternative Remittance System (ARS) and Cash Transactions

It was noted that some countries do not have appropriate regulations to control non bank financial institutions. Furthermore, the group agreed that there are many methods used to move money other than using the financial institutions, such as by using professionals (lawyers, notaries public, accountants etc.), resorting to ARS including "hawala," "hundi" or other types of underground banks, or simply moving cash by cash couriers. This is eminent in countries without developed financial systems, but it is also popular in countries which have a sophisticated network of financial institutions.

7. Absence of Anti Money Laundering Laws or FIUs

Above all, it was noted that some countries do not have FIUs and/or anti-money laundering laws, although they are the essential tools in the fight against money laundering. Lack of political will was identified as one of the reasons.

B. Solutions

The group discussed how to solve the above mentioned problems and came to a conclusion that the following measures should be considered by countries to effectively cope with money laundering. It should be noted that these measures are closely related, depending on each other.

1. Introduction of New Laws or Revision of the Existing Laws

First of all, countries without anti-money laundering laws should take steps to enact such laws as soon as possible, and countries which do not have FIUs should have laws or regulations establishing them (problem (g)).

Countries which already have anti-money laundering laws and FIUs should consider introducing or revising laws with a view to:

(i) expanding the scope of the predicate offences (general);
(ii) introducing new offences, criminalizing such conduct as the leakage of information or dishonest STR reporting by bank officials (problem (b) and (c)), or illegal ARS (problem (f)) ;
(iii) providing a legal framework for the cooperation between agencies and financial institutions related to anti-money laundering activities (general);
(iv) introducing clear standards for STRs (problem (c))
(v) providing a legal basis which allows law enforcement officials to utilize new investigative techniques (problem (d))
(vi) establishing supervisory systems for non-banking financial institutions, professionals, legal ARS and cash transactions (problem (f))
(vii) providing fair and effective measures for investigation authorities to obtain bank records promptly (problem (a))

2. Awareness Raising

In order to have the necessary laws or regulations mentioned in (a) above approved by the legislature, it is essential to obtain understanding of ministers and high ranking officials, law makers, interested groups such as lawyers and financial communities, and public in general. Thus it is very important to launch an active awareness raising campaign to promote the common understanding that anti-money laundering measures are necessary (related to solution (a))The understanding of the public and the financial institutions will also be essential to enhance the cooperation of the financial institutions to the law enforcement authorities, as well as efficient STRs (problem (b), (c)).

3. Capacity Building

Training of law enforcement and judicial officers and staff of FIUs to provide them with skills and knowledge in the investigation of money laundering, accounting and information technology is very

important to enhance their capacity. Measures should also be taken to provide them with sufficient equipment, especially Information Technology (IT) tools (problem (e)).

4. Establishment of a Regime for Cooperation and Coordination between Law Enforcement Officials and Other Relevant Agencies, Including the Financial Institutions

Having laws on paper is not enough to ensure the cooperation and coordination of activities in the fight against money laundering, including the investigation to trace the money. An effective regime to enhance the cooperation and coordination between law enforcement officials and other relevant agencies, including the financial institutions, should be established. This could be realized, for example, by establishing a coordination committee of agencies concerned.

5. Ratification of the UN Conventions

The United Nations Conventions, especially the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and 2000 United Nations Convention Against Transnational Organized Crime (the Palermo Convention), are very useful instruments in combating money laundering. In order to ratify these Conventions, countries have to enact laws to implement their obligations. They will serve as guidelines in drafting laws (solution (a)), and can be used in awareness raising campaigns to enlighten the public, officials, lawmakers and interested groups that these Conventions are adopted by the General Assembly, thus the de facto global consensus (solution (b)).

III. ESTABLISHMENT OF LEGAL FRAMEWORKS (IMPLEMENTATION OF THE RELEVANT UN CONVENTIONS AND OTHER INTERNATIONAL STANDARDS) AND ITS PROBLEMS AND SOLUTIONS

A. Expansion of Predicate Offences for Money Laundering

1. Four Approaches to Define Predicate Offences

On this item the group deliberated on what are the predicate offences. As per the Palermo Convention the term is defined as follows:

Predicate offences shall mean any offences as a result of which proceeds have been generated may become the subject of an offence as defined in article 6 of this Convention[1].

The Convention further defines and obligates States Parties to the convention to criminalize laundering of proceeds of crime[2]. The offences are extended to criminalization of participation in an organized criminal group[3], corruption[4] and obstruction of justice[5] respectively, and also to all serious crime which conduct constitute an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty[6]. Transnationality or involvement of an organized criminal group must not be made elements of these offences in domestic laws[7].

1 Article 2 (h) the Palermo Convention.
2 Article 6, ibid.
3 Article 4, ibid.
4 Article 8, ibid.
5 Article 23, ibid.
6 Article 2 (b), ibid.
7 Article 34 (2), ibid.

The group in their discussion came to the conclusion that there are four approaches which states apply as far as predicate offences are concerned namely:

(i) All crimes Approach
(ii) List Approach
(iii) Threshold Approach
(iv) Mixed Approach meaning both list and threshold approaches

On the other hand the FATF 40 Recommendations (Financial Action Task Force Recommendations) [8] on the scope of the criminal offences of Money Laundering stipulate that:

- Countries should criminalize money laundering on the basis of the Vienna Convention and the Palermo Convention.

- Countries should apply the crime of money laundering to all serious offences with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences or to a threshold linked either to a category of serious offences or to a penalty of imprisonment applicable to the predicate offence (threshold approach) or to a list of predicate offences or a combination of these approaches.

- Where countries apply a threshold approach, predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by a maximum penalty of more than one years imprisonment or for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences, which are punishable by a minimum penalty of more than six months imprisonment.

- Whichever approach is adopted, each country should at a minimum include a range of offences within each of the designated category of offences[9]. Predicate offences for money laundering should extend to conduct that occurred in another countries, which constitute an offence in that country, and which would have constituted a predicate offence had it occurred domestically. Countries may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically.

- Countries may provide that the offence of money laundering does not apply to a person who committed the predicate offence where this is required by domestic law[10].

Afterwards the discussion geared on the difficulties and the group earmarked the following:

The list approach seems to be more practical, since it is limited in scope hence making it easier for the legislature to approve the bill.

On the threshold approach it was noted that if the minimum period of the deprivation of liberty is low, this might cause difficulties for the legislature to approve the bill.

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[8] All FATF recommendations quoted in this paper are those which were revised in June 2003.

[9] Designated categories of offences are listed in the Glossary to the newly revised FATF 40 Recommendations.

[10] Last paragraph of FATF 40 Recommendation 1.

Theoretically, both the all crime approach and threshold approach have some questions, i.e., there are other offences such as infanticide, rape, grievous harm, which don't generate profit. There is a possibility of public concern that authorities abuse their powers, leading to some criticism from the pressure groups. In addition, it might increase the workload of law enforcement agencies and judicial officials as well; hence the need for more personnel and equipment, especially in countries where the legality principle is applied.

2. Degree of Mens Rea Required in Money Laundering Offences

The group noted that this is also one of the difficulties. This notion has a different interpretation and penalty as far as states are concerned. In some countries, such as the USA, where they use the list approach, they have a special provision in law which mitigates the burden of proof of the mental element of the launderer: the prosecution is required to prove that the defendant knew the proceeds came from a felony, but not from a specific offence. Indonesia also has provisions on the mitigation of mens rea. In Japan, there is no such special provision and the issue of the mental element is dealt with by the interpretation of the general provisions on mens rea in the Penal Code.

3. Proof of the Predicate Offences

In some countries prosecutors have to prove predicate offences beyond a reasonable doubt, and in some other countries a lower degree of proof is enough, such as a balance of probabilities. In some countries the conviction of the predicate offence must precede the indictment of the money laundering case. On the contrary in other countries such as Japan and Indonesia conviction for a predicate offence is not a pre-condition for instituting a money laundering case.

4. Measures to Solve the Difficulties

One component is the revision of the law but since the concept of money laundering is technical, we need to train legal drafters overseas. Also law enforcement, judicial and financial institution personnel need capacity building assistance.

In order to speed up the adoption of the bill in parliament, the awareness raising campaign, or some enlightenment activities targeting lawmakers, interested groups such as human rights activists or financial institutions, and members of the public would be needed to obtain their understanding on the urgency in taking anti- money laundering measures. In this context, the existence of international instruments such as UN Conventions can present a good argument in adopting relevant legislation.In addition to the expansion of the predicate offence, the new law could also deal with the mitigation of the degree of proof, which was mentioned above.

B. Confiscation, Freezing, Collection of the Value of the Proceeds of Crime, and Asset Sharing

At the outset, the group reviewed the relevant provisions in the Palermo Convention (Article 2 (g) and Article 12), and in the Vienna Convention (Article 5), as well as recommendation 3 of the FATF 40 Recommendations.

The group discussed the scope of the proceeds of crime. It was introduced that Japan needed new legislation to implement the confiscation provisions of the Vienna Convention and the Palermo Convention, because the existing Article 19 did not sufficiently cover the scope of obligations under these Conventions. Thus, in ratifying the Conventions other countries may need a thorough comparison of these Convention provisions and the confiscation provisions in their respective domestic laws.

Also, there was a discussion whether the confiscation should be mandatory, or judges should have discretion on this matter, and there was a general agreement that in drug offences and serious offences involving organized criminal groups, the confiscation should be mandatory.

The meeting also discussed the difference between "confiscation" and "forfeiture", since in Article 2(g) of the Palermo Convention and Article 1 (f) of the Vienna Convention, which states that "'Confiscation', which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority". The group noted that the Commentary on the Vienna Convention, prepared by the United Nations, has an explanation on this issue, stating that the reference to "forfeiture" is made in order to meet the needs of some national legal systems, in which this was a more appropriate term than "confiscation" and that the French and Spanish versions do not have the phrase "which includes forfeiture where applicable", since the term "confiscation" in French or "decosimo" in Spanish were deemed to be the only appropriate ones.[11]

The group noted that the shifting of the burden of proof concerning the legitimate origin of assets, dealt with by Group II, also needs attention.

The meeting also discussed the issue of civil and administrative forfeiture. It recalled the explanation made by the visiting expert from the United States, as well as recommendation 3 of the FATF 40 Recommendations, which stipulates that states "may consider adopting" civil forfeiture.

Some participants expressed concern that this process (especially administrative forfeiture) could be abused to evade the criminal procedure, which requires proof beyond a reasonable doubt, but other participants considered that civil forfeiture is an effective way to control the proceeds of crime, especially when the offender cannot be convicted due to certain reasons, such as his/her absconding or death.

All participants of the group said that their countries have provisions on freezing of proceeds of crime (and as for the participants of the 125th course, only Bhutan and the Maldives do not have the freezing provisions). It was noted that there are two possibilities in initiating the freeze procedure: one system may only accept court orders as a basis for freezing, and the other system may authorize prosecutors or law enforcement officers of a certain level to issue a freeze order.

As for the asset sharing, attention of the group was drawn to Article 5 paragraph 5 (b)(ii) of the Vienna Convention and Article 14 paragraph 3(b) of the Palermo Convention which states "may give special consideration to concluding agreements" concerning asset sharing. Views were expressed that asset sharing was a very useful tool in the fight against transnational crime, which generate a large amount of proceeds, helping to enhance cooperation between investigative agencies of the states concerned, and providing a fair compensation to the effort made by each agency. Some participants quoted a saying that "money makes enemies", and expressed views that a fight for money could deteriorate a once friendly relationship between the agencies concerned. However, the meeting agreed that the adoption of a legal framework to allow asset sharing merits serious consideration so as to enhance international cooperation.

[11] Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, p30 (United Nations publication Sales No. E.98 XI.5, E/CN.7/590).

C. Suspicious Transaction Reporting (STR) System and Financial Intelligence Unit (FIU)

The group reviewed the legal framework on STRs and FIUs in the international instruments, such as FATF 40 recommendations and its adoption by the FATF Style Regional Bodies (FSRB), as well as paragraphs 1(b) and 3 of Article 7 of the Palermo Convention.

It was confirmed that the minimum requirement for the FIU is for "receiving, [...],analysis and dissemination of STRs and other information regarding potential money laundering or terrorist financing"[12].

The group also reviewed three options concerning the scope of the STRs. One approach is a generic approach, where financial institutions are required to report all transactions, which they suspect or have reasonable grounds to suspect that the funds are the proceeds of criminal activities. The second approach is a threshold approach, where reports should be made on transactions exceeding a certain amount of money. The third approach is a combination of these two.

As for the generic approach, it could increase the workload of the financial institutions, as they have to make judgments in each transaction whether it is suspicious or not. This judgment is not of a nature to be clearly stipulated in law. By each case, the customer's nationality, vocation, past transactions, transaction value, transaction form, and other factors should be comprehensively considered. However, it is essential to establish certain guidelines for the financial institutions to help them in making a decision to ensure the smooth operation of this system. In Japan, through FIU, Japan Financial Intelligence Office (JAFIO), "Reference of STR" is distributed, and revisions are made when necessary.

The threshold approach is easier for the banks to apply. However, there is a danger that the criminals may evade the STR by dividing their transactions to several transfers below the threshold. That means, if the transaction exceeding US$ 10,000 is subject to report, criminals may divide their transactions into small lots such as US$ 9,900. In countries, which adopt the mixed type system such as Thailand, they may not face these issues, but this will be a concern to countries which adopt the threshold approach. There could also be a problem that the FIUs would be flooded by many reports.

The meeting discussed whether the FIUs should be equipped with any authorities concerning investigation and confiscation. It was noted that if the FIU is to have investigative authority, there should be many personnel who have sufficient experience in the investigation field. Some participants suggested that law enforcement authorities, with many experienced staff members, are more suitable for conducting investigation based on the STR from the FIUs. It was also noted that even the mandate of the Anti-Money Laundering Office (AMLO) of Thailand, which have an investigative authority, is limited to a list of offences, and they transfer the case involving other offences not listed to appropriate investigative agencies.

On the other hand, in case the FIU does not have investigative authority, such as Japan, it is important to enhance function to collect and analyze adequate information, and to manage collaboration among investigative agencies well. Especially, in case of the latter, we must say that the effectiveness of the FIU function is poor, if the information the investigative agencies consider important is totally different from the information sent from the FIU. To address these issues, a framework for the enhancement of cooperation and coordination among FIUs and other investigative agencies should be established, for example by holding periodical meetings, so as to promote a common understanding of the problems related to the information sharing.

[12] FATF Recommendation 26.

This issue is also related to where the FIU should be located whether under the central bank, or ministry of finance, or ministry of justice or interior, or it should be an independent body. It was observed that as far as the FIUs are vested with the minimum authorities mentioned above, countries may choose any of the above options, depending on their policies.

To ensure the effectiveness and comprehensiveness of STRs, there should be some sanctions in case the financial institutions do not abide by the STR rules.

We are seeing an increasing number of cases in which legal professions such as lawyers, certified accountants and real estate agencies lend hand to money laundering by offering consultancy on financial matters. This is the so called "Gatekeeper" issue and is becoming apparent, so measures should be put in place as per Recommendation 12 of FATF 40 Recommendations.

It will be beneficial to oblige the legal professional to report to the FIU to some extent, but on the other hand, trust between the customer is crucial for the lawyer to execute his/her duty.

Unlike Financial Institutions that deal in a large number of transactions, lawyers provide service on an individual basis. Thus it is relatively easy for the source of information to be revealed. There are some countries that oblige lawyers to make a report, but sufficient safeguards will be important.

On the co-operation of FIUs, the group observed that where they exist they should be encouraged to exchange information between each other and they should develop procedures to that effect. Where they do not exist informal channels such as Interpol, should be used.

Also, the capacity building of relevant bodies, such as training of the FIU officials and the employees of financial institutions, judicial personnel, as well as law enforcement officials, is of great importance in order to maximize the STR system.

D. Customer Due Diligence (CDD) and other Measures Required by the FATF 40 Recommendations

1. Issues Faced

On this aspect the group centred their discussion on Recommendation 12 of the FATF which stipulates: the CDD and the record keeping set out in Recommendation 5, 6 and 8 to apply to designated non-financial businesses and professions such as casinos, real estate agents, dealers in precious metals and precious stones, lawyers, notaries, other independent legal professionals, accountants and trust and company service providers.

Some participants observed that the issues of CDD measures such as financial institutions identify and verify the identities of the customers[13] normally annoys customers who may decide to go to other banks where the conditions on this aspect are less stringent.

The Group noted that it is especially difficult to identify customers when they conceal the person to whom the transactions actually effects, making use of another person appearing as "an owner". Identification of this issue of "beneficial owners" is one of the most challenging tasks in CDD.

On the professionals such as lawyers and accountants the group recalled the presentation of one expert at the Ministry of Foreign Affairs Seminar on counter-terrorism Conventions for the purpose of encouraging the accession to the Conventions by Southeast Asian countries, where he said lawyers in his

[13] FATF Recommendation 5.

country have gone to court to file for injunctions against the STR obligation by the legal professions.

All participants were of the view that in preparing a bill to require these professionals to exercise STRs, they might face the same problems faced by the country of the expert above, especially challenges from the professional associations.

2. Measures to Address the Situations

On the issue of verifying the identities of customers by financial institutions, participants observed that the regulatory bodies especially central or reserve banks should enforce compliance to all financial institutions by making sure they maintain the same standard and procedures. For those who default sanction should be put in place to reprimand them. Also regulatory bodies should sensitize public that the issue has to be adhered to by customers hence they have to cooperate with financial institutions in their business transactions by giving correct details of their identities and documentation.

On identifying beneficial owners the group was of the view that special forms should be used with comprehensive details and face to face business relationships or transactions should be used.

The group on professionals to report STRs, was of the view that they have to be encouraged to do it. To start with their association should be asked to include the compliance in their regulations. Further they should be enlightened that they are supposed to report their suspicious transactions but not relevant information obtained in circumstances whereby it is subject to professional secrecy or legal professional privileges [14].

IV. PROMOTION OF INTERNATIONAL COOPERATION

A. Mutual Legal Assistance and Extradition

The group agreed that the measures were essential tools in fighting transnational organized crime. It was agreed that articles 6 and 7 of the Vienna Convention, article 18 and 19 of the Palermo Convention, Recommendation 35-40 of FATF 40 Recommendations should be the basis of the International cooperation on these aspects.

Participants noted that they were implementing the measures but some countries when asked to extradite criminals they invoke principle of dual criminality as provided in article 18 paragraph 9 of the Palermo Convention. Some countries exercise strict application of dual criminality while others are flexible in applying it by taking into account the overall conduct of an offender, rather than simply comparing the text of laws. Again there are other countries, which don't require dual criminality aspects in non-coercive measures.

Some participants observed that the mutual legal assistance requests are costly and time consuming to the requested countries and sometimes there is lack of trust and confidence. There is no room for dual criminality in the Vienna Convention and the 1999 Suppression of Financing of Terrorism Convention. But in the Palermo Convention, which covers a wide range of offences there can be room for a country to invoke the dual criminality requirement, especially for serious crime.

[14] FATF Recommendation 16.

Political offences, capital punishment and the integrity of some central authorities were mentioned by some participants as a stumbling block to extradition. Experiences were mentioned by Japan, Laos, Indonesia and Tanzania, where they failed to obtain extradition of defendants or offenders. The meeting noted the aut dedere aut judicare principle adopted by several UN Conventions under which the requested country has to prosecute the person for whom extradition is sought if it refuses extradition solely on the ground that the person sought is its national. Despite the problems participants agreed that states should encourage to ratify the UN Conventions, especially the Vienna Convention, the Palermo Convention and adopt the FATF 40 Recommendations and join the body. Countries should enact domestic laws, which will be an indicator of political will on the state concerned. The advantages of ratifying the conventions and enacting domestic laws is that the states can benefit from the international technical assistance programmes like training and equipment.

B. Exchange of Information among Law Enforcement Agencies

On this item, the group was in consensus that this is the most effective way of combating transnational organized crime because criminals have no geographical boundaries. So law enforcement agencies should cooperate in exchanging information with one another, consistent with their respective domestic legal and administrative systems as stipulated in article 27 of the Palermo Convention. States should use the following fora as established channels of communication:

(i) Interpol through the National Central Bureaux (NCBs)
(ii) WCO through Regional Intelligence Liaison Offices (RILOs)
(iii) Egmont Group through the Financial Intelligence Units (FIUs)
(iv) Universal Postal Union through National Post Agencies

The group noted that the informal forum was faster than the diplomatic channels, which take a long time. However, for the judicial trial formal channels have to be pursued for admissibility of evidence in a court of law.

Japan gave an example of a case where the exchange of information with the law enforcement agencies in the United States, followed by a prompt mutual legal assistance request, led to a successful prosecution of a drug trafficking case.

Tanzania also cited three cases whereby an exchange of information was carried out among three Anti-Narcotic Units in East Africa through the auspices of the East African Operational Meetings on Drugs for the Directors of Criminal Investigation and the Heads of the Anti-Narcotic Units and big seizures of heroine where recorded.

On the other hand, inter-agency cooperation of law enforcement agencies at the state level should be encouraged to boost international cooperation. However, some countries pointed out the exchange of information is hampered by lack of equipment and training.

C. Joint Investigation and Border Control

This issue was deliberated in depth and the group unanimously agreed that this is a very useful measure to tackle cross-border crimes on condition that there should be bilateral, multilateral agreements or arrangement in matters of investigation, prosecution and judicial proceedings in one or more states. Sometimes it can be conducted on a case by case basis. This is stipulated in article 19 of the Palermo Convention.

It was introduced that Indonesia had a successful joint investigation with USA. And Laos also had a joint investigation with Thailand especially along the borders. Tanzania via Southern Africa Regional Police Chiefs Conference Organization (SARPCCO) and Eastern African Police Chiefs Conference Organization (EAPCCO) has also conducted very successful joint investigations and operations.

The Group noted that the experience of Tanzania merits attention, where foreign investigators are invited to participate in the joint operations and investigations as observers, South Africa offering equipment with wide database especially on stolen motor vehicles. The participant of Tanzania introduced that these joint operations and investigations are conducted on the basis of the various protocols. He also noted that in the negotiation of certain protocols, it was difficult to reach consensus on certain articles.