

GROUP 3

MULTI-AGENCY AND INTERNATIONAL COOPERATION

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I. INTRODUCTION

Protecting citizens from the harmful consequences of drug trafficking has become a major global concern. Despite the differences related to each country's realities and legislation, it is a phenomenon that poses unexpectedly similar challenges to nations and cannot be solved without a united effort.

Indeed, Tajikistan and Uzbekistan struggle every day to deal with the flow of opiates into their territories through the Afghan border. The Democratic Republic of Congo and Mali face analogous problems as transit countries for cocaine, a significant part of which comes from Brazil, a hub for the distribution of cocaine smuggled from Colombia, Peru and Bolivia towards the East. Meanwhile, drug mules recruited from the Philippines cross Malaysia with stimulants, a part of which may arrive in Japan. Egypt has limited production of cannabis and heroine, but gets its supply from foreign countries. For all we know, the proceeds of the criminal activities may be handed to a Brazilian *hawala* to be deposited in a fictitious bank account in a Thai bank and laundered through real estate purchased in the Philippines by a dummy corporation.

Despite the efforts of the United Nations to address the issue of international drug trafficking, the problem persists. It feeds from a bad equation: high demand for illicit substances, poverty among mules, failed states, higher profits for supply rings and a vast array of financial, commercial and transport professionals who benefit from the criminal chain. Unlike state agents, drug traffickers are not bound by territorial borders.

Cultural traditions and legal systems can be used both as a sword and a shield. Criminal groups are aware of this. They take advantage of the jurisdictional limits of countries to operate freely and shield themselves from prosecution. No matter how devoted a country may be in combating drug trafficking, it is a battle that cannot be beaten alone. That is the reason why nations should resort to mutual dialogue and cooperation.

The main objective of the group workshop is to exchange experiences related to each participant country's challenges and good practices on the front of international cooperation on drug trafficking, in order to achieve better mutual understanding and find possible solutions.

After reviewing the main issues related to multi-agency and international cooperation on drug trafficking matters, the group agreed to focus the discussion on the following topics: border control, information exchange, mutual legal assistance and its financial aspects. The discussion, summarized below, led to sixteen (16) recommendations.

In the presentation of the group's report, each participant's input was referred to under the name of the country they represent. Their ideas do not necessarily reflect their countries' policies.

II. SUMMARY OF THE DISCUSSION

A. Border Control

Border control was the most frequently mentioned issue by the participants. Thailand, Tajikistan, Uzbekistan, the Democratic Republic of Congo and Brazil reported similar problems related to their status as transit-point countries for illicit drug smuggling. These problems persist due to (i) the insufficiency of border outposts and checkpoints; (ii) the deterioration of the existing facilities and road signals; (iii) the deficiency of specific capacity-building for troops, police and customs officers; (iv) the shortage of personnel; and (v) the lack of technical means, such as appropriate vehicles, x-ray machines, radar, optical observation equipment and night vision/infra-red devices.

The Democratic Republic of Congo, Brazil and Thailand highlighted the challenges inherent to their vast and porous boundaries, some of them spread over forests, jungles and different bodies of waters. Meanwhile, Japan and the Philippines, both archipelagic in nature, have difficulty in guarding their coastlines. In isolated areas, it is the absence of the state that cuts deeper, unleashing free drug smuggling through pathways and waterways.

Tajikistan and Uzbekistan reported encountering severe difficulties at their borders with Afghanistan, an opium source country whose economy and institutions have proven incapable of tackling poppy trafficking. Afghan smugglers have adopted a system of drug trafficking without physical contact, by means of burying drugs at the border area in plastic bags. Although the Tajik and Uzbek authorities can seize the illicit substances, such *modus operandi* makes it hard to adjudicate the traffickers, especially in light of the impossibility of undertaking investigation measures inside the Afghan territory.

Brazil and the Democratic Republic of Congo shared concerns related to their inland borders with multiple states, some of them sources of illicit substances, like Colombia, Peru and Bolivia, or destination countries, like Angola.

Japan introduced a complicated issue to deal with: the transshipment of drugs in foreign vessels beyond the jurisdiction of the national coastal authorities. The challenge was said to be particularly tricky because many ships have fake flags or no flags at all, enhancing the need for intelligence disclosure from the outbound ports in order to raise the Japanese authorities' suspicion of specific vessels used for trafficking.

The abuse of airports, seaports and free ports/economic zones by drug syndicates for the sake of transshipment and drop-off of illegal substances was mentioned by the Philippines as well. Thailand reported that criminal rings have also taken advantage of the international postal service. Both countries emphasized the increasing role of couriers, runners and peddlers in trans-border drug trafficking. These couriers pose as tourists in exchange for money.

Brazil described the feeble monitoring of its inland borders, despite the number of governmental agencies with overlapping duties related to boundary control. Part of the problem is due to the lack of a national border control policy, entailing poor institutional coordination, instability of goals, unpredictability of resources and little accountability.

Mali reported fruitful outcomes after establishing an office of its anti-drug unit (CAAT) at the Bamako Airport. By working side by side with foreign countries, they have been able to seize cocaine and methamphetamine.

Tajikistan also provided input about promising results related to its National Counter-Narcotics Strategy for 2013-2020, aiming at the structuring and amelioration of the Tajik border facilities and the increase in mobility of the frontier guards, personnel and equipment.

Thailand saw the need for enhancing day and night joint patrols by the rivers. Such policy should be addressed along with the establishment of quick response units on both sides of the border, in case one

country stumbles upon a drug dealer and the perpetrator tries to run away to the neighbouring country.

The discussion moved on to the need of enacting treaties to grant the possibility of conducting hot pursuits in neighbouring countries, in order to avoid impunity and the loss of investigative windows of opportunity. However, most of the members of the group considered it an impossible solution, taking into consideration jurisdictional issues.

B. Information Exchange

The participants were unanimous in acknowledging the importance of information exchange in countering transnational drug trafficking. Tajikistan and the Democratic Republic of Congo mentioned the existence of specific agreements with neighbouring countries aiming at information exchange, but Tajikistan said there have been no fruitful results so far. On this subject, Uzbekistan added that an agreement sealed with Afghanistan in 2017 has contributed to effective sharing of information related to drug trafficking.

Japan emphasized the need for data exchange on a daily basis to perform the Coast Guard duties. This is one of the reasons to foster relations of trust with other states, because transnational crimes cannot be solved on the ground of only one country's efforts. A successful investigation launched as a result of intelligence shared from a foreign agency was presented as a good practice, leading to a large seizure of methamphetamine concealed inside a container.

The Philippines also mentioned the successful seizure of about 600 kilograms of methamphetamine hydrochloride after information was received from China. The Philippines, Japan and Uzbekistan concurred about the disadvantages of mutual legal assistance (MLA) as opposed to direct information exchange, pointing out that the MLA procedure is usually complicated and takes a long time. Japan added that probes based on information provided abroad have been conducted by its National Police Agency; although mutual legal assistance is considered to be the appropriate way to produce evidence, a report based on information may be admissible in court if the defence consents.

It was suggested by the Philippines that there is a need for "active and strong cooperation with foreign counterparts. Strengthening the bilateral, regional and multilateral coordination is crucial in the conduct of international operations"¹. The Democratic Republic of Congo and Mali underlined the important role played by INTERPOL in this field. Egypt and Brazil reckoned that the information exchange can be performed not only through agency-to-agency contacts, but also through liaison magistrates, police attachés, FIU liaison officers and focal points of international cooperation networks.

The Democratic Republic of Congo reported that, even though its drug trafficking legislation is still weak and Memoranda of Understanding (MoU) with neighbouring states and Southern African Development Community (SADC) members have been signed, the country could also benefit from effective information exchange with other countries.

The Philippines encouraged "embassies and consulates to undertake tighter screening of visa applications of nationals known to be involved in drug smuggling activities, and immigration officials should closely monitor and track their activities. This can only be achieved if concerned agencies have sufficient administrative and financial support"².

As a good practice, Brazil presented a project adopted by the Network of Anti-Drug Prosecutors in Ibero-America called the "Bogotá Protocol", an intelligence sharing platform related to drug trafficking through container shipments. It has delivered great results and has proven to be a hallmark of success in deterring and combating smuggling inside containers, hence the broadening of its scope to include air cargo shipments.

C. Mutual Legal Assistance

Concerning MLA, Egypt introduced a major barrier against the country's efforts to perform international assistance: the absence of domestic laws, bylaws or guidelines on the subject. While its Constitution provides

¹ *Drug Courier or Drug Mule* <http://pnp.gov.ph/operations/483-drug-courier-or-drug-mule>, citing PDEA as source.

² *Ibid.*

for the assimilation of international treaties as domestic legislation and Egypt has ratified all the major multilateral Conventions, proper regulation on the procedure of requesting and granting international cooperation remains unclear.

Brazil made a long exposé on obstacles faced by its practitioners when it comes to effective transnational assistance, most of them associated with the lack of minimum expertise on international cooperation affairs. Specialized units devoted to managing informal assistance, providing capacity-building and reviewing MLA drafts do not exist in most Brazilian state level police, prosecution services and courts, entailing scarce resort to formal and informal international cooperation, along with low-quality experiences with MLA requests. As for the federal level institutions, despite the significant progress experienced during the past decade, the perception of the Brazilian legal procedures as “universal” by practitioners and the disregard for other countries’ grounds and ways to grant assistance are almost widespread. This attitude has taken its toll on the performance of outgoing MLA requests, distinctively on those addressed to countries with different legal traditions. In such cases, the assistance sought tends to be lengthy, erratic and subject to frequent calls for clarification. Meanwhile the evidence obtained does not always match the local standards of admissibility. Other barriers include legal terminology differences, insufficiency of grounds in the requested country and procedural inconsistencies.

Japan presented the number of MLA requests made by its police and prosecutorial authorities in 2016 and concluded that, in light of the statistics related to crimes perpetrated by foreigners in the same year, a modest resort to international assistance has been done by local practitioners. A possible explanation for the MLA underuse in the country is the maximum time set by the Japanese law for the pre-trial detention of perpetrators: 20 days, which is not enough to obtain formal assistance. Therefore, Japan proposed that, in those cases when the evidence subject to MLA is not indispensable for indictment, formal assistance may be requested to obtain additional proof to support prosecution.

Uzbekistan raised attention to the obstacles posed by discrepancies in domestic legislation concerning the list of banned substances and the conditions related to the lawful use of precursors and prescribed drugs. It was asserted that it could lead to the impossibility of granting international cooperation due to dual criminality issues. Accordingly, in view of his professional experience, the Uzbek participant suggested a prompt update of the list of common illicit substances and precursors published by the Commission on Narcotic Drugs of the United Nations, which could be recommended to its member states as a standard for MLA purposes. The topic led to a comprehensive discussion among the participants. Egypt, Brazil, Japan, and the Philippines replied that the endorsement of a unified list would not be realistic for economic and diplomatic reasons. However, other solutions were suggested. These include (i) urging the UNODC to create a working group to study the subject; (ii) establishing MoUs to allow the exchange of information, regardless of the different approaches of each country on the drugs banned; (iii) harmonizing the list of illicit substances and precursors with neighbouring countries through bilateral treaties; and (iv) bypassing the question via the inclusion of the concept of “analogue substances” in the banning lists.

Japan clarified that bilateral treaties with various nations have achieved good results, but it does not mean the country would not grant assistance to other countries when requested on grounds of reciprocity.

The Democratic Republic of Congo adduced a pact on security, stability and development that was signed by the countries located in the Grand Lakes Region and has shown good outcomes related to MLA. Likewise, Mali described fruitful results by virtue of an existing regional platform for international cooperation and MLA treaties sealed with fellow states.

Brazil reported that deploying special investigative techniques through MLA has been specifically difficult for its practitioners. Wiretapping and the interception of electronic communications have posed insurmountable obstacles due to the need for timely judicial supervision by the requesting state, whereas controlled deliveries and undercover operations depend highly on comprehensive coordination between counterparts and may face sovereignty challenges. As a result, most practitioners rely on operations carried out by the police or customs without judicial concurrence, or simply give up on them. The general lack of awareness about informal cooperation channels and their role in international assistance has accounted for many of the aforementioned obstacles.

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The great value of making informal contact as soon as the case reaches beyond domestic borders was also pointed out. Signs of transnational dimensions include having family, assets or companies abroad, granting or receiving loans/investments from overseas and making suspicious trips. Previous contacts offer a good opportunity to learn about the justice systems involved, better understand each other's requirements, identify potential challenges and act as a prelude to a subsequent MLA request. If distrust is an issue, practitioners could address the implications of providing assistance on a merely theoretical basis prior to any discussions of substance. Strict enforcement of the principle of specialty within each agency, granting attention to confidentiality requests and fostering effective reciprocity are conditions frequently reckoned with as necessary to increase and maintain trust between nations.

Brazil also described the difficulties related to MLA faced by its 588 prefectures located in the inland border. Because most boundary rivers and pathways allow free circulation of individuals, drugs and assets, the lengthy procedure of translating MLA requests and sending them through central authorities have rendered it almost impossible to provide an effective response to criminal activity. The situation is particularly critical in the 30 twin-cities along the border, because their territories spread over both sides and bear no physical limits besides simply crossing a street.

D. Financial Institutions

Thailand and the Philippines presented challenges associated with laundering the proceeds of drug trafficking inside and outside the financial system. This was addressed in the Philippines by amending its Anti-Money Laundering Law to cover transactions made in casinos. Brazil accentuated the importance of international cooperation in identifying high-value targets through non-official financial transactions, whether through formal or informal channels, a point of view with which Egypt concurred.

Brazil introduced challenges related to the refusal of assistance on grounds of fishing expeditions, in light of the insufficient identification of bank accounts and other assets in MLA requests aimed at obtaining financial records and freezing orders. Another frequent obstacle pertains to meeting the dual criminality criteria with countries described as tax havens when the charges are related to tax evasion or capital flight. The group discussed alternatives for identifying bank accounts and assets without the input of the requested state, whereas Japan asserted the convenience of trying to obtain financial records by means of addressing a domestic non-coercive request to the bank's branches within Japan.

Mali made a thorough exposé on its financial intelligence unit, CENTIF, which is entitled to oppose the execution of suspicious bank transactions on the basis of serious, concordant and reliable information. The country also provided input on the role of the Intergovernmental Action Group Against Money Laundering in West Africa (GIABA), an agency backed by the Economic Community of West African States (ECOWAS).

The Democratic Republic of Congo added that the country can count on two governmental bodies under the direction of the Central Bank to counter money laundering and financing of terrorism: a national commission in charge of overseeing the domestic financial institutions and a special council which reports suspicious transactions directly to the president of the Republic. Local banks have the obligation of refraining from carrying out such transactions, under penalty of fine.

Brazil and Egypt advanced the discussion of the importance of the Egmont Group network in sharing precious intelligence on financial matters, side by side with main asset recovery networks.

III. RECOMMENDATIONS

After a thorough discussion among the participants, the following recommendations were made:

- 1) having treaties or memoranda of understanding among neighbouring countries, in order to:
 - (a) enhance coordination of border control policies and strategies;
 - (b) facilitate MLA by means of the exemption of translation and the exemption of intermediation through central authorities;

- (c) create joint patrols and quick response units on both sides of land and river borders; and
 - (d) grant specific measures to reconcile sovereignty and law enforcement in transboundary twin cities;
- 2) on a domestic level, institutionalization of global border control strategies and permanent border control task-forces, along with the quantitative and qualitative upgrade of border control facilities, equipment, technology and capacity-building;
 - 3) enhancement of visa application screening and monitoring of aliens known to be involved with drug trafficking, even before the beginning of their displacement towards the border;
 - 4) creation of international cooperation units within the main agencies involved (police, customs, prosecution service, border control and narcotic agencies, FIUs), intended to:
 - (a) oversee the agency's international cooperation efforts;
 - (b) manage international assistance networks and informal contacts;
 - (c) review drafts of outgoing MLA requests;
 - (d) supervise the execution of incoming MLA requests;
 - (e) control follow-up measures;
 - (f) allow direct cooperation between counterparts; and
 - (g) provide appropriate capacity-building;
 - 5) promotion of an active international cooperation culture among practitioners based on the following paradigms:
 - (a) legal systems are culturally conditioned and do not have a universal rationale;
 - (b) upholding justice in a global society involves not only preserving the country's citizenry, but also overcoming cultural biases;
 - (c) obtaining international cooperation depends on the consideration that the assistance sought will have to comply with the requested state's law and be useful before the requesting state's courts;
 - (d) because the matter may not be dealt with in the same manner as it is in the requesting state's jurisdiction, both in substance (grounds) and form (procedure), requests should mention the core conditions for the measure to meet its due process rules;
 - (e) in order to build trust, avoid miscommunication and prevent refusal of assistance, informal contact should be used as a starting point in any request related to countries with relevant legal differences;
 - (f) depending on the country involved, informal cooperation will suffice to obtain the assistance;
 - (g) in order to be enforced, requests must provide all data available about the measures sought, such as the identification and possible location of suspects, witnesses and companies, the addresses to be searched, the evidence to be seized, the records to be produced and the assets to be frozen;
 - (h) making proactive, early informal contact can aid in diagnosing potential challenges, gathering additional information, making strategic decisions and allowing the foreign authority to prepare for providing assistance;

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- 6) creation of a national board formed by central authorities, the Ministry of Foreign Affairs and each agency's international cooperation units, aiming at coordinating views and efforts towards international cooperation;
- 7) publication of online booklets concerning each country's criminal justice system and basic MLA provisions;
- 8) exchange of professional and cultural knowledge by means of joint training courses, seminars and workshops;
- 9) strict enforcement by the prosecution services of the principle of specialty and the observation of other conditions imposed by the requested country;
- 10) supporting the harmonization of every country's domestic law with the provisions of the United Nations convention on drug trafficking;
- 11) fostering communication and integration among agencies and officers in charge of informal cooperation (law enforcement attachés, liaison magistrates, network focal points);
- 12) implementation of intelligence sharing platforms and counterpart networks;
- 13) encouraging usage of the UNODC Mutual Legal Assistance Request Writer Tool, along with other UNDOC tools;
- 14) development of domestic procedures related to the transnational chain of custody of evidence, in order to meet the requirements of other countries;
- 15) capacity-building related to investigating transnational money laundering and using open source and FIU tools to trace foreign bank accounts and assets; and
- 16) devotion of comprehensive effort to allow international cooperation based on a list of common illicit substances and precursors, whether through the United Nations or by bilateral treaties.