Criminal organizations:
Identification, Seizure and Forfeiture.

In the world as it is today criminal organizations are not restricted to the territory of one single country (see for instance human trafficking, drug-trafficking or the offences in the field of financial crime) and every country is affected by the activities of these organizations. In the 2010 questionnaire we discussed in our commission Human Trafficking, which is—without doubt—also a prime object for criminal organizations. The so called Palermo Protocol (going back to 2000) deals with matters regarding human trafficking. This protocol was an annexe to the United Nations Convention against transnational organized crime and the protocols thereto (Palermo, 2000). This Convention was approved by the European Union through its decision of April 29/2004.

The Secretary General of the UN—Kofi A. Annan—wrote it 2004 about this Convention i.a the following:

“Criminal groups have wasted no time in embracing today’s globalized economy and the sophisticated technology that goes with it. But our efforts to combat them have remained up to now very fragmented and our weapons almost obsolete. The Convention gives us a new tool to address the scourge of crime as a global problem. (...) I urge all States to ratify the Convention and the Protocols thereto at the earliest possible date and to bring these instruments into force as a matter of urgency “.

In 1987 and 2003 the Study commission discussed aspects of organized crime. There is reason enough to look into the subject again.

Question 1:
Has your country signed and ratified the Convention and the Protocols thereto. If yes, on what date.
Japan signed the United Nations Convention against Transnational Organized Crime in December 2000, and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Protocol against the Smuggling of Migrants by Land, Sea and Air, and Protocol against the Illicit Manufacturing and Trafficking in Firearms in December 2002, respectively, but has not yet ratified the Convention nor any of these protocols (May 25, 2011).

Question 2:
Has your country special legislation for
2.1. the identification,
2.2. the seizure (freezing),
2.3. the forfeiture,
of property of criminal organizations? If yes, could you specify to what extent?
If no, is there any such legislation under consideration.
Japan does not have any special legislation for identification. As the court is not a legislative body, we are not in the position to express our opinions on this matter.
Japan has special legislation for seizure (freezing) and forfeiture, namely, the Act on Punishment of Organized Crimes and Control of Crime Proceeds, and the Act Concerning Special Provisions for the Narcotics and Psychotropics Control Act, etc. and Other Matters for the Prevention of Activities Encouraging Illicit Conducts and Other Activities Involving Controlled Substances through International Cooperation. Thus, it is legally possible to seize or forfeit criminal proceeds, and any proceeds that are proved to be property of a criminal organization would be seized or forfeited.

Question 3: Has your country set up one or more specialised agencies to identify and seize the proceeds of organized crime?
We do not know.

Question 4.
4.1. What assets are subject to seizure?
As for criminal proceeds, assets that may be forfeited pursuant to the provisions of law shall be subject to seizure. If the assets subject to forfeiture cannot be actually forfeited, due to the nature thereof, the part of other assets held by the accused equivalent to the value of the relevant assets to be forfeited shall be subject to seizure.

4.2. What assets are subject to forfeiture?
(i) Assets that are found to have been obtained as a result of a crime (limited to those tangible), and (ii) assets that have been obtained as a result of a crime committed for the purpose of gaining an unlawful economic benefit or a drug-related crime, etc. (not limited to those tangible, but including monetary claims) shall be subject to forfeiture. As for the latter type of assets, if the assets cannot be actually forfeited, due to the nature thereof, the part of other assets held by the accused equivalent to the value of the assets to be forfeited shall be subject to collection.

4.3. Does an asset need to have been seized in order to be forfeited?
Yes, an asset needs to have been seized in order to be forfeited.

4.4. What is the process for seizure of assets? (please summarize)
A public prosecutor or police official may file a request with the court for the seizure of assets that are subject to forfeiture. Upon receiving such request, the court shall issue an order of seizure if there are reasonable grounds for finding said assets to be eligible for forfeiture under law, and seizure is necessary in order to forfeit those assets. Based on this order, the public prosecutor, etc. shall seize the relevant assets. If the assets cannot be actually forfeited, due to the nature thereof, the part of other assets held by the accused equivalent to the value of the assets to be forfeited shall be seized based on a court order issued at the request of the public prosecutor.

4.5. What is the process for forfeiture? (please summarize).
Where it is proved that the accused (under public prosecution) has committed a crime, and any of his/her assets are found to have been obtained as a result of the crime, the forfeiture of
the assets shall be declared by a judgment, and the relevant assets shall be forfeited based on such a declaration. If the assets cannot be actually forfeited, due to the nature thereof, it shall be declared by a judgment that the part of other assets held by the accused equivalent to the value of the assets to be forfeited shall be collected from such other assets of the accused, and a public prosecutor shall collect such equivalent assets.

4.6. Does in your country the judge plays a role in the process mentioned in 4.4. and 4.5.? Yes, the judge does so.

Question 5:
5.1. Has your country legislation in force to confiscate after due process the proceeds of crime?
In addition to the Penal Code, the legislation in force in Japan for such purpose includes: the Act on Punishment of Organized Crimes and Control of Crime Proceeds, and the Act Concerning Special Provisions for the Narcotics and Psychotropics Control Act, etc. and Other Matters for the Prevention of Activities Encouraging Illicit Conducts and Other Activities Involving Controlled Substances through International Cooperation.

Question 6:
“Money makes the world go round”.
Has your country special legislation in force with regard to the electronic movements.?
Japan has a law that requires financial institutions, etc. to report to the administrative agency, etc. about their detection of any transactions suspected of involving criminal proceeds (under the title of "Act on Prevention of Transfer of Criminal Proceeds").

Question 7:
7.1. Should there be an international authority to handle organised crime besides for instance Interpol, Eurojust and Frontex.
We do not have any particular opinion on this matter.

7.2. Could your country be more active in that field?
We are not in the position to express our opinion on this matter.

7.3. Could you as Judge be more active in that field? Do you think that you have enough instruments and qualifications to handle cases of organized crime in Court?
We believe that cases of organized crime are being handled properly in accordance with the laws enacted by the Diet, the legislative body.