

NUMBERS 24/25

JANUARY 1996

SPECIAL DOUBLE ISSUE ON THE INTERNATIONAL CONFERENCE ON  
PREVENTING AND CONTROLLING MONEY LAUNDERING AND THE  
USE OF THE PROCEEDS OF CRIME: A GLOBAL APPROACH

COURMAYEUR, 1994

CONTENTS

*Chapter Page*

**Editor's note**

**Introduction**

**CHRONOLOGY OF THE BACKGROUND AND DEVELOPMENT OF THE  
CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME ON  
MONEY-LAUNDERING**

**RECOMMENDATIONS OF THE INTERNATIONAL CONFERENCE ON  
PREVENTING AND CONTROLLING MONEY-LAUNDERING AND  
THE USE AND PROCEEDS OF CRIME: A GLOBAL APPROACH**

An increasingly and undeniably global problem

Global trends in prevention and control policies

Gaps in the anti-money-laundering net: What needed to be done

Implementation priorities

**A GLOBAL STRATEGY FOR A GLOBAL PROBLEM**

**DOCUMENTATION AND SELECTED SUMMARIES OF PAPERS  
PRESENTED AT THE COURMAYEUR CONFERENCE**

Assessment of crime control policies by Paolo Bernasconi, Italian

National Center for Prevention and Social Defence, Italy

Money-laundering, regulatory strategy and internal corporate controls

by Brent Fisse, Professor of Law, University of Sydney, Australia

Assessment of regulatory policies by Michael Levi, Professor, University  
of Cardiff, Wales, United Kingdom of Great Britain and Northern Ireland

Money-laundering: the problem in Brazil and Latin America by José A. Rios,

member of the Executive Board of the United Nations Interregional Crime and Justice Research Institute, Rio de Janeiro, Brazil

Preventing and controlling money-laundering and the use of the proceeds of crime by Herman P. Woltring, Director, United Nations Interregional Crime and Justice Research Institute, Rome, Italy

Money trails: international money-laundering trends and prevention/control policies by Michael A. De Feo, Senior Counsellor for International Law Enforcement, Embassy of the United States of America, Rome, Italy and Ernesto U. Savona, Professor, University of Trento, Italy

### **Editor's note**

The scale of money-laundering is immense. \*This issue contains a flow chart of a money-laundering scheme. The investment of illicit profits in legal undertakings is estimated at US\$ 500 billion a year, a sum equal to the combined gross national products of two thirds of the Member States of the United Nations. The corrosive effects of money-laundering on democratic and political institutions cannot be overstated, even if the extent to which it undermines economies is difficult to estimate on the basis of the data widely available at present. What is certain is that no financial institution and no country are immune. Up to now, efforts to prevent and control money-laundering have been hindered by language and cultural differences, and variations in criminal codes and criminal justice practices, as well as by the desire to protect national sovereignty. As long as illicit assets are not controlled, however, the solution to the problem will become more difficult, with more serious consequences for volatile economies, particularly of developing countries and countries in transition.

The International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: A Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994, stemmed from the desire to focus attention on the global nature of the problem and the urgent need for a more integrated approach and more effective international cooperation. Because of the very nature of money-laundering, and the detrimental effects of illicit proceeds infiltrating the illicit economy, international cooperation should be based on the full realization of the global nature of the problem, and the sophistication and flexibility of money-laundering operations. It should be founded on consensus and the collective political will of the entire international community.

The United Nations has a key role in promoting a concerted and coherent global anti-money-laundering approach. Without international cooperation, it would be impossible for national authorities, including law enforcement and regulatory agencies, to obtain a clear understanding of the problem. The Conference at Courmayeur determined that priority measures included: criminalization of the laundering of criminal proceeds regardless of their origin, limitation of bank secrecy, the identification and reporting of suspicious transactions, improved regulation of financial operations and asset forfeiture where appropriate. The Conference made a significant contribution to the work of the United Nations in combating organized transnational crime, a goal of the international community that was further advanced by the World Ministerial Conference on Organized Transnational Crime held at Naples, Italy, from 21 to 23 November 1994, and the Ninth World Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995. These events, which brought together ministers and representatives of agencies to combat crime, were organized

under the guidance of the Commission on Crime Prevention and Criminal Justice, within the context of the high priority it is according to improved international cooperation for the prevention and control of organized transnational crime. The next edition of the *Crime Prevention and Criminal Justice Newsletter* will cover the Ministerial Conference, held at Naples.

This double issue of the *Crime Prevention and Criminal Justice Newsletter* contains a summary of the report of the Conference at Courmayeur. A number of documents were prepared specifically for it, some of which have been summarized in section IV. Copies of the originals may be requested from the Crime Prevention and Criminal Justice Branch, United Nations Office at Vienna, P.O. Box 500, A-1400 Vienna.

## **Introduction**

The key conclusion of the three-day International Conference on Preventing and Controlling Money-Laundering and the Use of Proceeds of Crime: A Global Approach, which ended on 20 June 1994 at Courmayeur Italy, was that the global nature and increasing sophistication of transactions involving the proceeds of crime whatever their source require vigorous countermeasures, including the creation of an international anti-money-laundering net.

The Conference had been organized by the International Scientific and Professional Advisory Council in cooperation with the Italian Government under the auspices of the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat. It was attended by approximately 250 participants from 45 countries, and intergovernmental and non-governmental organizations, as well as representatives from interregional, regional and affiliated institutes dealing with crime prevention and criminal justice, and experts.

The agenda of the meeting included five topics covering international money-laundering trends and prevention and control policies; criminal opportunities for laundering and using the proceeds of crime; mechanisms of international control; assessment of crime-control and regulatory policies and technical cooperation in preventing and controlling the laundering and use of the proceeds of crime.

In his opening remarks, Giorgio Giacomelli, Director-General of the United Nations Office at Vienna and Executive Director of the United Nations International Drug Control Programme (UNDCP), stressed the role of the Conference as a stepping-stone to a new way of viewing and responding to what had hitherto been seen as a uni-sectoral issue. "Today", he said, "money-laundering and the use of the proceeds of crime are activities deeply entrenched in the major political, economic and social concerns of a new era".

International crime-control and financial experts presented extensive evidence of the increasing transnationalization of money-laundering, which, they stressed, involved funds from both drug-related and other types of crime. Speakers reviewed trends in money-laundering techniques, revealing how criminal groups were taking advantage of weaknesses in national regulatory schemes as well as sophisticated ways of rapidly transferring illicit funds across national boundaries. Among the problems cited were under-regulation of some categories of professionals, the creation of "safe-money havens" by countries desperate for foreign investment and the lack of harmony between various national regulations.

Participants called for the establishment of an effective and comprehensive global anti-money-laundering net that would prevent money launderers from simply moving their activities from one country to another or from one financial sector to another in order to avoid control. The failure of some countries to establish their own protective nets was said to be frustrating the efforts of neighbouring countries which had nets. Areas requiring urgent redress included the prevalence of

financial institutions that were not banks and were not subject to adequate regulation, offshore businesses, and the failure by many States to implement fully existing anti-money-laundering measures such as the relevant provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the recommendations of the Financial Action Task Force (FATF) on Money-Laundering established by the heads of State or Government of the seven major industrialized countries and the President of the European Commission.

Among its recommendations, the Conference urged that strong administrative and regulatory tools be designed, buttressed by criminal law, to make it difficult for financial and investment services to be used for criminal purposes. Anti-money-laundering measures should be seen as part of a coherent and global crime control policy, which should give priority to the fight against serious crime, especially organized crime. Limitation of financial secrecy was called an "absolute *sine qua non* of serious money-laundering control and of sincere international cooperation".

Application of the "know your customer" rule, advocated by some international bodies, was called for, particularly with respect to abolishing anonymous bearer accounts and to identifying the real party represented by a nominee. The Conference called for laws to require the reporting of suspicious transactions, and the expansion of existing reporting requirements to cover funds derived from a wider range of crimes.

The Conference also recommended that research be conducted to identify those businesses that might be serving launderers and to determine the feasibility of extending present regulations beyond banking and financial institutions, with a view to preventing rather than simply attempting to prosecute money-laundering.

In expressing its appreciation to the Government of Italy and to the International Scientific and Professional Advisory Council for organizing the Conference, the Economic and Social Council at its substantive session in 1994 expressed its conviction that effective prevention and control of the laundering of the proceeds of crime and the control of such proceeds require concerted global action to curb the capacity of criminal organizations to transfer the proceeds of their activities across national frontiers by taking advantage of gaps in international cooperation.

The conclusions and recommendations of the Courmayeur Conference were considered by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994, at which the Naples Political Declaration and Global Action Plan against Organized Transnational Crime was unanimously adopted and subsequently approved by the General Assembly in its resolution 49/159 of 23 December 1994.

### **Chronology of the background and development of the crime prevention and criminal justice programme on money-laundering**

**1975.** Discussion of organized crime at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva, focused on "crime as business" at the national and transnational levels. Comparisons were drawn between crimes of corporations and those of organized crime, both of which might involve the corruption of law enforcement and political authorities and tended to be difficult to detect.

While crime as business was a serious problem in many developed countries, crimes such as bribery, price-fixing, smuggling and currency offences were said to be especially severe problems for developing countries, since the national welfare and economic development of the whole society might be drastically affected by them. Governments acknowledged that terms relating to those types

of crime were often vague and ambiguous, posing an obstacle to meaningful international cooperation in combating them.

**1980.** At the Sixth Congress, held at Caracas, the discussion of an agenda item on offences and offenders beyond the reach of the law at the Sixth Congress, held at Caracas, added new elements to the international perception of organized crime. Emphasis was placed on the concept of abuse of power in its various forms political, economic and social that were often interlinked. Among offences cited were activities that were legally defined as crimes but against which law enforcement agencies were fairly powerless, either because of the involvement of high-placed individuals or because of circumstances reducing the likelihood of their being reported or prosecuted.

Concern was expressed about the abuse of economic power by transnational corporations, as the victimized countries were often unable to deal with that problem effectively and individual countries were not always in a position to cope with transborder offences by corporations.

**1985.** Evidence presented to the Seventh Congress, held at Milan, indicated the escalating activities of organized crime worldwide. Congress participants emphasized that national boundaries no longer constituted effective barriers against those criminal activities. By exploiting the discrepancies in the legislation of various countries, organized crime was achieving a high degree of impunity. At the same time, alarm was growing in many parts of the world at the global impact of drug trafficking by criminal groups.

The Milan Plan of Action, adopted by the Congress, recognized the international dimensions of crime and the need for a concerted response on the part of the international community. It also recognized the significant role that the United Nations had to play as a universal forum and stated that its contribution to multilateral cooperation in reducing the opportunities to commit crime and in addressing the relevant socio-economic factors, such as poverty, inequality and unemployment, should be made more effective.

**1988.** The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was adopted by a high-level international conference held at Vienna. The Convention is perhaps the most important international binding instrument aimed at combating organized transnational organizations and one of their most lucrative activities, international drug trafficking. Among the changes that States parties agreed to work towards under the new Convention were criminalization of money-laundering and increased cooperation in extradition, mutual legal assistance and transfer of criminal proceedings.

**1990.** Within the framework of a discussion of action against organized crime and terrorist criminal activities at the Eighth Congress, held at Havana, it was stressed that the increase in the number of independent countries, together with a true internationalization of criminal activities, had created a need for new international institutions. Previous *ad hoc* cooperative activities of the countries were seen as inadequate.

In view of the frightening implications of criminal dealings in large sums of money, participants called for new legislative initiatives to curb money-laundering.

Later that year, the General Assembly adopted four model treaties developed at the Congress, covering extradition, mutual assistance in criminal matters, transfer of proceedings in criminal matters, and transfer of supervision of offenders conditionally sentenced or conditionally released.

**1991.** Two events were organized in response to the General Assembly's appeal for cooperation in combating organized transnational crime: an Ad Hoc Expert Group Meeting on Strategies to Deal

with Transnational Crime, held at Smolenice, Czechoslovakia, from 27 to 31 May 1991, and an International Seminar on Organized Crime, held at Suzdal, Russian Federation, from 21 to 25 October 1991, at which recommendations were formulated covering national, regional and international action.

A Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme, held at Versailles, France, resolved to step up international cooperation against crime. It was recognized that only the United Nations could effectively coordinate such action, by developing and implementing a concerted strategy directed at providing practical help. In following up the recommendations of that Meeting, the General Assembly moved to establish a Commission on Crime Prevention and Criminal Justice under the Economic and Social Council, which would replace the Committee on Crime Prevention and Control.

**1992.** At its first session at Vienna, the new Commission on Crime Prevention and Criminal Justice set as one of the priorities for the United Nations crime programme the question of national and transnational crime; organized crime; economic crime, including money-laundering; and the role of criminal law in the protection of the environment. The control of proceeds of crime was central to the resolution the Commission adopted requesting Member States to make every effort to modify their national legislation to effectively prevent the problem. It called for further analysis by the United Nations on the impact of organized criminal activities upon society at large and for the promotion of international cooperation aimed at controlling organized crime, with special emphasis on economic crimes and the laundering of illicit funds.

**1993.** On the recommendation of the Commission at its second session, the Economic and Social Council adopted resolution 1993/30 of 27 July 1993, in which it welcomed with appreciation the initiative of the Government of Italy and the International Scientific and Professional Advisory Council in organizing, under the auspices of the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat, the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: A Global Approach. The General Assembly also welcomed the initiative in its resolution 48/103 of 20 December 1993.

**1994.** On the recommendation of the Commission at its third session, the Economic and Social Council adopted resolution 1994/13 of 25 July 1994, in which it expressed its appreciation to the Government of Italy and the International Scientific and Professional Advisory Council for organizing the Conference and recommended that the World Ministerial Conference on Organized Transnational Crime should take into account the conclusions and recommendations of the International Conference.

**1995.** In the context of overall cooperation between the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat and the United Nations International Drug Control Programme, a joint technical cooperation project has been developed and is currently being considered for financing.

## **Recommendations of the International Conference on Preventing and Controlling Money-Laundering and the Use and Proceeds of Crime: A Global Approach**

### ***An increasingly and undeniably global problem***

The International Conference on Prevention and Controlling Money-Laundering and the Use and Proceeds of Crime: A Global Approach detailed numerous manifestations of the increased internationalization of criminal activities and of the globalization of money-laundering. The

geographic expansion of the activities of the most notable transnational criminal organizations were described with respect to the accumulation of proceeds not only from drug trafficking but also from all serious crimes for profit, national and transnational, as well as from other methods of serious economic distortion such as usury. The increased professionalism of their activities and sophistication of the schemes used to launder the proceeds of those crimes were described, and the progressive separation of money-laundering as an independent criminal service.

Trends in money-laundering techniques were increasing in sophistication and complexity. Organized criminal groups were, *inter alia*: (a) taking advantage of weaknesses in national regulatory schemes; (b) resorting to flexible and rapid transfers and movement of assets across national boundaries; (c) exploiting the diversity of business regulations within and between national systems, particularly by using multiple business vehicles in different countries to conceal the origin of funds, ownership and control; and (d) benefiting from the assistance of professional categories which were unregulated and from those which were regulated but did not carry out effective self-control on matters of legal and ethical violations. Those trends demonstrated the global nature of the phenomenon and the need for developing effective means to remove or at least to reduce those and other opportunities exploited by money launderers.

### ***Global trends in prevention and control policies***

The trends in criminal money-laundering activity were a consequence of the increasing demand from money-laundering services and the counter-pressures exerted by anti-money-laundering responses. Those responses had two principal goals. The first goal was to increase the risk of law enforcement, that was the risk of apprehension for the individual criminal or criminal enterprise and the risk of seizure of criminal assets. The seizure risk furnished the more effective deterrent against organized criminality, which could easily manage the apprehension risk by simple overstaffing and other personnel management practices. The second goal was the defensive one of protecting the legitimate economy and financial system from, *inter alia*, unfair competition from low-cost criminal proceeds against legitimate capital on which taxes had been paid.

Measures which had been recognized as effectively increasing the law-enforcement risk were the criminalization of money-laundering operations, forfeiture operations, restriction of bank secrecy in money-laundering inquiries, use of evidence-gathering techniques appropriate to overcoming the secrecy and the consensual nature of money-laundering offences, such as undercover operations and electronic surveillance, and international cooperation mechanisms which permitted virtually immediate communication and action by all the authorities concerned without obstructive formality.

A parallel trend was the recognition that preventive/regulatory mechanisms were an equally essential element of anti-money-laundering policies to defend the transparency of economic/financial systems and simultaneously to produce a complementary effect with control policies. The preventive/regulatory mechanisms were those made familiar to all by the Basel Declaration See Statement of Principles of the Basel Committee on Banking Regulations and Supervisory Practices. and the FATF recommendations; among others were the "know your customer" rule, recording and record-keeping requirements, reporting of suspicious transactions, immunity/indemnity for bank representatives reporting suspicious transactions, application of preventive/regulatory policies to non-bank institutions and businesses and professions which offered financial services. In that regard, it was necessary to recognize that regulatory schemes did burden banks and other supervised institutions, which should not be made to bear a disproportionate share of the costs of cooperation against money-laundering.

### ***Gaps in the anti-money-laundering net: What needed to be done***

The discussion and background documents See below for a list of background documents. revealed the absence of an effective and comprehensive global anti-money-laundering net which needed to be established in order to prevent money launderers from simply moving their activities from one country to another or from one financial sector to another to avoid regulatory and control efforts. The failure of some countries to establish their own protective nets simply frustrated the efforts of neighbouring countries that had done so. Many countries had little established governance or experience in regulating complex state-of-the-art financial operations, and few had effective relations with the private financial (banking and non-banking) sector to ensure the coordination or cooperation needed to identify suspected activities. Gaps in the money-laundering net were geographic with the principal prevention or control efforts concentrated in western Europe, North America, Australia and in the more developed countries of Asia. Other gaps were sectoral, i.e. non-bank financial institutions; businesses and professions which furnished financial services but were largely unregulated; and offshore business and financial institutions which were inadequately regulated. Other gaps related to failure to implement recognized anti-money-laundering measures, such as failure to ratify the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, or to enact the necessary implementing legislation, the failure to implement effectively the 40 recommendations drawn up by FATF; failure to enforce effectively anti-money-laundering regulations and legislation, once enacted; and finally, failure to control professions engaged in financial activities. Legislation was only the first step in the process of bringing the problem under control, and it might well be easier to get legislation enacted than to enforce it effectively in many countries.

### ***Implementation priorities***

The Conference strongly urged that it would be counter-productive for a global approach to the prevention and control of money-laundering to recommend anything less than the full implementation of the 1988 Convention, regardless of any liberalization, the Basel Declaration and the 40 FATF recommendations. The challenge was to build a social defence system, with administrative and regulatory tools, designed to make it difficult for services to be used for criminal purposes, buttressed by criminal law. As a credible deterrent, criminal law would continue to play an essential role. Anti-money-laundering measures were to be seen as a part of a coherent and global crime policy which should give priority to the fight against serious crime, especially against organized crime, which had a corrosive effect on economy and society. Nevertheless, certain needs commanded a worldwide degree of recognition as to the urgency of their implementation. Those priorities are discussed below.

### ***Criminalization of the laundering of drug and non-drug criminal proceeds***

Criminalization of drug money-laundering offences was required for States parties to the 1988 Convention. Expansion of criminalization to the laundering of the proceeds of other serious crimes was the trend, as evidenced by, *inter alia*, the Council of Europe Convention on the Proceeds from Crime, the political declaration by Commonwealth Heads of State and Governments and the domestic legislation of a number of countries with substantial experience in the field. Such criminalization would also solve problems of dual criminality encountered in international cooperation procedures.

### ***Limitation of bank secrecy***

Limitation of financial secrecy was a *sine qua non* of serious money-laundering control and of sincere international cooperation.

### ***"Know your customer" rule***

Application of the "know your customer" rule of the Basel Declaration and the FATF recommendations, particularly with respect to abolishing anonymous bearer accounts and identification of the real party in interests being represented by a nominee, should be another basic test of the effectiveness of a country's money-laundering prevention policies.

### *Identification and reporting of suspicious transactions*

Identification and reporting of suspicious transactions needed to be permitted and encouraged by legislation fully protecting representatives of financial institutions from any liability for good-faith reporting of suspicious transactions. The expansion of at least the reporting requirements to cover the proceeds of all serious crime was one of the effective steps to preventing a situation in which a financial institution may not report a clearly suspicious transaction without knowing precisely what crime resulted in those proceeds. When reporting was permitted, it seemed self-evident that notice of that report, or of an official inquiry about a transaction, should not be given to the client.

### *Improved regulation of businesses or professionals conducting financial operations*

Improved regulation or other preventive measures were being found to be necessary to prevent money-laundering activity being displaced from tightly supervised banks and financial institutions to non-supervised businesses and professions which offered financial services. Such measures could be requirements that all transactions of a certain type or magnitude be conducted through an authorized financial intermediary (termed "channelization"), or could impose certain identification, recording and/or reporting requirements on the offerer of financial services, but they must avoid the consequence whereby money-laundering was simply displaced from supervised banks to a wholly unregulated informal financial sector. Moreover, certain professions which have traditionally been unregulated or self-regulating could not be assumed to act effectively in implementing a self-regulating mandate. Therefore, legislative standard-setting might be necessary. It was, moreover, necessary to fight what was termed "reputation laundering", i.e. the process of acquiring respectability in a new environment. It should therefore be appropriate that the professional groups concerned promoted behavioural codes, including a range of disciplinary sanctions up to the exclusion of those members who brought disrepute to their own group, in order to safeguard the reliability of that profession. Moreover, it was clear that the launderer was aware of the various directives, recommendations and conventions requiring banks and financial institutions to follow current standard requirements of identification and reporting. The launderer was turning to other businesses which did not necessarily offer financial services.

The Conference therefore recommended that research and studies should be carried out to identify those businesses which may well serve the launderer and to determine the feasibility of extending the application of current reporting and other requirements to possible areas other than banking and financial institutions with the objective of preventing rather than simply attempting to prosecute money-laundering, with all the difficulties that the latter course of action implies.

### *Asset forfeiture*

Increased asset forfeiture and the availability of provisional measures, such as freezing or seizing of assets, contributed to a universally developing trend which could profitably be broadened beyond drug proceeds, always with due respect for the procedural guarantees for property rights established by national law. Asset forfeiture must be possible also for the proceeds of crimes committed abroad. The delegation of Japan, in a letter addressed to the organizers of the Conference, expressed its reservation with respect to this paragraph because of insufficient time to study the text.

Formal regulatory procedures, furnishing bank documents only after years of litigation and a lack of necessary legal instruments or administrative structures were obstacles which invited criminals to practice international money-laundering and to capitalize on collective governmental inertia and deficiencies. A further priority for implementation should be a rapid and uncomplicated mechanism for international cooperation in common administrative and legal matters. Mutual legal assistance arrangements which allowed the collection of admissible evidence were essential. Without such arrangements, national Governments would tend not to devote the needed investigative resources to international cases.

The Conference therefore recommended that international organizations or mechanisms should reinforce common strategies to combat money-laundering; that ways and means should be found for taking expeditious action in that sphere; and, in particular, that a consensus on the basic substantive elements of cross-border crimes and on legal norms regulating the procedure for mutual assistance between States in respect of such crimes should be sought and achieved in order to expedite the giving and receiving of such assistance in an area where speed is of the utmost importance.

### **A global strategy for a global problem**

Previously, implementation of anti-money-laundering policies by legislation and regulation was treated solely as a function of national sovereignty, and as a result not every country has moved spontaneously towards them. When a country did not take decisive steps to control the proceeds of crime, the global nature of the money-laundering problem became apparent and the need for a consistent global response was demonstrated. This suggested a three-level strategy. At the bilateral level those countries most adversely affected and those most able to cooperate with the non-implementing country should help it to achieve international minimum standards. Simultaneously, at the regional level, relevant organizations (broadly understood to include not only geographic but also political and cultural groupings such as the Commonwealth) should give such assistance and encouragement necessary to bring all of their members up to appropriate regional standards, which might even go beyond the 1988 Convention and the FATF recommendations, as have the European Community Money-Laundering Directive and the Council of Europe Convention on the Proceeds from Crime. At the international level, the appropriate organizations could contribute to efforts at the bilateral and regional levels. For the country which wished to do its part for the global protective network, assistance and encouragement should be available from friends and neighbours, from regional levels and from the international community. Effective coordination was needed at the regional and international levels to promote relevant action at the national level and cooperation between countries.

The implementation priorities listed above were predicated on assumptions about the presence of certain international and national enforcement mechanisms. Key among them was the concept that a net or web operated at three complementary levels international, regional and national and that the national level might be further divided into penal, cultural and administrative mechanisms. Political support and adequate resources, *inter alia*, were said to be essential conditions for effective action at all three levels. National government and multilateral, regional and international institutions must allocate adequate resources to successfully regulate or control activities which might exploit a high volume of legitimate transactions to achieve concealment, for example might be the case with electronic-transfer technology.

Those assumptions were not necessarily valid in all cases. If not, a variety of modalities of technical assistance might be necessary at the national level. These could include needs assessment; legislative

assistance; infrastructure development assistance; personnel development; and training in all relevant sectors, including national and interstate cooperation; comprehensive strategies for all involved government agencies, inter-agency coordination and functional cooperation; and transfer and sharing of technology, development and research.

At the international level, at least, the following modalities might be necessary: needs assessment; treaty development in extradition and mutual assistance matters; compatibility of treaty schemes and procedures; enhancing cooperation and information sharing, not only at the judicial level but also among regulators and law enforcement agencies; the same type of management rationalization of overlapping organizations at the level of regional and international organizations; and continuing applied research on the incentives and disincentives needed (a) to promote cooperation by the private sector with Governments, and (b) to consolidate coordination and cooperation between Governments.

The overriding objective would be to establish effective operational mechanisms so that no person would be above the law, and every person would be protected by the obligations of international, regional and domestic law for the observance of fundamental human rights.

### **Documentation and selected summaries of papers**

**presented at the Courmayeur Conference** All these documents are available on request from the Crime Prevention and Criminal Justice Branch, VIC, P.O. Box 500, A-1400, Vienna, Austria.

#### ***Background documents***

De Feo, Michael A. and Savona, Ernesto U.; *Money trails: International money-laundering trends and prevention/control policies*. (Topic 1.); European Institute for Crime Prevention and Control affiliated with the United Nations; *Money trails: International money-laundering trends and prevention/control policies*. Summary of the paper; Hallett, A. J. Hughes; *Developed/developing countries and economies in transition. Criminal opportunities for the laundering and use of the proceeds of crime*. (Topic 2.); Hogarth, John; *Mechanisms of international control (multilateral and regional arrangements)*. (Topic 3.); Noble, Ronald; *Mechanisms of international control (the Financial Action Task Force Recommendations and their Implementation)*. (Topic 3.); Bernasconi, Paolo; *Assessment of crime control policies*. (Topic 4.); Levi, Michael; *Assessment of regulatory policies*. (Topic 5.); Bassiouni, M. Cherif; *Technical cooperation in preventing and controlling the laundering and use of the proceeds of crime*. (Topic 6.).

#### ***Contributions of Member States***

Argentina. *Consideraciones sobre lavado de dinero*

Argentina. *Necesidad de establecer una legislación autónoma que tipifique el delito de lavado de activos*, by Professor Patricia M. Llercha

Australia. *Short position paper addressing the several themes in the draft agenda for the ISPAC Conference on Money-Laundering*

Austria. *Position paper*

Brazil. *Money-laundering: the problem in Brazil and Latin America*, by José Arthur Rios

Canada. *Overview of Canadian legislation*, by Liliana Longo, Department of Justice

China. *Position paper*

Colombia. *Elementos y características del blanqueo de dinero*

Colombia. *Colombia's Policies against Money-Laundering: the Colombian Financial System Action*, by the Colombian Banking and Financial Entities Association

Gambia. *Africa - A Dynamic Centre for Money-Laundering: the Gambian Perspective*

Greece. *Legislation of Greece relating to anti-money-laundering requirements* by Alexandros Metaxas, Head, Public Prosecutors' Office, Piraeus Court of Appeals

Italy. *Position paper*

Japan. *Position paper*

Malta. *Position paper, presentation by Hon. J. M. Fenech, BA(Hons)LLD MP, Minister of Justice*

Mexico. *La simulación fiscal y el proceso de lavado de dinero*

Poland. *The prevention and combatting of dirty-money-laundering and of the utilisation of criminal revenues (overall view)*, Ministry of Justice

Venezuela. *El Lavado de Dinero Proveniente del Trafico Illicito de Estupefacientes y Psicotrópicos en la Legislación Venezolana*

### ***Contributions of the United Nations***

United Nations International Drug Control Programme (UNDCP). *Assistance Juridique. Confiscations en Matière de Trafic Illicite de Stupéfiants et de Substances Psychotropes: Modèle de Loi*, November 1993

United Nations Interregional Crime and Justice Research Institute (UNICRI). *Preventing and controlling money-laundering and the use of the proceeds of crime*

### ***Contributions of affiliated institutes***

African Institute for the Prevention of Crime and the Treatment of Offenders; *Preventing and controlling money-laundering and the use of the proceeds of crime in Africa*; International Centre for Criminal Law Reform and Criminal Justice Policy; *The proceeds of crime: problems of investigation and prosecution*, by John L. Evans.

### ***Contributions of intergovernmental organizations***

ICPO/Interpol. *The history of INTERPOL*, by Patrick D. Dorsey, Head of the FOPAC Group; International Monetary Fund. *The International Monetary Fund's role in preventing money-laundering activities*, by Vito Tanzi, Director, IMF; FATF. *Annual Report 1993-1994*; OAS/CICAD. *Model regulations concerning laundering offences connected to illicit drug trafficking and related offences*; OAS/CICAD. *Presentation of the Executive Secretary*; South Pacific Forum on Law Enforcement Cooperation; *Declaration*.

### ***Contributions by other organizations***

Transparency International; *Money-laundering: a threat to sustainable development*

### ***Contributions by individual experts***

Fisse, Brent; *Money-laundering, regulatory strategy and internal corporate controls*; Flick, Giovanni

Maria; *Prevention and control of money-laundering: the prospectives and limits of the use of penal instruments* (paper submitted in Italian); Masciandaro, Donato; *Money-laundering, banks and regulation: an economic analysis*; Pansa, Alessandro; *Economic system and financial management of a clan of the "ndragheta"* (paper submitted in Italian); Siclari, Bruno; *Intervention on money-laundering* (paper submitted in Italian); Turone, Giuliano; *The strategies against the criminal economy: from the investigation of property to the confiscation of unjustified assets*.

### ***Selected summaries***

Six papers presented at the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: A Global Approach are summarized below.

#### **Assessment of crime control policies by Paolo Bernasconi, Italian National Center for Prevention and Social Defence, Italy**

The misuse of offshore companies is an obstacle to crime control policies. During the last decade many countries with no prospects of significant economic opportunities have gained in economic and financial strength by becoming safe havens for foreign tax evaders and law dodgers and by allowing almost unrestricted registration of businesses.

The incentive for businesses to be registered in such offshore havens is to escape severe tax and registration regulations on domestic companies. The advantages include: the possibility of funnelling large amounts of capital to and from offshore countries without the need to declare crucial cash transactions to domestic fiscal authorities; the guarantee of anonymity by offshore countries not requiring disclosure of directors or owners of companies; and the lure of very low tax rates often offered by offshore countries, together with guaranteed discretion and secrecy. Revenues from illicit trafficking in narcotics, arms, toxic waste and human beings as well as kickbacks and bribes are frequently hidden in offshore financial institutions.

Guaranteed secrecy promotes the quasi-immunity of the perpetrators since the true ownership and liability of an illegitimate company can be neither revealed nor investigated. Consequently, even if adequate regulations existed, mutual assistance might be in vain. Within the banking, corporate and commercial sectors, the issues of controls on corporate registration, shareholders' rights, effective liability regulations and stricter accounting control mechanisms should be tackled urgently.

Regulations to be considered include: imposing strict individual liability on any senior executive, regardless of the location or territory of the crime committed; no impunity for commission of money-laundering offences, regardless of jurisdiction; criminalization of all fiscal offences, in particular fiscal fraud and insider trading; and prosecution of corrupt foreign officials.

Criminal procedures with regard to the initiation of an investigation should be relaxed to expedite the process. Furthermore, bank secrecy should be addressed by facilitating the seizure of bank assets and alleged illicit revenues pending investigations; for example, by imposing the burden of unaccounted-for assets on the account holder.

Several successful attempts to address the illegal use of offshore companies include penalizing misconduct and mismanagement such as fraudulent bankruptcy, the application of the recommendations of FATF of 1990 and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime adopted by the Council of Europe in 1990.

#### **Money-laundering, regulatory strategy and internal corporate controls by**

## **Brent Fisse, Professor of Law, University of Sydney, Australia**

Corporate controls are essential for the implementation of any legislative or regulatory programme aimed at combating money-laundering. International strategies to combat this offence are the key to finding an effective solution. International enforcement and compliance within financial institutions are issues of particular concern.

The challenge is to provide versatile, efficient and effective legal and administrative internal safeguards within financial institutions, and to develop model regulations that can be modified and adapted to the legal culture and financial system of each Member State. The 44 recommendations on money-laundering agreed upon by the members of FATF are an important device, since these recommendations also highlight the urgent need for internal corporate controls to combat money-laundering.

First, there is no uniform scheme to deal with money-laundering at any single banking institution because of the diversity of banking activities performed by different banks. In order to detect possible money-laundering within the often complicated internal structures of global financial institutions, standards must be versatile so they can be applied on a case-by-case basis; for example, by imposing corporate compliance systems. Second, internal measures such as the systematic allocation of responsibility for compliance functions to specified personnel and the precise identification and management of risks created by the company's operations should be considered. Third, legal standards and their implications should be familiar to all staff. Fourth, a clearly stated compliance policy has to be issued, backed and enforced by higher echelons of management. These tactics if applied uniformly should have a deterrent effect. In addition a legal framework needs to be established to harmonize State crime-control strategies and corporate compliance systems.

In order to comply with international standards, members of FATF should be encouraged to consider a three-pronged strategy. First, to adopt national money-laundering control statutes. These could include legislating for adequate internal control mechanisms of financial institutions (e.g. the Australian Financial Transaction Reports Act of 1988). Second, to encourage law enforcement agencies to promote compliance systems in their fields as well as to coordinate their strategies with financial authorities and institutions. Third, to establish an international clearing-house project to disseminate updated information on the latest international developments under the possible auspices of the United Nations or the International Scientific and Professional Advisory Council.

In sum, a shift in focus from individual liability, undetectable within most corporate structures, to corporate liability needs to take place in order to achieve improved business conduct.

## **Assessment of regulatory policies by Michael Levi, Professor, University of Cardiff, Wales, United Kingdom of Great Britain and Northern Ireland**

First, implementation of regulatory policies and, second, their enforcement are the principal challenges in combating money-laundering. A balance must be struck, however, between minimizing illegitimate exploitation and detracting from economic dynamism. Within the seven major industrial nations (Group of Seven), there is considerable divergence in practice. All States agree, however, that money-laundering is beyond their reach.

The nature and characteristics of money-laundering are such that rarely do the proceeds of crime enter the official or even the unofficial banking systems directly. Vast quantities of funds can be transferred overseas without arousing any suspicion, especially since inter-company transactions are a black hole in efforts to detect money-laundering.

Under the Criminal Justice Act of 1993 of the United Kingdom, it is a crime for financial institutions to fail to report matters that they "know or suspect" constitute money-laundering of the proceeds of drugs; however, the obligation to report suspicion of other crimes, such as fraud, is voluntary. One of the greatest strengths of the current disclosure system is the cooperative nature of the working relationship between law enforcement and financial institutions.

Electronic international money transfers are extremely difficult to regulate. If banks or their local employees are under serious financial pressure, the temptation to cover up cash transactions will remain, which is why the regulation and the stability of financial institutions must be considered in tandem with internal checks and balances.

By competitive under-enforcement of money-laundering regulations, the effectiveness of controls generally are being undermined. Those countries who take their regulations seriously are subject to outflows of capital as a consequence of their integrity. Although sophisticated offenders will identify loopholes, an increased regulatory system might prove too burdensome for some potential offenders. Clearly, if bankers were to be held liable for damages to defrauded persons in trust for the conduct of accounts, better surveillance measures could be instituted.

A general objective must be to fine-tune all controls on money-laundering so that the law enforcement system is not overwhelmed. The key problem is to develop a set of rewards and sanctions that will maximize adequate feedback between banking regulators, police and bankers.

**Money-laundering: the problem in Brazil and Latin America by José A. Rios,  
member of the Executive Board of the United Nations Interregional  
Crime and Justice Research Institute, Rio de Janeiro, Brazil**

Money-laundering is the procedure by which the proceedings of illegal acts are converted into apparently legal activities, thus concealing their criminal origin. The majority of the money-laundering activities occurring in Brazil are the laundering of illicit revenues from drug trafficking, gambling, smuggling and corruption.

With the introduction of modern technologies in banking and telecommunications, criminals have become adept at injecting vast amounts of dirty money into financial markets worldwide. Majority shares in banking institutions and major interests in other parts of the economy are managed by illegitimate interests. Many Latin American countries do not consider money-laundering a crime, although the incorporation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 into Brazilian law has had a positive impact by changing banking regulations and providing financial institutions with a framework to combat criminal infiltration. This development was reflected in the report of the Secretary-General to the Commission on Crime Prevention and Criminal Justice at its second session. "Review of priority themes: the impact of organized criminal activities upon society at large: report of the Secretary-General" (E/CN.15/1993/3).

Companies run by illegitimate financial concerns have an edge over their law-abiding competitors because they blackmail and intimidate other companies and have the potential to cause financial turmoil by withdrawing their fortunes at short notice. The implications for developing countries could be particularly devastating. Consequently, black economies are mushrooming in many developing countries; in Brazil, for instance, one quarter of the workforce is employed in this sector.

Since the 1970s, illicit revenues from drug trafficking have been invested mostly in service-sector

industries. Illegal betting and lotteries are rampant with dirty money. Operated by underground kingpins, these channels are rarely penetrated by law enforcement.

In the battle to fight organized crime, attention has shifted from the perpetrators themselves to the seizure of their financial assets. In several Latin American countries such as Costa Rica and Panama, any kind of money-laundering carries a maximum penalty of 20 years' imprisonment but investigators still face many obstacles.

In conclusion, the reporting of any suspicious activity should be encouraged within an organization who should be obliged to inform law enforcers in order to create both an internal and corporate obligation as well as a legal one. International harmonization needs to be promoted urgently under the auspices of the United Nations as the clearing-house for international recommendations, advisory services and training programmes.

**Preventing and controlling money-laundering and the use of the proceeds of  
crime by Herman P. Woltring, Director, United Nations Interregional  
Crime and Justice Research Institute, Rome, Italy**

Major difficulties exist in mutual assistance matters with regard not only to money-laundering but also to transnational criminality in general.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 includes the conversion or transfer of property, knowing that such property is derived from any criminal offence, or from an act of participation in such an offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his or her actions; and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from any offence or from any act of participation in such an offence or offences. The importance of this Convention stems from the fact that it is the first international convention to oblige its signatories both to criminalize money-laundering and to grant mutual assistance simultaneously.

The Single Convention on Narcotic Drugs of 1961 obliged the signatories to try the suspect if a country would not extradite. Later, the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 imposed on States the obligation to establish jurisdiction over any perpetrator no matter what the territory of crime or seizure.

These conventions, however, neither address the emerging new forms of crime nor provide a broad approach to mutual assistance in general as they deal only with specific crimes of international significance; for example, drug trafficking and hijacking of aircraft and their intrinsic relationship to money-laundering. Another major problem underestimated and unforeseen by the framers of the conventions were the differences in legal systems. Most conventions were based on the civil law systems of continental Europe and therefore did not, for example, recognize the concept of common law jurisdiction.

The Commonwealth Scheme for Mutual Assistance in Criminal Matters of 1986 enabled the signatory States to pass the legislation necessary to allow law enforcement agencies to deal with their counterparts in other countries. Hence confiscation of illegal proceeds of crime by the order of a foreign court or the requesting country itself became lawful. International mutual assistance was greatly facilitated by the United Nations Convention against Illicit Traffic in Narcotic Drugs and

Psychotropic Substances of 1988 and the Model Treaties on Extradition and on Mutual Assistance in Criminal Matters. The Convention of 1988 acknowledges the conflict between the dual criminality rule and the "new" offence of money-laundering, criminalized for the first time in several jurisdictions. It furthermore obliges States parties to afford one another the widest measure of mutual legal assistance.

Another milestone was the drawing up by the Council of Europe, in 1990, of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which abolished measures that had previously hampered investigation thereby streamlining the investigation process.

Some of the principal obstacles to the provision of mutual assistance are the prima facie requirement and the dual criminality rule. The prima facie requirement has already been replaced in many common law countries. Dual criminality requires the international harmonization of specific offences. Because of several linguistic and translation problems, not all countries have incorporated the regulations of the 1988 Convention into domestic legislation. Therefore the degree of the perpetrator's knowledge of the purpose of the illicit revenue should serve as a common denominator to facilitate culpability until a more sophisticated definition can be developed.

### **Money trails: international money-laundering trends and prevention/control policies**

**by Michael A. De Feo, Senior Counsellor for International Law Enforcement,**

**Embassy of the United States of America, Rome, Italy and Ernesto U. Savona,**

**Professor, University of Trento, Italy**

It would be preferable for all countries, suffering from the money-laundering phenomenon, or hoping to attract investment capital by offering fiscal advantages, to adhere to a common global approach to money-laundering. Step by step, in a steady succession of regulations and laws, the international community should patiently but resolutely motivate and assist countries that do not have anti-money-laundering policies and mechanisms to put them in place, thereby constructing together a protective net against the circulation and infiltration of illegal money.

The paper deals with the recent trends that characterize the main transnational criminal organizations operating throughout the world, describing their main profit-yielding activities, the way in which the proceeds of crime are laundered in a regional or country context and the extent to which individual countries suffer from these criminal activities.

After examining the evolution of the money-laundering activities of the main transnational criminal organizations, such as the Chinese Triads, the Colombian cartels, Russian criminal organizations and the Sicilian Mafia, the paper observes three main trends in the progressive professionalization of money-laundering: first, a progressive separation between criminal activities and money-laundering activities; second, the prevalence of more professional launderers such as accountants, lawyers, private bankers; and third, the availability of more money-laundering services to a wide range of criminals and to more than one criminal organization.

These three trends are a direct result of the fact that drug- and non-drug-related criminal activities are producing immense riches, which need to be laundered in order to be used and invested. This demand for money-laundering, combined with the increased risk from the anti-money-laundering action of Governments, is stimulating the development of a more professional supply of money-laundering services, which, in turn, tend to increase the level of complexity of money-laundering schemes and overall money-laundering strategies.

The trends toward more professionalism and more complexity in money-laundering strategies and schemes coincide with a recent geographical trend to move money to be cleaned from north to south, from west to east, and from developed to developing countries and economies in transition. Increasingly effective regulatory and criminal controls in the industrialized countries are pushing capital to be laundered towards countries where such controls do not exist or are weak. This alarming trend underlines the urgency of the need for a global approach to the global market of money-laundering.

With slight variations, the geography seems clear. Western Europe, North America and Australia are converging towards the criminalization of money-laundering activities and an enlargement of the predicate offences from drug offences to virtually all serious crimes. Central and South America and Asia, when money-laundering is criminalized as a separate offence, often limit its application to drug instrumentalities and proceeds. Eastern European countries are beginning to address these issues in the context of an overall re-examination of the law of property, banking regulations and procedural law. Few African countries have ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and criminalized money-laundering.

There is a marked convergence of national policies on asset forfeiture and confiscation of the proceeds of crime, which appear to be more widely accepted than the criminalization of a money-laundering offence *per se*.

Many countries in Western Europe and North America, together with Australia, are rapidly converging towards creating one or more specialized agencies with the exclusive purpose of investigating or concentrating data on money-laundering. In some other countries these activities are carried by the financial and economic sectors of the general police agency.

It can be seen from experience that the negative incentives of public disapproval and law enforcement risk can be effective to motivate bank compliance with regulatory requirements.

Divergencies exist in the area of customer notification. In some countries bankers are still allowed to notify a customer if an official inquiry is made concerning his or her transactions, and sometimes even of the fact that the bank has reported a suspicious transaction by that customer to a regulatory or police authority. This is an inexplicable labyrinth of policies, which should, in the opinion of the authors, be resolved in favour of cooperation with governmental authorities rather than appearing to give that cooperation and then subverting its utility.

The convergencies in international cooperation are encouraging:

Ratification of the 1988 Convention is becoming an indicator of responsible membership in the anti-drug and anti-money-laundering world community. So far, 99 States have become parties to the Convention.

Criminalization of money-laundering as a separate offence is still in its early stages, but its adoption by more States is impeded more by indifference and the technical complexity of defining the constituent elements of the offence than by any substantial policy arguments against criminalization.

Countries that have demonstrated the political will to act against money-laundering, particularly those with significant organized crime problems and advanced banking industries, are achieving a desirable degree of prevention and control at the national level. Achieving the same degree of control at a regional and international level is a much more difficult proposition, as many countries are not yet motivated to control the phenomenon.

The gap between widespread international acknowledgement of the basic principles necessary to prevent and control money-laundering effectively and the very inconsistent application of those principles in far too many countries needs to be acknowledged and bridged by all parties concerned. At least the following six points should be the focus of immediate action and the starting-point for resolution of the problem areas by all countries: (a) the criminalization of a money-laundering offence; (b) limitation of financial secrecy; (c) "know your customer"; (d) identification and reporting of suspicious transactions; (e) improving the regulation of businesses/professionals who conduct financial operations; and (f) developing asset forfeiture.

The key point is how to persuade reluctant countries to come to participate in this comprehensive strategy so that the efforts of their neighbours are not needlessly betrayed.

The international community should provide systems of incentives or disincentives that will facilitate compliance with anti-money-laundering standards. The process should be managed in terms of a progressive responsibility of the regional, country and international mechanisms. The basic unit of money-laundering control is domestic legislation and regulation. However, not every country, for a number of reasons, will move spontaneously towards the implementation of effective anti-money-laundering policies. The paper then proposes a standard three-level response strategy for dealing with countries that do not implement such policies.

### *Notes*

NUMBERS 24/25

JANUARY 1996

SPECIAL DOUBLE ISSUE ON THE INTERNATIONAL CONFERENCE ON  
PREVENTING AND CONTROLLING MONEY LAUNDERING AND THE  
USE OF THE PROCEEDS OF CRIME: A GLOBAL APPROACH

COURMAYEUR, 1994

CONTENTS

*Chapter Page*

**Editor's note**

**Introduction**

**CHRONOLOGY OF THE BACKGROUND AND DEVELOPMENT OF THE  
CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME ON  
MONEY-LAUNDERING**

**RECOMMENDATIONS OF THE INTERNATIONAL CONFERENCE ON  
PREVENTING AND CONTROLLING MONEY-LAUNDERING AND  
THE USE AND PROCEEDS OF CRIME: A GLOBAL APPROACH**

An increasingly and undeniably global problem

Global trends in prevention and control policies

Gaps in the anti-money-laundering net: What needed to be done

Implementation priorities

## **A GLOBAL STRATEGY FOR A GLOBAL PROBLEM**

### **DOCUMENTATION AND SELECTED SUMMARIES OF PAPERS**

#### **PRESENTED AT THE COURMAYEUR CONFERENCE**

Assessment of crime control policies by Paolo Bernasconi, Italian

National Center for Prevention and Social Defence, Italy

Money-laundering, regulatory strategy and internal corporate controls

by Brent Fisse, Professor of Law, University of Sydney, Australia

Assessment of regulatory policies by Michael Levi, Professor, University

of Cardiff, Wales, United Kingdom of Great Britain and Northern Ireland

Money-laundering: the problem in Brazil and Latin America by José A. Rios,

member of the Executive Board of the United Nations Interregional Crime

and Justice Research Institute, Rio de Janeiro, Brazil

Preventing and controlling money-laundering and the use of the proceeds

of crime by Herman P. Woltring, Director, United Nations Interregional

Crime and Justice Research Institute, Rome, Italy

Money trails: international money-laundering trends and prevention/control

policies by Michael A. De Feo, Senior Counsellor for International Law

Enforcement, Embassy of the United States of America, Rome, Italy and

Ernesto U. Savona, Professor, University of Trento, Italy

#### **Editor's note**

The scale of money-laundering is immense. This issue contains a flow chart of a money-laundering scheme. The investment of illicit profits in legal undertakings is estimated at US\$ 500 billion a year, a sum equal to the combined gross national products of two thirds of the Member States of the United Nations. The corrosive effects of money-laundering on democratic and political institutions cannot be overstated, even if the extent to which it undermines economies is difficult to estimate on the basis of the data widely available at present. What is certain is that no financial institution and no country are immune. Up to now, efforts to prevent and control money-laundering have been hindered by language and cultural differences, and variations in criminal codes and criminal justice practices, as well as by the desire to protect national sovereignty. As long as illicit assets are not controlled, however, the solution to the problem will become more difficult, with more serious consequences for volatile economies, particularly of developing countries and countries in transition.

The International Conference on Preventing and Controlling Money-Laundering and the Use of the

Proceeds of Crime: A Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994, stemmed from the desire to focus attention on the global nature of the problem and the urgent need for a more integrated approach and more effective international cooperation. Because of the very nature of money-laundering, and the detrimental effects of illicit proceeds infiltrating the illicit economy, international cooperation should be based on the full realization of the global nature of the problem, and the sophistication and flexibility of money-laundering operations. It should be founded on consensus and the collective political will of the entire international community.

The United Nations has a key role in promoting a concerted and coherent global anti-money-laundering approach. Without international cooperation, it would be impossible for national authorities, including law enforcement and regulatory agencies, to obtain a clear understanding of the problem. The Conference at Courmayeur determined that priority measures included: criminalization of the laundering of criminal proceeds regardless of their origin, limitation of bank secrecy, the identification and reporting of suspicious transactions, improved regulation of financial operations and asset forfeiture where appropriate. The Conference made a significant contribution to the work of the United Nations in combating organized transnational crime, a goal of the international community that was further advanced by the World Ministerial Conference on Organized Transnational Crime held at Naples, Italy, from 21 to 23 November 1994, and the Ninth World Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995. These events, which brought together ministers and representatives of agencies to combat crime, were organized under the guidance of the Commission on Crime Prevention and Criminal Justice, within the context of the high priority it is according to improved international cooperation for the prevention and control of organized transnational crime. The next edition of the *Crime Prevention and Criminal Justice Newsletter* will cover the Ministerial Conference, held at Naples.

This double issue of the *Crime Prevention and Criminal Justice Newsletter* contains a summary of the report of the Conference at Courmayeur. A number of documents were prepared specifically for it, some of which have been summarized in section IV. Copies of the originals may be requested from the Crime Prevention and Criminal Justice Branch, United Nations Office at Vienna, P.O. Box 500, A-1400 Vienna.

## **Introduction**

The key conclusion of the three-day International Conference on Preventing and Controlling Money-Laundering and the Use of Proceeds of Crime: A Global Approach, which ended on 20 June 1994 at Courmayeur Italy, was that the global nature and increasing sophistication of transactions involving the proceeds of crime whatever their source require vigorous countermeasures, including the creation of an international anti-money-laundering net.

The Conference had been organized by the International Scientific and Professional Advisory Council in cooperation with the Italian Government under the auspices of the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat. It was attended by approximately 250 participants from 45 countries, and intergovernmental and non-governmental organizations, as well as representatives from interregional, regional and affiliated institutes dealing with crime prevention and criminal justice, and experts.

The agenda of the meeting included five topics covering international money-laundering trends and prevention and control policies; criminal opportunities for laundering and using the proceeds of crime; mechanisms of international control; assessment of crime-control and regulatory policies and technical cooperation in preventing and controlling the laundering and use of the proceeds of crime.

In his opening remarks, Giorgio Giacomelli, Director-General of the United Nations Office at Vienna and Executive Director of the United Nations International Drug Control Programme (UNDCP), stressed the role of the Conference as a stepping-stone to a new way of viewing and responding to what had hitherto been seen as a uni-sectoral issue. "Today", he said, "money- laundering and the use of the proceeds of crime are activities deeply entrenched in the major political, economic and social concerns of a new era".

International crime-control and financial experts presented extensive evidence of the increasing transnationalization of money-laundering, which, they stressed, involved funds from both drug-related and other types of crime. Speakers reviewed trends in money-laundering techniques, revealing how criminal groups were taking advantage of weaknesses in national regulatory schemes as well as sophisticated ways of rapidly transferring illicit funds across national boundaries. Among the problems cited were under-regulation of some categories of professionals, the creation of "safe-money havens" by countries desperate for foreign investment and the lack of harmony between various national regulations.

Participants called for the establishment of an effective and comprehensive global anti-money-laundering net that would prevent money launderers from simply moving their activities from one country to another or from one financial sector to another in order to avoid control. The failure of some countries to establish their own protective nets was said to be frustrating the efforts of neighbouring countries which had nets. Areas requiring urgent redress included the prevalence of financial institutions that were not banks and were not subject to adequate regulation, offshore businesses, and the failure by many States to implement fully existing anti-money-laundering measures such as the relevant provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the recommendations of the Financial Action Task Force (FATF) on Money-Laundering established by the heads of State or Government of the seven major industrialized countries and the President of the European Commission.

Among its recommendations, the Conference urged that strong administrative and regulatory tools be designed, buttressed by criminal law, to make it difficult for financial and investment services to be used for criminal purposes. Anti-money-laundering measures should be seen as part of a coherent and global crime control policy, which should give priority to the fight against serious crime, especially organized crime. Limitation of financial secrecy was called an "absolute *sine qua non* of serious money- laundering control and of sincere international cooperation".

Application of the "know your customer" rule, advocated by some international bodies, was called for, particularly with respect to abolishing anonymous bearer accounts and to identifying the real party represented by a nominee. The Conference called for laws to require the reporting of suspicious transactions, and the expansion of existing reporting requirements to cover funds derived from a wider range of crimes.

The Conference also recommended that research be conducted to identify those businesses that might be serving launderers and to determine the feasibility of extending present regulations beyond banking and financial institutions, with a view to preventing rather than simply attempting to prosecute money-laundering.

In expressing its appreciation to the Government of Italy and to the International Scientific and Professional Advisory Council for organizing the Conference, the Economic and Social Council at its substantive session in 1994 expressed its conviction that effective prevention and control of the laundering of the proceeds of crime and the control of such proceeds require concerted global action to curb the capacity of criminal organizations to transfer the proceeds of their activities across national

frontiers by taking advantage of gaps in international cooperation.

The conclusions and recommendations of the Courmayeur Conference were considered by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994, at which the Naples Political Declaration and Global Action Plan against Organized Transnational Crime was unanimously adopted and subsequently approved by the General Assembly in its resolution 49/159 of 23 December 1994.

### **Chronology of the background and development of the crime prevention and criminal justice programme on money-laundering**

**1975.** Discussion of organized crime at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva, focused on "crime as business" at the national and transnational levels. Comparisons were drawn between crimes of corporations and those of organized crime, both of which might involve the corruption of law enforcement and political authorities and tended to be difficult to detect.

While crime as business was a serious problem in many developed countries, crimes such as bribery, price-fixing, smuggling and currency offences were said to be especially severe problems for developing countries, since the national welfare and economic development of the whole society might be drastically affected by them. Governments acknowledged that terms relating to those types of crime were often vague and ambiguous, posing an obstacle to meaningful international cooperation in combating them.

**1980.** At the Sixth Congress, held at Caracas, the discussion of an agenda item on offences and offenders beyond the reach of the law at the Sixth Congress, held at Caracas, added new elements to the international perception of organized crime. Emphasis was placed on the concept of abuse of power in its various forms political, economic and social that were often interlinked. Among offences cited were activities that were legally defined as crimes but against which law enforcement agencies were fairly powerless, either because of the involvement of high-placed individuals or because of circumstances reducing the likelihood of their being reported or prosecuted.

Concern was expressed about the abuse of economic power by transnational corporations, as the victimized countries were often unable to deal with that problem effectively and individual countries were not always in a position to cope with transborder offences by corporations.

**1985.** Evidence presented to the Seventh Congress, held at Milan, indicated the escalating activities of organized crime worldwide. Congress participants emphasized that national boundaries no longer constituted effective barriers against those criminal activities. By exploiting the discrepancies in the legislation of various countries, organized crime was achieving a high degree of impunity. At the same time, alarm was growing in many parts of the world at the global impact of drug trafficking by criminal groups.

The Milan Plan of Action, adopted by the Congress, recognized the international dimensions of crime and the need for a concerted response on the part of the international community. It also recognized the significant role that the United Nations had to play as a universal forum and stated that its contribution to multilateral cooperation in reducing the opportunities to commit crime and in addressing the relevant socio-economic factors, such as poverty, inequality and unemployment, should be made more effective.

**1988.** The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic

Substances was adopted by a high-level international conference held at Vienna. The Convention is perhaps the most important international binding instrument aimed at combating organized transnational organizations and one of their most lucrative activities, international drug trafficking. Among the changes that States parties agreed to work towards under the new Convention were criminalization of money-laundering and increased cooperation in extradition, mutual legal assistance and transfer of criminal proceedings.

**1990.** Within the framework of a discussion of action against organized crime and terrorist criminal activities at the Eighth Congress, held at Havana, it was stressed that the increase in the number of independent countries, together with a true internationalization of criminal activities, had created a need for new international institutions. Previous *ad hoc* cooperative activities of the countries were seen as inadequate.

In view of the frightening implications of criminal dealings in large sums of money, participants called for new legislative initiatives to curb money-laundering.

Later that year, the General Assembly adopted four model treaties developed at the Congress, covering extradition, mutual assistance in criminal matters, transfer of proceedings in criminal matters, and transfer of supervision of offenders conditionally sentenced or conditionally released.

**1991.** Two events were organized in response to the General Assembly's appeal for cooperation in combating organized transnational crime: an Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held at Smolenice, Czechoslovakia, from 27 to 31 May 1991, and an International Seminar on Organized Crime, held at Suzdal, Russian Federation, from 21 to 25 October 1991, at which recommendations were formulated covering national, regional and international action.

A Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme, held at Versailles, France, resolved to step up international cooperation against crime. It was recognized that only the United Nations could effectively coordinate such action, by developing and implementing a concerted strategy directed at providing practical help. In following up the recommendations of that Meeting, the General Assembly moved to establish a Commission on Crime Prevention and Criminal Justice under the Economic and Social Council, which would replace the Committee on Crime Prevention and Control.

**1992.** At its first session at Vienna, the new Commission on Crime Prevention and Criminal Justice set as one of the priorities for the United Nations crime programme the question of national and transnational crime; organized crime; economic crime, including money-laundering; and the role of criminal law in the protection of the environment. The control of proceeds of crime was central to the resolution the Commission adopted requesting Member States to make every effort to modify their national legislation to effectively prevent the problem. It called for further analysis by the United Nations on the impact of organized criminal activities upon society at large and for the promotion of international cooperation aimed at controlling organized crime, with special emphasis on economic crimes and the laundering of illicit funds.

**1993.** On the recommendation of the Commission at its second session, the Economic and Social Council adopted resolution 1993/30 of 27 July 1993, in which it welcomed with appreciation the initiative of the Government of Italy and the International Scientific and Professional Advisory Council in organizing, under the auspices of the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat, the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: A Global Approach. The General Assembly also welcomed the initiative in its resolution 48/103 of 20 December 1993.

**1994.** On the recommendation of the Commission at its third session, the Economic and Social Council adopted resolution 1994/13 of 25 July 1994, in which it expressed its appreciation to the Government of Italy and the International Scientific and Professional Advisory Council for organizing the Conference and recommended that the World Ministerial Conference on Organized Transnational Crime should take into account the conclusions and recommendations of the International Conference.

**1995.** In the context of overall cooperation between the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat and the United Nations International Drug Control Programme, a joint technical cooperation project has been developed and is currently being considered for financing.

## **Recommendations of the International Conference on Preventing and Controlling Money-Laundering and the Use and Proceeds of Crime: A Global Approach**

### ***An increasingly and undeniably global problem***

The International Conference on Prevention and Controlling Money-Laundering and the Use and Proceeds of Crime: A Global Approach detailed numerous manifestations of the increased internationalization of criminal activities and of the globalization of money-laundering. The geographic expansion of the activities of the most notable transnational criminal organizations were described with respect to the accumulation of proceeds not only from drug trafficking but also from all serious crimes for profit, national and transnational, as well as from other methods of serious economic distortion such as usury. The increased professionalism of their activities and sophistication of the schemes used to launder the proceeds of those crimes were described, and the progressive separation of money-laundering as an independent criminal service.

Trends in money-laundering techniques were increasing in sophistication and complexity. Organized criminal groups were, *inter alia*: (a) taking advantage of weaknesses in national regulatory schemes; (b) resorting to flexible and rapid transfers and movement of assets across national boundaries; (c) exploiting the diversity of business regulations within and between national systems, particularly by using multiple business vehicles in different countries to conceal the origin of funds, ownership and control; and (d) benefiting from the assistance of professional categories which were unregulated and from those which were regulated but did not carry out effective self-control on matters of legal and ethical violations. Those trends demonstrated the global nature of the phenomenon and the need for developing effective means to remove or at least to reduce those and other opportunities exploited by money launderers.

### ***Global trends in prevention and control policies***

The trends in criminal money-laundering activity were a consequence of the increasing demand from money-laundering services and the counter-pressures exerted by anti-money-laundering responses. Those responses had two principal goals. The first goal was to increase the risk of law enforcement, that was the risk of apprehension for the individual criminal or criminal enterprise and the risk of seizure of criminal assets. The seizure risk furnished the more effective deterrent against organized criminality, which could easily manage the apprehension risk by simple overstaffing and other personnel management practices. The second goal was the defensive one of protecting the legitimate economy and financial system from, *inter alia*, unfair competition from low-cost criminal proceeds against legitimate capital on which taxes had been paid.

Measures which had been recognized as effectively increasing the law-enforcement risk were the criminalization of money-laundering operations, forfeiture operations, restriction of bank secrecy in money-laundering inquiries, use of evidence-gathering techniques appropriate to overcoming the secrecy and the consensual nature of money-laundering offences, such as undercover operations and electronic surveillance, and international cooperation mechanisms which permitted virtually immediate communication and action by all the authorities concerned without obstructive formality.

A parallel trend was the recognition that preventive/regulatory mechanisms were an equally essential element of anti-money-laundering policies to defend the transparency of economic/financial systems and simultaneously to produce a complementary effect with control policies. The preventive/regulatory mechanisms were those made familiar to all by the Basel Declaration See Statement of Principles of the Basel Committee on Banking Regulations and Supervisory Practices. and the FATF recommendations; among others were the "know your customer" rule, recording and record-keeping requirements, reporting of suspicious transactions, immunity/indemnity for bank representatives reporting suspicious transactions, application of preventive/regulatory policies to non-bank institutions and businesses and professions which offered financial services. In that regard, it was necessary to recognize that regulatory schemes did burden banks and other supervised institutions, which should not be made to bear a disproportionate share of the costs of cooperation against money-laundering.

### ***Gaps in the anti-money-laundering net: What needed to be done***

The discussion and background documents See below for a list of background documents. revealed the absence of an effective and comprehensive global anti-money-laundering net which needed to be established in order to prevent money launderers from simply moving their activities from one country to another or from one financial sector to another to avoid regulatory and control efforts. The failure of some countries to establish their own protective nets simply frustrated the efforts of neighbouring countries that had done so. Many countries had little established governance or experience in regulating complex state-of-the-art financial operations, and few had effective relations with the private financial (banking and non-banking) sector to ensure the coordination or cooperation needed to identify suspected activities. Gaps in the money-laundering net were geographic with the principal prevention or control efforts concentrated in western Europe, North America, Australia and in the more developed countries of Asia. Other gaps were sectoral, i.e. non-bank financial institutions; businesses and professions which furnished financial services but were largely unregulated; and offshore business and financial institutions which were inadequately regulated. Other gaps related to failure to implement recognized anti-money-laundering measures, such as failure to ratify the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, or to enact the necessary implementing legislation, the failure to implement effectively the 40 recommendations drawn up by FATF; failure to enforce effectively anti-money-laundering regulations and legislation, once enacted; and finally, failure to control professions engaged in financial activities. Legislation was only the first step in the process of bringing the problem under control, and it might well be easier to get legislation enacted than to enforce it effectively in many countries.

### ***Implementation priorities***

The Conference strongly urged that it would be counter-productive for a global approach to the prevention and control of money-laundering to recommend anything less than the full implementation of the 1988 Convention, regardless of any liberalization, the Basel Declaration and the 40 FATF recommendations. The challenge was to build a social defence system, with administrative and regulatory tools, designed to make it difficult for services to be used for criminal purposes, buttressed

by criminal law. As a credible deterrent, criminal law would continue to play an essential role. Anti-money-laundering measures were to be seen as a part of a coherent and global crime policy which should give priority to the fight against serious crime, especially against organized crime, which had a corrosive effect on economy and society. Nevertheless, certain needs commanded a worldwide degree of recognition as to the urgency of their implementation. Those priorities are discussed below.

### *Criminalization of the laundering of drug and non-drug criminal proceeds*

Criminalization of drug money-laundering offences was required for States parties to the 1988 Convention. Expansion of criminalization to the laundering of the proceeds of other serious crimes was the trend, as evidenced by, *inter alia*, the Council of Europe Convention on the Proceeds from Crime, the political declaration by Commonwealth Heads of State and Governments and the domestic legislation of a number of countries with substantial experience in the field. Such criminalization would also solve problems of dual criminality encountered in international cooperation procedures.

### *Limitation of bank secrecy*

Limitation of financial secrecy was a *sine qua non* of serious money-laundering control and of sincere international cooperation.

### *"Know your customer" rule*

Application of the "know your customer" rule of the Basel Declaration and the FATF recommendations, particularly with respect to abolishing anonymous bearer accounts and identification of the real party in interests being represented by a nominee, should be another basic test of the effectiveness of a country's money-laundering prevention policies.

### *Identification and reporting of suspicious transactions*

Identification and reporting of suspicious transactions needed to be permitted and encouraged by legislation fully protecting representatives of financial institutions from any liability for good-faith reporting of suspicious transactions. The expansion of at least the reporting requirements to cover the proceeds of all serious crime was one of the effective steps to preventing a situation in which a financial institution may not report a clearly suspicious transaction without knowing precisely what crime resulted in those proceeds. When reporting was permitted, it seemed self-evident that notice of that report, or of an official inquiry about a transaction, should not be given to the client.

### *Improved regulation of businesses or professionals conducting financial operations*

Improved regulation or other preventive measures were being found to be necessary to prevent money-laundering activity being displaced from tightly supervised banks and financial institutions to non-supervised businesses and professions which offered financial services. Such measures could be requirements that all transactions of a certain type or magnitude be conducted through an authorized financial intermediary (termed "channelization"), or could impose certain identification, recording and/or reporting requirements on the offerer of financial services, but they must avoid the consequence whereby money-laundering was simply displaced from supervised banks to a wholly unregulated informal financial sector. Moreover, certain professions which have traditionally been unregulated or self-regulating could not be assumed to act effectively in implementing a self-regulating mandate. Therefore, legislative standard-setting might be necessary. It was, moreover, necessary to fight what was termed "reputation laundering", i.e. the process of acquiring respectability in a new environment. It should therefore be appropriate that the professional groups concerned

promoted behavioural codes, including a range of disciplinary sanctions up to the exclusion of those members who brought disrepute to their own group, in order to safeguard the reliability of that profession. Moreover, it was clear that the launderer was aware of the various directives, recommendations and conventions requiring banks and financial institutions to follow current standard requirements of identification and reporting. The launderer was turning to other businesses which did not necessarily offer financial services.

The Conference therefore recommended that research and studies should be carried out to identify those businesses which may well serve the launderer and to determine the feasibility of extending the application of current reporting and other requirements to possible areas other than banking and financial institutions with the objective of preventing rather than simply attempting to prosecute money-laundering, with all the difficulties that the latter course of action implies.

#### *Asset forfeiture*

Increased asset forfeiture and the availability of provisional measures, such as freezing or seizing of assets, contributed to a universally developing trend which could profitably be broadened beyond drug proceeds, always with due respect for the procedural guarantees for property rights established by national law. Asset forfeiture must be possible also for the proceeds of crimes committed abroad. The delegation of Japan, in a letter addressed to the organizers of the Conference, expressed its reservation with respect to this paragraph because of insufficient time to study the text.

#### *Workable international cooperation mechanisms*

Formal regulatory procedures, furnishing bank documents only after years of litigation and a lack of necessary legal instruments or administrative structures were obstacles which invited criminals to practice international money-laundering and to capitalize on collective governmental inertia and deficiencies. A further priority for implementation should be a rapid and uncomplicated mechanism for international cooperation in common administrative and legal matters. Mutual legal assistance arrangements which allowed the collection of admissible evidence were essential. Without such arrangements, national Governments would tend not to devote the needed investigative resources to international cases.

The Conference therefore recommended that international organizations or mechanisms should reinforce common strategies to combat money-laundering; that ways and means should be found for taking expeditious action in that sphere; and, in particular, that a consensus on the basic substantive elements of cross-border crimes and on legal norms regulating the procedure for mutual assistance between States in respect of such crimes should be sought and achieved in order to expedite the giving and receiving of such assistance in an area where speed is of the utmost importance.

### **A global strategy for a global problem**

Previously, implementation of anti-money-laundering policies by legislation and regulation was treated solely as a function of national sovereignty, and as a result not every country has moved spontaneously towards them. When a country did not take decisive steps to control the proceeds of crime, the global nature of the money-laundering problem became apparent and the need for a consistent global response was demonstrated. This suggested a three-level strategy. At the bilateral level those countries most adversely affected and those most able to cooperate with the non-implementing country should help it to achieve international minimum standards. Simultaneously, at the regional level, relevant organizations (broadly understood to include not only geographic but also political and cultural groupings such as the Commonwealth) should give such assistance and encouragement necessary to bring all of their members up to appropriate regional

standards, which might even go beyond the 1988 Convention and the FATF recommendations, as have the European Community Money-Laundering Directive and the Council of Europe Convention on the Proceeds from Crime. At the international level, the appropriate organizations could contribute to efforts at the bilateral and regional levels. For the country which wished to do its part for the global protective network, assistance and encouragement should be available from friends and neighbours, from regional levels and from the international community. Effective coordination was needed at the regional and international levels to promote relevant action at the national level and cooperation between countries.

The implementation priorities listed above were predicated on assumptions about the presence of certain international and national enforcement mechanisms. Key among them was the concept that a net or web operated at three complementary levels international, regional and national and that the national level might be further divided into penal, cultural and administrative mechanisms. Political support and adequate resources, *inter alia*, were said to be essential conditions for effective action at all three levels. National government and multilateral, regional and international institutions must allocate adequate resources to successfully regulate or control activities which might exploit a high volume of legitimate transactions to achieve concealment, for example might be the case with electronic-transfer technology.

Those assumptions were not necessarily valid in all cases. If not, a variety of modalities of technical assistance might be necessary at the national level. These could include needs assessment; legislative assistance; infrastructure development assistance; personnel development; and training in all relevant sectors, including national and interstate cooperation; comprehensive strategies for all involved government agencies, inter-agency coordination and functional cooperation; and transfer and sharing of technology, development and research.

At the international level, at least, the following modalities might be necessary: needs assessment; treaty development in extradition and mutual assistance matters; compatibility of treaty schemes and procedures; enhancing cooperation and information sharing, not only at the judicial level but also among regulators and law enforcement agencies; the same type of management rationalization of overlapping organizations at the level of regional and international organizations; and continuing applied research on the incentives and disincentives needed (a) to promote cooperation by the private sector with Governments, and (b) to consolidate coordination and cooperation between Governments.

The overriding objective would be to establish effective operational mechanisms so that no person would be above the law, and every person would be protected by the obligations of international, regional and domestic law for the observance of fundamental human rights.

### **Documentation and selected summaries of papers**

**presented at the Courmayeur Conference** All these documents are available on request from the Crime Prevention and Criminal Justice Branch, VIC, P.O. Box 500, A-1400, Vienna, Austria.

#### ***Background documents***

De Feo, Michael A. and Savona, Ernesto U.; *Money trails: International money-laundering trends and prevention/control policies*. (Topic 1.); European Institute for Crime Prevention and Control affiliated with the United Nations; *Money trails: International money-laundering trends and prevention/control policies*. Summary of the paper; Hallett, A. J. Hughes; *Developed/developing countries and economies in transition. Criminal opportunities for the laundering and use of the proceeds of crime*. (Topic 2.); Hogarth, John; *Mechanisms of international control (multilateral and regional arrangements)*. (Topic 3.); Noble, Ronald; *Mechanisms of international control (the*

*Financial Action Task Force Recommendations and their Implementation*). (Topic 3.); Bernasconi, Paolo; *Assessment of crime control policies*. (Topic 4.); Levi, Michael; *Assessment of regulatory policies*. (Topic 5.); Bassiouni, M. Cherif; *Technical cooperation in preventing and controlling the laundering and use of the proceeds of crime*. (Topic 6.).

### ***Contributions of Member States***

Argentina. *Consideraciones sobre lavado de dinero*

Argentina. *Necesidad de establecer una legislación autónoma que tipifique el delito de lavado de activos*, by Professor Patricia M. Llercha

Australia. *Short position paper addressing the several themes in the draft agenda for the ISPAC Conference on Money-Laundering*

Austria. *Position paper*

Brazil. *Money-laundering: the problem in Brazil and Latin America*, by José Arthur Rios

Canada. *Overview of Canadian legislation*, by Liliana Longo, Department of Justice

China. *Position paper*

Colombia. *Elementos y características del blanqueo de dinero*

Colombia. *Colombia's Policies against Money-Laundering: the Colombian Financial System Action*, by the Colombian Banking and Financial Entities Association

Gambia. *Africa - A Dynamic Centre for Money-Laundering: the Gambian Perspective*

Greece. *Legislation of Greece relating to anti-money-laundering requirements* by Alexandros Metaxas, Head, Public Prosecutors' Office, Piraeus Court of Appeals

Italy. *Position paper*

Japan. *Position paper*

Malta. *Position paper, presentation by Hon. J. M. Fenech, BA(Hons)LLD MP, Minister of Justice*

Mexico. *La simulación fiscal y el proceso de lavado de dinero*

Poland. *The prevention and combatting of dirty-money-laundering and of the utilisation of criminal revenues (overall view)*, Ministry of Justice

Venezuela. *El Lavado de Dinero Proveniente del Trafico Illicito de Estupefacientes y Psicotrópicos en la Legislación Venezolana*

### ***Contributions of the United Nations***

United Nations International Drug Control Programme (UNDCP). *Assistance Juridique. Confiscations en Matière de Trafic Illicite de Stupéfiants et de Substances Psychotropes: Modèle de Loi*, November 1993

United Nations Interregional Crime and Justice Research Institute (UNICRI). *Preventing and controlling money-laundering and the use of the proceeds of crime*

### ***Contributions of affiliated institutes***

African Institute for the Prevention of Crime and the Treatment of Offenders; *Preventing and controlling money-laundering and the use of the proceeds of crime in Africa*; International Centre for Criminal Law Reform and Criminal Justice Policy; *The proceeds of crime: problems of investigation and prosecution*, by John L. Evans.

### ***Contributions of intergovernmental organizations***

ICPO/Interpol. *The history of INTERPOL*, by Patrick D. Dorsey, Head of the FOPAC Group; International Monetary Fund. *The International Monetary Fund's role in preventing money-laundering activities*, by Vito Tanzi, Director, IMF; FATF. *Annual Report 1993-1994*; OAS/CICAD. *Model regulations concerning laundering offences connected to illicit drug trafficking and related offences*; OAS/CICAD. *Presentation of the Executive Secretary*; South Pacific Forum on Law Enforcement Cooperation; *Declaration*.

### ***Contributions by other organizations***

Transparency International; *Money-laundering: a threat to sustainable development*

### ***Contributions by individual experts***

Fisse, Brent; *Money-laundering, regulatory strategy and internal corporate controls*; Flick, Giovanni Maria; *Prevention and control of money-laundering: the prospectives and limits of the use of penal instruments* (paper submitted in Italian); Masciandaro, Donato; *Money-laundering, banks and regulation: an economic analysis*; Pansa, Alessandro; *Economic system and financial management of a clan of the "ndragheta"* (paper submitted in Italian); Siclari, Bruno; *Intervention on money-laundering* (paper submitted in Italian); Turone, Giuliano; *The strategies against the criminal economy: from the investigation of property to the confiscation of unjustified assets*.

### ***Selected summaries***

Six papers presented at the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: A Global Approach are summarized below.

#### **Assessment of crime control policies by Paolo Bernasconi, Italian National Center for Prevention and Social Defence, Italy**

The misuse of offshore companies is an obstacle to crime control policies. During the last decade many countries with no prospects of significant economic opportunities have gained in economic and financial strength by becoming safe havens for foreign tax evaders and law dodgers and by allowing almost unrestricted registration of businesses.

The incentive for businesses to be registered in such offshore havens is to escape severe tax and registration regulations on domestic companies. The advantages include: the possibility of funnelling large amounts of capital to and from offshore countries without the need to declare crucial cash transactions to domestic fiscal authorities; the guarantee of anonymity by offshore countries not requiring disclosure of directors or owners of companies; and the lure of very low tax rates often offered by offshore countries, together with guaranteed discretion and secrecy. Revenues from illicit trafficking in narcotics, arms, toxic waste and human beings as well as kickbacks and bribes are frequently hidden in offshore financial institutions.

Guaranteed secrecy promotes the quasi-immunity of the perpetrators since the true ownership and liability of an illegitimate company can be neither revealed nor investigated. Consequently, even if

adequate regulations existed, mutual assistance might be in vain. Within the banking, corporate and commercial sectors, the issues of controls on corporate registration, shareholders' rights, effective liability regulations and stricter accounting control mechanisms should be tackled urgently.

Regulations to be considered include: imposing strict individual liability on any senior executive, regardless of the location or territory of the crime committed; no impunity for commission of money-laundering offences, regardless of jurisdiction; criminalization of all fiscal offences, in particular fiscal fraud and insider trading; and prosecution of corrupt foreign officials.

Criminal procedures with regard to the initiation of an investigation should be relaxed to expedite the process. Furthermore, bank secrecy should be addressed by facilitating the seizure of bank assets and alleged illicit revenues pending investigations; for example, by imposing the burden of unaccounted-for assets on the account holder.

Several successful attempts to address the illegal use of offshore companies include penalizing misconduct and mismanagement such as fraudulent bankruptcy, the application of the recommendations of FATF of 1990 and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime adopted by the Council of Europe in 1990.

### **Money-laundering, regulatory strategy and internal corporate controls by**

**Brent Fisse, Professor of Law, University of Sydney, Australia**

Corporate controls are essential for the implementation of any legislative or regulatory programme aimed at combating money-laundering. International strategies to combat this offence are the key to finding an effective solution. International enforcement and compliance within financial institutions are issues of particular concern.

The challenge is to provide versatile, efficient and effective legal and administrative internal safeguards within financial institutions, and to develop model regulations that can be modified and adapted to the legal culture and financial system of each Member State. The 44 recommendations on money-laundering agreed upon by the members of FATF are an important device, since these recommendations also highlight the urgent need for internal corporate controls to combat money-laundering.

First, there is no uniform scheme to deal with money-laundering at any single banking institution because of the diversity of banking activities performed by different banks. In order to detect possible money-laundering within the often complicated internal structures of global financial institutions, standards must be versatile so they can be applied on a case-by-case basis; for example, by imposing corporate compliance systems. Second, internal measures such as the systematic allocation of responsibility for compliance functions to specified personnel and the precise identification and management of risks created by the company's operations should be considered. Third, legal standards and their implications should be familiar to all staff. Fourth, a clearly stated compliance policy has to be issued, backed and enforced by higher echelons of management. These tactics if applied uniformly should have a deterrent effect. In addition a legal framework needs to be established to harmonize State crime-control strategies and corporate compliance systems.

In order to comply with international standards, members of FATF should be encouraged to consider a three-pronged strategy. First, to adopt national money-laundering control statutes. These could include legislating for adequate internal control mechanisms of financial institutions (e.g. the Australian Financial Transaction Reports Act of 1988). Second, to encourage law enforcement agencies to promote compliance systems in their fields as well as to coordinate their strategies with

financial authorities and institutions. Third, to establish an international clearing-house project to disseminate updated information on the latest international developments under the possible auspices of the United Nations or the International Scientific and Professional Advisory Council.

In sum, a shift in focus from individual liability, undetectable within most corporate structures, to corporate liability needs to take place in order to achieve improved business conduct.

**Assessment of regulatory policies by Michael Levi, Professor, University  
of Cardiff, Wales, United Kingdom of Great Britain and Northern Ireland**

First, implementation of regulatory policies and, second, their enforcement are the principal challenges in combating money-laundering. A balance must be struck, however, between minimizing illegitimate exploitation and detracting from economic dynamism. Within the seven major industrial nations (Group of Seven), there is considerable divergence in practice. All States agree, however, that money-laundering is beyond their reach.

The nature and characteristics of money-laundering are such that rarely do the proceeds of crime enter the official or even the unofficial banking systems directly. Vast quantities of funds can be transferred overseas without arousing any suspicion, especially since inter-company transactions are a black hole in efforts to detect money-laundering.

Under the Criminal Justice Act of 1993 of the United Kingdom, it is a crime for financial institutions to fail to report matters that they "know or suspect" constitute money-laundering of the proceeds of drugs; however, the obligation to report suspicion of other crimes, such as fraud, is voluntary. One of the greatest strengths of the current disclosure system is the cooperative nature of the working relationship between law enforcement and financial institutions.

Electronic international money transfers are extremely difficult to regulate. If banks or their local employees are under serious financial pressure, the temptation to cover up cash transactions will remain, which is why the regulation and the stability of financial institutions must be considered in tandem with internal checks and balances.

By competitive under-enforcement of money-laundering regulations, the effectiveness of controls generally are being undermined. Those countries who take their regulations seriously are subject to outflows of capital as a consequence of their integrity. Although sophisticated offenders will identify loopholes, an increased regulatory system might prove too burdensome for some potential offenders. Clearly, if bankers were to be held liable for damages to defrauded persons in trust for the conduct of accounts, better surveillance measures could be instituted.

A general objective must be to fine-tune all controls on money-laundering so that the law enforcement system is not overwhelmed. The key problem is to develop a set of rewards and sanctions that will maximize adequate feedback between banking regulators, police and bankers.

**Money-laundering: the problem in Brazil and Latin America by José A. Rios,  
member of the Executive Board of the United Nations Interregional  
Crime and Justice Research Institute, Rio de Janeiro, Brazil**

Money-laundering is the procedure by which the proceedings of illegal acts are converted into apparently legal activities, thus concealing their criminal origin. The majority of the money-laundering activities occurring in Brazil are the laundering of illicit revenues from drug trafficking, gambling, smuggling and corruption.

With the introduction of modern technologies in banking and telecommunications, criminals have become adept at injecting vast amounts of dirty money into financial markets worldwide. Majority shares in banking institutions and major interests in other parts of the economy are managed by illegitimate interests. Many Latin American countries do not consider money-laundering a crime, although the incorporation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 into Brazilian law has had a positive impact by changing banking regulations and providing financial institutions with a framework to combat criminal infiltration. This development was reflected in the report of the Secretary-General to the Commission on Crime Prevention and Criminal Justice at its second session. "Review of priority themes: the impact of organized criminal activities upon society at large: report of the Secretary-General" (E/CN.15/1993/3).

Companies run by illegitimate financial concerns have an edge over their law-abiding competitors because they blackmail and intimidate other companies and have the potential to cause financial turmoil by withdrawing their fortunes at short notice. The implications for developing countries could be particularly devastating. Consequently, black economies are mushrooming in many developing countries; in Brazil, for instance, one quarter of the workforce is employed in this sector.

Since the 1970s, illicit revenues from drug trafficking have been invested mostly in service-sector industries. Illegal betting and lotteries are rampant with dirty money. Operated by underground kingpins, these channels are rarely penetrated by law enforcement.

In the battle to fight organized crime, attention has shifted from the perpetrators themselves to the seizure of their financial assets. In several Latin American countries such as Costa Rica and Panama, any kind of money-laundering carries a maximum penalty of 20 years' imprisonment but investigators still face many obstacles.

In conclusion, the reporting of any suspicious activity should be encouraged within an organization who should be obliged to inform law enforcers in order to create both an internal and corporate obligation as well as a legal one. International harmonization needs to be promoted urgently under the auspices of the United Nations as the clearing-house for international recommendations, advisory services and training programmes.

**Preventing and controlling money-laundering and the use of the proceeds of  
crime by Herman P. Woltring, Director, United Nations Interregional  
Crime and Justice Research Institute, Rome, Italy**

Major difficulties exist in mutual assistance matters with regard not only to money-laundering but also to transnational criminality in general.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 includes the conversion or transfer of property, knowing that such property is derived from any criminal offence, or from an act of participation in such an offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his or her actions; and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from any offence or from any act of participation in such an offence or offences. The importance of this Convention stems from the fact that it is the first international convention to oblige its signatories both to criminalize money-laundering and to grant mutual assistance simultaneously.

The Single Convention on Narcotic Drugs of 1961 obliged the signatories to try the suspect if a country would not extradite. Later, the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 imposed on States the obligation to establish jurisdiction over any perpetrator no matter what the territory of crime or seizure.

These conventions, however, neither address the emerging new forms of crime nor provide a broad approach to mutual assistance in general as they deal only with specific crimes of international significance; for example, drug trafficking and hijacking of aircraft and their intrinsic relationship to money-laundering. Another major problem underestimated and unforeseen by the framers of the conventions were the differences in legal systems. Most conventions were based on the civil law systems of continental Europe and therefore did not, for example, recognize the concept of common law jurisdiction.

The Commonwealth Scheme for Mutual Assistance in Criminal Matters of 1986 enabled the signatory States to pass the legislation necessary to allow law enforcement agencies to deal with their counterparts in other countries. Hence confiscation of illegal proceeds of crime by the order of a foreign court or the requesting country itself became lawful. International mutual assistance was greatly facilitated by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the Model Treaties on Extradition and on Mutual Assistance in Criminal Matters. The Convention of 1988 acknowledges the conflict between the dual criminality rule and the "new" offence of money-laundering, criminalized for the first time in several jurisdictions. It furthermore obliges States parties to afford one another the widest measure of mutual legal assistance.

Another milestone was the drawing up by the Council of Europe, in 1990, of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which abolished measures that had previously hampered investigation thereby streamlining the investigation process.

Some of the principal obstacles to the provision of mutual assistance are the prima facie requirement and the dual criminality rule. The prima facie requirement has already been replaced in many common law countries. Dual criminality requires the international harmonization of specific offences. Because of several linguistic and translation problems, not all countries have incorporated the regulations of the 1988 Convention into domestic legislation. Therefore the degree of the perpetrator's knowledge of the purpose of the illicit revenue should serve as a common denominator to facilitate culpability until a more sophisticated definition can be developed.

### **Money trails: international money-laundering trends and prevention/control policies**

**by Michael A. De Feo, Senior Counsellor for International Law Enforcement,**

**Embassy of the United States of America, Rome, Italy and Ernesto U. Savona,**

**Professor, University of Trento, Italy**

It would be preferable for all countries, suffering from the money-laundering phenomenon, or hoping to attract investment capital by offering fiscal advantages, to adhere to a common global approach to money-laundering. Step by step, in a steady succession of regulations and laws, the international community should patiently but resolutely motivate and assist countries that do not have anti-money-laundering policies and mechanisms to put them in place, thereby constructing together a protective net against the circulation and infiltration of illegal money.

The paper deals with the recent trends that characterize the main transnational criminal organizations

operating throughout the world, describing their main profit-yielding activities, the way in which the proceeds of crime are laundered in a regional or country context and the extent to which individual countries suffer from these criminal activities.

After examining the evolution of the money-laundering activities of the main transnational criminal organizations, such as the Chinese Triads, the Colombian cartels, Russian criminal organizations and the Sicilian Mafia, the paper observes three main trends in the progressive professionalization of money-laundering: first, a progressive separation between criminal activities and money-laundering activities; second, the prevalence of more professional launderers such as accountants, lawyers, private bankers; and third, the availability of more money-laundering services to a wide range of criminals and to more than one criminal organization.

These three trends are a direct result of the fact that drug- and non-drug-related criminal activities are producing immense riches, which need to be laundered in order to be used and invested. This demand for money-laundering, combined with the increased risk from the anti-money-laundering action of Governments, is stimulating the development of a more professional supply of money-laundering services, which, in turn, tend to increase the level of complexity of money-laundering schemes and overall money-laundering strategies.

The trends toward more professionalism and more complexity in money-laundering strategies and schemes coincide with a recent geographical trend to move money to be cleaned from north to south, from west to east, and from developed to developing countries and economies in transition. Increasingly effective regulatory and criminal controls in the industrialized countries are pushing capital to be laundered towards countries where such controls do not exist or are weak. This alarming trend underlines the urgency of the need for a global approach to the global market of money-laundering.

With slight variations, the geography seems clear. Western Europe, North America and Australia are converging towards the criminalization of money-laundering activities and an enlargement of the predicate offences from drug offences to virtually all serious crimes. Central and South America and Asia, when money-laundering is criminalized as a separate offence, often limit its application to drug instrumentalities and proceeds. Eastern European countries are beginning to address these issues in the context of an overall re-examination of the law of property, banking regulations and procedural law. Few African countries have ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and criminalized money-laundering.

There is a marked convergence of national policies on asset forfeiture and confiscation of the proceeds of crime, which appear to be more widely accepted than the criminalization of a money-laundering offence *per se*.

Many countries in Western Europe and North America, together with Australia, are rapidly converging towards creating one or more specialized agencies with the exclusive purpose of investigating or concentrating data on money-laundering. In some other countries these activities are carried by the financial and economic sectors of the general police agency.

It can be seen from experience that the negative incentives of public disapproval and law enforcement risk can be effective to motivate bank compliance with regulatory requirements.

Divergencies exist in the area of customer notification. In some countries bankers are still allowed to notify a customer if an official inquiry is made concerning his or her transactions, and sometimes even of the fact that the bank has reported a suspicious transaction by that customer to a regulatory or police authority. This is an inexplicable labyrinth of policies, which should, in the opinion of the

authors, be resolved in favour of cooperation with governmental authorities rather than appearing to give that cooperation and then subverting its utility.

The convergencies in international cooperation are encouraging:

Ratification of the 1988 Convention is becoming an indicator of responsible membership in the anti-drug and anti-money-laundering world community. So far, 99 States have become parties to the Convention.

Criminalization of money-laundering as a separate offence is still in its early stages, but its adoption by more States is impeded more by indifference and the technical complexity of defining the constituent elements of the offence than by any substantial policy arguments against criminalization.

Countries that have demonstrated the political will to act against money-laundering, particularly those with significant organized crime problems and advanced banking industries, are achieving a desirable degree of prevention and control at the national level. Achieving the same degree of control at a regional and international level is a much more difficult proposition, as many countries are not yet motivated to control the phenomenon.

The gap between widespread international acknowledgement of the basic principles necessary to prevent and control money-laundering effectively and the very inconsistent application of those principles in far too many countries needs to be acknowledged and bridged by all parties concerned. At least the following six points should be the focus of immediate action and the starting-point for resolution of the problem areas by all countries: (a) the criminalization of a money-laundering offence; (b) limitation of financial secrecy; (c) "know your customer"; (d) identification and reporting of suspicious transactions; (e) improving the regulation of businesses/professionals who conduct financial operations; and (f) developing asset forfeiture.

The key point is how to persuade reluctant countries to come to participate in this comprehensive strategy so that the efforts of their neighbours are not needlessly betrayed.

The international community should provide systems of incentives or disincentives that will facilitate compliance with anti-money-laundering standards. The process should be managed in terms of a progressive responsibility of the regional, country and international mechanisms. The basic unit of money-laundering control is domestic legislation and regulation. However, not every country, for a number of reasons, will move spontaneously towards the implementation of effective anti-money-laundering policies. The paper then proposes a standard three-level response strategy for dealing with countries that do not implement such policies.

### *Notes*