

I. OVERVIEW: GIVING MORE PRIORITY TO COMBATING MONEY-LAUNDERING

A. Fighting money-laundering as an effective way to combat drug trafficking and organized crime

1. International trafficking in narcotic drugs and psychotropic substances has generated huge amounts of capital for its initiators and organizers. These drug cartels and trafficking groups are organized and structured to function efficiently within national economies, as well as at the international level. The profits derived from their illegal activities are either integrated into the legal economy or are used in corrupt and criminal ways to enhance such activities. Governments, therefore, when agreeing upon the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,^v decided to introduce measures to detect and punish money-laundering activities, thereby hitting drug traffickers where it would hurt them the most. Because of the impact that the effective implementation of such measures can have on curbing drug trafficking and achieving the objectives of the international drug control treaties, the International Narcotics Control Board decided to consider the subject at its fifty-ninth session.

2. No Government and no society should accept, from a moral, ethical or legal point of view, that income could be derived from criminal activities such as drug trafficking and related activities. All States, and not only those with legal obligations under the 1988 Convention, should provide and effectively implement laws that enable them to confiscate all proceeds derived from drug trafficking and to punish not only those involved in trafficking in drugs, but also those involved in facilitating in one way or another the making or handling of profits derived from such activities.

3. The prevention of money-laundering represents a challenge to all countries, developed and developing alike, but particularly to fragile or vulnerable economies, which can easily come under the economic and political pressure, or even the control, of criminal groups if their capital has free access to such economies. Such capital has a strong potential for exacerbating corruption in government and in the private sector.

4. Powerful trafficking groups and their financiers might come to have significant influence on politicians, the judicial system, the media and other sectors of society and might impose on the country their own laws, including the "buying of public opinion". The continuing propagation of the non-medical use of drugs can be seen as being in the interest of such financially powerful trafficking groups. Such groups could expect that, through the increased social acceptability of the non-medical use of drugs, drug abuse would grow and so would their profits.

5. Money-laundering entails surreptitiously introducing money of criminal origin into the legitimate channels of a respectable business in order to make it appear normal and legal. In practice, three steps, which may be simultaneous, can be identified:

(a) "Placement" or physical disposing of cash through financial establishments or the retail economy; conversion of cash on the spot into other currencies; or transfer of currency abroad;

(b) "Layering" or multiplying of financial transactions, often involving several countries, to prevent the tracing of illegal proceeds;

(c) "Integration" of income of criminal origin, which, under the guise of investments in economic activity, gives it the appearance of legality.

6. Money-laundering operations can be extremely complex and combating them requires a multidisciplinary approach that takes fully into account the legal, financial and law enforcement aspects of the problem. Major cases involving money-laundering are mostly international in nature, requiring a worldwide response.

7. Although the exact figures for money of criminal origin are unknown, they apparently have reached very high levels, as they have been compounded by the cumulative impact of concealed or reinvested funds in economic, social and political areas. Estimates are in the order of several hundred billions of dollars a year and exceed the gross national product of most countries. Most of the money stems from illicit drug production, trafficking and abuse throughout the world.

8. Traffickers are motivated essentially by the pursuit of maximum profits. Drug trafficking results in profits, which in turn are used to increase trafficking, thereby creating a circle that becomes increasingly vicious. Fighting drug money, and money from organized crime in general, can make it possible to break the circle by depriving those running drug trafficking operations and their organizations of their motivation. Up to now, seizures of drugs, even in large quantities, have caused the drug traffickers only limited losses, which have been quickly compensated for by increasing shipments. Confiscation of the assets and property of criminals, however, undermines their capacity to organize and to maintain their logistics, as well as their ability to corrupt - hence, the basis of their power. It is often the only way to destroy criminal organizations and the kinds of trafficking operations that they develop. Moreover, in some countries the sums confiscated from drug traffickers can be allocated to the fight against drugs. They could be used to fund drug abuse prevention projects, to improve the capacity of law enforcement agencies or to enhance programmes for crop substitution and alternative development. This would help to intensify the fight against organized crime and the production of and traffic in narcotic drugs, thereby breaking the vicious circle.

9. Money and financial operations are the points where criminals are the most vulnerable. Because of the compartmentalization of the major criminal organizations, it is usually impossible to establish a link between a seized drug shipment and the real organizers of the drug trafficking operation. Money is often the only trail that goes all the way to the organizers.

10. The international community has begun establishing the legal means and procedures to detect and combat money-laundering; because of the international nature of money-laundering, a general mobilization in that direction is essential. Furthermore, no country, rich or poor, large or small, equipped with sophisticated machinery to fight money-laundering or not, can consider itself safe from money-laundering activities. A chain is no stronger than its weakest link, and the effectiveness of world machinery to fight money-laundering will depend on whether there are important gaps in that machinery, such as lax or non-existent regulations, unregulated offshore services, or commercial laws facilitating money-laundering.

11. The international response to the problem of money-laundering is all the more essential because the amounts of money involved in such activities are assuming such proportions that they are capable of tainting or destabilizing financial markets, endangering the economic, political and social foundations of economically weak States, especially States that have just developed market economies, and ultimately posing a real threat to democracy. Some politicians argue that, in the interest of economic development, they must oppose laws and measures against money-laundering; such arguments fail to consider the

detrimental effects of such policies over time on social, economic and political development. Allowing proceeds from drug trafficking to infiltrate a national economy boosts the level of corruption in society. If large sums of such proceeds are invested into a certain part of an industrial or commercial sector, the other parts of that sector either will not be able to compete and will disappear or, in order to remain competitive, will have to adopt similar corrupt practices; thus, the rest of the industrial or commercial sector and the entire economy will eventually become corrupt, and political and social life as a whole will suffer similar consequences.

B. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

12. The adoption of the 1988 Convention marked the first decisive step in mobilizing the international community for the fight against illicit drug trafficking.

13. In the 1988 Convention, money-laundering offences are defined and parties to the Convention are required to make them serious criminal offences, to be severely punished and subject to extradition. The 1988 Convention also calls for the establishment of identification and tracing machinery, as well as procedures for making banking, financial or commercial records available, while forbidding States to decline to act on the grounds of bank secrecy. It provides for international cooperation to investigate, prosecute and confiscate the proceeds of drug trafficking. It calls upon each party to consider, to the extent that its domestic law permits, ensuring that the onus of proof is reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation. It defines mutual legal assistance, and encourages other forms of cooperation between legal and administrative systems by recommending less bureaucratic procedures for the exchange of information and data.

C. International organizational framework and action

14. Some encouraging developments have already taken place. As regards the financial sector, the Committee on Banking Regulations and Supervisory Practices,* on 12 December 1988, adopted a statement on prevention of criminal use of the banking system for the purpose of money-laundering,^{vi} which calls for greater vigilance on the part of the international banking community, particularly in identifying its customers, and increased cooperation with the judicial and police authorities in order to foil money-laundering operations. The statement has had a decisive impact within the international financial community, and many countries have introduced its principles into their financial systems.

15. The international community intensified its efforts in a tangible form, first of all in the work of the Financial Action Task Force established by the heads of State or Government of the Group of Seven major industrialized countries and the President of the Commission of the European Communities** at the fifteenth annual economic summit, held in Paris in July 1989. The Financial Action Task Force has taken the lead in efforts to combat money-laundering.

16. The first accomplishment of the Financial Action Task Force was the formulation of 40 recommendations, published in February 1990, which by and large strengthen and supplement in

*The Committee comprises representatives of the central banks and supervisory authorities of Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland and United States of America.

**Now called the European Commission.

detail the provisions of the 1988 Convention and the principles of the statement adopted by the Committee on Banking Regulations and Supervisory Practices, particularly in the area of future cooperation between the financial system and law enforcement and in the area of international cooperation.

17. Besides encouraging States to become parties to the 1988 Convention, to enact financial legislation that does not run counter to the guidelines of the Financial Action Task Force and to increase multilateral cooperation in investigations and prosecutions, the recommendations focus on the improvement of national legal systems to combat money-laundering, the enhancement of the role of the financial system, understood in its broadest sense, and the strengthening of international cooperation.

18. The Financial Action Task Force has been conducting and developing an analysis of world financial flows, banking and financial systems and money-laundering methods. It has been studying weak links that facilitate money-laundering operations ("front" companies,* electronic transfers, offshore groups, non-face-to-face transactions etc.) within the framework of a multidisciplinary approach (legal, financial and law enforcement). The Financial Action Task Force considers improvements to advocated countermeasures and monitors and evaluates implementation of the recommendations, as well as the introduction of relevant laws and countermeasures by its members.

19. The Financial Action Task Force has also developed a dynamic approach with respect to non-members, encouraging them to adopt and implement the recommendations. For that purpose, it established in 1993 the Caribbean Financial Action Task Force. At the end of 1994, the Financial Action Task Force established a secretariat in Australia to facilitate its activities in Asia and the Pacific. Many States that are not members of the Financial Action Task Force have adopted some if not all of its recommendations and have proceeded to implement their principles.

20. As of 1 November 1995, the membership of the Financial Action Task Force included the governments of 26 States or territories,** as well as the European Union and the Cooperation Council for the Arab States of the Gulf.*** Its success was recognized by the heads of State or Government of the Group of Seven major industrialized countries and the President of the European Commission at the twentieth annual economic summit, held at Naples in July 1994, which supported the continuation of its work for five more years (1994-1999).

21. At the regional level, the Council of Europe is especially active in preparing international legal instruments. Twenty-four States have signed, and eight have ratified,**** its Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime,^{vii} adopted in September 1990 by the Committee of Ministers of the Council of Europe. The convention facilitates international mutual assistance in this field. On 10 June 1991, the Council of the European Communities adopted

*"Front" companies are entities that are legally incorporated (or otherwise organized) and participate, or act under the pretence of participating, in legitimate trade. However, this trade serves primarily as a cover for money-laundering.

**Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.

***Member States are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

****The following eight States have signed and ratified the convention: Bulgaria, Finland, Italy, Lithuania, Netherlands, Norway, Switzerland and United Kingdom. And the following 16 States have signed but not yet ratified it: Australia, Austria, Belgium, Cyprus, Denmark, France, Germany, Greece, Iceland, Liechtenstein, Luxembourg, Portugal, San Marino, Slovenia, Spain and Sweden.

directive 91/308/EEC, on prevention of the use of the financial system for the purpose of money-laundering,^{viii} which provides an excellent model for national measures. Some United Nations entities, the European Commission, the Offshore Group of Banking Supervisors, the Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States and the Commonwealth Secretariat are also active in this area, but they are operating with limited human resources and their activities are often confined to a single region or subject in this area (such as legal assistance).

22. Representatives of the law enforcement agencies concerned, the Customs Co-operation Council (also called the World Customs Organization) and the International Criminal Police Organization (ICPO/Interpol), prepare analyses of money-laundering activities from an operational perspective and develop training programmes for financial investigators. ICPO/Interpol, in collaboration with the World Customs Organization, is developing a financial asset encyclopaedia that will provide information on the domestic legislation of some States in that field, as well as information for operational use. The World Customs Organization, with the support of the United Nations International Drug Control Programme (UNDCP) and ICPO/Interpol, has recently prepared a video aimed at heightening awareness of the growing problem of money-laundering.

D. Role of the United Nations in combating money-laundering

23. In 1994 and 1995, the following conferences, held under the auspices of the United Nations, all dealt with the necessity to introduce effective measures against money-laundering: 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;^{ix} the World Ministerial Conference on Organized Transnational Crime, held at Naples from 21 to 23 November 1994;^x and the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995.^{xi} The two entities of the Secretariat directly concerned with combating money-laundering, namely UNDCP and the Crime Prevention and Criminal Justice Branch, have been given specific mandates to that effect. Those mandates arise from the 1988 Convention in the case of UNDCP and, in the case of both UNDCP and the Branch, from various resolutions of the General Assembly, the Economic and Social Council, the Commission on Narcotic Drugs and/or the Commission on Crime Prevention and Criminal Justice.

24. Action by UNDCP in this field has so far taken place mostly in such areas as providing advice and assistance regarding legislation against money-laundering and assisting countries such as Colombia, Mauritius, Nigeria and Thailand in developing appropriate laws and legal infrastructure. In order to facilitate such assistance, UNDCP has developed model legislation on money-laundering and confiscation. Activities have also concentrated on raising awareness among Member States of the need for action against money-laundering, complementing in this respect the work of the Financial Action Task Force and other relevant entities; some specific activities have been developed, taking into account the limited resources, in some key areas, to start off programmes of action. At the same time, the idea of developing, together with the Crime Prevention and Criminal Justice Branch, a truly global programme of action against money-laundering, has been studied.

25. UNDCP has clear mandates to provide legal and training assistance in the fight against money-laundering. In 1995, in its resolution 9 (XXXVIII), the Commission on Narcotic Drugs requested UNDCP, in cooperation with the Crime Prevention and Criminal Justice Branch, to provide to

requesting States technical assistance in the training of judicial and investigative personnel and assistance in the prevention and control of money-laundering and the illicit transfer of assets.

E. Results achieved to date

26. As of 1 November 1995, 119 States have become parties to the 1988 Convention. None of them has made reservations by directly objecting to provisions against money-laundering. All must therefore introduce the relevant countermeasures.

27. All but one of the members of the Financial Action Task Force, including all of the members of the European Union, have introduced the laws and procedures required by the 1988 Convention and those advocated in the 40 recommendations formulated by the Financial Action Task Force. In addition, an increasing number of States that are not members of the Financial Action Task Force have made it a criminal offence to engage in money-laundering and, with varying degrees of progress, are enacting the necessary laws, primarily to establish cooperation between the financial system and the competent law enforcement agencies, and are setting up the necessary specialized services, particularly to handle reports of suspicious transactions from the financial system. This is the case, for example, in Chile, Czech Republic, Hungary, Poland and Slovenia.

28. Other States, such as Argentina, Bolivia, Israel, Kyrgyzstan, Mauritius, Russian Federation, Thailand and Ukraine, are initiating this process.

29. The introduction of such countermeasures inevitably takes time, mainly because of the parliamentary processes for introducing new machinery. The development of such efforts at the international level is therefore a long-term enterprise. A first step may be accomplished in a shorter time, however, by strengthening the rules for vigilance in the financial sector, rules that normally fall within the scope of internal regulation. Such strengthening makes the financial sector less vulnerable to money-laundering operations and prepares the way for the specialized law enforcement services to be established.

30. Several States have concluded agreements with others on the sharing of seized proceeds and are exploring the possibility of signing other such agreements. In some countries at least part of the value of confiscated proceeds and property is contributed to governmental bodies specializing in the fight against illicit traffic and drug abuse. Although the 1988 Convention encourages States to contribute confiscated proceeds to intergovernmental bodies specializing in the fight against illicit traffic and drug abuse, to date no such contributions have been made to UNDCP.

31. The Financial Action Task Force monitors the implementation of the recommendations by its members. It does this, first, through self-evaluation in the form of detailed questionnaires that are filled out periodically by each member and, secondly, through an original procedure called "mutual evaluation", whereby the legislation and the machinery established in each member State are examined by experts from other member States and by the Financial Action Task Force secretariat. This examination leads to a report that is studied and discussed by all members in a plenary meeting, a summary of which appears in the annual report of the Financial Action Task Force. To date, all member States have been examined and a new round of examinations has started to assess developments and to evaluate the situation in each of them from a better perspective. An identical procedure has been introduced in the Caribbean. The Financial Action Task Force also tries to introduce evaluation procedures in non-member States that are contacted as part of its efforts to heighten awareness.

32. The adoption by States of appropriate, comprehensive legislation can have an immediate effect in hindering money-laundering activities. In general, the analyses carried out, particularly within the Financial Action Task Force and the results obtained in the fight against money-laundering show that the countermeasures introduced lead: first, to the transfer of money-laundering operations, especially in the initial stages, known as "placement" and "layering", to countries that have not introduced controls and/or to banking systems that are not sufficiently regulated and organized; and, secondly, to having recourse to the non-banking financial sector and to the non-financial sector. There is also a refinement of money-laundering methods linked with recourse to financial professionals.

33. Even countries or territories that were once regarded by persons engaging in money-laundering activities as safe havens, with deep-rooted traditions of bank secrecy, are losing their attractiveness to such persons as legislation and countermeasures have recently been introduced in those countries or territories. Examples of such countries or territories are the Cayman Islands, Luxembourg, Monaco and Switzerland.

34. This development has led the Financial Action Task Force to give further thought to so-called "shell",* "front" or "ghost"** companies, to offshore financial havens and to the need to ensure transparency in the ownership of companies.

F. Observations

35. The Board considers that it is important to ensure that the roles of all organizations are complementary and that they cover both the theoretical and practical aspects of combating money-laundering at the international level. General policies should be formulated consistently and countries should be assisted, where necessary, in implementing those policies. While some progress has been made in this direction, the Board notes with concern that no concrete steps have been taken by the international community to effectively coordinate the fight against money-laundering worldwide. As a result, there is an evident lack of universality in the implementation of money-laundering countermeasures and there is no generally applicable instrument for assessing their results.

36. In order to achieve a more universal approach, the Board believes that a comprehensive framework should be established to coordinate measures taken against money-laundering throughout the world. Such a universal framework should include the systematic collection and dissemination of information about the seizure and confiscation of proceeds derived from drug trafficking, as well as mechanisms to monitor the international community's progress in preventing and controlling money-laundering. There should also be a thorough evaluation of the effectiveness of the countermeasures applied in this area. In order to achieve these goals, an appropriate instrument should be adopted that would expand to the international level the type of work done by the Financial Action Task Force in monitoring the implementation of its recommendations among its members. This would make it possible to record the successes of law enforcement in seizing and confiscating proceeds derived from drug trafficking, as has been done for drug trafficking seizures. The Board considers that the United Nations would be the

*"Shell" companies are entities legally established solely for the purpose of a criminal enterprise.

**In contrast to both "front" and "shell" companies, "ghost" companies exist in name only - no form of incorporation documentation is ever filed. "Ghost" companies are fictitious. They most often appear in shipping documents and fund transfer orders as consignees, freight forwarders or other third parties to conceal the ultimate recipients of illicit funds.

logical body to undertake monitoring of progress achieved in preventing money-laundering worldwide and to promote further action in that area.

G. Recommendations

37. As stated above, the international community, regional organizations and States have taken many important steps. Much, however, remains to be done. Therefore the Board recommends that all Governments should:

(a) Become parties to the 1988 Convention and amend their laws and, where necessary, their constitutions in order to implement the 1988 Convention;

(b) Introduce and effectively apply relevant laws against money-laundering, which must include laws on the confiscation of the property of traffickers;

(c) Consider ensuring that the burden of proof is reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, as provided for in the 1988 Convention, article 5, paragraph 7, even if doing so entails adopting legal and/or constitutional amendments;

(d) Implement fully the 40 recommendations formulated by the Financial Action Task Force;

(e) Institutionalize procedures whereby financial institutions report suspicious transactions to a specialized body; and consider extending a similar reporting system to professions engaged in financial activities and persons engaged in the sale of expensive goods;

(f) Set up specialized units to investigate and prosecute money-laundering;

(g) Strengthen regulations governing companies so as to make ownership and control more transparent and to facilitate cooperation with law enforcement agencies that fight money-laundering;

(h) Strengthen international cooperation in the fields of mutual legal assistance and law enforcement assistance;

(i) Consider establishing a comprehensive worldwide framework to more effectively coordinate action against money-laundering;

(j) Cooperate worldwide in evaluating procedures such as those developed by the Financial Action Task Force;

(k) Introduce a worldwide system for recording and reporting seizures of proceeds derived from drug trafficking;

(l) Conclude agreements with other Governments on the sharing of confiscated illicit proceeds, since this is a way to promote the willingness of Governments to investigate and share information on money-laundering activities;

(m) Contribute part of the value of confiscated proceeds and property to governmental and intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances.

H. Concluding remarks

38. The Board notes the different levels of progress so far achieved by Governments in the implementation of money-laundering countermeasures. It encourages Governments of countries with already functioning systems to assist those that have not been able to introduce such measures and/or to increase their support of UNDCP activities in this field.

39. The Board encourages all Governments and concerned international organizations to continue their efforts in developing the most appropriate mechanisms to detect, prosecute and prevent money-laundering activities. The time may have come to consider activities that could culminate in a legally binding international instrument that would deal more specifically with measures against money-laundering.