

## FOREWORD

The Council of Europe has had a long engagement with the anti-money laundering issue. In 1980 it adopted the first international instrument against money laundering (Recommendation No. R (80) 10 on measures against the transfer and the safekeeping of funds of criminal origin). Since then it has taken this issue forward on three fronts: as an international standard setter, through two conventions – the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the Warsaw convention, CETS No. 198); as a monitor of the effectiveness of anti-money laundering and countering the financing of terrorism (AML/CFT) measures, through the Council of Europe’s primary AML/CFT monitoring mechanism (MONEYVAL), under which 28 Council of Europe States (plus Israel) are currently evaluated, and also through the “Conference of the Parties”, which monitors compliance by state parties with the Warsaw convention; and as a provider of technical assistance, which is frequently based on Council of Europe monitoring reports.

Money laundering is the process by which criminal proceeds are sanitised to disguise their illicit origins. It is an international problem which confronts governments and policy makers worldwide. Criminals, whether drug barons in South America or organised crime groups and human traffickers in Europe, all have one thing in common. They need to distance themselves from their crimes by finding safe havens for their profits, where they can appear to be legitimate. Given the speed with which money moves around the globe, the problem requires common international solutions.

At the domestic level, states need to implement robust preventative legislation and ensure that it is properly enforced by all those with AML/CFT obligations. This needs to be complemented by effective prosecution of money launderers, particularly those third parties that launder money professionally on behalf of organised crime groups and others who commit major profit-generating crime. This needs to be backed up by proactive identification, tracing and early freezing of criminal assets and followed by deterrent confiscation orders.

For many years, the Council of Europe has promoted stronger action by states on these matters, particularly in the context of the fight against organised crime. Estimates suggest that of all the billions of dollars and euros laundered worldwide, most is laundered by, or on behalf of, organised crime groups. Money laundering provides them with their cash flow and investment capital, which consolidates their economic power base,

allowing them to penetrate the legitimate economy. Moreover, a concentration of economic power by organised crime can, through the use of corruption and influence, easily infect the political process. Therefore there are serious risks for the rule of law and democracy in not attacking the power of organised crime by fighting money laundering.

Money laundering, of course, also matters economically, as it poses immediate threats to global financial institutions. The financial system depends on confidence. If financial institutions become known to be associated, however inadvertently, with criminal money, they are vulnerable: confidence can be undermined, leading to collapse, failure and multiple losses to investors.

The recent global economic crisis underlines how vulnerable the financial system is when confidence is damaged.

Misuse of the financial system is not, however, limited to money laundering schemes designed to maximise proceeds from crimes which have already been committed. The financial system can also be misused to fund future terrorist atrocities and terrorism generally. In the wake of the attacks on the United States of America on 11 September 2001, the international community rapidly recognised the important similarities between the processes involved in money laundering and terrorist financing. Professor Gilmore's book explains how international action to counter money laundering has been developed in the last 10 years into a combined agenda to tackle both money laundering and terrorist financing.

This edition naturally addresses the role and work of the Financial Action Task Force (FATF), which remains the leading global standard setter in this area, and of which MONEYVAL became an associate member in 2006. The book charts the development of a fully interdependent global network of assessment bodies which now collectively (together with the international financial institutions) ensure that these issues are carefully monitored in almost all regions of the world. It describes also the collaborative work that is now being done by the FATF, MONEYVAL and other associate members of the FATF responding to the G20 call in 2009 to identify countries that potentially pose risks to the global financial system.

Previous editions of this work have described the European Union's engagement with these issues. Since the last edition, the European Union's third Money Laundering Directive (Directive 2005/60/EC) has been brought into force. This important new standard, putting into hard law for European Union countries much that is in the 2003 FATF recommendations, also builds further on these standards in some important respects. These developments are fully analysed.

The new and ambitious Council of Europe treaty in this area – the Warsaw convention – is also covered in some detail. This is a comprehensive anti-money laundering and combating the financing of terrorism convention. It covers preventative measures, including the important role that financial intelligence units (FIUs) now play. This convention also contains new domestic legal measures to facilitate the more effective prosecution of money laundering and application of confiscation in major proceeds-generating cases, based in part on the experience derived from MONEYVAL evaluations. Like the 1990 convention, the Warsaw convention also covers international co-operation (both at the judicial level and co-operation between FIUs).

Professor Gilmore's fourth edition of *Dirty money* is very timely. It brings together all recent developments and current challenges in the fight against money laundering and financing of terrorism, and places them in their historical context. It should be required reading for all those who are wrestling with these increasingly complex problems professionally. It is also recommended reading for anyone who simply wishes to learn more about how the international community has responded to these truly global threats.

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## CHAPTER I – TRANSNATIONAL AND ORGANISED CRIME: THE CONTOURS OF THE PROBLEM

### The context

In the course of the past 30 years or more there has been ever-growing public anxiety and political concern with the threat posed by modern and sophisticated forms of transnational criminal activity. In stark contrast with the 19th century when issues of criminal justice policy were thought of in almost exclusively national terms, the need for enhanced international co-operation and co-ordination in this sphere now occupies an important position on the political agenda. This represents an inevitable recognition of the fact that reliance on unilateral domestic legislative and law enforcement measures is no longer sufficient. As Peter Wilkitzki has aptly remarked, “no domestic criminal legislator can afford to treat crime merely as a national phenomenon”.<sup>1</sup>

Among the factors which have contributed to the growth of cross-border criminal activity pride of place must go to the technological revolution witnessed since the end of the Second World War.<sup>2</sup> While this has brought about countless benefits of an economic and social nature, as with the growth in world trade and international travel, it has also provided the criminal entrepreneur with new opportunities and wider geographic horizons. As has been noted elsewhere:

Modern technology has provided new impetus not only to legitimate trade and commerce, but also to criminal business enterprises. Thus, mass communications have facilitated contacts with associates in other countries and continents, modern banking has facilitated international criminal transactions, and the modern revolution in electronics has given criminal groups access to new tools enabling them to steal millions and to launder the huge illicit profits.<sup>3</sup>

Wider opportunities to engage in trans-border illicit conduct are also emerging in several parts of the world as a consequence of the enhanced mobility of individuals and the decreasing significance of national frontiers brought about by economic integration movements and similar factors. This is perhaps most obviously the case for the member states of the European Union (EU) as they seek to come to terms with the criminal justice implications flowing from the creation of a single internal market and the free movement of goods, people, services and capital which it ensures.

Notwithstanding the absence of comprehensive data on the scale of trans-frontier crime in the EU, and the widely acknowledged difficulty of quantifying the contribution of border controls to law enforcement and crime deterrence, the member states have accepted the need to take action to minimise the possibilities of abuse by criminal elements of a Europe without internal borders.<sup>4</sup> Indeed, Title VI of the Treaty of European Union (the Maastricht Treaty) underlined the importance of this dimension of the integration movement by specifically acknowledging that justice and home affairs were to be treated as matters of common concern.<sup>5</sup> Concrete expression has been given to this commitment to improve co-operation and co-ordination in a number of ways including the creation of a law enforcement body, known as Europol, charged with co-ordinating the exchange and analysis of police intelligence. As will be seen in greater detail in chapter VIII, while the initial mandate of Europol was restricted to drug trafficking and related money laundering it has since been broadened to include a large number of other areas of serious crime possessing a transnational dimension. Further significant compensatory law enforcement measures have been agreed and the area of judicial co-operation is in the process of being transformed through the ever-increasing use of the concept of mutual recognition.<sup>6</sup> While the criminal justice dimension to regional economic integration is at its most advanced within the EU it is not, however, an exclusively European issue. Its wider significance can, for example, be seen in the acceptance of the need for greater co-operation in criminal matters to compensate for increased freedom of movement within the Economic Community of West African States.<sup>7</sup>

This is not to say that the concept of international co-operation in criminal matters is itself new. For example, the 19th century witnessed the beginnings of the modern system of extradition which continues to provide the basic international mechanism for the return of fugitives who have sought refuge abroad to face justice in the territory where the crime was in fact committed. At much the same time the international community started, on a modest scale, to negotiate agreements designed to combat crimes of particular concern. To early examples of treaty based action to counter such abuses as the slave trade and forgery of currency have been added, particularly since 1945, a growing list of international instruments dealing with such diverse subjects as terrorist offences, genocide and apartheid.<sup>8</sup> There are, in addition, well-established structures for co-operation among law enforcement authorities. These include, among others, the International Criminal Police Organization (ICPO/Interpol) with its headquarters in Lyons, France<sup>9</sup> and the Brussels-based World Customs Organization (formerly the Customs Co-operation Council).<sup>10</sup> However, the high political priority currently accorded to the subject is of relatively recent origin. This change can be attributed in large measure to the enhanced level of appreciation of the magnitude and complexity of

the problem which emerged in the early 1980s when international concern came to focus on the threat posed by the international drugs trade.

That international drugs trafficking emerged as a central issue of concern for the world community was not merely a result of the escalating nature of the problem of drug abuse. It was also, and importantly, a reflection of an enhanced understanding of its negative social impact, its distortive effects on economies, and its implications for domestic political stability. The extent of the societal threat posed by trafficking syndicates was clearly demonstrated in Colombia in the late 1980s and early 1990s and seen most vividly in the murder, at the behest of the powerful cocaine cartels, of some of that country's leading politicians, judges and journalists. Less visible, but equally serious, were the efforts to penetrate and corrupt the central organs of state power. In its most extreme form, as evidenced by the US invasion of Panama, undertaken to remove General Noriega from power, the drugs trade can even pose an indirect threat to the maintenance of international peace and security.

In addition, drugs trafficking is by its nature global in character, requiring the international movement of products from producer countries to the major drug consumer nations. For example, cocaine produced mainly in South America must be shipped through the transit countries of the Caribbean and Central America to reach its major market in the United States. Similarly, heroin, originating primarily in the Golden Triangle of South-East Asia and the Golden Crescent of south-west Asia must be moved, by land, air or sea, to meet demand in North America and western Europe. In the case of the latter, most of the product has traditionally been exported by road using increasingly diverse routes and posing major problems for the democracies of central and eastern Europe.

It would, however, be unduly simplistic to think merely in terms of a movement from producer countries in the developing world to consumers located in the advanced industrialised economies. Producer and transit countries have their own, increasingly serious, problem of drug abuse. Furthermore, Europe is a major exporter of psychotropic substances to other regions of the world including Africa.<sup>11</sup> Another illustration of the geographical complexity of the situation is the dependence of developing country drug producers on the chemicals, manufactured primarily in the industrialised world, which are essential to the process of converting the coca leaf into refined cocaine and raw opium into heroin. For example, a kind of "reverse Balkan route" exists to facilitate the transfer of precursor and essential chemicals, particularly acetic anhydride, from Europe, through the southern borders of Turkey to the Persian Gulf states and the nations of south-west Asia.

For these reasons, among others, the drugs trade came to be universally recognised as a global problem requiring a global solution. Given this fact, major emphasis throughout the 1980s was placed on the need to improve the effectiveness and extend the scope of international co-operation in this area. One major achievement in this regard was the conclusion in Vienna in December 1988 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the 1988 UN convention). This important international agreement, which is examined in chapter III of this book, has attracted the participation of the overwhelming majority of states including many of the most important source, transit and consumer countries.

Subsequently, the members of the world community expanded their area of concern to encompass other forms of transnational criminal activity; initially organised crime, more recently corruption. In so far as the former is concerned, a major stimulus was provided by developments in central and eastern Europe. The end of the Cold War, the dissolution of the Warsaw Pact, and the disintegration of the Soviet Union were events of major global significance. They also brought about unparalleled opportunities and challenges for the states concerned and their people as domestic political structures moved swiftly to embrace both liberal democracy and entrepreneurial capitalism.<sup>12</sup> Of the many problems confronted by these states in the period of transition one of the most serious, least wanted and most heavily publicised, had to do with crime. In essence, the traumatic economic and political changes had the unintended but perhaps inevitable effect of increasing the potential for crime; opportunities which were enthusiastically seized upon by criminal elements.

In the overall context of this work one of the most alarming features was the emergence (in some cases the resurgence) of powerful organised crime groups which exploited the opportunities presented by the decline of existing structures of authority and legitimacy to further their own ends. Nowhere was the severity of this threat more obvious than in the Russian Federation. As a 1994 UN report was to explain:

Perhaps the most striking recent example of the way in which transnational criminal organisations can thrive in an environment of political, social and economic upheaval can be seen in the States of the former Soviet Union. Russian criminal organisations are not new, but the demise of the Communist Party, the disintegration of the Soviet Union, and the collapse of the criminal justice system clearly produced conditions that were highly conducive to the consolidation of existing criminal organisations and the emergence of new ones.<sup>13</sup>

The growing importance attached by governments to this issue was well illustrated in November 1994 by the convening, under the auspices of the UN, of the World Ministerial Conference on Organized Transnational Crime in Naples, Italy. There, the threat posed by the activities of such



crime groups was regarded as both serious and increasing. It was perceived to pose a threat to sovereignty, to national authority and state control, to democratic values and public institutions as well as to national economies, financial institutions and individuals. All states, including developing countries and nations in transition from communist rule to democratic governance, were seen to be vulnerable.<sup>14</sup>

In spite of such shared perceptions of the nature of the problem the conference was unable to resolve one fundamental issue; namely, the absence of a universally agreed definition of organised crime.<sup>15</sup> This difficulty, solved only six years later with the conclusion of the UN Convention against Transnational Organized Crime, stemmed not only from differences in national legal approaches and traditions but also from the considerable variations which exist among the groups themselves. There is no single model. As has been pointed out elsewhere:

The groups vary in shape and size and in skills and specialisations. They operate in different geographical domains and different product markets and use a variety of tactics and mechanisms for circumventing restrictions and avoiding law enforcement. Transnational criminal organisations range from highly structured organisations to more fluid and dynamic networks.<sup>16</sup>

While some forms of organised crime groups are involved primarily in one form of criminal activity, others engage in diverse activities. These range from traditional fields such as gambling, extortion, prostitution, counterfeiting and arms trafficking, to emerging areas like environmental crime, computer-related crime, the theft of technology, industrial espionage and copyright infringement. A particular concern for the world community is the involvement of a number of crime groups in criminal activities which have a major international dimension such as the smuggling of illegal migrants, the theft and smuggling of vehicles and money laundering.<sup>17</sup>

In addition to a highly diversified “product base”, the most mature of these criminal syndicates have developed extremely complex organisational structures, reminiscent of multinational corporations, which are designed to maximise profits and minimise risks. This analogy with international businesses can greatly assist an understanding of the forces which have helped the growth of this form of criminality. As two leading Australian scholars have stated:

Just as the move to corporate identity allowed capitalism to flourish, the move to organised crime allows crime to flourish. Economies of scale and limited liability operate within criminal organisations just as they operate in corporate organisations such as General Motors. Both systems reward entrepreneurship, and profit maximisation is the ultimate goal of both enterprises. Costs are internalised, and the possibility of monopolistic pricing is ever present.<sup>18</sup>

Notwithstanding such diversity, several organisations have attracted particular attention. Selected because of their involvement in operations which cross national boundaries, this priority group includes long-established networks such as the Chinese Triads, the Colombian cartels, the Japanese Yakuza and the Sicilian Mafia. Also of concern are newer groups with home bases in Mexico, the Caribbean, west Africa and central and eastern Europe.<sup>19</sup>

Although the threat posed by these organisations is greatest in their home countries, an increasing ability and willingness to operate across international frontiers in the pursuit of profit means that few states are completely unaffected by their activities. By way of illustration, “[g]roups like the Sicilian Mafia are spreading their activity into both Western and Eastern Europe, in addition to maintaining their traditional connections in the Americas”.<sup>20</sup> Similar concerns are attached to the internationalisation of the activities of Russian and other central and eastern European organised crime groups and their impact.

One illustration of such east-west linkages in Europe is to be seen in the area of drug trafficking.<sup>21</sup> Other aspects of the east-west crime flow relate to involvement in a range of activities including the smuggling of illegal migrants and transborder prostitution. Some of the crime opportunities which have been exploited, however, go in the reverse direction. This is reflected, for example, in the west-east movement of luxury cars stolen in Germany and other western European countries.<sup>22</sup>

Evidence also suggested an increasing degree of co-ordination and co-operation between such groups. As the 1994 Naples Conference was informed:

Like transnational corporations, transnational criminal organisations are entering more and more frequently into strategic alliances. ... Strategic alliances permit them to co-operate with, rather than compete against, indigenous entrenched criminal organisations, enhance their capacity to circumvent law enforcement, facilitate risk sharing, make it possible to use existing distribution channels, and enable criminal organisations to exploit differential profit margins in different markets.<sup>23</sup>

This phenomenon was clearly illustrated by Operation Green Ice. This was an undercover police operation which “revealed evidence of collusion between the Colombian cocaine cartels and organised crime groups in Italy for the importation and distribution of cocaine into Europe”.<sup>24</sup> It was brought to a conclusion in late September 1992 with co-ordinated police raids in Canada, the Cayman Islands, Colombia, Costa Rica, Italy, Spain, the United Kingdom and the United States. In the words of the US Department of State: “The raids resulted in seizures of \$47.7 million, and the freezing of 140 bank accounts containing \$7.3 million, and dozens of arrests”.<sup>25</sup>

That this is not an isolated example of co-operation is clear. For instance, a 1999 report of the Financial Action Task Force on Money Laundering (FATF) noted the formation of new alliances between Colombian drug traffickers and Russian organised crime groups.<sup>26</sup>

Also worthy of note in this context was the increasing recognition throughout the 1990s of the close relationship between organised crime and corruption. At the 21st Conference of European Ministers of Justice, held in Prague in June 1997, the Minister of Justice of the Czech Republic articulated the link between them as follows:

In many cases ... corruption is indeed one of the basic accompanying phenomena of organised crime. Organised crime tries, through corruption, to obtain the information it seeks, to minimise the risk of being subject to law enforcement measures and to acquire decisive influence in society. Organised crime has at its disposal considerable financial means, thus giving uncontrolled dimensions to corruption. If these phenomena are not effectively tackled and if, rather to the contrary, conditions are created even if inadvertently for their growth, the forms of corruption stemming from organised crime may endanger the very foundations of society, and official government structures may become mere puppets in the hands of the criminals.<sup>27</sup>

As will be seen in chapter III, the need to address these issues in combination has become the new orthodoxy; a fact well illustrated by the UN Convention against Transnational Organized Crime which entered into force in September 2003.<sup>28</sup>

## **The strategy**

The drugs trade and organised crime are not only international in character, they are also exorbitantly profitable.<sup>29</sup> While it is notoriously difficult to estimate with any precision the sums generated by such activities, all indications are that they are enormous. As the Director-General of the UN Office in Vienna noted in opening the 1988 Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances: "The amount of money involved in illicit drug trafficking was staggering. A single drug, cocaine, was worth billions of dollars on the illicit market. In some cases, the astronomical profits of the drug trade were used to create alternative economies and to undermine legislative and political systems."<sup>30</sup> Although a large number of individuals are involved at the many differing levels of this illicit trade, "most of the gains go to a rich, small elite that has come to wield impressive economic and political power. Some members are believed to have a personal worth that exceeds their country's national debt".<sup>31</sup>

The difficulties in seeking to make estimates in the context of organised crime more generally are even greater. As a June 1996 expert report explained:

The Italian Mafia, the Japanese Yakuza, the Colombian cartels, Russian and eastern European criminal enterprises, American ethnic groups and other, similarly structured groups are involved in a wide range of criminal activities. In addition to drug trafficking, these enterprises generate funds from loan sharking, illegal gambling, fraud, embezzlement, extortion, prostitution, illegal trafficking in arms and human beings, and a host of other offences.<sup>32</sup>

Increasingly, domestic and international law enforcement strategies have come to emphasise the need to focus on the financial aspects of these forms of crime; that is, to target the huge profits which have been aptly described as “the lifeblood of organised and transnational crime”.<sup>33</sup> Somewhat surprisingly, however, even in the early 1980s the necessary legal framework to permit effective action against organised crime through “financial devastation” was found to be lacking in most domestic legal systems and it was totally absent at the international level. Two central tools are now widely acknowledged to be required in order to give effect to this strategy. First, the criminal justice system must make provision for an efficient and effective method of tracing, freezing and eventually confiscating the proceeds derived from criminal activity. While some countries have had at least a limited ability to take such action for some time, legislation to permit the confiscation of criminal proceeds has become popular only in the course of the last 20 years.<sup>34</sup>

The second basic requirement is that modern legislation must be enacted which both criminalises and counters the process known as money laundering. The term “money laundering” is one of fairly recent vintage. It appears to have first been coined by American law enforcement officials and to have entered popular usage during the Watergate inquiry in the United States in the mid-1970s.<sup>35</sup> The expression seems to have been used in a judicial or legal context for the first time, again in the United States, only in 1982 in the case of *US v. \$4,255,625.39*.<sup>36</sup> Since then it has become widely accepted as a term of art at both the international and domestic level, being extensively used, for example, in the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime – an important initiative examined in chapter VII – and in subsequent global and regional treaty instruments. As Tom Sherman, the former Chairperson of the Australian National Crime Authority, has explained: “Money laundering is the process of converting or ‘cleansing’ property, knowing that such property is derived from serious crime, for the purpose of disguising its origin. The concept of money laundering generally covers those who assist that process and ought reasonably to be aware that they are assisting such a process.”<sup>37</sup> Here again

the vast majority of the members of the international community lacked appropriate domestic legal remedies. For instance, in the United States the phenomenon of money laundering was addressed for the first time in the Bank Secrecy Act of 1970 and was criminalised as such only in October 1986 with the enactment of the Money Laundering Control Act. Similarly, in the United Kingdom a modern legal framework for drug-related money laundering had to await the passage of the Drug Trafficking Offences Act 1986 and the Criminal Justice (Scotland) Act 1987.

Over the last two decades or more, and initially as a result of the 1988 UN drug trafficking convention, the need for a modern anti-money laundering strategy has become widely accepted in both law enforcement and policy-making circles; so much so that it was characterised as “the white collar crime of the 1990s ...”.<sup>38</sup> As Nadelmann pointed out: “It was perceived as essential both to identifying and prosecuting the higher-level drug traffickers who rarely if ever came into contact with their illicit goods, and to tracing, seizing and forfeiting their assets.”<sup>39</sup> Progress in this area is also seen to be a critical element in the fight against organised crime and, increasingly, as crucial in efforts to combat corruption. Consequently money laundering countermeasures have been afforded a central position in global and regional programmes, political declarations and treaties including, importantly, the 2003 UN Convention against Corruption.<sup>40</sup>

A further impetus for action has come from the increasing recognition of the negative impact which vast flows of “dirty money” can have on the financial sector. Here we are also confronted with serious difficulties in formulating estimates of any reliability and all such efforts must be regarded with caution.<sup>41</sup> However, the common perception in governmental circles is that the amounts in question are very substantial. For instance, in 1990 the FATF, the work of which is examined in chapters IV, V and VI, estimated that as much as US\$85 billion could be available annually for laundering and investment from the proceeds of drug trafficking in the US and Europe.<sup>42</sup> A March 1998 report released by the US State Department’s Bureau for International Narcotics and Law Enforcement Affairs placed the annual value of laundered funds derived from all crimes at between US\$300 and US\$500 billion. Similarly, in a February 1998 speech in Paris the Managing Director of the International Monetary Fund (IMF) underlined the magnitude of the issue of criminal profits in these words: “While we cannot guarantee the accuracy of our figures ... the estimates of the present scale of money laundering transactions are almost beyond imagination – 2 to 5% of global GDP would probably be a consensus range.”<sup>43</sup>

It is widely acknowledged that these are but very rough estimates (a fact highlighted by the abandonment in 2000 of a FATF initiative to develop a methodologically sound basis for calculating the magnitude of money laundering).<sup>44</sup> However, for present purposes such uncertainty is not fatal. As

Evans has remarked: "Fortunately there is no particularly compelling reason to spend much time on estimates. It is abundantly clear that the proceeds of crime have reached unacceptable levels and that action must be taken to contain criminal profits."<sup>45</sup>

The apparent magnitude of the sums involved has stimulated concern about the adverse consequences which flow from the investment of the substantial profits derived from crime in the legitimate economy and the degree of power and control which results. As Lamberto Dini, the then Italian Minister of the Treasury, remarked in June 1994: "The social danger of money laundering consists in the consolidation of the economic power of criminal organisations, enabling them to penetrate the legitimate economy."<sup>46</sup>

It is, for instance, a commonly expressed view that the Mafia in Italy derives more income from its "legitimate" business interests than from its criminal activities. Although such businesses will, like any other, create wealth and employment, their control by criminal elements poses a number of difficulties and dangers. As one leading law enforcement official has remarked: "There are clear signs that when organised crime invests in legitimate business activity it will attempt to dominate that market and engage in predatory pricing, extortion and corruption. In other words, the organised criminal is not content simply with legitimate profit but to maximise profit, by fair means or foul."<sup>47</sup>

Also of interest in this context is the fact that increasing attention is now being paid to the possible impact of money laundering activities on the world financial system. As Vito Tanzi was to explain in an influential 1996 IMF working paper:

The international laundering of money has the potential to impose significant costs on the world economy by (a) harming the effective operations of the national economies and by promoting poorer economic policies, especially in some countries; (b) slowly corrupting the financial market and reducing the public's confidence in the international financial system, thus increasing risks and the instability of that system; and (c) as a consequence ... reducing the rate of growth of the world economy.<sup>48</sup>

Over the years the G7/8 countries, and more recently the G20, have ensured that such issues were afforded a high priority by governments, international financial institutions and other relevant actors.<sup>49</sup>

A final, and critical, element of the strategy to counter money laundering flows from the international nature of the crimes in question and the extent to which criminals resort to the use of the global financial system in an effort to launder their funds and protect them from possible confiscation by law enforcement. Thus, close international co-operation is recognised

as essential. The ultimate overall goals of such international action “are to make the environment for transnational criminal organisations hostile and inhospitable, to infiltrate, disrupt, and destroy the network structures on which many of these organisations are based, and to make continued transnational criminal activities as difficult and as costly as possible”.<sup>50</sup>

As will be seen in some detail in chapter V, this strategy of financial devastation has, particularly since the events of 11 September 2001, been employed in the fight against terrorism. The underlying philosophy has been explained thus:

A successful terrorist group, like any criminal organisation, is ... necessarily one that is able to build and maintain an effective financial infrastructure. For this it must develop sources of funding, a means of laundering those funds and then finally a way to ensure that the funds can be used to obtain material and other logistical items needed to commit terrorist acts.<sup>51</sup>

In seeking to exploit this area of potential vulnerability, all of the dimensions of the strategy have been brought into play. That said, particular attention has been devoted to the campaign to freeze the funds and other assets of terrorists, terrorist organisations and those who finance them. In addition to the immediate impact on the funds in question an effective freezing regime is also thought to combat terrorism by:

- deterring non-designated parties who might otherwise be willing to finance terrorist activity;
- exposing terrorist-financing “money trails” that may generate leads to previously unknown terrorist cells and financiers;
- dismantling terrorist-financing networks by encouraging designated persons to disassociate themselves from terrorist activity and renounce their affiliation with terrorist groups;
- terminating terrorist cash flows by shutting down the pipelines used to move terrorist-related funds or other assets;
- forcing terrorists to use more costly and higher risk means of financing their activities, which makes them more susceptible to detection and disruption; and
- fostering international co-operation and compliance with obligations under UN Security Council Resolution 1267 (1999) and UN Security Council Resolution 1373 (2001).<sup>52</sup>

## Notes: I

1. Wilkitzki, P, "Development of an Effective International Crime and Justice Programme – a European View", in Eser, A and Lagodny, O (eds), *Principles and procedures for a new transnational criminal law*, Freiburg, Eigenverlag MPI, 1992, p. 267, at p. 270.
2. "Problems and Dangers Posed by Organised Transnational Crime in the Various Regions of the World", UN Doc. E/CONF. 88/2, 18 August 1994, p. 8.
3. "The Impact of Organised Criminal Activities Upon Society at Large: Report of the Secretary-General", UN Doc. E/CN.15/1993/3, 11 January 1993, p. 4.
4. See, for example, Bruggeman, W, "Transnational Crime: Recent Trends and Future Prospects", in Cullen, P and Gilmore, W (eds), *Crime sans frontières: international and European legal approaches*, Edinburgh, Edinburgh University Press, 1998, p. 85.
5. See generally, Anderson, M, et al., *Policing the European Union*, Oxford, Oxford University Press, 1995.
6. See, for example, Peers, S, *EU justice and home affairs law*, 2nd ed, Oxford, Oxford University Press, 2006. See also, Mitsilegas, V, *EU Criminal Law*, Oxford, Hart Publishing, 2009; and Fletcher, M, et al, *EU Criminal Law and Justice*, Cheltenham, Edward Elgar, 2008.
7. See, for example, Gilmore, W (ed.), *Mutual assistance in criminal and business regulatory matters*, Cambridge, Cambridge University Press, 1994, at pp. ix-x.
8. See, for example, Clark, R, "Offences of International Concern: Multilateral State Treaty Practice in the Forty Years Since Nuremberg", *Nordic Journal of International Law*, 1988, at pp. 49-119; and Currie, R, *International and Transnational Criminal Law*, Toronto, Irwin Law, 2010, Ch. 7.
9. See generally, Anderson M, *Policing the world: Interpol and the politics of international police cooperation*, Oxford, Oxford University Press, 1989.
10. See, Rigdon, A, "Aspects of International Police and Customs Cooperation", in *Action against transnational criminality: papers from the 1992 Oxford conference on international and white collar crime*, London, Commonwealth Secretariat, 1993, pp. 83-88.
11. See, for example, Council of Europe Doc. P-PG/Psychotropes (93) 3, 22 March 1993.
12. Joutsen, M, "Crime Trends in Central and Eastern Europe", Council of Europe Doc. PC-TP (94) 13, p. 1.
13. *Supra*, note 2, p. 10.
14. See, *ibid.*, at pp. 24-29.
15. See, UN Doc. E/CONF./88/L.3/Add.1, 23 November 1994, at pp. 3-4. See also, European Parliament, "Report of the Committee on Civil Liberties and Internal Affairs on Criminal Activities in Europe", Doc. EN/RR/244/244371, 27 January 1994, at p. 9. There was, however, some harmonisation of approach



- within the law enforcement community. See, for example, the memorandum submitted by Interpol and reproduced in House of Commons, Home Affairs Committee, "Organised Crime", HC Paper 18-II, 1994-95, at p. 150. See also, Anderson, M, "Control of Organised Crime in the European Community", Working Paper IX, A System of European Police Co-operation after 1992, Department of Politics, University of Edinburgh, 1993, at p. 6; *supra*, note 3, at pp. 2-3; and, Nilsson, H, "Future Corruption Control in Europe", paper presented at the Fifth International Anti-Corruption Conference, Amsterdam, 7-12 March 1992 (typescript), at p. 3.
16. *Supra*, note 2, pp. 10-11.
  17. See, *ibid.*, at pp. 16-22.
  18. Fisse, B and Fraser, D, "Some Antipodean Skepticisms About Forfeiture, Confiscation of Proceeds of Crimes, and Money Laundering Offenses", *Alabama Law Review*, 1993, p. 737, at p. 738.
  19. See, Savona, E and De Feo, M, "Money Trails: International Money Laundering Trends and Prevention/Control Policies", paper presented to the International Conference on Preventing and Controlling Money Laundering and the Use of the Proceeds of Crime: A Global Approach, Courmayeur Mont Blanc, Italy, 18-20 June 1994 (hereafter the 1994 conference) (typescript), at pp. 10-16. Since reproduced in Savona, E U (ed.), *Responding to money laundering: international perspectives*, Amsterdam, Harwood Academic Publishers, 1997. Subsequent references are to the original.
  20. *Ibid.*, p. 90.
  21. See, Gregory, F, "Unprecedented Partnerships in Crime Control: Law Enforcement Issues and Linkages Between Eastern and Western Europe Since 1989", in Anderson, M and den Boer, M (eds), *Policing across national boundaries*, London, Pinter Publishers, 1994, p. 85, at p. 96.
  22. See, for example, Adamoli, S et al., *Organised crime around the world*, Helsinki, Heuni, 1998, at pp. 51-52.
  23. *Supra*, note 2, p. 23.
  24. Sherman, T, "The Internationalisation of Crime and the World Community's Response", in *Action against transnational criminality: papers from the 1993 Oxford conference on international and white collar crime*, London, Commonwealth Secretariat, 1994, p. 1, at p. 5.
  25. US Department of State, "International Narcotics Control Strategy Report: Executive Summary", Washington DC, 1993, p. 111. See also, Wilson, G, "The Changing Game: The United States Evolving Supply-Side Approach to Narcotics Trafficking", *Vanderbilt Journal of Transnational Law*, Vol. 26, 1994, p. 1163, at pp. 1204-1206.
  26. See, "Financial Action Task Force on Money Laundering: 1998-1999 Report on Money Laundering Typologies", Paris, FATF, at p. 16.
  27. Council of Europe Doc. MJU-21 (97) 1, p. 3.

28. See further, chapter III below.
29. See, Fisse and Fraser, *op. cit.*, at p. 739.
30. UN Doc. E/CONF.82/SR.1, p. 3.
31. "International Narcotics Control", US Department of State Dispatch (10 September 1990), p. 83, at p. 85.
32. "Financial Action Task Force on Money Laundering: Annual Report 1995-1996", Paris, FATF, Annex 3, p. 2.
33. "Control of Proceeds of Crime: Report of the Secretary-General", UN Doc. E/CN.15/1993/4, 25 January 1993, p. 6.
34. See, *ibid.*, at p. 18.
35. See, Vallance, P, "Money Laundering: The Situation in the United Kingdom", paper presented to the Council of Europe Money Laundering Conference, Strasbourg, France, 18-30 September 1992 (typescript), at p. 1.
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39. Nadelmann, E, *Cops across borders: the internationalization of US criminal law enforcement*, Pennsylvania, Pennsylvania State University Press, 1994, p. 388.
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42. See, Gilmore, W (ed.), *International efforts to combat money laundering*, Cambridge, Cambridge University Press, 1992, p. 4, at p. 6.
43. "Financial Action Task Force on Money Laundering: Annual Report 1997-1998", Paris, FATF, Annex A, p. 37.
44. See, "Financial Action Task Force on Money Laundering: Annual Report 1999-2000", Paris, FATF, at pp. 26-27.
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46. Dini, L, "Opening Remarks" to the 1994 conference, *supra*, note 19 (type-script), p. 2.
47. Sherman, *supra*, note 37, p. 13.
48. Tanzi, V, "Money Laundering and the International Financial System", IMF Working Paper, WP/96/55, May 1996, p. 2. See also, Quirk, P, "Macroeconomic Implications of Money Laundering", IMF Working Paper, WP/96/66, June 1996.
49. This area has been particularly prominent in the work of the G7 since 1998 with special emphasis being placed on the difficulties posed by so-called "off-shore financial centres" and on encouraging international financial institutions to play a more proactive role in relevant spheres of activity. See, Scherrer, A, *G8 against Transnational Organised Crime*, Farnham, Ashgate, 2009.
- 50 "The Feasibility of Elaborating International Instruments, Including Conventions, against Organised Transnational Crime", UN Doc. E/CONF. 88/6, 29 September 1994, p. 2.
51. "Guidance for Financial Institutions in Detecting Terrorist Financing Activities", FATF-XIII, PLEN/39.REV 1, Paris, FATF, p. 2.
52. "Freezing of terrorist assets: international best practices", Paris, FATF, 2003, p. 2. This guidance has since been further developed and refined most recently in June 2009.