UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.15/1996/3
3 April 1996

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Fifth Session
Vienna, 21-31 May 1996
Item 3 of the provisional agenda*

REVIEW OF PRIORITY THEMES

Control of the proceeds of crime

Report of the Secretary-General

Summary

The present report, submitted in pursuance of Economic and Social Council resolutions 1994/13 of 25 July 1994 and 1995/11 of 24 July 1995, provides an overview of the multidimensional and challenging problems associated with the proceeds of crime, and examines them from the perspective of Governments. It also summarizes international, regional and other initiatives for the prevention and control of the laundering of the proceeds of crime and the control of such proceeds, and describes the role of the United Nations in promoting

*E/CN.15/1996/1.

V.96-82055T

CONTENTS

INTRODUCTION

1. The Economic and Social Council, in its resolution 1994/13 of 25 July 1994, requested the Secretary-General to establish and maintain close cooperation with Member States, intergovernmental organizations and other entities active in the field of controlling the proceeds of crime, including the regular exchange of information.

2. The Council also requested the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice, at its fifth session, on international, regional and other initiatives for prevention and control of the laundering of the proceeds of crime and the control of such proceeds, including recommendations for further concerted action at the global level, and on the implementation of Council resolution 1993/30 of 27 July 1993 on the control of the proceeds of crime.

3. It should be recalled that the Council, in its resolution 1995/11 of 24 July 1995, requested the Commission to ensure and monitor full implementation of the Naples Political Declaration and Global Action Plan, adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994 (A/49/748, annex, sect. I.A). In the same resolution, the Secretary-General was requested to seek cooperation and to join efforts with other international, global and regional organizations and mechanisms that have played an active role in combating money-laundering in order to reinforce common regulatory and enforcement strategies in that area.

4. Pursuant to the above-mentioned resolutions, the Secretary-General invited Governments to provide the Secretariat with information on, *inter alia*, initiatives for prevention and control of the laundering of the proceeds of crime and the control of such proceeds.

5. The present report contains a summary of the information provided by Member States, and includes an account of international, regional and other initiatives for prevention and control of the laundering of the proceeds of crime and the control of such proceeds. The report also highlights some new trends and challenges in money-laundering activities and elaborates on recommendations for further action by the Commission.

I. SUMMARY OF THE INFORMATION RECEIVED FROM MEMBER STATES

6. By 30 March 1996, replies had been received from the following States: Argentina, Australia, Austria, Belarus, Canada, Chile, Croatia, Cuba, Cyprus, Germany, Greece, Haiti, Holy See, Italy, Jamaica, Japan, Mexico, Panama,

Qatar, Saudi Arabia, Spain, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America.

7. Several States provided information on the adoption of broad new anti-money-laundering policies and laws (Australia, Canada, Chile, Germany, Greece, Holy See, Italy, Japan, Mexico, Panama, Spain, United Kingdom and United States). Others, such as Austria, Croatia, Cuba, Cyprus, Jamaica, Qatar, Thailand and Turkey, were in the final stages of presenting or adopting new legislation. Some States reported that they did not have any specific legislation for preventing and controlling money-laundering (Belarus and Haiti).

8. It was observed, however, that money-laundering in many countries was a criminal offence only when explicitly linked to illicit narcotics activity.

9. Some Governments stressed the importance of the 40 recommendations adopted by the Financial Action Task Force (FATF) established by the major industrialized countries (Group of Seven) and the President of the Commission of the European Communities, as a key instrument for efficiently and effectively combating money-laundering. Others identified the relevance of enacting new legislation providing for the forfeiture of proceeds from all criminal activities, emphasizing the possibility of making use of those forfeited assets to finance law enforcement efforts against criminal organizations.

10. The majority of the responding States highlighted the significance of integrated and coordinated international cooperation and the establishment of a system of exchanging information, as well as the need for the harmonization of the world's financial, regulatory and legal regimes to combat the laundering of the proceeds of serious crimes.

11. Anti-money-laundering legislation in Argentina was related to illicit drug trafficking. In 1990, Argentina established a "mixed commission" on the control of money-laundering operations linked with drug trafficking. That commission was entrusted with providing recommendations and advice to financing institutions, municipalities and courts. Control activities were also developed by the National Customs Administration, the Central Bank of the Republic, the General Tax Bureau and the Secretariat for the Prevention and Control of Drug Addiction and Illicit Drug Trafficking. Argentina had also actively participated in preparing a legislative model for uniform substantive and procedural laws in the western hemisphere. In addition, in December 1995, as a follow-up of the Summit of the Americas, held at Miami in December 1994, Argentina hosted a Ministerial Conference on Money-Laundering.

12. Over the past 10 years, Australia had developed a comprehensive set of measures representing a "whole system" approach to the problem. One of the principal features of this approach had been legislation which targeted key aspects of organized criminal activity, particularly proceeds of crime and money-laundering. The efforts of Australia against money-laundering were based on the 40 recommendations of FATF. The key pieces of legislation designed to implement those recommendations were the Proceeds of Crime Act and the Financial Transactions Report Act. The Proceeds of Crime Act had been in force for eight years, and had proved to be an effective tool for law enforcement in the fight against organized crime. The Act allowed a court to make an order for a pecuniary penalty based on the value of the benefit derived from a crime. It also provided for freezing orders to prevent the dissipation or removal of assets and confiscation orders in relation to property used in, or derived directly or indirectly from, the commission of an indictable offence against Commonwealth law. The Act provided law enforcement investigators with new tools to follow the money trail.

13. The Financial Transactions Reports Act in Australia had established a mandatory regime for reporting significant and suspect cash transactions to a monitoring agency called AUSTRAC.

14. Australia had also established a Confiscated Assets Trust Fund in December 1991. Since then, all assets recovered under the Proceeds of Crime Act and the narcotics-related provisions of the Customs Act had been paid into the Trust Fund rather than into consolidated revenue (a total of nearly 28 million Australian dollars). The intention of the Trust Fund was also to collect all the funds gained from the instruments, profits and proceeds of crime against the environment. Funds had been made available for a wide range of projects. The Australian Federal

Police had been given funding, for example, to establish satellite-based vessel and vehicle tracking systems, plus a ground-based radio-frequency tracking system.

15. Australia was a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[1] had signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990, and was working towards ratifying the latter Convention. Australia considered that FATF had provided a strategy for the Asian countries to use in the fight against money-laundering. One aspect of that strategy had been the establishment of an Asian secretariat which had a variety of functions, including dissemination of information and coordination of assistance by way of advice and training in developing and implementing effective countermeasures against money-laundering. Australia was using its Confiscated Assets Trust Fund to fund the secretariat for the first three years of its operation.

16. Australia also believed that the Commonwealth had an important role to play in promoting international cooperation against money-laundering. Since 1993, Commonwealth Ministers of Law and Finance and their senior officials had taken significant steps towards discharging the mandate given to them by the Commonwealth Heads of Government. Excellent work had been done on preparing a model anti-money-laundering law giving effect to the 40 recommendations of FATF. Agreement had also been reached on a self-evaluation process for monitoring the implementation of anti-money-laundering measures by the Commonwealth countries.

17. In Austria, the proposed Penal Law Amendment Act of 1995 would reorganize the legal provisions in connection with illicit proceeds of organized major and moderate crime, as well as the related provisions of the judicial system of the country. In particular, the proposed amendments to the Penal Code would provide for the following: (a) consolidation of all unlawful enrichment provisions into an autonomous, non-punitive sanction that would be applicable to all offences producing illicit financial gains and to the members of criminal organizations; (b) introduction of a new type of forfeiture mechanism designed to facilitate the confiscation of assets deriving from criminal activities either committed abroad or by unknown offenders, and of assets held by criminal organizations; (c) adaptation of the provisions of the Penal Code governing the question of Austrian jurisdiction in cases with foreign implications to the proposed new system of administrative orders under the property law and to the new money-laundering provisions; and (d) adjustment to the Austrian Extradition and Legal Assistance Act to the proposed system of administrative orders under the property law for the purpose of facilitating the transnational enforcement of such orders. The amendment also covered acts of money-laundering carried out in a country where they are not (yet) punishable, provided that such acts might be subject to domestic prosecution in Austria. Another key aspect of the proposed amendment would be to make it easier for the courts to establish evidence shifting the burden of proof that dubious assets were earned in a lawful manner to the alleged perpetrator.

18. Financial profits made by a member of a criminal organization during the time of his membership or funds held by criminal organizations or obtained through punishable acts would be forfeited if it could be reasonably assumed that such funds were assets controlled by that criminal organization or derived from a punishable act. The Penal Code relating to the problem of money-laundering did not require any detailed information on how a criminal organization had obtained control over such funds. The new forfeiture regulation would stipulate that it must be ensured that the assets of a criminal organization could be forfeited without the authorities having to specify the offence from which a given pecuniary gain was derived. Forfeiture of proceeds would also be instituted regarding funds detected in Austria which belonged to a foreigner, and for which no domestic jurisdiction existed, or when they were known to be derived from a criminal act, but could not be ascribed to a specific offender. Money-laundering would also be added to the list of punishable acts, regardless of the laws applicable at the site of the offence, as long as the preliminary acts were committed in Austria.

19. Belarus had no mechanism for controlling money-laundering and the utilization of the proceeds of crime. Because of inadequate legislation in the area of financial activity and the absence in its criminal legislation of any statutory definition of money-laundering or of the liability of either physical persons or banking institutions for such operations, Belarus was beginning to encounter the problem of dirty money becoming legalized. In order successfully to combat money-laundering, the financial as well as the criminal aspects needed to be taken into

account, since the detection and withdrawal from circulation of such money was a key factor in curbing the illegal operation of organized criminal groups. Belarus had no law on extradition of criminals who had committed serious offences in the territory of the country and taken refuge abroad. It was also necessary to consider increasing cooperation between both the organs responsible for regulating the operation of the financial and economic sectors and those responsible for ensuring observance of criminal legislation.

20. In Canada, drug trafficking was considered the most important source of illicit funds, but dirty money was also generated by other criminal activities, such as fraud, counterfeiting and smuggling. Money-laundering was done through banks, investment in real estate, precious metals, commodities, insurance, securities and foreign exchange, as well as through the use of an extensive international financial network. In 1990, the Government of Canada had established an Advisory Committee on money-laundering with representation from the public and private sectors to monitor and recommend improvements to measures taken by Canada to combat money-laundering.

21. Substantive legislation in the area of proceeds of crime in Canada fell exclusively within the jurisdiction of the federal Government, and was founded in the Criminal Code, the Food and Drugs Act, the Narcotic Control Act and the Proceeds of Crime Act. The Proceeds of Crime Act defined two classes of offence, designated drug offences and enterprise crime offences which were associated with money-laundering. It made provision for search, seizure and detention of the proceeds of crime and forfeiture thereof. The criminal forfeiture scheme was conviction-based. The decision to order forfeiture was taken at the sentencing stage of the accused, and was ordered only if the court was satisfied beyond a reasonable doubt that the property consisted of proceeds of crime. It also provided for the possibility of proceeding against the target property, in the absence of the accused, and without registering a conviction, if specific preconditions were established. In those circumstances, the accused need not be in Canada, although the standard of proof remained that of proof beyond a reasonable doubt.

22. Proceeds of crime were defined as any property, benefit of advantage, within or outside Canada, obtained or derived directly or indirectly as a result of: (a) the commission in Canada of an enterprise crime offence or a designated drug offence; or (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated drug offence. Money-laundering offences could be prosecuted on indictment with a maximum sentence of 10 years of imprisonment, or by summary conviction, with a maximum sentence of six months of imprisonment or a fine of $2,000 Canadian dollars (Can$), or both.

23. The Proceeds of Crime Act established record-keeping requirements in the financial services industry in order to facilitate the investigation and prosecution of offences, and it provided that it was an offence to contravene or to fail to comply with that requirement. The Act required financial institutions to keep records of large cash transactions when transactions totalling Can$ 10,000 or more were made by or for the same person in the same day. Verification of the identity of individuals who transacted business with the institution, whether they were acting on their own behalf or as representatives of some other entity were also required. Banks and other financial institutions in Canada were obliged in general to maintain the confidentiality of information obtained in the course of dealing with customers; but, under the Proceeds of Crime Act, they could report suspicions of money-laundering without the fear of civil or criminal liability for such reporting.

24. Canada had amended in 1993 the Criminal Code and provided a scheme for the protection and interception of private oral communications and telecommunications pursuant to a judicial authorization. For investigative purposes, the courts could authorize electronic video surveillance, interception of cellular phone communications and the use of dialled-number recorders and electronic tracking devices.

25. The Seized Property Management Act came into force in Canada in September 1994. It provided a structure within the Government of Canada by which it could cooperate with local and international law enforcement agencies to locate, seize, manage and dispose of forfeited property generated by criminal activities. Its provisions permitted forfeited assets to be shared with Canadian law enforcement agencies and with foreign governments whose law enforcement agencies had participated in investigations leading to their forfeiture.

26. The Canadian Bankers' Association had established and maintained, since 1986, a Task Force on Money-Laundering as a consultant body for banks. Canadian banks had published guidelines to assist employees in implementing appropriate measures to detect and combat money-laundering.

27. In Chile, the law that sanctioned illicit drug trafficking established a series of measures to prevent laundering of assets derived from drug trafficking. Bank secrecy no longer constituted an obstacle for investigations in Chile. The body regulating bank secrecy did not hinder investigations carried out by the police and magistrates to combat money-laundering, while a special judicial authorization was required to expedite investigations.

28. On 19 March 1994, the Government of Chile adopted a law that strengthened legal controls over the stock market, the financial system, pension funds and insurance companies. By another law adopted on 20 September 1995, Chile had modified its Penal Code in order to create new criminal offences with stricter sanctions.

29. Croatia adhered to all international treaties, and was engaged in concluding new agreements with the police of other countries, particularly those on jointly combating all types of international crime, such as organized crime and drug trafficking, as well as international industrial and financial crime. In addition, Croatia was taking an active part in international meetings, conferences, and working groups, thus contributing to combating all types of international crime. The Ministry of Internal Affairs was involved in drafting new criminal legislation, including the Money Laundering Act, the Penal Code, the Organized Crime Act and the Drug Trafficking Act, which would be brought into line with the United Nations recommendations.

30. Cuba had adopted legislation permitting freer access to foreign capital and expanding facilities for investment. Combined with the increase in tourism, those measures gave rise to concern regarding the possibility of operations involving the laundering of money derived from illicit activities. Although the Penal Code of Cuba did not provide for an offence relating exclusively to activities involving money-laundering, there was an offence in the Penal Code whose definition was totally applicable to it, namely the offence of being an accessory to a crime after the fact. Complicity was rendered punishable by the extension of the concept of participation in the principal offence to anyone who gave advice with a view to the more effective performance of the punishable act or promises, before the commission of the offence, to conceal the perpetrator of the offence or the objects obtained, or to remove the traces left. There were other provisions complementing those referred to above. It was made obligatory to report any criminal act of which one was aware, and, in the event that this was not done, provision was made for the offence of failing to report an offence. Other offences proscribed in this legislation were association for a criminal purpose and illicit enrichment. There was also the possibility, when any such criminal offence was committed, to order the confiscation of assets derived from the offence. A series of rules of an administrative nature to be observed in the banking area were being developed, and efforts were made to train the personnel assigned to these duties in the most efficient way.

31. Cyprus intended to submit a bill to be known as the "Law that Provides for the Concealment, Investigation and Confiscation of Proceeds Resulting From Certain Criminal Actions" to its House of Representatives in 1996. Cyprus had ratified the 1988 Convention in March 1990. In June 1992, legislation was enacted to give effect to the provisions of that Convention. In 1995, Cyprus had also ratified the Council of Europe Convention.

32. Since 1988, the Central Bank of Cyprus had issued various circulars and recommendations to the financial sector, designed to combat money-laundering through the financial system. Since September 1990, all banks in Cyprus, both domestic and offshore, were required to submit to the Central Bank of Cyprus a monthly statement of their cash deposits and unusual fund transfers in excess of the equivalent of United States dollars 10,000 (US$) per transaction. Following the request of the Central Bank, all banks had adjusted their computerized accounting systems so that all cash deposits in excess of that limit were identified separately at the time of the transaction. The instant detection of cash transactions had particularly enhanced the ability of banks to monitor and identify all transactions of a suspicious nature which might be aiming at the laundering of illicit funds. Since December 1994, banks, acting on the request of the Central Bank, had appointed a member of the managerial staff as Money Laundering Compliance Officers. The Central Bank was in close contact with the Association of Commercial Banks

for the purpose of providing assistance towards the preparation of a code of conduct designed to prevent the use of the banking system for the purpose of money-laundering. In addition, the Central Bank was making constant efforts to increase awareness on money-laundering through: (a) circulation to banks of extensive lists showing examples of suspicious transactions accompanied by warning signs and characteristic behaviour patterns of customers involved in money-laundering; and (b) organizing training seminars on its own initiative and prompting banks to promote their own in-house training system for timely recognition and prevention of transactions aiming at the laundering of criminally derived funds.

33. In Germany, new criminal provisions enacted against money-laundering criminalized laundering of proceeds of all major crimes and minor crimes committed by a member of a criminal organization. Those provisions were in line with the aims of article 6 of the Council of Europe Convention. The new criminal provisions against money-laundering were based on the assumption that money-laundering could be defined as the systematic disguising of illegal assets, using the scope offered by the legal financial market, with a view to shielding them from seizure by the criminal prosecution authorities and preserving their economic value. In line with the 1988 Convention, the provisions distinguished between the elements of the criminal offence of "disguising the origin" and that of the acquisition, possession or use of items deriving from certain predicate offences. The new legislation criminalized actions which prevented or obstructed the access of the criminal prosecution authorities to assets derived from certain criminal offences. It also considered as a criminal offence the prevention or placing in jeopardy of the location, forfeiture, confiscation or seizure of incriminating property or of the detection of its origin. In contrast to the acquisition and possession or use of items derived from a criminal offence, there were limits to punishability, while illegality had been made dependent on the offenders' having known of the illicit origin of the item at the time of acquisition. Knowledge obtained subsequently, therefore, did not incriminate the offender. Attempted money-laundering was also a punishable offence. According to the legislation, money might be confiscated, while measures going beyond confiscation might be ordered (seizure of assets or extended forfeiture) with the aim of depriving the offender of unlawfully acquired property.

34. Germany had recently considered an extension of the elements of the criminal offence of money-laundering by amending the catalogue of predicate offences with a view to ensuring a more effective prosecution of offenders. The German Criminal Code foresaw punishability of money-laundering in cases where the predicate offence has been committed abroad. The Courts might at their discretion mitigate the punishment or dispense with punishment if the offender voluntarily disclosed his knowledge, and had substantially helped to make possible detection of the offence or offences predicate to money-laundering, going beyond his own contribution thereto. Those privileges were intended to contribute to more effective suppression of organized crime in so far as they created an incentive to report punishable money-laundering offences. Tendencies to shift money-laundering activities to financial exchange offices and, *inter alia*, to the trade in high-quality luxury goods and in precious metals had been observed. Such activities aimed at laundering the proceeds of crime were punishable under the German penal law.

35. Greece indicated that the Greek Parliament had recently adopted a law containing provisions on the prevention and repression of legalization of proceeds from criminal actions and other penal provisions.

36. In Haiti there were no penal provisions or regulations for the control of the laundering of the proceeds of crime. Haiti recognized that there was a tremendous development of drug trafficking and related crimes all over the world, and that this issue should be addressed.

37. The Holy See stated that an agreement had been reached between the *Istituto per le Opere di Religione* (Bank of the Vatican) and the Ministry of Finance of Italy concerning measures against possible money-laundering transactions.

38. Italy had adopted specific legislation to combat both organized crime and money-laundering at the national and international level. It had criminalized money-laundering in the form of both substitution of moneys and reinvestment in legitimate economic activities. Pre-emptive measures had been adopted for determining the real status of corporate ownership and enterprise owners, as well as for collecting information on the purchase and

transfer of corporate entities. Italian legislation obliged notaries and town clerks to inform the *Questore* (local high police authority) of movements of company funds and shares, as well as of the transfers of commercial licences. The law also contained provisions designed to ensure the transparency of public administration.

39. Illicitly acquired goods could be forfeited in Italy, in relation to a conviction and pre-emptively in the case of people belonging to or cooperating with Mafia-type organizations. Such a forfeiture was carried out through a judicial process with full respect of the rights of the defence and of third parties acting in good faith. The body regulating bank secrecy in Italy did not hinder efforts by police and magistrates to combat money-laundering. The legislation regulating the use of cash exceeding 20 million liras ensured the identification of bank and financial brokers, and imposed upon them the obligation to inform the *Questore* of all suspicious transactions, without incurring penal and administrative sanctions because their collaboration exonerated them from criminal liability. The Italian legislation contained specific provisions envisaging the possibility of electronic surveillance, undercover operations and controlled deliveries. Furthermore, Italy had established investigative bodies which were specialized in intelligence on organized crime, as well as in economic matters and money-laundering. Ad hoc laws also ensured the protection of cooperating witnesses and restitution to the victims of organized crime.

40. The Italian Parliament was studying "Community Law 1994", which envisaged the possibility of extending money-laundering laws to other strictly financial activities and occupations in order to combat illicit transactions.

41. At the international level, Italy was cooperating with FATF, the Council of Europe and the European Union, and fully implementing their recommendations and directives. Italy had also signed a number of bilateral agreements with other countries, including the United Kingdom and the United States. Those agreements envisaged the seizure and forfeiture of goods on the basis of special crime prevention laws.

42. Jamaica had ratified the 1988 Convention, and had decided to adopt the Model Regulations on Money Laundering of the Organization of American States (OAS), the 21 recommendations of the Caribbean Financial Action Task Force (CFATF), and the 40 FATF recommendations. The Parliament of Jamaica was currently considering a bill designed to make money-laundering a criminal offence, and approval was expected shortly. Jamaica had created an Assets Tracing and Money Laundering Unit within the Jamaica Constabulary Force. At the same time, the Fraud Squad of the Jamaica Constabulary Force was being reorganized to deal with financial fraud and white collar crimes, and had been working with CFATF. An evaluation of the country programme is to take place in October 1996.

43. Japan expressed the view that the control of illicit proceeds should be carried out jointly with the suppression of crimes which produced such proceeds, the confiscation or forfeiture of illicit proceeds and the prevention of concealment of funds and money-laundering, and should provide assurances of the transparency of monetary transactions. At the same time, those measures should be carried out in the most effective manner, taking into account the trends and circumstances of crime in each country. Moreover, the measures must be consistent with the basic legal systems of each country, and reflect the interests of victims. The Japanese Penal Code provided for confiscation and "collection of equivalent value" (forfeiture) applicable to all crimes except very minor ones. The Anti-Drug Special Law which went into effect in 1992 controlled illicit proceeds obtained as a result of drug offences. The Ministry of Finance and other relevant administrative organs controlled and supervised all financial institutions. They were required to identify customers carefully, pay special attention to specified transactions, and keep specified documents on file. In addition, a system to control transactional movement of certain kinds of capital was currently in operation. Reporting of transactions suspected to be related to drugs was mandatory. Japan did not have a bank secrecy law, and financial institutions cooperated with investigating authorities, which, by virtue of a warrant issued by a judge, might search and seize evidence of transactions and other documents kept by those institutions. Despite the considerable efforts which had been made to ensure the transparency of financial institutions, as large amounts of cash were often used for payments in business transactions, criminal organizations could easily use their illicit proceeds in that form. Such a business practice was a factor to be considered in the attempt to decrease the amount of capital being laundered.

44. Japan was of the view that international cooperation was essential to effectively suppress offences. In addition, the Government of Japan always endeavoured to promote bilateral cooperation with other countries.

45. With regard to the practical aspects of the United Nations crime prevention and criminal justice programme, Japan considered that facilitating the exchange of information among Member States would be very useful in controlling the proceeds of crime. Information exchange should thus be given priority in the future work of the programme. In that regard, the Commission, at its fifth session, should fully discuss concrete methods, such as the framework and topics for the collection and exchange of information, rather than merely ask Member States to provide unspecified information.

46. Mexico had taken various measures and implemented a number of actions to prevent, detect and combat money-laundering, taking into account that one of its main origins was drug trafficking, the vast proceeds of which were being channelled into national financial and commercial systems, a process that was being fostered by the increasing technological sophistication of the international finance system. Organized crime took advantage of and exploited the lack of international coordination and the unsophisticated methods used to combat it. Mexico was aware that the increase in money-laundering was also due to weaknesses of regulatory mechanisms in finance, banking and taxation. Since 1990, Mexico had responded at the national level by incorporating into its legislation provisions designed to penalize money-laundering, and imposing a penalty on any person bringing a sum equivalent to US$ 20,000 into the country without declaring it. The coordination agreement between the Department of Public Prosecution and the Department of Finance and Public Credit concerning crimes against public health and safety made it possible to detect operations presumed to involve money-laundering by means of tax inspections, whereby sufficient information could be obtained to bring charges. In October 1993, non-mandatory recommendations were introduced in the banking sector, with the aim of obtaining particulars of and identifying suspect operations.

47. On 30 November 1995, the President submitted to Congress, through the Senate, a penal law reform bill establishing money-laundering as an autonomous offence, that is, as an unlawful act which would no longer be linked exclusively to revenue offences. Similarly, the laws governing banking, the stock market and financial activities and the fiscal laws had been adapted.

48. The two strategies followed by Mexico in this field were as follows: (a) establishing channels for communication of intelligence and information that would make it possible to expand the knowledge base in each country and to enhance the process of communication with countries that possessed more advanced techniques; and (b) international cooperation in combating criminal activities that frustrated the efforts of Governments to fulfil their commitment to promote human rights, fundamental freedoms and democratic decision-making.

49. At the international level, mutual legal assistance and customs cooperation treaties agreed with other countries had been put into effect. In May 1995, a mutual assistance agreement had been signed with the United States for the exchange of information on currency transactions conducted through financial institutions, and another would shortly be signed with France. There was already a bilateral agreement with the United States on the sharing of property confiscated from drug traffickers in that country. The proceeds would be used by Mexico to purchase equipment and finance programmes for combating drug trafficking and addiction.

50. In Mexico, the application of the juridical concept of confiscation of property was prohibited under the Constitution. Nevertheless, the Penal Code, which applied to the Federal District in matters of ordinary jurisdiction and to the entire country in matters of federal jurisdiction, provided for the juridical concept of seizure of the instrumentalities, objects and proceeds of crime, for which purpose the Federal Code of Criminal Procedure empowered the Federal Department of Public Prosecution to take into custody any instrumentalities of, or property derived from, or constituting the proceeds or bearing signs of, or having a possible connection with, an offence, with a view to subsequently requesting the competent judicial authority to rule on the forfeiture of such property.

51. Panama had recently adopted legislation making money-laundering a criminal offence. It reiterated its view, expressed at 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, that, like other developing countries, Panama required greater technical assistance from the United Nations crime prevention and criminal justice programme.

52. Qatar reported that its competent authorities were taking appropriate measures for the implementation of recommendations of the United Nations in the field of crime control on a regular basis, through international agreements, coordination and cooperation, as well as the exchange of information on organized crime. The authorities were also studying legislation prohibiting the laundering of the proceeds of crime. The Ministry of the Interior had coordinated with the Central Bank of Qatar measures to be taken to combat the laundering of such proceeds. As a result, the Central Bank, in 1994, has issued to banks and exchange offices operating in the State two circulars which included measures for combating money-laundering.

53. In recent years Spain had brought its legislation in this area not only into line with the criteria set out by the 1988 Convention, but also with the 40 recommendations of FATF. A specific law governing measures to prevent money-laundering and the corresponding regulations had been promulgated by Royal Decree and published in the Official Gazette in July 1995. The New Penal Code of Spain, which would come into effect in May 1996, defined the offence of general laundering in connection with a serious crime, under the provisions related to receiving stolen goods and similar conduct. Some innovations included the broadening of the scope for punishment and a more precise definition of punishable conduct, including any serious criminal activity (prostitution, fraud, terrorism, tax offences etc.), and an increase in the penalties imposed by the current Code in relation to laundering offences connected with drug trafficking. While it might seem that the severity of the foreseen penalties had not changed (imprisonment for a term of one to six years) the new Code did not envisage automatic reductions, which meant that the *de facto* penalties were more stringent. Pending the enactment of the New Penal Code in mid-1996, only the laundering of proceeds from drug trafficking could be prosecuted in Spain.

54. The term "laundering" did not exist in Spanish legislation. The current Penal Code referred to receiving stolen goods. The same terminology was employed in the new Code, which dealt with "receiving stolen goods and other similar conduct". It was recognized that such terminology might give rise to misunderstandings, because it might be unclear in other languages.

55. Spanish legislation included punishment for certain types of conduct, such as negligence, incitement and possession, despite the fact that the 1988 Convention and the European Community Directive on Money Laundering of 1991 did not insist on compulsory punishment for such conduct, but made it optional for States. Spanish legislation laid down very useful additional measures for cases in which the offences were committed by organized gangs, as well as increasing the penalty imposed, such as the dissolution of the organization, closure of its premises, temporary suspension of its activities and professional disqualification of its members.

56. Thailand attached importance to the prevention and control of the laundering of the proceeds of crime as well as the suppression of narcotics offences. It had enacted two laws that dealt with those crimes: the Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics, which gave the authorities the power to trace, seize and confiscate the properties of the offender; and the Act on Mutual Assistance in Criminal Matters, which promoted international cooperation between the law enforcement agencies of Thailand and those of foreign countries in gathering information and initiating legal proceedings against criminal offenders.

57. A proposed act on the prevention and suppression of concealment or alteration of property connected with the commission of an offence had been submitted to Parliament for consideration and approval. The proposed act would create a specific office to administer data regarding concealment or alteration of property connected with the commission of an offence. The office would receive and analyse reports from financial institutions and government agencies and officials that had the responsibility to give a statement regarding transactions involving a higher value than the one stipulated in the Ministerial Regulations, or giving reasonable cause for suspicion that they were related to the commission of an offence.

58. The new act would foresee imprisonment of from 1 to 10 years or a fine not exceeding 200,000 baht, or both, for any person who transferred or accepted a transfer of any property connected with the commission of an offence for concealment or cover-up of the acquisition and source of, or the transfer of any rights regarding, the sai d property. By virtue of the new act, any person who conspired with one or more other persons to commit an offence should be punished with imprisonment not exceeding five years or a fin e not exceeding 60,000 baht, or both. In such cases, if the offender was a government official, the penalty imposed for such offence would be trebled. Th e proposed act also provided that property, including the interest the reon, connected with the commission of an offence would become State property following a court conviction.

59. A Bill relating to money-laundering was being finalized in the General Assembly of Turkey. Nevertheless, the international security agreements signed by the Government of Turkey included provisions for the exchange o f information on the prevention and control of money-launde ring. Turkey supported all international initiatives in this field, had signed the 1988 Convention, and was a full member of FATF, having endorsed its 40 recommendations in 1991, and having since then initiated studies for creati ng new legislation and modifications in the existing law and regulations which were necessary for the implementation of the recommendations, as well as for the ratification of the 1988 Convention. In June 1991, amendments in the exchange control regulations had been introduced in order to remove the provisions concerning the importation into the country of foreign currencies without restriction o r without investigation of their source. Those amendments also introduced a requirement for banks and specia l financial institutions to report to the competent authorities all transfers abroad of Turkish lira and foreign currency exceeding US$ 50,000 or its equivalent, except in the case of exports, imports and invisible transactions.

60. Turkey intended to expedite the preparatory work initiated in 1992 for establishing money-laundering as an offence punishable by law. Consequently, a draft law had b een prepared on the basis of contributions by all relevant ministries and public entities, known as the Law on Prevention of Illicit Trafficking in Narcotic Drugs an d Psychotropic Substances and Money Laundering, which would also ratify the 1988 Convention. The majo r characteristics of the draft law might be summarized as follows: (a) money-laundering would be established as an offence with a broader definition, covering the proceeds of crime as money and monetary instruments, property and proceeds derived from any criminal activity; (b) a confiscation provision with a broader coverage than existin g provisions had been included; (c) freezing and seizing of assets had been covered in specific provisions; and (d) controlled delivery had been introduced for the first time. The draft law would regulate corporate criminal liability and contained specific provisions on suspicious transactions. It would also establish the Search and Examination of Financial Crimes Directorate (SEFCD), which would be a special body directly attached to the Office of the Prime Minister, with responsibilities for co mbating money-laundering. SEFCD would employ both law enforcement staff and financial experts. Moreover, it would have a close working relatio nship with the General Directorate of Security, the customs authorities, the Ministry of Justice, the Undersecretariat of the Treasury and other competent bodies. SEFCD would be created as a body authorized t o receive all kinds of information and documents from financial and non-financial institutions, including public entities, as well as from individuals. It would also have the authority to establish a general system for reporting transactions.

61. The United Kingdom placed the greatest impor tance on action to suppress money-laundering and to confiscate the proceeds of crime. It had undertaken a very wide range of initiatives in recent years to strengthen its own anti-money-laundering and confiscation systems. It also remained in the forefront of international efforts in the field, and was keen to promote international cooperation in combating money- laundering and confiscating the proceeds thereof, wherever possible.

62. Many measures had been taken in recent years to prevent criminals from using the financial system of th e United Kingdom for money-laundering. Those measures included: the criminalization of money-launderin g predicated on all serious crimes; the publication in 1990/ 91 of the Money Laundering Guidance Notes for banks and building societies and insurance and investment businesses, and the issuing in February 1995 of their most recent revision; the establishment of the National Criminal Intelligence Service as a central point for receiving an d disseminating disclosures from financial institutions and other sources about suspected money-laundering; and the establishment of an anti-money-laundering regulatory regime for credit and financial institutions as part of th e

measures taken to implement the European Community Directive on Money Laundering. In addition, the United Kingdom had comprehensive legislation in place to trace, freeze and confiscate the proceeds of drug trafficking and all other serious crime. That legislation had been strengthened recently by the Proceeds of Crime Act of 1995.

63. The United Kingdom had been highly active from the outset in FATF. It continued to take a keen interest in money-laundering and confiscation policy issues in forums such as the Council of Europe. It had comprehensive legislation in place to assist other jurisdictions in tracing, freezing and confiscating the proceeds of all serious crimes (the latter two on a basis of reciprocity). The practical steps it had taken to encourage practical cooperation in confiscation included the following: implementation and ratification in 1991 of the 1988 Convention; ratification in 1992 (as the first country to do so) of the 1990 Council of Europe Convention; conclusion since February 1988 of 29 bilateral confiscation agreements, while pursuing agreements with a number of other countries.

64. The first money-laundering provisions in United Kingdom law were included in the Drug Trafficking Offences Act which came into force in September 1986. The provisions were consolidated in the Drug Trafficking Act 1994, which makes it an offence for any person to assist another in disguising the true identity of drug-trafficking proceeds. The 1994 Act created a related offence of prejudicing an investigation, designed to catch the employees of financial institutions and others who "tipped off" a suspect that an investigation was being carried out.

65. The main purpose of the money-laundering provisions of the Criminal Justice Act 1993 was to enable the United Kingdom to implement the European Community Money Laundering Directive. Under the terms of the Directive, implementation was mandatory as far as the proceeds of drug trafficking were concerned, though member States might extend implementation to include the proceeds of other serious crime if they wished. Since both the Drug Trafficking Offences Act 1986 and the Criminal Justice (International Cooperation) Act 1990 had already been in force before the United Kingdom had set about implementing the European Community Directive, existing legislation had to be examined to determine where it might be supplemented, as in the case of the 1988 Convention.

66. The 1993 Act created a wide range of new offences to criminalize the laundering of the proceeds of serious crimes other than drug trafficking. The new offence of failure to disclose to the authorities a suspicion that another was engaged in money-laundering had been restricted to the proceeds of drug trafficking and terrorist funds. There was consequently no offence of failure to disclose a suspicion that another is engaged in laundering the proceeds of crime generally.

67. A confiscation order under the 1994 Act might only be made against a person who had been convicted of a drug-trafficking offence as defined by the Act. The 1994 Act contained a number of features new to the law of the United Kingdom. One of these was the power that it created to confiscate the totality of a person's benefit from drug trafficking, including drug trafficking of which the defendant had never been convicted. It also contained the power to make a charging order on assets which might be used to satisfy a confiscation order. The power to impose a charge on assets such as stocks and units of a unit trust was modelled on existing powers in the civil law to enforce civil judgements. In setting the amount to be recovered under the order, the court could take into account any gifts the offender had made to family, associates and others in the last six years, and any gifts the defendant had made at any time out of proceeds of drug trafficking. When it came to enforcing the confiscation order, then the value of such gifts could be confiscated from their recipients. The new investigative powers particular to drug-trafficking investigations were the production order and the search warrant. Both devices, which had been consolidated in the Drug Trafficking Act 1994, enabled the police and customs to obtain confidential banking and other material at a very early stage of an investigation, before there were reasonable grounds to believe that a specific offence had been committed, and they were particularly useful in financial investigations into the proceeds of drug trafficking.

68. The 1994 Act also creates new powers for the High Court to make a confiscation order against a person who died after conviction but before a confiscation order had been made, and to make a confiscation order *in absentia* against a person who absconded either before or after conviction.

69. The United States was firmly committed to international coordination and cooperation to combat transnational crime, by denying criminals the benefit of the proceeds of their criminal activity, and by criminalizing efforts to hide or launder the proceeds of all serious crime.

70. The United States believed that legislation providing for the forfeiture of proceeds derived from criminal activity should be combined with a range of prosecutorial measures in the fight against international crime, particularly organized transnational crime. Seizing and forfeiting the illegally obtained assets of a criminal organization and then channelling those forfeited assets into law enforcement efforts to dismantle the criminal organization provided an important counterpart to prosecution of individual offenders.

71. The United States considered that gaps in legislation concerning criminal organizations inhibited effective prosecution of criminals, and limited the success of domestic as well as international law enforcement efforts. As stated in the report of the International Conference on Preventing and Controlling Money-Laundering and Use of the Proceeds of Crime: A Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994 (E/CONF.88/7), it was vital for States to have a wide range of laws and techniques to investigate and prosecute crime of all kinds, including money-laundering and conspiracy to launder illegally obtained funds.

72. The United States strongly supported the efforts of the United Nations and other global and regional initiatives designed to promote the harmonization of the world's financial, regulatory and legal regimes, thereby achieving more effective control of the laundering of the proceeds of serious crime. It also encouraged States to adopt and implement such measures, and supported the establishment of institutions to further assist the international community in thwarting the increasingly complex efforts to circumvent anti-money-laundering laws.

II. RECENT INTERNATIONAL INITIATIVES

73. The adoption of the 1988 Convention not only marked the first decisive step in mobilizing the international community in the fight against illicit drug trafficking, but also defined money-laundering offences and required parties to the Convention to proscribe them as serious criminal offences that would be severely punished and subject to extradition. The Convention called for the establishment of identification and tracking 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.

74. FATF was established to examine measures to combat money-laundering. As of November 1995, the membership of FATF included 26 States or territories, the European Union and the Cooperation Council for the Arab States of the Gulf, representing the major financial centres of the world. The 40 recommendations of FATF strengthened and supplemented the provisions of the 1988 Convention and the principles adopted by the Basle Committee on Banking Regulations and Supervisory Practices in 1988, particularly concerning future cooperation between the financial system and law enforcement and in the area of international cooperation.

75. In 1995, FATF completed the first set of mutual evaluations of its members regarding progress in the implementation of the 40 recommendations. In 1996, the second round of such evaluations was beginning, focusing on the effectiveness of each member's anti-money-laundering measures in practice.

76. Besides encouraging States to become parties to the 1988 Convention, to enact financial legislation that did not run counter to the guidelines of FATF, and to increase multilateral cooperation in investigations and prosecutions, the recommendations focused 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. In addition to CFATF, established in 1993, FATF established a Secretariat in Australia at the end of 1994, to facilitate activities in Asia and the Pacific. FATF also continued to analyse world financial flows, banking and financial systems and money-laundering methods, trying to identify the weak links that facilitated money-laundering operations.

77. In the context of the coordination mechanism of FATF, which brought together all international organizations active in the field of prevention and control of the laundering of the proceeds of crime, considerable progress had been achieved in identifying areas where cooperation among relevant international organizations would be most effective. In that connection, it had become evident that one area where international action was necessary was the collection of reliable information on national action for the prevention and control of the laundering and use of the proceeds of crime. The collection and regular updating of information on national legislation, on regulatory measures and on the experience gained from implementation of such measures was essential, not only to improve knowledge and decision-making, but also as a foundation for increased and more effective international cooperation. A standard format for collection and processing of information had been developed by the International Criminal Police Organization (ICPO/ Interpol), with input from the Commonwealth and other international organizations.

78. At the Summit of the Americas held at Miami in 1995, the Heads of State and Government of the countries of the region recognized that money-laundering constituted a serious challenge to the maintenance of law and order throughout the hemisphere, and might threaten the integrity, reliability and stability of Governments, financial systems and commerce. A Hemispheric Plan and a Declaration of Principles were adopted at the Summit of the Americas Ministerial Conference on Money Laundering held at Buenos Aires from 30 November to 2 December 1995. Standards and principles to promote transparency, oversight and enforcement to stop money-laundering were included in the communiqué, which also proclaimed a Declaration of Principles in which the participants agreed to make the laundering of proceeds a criminal offence. It further outlined legal, regulatory and enforcement actions to be taken against criminal enterprises.

79. The Conference succeeded in creating awareness that money-laundering was a problem going beyond drug trafficking and involving other kinds of transnational crime, and that money-laundering was not only a law enforcement issue, but also a financial and economic issue, requiring a coordinated inter-agency approach. In addition, States agreed on the establishment of a working group of OAS, to consider an inter-American convention to combat money-laundering. Implementation of the communiqué will be made through the Inter-American Drug Abuse Control Commission of OAS.

80. 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; the World Ministerial Conference on Organized Transnational Crime; the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders; and the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized transnational Crime, held at Buenos Aires from 27 to 30 November 1995.

81. The two entities of the Secretariat directly concerned with combating money-laundering, namely the Crime Prevention and Criminal Justice Division and the United Nations International Drug Control Programme (UNDCP), had been given specific mandates to that effect. The two entities have been closely cooperating in the implementation of their respective mandates. In order to improve the services that the two entities were mandated to provide to Member States, the Division and UNDCP had been working towards developing a comprehensive technical assistance project against the laundering of the proceeds of crime.

III. NEW TRENDS AND CHALLENGES IN COMBATING MONEY-LAUNDERING ACTIVITIES

82. Globalization is the major socio-economic phenomenon confronting the world in the last decade of the twentieth century. Driven by technological and organizational innovations, the world socio-economic space is currently experiencing profound structural changes. Deregulation processes, new technologies, advancements in telecommunications and the creation of expanded economic spaces and market liberalization have had major implications on the development process, and have induced sizable productivity increases and new opportunities for profits, not only for the legal economy, but also, for organized transnational crime, which coexisted with, and benefited by, the legal economy.

83. The implementation of free trade agreements and regional compacts creating trading and economic zones which transcend national borders could increase the use of international trade as a mechanism for laundering the proceeds of criminal organizations. The impact of the liberalization of border and other customs controls, liberalized banking procedures and freedom of access within those zones creates additional potential risks for the future. The trends cannot be changed, but in relation to them, it is important to bear in mind the harmful consequences that they could have over small dependent economies, especially those of developing countries and of countries in transition.

84. Transnational criminal organizations, with their highly corruptive power, have become deeply involved in privatization programmes. They have started to buy previously State-owned banks and financial, telecommunications and service institutions, and suddenly they could start to control - if effective countermeasures are not quickly implemented - not only assets, but countries as well.

85. As of 1 November 1995, 119 States had become parties to the 1988 Convention, and the number continued to grow in 1996. Many important financial centres have adopted legislation to curb drug-related money-laundering. Too many priority financial centres, however, still have not adopted needed legislation or ratified the Convention. There is also a big question whether the drug-trafficking-oriented money-laundering laws that many Governments adopted in the early 1990s were adequate, given recent developments in money-laundering practices, the new technologies used in banking and, most importantly, the diversity and flexibility of organized transnational crime and its ability to shift operations to other more lucrative areas.

86. Organized crime groups are increasingly a factor in predominantly money-laundering schemes, and the multiple sources of their proceeds compounds the difficulty of linking the monetary transaction to a unique predicate offence like drug trafficking. Meanwhile, an increasing number of organized criminal organizations, do not directly manage the laundering or conversion of their proceeds, but rely predominantly on professional money brokers. Such brokers are increasingly crafting effective schemes to evade normal monitoring, detection and reporting devices.

87. To understand money-laundering as it is currently practised on a global basis, it is necessary to appreciate money as a commodity. Just as a sound investment portfolio will contain stocks, bonds and other monetary instruments, the money brokers vary their holdings. The money-laundering industry, like the underlying criminal acts giving rise to it, crosses national boundaries, and this globalization will intensify as technology makes currency transfers faster and easier. Few governments have control mechanisms adequate for identifying and tracing such transactions should they occur. Apart from financial institutions in which officials are complicit in the money-laundering transaction, financial institutions are rendered most vulnerable by the combination of correspondent banking relations and electronic transfers.

88. The layering and integration stages of money-laundering are using more sophisticated techniques. Cash is now being held in bulk, or placed into the financial system through exchange houses and other non-bank financial institutions. It is moved not only through wire transfers, but also through innumerable varieties of licit and illicit financial instruments, including letters of credit, bonds and other securities, prime bank notes and guarantees, without a parallel increase in the capability of the far-flung elements of the world's financial system to verify the beneficiaries or authenticity of instruments.

89. There is emerging concern about new banking practices, such as direct access banking which permits customers to process transactions directly through their accounts by computer operating on software provided by the bank. This system limits the ability of the bank to monitor account activity, such as transactions involving joint accounts and pass-through banking schemes which have been a traditional method of layering. Beneficial owners of funds can now manipulate the identity of the ultimate recipient of the funds without a review by bank officers. Pass-through banking by itself poses myriad problems for regulators, by creating the ability of depositors unilaterally to create accounts within accounts, or even to provide quasi-banking services to off-line customers in a kind of bank within a bank. These new bank services can limit the utility of systems in place which allow information about both the originator and the recipient to travel with the electronic funds transfer.

90. Non-bank financial systems are still unevenly regulated in most parts of the world, especially at the placement stage for cash. Non-bank financial institutions include a wide variety of exchange houses, cheque-cashing services, insurers, mortgagers, brokers, importers, exporters, trading companies, gold and precious metal dealers, casinos, express delivery services and other money movers of varying degrees of sophistication and capability, and other underground banking systems.

91. Control efforts are being sorely challenged by the creation of new, independent wire transfer services, some of which service small clusters of banks. Reports and economic indicators generally do not reflect the volume of money that is transferred in the financial system, because transactions of that kind are designed to fall outside the scope of administrative controls and other reporting.

92. The electronic highway now links banks and non-bank financial institutions worldwide to facilitate expanding world trade and financial services, placing ever greater priority on banks of origin to establish the identity of beneficial owners and their sources of funds. There are few controls on electronic transfers, and, compounding the problem, the bank or non-bank of origin is increasingly based outside major financial centres in jurisdictions which do not adequately control money-laundering and other financial crimes.

93. The use of microchip-based electronic money for financial transactions, via smart cards and the Internet, are assuming a potentially important place in the domestic and worldwide payments system. These chip-based electronic cyberpayments are emerging very rapidly. Cyberpayments may soon become an addition to the major means of payment - currency, cheques, credit cards, debit cards and automated clearing-house transfers that are currently used to make purchases.

94. A significant feature of the new cyberpayments is that they include a new form of currency, a cybercurrency that is engineered to be an electronic emulation of paper currency. Cybercurrency includes the attributes of conventional currency: a store of value, a medium of exchange, a numeraire, anonymity and ease of use. But there are added features: transfer velocity (almost instant electronic transfers from point to point) and substitution of electrons for paper currency and other physical means of payment. This is obviously an innovative addition to the payments mechanism, but it requires close attention, since the use of microchip and telecommunications technologies add some significant new dimensions for law enforcement.

95. Reporting regulations must be completely redesigned to include the reporting of currency in electronic form moving to other countries via the Internet or across the border in a smart card or electronic purse. Law enforcement issues likely to arise in this area include fraud, counterfeiting and computer hacking. Moreover, high speed, worldwide transfers that are a facet of the cyberpayment technology add complexity to the ability of law enforcement to trace criminal activity and recover the proceeds from drug trafficking.

96. Regulators, money-laundering investigators and international policy-making bodies are facing profound challenges from a banking world which not only knows no geographic horizons and is open 24 hours a day, but is increasingly interconnected, as large transnational banks extend their reach not only through branch and subsidiary networks, but through correspondent relationships that cross the globe.

97. The concern is not with the growth or dominance of the largest banks, or the extension of their networks, but whether standards of prudential supervision are met at every juncture in this web of correspondent banking. The emergence of active financial service industries in every jurisdiction capable of becoming active players on the electronic highway of superbanking places ever more emphasis on vetoing transactions at the bank of origin. There is a lack of confidence that the scope of current know-your-customer policies is sufficient to cover most financial transactions at their point of origin.

98. The regulation of offshore banking is also a growing concern The assurance of absolute secrecy by many jurisdictions which license such facilities makes it possible for those facilities to be manipulated to move and conceal or generate illicit proceeds, and far too many questions remain about their regulation.

99. Attention is also being focused on the following problems: the counterfeiting of currencies and other monetary instruments, especially bonds; the boom in contraband smuggling; the buying of banks and other financial institutions by suspected criminal groups; the resort by criminals to the use of smaller, less-monitored banks; and the sophisticated use of such new phenomena as direct access and pass-through banking and electronic cash systems. Financial crimes and money-laundering are occurring with varying degrees of regularity in many jurisdictions, and some Governments still have not criminalized all forms of money-laundering. Some have not given sufficient regulatory authority to central banks and other institutions; many do not have adequate data systems to monitor trends and methods used in their territories; and many have not made adequate provision for mutual legal assistance.

100. It is important to bear in mind that money-laundering is essential to organized crime, which must convert its ill-gotten gains into usable resources. Profits that cannot be spent are no profits. Thus, it is essential that in an integrated and balanced approach, this aspect of the problem is duly taken care of. There has been considerable discussion in many international forums about the issue of extending the scope of predicate offence for money-laundering (which usually accompanies mandatory confiscation) from drug crimes to other serious crimes. This is particularly important, since predicate offences are a constituent part of money-laundering, and conviction will unavoidably require the proof of predicate offence.

101. In systems where confiscation is allowed only for specifically designated crimes, extending the scope of the predicate offence to the maximum extent possible would be quite effective for deprivation of illicit proceeds, while in systems where confiscation is allowed for all crimes in general, extending the scope of predicate offences is not necessarily vital, since effective deprivation of illicit proceeds is already possible if the predicate offence itself was thoroughly investigated.

102. In depriving of illicit proceeds, it is also very important to consider the ways of ensuring the interests of victims. In drug-trafficking crimes, as there is usually no victim, the deprivation of illicit proceeds solely by the Government will not cause serious problems. But, as regards other crimes, such as fraud and extortion, the interests of victims would be greatly damaged if only the Government benefits from the deprived assets. In this sense, when enacting legislation on the issue, it will be convenient to consider creating a system whereby the Government distributes confiscated assets to the victims. Such distribution could be limited only to victims who appear in the indictment.

103. Due consideration should be given as well to the enactment of regulatory provisions that could prevent the holding and concealment of illicit proceeds through administrative and preventive measures. In this regard, the review of the administrative measures to control financial institutions is essential.

IV. ACTION REQUIRED BY THE COMMISSION

104. The growth of organized transnational crime and the diversity of its activities suggest that an increasing amount of illicit proceeds would be directed at the world's financial systems. The problems facing policy makers, regulators and criminal justice systems are bound to be compounded by the increasing use of very sophisticated new technologies which provide an array of new opportunities for concealing and laundering criminal proceeds. In view of those trends, the particular needs of developing countries and of countries in transition will multiply and grow exponentially. The Division has already had an indication of this, in the form of a growing number of requests for assistance in the field of prevention and control of the laundering of the proceeds of crime. Consequently, the Commission might wish to devote attention to ways and means of strengthening the capacity of the Division to undertake more operational activities in this area, in response to requests of Member States.

105. As mentioned above, the rapidly changing situation would make reliable information and knowledge more essential than ever, as a basis for efficient decision-making and effective concerted action at all levels. In view of the work already under way in both the Division and UNDCP in the collection of legislation, and given the clearing-house functions of the Division already mandated by the Council and the General Assembly, the Commission might

wish to consider authorizing the Division to expand its information collection to the area of the prevention and control of the laundering of criminal proceeds. Such a function could be performed in cooperation with other international organizations, building on data collection instruments already developed by ICPO/Interpol and the Commonwealth Secretariat.

106. The Commission may also wish to encourage more coordination and cooperation among relevant international organizations, in order to improve advocacy and dissemination of information, and foster action against the laundering of criminal proceeds.

Notes

[1]*Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E. 94.XI.5).