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George Millard

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enforcement of external orders — in other words, confiscation orders obtained in the United States was passed in May of last year.

There are a number of cases which have come about. I have talked on the first one, the BCCI case, which occurred several years ago. It is remarkable that the Bahamas was one of the first countries to take regulatory action against BCCI, to close down BCCI in the Bahamas. That is symptomatic of the importance which the government has placed on this area.

There are many cases which have proceeded before the courts. This is an example of one where Americans were charged with forgery, fraud, and conspiracy. One difficulty, and I do not want to suggest that there are not continuing difficulties, is a lack of resources and indeed the police themselves need additional resources to provide the proper investigation. But the good news is that only clean money is welcome. The regional governments have committed massive resources to make that clear. It is time to dramatically expand trade services and relationships.

XV. ECONOMIC CRIME AND ORGANIZED CRIMINALITY IN SOUTH AMERICA

*George Millard**

Considering Latin America as an interactive bloc economically, and even taking into account all the regional differences, it cannot be denied that certain criminal activities, as financial offenses are intensely reflected in all nations.

In seeking out the relationship between the various forms of criminality, the extraordinary importance which drug trafficking assumes throughout the continent becomes immediately obvious. Criminal actions starting from the plant cultivation, whether it be coca or poppy or even marijuana, extrapolate all the frontiers causing differentiated economic impact. The producing countries are a source of wealth for the peasants and related workers. This same wealth extends itself, forming a production chain linked to drugs. It almost becomes an obligation to specialize in various activities, from the transportation, and continuing with the refining in the laboratories, then on to the local commercialization, or its preparation for export which is a journey into other markets.

* Director of Police, São Paulo, Brazil, and Professor, Civil Police Academy, São Paulo, Brazil.

At each of these stages, payment is effected using distinct forms, from payment in (local) cash to a percentage participation in the transaction, or even in kind — by the drug itself. Various studies have been carried out with the purpose of verifying the economic phenomena of these new sources of income, and the appearance of wealth, as is almost always shown, completely out of proportion to local norms.

These studies, principally within the communities of the Andean region, were produced by various research teams sponsored by UNESCO. In that area they were interpreted by sectorial effects reflected by the injection of resources of laundered narco-dollars, and invested in civil construction. Monies coming from the underworld economy applied in the purchasing of rural land and in urban construction, mixing in with the formal economy. It is the reference to an extensive research in cities in Ecuador, Colombia and various other countries, which felt the heavy impact of the injection of resources directly obtained from the commercialization of drugs. Others raise hypotheses about the sustaining of whole communities by drugs, and the impossibility of the substitution by other economic activities without causing grave social distortions.

In recent UNESCO studies and in the MOST Programme/Management of Social Transformations, the reports show the social and economic transformations due to the poppy cultivation in the Colombian central massif. Further, there are new and recent studies about the economical and social impact in drugs in the Amazon basin, also within the context of the same UNESCO programme.

In addition to the river networks there are road and air transport facilities that allow a reasonably good link between the Pacific and Atlantic coasts, and it is clear that the drug economy has directly or indirectly contributed to its gradual construction. The association between drug trafficking and contraband is a reality, as the main corridors and routes that link the border countries, and the virtual network of transit points and drug processing sectors, are part of the so-called logistics drug-trade network. The routes and corridors used by the traffic are two-way and serve to smuggle gold, electronic goods, commodities (coffee and soybeans), and stolen cars and trucks which are all exchanged for coca, cocaine, arms or manufactured products.

The countries which form part of the system of production, transformation, trafficking and distribution of drugs do become, at certain moments, exposed to risks never before imagined. A vulnerability in the financial systems has arisen, determined by the dependence on the economy by the drug, and by the occurrence of various offences which have taken advantage of the economic structure. This is not taking into account the strong power of the corrupting body, always ready to infiltrate itself,

guaranteeing the permanence and the actual survival of the criminal activity itself.

Close to the spirit of legitimate corporations on a multinational basis criminal enterprises also conceive and project complex strategies, mainly because they imply transnational networks.

Despite the dissimilarities between drug trafficking and money laundering, they share to a certain extent the same logistic facilities in chosen fields of operation. The tasks completed in one or other activity, come together to form what is known as the drug industry. This perception of the use of the same logistics support, is due to the need of operational flexibility, in virtue of the ever-present risk inherent in such an enterprise. This type of operation is depicted with a peculiarity characterized by constant changes in routes, bases, intermediaries, storage and loading points.

In money laundering, the operation mainly depends on an urban centre, where the minimum of structures are found, legalized and linked to the financial area, such as banks, exchange houses, foreign exchange bureaux, or electronic transfer points. One can see the same spirit and dissimulation strategy, as well as the ever present corrupting force.

A lot has been said about the mechanisms of money laundering and its various stages. We simplify the definition of money laundering "as the way in which criminals conceal and disguise the proceeds of their crimes."

There are various stages in the process, the first is known as Placement, the moment when the money is physically deposited in financial institutions. Then the money is to be transferred electronically; which is the stage called Layering carried out in an attempt to avoid identification, through countless and at times simultaneous transactions. Finally, Integration, when the funds start to return now "clean and legitimate."

While many ways are used to obtain these results, always at one time or another, they involve some financial institution. The greatest risks are at the first stage and these tend to diminish gradually, as they get further away from the real beneficiaries by the utilization of front companies often installed in tax havens protected by commercial, fiscal and bank secrecy. Almost always the transactions are constituted through power-of-attorneys and with bearer bonds.

In the case of Brazil, it is not correct to imagine that the benefits always have to leave the country. The national participation designated for remittance, principally in the international organizations, remains here. At the end, the laundered money is re-incorporated in the financial system as if it was clean money. Small towns on the borders with Peru and Bolivia move enormous sums of money. The amounts were proven in bank movement data obtained from Brazil's Central Bank in small towns lost in

the Amazonian vastness.

Cases such as these help give a clearer picture of the problem at hand dealing with the money not being disguised as in the large financial centres such as Rio de Janeiro and São Paulo, where it dilutes itself with the enormous amounts moved. The drug economy succeeded in compelling the creation and utilization of financial engineering mechanisms, which have become available for the laundering of illicitly acquired monies.

There are many forms of money laundering, and at each moment a new one appears. Some of the more traditional ones remain, such as the loan which will never be paid off and which is used for the return of illicit money applied in some tax haven. The schemes include under and over invoiced sales in import and export operations, overseas branch office losses, the breaking of contracts, losses through multi-million fines, and even guarantees offered for collateral, which move from hand to hand. There are whole series of parallel maneuvers to justify increases in assets and open displays of wealth.

The same ruses are used to cover up the most varied of illicit acts, including those of a fiscal nature with the respective tax evasions.

There is a lot of Brazilian money overseas. The actual numbers are obviously unknown, but using indirect methods, the IRS states that there must be US \$20 billion remitted irregularly to tax havens, which is almost the equivalent to the total individual and corporate tax collected last year. Nevertheless, this figure could be highly underestimated according to Raymond Baker of the Brooking Institution, an American independent research entity who maintains that the amount of crime money could reach the sum of US \$80 billion accumulate outside the Brazilian borders. The majority of this money is due to corruption, tax evasion and/or criminal activities related to drugs and arms trafficking.

As to the Brazilians' destinations, the first place is a tax haven called the Cayman Islands which in 1998 inexplicably shows in the economic indicators as the third largest exporter to Brazil. What has been happening? Is it a case of the practice of price transfers? The answers have not been forthcoming, forming part of an investigation being carried out by the authorities.

The definition of a tax haven, according to Brazilian authorities, is any country where the income tax rate for either the individual or the corporate body is 20% or less. In second place of preference is Uruguay, which aims to be, in the words of the Head of the (Brazilian) IRS, the Mercosur's fiscal refuge in the same way Luxembourg is for Europe. It is a fiscal haven on the southern border with Brazil, which offers all possibilities of financial arrangements allowed by an ultra-liberal legislation completed with the most absolute bank secrecy protection. For example, in 1993 Uruguay, a

non-producing country, had a gold trade of such intensity that it exported to the United States 75 million dollars in ingots — approximately 6.2 tons in weight. Of course, the so-called “Operação Uruguai” must be remembered, which deal with the campaign funds of Brazil’s impeached president Collor.

Finally, there is the United States, where a lot of dirty money has been applied by Brazilians in financial institutions or invested in the purchase of millionaire real estates. This is a motive for investigations by American authorities, and the frequent object of news in the Brazilian press.

The majority of the cases are related to acts of a criminal nature practiced in Brazil. We remember the frauds against the welfare system practiced by a gang of lawyers, court officers and a judge. This was the object of a court case in the District Court of Miami. At the time the aim of the Brazilian government, was to recover part of approximately US \$150 millions fraudulently remitted to the USA in cash by a female lawyer condemned and serving a prison sentence today in Brazil.

The examples continue multiplying since the discovery in 1999 of the deviation of about US \$100 millions from the building fund for the Regional Labour Court in São Paulo. This money was applied in real estate and in bank accounts by a corrupt judge, today on the run.

Furthermore, there is the arrest by the FBI of Brazilian businessmen, based in South Florida, suspected of laundering drug money. According to the Federal Justice Department, two Brazilians had set up a scheme to launder about US \$200 million, which was in cash in Japan, for the Colombian narco-traffickers. The two Brazilians were owners of financial companies established in Miami, and were associated with two accomplices, one of them a British executive of an investment bank in Boca Raton on the Florida coast. They intended to withdraw about US \$20 million from Tokyo, embarking on commercial flights to Pakistan, where it would be deposited in other bank accounts. The trial of this gang is about to start in West Palm Beach, Florida.

The search for the US \$242 million, which disappeared from the safes of Banco Noroeste in the Cayman Islands in 1998, is yet another example. This enormous quantity of money passed through several well-known American and British banks in the names of twenty off shore companies, constituted in tax havens. Until disappearing without trace, despite the FBI and Scotland Yard, with the support of Interpol, trying to solve the case.

These were just some of the actions which reached the media, drawing the attention of the common citizen and the man-in-the-street, and motivating various speculations about criminal activity which penetrates national frontiers.

The organizational criminality is also present and of great intensity in the so-called triple frontier of Paraguay, Argentina and Brazil. Especially, in Ciudad del Este, the frontier town linked Foz do Iguaçu, in Brazil by a bridge over the Paraná river. It is there that the contraband of cigarettes, alcoholic beverages, merchandise or even trinkets, mixed with the trafficking of drugs and arms, and the laundering of money originates. If this was not enough, it is also an important conduit for stolen cars, trucks and cargoes, centre for electronic piracy and falsified merchandise. Furthermore, the city has a strong presence of the Chinese Triads, representatives of eastern crime organizations, connected with gaming, extortion and illegal immigration. It is also there, according to Brazil's ambassador in the capital Asuncion, that about US \$8 billions is laundered annually.

Elsewhere, there are less apparent criminal activities which go unnoticed, whether by the quantity of drugs involved or by the insignificance of the participants. These are almost always small-scale operations, involving human transport in the form of recruiting "mules."

These operations add up to hundreds, and they represent a real hidden criminal potential. The operations include sophisticated triangulation systems and passing through various countries before reaching the final destination. These are the Nigerian gangs, which float around the world. Further, there is the case of the so-called Nigerian letters.

The non-organized Nigerian criminal organization is present all through Latin America. With an ever increasing presence in both Brazil and Suriname, the criminals dedicate themselves not only to international drug trafficking in general (cocaine and heroin), but also to activities related to falsification and fraud, victimizing people connected to business, industry and the financial world. Their marked presence is expanding and with the number of rip-offs perpetrated in different countries, it makes repression difficult in virtue of the multiplicity of the jurisdictions involved.

Others who deserve attention are prominent members of the Italian Mafia, whether traveling through the continent on forced or voluntary "holidays." Many of them, are to be found south of the equator. In most cases they are escaping from eventual legal problems, absconding from prison or from internal rivalries. Many try to establish themselves in their own businesses. Brazil was the hideaway for one of the biggest Mafiosi of all times, who remained here until his death at eight years old, without Italy managing to obtain his extradition. Another criminal arrested here who became the symbol for the end of the "omertá" (Law of Silence) was called Don Massimo or Tomaso Buschetta, also died recently.

Since the decade of the 80s, the Mafia has been associating itself with the Colombian cartels, and Brazil was always an ideal location for

discussions and closing of business deals. For one, it is a first class articulation point owing to the excellent telecommunications infrastructure and the available efficient banking system. This situation started to change for various reasons. One of them was a political decision to face the problem of money laundering by adopting a specific legislation published in 1998, which, although presenting blatant difficulties of application, is a landmark in the sense of starting this task, so long clamoured for by the international community. Another is the work of co-operation between various countries, such as Brazil and Italy, resulting in the clarification of the actions of Brazilians associated with the Mafia. Additionally, the speeding up of the capture and extradition of Italian criminals found here is a significant step.

More recently, one more manifestation in the sense of instituting bilateral agreements has been made. I refer to the Bilateral Co-operation Treaty between Brazil and the United States in the penal area for combating organised crime which at present is at the voting stage in the House of Representatives. The co-operation agreement was signed in 1997 by the presidents of Brazil and the United States, during the latter's visit to the country. The U.S. Senate gave its immediate approval, but here in Brazil the Treaty was presented before Congress by the government only last year.

The objective of this treaty is to facilitate the work of Brazilian and American authorities in the investigation of criminal acts in the two countries by the way of information exchange and obtaining the statements of suspects and accused persons involved in criminal cases.

The Treaty further provides for the existence of central authorities and for the exchange of information. In Brazil this authority will be the Minister of Justice, and in the United States the Attorney General or the person designated by him.

The project is entitled the Judiciary Assistance in Penal Material Agreement, and the authorities will communicate with each other directly in keeping with the objectives stipulated in this agreement.

The treaty has special importance because it establishes a juridical mechanism in keeping with the increased bilateral co-operation in the fight against transnational crimes, such as money laundering and the trafficking of arms and munitions. The agreement allows that the country has the right to oblige a person cited to give deposition or to give evidence, to present themselves as a witness, or to show documents, registers or assets.

In the pipeline are a seven agreements of a similar nature between Brazil, Chile, Portugal, the United States, France and the Mercosur countries, for the transfer of condemned prisoners and miscellaneous co-operation. In the exposition of the motives annexed to the project, the agreement establishes means of co-operation in the police investigation, in

the penal process and in the initiatives of crime prevention.

The agreement also specifies that those involved in criminal processes could be transferred to the applicant country to give depositions, and obligates the countries to make full efforts to identify the location or identify discerned persons or assets, execute search warrants, apprehend and deliver any asset required.

A rather black picture has been painted with regard to the links between economic crime and organized criminality in South America, particularly Brazil.

We need to be more effective in continuing to combat criminals at the highest national and international levels. It is most certain that there is the need to provide leadership and expertise to fight organized crime, nationally and internationally, and to build on the work of Regional Crime Intelligence Services to ensure that national problems are met with national solutions. Finally, we need to enable the adequate supply of intelligence at the international level. It is a difficult task, but it should be emphasized and pursued at all costs.

XVI. STRENGTHS AND HURDLES IN THE STRUGGLE AGAINST ASSET LAUNDERING AND THE REPRESSION OF FINANCIAL CRIME: THE COLOMBIAN PERSPECTIVE

*Jaime Ospina-Velasco**

A. Introduction

We are very pleased to accept the invitation of the Levin College of Law of the University of Florida to present our perspective on the achievements, successes as well as the failures of the struggle by public and private institutions against asset laundering in Colombia.

We would also like to thank the (University's) Business School and the Center for Latin American Studies for their significant cooperation in the preparation of the agenda for this Conference and for giving us the opportunity to learn what various countries do to prevent the misuse of financial institutions, to curb crime, to defeat criminal enterprise and to overcome the detrimental effects of such activities.

* The author is a founding partner of Ospina, Oviedo & Asociados Ltda., a leading consulting firm in Colombia, specialized in consulting to banks and financial institutions on prevention and control of asset laundering, and founding member of the Center of Studies on Money Laundering at the School of Law of Pontificia Universidad Javeriana at Bogotá, Colombia.