

THE EFFORTS TO COMBAT MONEY LAUNDERING

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INTRODUCTION

The present paper is about the national and international efforts to combat money laundering. From criminal and macroeconomical perspectives, we study the Brazilian and United States legislations, the mechanisms of control, the impact on the economy and the measures of combat this criminality.

Criminal activities, such as drug trafficking, smuggling, human trafficking, corruption and others, tend to generate large amounts of profits for the individuals or criminal organizations.

However, by using funds from such illicit sources, criminals risk to catch the authorities' attention to their criminal activity and exposing themselves to criminal prosecution. In order to benefit freely from the proceeds of their crime, they must therefore conceal the illicit origin of these funds.

Briefly described, "money laundering" is the process by which proceeds from a criminal activity are disguised to conceal their illicit origin¹.

The study has great relevance, because money laundering affects all the economy of a country. The great circulation of money of illicit origin, far from the official organs of control of the country financial system, unbalances the market and the economy as a whole.

A Government that has allowances diverted, for instance, stops using this amount that should be designated to bring public politics into effect on behalf of the population. This produces multiple effects on its economy, especially for the maintenance of social inequality, criminality, etc. In addition, this money has a tendency to be hidden, many times in the form of tax evasion, where it is sent to be "washed". After this, it reenters the country financial system already divested of its illicit origin.

Besides the unbalance of the economy caused by the great unofficial circulation of money, a country with corruption and money laundering will not attract investors who look for economically more stable countries without so many problems of criminality. No enterprise will have interest in establishing itself in a place where the rules of the government are not clear and are dictated by corruption and where the criminality rules.

The penal intervention is necessary in order to punish money laundering on account of several risks that it brings in several sectors of the society, such as: (a) hyper-reaction of the financial markets; (b) oscillation of the exchange rates,

¹ See <http://www.imf.org/external/np/mae/oshore/2000/eng/role.htm>, access in 22.nov.07.

taxes and interest; (c) risks of contamination in the free competition; (d) decrease of the performance of the financial politics of the country; (e) financial instability; (f) increase of the corruption, among others.

We looked to study and understand what money laundering is, how it happens in Brazil, the legislation about this issue, the economical mechanisms involved and the institutions participants in this process. In international extent, we looked to study the acting of the United States in the combat to this criminality, the agreements about this issue, and some of the existent international organizations acting against money laundering. We hope this paper can be useful to draw strategies by the institutions that combat this crime – such as Public Prosecution Service, Police Offices, etc. – in order to decrease the ominous effects of this practice and to bring important contributions to be adopted or improved in our country.

More important than to put the criminals in the prison, it is to make the criminal organization impracticable. This can be done through the blocking of the assets of its integrants, bringing these values back to the country and determining the loss of them on behalf of the damaged state or nation. It will be possible just with the knowledge of the functioning of the processes of money laundering. We need to know the economical proceeding involving enterprises and institutions. It's necessary for joint work among the institutions that detain the financial information and the organisms that combat the crime. Additionally, it's important to have the the cooperation of the countries involved in the scheme.

The paper will be developed in three chapters:.

The first chapter will address the money laundering in Brazil, general arrangements, legal aspects, the institutions involved in it combat and the forms of prevention used.

The second chapter will be about the international efforts against Money laundering, the international agreements for witch Brazil is a signatory, as well as the money laundering in the United States, the legislation and the mechanisms of combat of this criminality in this country.

The third chapter will point the principal problems faced and will indicate suggestions for a bigger effectiveness in the combat and prevention of the money laundering.

He hope, at the end, to be able to contribute, in some form, to a better understanding of the money laundering crime and to the improvement of the efforts to its combat.

1 MONEY LAUNDERING IN BRAZIL

1.1 GENERAL ARRANGEMENTS:

1.1.1 The Relation of Economical Law and Penal Economical Law with Money Laundering crime.

In its Title VII, the Federal Brazilian Constitution addresses the Economical and Financial Order of the country. It looks to regulate the commercial relations, in order to avoid abuses of the economical power, in the name of the general interest. From art. 170 and on, it discusses the economical order and, from art. 192 and on, it regulates the financial system.

In Brazil, the Economical Law is the branch of the Law System that joins and systematizes a set of legal rules of public interest, destined to protect and maintain a certain organization of the national economy in order to provide the welfare of all community.²

The Economical Law preserves and harmonizes the economical order. When determined conducts harm or endanger goods connected with this economical order seriously, with disturbing reflexes of the social interest, the Penal Law appears, more specifically the Penal Economical Right, to protect them.³

The goods that Penal Economical Law protects, however, do not have easy characterization, because of their nature, such as the "quality of the consumption", "the environment", "free and clean competition", among others predicted in the Title VII of Federal Constitution. For this reason, the economical crimes are called macroeconomical crimes, because they aim for the protection of goods that are of interest to the whole society, less than the goods of individual interest, though these could be indirectly protected as well. They concern to the functioning of the economical system and, so, they have macrossocial character.

Generally the economical crimes are predicted in special laws, like the Law 9613/98, that disciplines the Money Laundering Crimes, the Law 7492/86, about the financial crimes.

² MONREAL apud SILVA, Cesar Antonio da. Money Laundering: a new penal perspective Porto Alegre: Livraria do Advogado, 2001, p. 24

³ SILVA, Cesar Antonio da. Money Laundering: a new penal perspective. Porto Alegre: Livraria do Advogado, 2001, p. 25.

In the present work, we will make consideration about the Money Laundering Law specifically.

The money laundering crimes, characterized like macrodelinquency, comprise those conducts destined to make with appearance of lawful the money obtained with illicit ways. The money is originated from the practice of determined criminal activities, such as traffic of drugs, contraband, corruption, etc, and causes highly damaging injury to the economical and financial order of a country. It is, so, a phenomenon with social and economical character. The financial system is reached seriously in its normal functioning. There is a damage of the normal flow of capitals, as soon as it affects the clean competition. Dominant groups appear and create monopolies. There is no the necessary transparency of determined financial operations. The abuse of the economical power manifests itself. The disloyal competition take place; the trick to the Internal Revenue Service occurs as well as the facilitation of the corruption, along with other factors that weaken the economical order of the society.⁴

The Money Laundering crime is, therefore, a transnational crime. It is characterized for a set of commercial or financial operations, that look to the incorporation of resources, goods and values in the economy of each country, in a transitory or constant way, originated from serious crimes, such as traffic of drugs, contraband, terrorism, contraband of arms, corruption and kidnapping⁵.

The money laundering crimes are also acquaintances as “white collar”, because generally committed by persons of social high status.

Usually they are committed by organized groups, transnationals. The crimes exceed the limits of the territorial, sea and air space of a country. They cause ominous influence in the financial-economical system of the nations, because of the globalization of the economy, bringing imbalance to the economical national and international order. The money has not any commitment with the social interest and the common welfare, which has been leading the Authorities to its most effective combat.

There are international banking systems and market of capitals, in determined countries, specialized in money laundering. They use proceedings that aim to hide or to make difficult to find the origin of the values and the transparency of the operations, allowing the circulation of great quantities of money and tax evasion.

As well as the organizations and lawful enterprises started to benefit of the globalization and of its facilities for the realization of international business, also the

⁴ SILVA, Cesar Antonio da. Money Laundering: a new penal perspective. Porto Alegre: Livraria do Advogado, 2001, p. 32.

⁵ FELIX, Francisco Carlos de Matos. COAF – Concil of Control of Financial Activities. Lecture uttered in Money Laundering Course, Curitiba, 14. Set. 06.

criminal organizations started to use these advancements for the practice of crimes. The diffusion of the internet communications, the facilitation of transport of goods and the reduction of the barriers for the circulation of persons and values for the whole world allow the practice of crimes connected with drug trafficking, arms and other goods with illicit origin, as well as for the occultation, circulation and legitimation of the product of these crimes. The groups make use as much of clandestine mechanisms of movement of capitals, as also of the financial legitimate systems, employing specialized agents in economical criminality and legitimation of capitals.⁶

Nations and Authorities realized the necessity of breaking with the existent models of the organized criminality persecution in order to make their actions more effective. They realized that this criminality has been acting at all places and it is not obstructed by the barriers of sovereignty, territory, jurisdiction, etc.. So they started to modify the way of fighting it, creating international standards of conducts to be adopted by the countries.

Ahead, we intend to study the applicable legislation to this kind of crime in Brazil and USA, and the mechanisms of combat used by them. We will compare the practices adopted in these countries and looking for solutions for reaching the effective control and prevention of money laundering.

1.1.2 Presuppositions of the Money Laundering Crime – Preceding Crime

The money laundering crime is characterized for proceeds of illicit origin. Consequently, it must result from an illicit conduct described in the law as criminal conduct.

The Penal Law needed to be adapted and to look to other branches of the Law for the mechanisms for the organized crime combat. This because it faces a complex macrocriminality, not reachable for the penal traditional law. It needed to concentrate more the attentions on the control of goods, rights and values maintained by the criminal groups, finding strategies to weak financially the group and to avoid the criminal practices.

The Law 9613 of 03/03/98 regulate the money laundering crimes or occultation of goods, rights or values; the prevention of the use of the financial system for the practice of the predicted crimes of the law; it creates the Financial Activities Control Council – COAF – and it gives other providences.

The article first talk about the preceding crimes, necessary presuppositions for the Money laundering taking place.

⁶ ARAS, Vladimir. National System of Money Laundering Combat and Recuperation of Asstes. 2006. 26.set.07 <<http://jus2.uol.com.br/doutrina/texto.asp?id=9862>>.

Article 1st. To hide or deceive the nature, origin, location, arrangement, movement or property of goods, rights or values originated, straight or indirectly, of crime:

- of drug traffic;
- of terrorism and its financing;
- of contraband or traffic of arms;
- of extortion by kidnapping;
- against the public administration – corruption
- against the financial national system
- practiced by criminal organization;
- practiced by individual against the public foreign administration.⁷

The paragraph first tells that it incurs the same penalty who, to hide or to disguise the use of goods, rights or values originating from any of the preceding crimes told in this article:

- I - converts them in lawful assets;
- II- acquires, receive, exchanges, negotiate, give or receives in guarantee, saves, has in deposit, moves or transfers;
- III-imports or exports goods with values not corresponding to the true ones.

The second paragraph establishes that it incurs the penalty who:

- I – uses, in the economical or financial activity, goods, rights or values that he can know they are originated from any of the preceding crimes told in this article;
- II- participates of group, association or office, knowing that it principal or secondary activity is orientated to the practice of crimes predicted in this Law

The predicted penalty is prison from three to ten years and also a fine.

Among the preceding crimes, the corruption deserves distinction, especially that of chiefs of state, political leaders and public agents, who accept bribery, gifts, illegal payments, or participate of the diversion of allowances. This kind of criminality causes enormous damage to the economy and to the credibility of the institutions, because it is committed by that people that have the duty to look after the suitability and good performance of the public services and to fight the corruption.

In Brazil, it is becoming common and concerning the corruption in the judicial sector, and among all who participate of this process, such as Judges, Public Prosecution Service, policemen, lawyers, etc. The criminal organizations have been enticing, co-opting and permeating his integrants in the public sector and in strategic areas, starting to make use of this structure to its favor, causing enormous damages to society and to the Nation.⁸

⁷ Crimes predicted in the articles 337B, 337C, 337D of Brazilian Penal Code. This item was introduced by the law n. 10.467/02.

⁸ ASCARI, Janice Agostinho Barreto. Assets Laundering. Lecture uttered in Money Laundering Course, Curitiba, 15.Set.06.

The law characterized the Money Laundering crime like autonomous crime. So, even when the author of the crime is unknown or exempt of penalty, the crimes are punishable. Also it allows the concession of advantage for the criminal that collaborates with the investigation and the technical inversion of the burden (onus) of the proof against the person interested in the liberation of goods, rights and values, that has the duty of demonstrating that these assets, object of apprehension determined by the judge, during the criminal proceedings, are licit. For the prosecutor starts a criminal case, however, it's necessary the demonstration of sufficient signs of the preceding crime's existence.

The law innovated regarding the possibility of the penal case follows its regular way when the culprit, not located and summoned through the official press of the Judicial System, defaults. Although there are some discussions about the constitutional legality of this arrangement, it does not apply the article 366 of the Brazilian Penal Process Code, which determines the suspension of the case in these hypotheses.⁹

Some important crimes as robbery, extortion by kidnappings and all the crimes committed through payment were omitted in the Money Laundering Law, and this limits the prevention and repression.¹⁰

The inclusion of the criminal organization crime among the roll of preceding crimes produces ambiguity, because our legal system does not establish what a criminal organization would be. Though criminal organization is mentioned in the 9034/95 and 10217/01 laws, they do not bring the concept of it. There are Bills in Brazilian Congress aiming at regularizing the matter, but meanwhile the legal gap keeps on causing difficulties to the operators of the Law. The same happens with the terrorism crime, which is not defined in Brazilian legislation.

Another difficulty for the persecution of the money laundering crimes has to do with the Double Incrimination Principle. In other words, when the preceding crime is practiced in another country, the conduct must be considered a crime also in this country, otherwise it will not be characterized as money laundering crime, because the origin of the values will not be illicit. For this reason, it is important that the countries adopt the same roll of the preceding crimes, in order to make more effective the penal persecution.

A money laundering condemnation will cause the loss of the goods, rights or values of the criminal, on behalf of the Union, but the right of the people harmed by the crime or in good faith is protected. With the end of the case and with the

⁹ PAMPLONA, Juliana Faria. General Aspects for the Discussion of International Politics of Public Security. Money Laundering and Internationalization of capitals. 2001. 24.set.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=2197>>.

¹⁰ ARAS, Vladimir. National System of Money Laundering Combat and Recuperation of Assets. 2006. 26.set.07 <<http://jus2.uol.com.br/doutrina/texto.asp?id=9862>>.

condemnatory sentence stopped by judgement, the culprit will be prevented from having any public function of any nature in the public sector. He also can not integrate the directorship, the Council of Administration or the management of the legal entities indicated in the 9th article of the law, such as financial institutions, brokers, insurers, administrators of credit card or of partnership, and so forth, for the double of the time of the punishment by confinement.¹¹

DEPERON¹² talks about some vulnerable sectors of the economy that were addressed in the Money Laundering Law.

a) Financial System – Because of the great circulation of money in the financial system resulting from the globalization, and from the search by the enterprises for more attractive interest rates, purchase and sales of assets, and great international operations of mutual one. These transactions move great amounts, allowing the recycling of dirty money.

b) Stock Exchanges - The Stock Exchanges are associations that stimulate and make easy the purchase and sale of stocks. However these stocks are bought through a broker and, because it does not identify who its clients are, it can negotiate titles on behalf of criminals.

c) Insurance Companies – Sector also vulnerable, as regarding the shareholders and the insureds, subscribers, participants and intermediaries.

d) Realtors - The purchase and sale of real estate is the economical activity of the realtors. This can make easy the use of the dirty money in activities practiced by these enterprises.

e) Plays and Draws – The great sums of money that circulates in lottery places, bingoes and others allows the money laundering occurs. They use techniques to manipulate the reward, exchange combinations, make great bets in determined kind of play (ex. roulette).

The law considers other vulnerable sectors, like the international commerce of objects of arts and precious stones. In its article 9ts, it imposes them some obligations in order to prevent crimes. Finally, it created the national clients register of the financial national system (art. 10thA).

Next, we are going to analyse the money Laundering Steps.

¹¹ PAMPLONA, Juliana Faria. General Aspects for the discussion of international politics of public security. Money Laundering and Internationalization of capitals. 2001. 24.set.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=2197>>.

¹² DEPERON, Mariana Pazianotto. Money Laundering. 2000. 24.jun.07. <<http://www.neofito.com.br/artigos/art01/jurid277.htm>>.

1.2- MONEY LAUNDERING STEPS:

The money laundering crime involves three steps. 1st Placement; 2nd layering, 3rd Integration.¹³

1st step- Placement. It consists in introduce the money in the economical system. The criminal send the money abroad to make it circulate in countries with more permissive rules and with a financial liberal system.

According Marques¹⁴, it is possible identify this practice, especially when the financial operation is carried out:

- a) in disagreement with the economical capacity or the profile of the client;
- b) in high values of currency;
- c) through smaller amounts of money to avoid compulsory registers;
- d) in the name of third individual in order to hide data;
- e) in purchase and sale of prizes of lottery;
- f) using places of plays;
- g) using tax haven – electronic transfer of resources

When the sums are not very high, the criminals also make use of commercial establishments, like restaurants, nightclubs, commerce, etc., in order to insert the illicit money in these activities, mixing it with lawful money and making difficult the checking of the origin.

For great amounts of values, very often it is necessary the criminals send the money abroad through the financial system or transporting the money, in currency, or converted in gold or diamonds, in order to reduce the volume. In using the financial system, it is necessary to make the operation through a transaction of an enterprise with credibility and financial capacity to carry out an operation in that amount without attracting attention.

2nd Step – Layering: It consists in making difficult to track the illicit resources. The goal is to break the chain of evidences avoiding the possibility of investigation about the origin of the money.

In this phase, the following acts can be practiced in general:

- a) acquisition of bearer ordinary shares or participation in stock companies;
- b) superturnover in exports;

3rd Step – Integration: The assets are incorporated formally to the economical system. The criminal organizations usually invest in business that

¹³ FELIX, Francisco Carlos de Matos. COAF – Concil of Control of Financial Activities. Lecture uttered in Money Laundering Course, Curitiba, 14. Set. 06.

¹⁴ MARQUES, Silvio Antônio. Money Laundering and Administrative Improbability. Lecture uttered in Money Laundering Course, Curitiba, 14. Set. 06.

make easy its activities, and they can develop activities able to help and make services one another.

In this 3rd phase, the assets can be applied in lawful business (like housing, vehicles, etc.), or illicit, like the criminal practices financing¹⁵.

Mendroni quoted by Gomes¹⁶ describe some techniques used by the criminal organizations in order to hide the dirty money:

- a) fictitious enterprises – they do not exist physically, nevertheless they move money in proper name;
- b) fraudulent sales of real estate – they declare, in the contract of purchase and sale, a inferior value for the property, different from the value effectivelly payed. So when the real estate is launched again in the market, in its real price, the difference apparently seems to have a lawful origin;
- c) “front companies” – the interprises exist, in the physically and documentary form, participating, at least apparently, of lawful activity, however they are used like instrument of money laundering;
- d) mix – the criminals mix illicit capital with lawful one, and then they show up both proceeds as resulted from lawful activity of the enterprise;
- e) structuring (estruturaco)– they share the amount of values in small divisions that are not supervised;
- f) contraband of money – it is a physical transport of money to another country, disconnecting it of the illicit origin and investing in a foreign bank.

Gomes¹⁷ tells that, in Brazil, the video Bingo has been one of the practice preferred used, inclusive catching the attention of the Italian mafia for the sale of machines and for money laundering resulting from the sale of the cocaine.

The report of GAFISUD¹⁸ points out that the main practices used in South America are: simulated exporting of services; simulated exporto of goods; simulated foreign investment in a “local company”; International Foreign Exchange Arbitrage³ through transport of unlawful money; Transfers of Unlawful Money Split into Fractions through International Remittances; “Peso Broker” (Black Market Peso Exchange); Use of Shell Companies to Support the Money Laundering Activities of Criminal Organisations or Terrorist Organisations; Financial and

¹⁵ GOMES, Alzeni Martins Nunes. Money Laundering, Relevant Notes. 2003. 18.set.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=4498>>.

¹⁶ MENDRONI apud GOMES, Alzeni Martins Nunes. Money Laundering, Relevant Notes. 2003. 18.set.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=4498>>.

¹⁷ GOMES, Alzeni Martins Nunes. Money Laundering, Relevant Notes. 2003. 18.set.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=4498>>.

¹⁸ To see a deeper description of the techniques see the Report available on <http://www.gafisud.org/pdf/english.pdf>, access on 10.Dec.07.

Investment Products Susceptible to Being Used for Money Laundering Operations; Utilization of Insurance Company Products; Use of Illegal Funds to Reduce Debt or to Capitalize Legitimate Companies; Purchase of “Prizes” by a Criminal Organization; Claiming a Fictitious Prize Won Abroad in Order to Enter Unlawful Money into a Local Country; Physical Transport of Unlawful Money for Currency Conversion; Laundering Money Originated in Acts of Corruption.

There are four common factors to all the operations of money laundering: a) the property and the origin of the money needs to be hidden; b) the form of the values needs to be modified and the volume needs to be reduced; c) the track left behind needs to be concealed, obstructing the tracking of the origin; d) the criminals need to maintain constant control on the money laundering process. In other words, as the money is illicit, they have to take care of it in order to avoid of being subtracted or appropriating by others in the course of the process. There is no legal mechanism to protect the illicit values and recover it.¹⁹

Following we will pass to the analysis of the organizations and proceedings involved in money laundering combat.

1.3 ORGANIZATIONS INVOLVED IN MONEY LAUNDERING COMBAT

The Money Laundering Law established several precautionary measures, in order to prevent that sectors of the national economy are used in the money laundering process.

Its principal target is to make the criminal organization financially impracticable and not profitable to the practice of crimes, consequently reducing the incidence of this criminality and of the preceding crimes. Several tools adopted by the countries and the agreements of international cooperation take into account this purpose and look basically for the apprehension of the goods and values of the gangs, making difficult its maintenance.

One of the arrangements of Brazilian Money Laundering Law is the *compliance*. In other words, it is the obligation of the legal entities listed in the article 9th of the Law (financial institutions, exchange bureaux, Stock Exchanges, insurers, etc.) of identifying the clients and maintaining up-to-date registers. Also they must register the whole transaction that exceed the fixed limit and communicate the proposal or realization of transaction that could have signs of money laundering crimes.

The transgression of this obligation can submit the offender to the penalties such as warning, fine and temporary impediment for the exercise of the administrator's post of the legal entities indicated in the 9th article of the law.

¹⁹ MORAIS, Andrea Frota Machado. Money Laundering in Brazil. 2000. 30.Oct.07. <<http://www.gwu.edu/~ibi/minerva/Fall2000/Andrea.Morais.pdf>>

These penalties are applied by the supervisory organs of each category, like the Central Bank, in case of financial institutions, and by the COAF, when the offenders are not subdued to any competent authority.²⁰

In addition, according article 13 of Brazilian Penal Code, the transgressor can be considered as a participant in money laundering crime, because of the “causal relevance of the omission”. The lack of compliance can make easier the crime practice. As the penal law “consider cause the action or omission without which the result would not have taken place”, the agent that do not follow the compliance rules, and had the legal duty of doing this, can be accused of money laundering²¹.

The article 15th says that the COAF should examine, identify and investigate the suspect signs of money laundering practice. It must communicate the competent authorities for the adoption of the appropriate proceedings, when it suspects or verifies the practice of crimes described in the Law 9.913/98 or any other illicit.

Other institutions also have a fundamental role in the investigation and in the obtaining of the proofs necessary for the penal persecution, such as the Federal Police and the Public Prosecution Service.

As the COAF, also the Central Bank, the CVM (Brazil's Securities Commission) and the SUSEP (Bureau of Private Insurances) receive informations of suspect movements. The exchange of data among the entities that have the duty to inform the COAF, the other entities that receive informations and the Federal Revenue, is basic to track the values of illicit origin.

Generally these informations are sent to the Federal Police and to the respective State and Federal Public Prosecution Services in order to make arrangements for blockade of goods and other precautionary measures, as well as getting the sufficient proof for the penal action starting.

These are the principal national organizations of Money Laundering combat, integrants of the COAF²²:

BACEN – Central Bank of Brazil;

²⁰ PAMPLONA, Juliana Faria. General Aspects for the discussion of international politics of public security. Money Laundering and Internationalization of capitals. 2001. 24.set.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=2197>>.

²¹ ARAS, Vladimir. National System of Money Laundering Combat and Recuperation of Asstes. 2006. 26.set.07 <<http://jus2.uol.com.br/doutrina/texto.asp?id=9862>>.

²² MIKALOVSKI, Algacir. Money Laundering. Investigation Techniques. Lecture uttered in Money Laundering Course, Curitiba, 15. Set.06.

CVM – Brazil's Securities Commission (Comissão de Valores Mobiliários);
SUSEP – Bureau of Private Insurances;
PGFN – General Office of Nacional Treasury (Procuradoria Geral da Fazenda Nacional);
SRF – General Office of Federal Revenue;
ABIN - Brazilian Agency of Intelligence;
DPF – Department of the Federal Police;
MRE - State Department;
CGU – General Office of Control of the Union (Controladoria Geral da União).

In Brazil, this cooperation and investigation are just starting. The institutions have not sufficient structure to deal with this type of criminality. The numbers of penal actions for money laundering crimes are reduced in the Courts. This is because not always a team has sufficient structure to face a criminal organization in its spacious branching and to obtain sufficient proof to start a penal action.

The money laundering crime demands a strenuous work of investigation and crossroad of informations, that very often the institutions are not prepared to face. The delay in the obtaintion of this information, the lack of specialized people to analyse the obtained data and to cross with others, very often, can frustrate an operation, because the criminal organizations are much more prepared and equipped and make difficult the work of the investigation.

We can realize a tendency of applying measures that reach the inheritance of the group, with the apprehension of its goods and values in order to make difficult the maintenance of the organization. The prison is just a second target. This because, when the agents are imprisoned, easily other people take the place and continue the criminal practices. Otherwise, whether the group can not move any more his accounts, use its goods and assets, it will not continue with the criminal activity, because it is expensive and demands capital. We are not saying that the prison is not the goal of the penal persecution anymore. However it must be sought with this other basic objective that is making the criminal group financially worse off, and as a result preventing several new crimes.

In the State area, which detains the residual competence for the processing of the money laundering crimes in the courts, the number of penal actions is still more reduced than in the Federal area.

With ten years of State Public Prosecution Service in Rio Grande do Sul, I have never received any police proceeding about money laundering crime. If the Prosecutor realizes some sign of money laundering practice, he should has to begin the investigation, accessing the COAF or carrying out other diligence, which can remain not relizable for excess of work and lack of human and material specific resources.

This takes place, also, due to the lack of structure of the state civil police officer to investigate this type of crime. The quality of the tools employed by the organizations to launder money demands specialized knowledge and exchange of informations net to persecute the crime. The non-existence of a unique net of information between the state police officers and federal police officers, in the states of Brazil, makes easier the occultation of the criminal organizations. Moreover when the civil police officer, as the shortage of resources and of people, generally has no conditions to seek this specialized information.

PAMPLONA²³ does relevant analysis about the money laundering legislation.

The author mentions the Complementary Law n.º 105 of 10/01/2001 (Lei Complementar), that describes the hypotheses of bank secrecy break in the operations of financial institutions that involve resources originating from the criminal practice, including money laundering. Also, this law lists the preceding crimes predicted in the Law 9.613/98, demonstrating the lawmakers's worry in creating mechanisms to intensify the ways to obtain informations in order to get a higher effectiveness in the penal persecution²⁴.

Following the same way, the Complementary Law nº 104, of 10/01/2001²⁵, that altered the Tax National Code of Brazil, regulate the exchange of secret information in the Public Administration area. The law rules that it will be made by a administrative process. In addition, the delivery of the information will be done personally to the authority that requested, by receipt, that formalizes the transfer and secures the preservation of the secrecy.

The Central Bank, the Brazil's Securities Comission (CVM) and other institutions, like the Federal Revenue, have been having important acting in the exchange of informations, transcending frontiers. According establishes Complementary Law 105/2001 in its article 2nd, § 4th:

" § 4th. The Central Bank of Brazil and the CVM, in its areas of competence, will be able to sign ageements:

I - with other public supervisory organs of financial institutions, in order to carry out joint inspections, observing the respective competences;

²³ PAMPLONA, Juliana Faria. General Aspects for the discussion of international politics of public security. Money Laundering and Internationalization of capitals. 2001. 24.set.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=2197>>.

²⁴PAMPLONA, Juliana Faria. General Aspects for the discussion of international politics of public security. Money Laundering and Internationalization of capitals. 2001. 24.set.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=2197>>.

²⁵ Legislation available on http://www.planalto.gov.br/ccivil_03/Leis/LCP/Lcp104.htm, access in 18.Oct.2007.

II - with central banks or supervisory entities of other countries, aiming at:

- a) the inspection of branches and subsidiaries of financial foreign institutions, in functioning in Brazil and of branches and subsidiaries of financial Brazilian institutions abroad;
- b) the mutual cooperation and the exchange of informations for the investigation of activities or operations that implicate application, negotiation, occultation or transfer of financial assets and of property values connected with the practice of illicit conducts. "

The article 7th establishes that these two organs "will maintain constant exchange of informations about the results of the inspections that they carry out, the proceeds they start and the penalties they apply, whenever the informations will be necessary to the performance of its activities."

Although the mentioned law does not mention the Federal Revenue and the Federal Police as participants in the exchange of informations, this exchange exists, specially between the Federal Revenue and the BACEN. When the BACEN realizes some suspect movement of great sum of values or tax evasion, it contacts Federal Revenue to check the inheritance involved and to value its financial capacity²⁶.

The General Co-ordination of the System of Inspection (COFIS) create, by the Regulation COFIS 007/99, the special group. This is responsible for the acting in the representations received from the Central Bank of Brazil in the the 9th Fiscal Region, along with the Federal Public Prosecution Service and the Federal Police. When the practice of a crime is checked, or signs of its incident, the group will inform to the Public Prosecution Service and the Federal Police, annexing the necessary documentation to the explanation of the facts²⁷.

The inspection of the operations of remittance and valuable entry, through the called counts CC-5, also started to make part of the tools of money laundering combat. In February 2nd, 1969, the Central Bank published the Carta-Circular number 5 (CC-5) normatizando the functioning of these bank accounts.

Though the Carta-Circular BACEN number 2.677, of April 10th, 1996 revoked the Carta-circular number 5, that started to regulate the issue, the name CC5 kept on being used up to today.

²⁶ PAMPLONA, Juliana Faria. General Aspects for the discussion of international politics of public security. Money Laundering and Internationalization of capitals. 2001. 24.set.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=2197>>.

²⁷ PAMPLONA, Juliana Faria. General Aspects for the discussion of international politics of public security. Money Laundering and Internationalization of capitals. 2001. 24.set.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=2197>>.

The CC-5 accounts are accounts in national coin, maintained by individual or legal entities resident or provided with a domicile abroad, in accredited banks authorized operating in the exchange market with floating rates. The individual or legal entity effectuates deposit in national coin, in one of these accredited banks, informing how and when it wants to receive the values abroad. The foreign bank effectuates the exchange operation with the national bank and make the value available abroad, in the account and bank indicated by the depositor. The depositor will be able to direct the money to the finality in accordance with his will, including bring it back to the country.

The use of the CC-5 accounts does not induce necessarily to the presumption of an illicit practice. It depends on the checking of the origin of the values, if the tax rules was followed or if they are taking refuge in some tax haven.

Since the publication of the Carta-circular nº 5, the banks were already obliged to register the origin of the resources, the identity of the depositor and of the favored one. From October, 1992, the transfers operations started to be registered daily in the SISBACEN, maintaining this proceeding up to today, according article 11th of the Carta-circular 2677/96. It must be also informed the origin and destination of the resources, the nature of the payments, the identification of the depositors and beneficiaries and the financial intervenient institutions²⁸.

The Carta-circular BACEN number 2826/01 lists a series of suspect activities that financial institutions must supervise, register and communicate the Central Bank. They are called red flags, that allow to identify these suspect transactions, such as²⁹:

- substantial alterations in the routine of the bank account;
- great activity by wire transfer;
- operations without economical sense;
- use of several accounts simultaneously;
- incompatible movement with the business or profession;
- relations with tax heavens;
- structuring of operations with fragmentation of deposits or remittances;
- refusal in informing resources origin or the holder identity;

²⁸ PAMPLONA, Juliana Faria. General Aspects for the discussion of international politics of public security. Money Laundering and Internationalization of capitals. 2001. 24.jun.07. <<http://jus2.uol.com.br/doutrina/texto.asp?id=2197>>.

²⁹ ARAS, Vladimir. National System of Money Laundering Combat and Recuperation of Asstes. 2006. 26.set.07 <<http://jus2.uol.com.br/doutrina/texto.asp?id=9862>>.

- documentary inconsistency.

According to COAF activities report³⁰, of 2006, it received 37.969 communications from BACEN in the years of 2005/2006. The more common practice verified, among the *red flags* above, representing 14.523 or 39,18%, concerns to “the economical movement of resources incompatible with the inheritance, the economical activity or the professional occupation and the presumed financial capacity of the client”.

This register that banks are obliged to do allows the inspection and the control of these accounts by the Central Bank, as well as by the Federal Revenue. With the Complementary Law number 105/200, the Federal Revenue started to have access to these informations, that before were protected by the bank secrecy.

Tax haven is considered the countries that exempt, total or partially, of the payment of taxes, the profits derived by legal entities, installed in its territory, whose equity capital is signed by non-residents, but they have its social activities practiced out of his jurisdiction. Yet they can be those that do not tax the income or tax it in percentage up to twenty per cent³¹. The Federal Revenue, in its regulation IN-SRF number 188 of 08/06/2002, lists the countries considered tax haven.

According to Marques³², the reasons for people looking for tax haven are:

- a) high taxes in the countries of the individual entities’s residence;
- b) fiscal prohibitive bracket for the societies of capital;
- c) possibility to avoid fiscal responsibilities, celebrating the work contract abroad;
- d) elimination of the problems of goods nationalization or of confiscation of personal property or real property;
- e) anonymity;
- f) protection of the capital by deposits in countries that guarantee the protection of the bank secrecy.

Because of the complexity of the analysed mechanisms, we can realize the necessity of preparation of the agents who are going to act in this type of investigation. They will need to be able to do the investigated person’s accounting and fiscal analisys, crossing this informations with the other suspects’s data, in

³⁰ Disponível no endereço <https://www.coaf.fazenda.gov.br/downloads/relatorios-coaf/Relatorio%20de%20Atividades%202006.pdf>, p. 19 do relatório, acesso em 10.dez.07.

³¹ MARQUES, Silvio Antônio. Money Laundering and Administrative Improbability. Lecture uttered in Money Laundering Course, Curitiba, 14. Set. 06. See also IN-SRF nº 188, available on <https://www.coaf.fazenda.gov.br/conteudo/legislacaoe-normas/legislacao/in-188/>, access in 20.Oct.07.

³² MARQUES, Silvio Antônio. Money Laundering and Administrative Improbability. Lecture uttered in Money Laundering Course, Curitiba, 14. Set. 06.

order to track the money and find its origin. This is a very difficult work that demands technical knowledge about the subject.

As we saw before, the intention of Money Laundering Law is make the criminal organization economically worse off, preventing new crimes. So, besides the penal action, the Public Prosecution Service must give emphasis to the blockade and apprehension of goods and values, aiming at the loss of them in the end of the penal action, as well as the recuperation of assets. This can be done by the the action of damages and of the action of administrative improbity responsabilization of the Law n. 8.429/92. The article 12 of this law predicts punishments that can be from the application of a civil fine, to the mending of the damage, passing by the devolution of the values unjustly added to the the dishonest public worker's inheritance.

The Public Prosecution Service will be able to act, then, in the civil sphere, starting the civil proceeding. He also can propose other judicial preventive mesure to guarantee the civil execution or to get proofs in Brazil and abroad to start the administrative improbity action or civil public action and its subsequent execution.

Among the precautionary measures, we can list:

- a) precautionary measures of protest;
- b) precautionary measures of blockade of assets [ação cautelar de seqüestro de bens];
- c) writ of execution (of documents that have relation to the practice of the crime, mercantile books of enterprises, etc.) [ação cautelar de busca e apreensão (de documentos relacionados à pratica do ilícito, livros mercantis de empresas, etc)];
- d) precautionary measures of show [ação cautelar de exibição] (1 - secrecy bank break, extracts of copies and cheques, receipts of financial operations in Brazil and outside; the Central Bank's informations, etc.; 2- fiscal secrecy break; 3- telephone accounts secrecy breaks).

According to Marques³³, the proceeding for obtaining secret documents abroad will happen by:

- a) Rogatory Letters [cartas rogatórias]– dispatched by the State or Federal Judge in the file of precautionary measures or of the principal, civil or criminal action, by the central authority (DRCI of the Ministry of the Justice)
- b) Request of International Criminal Cooperation (MLAT) – between executive organs (Public Prosecution Service or police officers) or Judicial, by the central authority (DRCI of the Ministry of the Justice), with subsequent exchange.

³³ MARQUES, Silvio Antônio. Money Laundering and Administrative Improbity. Lecture uttered in Money Laundering Course, Curitiba, 14. Set. 06.

- c) Request of International Civil Cooperation – The Department of Justice of the United States accepts civil request (MLAT), since there is criminal investigation happening.
- d) straight contact with international authorities.

The secrecy of the documents must be maintained in all the phases of the civil and criminal action. The leak of informations to the press can cause problems to other processes, besides the possibility of being suspended the cooperation of the international authorities and not being completed the initial informations.

Another organ of the system that deserves to be mentioned is the Department of Legal International Cooperation and of Recuperation of Assets (DRCI). It was created in 2003 by presidential decree and it has double function:

- 1) It acts like central authority of the international cooperation system in almost totality of the bilateral and multilateral treaties of penal category signed by Brazil; the exception is the agreement Brazil-Portugal, in which the central authority is the Center of Legal International Cooperation (CCJI) of the General Republic Prosecutor Attorney Office [Procuradoria Geral da República];
- 2) collaborates with the criminal persecution organs and with other entities in charge of the recuperation of assets, in order to make more effective the instrumens of the Union's inheritance recuperation and of its organs, as well as for the confiscation of values obtained in criminal activities, especially the money laundering. Besides, the DRCI also has de responsibility of the co-ordination of the National Strategy of Combat to the Corruption and Money Laundering (ENCCLA)³⁴.

The ENCCLA has been in charge of joining the organizations involved with the money laundering combat and looking to draw annual targets to be reached by these organisms,. A lot of the practices today adopted for the money laundering combat divert of these targets. Among these, we can register the inclusion of the article 10 A in the Law 9.613/98; the criation of the BACEN-JUD for valuable blockade in real time used in the Specialized Court of Money Laundering Combat; the implementation of the INFO-JUD, created by the Federal Revenue, which it will allow the electronic access to fiscal informations by the Judge³⁵.

³⁴ ARAS, Vladimir.National System of Money Laundering Combat and Recuperation of Asstes. 2006. 26.set.07 <<http://jus2.uol.com.br/doutrina/texto.asp?id=9862>>.See also Decree 6061 of 15.nov.07,article 11th, about the atributions of DRCI, available on http://www.planalto.gov.br/CCivil_03/ Ato2007-2010/2007/Decreto/D6061.htm#art6, access in 10.Nov.07.

³⁵ ARAS, Vladimir.National System of Money Laundering Combat and Recuperation of Asstes. 2006. 26.set.07 <<http://jus2.uol.com.br/doutrina/texto.asp?id=9862>>.

Up to 2003, the lack of articulation and strategic co-ordination by the State was pointed as the principal deficiency in Brazilian system of money laundering prevention and combat.

So, thinking of the efficient result of the State action, related to this issue, demands elevated degree of cooperation and interaction, the principal authorities responsible for the organized crime combat in Brazil developed the ENCCLA.

Principal actions of the ENCCLA:

Realization of the first ENCCLA publication, with the participation of forty two representatives of twenty seven organs who were brought together from 05 to 07 of December, 2003, in Pirenópolis (GO). This meeting resulted in the initial diagnosis of the situation, that allow to draw thirty two targets for the year 2004, relatad to six principal objectives:

- To coordinate the strategic and operational acting of the organs and public agents of the Brazilian state in the money laundering combat;
- To improve the basic use of data and public registers in the money laundering and organized crime combat;
- To check objectively and to increase the efficiency of the National System of Money Laundering Combat, of Recuperation of Assets and of Legal International Cooperation;
- To enlarge the international cooperation in the criminal activity combat and in the recuperation of the assets of illicit origin;
- To develop in Brazil a culture of the money laundering combat; and to prevent the money laundering;

Every year, the ENCCLA prepares the strategies for the next year. These targets are available in the Brazilian Ministry of the Justice web site³⁶.

In Brazil, there are no statistics, in national extent, about the numbers of judicial actions and proceedings involving money laundering. One of the ENCCLA's targets of 2006 is to develop a system to produce statistics on criminal investigating proceedings, penal actions, sentences, culprits, condemnations and apprehensions on money laundering in the federal and state extent.

We can refer also the Resolution CMN n. 2.911/2001, where the BACEN establishes rules making the declaration of Brazilian capitals abroad compulsory, since they exceed the cipher of hundred thousand dollars; and several COAF's resolutions regulating the activity of some individuals obliged to the fulfilment of the Law 9.613/98.

³⁶

http://www.mj.gov.br/data/Pages/MJ7AE041E8ITEMID3239224CC51F4A299E5174AC98153FD1P_TBRIE.htm, access in 25.Nov.07.

From the Convention of Vienna³⁷ (Decree 154/91), we can realize that Brazil has been trying to implement several measures and legislation concerning to the adoption of necessary tools for the money laundering combat, such as:

- Law 9034, of 03 of May of 1995 – Organized Crime Law;
- Law 9296 of 24 of July of 1996 – Interception of Telephone Communications in computer science and telemática systems;
- Decree 2 799, of 8 October 1998 – Establishment of the Financial Activities Control Council (COAF);
- Order 330, of 18 December 1998 – Internal Regulation of the Financial Activities Control Council (COAF);
- Circular 2852 (BACEN) of 3 December 1998 – provides procedures to be followed in the prevention and combat of activities related to the crimes referred to in Law 9 613;
- Carta-Circular 2826 (BACEN) of 4 December 1998 – a list of transactions and situations that may suggest the occurrence of offences referred to money laundering, and provides procedures for the reporting to the Central Bank of Brazil and COAF;
- Circular SUSEP 89 of 08 April 1999 - situations that may suggest the occurrence of money laundering;
- Instruction CVM 301 of 16 April 1999 – the identification, report and record-keeping of money laundering suspicious transactions;
- Law 9807 of 13 of July of 1999 - establishes standards for the organization and the maintenance of special programs of protection to threatened victims and witness;
- Complementary Law 104, of 10 January 2001 – exchanging of information among public institutions and fiscal secrecy;
- Complementary Law 105, of 10 January 2001 – banking secrecy of financial institutions transactions;
- Circular 3030 (BACEN) of 11 April 2001 – identification and register of check's deposits and resources transference;
- Carta-Circular 2965 (BACEN) of 04 June 2001 - to give to special attention to the financial transactions of residents with non-cooperative countries;
- Carta-Circular 2977(BACEN) of 18 September 2001 - the creation of the database PCAF500 in the Central Bank System - SISBACEN and gives instructions to report the suspicious transactions;
- Carta-Circular 2986 (BACEN) of 29 November 2001 - to give special attention to the financial transactions of residents with non-cooperative countries;
- Comunicado 9068 (BACEN) of 04 December 2001 - recommendations to the Financial Institutions on donations proceeding from foreign countries;
- Carta-Circular 2997 (BACEN) of 28 February 2002 - recommendation for intensified monitoring of financial transactions with NAURU;
- Law 10.467, of 11 June 2002 – add the Chapter II-A to the Title XI to the Decree Decree-law 2848 – The Penal Code – about the device of the money laundering Law;

³⁷ Available on http://www.unodc.org/pdf/convention_1988_en.pdf, access in 24.Nov.07.

- Carta-Circular 3029 (BACEN) of 28 July 2002 - recommendations involving noncooperatives countries;
- Carta-Circular 3098 (BACEN) of 11 of June of 2003 – obligation of the banks of reporting back transactions in sort above R\$100.000,00.
- Carta-Circular 3287 (BACEN) of 21 of July of 2005 – regulate the general register of correntistas and clients of financial institutions, as well as of his attorneys.

We can also list other legislation concerning to the matter:

- Law 4595/64 – Financial National System – Central Bank and Financial National Consil;
- Law 6385/76 – Stock Market - Security Market Comission
- Law 7492/86- it defines the crimes against the financial national system
- Decree 5015/2004³⁸ – Convention of Palermo – Convention of the United Nations against the transnational organized crime³⁹.
- Decree 5687/2006⁴⁰ – Convention of Merida (Mexico) – Convention of the United Nations against the corruption⁴¹.

Clearly, we can see the existence of many laws regulating the money laundering issue. However, the efficiency of its prevention will depend on the integrated acting and supervision of the organs of control, financial and non-financial institutions.

The proceeding for the recuperation of assets is not simple as well, especially if the goods are abroad. In this case it will depend on a request of na internacional cooperation.

The work of the authorities begins with the identification of the agents and of the assets object of money laundering. After the values will have to be tracked, following the track of documents left by the “launders” during the phases of occultation. When the tracking is brought into effect with result, the judicial blockade of the assets will must be done. In Brazil, it has been done by the BACEN-jud, with use of the personal sign of the registered judge. Abroad, it will depend on a request of international cooperation, asked by the Judge or Public Prosecution Service through the Brazilian Central Authority (DRCI or CCJI). This will send the request to the State Department and to the Brazilian Embassy abroad.

The Brazilian Embassy will direct the requisition to the Central Authority abroad, that will send to the applied Authority. If the request has been filling out the requisites predicted in international treaty, it will be carried out by the foreign State. When specific treaty do not exist, it will be able to be carried out on basis of the promise of reciprocity principle or on basis of a multilateral convention with

³⁸ Available on http://www2.mre.gov.br/dai/m_5015_2004.htm, access in 24.Nov.07.

³⁹ Available on <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>, access in 24.Nov.07.

⁴⁰ Available on http://www2.mre.gov.br/dai/m_5687_2006.htm, access in 24.Nov.07.

⁴¹ Available on <http://www.unodc.org/unodc/en/treaties/CAC/index.html>, access in 24.Nov.07.

subsidiary rules about the subject. When the goods were blockaded, it will be necessary to be warned up to the penal final decision, in order to be determined the loss of them on behalf of the Union or restored to the absolved culprit. The goods also can be alienated in advance to avoid deterioration⁴².

We have been analysing the principal active organisms involved in the money laundering combat and brasilian legislation concerning the matter. In the next chapter, we will study the international efforts against money laundering.

⁴² ARAS, Vladimir. National System of Money Laundering Combat and Recuperation of Asstes. 2006. 26.set.07 <<http://jus2.uol.com.br/doutrina/texto.asp?id=9862>>..

2 THE INTERNATIONAL EFFORTS AGAINST MONEY LAUNDERING

2.1 THE INTERNATIONAL MONEY LAUNDERING AGREEMENTS AND ORGANIZATIONS THAT BRAZIL IS SIGNATORY

Because of the transnational nature of the money laundering crime and the consequences of this criminality are not restrained to the frontiers of a country, the nations began to realize the necessity of establishing agreements of mutual cooperation.

The Convention of the United Nations Against the Illicit Traffic of Drugs and Psychotropic Substances, in Vienna, in 1988, recommended the punishment, in the internal legislation of the countries signatories, of the conducts connected with the conversion or transfer of goods resultant of traffic of drugs and connected drugs, in order to hide or to cover the illicit origin up, or helping someone doing it, knowing that they proceed from traffic crime⁴³. Brazil and USA are signatory of this Convention.

The FATF-GAFI (Financial Action Task Force on Money Laundering), created by the G7, in Paris, in 1989, establishes international directives for the money laundering and terrorism combat, controls if the countries implemented the measures in accordance with these standards and identifies and studies methods and tendencies of money laundering and terrorism. The FATF-GAFI has launched The Forty Recommendations on Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing, being one of its goals to enlarge the participation of the countries of the whole world⁴⁴. Brazil and the United States are also signatories of this organism.

Five organizations participate of the FATF meetings and decisions and sixteen international organizations as observers. The five FATF-Style Regional Bodies are: Asia / Pacific Group on Money Laundering (APG); Caribbean, Financial Action Task Force (CFATF); Council of Europe PC-R-EV Committee; Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); and Financial Action Task Force on Money Laundering in South America (GAFISUD).

One of the reports of the FATF⁴⁵, based on the report of the GAFISUD de 2005⁴⁶, describes the techniques of money laundering applied in the South America.

⁴³ SILVA, Cesar Antonio da. Money Laundering: a new penal perspective. Porto Alegre: Livraria do Advogado, 2001, p. 58.

⁴⁴ Information available on <http://www.fatf-gafi.org/dataoecd/46/1/39162982.pdf>, access in 08.Nov.07. The recommendations are available on http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236920_1_1_1_1_1,00.html, access in 08.Nov.07.

⁴⁵ Report available on <http://www.fatf-gafi.org/dataoecd/30/22/38418180.pdf>, access in 22. Nov.07

Aras⁴⁷ teaches that, from 2001, with the terrorist attack to the World Trade Center in the United States, this country started to adopt a more rigorous legislation and to press to international measures were taken. Along with other countries considered targets of terrorist action, it intensified the international cooperation for the presecution of money laundering crimes and of crimes practiced by criminal organizations. The author says:

“ However, it is not possible to deny that the most significant jump in this evolutive perspective of a global system anti-laundering of assets happened from 2001, after the terrorist attacks to targets in New York and in Washington. Subsequently the tragic and successful Al Qaeda’s attack, the United States modified its internal legislation, becoming more rigorous, by the adoption of the US Patriot Act. It also started to press strongly in international forums in the United Nations, in the OAS⁴⁸ , in the OECD⁴⁹ and in the GAFI for the preparation of international and domestic instruments to combat the terrorism and its financing. ”

Other Conventions also adopt recommendations of postures to be adopted by the signatory countries for the money laundering combat, such as the Convention of Palermo⁵⁰, the Convention of Merida⁵¹ and the Convention of the United Nations for the elimination of the financing of the terrorism, of 1999. Recently, in September of 2006, the General Assembly of the United Nations adopted the Global Counter-Terrorismo Strategy⁵², a set of strategies of global action against the terrorism.

The United Nations, by the ODCCP - Office of Drug Control and Crime Prevention, that established the program against money laundering (GPML), have been helping countries in the structuring of the legislation and mechanism of control and of combat to this criminality.⁵³

⁴⁶ Report available on <http://www.gafisud.org/pdf/english.pdf>, access in 22.Nov.07.

⁴⁷ ARAS, Vladimir. National System of Money Laundering Combat and Recuperation of Asstes. 2006. 26.set.07 <<http://jus2.uol.com.br/doutrina/texto.asp?id=9862>>.

⁴⁸ OAS-Organization of American States

⁴⁹ OECD- Organization for Economic Co-operation and Development

⁵⁰ See footnote number 38.

⁵¹ See footnote number 40.

⁵² Available on <http://www.un.org/terrorism/strategy-counter-terrorism.html>, access in 24.Nov.07.

⁵³ VASCONCELOS, Ana Paula Ribeiro. The Financial Sistem’s Internal Efforts to Prevent Money Laundering: The Brasilian and the American Experience. 2002. 07.Oct.07 <<http://www.gwu.edu/~ibi/minerva/Fall2002/AnaPaula.Vasconcellos.pdf>>.

Brazil is a signatory of the Financial Action Task Force on Money Laundering in South America (GAFISUD), agreement established with the goal of allowing the growth of the international cooperation and the exchange of informations among the countries of the South America. The GAFISUD was presided by Brazil in the year of 2006.⁵⁴

As Brazil, through the COAF, as the United States they participate of Egmont Group⁵⁵, that is a international group constituted by 106 financial intelligence units – FIUs, of different countries, created in 1995 to increase the international cooperation in money laundering combat and to contain the terrorism financing.

The cooperation between Brazil and the United States happens on basis of bilateral treaty - the MLAT, Legal Mutual Assistance Traty⁵⁶ - that is an agreement of legal penal cooperation. This Traty allows the communication and consultation occur straightly between the Central authorities (DRCI – American DOJ), or by straight communication between the applying and applied authority.

In countries where there is not bilateral agreement, the cooperation can happen on basis of multilateral agreements or promise of reciprocity. In this last one, there is the commitment that a similar case will be regulated by the same rules of the applying country, and the cooperation will be ruled by the legislation of the applied country

In the cooperation on basis of bilateral agreements the rules are clear. It is not necessary the requisite of the diplomatic ways, the communication can be straight between central authorities and the requisite of the double criminality is not demanded. In the cooperation on basis of the promise of reciprocity, the rules can vary in accordance with the involved countries.

In case of Switzerland, for example, where the cooperation happens on basis of the promise of reciprocity, this can be much more complex and less predictable than with the United States, because of the non-existence of bilateral or multilateral agreement. Its necessary the fulfilment of the reciprocity principle, that can make impossible the cooperation in the cases of financial crimes, because they are not recognized as crime by that country. In addition, for having the goods brought back, it is demanded the penal condemnatory sentence stopped by judgement, among other restrictions.⁵⁷

⁵⁴ Information available on <https://www.coaf.fazenda.gov.br/destaques/downloads/Relatorio%20de%20Atividades%202006.pdf>, access in 13.Oct.07.

⁵⁵ <http://www.egmontgroup.org/asia.html>, access in 13.Oct.07.

⁵⁶ Available on <http://www.treas.gov/offices/enforcement/pdf/mlta.pdf>, access in 25.nov.07.

⁵⁷ BELOTTO, Ana Maria. Lecture uttered in Money Laundering Course, Porto Alegre, from 19 to 21. Oct.06.

The cooperation can be for the obtention of proofs (documents, bank documents, and witnesses' summons and heard, etc.) or solicitation of blockade and repatriation of goods and values.

It is very important for the countries to narrow the knots of international cooperation in what concerns the money laundering combat, because as we have been seeing, the valuable circulation of illicit origin does not respect frontiers and finds, in the administrative bureaucracy of the relations among countries, a breach for the criminality and impunity.

Next, we will pass to the analysis of the American legislation about the matter.

2.2 MONEY LAUNDERING IN THE UNITED STATES

The United States is member of United Nations. It is a signatory of the Vienna, Palermo and Merida Conventions and it follows the international standards for the actions of Money Laundering. The US is a member of the FATF, of the Caribbean Financial Action Task Force – COSUN and of the Asia / Pacific Group on Money Laundering (APG).

As we saw before, FATF is an inter-governmental body created to fight money laundering, to impact terrorist financing through the development and promotion of national and international policies. The FATF is therefore a "policy-making body", created in 1989, that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. The FATF has published 40 + 9 Recommendations in order to meet this objective.⁵⁸

The FATF study the trends adopted by money laundering criminal groups and publishes this material in its annual report on its webpage⁵⁹.

Criminals are very creative in developing methods to launder money and finance terrorism, and they will continue to update their tools. Money laundering and terrorism financing typologies in any given location are heavily influenced by the economy, financial markets, and anti-money laundering/counter financing of terrorism regimes. Consequently, methods vary from place to place and over time. Those involved in the fight against money laundering or the financing of terrorism rely on the most current information on typologies. FATF members provide one another and the Financial Action Task Force (FATF) Secretariat annually with observations based on recent cases or studies of particular subject

⁵⁸ Information available http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html, access in 05.nov.07.

⁵⁹ Report available on http://www.fatf-gafi.org/findDocument/0,2350,en_32250379_32237235_1_32247552_1_1_1,00.html, access in 22.nov.07.

areas. FATF collects this information and attempts to describe the trends in order to be in a position to adapt recommendations to specifically address money laundering and terrorist financing risks.⁶⁰

It is clear that the preoccupation of the United States, regarding to this criminality, is connected straightly with terrorism and its financing, as result of the attacks of September 11th.

The US Patriot Act, published soon after the attacks, is the principal legislation about money laundering, establishing several preventive instruments.

The American government realized that the terrorist attacks were financed by international acts of money laundering. For this reason, it started to intensify the efforts to reduce the money laundering and the terrorism financing.

Some of measures published by the US Patriot act are: the cut of knots between American banks and fictitious banks in other countries; the establishment of programs for the formal identification of the clients; the demand of higher vigilance of the foreign's accounts and of the private bank accounts; the demand of the financial institutions use special measures to finish a bank relation when there are money laundering suspects.⁶¹

From Title III and on, it adresses the money laundering and antiterror issues.

The principal arrangements of protection against money laundering of US PATRIOT ACT are:⁶²

- 1) it establishes policies, proceedings and specific diligence controls in order to detect and inform cases of money laundering through bank accounts which holders are persons or institutions not American (article 312);
- 2) it prohibits the financial foreign institutions to establish or to administer counts in the United States of fictitious foreign banks (fictitious bank is that which has not physical presence in any country) (article 313);
- 3) it outlines the cooperation and exchange of informations among several financial entities, agencies of intelligence, regulating and representative authorities of the justice, about persons, institutions and suspect organizations of being connected with the terrorism or with money laundering (article 314);

⁶⁰ Infomation avaible on <http://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>, acesso em 22.nov.07.

⁶¹ MORAES, Neydja Maria Dias. The Money Laundering Crime in Brazil and in Several Countries. 2005. 25.Nov.07 <<http://jus2.uol.com.br/doutrina/texto.asp?id=7424&p=1>>

⁶² MORAES, Neydja Maria Dias. The Money Laundering Crime in Brazil and in Several Countries. 2005. 25.Nov.07 <<http://jus2.uol.com.br/doutrina/texto.asp?id=7424&p=1>>

4) it enlarges the list of the crimes considered as money laundering and includes the corruption, the import of arms, the false classification of goods in the export (article 315);

5) it regulates the right of opposition, to be supported by the owner of goods confiscated, due of the confiscation of suspect assets of international terrorism (article 316);

6) it allows that the authorities responsible of applying the law effectuate blockade of funds deposited in a foreign bank account, if this one has an interbank account in the United States, in a regular financial institution (article 319);

7) it allows the authorities to watch the clandestine bank systems or intermediaries' nets that permit people to transfer money effectively from a country to addressees in another country, without the funds cross the frontiers, not even the transactions are registered (art. 359);

8) It restrains the civil responsibility for the volunteer revelation of suspect activities by a financial institution or person linked to a similar institution (article 351).

9) control of operations in value higher than US\$10.000 (article 365).

As a result, the United States keeps as one of the most active countries concerning the money laundering combat.

Several institutions and financial American organizations participate actively of the anti-money laundering actions. Among them, we can mention the Department of the Treasury, the Department of Justice, the Federal Reserve, the IMF, the World-wide Bank, the Unity of Financial Intelligence (equivalent to the COAF in Brazil, but integrant of the department of the Treasury), Regulating Agencies of the Banks (the federal bank ' regulators: Office of the Comptroller of the Currency, Federal Reserve Federal Board and Deposit Insurance Corporation; Internal Revenue Service; Examination Division; Office of Thrift Supervision (savings and loans); National Credit Union Administration; Financial Crimes Enforcement Network – FinCEN).⁶³

Similar to the work of the COAF, the Unity of Financial American Intelligence works with the obtention, analysis and exchange of informations among several organs that act in the anti-money laundering system, of national extent and with other unities of global intelligence. It provides also technical assistance to several organizations and international cooperation. It has tried to enlarge the efforts of

⁶³ VASCONCELOS, Ana Paula Ribeiro. The Financial Sistem's Internal Efforts to Prevent Money Laundering: The Brazilian and the American Experience. 2002. 07.Oct.07 <<http://www.gwu.edu/~ibi/minerva/Fall2002/AnaPaula.Vasconcellos.pdf>.>

prevention and money laundering fight and to enlarge the cooperation with government organs, international organizations and other unities of intelligence.

In United States, differently from Brazil, the task of banking supervision is shared among the Federal Reserve (state chartered banks that are members of the Federal Reserve System and bank holding companies), the Office of the Comptroller of the Currency – OCC (national banks) and the Federal Deposit Insurance Corporation – FDIC (insured state banks that are not members of the Federal Reserve System)⁶⁴.

The banks and financial institutions must be adapted to the American law and answer at the disposal of control of the financial movements. The US American Act establishes several dispositions to be observed⁶⁵:

- New (review) AML compliance programs;
- Prevent the access of “shell banks” to the US financial system (section 313);
- Identification of foreign correspondent banks and their owners;
- Due diligence for correspondent accounts and private banking (section 312);
- Maintenance of concentration accounts (section 325);
- Minimum standards for customers’ identification (section 326).

The US Treasury Department has also prompted the G-7, the G-20, the IMF and the World Bank to take actions, enlisting their member nations in the comprehensive program against terror.⁶⁶

The Treasury Department periodically establishes the priority strategies to combat money laundering, pointing the main threats and vulnerabilities of the system. Its purpose is to inform the law enforcement community, policy makers, and regulators in their efforts to combat money laundering strategically.⁶⁷

The specific money laundering threats and vulnerabilities addressed by the 2007 strategy were identified by an interagency working group in a year-long evaluation that culminated in the U.S. Money Laundering Threat Assessment. Never before have regulators, policymakers, and law enforcement professionals come together to identify money laundering trends and methods in the United

⁶⁴VASCONCELOS, Ana Paula Ribeiro. The Financial System’s Internal Efforts to Prevent Money Laundering: The Brazilian and the American Experience. 2002. 07.Oct.07 <<http://www.gwu.edu/~ibi/minerva/Fall2002/AnaPaula.Vasconcellos.pdf>.>

⁶⁵ VASCONCELOS, Ana Paula Ribeiro. The Financial System’s Internal Efforts to Prevent Money Laundering: The Brazilian and the American Experience. 2002. 07.Oct.07 <<http://www.gwu.edu/~ibi/minerva/Fall2002/AnaPaula.Vasconcellos.pdf>.>

⁶⁶ Information available on <http://www.treasury.gov/press/releases/reports/2002910184556291211.pdf>, access in 05.nov.07.

⁶⁷ Information available on http://www.treasury.gov/offices/enforcement/money_laundering.shtml, access in 05.nov.07.

States, and to assess our effectiveness against a spectrum of money laundering threats.⁶⁸

Due to the global nature of financial and communications networks, the United States cannot have a sustained impact against money laundering unless other countries impose similar or complementary domestic regulations and cooperate with international sanctions. The U.S. government continues to work bilaterally and multilaterally to improve global safeguards.⁶⁹

The World Bank and the IMF have also established a collaborative framework with the FATF for conducting comprehensive AML/CFT assessments of countries' compliance with the FATF 40+8 Recommendations, using a single global methodology. The assessments are carried out as part of the Financial Sector Assessment Program (FSAP) and lead to a Report on Observance of Standard and Codes (ROSCs)⁷⁰

The program helps countries identify vulnerabilities in their financial systems and determine needed reforms.⁷¹

Among the adopted measures, they give assistance to countries-members to fulfill the standards demanded by the FATF and technical support for the adoption of regimes anti-money laundering.

Other institution, the MFI was already actively at work assessing member countries compliance with the international standard developed (and subsequently fundamentally revised) by the Financial Action Task Force (FATF), as well as providing technical assistance on how to improve AML/CFT regimes. As a collaborative institution with near universal membership, the IMF is a natural forum for sharing information, developing common approaches to issues, and promoting desirable policies and standards -- all of which are critical in the fight against money laundering and the financing of terrorism. Currently, the three main areas of IMF work in connection with AML/CFT are:

Assessments: Each evaluation of financial sector strengths and weaknesses conducted under the Financial Sector Assessment Program (FSAP) and the Offshore Financial Centers Program must include an assessment of the jurisdiction's AML/CFT regime. Such assessments measure compliance with the FATF 40+9 Recommendations according to an agreed Methodology for Assessing

⁶⁸ Information available on <http://www.treasury.gov/press/releases/docs/nmls.pdf>, access in 05.nov.07.

⁶⁹ Information available on <http://www.treasury.gov/press/releases/docs/nmls.pdf>, access in 05.nov.07.

⁷⁰ Report available on <http://www.worldbank.org/ifa/Money%20Laundering%20SecM2001-0228.pdf>, access in 22.nov.2007. See also <http://www1.worldbank.org/finance/html/amlcft/index.htm>, access in 22.nov.07.

⁷¹ Information available on <http://www1.worldbank.org/finance/html/fsap.html>, access in 22.nov.07; see also <http://www.imf.org/external/np/fsap/fsap.asp>, access in 22.nov.07.

Compliance with the FATF 40+9 Recommendations also used by the Financial Action Task Force (FATF), the FATF-style regional bodies (FSRBs), and the World Bank in conducting their assessments;

Technical Assistance: Along with the World Bank, the IMF provides substantial technical assistance to member countries on strengthening their legal, regulatory, institutional and financial supervisory frameworks for AML/CFT; and

Policy Development: IMF and World Bank staff have been active in researching and analyzing international practices in implementing AML/CFT regimes as a basis for providing policy advice and technical assistance.

In MFI, among the goals of this effort are: protecting the integrity and stability of the international financial system, cutting off the resources available to terrorists, and making it more difficult for those engaged in crime to profit from their criminal activities.⁷²

In The United States we can observe that is quite present the concern about corruption as well, demonstrated by countless existent mechanisms in the institutions that look for the prevention of this crime. Considering that this practice generally is tied to the money laundering, we can realize also the importance of developing anti-corruption programs.

The Office of Government Ethics⁷³ of US Government is responsible for giving knowledge and supervising the fulfilment of the Standards of Conduct Ethics of the public workers.

The Office of Government Ethics - OGE exercises leadership in the executive branch to prevent conflicts of interest on the part of Government employees, and to resolve those conflicts of interest that do occur. In partnership with executive branch agencies and departments, OGE fosters high ethical standards for employees and strengthens the public's confidence that the Government's business is conducted with impartiality and integrity. The OGE develop and apply programs to provide information to enhance the understanding about the ethic statues, regulations and policies.

It is responsible for comunicate the Athorities when they detect a criminal conduct, as well as to take steps to apply disciplinal sanctions.

The World Bank⁷⁴, besides its anti-money laundering program, has also an anticorruption program, because periodiccally it can face its own problems internally or involving their projects.

⁷² Information available on <http://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>, acesso em 22.nov.07.

⁷³ Information available on <http://www.usoge.gov/home.html>, access in 25.nov.07.

The World Bank has played a lead role in putting corruption at the top of the global development agenda as one of the most important obstacles to promote sustainable economic growth and poverty reduction. Since 1996, the World Bank has supported more than 600 anticorruption programs and governance initiatives developed by its member countries.

The World Bank's assistance to improving governance and combating corruption is aimed at helping countries deliver basic services better to the poor and create growth and employment opportunities by encouraging private investment—both means of lifting people out of poverty. The Bank also has a fiduciary responsibility to its stakeholders to ensure that development funds are used for the purpose intended, and not jeopardized by corruption.

The World Bank fights corruption projects, through its Department of Institutional Integrity, that investigate allegations of corruption regarding Bank Group operations, as well as possible staff misconduct, and provide its findings to Bank management for decisions. It could lead to a temporary suspension or to a sanction

In September 2007 the Bank launched the Stolen Asset Recovery (StAR) initiative, in partnership with the United Nations, to help developing countries recover and channel assets stolen by corrupt leaders towards effective development programs.

By one conservative estimate, The World Bank website affirms that corrupt money flowing abroad from developing countries is about US\$40 billion per year, or 40 percent of annual official development assistance funds.

The development impact of corruption on such a vast scale is enormous. Deterring such crime is thus a priority for the World Bank and other development agencies. Ensuring that there is no safe haven for the proceeds of corruption would contribute toward this goal by raising the cost of engaging in high-level corruption.

The initiative aims to strengthen accountability institutions in developing states and provide assistance to strengthen institutional capacity of government agencies to locate and repatriate stolen assets. It also calls for developed nations to proactively assist in the recovery of stolen assets and for greater global and bilateral cooperation.

We can realize the preoccupation of the whole international community with the problem of the money laundering and a world-wide tendency of joining efforts

⁷⁴ Informations available on
<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20040922%257emenuPK:34480%257epagePK:34370%257etheSitePK:4607,00.html>, access in 22.nov.07.

in the combat to this criminality. We need to work to narrow still more this cooperation among the countries and to improve our internal techniques of acting. In next item, we suggest some actions to fight money laundering, concluded from this paper.

3 SUGESTIONS AND ACTIONS TO BE ADOPTED:

We could note, in the course of this paper, the difficulty that involve money laundering combat. While the criminality has no frontiers, the State has to respect the laws and individual guarantees in the penal persecution, which make difficult the punishment of the crimes.

In two high-profile cases occurred in Brazil, involving the Judge Nicolau dos Santos Neto and the Federal Judge John Carlos da Rocha Mattos, accused of crimes against the public administration and against the financial system (tax evasion), we could see that was essential the international collaboration. This made possible the blockade and apprehension of the assets, considering that the goods and values of the accuseds were in other countries. Inclusive, in the first case there was investigation initiative of the General-Prosecuter Attorney of Switzerland, because of the news published in the press about the CPI-Parliamentary Commission of Inquiry in Brazil. He also checked the bank account opened by Nicolau, in Geneva, that was base for the blockade of the values for the authorities of the Switzerland. Subsequently, the Brazilian authorities also proceeded in the blockade of the goods. This originated the beginning the investigations, that culminated in penal action and action of recuperation of assets.⁷⁵

Besides the difficulties of depending on the international collaboration for getting proofs for the penal action and for the recuperation of goods, the country presents several internal difficulties. We have technical, structural and legal problems, among others, that need to be surpassed.

The agents very often are not prepared to deal with this specialized criminality and with the net of informations necessary for the tracking of values. This demands constant updating and work in team, resulting in many unpunished crimes because of this deficiency. The specialization of the police, Judges and Public Prosecutors Services, in the Federal and State extent, is essential in order to achieve the anti-money laundering goals.

⁷⁵ ASCARI, Janice Agostinho Barreto. Assets Laundering. Lecture uttered in Money Laundering Course, Curitiba, 15.Set.06.

The set of laws and the legislative inefficiency, especially for the faults and existent omissions, very often does not allow an effective and quick answer in the combat of this criminality.

The easiness of movement of assets in a globalized economy, which allows the use of exchange bureaux, dollar dealers, factoring enterprises, the existence of tax haven around the world, the difficulty of concrete frontiers control and little integration among the organs to exchange informations are decisive factors for the money laundering practice.

It is necessary to look for the improvement of the mechanisms and institutions involved in anti-money laundering programs. Several measures are suggested by the studied authors, and others that we can conclude by the present study should be adopted, in order to make the money laundering combat more effective. We can highlight:

1) Unification of the state and federal net of police informations, allowing the access of the agents who act in the money laundering combat.

2) Implementation of the targets and recommendations of the ENCCLA⁷⁶, such as:

- To prepare bill to standardize and to accelerate the communication, by the organs of inspection and control of the Public Administration, about signs of illicit practices to the organs of investigation, intelligence and penal persecution, (target 1 of 2007).

- To prepare bill to provide the exchange of secret informations among public organs and entities of control, prevention and combat of corruption and money laundering and of recuperation of assets (target 2 of 2007).

- To prepare bill that creates the National Fund of Illicit Assets and provides the legal regime of confiscation of goods, rights and values in criminal process (target 11 of 2007).

- To provide the implementation mechanism of the Council of Security of the United Nations's resolution for the blockade and apprehension of terrorist's goods (target 12 of 2007).

- To prepare bill regulating the removal of the fiscal and bank secrecy of public agent in the penal, civil or administrative investigation involving illicits against the public administration (target 25 of 2007).

⁷⁶ Available on http://www.mj.gov.br/data/Pages/MJ7AE041E8ITEMID3239224CC51F4A299E5174AC98153FD1P_TBRIE.htm, access in 25.nov.07.

- To take steps for approval of the bill that creates civil action of loss of illicit origin goods, aiming at the ready recuperation of assets (ENCCLA 2005). To adopt the advance alienation of the good – as soon as the blockade is decreed – and the deposit of the values collected in judicial account, for preservation of its monetary value and to avoid expenses of the state with the management of the apprehended goods. In order to give effectiveness to this target, it is necessary the fulfilment of Meta 17 of the ENCCLA 2006, that establishes the creation of the National Register of Apprehended Goods – CNBA and the diffusion of the system of electronic auction of goods apprehended. This will depend on term of partnership to be established by the Ministry of the Justice with the National Institute of Judicial Quality - INQJ.⁷⁷

- To take steps for the approval of the bills that typify criminal organization, defines terrorism and its financing; disciplines special techniques of investigation (recommendation ENCCLA of 2007)⁷⁸;

- To adapt the Money Laundering Law to the most recent international recommendations, such as the elimination of the roll of the preceding crimes; substitution of the expression preceding crime for penal preceding imputation, more extensive (ENCCLA of 2004).

3) Enlargement of the officials' board of the COAF that relies with twelve analysts for whole Brazil.

4) Creation of teams in the States, involving State and Federal Public Presecution Office, military, civil and federal polices, State and Federal Revenue, Central Bank, Judicial System, COAF, in order to exchange informations and accelerate the proceedings.

5) Acceleration and debureaucratization of bank secrecy break proceedings. For the detection of illicit origin of the values, most times it is necessary detailed analysis by the Central Bank of all the principal and secondary accounts of the investigated person. It will need to point to the whole way done by the financial values, which demands time and personal resources.

6) Support of the Government and of the Institutions with resources and structure for the realization of the investigations.

7) Preparation and updating of the agents in the area.

⁷⁷ See site of Ministry of Justice on <http://www.mj.gov.br/drci/data/Pages/MJ7A4BFC59ITEMID03AAF17B718C4D3197E983142910505CPTBRIE.htm>, access in 10. Nov. 07.

⁷⁸ Available on <http://www.mj.gov.br/data/Pages/MJ7AE041E8ITEMID70EFA6233CEA4B8DAA9C160F6EB41BA9PTBRIE.htm>, access in 25.nov.07.

8) Institutional support in case of people investigated reaction.

8) Internal structuring of the institutions in order to improve the preparation, the exchange of informations, etc., for the best efficiency in the money laundering combat.

9) Enlargement of the international collaboration to all countries.

Brazil, since the publication of the Money Laundering Law, has been looking to improve and to make the struggle more effective against this criminality. Much has been done, but there is still work to do. We hope that this work brings some contribution in this sense.

CONCLUSION

This work looked to analyse the existent legislation, the organizations involved in the money laundering combat in Brazil, the existent agreements in international level and the work developed by the United States. The subject is large and we did not have the pretension of exhausting it, but to bring contributions to the best understanding of this matter, as well as few suggestions to the effectiveness of the money laundering fight.

As we have been studying, the Money Laundering Crime has transnational character. The criminals use a set of commercial or financial operations in order to incorporate in the economy of each country, in a transitory or permanent way, resources, goods and values with illicit origin.

This criminality causes great damages to the country, because of the great flows of capitals that circulates for unofficial ways, escaping of the control of the institutions and destabilizing the economy. Different problems are caused by this criminality, as the hyper-reaction of the financial markets, oscillation of the exchange rates, taxes and interest; risks of contamination to the free competition; decrease of the performance of the financial politics of the country, financial instability, increase of the corruption, and so forth.

In a globalized world, the criminal groups take advantage of the easiness of the valuable and goods circulation, in order to make illegal money flow and to practice fraudulent business beyond the frontiers of the nations. They have being spread in several branching in different countries, concerning the Authorities in international extent.

Because of this, countries started to join efforts for the restriction of this criminality, publishing the Conventions by the United Nations and other agreements. They also create international groups anti-money laundering and financial intelligence unities, in order to improve the international cooperation and exchange of informations.

In global extent, we saw that the international organisms must seek to enlarge the agreements of cooperation, comprising more countries in this exchange of informations and union of efforts against the money laundering. The equality of the legislation, especially that concerning to the preceding crimes, is important to the cooperation be effective among the involved nations. The barriers that can obstruct or make difficult the persecution of these crimes must be moderated on behalf of a higher interest that is the good progress of the economy of a country.

After the terrorist attacks in September 11th, 2001, the United States started to influence and to press positively the United Nations and other international

organizations in order to be adopted actions of anti-money laundering and terrorism financing programs.

Later on, it have been signed the Conventions of Palermo and Merida, as well as it have been reprinted the recommendations of the FATF. These were important steps for a bigger effectiveness of the international actions anti-money laundering and anti-terrorism.

We checked that the biggest goal of these efforts has been to make the criminal organization impracticable, through the blockade and aprehension of its goods. Consequently, it is looked to make difficult the practice of new crimes and of the money laundering itself.

Since Vienna Convention, Brazil has been improving its legislation in money laundering combat system.

As The United States, it looks to follow the international recomendations to the prevention of this criminality.

The Law 9613/98 regulated the money laundering crime and criated the COAF. It has been one of the principal legal mechanisms utilized for the money laundering combat, along with other legislation.

Among the preceding crimes, necessary to the money laundering characterization, we saw the corruption is one of the most ominous, because it is committed by who has the duty of looking after the decency of the Civil Service, which shakes the credibility of the government and of the institutions. As the United States, Brazil needs to give emphasis to anti-corruption programs, strengthening and solidifying the position of the State, as reliable entity and provider of public policies and of the commom welfare. That will make possible to attract investiments from abroad to the country, which will move the economy and will make the population better off.

However, there are still several aspects to be improved, in order to Brazil becomes more effective in the combat to this criminality, following the international standards.

Among the principal measures we have seen during this work, we point out some that we understand might lead to a short time result against money laundering:

- 1) the adaptation of the brasilian legislation to the reality of this criminality, with inclusion of the criminal organization and terrorism concepts in the law;
- 2) to structure the institutions that participate of the anti-money laundering program, in order to give them conditions to monitor the gangs, to track

the values and to gather the necessary proof to propose the penal action;

- 3) to train the teams constantly, in order to be able to fight this criminality; they must be updated about the methods and tendencies used by the criminals;
- 4) to make easier the exchange of secret informations between the institutions, and between the countries;
- 5) to emphasize the blockade and apprehension of goods and values of the gang, aiming to make it financially impracticable;
- 6) to emphasize the recuperation of assets, in order to compensate the harmed public entity.

Brazil is in the right way, struggling to implement the international standards of the anti-money laundering programs. As soon as it manages to introduce the necessary improvements in the money laundering system, it will be able to gather much more effective results.

It is time to begin to work to change this mentality that Brazil does not have solution. So far as we will have serious persons working for a safer Brazil, free of crimes, violence and corruption, we will begin to gather the economical results of this stability. The country will start to attract investors, interested in a solid economy and in a transparent government. No enterprise will have interest in investing in a country where the bribery and the crime dictate the rules. If we manage to change this conscience, and consequently Brazil's vision from abroad, we will have given a great step, toward making Brazil a better place to live, safer, richer, and in better conditions for the population.

This must be the stimulus the institutions that fight the criminality can have, and it is the principal contribution they can give for the country.

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