MONEY LAUNDERING

I - INTRODUCTION

The establishment of organized crime groups in our society has become the mid-wife of another intricate web of criminality. Its wide and long-ranging threats undermine the sovereignty of states, their economic stability, financial structures and their criminal justice system. This is the transnational crime of Money Laundering which organized crime groups, from drug syndicates, arms trafficking and the other burgeoning areas of criminal activity, to perpetuate their existence, expand their operations and institutionalize their presence in a *mafia* type fashion.

In capsule form, organized crime groups must launder their money from their crimes for two basic reasons: First, the money trail itself can become the evidence against the perpetrators of the crime. Second, the money itself can be the subject of suspicion, investigation and seizure. Money-laundering however, has three dynamic stages:[1]

1. Moving the funds from direct association with the crime;

2. Disguising the trail to foil pursuit;

3. Making the money available to the criminal once again with its occupational and geographic origins hidden from view.

For reason that money laundering and its implications have just recently reached worldwide awareness, there are still several variants of definitions attributed to it. Among these are:[2]

a. The manipulation of money from illicit sources through means that make the money appears to be from legitimate sources.

b. The conversion or transfer of property knowing that such property is derived from criminal offense, for the purpose of concealing or disguising the illicit origin of the property or assisting any person who is involved in the commission of such offense, or offenses to evade legal consequence of his action.

c. The concealment or disguise of the true nature, source, location, disposition, movement rights, with respect to or ownership of property, knowing that such property is derived from a criminal offense.

d. The acquisition, possession or use of property knowing at the time of receipt that such property was derived from a criminal offense or from an act of participation in such offense.

e. The movement of money derived by organized crime groups from their criminal activities to a semi-legal business venture, reinvesting it further to a legitimate business until the trace of its criminally derived origin faded and making the same proceeds available again for use by the organized crime groups.

In essence, the rule in successful money laundering is always to approximate as closely as possible legal transactions and apply the methods routinely employed by legitimate businesses to disperse any suspicion. In the hands of the criminals, they do transfer-pricing between affiliates of transnational corporations via phony invoicing; inter-affiliate real estate transactions become reverse-flip property deals; back-to-back loans turn into loan-back scams; hedge or insurance trading in stocks or options become method or cross-trading; and compensating balances develop into so-called underground banking schemes. On the surface, it may be impossible to differentiate legal and illegal variants. The distinction becomes clear only once a particular criminal act has been targeted and the authorities subsequently begin to unravel the money trail.[3]

On the other hand, basic counter-measures developed in the international financial system and some modern states have been directed toward the 3 F's, which stand for **finding, freezing and forfeiture**. Of these three remedies, finding is the most difficult part for the law enforcement has to find the almost invisible link between the underlying offenses, the criminal money derived from them and the ultimate long trails filtering its way to legitimate businesses.

The rapid advancement of information technology and communication has created financial structures perpetually operating under a global system. This system created the "mega-byte money" (i.e. money in the form of symbols appearing on computer screens in millions or billions of dollars) which can move around the world with split-second speed and ease. This development made monitoring, detection and prosecution of money-laundering cases all the more difficult, if not next to impossible. The establishment of offshore banking or financial structures and the enforcement of bank secrecy laws further complicated the tracking process and provided an opportunal havens for drug syndicates and other organized crime groups. It created layers after layers of disguise and obstacles carefully obliterating the money trail and building a "Bermuda triangle" in the financial investigations.

II - BRIEF HISTORY

Since necessity is the master of all inventions, man has devised a deceptive scheme to cover-up his wrong doings. In the early 17th century, the Catholic Church decreed against the imposition of usurious rates and considered it as a mortal sin compelling merchants and moneylenders to engaged in a variety of practices that eventually become the precursors or models of modern techniques for hiding, moving and washing criminal money. The main objective was to make interests disappear or appear to be something other than what they were.[4] One way was to artificially inflate the exchange rates to compensate for the supposed interest, or imposed additional premiums for the business risks or as penalties for late payments.

Along the course of history, the evolution of money laundering activities could be traced to the era when pirates preyed on European traders crossing the Atlantic sea and thereafter seek financial havens in which they can luxuriously make use of the fruits of their criminal

trade. They sought for financial havens where they could be welcomed to spend their money, particularly when time has come for them to retire. Mediterranean city-states competed to have the pirates as adopted residence of their domain. The pirates' money boosted their commerce and trade and provided additional income to their national coffer. In other instances, their loot was sometimes used to buy pardons to permit them to return home. By the year 1612, the world witnessed the first modern amnesty to criminal money when England offered pirates who abandoned their trade, both full pardon and the right to keep their proceeds. Three and a half centuries later, the similar deals were requested by prominent drug barons from Latin America like Columbia, Mexico and Italy.[5]

Under the common law tradition of England, measures were already made anticipating our modern laws today. Freezing and confiscation were then imposed on criminally derived income. This was justified as necessary for deterring other subjects and as a good source of revenue for the Crown. Still, the idea of money laundering has not yet found its niche in the statutes.

It is only in 1920's[6] that the term money laundering emerged to have been coined in the United States, when street gangs sought a seemingly legitimate explanation for the origins of their racket money. They tried to find a way on how to hide their criminal money by venturing on car wash services, vending machines and laundry services. It is in this context that the term "money-laundering" may have been coined. Literally, the idea is to clean the "dirty money" and make it appear to have been sourced from a legitimate business.

The traditional focus was to go after the underlying offense generating the criminal money. The penalty of seizure was imposed only as a punishment for the underlying crime committed. Law enforcement and prosecution stop there and do not bother to pierce beyond the veil of the money laundering process. Today, the trend is to criminalize the act of laundering money and to make the act of laundering completely independent of the underlying offense. It started in the United States in 1986 and is progressing rapidly around the world, though recognition of this phenomenon has not yet touched the awareness of some sovereign states. One reason for delays and hesitations in some states in classifying money laundering as a crime is the difficulty in convincing and demonstrating the harmful and wide-ranging effects of this new criminal dimension.

In Asia, it is heartening to note that during the 6th ASEAN Summit on 15 December 1998, various countries have expressed recognition on transnational character of criminal activities, including the threats of money-laundering.

III - THE MONEY LAUNDERING SCHEMES

Perhaps money laundering maybe illustrated with the tax evasion issue. Although they share some several techniques, they undergo distinct operational process. In tax evasion, legally earned money are hidden or made to appear as non-taxable earnings, or operational business expenditures are bloated to avoid paying taxes or to reduce the same. Money laundering on the

other hand does the opposite. It takes illegally earned money and give it the appearance of a legitimate business income. Thus, the crime group is more than willing to pay the proper tax due the government.

It may be illustrated further in the case of a prostitute. One is working in the streets accepting cash for sexual services---the transaction is anonymous and it does not enter the national income accounts of the country escaping both formal regulations and taxation. But consider a prostitute working through a front of legally registered massage parlor or night clubs who is paid through checks or credit card---the transaction is recorded and it enters the national economic statistics in a misreported way. Hence, it is subject to at least some degree of taxation. In the second case, the earnings are laundered---their nature is disguised, but their existence is not hidden.[7]

Or take the classic example of the racetrack betting, the launderer simply uses his illegal cash to purchase winning tickets, probably paying the true winner a premium, and then presents the ticket for payment. The funds can therefore be represent as legitimate earnings from authorized gambling. This technique is historically used and is still applied today.[8]

Or take the property deals for example. If someone would "wash" his money, he would purchase a piece of property paying with formal bank instruments and legitimately earned money for a publicly recorded price that is much below the real market value. The rest of the purchase price is paid with the criminal or illegal money. The property is then resold for the full market value and the money recouped, with the illegal component now appearing to be capital gains on a real estate transaction.

These illustrations may be considered as an over-simplification of the operational techniques employed by supposed launderers, but these illustrations are utilized for us to have a clearer perspective on how this scheme works in the simplest way. But in reality, organized crime groups applied the most sophisticated methods, confusingly intricate and meticulously orchestrated to avoid any traces along the money trail.

Criteria for Techniques Applied

There is a variety of techniques being applied by organized crime groups in money-laundering depending largely on the following criteria:

a. The immediate business environment.

The launderers assess the make profile of the normal business transactions in the area and jurisdiction they will operate. Their choice will largely reflect the economic policies and financial principles being enforced in the area of operation.

b. The orders of magnitude.

Small sums laundered periodically will require quite different techniques than comparatively large amounts.

c. The time factor.

The technique chosen will likely reflect the operation is once-and- for-all, or sporadic, event or something to be conducted on an on-going basis. It will reflect as well the degree of which haste is essential.

d. The amount of trust that can be accorded to complicit institutions and individual.

This requires judgement about how much potential partners and/or accomplices have at stake in cooperation or betrayal and where, on the fear-greed tradeoff curve, they happen to be.

e. The record of law enforcement.

Laundering requires time and money. How much money and energy will be put into the effort to multiply levels of cover and obscure the trail will depend on an assessment on how serious and effective police probes are likely to be in the place or places where the process is conducted.

f. The planned long-term disposition of the funds.

Money maybe subjected to differing processes depending on whether it is designed for immediate consumption, for savings in visible or invisible forms or for reinvestment.

It is a basic rule in criminal law that prosecution and conviction of the accused include the forfeiture of the object of the crime particularly in the crimes against property or the confiscation of the same in cases of prohibited or illegal items. More so, in the law of evidence these are the "'corpus delicti" or body of the crime itself. These are the very evidence which are needed in the prosecution and conviction of the offenders.

Forfeiture of the fruits of the crime becomes more difficult when it undergoes the money-laundering process. There is further difficulty if the state having jurisdiction of the underlying criminal offense has no enforceable laws on money-laundering.

Money-laundering operations involve a dynamic three-stage process.[10]

a. Moving funds from direct association with the crime.

The basic principle that is basically applied in every money-laundering operation is that the illegal money is mixed with the legal and the entire sum is reported as the earnings of the legitimate business.

These criminal groups therefore will devised a way to "wash" their criminal in such a manner that its linkage with their criminal activities will ultimately be erased. The strategy is to engage

in any cash-based business venture because it leaves no traces of documents or any corroborative pieces of evidence that will show any affiliation with illegal activities.

Among the favorite business fronts are bar and restaurants, video-cassette rentals, video games outlets, car-washes and laundries and other establishments where the flow of cash money is immediate and fastidiously in small amounts. It is worthy to note that more often than not, the cover business is considered a semi-legal enterprise.

When the sums derived from these business fronts become larger and the law enforcement in the immediate jurisdiction is seen as particularly dangerous, the laundering process will more likely to involve an international dimension. At this point, the three stages of the money laundering process will come into play in a chronologically distinct and logical manner.

In moving these funds from the country of origin, the organized crime groups either sidestep or go through he normal banking process. If they sidestep, the idea is to ship the cash money in bulk, which is the most popular method applied, or convert it to valuable items like gold, diamonds or other precious gems and reconvert it into cash in the point of destination.

Although there has been counter-measures made by many countries by demanding reports or declaration of all monetary instruments, the record of success is not very encouraging. Bulk cash, particularly in large denomination can still be easily carried out of a country in a hand-luggage. The "dollarization" of commercial transactions around the world has made the United States $100 bill the most favorite because the currency is well-known and is universally accepted. The largest denomination deutsche mark and the Swiss franc notes would qualify whereas the Singapore dollar, available in $10,000 denominations, would probably used rarely and within a limited geographic area.[11] Even if controls on hand luggage are tightened, bulk cash can be easily moved through checked personal luggage, particularly if the passenger travels by ship. It can also be stuffed into bulk commercial containers whose sheer volume defeats any systematic efforts to monitor them.

Since these criminal groups will almost always avoid the risk of suspicion and identification, they used professional couriers to handle the job and further guarantee delivery. And they are clever enough to chose a courier that possesses diplomatic passport thereby affording partial immunity from search.[12]

There are various lateral transfers that can be used to export money. They work through what we call "compensating balances" which is a simple principle that has long been used in legitimate trade, particularly when dealing with countries that have exchange controls and/or legally inconvertible currencies.

Illustration:

Assume Business I in country A owes $X to Business II in

country B; Assume Business II in country B owes $X to Business III in

country A; To settle the debts without compensating balancing:

Business I would ship $X to Business II

Business II would ship &X to Business III

This requires two international transfers and four distinct withdrawal and deposit transactions.To settle the debt with compensating balance, all that happens is that Business I in country A settles the debt owed by Business II to Business III in country A. There are only two banking transactions, from the account of Business I to the account of Business II and no international transfers. The worse part of it is that there financial brokers who specialized in arranging such transfers.

The mandatory requirements require by some jurisdictions, such as automatic reporting of sums subject of cash transfer above certain threshold is schemingly defied by the launderers. What they do is to break cash deposits below the ceiling control and make multiple transactions. They knew very well that large deposits with no apparent justifications would potentially attract the attention of authorities. Unlike the situation decade ago, so much attention has been focused on instances when banks accepted a huge bundle of cash from unknown parties and either wired it abroad or converted it to bearer instrument. Successful money-launderers today requires working through a front business, one that has credible explanation for its level of deposits and --- equally important when the next stage of money laundering begins is an equally credible explanation for moving the funds abroad.[14]

b. Disguising the Trail to Foil any Pursuit.

The stage one of the laundering cycle metamorphosized into the stage two of the laundering cycle when the money is already transferred abroad. This may appear to be too complex for us but there is a simple structure that under lies almost all international money-laundering activities during this stage.

The Swiss banks has become the traditional haven for many launderers over the decades because of the protection afforded by its famed secrecy laws. Recently however, Swiss authorities has signed treaties of cooperation in criminal investigation of other countries and moved actively and rigorously to freeze suspect accounts in everything from embezzlement to insider trading to drug trafficking cases.[15]It has also legislated money-laundering as a crime per se. Our country has encountered this when the money laundered by the late President Ferdinand E. Marcos has been frozen and turned-over to the Philippine government for proper disposition awaiting the final decision on the human rights violations cases filed against the Marcos' estate.Still, Switzerland has not lost its role financial haven for money-launderers only that the money deposited has undergone "pre-washing" process elsewhere.[16]

The idea is to establish a bank account abroad considered as financial haven under the name of a corporation. The reason for this is that bank secrecy can be waived when there is a criminal investigation, thereby avoiding personal identification of the organized crime groups behind the dummy corporation. This stage becomes more comfortable because there are some jurisdictions that facilitate the establishment of an instant-corporation manufacturing business such as the Cayman Islands, the British Virgin Islands, Liberia, Panama and many others. They sell "offshore" corporations that are licensed to conduct business only outside the country of incorporation and are free of tax or regulation and protected by corporate secrecy laws. Thus between the law enforcement authorities and the launderer, there is one level of bank secrecy, one level of corporate secrecy and the additional protection of client-attorney privilege especially when a lawyer in the corporate secrecy haven is designated to establish and run the company which is now common even in our jurisdiction.[17]

There is the additional layer of an "offshore trust" which is justified perfectly by legal reasons. The advantage of a trust is that the owner of the assets conveys that ownership irrevocably to the trustee and therefore prevents those assets from being seized by creditors. They are usually protected by secrecy laws and further insulated by the "flee clause" which authorizes the trustee to shift the domicile of the trust whenever threatened by civil war, civil unrest or even probes by law enforcement authorities.[18]

Another layer of secrecy is added when these offshore corporations capitalize their assets into bearer shares converting the ownership thereof anywhere at anytime to no one.Or they may resort to multiple systems of interlocking companies incorporated in different places making it almost impossible to trace and forcing law enforcement to proceed from jurisdiction to jurisdiction peeling layers after layers like that of an onion.

When the money has been moved through the international financial system and has sufficiently made their origins and traces extremely difficult, if not impossible to identify, it is time to move them to country of origin to be used and enjoyed again by the organized crime groups.

c. Making the Money Available to the Criminal once again with its Occupational and Geographic Origins are hidden from view.

Among the many techniques used in the final stage are the following:[19]

1. Funds can be repatriated through a debit or credit card issued by an offshore bank.

Withdrawals from ATM machines or expenditures using the card can be settled either by automatic deduction from foreign bank account or by the card holder periodically transferring the required funds from one foreign bank to another. Debit cards are superior from the point of

view of automaticity and confidentiality. However, even an ordinary credit card can be turned into debit card by being secured through the deposit of collateral with the issuing bank.

2. Bills incurred in the place of residence can be settled by an offshore bank or even more discreetly by an offshore company.

Persons seeking to use illegal money at home held abroad need not bother to work through their own offshore accounts and shell companies. There are firms that advertise their willingness all of their clients major payments. The client makes a deposit from his/her offshore account to that firm's offshore account and sends bills or payment instructions to the firm.The use of bankdrafts which are either sold outright by a bank or issued to an account holders against the security of their current balance.

Drafts do not show the name of the payee yet they are guaranteed by the bank, virtually making them as good as cash. They are used for several transactions and redeemed by banks where they are en-cashed and which have a correspondent relationship with the issuing bank. The draft then returned and the issuing bank wired payment to the cashing bank, often in bulk to cover a number of drafts at the same time, thus further obscuring the trail.

4.The use of payable-through account.

A foreign bank opens a correspondent master account with a bank in a host country and allows its client to draw checks on the bank's master account instead of securing a license to operate in one country. The account remains legally in the name of the foreign bank.

5. Money is disguised as casino winnings.

The money is wired from the criminal's offshore bank account to a casino in some tourist center abroad. The casino pays the money in chips; the chips are then cashed in; and the money is repatriated via a bank check, money-order or wire transfer to the criminal's domestic bank account where it can be explained as a result of good luck during a gambling junket. This trick is used sporadically because winning too often will attract attention.

6. Bogus capital gains on options trading where the onshore company records a capital gain and the foreign one a capital loss. The trick is to "buy" and "sell" a currency, commodity or stock option back and forth between foreign and domestic companies. This works even better if the foreign company is incorporated in a place with secrecy laws.

7. The use of international real estate flips.

The criminal arranges to "sell" a piece of property to a foreign investor who is , in reality, the same criminality working through one or several offshore companies. The "sale" price is suitably inflated above acquisition cost, and the money is repatriated as capital gain on a smart real estate deal.

8. The criminals arrange the transfer of funds as personal income by falsely representing himself as an employee or consultant of his offshore company.

Personal in come is easy to arrange. The criminal has simply one or more of his offshore companies hire him as an employee or, better, as a consultant. He then pays himself a handsome salary or generous consulting fees, as well as probably a company car or a condominium in a prime location, out of the offshore nest-egg.

9. The criminal may set up a domestic corporation and have it billed as an offshore company for goods sold or services rendered making it appear that the money repatriated as business income.

10. Bringing the money home as a business "loan" to the criminal's onshore entity.

This is probably the neatest solution of all. The criminal arranges for money held in an offshore account to be lent to his onshore entity. Not only is the money returning home in completely non-taxable form, but it can be used in such a way as to reduce taxes due in strictly legal domestic income. Once the "loan" has been incurred, the borrower has the right to repay it, with interest, effectively to himself. In effect, the criminal can even ship more money out of the country to a foreign safe haven while reducing the "interest" component as a business expense against domestic taxable income. With the employment of the various "loan-back" techniques, the money laundering circle is not merely completed, it can actually be increased in diameter.

The 10 Fundamental Laws of Money-laundering[20]

1. The more successful money-laundering apparatus is in imitating the patterns and behavior of legitimate transactions, the less the likelihood of it being exposed.

2. The more deeply embedded illegal activities are within the legal economy, the less their institutional and functional separation, the more difficult to detect money-maundering.

3. The lower the ratio of illegal to legal financial flows through any given business institution, the more difficult will be the detection of money-laundering.

4. The higher the ratio of "services" to physical goods production in any economy, the more easily money-laundering can be conducted in that economy.

5. The more the business structure of production and distribution of non-financial goods and services it dominated by small and independent firms or self-employed individuals, the more difficult the job of separating legal from illegal transactions.

6. The greater the facility for using cheques, credit cards and other non-cash instruments for effecting illegal financial transactions, the more difficult is the detection of money-laundering.

7. The greater the degree of financial deregulation for legitimate transactions, the more difficult will be the job of tracing and neutralizing criminal from legal money.

8. The lower the ratio of illegally to legally earned income entering any given economy from outside, the harder the job of separating criminal from legal money.

9. The greater the progress towards the financial services supermarket, the greater the degree to which all manner of financial services can be met within one integrated multi-divisional institution, the less the functional and institutional separation of financial activities, the more difficult the job of detecting money-laundering.

10. The worse becomes the current contradiction between global operation and national regulation of financial markers, the more difficult the detection of money-laundering.

Factors that Helps in the Money-laundering Scheme[21]

1.The Dollarization of the Black Market.

The growing popularity and the wide acceptance of the United States high denomination notes as a physical medium of exchange, means of payment and store of value around the world has seriously contributed to the expanding operation of the black market. This provided the organized crime groups another avenue or option to launder illegal money.

The steadily growing appetite for US high denomination note has been their vehicle for conducting covert wholesale transaction for hiding international financial transfers and for holding underground savings. This operates to the full spectrum of illicit and underground activity and also has direct implications for the proceeds of serious crimes including drug trafficking.

The black market exchanging the local currency for US dollar bills can be equally accommodating to cigarettes smugglers, drug traffickers, tax evaders, kidnap for ransom criminals and other high financially motivated crimes.

The more popular the use of the US dollar, the more easily someone can bring US currency to parallel money markets, convert it to local currency, deposit the local currency in a financial institutions and wire it anywhere else while attracting considerably less attention than the direct deposit of the US currency would attract.

Due to its wide acceptance, the launderer may convert his US dollars into valuable goods, resell the goods and deposit the money as the proceeds of a legitimate commerce, thereby further obscuring the trail.

2. The Trend toward Financial Deregulation.

This trend has become the precursor of **"financial services supermarket"**, the integrated, multi-functional financial institution that offers the client at one and same time deposit transfer security and commodity brokerage, investment management and fiduciary service along with departments skilled in creating foreign skill corporations. And offshore trust. It is gradually eliminating preliminary checks and balances on the nature, provenance and destination of financial assets that a system of distinct and specialized institutions should have automatically ensured. Once the money has entered the "supermarket", the first barrier has been destroyed and there are no more layers of scrutiny to pass while the capacity to shift funds from asset to asset and from place to place is greatly enhanced to the advantage of the organized crime groups.

The growing absence around the world of currency controls of this trend has increased the convertibility of currencies expanding trade and commerce. The effect is when capital movements are free, this freedom applies to funds of illegal and legal origin and the more jurisdictions these funds can flow, the more currencies into which they can be converted and the harder the job of tracing.

3. The Proliferation of Offshore Banks.

The concept of offshore banks, though widely employed, is little understood.With the progress of the Euromarket, and the growing use offshore banking system, this has reinforced the trend on liberalization and deregulation. They do not operate however, the same thing as financial secrecy havens.

By illustration, Panama introduced its bank secrecy laws in 1917, buttressed it with Swiss-style "numbered" accounts in 1959 and only introduced offshore banking legislation in 1971. The biggest offshore banking center is actually the City of London, but its bank secrecy laws, is no serious impediment to criminal investigations. Switzerland on the other hand, which is almost synonymous to bank secrecy laws, has no offshore banks.

The common understanding of "offshore bank" is that it is any bank anywhere in the world that accept deposits and/or manages assets denominated foreign currency in behalf of persons legally domiciled elsewhere. What they are supposed to do is handle wholesale transactions, usually denominated in dollars on a bank-to-bank basis. They do not deal with the general public nor they do not accept cash in suitcases.Its implication on money-laundering is that it offers more jurisdictions complicating the money trail and evading the scrutiny of national regulations.

4. The Proliferation of Financial Secrecy Havens.

The traditional protection assured to clients of financial institutions is confidentiality, and in case of breach, the clients have recourse of civil remedies. By contrast, bank secrecy laws imposed

criminal sanctions on those who divulge information regarding client's transactions. Bank secrecy takes many forms, functions and degrees of defeasibility such as the following :

a. There can be **totally anonymous accounts** where no one in the bank can possibly know, unless the clients themselves reveal the information, and who the beneficial owners of the accounts are. These are the most dangerous. However, at present only Austria offers such accounts. They may be of some use in hiding criminal money but, because no transfer may be made from them, they are of minimal utility in moving and washing money, and Austria is under pressure to modify or abolish them.

b. There can be **accounts in which a layer inter-poses him between the bank and the client**, thereby protecting the client's identity, first by any bank secrecy laws the country may have and second by an additional layer of lawyer-client privilege. This was typical, for example, of the old Form B accounts in Switzerland, which have been abolished. A strong case may be made for banning them wherever they still exist.

c. There are **accounts protected by both official bank secrecy acts and the informal device of nominee ownership** in which the nominee and the beneficial owner are connected by civil contract and/or simply a bond of trust (or fear) rather than by formal attorney-client privilege. These are different from Form B type accounts since the bank has little or no control over the use of nominees. On the other hand, since there is no client-attorney privilege, there is nothing to prevent the nominee from revealing information about the beneficial owner of the account.

d. There are **owner-held accounts** that are coded so that only the top management of the bank knows who the beneficial owner is, and secrecy laws prevent the management from revealing that information. These are especially effective if the country's bank secrecy law also forbids the bank to reveal information even if the client requests lifting of bank secrecy. The public rationale of such rules is that they protect clients against harassment and blackmail by outlaw States and secret police forces, and on the surface that seems to be a reasonable argument. However, it is difficult not to get the impression that the real purpose is to give a competitive advantage to the particular haven's banks in bidding for internal flows of illegal money. In other words, it is the welfare of the banks, not of the clients, that is really at issue. In any event, it should be possible for the authorities in a jurisdiction to judge whether a client making a request to lift bank secrecy is being subject to a proper criminal process or is being harassed for purely political reasons before agreeing to waive secrecy.

e. Then there are **coded accounts**, protected further by bank secrecy laws, but where the client (perhaps under pressure from law enforcement) can request the bank to lift the protection and divulge information. By definition these pose less of a threat.

f. Finally, there are **accounts protected by banks secrecy laws without the additional device of a code that permits** that only the most senior managers to know who the account holder

is. These more standard forms of secret accounts have a long history, and there are sound arguments for their existence. However, there are equally compelling arguments against them. Those who seek secrecy by definition have something to hide. In the majority of cases, it is safe to say that what they have to hide is the origin, provenance and destination of their wealth, not their political views or ethnic origins. Nonetheless, rather than pressing for a total abolition of this modest form of bank secrecy, one in which bank employers in general have direct access to the identity of the beneficial owner of the account and where there are no extraordinary cloaking devices, efforts should be made to encourage countries to agree on the general conditions under which secrecy is permissible. There is huge difference between secrecy to protect company's financial position from a commercial competitor's probes and secrecy to protect the origin of a company's bank account from a criminal investigation.

Features of an Ideal Financial Haven[22]

a. No deals for sharing tax information with other countries

b. Availability of instant corporations

c. Corporate secrecy law

d. Excellent electronic communications

e. Tight bank secrecy laws

f. A large tourist trade that can help explain major inflows of cash

g. Use of major world currency, preferably the United States dollar, as the local money

h. A Government that is relatively invulnerable to outside pressure

i. A high degree of economic dependence on the financial service sector

j. A geographic location that facilities business travel to and from rich neighbors.

k. Time zone location

l. A free-trade zone

m. Availability of a flag-of-convenience shipping registry

One analyst observed that **"the secrecy haven is one of dirty money's most cherished privileges and one of its most ardent solicitors."** The issue of bank secrecy is a delicate and serious concern. For unstable and developing countries, it can not just relax its secrecy laws, otherwise it would shun the interest of would be investors, both legal and illegal ones. It may also drive away existing foreign companies because of mistaken stiff regulations or too much interference. However, it is important not to exaggerate the significance of bank secrecy or to

lose sight of other barriers to finding, freezing and forfeiting criminal money because money-laundering can very well exist even w/o bank secrecy laws. Let us not forget that there still the corporate secrecy laws, w/c even we have identified the depositor, i.e. "Guns For Hire Services", it may still impossible to identify the people running such entity.

It is not that countries espousing bank secrecy laws are competing for the influx of drug money and other criminally derived funds, they are just torn between compelling necessities: the need to increase government resources, its economic vulnerability and the lack of alternative resources.

5. Electronic Transfer

The development of the "megabyte money" (money in forms of symbols on computer screen) has made it possible to more funds with speed and ease and in volume without resorting to cash transactions. In the 1995, the United States payment structure cash transactions only amounted to $ 2,200 billion as compared to $ 544,000 worth of electronic transaction or roughly 0.40%. Figure?

What is the implication of this? The extensive used of electronic money transfer, considering its voluminous transactions, has de-magnified the money-laundering transactions as a mere speck lost in the vast sea of financial transfers. In addition, **there is no existing functional and institutional separation between the transfer of illicit and licit monies**[23] such as proceeds from drug trafficking and other forms of crime. The now defunct United States office of Technology Assessment had once reasonably guessed that around 0.05 to 0.1 percent of the approximately 700,000 wire transfers a day contain laundered money up to a value of $ 300 million.[24] That is very much less than a drop in a bucket of the whole transactions. The gigantic transactions of $ 2,000 billion wire transfers a day would prevent any attempt to classify the nature of each wire transfer whether it is a laundered money or not.

This opportunity has given more interest to the criminals to exploit the system and offshore financial havens and bank secrecy jurisdictions are all too often willing participants in this process of exploitation. They are also attractive to terrorists and insurgent groups seeking to launder criminal proceeds generated to support their armed struggle or to acquire weapons that can be used in their continuing campaigns of violence.

6.The Used of Professional Launderers

In March 1997, the International Narcotics Control Strategy Report states that "professional money-laundering specialist sell high quality services, contracts, experience and knowledge of money movements, supported by the latest electronic technology, to any trafficker or other criminal willing to pay their lucrative fees. This practice continues to make law enforcement more difficult, especially through the commingling of licit and illicit funds from many sources and the worldwide dispersion of funds, far from the predicate crime scene"[25]. Among the several levels of professional launderers involved are the following:[26]

a. The first level consists of the so-called **financial consultants** who write books and conduct seminars on the tax benefits in the offshore world. This is always followed-up with the provision of specific advice and guidance for individuals who have been convinced that moving all or part of their financial assets offshore is beneficial.

b. The second level **involves lawyers, accountants or brokerage and financial firms** that provide a *porfolio* of services to a wide variety of customers, legitimate and criminals alike.

c. The third level are those **financial managers** who have chosen a market niche in the provision of specialized services to specific clients who are obviously engaged in criminal activity. They are more clearly in collusion with the criminals in hiding and laundering their money.

What level these various agents operate on, their objective is to advice a scheme with an appropriately complex mix of corporations, jurisdictions and institutions to provide a maximum protection for their clients and to make any law enforcement investigations as difficult and frustratng as possible.

IV THE GLOBAL SITUATION

A. Global Trends in Money Laundering[27]

1. The global nature of money laundering phenomenon renders geographic boarders increasingly irrelevant.

2. No significant new methods of money laundering have been identified during the fast years.

3. There is a growing trend among money launders to move away from the banking sector to the non-bank financial institution sector. The use of *bureaux change* (currency exchange houses) and money remittance business (such as wire transfer companies) to dispose of criminal proceeds remain among the most of the cited threats.

4. There is also a continuing increase in the amount of criminal cash being smuggled out of the country for placement into financial system abroad.

5. The most noticeable trend is the increase in the use of money laundering of non-financial in business or professions related to banking institution. The use of shell companies is in vehicle.

B. Money Laundering Crimes

Due to the clandestine nature of money laundering, it is difficult to estimate the total amount of money which goes to through the laundry cycle. The United Nations estimate that about 5% of the world's gross national product or as high as $500 billion[28] a year is involved in the process.

Efforts are being done by international organizations to verify this and come up with an accurate figure.

a. The Bank of Coordination and Commerce Int'l (1991)[29]

The widely-publicized scandal that became the precursor of changes in European countries regarding money laundering was the Bank for Coordination and Commerce International (BCCI) case in 1991 operating in the United States and United Kingdom. It sent shock wave through the global financial system that later called for stricter bank regulations.

The bank's publicity of huge profits was largely fictitious and it had been wholly indiscriminate about its traffickers, terrorists, dictators, fraud, merchants, arms dealers and other organized crime groups.

The bank's operation was made-up of multiplying layers of entities, related to one another through an impenetrable series of holding companies, affiliates, subsidiaries, bank-within-bank, dealing and nominee relationships. By fracturing corporate structure, the complex BCCI family of entities was able to evade ordinary restrictions on the movement of capital and goods as a matter of daily practice and routine. Exploiting the facilities of offshore financial centers, shell companies and high-level political influence, BCCI's global scope made it not accountable to any jurisdictions or regulations.In July 1991, more the $12 billion in assets of BCCI were seized after regulators discovered evidence of wide-spread fraud.

b. European Union Bank of Antigua (1997)[30]

This is a perfect example of the way in which the offshore banking jurisdictions and bank secrecy havens facilitate criminal activity. It appeared to be the prototype bank of the future, soliciting for deposits on the World Wide Web and offering anonymity avoidance of what was portrayed as burdensome and expensive accounting requirements, and excellent returns of as much as 9.91% on one year, $1 million dollar certificate of deposit.

It was registered initially as an offshore bank in Antigua on 08 June 1994. In September 1995, the EUB launched its Web site and chained to be the first Internet bank with customers able to create and manage account on-line via the internet connection. In 1996 it claimed to have a backing $ 2.8 million and 144 accounts with account holders in 43 countries.

The bank's advertisement was explicitly aimed at persons seeking to evade taxes or find a haven for dirty money where it would be beyond the reach of law enforcement. Customers can open numbered accounts, in which the customer's identity is known only by an EUB private banker or coded accounts, which are numbered accounts that operate by passcode rather than signature In July 1997, the EUB collapsed and bank officials disappeared along with the deposits.

c. The Johnny Kyong Case[31]

In 1990 Johnny Kyong was convicted of supplying herein to New York Mafia. Apparently, he moved his profits through bulk shipments of cash to Hong Kong or through a Venezuelan company to bank accounts in Hong Kong. He then used the "*fie chien*" or Asian underground banking system to move more funds to Burma and Thailand to purchase more drugs.

d. The Spence Money-laundering of New York (1991)[32]

A law firm provided the over-all guidance for the laundering effort while both a trucking business and a beer distributorship were used as a cover. A Bulgarian diplomat, a firefighter and a rabbi acted as couriers, picking up drug trafficking proceeds in hotel rooms and parking lots. The money was then transported and deposited in an account with the assistance of a Citibank assistant manager; the money was thereafter wired to banks in Europe, including a private bank in Switzerland in which two employees remitted it to specific accounts designated by drug traffickers.

A sum of $70 million to $100 million was laundered by the group during 1993 and 1994. The group was busted when the bank supplied a suspicious activity report which played a critical role in the downfall of the money-laundering network.

e. In May of 1999, a money manager has vanished with as

much as $3 billion in clients money by siphoning off a dozen of small insurance companies in five States in the US.The suspect was identified as Martin Frankel who is now at large after burning all the documents in his mansion house with more than 80 computers and wide - screen televisions turned to financial news channels. As much as $1.98 billion was missing from the St. Francis of Assisi foundation which was established by Frankel in British virgin Islands in August 1998. f. The $10 Billion "Russiagate" story broken last August 20 by the New York Times and the Wall Street Journal, in what maybe considered as the biggest money laundering case ever pursued, seems to be a landmark scandal in Moscow. The billion dollars is said to have been funneled out of Russia through accounts at the Bank of New York Co. Inc.

Slovo, the former newspaper Pravda, announced that the pogrom (massacre) of the red Mafia has begun. The US and British secret services do not exclude the probability that money was used to hire assassins and trade in drugs, the paper added without citing any sources. A reported Russian mob leader Semyon Mogilevich denied accusations that he was involved in the alleged laundering through an American Bank, and in the Russian organized crime. Mogilevich has been linked to a company called Benex which had accounts with the Bank of New York that raised the suspicion of investment.Relatedly, Moscow's third main daily, Uremya, which has financial links to the Central bank, reveals that investigation had zeroed in on President Boris Yeltsin's two daughters.

"USA Today" reported that Yeltsin's daughter and close confidant, Tatyana Dyachenko, as well as other advisers to the President may have handled $20 million in New York Bank accounts.Moscow's mainstream press, much of it controlled by the very oligarchs implicated in the $10 billion dollar probe, however, took a skeptical view. The leading Kommersant Business Daily newspaper that was recently purchased by controversial tycoon Boris Berejousky simply ignored the biggest banking scandal to hit modern Russia. Russia's more reserved press like the liberal Sevodnya Daily controlled by Vladimir Gurinsky's MOST-Media Bank, linked the Bank of New York Probe to US election politics.

"Is (US Vice-President) Albert Gore the patron of the Russian Mafia?" asked the headline of a Russian newspaper Sevodnya. It argues that the money laundering allegations were being linked to the New York and Washington Press by the Republicans keen to damage Gore's reputation by portraying him as the "Champion of Corrupt Russian Officials."Meanwhile, the US and the British authorities are investigating claims that Russian businessmen and senior officials may have channeled around US$10 billion out of Russia through the Bank of New York.

However, both the IMF and the US Department of Agriculture said they have no evidence that their loans and aid to Russia had fallen into the hands of mobsters. "Our monitoring has not shown any diversion" Richard Fritz, USDA's General Sales Manager told Reuters, adding that food-aid shipments would continue.Analysts said that Russia might become more isolated from the reform course if the IMF held back its aid over all allegations that previous credit were caught up in a money laundering scheme. The incident called into question the next $640 million *tranche* of $4.5 billion IMF loan for Russia, expected in September.

The New York Bank (NYB) fired a London-based Executive, Lucy Edwards, in charge of its Eastern European operation, for misconduct and falsifying records. Another Russian-born NYB executive, Natasha Murfinkel Kagalousky, has been suspended and her husband Konstantino is also implicated in the scandal. The latter said the scandal was being blown out of proportion by US politicians and relating it to the aid to Russia which is expected to be a sensitive issue in the next year's presidential election.

C. Global Response

Countries around the globe are now beginning to realize the catastrophic impact of money-laundering if it goes-on unchecked. This new trend in the organized crime world threatens to erode the integrity of every nation's financial system, the safety and security of people, state and other democratic institutions. Fighting it not only reduces financial crimes but it will deprive these elusive, well-financed and technologically adept criminals and terrorists of the means to commit other serious crimes.[33]The United States of America has been continually exerting effort and initiatives to lay down effective measures to combat money-laundering and other international crimes. Bilateral and global cooperation is being forged to come up with an internationally accepted countermeasures and law enforcement.

The International Law Enforcement Academies (ILEA) in Budapest, Western Hemisphere and Bangkok, Thailand were recently established to provide instruction and training in financial investigation techniques and money-laundering.

The Mutual Legal Assistants Treaties (MLATs), in which the Philippines is a signatory, was signed by many countries to allow the exchange of information and evidence in the criminal prosecution of money-laundering and asset forfeiture cases. There is also the Statement of Principles on Prevention Of Criminal Use of Banking System for the Purpose of Money Laundering of the Basel Committee on Banking Regulations and Supervisory Practices of December 1988, also known as the Basel Statement.

The G-7 Economic Summit in Paris in 1989 established the Financial Action Task Force (FATF) the purpose of which is the promotion and development of policies to combat money-laundering. In April 1998, FATF member-states confirmed their intention to build a strong global alliance and urged all concerned to foster the establishment of a world-wide anti-money laundering network through expansion of its membership, development of regional bodies and close coordination with all relevant international organizations. It also expressed its concerned on jurisdictions which allow excessive banking secrecy and the use of "screen companies" for illegal purposes. It then issued the FATF 40 Recommendations on money-laundering which was revised in 1996 and referred to as the FATF Recommendations.

On 08 November 1990, a Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, also referred to as the Strasbourg Convention was finalized and was opened for signature since then.By 10 June 1991, the Council of Europe issued a directive on the prevention of the use of the financial system for the purpose of money laundering (91/308/EEC) also known as the CEC directive.In December of 1995, the Ministerial Communique of the Summit of Americas Conference concerning the Laundering of Proceeds and Instrumentalities of Crime was held in Buenos Aires, France.

Recently, the United Nations issued the Political Declaration and Action Plan against Money Laundering which was adopted at the twentieth special session of the General Assembly in New York on 10 June 1998.Several jurisdictions now are reviewing their financial regulations and restrictions, adopting new measures and opening their system for linkage with other countries. The creeping clout, economic desolation and mockery of states' sovereignty have been the catalyctic factors on why several jurisdictions are now taking the initiatives against money-laundering.

Facing international pressure after several cases of financial frauds scandal, Austria has criminalized the laundering of all assets derived from serious crimes. The legislation extended to banks, mutual savings bodies, insurers and *bureaux de change*, all of which are required to report suspicious transactions to the Reporting Unit of the EDOK (Central Department Against Organized Crime).[34]

In August 1998, The Kingdom of Belgium extended its money-laundering laws to professions and activities other than financial institutions including real estate agents, notaries bailiffs, accountants and auditors, estate agents, casinos, and security firms that transport money. Financial institutions are required to keep records on the identities of all their clients and are required to report suspicious transactions involving $13,000 or more.[35]

In Burma under its 1993 Narcotic Drugs and Psychotropic Substance Law, narcotic related money-laundering is a crime and money, property or benefits involved in or derived from narcotics may be seized. There are no reliable records of its campaign however, because of its lack of expertise and resources to prosecute money-laundering.[36]

China, with its large and growing economy, weak and liberalized financial system, has led to an increase in financial crimes, particularly fraud. In 1997, a law was passed criminalizing the laundering of the proceeds of narcotic trafficking, smuggling and organized crimes. It also required that foreign currency transactions over $10,000 fro individuals and $100,000 for authorized businesses, be verified and registered with the State Administration of Foreign Exchange.[37]

In India, the most significant sources of laundered money are financial crimes (including tax evasions) and corruption. Although money-laundering is not a criminal offense per se, those suspected of hiding funds can be prosecuted for income tax evasion or under sections of customs or foreign exchange regulations. Current laws also stipulate that transactions over $2,400 must be reported to bank management which then decide whether or not it will notify the authorities of any suspicious activity. It has a pending bill on money-laundering as of late 1997.[38]

Money-laundering in Italy was informally estimated to a total of over $50 billion annually. In 1997, the Italian government enacted Act No. 153 which created an inter-ministerial commission to coordinate all enforcement for intelligence network, operation, and prosecution of money-laundering cases.[39]

The United Kingdom money-laundering regulations mandate suspicious transaction reporting, customer identification, and record keeping. This applies to banking and non-banking sector including accountants, lawyers and professionals.[40]

There are many other countries around the globe which have initiated counter-measure laws to combat money-laundering. Others are in the process of legislation while others are just beginning to recognize the criminal character of this new phenomenon. Still, others failed or may have deliberately ignored the existence of this new criminal activity, may be because they have not felt its impact or they simply refused to admit it. Sooner or later, the time will come for them to realize implacable existence of money-laundering. Worse, this phenomenon may have been in

their backyard, slowly eating the foundations of its governmental and financial structures…like termites!

V THE PHILIPPINE SITUATION

A. The Status Quo

The Philippines has long recognized that the drug menace is the cause of the rising criminal wave, and that effective anti-money laundering measures are critical part in the fight against the drug problem. There are also other criminal activities partaking an international dimension yet to be effectively addressed by the government. Among these are human trafficking, arms smuggling, credit card fraud and other crimes riding on the technology of the information highway.

It is true that our laws have their forfeiture clause, but they seem to not apply when the criminal money has been re-invested in a semi-legal and legal business conduits. There is yet to a court decision on this aspect of criminal prosecution. The reason for this is that there must not be an iota of doubt that the money was directly derived from the specific offense subject of prosecution. That is why criminals convicted of "economic crimes" are put behind bars but without their laundered money being traced and forfeited.

There is yet to be a concrete case on money-laundering but there are strong indicators that this menace exists in our jurisdiction. The proliferation of businesses like pawnshops, foreign exchange dealers, bars and restaurants, casinos and others have been viewed as positive index of a growing economy, but a meticulous dissertation of their structures may reveal otherwise. These are potential conduits of criminal proceeds in its money-laundering process.Our strict bank secrecy laws, liberalized economy, graft and corruption in various governmental sectors and absence of anti-money laundering laws may have been taken advantage of by organized crime groups operating under the cloak of small-medium and large investment schemes.

In reference to the "major financial havens" identified by the United Nations Office for Drug Control and Crime Prevention (UNDCP) and our Bangko Sentral ng Pilipinas (BSP) Registered Foreign Equity Investments, there are at least ten (10) jurisdictions which have a record of investment in our country. Although we have no concrete records that these investments from these financial havens have their origin from criminal activities, the erratic statistical changes based on the records of the BSP indicate strong circumstancial evidence that laundered money passed through our financial system (Refer to Figure ___). Consider the case of the British Virgin Islands, it had an investment of $8.762 million in 1995 and by the next year the investment ballooned to $105.77 million or a meteoric increased of approximately 1,200%. Figure/statistics.

Netherlands in 1994 increased by 4,054% or $547,766 million as compared to its $13.51 million investments in 1993. Other jurisdictions considered as financial havens also showed some unusual increases and decreases in their investments which somehow defied normal economic explanation. This is not saying that all these investments have their sources from criminal proceeds. There are strong indicating factors however, that certain percentage of these investments are laundered money, and a deeper study and analyst must be conducted on this matter.

A consideration must be made that during those years, there were unusual increases in the investments from these financial jurisdictions. It was also during those times that there are millions or billions of laundered money being investigated involving these financial havens. It is not far from possibility that a certain amount of these laundered money found there way into our financial system through banks, real estate business, stocks exchange and other financial ventures.

The Philippine government however, is cautiously addressing the problem because of the "chilling effect" it might cause to the economy. The investments from other countries regardless of the nature of their "origin" is very much welcomed because it helps our economy afloat, especially during financial crisis, and increases government revenue. It is a positive indication to the global market that our economy is stable and strong, and most probably it will attract more foreign entities to invest in our country.

The passage of anti-money laundering measures purposedly to sanitize the kinds and sources of funds being invested here would however, raise a negative impression on these investors, both local and foreign. It may drive away the much sought investments and derail our course towards a full-blown economic development. At the same time, we are trying to prevent the Philippines from becoming another financial haven for money laundering. These are the diametrical extremes which our country is trying to reconcile. The political structure of our country also serves as an impediment to the passage of various pending bills in congress on money laundering. The oppositions consider it as a "Damoclean sword' hanging over them ready to strike them in times of political upheaval. They see it as a tool for political vendetta primarily because of the inclusion of the RA 3019 or the Anti - Graft and Corrupt practices Act and other related laws which can easily be emasculated and prostituted in order to suit the demands of the powers that be.

In a strong democracy like ours, the amendments to bank secrecy and the wire tapping laws will be vehemently opposed. The constitutional guarantee on our bill of rights will shun any attempt to erode or diminish any of those sacred provisions. But the amendments are necessary in the investigation process on money laundering. Law enforcers are left crippled to unravel the intricate web of money laundering schemes and run after the personalities behind this new criminal dimension. This is the shelter hub where launderers take their next move to transfer their laundered money to another jurisdiction. This will render more difficult for investors to

track down these money launderers.The fact remains however, that something must be done. There is a semblance of truth to all the suspicions and fears that we have - that money laundering exists in our jurisdiction! To date, there are four pending bills in Congress since 1998 on racketeering activities and money laundering (comparative matrix included here).Among the identified transnational crimes operating in the Philippines and have linkages to money-laundering activities are the following;

1. Drug Trafficking

According to estimates, the whole drug industry, which is primary concern of the government today, is worth more than P250 [41]billion, roughly half of the national budget. This drug menace has been the formidable threat to all the sectors of our society because of its encompassing and devastating effects. This large amount of money is used by drug traffickers to buy real estates, invest them in business ventures, procure of stocks and even create their own financial institutions or transfer their drug money to financial havens abroad.

A country report prepared for the meeting of the Association of Southeast Asean Nations (ASEAN) Senior Official on Drug Matters held last April in Jakarta summed up the role the Philippines plays in drug trafficking trade. The report said that "the Philippines has become the major transit points in international drug trafficking because of its proximity to the Golden Triangle: Laos, Thailand and Myanmar; its strategic location in the Pacific and southeast Asia; its lengthy coastline suitable for smuggling; its financial/banking system conducive to money laundering; and its tourists flow in major international ports." [42]The continuos laundering of drugs money may soon dissipate our financial resources and ultimately cripple our financial and governmental structures, not to mention the social havoc it will cause to our country.

2. Terrorism

On 15 November 1986, a Japanese national was kidnapped by the Communists Party of the Philippines/National People's Army (CPP/NPA) and demanded a ransom of US $3 million[43] to support its terroristic activities and other rebellious deeds to destabilize the government.

The CPP/NPA and the National Democratic Front (NDF) have collected Php16 million in 1998[44] through revolutionary taxes and extortion from wealthy personalities in there are of operation and from other sympathetic groups of the society. They are also recipient of Php11.9 million from foreign sources through electronic bank transfer and other money-laundering techniques.

A Php50 million initial funding from a certain Al Mokhro Ibrahim, member of the Ikhan Al Muslimen from of Qatar[45] was laundered to construct a hospital for the Moro Islamic Liberation Front (MILF). Financial support from the Arab countries were also used to purchase assorted firearms for the Abu Sayyaf and the MILF. They have an estimate of 10,500 assorted FA's[46] approximately valued Php150 million.

Analysis revealed that these terrorists groups cannot perpetuate their abhorrent acts without the financial support of both local and international cliques through the money-laundering process or violation of anti-racketeering laws.

3. Arms Trafficking

The government is losing Php40 million[47] annually on unpaid taxes due to the smuggling of "paltik" firearms which is now gaining recognition among organized crime groups around the world.The PNP Firearms and Explosive Division (PNP-FED) records show that from 1991 to March 1999, the NALECC-NAIAI Group intercepted and confiscated 334 assorted smuggled firearms[48] roughly valued at Php3-4 million. Sometime in 1992, it was monitored that a big shipment of firearms, mostly cal. 5.56 rifles[49] (US made) were unloaded in Mindanao. The firearms were allegedly purchased by local officials.The Japanese Yakuza syndicate and the Boryukodan group are identified as smuggling in and out of the country through the various entry points with used of barges, motorized bancas and other water carriers. The Philippine Navy anti-gunrunning operations from, 1992 to March 1999 effected the seizure of 55 vessels, arrest of 52 persons and confiscation of various firearms valued at Php 5.7 million.[50]

4. Trafficking in Persons

Trafficking of human beings, particularly women and children have reached an alarming level throughout the world.In 1996, 984 Filipino women were married in a Korean sect ceremony to Korean Moonies, after being matched by a computer. A $2,000 fee was collected from the groom. Documented cases include women eventually sold into prostitution upon arrival in Korea.The proliferation of websites in the cyberspace featuring Filipina women as sex commodities and mail-order-brides is becoming a lucrative business. In 1996 alone, this cyberspace sex industry posted an estimated US $198 million.[51]

The entry of illegal aliens by means of air and sea transportation through the various entry and exit points has become a security concern of the country. On top of that, fraudulent passports and documents are manufactured by criminal syndicates by paying them Php20,000 to Php50,000 to facilitate their entry into the country. Thousands of foreign nationals, particularly Chinese, enter our jurisdiction annually.

This is not to mention the illegal recruitment and placement wherein Php20,000 to as much Php120,000 are being charged to our unsuspecting countrymen hoping to find a greener pasture in foreign land, and the other modes of trafficking such as adoption, religious pilgrimage, family tours and others.

5. Commercial Frauds

In May of 1999, an Augustinian Filipino priest was arrested for carrying 24 phony US $100 million notes who tried to sell to a broker. Investigation showed that the notes came from the southern part of the Philippines and that the priest had access to another $65 billion fake currency.Sometime in August 1998, an advertisement in the a newspaper stated that:"Money Trading P200,000 minimum investment 15% return/day, pooling possible, profits withdrawal daily. No Gimmicks. Call 8942689/ page EC 146-943792."

The ad came from WINGOLD MANAGEMENT PHILS., INC (WMPI) registered with the Security and Exchange Commission (SEC) on 19 March 1998 "primarily to act as manager or managing agents of persons, firms, associations, corporation, partnerships and other entities…. *except management of funds, securities, porfolios or similar assets of the managed entities or corporation"* (underscoring supplied). It claimed to have a head office in British Virgin Islands, but as inquiry, it has been "struck off" for non-payment of license fee.[52]

Although it was never licensed as a commodity/merchant broker, it engaged in foreign currency trading activities and has defrauded its client foreign currency investors easily estimated at Php1.6 billion.The proliferation of fake currency syndicates involving foreign nationals, particularly Jordanians and Nigerians have penetrated our jurisdiction. Hundreds of millions of fake dollars and pesos have been confiscated. This coupled by the reproduction of fake credit/ATM cards which has defrauded millions of pesos from unwitting cardholders and depositors.

5. Treasureland Limited

In August of 1999, the Interpol of London which currently conducting investigation on a possible large scale money-laundering operation which has been brought to light as a result of a series of disclosures made by the Anglo Irish Bank in London. On several occasions, Treasureland Limited, holding office in Pasig but was incorporated in British Virgin Island, with identified two (2) Filipino directors, expressed its intention to deposit around US $10 billion with the Anglo Irish Bank. The bank however, requested clarification on the location and sources of the funds and was advised that the funds were with the Chase Manhatten in Zurich. In addition, a certificate of deposit for US $2,107,865.02 held at Metropolitan Bank and Trust Company was provided but appeared to have been produced on an ink jet printer.It is vaguely intimated that the amount may be connected to the ill-gotten wealth of the former President Marcos.The amount appears to be very substantial with potential to destabilize national economies and bring about the downfall of long standing and secure financial institutions.

6. Graft and Corruption

According to estimates, about 30-40% of our national budget is lost graft and corruption. That is translated to a fair estimate of P150 billion to P200 billion annually being wasted through bureaucratic red tapes, ghost projects, cost estimate padding, overpricing, percentages and other unscrupulous means used by crooks in the government.

B. Creation of the Philippine Center on Transnational Crime (PCTC)

During the 6th Asean Summit on 15 December 1998 held in Hanoi, Vietnam, the delegates recognized the threats of transnational crimes in view of its political, economic and socio-cultural repercussions.

On 15 January 1999, President Joseph Estrada issued Executive Order No. 62creating the Philippine Center on Transnational Crime (PCTC) to formulate and implement a concerted program of action of all law enforcement, intelligence units and other government agencies for the prevention and control of transnational crimes.

This was reinforced by Executive Order No. 100 dated 07 May 1999 placing the Loop Center of the National Action Committee on Anti-Carnapping and Anti-Terrorism (NACAHT), Interpol NCB-Manila, Police Attaches of the Philippine National Police (PNP), and the Political Attaches/Councilors for Security Matters of the DILG, under the general supervision and control of the PCTC.

The Philippines is projected to host the Asean Conference on Transnational Crime this November 1999. The PCTC will also become the future location of proposed Asean Center which will become the database information center for all Asean countries regarding transnational crimes.

On 04-06 August 1999, the Asian Development Bank in the Philippines sponsored the Asia Pacific Group on Money Laundering where about 30 jurisdictions attended the same. The conference focused on the countermeasures that could be adopted by jurisdictions according to their peculiar situation. The financial, legal and law enforcement aspects were considered as logical and effective approach against money-laundering.

VI PROPOSALS

The government should draft a strategic plan that will focus on money-laundering. We should not be immobilized by the inertia of waiting for a big "explosion". This new criminal phenomenon must given the scrutiny of attention before it permeates like poisonous vines the governmental structure and financial system of our country. We should not wait for us to reach the point of no return.The following proposals are recommended:

1. Immediate passage of the anti-money laundering bill.

2. Revision of our bank secrecy law, wire-tapping law and other related laws in harmony with trade liberalization but without compromise of financial integrity and sovereignty.

3. Adoption of mandatory reporting of suspicious or anomalous transactions.

4. Constant and effective monitoring of money laundering patterns within and without our jurisdiction.

5. Research and analysis of money management practices.

6. Monitor and restrictions against non-drug related money-laundering and other financial crimes.

7. Involvement of the banking and other financial sectors in the government's drive against transnational crime.

8. Continuing study on global trends in both economic, political and socio-cultural development.

9. Statistical research, analysis and monitor of alien activities in the country.

10. Analyzing the impact of money-laundering on national government and economy.

11. Drafting of MOA, bilateral or multi-lateral agreements with the regional and international law enforcement agencies in the operation, investigation and prosecution of transnational crime syndicates.

12. Closer supervision of the local banking system vis-à-vis the global financial structure.

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[1] Double issue 34 and 35 of the Crime Prevention and Criminal Justice Newsletter Issue 8 of the UNDEP Technical Series p. IV

[2] Financial Action Task Force

[3] op.cit

[4] Double Issue 34 and 35, Issue 8 of UNDCP Technical Series p.3

[5] Ibid in reference to R.T. Taylor unpublished manuscript (1997) on the history and practice of money laundering p.3

[6] op.cit p.6

[7] Ibid.

[8] Ibid.

[9] Ibid p.6

[10] Ibid p.4

[11] Ibid p.7

[12] Ibid

[13] Ibid

[14] Ibid in ref to "The Big Washed" Naylor Chaps 2 - 5

[15] Ibid p.9

[16] Ibid

[17] Ibid

[18] Ibid

[19] Naylor, The big Washed Chap.4

[20] Double Issue 34 and 35 Issue 8 of UNDCP Technical Series p.12

[21] Ibid p.14

[22] Ibid p.17

[23] Ibid in reference office of Technology Assessment , Information Technologies for the control of Money-Laundering (OTA report, 1995)

[24] Ibid p.9

[25] International Narcotics Control Strategy, USA (March 1997)

[26] Issue 8 of the UNDCP Technical Service, p.26

[27] International Narcotics control Strategy Report, 1998 released by the Bureau for International Narcotics and Law Enforcement affairs, US Department of State, Washington D.C. February 1999, p.4

[28] United Nations Global Programme against Money Laundering.

[29] Ibid in ref. To K.B. Whittington, the BCCI Fraud, London.

[30] op.cit in ref Internet Business ken Young; Money Laundering Alert vol.7 no. 9 p.1

[31] Issue no. 8 UNDCP Technical Series p.39

[32] Ibid in ref. To "Motley group of Money - launderers hung out to dry in New York" DEA World (Winter 1995)

[33] International Narcotics Control Strategy report,1998,Released by the Bureau for International Narcotics and Law Enforcement Affairs, US Dept of State, Washington DC February 1999, p.3

[34] Ibid p. 74

[35] Ibid pp.80 - 81

[36] Ibid pp. 87 - 88

[37] Ibid pp. 93 - 961

[38] Ibid pp 122 - 124

[39] Ibid pp 176 - 131

[40] Ibid pp 193 -194

[41] Philippine Daily Inquirer, 25 June 1999

[42] Manila Times 5 July 1999

[43] NACAHT Report

[44] Ibid.

[45] Ibid.

[46] Ibid.

[47] FED Report

[48] Ibid.

[49] Op. cit.

[50] Ibid.

[51] “International Flesh Trade enters Cyberspace”, 28 May 1999, Malaya

[52] SEC Memorandum Report dated 05 March 1999