

Redefining Money Laundering and Financing of Terrorism

Roberto Durrieu¹

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1. Overview.

In accordance with Mc Crudden, the ‘legal research has engaged with the more recent social sciences in ways that would have seemed unlikely even 50 years ago. Socio-legal studies, sociology of law, law and economics must now be seen as integral to legal research’.² Looking beyond the single discipline of law, trying to include into the legal

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² Christopher Mc Crudden, ‘Legal research and the social sciences’ *Law Quarterly Review (L.Q.R.)* [2006] 122 (Oct), 632-650.

discussion and analysis other disciplines seems to be particularly necessary when we refer to the phenomenon of money laundering. A range of disciplinary paradigm shifts, policy changes, economic factors, and world political events have combined to shift the phenomenon of ML, not only to the forefront of law but also of international relations, criminology and economics, among other disciplines. As it will be deduced later, money laundering remains too big an idea and phenomenon to be constrained by the disciplinary strictures of law, or indeed any other single discipline. Failure to understand that ML can not be analyzed within a single and immediate discipline, in detachment from one another, seems to be one of the basic philosophical errors of so many investigations concerning this subject matter.

A primary aim of chapter I is, therefore, to break down these boundaries in order to better understand the complexities of ML in a more general context. Thus, this chapter will focus on understanding the meaning, general characteristics, principles, causes and effects of ML. This general approach and overview will allow us, in future chapters, to think critically about the transnational crime of ML.

The main questions and topics addressed in this chapter are organised as follows. First of all, I deal with the meaning of ML (Section 2). Later, I will try to explain how ML operates. There is little empirical evidence from ML studies that shows how ML operates and, therefore, I had to rely on inferences or assertions from international documents and from textbooks. Since the empirical data are so poor, I will practise a cross-case analysis of eight relevant ML cases, which I will refer to as examples to support what I write (Section 3). Subsequently, I will focus on the relationship between ML and ‘financing of terrorism’—hereinafter FT—(Section 4). Later, I will analyze the link or nexus involved in the processes of ML and ‘money dirtying’—hereinafter MD— (Section 5). The following and final section intends to

build up indicators of ML attractiveness among developing countries or territories (Section 6).

2. What is ‘money laundering’?

The origin of the term ‘money laundering’ arises from the practices of the New York Mafia in the 1920s, when laundromats functioned as facades for criminal activities. Mafia groups acquired these launderettes as they gave them a means of giving a legitimate façade or appearance to assets derived from criminal activities. Their proceeds of crime, therefore, were declared to be profits gained through legal activities, that is, launderettes, and were thus ‘recycled’ or ‘laundered’.³

Nevertheless, the earliest reported use of the term ‘money laundering’ in a legal context was in the US in 1982, in the case of *US v \$4,225,625.39*⁴; and it was not until 1986 that money laundering became a criminal offence. The United States was the first country in the world to criminalize ML, through the Money Laundering Control Act 1986.⁵ The second country was the UK, through the Drug Trafficking Offences Act 1986 that criminalized the proceeds of drug trafficking activities.⁶

³ For further details about the origin of the term ‘money laundering’, see e.g., Heba Shams ‘*Legal globalization: Money Laundering Law and Other Cases*’ (Sir Joseph Gold Memorials Series, Vol. 5, The British Institute of International and Comparative Law, London 2004) 2-3.

⁴ Federal Supplement, vol. 551, South District of Florida (1982), 314; cited in Nicholas Ryder, ‘The Financial Services Authority and Money Laundering. A game of Cat and Mouse’, *Cambridge Law Journal* (C.L.J.) [2008], Vol. 67, Part 3, November 2008, 636.

⁵ This Act was a direct response to the case *US v. Anzalone* (1985) US 766, F.2d 676 1st Cir.

⁶ Drug Trafficking Offences Act 1986, article 24. I will further refer to this criminal offence in chapter II, section 2.

It is necessary now to analyze the phenomenon of ML itself. Experts in the areas of law, economics as well as in political or international organizations seem to differ in their views of the ML phenomenon. Thus, the definition of the term ‘money laundering’ is more ambiguous than one would expect. As a result, a variety of definitions have been suggested. I will provide the following definitions as examples:

The Financial Action Task Force on Money Laundering (FATF)⁷ defines the word ML as ‘the processing of ... criminal proceeds to disguise their illegal origin’.⁸ A similar definition is the one suggested by The Joint Money Laundering Steering Group, which understands this activity as the ‘process whereby criminals attempt to hide and disguise the true origin and ownership of the proceeds of their criminal activities’.⁹ According to the United Nations Office on Drugs and Crime (UNODC) and the International Monetary Fund (IMF), money laundering can be described as ‘the process by which a person conceals or disguises the identity or the origin of illegally obtained proceeds so that they appear to have originated from legitimate sources’.¹⁰ At the same time, Stessens said that money laundering is a process by which a criminal expects to conceal the criminal origin of assets and ‘to ensure that the criminals can “enjoy” their proceeds, by consuming or investing them in the legal economy’.¹¹ Finally, from an

⁷ A special intergovernmental body set up by the G-7 Summit in 1989 to combat ML. For further information about the FATF see chapter III, section 2.3, or visit:<<http://www.fatf-gafi.org>> accessed 8 November 2008.

⁸ FATF, Money Laundering FAQ, What is money laundering? See <<http://www.fatf-gafi.org>> accessed 4 October 2009.

⁹ Joint Money Laundering Steering Group, *Prevention of Money Laundering / Combating the Financing of Terrorism: Guidance for the UK Financial Sector Part I* (London, 2006). Cited in N. Ryder, ‘The Financial Services Authority and Money Laundering. A game of Cat and Mouse’, *Cambridge Law Journal* (C.L.J.) [2008], Vol. 67, Part 3, 636.

¹⁰ United Nations, Office for Drug Control and Crime Prevention and International Monetary Fund, ‘Model Legislative on Money Laundering and Terrorism Financing (for civil law legal systems)’ (Report) (IMF, UNODC, 1 December 2005) 1.

¹¹ Stessens, *Money Laundering: A New International Law Enforcement Model* (CUP, Cambridge 2000) 83.

economic point of view, the economist Masciandaro also said that ‘money laundering is an autonomous criminal economic activity whose essential function lies in the transformation of liquidity of illicit origin, or potential purchasing power, into actual purchasing power usable for consumption, saving, investment or reinvestment’.¹²

In the following lines I will compare these descriptions with one another:

- a) All the descriptions mentioned above perceive ‘money laundering’ as a process. We will postpone full discussion of the different stages or steps throughout the process of ML until section 5, but it could be noted now that—according to the UNODC terminology— the process of ML could be divided in three different stages or steps. The first step is *placement or concealment*. This first step involves placement of ill-gotten funds into the financial system, usually through a financing institution. The second step is *layering or converting*. This means converting and transferring or moving the funds through a series transactions in order to obscure the money trail. The third and last stage is *integration*, where the ill-gotten funds are invested or consumed in the formal or legal economy.¹³
- b) A common feature of the description given by the FATF and the Joint Money Laundering Steering Group, is the concealment character of the ML process. Both definitions suggest that ML is a concealment process, by which a person or a criminal conceals or disguises the criminal origin or source of the assets.
- c) The description offered by the UNODC/IMF goes one step further, not only stressing that ML endeavours to conceal the criminal source or origin of the assets, but also emphasising the more active approach of making them appear legal.

¹² D. Masciandaro, ‘*Black Finance: The Economics of Money Laundering*’ (Edward Elgar Publishing Ltd., Cheltenham, UK 2007) 2.

¹³ See, United Nations Office on Drugs and Crime (2006). See online: <www.unodc.org/unodc/money_laundering_cycle.html> accessed 8 January 2009.

- d) At the same time, Stessens goes beyond the above descriptions, considering that ML is not only a process by which a criminal intends to conceal the criminal origin of the assets (as stressed by the FATF and the Joint Money Laundering Steering Group), but also to ‘enjoy’ their accumulated ill-gotten assets by consuming or investing them in the legal or formal economy.
- e) Masciandaro, finally said that ML is only a process of conversion or transformation by which criminals can invest, consume or save their ill-gotten assets in the legal economy. That is to say, this author is stressing the transformation and investment final aim of a ML process; instead of emphasising both the concealment and the recycling or investing aims of a ML process (as stressed by Stessens).

I propose a kind of fusion or combination between the above mentioned definitions in order to offer a complete view or description of a ML process. As a consequence of this combination, I identify two different kinds of ML procedures: a ‘complete or full process of ML’, and a process of ‘money laundering in the first degree’.¹⁴

A complete or full manoeuvre of ML can be described as a process by which a person *conceals or disguises* the identity or the origin of ill-gotten assets so they can look legitimate, and enjoys such assets by *investing, consuming or saving* them in the legal or formal economy. Moreover, throughout a complete or full process of ML ill-gotten assets are *converted or transformed* in legally gotten assets; so, the assets trespass from the so-called parallel or underground economy¹⁵ to the legal or formal

¹⁴ The expression ‘money laundering in the first degree’ is used, for instance, by Stessens (2000) page 83.

¹⁵ Throughout this dissertation, the terms ‘illegal’, ‘parallel’, ‘informal’ or ‘underground’ economy will be used interchangeable. These terms refer to the economic market consisting of all commerce, cash money or any other asset on which applicable taxes and regulations of trade are being avoided.

economy.¹⁶ As a consequence of this conversion or transformation process, a criminal is able to consume and invest its ill-gotten assets in the formal economy by purchasing houses, yachts and cars, among other luxury assets, and generate legal profits on those investments like any other ordinary and honest person, or use the already recycled or clean assets for the finance of further criminal activities.¹⁷

Someone could say, however, that this description of a complete ML process is too long and complex. In general, the best descriptions or definitions of a phenomenon are the simplest and shortest ones. Therefore, a process of ML could be simply described as the ‘act of making money or any other economic value that comes from a criminal source A, look like money or any other economic value coming from a legitimate source B’.

A drug trafficking example of a complete ML process could be the ‘Operation Green Ice’. This was an undercover police investigation, with co-ordinated police raids in Canada, the Cayman Islands, Colombia, Costa Rica, Italy, Spain, the United Kingdom and the United States. At the end of September 1992, the London police discovered a garage in Berdmonsey—southeast of London—with twenty cubic meters of US dollars pounds, guilders and many other currencies, fractioned in small denomination. These came from Colombian cocaine trafficking, derived from the retail sale of the drug all over Europe. The investigation established that the discovered cash money was concealed and ‘frozen’ in the garage, waiting for the best way to be transferred, moved and finally invested into the legal or formal economy; meanwhile an other percentage of these proceeds of drug trafficking, were already converted in

¹⁶ For the purpose of this research ‘legal’ or ‘formal’ economy means the opposite of ‘illegal’ and ‘informal’ economy. Thus, these expressions refer to assets that are regulated or declared before the fiscal legal authorities of a country.

¹⁷ Edward Rees QC, Richard Fisher and Paul Bogan, ‘The Proceeds of Crime Act 2002’ (3rd. Ed, Oxford University Press, Oxford 2008) 127.

financial instruments (e.g., checks or bank notes) and finally, invested in the legal economy. The coordinated investigation resulted in seizures of USD 47.7 million, and the freezing of 140 bank accounts containing USD 7.3 million, and dozens of arrests.¹⁸

On the contrary, ‘money laundering in first degree’ can be described as a process by which a person conceals or disguises the criminal origin of the assets or transforms the nature of the proceeds of crime, but these assets are not finally reinvested or consumed in the formal or legal economy. Then, the recycling or investment final stage throughout the whole process of ML is not present in this kind of ML procedure. A drug trafficking example of a ML process in its first degree or stage, could be the changing to larger denominations street-level drug cash money to reduce the bulk and enhance portability, so the cash money can be moved from one place to another, and later, converted into a legitimate assets through the purchase of financial documents.

2. How does money laundering operate?

The purpose of this section is to explain how money laundering works and, at the same time, to identify its main features or characteristics. It should be noted, first of all, that the explanations concerning this subject derive from assertions made in international documents and textbooks, which are not supported by enough empirical data. Since there is little empirical evidence or data from studies of ML that shows how ML operates, I am forced to rely on inferences or assertions from international documents and textbooks. However, for a further understanding and support of what I write, I

¹⁸ US Department of State, ‘1993 International Narcotic Control Strategy Report: Executive Summary’, (Report) (Washington D.C., 1993) p. 111. See also, William C. Gilmore, ‘*Dirty Money: the evolution of international measures to counter Money Laundering and Financing of Terrorism*’ (3rd edn, Council of Europe Publishing, Germany 2004) 18.

practiced a cross-case analysis of eight relevant ML cases, which I will refer to as samples throughout the explanation. These eight ML cases are included in a comparative chart as *Appendix I*; and pertains to the Argentine jurisdiction. I selected the jurisdiction of Argentina to practice this examination, for two main reasons: first of all, there is a perception that ML is a significant problem that is vastly widespread in this country. According to Richards, ‘Argentina has been identified as one of the world’s biggest money laundering countries’.¹⁹ More recently, the FATF’s Mutual Evaluation Report on Argentina, underlines that this country ‘has not made adequate progress in addressing a number of deficiencies’ in their legal framework against ML; so ‘the legal and preventive AML/CFT measures that are in place lack effectiveness’.²⁰ Secondly, the analysis of ML cases in a developing country such as Argentina makes it easier to explore this subject in other comparable jurisdictions.²¹ Basic reasoning is roughly the same across other ML cases perpetrated in comparable jurisdictions. I selected these eight ML cases, since they are the only ones that have substantial and complete court statements in this country.²² To date no comparative cross-case analysis appears to have been done in this country. Therefore, this analysis is an attempt to fill that gap.

The questions and topics addressed in this section are organized as follows: (a) why do criminals or organized crime choose ML? (b) understanding the stages of a ML

¹⁹ James R. Richards, *Transnational Criminal Organizations, Cybercrime and Money Laundering* (CRC Press, Washington DC 1999) 266.

²⁰ See, FATF Third Evaluation on Argentina and Second joint FATF/GAFI-SUD, ‘Mutual Evaluation Report – Argentina’ (Report) (22 October 2010) 5.

²¹ Argentina is a member of the G-20; an international forum conformed by 20 developing and emerging market countries. For more information see the following website: <http://www.g20.org/G20/> accessed 5 January 2009. In addition, Argentina is one of the thirty-four member countries of the FATF; see online: www.fatf-gafi.org last accessed 10 January 2011.

²² Substantial and complete court statements of the eight cases described in the chart were found online through ‘Lexis Nexis Argentina’ academic gateways/hubs.

process; (c) the internationalization of ML operations; (d) a mutable or changeable process; (e) a ‘modern crime’; (f) a ‘white collar crime’; (g) what is the scale of the problem? and, finally, (h) difficulties on the investigation and prosecution of ML operations. Each of these topics is described below.

(a) *Why do criminals or organized crime choose ML?*

In a process of ML there will always be a criminal agent or a group of criminals who, having committed a criminal offence, the so-called ‘predicate offence’, will have generated and accumulated dirty or ill-gotten properties, assets or money. For the purpose of analysis in this dissertation, the term ‘predicate offence’, taken from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances²³—and many subsequent international instruments— refers to any criminal offence as a result of which profits, economic values or properties were acquired or generated; and the expression ‘dirty’ or ‘ill-gotten’ properties, assets or money will refer to the funds deriving from the commission of a predicate offence. Dirty assets can be derived from the commission of several predicate offences such as extortion, corporate fraud, cross-border prostitution, financing of terrorism,²⁴ smuggling of illegal migrants, kidnapping, drugs, human and arms trafficking and corruption, among other crimes committed for the purpose of asset collection. These are the so-called ‘acquisitive crimes’.²⁵

²³ The so-called Vienna Convention 1988. For a further details of this convention see chapter II, section 2.2.

²⁴ In its Second Special recommendation on Terrorist Financing, FATF recommended countries to list the crime of financing of terrorism as one of the predicate offences to ML.

²⁵ In the 1980s, the legal definition of ML refers only to the laundering of drug money. However, in the last two decades it has been extended to include an increasing number of other acquisitive crimes. Today, the FATF definition includes also FT as a predicate offence. From a legal perspective this means that

These acquisitive crimes or predicate offences can be performed by one, two or three criminal agents. However, if the acquisitive crimes are complex criminal activities that requires a highly technical know-how and generate high or substantial amounts of ill-gotten assets, then, the participation of ‘organised crime’²⁶ throughout the commission of acquisitive crimes could be frequent. In this context, it could be assumed that a criminal agent or a group of two or three criminal agents not organized in organised crime could not easily and effectively perpetrate serious and complex acquisitive crimes and deal with high amounts of the derived proceeds of crime. It is outside the scope of this dissertation to enumerate all the definitions for organised crime. For the purpose of this research, we define ‘organised crime’ as follows: (i) collaboration of three or more people, (ii) for a prolonged or undefined period of time, (iii) suspected or convicted of committing serious criminal offences; and (iv) having the objective of pursuing profit and/or power.²⁷

It could be said that one of the main goals of a criminal agent or organized crime that commits an acquisitive crime is to generate a profit for the individual or organized criminal group that carries out the predicate offence.²⁸ From criminals’ point of view, the relatively small amounts of dirty profits or assets that they could generate through the commission of an acquisitive crime can be easily employed or used in the ‘underground’ or ‘informal’ economy without the detection of law enforcement

there has been a tremendous evolution in the legal definition of ML. This is discussed in detail in chapter II, section 2.

²⁶ For the purpose of this dissertation the terms ‘criminal organization’, ‘organised crime’ or ‘organised criminal group’ will be used interchangeably.

²⁷ This definition of ‘organized crime’ was given by an expert group commissioned by the Council of Europe in the Third High-Level Meeting of Ministers of the Interior on the ‘Fight against Terrorism and Organised Crime to improve Security in Europe’ (Counsel of Europe, Warsaw, 17-18 March 2005). For an identical definition of ‘organized crime’, see: The European Union definition of ‘organised crime’ (doc 6204/2/97 Europol 35, Rev 2: for its annual organised crime report).

²⁸ The FATF-OECD, Policy Briefs on ‘Money Laundering’, Report prepared and published by the OECD’s Secretariat, (July 1999) 1.

authorities. However, a *first dilemma* could arise when a criminal agent, a group of two, three or more criminals or organized crime accumulate significant amounts of dirty profits. This dilemma refers to whether or not the generated and accumulated ill-gotten assets should be transferred or submitted to a process of ML:

- *Option A:* If criminals decide to keep huge amounts of the accumulated dirty assets without submitting them to a process of ML, the probabilities of being discovered and therefore incriminated, could be high. Without ML operations, which disguise the criminal origin of the assets and provide them with an apparently legitimate origin, the accumulation of significant ill-gotten assets itself could draw the attention of law enforcement officials and link criminals with their criminal activities. The need to use ML techniques could arise from the fact that several acquisitive and serious crimes such as drug trafficking tend to be highly cash intensive. In fact, the physical volume of cash money can exceed the volume of, for instance, the drugs themselves. The amount of cash money involved in drug trafficking is astronomical. The United Nations estimates the value of drug trafficking in the world to be around USD 400 billions per year.²⁹
- *Option B:* If criminals, however, decide to submit at least part of the accumulated dirty assets to an effective ML activity, whereby they conceal the origin of the proceeds of crime so they appear to have originated from a legitimate source, they could minimize or reduce the risk of prosecution and conviction.

It should be noted, however, that the ultimate goal of a ML operation might not only be to disguise or conceal the predicate offence as a result of which proceeds of

²⁹ United Nations Office on Drugs and Crime (UNODC), *Global Illicit Drug Trends 2005* (Report) (Vienna, UNODC) p. 16. See online: www.unodc.org/unodc/en/data-and-analysis/wdr.html <accessed 27 February 2011>. See also, Drug Policy Alliance, Drug Treatment vs. supply side measures (fact sheet). Retrieved (Report) (19 April 2004); see online: www.drugpolicy.org/library/factsheet/drugtreatment/index.cfm <accessed 27 February 2011>.

crime have been generated or from which ill-gotten assets are derived. Throughout a process of ML, a criminal may also intent to enjoy the accumulated ill-gotten assets by consuming or investing them in the ‘legal’ or ‘formal’ economy or use them, after they have been recycled and cleaned, for the finance of further criminal activities.³⁰ Based on this assessment, it could be said that a criminal agent or organized crime choose to practise a complete ML process when their ultimate goal is to conceal and convert the accumulated ill-gotten assets, so they can look legitimate (what I call the concealment or the converting aim of a ML process) and/or to enjoy the ill-gotten assets by consuming or investing them in the legal or formal economy (what I call the enjoying or investing aim of a ML process).

In the event a criminal agent or organized crime decide to submit their accumulated dirty profits to a ML activity for one or both of the above mentioned purposes—that is to say, if they decide in favour of the above explained option B—a *second dilemma* could arise. This second dilemma refers to whether or not the ML process will be practised by the criminal agent or any of the members of the group of criminals or organized criminal group that committed the predicate offence or by a third party that did not participate in any form, neither directly nor indirectly, in the commission of the predicate offence. When criminals opt to launder the proceeds of their own criminal activities, instead of delegating this activity to a third party (e.g., a lawyer, an accountant, a politician or a banker) they engage in the so-called ‘self-laundering’ behaviour.³¹ Meanwhile, when criminals decide to delegate to a third party the laundering activity, they engage in the so-called ‘third party laundering’ behaviour.

³⁰ See, e.g., Stessens (2000) 83; and Edward Rees QC, Richard Fisher and Paul Bogan (2008) 128.

³¹ The expression ‘self laundering’ is used, for instance, in: R.E. Bell, ‘An Introductory Who’s Who for Money Laundering Investigators’, *Journal of Money Laundering Control*, Vol. 5, No.4, p. 287-288.

Rational criminals could decide to launder their own ill-gotten assets, without a third party assistance, for instance, when they wish to control their own laundering activity, or when they have the necessary professional expertise and technical know-how to practise self-laundering operations or, simply, when they feel unable to trust anyone else to carry out the laundering.³²

A drug-trafficking example of a *self-laundering behaviour* could be the ‘Juarez Cartel’ case study.³³ During the 1990’s, the Juarez Cartel was seen as one of the biggest drug trafficking criminal groups in Mexico and one of the most important in the world.³⁴ In 1996, the Argentine federal police—in coordination with the FBI—discovered that the Juarez Cartel invested in the Argentine economy, more than USD 18.000.000 derived from this Cartel’s drug-trafficking activities in Mexico and the US.³⁵ The Argentine prosecution demonstrated that, during the period 1994-1996, part of these proceeds of crime—estimated to be over USD 2.000.000—were transferred to Argentina by mailing and in suitcases containing cash money, brought personally by members of the Juarez Cartel, including its leader Amado Carrillo Fuentes (alias ‘*The Lord of the Rings or Skies*’ or, in Spanish, ‘*El Señor de los Anillos*’); meanwhile the rest of the drug-trafficking proceeds, estimated to be over USD 13.000.000, were transferred through electronic wire-transfer systems, made from the US to bank accounts in

³² These assertions are based on a logical reasoning and assuming that more individuals participating in the commission of both the predicate offence and the subsequent laundering of the proceeds of crime, then, higher risk and chances to be discovered and, therefore, to be prosecuted for both the commission of the predicate offence and the laundering of the proceeds of crime. Simply: the more people involved in these activities, then more chances to draw the attention of legal authorities.

³³ Case study No. 5 entitled ‘*Di Tullio, Nicolas A., Carrillo Fuentes, Amado, and others*’ (1996-2000).

³⁴ See, for instance, James R. Richards (1999) 165.

³⁵ An interesting detail of the prosecution is that the existence of a predicate offence, from where the assets derived, was demonstrated by a report provided to the Argentine Federal Criminal Courts by the Embassy of Mexico in Argentina. The report contained empirical evidence and data in order to establish not only that the assets involved in the laundering could derive from the Juarez Cartel’s drug-trafficking activities, but also that Amado Carrillo Fuentes and some of the offenders or accused for laundering operations in Argentina were, at the same time, members of the Juarez Cartel.

Argentina. These bank accounts were opened in financial institutions such as the ‘MA Bank Limited’, the ‘MA Casa de Cambio’ and the ‘Mercado Abierto S.A.’. Once the assets entered Argentina, part of them had been converted or recycled so they could look legitimate, through the acquisition of financial instruments, such as shares in an oil company named ‘Petrolera Mar del Plata S.A.’. The rest of the assets that entered to Argentina were used by Amado Carrillo Fuentes—through the use of straw men—to purchase an estancia or countryside in the Province of Buenos Aires, rural machinery, luxury apartments in the City of Buenos Aires and cars, among other assets.³⁶

A drug-trafficking example of a ‘*third party laundering*’ operation is the case ‘Mario Caserta, among others’.³⁷ A branch of an organized criminal group dedicated to drug-trafficking activities in the US and led by Jose Patiño (also named as Ramon Puentes) delegated the laundering of their drug-trafficking proceeds to third parties; that is to say, to persons that were not members of the referred drug-trafficking organization. According to the prosecution, it was demonstrated that, between August and November 1990, the offenders Amira Yoma, Mario Caserta, Ibrahim Al Ibrahim, among others, regularly acted as a camel for drug-smugglers by bringing at least USD 1.000.000—wrapped in a blanket inside a suitcase—into Argentina and Uruguay, after each of their trips to New York and Miami. Once the assets entered to Argentina, they were recycled and integrated in the formal economy, through the purchase of financial instruments (e.g., shares and bonds); while the assets transferred to Uruguay were deposited in bank accounts opened under ‘straw men’.³⁸

³⁶ According to Federal High Criminal Courts, City of Buenos Aires, Room 1 (13 February 2002). Law case entitled ‘*DT, NA*’; published in *JA* (Lexis Nexis Argentina), 2002-II500.

³⁷ See case study No. 2, entitled ‘*Mario Caserta, Amira Yoma, among others*’ (1990).

³⁸ Federal High Criminal Courts, City of Buenos Aires, Room 1 (1992). Reviewed by The National Court of Criminal Cassation of Argentina, Room 1 (2006); and the Supreme Court of Argentina (2010).

Once we have assessed the incentives that a criminal agent or organized crime could face when they engage on ML operations, it becomes possible to examine the different stages or phases of a ML process.

(b) Understanding the stages or phases of a money laundering process:

During this preliminary stage, it seems useful to examine in detail the processes involved in ML activities. It could be said, first of all, that launderers can make use of a wide variety of techniques in order to accomplish their ends; that is: make money or any other economic value that comes from a criminal source A, look like money or any other economic value coming from a legitimate source B.

We should also say that the techniques designed to launder the proceeds of crime can be performed in a single stage, as well as in two, three, four or more phases, depending on the imagination and ability of the criminal who decides to submit his/her accumulated assets to a process of ML. Beyond this assessment, international organizations, such as the UNODC³⁹ or the World Bank and the International Monetary Fund,⁴⁰ have developed a three-stage theoretical description to assist investigators and academics in understanding the stages or phases throughout the ML process. These three ML stages are: (i) pre-washing, placement or concealment; (ii) layering, conversion or decanting; and (iii) integration or reinvestment. Each of them will be described in the following lines.

³⁹ See online: <www.unodc.org/unodc/money_laundering_cycle.html> accessed 8 January 2009.

⁴⁰ Paul Schott 'Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism' (2nd ed., The World Bank/IMF, Washington DC, 2006) I-8.

(i) *Pre-washing, placement or concealment stage*: at this first stage, the launderer disposes of the so-called dirty assets. Cash money is the most common medium of exchange and disposal, particularly that related to drugs.⁴¹ This first stage also involves placement of funds into the financial system, usually through a financial institution (e.g., bank, exchange bureau, insurance agent and credit union). The objective of this maneuver is to separate the assets at least one step away from its original source. This can be accomplished, for instance, by the splitting of large sums into smaller ones in order to reduce the physical volume of cash and, afterwards, depositing them in different offices of multiple financial institutions over time. The deposit of funds into financial institutions might be practiced by the use of ‘*smurfing*’⁴² maneuvers. To smurf is to divide a large sum into small amounts and to make a series of small payments into bank accounts, so as to avoid drawing attention to the individual payments and keeping below the minimum amount attracting some requirement that the transaction be reported to a monitoring body. Thus, for instance, a large number of currency deposits in amounts of USD 9,000 in a jurisdiction where any deposit in excess of USD 10,000 is reportable, may be an indicator of smurfing.⁴³

Another mechanism classified in this first stage is the movement of cash money outside the area where the assets have been generated or accumulated. In order to move assets from one place to another in a quick and anonymous way, they employ two well-known mechanisms: firstly, the so-called informal value transfer systems (IVTSs) or

⁴¹ Ibid.

⁴² The term ‘*smurfing*’, derived from the small blue figures in the children’s cartoon series, is also named as ‘structuring’ activities.

⁴³ An example of a deposit of funds into financial institutions through the use of smurfing manoeuvres is the case study No. 8, entitled ‘*Geosur S.A.*’ (See Appendix I). Legal authorities of Argentina detected the deposit of Argentine pesos, in ‘Banco Patagonia’, ‘Banco de Tierra del Fuego’ and ‘Banco de Chubut’, through the use of *smurfing* manoeuvres; that is to say, the deposits were practiced in small amounts to avoid drawing attention and in the name of straw-men.

also known in the global financial jargon as ‘*hawala*’ systems,⁴⁴ which are based on trust and occur in the absence of, or are parallel to, formal banking channels, and; secondly, money transportation mechanisms, including cash courier or mailing or, simply, by physically smuggling or carrying cash money from one place to another, or even to different jurisdictions or regions. To limit cash transportation mechanisms, FATF issued the ‘Special Recommendation IX: Cash Couriers’ suggesting jurisdictions to introduce domestic anti-ML norms in order to prevent physical cross-border cash currency transportations in sums over EUR/USD 15,000.⁴⁵

(ii) *Layering, conversion or decanting stage*: The second stage occurs after the money has already entered the financial system. At this point of the process, the funds or securities placed in the first stage could be moved to other financial institutions or jurisdictions, further separating them from its criminal origin or source. During this stage, the aim is to cut the trail of evidence that may appear if an investigation regarding the origin or destination of the money is undertaken. To that end, layers of transactions and business entities such as ‘off shore’⁴⁶ or ‘shell’ corporations⁴⁷ could be used. These

⁴⁴ The word ‘*hawala*’ means ‘transfer’ in the Arabic language. It should be noted that these systems are also used as a legitimate method of money transfer. The following example will describe how the *hawala* system works: An Argentinean citizen (“A”) wants to send USD 10,000 to his colleague (“B”) in Turkey. “A” contacts a *hawalador* (“H1”) in Argentina to effectuate this transfer. “H1” consents to make this value transfer for a 1% fee, an amount less than charged at banks or wire transfer businesses. “A” then pays “H1” USD 10,000 and “H1” gives “A” a password. After this, “A” contacts “B” to give him the password and tells him whom to contact in Turkey to receive the money. At the same time, “H1” contacts his business partner, a *hawalador* in Turkey (“H2”) to inform him of the transaction and the password. Finally, “B” receives from “H2” the USD 10,000 minus the 1% commission. For additional details about the ‘*hawala system*’ see World Bank/IMF, ‘Informal Funds Transfer Systems: An Analysis of the Informal Hawala System’ (Paper No. 222, 18 August 2003)³. The paper is available online: <<http://www.imf.org/external/pubs/nft/op/222/index.htm>> accessed 11 November 2008.

⁴⁵ FATF, ‘Interpretative note to Special Recommendation IX: Cash Couriers’ (Report, 2004). See <http://www.fatf-gafi.org/dataoecd/5/48/34291218.pdf> accessed 8 November 2008.

⁴⁶ ‘Off-shore’ corporations are defined as foreign corporations opened in countries with extensive provisions for secrecy in corporate formation. These may include non-disclosure of company officers, shareholders or owners. See John Madinger, ‘*Money Laundering: A guide for criminal investigators*’ (Taylor & Francis, Florida, USA 2006) 170.

⁴⁷ ‘Shell corporations’ have no assets and no liabilities, just a charter to operate. Ibid.

types of corporations could be opened in the so-called 'tax haven' jurisdictions where bank secrecy makes following the money trail difficult among other concealment mechanisms.⁴⁸ In this stage the form of the accumulated funds could be converted into financial instruments, such as money orders or checks, to divert suspicion. Whenever possible the accumulated illegal funds could be deliberately mixed with assets derived from legal activities, to conceal its origin or source and to divert suspicion. This second stage could be entwined with the placement or concealment first stage.

(iii) *Integration or reinvestment in the legal and official economy*: In the ML process the economic circle ends with the integration of ill-gotten money or any other economic value in the legal economy. In other words, during this last stage, ill-gotten assets are recycled, integrated or consumed in the formal economy so they appear to have originated from legal sources. This is accomplished, for instance, through the purchase of assets such as real estate, bank notes, loans or other market-based instruments or luxury goods, in the legal and official economy. It is important to highlight that the integration stage could take place in jurisdictions very far away from the location where the original predicate offence was committed and probably after the assets have gone through various financial markets across the world.

A drug trafficking example of the above explained three-stages of a ML process could be the above mentioned 'Medellin Cartel' case study.⁴⁹ At the end of 1995, the Argentine police discovered a house in the City of Pilar, Province of Buenos Aires, with

⁴⁸ An international report, commissioned by the United Nations, correctly stresses that off-shore financial jurisdictions offer an excellent channel not only for ML operations, but also for the perpetration of other type of criminal offences such as fraud. See United Nations, Office for Drug Control and Crime Prevention, 'Financial Haven, Banking Secrecy and Money Laundering' (Report) (New York, United Nations, 1998) 26.

⁴⁹ Case study No. 4, entitled '*Santos Caballero, Maria, and others*' (See appendix I).

five cubic meters of US dollars, Argentine pesos, and many other currencies. The prosecution established that these cash money derived from Colombian cocaine trafficking activities practiced by the so-called Medellin Cartel (the first placement phase). Part of these cash money was transferred and moved from Colombia to Argentina through informal values transfer systems (IVTSs) such as the so-called *hawala* systems or, simply, by carrying cash money physically from one country to the other (the second layering phase). It was also established that the discovered cash money was concealed or 'frozen' in the garage of the house, waiting for the best way or form to be introduced in the financial system and, later, invested into the legal economy of Argentina, by purchasing shares, a hotel, houses and cars (the third integrating phase).⁵⁰

(c) *The internationalization of ML operations:*

The first question to tackle is: Where does money laundering occur? As explained in previous lines, the process of ML is a necessary consequence of almost all profit generating crime (i.e., acquisitive crimes or predicate offences). As a consequence, it could be said that ML can occur practically anywhere in the world, where the predicate offence was committed.

Moreover, it should be noted that a complete process of ML can occur in one country or jurisdiction; that is to say, when all the laundering techniques or stages of the process are practiced in the same jurisdiction where the predicate offence was

⁵⁰ High Federal Criminal Courts, City of Buenos Aires, Room II (2000). Reviewed by National Court of Criminal Cassation of Argentina, Room III (2001), and Federal Oral Criminal Courts No. 6, City of Buenos Aires (2005).

perpetrated. However, as a process that could be practiced in more than one stage or phase, a complete process of ML can be practiced in two or more jurisdictions; that is to say, for instance, the jurisdiction where the predicate offence was perpetrated and ill-gotten assets accumulated and one or more other jurisdictions or countries where the proceeds of crime are transferred to be recycled and invested on the legal economy.

Despite the fact that a complete process of ML can occur in one country or jurisdiction; the literature in general believes and assumes that ML is a transnational or international process, which involves or includes cross-border elements and effects.⁵¹ For this dissertation, ML is transnational or international, when two or more countries or jurisdictions are involved throughout the laundering process. It seems to be logical to say that ML is very likely to be a transnational activity. This is because ML is, in essence, a concealment process; thus, under the view of a rational launderer, the criminal origin of the assets could be better disguised if more than one jurisdiction is used throughout the process.⁵² The EU Directive 91/308/EEC, for instance, took

⁵¹ See e.g., House of Lords, 'Money Laundering and Financing of Terrorism' (European Union Committee) (Report) (19th Report of Session, 2008-2009) p. 11; Paul Schott, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* (2nd edn, World Bank / IMF, Washington D.C. 2006) I-6: 'these activities [money laundering] take place on a global basis'; Edward Rees QC, Richard Fisher and Paul Bogan, *The Proceeds of Crime Act 2002* (3rd ed., OUP, Oxford 2008) 127: 'The process of money laundering is international in its extent'; and Brigitte Unger, 'The Scale and Impact of Money Laundering' (Edward Elgar, Cheltenham UK 2007) 74-88. This last scholar uses a gravity model to calculate the cross-border flows of laundering money. See also, Peter Alldridge, 'The Moral Limits of the Crime of Money Laundering', *Buffalo Criminal Law Review* [Vol. 5:279] p. 280: 'Rational launders may prefer conservative portfolios. One conservative choice is to expatriate the money [derived from a crime]'; FATF 'Global Money Laundering and Terrorist Financing Threats Assessment' (Report) (July 2010) p. 52; K. Alexander, 'The International Anti-Money Laundering Regime: The Rol of the Financial Action Task Force' (2001) 4 *Journal of Money Laundering Control* 231-248, at. 233; and, Angela Veng Mei Leong, *The Disruption of International Organized Crime: an analysis of legal and non-legal strategies* (Ashgate Publishing Ltd., London 2007) 55; among others.

⁵² For an example of a trans-border ML case, see above, the 'Operation Green Ice' case. Moreover, as stressed below, ML is a transnational or international process, in 8 out of 8 of the analyzed relevant ML cases, which are included in a chart in Appendix I of this thesis.

account of this, noting that ‘Money laundering is usually carried out in an international context, so the criminal origin of the funds can be better disguised’.⁵³

Inspired on the idea that ML is very likely to be a transnational process, the FATF and the OECD⁵⁴ estimated that ML may be concentrated geographically according to the stage or phase the ML process has reached.⁵⁵ At the *placement stage*, for example, ill-gotten funds are usually processed relatively close to the place or country where the predicate offence was committed. With the *layering phase*, the launderer might choose a ‘regulatory haven’ jurisdiction⁵⁶ or simply a large regional business or bank centre. According to these intergovernmental organizations, this is because, at this second stage of the process, ill-gotten funds may also only transit bank accounts at various locations where this can be done without leaving traces of their source or ultimate destination. Finally, at the *integration phase*, launderers might choose to invest recycled or laundered funds in still other locations if they were generated in unstable economies or locations offering limited investment opportunities. Relying for its credibility on its source, neither the FATF nor the OECD have published the empirical evidence or data to support these assertions.

⁵³ EU Directive 91/308/EEC (Preamble). For further details about this EU Directive, see below chapter II, section 2.2.

⁵⁴ The FATF works closely with other international bodies such as the OECD (Organisation for Economic Co-operation and Development). While its secretariat is housed by the OECD, the FATF is not part of the OECD. However, where the efforts of the OECD and FATF complement each other, such as on bribery and corruption of the functioning of the international financial system, the two secretariats consult with each other and exchange information.

⁵⁵ The FATF-OECD, Policy Briefs on ‘Money Laundering’ (Report) (July 1999) 1. The OECD Policy Briefs are prepared by the Public Affairs Division and published under the responsibility of the Secretary-General.

⁵⁶ The expression ‘regulatory havens’, means countries or territories in which the identity of the controlling bank accounts or corporations is readily concealed. The expression ‘regulatory havens’ is used interchangeably with other labels, such as ‘tax haven’ jurisdictions or ‘off-shore centres’.

Considering that ML is very likely to be a transnational process, then the response to this problem needs to have a significant international legal dimension and coordination. This was stressed by the EU Directive 91/308/EEC, noting that:

(...) measures exclusively adopted at national level without taking account of international coordination, would have very limited effects; (...) any measures adopted by the community in this field should be consistent with other action undertaken in other international fora.⁵⁷

This same line of reasoning was adopted by the FATF, which designed and proposed a set of anti-ML norms, assuming that: ‘discrepancy between national measures to fight money laundering can be used potentially by traffickers, who would move their laundering channels to the countries and financial systems where no or weak regulations exist on these matters’.⁵⁸ Then, in other words, it could be said that the system of anti-ML measures as designed and proposed by the FATF is based on the idea that ML is a transnational or international problem, since criminals or organized crime could shop around the world trying to find the best legal environment or jurisdiction in which to practice ML operations. Hence, having adequate, widespread and harmonized anti-ML regimes at both international and domestic levels is critical to structure a coordinated and efficient legal system in terms of responding to the phenomenon of ML.⁵⁹

Examples of inadequate anti-ML norms adopted at the domestic level that could be attractive for ML operations, are the so-called ‘off-shore centres’, where the provisions in the formation of ‘off shore’ or ‘shell’ corporations could allow the non-disclosure of company officers, shareholders or owners to the State’s Registration

⁵⁷ EU Directive 91/308/EEC (Preamble)

⁵⁸ FATF, Annual Report 1989-1990 (7 February 1990) 16.

⁵⁹ FATF ‘Global Money Laundering and Terrorist Financing Threats Assessment’ (Report) (July 2010) 52.

Offices; or the so called ‘tax haven’ jurisdictions, where the exchange market is slightly regulated and the existence of certain rules makes the lifting of bank/professional secrecy difficult; or, simply, jurisdictions that implemented an inadequate crime of ML, among other inadequate civil or administrative anti-ML provisions.

As a result of the comparative cross-case analysis of the eight Argentine ML cases the following findings can be summarized:

- (i) According to all the analyzed cases, at least two jurisdictions are involved. The jurisdiction where the predicate offence was perpetrated and one or two jurisdictions where the proceeds of crimes are converted, transformed, transferred and integrated in the legal economy. Then, it could be said that ML is a transnational process, in 8 out of 8 of the analyzed cases.
- (ii) According to all the cases (except cases 7 and 8), the placement and layering phases in a process of ML are developed outside Argentina. This country seems to be attractive for launderers to develop the third phase of laundering, the integration or reinvestment phase, where ill-gotten assets are invested, for instance, in real estate, shares, diamonds, among other assets or economic values.
- (iii) According to cases 1, 2, 4, 5, 6, 7 and 8, Uruguay and the Virgin Islands seem to be the best jurisdictions to develop the first and second phases of laundering, before assets are finally integrated in Argentina. In the referred case studies, ‘off-shore’ and ‘shell’ companies incorporated in Uruguay and the Virgin Islands are the ML mechanisms used by launderers to separate and/or disguise the proceeds of crime from their illegal source.⁶⁰

⁶⁰ Uruguay and Virgin Islands, have provisions in the formation of ‘off-shore’ and ‘shell’ corporations that allows the non disclosure of company shareholders to their ‘State Registration Offices’. For a general and further discussion regarding the abuse on the use of off-shore corporations see: Daniel R. Vitolo, ‘Uso y abuso de las estructuras societarias off-shore’, La Ley, 23 February 2005, and Vitolo ‘Prevención

The internationalization of ML operations could be the consequence of several and different factors. One might be the expansion of organized crime during the last decades. As the FATF has estimated:

Organized crime continues to be responsible for a large proportion of the dirty assets or money flowing through financial channels. The Italian Mafia, the Japanese yakuza, the Colombian cartels, Russian and Eastern European criminal enterprises, American ethnic gangs, and other, similarly structured groups are involved in a wide range of criminal activities. In addition to drug trafficking, these enterprises generate funds from loan sharking, illegal gambling, fraud, embezzlement, extortion, prostitution, illegal trafficking in arms and human beings, and a host of other offences. Frequently, they maintain extensive holdings in legitimate businesses which can be manipulated both to cloak and to invest illegally generated funds.⁶¹

In this vein, Galeotti notes that ‘global organized crime is evolving, embracing new markets and new technologies, and moving from traditional hierarchies towards more flexible, network-based forms of organisations’.⁶² Moreover, Pedro David, Judge ‘ad hoc’ of the ICTY, notes that:

Organized crime having a huge economic and technical power, which generates corruption and destruction of legitimate forms of co-existence, unquestionably constitutes the most serious threat to world peace nowadays, without ruling out of course the excluding and unequal marginality scourges and poverty in which almost three-quarters of people are immersed into.⁶³

sobre el uso de estructuras jurídicas off-shore frente al delito de lavado de dinero y el crimen organizado’, La Ley, 13 December 2004.

⁶¹ Financial Action Task Force on Money Laundering: Annual Report 1995-1996 (Report, Paris, 28 June 1996) 3.

⁶² Mark Galeotti, ‘*Global Crime Today: The Changing Face of Organized Crime*’ (Routledge Publisher, Oxford 2005) 1.

⁶³ Pedro R. David, ‘*Globalización, prevención del delito y justicia penal*’ (Zabalia, Buenos Aires 2004) 20. The translation from Spanish to the English language of this phrase is mine.

It could be said that organised crime can and do easily take advantage of the ability to do legal and illegal businesses in any place, instantaneously and under any circumstances. They could take advantage of the facilities of the globalization, sometimes by colluding with other criminal groups or, moreover, by laundering their proceeds of crime on an international or globalize scale. In some contexts, the term 'globalization' is used to refer to economic relations within a single 'world economy'. In the context of this thesis, I use the term 'globalization' in a broad sense; following Anthony Giddens,⁶⁴ to go beyond economics to include any processes that tend to make human relations—economic, political, cultural, communicative, etc— more interdependent.

A second factor is related to the growth of e-commerce systems, technological innovation and the globalization of the economy. Technology, free trade, and consumerism have increasingly brought the world together. Today, individuals, organizations, and governments can move people, goods, services and capital almost as if there were no international borders. Unfortunately, the abrupt technological progress and the internationalization of the economy is connected with the evolution and trans-border use of money laundering techniques. The interplay between technology and cross-border finance activities has created unparalleled opportunities for the development of complex and transnational operations of ML. Criminals take advantage of the globalization, for instance, when they move, transfer or submit their accumulated ill-gotten assets through the instantaneous payment systems made over the Internet, which have created and broadened opportunities for criminals and their ML activities. As technology advances, so alas do opportunities for money laundering.⁶⁵

⁶⁴ A Giddens, *The Consequences of Modernity* (Stanford University Press, Stanford 1990) 64.

⁶⁵ For further details about the interplay between technology and cross-border finance with the increase and development of transnational ML processes, see: Bruce Zagaris and Scott B. Mac Donald, 'Financial

A third factor could be the collapse of a number of communist governments — mainly during the 1980s and 1990s—which converted abruptly from centrally controlled economies to capitalist markets. For instance, the result of the abrupt change on the Soviet’s economy during the 1990s was a dramatic increase in property and economic transactions that facilitated the development of crime in general and certain types of financial crimes, such as the crime of ML, in particular.⁶⁶

It could be said, therefore, that launderers could not recognize borders and spread beyond the territory of a country. This fact has strengthened the need to treat the problem of ML in a cooperative, global and consistent way.⁶⁷ The world should give a harmonized answer to transnational and trans-border common problems such as ML, trying to avoid the creation of illegal and regulatory havens.⁶⁸

(d) A mutable or changeable process:

I defined ML above as the act of making money or any other economic value that comes from a criminal source A, look like money or any other economic value coming from a legitimate source B. This definition shows the mutability or transformation character of a ML process. A complete process of ML is, in essence, a mutable act. Throughout a process of ML, ill-gotten money or any other economic value goes, moves, changes and

Fraud and Technology: The Perils of an Instantaneous Economy’, *Geo. Wash. J. Int’l Law & Economics* [1992-3] 61-72.

⁶⁶ See e.g., F. Varese, *The Russian Mafia: Private Protection in a New Market Economy* (Oxford University Press, Oxford 2001) 17-36.

⁶⁷ For further information about the importance of ‘international co-operation’ see, e.g., C. M. Cearras, *‘Cooperación Judicial en Materia Penal’* (Judicial Co-operation in Criminal Matters), *Mores Maiorum Journal*, Year 1, Vol. 1, 2004.

⁶⁸ For a more detailed analysis concerning the harmonization of anti-ML legislations at both the international and domestic levels, see below, chapter II, section 3.

finally trespass from the parallel or underground economy to the formal or legal economy. Launderers use mutable ML techniques to conceal the criminal origin of their ill-gotten assets and finally recycle, invest or consume these assets in the formal economy.

The technological progress, with the impact of internet and mass-media, has made this scenario much more mutable, flexible and changeable. In a second, electronic monetary instruments, among other technical instruments, can convert or transform ill-gotten cash money for some type of negotiable instruments or other assets that can be consumed or invested in the legal economy.

A complete process of ML, whether simple or complex is, in essence, a changeable or mutable behavior. Examples of ML operations range from simple to very complex. An example of a simple operation of ML could be the changing to larger denominations street-level drug cash money to reduce the bulk and enhance portability, so they can be moved, converted into a legitimate assets and, finally, invested in the legal or formal economy. An example of a complex operation of ML, on the other hand, could be the movement or transfer of ill-gotten assets from one jurisdiction to another in a quick and sometimes anonymous manner, through the use of bank money orders, with electronic money (also known as 'e-money' or 'digital cash'), to bank accounts opened with false identity cards, or simply under the name of third parties who act as 'straw men'. These bank accounts could be also opened on the so-called 'tax haven' jurisdictions, where the exchange market is slightly regulated and the existence of certain rules makes difficult the lifting of bank secrecy.⁶⁹ And finally, the converted assets are invested in the formal economy by purchasing a hotel or a luxury house.

⁶⁹ For more examples about simple and complex stages of a process of ML, see below section 6.

(e) A 'modern crime':

Silva Sanchez, in his book *'Expansion del Derecho Penal'* [Criminal Law Expansion] classifies modern crimes as those in a 'third gear'.⁷⁰ According to the author, crimes included in this category are those criminal offences that are substantially related to tackling terrorism, money laundering, organized crime, people trafficking, transnational fraud, among other 'modern phenomena'. These type of criminal initiatives are named by the criminology as 'modern crimes', also known as 'organized economic criminality of transnational nature', 'corporate or business crimes with transnational perspective' or, simply, 'crimes of the powerful'.⁷¹

These types of crimes have obvious and direct consequences for the legal environment or analysis. New theories of criminal law such as the so-called 'guarantor position' or 'commission by omission' have been developed during the last three decades. These theories show, in general, that there has been a strong increase in criminal liabilities by company directors or statutory auditors for failure to comply with their duties and obligations inherent to their positions. The obvious failure of the power of States in effectively reducing ML, among other transnational phenomena, has obliged international and domestic legislations to pass new rules related to 'corporate governance', with the purpose of guaranteeing a fairer, as well as a more transparent business activity.⁷² This issue is also related to the development of multi-offensive

⁷⁰ Jesús Maria Silva Sanchez, *'La expansión del derecho penal. Aspectos de la política criminal en las sociedades post-industriales'* (BdF, Montevideo, Uruguay 2006).

⁷¹ These terms are used, for instance, by David Whyte, *'Crimes of the Powerful: A reader'* (Open University Press, England 2009); M. Gracia, *'Prolegómenos para la lucha por la modernización y expansión del Derecho Penal y para la crítica del discurso de resistencia'* (Tirant lo Blanch, Valencia 2003) 161; and, Virgolini, *'Delitos de cuello blanco, crimen organizado y corrupcion'* (Editorial El Puerto, Buenos Aires 2004) 9.

⁷² Corporate governance could be defined as a set of relationships among the management of a company, its board of directors, its shareholders and other people related directly or indirectly with the corporation. For more information about corporate governance rules see e.g.: M. C. Lanús Ocampo, 'Gobierno Corporativo en Entidades Financieras', *LL*, 7 April 2006. The translation of this definition from Spanish to the English language is mine.

crimes, which are trying to defend and protect, simultaneously, several social interests or values.⁷³ And related with the social, political and legal dimension that arise the possible clash or tension between the defense and promotion of human rights guaranties and the struggle against modern and financial crimes, such as serious frauds, crimes against organized crime, terrorism and, of course, the ML criminal offence.⁷⁴

(f) A White Collar crime:

Scholars first began to use the term 'white collar crime' in 1940 when Edwin H. Sutherland defined it as 'a crime committed by a person of respectability and high social status in the course of his occupation'.⁷⁵ Unwilling to embrace existing sociological and psychological assumptions about criminal behavior, Sutherland began the study of upper class's substantial, and largely overlooked, involvement in criminal behavior. In doing so, he also sought to provide a new theoretical framework for the study of criminology.⁷⁶ Decades later, however, the term 'white collar crime' continues to be the subject of intense academic debate in fields ranging from law to journalism.

It should be noted that scholars have been unable to formulate an acceptable definition for the term 'white collar crime', disagreeing on the following three key issues: (i) the extension of the term to include activities of a non-criminal nature; (ii) the categorization of the term based on the actors involved, as opposed to the act itself; (iii)

⁷³ I will further refer to multi-offensive crimes, such as the crime of ML, in chapter III, section 1.

⁷⁴ See, A. Ashworth, *'Human Rights, Serious Crime and Criminal Procedure'* (Sweet & Maxwell, London 2002).

⁷⁵ M.I. Dixon 'The Re-Defining of White Collar Crime', *J. Int'l L.* 561 (Spring 1995).

⁷⁶ For more on Sutherland's theoretical framework, see Stuart P. Green, 'The Concept of White Collar Crime in Law and Legal Theory', *Buffalo Criminal Law Review*, Rev. 2, Vol 8:1, 2004-2005.

the selection of factors used to determine whether or not a particular act can be considered a ‘white collar crime’. The general consensus, however, seems to be that ‘white collar crimes’ are committed by actors of a certain social status and occupation. And, moreover, that the so-called white collar crimes are those criminal offences committed by persons with professional backgrounds and above average levels of social status and respect.⁷⁷ The social and professional status of the offender serves as one of the main characteristics that differentiate ‘white collar crimes’ from conventional crimes or also named ‘black collar crime’ or, simply, ‘street crimes’. Concerning the comparative cross-case analysis of eight ML cases, it should be noted that all these law cases involved actors of a ‘certain social status and occupation’.⁷⁸

Based on the above discussion, it seems reasonable to conclude that ML, which often requires a certain level of technical knowledge, and access to several businesses and financial institutions in more than one jurisdiction, can be categorized as a ‘white collar crime’.

(g) *Quantum*:

The amounts of ill-gotten assets usually managed by launderers are high. In mid 1996, the International Monetary Fund (IMF) estimated that the sum of illegal assets that entered into the world financial system ranged between USD 300,000 and USD 500,000

⁷⁷ Ibid.

⁷⁸ For instance, the so-called ‘Martio Caserta, and others’ case study No. 2, involved the following actors or offenders ‘of a certain social status and occupation’: Amira Yoma (a personal secretary to the Argentine President); her former husband Ibrahim Al Ibrahim (the Chief of Immigration and Customer Services at the International Airport of Argentina) and Mario Caserta (former Director of the Federal Cleanup and Potable Water of Argentina). Another example is the ‘Medellin Cartel’ case study No. 4, which involved the following main actors: María I. Santos Caballero (the widow of Pablo Escobar Gaviria, the leader of the Medellin Cartel), her son Juan Sebastian Marroquín Santos, his girlfriend, María los Angeles Sarmiento del Valle, the accountant Juan Carlos Zacarías and two employees or assessors Carlos Gil Novoa and Oscar Luppia.

billion annually.⁷⁹ Later, there were estimates showing that the amount was around USD 500,000 billion⁸⁰ and, more recently, USD 1.3 trillion.⁸¹ More updated reports indicate that proceeds of crime involved in ML activities generate a world movement of approximately USD 3 trillion a year.⁸² In 1998, the then-managing director of the IMF, Michel Camdessus, affirmed that ML could account for around 5% of the global Gross Domestic Product (GDP), although this international organization has never formally published these estimates.⁸³

Some scholars, such as Elizabeth Joyce, criticize these estimates alleging that launderers do not document the extent of their operations or record the amounts of their profits. Thus, due to its secretive nature it becomes difficult to determine precisely the value of assets involved in ML operations.⁸⁴ In addition, it could be said that ML activities can take place on a global basis, in a huge variety of ways or forms, as well as outside the normal range of economic statistics; as a consequence, estimates could be even more difficult to be produced.

(h) Difficulties on the investigation of ML cases

⁷⁹ See e.g., V. Tanzi, 'Money Laundering and the international financial system', (Washington DC, WP/96/55-EA).

⁸⁰ See UN Doc. E/Conf.82/16, Vol. 1, p.3. Cited in M. Gallant, 'Money Laundering and the Proceeds of Crime – Economic Crime and Civil Remedies' (Edward Elgar, Cheltenham, UK 2005) 12.

⁸¹ For more information on statistics gathered in the mentioned periods see, for instance, the following website corresponding to the UNODC:
<<http://www.unodc.org/unodc/en/money-laundering/indez.html>> accessed 8 Nov 2008.

⁸² Ibid.

⁸³ Elizabeth Joyce, 'Expanding the International Regime on Money Laundering in Response to Transnational Organized Crime, Terrorism, and Corruption', in Philip Reichel (ed.) 'Transnational Crime & Justice' (Sage Publications, London 2005) 81.

⁸⁴ Ibid.

According to William C. Gilmore, money laundering convictions have proved to be very difficult to secure in most jurisdictions, including the world's richest industrialized countries.⁸⁵ There is no doubt that it is one thing to reach agreement on paper and quite another to secure effective operation in practice. For instance, according to the cross-case analysis of eight ML cases, only case study No. 3 received a definitive and final conviction. This feature shows that Argentine criminal courts are not efficient in the investigation of ML cases.⁸⁶

Nevertheless, it should be stressed that difficulties on the investigation of ML, could be a worldwide problem. For example, in the period 1987 to 1998 there were only 357 prosecutions for ML in the UK and 136 convictions.⁸⁷ Since then, the numbers of criminal prosecutions have increased in the UK, but conviction rates have remained low.⁸⁸ At the same time, Italy had 538 prosecutions in 1995 alone, while in the US was 2034.⁸⁹ Between 2003 and 2007, 786 persons were prosecuted in Hong Kong and China

⁸⁵ See, W. C. Gilmore, *'Dirty Money: the evolution of international measures to counter Money Laundering and Financing of Terrorism'* (3rd edn, Council of Europe Publishing, Germany 2004) 74.

⁸⁶ The only conviction was sentenced in the case 'Sessia, Luis Felipe and others' [2006], (The National Court of Criminal Cassation of Argentina, Room 1). Although there are not official reports showing how many ML cases have been prosecuted in Argentine criminal courts, the FATF Mutual Evaluation Report on Argentina estimates that, since 2000—the year the new crime of ML came into force in this country, Law No. 25,246—there were only four (4) ongoing prosecutions and no conviction for ML. See: FATF-GAFI and GAFISUD 'Mutual Evaluation Report on Argentina' (Report) (22 October 2010) 36.

⁸⁷ Cabinet Office Performance and Innovation Unit Recovering the Proceeds of Crime (2000) Stationery Office.

⁸⁸ The conviction rate in 1998 was 44% for ML offences as opposed to an overall Crown Court conviction rate of 76% per Digest 4 (Home Office RDS). Cited in Ian Smith (ed.) *'Asset Recovery: Criminal Confiscation and Civil Recovery'* (Lexis Nexis, London 2003) 498.

⁸⁹ Cabinet Office Performance and Innovation Unit Recovering the Proceeds of Crime (2000) Stationery Office, paragraph 9.8.

for ML offences, of which 465 (over 59%) were convicted.⁹⁰ In 2005, India had 6 prosecutions, and a total absence of any ML conviction.⁹¹

3. Money laundering and its connection with the financing of terrorism.

The main purpose of this section is to demonstrate whether or not there is a connection or link between the processes of ML and financing of terrorism (FT). I am convinced more and more that the link between ML and FT as it is presented today does not correspond to reality. Indeed, in this section I am demonstrating that it is possible to present the link between both phenomena in a simpler and different way. Considering that we are referring to the term ‘financing of terrorism’, it seems to be necessary, first of all, to define what we mean by ‘act of terrorism’ and discuss the main differences and similarities between organised crime and terrorist groups. These preliminary debates are necessary to determine, later, the similarities and differences between ML and FT.

It should be noted that the term ‘terrorism’ has never been defined in international law.⁹² The absence of an internationally agreed upon definition of ‘terrorism’ poses serious problems for delineating what is ‘financing of terrorism’. However, I overcome this obstacle using the term ‘act of terrorism’, which was defined in international law. The United Nations Convention for Suppression of the Financing of Terrorism notes that the primary objective of an act of terrorism is to ‘intimidate a population, or to compel a government or an international organization to do or abstain

⁹⁰ FATF, ‘Mutual Evaluation Report on Hong Kong and China’ (Report) (27 June 2008) 29.

⁹¹ FATF and Asia/Pacific Group on Money Laundering, ‘Mutual Evaluation Report on India’ (Report) (25 June 2010) 43.

⁹² For a general discussion of this, see: B. Saul *‘Defining Terrorism in International Law’* (Oxford University Press, Oxford 2006).

from doing any act'.⁹³ An act of terrorism includes therefore the deliberate use of violence against civilian targets, with the intention of instilling terror in a population or in a government or an international organization for some political purpose.

The main difference that distinguishes organised crime from a terrorist group appear to be in the following aspect: one of the ultimate goals of an organised criminal group is to obtain financial gains as its ultimate objective, rather than instilling terror in a population for some political purpose.⁹⁴

Despite the above main different objective, we could say that terrorist groups and organised crime alike require financial help and support to finance their activities and enhance their power.⁹⁵ Assuming that terrorist organizations require financial aid to support their goals (among these: training, materials, travelling costs, etc.) it is of vital importance for them to have an international flow of funds which they can allocate to fulfil their aims. It should be noted that while the overall funds required by a terrorist organization may be large, the cost of a particular attack can be relatively small. For instance, the US authorities have estimated that the total cost of planning and carrying out the 9/11 attacks was below USD 300,000.⁹⁶

But what do we mean by 'financing of terrorism'? An international book commissioned and published by the World Bank and the International Monetary Fund

⁹³ Article 2. This convention is described in chapter II, section 2.2.

⁹⁴ This assessment is based on a comparative analysis of the definitions of organized crime and terrorist groups that I am using in this dissertation. According to the definition of 'organized criminal group' that I am using in this work, one of the key elements of this definition is the objective of pursuing profit and/or power, rather than committing an 'act of terrorism'; which is the main purpose of a terrorist group. See also R.C.H. Alexander, *Insider Dealing and Money Laundering in the EU: Law and Regulation*, (Ashgate Publishing Company, London, UK 2007) 174: 'the terrorist does not seek to become rich, or indeed any personal gain. His goal, and that of his organisation, is the achievement of a political end; the independence of a territory, a change in governmental order or, as with Al Qaeda, the complete destruction of a given system worldwide'.

⁹⁵ Ibid.

⁹⁶ D. Hopton, *Money Laundering: A concise Guide for All Business* (Gower Publishing Ltd., Hampshire, England 2006) 4.

defined 'financing of terrorism' as 'the financial support, *in any form*, of terrorism or of those who encourage, plan, or engage in terrorism' (emphasis added).⁹⁷ In other words, the objective of this activity is to channel funds of any origin and source, to individuals or groups with the purpose of enabling acts of terrorism.

And, what does this definition of FT mean by stating that the financial support could be 'in any form'? According to this same book commissioned and published by the World Bank and the IMF, the expression '*in any form*' means that funds used to support terrorist groups may have their origin in legitimate sources, criminal activities, or both.⁹⁸ However, it could be said that this definition of the word 'financing of terrorism' and, in particular, the expression 'in any form', is too restrictive, too narrow. It has failed to cover and identify in a clear and unambiguous manner, which are, in essence, the ways or forms that terrorist groups, or of those who encourage, plan, or engage in acts of terrorism can use to finance their activities. Probably, because of this failure to cover a clear description of this, several scholars have failed to establish and identify the link between money laundering and financing of terrorism. Donato Masciandaro affirms that the main difference between ML and FT lies in the origin of the funds: while in the ML process the source of funds always derives from criminal activities, the source of funds used to finance terrorist organizations may be of both 'dirty' and 'legal' origin.⁹⁹ This opinion was undertaken by the rest of the literature.¹⁰⁰

⁹⁷ Paul Allan Schott, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* (2nd edn, World Bank / IMF, Washington D.C. 2006) 1.

⁹⁸ Ibid.

⁹⁹ D. Masciandaro 'Economics: The Demand Side', in Masciandaro and others (eds.) *Black Finance: The Economics of Money Laundering*, (Edward Elgar, Cheltenham, UK 2007) 4.

¹⁰⁰ See, e.g., Peter Reuter and Edwin M. Truman, 'Chasing Dirty Money: Progress on Anti-Money Laundering' (Institute for International Economics, Washington D.C. 2004) 2; or Bruce Zagaris, 'The Merging of the Anti-Money Laundering and Counter-Terrorism Financing Enforcement Regimes after September 11, 2001', *Berkley Journal of International Law*, [2004] Volume 22:23, p. 123-158.

The following discussion will reveal that Masciandaro's assessment is, at least, incomplete. Contrary to what everybody believe, I will demonstrate that terrorist groups or those who encourage, plan, or engage in acts of terrorism can use to finance their activities not only criminal or legal assets, but also ML and 'money dirtying' processes ('MD'). To put it differently, it will be shown that terrorist groups can finance their activities through four different ways or forms, and ML is one of these ways of financing. These four ways are: (i) criminal assets, (ii) legal assets, (iii) money laundering and (iv) money-dirtying. In the following lines we will explain in detail these four ways of financing. This discussion will allow us to establish, finally, which is the real link or nexus between the processes of money laundering and financing of terrorism.

First of all, it should be said that *criminal assets* can be used to fund terrorist activities. An example could be the financing of terrorism with the proceeds from the production and marketing of narcotics, kidnapping or extortion. These criminal activities seem to be a sizable financial contributor to terrorist organizations.¹⁰¹ Consistent with this, numerous FATF Mutual Evaluations Reports have shown narcotics trafficking to be the most prevalent criminal activity used to raise terrorist funds; and this is followed by fraud, then smuggling and extortion.¹⁰² In this same vein, Fletcher Badwin estimates that the terrorist group Al-Qaeda gets about forty percent of its funds from drug trafficking, twenty percent from extortion, and about ten percent from kidnapping.¹⁰³

¹⁰¹ See, e.g., Thomas J. Biersteker and Sue E. Eckert, 'The challenge of terrorist financing', in 'Countering the Financing of Terrorism' (Routledge, England 2008) 12.

¹⁰² FATF, 'Global Money Laundering and Terrorist Financing Threat Assessment' (Report) (July 2010) page 8.

¹⁰³ Fletcher Badwin 'Organized Crime, Terrorism and Money Laundering in the Americas', Florida Journal in International Law [2002-03], Vol. 15, p. 4.

However, it should be made clear that terrorist groups could not only finance their activities with the proceeds of crime, but also through managing *legitimate assets* and businesses, such as Osama bin Laden's enterprises in Sudan or honey trading in Yemen.¹⁰⁴ Foundations and political parties, among other benefactors, can provide terrorist groups with these clean funds. An example of this involves those donations made to organizations by individuals who believe them to be real Islamic charities but which later on turn out to be a cover-up for supporting terrorism.¹⁰⁵

Like organised crime, terrorist groups could also need to practice *money laundering*, after generating and accumulating substantial amounts of dirty assets. Indeed, the so-called War-on-Terror and the expansion of organized criminal enterprises during the last decades, have furthered worldwide attention on ML. This arises from the fact that 'trade-based money laundering is used by organized crime groups and, increasingly, by terrorist financiers as well'.¹⁰⁶ Terrorist groups could need to practise ML activities for the following two reasons:

(a) *The concealment aim:* terrorist groups that accumulate significant amounts of dirty profits could need to utilise ML techniques in order to conceal or disguise the identity or the origin of criminal obtained proceeds so that they appear to have originated from legitimate sources.¹⁰⁷ Furthermore, when terrorist groups decide to launder the proceeds of crime, the importance of this concealment aim for them is greater, since the need to lower the risk of being discovered concerns both the crime

¹⁰⁴ Thomas Biersteker and Sue Eckert 'The challenge of terrorism financing', in T. Biersteker and others (eds.) *Countering the Financing of Terrorism*, (Routledge Publishers, London 2008) 9.

¹⁰⁵ R.C.H. Alexander, *Insider Dealing and Money Laundering in the EU: Law and Regulation*, (Ashgate Publishing Company, London, UK 2007) 174.

¹⁰⁶ US Department of State, Bureau for International Narcotics and Law Enforcement Affairs (International Narcotics Control Strategy Report 2005, March 2005). Available online: <http://www.state.gov/p/inl/rls/nrcrpt/2005/vol2/html/42380.htm>> accessed 10 June 2009.

¹⁰⁷ See the first dilemma of a launderer mentioned above, in section 2.

that generated the dirty money (the predicate offence) and the destination of these assets: that could be, to finance and support the general structure of the organization (e.g., training, arms, food) or to commit the terrorist attacks they intend to undertake.¹⁰⁸

(b) *The cleaning or investing aim:* terrorist groups, like criminal organizations, are looking to legitimize their ill-gotten assets so that they can consume or invest them in the legal economy like any other honest and ordinary person; or use the already recycled or clean assets to continue financing their activities.

However, as explained above, terrorist groups are not only financed with dirty money, but also with clean or legal flows of assets. So, after accumulating significant amounts of legal assets terrorist groups could need and decide to submit part of these legal assets to a ‘*money dirtying*’ or ‘reverse ML’ process.¹⁰⁹ ‘Money dirtying’ (MD) involves a process diametrically opposite to the ML process; instead of being ‘launched’, the money is ‘dirtied’. Through a process of MD, money or any other asset moves and finally trespass from the so-called legal or formal economy to the parallel or underground economy.

Terrorist groups could require practicing MD operations bearing in mind the following two reasons:

a) *The concealment aim:* significant amounts of legal assets without justification could draw the attention of law enforcement authorities. Hence, after accumulating significant amounts of legal profits they would most likely prefer to channel their

¹⁰⁸ B. Unger, ‘*The Scale and Impacts of MoneyLaundering*’, in D. Masciandaro and others (eds.), ‘*Black Finance: The Economic of Money Laundering*’ (Edward Elgar, Cheltenham, UK 2007) 170-171.

¹⁰⁹ The ‘money dirtying’ process is also named ‘reverse ML process’. See e.g., Angela Veng Mei Leong, ‘*The Disruption of international Organized Crime: an analysis of legal and non-legal strategies*’ (Ashgate Publishing Ltd., London 2007) 45.

legitimate funds through a MD process to prevent authorities from tracing back the legal source. It could be also said, for instance, that a rational person who expects to finance terrorist activities, will not simply write a personal check or give cash money derived from legal activities to purchase the necessary elements to support their terrorist activities. Instead, they could prefer to utilize a process of MD to separate or disguise these financial flows from their legal origin or source.

- b) *The 'dirtying' and investing aim:* assuming that some of the elements that terrorist groups could require to support their organizations are only purchased in the informal or underground economy, they could also require to recycle and invest their accumulated legal assets into the informal or underground economy. An example could be the transfer of money proceeding from a legal activity or source (e.g., a factory owned by a terrorist group, through a straw man or false shareholder) to parallel or informal economic channels in order to purchase chemical weapons that are only offered in the underground economy.

As a consequence of the above explanation, the process of money dirtying could be described as a concealment and dirtying process, by which a terrorist group mainly tends to separate or disguise legitimate profits from its legal source, for the purpose of consuming, saving or investing them in the underground economy. Or simply, the process of MD could be described as the act of moving, converting or concealing money or any other economic value that comes from a legal source A, look like money or any other value coming from a different source B. As a process, it could also be said that MD techniques can be performed in a single stage, as well as in two, three, four or

more phases, depending on the imagination and ability of the person who decides to submit his/her accumulated legal assets to a process of MD.

The above discussion can be summarized as follows: (i) both criminal organizations and terrorist groups could commit crimes to acquire funds; (ii) however, a substantial proportion of terrorist financing comes from legitimate donations, contributions and legitimate businesses; (iii) moreover, I explained that terrorist groups also use ML and MD procedures to finance their activities; (iv) hence, it can be suggested that 'financing of terrorism' can be undertaken in four different ways or forms. These four ways or forms of financing are: first, the concealment, recycling and investing process of ML (flows of criminal assets that are converted and trespass from the underground economy to the formal economy); second, the concealment and dirtying process of MD (flows of legal assets that are converted and trespass from the legal or formal economy to the underground economy); third, 'legal funds' (which are economic values that pertain and never leave the legal economy); and finally, 'ill-gotten funds' (which are economic values that never leave the parallel or underground economy); (v) then, as a conclusion, it could be said that the link between ML and FT, the main problem to solve and examine in this section, is that ML is part of the process of FT. To be precise, ML is one of the four ways or forms that a terrorist group or those who are engaged in acts of terrorism can use to finance their activities. As a consequences of this last assessment or conclusion, it could be said that the expression 'financing of terrorism' could be redefined and refer to the financial support, in the above mentioned four ways or forms, that terrorist groups, or those who encourage, plan or engage in acts of terrorism, could use to finance their activities.

4. The link or nexus between ‘money laundering’ and ‘money dirtying’ operations.

Before analyzing the differences and similarities between ML and MD procedures, it should be said, first of all, that international documents and textbooks in general seem to confuse or misunderstand the process of MD with the process of FT. This is true, for example, on the three-stage theoretical description developed by a book published by the World Bank and the International Monetary Fund (IMF) entitled ‘Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism’, which tends to describe the techniques of money laundering and financing of terrorism.¹¹⁰ As a consequence of this confusion on the use of the words ‘money dirtying’ and ‘financing of terrorism’, these intergovernmental organizations refer to the ‘Three-stages of Money Laundering and Financing of Terrorism’; however, as it will be explained in the following lines, they should have referred to the ‘Three-stages of Money Laundering and Money Dirtying’.

Firstly, the World Bank and IMF publication stressed that ML is a process that can be practiced in three different stages (concealment, conversion and integration); and, subsequently, this publication explains that the first two-stages (placement and layering) are common for ML and financing of terrorism processes, whilst the third stage (integration) is different. In particular, the Reference Guide published by the World Bank and the IMF points out:

These three stages [concealment-conversion-integration] are also seen in terrorist financing schemes, except that stage three integration involves the distribution of funds to terrorists and their

¹¹⁰ See, Paul Schott ‘*Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*’ (2nd ed., World Bank/IMF, Washington DC) I-8.

supporting organizations, while money laundering (...) goes in the opposite direction—integrating criminal funds into the legitimate economy.¹¹¹

This viewpoint was subsequently taken up as a given in the literature.¹¹²

The main two problems with the above description of the ML and FT processes are: first of all, that this theoretical description of the ML and FT processes comes from assertions or assumptions, which are themselves not supported by empirical data. Secondly, even if there were enough evidence to support this description, it should be noted that the process of ‘terrorist financing’ is not, itself, a process by which a person disguises and transforms assets or funds in the so-called placement and layering stages and, finally, integrates these assets, in the opposite direction than the ML process, in order to be distributed for terrorist purposes. Contrary to what these international organizations believe and publish in their Reference Guide and as was explained in the previous section, this description is applicable to the process of MD; and not to the process of ‘financing of terrorism’.

So, what does it mean financing of terrorism? In the previous section we explained that the process of FT can be undertaken by four ways or forms of financing, and MD is just one of these ways or forms. The other three ways or forms, which are part of the process of FT are: firstly, financing with legal assets (flows of funds that never leave the formal economy); secondly, financing with criminal assets (flows of assets that never leave the informal economy) and, finally, a complete process of ML. Then, contrary to the opinion of the above mentioned Reference Guide published by the World Bank and the IMF, the expression ‘financing of terrorism’ means the financial

¹¹¹ Ibid.

¹¹² See, for instance, Masciandara, ‘Economics: The Demand Side’, in Masciandaro and others (eds.), *Black Finance: The Economics of Money Laundering*, (Edward Elgar, Cheltenham, UK 2007) 4; among other examples.

support, in the above mentioned four ways or forms, that terrorist groups, or those who encourage, plan or engage in acts of terrorism, could use to finance their activities.

Once we have clarified the above misunderstanding on the use of the terms MD and FT, then, it becomes possible to explain the differences and similarities between ML and MD.

The process of ML was defined as the act of making money or any other economic value that comes from a criminal source A, look like money or any other economic value coming from a legitimate source B. It was also explained that ML can be performed in a single stage, as well as in two, three, four or more phases, depending on the imagination and ability of the person who decides to submit or transfer his/her accumulated assets to a process of ML. Furthermore, beyond this assessment it was explained that, in general, the literature refers to three-theoretical stages in a process of ML (i.e., first stage: pre-washing, placement or concealment; second stage: layering, conversion or decanting; and, finally, integration or reinvestment).

On the contrary, it was explained that the process of MD was described in the previous section as a concealment or dirtying process, by which terrorism mainly tends to separate or disguise legitimate profits from its legal source, for the purpose of consuming, saving or investing them in the underground economy. Moreover, it was explained that the MD process, could be also referred as a 'reverse money laundering' process; this is because, instead of being 'laundered' the economic values are 'dirtied'. And, finally, it was said that, as a process, MD can be performed in a single stage, as well as in two, three, four or more phases, depending on the imagination and ability of the person who decides to submit or transfer his/her accumulated assets to a process of MD.

Based on the above descriptions and definitions, I will try to identify, in the following lines, the main similarities and differences between ML and MD processes.

The main similarity or link between ML and MD seems to be that both are processes by which a person intends to separate and disguise the origin and destination of the assets involved in the processes. These processes can be performed in one or more than one stages and they can be practiced in one or more jurisdictions, so they can include or not transborder or transnational elements and effects. In addition, and following the three-stages description of a ML process (concealment, conversion and integration) it could be said that these same three stages can be seen and applied to the concealment and dirtying process of MD; except that stage three, integration, involves the distribution of funds to terrorists and their supporting organizations, while money laundering goes in the opposite direction—integrating criminal funds into the legitimate economy.

Then, it could be said that the main difference between ML and MD processes lies in the origin and destination of the assets. In a process of MD the flows of funds always derive from a legal source, while in the process of ML assets derive from criminal activities. Moreover, in a complete process of MD the integration or reinvestment of stage three involves the distribution of legal funds in the underground economy by terrorist groups or those who encourage, plan or engage in terrorist acts, while in a process of ML the flows of funds are moved and transferred in the opposite direction: integrating the proceeds of crime into the legal or formal economy.¹¹³

¹¹³ This assessment is based on a comparative analysis of the definitions of ‘money laundering’ and ‘money dirtying’ that I am using for the purpose of this dissertation.

5. Evaluating the causes and effects of money laundering - Why are some regions more attractive than others for submitting dirty assets?

Profit-maximization is not the main objective of criminals that practice ML in a given country or territory. Instead, criminals that decide to conceal, convert and finally invest their proceeds of crime in the formal economy will expect, as a priority, to finish the laundering process with impunity, that is, without being detected by law enforcement authorities.¹¹⁴ This assessment is founded on the nature of the laundering process. ML is, in essence, both concealment and investing process. So, following this primary aim, maximization of profits could be a second and less important aim, but not a priority.

In line with this assessment Peter Alldridge said:

People will pay for secrecy because it costs less than disclosure. To the person in possession of money derived from illegal sources, the dangers of disclosure relate to the possibility of prosecution and imprisonment (,,). On the other side, a person holding assets acquired from illegal sources should be willing to expose him/herself to a reduced rate of return.¹¹⁵

Considering and assuming that a launderer's priority is to avoid their detection when practicing the laundering of proceeds of crime, then, they could even pay higher prices for their laundering investments if the risk of detection is sufficiently low. This is especially true in the procedures of ML that can be classified as 'expensive procedures',

¹¹⁴ The author has not found empirical evidence to support this assessment; so I assume this idea as a logical and deductive reasoning.

¹¹⁵ Peter Alldridge, 'The Moral Limits of the Crime of Money Laundering', Buffalo Criminal Law Review [Vol. 5:279] page 280.

since they require the payment of high rates of taxes.¹¹⁶ The payment of taxes is often a considerable percentage of the total cost of a ML transaction or operation.

But let us focus our attention in the main question to answer in this section. The question to tackle now is the following: why would a criminal agent, a group of criminals or an organized criminal group, having accumulated significant amounts of dirty profits, consider one region or the other as a place to disguise, clean and/or invest their dirty profits? The answer of this question will help us in understanding the causes and effects of money laundering. This discussion will be focused, again, on the Argentine case; this is because understanding the contours of the problem in a developing country such as Argentina makes it easier to explore this subject in other jurisdictions. Basic reasons are roughly the same across comparable jurisdictions.

The combination and interaction of the following seven variables will help us to answer our question:

(a) Competition for 'dirty' money (The Seychelles fiscal strategy):

A number of governments are so eager for capital inflow that their authorities implement fiscal strategies that seek to attract foreign global investments regardless of their origins. Unger called this fiscal strategy the 'Seychelles strategy' after the State of Seychelles — a small island in the Indian Ocean — attracted international investment in 1995 by guaranteeing immunity with a no-question-asked policy regarding the origins of the investments, as long as they exceeded the sum of USD 10,000 (unless the investor had committed acts of violence or drug trafficking in Seychelles itself).¹¹⁷

¹¹⁶ It is outside the scope of this research to describe the possible typologies of ML that could require the payment of taxes.

¹¹⁷ For more information about the 'Seychelles fiscal strategy' see, e.g.: B. Unger, 'International Economics' in D. Masciandaro and others (eds.) *'Black Finance: The Economic of Money Laundering'* (Edward Elgar Publishing Ltd., Cheltenham, UK 2007) 90-91. The Seychelles case study is also analysed

In this respect, it should be noted that on 22 December 2008 the Argentine Congress passed the ‘Economic Emergency Act’ (‘EEA’) to boost tax revenue and stimulate the domestic economy by allowing worldwide assets into the country and limiting the questioning of its origins. In particular, the ‘EEA’ guarantees tax incentives and immunity from criminal tax proceedings for repatriated undeclared funds which are invested in this country.¹¹⁸ International organizations, such as the FATF, said that the EEA economy plan does not violate international anti-ML standards, since this fiscal strategy does not provide the immunity of ML investigations or prosecutions; however, the FATF warned that the inefficient enforcement of the EEA fiscal plan could promote or facilitate ML operations in this country.¹¹⁹

(b) Jurisdictions with high rates of corruption:

Countries with high levels of corruption could attract a significant proportion of global dirty assets requiring laundering.¹²⁰ Launderers could command vast sums of ill-gotten assets or money, which they can use to bribe State officials in exchange for impunity. It

by R.C.H. Alexander, *Insider Dealing and Money Laundering in the EU: Law and Regulation*, (Ashgate Publishing Company, London, UK 2007) 27, and Guy Stessens *Money Laundering: a new international law enforcement model* (Cambridge University Press, Cambridge 2000) 92.

¹¹⁸ While Argentina’s basic tax rate on earnings is 35 %, the ‘EEA’ offer a 1% rate on money that is repatriated to Argentina and invested in industry, infrastructure or farming. Funds that are repatriated but invested in other sectors will pay a maximum rate of 8%. Argentina has about US\$ 140 billion in off-shore accounts, so the government of this country is hoping that some of those funds will return, benefiting their domestic economy. See e.g. ‘Aceleran el debate del proyecto [de blanqueo] en el Senado’, La Nacion, 16 December 2008. <http://www.lanacion.com.ar/nota.asp?nota_id=1081258> accessed 16 December 2008.

¹¹⁹ ‘Dura critica del GAFI por el blanqueo’ [*Strong FATF’s critics for the money laundering law*] La Nacion, 16 December 2008.

¹²⁰ FATF, ‘Global Money Laundering and Terrorist Financing Threat Assessment’ (Report) (July 2010) page 57: ‘302. Corruption and ML often occur together, with the presence of one reinforcing the other (...). 303. In addition, ML can be carried out with reduced risk if public officials can be persuaded to cooperate. Thus the bribing of PEPs becomes a key part of the conduct of the illegal activity. The presence of PEPs in a jurisdiction means that it suffers and/or poses a ML risk’.

should be said, however, that not all scholars agree with this assessment. For instance, Masciandaro in his book 'Black Finance: The Economic of Money Laundering' pointed out that criminals prefer countries with low rates of corruption to launder their proceeds of crime. This author believes that, like any other investor, launderers expect, finally, to reach an investment or profit maximization and corrupt countries could damage this investment.¹²¹

Nevertheless, Masciandaro's assessment seems to be incorrect. As assumed above, launderers do not seek to invest their accumulated ill-gotten assets where it is more economically profitable, but where they can launder (conceal, convert and invest) their proceeds of crime more effectively. In fact, rational launderers could be willing to pay more than the true value of their laundering investment transaction, if the risk of detection is sufficiently low. This is the case, for instance, when the process of ML requires the payment of high rates of taxes or bribes as a percentage of the total cost of the laundering transaction. Hence, contrary to the opinion of Masciandaro, it is logical to say that launderers could prefer countries with high rates of corruption since in this jurisdictions they will have more chances to bribe authorities in exchange of impunity. ML can be carried out with reduced risk in jurisdictions where public officials can be suborned. Following their concealment and recycling priority, rational launderers will just consider the payment of bribes to legal authorities as part of the cost of the ML transaction they need to pay to reach their main goal: launder the proceeds of their crime with impunity, that is, without being discovered or detected.

Notwithstanding the above, a different scenario could appear after the process of ML is completed and the assets are totally recycled and invested in the legal economy. Of course, when ill-gotten assets are totally mixed, consumed or invested in the formal

¹²¹ D. Masciandaro and others (eds.) '*Black Finance: The Economic of Money Laundering*' (Edward Elgar Publishing Ltd., Cheltenham, UK 2007) p. xi and 82.

economy so they appear as being reached legally; that is, when the process of ML has finished, the chances to be discovered and detected by law enforcement authorities could be lower. On this basis, it may reasonably be argued that this change in the risks, variables and circumstances can produce a change in the priorities and mind of a launderer. The priority of a launderer who already finished the process of laundering could be to seek to invest their already recycled and clean assets where it is more economically profitable, rather than where they can conceal or disguise their proceeds of crime more effectively. This is because the criminal origin of the assets was already concealed, disguised and ill-gotten assets already look as to have originated from legitimate sources, so their concealment priority and main goal of recycling was already satisfied.

As a conclusion of the above discussion, it could be said the following: first of all, during the process of laundering, launders would prefer to submit and transfer the proceeds of crime to a country with high rates of corruption, since they could take into account that corrupt countries can offer lower chances of being discovered. However, secondly, when launderers already completed the process of ML, they could prefer countries with low rates of corruption to submit the proceeds of crime of laundering, since corrupt countries can damage their investments.

It should be noted that Argentina is a well established developing country with an emerging economy, where a high level of corruption seems to dominate public administration. According to the 'Corruption Perceptions Index' published annually by Transparency International, in the periods 2000/2008 Argentina ranged between its worst score of 2.8 and its best score of 3.5 on a scale that ranges from a score of 10 for the cleanest to 1 for the most corrupt nations.¹²²

¹²² Transparency International, 'Corruption Perception Index' (Report) (Washington DC, USA) (2000-2008). <http://www.transparency.org/policy_research/surveys_indices/cpi/2008> accessed 10 Nov 2008.

(c) Social, economic and political conflicts:

Launderers often take advantage of political, economic and social confusion to develop their illegal enterprises.¹²³ While law enforcement authorities are busy focusing on resolving chaotic social scenarios, organized crime could take advantage of these distractions, to launder their proceeds of crime or to collude with other laundering groups. Political and social confusion has increased significantly in Argentina over the last three decades, especially in the period 2001/2003.¹²⁴

(d) The presence of adequate anti-ML norms, in countries with low enforcement capacity:

States with weak and inefficient law enforcement authorities dedicated to combating ML, including where appropriate, judicial authorities, are also attractive to ML because of their ineffectiveness or lack of a fully functioning anti-ML regulatory and repressive system. When States are weak, but act as if they were strong passing laws and regulations purporting to regulate without the will or capacity to enforce the law, they inevitably create spaces between reality and legality that can be explored by criminals, organized crime and launderers.¹²⁵

As illustrated by the following examples, it could be suggested that Argentina has an inefficient anti-ML enforcement and judicial system, together with an adequate anti-ML legal regime. First, although Argentina created a Financial Intelligence Unit

¹²³ FATE, 'Global Money Laundering and Terrorist Financing Threat Assessment' (Report) (July 2010) page 52.

¹²⁴ Argentina descended into social, political and economic chaos, especially between 2001 and 2003. The influence of this huge crisis included, in just two weeks at the end of December 2001, the death of 30 people in popular street insurrections; and, furthermore, five presidents were forced to leave office.

¹²⁵ B. Bagley, 'Globalisation and Latin American and Caribbean Organised Crime' in Mark Galeotti (ed), 'Global Crime Today – The Changing Face of Organised Crime' (Routledge, London 2005) 32-53.

office (operational since 2003), this office is not sufficiently independent from the Executive Power to operate efficiently. Since June 2005, only the Executive Power has had the power to appoint and remove the Chief of the FIU, who has broad faculties to investigate ML cases.¹²⁶ Second, Argentine criminal courts are inefficient in investigating the crime of ML. Since 1989 –the year the crime of ML came into force in this country- there has only been one final conviction for this offence.¹²⁷ In general, those suspected to be perpetrators of ML activities are convicted only for the commission of the predicate offence, such as crimes of drug trafficking, fraud, or corruption, and no effective attempts are made to discover what became of the profits generated by the illegal activity. Despite this lack of enforcement, Argentina has anti-ML legal regimes that can be classified as ‘adequate’, because they are structured in compliance with international Conventions (hard law instruments). Argentina ratified all the international conventions against ML and is one of the thirty-two member countries of the FATF.

(e) Geographical characteristics -vulnerable and open borders:

Smuggling criminal cash money from the country in which the predicate offence occur to another region or country constitutes a typical laundering technique, especially in the first stage of placement or concealment. Then, countries with vulnerable and or open

¹²⁶ For more information about the inefficient development of the Argentine FIU see the following reports: (i) firstly, FATF-GAFI and GAFISUD ‘Mutual Evaluation Report – Argentina’ (Report) (22 October 2010) p. 48; (ii) secondly, Organization for Economic Co-operation and Development (OECD), ‘Argentina: Phase 2 – Report on the application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions’ (Report, 20 June 2008) 57. Available on the web: <<http://www.oecd.org/dataoecd/29/1/36448836.pdf>> accessed 2 January 2009.

¹²⁷ The only conviction was sentenced in the case ‘Sessia, Luis Felipe and others’ [2006], (The National Court of Criminal Cassation of Argentina, Room 1). Although there are not official reports showing how many ML cases are being investigated in Argentine criminal courts, FATF’s Mutual Evaluation Reports estimates that, since 2000 —the year the new crime of ML came into force in this country, Law Nro. 25,246—there were only four ongoing prosecutions and no conviction for ML. See: FATF-GAFI and GAFISUD ‘Mutual Evaluation Report – Argentina’ (Report) (22 October 2010).

borders could be attractive for practicing this typology of laundering, that is to say, to physically move or transfer criminal assets from one region to the other.

With this respect, it could be said that another serious problem in Argentina is the vulnerability of its borders, such as the so-called 'Tri-Border', comprising Ciudad del Este (Paraguay), Foz do Iguacu (Brazil) and Puerto Iguazú (Argentina). The special geographic, political and social features of this region could favour the development of ML activities.¹²⁸ The US Department of State expressed its concerns over extremist groups operating in the Tri-Border region and, particularly, over the 'hawala' transactions taking place between that area and the Middle East.¹²⁹

(f) *High rates of 'informal' economy:*

Launderers feel themselves comfortable in jurisdictions with high rates of informal economy. This is because, in regions with high rates of informal economy the physical volume of ill-gotten cash money could be mixed up or confused within the higher rates of the informal or the underground economy; so, as a consequence of this general ground of confusion, the risk of being detected by legal authorities at the moment of accumulating significant amounts of ill-gotten cash money could be lower. In this same line of reasoning, it could be said that rational criminals, which generated and accumulated ill-gotten assets could not consider the accumulated assets as 'significant' in regions with high rates of informal economy, so in this context, criminals could

¹²⁸ For further details about the vulnerability of the 'Tri-Border' see: M. Ruiz, 'Money Laundering – Argentine Chapter', in Toby Graham (ed), *Butterworths International Guide to Money Laundering Law and Practice* (2nd edn, Butterworths Lexis Nexis, London 2003) 142-155; or, Thomaz G. Costa and Gaston H. Schulmeister 'The Puzzle of the Iguazu Tri-Border Area: Many Questions and Few Answers Regarding Organised Crime and Terrorism Links' in *Global Crime*, Vol. 8, No. 1, (Routledge, London 2007) 26-39.

¹²⁹ US Department of State, 'Communique of the 3 + 1 Group on Tri-Border Area Security' (Counterterrorism Office, Washington D.C., 6 December 2004). Document available on the web: <<http://www.state.gov/s/ct/rls/other/39706.htm>> accessed 16 December 2008.

decide to keep the dirty assets in the informal economy, rather than submitting them to a process of ML: that is to say, without adopting option A of the above mentioned *first dilemma*.¹³⁰ If criminals decide to keep the accumulated ill-gotten assets in the informal economy without submitting the proceeds to a ML process, then, the chances to be detected by law enforcement authorities could be much lower. This is because the chances of identifying a ML operation is at its highest probability during the preliminary stage of placement, when the assets are entering the economic or financial system and when a financial entity or any other economic agent has a physical contact with the entering ill-gotten assets. This key stage on the process of ML implies a contact with the legal economy or financial system and therefore expose the launderer to the chance of being detected. However, if the size of a region's informal economy is reduced to a reasonable level, the criminal could be more pressured to submit the accumulated dirty assets into a ML process and would, therefore, increase the chances that law enforcement authorities detect their ML operations.¹³¹

Argentina has an informal economy of around 25-30%.¹³² This is a high rate comparing with United States (around 10%) and a low rate of informal economy comparing with other American countries such as Colombia (around 42%), Peru (around 60%) and Bolivia (around 67%).¹³³

g) A jurisdiction that adopted 'inadequate' anti-ML norms:

¹³⁰ See, above, section 2.

¹³¹ It is outside the scope of this research to study other consequences of the informal economy on the economy. For a general discussion of this see: Friedrich Schneider 'Shadow Economies and Corruption all over the World: What do we Really Know?' in M. Pickhardt and E. Shinnick, (eds.) *The Shadow Economy, Corruption and Governance* (Edward Elgar Edt., Cheltenham UK, 2008) 144.

¹³² F. Schneider (2008) 144.

¹³³ Ibid.

The international community has implemented an international legal order for the purpose of ML. By designing a supranational legal order, the international community attempts to globalize and harmonize the international anti-ML regimes at both the international and national levels. The task of harmonizing anti-ML norms is essential, among other reasons, to ensure that criminal groups cannot shop around the world in an attempt to find the best jurisdiction in which to practice ML operations.¹³⁴ Therefore, having adequate, widespread and harmonized anti-ML regimes at both international and domestic levels is critical to structure an effective and efficient legal system in terms of responding to the phenomenon of ML. Countries with inadequate anti-ML norms are attractive for ML operations. A typical example of inadequate anti-ML norms adopted at the domestic level are the so-called ‘regulatory havens’;¹³⁵ this last expression refers to the countries or territories in which the identity of the controlling bank accounts or corporations is readily concealed.

As it has already been explained above, it could be affirmed that Argentina has adequate anti-ML legal norms. This country has signed and ratified all the international conventions against ML and its anti-ML norms are structured, in general, in compliance with the international hard law instruments. However, this thesis will argue that this is not enough. It is time to review and redefine the international conventions on this matter. Key aspects of the international legal order against ML as drafted in hard law instruments, in particular the definition of the international crime of ML, seems to be insufficient for the purpose of ML. The international legal order is too ambiguous, too narrow, and it has failed to cover many key elements of the preventive and repressive

¹³⁴ FATF, Annual Report 1989-1990 (7 February 1990) p. 16: ‘discrepancy between national measures to fight money laundering can be used potentially by traffickers, who would move their laundering channels to the countries and financial systems where no or weak regulations exist on these matters’.

¹³⁵ The expression ‘regulatory havens’, is used interchangeably with other labels, such as ‘tax haven’ jurisdictions or ‘off-shore centres’. See chapter II, section 3.

systems in a clear, detailed and unambiguous manner. I am proposing in this thesis to harmonize, as much as possible, the supranational preventive/regulatory AML regime and to redefine a new, less ambiguous, more detailed and uniform definition of the international crime of ML, which can be adopted by any country of the world.

6. Conclusions.

It has been the business of this chapter to introduce and analyze the phenomenon of money laundering itself. For that purpose we explained, first of all, the meaning of the term ‘money laundering’ and, later, we explored how ML operates. Most of the explanation referred to the way ML works derived from assertions made in international documents and textbooks, and supported by a cross-cases analysis of relevant ML cases, which were included in a chart on the Appendix I. Subsequently, we evaluated the link or nexus between ML and the ‘financing of terrorism’ and, after, we have studied the similarities and differences between the processes of ‘money laundering’ and ‘money dirtying’. Finally, we have also examined some of the key causes and effects of ML. It is against this background that problems confronted by the international legal order against ML must be seen. It is to this issue that this study now turns.

Word count: 18.500 words (including footnotes and appendix I)

Appendix I

Argentine Money Laundering Case Studies

Case and Year	Case Name	Criminal Courts	Predicate Offence (PO) ML Stages and techniques	Status of the investigation
1 1989/ 1990	'Raul Vivas and others'	Federal Oral Courts, City of Buenos Aires, Room 5 (2003).	Predicate offence: Drug trafficking activities in the US. 1 st stage: "dirty" money converted into financial instruments in USA. 2 nd stage: financial concealment mechanisms implemented in Uruguay. 3 rd stage: real estate purchases in Argentina.	Closed. Federal Oral Courts ordered the dismissing of Rivas and the others accused for "not enough evidence connecting the ML crime and the predicate offence of drug trafficking". Raul Vivas was arrested and sentenced to 501 years of prison for ML offence in USA Courts.
2 1990	'Mario Caserta, and others'	Federal High Criminal Courts, City of Buenos Aires, Room 1 (1992). Reviewed by The National Court of Criminal Cassation of Argentina, Room 1 (2006). Supreme Court of Argentina (present).	PO: Apparently, drug trafficking activities in the US. 1 st stage: physical cash transfers in "suitcases", mail from New York, Miami and Andorra to Uruguay and Argentina. 2 nd stage: banking and IVTS transfers from Argentina to Uruguay. 3 rd stage: real state purchases in Argentina and Uruguay.	Open. Caserta Mario (preventive arrest for 3 years, afterwards released and indicted.), Jose Lezcano Patiño (sentenced to 10 years in prison in USA), Anello, Collazo, Baliate, and others (indicted). Amira Yoma (dismissed)
3 1995	'Seccia, Luis Felipe and others'	Federal High Criminal Courts, City of San Martin, (1999). Reviewed by Federal Oral Courts No. 2 of San Martin (2003). The National Court of Criminal Cassation of Argentina, Room 1	PO: Drug trafficking activities from Italy. 1 st and 2 nd stages: IVTS from Italy to Argentina. 3 rd stage: purchase jewellery and gold, amongst other luxury goods, in Argentina.	Closed. The president of a financial institution and two collaborators were sentenced to imprisonment for 3 years and fines (2003).

		(2006).		
4 1995/ 1999	'Santos Caballero, Maria, and others'.	Federal High Criminal Courts, City of Buenos Aires, Room 2 (2000). Reviewed by The National Court of Criminal Cassation of Argentina, Room 3 (2001). Federal Oral Courts No. 6, City of Bs. As. (2005).	PO: Drug trafficking from Medellin Cartel, Colombia. 1 st and 2 nd stages: IVTS from Colombia and Uruguay to Argentina. 3 rd stage: real estate, luxury cars and other assets purchased in the name of 'off shore' and 'shell' companies domiciled in Uruguay.	Open. Indictments and preventive arrests (2000). Federal Oral Courts ordered the annulment of the prosecutor's accusation, requesting a new investigation (2005).
5 1996/ 2000	'Di Tullio, Nicolas A., Carrillo Fuentes, Amado, and others'.	Federal High Criminal Courts, City of Buenos Aires, Room 1 (2002).	PO: Drug trafficking from Juarez Cartel, Mexico. 1 st stage: IVTS from Uruguay and USA to Argentina, and physical cash transfers in 'suitcases' and mailing. 2 nd stage: open bank account opened in name of 'straw men'. 3 rd stage: real estate purchases, including farms, hotels, apartments, rural machines and other goods.	Open. Di Tulio (preventive arrest warrant for 3 years, later released from prison and finally indicted). Amado Carrillo Fuentes— alias ' <i>El Señor de los Anillos</i> '—(indicted, but he finally died in 1997), and other 5 businessmen (indicted).
6 1999/ 2000	'Gil Suarez, Humberto Nicanor y otros'.	High Federal Criminal Courts, City of San Martin (2002)	PO: Apparently, drug trafficking activities derived from the Republic of Surinam. 1 st and 2 nd stages: statement of <i>off-shore</i> companies in Uruguay. 3 rd stage: purchase of real estate and other goods.	Closed. Courts ordered indictments and arrests warrants. Later, High Courts considered that 'there is not enough evidence to connect the invested assets with the predicate offence of drug trafficking committed in the Republic of Surinam'.
7 2000	'G.R.J. and others'.	High Federal Criminal Courts, City of Buenos Aires, Room 2 (2004)	PO: Apparently, proceeds derived from the crime of fraud perpetrated in Argentina.	Closed. High Courts ordered the dismissal of all the indicted offenders, alleging that it was not proved

			<p>1st stage: deposit of money collected in Argentina and transferred to an 'escrow' account domiciled in Virgin Island.</p> <p>2nd and 3rd stages: several 'back to back' movements through off-shore companies domiciled in Virgin Islands, aiming to conceal the funds originated by the fraud.</p>	the intention to commit the crime of ML.
<p>8</p> <p>2001/ 2002</p>	'Geosur S.A. Company'	<p>Federal Criminal Courts, City of Rawson, Chubut.</p> <p>Ordinary Criminal Courts, City of Rawson, Chubut.</p> <p>Reviewed by Supreme Court of Argentina (2003)</p>	<p>PO: Bank fraud from Argentina.</p> <p>1st stage: fractioned banking operations in name of "straw men".</p> <p>2nd stage: transfer of the assets to an escrow bank account opened in Virgin Islands.</p> <p>3rd stages: N/A (Non applicable).</p>	Open. Supreme Court of Argentina resolved a jurisdiction complain between two Argentinean Courts.