CHAPTER 7

CONCLUSION AND SUGGESTIONS

7.1 CONCLUSION:
Money laundering is sleight of hand a magical deception for wealth formation the lifeblood of drug dealers, fraudsters, smugglers, arms dealers, terrorists, extortionists and tax-evaders. It is also the world’s third largest business. Though a relatively new and in vogue subject, it has in fact been around for centuries. Criminals throughout history had to conceal the source of newly acquired wealth in order to run away prosecution for the predicate crime. However, the magnitude of the problem has escalated out of all proportion. Former US Secretary of State George Shultz summed it up when he stated:

"Today’s criminals make the Capone crowd and the old Mafia look like small time crooks".

Money laundering is one of the ongoing problems facing the international economy, and from the evidence studied while researching this work, it can be seen that while the fundamentals of this crime remains largely the same, technology has offered, and will continue to offer a more sophisticated and circuitous means to convert ill-gotten proceeds into legal tender and assets. The largely unchecked growth of the Internet presents what has been described as the "Armageddon scenario of banking on the 'Net - criminals could have money transferred without any audit trail". There is a total absence of regulation of the Internet and it has been recognised that authorities need to ensure that legislation keeps abreast of technology in order to understand and pick up on any new techniques that professional money launderers may come up with.

There is also a growing realization about the extent that money laundering and its relationship with organized crime are interlinked. The huge profits that accrue to these criminals from such areas as drug trafficking, international

1 http://www.sid.in-berlin.de/nedkelly-world/moneylaunderingbriefhistory.html
2 http://www.laundryman.u-net.com/page14_conclusions.html
fraud, advance fee fraud, long firm fraud, arms dealing, trafficking in human organs and tissue, etc., will be used not only to facilitate ongoing operations, but to consolidate the wealth, prestige and respectability of those in control of the criminal business. Drug trafficking remains the largest single generator of illegal proceeds: more money is spent world-wide on illicit drugs than on food. However, non-drug related crime is increasingly significant.

The characteristics of organized crime are evident in money laundering:

- it is a grouping movement, in that it is carried out often by more than one person;
- it is a criminal activity which is long term and continuing;
- it is a criminal activity which is carried out irrespective of national boundaries;
- it is large scale; and
- it generates profits which are frequently made available for licit use.

These characteristics define a very exacting kind of grave criminal activity which, at its most developed, is highly stylish and multifaceted. The extent of organisation that is displayed in money laundering is therefore of particular concern because of its scale, its competence to exploit and influence the legitimate business world and its capacity for internationalization. These concerns have led to concerted international action for a solution to combat this growing menace called Money Laundering\(^3\). This is particularly evident, not only in the formation of the FATF but also in international agreements and legislation.

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\(^3\) [http://www.sid.in-berlin.de/nedkelly-world/moneylaunderingbriefhistory.html](http://www.sid.in-berlin.de/nedkelly-world/moneylaunderingbriefhistory.html)
7.2 RECOMMENDATIONS:

Based on the detailed research I have carried out I now make the following recommendations:

In an electronic world in which the banking system operates through linked computers 24 hours a day, there must be increased global emphasis upon thorough vetting of personal, company and financial institution accounts at the bank of origin. There is no substitute for a systematically applied know-your-customer policy, especially as applied to those placing currency into the system and converting it to an account susceptible to immediate transfer outside the jurisdiction.

Considerable attention also must be focused by anti-money laundering authorities on establishing international standards, obtaining agreements to exchange information, establishing linkages for cooperative investigations, and overcoming political resistance in various key countries to ensure such cooperation.

Governments need laws and regulations that: establish corporate criminal liability for bank and non-bank financial institutions for money laundering violations; apply to all financial transactions, not just to cash transactions at the teller's window; apply reporting and anti-money laundering measures to serious crimes, not just drug trafficking; criminalize investments in legitimate industry if the investment proceeds were derived from illegal acts; and enable the sharing of financial and corporate ownership information with law enforcement agencies and judicial authorities.

Governments also need strategies that focus on changes in both the operations of financial systems and the methods criminals develop to exploit them-strategies which look at specific governments and specific financial systems.
Over time, a number of specific continuing actions are needed to keep pace with the dynamics of money laundering in a high-tech world. Continuous action is needed on each of the following categories:

1. Adoption and Implementation of International Anti-Money Laundering Standards:

The development of international standards to reduce jurisdictions’ vulnerability to money laundering and to enhance financial, regulatory and law enforcement of anti-money laundering regimes has been at the forefront of the fight against this crime. Accordingly, it is critical that these standards, which continue to be refined and strengthened, be adopted on a global basis. Today, these standards include, among others: the FATF 40 Recommendations, the Aruba 19 Recommendations (CFATF), the OAS Model Regulations on Money Laundering, the Summit of the Americas December 1995 Buenos Aires Communiqué Plan of Action, the European Directive on Money Laundering, and the Basle Principles.

2. Constant Monitoring of Money Laundering Patterns, Trends and Typologies:

More sophisticated techniques, involving both bank and non-bank financial institutions, in a wide array of traditional and non-traditional financial centres, have complicated identification, tracing and investigation. Information exchanges have been improving, but critical gaps in know-how must be closed in tandem with improved cooperation. There is a high priority need to share data, even critical intelligence. The pervasive corruption in some systems remains a barrier to information sharing.

3. Analysis of Money Management Practices:

We need improved information from more countries on what factors influence drug traffickers and their money managers to use particular systems in specific countries, to keep reserves in cash and other monetary instruments, to invest rather than park funds. Interviews of arrested drug money managers are
producing detailed profiles of money management schemes. The best data so far applies to the cocaine trade, but we need to develop the same level of knowledge about heroin and marijuana syndicates.

4. **Tightening Restrictions Against Non-Drug Related Money Laundering and Other Financial Crimes:**

We need to identify the parallels between drug money laundering on the one hand, and non-drug related money laundering and other financial crimes on the other, and achieve an effective international capability to investigate and prosecute all these crimes. While a number of governments are willing to impose new restrictions on drug-related financial crimes, many hesitate to apply such strictures to other non-drug money laundering and other forms of financial crime.

5. **Equating Economic Power with Political Clout:**

The increasing concentrations of wealth among criminal groups in a number of jurisdictions is a concern, not only because of possible impacts on investments, real estate values, legitimate commerce and government integrity, but also because these organizations have the wealth to make large financial contributions to government officials who may compromise decisions in order to assist the criminals. We need to assess the national security, foreign policy, and political implications of these accumulations and transfers of wealth in all financial centres where such wealth is being concentrated. Corrupt officials and non-transparent financial systems represent a continuing threat to democracy and free markets in literally every region of the world.

6. **Eliminating Systemic Weaknesses:**

Banks need to maintain similar records on their financial institution clients as they do for other customers and to report suspicious transactions involving such clients. Some available but underutilized tracking mechanisms include revocation of licenses, changes in ownership and management, levying of
fines, and prosecutions. Perhaps the most intrinsic weakness is the lack of qualified personnel, not only in government regulatory agencies, but also within many banking systems, who are trained not only in implementing and managing such oversight systems, but also in handling today's complex monetary transactions. The enhanced training reported in recent international meetings is encouraging, but more is necessary.

7. **Assessing the Criminal as Entrepreneur:**

We need to explore the extent to which criminal organizations are penetrating legitimate financial and other businesses, using their vast resources to gain control and to influence economic, financial and business decisions. More data and systematic analysis are needed, for example, on the role played by the trafficker and money launderer in foreign exchange markets, including their use of and creation of gray markets. There is good reason to question the overt as well as covert ownership of banks and financial institutions in many parts of the world.

8. **Analyzing the Impact of Money Laundering on National Governments and Economies:**

We need more analysis of the impact of a country's political and structural factors on its receptivity to money laundering and more analysis of the impact of money laundering and political life and economic life of the jurisdiction. Among the questions requiring analysis is the extent to which structural macro-economic factors, such as commodity deflation, sustained high levels of unemployment, and recession make a jurisdiction susceptible to becoming a money laundering haven. At the sectoral level, we need to determine the influence of black markets on legitimate enterprises. At the institutional level, we need to identify the major factors that may influence bankers and other financial managers in some jurisdictions to accept money they have reason to believe is tainted. As we better identify where money laundering is most likely to have a macro-economic or political impact, we need to evaluate the potential effectiveness of economic countermeasures. These could include
limiting or excluding access to the global financial system of entities or states identified as major problems.

9. Regulating Exchange Houses and Remittance Systems:

There is ample evidence that the various underground "hundi", "hawala", and "chop" remittance systems, so essential to economic life in the Middle East, South and East Asia, are being used by drug traffickers, just like the "cambios" of Latin America, and non-bank institutions of all kinds, are being used in the western financial community. They serve vital functions for key sectors of many economies. Systems for regulating the laundering of the proceeds of crime are essential, but they will fail unless they take into account the very informality that makes underground banking effective and desirable.

10. Continuing to focus attention on offshore banking:

The Financial Action Task Force (FATF), working with the Offshore Group of Banking Supervisors (OGBS) and other relevant organizations, have been quite effective in working together, and some of offshore banking centres are either members of FATF or the Caribbean Financial Action Task Force (CFATF) or have participated in FATF/CFATF seminars which provided guidance on adopting and implementing FATF and UN guidance. The agreement in Paris in February 1997 to undertake compatible mutual evaluations of these constituencies should be given a high priority for early implementation. More analysis is needed of the methods used to move money through offshore banks, and OGBS should be supported in its efforts to include as many offshore banking centres as possible within its membership and a parallel effort to evaluate progress by its members.

11. Expanding the global use of the mutual evaluation process:

The CFATF has an on-going mutual evaluation process to assist its members' anti-money laundering regimes, and the Council of Europe is also beginning to implement such a process for jurisdictions in the Newly Independent States of the former Soviet Union (NIS) and in Central and Eastern Europe. These
important regional initiatives should continue apace and can serve as prime examples in spreading money laundering countermeasures to other regions, such as Asia, Africa and the Middle East.

12. Consolidated supervision of the international banking system:

The Basle Principles The Basle Committee on Banking Supervision released its Core Principles for Effective Banking Supervision in September 1997. This document establishes 25 Core Principles to serve as a basis for supervision in all countries. They are comprehensive in their coverage, addressing the preconditions for effective banking supervision, licensing and structure, prudential regulations and requirements, methods of ongoing banking supervision, information requirements, formal powers of supervisors and cross-border banking. Principle 15 requires banking supervisors to determine that the banks they supervise have adequate policies, practices and procedures in place, including strict "know your customer" rules that promote high ethical and professional standards in the financial sector and prevent the banks from being used, intentionally or unintentionally, by criminal elements. Supervisory authorities throughout the world will be encouraged to endorse the Principles by no later than October 1998. The Principles have been designed to be verifiable by supervisors, regional supervisory groups, and the market at large. The Basle Committee will play a role, together with other interested organizations, in monitoring progress made by individual countries in implementing the Principles.

13. Adopting Information Standards:

The adoption by governments of information standards such as those recommended by FATF and the Society for Worldwide Interbank Financial Telecommunication (SWIFT) network is a welcome, if not yet universal, step. Many more governments need to cooperate in adopting regulations to help curb the misuse of electronic transfer and payment mechanisms to launder illicit funds.
14. Detecting Counterfeit Instruments:

Governments and banking systems must be more vigilant in efforts to detect counterfeit currency and other monetary instruments. The schemes involving counterfeit bonds and other securities, usually as collateral, suggest the need for an international clearinghouse to assist banking and financial systems outside the major centres in determining the authenticity of documents.

15. Identifying and Preventing Financial Crimes:

Governments and banking systems must exert greater efforts to identify and prevent a wide range of financial crimes, beyond drug and non-drug money laundering, including financial frauds such as credit card fraud and prime bank guarantees. The history of such frauds suggests a need for a clearinghouse which can assist the financial services industry in identifying customers and authenticating documents.

16. Ratifying and implementing the 1988 UN Drug Convention:

The United Nations Drug Control Program (UNDCP) should intensify its efforts to ensure that all significant financial centre countries are implementing fully the anti-money laundering and asset forfeiture provisions of the 1988 UN Drug Convention. As an immediate priority, UNDCP should focus on securing ratification or accession of the significant financial centre governments which have not yet become parties to the Convention.

17. Pursuing a Continuously Evolving Strategy:

Nearly every opportunity that global businesses and finance companies have to offer legitimate commerce is today used by money launderers and financial fraudsters. Financial regulation, supervision and enforcement needs to expand to cover transactions that transcend national boundaries and to cover the widening array of financial service businesses. Similarly, there is a growing need to reduce the increasing use of non-financial service providers in the commission of these crimes.
By implementing the recommendations above, the authorities should further strengthen the fight against the money launderer and show them that there is no place to hide.

However, there will have to be political impetus to crystallize strong coordinated overall international action, and to define the best way to associate other countries, including drug-producing countries, to the fight against money laundering.

7.3 POINTS TO PONDER: FUTURE ACTION AREAS:

There are still a number of obstacles in combating money laundering at its present form. For example, tax havens are the ones who benefit most from it; in some of the tax haven countries like the Bahamas and Cayman Islands, the whole economy is dependent on money laundering. No wonder, they are reluctant to participate in any kind of prohibitive measures that could eliminate or proscribe money laundering.

In addition to the services offered by tax havens, there are a number of other factors that needs to be taken into consideration to root out money laundering menace.

They are as follows:

1) DOMESTIC LAWS:

Most of the nations have laws, rules and regulations to counter money laundering. However, there are yet many countries that have not responded to the appeal of passing stringent laws to fight money laundering. These are the countries, which attract the 'dirty money' to their shores during different stages of money laundering cycle. Such regimes with lax controls include tax haven offshore centres.

It is seen that some nations make anti money laundering laws just for the sake of formality without necessary commitment. Money laundering cannot be
controlled till there is will and commitment in every nation. There is therefore an imperative need that each nation follows in letter and spirit the guidelines for model laws on money laundering issued by the international authorities like the Vienna Convention, FATF, IOSCO, Basle Committee.

2) LAW ENFORCEMENT:

Mere passing the laws and framing regulations is not going to help in overcoming the money laundering menace. The bigger concern is enforcement of anti-money laundering laws. There is the need of continuous assessment and review of the shortcomings in implementation of the laws by each nation. The assessment can be in the form of self-review and peer-review. During review, whatever faults and weaknesses are noticed, action plans to rectify and overcome those have to be prepared and acted upon.

The investigation of money laundering cases need inputs on many fronts from respective agencies like customs, income tax, police, financial institutions, intelligence gathering authorities to unravel their full ramifications. Each country therefore urgently needs to create cross-departmental and private-public sector composite entities (like FATF recommended FIU) to counter money laundering. Once FIU is in the place, there has to be constant interaction, cooperation and coordination (exchange of information, and help for investigation) between FIU and other agencies as well as amongst various agencies on the domestic front.

3) SEPARATE CADRE OF AML COMPLIANCE OFFICERS:

There is the need that, managerial staff of sufficient seniority be fully trained in anti-money laundering measures. Once, trained, sufficient numbers of such managers should be appointed as AML Compliance Officers in each financial institution. These officers should be entrusted with AML compliance work only and should not be burdened with normal vigilance functions.
4) INVEST IN AML TECHNOLOGY:

Financial industry needs to invest in the technology and software development to detect the transactions, which could be used by terrorists to finance their operations. But one has to strike a balance between technology and human element. Technology could be effective only when we have trained and committed personnel to make use of it. The challenge lies here to smell and take note of the suspicious activity and then act pro-actively.

5) FINANCIAL INSTITUTIONS:

All financial institutions still do not look fully committed to protect themselves from deleterious and short-term benefits of illicit money. Some of these willingly offer their services to criminals for laundering dirty money for the sake of business. `BCCI Affair' is a glaring example in this respect. Financial institutions of all kinds having potential to be used for money laundering need to be made aware of the pernicious effects of money laundering. In each country they need mandatory be made part of anti-money laundering machinery and culture. •

A reference to Wolfsburg Principles, which are in the nature of voluntary global anti-money laundering guidelines for private banking, is made here. These principles were agreed to by eleven large private commercial banks namely City Bank, JP Morgan, Chase, HSBC, Barclays, Banco Santander Central Hispano, Society General, Deutsche Bank, ABN AMRO, Credit Suisse and UBS. These banks committed themselves to these principles. Thus there will not be any downward competition on the money laundering standards amongst these banks. Rather personnel of these banks will have strong will to share `their experience and develop efficient tools for the future'. We need such commitment amongst all the financial institutions so that there is no abuse of the system by criminals including terrorists. Kenneth Rijock, presently a financial crime consultant says that "now, (let us make) banks the police of the world when it comes to money laundering"
Whichever country or institution does not fall in line, the sanctions could be imposed against those. And lastly, if need be, they could be boycotted. Tax-free offshore Canters and financial institutions incorporated there are a case in point. The FATF's 40 Recommendations and Basle Committee's Statement of Principles can work as model guide.

6) **PUBLIC - PRIVATE PARTNERSHIPS:**

On all fronts of anti-money laundering let more and more partnerships between the institutions/enterprises of government/public sector and private sector are actively encouraged. Such partnerships as is the current practice should not be confined only to the development sector. Till the institutions from both the public and private sector give their best to the joint/cooperative initiatives in the anti-money laundering area, government intelligence/enforcement agencies alone would not be able to successfully tackle the challenge of money laundering.

7) **BILATERAL AND MULTILATERAL COOPERATION:**

It is seen that cooperation on money laundering investigations among the nations is not always natural, willing and forthcoming. Many a time response of one country to other's request is very much delayed and entangled in long institutional, judicial and procedural formalities. By the time such procedural formalities are complied with, either the information asked for is stale or the targeted illicit money is wire transferred elsewhere. Each country therefore needs to give top priority to actively provide full cooperation in investigations of money laundering cases so that the criminals do not get away with their `huge profits'. The nations may therefore enter into bilateral and multilateral treaties binding themselves to cooperate in such investigations.

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4 The FATF's 40 Recommendations Nos. 8 to 29
8) GIVING UP DOUBLE STANDARDS:

The nations on the one hand call for clean world-financial-order, whereas on the other side they and their under-cover (intelligence) agencies use world-financial-system for their clandestine operations; where they not only use dirty devices of money launderers, they are directly or indirectly making use of services of those launderers. For instance CIA of the US and ISI of Pakistan used Swiss and offshore banks and BCCI for their ‘dirty operations’ in the same manner as organized and white-collar criminals do. Many nation governments' enthusiasm for tracing the dirty money is tempered by considerations of real politic, thus becoming a real impediment to root out the menace of money laundering⁵.

All nation governments need therefore to give up such double standards and then work wholeheartedly to wipe out the dark patches of money laundering from the face of international finance and politics.

The alarming growth in the volume of money-laundering and its links with other crimes, including the illicit trade in narcotics, have made it a major global problem.

Launderers are continuously looking for new routes for laundering their funds. Economies with growing or developing financial centres, but inadequate controls are particularly vulnerable as established financial centre countries implement comprehensive anti-money laundering regimes.

Differences between national anti-money laundering systems will be exploited by launderers, who tend to move their networks to countries and financial systems with weak or ineffective countermeasures.

As with the damaged integrity of an individual financial institution, there is a damping effect on foreign direct investment when a country’s commercial and financial sectors are perceived to be subject to the control and influence of organized crime.

⁵ Naylor, 1994:309, 415, 437
The possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. Organized crime can get into financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments. The economic and political influence of criminal organisations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society. In countries transitioning to democratic systems, this criminal influence can undermine the transition. Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue.