Chapter 2
Civil and Criminal Legislation Regarding Money Laundering and the Protection of Cultural Heritage

2.1 Money Laundering: The Crime Defined

A great deal of attention has focused on money laundering due to the highly sophisticated nature of its criminal practices—practices that have been internationally organized and professionally executed for a considerable amount of time.

Organized crime has had a relatively free hand in its efforts to make criminal assets legal. This is made possible by the total ineffectiveness of current national and international laws, which have not kept pace with the changing situation.

Gilson Dipp points out that organized crime takes advantage of the "inertia of States, and their closely-regulated executive, legislative and judicial branches, which are bound by the principle of territoriality—the idea that the law holds only within its boundaries. This is a hopelessly dated notion. Each State must, without giving up its sovereignty, achieve broad international cooperation. To insist on a 19th-century conception of sovereignty is to allow organized crime to exercise its will to the detriment of formal sovereignty."[1]

On the other hand, the understanding that organized crime greatly affects our economic and social fabric led to the realization that a new class of felony had to be clearly established. Such is also the case in the category of financial crimes, which is principally characterized by the absence of social scrutiny.

Francisco de Assis Betti views financial crimes as crimes that are generally "marked by the absence of social scrutiny, due to several factors including an excessive attachment to material things such as profit and egotistical zeal among the owners of capital, who are scornful of the lower classes and confident in their own impunity. Most of these crimes are covered up by collusive public officials. When the crimes do come to light, evidence is poorly produced and the facts are difficult to ascertain, given the specialized assessment required, culminating almost always in impunity."[2]

---

[1] Interview published 11/03/2004 on the *Consultor Jurídico* website. www.conjur.com.br. Accessed June 18, 2012.

[2] In BETTI, Francisco de Assis. *op. cit*., p. 20.

F. M. De Sanctis, *Money Laundering Through Art*, DOI: 10.1007/978-3-319-00173-9_2,

Money laundering was at first linked to drug trafficking. Recognition of the crime of money laundering traces its origins, in Europe, to a 1980 recommendation by the Council of Europe. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention of 1988) is considered the international milestone that paved the way for worldwide political and criminal analysis of the subject.

All efforts to categorize money laundering as a crime on its own were closely associated with the international traffic in narcotics. Two separate aspects appear to have been decisive in bringing about an international mobilization to punish the conversion of the proceeds of criminal drug trafficking into apparently legal wealth.

The first is the predictable inefficacy of the methods used in the war on drugs. The second factor stems from the economic impact that the movement of so-called "narcodollars" has on the economies of many countries—enough to interfere greatly with the normal course of production, competition and consumption.

Thus, there was a strong international push for the adoption of a means to combat money laundering. The United Nations Vienna Convention of 1988 provided an international legal framework, although it was specifically organized to battle the traffic of narcotic drugs and psychotropic substances.

The failure of traditional legislation to deal with these new issues was well known. It was a constant concern in many countries in their struggle against serious crime because permitting the flow of illegal capital poses a threat to everyone and undermines the confidence in law enforcement institutions.

Mireille Delmas-Marty and Geneviève Giudicelli-Delage assert that "beginning in the late 1980s, the international community became aware of the shortcomings—if not futility—of national rights when faced with increasingly effective international crime prospering precisely because of the disparities between, and lack of harmony among, national legislative bodies…. The UN Convention signed at Vienna on December 20, 1988, was the first response to bring harmony to enforcement."[3]

It is important to take into account that criminalizing money laundering emerged as a measure to inhibit the use and benefit of illegally acquired assets. Thus, it is a crime derived from another, and could not exist without the antecedent crime having been previously committed. It is, in the words of Jean Larguier and Philippe Conte, a "consequential crime," as opposed to behavior preceding or concurrent with the primary act or attempt.[4]

To confidently benefit from its illegal income, organized crime has protected itself well, much like the Government, causing the latter to turn to the most modern mechanisms for combating crime.

Francisco de Assis Betti adds that it is not always "easy for a criminal to use the proceeds of crime." Profligate spending and the eccentricities that always accompany the easy acquisition of money, and immediate purchases way above one's standard of living, are outward signs of wealth which give rise to suspicion,

---

[3] Cf. DELMAS-MARTY, Mireille; GIUDICELLI-DELAGE, Geneviève. *Droit pénal des affaires*. 4th ed. Paris: Presses Universitaire de France, 2000. pp. 309–310.

[4] In CONTE, Philippe; LARGUIER, Jean, *op. cit*., p. 238.

and are conducive to investigations by either police or internal revenue authorities. Experienced criminals therefore try to come up with arrangements for investing their criminal proceeds and work with others inclined to conceal these assets and obliterate the money trails in order to avoid enforcement efforts.[5]

To the extent that society has realized that serious crime can encompass more than just violent crime, more and more States have ratified international regulatory instruments without restrictions, demonstrating that they are no longer willing to tolerate open-ended criminality within their borders.

The links between money laundering and organized crime necessitated immediate and aggressive intervention by governments, not least to ensure their very survival.

Article 3 of the Vienna Convention of 1988 requires that each signatory take all necessary steps to fight drug trafficking and to establish as criminal offenses under domestic law all of the practices enumerated therein. The practices in question are divided into three groups within Section 1 of Article 3. The first group (item "a" of Article 3, Section 1) refers to the drug trafficking itself as it describes production, manufacture, extraction, preparation or sale [3(1)(a)(i)], cultivation [3(1)(a)(ii)], possession or purchase for any of the above purposes [3(1)(a)(iii)], transportation and distribution [3(1)(a)(iv)], and the organization, management or financing of any of the offenses enumerated above [3(1)(a)(v)]. The second group (item "b" of Article 3, Section 1) deals with money laundering whereby all signatory States agree to outlaw the conversion or transfer of property that is derived from offenses provided in item "a" [3(1)(b)(i)] and the concealment or disguise of the true nature, location, disposition or ownership of said property [3(1)(b)(ii)]. Finally, the third group (item "c" of Article 3, Section 1) addresses other types of contact in connection with narcotics trafficking or money laundering, such as the acquisition, possession or use of the proceeds of narcotics trafficking [3(1)(c)(i)], possession of materials or equipment related to narcotics trafficking [3(1)(c)(ii)], inciting or inducing others to commit the offenses therein enumerated [3(1)(c)(iii)], and aiding or abetting the commission of any of the offenses therein enumerated [3(1)(c)(iv)].

Observe that money laundering is in essence a derivative crime because the offense is contingent upon an antecedent crime.

In 1992, in the Bahamas, the OAS General Assembly passed and adopted Model Regulations on money laundering offenses related to drug trafficking, which define, in Article 2, behavior considered unlawful. This led to the drafting of numerous laws in Latin America, including Colombia (Law No. 333 of 1996), Chile (Law No. 9366/1995), Paraguay (Law No. 1015/1997) and Venezuela. Money-laundering legislation was already in place in Argentina, Ecuador, Mexico and Peru before the Model Regulations were adopted in the Bahamas, but after the Vienna Convention.

When the Money-Laundering Law was promulgated in Brazil, the crime in question had already lost its characterization as a crime derived solely from

[5] In BETTI, Francisco de Assis. *op. cit*., p. 39.

drug-trafficking crimes, as was the case in many of the countries that make the offense illegal. For example, Spain, Switzerland, Austria, the United States, Canada, Australia and Mexico no longer classify money laundering as a mere appendage of drug trafficking. Given the evidence that the money-laundering problem is not exclusively a drug trafficking issue, and faced with the deleterious consequences of the entry of the proceeds from certain types of crime into a nation's economy, many legislative bodies began to extend the concept of money laundering by associating it with other types of antecedent crimes.

The crime of money laundering had to be separated from drug trafficking because there was no justification for legislating against only that particular form of illicit enrichment. However, this presented serious questions of legal doctrine, such as the question of what legal interest is actually being protected.

Indeed, when money laundering was a crime exclusively in connection with drugs, it could be argued that the legal justification—albeit in an indirect and reflexive manner—was the same as that for drug trafficking. This is clearly the case in the Vienna Convention, which makes no formal distinction between drug trafficking per se and enrichment therefrom.

Argentine legislation, originally under Article 25 of Law No. 23737/1989 and currently under Article 3 of Law No. 25246/2000, provides a penalty of two to ten years for all who engage in money laundering even without having participated or cooperated in the predicate crime from which the money was obtained. Thus, if a prerequisite for liability for money laundering is the absence of some antecedent narcotics violation, we may infer that this is a case of violation of one and the same criminal legal interest, so as to avoid *bis in idem*.

With the shedding of this exclusive link with the originating crime, many questions emerged as to the legal justification for criminalizing money laundering. Today there is no question that the crime of money laundering falls within the category of financial crimes because of the great effect it has on socio-economic order. There is no doubt that introducing large sums of money that originated in crime into the market interferes with the normal course of production, consumption and competition.

Another difficulty with money laundering is that it is not simple to accomplish, nor does it follow any preset rule. The commission of the crime involves processes that are often complex and sophisticated, with actions taken in a concatenated or scattered manner, all in an effort to make dirty money look legal. One could indeed simply define money laundering as a procedure whereby one transforms goods acquired through unlawful acts into apparently legal goods. However, overriding considerations of legality and legal security do not permit us to make use of such a simple definition.

The crime of money laundering, classically speaking, involves three stages of conduct, namely: concealment or placement, in which goods acquired by unlawful means are made less visible; monitoring, dissimulation or layering, in which the money is severed from its origins, removing all clues as to how it was obtained; and integration, in which the illegal money is reincorporated into the economy after acquiring a semblance of legality. Added to this is the recycling stage, which consists of wiping out all records of those previous steps completed.

Faced with the complexity of the various forms of conduct and processes comprising money laundering, one is struck by the almost complete impossibility of imposing legal restraints other than through combined means, by proscribing more than one form of conduct, and open-ended means, since the large number of activities described in the Vienna Convention and adopted by most countries calls for intervention for full classification within the limits therein imposed. Additionally, money laundering is always a derivative crime, so that it must necessarily be connected, to a greater or lesser extent, to its antecedent crime. All of these issues give innumerable peculiarities to the crime of money laundering, peculiarities that must be gradually sorted out by jurisprudence or case law.

In Brazil's case, money laundering was not typified in the main body of the Criminal Code, as was done, for instance, in the United States (in 18 U.S.C. § 1956). This poses an undeniable difficulty, for if the crime in question were codified, it would have to be promptly adapted to the principles and rules of the Criminal Code. Because this system is integrated and hierarchical, there would be no margin for unjustifiable exceptions. Such is the case in France, Italy, Switzerland and Colombia.

Created in December of 1989 by the seven richest countries in the world (G-7[6]), the Financial Action Task Force (FATF, or *Groupe d'Action Financière sur le blanchiment des capitaux*—GAFI), organized under the aegis of the Organization for Economic Cooperation and Development (OECD), has a mandate to examine, develop and promote policies for the war on money laundering. It initially included twelve European countries along with the United States, Canada, Australia, and Japan. Other countries joined afterward (including China in 2007), as well as international organizations (the European Commission and the Gulf Cooperation Council). Brazil joined, initially as an observer and later as a full member, at the XI Plenary Meeting, held in September of 1999.

The OECD is an intergovernmental agency organized to promote measures for the fight against money laundering. Its list of Forty Recommendations, drafted in 1990, was revised in 1996. Another eight recommendations were drawn up in 2003 (on financing of terrorism) and a ninth in 2004 (also about financing of terrorism). On February 16, 2012, all forty-nine recommendations were revised, improved and condensed into forty.

These recommendations are not binding, but they do exert strong international influence on many countries (including nonmembers) to avoid losing credibility, because they are recognized by the International Monetary Fund and the World Bank as international standards for combating money laundering and the financing of terrorism. In the 1996 version, they were adopted by 130 countries. In the 2003–2004 version, they were adopted by over 180 countries.

It is important to mention that the idea of improving and condensing the Recommendations to avoid distortion and duplication, and to also incorporate the nine Special Recommendations on the financing of terrorism into the basic text

[6] United States, Japan, Germany, France, United Kingdom, Italy and Canada, which has since been joined by Russia (G8).

(Forty Recommendations), originated in Brazil when it presided over the FATF between 2008 and 2009.

Some initial resistance to altering wording that had already become assimilated was overcome. No substantial changes were offered, and all focus was on fine-tuning the Recommendations to make them clearer and more objective, and as a result more easily enforceable. All of this changed and facilitated matters, including the member nations' methods of evaluation.

The following are relevant provisions contained in the 2012 version of the Recommendations:

Countries should identify, assess, and understand the money laundering and terrorism financing risks of the country, and take action to mitigate them (*Risk-Based Approach—RBA*, Recommendation No. 1). Countries should ensure cooperation among policy-makers, the Financial Intelligence Units (FIUs) and law enforcement authorities, and domestic coordination of prevention and enforcement policies (Recommendation No. 2). The current text of Recommendation No. 2 (this was in Recommendation No. 31 before) adds legitimacy to Brazil's National Strategy for the Fight against Corruption and Money Laundering (ENCCLA).[7] The crime of

[7] According to a study conducted by the Brazilian Federal Justice Council's Judiciary Studies Center on the effectiveness of Law No. 9613/1998, through September of 2001 the Brazilian Federal Police had conducted only 260 police investigations, and most (87%) of the federal judges polled in that study answered that there were no active proceedings in their courts relating to money laundering through 12/31/2000, the date on the survey form (FEDERAL JUSTICE COUNCIL, *A critical analysis of the money laundering law*). In 2002 and 2003, with Minister Gilson Dipp of the Appellate Court presiding, and participation from representatives of the Federal Courts, the Office of the Federal Prosecutor, the Federal Police and the Brazilian Federation of Bank Associations (FEBRABAN), the Council drew up substantive recommendations to improve investigation and prosecution of criminal money laundering by engaging the cooperation of various government departments responsible for implementing the law. It was embryonic to the ENCLA (National Strategy for the Fight against Money Laundering and Recovery of Assets), later renamed the National Strategy for the Fight against Corruption and Money Laundering (ENCCLA). The ENCCLA is made up of the primary agencies involved in the matter, which are the Office of the Attorney General, the Council for Financial Activities Control (COAF), the Justice Ministry's Asset Recovery and International Legal Cooperation Council Department (DRCI), the Federal Justice Council (CJF), the Office of the Federal Prosecutor (MPF), the Office of the Comptroller-General (CGU) and the Brazilian Intelligence Agency (ABin), annually setting policy for all actions to be carried out in the execution of Law No. 9613/1998, on account of private and uncoordinated—if not conflicting—agendas having been observed among government agencies responsible for said enforcement. A meeting was held on December 5–7, 2003, in Pirenópolis in the State of Goiás, to develop a joint strategy for the fight against money laundering. To monitor progress toward the goals set forth in the objectives of access to data, asset recovery, institutional coordination, qualification and training and international efforts and cooperation, an Integrated Management Office for the Prevention of and Fight against Money Laundering (GGI-LD), was created in compliance with Target 01 of ENCLA/2004. This Office is composed of the primary government agencies, as well as the Judicial Branch and Attorney General's Office, conducting both breakout sessions and plenary meetings on various occasions. Every year they define new Actions (formerly Targets), in hopes that the conclusions arrived at during their work sessions will be transformed into substantive outcomes.

money laundering should apply to predicate offenses, which may include all serious offenses, any of a long list, or any offenses punishable by a maximum penalty of more than one year, and criminal liability should apply to all legal persons, irrespective of any civil or administrative liabilities (Recommendation No. 3). No criminal convictions should be necessary for asset forfeiture. Furthermore, with reference to the Vienna Convention (1988), the Terrorist Financing Convention (1999), and the Palermo Convention (transnational organized crime, 2000), the burden of proof on confiscated goods should be reversed (Recommendation No. 4). Countries should criminalize the financing of terrorism (Recommendation No. 5). Countries should implement financial sanction regimes to comply with UN Security Council resolutions on terrorism and its financing (Recommendation No. 6), and on the proliferation of weapons of mass destruction and its financing (Recommendation No. 7). Countries should establish policies to supervise and monitor non-profit organizations, so as to obtain real-time information on their activities, size and other important features, such as transparency, integrity and best practices (Recommendation No. 8). Financial institution secrecy laws, or professional privilege, should not inhibit the implementation of the FATF Recommendations (Recommendation No. 9). Financial institutions should be required to undertake customer due diligence and to verify the identity of the beneficial owner, and be prohibited from keeping anonymous accounts or those bearing fictitious names (Recommendation No. 10). Financial institutions should also be required to maintain records for at least five years (Recommendation No. 11) and closely monitor politically exposed persons (PEPs), that is, persons who have greater facility to launder money, such as politicians (in high posts) and their relatives (Recommendation No. 12). The 2012 version expanded the definition of PEPs to include both nationals and foreigners, and even international organizations.

Other provisions worth mentioning include:

Financial institutions should monitor wire transfers, ensure that detailed information is obtained on the sender as well as on the beneficiary, and prohibit transactions by certain people pursuant to UN Security Council resolutions, such as resolution 1267 of 1999 and resolution 1373 of 2001, for the prevention and suppression of terrorism and its financing (Recommendation No. 16). Designated non-financial businesses and professions (DNFBPs), such as casinos, real estate offices, dealers in precious metals or stones, and even attorneys, notaries and accountants, must report suspicious operations, and those who report suspicious activity must be protected from civil and criminal liability (Recommendation No. 22, in combination with Nos. 18 through 21). Countries should take measures to ensure transparency and obtain reliable and timely information on the beneficial ownership and control of legal persons (Recommendation No. 24), including information on trusts—settlors, trustees and beneficiaries (Recommendation No. 25). Financial Intelligence Units (FIUs) must have timely access to financial and administrative information, either directly or indirectly, as well as information from law enforcement authorities in order to fully perform their functions, which include analysis of suspicious statements on operations (Recommendations Nos. 26, 27, 29 and 31). Casinos must be subject to effective supervision and rules to prevent money laundering (Recommendation No. 28). Countries should establish the means for

conducting freezing and seizure operations, even when the commission of the predicate crime may have occurred in another jurisdiction (country), and implement specialized multidisciplinary groups or task forces (Recommendation No. 30). Authorities should adopt investigative techniques such as undercover operations, electronic surveillance, access to computer systems, and controlled delivery (Recommendation No. 31). The physical transportation of currency should be restricted or banned (Recommendation No. 32). Proportionate and dissuasive sanctions should be available for natural and legal persons (Recommendation No. 35). There should be international legal cooperation, pursuant to the Vienna Convention (international traffic, 1988), Palermo Convention (transnational organized crime, 2000) and Mérida (corruption, 2003) (Recommendation No. 36). Countries should provide mutual assistance to facilitate a quick, constructive and effective solution (Recommendation No. 37), including the freezing and seizure of accounts, even with no prior conviction (Recommendation No. 38). Countries should quickly execute extradition requests (Recommendation No. 39), and spontaneously take action to combat predicate crimes, money laundering, and terrorism financing (Recommendation No. 40).

Thus, as of the 2012 revision, the Recommendations set forth general guidelines, with details given in Interpretative Notes. The glossary has made it easy to place the standards adopted in proper perspective and also provides important clarifications.

The Interpretative Notes are best described as a sort of common ground made to fit both common law and civil law countries.

One important innovation, albeit not the purpose of the February 2012 review, was pointing out the need for countries to adopt the Risk-Based Approach (RBA). In other words, before applying certain measures, standards must be established to guide public policies for preventing and combating money laundering, terrorism financing and (this is new) the proliferation of weapons of mass destruction.

With regard to politically exposed persons (PEPs), what was once a simple requirement to monitor certain foreign nationals or authority figures now refers to domestic entities, understood to include international organizations.

The FATF pressed for the creation of similar agencies known as FATF-Style Regional Bodies (FSRBs), intended to integrate the global network for the war on money laundering, including:

(a) *Asia–Pacific Group on Money Laundering* (APG, which includes Australia, Bangladesh, Brunei, Cambodia, Taiwan, Cook Islands, Fiji, Hong Kong, India, Indonesia, Japan, South Korea, Malaysia, Marshall Islands, Mongolia, Nepal, New Zealand, Niue, Pakistan, Palau, the Philippine Islands, Samoa, Singapore, Sri Lanka, Thailand, Tonga, the United States and Vanuatu);
(b) *Eurasian Group* (EAG, including Belarus, Kazakhstan, Russia, Kyrgyzstan, the People's Republic of China and Tajikistan);
(c) *Middle East and North Africa Financial Action Task Force* (MENAFATF, made up of Algiers, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, Yemen and the United Arab Emirates);
(d) *Caribbean Financial Action Task Force* (CFATF or GAFI CARAÏBE, for Central America and the Caribbean, namely Antigua and Barbuda, Anguilla,

Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman, Costa Rica, Dominica, the Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, the Dutch Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, the Turks and Caicos Islands, Trinidad and Tobago, and Venezuela);

(e) *Moneyval* (Council of Europe, composed of Albania, Andorra, Armenia, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lichtenstein, Lithuania, Moldavia, Malta, Monaco, Poland, Romania, Russia, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Macedonia and the Ukraine);

(f) *Eastern and Southern Africa Anti-Money Laundering Group* (ESAAMLG: Botswana, Kenya, Lesotho, Malawi, Mozambique, Mauritius, Namibia, South Africa, Swaziland, Seychelles, Uganda, Tanzania, Zambia and Zimbabwe);

(g) *Financial Action Task Force on Money Laundering in South America* (GAFISUD, composed of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Mexico);

(h) *Intergovernmental Action Group against Money Laundering in West Africa* (GIABA);

(i) Central African Action Group against Money Laundering (GABAC).[8]

A group resembling an FSRB is the Offshore Group of Banking Supervisors—OGBS (composed of Aruba, Bahamas, Bahrain, Barbados, Bermuda, Cayman Islands, Cyprus, Brault, Guernsey, Hong Kong, the Isle of Man, Jersey, Labuan, Malaysia, Macau, Mauritius, Netherlands Antilles, Panama, Singapore and Vanuatu).

The purpose of these groups is to promote the adoption and effective implementation of the Forty Recommendations, requiring member nations to accept multilateral oversight and mutual evaluations.

The FATF does not appear particularly concerned with art, for in recommending the compulsory reporting of suspicious operations on the part of designated non-financial businesses and professions (DNFBPs), at no time did it mention that sector. It went no further than to include casinos, real estate offices, dealers in precious metals or stones, attorneys, and notaries and accountants, suggesting that they be subject to internal controls, and recommending protection of whistleblowers from civil and criminal liability (Recommendation No. 22, together with Nos. 18–21).

Despite estimates running into the billions for the underworld dealing in works of art,[9] the Financial Action Task Force has not addressed the problem.

---

[8] See 2010–2011 Annual Report for the Financial Action Task Force/Groupe d'Action Financière. www.fatf-gafi.org. Accessed May 20, 2012.

[9] Cf. Robert Spiel Jr. places the annual amount involved in global theft of artworks at $1.3 billion (in *Art Theft and Forgery Investigation*, pp. 31 and 237–238). The FBI estimates that the international traffic in artworks amounts to some $6 billion annually, while UNESCO reportedly claims the amount is in excess of $1 billion a year (Cf. Tailson Pires Costa and Joceli Scremin da Rocha, *A incidência da Receptação e do Tráfico Ilícito de Obras de Arte no Brasil*. https://www.metodista.br/revistas/revistas-ims/index.php/…/523, pp. 264–265).

2.2 International Laws and Treaties Regarding Money Laundering and the Protection of Cultural Heritage: A General Perspective

The United Nations Educational, Scientific and Cultural Organization (UNESCO) drafted a Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property on November 14, 1970. It sought to prevent the illegal traffic in artwork by requiring special export licenses and an administrative control system to enable Member States to prevent illegal importation and exploitation of artworks.[10]

The Bureau of Educational and Cultural Affairs of the United States Department of State provides important support to the claims of States for violations of the aforesaid UNESCO Convention. In 2012, it allocated $6 million for

[10] Article 6 reads: *The States Parties to this Convention undertake: (a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations; (b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate; (c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.* Article 7 reads: *(a) To take necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States; (b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution; (ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.* Article 10 reads: *(a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject; (b) to endeavor by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.*

the conservation of artworks (not just within the United States) and another $1 million for training government agencies, including federal prosecutors.[11]

Another important international convention likewise intended to combat the illegal trade in artworks is the UN Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT). Its preamble addresses the concerns over the illegal trade in cultural objects,[12] and requires Member States to establish common rules for restitution or repatriation for the return of the property illegally removed. Observe that the Convention requires the return even of articles acquired in good faith.[13]

In the wake of recommendations contained in the Convention Concerning the Protection of the World Cultural and Natural Heritage, drafted at the UNESCO General Conference on October 17–November 21, 1972, and dated 11/23/1972,[14] it became important for Governments to confer upon artwork "a function in the life of the community" (Article 5).

It is indeed incumbent upon all to protect the cultural heritage of mankind, as provided in the Convention Concerning the Protection of the World Cultural and Natural Heritage, specifically:

> Article 4:
> Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage… situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and cooperation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.
>
> Article 5:
> To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage… each State Party to this Convention shall endeavor… d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage.
>
> Article 11 – 1:
> Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural

[11] BUREAU of Educational & Cultural Affairs. United States Department of State, meeting with Margaret G.H. MacLean, Senior Analyst, on 06/21/2012, at 3 PM, in SA5, Fifth Floor; and exchanges.state.gov/heritage/culprop/review.html. Accessed June 22, 2012.

[12] "Deeply concerned by the illicit trade in cultural objects and the irreparable damage frequently caused by it, both to these objects themselves and to the cultural heritage of national, tribal, indigenous or other communities, and also to the heritage of all peoples, and in particular by the pillage of archaeological sites and the resulting loss of irreplaceable archaeological, historical and scientific information."

[13] Article 3: *(1) The possessor of a cultural object which has been stolen shall return it. (2) For the purposes of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place.*

[14] The United States has been a party to it since 12/07/1973 (date of ratification), and Brazil since 09/01/1977 (date of acceptance; by Legislative Decree No. 74 dated 06/30/1977, only as of 11/07/1977). (Cf. http://whc.unesco.org/en/statesparties. Accessed May 21, 2012).

> heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance.
>
> Article 11 – 2:
> On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of 'World Heritage List,' a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years.

Article 15 created the Fund for the Protection of the World Cultural and Natural Heritage called "The World Heritage Fund," and Article 16 provides, in addition to voluntary contributions, a pledge to deposit contributions to the Fund every two years.[15] Finally, Article 29 requires the State Parties to prepare reports for the General UN Educational, Scientific and Cultural Organization, which are then brought to the attention of the World Heritage Committee.

Such measures were adopted to thwart ordinary crime against works of art (robbery, theft, receiving, forgery), but were not thought out in terms of money laundering and terrorism financing. Commission of ordinary crime sometimes constitutes a single element in money laundering, and the art used for this crime is only for appearances of legitimacy and legal activities.

Then, the United Nations Convention against Transnational Organized Crime was convened in Palermo on 11/15/2000,[16] following the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 12/20/1988 (Article 5).[17] Both global regulatory guidelines require the State Parties to make laundering the proceeds of crime itself a crime (Article 6), and provide for the confiscation of "proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds" [Article 12(1)(a)]. Parallel to that is the United Nations Convention against Corruption held at Mérida in 2003 (Article 31, item 5—confiscation and seizure of money in an amount equivalent to the proceeds of crime).[18]

Items 2, 3 and 4 of Article 12 of the United Nations Convention against Transnational Organized Crime held at Palermo correspondingly assert that "State Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation; if the proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds; if proceeds

---

[15] With reservations, on the part of Brazil (in the ratifying decree).

[16] In Brazil, promulgated by Decree No. 5015 dated 03/12/2004, and passed by Legislative Decree No. 231 dated 09/29/2003.

[17] Ratified by Brazil by Decree No. 154 dated 06/26/1991.

[18] Ratified by Brazil by Decree No. 5687 dated 01/31/2006.

of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds."

Such provisions accurately depict the new world order with respect to combating organized crime, including narcotics trafficking and corruption.

It is sometimes alleged by defendants that the property seized has no links to the crime. It is then up to the judge to properly estimate the amount that flowed from the proceeds of the unlawful conduct imputed, mindful of the need to enforce the requirements set forth in the foregoing Conventions, as well as Article 387, Section IV, of the Brazilian Code of Criminal Procedure, which requires that the sentence be fixed at the "minimum amount required for reparation of damages caused by the infraction, taking into account all losses suffered by the aggrieved party," in order to put the confiscation into effect—that is, to secure definitive forfeiture of that amount for the injured party or to the State as indemnification for damages caused by unlawful conduct.

Under Article K.3 of the Treaty of Maastricht (1992), European Union Member States agreed to adopt a common policy in their domestic efforts, and the 1998 joint action (98/773/JHA) sought to include money laundering as a type of organized crime. This was revoked in part by the Framework Decision[19] of the European Union Council dated 06/26/2001, whereby Member States agreed not to make reservations on Articles 2 and 6 of the European Convention of 1990 (including the rule that provides for money laundering resulting generically from criminal conduct), since only *serious infractions* can be at issue, and provided measures for confiscation and criminal action on the proceeds of crime having a maximum penalty of greater than one year, or crimes considered serious (Article 1).

The Framework Decision of 02/24/2005 (2005/212/JHA) on forfeiture of products, instruments and property related to the crime, allows "extended powers of confiscation" aimed not only at forfeiture of assets of all those found guilty, but also assets acquired by their spouses or companions, or whose property may have been transferred to some company under the influence or control of the guilty parties—for organized criminal practices such as counterfeiting, trafficking in persons or assisting illegal immigration, sexual exploitation of children and child pornography, traffic in narcotics, terrorism, terrorist organizations and money laundering, provided they be punishable by a sentence of a maximum of at least five to ten

[19] Decision and framework decision (Title VI of the European Union Treaty): With the entry into force of the Treaty of Amsterdam, these new instruments under Title VI of the European Union Treaty ("Provisions on Police and Judicial Cooperation in Criminal Matters") replaced joint action. Framework decisions are used to bring together the legislative and regulatory provisions of Member States. They are proposed on a motion by the Commission or by a Member State, and must be unanimously adopted. They are binding on Member States as to results to achieve, and leaves it to national courts to decide on the manner and the means of achieving them. Decisions address all other goals besides the conference committee work on legislative and regulatory provisions of the Member States. Decisions are binding and all measures necessary to carry out the decisions within the scope of the European Union are adopted by the Council through qualified majority vote.

years of imprisonment, or, in the case of laundering, with a maximum penalty of at least four years of imprisonment, and by their nature generating financial income (Article 3, Sections 1–3).

Note that the Palermo Convention provides for international cooperation on matters of confiscation [Article 13(1)], and expressly provides that the proceeds of crime be allocated to finance a United Nations Organizations Fund, so that it may assist Member States in obtaining the wherewithal with which to enforce the Convention [Articles 14(3)(a) and 30(2)(c)].

Artworks could well be included in the scope of this Convention if one could point to convincing evidence that they might be related to the commission of antecedent crimes and to money laundering. If the art market were indeed being used for purposes of money laundering, those circumstances would justify judicial search and seizure, and possibly confiscation as well.

2.3 National Laws and Enforcement: A Perspective from the United States and Brazil

In the United States, legislation fully supports confiscation of property in both administrative and criminal proceedings. The United States Code, Title 19 § 1595a (c), establishes customs forfeiture by providing that "[m]erchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows: (1) The merchandise shall be seized and forfeited if it… (a) is stolen, smuggled, or clandestinely imported or introduced." There is a "failure to declare" law in the United States, 19 U.S.C. § 1497, which provides for forfeiture of any article not declared or mentioned orally or in writing.[20]

The U.S. Cultural Property Implementation Act of March 1983 (19 U.S.C. §§ 2601—2613), provides a series of administrative measures. Section 2609(a) of the Act establishes that "[a]ny designated archaeological or ethnological material or article of cultural property which is imported into the United States in violation of Section 2606 of this title or Section 2607 of this title[21] shall be subject to seizure and forfeiture."

The U.S. criminal code (18 U.S.C.) establishes as a crime:

> § 542 (Entry of goods by means of false statements)
> Whoever enters or introduces… into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal,… or makes any false

[20] 19 U.S.C. § 1497: *(a) In general (1) Any article which—(A) is not included in the declaration and entry as made or transmitted; and (B) is not mentioned before examination of the baggage begins—(i) in writing by such person, if written declaration and entry was required, or (ii) orally, if written declaration and entry was not required; shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.*

[21] These deal with stolen works.

statement in any declaration without reasonable cause to believe the truth of such statement, or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement [shall be guilty of a crime].

§ 545 (Smuggling goods into the United States)
Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been brought into the United States contrary to law [shall be guilty of a crime]. Merchandise introduced into the United States in violation of this section shall be forfeited to the United States.

§ 1956 (Money Laundering)
(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—(A) (i) with the intent to promote the carrying on of a specified unlawful activity; or with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or knowing that the transaction is designed in whole or in part—(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. (…) (2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States—(A) with the intent to promote the carrying on of specified unlawful activity; or (B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part— (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or (ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both (…).[22]

§ 1957 (Engaging in monetary transactions in property derived from specified unlawful activity).
Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).[23]

---

[22] 18 U.S.C. § 1956: *(a) (1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—(A) (i) with the intent to promote the carrying on of specified unlawful activity; or (ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or (B) knowing that the transaction is designed in whole or in part—(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or (ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the*

(Footnote 22 continued)
proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement. (2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States— (A) with the intent to promote the carrying on of specified unlawful activity; or (B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part— (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or (ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true. (3) Whoever, with the intent—(A) to promote the carrying on of specified unlawful activity; (B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or (C) to avoid a transaction reporting requirement under State or Federal law, conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section. (b) Penalties.—(1) In general.—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—(A) the value of the property, funds, or monetary instruments involved in the transaction; or (B) $10,000. (2) Jurisdiction over foreign persons.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States; (B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or (C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States. (3) Court authority over assets.—A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section. (4) Federal receiver.—(A) In general.—A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity. (B) Appointment and authority.—A Federal Receiver described in subparagraph (A)—(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case; (ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and (iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of

(Footnote 22 continued)
submitting requests to obtain information regarding the assets of the defendant—(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or (II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General. (c) As used in this section—(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7); (2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction; (3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected; (4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree; (5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery; (6) the term "financial institution" includes— (A) any financial institution, as defined in section 5312 (a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and (B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101); (7) the term "specified unlawful activity" means—(A) any act or activity constituting an offense listed in section 1961 (1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31; (B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act); (ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16); (iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978); (iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official; (v) smuggling or export control violations involving—(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or (II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774); (vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or (vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts; (C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); (D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified),

(Footnote 22 continued)
section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(l) (relating to the unlawful importation of firearms), section 924 (n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38 (c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than $5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons) environmental crimes (E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or (F) any act or activity constituting an offense involving a Federal health care offense; (8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory,

(Footnote 22 continued)
or possession of the United States; and (9) the term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity. (d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section. (e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency. (f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and (2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000. (g) Notice of Conviction of Financial Institutions.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution. (h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy. (i) Venue.—(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—(A) any district in which the financial or monetary transaction is conducted; or (B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted. (2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place. (3) For purposes of this section, a transfer of funds from one place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2) any portion of the transaction may be charged in any district in which the transaction takes place.

[23] 18 U.S.C. § 1957: *(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b). (1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both. (2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction. (c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity. (d) The circumstances referred to in subsection (a) are—(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or (2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class*

§ 2314 (Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting)
Whosoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, valued at $5,000 or more, knowing the same to have been stolen, converted or taken by fraud [shall be guilty of a crime].

Through this legislation, the United States Attorney's Office for the Southern District of New York was able to seize, confiscate or repatriate many works of art either stolen or fraudulently sent to the United States under false or defective documentation.[24]

(Footnote 23 continued)
described in paragraph (2)(D) of such section). (e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. (f) As used in this section—(1) the term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956 (c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956 (c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution; (2) the term "criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense; and (3) the terms "specified unlawful activity" and "proceeds" shall have the meaning given those terms in section 1956 of this title.

[24] The chief prosecutor for the Asset Forfeiture Unit, Sharon Cohen Levin, provided the author with substantial and pertinent information (in her office at One Saint Andrews Plaza) as to claims filed for recovery of goods, among them: United States v. An Antique Platter of Gold, Known as a Gold Phiale Mesomphalos, 400 B.C.; United States v. Tenth Century Marble Wall Panel Sculpture of a Guardian from the Tomb of Wang Chuzhi; United States v. Paintings Known as *Venus and Adonis* and *Hercules and Omphale* by Andrea Appiani; United States v. Head of Alexander the Great; United States v. A Silver Rhyton in the Shape of a Griffin, 700 B.C.; United States v. A South Arabian Alabaster Plaque or Stele, 300–400 A.D.; United States v. A Colossal Roman Marble Portrait of the Emperor Trajan; United States v. One Egyptian Alabaster Offering Vessel; United States v. A Bronze Statute of Zeus; United States v. An Archaic Etruscan Pottery Ceremonial Vase, 7th Century B.C., and A Set of Rare Villanovan and Archaic Etruscan Blackware with Buchero and Impasto Ware, 8th–7th B.C.; United States v. Indian Artifacts; United States v. Marble Sarcophagus of Child; United States v. A Pair of Gold Earrings; United States v. Roman Marble Portrait Head of the Emperor Marcus Aurelius (sold at Christie's of New York); United States v. Decrees of Anna Ioannovna to Kaysarov (1733), Aleksandr I, II and III (1825, 1867, 1892), Nicolay I (June and April, 1832) and Empress Catherine II (1762); United States v. The Painting Known as *Le Marché*, created by Camille Pissarro; United States v. Lega ed Il Cigno (Leda and the Swan), an oil on copper painting by Lelio Orsi; United States v. One Julian Falat painting entitled *Off to the Hunt* and One Julian Falat painting entitled *The Hunt*; United States v. The painting known as *Hannibal*, by Jean-Michel Basquiat, et al. as *Modern Painting with Yellow Interweave*, by Roy Lichtenstein, *Figure Dans Une Structure* by Joaquin

In Brazil, Bill No. 3443/2008, converted into Law No. 12683 of 07/09/2012, which amended Law No. 9613 of 03/03/1998, was hotly debated by many agencies that take part in the National Strategy for the Fight against Corruption and Money Laundering (ENCCLA). The ENCCLA comprises over sixty members, including many government agencies, such as Brazil's Federal Revenue Department, the Central Bank, the Ministry of Justice, State and Federal Attorneys' Offices, the Federal Police, and State and Federal Courts. The ENCCLA strives to honor all international commitments entered into by Brazil, and keeps up with all countries that are members of the Financial Action Task Force on Money Laundering (FATF).[25]

Among its recommendations is a need to close the loopholes that make money laundering feasible. Another recommendation is to require individuals in significant levels of trust (auditors, bank managers, insurance, real estate and capital goods brokers, etc.) to submit Suspicious Activity Reports to Financial Intelligence Units, which are key to all crime fighting systems.

In closing with a set list of antecedent crimes, it attempted to fine-tune and update the law to the most modern standards of money-laundering legislation, and thus provided preemptive asset forfeiture. Just as positive was the change requiring Suspicious Activity Reports from boards of trade, recordkeeping entities and all those involved in mediating, brokering or negotiating the trade of athletes. It was lax, however, in not including, for example, notification requirements on the part of sports clubs, sports federations and sports confederations.

By the new language imparted by Law 12683 of 09/07/2012, the crime of money laundering is now defined as:

> Art. 1 Concealing or disguising the nature, origin, location, disposition, movement or ownership of goods, securities or money derived directly or indirectly from a criminal offense.
>
> Penalty: Three to ten years of imprisonment and a fine.
>
> § 1 The same penalty shall apply to anyone who, in order to conceal or disguise the use of goods, securities or money arising directly or indirectly from a criminal offense:
>
> I – converts them into legal assets;

(Footnote 24 continued)

Torres-Garcia, *Composition Abstraite* by Serge Poliakoff; *Roman Togatus*, unattributed Sculptor (Edemar Cid Ferreira Collection); United States v. One Terra Cotta Urn from Italy dating from the Ninth Century B.C.; United States v. Portrait of A Musician Playing A Bagpipe (Holocaust Property); United States v. An Oil Painting Known as Saint Hieronymus (Holocaust Property); United States v. Ancient Hebrew Bible, 1516 (Holocaust Property); United States v. Portrait of Wally, a painting by Egon Schiele (Holocaust Property).

[25] The most recent Argentine anti-money-laundering law (Law No. 26683 of 06/21/2011), in addition to including self-laundering, increases the minimum sentence from two years to three years (while keeping the maximum at ten years), requires the laundered money to have originated from a "criminal act" instead of a "crime," adds language to the Criminal Code making corporations subject to criminal liability, and establishes forfeiture of assets with no need for criminal conviction, provided illegal origin can be established, including cases of bankruptcy, flight, statutory limitations or the existence of any reason for suspending or terminating criminal proceedings, or when the defendant acknowledges the illegal source of the goods. (INFORME ANNUAL 2011. *Unidad de Información Financiera*. Buenos Aires: Departamento de Prensa, Ministerio de Justicia y Derechos Humanos/Presidencia de la Nación, 2012, pp. 24–26.).

II – acquires, receives, trades, negotiates, gives or receives them in guarantee or in bailment, keeps them on deposit, negotiates or transfers them;

III – imports or exports goods at a price other than their true value.

§ 2 The same penalty shall also apply to anyone who:

I – makes use – in financial or business dealings – of goods, securities or amounts they know or have reason to know are the proceeds of crime;

II – is a member of any group, association or office while aware that its primary or secondary activity involves the commission of crimes as provided herein.

§ 3 Such attempts are punishable pursuant to the sole paragraph of Article 14 of the Criminal Code.

§ 4 The penalty shall be increased by one-third to two-thirds if the crimes established in this Law are committed as repeat offenses or through a criminal organization.

§ 5 The penalty may be reduced by one-third to two-thirds, and may be served under a work-release or similar program, or the judge may suspend the sentence or instead sentence the defendant to curtailment of rights if the first principal, second principal or accomplice freely cooperates with the authorities, and provides information to assist in the investigation of the crimes, identifies the perpetrators or identifies the whereabouts of the goods, securities or monetary proceeds of the crime.

Brazil's National Institute of Historic and Artistic Heritage (IPHAN) is a federal agency under the Ministry of Culture. Its mandate is to oversee and protect the stewardship of archaeological collections that are federal property (under Article 20, X of the Federal Constitution, and Article 17 of Law No. 3924 of 07/26/1961) and may not be preserved by private entities. It also extends protection to property having historical, artistic and cultural value. The Brazilian Constitution establishes, in Article 20, Section X, that all archaeological and prehistoric sites belong to the Union, and in Article 23, Sections III and IV, that all governing bodies (the Union, the states, the Federal District and the municipalities) shall be responsible for the protection of "documents, works and other assets of historical, artistic or cultural value (…) and archaeological sites" and also must "prevent the loss, destruction, or changing of the characteristics of works of art and other goods of historical, artistic and cultural value."[26]

[26] The Brazilian Constitution and the framework for cultural protection: *TITLE I Fundamental Principles (…) Art. 4 The international relations of the Federative Republic of Brazil are governed by the following principles: (…) Sole paragraph. The Federative Republic of Brazil shall seek the economic, political, social and cultural integration of the people of Latin America, with a view toward forming a Latin American community of nations. (…) TITLE II Fundamental Rights and Guarantees. CHAPTER I INDIVIDUAL AND COLLECTIVE RIGHTS AND DUTIES. Art. 5 Everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the Country the inviolability of the rights to life, liberty, equality, security and property, on the following terms: (…) LXXIII – any citizen has standing to bring a popular action to annul an act injurious to the public patrimony or to the patrimony of an entity in which the State participates, to administrative morality, to the environment and to historic and cultural patrimony; except in a case of proven bad faith, the plaintiff is exempt from court costs and from the burden of paying the prevailing party's attorneys' fees and costs (…) TITLE III Organization of the State (…) CHAPTER II THE UNION (…) Art. 23 The Union, the States, the Federal District and the Municipalities shall have in common the power: (…) III – protect documents, works, and other assets of historical, artistic and cultural value, monuments, remarkable natural landscapes and archaeological sites; IV – to prevent the loss, destruction, or*

(Footnote 26 continued)
changing of the characteristics of works of art and other goods of historical, artistic and cultural value; V – to furnish means of access to culture, education and science; (…) Art. 24 The Union, the States and the Federal District shall have concurrent power to legislate on: (…) VII – protection of the historical, cultural, artistic, touristic, and scenic patrimony; VIII – liability for damages to the environment, consumers, property and rights of artistic, aesthetic, historical, touristic, and scenic value; IX – education, culture, teaching and sports; (…) CHAPTER IV THE MUNICIPALITIES (…) Art. 30 The Municipalities have the power to: (…) IX – Promote protection of local historical and cultural patrimony, observing federal and state legislation and supervision; (…) TITLE VIII The Social Order (…) CHAPTER III EDUCATION, CULTURE AND SPORTS. Section I EDUCATION (…) Art. 213 Public funds shall be allocated to public schools, and may be directed to community, religious, and philanthropic schools, as defined in law, that: (…) II, § 1 – University research and extension activities may receive financial support from the government. (…) Section II CULTURE. Art. 215 The National Government shall guarantee to all full exercise of their cultural rights and access to sources of national culture, and shall support and grant incentives for appreciation and diffusion of cultural expression. § 1 – The National Government shall protect expressions of popular, indigenous and Afro-Brazilian cultures and those of other participant groups in the process of national civilization. § 2 – The law shall provide for establishing highly significant commemorative dates for various national ethnic segments. § 3 – The law shall establish a National Culture Plan, of multi-year duration, seeking the cultural development of the country and the integration of public actions that lead to: (Added by Constitutional Amendment No. 48 of 2005) I – defense and valorization of Brazilian cultural patrimony; (Added by Constitutional Amendment No.48 of 2005) II – production, promotion and diffusion of cultural goods; (Added by Constitutional Amendment No. 48 of 2005) III – formation of qualified personnel for the multiple dimensions of cultural management; (Added by Constitutional Amendment No. 48, of 2005) IV – democratization of access to cultural assets; (Added by Constitutional Amendment No. 48 of 2005) V – valorization of ethnic and regional diversity. (Added by Constitutional Amendment No. 48, of 2005) Art 216. Brazilian cultural heritage includes material and immaterial goods, taken either individually or as a whole, that refer to the identity, action, and memory of the various groups that form Brazilian society, including: I – forms of expression; II – modes of creating, making, and living; III – scientific, artistic, and technological creations; IV – works, objects, documents, buildings, and other spaces used for artistic-cultural manifestations; V – urban complexes and sites of historical, landscape, artistic, archaeological, paleontological, ecological and scientific value. § 1 – The Government, with the collaboration of the community, shall promote and protect Brazilian cultural heritage by inventories, registries, surveillance, monument protection decrees, expropriation, and other forms of precaution and preservation. § 2 – It is the responsibility of public administration, as provided by law, to maintain governmental documents and take measures to make them available for consultation by those that need to do so. § 3 – The law shall establish incentives for production and knowledge of cultural property and values. § 4 – Damages and threats to the cultural patrimony shall be punished, as provided by law. § 5 – All documents and sites bearing historical reminiscences of the old hideouts for fugitive slaves are declared to be historical monuments. § 6 – States and the Federal District may bind up to five-tenths of one percent of their net tax receipts from the state fund for cultural development for financing cultural programs and projects, but these resources may not be used for payment of: (Added by Constitutional Amendment No. 42 of 12/19/2003) I – personnel expenses and payroll charges; (Added by Constitutional Amendment No. 42 of 12/19/2003) II – debt service; (Added by Constitutional Amendment No. 42 of 12/19/2003) III – any other current expense not linked directly to the supported investments or stock. (Added by Constitutional Amendment No. 42 of 12/19/2003) Section III SPORTS. Art. 217 It is the duty of the State to foster formal and informal sporting activities as each individual's right, observing: § 3 – The Government shall encourage leisure as a means of social promotion. CHAPTER IV SCIENCE AND TECHNOLOGY (…) Art. 219. The domestic market comprises part of the national patrimony and shall be encouraged to make viable cultural and socio-economic development, the well-being of the population and the technological autonomy of Brazil,

(Footnote 26 continued)
as provided by federal law. CHAPTER V SOCIAL COMMUNICATION. Art. 220 The expression of thoughts, creation, speech and information, through whatever form, process or vehicle, shall not be subject to any restrictions, observing the provisions of this Constitution. § 1 – No law shall contain any provision that may constitute an impediment to full freedom of the press, in any medium of social communication, observing the provisions of art. 5, IV, V, X, XIII and XIV. § 2 – Any and all censorship of a political, ideological and artistic nature is forbidden. § 3 – It is the province of Federal law to: I – regulate public entertainment and shows, and it is the responsibility of the Government to advise about their nature, the ages for which they are not recommended and the locales and times unsuitable for their exhibition; II – establish legal measures that afford individuals and families the opportunity to defend themselves against radio and television programs or schedules that contravene the provisions of art. 221, as well as against commercials for products, practices, and services that may be harmful to health and the environment. § 4 – Commercial advertising of tobacco, alcoholic beverages, pesticides, medicine, and therapies shall be subject to legal restrictions, in the terms of subparagraph II of the preceding paragraph, and shall contain, whenever necessary, warnings about harms caused by their use. § 5 – The media of social communication may not, directly or indirectly, be subject to monopoly or oligopoly. § 6 – Publication of printed means of communication shall not require a license from any authority. Art. 221 Production and programming by radio and television stations shall comply with the following principles: I – preference for educational, artistic, cultural and informational purposes; II – promotion of national and regional culture and fostering any independent production aimed at its dissemination. III – regionalization of cultural, artistic and journalistic production, according to percentages established by law; IV – respect for ethical and social values of the individual and the family. Art. 222 Ownership of journalism firms and firms broadcasting sound or images with sound is restricted to native-born Brazilians or those naturalized for more than ten years, or to legal entities organized under Brazilian law and with their headquarters in the Country. (New language provided by Constitutional Amendment No. 36 of 2002) § 1 – In either case, at least seventy percent of the total capital and voting capital of journalism firms and firms broadcasting sound or images with sound must be owned, directly or indirectly, by native-born Brazilians or those naturalized more than ten years, who must manage the activities and determine the programming content. (New language provided by Constitutional Amendment No. 36 of 2002) § 2 – In any means of social communication, editorial responsibility and activities of selecting and directing programming are restricted to native-born Brazilians or those naturalized for more than ten years. (New language provided by Constitutional Amendment No. 36 of 2002) § 3 – Irrespective of the technology utilized for rendering the service, electronic means of social communication shall observe the principles enunciated in art. 221, in the form of specific law that shall also guarantee the priority of Brazilian professionals in the execution of national productions. (Added by Constitutional Amendment No. 36 of 2002) § 4 – Participation of foreign capital in the firms referred to in § 1 shall be regulated by law. (Added by Constitutional Amendment No. 36 of 2002) § 5 – Changes in controlling shareholders in the firms referred to in § 1 shall be communicated to the National Congress. (Added by Constitutional Amendment No. 36 of 2002) Art. 223 The Executive has the power to grant and renew concessions, permits and authorizations for the services of broadcasting sounds and images with sounds, observing the principle of complementary roles of private, public, and state systems. § 1 – The National Congress shall consider such acts within the time period of art. 64, §§ 2 and 4, starting from the date of receipt of the message. § 2 – Non-renewal of concessions or permits requires approval by at least two-fifths nominal vote of the National Congress. § 3 – Grants or renewals shall be legally effective only after consideration by the National Congress, in accordance with the preceding paragraphs. § 4 – Cancellation of a concession or permit prior to its expiration date requires a judicial decision. § 5 – The term of a concession or permit shall be ten years for radio stations and fifteen years for television stations. Art. 224. For the purposes of the provisions of this chapter, the National Congress shall institute, as an auxiliary agency, the Social Communications Council, as provided by law. CHAPTER VI THE ENVIRONMENT (…) CHAPTER VII FAMILY, CHILDREN, ADOLESCENTS, YOUTHS AND ELDERLY (…) Art. 227

Article 24 of Legislative Decree (Decreto-lei) No. 25 of 11/30/1937, which organized the protection of historical and artistic patrimony of Brazil, requires that "the Union maintain—for the preservation and exhibition of historical and artistic works—in addition to the National Historical Museum and the National Museum of Fine Arts, other national museums as may become necessary, and shall also make provisions to promote the establishment of state and municipal museums having similar purposes."

There is also a provision for administrative seizure (of illegally exported national heritage works[27]), and for forfeiture arising from crime (generic provision for all proceeds from or instrumentalities of crime; and a provision in Brazil's Money-Laundering Law, Article 91, Sections I and II of the Criminal Code, and Article 7, Section I of Law No. 9613 of 03/03/1998, as amended by Law No. 12683/2012).

The relevance and originality of all this warrant revisiting a very apropos line of reasoning in the author's work[28] having to do with confiscation even when there is no previous criminal conviction. As was already discussed, the Financial Action Task Force (FATF) Recommendations (in particular, Recommendations Nos. 4 and 30), the UN Convention on the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, December 20, 1988, Article 5), the UN Convention against Transnational Organized Crime (Palermo, 2000, Article 12, Item 7), the UN Convention against Corruption (Mérida, 2003, Article 20, Article 30, Item 8 and Article 47), and the Council of Europe Convention on Laundering, Search, Seizure

(Footnote 26 continued)
It is the duty of the family, the society and the Government to assure children, adolescents, and youths, with absolute priority, the rights to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, liberty and family and community harmony, in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty and oppression. (…) CHAPTER VIII INDIANS. Art. 231 The social organization, customs, languages, creeds and traditions of Indians are recognized, as well as their original rights to the lands they traditionally occupy. The Union has the responsibility to delineate these lands and to protect and ensure respect for all their property. § 1 – Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable for the preservation of environmental resources necessary for their well-being and those necessary for their physical and cultural reproduction, according to their uses, customs and traditions. (…) Art. 232 Indians, their communities and their organizations have standing to sue to defend their rights and interests, with the Public Ministry intervening at all stages of the proceeding. (…) (Added by Constitutional Amendment No. 65 of 2010) TITLE IX General Constitutional Provisions (…) Art. 242. (…) § 1 – Teaching of Brazilian history shall take into account the contribution of different cultures and ethnic groups the formation of the Brazilian people. (…).

[27] Cf. Article 15 of Legislative Decree No. 25 of 11/30/1977 (legislation organizing protection of national historic and artistic patrimony) and Law No. 3924 of 07/26/1961 (regulating public assets of interest to the Union, e.g., archaeological and ethnological assets) in combination with Law No. 4845 of 11/19/1965 (banning exportation of artworks produced in Brazil with provisions for their seizure).

[28] In *Lavagem de Dinheiro. Teoria e Prática.* Campinas: Millennium, 2008, pp. 163–173.

and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw, 2005, Article 2) all recommend that consideration be given to the adoption of confiscatory measures absent prior criminal conviction, or measures shifting the burden of proving the legal source of assets onto the accused.

To increase the likelihood of recovering assets of criminal origin, States are urged to draft laws instituting Civil Forfeiture Actions for Illegally Acquired Assets as a means of fighting money laundering by interrupting the usufruct of the proceeds of crime.

For example, on September 5–6, 2005, judicial authorities of the Office of the Federal Prosecutor, the Attorney General's Office, and the Justice Ministry's Asset Recovery and International Legal Cooperation Department (DRCI), met to discuss the project, given the participation of Kimberly Prost, UN specialist on Drugs and Crime. The meeting was again taken up on October 7 of that same year and then again on March 20, 2006, to finalize the project and conclude the discussions.

The primary focus was on establishing quicker means of recovering illegal assets—means that did not require a decision on the defendant's criminal liability, but rather, a judicial recognition restricted to proof of the illegal origin of the assets, absence of proper title for their acquisition, or a mismatch between income level and assets acquired.

Leaving illegally obtained money in the hands of criminals—especially members of organized criminal gangs—encourages the reentry of those monies into the underworld, or back into the original illegal business practices occurring prior to, or even after serving a sentence, with the potential for serious harm to society.

ENCCLA Target No. 19 of 2008, foreseeing the need to confiscate illegal goods, highlighted the importance of a law to enable the taking of urgent measures in administrative proceedings. The Office of the Attorney General then agreed to draft a bill which, if passed, could apply to both administrative proceedings and lawsuits charging administrative dishonesty, irrespective of the civil actions addressed here.

Civil action opens up new inroads for obtaining assets that would end up financing organized crime, inasmuch as they are derived from it. They allow the State to deal with the proceeds of crime. They must also be clearly regulated so as on the one hand to not offend fundamental rights of the individual, and on the other to serve as a quick and effective tool for the recovery of illicit assets.

The civil action in question would indeed be an extension of State powers regarding illegal assets, inasmuch as it would allow definitive forfeiture while dispensing with a final decision by a court and still respecting the rights of the individual.

The rights of those who received the property in good faith, or of third parties in a similar situation, must be protected. They must therefore be assured the right to answer the civil charges, and even assured payment of minor expenses (like living expenses) during discussion of their situation. One could prove, for example, having rented the house in good faith without knowing that it was used for illegal purposes (such as prostitution).

It would not be appropriate, however, for the defense to argue adverse possession, because it would be too easy to deflect the purpose of the action if, for instance, the owner were to pay someone to allege uninterrupted possession.

We should mention that the burden of proof as to the illegal origin of the assets and monetary amounts does, in principle, fall on the State and includes not only the proceeds of the crime, but also its instrumentalities, such as cars, boats, houses and businesses. To be clear, it is only if the assets are included in an income tax return that the burden of proof is on the State, as opposed to the owner, possessor or bearer.

Note that criminal sanctions are oftentimes perceived as a temporary setback (even when penalties are severe), whereas the compulsory transfer of valuable assets to the State, such as cars, mansions and luxury items, causes more trouble to criminals because of its irreversible nature.

But civil action is not intended as a means of giving the State yet another punitive instrument. Yet it does have this effect, to the extent that those accustomed to having illegal assets value them very highly, even when compared to their own individual freedom. Hence, civil action to terminate ownership does indeed become a valuable instrument in fighting crime and is also more effective in the recovery of illegal assets.

It is much more difficult to obtain a satisfactory outcome in serious and complex crimes, especially money laundering, because criminals have made use of qualified professionals to enable them to distance themselves from the crime. Civil action is quite useful here because the value judgment involved is different. What must be proven is a link. It is not a judgment of merits as in a criminal procedure, but rather a determination of the probabilities that the assets are the product of illegal activity.

Indeed, the cost involved in gathering evidence of a crime such as money laundering, coupled with the difficulty of obtaining a favorable outcome, even in the presence of strong suspicion of criminal activity, has caused governments to rethink the entire system in terms of adopting less costly methods—methods more closely hedged in with the necessary guarantees—as a strong ally in the recovery of illicit assets.

It is important to the success of the action that specific cooperative agreements between States be entered into, thereby opening up a broad avenue for the recovery of illegal assets.

Due to its autonomous nature, the action under consideration may be brought concurrently with criminal prosecution, provided it does not jeopardize criminal investigations, which are often secret. If during the course of bringing civil action it is found that criminal prosecution can feasibly be quickly resolved, the civil suit should be suspended pending the outcome of criminal proceedings.

One must, however, be mindful of the absolute autonomy of civil action. Situations such as the death of a defendant or subject of an investigation, statutory limitations, insufficient evidence, criminal immunity or obtaining of evidence from abroad may burden, if not thwart, recovery of illegal assets.

Civil action could be improved by permitting preventive seizure or impoundment prior to definitive forfeiture, thus allowing the appointment of a custodian of property, but without preemptive alienation (before the decision becomes final), which could be risky because the judgment of merits is different from that in criminal courts, except in cases of deterioration.

Should a settlement occur in civil proceedings, the effect in criminal court would favor reducing the sentence, whether by acknowledgment of subsequent repentance (CPB—Brazilian Criminal Code, Article 16), or by mitigating circumstances, such as voluntary cooperation (CPB Article 65, Section III, Item b), or by plea bargaining.[29]

To avoid improper management of such actions (purely personal or political filings), specific rules of procedure must be established, such as, for instance, rejection of filings once ten or fifteen years have elapsed following possession or holding, prior analysis of the history of the ownership of the assets through forensic examination, and a preliminary hearing with the defendant—all to preclude arbitrary or baseless filings.

Civil action for termination of ownership is accepted procedure in the United Kingdom, Iceland, Italy, the United States, Colombia (through Law No. 793 of 12/27/2002), Australia and South Africa.

In the United States, the Treasury Department's Office of the Comptroller of the Currency (OCC) requires that all banks file Suspicious Activity Reports (SARs) with the Financial Crimes Enforcement Network (FinCEN), also a Treasury Department agency. This must be done whenever any violation is known or suspected, and also whenever a suspicious transaction involves money laundering or any violation of the rules made pursuant to the Bank Secrecy Act (BSA).[30]

Note that the OCC has received requests to amend the expression "known or suspected violation" because of its breadth of scope. The conclusion was made, however, that attempted crimes, or the potential for the same, must be reported in order to bolster the effectiveness of efforts to combat money laundering. There was, however, more clarity provided on the requirement that banks report suspicious activities "for any reason" because critics considered the expression overly broad and rendered meaningless the $5,000 threshold for Suspicious Activity Reports. The OCC decided that reporting was required on any operation involving $5,000 or more, provided the banks know, suspect, or have reason to suspect that the operation involves money derived from illegal activities; there is some intent to conceal or disguise the money;

---

[29] Many Brazilian laws contain such provisions, among them: Criminal Code (Article 159, § 4, as amended by Law No. 9269 of 04/02/1996); Law No. 7492 of 06/16/1986 (Article 25, § 2, with new language added by Law No. 9080 of 07/19/1995); Law No. 8072 of 07/25/1990 (Article 8, sole paragraph); Law No. 8137 of 12/27/1990 (Article 16, sole paragraph, new language added by Law No. 9080/1995); Law 9034 of 05/03/1995 (Article 6); Law No. 9613 of 03/03/1998 (Article 1, § 5); Law No. 9087 of 07/13/1999 (Articles 13–15); and Law No. 11343 of 08/23/2006 (Article 41).

[30] Cf. John K. Villa. *Banking Crimes: Fraud, Money Laundering and Embezzlement*, vol. 2, App. 2A1.

it might form part of a plan to circumvent reporting; the money has no legal or business purpose; or the money does not match the customer's expected profile.[31]

Bibliography

ANISTIA poderá coibir o 'esquema Daslu'. Colecionadores afirmam que sonegação continuará sendo praxe no meio enquanto carga tributária não diminuir. *Folha de São Paulo*, 01/01/2012, Ilustrada supplement, p. E5.

ANNUAL REPORT 2010-2011. Financial Action Task Force/Groupe d'Action Financière. fatf-gafi.org. Accessed Mar 20, 2012.

APG reports deficiencies in Nepal's anti-money laundering compliance. Ekantipur.com. 08/20/2011. Kantipur Publications Pvt.

ARTISTS and Art Galleries. Publication by *Internal Revenue Service. Department of the Treasury. Market Segment Specialization Program*. www.artchain.com/resources/art_audit_guide.pdf. Accessed May 23, 2012.

ASCENSÃO, José de Oliveira. Branqueamento de Capitais: reacção criminal. Estudos de direito bancário. Coimbra: Coimbra, 1999.

ASSIS TOLEDO, Francisco de. *Princípios Básicos de Direito Penal – De acordo com a Lei n. 7.209, de 11.07.1984, e a Constituição de 1988*. São Paulo: Saraiva, 4th ed., 1991.

BALTAZAR JÚNIOR, José Paulo. *Crimes Federais*. Porto Alegre: Livraria do Advogado, 7th ed., 2011.

BALTAZAR JÚNIOR, José Paulo. *Crime Organizado e Proibição de Insuficiência.* Porto Alegre: Livraria do Advogado, 2010.

BALTAZAR JÚNIOR, José Paulo. *et alii. Lavagem de dinheiro. Comentários à lei pelos juízes das varas especializadas em homenagem ao Ministro Gilson Dipp.* Porto Alegre: Livraria do Advogado, 2007.

BARBOSA, Renato Rodrigues. Perito propõe estratégias de inteligência financeira no CJF. *Revista Perícia Federal*, Brasília, ano 5, no. 19, Nov/Dec 2004.

BARROS, Marco Antônio de. *Lavagem de capitais e obrigações civis correlatas*: *com comentários, artigo por artigo, à Lei 9.613/98*. São Paulo: Ed. Revista dos Tribunais, 2004.

BARROS, Marco Antônio de. *Lavagem de dinheiro: implicações penais, processuais e administrativas. Análise sistemática da Lei no. 9.613, de 3-3-1998*. São Paulo: Oliveira Mendes, 1998.

BARROSO, Luís Roberto. Da constitucionalidade do Projeto de Lei 3.115/97. *Revista de Direito Bancário, do Mercado de Capitais e da Arbitragem*, no. 16, pp. 199–210, Apr/June 2002.

BATISTA, Nilo. *Introdução crítica ao direito penal brasileiro.* 8th ed. Rio de Janeiro: Revan, 2006.

BERTOLDI, Marcelo M. (Coord.). *Reforma da Lei das Sociedades Anônimas* – comentários à Lei 10.303, de 31.10.2001. São Paulo: Ed. Revista dos Tribunais, 2002.

BETTI, Francisco de Assis. *Aspectos dos crimes contra o sistema financeiro no Brasil* – comentários às Leis 7.492/86 e 9.613/98. Belo Horizonte: Del Rey, 2000.

BETTIOL, Giuseppe. *Direito penal*. Tradução brasileira e notas de Paulo José da Costa Júnior e de Alberto Silva Franco. São Paulo: Ed. Revista dos Tribunais, 1976.

BINDING, Karl. *La culpabilidad en derecho penal*. Transl. Manuel Cancio Meliá. Montevidéu, Buenos Aires: B de F, 2009.

BITENCOURT, Cezar Roberto. *Tratado de direito penal – Parte geral.* Vol.1, 17th ed. São Paulo: Saraiva, 2012.

[31] Cf. John K. Villa. *Banking Crimes: Fraud, Money Laundering and Embezzlement*, Vol. 2, App. 2A5-6.

BITENCOURT, Cezar Roberto. Crimes contra o sistema financeiro nacional praticados por administradoras de consórcios. Responsabilidade penal da pessoa jurídica. Atipicidade. *Revista dos Tribunais*, São Paulo, no. 735, Jan 1997.
BITENCOURT, Cezar Roberto. *Manual de direito penal*: parte geral. Vol. 1, 6th ed. São Paulo: Saraiva, 2000.
BITENCOURT, Cezar Roberto. Responsabilidade penal da pessoa jurídica à luz da Constituição Federal. *Boletim do IBCCrim,* São Paulo, ed. esp. no. 65, Apr 1998.
BOLDT, Raphael. Delação premiada: o dilema ético. *Direito Net*. www.direitonet.com.br. Accessed Sept 15, 2005.
BOULOC, Bernard. Coactivité en matière de publicité trompeuse. *Revue de Science Criminelle et de Droit Pénal Comparé,* [S.l.], p. 95, Jan/Mar 1995.
BOULOC, Bernard; STEFANI, Gaston; LEVASSEUR, Georges. *Droit pénal géneral.* 17th ed. Paris: Dalloz, 2000.
BRINKMAN, Manus. Reflections on the Causes of Illicit Traffic in Cultural Property and Some Potential Cures. *Art and Cultural Heritage. Law, Policy, and Practice.* New York: Cambridge University Press, edited by Barbara T. Hoffman, 2006.
BROYER, Philippe et al. *La nouvelle économie criminelle*: criminalité financière – comment le blanchiment de l'argent sale et le financement du terrorisme sont devenus une menace pour les entreprises et les marchés financiers. Paris: Éditions d'Organisation, 2002.
BRUNO, Aníbal. *Direito penal*. Rio de Janeiro: Forense, 2009.
CAEIRO, Pedro. *Branqueamento de capitais*. Manual distributed in coursework offered October 17–21, 2005 and sponsored by the OAS and the Justice Ministry for Brazilian judges and prosecutors.
CAPEZ, Fernando. *Curso de direito penal – Parte geral*. Vol. 1, 16th ed. São Paulo: Saraiva, 2012.
CASSELLA, Stefan D. The Money Laundering Statutes (18 U.S.C. §§ 1956 and 1957). *United States Attorney's Bulletin*. Washington, DC, vol. 55, No. 5, Sept 2007.
CEREZO MIR, José. *Curso de derecho penal español – Parte general*. Vols. II & III. Madrid: Tecnos, 2001.
CERVINI, Raúl. Macrocriminalidad económica. *Revista Brasileira de Ciências Criminais*. Vol. 11, pp. 50–79. São Paulo: Ed. RT, July–Sept 1995.
CERVINI, Raúl et al. *Lei de lavagem de capitais*. São Paulo: Ed. RT, 1998.
CHAIRMAN'S SUMMARY, Paris Plenary, June 20-23, 2006. Financial Action Task Force/Groupe d'Action Financière. Fatf—Gafi. http://www.fatf-gafi.org. Accessed July 3, 2006.
CHARNEY, Noah. *Stealing The Mystic Lamb: The True Story of The World's Most Coveted Masterpiece*. New York: PublicAffairs, 1st ed., 2010.
COELHO, Walter. *Teoria geral do crime*. Porto Alegre: Fabris/Escola Superior do MPRS, 1991.
CONSELHO DA JUSTIÇA FEDERAL. Centro de Estudos Judiciários, Secretaria de Pesquisa e Informação Jurídicas. *Uma análise crítica da lei dos crimes de lavagem de dinheiro*. Brasília: CJF, 2002.
COUNCIL FOR FINANCIAL ACTIVITIES CONTROL—COAF. https://www.coaf.fazenda.gov.br/conteudo/estatisticas/comunicacoes-recebidas-por-segmento/. Accessed May 18, 2012.
CONTE, Philippe; LARGUIER, Jean. Le recel de choses et le blanchiment. *Droit pénal des affaires*. Paris: Dalloz; Armand Colin, 2004.
CONTE, Philippe; LARGUIER. *Droit pénal des affaires.* 11th ed. Paris: Paris: Dalloz; Armand Colin, 2004.
CORRÊA, Hudson. Juiz denuncia uso de gado para lavagem de dinheiro. *Folha de São Paulo*, São Paulo, 07/24/2005. Dinheiro, B7.
COSTA, Emílio Carlos Dantas. Crimes do colarinho-branco. *Jornal da Tarde*. São Paulo, 10/18/1997, p. 2A.
COSTA, José de Faria. O branqueamento de capitais (algumas reflexões à luz do direito penal e da política criminal). In CORREIA, Eduardo et al. *Direito penal econômico e europeu:* textos doutrinários. Vol. 2. Coimbra: Coimbra Ed., 1999.
COSTA, José de Faria. *Breves reflexões sobre o Decreto-Lei n. 207-B/75 e o direito penal econômico*.
COSTA JÚNIOR, Paulo José. *Comentários ao Código Penal*. 5th ed. São Paulo: Saraiva, 1997.

CROCQ, Jean-Christophe. *Le guide des infractions.* 3rd ed. Paris: Dalloz, 2001.
CUESTA AGUADO, Paz M. de la. *Causalidad de los delitos contra el medio ambiente.* Valencia: Tirant lo Blanch, 1995.
DANTAS COSTA, Emílio Carlos. Crimes do colarinho-branco. Jornal da Tarde. São Paulo, 10/18/1997.
D'AMORIM, Sheila, and SOUZA, Leonardo. BC falha no combate à lavagem, afirma TCU. *Folha de São Paulo*. São Paulo, 10/13/2005. Caderno Dinheiro, B3.
DE CARLI, Carla Veríssimo (Org.). *Lavagem de dinheiro: prevenção e controle penal.* Porto Alegre: Verbo Jurídico, 2011.
DELMANTO JÚNIOR, Roberto. Justiça especializada para os crimes de lavagem de dinheiro e contra o Sistema Financeiro Nacional (a inconstitucionalidade da Resolução no. 314, de 12/5/2003, do Conselho da Justiça Federal). *Revista do Advogado*, São Paulo, ano 24, no. 78, pp. 95–102, Sept 2004.
DELMANTO JÚNIOR, Roberto *et alli*. *Código Penal comentado.* 8th. ed. São Paulo: Saraiva, 2010.
DELMANTO JÚNIOR, Roberto *et alli*. *Leis Penais Especiais Comentadas.* Rio de Janeiro: Renovar, 2006.
DELMAS-MARTY, Mireille. *Droit pénal des affaires.* 3rd ed. Paris: Presses Universitaire de France, 1990.
DELMAS-MARTY, and GIUDICELLI-DELAGE, Geneviève. *Droit pénal des affaires.* 4th ed. Paris: Presses Universitaire de France, 2000.
DE SANCTIS, Fausto Martin. *Lavagem de Dinheiro: Jogos de Azar e Futebol. Análise e Proposições.* Curitiba: Juruá, 2010.
DE SANCTIS, Fausto Martin. *Crime Organizado e Lavagem de Dinheiro. Destinação de Bens Apreendidos, Delação Premiada e Responsabilidade Social.* São Paulo: Saraiva, 2009.
DOTTI, René Ariel. *Curso de direito penal – Parte geral*. 2nd ed. Rio de Janeiro: Forense, 2004.
FARIA, Bento de. *Código Penal brasileiro* (comentado). Vol. 5, 2nd ed. Rio de Janeiro: Record, 1959.
FERREIRA, Gabriel Jorge. Estrutura normativa do Sistema Financeiro Nacional. *Revista dos Tribunais,* São Paulo, no. 16, July/Sept 1996.
FORTUNA. Eduardo. *Mercado Financeiro. Produtos e Serviços*. Rio de Janeiro: Qualitymark, 2004.
FRAGOSO, Heleno Cláudio. *Lições de direito penal*: a nova parte geral. 8th ed. Rio de Janeiro: Forense, 1985.
FREIRE JÚNIOR, Américo Bede and SENNA MIRANDA, Gustavo. *Princípios do processo penal – Entre o garantismo e a efetividade da sanção.* São Paulo, Ed. RT, 2009.
GÁLVEZ VILLEGAS, Tomás Aladino. Delito de lavado de activos: análisis de los Tipos Penales Previstos en la Ley no. 27.765. *Magazine of the Office of the Public Prosecutor of Peru,* ("Fiscalía de la Nación"), pp. 46–62, Feb 2005.
GAMA, Guilherme Calmon Nogueira da; GOMES, Abel Fernandes. *Temas de direito penal e processo penal*: em especial na Justiça Federal. Rio de Janeiro: Renovar, 1999.
GARCIA, Basileu. *Instituições de direito penal.* Vol. 1. 4th ed. São Paulo: Max Limonad, 1978.
GARCIA, José Ángel Brandariz. *El delito de defraudación a la seguridad social*. Valencia: Tirand lo Blanch, 2000.
GARCIA, Plínio Gustavo Prado. Arbítrio e inconstitucionalidade na lei de lavagem de dinheiro ou bens. *Informativo do I.A.S.P.,* São Paulo, no. 45, Mar/Apr 2000.
GODINHO, Jorge Alexandre Fernandes. *Do crime de "branqueamento" de capitais*: introdução e tipicidade. Coimbra: Almedina Ed., 2001.
GODOY, Arnaldo Sampaio de Moraes. *Direito tributário comparado e tratados internacionais fiscais*. Porto Alegre: Sergio Antonio Fabris, 2005.
GODOY. *Direito tributário nos Estados Unidos*. São Paulo: Lex, 2004.
GODOY, Luiz Roberto Ungaretti de. *Crime organizado e seu tratamento jurídico penal*. Rio de Janeiro: Elsevier, 2011.
GOMES, Luiz Flávio. *Direito penal – Parte geral*. 2nd ed. São Paulo: Ed. RT, 2009.
GOMES, Luiz Flávio. Crime organizado: que se entende por isso depois da Lei no. 10.217/01? – Apontamentos sobre a perda de eficácia de grande parte da Lei 9.034/95. *Jus Navegandi*. www1.jus.com.br. Accessed June 1, 2004.

GUIBU, Fábio. Para ministro, há cultura de crimes. Folha de São Paulo. São Paulo, 10/28/2012. Caderno Brasil, A7.
HAMPTON, Alan. *Sources of Information in a Financial Investigation. United States Attorney's Bulletin*. Washington, DC, Vol. 55, No. 5, Sept 2007.
HUNGRIA, Nélson. *Comentários ao Código Penal – Arts. 1 a 10, 11 a 27, 75 a 101*. 4th ed. Rio de Janeiro: Forense, 1958.
INFORME ANNUAL 2011. *Unidad de Información Financiera*. Buenos Aires: Departamento de Prensa, Ministerio de Justicia y Derechos Humanos/Presidencia de la Nación, 2012.
INSUFFICIENT laws to tackle terror-funding: FATF. *Mint.* WLNR 14346920. 07/18/2010.
JEANDIDIER, Wilfried. *Droit Penal dês Affaires*. Paris: Dalloz, 1996.
JOSEPH, Lester. *Suspicious Activity Reports Disclosure and Protection. United States Attorney's Bulletin*. Washington, DC, Vol. 55, No. 5, Sept 2007.
JOSEPH, Lester; ROTH, John. *Criminal Prosecution of Banks Under the Bank Secrecy Act. United States Attorney's Bulletin*. Washington, DC, Vol. 55, No. 5, Sept 2007.
JESUS, Damásio Evangelista de. *Direito penal – Parte geral.* Vol. 1, 33rd ed. São Paulo: Saraiva, 2012.
JESUS, Damásio Evangelista de. *Imputação objetiva.* 3rd ed. São Paulo: Saraiva, 2007.
LACERDA DA COSTA PINTO, Frederico de. Crimes econômicos e mercados financeiros. Revista Brasileira de Ciências Criminais, São Paulo, n. 39, pp. 28–62, July/Sept 2002.
LEITE, Carlos Eduardo Copetti. Força-tarefa: conceito, características e forma de atuação. *Revista dos Procuradores da República*, ano 1, no. 2, pp. 8–9, Sept 2004.
LYRA, Roberto. *Criminalidade econômico-financeira.* Rio de Janeiro: Forense, 1978.
MACHADO, Agapito. *Crimes do colarinho branco e contrabando/descaminho.* São Paulo: Malheiros Ed., 1998.
MACHADO, Miguel Pedrosa. A propósito da revisão do Decreto-Lei no. 28/84, de 20 de janeiro (Infracções antieconômicas). In: CORREIA, Eduardo et al. *Direito penal econômico e europeu:* textos doutrinários. Vol. 1. Coimbra: Coimbra Ed. 1998.
MAGALHÃES NORONHA, Edgard. *Direito penal: introdução e parte geral*. Vol. 1, 2nd ed. São Paulo: Saraiva, 1963.
MAIA, Rodolfo Tigre. *Dos crimes contra o sistema financeiro nacional:* anotações à Lei Federal no. 7.492/81986. São Paulo: Malheiros Ed., 1996.
MAIA, Rodolfo Tigre. *Lavagem de dinheiro – lavagem de ativos provenientes de crime. Anotações às disposições criminais da Lei no. 9.613/1998*. São Paulo: Malheiros Ed., 1999.
MALHEIROS FILHO, Arnaldo. Crimes contra o sistema financeiro: as "triangulações" e a "doutrina da estrada de Santos". Atualidades em Direito Penal. *Revista do Advogado,* São Paulo, no. 53, Oct 1998.
MARQUES, José Frederico. *Curso de direito penal*. São Paulo: Saraiva, 1954.
MARQUES, José Frederico. *Tratado de direito penal*. Vol. 1–2. Campinas: Bookseller, 1997.
MARQUES DA SILVA, Germano. Direito Penal Português – parte geral. Vol. II. Lisboa: Verbo, 1999.
MESSINEO, Francesco. Máfia e Crime de Colarinho Branco: uma nova abordagem de análise. *Novas tendências da criminalidade transnacional mafiosa.* Organizers: Alesandra Dino and Wálter Fanganiello Maierovitch. São Paulo: Unesp Ed., 2010.
MENDEZ RODRIGUEZ, Cristina. *Los delitos de peligro y sus técnicas de tipificación.* Madrid, 1993.
MENDRONI, Marcelo Batlouni. *Crime de lavagem de dinheiro*. São Paulo: Atlas, 2006.
MENDRONI, Marcelo Batlouni. Crime de lavagem de dinheiro: consumação e tentativa. *Ultima Instância*: revista jurídica. www.ultimainstancia.com.br. Accessed June 12, 2012.
MENDRONI, Marcelo Batlouni. Delação premiada. *Ultima Instância*: revista jurídica. www.ultimainstancia.com.br. Accessed Aug 28, 2005.
MIR, José Ricardo Sanchís and Vicente Garrido Genovés. *Delincuencia de cuello blanco*. Madrid: Instituto de Estudios de Política, 1987.
MIR PUIG, Santiago. *Derecho penal – Parte general (fundamentos y teoría del delito)*. Barcelona: Promociones Publicaciones Universitarias, 1984.
MIR PUIG, Santiago. *Introducción a las bases del derecho penal.* Montevideo/Buenos Aires: B de F, 2003.

MIRABETE, Júlio Fabbrini. *Processo penal*. 10th ed. São Paulo: Atlas, 2000.
MORAES, Alexandre. Direito Constitucional. 6th ed. São Paulo: Atlas, 1999.
MORAES FILHO, Antônio Evaristo et al. Habeas corpus – crime de gestão fraudulenta de instituição financeira. *Revista Brasileira de Ciências Criminais,* São Paulo, no. 20, Oct/Dec 1997.
MORAES, Maurício Zanoide de. Presunção de inocência no processo penal brasileiro: análise de sua estrutura normativa para a elaboração legislativa e para a decisão judicial. Rio de Janeiro: Lúmen Juris, 2010.
NORONHA, E. Magalhães. *Direito penal.* Vol. 1, 20th ed. São Paulo: Saraiva, 1982.
NUCCI, Guilherme de Souza. *Manual de direito penal – Parte geral – Parte especial*. 7th ed. São Paulo: Ed. RT, 2011.
NUCCI, Guilherme de Souza. *Leis Penais e Processuais Penais Comentadas.* 2nd rev. ed. São Paulo: Ed. Revista dos Tribunais, 2007.
NUCCI, Guilherme de Souza. *Individualização da pena*. São Paulo: Ed. RT, 2005.
NUNES JR., Vidal Serrano; ARAUJO, Luiz Alberto David. *Curso de direito constitucional.* 7th ed. São Paulo: Saraiva, 2003.
OLIVEIRA, Eugênio Pacelli de. Coordinator. *Direito e processo penal na justiça federal: doutrina e jurisprudência.* São Paulo: Atlas, 2011.
OLIVEIRA, Leonardo Henrique Mundim. Crimes de gestão fraudulenta e gestão temerária em instituição financeira. *Revista de Informação Legislativa,* Brasília, no. 143, July/Sept 1999.
OLIVEIRA, Odilon. Lavar dinheiro com gado é muito fácil. *Jornal da Tarde*, 06/25/2007.
OLIVEIRA, William Terra de; CERVINI, Raúl; GOMES, Luiz Flávio. Terra de. *Lei de lavagem de capitais.* São Paulo: Ed. Revista dos Tribunais, 1998.
PAULA, Áureo Natal de. *Crimes contra o Sistema Financeiro Nacional e o Mercado de Capitais*. 2nd ed. Curitiba: Juruá, 2007.
PIMENTEL, Manoel Pedro. Crimes contra o Sistema Financeiro. In: ANTUNES, Eduardo Muylaert (Coord.). *Direito penal dos negócios:* crimes do colarinho branco. São Paulo: Associação dos Advogados de São Paulo, 1990.
PIMENTEL, Manoel Pedro. *Crimes contra o sistema financeiro nacional:* comentários à Lei 7.492, de 16/6/86. São Paulo: Ed. Revista dos Tribunais, 1987.
PIMENTEL, Manoel Pedro. *Curso de direito penal brasileiro – Parte geral*. Vol. 1, 6th ed. São Paulo: Ed. RT, 2010.
QUEIJO, Maria Elizabeth, and MACHADO, Charles M. Crimes de Colarinho Branco. São Paulo: Saraiva, 2000.
REALUYO, Celina B. *It's All about Money: Advancing Anti-Money Laundering Efforts in the U.S. and Mexico to Combat Transnational Organized Crime.* Washington, DC: Woodrow Wilson International Center for Scholars. Mexico Institute, May 2012.
REAP, James K. The United States and the World Heritage Convention. *Art and Cultural Heritage. Law, Policy, and Practice.* New York: Cambridge University Press, edited by Barbara T. Hoffman, 2006.
RIDER, Barry. The Financial World at Risk: The Dangers of Organized Crime, Money Laundering and Corruption. *Managering Auditing Journal*. no. 7, 1993.
ROSA, Fábio Bittencourt da. Lei no. 7.492/86 e o Concurso Aparente de Leis. Direito Federal. *Revista da Ajufe*, ano 23, pp. 205–211, 1st sem. 2005.
RUIVO, Marcelo Almeida. *Criminalidade financeira: contribuição à compreensão da gestão fraudulenta.* Porto Alegre: Livraria do Advogado, 2011.
RUSSI, Joyce. ENCLA 2006. Entidades buscam aperfeiçoamento normativo. Formular leis que garantam o efetivo combate à lavagem de dinheiro e a recuperação dos ativos é a principal meta da Encla para este ano. *Jornal da Associação Nacional dos Procuradores da República*, no. 34, Feb 2006.
SANTIAGO, Rodrigo. O "branqueamento" de capitais e outros produtos do crime: contributos para o estudo do art. 23.º do Decreto-Lei no. 15/93, de 22 de janeiro, e do regime de prevenção da utilização do sistema financeiro no "branqueamento" (Decreto-Lei no. 313/93, de

15 de setembro). In: CORREIA, Eduardo et al. *Direito penal econômico e europeu:* textos doutrinários. Vol. 2. Coimbra: Coimbra Ed., 1999.

SANTOS, Cláudia Maria Cruz. *O crime de colarinho branco (da origem do conceito e sua relevância criminológica à questão da desigualdade na administração da justiça penal).* Coimbra: Coimbra Ed., 2001.

SILVA, Antônio Carlos Rodrigues da. *Crimes do colarinho branco.* Brasília: Brasília Jurídica, 1999.

SILVA, Germano Marques da. *Direito penal português – Parte geral*. Vol. II. Lisbon: Verbo, 1999.

SIMÕES, Euclides Damaso. Manual distributed in coursework offered October 17–21, 2005 and sponsored by the OAS and the Justice Ministry for Brazilian judges and prosecutors.

SIMPÓSIO sobre direito dos valores mobiliários. Série cadernos do Centro de Estudos Judiciários do Conselho da Justiça Federal, nos. 15 and 16. Brasília: 1998 and 1999.

SUÁREZ-INCLÁN DUCASSI, María Rosa. Financial Regulations and Tax Incentives with the Aim to Stimulate the Protection and Preservation of Cultural Heritage in Spain. *Art and Cultural Heritage: Law, Policy, and Practice.* New York: Cambridge University Press, edited by Barbara T. Hoffman, 2006.

SUTHERLAND, Edwin H. *El Delito de Cuello Blanco – White Collar Crime – The Uncut Version.* Buenos Aires: Editorial IBdeF, 2009.

SUTHERLAND, Edwin H. *White-Collar Crime – The Uncut Version*. New Haven: Yale University Press, 1983.

THE SAR Activity Review, Trends, Tips & Issues. *Published under the auspices of the BSA Advisory Group*, Issue 12 FinCEN, Oct 2007.

THOMPSON, Erin. The Relationship between Tax Deductions and the Market for Unprovenanced Antiquities. 33 Colum. J.L. & Arts 241, 2010.

TOLEDO, Francisco de Assis. *Princípios básicos de direito penal*. São Paulo: Saraiva, 2000.

TOLEDO, Francisco de Assis. *Princípios básicos de direito penal – De acordo com a Lei no. 7.209, de 11.7.1984, e a Constituição de 1988*. 4th. ed. São Paulo: Saraiva, 1991.

TOURINHO FILHO, Fernando da Costa. *Curso de direito constitucional*. 7th ed. São Paulo: Saraiva, 2003.

TSITSOURA, Aglaia. Les travaux du Conseil de l'Europe. *Revue Internationale de Droit Pénal,* [S.l.], vol. 54, no. 3/4, 1983.

VERMELLE, Georges. *Le nouveau droit pénal*. Paris: Dalloz, 1994. (Série Connaissance du droit).

VIEIRA, Ariovaldo M. Coordenador. Temas relevantes no direito penal econômico e processual penal. São Paulo: Ed. Federal, 2007.

WELZEL, Hans. *Derecho penal alemán: parte general*. 11th ed. (4th ed. Castellana). Transl. Juan Bustos Ramírez & Sérgio Yánez Pérez. Santiago: Jurídica, 1997.

ZAFFARONI, Eugenio Raúl. *Moderna dogmática del tipo penal.* Lima: Aras Editores, 2009.

ZAFFARONI, Eugenio Raúl; PIERANGELI, José Henrique. *Manual de direito penal brasileiro – Parte geral*. 2nd ed. São Paulo: Ed. RT, 2005.

ZAFFARONI, Eugenio Raúl. *Tratado de derecho penal. Parte general*. Buenos Aires, 1998.

ZANCHETTI, Mário. 1997 Il ricciclaggio di denaro proveniente da reato. Milan: Giuffrè, 1997.

http://www.springer.com/978-3-319-00172-2

Money Laundering Through Art
A Criminal Justice Perspective
De Sanctis, F.M.
2013, X, 223 p., Hardcover
ISBN: 978-3-319-00172-2