COMMENTS

FROM DOLLARS TO PESOS: A COMPARISON OF THE U.S. AND COLOMBIAN ANTI-MONEY LAUNDERING INITIATIVES FROM AN INTERNATIONAL PERSPECTIVE

On September 10, 2007, a feared Colombian "cocaine kingpin" of the Norte del Valle cartel was arrested.[1] "Don Diego" Montoya is allegedly responsible for 1500 killings related to the trafficking of "hundreds of tons of cocaine to the United States and Europe."[2] Montoya and the Norte del Valle cartel have been compared to the infamous Pablo Escobar and the Medellin cartel.[3] Although Montoya's cartel operated in Colombia, the impacts of his cartel are felt worldwide. Drugs, money, and extortion transcend borders.[4]

Drugs, primarily cocaine, are transported out of Colombia and distributed throughout the world.[5] Colombia's estimated production of cocaine in 2006 alone was 157,200 pounds and the Interagency Assessment of Cocaine Movement (IACM) estimates that "between 530 and 710 [metric tons] of cocaine departed South America toward the United States in 2006, an amount similar to the 2005 estimate of between 518 and 733 [metric tons]."[6] The United States is the largest

1. Juan Forero, *Reputed Cocaine Boss Arrested in Colombia*, WASH. POST FOREIGN SERVICE, Sept. 11, 2007, at A13.

2. *Id.*

3. *Id.*; *see also* Dep't Homeland Sec., U.S. Immigration and Customs Enforcement (ICE) (Mar. 16, 2006), http://www.state.gov/documents/organization/3209.pdf ("It is estimated that the Norte Valle Cartel is responsible for between 30 to 60 percent of the cocaine that enters the United States. Over the past ten years, the Norte Valle cartel smuggled in excess of 500,000 kilograms of cocaine into the United States, with a wholesale value exceeding $5 billion.").

4. Chris Kraul, *Drug Suspect's Arrest Hailed*, L.A. TIMES, Sept. 13, 2007, at A4.

5. *See* U.N. OFFICE OF DRUGS AND CRIME (UNODC), COLOMBIA COUNTRY PROFILE 46 (2003), *available at* http://www.unodc.org/pdf/colombia/Colombia%20ountry%20Profile%20version%20final%20julio%202003.pdf [hereinafter UNODC COUNTRY PROFILE].

6. U.S. DRUG ENFORCEMENT ADMIN., DRUG INFORMATION: COCAINE,

consumer of Colombian cocaine.[7] It is believed that Montoya and the Norte del Valle cartel have been responsible for seventy percent of cocaine shipped to the United States.[8]

After the drugs produced in Colombia are sold on the streets of the United States, Colombian drug traffickers must determine how to reintroduce the proceeds of those drug sales into Colombia, in the form of pesos, without alerting either country's authorities.[9] The conversion of dollars to pesos is often done through the Black Market Peso Exchange (BMPE), an underground system of foreign currency exchange used by both drug traffickers *and* legitimate business people who seek to avoid high tariffs.[10] This intermingling, or layering, of narcotics proceeds with legal funds creates an additional facade for illegitimate funds.[11] The BMPE is described as a "trade-based money laundering system,"[12] which is sometimes "used by informal value transfer systems to settle accounts."[13] In the first step of a trade-based money laundering system, money brokers buy illegally obtained dollars from U.S. drug dealers and sell them to Colombian

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http://www.dea.gov/concern/18862/cocaine.htm#a (last visited Mar. 29, 2008).

7. *See* PBS WIDE ANGLE, INTERACTIVE MAP: HOW THE MONEY GETS HOME (Sept. 16, 2004), http://www.pbs.org/wnet/wideangle/shows/colombia/map4 [hereinafter HOW THE MONEY GETS HOME]; *see generally* Press Release, U.S. Treas. Dep't, Treasury Under Secretary for Enforcement James E. Johnson Remarks Before the Wine Institute (May 15, 2000) (Press Release LS-627), *available at* http://www.treas.gov/press/releases/ls627.htm [hereinafter Johnson Remarks] (discussing the Black Market Peso Exchange (BMPE)).

8. Kraul, *supra* note 4.

9. *See* HOW THE MONEY GETS HOME, *supra* note 7; *see generally* U.S. DEP'TS. OF TREAS., JUSTICE, & HOMELAND SEC., 2007 NATIONAL MONEY LAUNDERING STRATEGY 57-60 (2007) [hereinafter 2007 STRATEGY] (discussing specific mechanisms used to launder money).

10. *See* Johnson Remarks, *supra* note 7.

11. HOW THE MONEY GETS HOME, *supra* note 7.

12. 2007 STRATEGY, *supra* note 9, at 57-60 (discussing the "Black Market Peso Exchange" as a form of "trade-based money laundering"). The system "allows drug traffickers to launder their illicit proceeds by exchanging their dollars in the United States for pesos in Colombia without physically moving funds from one country to the other." *Id.* There are other recognized forms of money laundering, such as banking, money services businesses, online payment systems, bulk cash smuggling, insurance companies, shell companies and trusts, and casinos. *See id.* at 20-67.

13. *Id.* at 7.

businesses.[14] Then, Colombian businesses use the money to purchase everyday U.S. products: "home appliances, consumer electronics, alcohol, tobacco, and used auto parts."[15] Finally, the Colombian businesses sell these goods in Colombia and export them.[16] An "informal value transfer system" is defined as "any system, mechanism, or network of people that receives money for the purpose of making the funds or an equivalent value payable to a third party in another geographic location, whether or not in the same form."[17] The inherent feature of these informal systems is that the transfers do not occur within the conventional banking system but rather occur through "non-bank financial institutions" or other organizations whose "primary business activity may not be the transmission of money."[18] Drug dealers often use these other informal value transfer systems to internationally convert criminally derived funds and they have many names depending on the region: *hawala* (in the Middle East, Afghanistan, and Pakistan); *hundi* (in India); *fei ch'ien* (in China); and *phoe kuan* (in Thailand).[19] These systems are especially attractive to criminals because the money may be transferred "without the actual movement of a single traceable dollar."[20] Instead of a direct currency exchange, these systems facilitate the exchange of debts to avoid leaving a financial transaction trail.[21]

Money laundering is a common tool for a variety of criminal endeavors including drug trafficking, terrorist financing, and other

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14. *Id.* at 57.

15. *Id.*

16. *Id.* ("Other methods include manipulating trade documents to over- or underpay for imports and exports, and using criminal proceeds to buy gems or precious metals.").

17. FINCEN, U.S. TREAS. DEP'T, ISSUE NO. 33, ADVISORY: INFORMAL VALUE TRANSFER SYSTEMS 1 (Mar. 2003), *available at* http://www.fincen.gov/advis33.pdf [hereinafter INFORMAL VALUE TRANSFER SYSTEMS] (describing various methods of money laundering categorized as "informal value transfer systems").

18. *Id.*

19. *Id.* ("[S]o-called underground banking systems . . . predate Western banking systems and existed as far back as 5800 BC.").

20. Amos N. Guiora & Brian J. Field, *Using and Abusing the Financial Markets: Money Laundering as the Achilles' Heel of Terrorism*, 29 U. PA. J. INT'L L. 59, 63 (2007).

21. *See id.*

illegal activities.[22] Terrorist groups and drug traffickers facilitate each other's crimes.[23] Drug trafficking provides monetary assistance to terrorist movements.[24] Additional overlap of the two crimes also occurs on a practical level: "The same cross-border corridors and infrastructure used to move illegal drug shipments have also long been utilized to move weapons and personnel for terrorist groups. At the same time, terrorist organizations have provided drug traffickers with security services and training in the art of urban warfare and terrorism."[25]

These issues are of imminent concern to both the United States and Colombia as the backlash of corruption and violence are devastating. The two countries are working together under the guidance of international standards to combat drug trafficking and terrorism, and the most recent plan of attack utilizes anti-money laundering initiatives.[26] Although U.S. anti-terrorist and anti-money laundering efforts became a focus for U.S. law enforcement after September 11, 2001, money laundering has facilitated drug traffickers and terrorist regimes for decades.[27] Colombia has not only dealt with

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22. *See generally* 2007 STRATEGY, *supra* note 9, at 31-53, 57-60 (assessing the threat of money laundering to the United States).

23. Luz Estella Nagle, *Global Terrorism in Our Own Backyard: Colombia's Legal War Against Illegal Armed Groups*, 15 TRANSNAT'L L. & CONTEMP. PROBS. 5, 21-22 (2005) [hereinafter Nagle, *Our Own Backyard*].

24. *Id.*; *see also* George H. Millard, Speaker at University of Florida: Organized Crime, Terrorism, and Money Laundering in the Americas, *in* 15 FLA. J. INT'L L. 3, 22 (2002). Various experts spoke about terrorism and organized crime. *See id.* Millard noted the exchange of drugs for arms describing "the exchange of one kilo of cocaine for an AR-15 rifle, and the payment of up to five kilos of the drug for a RPG4 rocket-launcher, capable of destroying a tank." *Id.*

25. Nagle, *Our Own Backyard*, *supra* note 23, at 22; *see also* Millard, *supra* note 24, at 21-22. Millard discusses the "nexus . . . between terrorism and organized crime, including drug trafficking." *Id.* He exemplified this link by explaining the transactions of "Colombian guerrillas and Brazilian drug traffickers," the guerrillas being members of the "Fueras Armadas Revolucionarias de Colombia (FARC)." *Id.* This scheme was referred to as the "Suriname connection, where the leaders are a Brazilian farmer and ex-dictator of that country, and for negotiation, the sale of armaments to the FARC in exchange for cocaine." *Id.*

26. *E.g.*, FATF, FATF Standards, http://www.fatf-gafi.org (follow "FATF Recommendations and Methodology" hyperlink) [hereinafter FATF Standards] (last visited Feb. 29, 2008).

27. FinCEN, U.S. Treas. Dep't, Regulatory/BSA Timeline,

international terrorism, but has been struggling with internal clashes between state actors and guerrilla groups.[28] Both the United States and Colombia are negatively impacted by drug trafficking and money laundering, however, each country is affected in different ways.[29]

This Comment will discuss the international effort to combat money laundering and will then compare relevant U.S. and Colombian criminal law regarding money laundering. There is a vast array of money laundering crimes and regulatory penalties. This Comment will focus primarily on the criminal law of the two countries and emphasize the current laws addressing drug trafficking and terrorist financing. The Comment, however, will not thoroughly discuss banking regulations and reporting requirements.

Part I describes the money laundering process by defining money laundering as recognized by the international community, describing the generic money laundering process, and explaining the Colombian BMPE.[30] Part II discusses the relevant international law, providing a framework for national legislatures to create consistent money laundering initiatives. Part III gives an overview of the relevant U.S. and Colombian law as it relates to money laundering with a primary focus on criminal laws. Lastly, Part IV compares the U.S. and Colombian law, as well as the combined effort of the two countries to combat money laundering and related crimes.

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http://www.fincen.gov/reg_timeline.html (last visited Mar. 29, 2008) (stating the Bank Secrecy Act (1970) was the first official U.S. measure to combat financial crimes). *See also* Luz Estella Nagle, *U.S. Mutual Assistance to Colombia: Vague Promises and Diminishing Returns*, 23 FORDHAM INT'L L. J. 1235, 1264 [hereinafter Nagle, *Mutual Assistance*] (2000) (discussing the two countries' efforts to combat the drug war). The U.S. anti-money laundering laws were enacted after "massive amounts of dollars [from drug-trafficking] were deposited" into U.S. accounts in the 1970s. *Id.*

28. Nagle, *Our Own Backyard*, *supra* note 23, at 9-24.

29. *See, e.g.*, ROBERT E. GROSSE, DRUGS AND MONEY: LAUNDERING LATIN AMERICA'S COCAINE DOLLARS 175 (2001) ("[I]n the United States, the key costs are health related (lost work, deaths, and health care costs, due mainly to drug addiction), in Colombia, the key costs are related to the violence involved with the drug trafficking and the impact of the traffickers' economic power on distorting the economy.").

30. *See generally* Michael C. Greenburg, *The Cocaine Cartel's Best Kept Secret . . . The Black Market Peso Exchange*, 6 ILSA J. INT'L & COMP. L. 685, 686 (2000) (describing Colombia's "principal money laundering vehicle" as the "Black Market Peso Exchange (BMPE).").

I. MONEY LAUNDERING

A. Money Laundering Defined

Money laundering is defined as "[t]he act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced."[31] The International Monetary Fund (IMF) describes three different types of actus reas recognized by the international community as an element of money laundering:

> (i) the conversion or transfer, knowing that such property is the proceeds of crime; (ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; and (iii) the acquisition, possession or use of property, knowing, at the time of the receipt, that such property is the proceeds of crime.[32]

It is important to note that the definition specifically requires knowledge or "concealment."[33]

Money laundering is a federal crime in the United States and is a violation of the Penal Code in Colombia.[34] Although authorities attempt to prosecute money launderers, the IMF estimates "the total dollar amount laundered worldwide is between 590 billion to 1.5 trillion dollars annually, or between two percent and five percent of the world's GDP."[35] Money laundering is an increasingly difficult crime for law enforcement to detect primarily due to globalization and the emergence of new technologies.[36] On a basic level, globalization

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31. BLACK'S LAW DICTIONARY 1027 (8th ed. 2004).

32. Int'l Monetary Fund, Anti-Money Laundering/Combating the Financing of Terrorism—Topics, What Is Money Laundering?, http://www.imf.org/external/np/leg/amlcft/eng/aml1.htm#moneylaundering (last visited Feb. 21, 2008) [hereinafter What Is Money Laundering?].

33. *Id.*

34. The specific laws of each country and the current international initiatives will be discussed in further detail below. *See infra* Parts II-III.

35. HOW THE MONEY GETS HOME, *supra* note 7.

36. INT'L NARCOTICS CONTROL BD., REPORT FOR THE INTERNATIONAL NARCOTICS CONTROL BOARD FOR 2001, U.N. Doc. E/INCB/2001/1 ¶ 3 (2001), *available at* http://www.incb.org/pdf/e/ar/2001/incb_report_2001_1.pdf.

facilitates the movement of goods, services, and financial transactions on a much larger scale and with more ease than ever before.[37]

With the increase in global trade came a parallel increase in financial transactions. Within the United States alone, "more than 465,000 wire transfers—valued at more than $2 trillion—are handled daily."[38] An international messaging system known as SWIFT (Society for Worldwide Interbank Financial Telecommunication) carries another 220,000 transfer messages between banks in and out of the United States daily.[39] More complex and technologically advanced financial transactions facilitate crime and place additional barriers between criminals and law enforcement.[40] Drug traffickers utilize new technologies not only to improve their sales operations, but also to "protect themselves and their illicit operations from investigation by drug law enforcement agencies."[41] The anonymity, ease, and speed of electronic transactions facilitate the traffickers' money laundering endeavors.[42]

The detection of money laundering is inhibited in this practical sense and is further complicated by U.S. privacy laws, such as the Right to Financial Privacy Act of 1978, which "provides many of the procedural protections for financial records guaranteed more broadly by the Fourth Amendment."[43] Additionally, the Electronic Communications Privacy Act of 1986 "prohibits the monitoring of wire transfers while in transit or in storage without a court order, warrant, or administrative subpoena."[44] However, the USA

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37. *See* MOISÉS NAÍM, ILLICIT: HOW SMUGGLERS, TRAFFICKERS, AND COPYCATS ARE HIJACKING THE GLOBAL ECONOMY 134 (Anchor Books 2006) (2005); *see also* Bruce Zagaris, *Developments in the Institutional Architecture and Framework of International Criminal and Enforcement Cooperation in the Western Hemisphere*, 37 U. MIAMI INTER-AM. L. REV. 421, 423 (2006) [hereinafter Zagaris, *Developments*].

38. Bruce Zagaris & Scott Ehlers, *Drug Trafficking & Money Laundering*, 6 FOREIGN POL'Y FOCUS No. 18 (2001), *available at* http://www.fpif.org/fpiftxt/1416.

39. *Id.*

40. *See* Zagaris, *Developments*, *supra* note 37.

41. INT'L NARCOTICS CONTROL BD., *supra* note 36, ¶ 9.

42. *Id.*

43. Zagaris & Ehlers, *supra* note 38.

44. *Id.*

PATRIOT Act (Patriot Act) has made significant adjustments to privacy rights within the realm of financial transactions.[45]

B. The Basic Stages of Money Laundering

Money laundering generally occurs in three stages as follows:

1. *Placement.* The money is "placed" into the financial system, and launderers convert the cash profits from criminal activity into monetary instruments, such as money orders or traveler's checks, or deposit them into financial institution accounts.[46]

2. *Layering.* The funds are "layered" between transactions; launderers transfer or move funds into other accounts or other financial institutions to further disconnect the proceeds from their criminal origin.[47]

3. *Integration.* The money is "integrated" back into the economy "and used to purchase legitimate assets or to fund further criminal or legitimate activities."[48]

C. An Explanation of the Black Market Peso Exchange (BMPE)

Although various methods of money laundering exist, this method, when used by drug cartels, is the "single most efficient and extensive money laundering system in the Western Hemisphere."[49] The Asset Forfeiture and Money Laundering Section of the U.S. Department of Justice described the BMPE as follows:

1) The Colombian drug cartels export drugs to the United States;
2) Drugs are sold for dollars in the United States;
3) A cartel in Colombia enters into a "contract" with the Colombian Black Market Peso Exchanger who is usually in Colombia;
4) The cartel sells its U.S. dollars to the Exchanger's U.S. agent;

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45. *See generally* Elwood Earl Sanders, Jr. & George Edward Sanders, *The Effect of the USA Patriot Act on the Money Laundering and Currency Transaction Laws*, 4 RICH. J. GLOBAL L. & BUS. 47, 83 (2004) (discussing the adjustments made to financial transaction laws).

46. Lester M. Joseph, *Anti-Money Laundering Update*, *in* CORPORATE LAW AND PRACTICE COURSE HANDBOOK SERIES NO. B0-01LS 627, 661 (2003).

47. *Id.*

48. *Id.*

49. *Id.*

5) Once the U.S. dollars are delivered, the peso exchanger in Colombia deposits the agreed upon equivalent to the U.S. dollars in Colombian pesos into the cartel's account in Colombia (at this point, the cartel representative is out of the picture because he has successfully converted his drug dollars into pesos);
6) The Colombian Black Market Peso Exchanger now assumes the risk for introducing the *laundered* drug dollars into the U.S. banking system; this is done through a variety of structured transactions;
7) The Colombian Black Market Peso Exchanger now has a pool of laundered funds in U.S. dollars to sell to Colombian importers who use the dollars to purchase goods, either from the U.S. or from collateral markets; and
8) Finally, these goods are transported to Colombia.[50]

Raymond Kelly, Commissioner of the U.S. Customs Service, has referred to the BMPE as "the ultimate nexus between crime and commerce, using global trade to mask global money laundering."[51]

II. THE INTERNATIONAL EFFORT TO COMBAT MONEY LAUNDERING

After September 11, 2001, the international community began to strengthen its collaborative effort to fight terrorist activities.[52] As the ensuing international efforts demonstrated, one of the main ways to effectively fight terrorism is to eliminate terrorist financing, much of which is disguised through money laundering.[53] A survey of past and current international efforts follows.

A. Financial Action Task Force (FATF)

One of the first collaborative international efforts targeting anti-money laundering was the Financial Action Task Force (FATF).[54]

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50. Joseph, *supra* note 46, at 644.

51. Oriana Zill & Lowell Bergman, *The Black Peso Money Laundering System*, PBS FRONTLINE, http://www.pbs.org/wgbh/pages/frontline/shows/drugs/special blackpeso.html (last visited Mar. 22, 2008).

52. Alison S. Bachus, *From Drugs to Terrorism*, 21 ARIZ. J. INT'L & COMP. L. 835, 869-70 (2004).

53. *Id.*

54. *See* FATF, About the FATF, http://www.fatf-gafi.org (follow "About the FATF" hyperlink) (last visited Mar. 8, 2008).

The FATF was created in 1989 by the G-7 Summit in Paris as an international policy-making group specializing in money laundering.[55] The FATF collaborates with the International Monetary Fund (IMF), the World Bank, and the United Nations in its efforts against money laundering and terrorism.[56] The IMF and the World Bank have recognized FATF Recommendations, discussed below, as the international standard against money laundering and terrorist financing.[57] The United States has been a member of the FATF since 1990.[58] Although Colombia is not a member of the FATF, it is a member of the Financial Action Task Force on Money Laundering in South America (GAFISUD), which is an Associate Member of the FATF.[59]

The FATF developed the accepted international standards to combat money laundering and terrorist financing through its "Recommendations."[60] These standards include the 40 Recommendations on Money Laundering (40 Recommendations) and Nine Special Recommendations on Terrorist Financing (SRTF).[61] FATF developed the 40 Recommendations in 1990, shortly after the

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55. *Id.* The FATF is an international organization comprised of 34 members. *Id.* The G7, now the G8, is a group of the eight heads of state of the major industrial democracies. G8 Information Centre, What is the G8?, http://www.g8.utoronto.ca/what_is_g8.html (last visited Apr.17, 2008). The group meets annually to "deal with the major economic and political issues facing their domestic societies and the international community as a whole." *Id.*

56. What Is Money Laundering?, *supra* note 32.

57. FATF, THE 40 RECOMMENDATIONS n.2 (2003), *available at* http://www.fatf-gafi.org (follow "40 Recommendations" hyperlink) [hereinafater THE 40 RECOMMENDATIONS].

58. FATF, General Information US, http://www.fatf-gafi.org (follow "About the FATF" hyperlink; then follow "Members & Observers" hyperlink) (last visited Feb. 9, 2008); FATF, Financial Action Task Force of South America Against Money Laundering (GAFISUD), http://www.fatf-gafi.org (follow "About the FATF" hyperlink; then follow "Members & Observers" hyperlink; then follow "Financial Action Task Force of South America Against Money Laundering (GAFISUD)" hyperlink) (last visited Feb. 29, 2008).

59. FATF, Members & Observers, http://www.fatf-gafi.org (follow "About the FATF" hyperlink; then follow "Members & Observers" hyperlink) (last visited Mar. 3, 2008).

60. What Is Money Laundering?, *supra* note 32; About the FATF, *supra* note 54.

61. FATF Standards, *supra* note 26.

formation of the FATF; FATF adopted the SRTF measures in October 2001 after a global realization of the need to focus on anti-terrorism measures.[62]

The 40 Recommendations "provide a complete set of counter-measures against money laundering covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation."[63] The 40 Recommendations can be broken down into three categories: (1) the criminal offense of money laundering, including legislative guidelines and confiscation measures (Recommendations 1-3); (2) "Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing" (Recommendations 4-25); and (3) "Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing," including international cooperation (Recommendations 26-40).[64]

The nine SRTF provide guidelines upon which implementation by all countries "will deny terrorists and their supporters access to the international financial system."[65] These Recommendations discuss the criminalization of money laundering as it relates to terrorist financing and propose methods of protection for parties in financial transactions.[66]

Both sets of Recommendations discussed above address the implementation of UN instruments geared at combating money

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62. FATF, THE 40 RECOMMENDATIONS, *supra* note 57.

63. *Id.; see also* Bruce Zagaris, *Revisiting Novel Approaches to Combating the Financing of Crime: A Brave New World Revisited*, 50 VILL. L. REV. 509, 564 (2005) [hereinafter *Novel Approaches*] (describing the Recommendations as a "comprehensive laundry list" of every major effort nations and institutions should take to fight money laundering and terrorist financing). The Recommendations "cover ratification of international agreements, criminalization of relevant activities, due diligence requirements and the kinds of financial institutions that are bound to meet them, assistance to foreign countries and implementation of terrorist list sanctions." *Id.*

64. FATF, THE 40 RECOMMENDATIONS, *supra* note 57.

65. FATF, FATF Documents on Terrorist Financing, http://www.fatf-gafi.org (follow "Key Topics" hyperlink; then follow "FATF Standards" hyperlink; then follow "Terrorist Financing" hyperlink) (last visited Mar. 8, 2008).

66. FATF, 9 SPECIAL RECOMMENDATIONS (SR) ON TERRORIST FINANCING (TF) (2004), http://www.fatf-gafi.org (follow "9 Special Recommendations" hyperlink) [hereinafter 9 SPECIAL RECOMMENDATIONS].

laundering.[67] The 40 Recommendations suggest that countries look to the United Nations for guidance in creating legislation related to the criminalization of money laundering.[68] Recommendation 1 specifically urges the criminalization of money laundering in accordance with the Vienna Convention and the Palermo Convention.[69] Recommendation 35 proposes countries implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (also discussed in the SRTF) and additionally encourages countries to "ratify and implement other relevant international conventions, such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter-American Convention Against Terrorism."[70] The Recommendations propose the implementation of these conventions to set minimum standards, leaving the details of implementation to the particular countries with particular circumstances and constitutions.[71]

The first SRFT reiterates that countries should ratify and implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.[72] This Special Recommendation additionally suggests countries implement UN resolutions relating to the prevention and suppression of the financing of terrorist acts, specifically United Nations Security Council Resolution 1373.[73]

B. Financial Action Task Force of South America (GAFISUD)

Using the FATF as a model, GAFISUD was created in 2000 in Cartagena, Colombia by a memorandum of understanding between

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67. *Id.*; *see also* THE 40 RECOMMENDATIONS, *supra* note 57.

68. THE 40 RECOMMENDATIONS, *supra* note 57.

69. *Id.* The conventions' full names are the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention Against Transnational Organized Crime, 2000 (the Palermo Convention). *See id.*

70. *Id.*

71. *Introduction* to THE 40 RECOMMENDATIONS, *supra* note 57.

72. 9 SPECIAL RECOMMENDATIONS, *supra* note 66.

73. *Id.*

government representatives of nine South American countries.[74] Its purpose was to integrate ongoing, South American money laundering efforts.[75] After September 11, 2001, GAFISD expanded its mission to counter terrorist financing.[76] Currently, GAFISUD describes itself as a "regional inter-governmental organization" which unites South American countries to "combat money-laundering and terrorism financing by means of the continuous improvement of national policies and the strengthening of different methods of co-operation between Member States."[77] GAFISUD is now comprised of ten countries: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, and Uruguay.[78]

The organization's goals complement those of the FATF in developing strategies to collaboratively deter money laundering.[79] GAFISUD adopted the 40 Recommendations issued by FATF as "the most widely recognized international standard for countering money-laundering and the Special Recommendations against terrorism financing."[80] Like the FATF, GAFISUD promotes mutual evaluation between countries and coordinates education and trainings.[81] Because of its geographical focus, GAFISUD considers factors specific to the region when implementing anti-money laundering measures.[82]

C. Egmont Group

Another international group focused on anti-money laundering is the Egmont Group of Financial Intelligence Units (FIUs).[83] This

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74. FATF, Members and Observers, http://www.fatf-gafi.org (follow "About the FATF" hyperlink; then follow "Members & Observers" hyperlink) (last visited Mar. 31, 2008) [hereinafter FATF, Members and Observers].

75. *Id.*

76. *Id.*

77. GAFISUD, About GAFISUD, http://www.gafisud.org/home.htm (last visited Mar. 3, 2008).

78. *Id.*

79. *See id.*

80. *Id.*

81. FATF, Members and Observers, *supra* note 74.

82. *Id.*

83. EGMONT GROUP, STATEMENT OF PURPOSE (2004), *available at* http://www.egmontgroup.org/files/library_egmont_docs/statement_of_purpose.pdf.

informal group of intelligence units from around the world was formed in 1995 in response to issues of confidentiality regarding financial transactions.[84] The Egmont Group also recognizes the importance of international cohesion in the effort to combat money laundering and terrorist financing.[85] National governments began to form these specialized agencies (FIUs) to process financial information that may be "related to criminal or terrorist activity."[86] The Egmont Group defines a Financial Intelligence Unit as follows:

> A central, national agency responsible for receiving, (and as permitted, requesting), [analyzing] and disseminating to the competent authorities, disclosures of financial information:
> (i) concerning suspected proceeds of crime and potential financing of terrorism, or
> (ii) required by national legislation or regulation, in order to combat money laundering and terrorism financing.[87]

FATF Recommendation 14 proposes that countries operate FIUs that provide the above functions.[88] The U.S. FIU is the Financial Crimes Enforcement Network (FinCEN).[89] The Colombian version of such an agency is *la Unidad de Información y Análisis Financiero* (UIAF),[90] or the Financial Information and Analysis Unit (FIAU) in English.[91]

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84. Int'l Monetary Fund, Anti-Money Laundering/Combating the Financing of Terrorism—Topics, What Are Financial Intelligence Units (FIUs)?, http://www.imf.org/external/np/leg/amlcft/eng/aml1.htm#moneylaundering (last visited Mar. 3, 2008) [hereinafter What Are Financial Intelligence Units (FIUS)?]; The Egmont Group, The Egmont Group Financial Intelligence Units, http://www.egmontgroup.org/about_egmont.pdf (last visited Mar. 29, 2008).

85. *Id.*

86. What are Financial Intelligence Units (FIUs)?, *supra* note 84.

87. EGMONT GROUP, *supra* note 83.

88. What Are Financial Intelligence Units (FIUs)?, *supra* note 84.

89. Fin. Crimes Enforcement Network (FinCEN), About FinCEN/Overview, U.S. Treas. Dep't, http://www.fincen.gov/af_overview.html (last visited Mar. 8, 2008).

90. Unidad de Información y Análisis Financiero (UIAF), República de Colombia [Financial Information and Analysis Unit, Republic of Colombia], Inicio, http://www.uiaf.gov.co/ (last visited Mar. 8, 2008).

91. Jaime Ospina-Velasco, *Strengths and Hurdles in the Struggle against Asset Laundering and the Repression of Financial Crime: The Colombian Perspective*, 13

D. International Monetary Fund (IMF) and the World Bank

The IMF recognizes the importance of a united effort against money laundering to effectively thwart criminals who generally "move their funds to jurisdictions with weak or ineffective laws."[92] The IMF and the World Bank assist the global effort through assessment, technical assistance, and policy development.[93] The IMF and the World Bank provide assessments of individual countries' anti-money laundering initiatives to determine whether such measures comply with the Financial Action Task Force Recommendations.[94] Also, the IMF and the World Bank provide technical assistance to strengthen member countries' "legal, regulatory and financial supervisory frameworks."[95] One of the IMF's primary concerns is the effect that money laundering will have on member countries' economies, including "risks to the soundness and stability of financial institutions and financial systems and increased volatility of international capital flows."[96]

E. United Nations

Several UN initiatives address money laundering. This section will focus on the key criminal initiatives discussed in the FATF Recommendations. As previously stated, the FATF has recommended that its member countries utilize the Vienna and Palermo Conventions for criminalizing money laundering.[97] The FATF further recommended the implementation of the 1999 United Nations International Convention for the Suppression of the Financing of

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FLA. J. INT'L L. 96, 109 (Fall 2000) ("[The FIAU] was created by Decree 1964 of 1998 and later consolidated by virtue of Law 526 of 1999.").

92. Int'l Monetary Fund, The IMF and the Fight Against Money Laundering and the Financing of Terrorism (Apr. 2007), http://www.imf.org/external/np/exr/facts/aml.htm.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. THE 40 RECOMMENDATIONS, *supra* note 57, at Recommendation 1.

Terrorism and the United Nations Security Council Resolution 1373.[98] These initiatives will be briefly discussed below.

i. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention)[99]

The Vienna Convention primarily focused on thwarting drug trafficking through a cohesive international effort.[100] This constituted the first international initiative to criminalize money laundering,[101] requiring "signatories to criminalize drug-related money laundering and to enact asset forfeiture laws."[102] Article 3, entitled "Offenses and Sanctions," states that each party shall criminalize specifically listed offenses when committed "intentionally."[103] This Convention focuses on drug-related crimes (i.e., possession, purchase, cultivation) and criminalizes money laundering in conjunction with the following offenses:

> i) The conversion or transfer of property,[104] knowing that such property is derived from any [drug-related] offence or offences . . . or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
> ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from . . . [drug-

98. 9 SPECIAL RECOMMENDATIONS, *supra* note 66.

99. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *opened for signature* Dec. 20, 1988, 1582 U.N.T.S. 95 [hereinafter 1988 UN Drug Convention].

100. *Id.* art. 2.

101. UNODC, UN Instruments and Other Relevant International Standards on Money-Laundering and Terrorist Financing, http://www.unodc.org/unodc/en/money-laundering/Instruments-Standards.html [hereinafter UN Instruments and Other Relevant Int'l Standards].

102. Zagaris & Ehlers, *supra* note 38.

103. 1988 UN Drug Convention, *supra* note 99, art. 3.

104. *Id.* art. 1(q) ("'Property' means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.").

> related] offence or offences . . . or from an act of participation in such an offence or offences.[105]

The Vienna Convention goes on to state that the requisite "[k]nowledge, intent or purpose" of the stated offenses may be "inferred from objective factual circumstances."[106]

ii. United Nations Convention Against Transnational Organized Crime, 2000 (the Palermo Convention)

The Palermo Convention extends the scope of money laundering offenses beyond drug-related crimes to include all serious crimes.[107] Although the Convention addresses many facets of transnational crime, this Comment focuses on the articles related to money laundering. Article 6 provides legislative guidance in criminalizing money laundering and Article 7 suggests additional measures to "combat money-laundering" with a focus on financial institutions.[108] The suggested criminal offenses included in Article 6 are comparable to the provisions of the Vienna Convention; however, instead of focusing on drug-related offenses, the Palermo Convention more broadly refers to the knowledge that property is "the proceeds of crime."[109] The Convention suggests that the crime of money

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105. *Id.* art. 3(1)(b)(i)-(ii).

106. *Id.* art. 3(3).

107. *UN Instruments and Other Relevant Int'l Standards*, *supra* note 101.

108. United Nations Convention Against Transnational Organized Crime, arts. 6-7, *opened for signature* Dec. 13, 2000, G. A. Res. 55/25, U.N. Doc. A/RES/55/25 (2001).

109. *See id.* art. 6(1). The text of the relevant portion of Article 6 reads as follows:

> Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (*a*) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; (*b*) Subject to the basic concepts of its legal system: (i) The acquisition,

laundering should be applied to "the widest range of predicate offenses" which should include "all serious crimes" as well as participation in organized crime (Article 5), corruption (Article 8), and the obstruction of justice (Article 23).[110] The Convention defines "serious crime" as "conduct constituting an offense punishable by a maximum deprivation of liberty for at least four years or a more serious penalty."[111]

iii. Terrorist Financing: The 1999 UN International Convention for the Suppression of the Financing of Terrorism and the UN Security Council Resolution 1373

The 1999 United Nations International Convention for the Suppression of the Financing of Terrorism does not directly address the crime of money laundering, but more generally "requires Member States to take measures to protect their financial systems from being misused by persons planning or engaged in terrorist activities."[112] For example, the Convention requires member states to take measures requiring financial institutions to use "the most efficient measures available" to identify customers and to "pay special attention to unusual or suspicious transactions and report transactions suspected of

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possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

Id.

110. *Id.* at Annex I, art. 6(2)(a)-(b).

111. *Id.* at Annex I, art. 6(2)(b).

112. International Convention for the Suppression of the Financing of Terrorism, G.A. Res. 54/109 (Dec. 9, 1999), *available at* http://www.un.org/law/cod/finterr.htm; *UN Instruments and Other Relevant Int'l Standards*, *supra* note 101. *See also* Alan Lambert, *Organized Crime, Terrorism, and Money Laundering in the Americas: Underground Banking and Financing of Terrorism*, 15 FLA. J. INT'L L. 9, 10 (2002). Article II of the United Nations International Convention for the Suppression of the Financing of Terrorism defines the act of terrorist financing as "directly or indirectly, unlawfully and willfully, [providing] or [collecting] funds with the intention that they should be used, or in the knowledge that they are to be used in full, or in part, in order to carry out a number of offenses." *Id.*

stemming from a criminal activity."[113] After September 11, 2001, the member states of that convention began to see the correlation between terrorist financing and other areas of crime, specifically money laundering.[114] The United Nations responded with the adoption of Resolution 1373, imposing specific obligations to cut off terrorist financing.[115] Resolution 1373 specifically notes

> the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard *emphasizes* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security.[116]

F. U.S. and Colombian Participation

The United States has signed and ratified the United Nations Convention Against Transnational Organized Crime.[117] Colombia is also a member of the Convention Against Transnational Organized Crime.[118] The United States and Colombia both participate in the following UN conventions as either parties or as territorial entities to which the application of the convention has been extended: 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the International Convention for the Suppression of the Financing of Terrorism.[119]

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113. International Convention for the Suppression of the Financing of Terrorism, *supra* note 112.

114. *UN Instruments and Other Relevant Int'l Standards*, *supra* note 101.

115. *Id.*

116. S.C. Res. 1373, ¶ 4, U.N. Doc. S/RES/1373 (Sept. 28, 2001), *available at* http://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf (emphasis added).

117. Fact Sheet, Office of the Spokesman, U.S. Dep't State (Nov. 3, 2005), http://www.state.gov/r/pa/prs/ps/2005/56006.htm (last visited Mar. 29, 2008).

118. 2 BUREAU OF INT'L NARCOTICS AND LAW ENFORCEMENT AFFAIRS, U.S. DEP'T STATE, INT'L NARCOTICS CONTROL STRATEGY REPORT pt. 1 (Mar. 2007), *available at* http://www.state.gov/p/inl/rls/nrcrpt/2006/vol2/.

119. *Id.*

III. U.S. & COLOMBIAN DOMESTIC ANTI-MONEY LAUNDERING LAWS

Numerous penalties related to money laundering exist, some targeting banks, cash businesses, and other financial institutions for regulatory violations, and others criminally punishing individuals and institutions for laundering funds. The primary anti-money laundering laws in the United States and Colombia focus on both the individual money launderer's concealment of illegal funds and the transportation of funds across borders, also known as international money laundering.[120]

A. United States Anti-Money Laundering Initiatives

The United States combats money laundering using a multifaceted approach. Criminal and civil sanctions are included in the United States Code and additional measures have been implemented with the fairly recent adoption of the Patriot Act.[121] As stated above, the United States has also joined the international community in a collaborative effort to reduce all forms of money laundering.

1. Money Laundering Control Act of 1986

Although multiple laws address money laundering,[122] the principal U.S. statute addressing the transaction and transportation of illegal funds is the Money Laundering Control Act of 1986.[123] While the United States originally enacted this anti-money laundering act to

120. *See supra* Part II.E.

121. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in scattered sections of 18 U.S.C.).

122. *See generally* Currency and Foreign Transactions Reporting Act of 1970 (Bank Secrecy Act), 31 U.S.C.S. §§ 5311-5330 (LexisNexis 2006 & Supp. 2007) (specific laws and reporting requirements for financial institutions). *See generally* OFFICE OF THE COMPTROLLER OF CURRENCY, WASH., D.C., MONEY LAUNDERING: A BANKER'S GUIDE TO AVOIDING PROBLEMS 4 (Dec. 2002), *available at* http://www.occ.treas.gov/moneylaundering2002.pdf ("Congress enacted the BSA to help prevent banks and other financial service providers from being used as intermediaries for, or being used to hide the transfer or deposit of money derived from, criminal activity.").

123. 18 U.S.C.S. § 1956 (LexisNexis 2002 & Supp. 2007).

prevent drug trafficking, the tragic events of September 11, 2001 have shifted the primary focus to terrorist financing, although the Act still criminalizes drug-related money laundering.[124] The Money Laundering Control Act is codified in two sections of Title 18 of the United States Code: sections 1956[125] and 1957.[126] Section 1956 is the general provision criminalizing money laundering, and section 1957 focuses on engaging in transactions of illegally obtained property exceeding $10,000.[127] A general overview of each provision follows.

Section 1956 prohibits three types of conduct: money laundering through transaction; money laundering through transportation; and laundering money that a law enforcement officer holds out as illegally obtained through a "sting" operation.[128] Although this discussion will focus on the section involving transactional laundering (section (a)(1)) and the section involving laundering through transportation (section (a)(2)), the general elements for all three sections are the same: "(1) knowledge; (2) proceeds; (3) specified unlawful activity; (4) financial transaction; and (5) intent."[129] The U.S. Court of Appeals for the 10th Circuit stated that a successful conviction for money laundering under section 1956(a)(1) is based upon proof of the following:

> (1) [The defendant] knowingly conducted a financial transaction; (2) [the defendant] knew the funds represented proceeds of an unlawful activity; (3) the funds actually did represent the proceeds of the unlawful activity; and (4) the transaction was designed to conceal the nature, location, source ownership or control of the proceeds. 18 U.S.C. § 1956(a)(1)(B)(i) (1994).[130]

The section criminalizing money laundering through transportation of funds contains essentially the same elements as the

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124. *Id.* Lani Cossette, *New Long-Arm Authority over Foreign Banks Raises Due Process Concerns but Remains a Viable Tool to Prevent Money Launderers from Abusing the U.S. Financial System*, 71 GEO. WASH. L. REV. 272, 283-84 (2003).

125. 18 U.S.C.S. § 1956 (LexisNexis 2002 & Supp. 2007).

126. 18 U.S.C.S. § 1957 (LexisNexis 2002 & Supp. 2007).

127. 18 U.S.C.S. §§ 1956-57 (LexisNexis 2002 & Supp. 2007).

128. *See* 18 U.S.C.S. § 1956(a)(1)-(3); *see also* Edward Swanson, *Comment to § 1956*, Supp. at 46, 18 U.S.C.S. § 1956 (LexisNexis Supp. 2007).

129. *Id.*

130. United States v. Rahseparian, 231 F.3d 1267, 1272 (10th Cir. 2000).

section criminalizing the financial transaction, except the defendant must first transport, or attempt to transport, funds across the U.S. border.[131]

Under section 1956, the defendant must know the funds are the proceeds of "some illegal activity," and such knowledge "may be actual or inferred."[132] The defendant may not be willfully blind.[133] Although "[d]irect evidence of intent is not necessary to support a money-laundering conviction," courts have held that the purpose of the transaction, or transportation of funds, must be to conceal.[134] Also, evidence supporting such an assertion must be "substantial."[135] Therefore, it is important to note that the defendant must both have *known* that the funds were derived from an unlawful activity and the

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131. 18 U.S.C.S. § 1956(a)(2) (LexisNexis 2002 & Supp. 2007); *see also* United States v. Cuellar, 441 F.3d 329, 332 (5th Cir. 2006) (discussing the required elements for international money laundering).

> First, [the government] must show that the transportation or attempted transportation of funds was across U.S. borders. Second, the funds in question had to be the proceeds of specified unlawful activity. Third, [defendant] must have known that the funds represented such proceeds. Fourth, his transportation of the funds must have been designed (in whole or in part) to conceal or disguise the nature, location, source, or control of the proceeds. Fifth, [defendant] had to know that such concealment was the design of his enterprise.

Id.

132. 53A AM. JUR. 2D *Money* § 61 (2006 & Supp. 2007).

133. *E.g.*, Justin Serafini, *Money Laundering*, 41 AM. CRIM. L. REV. 887, 895 (2004) (discussing the U.S. money laundering laws specifically).

134. 53A AM. JUR. 2D *Money* § 61 (2006 & Supp. 2007).

135. United States v. Johnson, 440 F.3d 1286, 1291 (11th Cir. 2006) (citing United States v. Blankenship, 382 F.3d 1110, 1130 (11th Cir. 2004)). *See also Blankenship*, 382 F.3d at 1130 (providing examples of types of evidence).

> Evidence that may be considered when determining whether a transaction was designed to conceal includes, among others, statements by a defendant probative [of] intent to conceal; unusual secrecy surrounding the transaction; structuring the transaction in a way to avoid attention; depositing illegal profits in the bank account of a legitimate business; highly irregular features of the transaction; using third parties to conceal the real owner; a series of unusual financial moves cumulating in the transaction; or expert testimony on practices of criminals.

Id.

purpose of the transaction itself must be to *conceal* that unlawful source.[136]

Section 1957 of the United States Code criminalizes "engaging in monetary transactions in property derived from specified unlawful activity," and penalizes anyone who "knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity."[137] This section, however, does not require that the defendant have knowledge of the exact unlawful activity, just that the property is derived from such a "specified unlawful activity."[138] This is similar to the knowledge element required in section 1956, in that the knowledge may be inferred.[139] The Money Laundering Control Act is also comparable to the international standards, like that of United Nations Convention Against Transnational Organized Crime, discussed above, in that both schemes refer to knowledge and intent to conceal.[140]

There are a few notable distinctions and similarities between sections 1956 and 1957. Section 1957 requires the property to have a value over $10,000.[141] Under section 1957 there is no requisite intent

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136. *See generally* United States v. Rahseparian, 231 F.3d 1267, 1272 (10th Cir. 2000) ("[D]efendant's transactions were designed to 'conceal the nature, location, source ownership or control of the proceeds' of the income from [an unlawful business]."). *Cf.* Louis V. Csoka, *Combating Money Laundering: A Primer for Financial Services Professionals*, 20 ANN. REV. BANKING L. 311, 331 (2001) ("Section 1956 establishes four alternative intent requirements: (1) intent to promote specified unlawful activity; (2) intent to violate International Revenue Code Sections 7201 or 7206; (3) intent to conceal or disguise the nature, location, source, ownership, or control of the proceeds of specified unlawful activity; or (4) intent to avoid a reporting requirement under state or federal law.").

137. 18 U.S.C.S. § 1957(a) (LexisNexis 2002 & Supp. 2007).

138. *Id.* § 1957(a), (c). *See* Serafini, *supra* note 133, at 893 ("Because the recipient need not actually exchange or launder the funds or have any specific intent to further or conceal unlawful activity, [section] 1957 potentially criminalizes seemingly 'innocent' acts or commercial transaction.").

139. Serafini, *supra* note 133, at 895.

140. What Is Money Laundering?, *supra* note 32. *See, e.g.*, United Nations Convention Against Transnational Organized Crime, *supra* note 108, art. 6.

141. 18 U.S.C.S. § 1957(a) (LexisNexis 2002 & Supp. 2007); *see also* United States v. Wynn, 61 F.3d 921, 926 (D.C. Cir. 1995). *Cf.* 18 U.S.C.S. § 1956(f) (LexisNexis 2002 & Supp. 2007) (requiring the value of a transaction to exceed $10,000 before affording extraterritorial jurisdiction).

to conceal.[142] Additionally, the penalties under section 1957 are criminal fines and/or "imprisonment for not more than ten years,"[143] with the possible addition of civil penalties under 1956.[144] Under section 1956 both civil and criminal penalties may be enforced.[145] The civil penalties range and are generally assessed on "the greater of . . . (A) the value of the property, funds, or monetary instruments involved in the transaction; or (B) $10,000."[146] The criminal penalties range from 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."[147]

Additionally, section 1956 allows the court to 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."[148] This is an important feature of section 1956 as it opens the door for federal authorities to seize illegally obtained assets prior to the culmination of the trial.[149] Another tool for federal authorities is section 1956(b)(2), which extends long-arm jurisdiction over foreign individuals in certain circumstances.[150]

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142. Serafini, *supra* note 133, at 893; *see also Wynn*, 61 F.3d at 926-27 ("Due to the omission of a 'design to conceal' element, section 1957 prohibits a wider range of activity than money 'laundering,' as traditionally understood.") (quoting Emily J. Lawrence, Note, *Let the Seller Beware: Money Laundering, Merchants and 18 U.S.C. §§ 1956, 1957*, 33 B.C. L. REV. 841, 856-66 (1992)).

143. 18 U.S.C.S. § 1957(b) (LexisNexis 2002 & Supp. 2007).

144. *Id.* § 1956(b)(1).

145. *Id.* § 1956(a)-(b).

146. *Id.* § 1956(b)(1)(A)-(B).

147. *Id.* § 1956(a)(1)(B)(ii).

148. *Id.* § 1956(b)(3).

149. *Id.* § 1957(b) (LexisNexis 2002 & Supp. 2007). *See also* 18 U.S.C. §§ 981-983 (relevant laws regarding seizure and forfeiture of property prior to a conviction). These provisions allow for the taking of property involved in a specified unlawful activity or the taking of certain proceeds generated from such an activity. *See id.* There is no prerequisite that the property be laundered in order to be forfeited. *Id.*

150. 18 U.S.C.S. § 1956(b)(2) (LexisNexis 2002 & Supp. 2007).

2. International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (Title III of the USA PATRIOT Act)

The Patriot Act was signed into law in response to the terrorist acts of September 11, 2001.[151] The Act seeks to "deter and punish terrorist acts in the United States and around the world."[152] In furtherance of this goal, Title III of the Act amends and fortifies the U.S. anti-money laundering laws.[153] The Patriot Act has amended both the Money Laundering Control Act of 1986 and the Bank Secrecy Act of 1970.[154]

The Patriot Act targeted informal value transfer systems, such as the Colombian BMPE by "expand[ing] the definition of 'financial institution' to include IVTS [informal value transfer system] operators."[155] The Patriot Act requires operators to comply with all BSA regulations, and the recordkeeping, reporting, and anti-money laundering program requirements.[156] The Patriot Act has also expanded the "list of predicate underlying offenses" involved in money laundering.[157]

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151. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in scattered sections of 18 U.S.C.); *see* Bruce G. Leto et al., *Anti-Money Laundering Initiatives Under the USA Patriot Act*, FINDLAW (2002), http://library.findlaw.com/2002/Jun/24/128259.html.

152. USA PATRIOT Act.

153. *Id.* § 301.

154. Leto et al., *supra* note 151.

155. INFORMAL VALUE TRANSFER SYSTEMS, *supra* note 17, at 10. *See also* USA PATRIOT Act § 359(a). Section 359(a) added the following to the definition of "financial institution":

> [A "financial institution" includes] a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

Id.

156. INFORMAL VALUE TRANSFER SYSTEMS, *supra* note 17, at 10. *See also* USA PATRIOT Act § 359.

157. Daniel C. Lindner, *Money Laundering Between States: A Comparison of International Money Laundering Control Mechanisms*, 74 DEF. COUNS. J. 47, 51 (2007).

Further, the Act expanded the jurisdictional reach of the United States.[158] Section 317 of the Patriot Act added section 1956(b)(2), "Jurisdiction over Foreign Persons," to the Money Laundering Control Act, extending the long-arm jurisdiction of the U.S. district courts to any "foreign person, including any financial institution."[159] Jurisdiction is deemed proper under this section 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."[160] The only prerequisites to asserting such jurisdiction are as follows: the individual "foreign person" must commit an offense under 1956(a) "involving a financial transaction that occurs in whole or in part in the United States;" the financial institution is subject to jurisdiction if it "maintains a bank account at a financial institution in the United States."[161]

Although the defendant has a constitutional right to due process, which generally requires that a foreign individual or entity have minimum contacts with the state to justify an assertion of personal jurisdiction over such a defendant, Congress sets the bar for determining sufficient minimum contacts in this instance because the courts defer to Congress regarding U.S. foreign policy.[162] Congress has deemed a foreign bank's maintenance of a U.S. correspondent banking account in the United States a significant contact because it is the means through which terrorists launder their funds.[163] Thus, U.S. courts may lawfully assert general personal jurisdiction over a foreign bank facing charges if the defendant bank has a U.S. correspondent account in the United States, even if the bank did not use its U.S. correspondent account to launder the specific funds in question.[164]

Congress also extends U.S. jurisdiction in Section 319, which "permits U.S. authorities to seize a foreign bank's inter-bank account to reach tainted money on deposit in the foreign bank outside of the

158. *Id.* at 50.

159. USA PATRIOT Act § 317 (amending 18 U.S.C.S. § 1956 (LexisNexis 2002 & Supp. 2007)).

160. *Id.* § 317; *see also* 18 U.S.C.S. § 1956(b)(2) (LexisNexis 2002 & Supp. 2007).

161. USA PATRIOT Act § 317.

162. Cossette, *supra* note 124, at 283-84.

163. *Id.*

164. *Id.* at 286.

United States."[165] However, U.S. authorities "are not required to show that the funds in any inter-bank account are related to the tainted funds at issue."[166] This jurisdictional extension has sparked diplomatic controversy, particularly when the law affects a foreign country's banks.[167]

Another section of the Patriot Act related to money laundering is Section 314(a), entitled "Cooperative Efforts to Deter Money Laundering."[168] FinCEN was delegated the authority to create regulations pursuant to Section 314.[169] Some of FinCEN's toughest regulations bestow strength upon law enforcement: such regulations give law enforcement agencies "45,000 points of contact at more than 27,000 financial institutions to locate accounts and transactions of persons that may be involved in terrorism or money laundering."[170] The Patriot Act has also altered many other areas of U.S. law to require financial institutions to identify, detect and report suspicious transactions indicative of money laundering or terrorist financing.[171]

B. Colombian Anti-Money Laundering Law

Unlike the United States, which is a common law legal system, Colombia is a civil law jurisdiction.[172] As such, Colombia does not use case law as binding precedent.[173] Although judicial opinions can

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165. Edward J. Krauland & Aaron R. Hutman, *Money Laundering Enforcement and Policy*, 38 INT'L LAW 509, 512 (2004). *See also* USA PATRIOT Act § 319.

166. Krauland & Hutman, *supra* note 165.

167. *Id.*

168. USA PATRIOT Act § 314(a).

169. FinCEN, U.S. Dep't Treasury, FinCEN's 314(a) Fact Sheet (Apr. 2008), http://www.fincen.gov/314afactsheet.pdf.

170. *Id.*; *see also* USA PATRIOT Act § 358; Sanders & Sanders, *supra* note 45, at 83. Bank Secrecy Act reports have also become more readily available under the Patriot Act, allowing access to state and federal financial regulators as well as U.S. agencies. *Id.*

171. OFFICE OF THE COMPTROLLER OF THE CURRENCY, *supra* note 122, at 4-6 (providing an overview of such changes to assist in banking compliance).

172. Antonio Ramirez, *An Introduction to Colombian Governmental Institutions and Primary Legal Sources*, N.Y.U. GLOBALEX, PART II.1 (May 2007), http://www.nyulawglobal.org/globalex/colombia.htm#_II._Primary_Sources.

173. *Id.*

offer guidance, the lower courts are autonomous and are not bound to follow decisions of higher courts.[174] Therefore, the main source of Colombian anti-money laundering authority is the criminal code itself.[175]

The anti-money laundering law is found in the Penal Code under Act 599 of 2000.[176] As a result of Act 599 and other anti-money laundering initiatives, Colombia is considered the "regional leader in the fight against money laundering."[177] The anti-money laundering laws were enacted when Colombia "established the 'legalization and concealment' of criminal assets as a separate criminal offense" in 1995.[178] Later, "in 1997 and 2001 Colombia criminalized the laundering of the proceeds of extortion, illicit enrichment, rebellion, narcotics trafficking, arms trafficking, crimes against the financial system or public administration, and criminal conspiracy."[179]

The specific criminal offense of "money laundering" is found in Article 323 of the Colombian Penal Code, which criminalizes a broad range of money laundering activities.[180] Article 323 makes it illegal for any individual to "acquire[], protect[], invest[], transport[], convert[], hold[] for safekeeping or manage[] assets originating, directly or indirectly," from specific unlawful activities, including drug and arms trafficking.[181] Article 323 additionally criminalizes

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174. *Id.* at Part II.3.

175. *See* PENAL CODE art. 323, Act 599 of 2000 (Colom.) *as reprinted in* U.N. SEC. COUNCIL, Sec. Council Comm. Established Pursuant to Resolution 1267, *Note Verbale Dated 21 April 2003 From the Permanent Mission of Columbia to the United Nations Addressed to the Chairman of the Committee*, 3, U.N. Doc. S/AC.37/2003/(1455)/39 (May 1, 2003) [hereinafter *Colombia Report to United Nations*].

176. *Id.*

177. BUREAU OF INT'L NARCOTICS AND LAW ENFORCEMENT AFFAIRS, *supra* note 118.

178. *Id.*

179. *Id.*

180. PENAL CODE art. 323 of Act 599 (Colom.) *as reprinted in Colombia Report to United Nations*, *supra* note 175.

181. *Id.* A complete list of the crimes mentioned in Article 323 follows: "activities of extortion, illicit enrichment, extortive kidnapping, rebellion, arms trafficking, crimes against the financial system or public administration, or linked to proceeds of crime that are the object of a conspiracy to commit an offence, or activities related to trafficking in toxic or narcotic drugs or psychotropic

giving illegally obtained funds the "appearance of legality," or legalizing such funds, or taking any other steps to intentionally hide or disguise the illegal funds.[182] The crime of money laundering alone, without commission of the underlying offenses, carries criminal penalties of between six and fifteen years of imprisonment, in addition to a fine up to fifty thousand times the minimum statutory wage rate.[183]

Money laundering is punishable under Article 323 even if the act of deriving the assets or the other criminal acts occur in a foreign country.[184] The Article further provides that a penalty may be increased by up to fifty percent of the original penalty when the acts involve "exchange or foreign trade transactions or when goods were imported into the national territory . . . [or] when contraband goods have been brought into the national territory."[185] This portion of the provision is therefore aimed at thwarting the activities of the Black Peso Market Exchange.[186]

Like U.S. law, Colombian law provides for seizure of certain financial assets which are either "used to commit the punishable act, or which are derived from the commission of such act."[187] Colombia also arms the prosecutor with "precautionary measures" such as the freezing of assets and *in rem* forfeiture of property.[188] Latin American

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substances." *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *See* Zill & Bergman, *supra* note 51.

187. CODE CRIM. PROC. art. 67 (Colom.), *as reprinted in Colombia Report to United Nations*, *supra* note 175.

188. PENAL CODE art. 12, Act 599 (Colom.), *as reprinted in Colombia Report to United Nations*, *supra* note 175. The relevant portion of Article 12 follows as translated:

> The prosecutor may order precautionary measures or request the competent judge to take such measures, as appropriate; the measures shall include suspension of dispositive power; freezing and attachment of assets, money deposited in the financial system, transferable securities and the returns thereon, and the order not to pay out such yields if it proves impossible to seize them physically.

Id. *See generally* Brian J. Henchey, *Backgrounder on Forfeiture*, CORNELL UNIVERSITY LAW SCHOOL, LEGAL INFORMATION INSTITUTE (1999),

nations have traditionally restrained such efforts in advancement of individual privacy rights.[189] To ensure that those rights are not abandoned, precautionary procedural mechanisms have been implemented.[190]

Colombia has also added provisions which address terrorist financing.[191] For example, a recent amendment to the Colombian law added terrorist financing as an independent crime, criminalizing "direct and indirect financing of terrorism, of both national and international terrorist groups."[192] This crime requires "*mens rea* (guilty mind) of a criminal agreement."[193] Additionally, Article 345

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http://www.law.cornell.edu/ background/forfeiture/ (last visited Apr. 17, 2008) (providing general information on forfeiture laws).

189. Luz Estella Nagle, *The Challenges of Fighting Global Organized Crime in Latin America*, 26 FORDHAM INT'L L.J. 1649, 1710 (2003).

190. *Id.*

> In response to potential conflicts with civil law traditions that protect an individual's right to privacy, a balance must be struck between drug prevention and individual rights. Colombian Decree 1461 of 2000 addresses such concerns and is a comprehensive list of rules regarding the custody, care, administration, and destination of goods and property that are proceeds from a crime or tools utilized in the execution of the crime.

Id.

191. *E.g.*, PENAL CODE art. 343, Act 599 (Colom.).

192. *Id.* BUREAU OF INT'L NARCOTICS AND LAW ENFORCEMENT AFFAIRS, *supra* note 118, at 57. *See also* U.N. OFFICE ON DRUGS & CRIME, LEGISLATIVE GUIDE TO THE UNIVERSAL ANTI-TERRORISM CONVENTIONS AND PROTOCOLS para. 80, U.N. Sales No. E.04.V.7 (2004), *available at* http://www.unodc.org/pdf/ Legislative%20Guide%20Mike%2006-56981_E_Ebook.pdf [hereinafter UNODC LEGISLATIVE GUIDE] (commenting upon Law Number 599 of Colombia). "[The law] is entitled 'Concerning (agreement) or (joint action), terrorism, threats and instigation.'" *Id.* The law states that "when a number of persons *(agree together) or (act together)* for the purpose of committing crimes, each of them will be punished, for this conduct alone, with imprisonment." *Id.* (emphasis added). A translated version of Article 343, criminalizing "terrorism" follows:

> Whoever provokes a state of fright or terror in the population or a sector of it, through acts that endanger life, the physical integrity or the liberty of persons or structures or means of communication, transport, processing or transmission of fluids or energy, using means capable of causing mass destruction, will be incarcerated for this offence, without prejudice to the separate penalties provided for the crimes committed in the course of this conduct.

Id.

193. UNODC LEGISLATIVE GUIDE, *supra* note 192, at para. 81 ("[W]hether the

of the Colombian Code under Act 599 discusses money laundering related to terrorist activities and provides that "[a]ny person who manages money or assets linked to terrorist activities shall be liable to a term of imprisonment of between six (6) and twelve (12) years and a fine of between two hundred (200) and ten thousand (10,000) times the minimum statutory monthly wage."[194]

Colombia's efforts at combating money laundering have resulted in the strengthening of "[b]oth Colombia's financial structure and regulations."[195] Although Colombia has set standards in accordance with those of the United Nations Convention Against Illicit Traffic of Narcotic Drugs and Psychotropic Substances, "there is a visible gap between the written law and reality."[196]

IV. COMPARISON OF U.S. AND COLOMBIAN ANTI-MONEY LAUNDERING LAWS

The U.S. and Colombian primary anti-money laundering laws are essentially the same and are consistent with the international definition of money laundering.[197] Both require that the funds be derived from a criminal endeavor, or specified unlawful activity, and both require that the individual has knowledge of this fact.[198] Initially, both countries criminalized money laundering related to drug trafficking, and both have now expanded legislation to include money laundering related to other crimes, such as terrorist financing.[199] In instituting such measures to thwart both drug trafficking and terrorist

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necessary *actus reus* (criminal act) is closer to what would be called an attempt in many legal cultures or to conspiracy as applied in common law legal systems requires interpretation by persons familiar with Colombian jurisprudence.").

194. PENAL CODE art. 345 of Act 599 (Colom.) *in Colombia Report to United Nations*, *supra* note 175.

195. UNODC COUNTRY PROFILE, *supra* note 5, at 36 (Colombia's "legislative framework [is] aim[ed] at the penalization of money-laundering, facilitating prevention, detection and prosecution of the crime, and establishing mechanisms for the confiscation of illicit proceeds of crime.").

196. *Id.*

197. *See* What Is Money Laundering?, *supra* note 32.

198. *See* 18 U.S.C.S. § 1956 (LexisNexis 2002 & Supp. 2007); PENAL CODE art. 323 of Act 599 (Colom.).

199. *See* BUREAU OF INT'L NARCOTICS AND LAW ENFORCEMENT AFFAIRS, *supra* note 118; PENAL CODE art. 323 of Act 599 (Colom.).

financing, both have received a mixed public response. The Patriot Act sparks controversy in the United States for its impact on U.S. citizens' constitutional rights;[200] the Colombian war on terror prompts review of the "delicate balance between violation of basic civil liberties and prudent action to combat terror."[201]

The major differences in the two countries' anti-money laundering schemes do not lie within the laws themselves, but instead surface in a review of the countries' enforcement measures and mechanisms, or lack thereof, and the overall climate of the two countries. As discussed briefly in the beginning of this Comment, Colombia has been dealing with internal political conflict for decades.[202] The United States, on the other hand, is more concerned with external terrorist threats.[203] The attacks of September 11, 2001 gave rise to a dramatic shift in U.S. policy: "[d]eclaring 'war on terror,' the United States demanded tightened global rules on sharing financial records, lifting bank secrecy and executing asset seizures against suspect individuals."[204]

However, the reality is that "[t]he most comprehensive and rigorous evaluation of the anti-money laundering regime in place in the United States concluded in 2004 that 'the risk of conviction faced by money launderers is about five percent annually.'"[205] One enforcement challenge faced by the United States is the problem of coordinating enforcement efforts; there are over twenty different law enforcement agencies that perform money laundering investigations and prosecutions.[206] An agency is assigned an investigation depending on the underlying predicate offence involved in the money laundering.[207] This problem also results in an inefficient and disjointed investigation as the typical act of money laundering usually

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200. *See generally, e.g.*, Christopher Metzler, *Providing Material Support to Violate the Constitution: The Patriot Act and Its Assault on the Fourth Amendment*, 29 N.C. CENT. L.J. 35 (2006) (arguing the USA PATRIOT Act conflicts with the Fourth Amendment and invites future intrusions upon Fourth Amendment rights).

201. Nagle, *Our Own Backyard*, *supra* note 23, at 42.

202. *Id.* at 9-24.

203. *See* NAÍM, *supra* note 37, at 154.

204. *Id.*

205. *Id.* at 140.

206. Lindner, *supra* note 157, at 52.

207. *Id.*

involves several other offenses.[208] "[I]nvestigations and prosecutions are often duplicative in nature."[209] Therefore, although the United States takes "a uniquely aggressive and far-reaching stance" on money laundering through its legislation, enforcement of these laws is difficult.[210]

Colombia also faces obstacles in enforcing its anti-money laundering legislation. One continuing problem faced by Colombia is its unstable political environment; the Colombian government is "continually at war with rebel forces of Revolutionary Armed Forces of Country (FARC), which have been linked to trafficking in cocaine."[211] The illegal drug industry began to take its toll on Colombians in earnest in the 1980s as "homicides and other violent crimes increased dramatically" and natives began to notice the "illegal industry's effects on the political system."[212] Colombia has attempted to thwart illegal drug trafficking, but corruption runs deep into the weak governmental infrastructure, making it difficult for legislative measures to be successfully implemented and enforced.[213]

Despite these challenges, Colombia has made a systematic effort to follow international legislative standards relating to money laundering.[214] Colombia's ratification of the United Nations Convention Against Illicit Trafficking in Narcotics and Psychotropic Substances has facilitated the exchange of information between the United States and Colombia.[215] Such communication has increased

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208. *Id.*

209. *Id.*

210. *Id.*

211. Joe Swanson, *Drug Trafficking in the Americas: Reforming United States Trade Policy*, 38 GEO. WASH. INT'L L. REV. 779, 796 (2006).

212. Francisco E. Thoumi, *Illegal Drugs in Colombia: From Illegal Economic Boom to Social Crisis*, 582 ANNALS AM. ACAD. POL. & SOC. SCI. 102, 114 (2002).

213. *Id.*; *see also* Nagle, *Mutual Assistance*, *supra* note 27, at 1281-82. "Centuries of institutionalized corruption, five decades of guerrilla insurrection, a quarter century of uncontrollable drug trafficking and narcoterrorism, and horrific political and societal violence have brought Colombia to the precipice of anarchy and disintegration." *Id.* "The legitimate government for all intents and purposes is not in control and is largely out of touch with the will of the Colombian people." *Id.*

214. *See* Ospina-Velasco, *supra* note 91, at 113.

215. BUREAU OF INT'L NARCOTICS AND LAW ENFORCEMENT AFFAIRS, *supra* note 118 ("This convention extends into most money laundering activities that are the result of Colombia's drug trade.").

the rate of money laundering convictions in Colombia. The prosecutor's office, for example, counted eighty-seven successful convictions for money laundering in 2005 and sixty-six convictions by October 2006.[216] Colombia has also implemented "horizontal" agreements "to control the traffic of precursor chemicals across the borders of the nation."[217] As Colombia works toward rehabilitation and away from corruption, it seeks aid in both policy and monetary forms to effectively combat money laundering and other associated crimes.[218]

The United States assists Colombia financially through "Plan Colombia," a "comprehensive strategy to counter drug trafficking, improve the performance of the armed forces, and win the confidence of civilians."[219] The United States, along with international organizations, have given millions of dollars to this project.[220] The United States claims the program will "enhance Colombia's ability to identify and prosecute drug money laundering crimes, as well as forfeit the proceeds from these crimes."[221] This financial assistance is used "to train prosecutors and police and to upgrade the technical capabilities of Colombia's Financial Analysis Unit."[222]

The U.S. Immigration and Customs Enforcement (ICE) is also joining efforts with Colombia, and has "successfully conducted high

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216. *Id.*

217. UNODC COUNTRY PROFILE, *supra* note 5, at 37 ("Horizontal cooperation agreements have been set up with Brazil, Ecuador and Panama to control this influx.").

218. *See* Ospina-Velasco, *supra* note 91, at 113.

219. Nagle, *Mutual Assistance*, *supra* note 27, at 1269 (quoting Jason Feer, *Failure of US Congress to Boost Aid to Columbia Likely to Increase Violence*, OIL DAILY, Dec. 7, 1999); *see also Novel Approaches*, *supra* note 63, at 572 ("The Bush administration has not tried to sell Plan Colombia as an international program, but has expanded it to include counter-terrorism.").

220. *See* International Office of National Drug Control Policy (White House), International Money Laundering and Asset Forfeiture ONDCP FACT SHEET, http://www.whitehousedrugpolicy.gov/publications/international/factsht/intrnl_mny_lndrg.html (last visited Mar. 22, 2008).

221. *Id.*; *see also* Hale Sheppard, *The Andean Trade Preference Act: Past Accomplishments and Present Circumstances Warrant Its Immediate Renewal and Expansion*, 34 GEO. WASH. INT'L L. REV. 743, 771 (2003) (noting that the United States proposed increasing funding and overall involvement in the area in 2003).

222. *Id.*

profile money laundering investigations, which have resulted in dismantling of large money laundering organizations."[223] An example of one such organization is the Norte Valle Cartel, "Juan Albiero Monslave, owner of various money remitter stores, was the chief overseas officer in the United States for the Norte Valle Cartel. From 1993-1996, Monslave's stores laundered approximately seventy million dollars."[224] As a result of a collaborative U.S. and Colombian effort, Monslave is now "serving a life term for murder, drug trafficking, and money laundering."[225]

V. CONCLUSION

Both the United States and Colombia are actively engaged in international anti-money laundering initiatives and are continuously expanding and improving their domestic laws and regulations to meet the international FATF standards.[226] Although both countries have comparable anti-money laundering laws in place, the overall political climate and motivation behind anti-money laundering legislation differs.[227] The United States fears external terrorist attacks, while Colombia battles internal chaos and corruption.[228] However, both countries face difficulties in enforcement. Enforcement measures are difficult because of the complex nature of the crime itself and because the U.S. and Colombian governments lack the requisite internal cohesion and international cooperation necessary to deter such crimes.[229]

Although the international community has established a more comprehensive scheme of laws and regulations to combat money laundering, the problem now lies with the enforcement mechanisms.[230] The United Nations and the World Bank predict that as the Colombian government strengthens its enforcement system,

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223. Dep't Homeland Sec., *supra* note 3.
224. *Id.*
225. *Id.*
226. *See supra* Part II.
227. *See supra* Part IV.
228. *See supra* Part IV.
229. *See supra* Part IV.
230. Bachus, *supra* note 52, at 870.

"those elements of the FARC and the AUC committed to conflict or criminal incomes are likely to withdraw into Venezuela."[231] However, this will only change the location of the violence and corruption. There must be international collaboration to effectively deter money laundering; otherwise, parties will simply move their criminal activities to the country with the weakest enforcement mechanisms.[232]

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231. UNITED NATIONS OFFICE OF DRUGS AND CRIME & THE LATIN AMERICA AND CARIBBEAN REGION OF THE WORLD BANK, CRIME, VIOLENCE, AND DEVELOPMENT: TRENDS, COSTS, AND POLICY OPTIONS IN THE CARIBBEAN 102, Report No. 37820 (Mar. 2007), *available at* http://www.unodc.org/pdf/research/Cr_and_Vio_Car_E.pdf.

232. *Id.*

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