TRANSNATIONAL CRIME AND MONEY LAUNDERING: The relevance of international cooperation treaties

CRIME TRANSNACIONAL E LAVAGEM DE DINHEIRO: A relevância dos tratados de cooperação internacional

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Abstract:
The primary purpose of this scientific paper is analyzing transnational crimes, focusing on money laundering, and the concerns regarding the protection of the States' wealth. This preoccupation rises the need to reinforce the cooperation between countries through the application of national and international laws regarding these matters (international solidarity), as tackling organized crime responsible for money laundering is a matter of common interest. The paper also explains procedures used in Brazil and in other countries to fight money laundering and presents examples of actions successfully combating international crime. This article follows a qualitative approach method, by using general arguments pertinent to the subject, and a quantitative method, by applying the statistical technique for data collection and its analysis.
Keywords:
Transnational crime; Money laundering; International Solidarity; International Treaties and Conventions; Criminal Organization.
Resumo:
O principal objetivo deste artigo científico é analisar os crimes transnacionais, com foco na lavagem de dinheiro, e as preocupações relativas à proteção da riqueza dos Estados. Esta preocupação aumenta a necessidade de reforçar a cooperação entre países através da aplicação de leis nacionais e internacionais sobre estas questões (solidariedade internacional), uma vez que o combate ao crime organizado responsável pelo branqueamento de capitais é uma questão de interesse comum. O documento também explica os procedimentos utilizados no Brasil e em outros países para combater a lavagem de dinheiro e apresenta exemplos de ações que combatem com sucesso o crime internacional. Este artigo segue um método de abordagem qualitativa, utilizando argumentos gerais pertinentes ao assunto, e um método quantitativo, aplicando a técnica estatística para coleta de dados e sua análise.
Palavras-chaves:
Crime Transnacional; Lavagem de dinheiro; Solidariedade internacional; Tratados e Convenções Internacionais; Organização Criminosa.

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1 INTRODUCTION

Money laundering is no longer an isolated concern of each country. It has become internationally noted and fought, with many countries developing, in a targeted way, specific and increasingly stricter laws, avoiding economic and social losses.

The fight against this type of crime relies on the support of trained law enforcement agents who, due to the very nature of the work they perform -- not only to combat corruption, but also to facilitate services the State must provide to its administered entities--, end up being the most targeted by actions from criminal organizations; increasing the severity of money laundering laws can sometimes result in a counter-expected effect, such as in the practice of crime of corruption.

Organized crime, in its national and transnational dimensions, threatens the security of society, not only in the economic and political sphere, but also in the social sector, thus becoming a theme that demands the adoption of minimally structured strategies, to avoid irreversible damage to public coffers, culture, human relations, and society as a whole.

The role of the State has thus become to provide and disseminate tactics and strategies, provide knowledge[4] to anticipate and mitigate risks in their countries, detect vulnerabilities and help solving them, subsidizing action aimed at security and oversight, through internationally adopted norms, assumptions and procedures.

With the advanced technology with which we live today and the intensification of international relations between States, communication has become faster, with the strengthening of globalization, thus enabling expected results to occur as fast as possible, and reducing financial/economic losses, through joint preventive and repressive actions in combating corruption.

To highlight the actions of States in view of this constant need for vigilance, this work seeks to cover practices adopted to mitigate the practice of money laundering crimes, considering the sources, foundations and doctrines, yet without performing a comparative analysis between the domestic legislations of each country.

The quantitative approach, which we will use throughout this work, translates some chosen statistics into a quantifiable format.

By quantitative research, it is considered that relevant aspects of the research can be quantifiable, which means translating in numbers opinions and information to classify and

[4] MINISTÉRIO DA JUSTIÇA. GOVERNO FEDERAL. Curso para identificar lavagem de dinheiro. Disponível em < http://www.justica.gov.br/news/curso-para-identificar-lavagem-de-dinheiro >. Acesso em 13/10/2018.

analyze them. It requires the use of resources and statistical techniques (percentage, average, mode, median, standard deviation, correlation coefficient, regression analysis, etc.)[5]. This article makes use of some of these parameters, in order to provide some clarity on the scope and scale of the case study.

2 THE CRIMINALIZATION OF MONEY LAUNDERING AND ITS ENFORCEMENT

The expression money laundering, also called laundering, constitutes a process of mutation of "dirty money" into "clean money". It is a criminal maneuver to introduce money derived from a previous illicit act into the economic and financial system, resulting in an illegal economic advantage. Therefore, its existence depends on a previous criminal act.

Brazil began to criminalize money laundering based on the Vienna Convention[6] and the Palermo Convention[7]. Subsequently to these norms, it has published in his internal regulatory edifice some laws of great value for the legal and financial order of the country, adopting punitive measures similar to those established in the aforementioned conventions.

Our national system has implemented legal norms to standardize the treatment already undertaken by other States, and to disseminate the practice of money laundering as a crime, as the lack of information about this important subject would certainly entail great harm to Brazil.

The legal diploma, introduced in our legalistic system through Law No. 9.613, promulgated on March 03rd, 1998, instituted as crime the practice of money laundering. Such conduct consists in the concealment of goods, rights and values that directly or indirectly are the result or product of previous crimes, which we can exemplify citing narcotics trafficking crimes, attacks against the financial system and acts perpetrated by criminal organizations.

With the advent of Law No. 12.683, of July 09th, 2012[8], which amended the Law No. 9.613/98, it became more efficient to prosecute money laundering crimes, eliminating the previously existing (and *numerus clausus*) restrictions of previous crimes, without specifying any role, thereby enlarging the catalogue of the connecting offences.

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[5] PRODANOV, C. C.; FRAITAS, E. C. D. Metodologia do trabalho científico: Métodos e Técnicas da Pesquisa e do Trabalho Acadêmico. 2ª Ed. Novo Hamburgo: Universidade Freevale, 2013, p. 69.

[6] DECRETO LEI Nº 154 de 26 de junho de 1991. Convenção de Viena. Disponível em <http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0154.htm>. Acesso em 13/10/2018.

[7] DECRETO LEI Nº 5.015, de 12 de dezembro de 2004. Convenção de Palermo. Disponível em <http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5015.htm >. Acesso em 13/10/2018.

[8] LEI Nº 12.683, de 09 de julho de 2012. Disponível em < https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12683.htm >. Acesso em 13/10/2018.

Law No. 9.034, of May 03rd, 1995[9], considered only the means of evidence and investigative procedures to be carried out on crimes committed by gangs or gang.

The legislator, with the promulgation of the Law No. 10.217/01[10], came to amend articles 1 and 2, of the Law 9.034/95, establishing the norms there set forth applied to the illicit - and not only to crimes-, perpetrated by gangs, criminal associations or criminal organization.

The recent norm, Law 12.850/13[11], revoked the former Organized Crime Act (Law No. 9.034/95), defined criminal organization, and legislates on criminal investigation, the means to obtain evidence, related criminal offences and the criminal procedure to be applied (plea bargain collaboration, controlled action, infiltration of agents, among others).

In recent years, the government has been consistent in its efforts, constantly seeking to improve in new ways, and adopting innovations in anti-money laundering policies, putting in practice not only all public commitments (COAF, Federal Police, Federal and state Public Prosecutor's Office and other organs of the State), but also involving private entities, for example, delegating powers to financial institutions[12] in the refusal of certain financial operations and transactions.

In this sense, rules and procedures[13] have been edited to fight the crime of money laundering, which must be adopted by financial institutions, and have begun to use the acronym AML (Anti-Money Laundering), intended to inhibit values obtained in an unlawful way from being integrated, the last stage of the cycle, into the financial and economic system of any country as "clean".

Such rules allow financial institutions to identify, monitor and report to the Financial Activities Control Board (COAF – Council for Controlling the Economic Activities) any transaction or financial transactions suspected of being a crime or that are understood by them as arising from practice of crime.

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[9] LEI Nº 9.034, de 03 de maio de 1995. Disponível em <http://www.planalto.gov.br/ccivil_03/leis/l9034.htm>. Acesso em 13/10/2018

[10] LEI Nº 10.217, de 11 de abril de 2001. Disponível em <http://www.planalto.gov.br/ccivil_03/LEIS/LEIS_2001/L10217.htm>. Acesso em 13/10/2018.

[11] GIRÃO, Marcos. Estratégia Concursos – Lei nº 12.850/13 Esquematizada. Combate às Organizações Criminosas. 2016. Disponível em < https://www.estrategiaconcursos.com.br/blog/lei-no-12-8502013-esquematizada-combate-as-organizacoes-criminosas/ >. Acesso em 24/10/2018.

[12] Título 1, Capítulo 13, Seção 1 – Disposições Gerais, nº 9-A a) obter informação correspondente de forma a compreender plenamente a natureza de sua atividade e conhecer, a partir de informações publicamente disponíveis, a reputação da instituição e a qualidade da sua supervisão, incluindo se a instituição foi objeto de uma investigação ou de uma ação de autoridade de supervisão, relacionada com a lavagem de dinheiro ou com o financiamento do terrorismo, e certificar-se de que não se trata de instituição que: I – não tenha presença física no país onde está constituída e licenciada; e II – não seja afiliada a nenhum grupo de serviços financeiros que seja objeto de efetiva supervisão. https://www.bcb.gov.br/Rex/RMCCI/Ftp/RMCCI.pdf

[13] Lei nº 9.613/98; Circular BCB 2.852/98; Carta-Circular BCB 2.826/98; Carta-Circular BCB 3.098/03; Circular BCB 3.339/06; Resolução nº 2.554 do Banco Central do Brasil.

The COAF[14] is an administrative body created by Law No. 9.613, of March 03rd, 1998, to assist in the identification of operations and transactions suspected of illicit acts related to money laundering. According to art. 11(II), any operation which, by its characteristics, can confine the practice of money laundering crime must be communicated to the COAF within 24 hours of its occurrence or proposal of realization.

The role of financial institutions is fundamental in this AML process, since the money earned in an unlawful manner by a previously practiced criminal act quickly becomes a seemingly lawful resource, facilitating the dissemination of its illicit origin.

2.1 Protected Legal Asset

When one seeks to understand the legal interest to be protected in a certain behavior, it becomes prominent to adopt as a premise that life in society leads us to value, desire and dispute personal satisfactions arising from certain relevancies and "imposed" by society itself. Therefore, it is imperative and necessary to embrace protective actions of what may be damaged, which ultimately attracts the attention of jurists (lawmakers, law enforcers, and others).

The greatest legal asset under tutelage in our legal order is life[15], which can be seen even as a presupposition for the existence of other legal assets.

The criminal typology prevents certain conducts because it considers them harmful and improper to the legal asset under tutelage. Thus, it is understood that the existing criminal standardization to defend these assets is the central point, the reason of being, to the repression of damaging conducts. Criminal classification manifests itself to punish the actions which go against the protection of legal assets[16].

In this way, the Law on Money Laundering was edited, criminalizing not only the antecedent offense, but also the attempt or its realization of "cleaning" the money, aiming at the protection of a greater legal asset for the benefit of the whole society.

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[14] O Conselho de Controle de Atividades Financeira – COAF – tem como missão produzir inteligência financeira e promover a proteção dos setores econômicos contra a lavagem de dinheiro e o financiamento do terrorismo. O COAF recebe, examina e identifica ocorrências suspeitas de atividade ilícita e comunica às autoridades competentes para instauração de procedimentos. Além disso, coordena a troca de informações para viabilizar ações rápidas e eficientes no combate à ocultação ou dissimulação de bens, direitos e valores. Disponível em < http://www.fazenda.gov.br/orgaos/coaf>. Acesso em 13/10/2018.

[15] CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL DE 1988, art. 5º, caput. Disponível em <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm>. Acesso em 23/10/2018.

[16] ALLEGRO, Romana Affonso de Almeida. Bens Jurídicos – O interesse estatal de tutelar bens jurídicos através de sua normatização. 2005. DireitoNet. Disponível em < https://www.direitonet.com.br/artigos/exibir/2089/Bens-juridicos>. Acesso em 22/10/2018.

It is necessary to emphasize that our doctrine has not been uniformly positioned in relation to the protected legal asset.

Among the most diverse authors who advocate this doctrinal current, we find names like Luiz Flávio Gomes, Raul Cervini and William Terra, who in a joint work affirm that "the creation of special criminal types aimed at combating the procedures of Laundering of capital and money seeks to fundamentally protect the normality of legal traffic in the world of economics ". They conclude by stating that the crime of money laundering "encroaches meta-personal or trans-individual interests, and for this reason the legally protected asset could not be other than the socio-economic order itself[17]".

There is another current that defends that the legal asset is the administration of justice. Among the doctrine proponents who form such conviction is Rodolfo Tigre Maia, when he says that "the protected legal asset is the administration of justice, because the conducts described in the type impact justice as an institution and as a function, damaging it in practical achievement and offending its prestige and trust[18].

There are also those who argue that the legal asset is both the economic order and the administration of justice. In addition, although these are lines of weakened adherence, there are those who argue that the protected legal asset is internal security, others that it is the claim of confiscation of the proceeds of the crime, and even those who understand that it is the same asset protected by the crime antecedent of money laundering, and there are still those who defend the absence of a legal asset[19].

With the occurrence of the crime of money laundering, it is intended, however, to protect the administration of justice, the economic order and/or the financial system, and in all cases the protection of the Society itself is the main concern.

2.2 Criminal jurisdiction

According to the Brazilian federal constitution, the State Justice has jurisdiction over crimes, whereas the Federal Courts only have jurisdiction over cases that are expressly described in the legal code.

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[17] CASTRO, Thiago Cardoso de. A lavagem de capitais e o bem jurídico nela tutelado. Publicado em 06/2015. Disponível em < https://jus.com.br/artigos/39793/a-lei-de-lavagem-de-capitais-e-o-bem-juridico-nela-tutelado >. Acesso em 24/10/2018.

[18] MAIA, Rodolfo Tigre. Lavagem de dinheiro: lavagem de ativos provenientes de crime: Anotações às disposições criminais da Lei 9.613/98. 2ª edição. São Paulo: Ed. Malheiros. p. 57. 2007.

[19] CASTRO, Thiago Cardoso de. A lavagem de capitais e o bem jurídico nela tutelado. Publicado em 06/2015. Disponível em < https://jus.com.br/artigos/39793/a-lei-de-lavagem-de-capitais-e-o-bem-juridico-nela-tutelado >. Acesso em 24/10/2018.

As seen, Law No. 9.613/98[20] verses on crimes of money laundering or concealment of goods, rights and values. As a federal law, it provides, in article 2 (III), the cases in which the Federal Court becomes competent to judge these criminal offences.

See:

> Art. 2 º The process and judgment of the crimes provided for in this law:
> (...)
> III – are competence of the Federal Court:
> A) when practiced against the financial system and the economic-financial order, or to the detriment of goods, services or interests of the Union, or of its municipal entities or public enterprises;
> b) when the preceding criminal offence is the jurisdiction of the Federal court. "
> This law only reaffirms what the Federal Constitution of 1988 (CF/88)[21] says:
> Art. 109. The federal judges are responsible for prosecuting and judging:
> (...)
> IV – Political crimes and criminal offences committed to the detriment of goods, services or interests of the Union or its local authorities or public enterprises, excluding contraventions and reserving the competence of the military justice and electoral justice; "

Therefore, as said, the list provided for in art. 2nd, paragraph III, of Law No. 9.613/98 is categorical, from which it is concluded- - by reason of the residual competence of the common State justice - that situations not foreseen constitute competence of State justice. More so in this case, because the lack of legal foresight of competence could characterize offense to access to the judiciary – (art. 5, XXXV, at CF/88) and to the principle of natural judge, if the appropriate jurisdiction was not dealt with by legal norm.

The principle of the natural judge[22] has an implicit prediction in CF/88[23], in its Article 5 (LIII), which ensures no one shall be prosecuted or sentenced except by the competent authority.

3 INTERNATIONAL TREATIES AND CONVENTIONS: INTERNATIONAL SOLIDARITY

[20] 20 Lei nº 9.613, de 03 de março de 1998. Disponível em < http://www.planalto.gov.br/ccivil_03/leis/L9613.htm >. Acesso em 24/10/2018.

[21] CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL DE 1988. Disponível em < https://presrepublica.jusbrasil.com.br/legislacao/91972/constituicao-da-republica-federativa-do-brasil-1988#art-109--inc-IV >. Acesso em 24/10/2018.

[22] O princípio do juiz natural preleciona a utilização de regras objetivas de competência jurisdicional para garantir independência e a imparcialidade do órgão julgador. Trata-se, portanto, de juiz previamente encarregado, na forma da lei, como competente para o julgamento de determinada lide, o que impede, entre outras coisas, o abuso de poder. Com consequência, não se admite a escolha específica nem a exclusão de um magistrado de determinado caso. CONSELHO NACIONAL DE JUSTIÇA (CNJ). Disponível em <http://www.cnj.jus.br/noticias/cnj/85865-cnj-servico-principio-do-juiz-natural>. Acesso em 24/10/2018.

[23] CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL DE 1988. Disponível em http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm >. Acesso em 24/10/2018.

It is a fact that Brazil has adopted a practice, which has been maintained over the years, to participate in several international meetings, ratifying, therefore, in our internal order what was discussed and approved in the agreements signed between our State and foreign countries; not only to establish effective standards and measures fighting the crime of money laundering, but also in requests for international judicial assistance and cooperation. We will expand below on the posture adopted by Brazil in these subjects.

By the end of the 80's, the prevention of money laundering was regarded as a social problem of international character[24] and began to have strategies also for the fight against organized crime and drug trafficking, as the most common types of criminals who need to wash money are drug traffickers, mobsters, politicians, corrupt civil servants and people who commit unlawful acts of significant severity and/or relevance.

The world-wide money laundering theme was discussed for the first time at the United Nations Convention, held on 20 December 1988 in Vienna[25]. In Brazil, this Regulation was ratified and incorporated into its internal norms through Decree No. 154/1991, which provides for international collaboration with regard to illicit trafficking in narcotic drugs and psychotropic substances.

This decree began positioning Brazil regarding the prevention of money laundering, establishing guidelines based on indicatives of criminal conduct of money laundering, as can be seen in the wording of article 3, 1, point (b), i)[26].

Returning to international scenario, in 1989, the Financial Action Group against money laundering and terrorist financing[27] (FATF/GAFI[28]) was created by the G-7 (Germany, Canada, the United States, France, Italy, Japan and the United Kingdom), a group of the seven largest and

[24]WIKIPEDIA. Lavagem de dinheiro. Disponível em <https://pt.wikipedia.org/wiki/Lavagem_de_dinheiro>. Acesso em 13/10/2018.

[25] DECRETO LEI Nº 154 de 26 de junho de 1991. Disponível em <http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0154.htm>. Acesso em 24/10/2018.

[26] "A conversão ou transferência de bens, com conhecimento de que tais bens são procedentes de algum ou alguns delitos estabelecidos no inciso a) deste parágrafo, ou da prática do delito ou delitos em questão, com objetivo de ocultar ou encobrir a origem ilícita dos bens, ou de ajudar a qualquer pessoa que participe na prática do delito ou delitos em questão, para fugir das consequências jurídicas de seus atos".

[27] CORRÊA, Luiz Maria Pio. O Grupo de Ação Financeira Internacional (GAFI): organizações internacionais e crime transnacional / Luiz Maria Pio Corrêa – Brasília: FUNAG, 2013. 282 p. (Coleção teste de CAE). Disponível em < http://funag.gov.br/loja/download/1042-Grupo_de_Acao_Financeira_Internacional_GAFI_O.pdf >. Acesso em 24/10/2018.

[28]O GAFI é um organismo intergovernamental que tem por objetivo conceber e promover, quer a nível nacional como nível internacional, estratégias contra o branqueamento de capitais e o financiamento do terrorismo. Trata-se de um organismo de natureza intergovernamental e multidisciplinar criado em 1989 com a finalidade de desenvolver uma estratégia global de prevenção e de combate ao branqueamento de capitais e, desde Outubro de 2001, também contra o financiamento do terrorismo, sendo reconhecido a nível internacional como a entidade que define os padrões nesta matéria. DIREÇÃO-GERAL DA POLÍTICA DE JUSTIÇA. FATF ¤ GAFI. Disponível em <http://www.dgpj.mj.pt/sections/relacoes-internacionais/anexosorgint2/o-que-e-o-gafi/>. Acesso em 22/10/2018.

most industrialized economies of the world, with the essential goal to combat international drug trafficking. Due to its importance, it became the managing body of the global regime to cope with money laundering, constituting the example of an effective international organization, with the recognition of the IMF and the World Bank as the international standards to be used in the fight against money laundering and terrorism.

In 1990, the FATF issued a report with 40 recommendations[29] setting out principles of prevention and repression of money laundering. In October 2001, after the terrorist attacks in New York against the towers of the World Trade Center, the group annexed another 9 (nine) Special recommendations to this report, thus extending it to the issues of financing terrorist acts and organizations.

The FATF forged narrow partnerships with the G7, G20, United Nations (UN), International Monetary Fund (IMF), World Bank, Egmont Group of Financial Intelligence units, Front Side Bus (FSB), Organization for Economic Cooperation and Development (OECD) and other international organisms[30], so that, within its highest level of global anti-money laundering standard, several countries would effectively commit to promote in their territories the fight against money laundering and financing of terrorism.

FATF/GAFI recommendations are adopted by more than 180 countries, including Brazil, which became an effective member in 2000; despite the finite number of countries, its measures are directed to all states and territories of the world[31].

Another important international instrument was the Palermo convention, which Brazil signed in 2000, and was subsequently incorporated into domestic law through Decree n ° 5,015 of March 12, 2004 - whose title is "United Nations Convention Against Transnational Organized Crime " - , thus reinforcing Brazil's commitment against money laundering. This Convention aims to promote cooperation in order to prevent and combat transnational organized crime more effectively.

According to De Carli (2012, p. 150), "The text imposes again on the states-party the legal obligation to criminalize the laundering of a crime product. Art. 6th deals with the granting or

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[29] AS RECOMENDAÇÕES DO GAFI. Padrões internacionais de combate à lavagem de dinheiro e ao financiamento ao terrorismo e da proliferação. Disponível em <http://www.fazenda.gov.br/orgaos/coaf/arquivos/as-recomendacoes-gafi>. Acesso em 13/10/2018.

[30] FATF AT G7 MEETING IN SENDAI. Disponível em <http://www.fatf-gafi.org/fr/publications/recommandationsgafi/documents/g7-terrorist-financing-action-plan.html>. Acesso em 13/10/2018.

[31] AS RECOMENDAÇÕES DO GAFI. Padrões internacionais de combate à lavagem de dinheiro e ao financiamento ao terrorismo e da proliferação. Disponível em <http://www.fazenda.gov.br/orgaos/coaf/arquivos/as-recomendacoes-gafi>. Acesso em 13/10/2018.

transfer of goods of criminal origin without altering the structure of the type already described in the Vienna Convention. The difference between them, of course, is that the first convention limits criminal offences to those related to drug trafficking, while the Palermo convention extends the scope of antecedents to organized group participation, to obstruction of justice and to all serious crimes (maximum penalty of four years or more). The second mode of laundering--concealment or cover-up--is described in identical fashion to that previously defined by the Vienna Convention. In relation to the receipt of laundered assets, the provisions are identical in the two Conventions"[32].

In addition to those previously referred, another treaty, as important in preventing and combating money laundering, was the United Nations Convention Against Corruption – Mérida Convention – signed in 2003, which was incorporated into domestic law on 31 January 2006, with the edition of Decree N º 5.687/06[33].

The conventions mentioned here represent fundamental milestones in the prevention of money laundering and the fight against terrorist financing, to which several countries have committed themselves, and having done so, promoting the criminal prosecution of damaging conduct to the financial system.

4 METHODS OF COMBATING CRIME AND SOME MEASURES ADOPTED BY BRAZIL AND FOREIGN COUNTRIES

In this topic, we shall address a few measures adopted by Brazil and some foreign countries in Transnational Crime and combating crime in money laundering only as an explanatory, not exhaustive point.

Internal law is the most complete measure adopted by any country, and from this it is permissible to create specific entities with the power to edit norms for better effectiveness of control and fight any irregularities.

In order to adapt the modern reality to the new criminality, the Law No. 12.683/12[34] was published altering various devices of the Law No. 9.613/98, authorizing police authorities and the Public Prosecutor's Office to request[35] registration data of investigated subjects, without

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[32] CARLI, Carla Veríssimo de. Lavagem de dinheiro: ideologia da criminalização e análise do discurso. Porto Alegre: Verbo Jurídico, 2012, p. 150.

[33] DECRETO Nº 5.687, de 31 de janeiro de 2006. Disponível em < http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Decreto/D5687.htm >. Acesso em 13/10/2018.

[34] http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2012/Lei/L12683.htm#art2. Acesso em 28/10/2018.

[35] Art. 17-B. A autoridade policial e o Ministério Público terão acesso, exclusivamente, aos dados cadastrais do investigado que informam qualificação pessoal, filiação e endereço, independentemente de autorização judicial, mantidos pela Justiça Eleitoral, pelas empresas telefônicas, pelas instituições financeiras, pelos provedores de internet

judicial authorization, directly to the institutions (article 17 – B, Law 9.613/98, included by law 12.683/12).

Undoubtedly, a major step has been given through measures adopted by the PLD in the so-called "early alienation", consisting of the possibility of alienation of assets seized before the definitive decision on the crime of money laundering. This precautionary measure is one of the most appropriate ways to recover the harmful object, without risking depreciating or dissipating the value of the asset.

In accordance with § 1, art. 4th, of the Law 9.613/98 describes that "Art. Fourth-A. the advance disposal for the prevention of the value of goods under constriction shall be decreed by the judge, through official letter , at the request of the public Prosecutor or by solicitation of the interested party, by petition in its own name, which shall be granted in the court and whose record shall separate procedure in relation to the main proceedings. § 1-the application for disposal shall contain the relationship of all other assets, with description and specification of each of them, and information about who owns them and where they are located ".

Historically, the French philosopher, Montesquieu, proposed the division of three powers (executive, legislative and judiciary) as a form of equilibrium, in order to prevent a single person from having the power[36], "preserving the freedom of men against abuses and tyrannies of rulers. "

Taking advantage of this definition, Brazil has been promoting a narrowing of the relationship and competence of the three (3) powers, in addition to the Public Prosecutor's Office, civil society and private initiative, so that there is a greater and faster way to obtain information, each acting directly or indirectly in the prevention and combating of money laundering[37], of course, in accordance to their constitutional attributions.

The narrowing of transnational relations, with the rapid exchange of information and displacement of people and/or things, has helped to significantly mitigate damage to the public treasury and to society.

In addition to regulating, by means of laws, the crime of money laundering and broadening the scope of penal legislation for the practice of this illicit act, Brazil allowed, in 2003,

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e pelas administradoras de cartão de crédito (Incluído pela Lei nº 12.683/2012). LEI Nº 9.613, DE 03 de março de 1998. Disponível em <http://www.planalto.gov.br/ccivil_03/leis/L9613.htm>. Acesso em 13/10/2018.

[36] SOUSA, Rainer Gonçalves. Três Poderes; Brasil Escola. Disponível em <https://brasilescola.uol.com.br/politica/tres-poderes.htm>. Acesso em 24/10/2018.

[37] UNITED NATIONS OFFICE ON DRUGS AND CRIME. Escritório de Ligação e Parceria no Brasil. Combate à lavagem de dinheiro no Brasil. Disponível em <https://www.unodc.org/lpo-brazil/pt/crime/combate-a-lavagem-de-dinheiro-no-brasil.html>. Acesso em 24/10/2018.

the establishment of the henceforth called National Strategy to Combat Corruption and Money Laundering (ENCCLA), enacted by the Ministry of Justice.

As recent results from ENCCLA, we can cite the creation of the National Training Program for Combating Corruption and Money Laundering (PNLD), with about 15 (fifteen) thousand public agents trained in all regions of the country, and the implementation of the Customer Registry of the Financial System (CCS), under the management of the Central Bank of Brazil (BACEN) – raising Brazil to one of the most advanced countries in the area of money laundering prevention[38].

Another relevant issue was the creation of the COAF, a public body that has the power to dispatch[39] resolutions that should be fulfilled by public and private entities. The published resolutions involve companies from various branches of activity, and are designed to involve the largest number of entities possible, establishing, mainly, measures of identification control of businesses and operations carried out, involving the purchase or sale of goods or provision of services.

To comply with this, companies must adopt various procedures, including the identification of customers and third parties involved in operations performed; obtaining information about the purpose and nature of the business relationship; identification of the final beneficiary of the operations carried out; identifying operations or proposals for suspicious transactions.

It is also important to note the creation, by the Office of the Federal Public Prosecutor, of the Working Group on Money Laundering and Financial Affairs (GTLD), which has as participants the members of the Federal Public Prosecutor's Office and the state Public Prosecutor's Office. The investigations are carried out by the Federal Police, which can avail themselves of information provided by the IRS, COAF and Central Bank, for example.

The GTLD created a Web page whose purpose is the widespread dissemination of measures taken to combat money laundering, the bureaucracy reduction of justice -making available information inherent to all national and international organs and entities -, and the disclosure of statistical data related to the actions in the prevention and repression of offences[40].

In 2003, the Department of Asset Recovery and international Legal Cooperation (DRCI) was created with the competence to articulate, integrate and propose actions between the organs

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[38] ENCCLA. Estratégia Nacional de Combate à Corrupção e à Lavagem de dinheiro. Disponível em http://enccla.camara.leg.br/enccla/ >. Acesso em 24/10/2018.

[39] MINISTÉRIO DA FAZENDO. Normas – COAF. Disponível em < http://fazenda.gov.br/orgaos/coaf/legislacao-e-normas/normas-2013-coaf >. Acesso em 24/10/2018.

[40] MINISTÉRIO PÚBLICO FEDERAL. GT em lavagem de Dinheiro e Crimes Financeiros lança site. Disponível em < http://www.mpf.mp.br/pgr/noticias-pgr/gt-em-lavagem-de-dinheiro-e-crimes-financeiros-lanca-site >. Acesso em 24/10/2018.

of the executive and judiciary authorities and the Public Prosecutor's Office to face corruption, money laundering and transnational crime, including within ENCCLA[41]. Such competence is determined in art. 12, item I, of Decree No. 9,360, of May 07, 2018[42].

As it can be seen, the measures adopted by Brazil and foreign countries, in order to combat money laundering, are not finished with these actions, as they must accompany the dynamism of the conducts that aim to conceal the forms of money laundering.

4 MONEY LAUNDERING AND CYBERCRIME

The largest step to the success of the illicit activity of money laundering is to be able to hide its true origin. Subsequently, the entire archetype must be assembled to destine the resource illegally obtained, in order to give the appearance of lawfulness; for that, there are innumerable ways to hide it, to realize this "money laundering."

In a single attempt to "launder" money, a considerable number of people - sometimes concomitantly in several countries - can be involved, by means of "false" operations, a device used to justify the existence of values or goods.

Most of these operations are carried out through Financial Institutions, as agents whose activity is, among others, the collection of customer (public) funds, for use (i) in the granting of loans under various modalities; and (ii) the application of cash into other assets, such as national treasury bills.

Until the emergence of concerns about laundering crimes, what was relevant to financial institutions stemmed from concerns about the insolvency of such entities.

A particular financial institution could become insolvent if it accumulated uncollectable credits / rights, such as if its clients were unable to repay amounts received in mutuality.

Hence the need for a regulatory and oversight body for the activities of financial institutions.

Thus, through Law No. 4.595, dated December 31, 1964[43], the Central Bank of Brazil (BACEN) was created, a body with risk assessment instruments involved in credit operations44.

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[41] MINISTÉRIO DA JUSTIÇA. Governo Federal. Departamento de Recuperação de Ativos e cooperação Jurídica Internacional. Disponível em <http://www.justica.gov.br/Acesso/institucional/sumario/quemequem/departamento-de-recuperacao-de-ativos-e-cooperacao-juridica-internacional>. Acesso em 24/10/2018.

[42] DECRETO Nº 9.360, de 07 de maio de 2018. Disponível em <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/Decreto/D9360.htm#art23>. Acesso em 24/10/2018.

[43] LEI Nº 4.595, de 31 de dezembro de 1964. Disponível em <http://www.planalto.gov.br/ccivil_03/LEIS/L4595.htm>. Acesso em 24/10/2018.

[44] BANCO CENTRAL DO BRASIL. Objetivo. Disponível em < https://www.bcb.gov.br/fis/crc/port/objetivos.asp >. Acesso em 24/10/2018.

With the increasing globalization of the threats of money laundering and terrorist financing, the FATF has also increased the scope for international cooperation between government agencies and between financial groups. The Recommendations, subsequently revised, have brought efficiency and effectiveness to the exchange of information between States, tracing, blocking, confiscating and returning to origin illegal assets[45].

Hence, it is necessary to equip the State with repressive measures to combat the crime of money laundering, an assignment that was also delegated to the Central Bank.

Based on this imputation, BACEN determines to the financial institutions which it oversees that they communicate incompatible financial transactions, based on assumptions adopted as "regular ways of carrying out financial transactions".

In this way, operations such as deposits in significant amounts of cash, electronic transfers without support in supporting documentation, grandiose operations involving politically exposed persons must be immediately communicated to BACEN, so that eventual practice of a money laundering crime may be stalled.

Despite the rules here set forth, a large proportion of money laundering, practiced today, relies on the use of cybercrime. This is because crimes committed by the computer can sometimes hide the true beneficiary of money illegally obtained.

Currently, there are several ways to omit information about the origin, destination and beneficiary of the resource through the world wide web, such as the use of cryptographic currency (Bitcoins, for example) and the use of online games.

For this reason, the rules restricting this crime must be constantly improved.

6 CONCRETE CASES INVOLVING POLITICALLY EXPOSED PEOPLE - OPERATION “LAVA JATO”

Our history is replete with denunciations of misappropriation of funds, which should be directed to health, education, leisure, and culture. The explanation may be connected to the fact that part of our rulers - at all levels of the chain -, surrounded by auxiliaries, seek only to serve their own interests and those of large conglomerates (Industries, Contractors). These facts keep social differences at alarming levels[46] as we find in Brazil today.

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[45] MINISTÉRIO DA FAZENDA. Grupo de Ação Financeira contra a Lavagem de Dinheiro e o Financiamento do Terrorismo (GAFI/FATF). Disponível em < http://www.fazenda.gov.br/assuntos/atuacao-internacional/prevencao-e-combate-a-lavagem-de-dinheiro-e-ao-financiamento-do-terrorismo/gafi >. Acesso em 28/10/2018.

[46] REVISTA EXAME. Um terço da desigualdade de renda vem da ação do governo. Disponível em <https://exame.abril.com.br/revista-exame/e-o-estado-piora-esta-diferenca/ >. Acesso em 22/10/2018.

In order to mitigate such conduct, Law No. 12.850/2013 was issued, which is responsible for defining criminal organization and inputs criminal investigation, means of obtaining evidence, related criminal offenses and criminal procedure to be applied.

It was only after 2014 that Brazil began to apply more clearly the definition and practices of money laundering crimes and to understand the reflection that corruption can cause on the citizen, especially the less well-off citizen.

The operation "Lava Jato" was responsible for bringing into our view conducts that had been practiced for years in our country, hitherto covered up, but which were gradually untangled, becoming crystalline in the eyes of the nation. In addition to Operation "Lava Jato", operations such as "Zelotes" and "Acrónimo" and several others in progress in our country were aimed at eradicating the most varied criminal organizations that are mainly involved in public administration, both directly and indirectly.

This issue, which will also be approached in a non-strenuous way, stems from the exhaustive work of research, of great cooperation, of enormous media coverage, and involves high level entrepreneurs, public officials and political authorities.

Operation "Lava Jato"[47], for example, which was triggered by the initiation of investigations of pipelines linked to Petrobrás, timidly began with the arrest of a dollar dealer, Alberto Youssef; but has turned into a large web (with transnational extension), which has already brought to prison numerous figures known from the Brazilian political scene.

Undoubtedly, this very precious subject could be widely discussed; however, the crucial point here is to highlight the ways in which the money-laundering crime is handled, the conviction and sentence served by the defendants involved.

In the second phase of the Operation held on 03/20/2014[48], there was the first arrest of the former Petrobrás Supply Director, Paulo Roberto Costa. The seizure of his vehicle (Land Rover) pointed out an intense relationship between the engineer and the dollar dealer Alberto Youssef, with several interests in illicit businesses.

After some other operations, in April 2015, the first arrests of ex-politicians took place in Operation "Lava Jato". In their 11th (eleventh) phase, the investigators executed arrest warrants against former deputies André Vargas, Pedro Corrêa and Luiz Argôlo. An investigation pointed out that, in addition to the facts that occurred within Petrobrás, diversions of funds also occurred in other federal public agencies.

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[47] MINISTÉRIO PÚBLICO FEDERAL. Por onde começou. Disponível em <http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/atuacao-na-1a-instancia/investigacao/historico>. Acesso em 22/10/2018.

[48] MINISTÉRIO PÚBLICO FEDERAL. Linha do tempo. Disponível em <http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/atuacao-na-1a-instancia/parana/linha-do-tempo>. Acesso em 22/10/2018.

Two large contractors were also targeted in the operation, with the outbreak of the 14th (fourteenth) phase. On June 19, 2015, the operation resulted in the arrest of executives of the two largest contractors in the country: Odebrecht and Andrade Gutierrez. Among those arrested were Odebrecht President Marcelo Bahia Odebrecht and Andrade Gutierrez President Otávio Marques de Azevedo. The subsequent conviction, issued by the judge of the 13th Federal Criminal Court of Curitiba, of Marcelo Odebrecht and eight other persons involved in corruption and money laundering crimes, would come in the twenty-fourth (twenty-fourth) phase (denominated "Alethéia").

The first conviction of a politician, former federal deputy André Vargas, occurred on September 22, 2015, in the 19th (nineteenth) phase (called "Nessum Dorma"), in one of the lawsuits arising from "Lava Jato". The former vice-president of the Chamber of Deputies has been convicted of corruption and money laundering offenses.

At the stage of the 22nd (twenty-second) phase, called "Triple X", it was verified that a criminal structure was established to provide the investigated parties with the opening of offshore companies and accounts abroad to hide and conceal the proceeds of corruption offenses at Petrobrás. In addition, the concealment of assets through a real estate venture was discovered and suspicions were raised that one of the contractors used the business to pass on bribes to agents involved in the criminal scheme.

The last phase to date (22/10/2018) - 55th (Fifty-fifth) (called "Integration II"), of 09/26/2018 - had the objective to deepen the investigations on the practice of crimes of corruption, money laundering, tax evasion, fraud and embezzlement in a scheme related to the administration of the federal highways in Paraná.

This is to say, the objective of pinching part of the history of the aforementioned operation is to portray the chain of the crime of money laundering in the various public spheres, making it possible to observe the models of money laundering established by means of the mentioned operation, to be highlighted: provision of fictitious services, donation to political parties (both official and unofficial) and use of companies located in tax havens (off-shores).

The result of this operation, in numbers updated until October 15, 2018[49], have been:

√ 2,476 procedures in place;

√1,072 search warrants and seizures;

√ 227 writs of coercive conduct;

√ 120 arrest warrants;

[49] MINISTÉRIO PÚBLICO FEDERAL (MPF). A lava jato em números no Paraná. Resultados da operação lava-jato. Disponível em <http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/atuacao-na-1a-instancia/parana/resultado>. Acesso em 22/10/2018.

√ 138 temporary arrest warrants;

√ 6 arrests in flagrante delicto;

√ 548 requests for international cooperation, with 269 active applications for 45 countries and 279 requests for 36 countries;

√ 176 award-winning collaboration agreements signed with individuals;

√ 11 leniency agreements and 1 conduct adjustment agreement;

√ 82 criminal charges against 347 persons (without repetition of name), with 46 having already been sentenced for the following crimes: corruption, crimes against the international financial system, transnational drug trafficking, criminal organization, money laundering, among others;

√ 215 convictions against 140 people, counting 2,036 years, 4 months and 20 days of punishment;

√ 9 accusations of administrative impropriety against 52 individuals, 16 companies and 1 political party, requesting the payment of R $ 14.9 billion;

√ Total value of the requested compensation (including fines): R $ 39.9 billion;

√ crimes already reported involve bribe payments of about R $ 6.4 billion, R $ 12.3 billion are subject to recovery by collaboration agreement, of which R $ 846.2 million is repatriated;

√ R $ 3.2 billion in assets of defendants already blocked.

As a "remedy" to recover funds that were diverted from public coffers, Brazil enacted in January 13, 2016 the so-called Asset Repatriation Law, No. 13,254[50], whose deadline for repatriation and regularization of funds held abroad and undeclared was reopened with the advent of Law No. 13,428 of March 30, 2017[51].

The present Law is, in fact, about criminal and tax amnesty. The interested party / taxpayer should only declare the appeal, proving (or keeping it in good standing) that he / she possessed assets of lawful origin; for such purpose, however, they should pay the equivalent of 30% (thirty percent), as income tax (15%) and fine (15%), of the value of assets held irregularly abroad.

As in the previous edition, this last Law also prohibits politicians and public office holders from repatriating resources, that is, from regularizing assets and cash that are abroad.

[50]LEI Nº 13.254, de 13 de janeiro de 2016. Disponível em <http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Lei/L13254.htm>. Acesso em 22/10/2018.

[51]LEI Nº 13.428, de 30 de março de 2017. Disponível em <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/Lei/L13428.htm>. Acesso em 22/10/2018.

7 CONCLUSION

In view of this, the strategies adopted in the national territory, modeled after widely disseminated and embraced international practices, targeting preventing and combating money laundering, are aimed at drastically reducing the practice of other crimes, especially drug and arms trafficking, and corruption.

Money laundering itself, however, needs to be further evidenced, precisely because its essence is to bring into the open world what until then lived in shadows. Thus, it is necessary to make the crime of money laundering visible and bring public attention to the fight against it.

Even if national legislation provides for various mechanisms for the eradication of money laundering, it is important to highlight that, without effective action and cooperation from other States, national measures alone would have not been effective in combating such criminal practice, since this crime is already globalized.

All the meetings held between countries subscribing international money laundering prevention and combat practices, including also countries invited to join a bloc or group, have as their central idea and ideology to grant the States rules, tools, best practices and subsidies to exercise their criminal policies autonomously, combating both the antecedent crime (crimes of corruption and drug and arms trafficking) and the consequent offense (money laundering).

The exchange of information resulting from these sharing practices originated innovative ideas for models to eradicate crimes like money laundering.

In concrete terms, for example, Operation "Lava Jato" has demonstrated how complex is the problem – from the diversity of money laundering schemes – and how much it is still necessary to fine tune and perfect the means of action against such offenses.

It is evident, from this Operation, there is a multitude of archetypes that surround the disguise of capital origin, such as fictitious service contracts, political party donations, and resorting to offshore accounts; and, we may add to these here stated, other forms are developing from the need to diversify money laundering, such as the following top of mind examples, (i) utilization of foreign investment funds -- which omit the true beneficiary --; and (ii) celebrating fictitious mutual benefit contracts – without the consideration due by the mutualist party being settled.

Such laundering money models were discovered only from the innovative legislation which allowed, for instances, establish the benefit of plea bargaining, an institution used by other countries, and used to great success in the referred Operation.

Another factor, the information exchange between Brasil and other States which received requests provided from crimes of corruption, was fundamental to close and conclude the conceived money laundry combat model.

Finally, albeit straining, the change of behavior in brazilian society, hereby attested, infers that fighting money laundering is necessary and effective to mitigate the practice of drug trafficking, arms dealing, and corruption crimes, as the infamous "feeling of impunity" is being, at a minimum, relativized; it is not an accepted practice anymore.

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