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**Open-ended intergovernmental
expert working group on countering
money-laundering and promoting
judicial cooperation**

Vienna, 30 June-2 July 2008

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Discussion note by the International Narcotics Control Board

Summary

Pursuant to Commission on Narcotic Drugs resolution 51/4, the International Narcotics Control Board (INCB) decided, at its last session in May 2008, to provide to the five open-ended intergovernmental expert working groups the Board's views on the five topics for discussion, namely (a) drug demand reduction, (b) supply reduction (manufacture and trafficking), (c) countering money-laundering and promoting judicial cooperation, (d) international cooperation on the eradication of illicit drug crops and on alternative development, and (e) control of precursors and of amphetamine-type stimulants.

This paper reflects the views of the Board on the topic of countering money-laundering and promoting judicial cooperation. The Board expects that the views of the Board will be reflected appropriately in the deliberations of the working groups, and in the final outcome of the process of the UNGASS review.



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I. Money-laundering

1. The adoption of the 1988 Convention marked the first decisive step in mobilizing the international community for the fight against money-laundering. In Article 3 of the 1988 Convention, money-laundering offences are defined and parties to the Convention are required to make them serious criminal offences, to be severely punished and subject to extradition. Since money-laundering often includes international financial transactions, combating money-laundering almost by definition requires effective international cooperation, and the 1988 Convention includes provisions outlining the cooperation that State Parties should, as a minimum, afford each other in conducting joint operations against money-laundering.

II. Achievements

2. The international community has achieved a wide consensus that money-laundering is a priority issue. This can be evidenced not only by the high rate of ratification of the 1988 Convention – as of 31 March 2008, a total of 182 Governments, as well as the European Union, were State Parties – but also by the other initiatives against money-laundering, as noted below.

3. Also significant is the adoption in 2001 of the Convention against Transnational Organized Crime, which, for example in Article 6 and 7, contains detailed provisions stipulating the measures Parties should take against money-laundering. It should be noted that, pursuant to Article 34 of this Convention, State Parties must establish money-laundering as a serious crime even if there is no international element nor involvement of an organized criminal group.

4. The Financial Action Task Force (FATF), which was first established by the G7 in 1989 and currently has 34 member States, has taken the lead in efforts to combat money-laundering, in particular through monitoring implementation of its 40 recommendations. These recommendations have been revised several times, to keep abreast of developments in money-laundering techniques.

5. A large number of countries have strengthened their efforts against money-laundering pursuant to dialogue with the FATF; while a significant number of countries and territories had failed to cooperate with the organization at the outset, the number of countries or territories designated as being “non-cooperative” has steadily been reduced to zero.

III. Challenges

6. There are still 13 Governments that have not yet become Party to the 1988 Convention: eight in Oceania (Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Solomon Islands and Tuvalu), three in Africa (Equatorial Guinea, Namibia and Somalia) and one each in Asia (Timor-Leste) and Europe (Holy See). It should be noted that significant money-laundering problems have been reported in some of the countries that have not yet become Party to the 1988 Convention.

7. There are currently 144 State Parties to the Transnational Organized Crime Convention, leaving a significant proportion of Governments not yet party to this important international Convention.
8. Unlike the 1961 Convention and the 1971 Convention, and unlike the Transnational Organized Crime Convention, there is no single international body charged with monitoring application of the provisions of the 1988 Convention, and providing Parties with guidance on fulfilling their obligations (with the exception of the Board, which is responsible for monitoring application of Articles 12, 13 and 16 of that Convention).
9. In a related issue, though the FATF is widely recognized as being the authoritative international body in the field, it should be noted that the organization is not a universal one; it includes only 34 member States. This may lead to difficulties as international efforts against money-laundering continue to develop.
10. The techniques of money-laundering evolve rapidly, often quicker than the capacity of law enforcement officials, in particular in countries with less experience in combating this phenomenon.
11. Technological progress has also played a role; in most countries, almost all suspicious transaction disclosures relate to cash transactions, suggesting that measures against money-laundering have not kept pace with technological change. Electronic money-laundering will surely increase with the growth of online financial service companies. Underground banking systems may also use information technology to maintain their operations.

IV. Recommendations

12. Governments that have not yet done so should accede to and implement the 1988 Convention and the Convention against Transnational Organized Crime, at the earliest opportunity.
13. The international community should take measures to ensure that the implementation of the 1988 Convention is monitored, and that Governments are provided with authoritative guidance on the fulfilling of their obligations under this Convention.
14. The international community should consider establishing a comprehensive worldwide framework to more effectively coordinate action against money-laundering, including procedures to evaluate and recommend improvements in Governments' efforts. There should also be a worldwide system for recording and reporting seizures of proceeds derived from drug trafficking.
15. Governments should implement fully the 40 recommendations formulated by the Financial Action Task Force, and introduce and effectively apply relevant laws against money-laundering, which must include laws on the confiscation of the property of traffickers. Governments should continue to ensure that measures against money-laundering are revised regularly, to take into account new developments in both money-laundering techniques and information technology.
16. Governments should institutionalize procedures whereby financial institutions must report to the authorities suspicious transactions. Governments should also

consider extending a similar reporting system to professions engaged in financial activities and persons engaged in the sale of expensive goods.

17. Governments should strengthen regulations governing companies, so as to make ownership and control more transparent, and to facilitate cooperation with law enforcement agencies that combat money-laundering.

18. Governments should consider ensuring that the burden of proof is reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, as provided for in Article 5 (7) of the 1988 Convention, even if this involves constitutional or legislative changes.

19. Governments should establish specialized bodies to investigate money-laundering, and provide these bodies with adequate financial, human and material resources.

20. Governments should strengthen international cooperation against money-laundering. In particular, more experienced Governments should provide technical assistance in combating money-laundering, to ensure that lesser experienced Governments are not exploited by criminal organizations.

21. Governments should consider contributing part of the value of confiscated proceeds and property to governmental and intergovernmental bodies specializing in the fight against drug trafficking and abuse.

V. Judicial cooperation

22. Above and beyond the measures State Parties should take to cooperate with one another in the area of money-laundering, the 1988 Convention also stipulates detailed measures that State Parties should take for mutual legal assistance in a broader sense. In Article 7, State Parties are obligated to afford each other “the widest measure of mutual legal assistance in investigation, prosecutions and judicial proceedings” against drug trafficking. Likewise, the Transnational Organized Crime Convention contains similar provisions, stipulating that State Parties should engage in mutual legal assistance in combating international organized crime.

23. One particularly salient issue in this point is that of extradition of drug-related offenders. Article 6 of the 1988 Convention encourages State Parties to use the Convention as a legal basis for extradition with regard to the offences stipulated in the Convention. State Parties that decline to extradite a person are, in most cases, required to consider prosecution domestically. Controlled delivery, the necessity of which is stipulated in Article 11 of the 1988 Convention, is also a vital tool against drug trafficking.

VI. Achievements

24. Information collected by INCB through its survey on progress over the UNGASS decade shows that many countries participate in joint operations and mutual assistance against drug trafficking under the umbrella of international or regional organizations, such as UNODC, Interpol, the Inter-American Drug Abuse Control Commission (CICAD), and task forces against drug trafficking in Europe.

Cooperation in law enforcement has increased in all regions, as has the implementation of controlled delivery.

25. Over 90 per cent (108 in all) of the Governments that provided information on this issue to INCB indicated that law enforcement or border control officials meet regularly with their counterparts in neighbouring countries/territories to discuss drug trafficking matters.

VII. Challenges

26. When asked whether they perceived cooperation with neighbouring countries/territories to be sufficient, nearly one third – 35 out of 120 – informed INCB that cooperation was in need of improvement. Most of these countries were in either Africa or the Americas.

27. Most discussions that take place between neighbouring countries on drug trafficking issues appear to be working level discussions, with meetings at a more senior, policymaking level (such as vice-ministerial or ministerial level) far less common.

28. There is still a significant number of countries – at least half of the countries that have provided information on this subject to INCB – that require a bilateral agreement for the extradition of drug-trafficking-related offences. The majority of these countries are in Asia.

VIII. Recommendations

29. Governments that have not yet done so should accede to and implement the 1988 Convention and the Convention against Transnational Organized Crime, at the earliest opportunity.

30. Governments should strengthen mechanisms for international cooperation in the fields of mutual legal assistance and law enforcement assistance, at both the working and policymaking levels.

31. Governments should allow for the 1988 Convention to be sufficient legal basis for extradition in drug-trafficking-related offences, to facilitate the extradition of drug-related offenders.