

INTERAMERICAN DEVELOPMENT BANK

**CONFERENCE:
TRANSPARENCY AND DEVELOPMENT IN
LATIN AMERICA AND THE CARIBBEAN**

**TRANSPARENCY AND DEVELOPMENT IN
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I am pleased to be able to comment on this theme, especially in this setting.

In doing so, I note that it follows the Conference's opening discussions on integrity and transparency, both of which are fundamental to the banking system—and the national financial system more broadly conceived—and to the role of the Superintendency of Banking.

Thanks are due to the Inter-American Development Bank (IDB), not only for organizing this Conference, but for its general leadership on these issues, and I have specifically in mind the necessary, ineluctable relationship of the markets for financial instruments of all types and development, which is both a cornerstone of present tense politics and the sine qua non of the future commonwealth.

Ms. Cheribin's paper shows beyond any doubt the present complexity of the Bank Supervisor's role. My aim will be to build on that while making some particular comments.

The term "organized crime" does not, I believe, appear anywhere in the paper. Yet organized crime is precisely what constitutes the definitional sub-stratum here—not just for the paper, but for the entire workings of the criminal practice, whose whole purpose is to use the instruments of the legitimate economy to achieve illegal ends. Money Laundering—the name occurs in the title—transforms the illegal into the virtually legal. I use the term "virtually" because that is as close as you have to get to achieve functionality. And as in other forms of organized crime, between those who should have known and those who knew and remained impassive or were criminally cognizant, there are not too many innocents.

Before going further and entering into the paper, I want to extend my thought here—money laundering is a parasitic activity which in the long run weakens its host institutions, be they economic or political. The price for such debilitation is high, well in excess of economic "benefits" which money laundering is sometimes credited with in short sighted analyses. I believe the paper implicitly takes this into account in reaching its conclusions.

You have heard much lately about medicines which lose all their effect over time because the viruses against which they were designed to operate learn, metabolically, organically, how to neutralize them. For those who practice rote medicine in such conditions and even more dramatically, for those patients afflicted, the stakes become very serious, very fast.

The paper alludes to practices—entrusting government agencies which lack supervisory capacity (pg. 8)-- which ensure the appearance of regulation and not the thing itself.

Inadequate standards—read regulatory requirement and structures—provide organized crime the opportunity by leaving pathways open. Thus, this conclusion in the paper pinpoints a necessity which all jurisdictions must face with practical responses.

But right now the CFATF is writing evaluations, which are basically the product of peer review, which clearly identify critical shortcomings, and that is a critical point in the region's favor. It gives the jurisdictions the practical starting point they need.

Change, as I noted above, is something organized crime learns to do very well. For banks, banking supervisors, individual countries and the region, there is yet another need besides the almost too well-worn maxim about knowing your customer.

It is to know your enemy.

Learn, like organized crime, to change, and to do so quickly. Instead of letting lapses and ambiguities in the law become crime shelters, the law, like a well-oiled and supple whip, should be a scourge against laundering even as it encourages and motivates legitimate business.

Under the rubric of the Supervisory Framework (pg. 9), many institutions and practices are cited, but there is an overall quality of detachment which emerges. There are many steps in the process, many possible avenues, but the action of many of the agencies is implied to be conditional, possible, and eventual. It's note (pg. 12) on the desirability anti-money laundering committees to join together the various individual national agency actors is exactly, to my mind, what should be done. And done vigorously.

Let me cite Phil Williams of the University of Pittsburgh's Ridgway Center for International Security Studies on this –the idea of fighting fire with fire: “Governments and law enforcement agencies have to think and act much more in network terms; the need to develop the same kind of flexibility to operate both nationally and transnationally through the creation of informal transnational law enforcement networks based on trust that is exhibited by drug-trafficking networks. Greater care also needs to be given to devising strategies for more effective attacks on networks. Such strategies need to identify both critical nodes (those where redundancy is minimal) and critical connections –especially those to government and the legitimate financial sector. . .While this approach does not guarantee success, it does at least conform to the first precept of effective strategy, which is to know your enemy and adjust your actions accordingly.”

Page 14 notes a common human dilemma in the age of information. That is, a gross excess of the same. Here the excess is numerous reports of large transactions (whatever that may be). The very fact that “little or no use is made of the information submitted” may point—and probably does point—to a different conclusion than the usual “lack” of resources. The system must report relevant, questionable, suspicious transactions, not large ones. In other words, good intelligence is not an end product; rather, it is the beginning input to a pointed analysis.

On training, I will later conclude with some remarks about CICAD's program. However, pg. 17 notes that in some cases, seminars include commercial bank personnel. Commercial banks and other key private institutions are functional correlatives in the process, and to get to the integrity with which this conference is concerned, they ought to be integral to training plans, at least in so far as they are directly affecting or affected agents.

Under “Areas in Need of Supervisory Strengthening” Ms. Cherebin's paper includes immediately and correctly non-bank sectors of the financial structure (pg. 18). But while the analysis calls for more to be done “in the regulation and supervision of these entities”, it also says that supervisors should not be expected to be law enforcement officers. I suggest, to the contrary, that law enforcement officers are what they properly are. It does not matter that they may not have or use arrest powers, but it does matter, publicly and substantially, that they can be

seen enforcing the law. Presiding over, guiding, coordinating the actions of the various responsible agencies fits, it seems, a contemporary definition of the role of a banking supervisor in a modern system.

Page 19 raises the resource issue again, this time tied to “volumes of large cash transactions looking for suspicious transactions”. Resources are needed and needed desperately—and by the way, the private system might profitably be enlisted here—but selectivity is the key. If there are greatly abnormal values of large cash transactions then perhaps the wrong things are being looked at. Perhaps, on the other hand, the very worst assumptions are being demonstrated, in which case international help might quickly be summoned.

The call for strengthening the legal framework (pg. 20) is well aimed—bearer shares prohibition and full disclosure definitely should be in the law.

Working on results, the analysis trails in the paper converge on licenses and sharing information in rejected applications. A more thoroughgoing exposition would be helpful; this kind of cooperation has proved difficult in practice (pg. 21).

The recommendation for minimum standards is timely—by taking the lead here the jurisdictions could do far more than is possible by publicity.

And lastly, there is no better tonic for the public and for good business than the effect of seeing good, up-to-date laws get good enforcement. In a word, this means indictments, trials, and a record on convictions that is convincing. Piling up reports uses up time and resources, but a few good cases taken through to trial sends a message whose import is misunderstood by none.