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**Controlling the international
money trail:
What Lessons Have Been Learned?**

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"Special sorts of conditions must exist for the creation of the special sort of criminal that he typified. I have tried to define those conditions—but unsuccessfully. All I do know is that while might is right, while chaos and anarchy masquerade as order and enlightenment, those conditions will obtain."

Eric Ambler (1937) *A Coffin for Dimitrios*

Since the mid-1980s, the world has witnessed an extraordinary growth in efforts to control crime for gain (and latterly, terrorism) via measures to identify, freeze and confiscate the proceeds of crime nationally and transnationally, coinciding with an opposite tendency to open up general money flows via the liberalisation of currency restrictions and marketisation in the 'Less Developed' world and in former Communist 'societies in transition'. The efforts of the Anti-Money Laundering (hereafter AML) movement to roll back *deregulation* in the non-tax sphere has been described by several government officials as combating 'the dark side of globalisation', tempting the thought that the Financial Action Task Force (FATF)¹

1. FATF was created by the G-7 in 1989 as a temporary body with a Secretariat of a mere three people, and expanded subsequently from 16 (essentially OECD plus the European Commission) to 31

must be the equivalent of the Jedi Knights battling the dark side in the criminological equivalent of Star Wars! Whether the alternative interpretation of King Canute vainly defying the advancing waters lapping over his empire is more appropriate will be examined here. One useful way of conceptualising the issue is as a global exercise in crime risk management which seeks to drag in as a conscript army those governments and those parts of 'the' private sector that seem unwilling to volunteer for transnational social responsibility.

But exactly what sorts of risks are they managing (and do they believe they are managing), and how serious and well considered has the attempt been? There is no need in this paper to consider historiographically what the aims and objectives of the diverse parties were, except that in a sense it is unfair to judge them retrospectively for acts of omission and commission: politics is after all the art of the politically possible as well as of the desirable. Rather the aim is to examine the accomplishments: what does it all mean, now, compared with what might otherwise have occurred (the historical counterfactual) and with what might be 'needed' (for what purposes?) In the realm of state and transnational regulation, we must also consider what would be 'rational' for the private business sector and civil society to do for themselves – if they could agree to do so in practice – and what would *governments* and IGOs want to do that conflicted with interests of 'the' private sector *or* filled a structural gap in civil society/private business sector activities (e.g. police co-operation within and across borders).

Consider this: money launderers – a range of social types that includes varied offences such as drugs and people traffickers and the officials/politicians they corrupt; investment, tax and EU fraudsters; counterfeiters/intellectual property criminals; and both transnational corporations and the public officials who are bribed by them in their own countries or overseas – are not normally a credit risk. They are depositing funds for short or long term and if they were defrauding the institution, they would have to take the funds from that fraud elsewhere if they were to sanitise their origin. Consequently there is no normal prudential risk in accepting launderers as clients or in accepting their funds.² Likewise, though anti-capitalist terrorists normally cause collateral damage to banking interests and sometimes – as in Istanbul and New York – cause direct physical damage to financial services buildings and employees, those funds – whether or not derived from crimes – are not *per se* harmful to financial institutions. Yet senior regulators in offshore and onshore jurisdictions alike are nowadays required to have

members. The thirty-one member countries and governments of the FATF are: Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong, China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Kingdom of the Netherlands; New Zealand; Norway; Portugal; the Russian Federation; Singapore; South Africa; Spain; Sweden; Switzerland; Turkey; the United Kingdom; and the United States. The European Commission and the Gulf Co-operation Council are also members of the FATF. The global network includes the FATF-style regional bodies: Asia Pacific Group, the Caribbean Financial Action Task Force, ESAAMLG, EAG, GAFISUD and MENAFATF and Moneyval. The Offshore Group of Banking Supervisors is also part of this network. In 2005, China was admitted as an Observer.

2. Though bankers and other professionals may decide that they do not want to deal with particular companies or people because this may damage their client profile. Of course, the collective social effect of facilitating crime may be to reduce general levels of business and therefore welfare, and the reputational damage from being stigmatised may have some prudential effects – one rationale for regulation by the Bank for International Settlements since 1988.

(or plausibly claim) expertise in anti-money laundering (AML), and even within the IMF, lawyers dealing with money laundering came to form in 2003 the largest section of its legal division.

In 1986, when the legal regulation of money-laundering began in the West, British banking representatives had to go on a newly devised course in the US to find out what money-laundering was (or, to be more precise, what the Americans believed it to be)³: two decades later, there are (at least) monthly conferences in different parts of the globe updating bankers, regulators, legally required corporate Money-Laundering Reporting Officers and, increasingly, independent lawyers and accountants on changes in regulation and 'money laundering typologies', supplementing interactive videos and CD-ROMS whose viewing is considered to be essential to comply with national legal regulations on staff training.⁴ These are supplemented by an army of consultants – usually containing former senior American, British, Swiss (or, in Asia-Pacific, Australian) police, regulators and FATF delegates – carrying out compliance reviews and remedying both national and corporate 'failures' with 'solutions' drawn from US or European legislation⁵ aimed at finding favour with evaluators and regulators. The analogy would be with the children in the Hilaire Belloc poem 'Jim' who were told "And always keep a-hold of Nurse for fear of finding something worse".

From a few informal tip-offs from bankers to police in 1986, the number of 'suspicious transaction reports' by bankers and professionals to the UK National Criminal Intelligence Service rose from 15,114 in 1999 to 94,708 in 2003 (and rising), almost doubling after '9/11'. The US had routine cash and wire transfer reports (in their millions, reaching 13.6 million in 2004) but only in 1996 did they devise a regime of Suspicious Activity Reports from its financial and other institutions: the number of US SARs rose from 52,069 in 1996 to 663,655 in 2004.⁶ In what respects does this extra reporting count as success? The former head of financial crime regulation at the UK Financial Services Authority stated in 2003 (personal communication) that a low number of reports counted as a 'red flag' of institutional failure to enforce AML regulations: but this is to confuse outputs with outcomes, and takes no account either of (a) the preventative effect (if any) of potential client rejection or (b) what (if anything) is made by the law enforcement and regulatory agencies of financial reporting information.

It would be a mistake to see the international enforcement regime as solely a product of direct AML organisations. In a different sphere, the governments of France, Germany, Japan and the UK have been very publicly told by the Chair of the OECD Convention on Combating Bribery of Foreign Public Officials in Interna-

3. Interview with the former Secretary of the British Bankers' Association.

4. In the UK, for example, all retail banking employees are required to pass examinations on money-laundering issues. There is a flourishing private sector market – often in collaboration with regulatory bodies – in training media, with the UK an early market leader.

5. Some of this does not fit operationally with central and eastern European legal systems, but this may not be a barrier and may not even be realised by the experts or known/cared about by the legislatures, since the aim is to please the assistance donors to avoid sanctions of some kind.

6. Part of these increases should be discounted because it reflects the rise in the number of bodies required to make filings, though the extent differs in different jurisdictions.

tional Business Transactions 1997 that they need to amend their recent proposed or actual legislation and to improve implementation because they inadequately comply with the Convention.⁷ In addition to regular reviews by the OECD, Council of Europe and the Organisation of American States using self-assessment and mutual/expert evaluation methodologies, there are also a host of anti-corruption consultants and experts, bringing their national or Intergovernmental Organisation (e.g. World Bank) approved 'solutions'. The latter usually take the form of legislation and infrastructural bodies such as Independent Commissions against Corruption – now numbering 20 (plus four quasi-ICACs) around the world – that are internationally acceptable as indicators of proper systems being in place and therefore are copied by other jurisdictions seeking respectability.⁸

These experts' knowledge of *local* cultures and legislative frameworks is variable⁹, but the basis for their selection is their professional experience in the donor countries – usually containing some international mutual assistance work – and they naturally export those law enforcement methodologies: this has been particularly common in Central and Eastern Europe and in the Balkans. There is thus a conscious and unselfconscious 'hearts and minds' transfer of national methods and frameworks, emanating from the fact that:

1. most donors of assistance genuinely believe their own systems (and/or the systems they have sponsored elsewhere) are the best;
2. the closer that foreign laws and criminal justice systems are to the advisor's domestic system, the easier mutual legal assistance is for the donor country's evidential admissibility purposes later, and
3. personal and national networking is a crucial ingredient of future cooperation.

These AML and anti-corruption activities have to be seen within the context of the general drive for 'security' and for the development of a climate favourable to economic liberalisation and multinational corporate activities in post-Communist Central and Eastern Europe and Eurasia. This constitutes a much larger cultural ambition than waging the War on Drugs. So when we ask ourselves questions about what lessons have been learned and to what extent an international control regime has successfully been created, we cannot avoid confronting the issues of what are the yardsticks of achievement and what metrics are, are not and might be used for measurement of them.

7. See OECD corruption website for country reports.

8. It not only brings respectability, but also – at least in the past - foreign funding from the UK, US and World Bank. We shall leave aside the irony that Independent Commissions against Corruption were considered appropriate policy transfers for 'lesser breeds of men' but not for North American or EU countries, or – except in the very limited guise of OLAF - for the EC itself. As one interviewee from an EU accession country commented: "We now have a lot more laws and systems in place than any of the EU countries."

9. The Council of Europe had the oldest involvement in this area, and tends to use Europeans who are more likely to have local understanding. It and the much wealthier EU, as well as the Organisation for Security and Co-operation in Europe and the UN, have expanded their activities since the collapse of the Soviet Union. The US has been particularly proactive, with the American Bar Association's Central European and Eurasian Law Institute projects (supported by the US government), and the Treasury Department's Office of Technical Assistance.

Core Objectives and Means of Attainment

The control of the money trail is an immense diplomatic, legislative and commercial work in progress which has brought together since the mid-1980s in a fluid but frequent series of global settings representatives from almost all countries in the Americas, Asia-Pacific, Europe, the Middle East and latterly, parts of Africa, and from diverse government departments – principally Justice and Treasury departments, but also foreign service diplomats – law enforcement, regulatory and intergovernmental officials and, in some more limited settings, bankers and other corporate executives and some NGOs.¹⁰ In the anti-money laundering (AML) movement, there are numerous component crimes from corruption to tax fraud to terrorism, but the Global War on Drugs has been the common central theme since the beginning (see Van Duyne and Levi, 2005; Levi, 2002; Stessens, 2000; Wechsler, 2001). Interestingly, prior to 2000, few people in the mainstream anti-corruption and international development movements made a link between Grand Corruption and the AML regime, or at least conducted any serious policy initiatives that reflected such awareness: it was only in the course of the public phase of the Abacha scandal that the awareness percolated through NGOs that AML represented a point of prevention or recovery of proceeds of crime, an insight taken through into the work of the Commission for Africa (2005).

Notwithstanding this delayed awareness, every international body with finance and/or crime within its mandate has become drawn into this AML arena, because it actively wishes to make a contribution and/or because politically and bureaucratically, it cannot afford to neglect this source of funds, influence and prestige by failing to be a 'player'. This has led to a plethora of regulation and because money laundering *actually* is a common feature of all crimes for significant gain, AML has come to be written into the 'effectiveness' of all of these regulatory efforts including, with some conceptual and terminological strain, the financing of terrorism from the proceeds of otherwise lawful activity, including charitable donations.

This process adopted as a core tool a novel international 'soft law' peer group methodology, 'mutual evaluation': a lesson sought out and drawn in 1990 by the Financial Action Task Force from the rigorous (and consensus-based) method for reviewing the legislation and economic infrastructure of applicants for accession to the OECD, and which had the advantage also that it was familiar to Finance Ministers from IMF procedures. It has then embedded mutual evaluation into the apparently objective routines of agreed anti-money laundering surveillance for over a decade, during which seven regional bodies were created (with FATF and, more specifically, US and UK encouragement). This model has been adopted in AML, anti-corruption and mutual legal assistance evaluations worldwide. Of FATF members, Turkey passed some AML measures after sanctions were applied to it, and Austria was the subject of formal escalating sanction moves for non-compliance (which, when they looked likely to lead to suspension from membership *and*

10. The physical absence of representatives from major socio-economic groups does not, of course, mean that they are not represented via lobbying and/or second-guessing by those who are present.

were given some publicity, led to the demanded legal reforms¹¹), and periodic summary reviews of the state of compliance among FATF and regional bodies are published, along with the far more detailed reviews conducted by the IMF/World Bank under their post-'9/11' mandate.

In addition to international measures that combine regulatory and criminal justice measures, banking regulators also seek to control financial and reputational risks by exerting direct pressure on their domestic regulatees. Because of the centrality of the dollar in the settlement of international trade, all significant banks that are not licensed in the US seek correspondent banking relationships with banks that are. So when in April 1999, the US and UK Treasuries issued 'advisories' requiring their own regulated financial institutions to exercise special care in dealings with Antigua banks, this had a marked negative effect on Antigua's business because it meant that *all* transactions were to be slowed and treated as 'suspicious'¹².

However in 2000 - disappointed at the pace of change in some 'rogue financial states' and seeking wider international sanctions and legitimation than could be provided by national advisories alone - the FATF, at the initial instigation of the Clinton administration but supported by the G-7 after the peaceful resolution of some *internal* threats to 'blacklist' each other for non-compliance, overturned the commitment to *mutual* evaluation and instituted the Non-Cooperative Countries or Territories initiative. Under this, those members and non-members alike who failed to meet 'sufficient' of the FATF AML criteria (which had some additional and more stringent ones added to them for this exercise) would be listed and 'punished' by 'enhanced due diligence' (i.e. slowing down) or even exclusion from normal international banking facilities¹³: however, no procedure had initially been envisaged on how countries were to get *off* the blacklist once they had been put on it. In an attempt to routinise, professionalize and to some extent depoliticise the globalisation of AML activity, G-7 pressed forward the need for the initially reluctant International Monetary Fund to develop an AML component into its Reports on Observance and Standards and Codes that are applied to every country reviewed by the IMF. Nevertheless, the *law enforcement* component of AML policies remains open to re-evaluation, symbolised by the fact that, uniquely, these are completed not by core IMF staff but by outside experts.¹⁴ It also has an uncertain

11. Eventually: in fact it was only in 2002 that transfers involving existing anonymous passbooks were stopped, the FATF displaying some tolerance in its monitoring of implementation, since it threatened suspension of membership in 2000. The relative importance in generating compliance of (a) shaming per se and (b) prospective economic damage is uncertain.

12. The Antigua Advisories - precipitated by Antigua legislation easing AML measures there, and by the European Union Bank internet fraud on international depositors (see Blum et al., 1998) which was symptomatic of domestic regulation - were lifted only in July 2001, and monitoring continued thereafter.

13. In the first round in 2000, Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines were listed. In 2001, Egypt, Grenada, Guatemala, Hungary, Indonesia, Myanmar, Nigeria and Ukraine were added. As of August 2004, Cook Islands; Indonesia, Myanmar, Nauru, Nigeria, and Philippines remain on the list, though others de-listed are under monitoring.

14. The AML staff are currently not in core or permanent IMF posts. In July 2002, the IMF Directors concluded:

"the staff's involvement in assessing non-prudentially-regulated financial sector activities should be confined to those that are macro-economically relevant and pose a significant risk of money

relationship with the FATF, which in 2003 completed a major review of its own Recommendations and which has been given a new and enhanced mandate to deal with terrorist finance, including requiring originating information on wire transfers, progress on which had always been resisted by the private sector.

Furthermore, questions have been raised consistently about the willingness of FATF to apply consistent principles to more powerful nations than Turkey or Austria. The meetings (and pre-meetings) have provided a forum for genuine debate about the criteria for blacklisting: thus (after considerable inter-departmental wrangling within some delegations), Israel was blacklisted (along with Lebanon) on 'merit' in 2002¹⁵. Although not alone, the prime candidate for accusations of lenient treatment for insiders is the US (*The Economist*, 23 June 2001, p.801, and an earlier critical report by FATF in 1997): by its own assessment in 2001-2, the US was in full compliance with only 19 of the 28 Task Force recommendations requiring specific action (FATF 2003, Annex D, p.5).¹⁶

Prior to '9/11', strongly organised banking industry opposition had frustrated all but the most basic Know Your Customer requirements, and it was only in the aftermath that it became politically opportune to "take out policies from the top and the bottom drawer"¹⁷ and pass the USA Patriot Act 2001 that enabled it to comply more fully. The operation of the non-compliance policy "relies on a combination of the compliance findings under mutual evaluation reports and the self-assessment exercise" (FATF 2001, p.43). The obvious difficulty in recent years has been that both the non-compliance strategy and mutual evaluation have had the original 1990 recommendations as the frame of reference, whilst self assessment relates to the recommendations as amended in 1996. To assure members of equal formal treatment, amendments to the standards can only be evaluated at the end of each round of country evaluations, which takes years. These should however be brought into alignment in the course of the third round, which started at the end of 2004.

The new unprecedented eight-year mandate of the FATF, which covers the period from September 2004 to December 2012, sets out its main future tasks, which in

laundering/terrorism financing [italics not in original];

all assessment procedures should be transparent and consistent with the mandate and core expertise of the different institutions involved, and compatible with the uniform, voluntary, and cooperative nature of the ROSC exercise;

the assessments should be followed up with appropriate technical assistance at the request of the countries assessed in order to build their institutional capacity and develop their financial sectors; and the assessments would be conducted in accordance with the comprehensive and integrated methodology."

15. Both have now been removed from the list.

16. It states: "The United States is in full compliance with 19 Recommendations. Since last year, the US has implemented final rules that impose the requirements of R. 14, 15, 28 and 29 on bureaux de change and money transmitters. The US remains in partial compliance with R. 8, 10-12, 14, 15, 19-20 and 26 due to the fact that it has not extended full anti-money laundering measures to insurance companies. The USA PATRIOT Act, signed into law in October 2001, authorises the US to impose far-reaching measures to protect the financial system from money laundering and terrorist financing. A new rule proposed in 2002 deals with implementing relevant measures within the insurance industry. When this rule is issued in final form, the US will likely reach full compliance with remaining FATF Recommendations."

17. US interviewee.

essence are remarkably like the past ones. The priorities (FATF, 2004, p.5) will be “to continue to set standards to combat money laundering and terrorist financing; to carry out typologies and compliance work in order to ensure global action against money laundering and terrorist financing; to develop closer co-operation with the IMF and the World Bank; and to enhance FATF’s relationships with FATF-style regional bodies (FSRBs). This new eight year mandate is a recognition of the obvious need to deepen and expand the international community’s effort to fight money laundering and the financing of terrorism.”

As early adopters of AML and *some* anti-corruption measures, the UK, US, Australia and the Netherlands have chosen their regulations most freely, whereas most or all countries who have appeared on the Non-Cooperative Countries or Territories ‘blacklists’ fall clearly into the coercive transfer category in both areas. (The FATF appears to be following a restorative justice model, especially when a country is politically valued. Russia was blacklisted in 2000 and – following intensive reforms headed by an experienced former British police officer - taken off only in Autumn 2002. After a positive evaluation of its measures in 2003 that coincided with Russia’s participation in the War on Terror, it was permitted to join the FATF itself.) Some countries that score high on AML measures score lower on anti-corruption ones (but not vice versa), but one difference between this arena and many other social policy ones is that ‘the problems’ of corruption, transnational organised crime and money laundering are actively constructed by elites in what Van Duyne (1998) has sceptically termed the ‘threat assessment industry’, who have an interest in amplifying or (when accused by others) sometimes denying them.¹⁸

One of the best examples of this amplification is the estimated global figure or range, given in many speeches and papers for official bodies, for money-laundering: we sourced *all* of these ‘official data’ (sic!) since 1988 as largely invented by senior figures of the UN, FATF and IMF and reiterated by national politicians and police chiefs, without any serious underlying analysis or justifiability: notwithstanding, they are accepted and endlessly regurgitated by the media because of the authority of their sources and because they fit the imagery of Global Evil. In a wonderfully circular logic, the ‘data’ are then used to justify the invasiveness of the measures proposed to deal with this vast problem (van Duyne and Levi, 2005; see also Reuter and Truman, 2005 for a more sophisticated economic analysis of the estimation process, which also lays waste to some of the ‘informal economy’ estimates).

The Economic Context of Money Laundering and Governance Regulation

The contradictions and incompletenesses in the global governance of money laundering are partly the result of the connectedness of transparency with the core functioning of the world economic system. (Though this does not mean that

18. A good example of disputes over what counts as evidence is prosecutions for transnational corruption, see n.7 and 19 above. The OECD used the complete absence of prosecutions to illustrate that the UK was not compliant, rather than accepting that the absence of prosecutions showed that there was no problem.

nothing significant can be done about money laundering without eliminating opacity everywhere.) In post-industrial societies and in some Small Island Economies (SIEs), the service sector is important, and the financial services sector offers the prospect of high, ecologically clean employment, income from registration fees and foreign currency earnings. In London, for example, one in five people in employment work in financial services, and 'invisible earnings' compensate for the poor balance of visible trade (International Financial Services, 2003). Swiss private banks (for 'High Net Worth' customers with at least \$1 million in assets excluding their homes) manage an estimated £1.364 billion, more than half of which is for 'offshore' foreign customers (Financial Times, 9 June 2003).

The Tax Justice Network (2005) estimates that over US\$11.5 trillion is held offshore by High Net Worth individuals; and Bank for International Settlements data indicate that a fifth of all cash deposits are held offshore (i.e. other than where the account-holders are normally resident). In terms of assets held in different jurisdictions, Switzerland is well ahead, followed by the UK, US, Caribbean, Channel Islands, Luxembourg and Hong Kong. This generates caution before risking the loss of jobs, taxes and campaign finance by acting alone at a national or at a corporate level against laundering and transnational bribery. The *proportionate* potential effect of anti-laundering measures on Small Island Economies and land-based small countries may be just as if not more serious, since their economies typically are not diversified, having essentially tourism and financial services as their sole sources of income. They often moved into financial services at the instigation of the former or present colonial powers to reduce their dependence on aid¹⁹, and annual licence fees can be a substantial and impossible-to-replace proportion of government income, the licence fee profit ratio being higher if regulatory and mutual legal assistance costs are negligible. For all countries and regulated firms, due diligence on the origin and destination of financial transfers imposes economic costs, but the costs of crime elsewhere (from, say, a fraudulent bank or pyramid scheme) may be far greater than any benefits received by offshore governments and financial institutions: the social costs of 'market offences' (Naylor, 2002) are more complex to calculate.

Let us assume that controls are more likely to be seriously implemented where the people who have to apply them have a direct stake in the benefits of implementation. Most primary offences occur outside financial centres, reducing their motivation to combat money laundering, but the opportunity costs of financial services industry substitution are as real for those countries as drug crop substitution is in Afghanistan, Colombia and Peru.²⁰ There has been much discourse about the importance of a 'level playing field' – and concerns about this are commonplace, especially in countries of the North – but this might produce the extinction of many offshore finance centres, since they require an advantage from lower regulatory/licensing costs or other forms of arbitrage. This is one reason

19 Interviews with UK and Caribbean officials. This was one source of the bitterness that several Caribbean ministers expressed over the pressures to introduce tough regulation.

20. One could analyse the distribution of direct and 'trickle down' costs and benefits to expatriates and indigenous people, but this is too complex an issue to be reviewed here.

why there is particularly strong opposition to the 'harmful tax avoidance' proposals of the OECD, since this is seen as a far greater threat than the AML and anti-corruption drives to the economic survival of such territories, and taxation does not have the same cultural resonance as 'crime' and certainly as 'terrorism', making it easier to oppose, whether it comes in the form of lobbies such as the Tax Justice Network or from otherwise powerful individual governments.²¹

There is no evidence that anyone in the UK government believed that combating tax avoidance or even evasion was an important goal of the strategy, though the fact that the British Bankers' Association sought and received reassurance on that point from the Conservative government of the day does not prove that increasing the tax yield was not a *covert* objective. But there was not then and is not now any international consensus even within the richer OECD members on the inclusion of tax offences as a 'predicate crime' for money laundering, i.e. as a crime that makes it obligatory for financial services and professional staff to report suspicions to the authorities. Indeed, tax crimes are not now a predicate under US money laundering or racketeering legislation (though once the tax form for that year is completed, production of false financial records may constitute the crime of false accounting in several countries).

In the case of the governance of the money trail, it is vital to appreciate that not all aims and ambitions were present from the outset: this would have required far too sophisticated a worldview and too implausibly coherent a set of perspectives on re-regulation. Nevertheless, there were twin tracks of (1) the criminal law mechanisms favoured by the Americans as a universal model and embodied in the UN Convention, and (2) the regulatory approaches to Customer Due Diligence favoured particularly by the Swiss since 1977 (following the Chiasso scandal), but also by regulators from other jurisdictions, which led to an American proposal to the Basel Committee on Banking Supervision to develop some general due diligence standards issued in 1988.

Driven hard by the Americans and British, who recognised that without further consistent internationalisation of controls over illegal drugs, the supply side model of drug prohibition would not work²², the 1988 UN Vienna Convention had captured the global *zeitgeist* of concern about the effects of drugs on all their societies: the highest common denominator of *domestic* political agreement and therefore the easiest to get through a consensus oriented diverse body such as the UN. The fact that the Convention was rushed through in an unprecedented two years (Gilmore, 2004) indicates the level of urgency.

21. The Swiss have been in the forefront of the struggle against tax information sharing with the EU, as well as the wider OECD proposals. Important in this context is that because of their customs union with Liechtenstein, they are responsible for representing Liechtenstein's position also, and have given them substantial assistance in AML measures, especially since blacklisting gave Liechtenstein's bankers and lawyers a 'wake-up' call. The US position on the 'Harmful Tax Avoidance' initiative by OECD has been softened substantially since the Bush administration replaced the Clinton one, despite burgeoning budget deficits and tax reductions that one might have thought would give legitimacy to anti-artificial tax avoidance and evasion measures.

22. We will not address here whether this model made sense anyway: see Naylor (2002) for a sharp critique.

However, interviews - confirmed by the absence of references to it in the 1988 Convention - suggest that there was not yet any common sense of transnational organised crime as involving other than drugs trafficking syndicates, still less a realistic desire to deal with terrorist finance or terrorism - a subject that still evokes immense definitional difficulties at UN level. Rather, the same forces that drove the US and the UK to enact the first *domestic* anti-money laundering legislation in the mid-1980s²³ led them to want other countries to adopt such legislation and systems, both creating new institutions and using existing frameworks that were judged to be the best tactical means of achieving those results.

Broader internationalist ambitions were already under way on the part of the US, especially in the drugs enforcement arena (Nadelmann, 1993), enhanced by the temporary merger with the DEA that made the FBI more internationalist: but the UK was unwilling to invest such vast resources in stationing large numbers of officers overseas.²⁴

The French government also had a strong interest in money-laundering regulation, driven by dislike of deregulation and concern about tax evasion in offshore finance centres (especially those connected to the British!): see Lascoumes and Godefroy (2002) and Peillon and Montebourg (2001, 2002). This perspective on measures to control transnational crime is not without its contradictions, especially over the Franco-British reluctance to criminalise transnational bribery (until 2001) and over the French domestic political 'slush funds' that were used both for domestic clientelist purposes and to 'sweeten' overseas contract bids by French firms.

A combination of events made the creation of the FATF in 1989 special. First, although it was agreed by the key G7 players - France, UK and US - that the UN was not likely to be able efficiently to apply the measures against money laundering set out in the Vienna Convention and that something over which they could exercise more control was desirable if they were actually to have an impact, there was very little time - just the summer - between the political agreement that the FATF would be created and the negotiations on detail. The net effect of this was to broaden the tasks of FATF to 'satisfice' the major national and professional interests, making it quite multilateral, and also to speed up the policy transfer process. At this time, many banking regulators in some countries remained unconvinced that AML was anything to do with systemic risk, and this represents one strand of thought that has continued to the present, with core sections of the IMF remaining sceptical about the macroeconomic relevance of money laundering.

From the creation of FATF, although international pressure and standards are used to push *domestically* policies resisted in some countries, the international

23. The US had enacted its Racketeer Influenced Corrupt Organizations (RICO) legislation in 1970, but this did not contain bank routine or suspicious transaction reporting provisions and it was only in the mid-1980s that its asset forfeiture provisions became more commonly used (Levy, 1996; and interviews with US officials).

24. Though one should take into account both Customs officers and the military, for example the Navy in the Caribbean.

regime runs up against domestic attitudes and sometimes even constitutions. Examples include corporate criminal liability (a concept alien to Germanic law systems) and measures to require lawyers to report suspicions of money laundering (passed by the UK in 1993, the EU in 2001 but the subject of a hitherto successful appeal by Canadian lawyers and pending appeals by some European lawyers to the European courts): see Levi, Nelen and Lankhorst (2005).

Spreading the Anti-Money Laundering Message Throughout the World

The above is taken from the title of the FATF's Annual Report for 2000, and expresses the evangelical tone of the AML movement. Partly reflecting 'spheres of influence' and partly immediate concerns of key members, the decision was taken to set up a regional body which was to be 'encouraged' in self-policing by adopting the new model of 'mutual evaluation' pioneered by the FATF. This was the Caribbean Financial Action Task Force, founded in 1990 and based in Trinidad, with a British-funded Secretariat (which fact caused political resentment among some Hispanic members).

Although nominally self-governing, it was well understood by Caribbean jurisdictions that this was intended to constitute pressure on them to reduce well-publicised scandals of corruption and easy acceptance of drugs and tax evaded cash 'in Uncle Sam's backyard', which had benefited some politicians personally as well as their friends and political supporters. However with combined Anglo-American pressure, there seemed little option but to fall in line. The process (and even the later NCCT initiative) enabled the more far sighted regulators and politicians to make use of external pressure and support to get their legislature and executives to 'clean up their act'.

The Caribbean was seen as the key problem area for drugs money laundering for the Americans and, by extension, for the British. However, it was also important to develop policies for other regions with finance centres, and so the gradual sprawl led to FATF-style bodies in the Council of Europe and Asia-Pacific Group, followed much later by African and South American bodies (1999-2004). The United States is either a member or an observer at all of these regional gatherings, and the UK participates in all but the South American one.

The European Context

European interest in AML measures preceded the formation of the FATF. Prior to the Treaty of Amsterdam, however, the European Commission had no legal competence in criminal matters, so controls over money laundering had to be smuggled in under the (still largely unexamined) guise that variations in Member State provisions against laundering were a threat to the integrity of and free flow of funds within the internal market and therefore fell within the European Commission's right of initiative.

This was a perspective that most Member States were happy to go along with, since the Treasury officials of the larger States had already been enculturated by

the FATF and it was difficult politically to be seen to tolerate money laundering, particularly when the measures of control were not obviously severe. The combined 'ecological' effect of the Presidency's Multi-Disciplinary Group (MDG), Europol and the growing Justice and Home Affairs component of both the European Council and the Commission act as pressure upon the more jurisprudentially conservative Member States (such as Germany) to 'modernise' so as not to fall out of line with the majority. The principle of evaluation (though not necessarily *mutual* evaluation) is confirmed in the proposed European Convention.²⁵

Also important in the evolution of anti-money laundering activities were more modest elements. The increased 'traffic' between countries forces them at an operational level to seek solutions to their interface problems. Thus the Egmont Group was generated by the need of the American and Belgian administrative type financial intelligence units (FIUs) to both obtain information from and transmit information to the police-type FIUs that existed elsewhere in the world. Since 2000, the EU has encouraged and funded cross-border financial intelligence-sharing via a Secure Intranet (FIU.net) mechanism developed by the British and Dutch. So it would be a mistake to see these policy and practice transfers as coming either from above or from below: rather they come from both, though given the financial cost of many interactions in the money trail arena, some senior support is often needed before the exchanges are allowed to develop.

In this sense, international is different from local partnership policing, where few marginal costs have to be funded: mid-week plane fares, hotels, and time off work are considerably more expensive and generally cannot be found from routine or training budgets. As networks expand geographically and numerically, these costs rise substantially. Note, however, that these funds tend to be available only for activities related to 'organised crime' as commonly understood. Frauds and economic crimes that fall outside those constructions in line with the EU Action Plan against Organized Crime 1997 do not receive funding, though some activities in support of action against EU fraud might be funded via OLAF (Organisation pour la Lutte Anti-Fraude) or its predecessor UCLAF.

The other key role of the EU has been in relation to the *acquis communautaire*, which has enabled them to engage in largely coerced policy transfer of AML, anti-corruption, and mutual legal assistance legislation and programmes to candidate countries²⁶. This has involved self-assessment questionnaires, mutual evaluations (also making use of the MONEYVAL evaluations within the Council of Europe framework), and some technical assistance programmes.

25. Article III-161 of the final text of the Convention states: "Without prejudice to Articles III-265 to III-267, the Council of Ministers may, on a proposal from the Commission, adopt European regulations or decisions laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Chapter by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and Member States' national Parliaments shall be informed of the content and results of the evaluation."

26. It is not completely coerced. There is a 'modernisation' cultural component that is relevant to the exchange as the former Communist countries of Central and Northern Europe join the EU, but non-compliance is not an option.

Incorporation and compulsion: Business reactions to money trail issues

Businesses vary widely in their motivations both for compliance to the law and for the wider exercise of Corporate Social Responsibility, a term whose salience in corporate life has been enhanced in recent years, stimulated by scandal and government reactions to it, but also by consumer and media pressures for transparency (Levi and Pithouse, forthcoming). It is mainly large companies whose dealings with the general public, with governments and with international institutions such as the World Bank for contractual and other purposes are significantly affected by reputation, including *but not restricted to* the absence of criminal convictions or 'serious' regulatory penalties.²⁷ Whatever their private views about customer confidentiality, most institutions have to take the view that co-operation with FIUs in anti-laundering measures is necessary.

To facilitate mutual trust in a highly secretive area with intense competition, eleven senior compliance personnel from the largest international bankers worked with two competent former government officials now representatives of the NGO Transparency International which, as an aggressive critic of transnational and domestic corruption, had sufficient credibility to serve this purpose, to develop the Wolfsberg Principles, so named after the UBS training centre where they met. Once these principles had been announced and presented to the world – *inter alia* agreeing to applying the same procedures for identifying and monitoring accounts of public officials *worldwide*, whatever the national legislation, to reduce the chances of their being used for laundering money – other bankers who were not included in this elite process of global private sector policy development wanted to join, and a (potentially) virtuous circle was created, using positive reputational benefit (and the absence of very negative future reputational harm) as a motivator (Pieth and Aiolfi, 2003).

Although the involvement of bankers in government AML policy development varies – the UK and Switzerland have always been at the collaborative end of the spectrum – senior compliance staff from the 'Wolfsberg banks' (previously seen as 'the problem' by many law enforcement officials) were not only given advance notice of but also were consulted over the revised Financial Action Task Force drafts of 2003. Nevertheless, perhaps out of concern to be misinterpreted as favouring some banks rather than others, and partly out of concern for information leakage in such a diverse industry, many governments have difficulties in large-scale information sharing with the financial sector.

27. The administrative or regulatory sanction issue is particularly important in those jurisdictions that do not have or do not implement corporate criminal liability. We are not arguing that multinationals all behave lawfully all the time: if all the financial institutions that had been sanctioned for complicity in fraud against clients or money-laundering were prohibited from doing business, there would be few international banks left. The accounting firm Andersens is the most dramatic example in modern times of reputational harm obliterating corporate value: it should not be forgotten, however, that the key trigger of the collapse was the prosecution of the firm, which conviction would have disqualified it from audit work in the US. For a more general discussion of business regulatory issues – though it does not mention fraud or money laundering and only briefly mentions corruption and organised crime – see J. Braithwaite (2002) *Restorative Justice and Responsive Regulation*, Oxford: OUP.

The Impact of Terrorism

No review of contemporary crime control changes would be complete without terrorism. Mutual evaluation and the NCCT mechanism had already shifted many of the most recalcitrant jurisdictions into legislative and institutional reform on money-laundering, though countries such as China and India had mysteriously escaped listing, for reasons that were interpreted as geo-political by interviewees from countries of the South. '9/11' had an immediate effect (a) in generating the hugely intrusive and extra-territorially applicable USA Patriot Act 2001²⁸ (and other, less significant, national legislation in over 50 countries), and (b) on enhancing and renewing the mandate of FATF – which rapidly generated Special Recommendations on the Financing of Terrorism that were approved within weeks - and reviving the pressure on the private sector to complete the counterparties to wire transfers.²⁹

It also stimulated major interest in money-remitters and underground banking, and even in credit and debit card fraud. The most dramatic change was in re-focusing or distorting the concept of money-laundering to include proceeds from legitimate activities that might support terrorism, including aid to the families of terrorists. Every method that, upon deconstruction, anyone connected with the 'Al-Qaeda organisation' (later modified to 'network') had used to move money had to be monitored and controlled. Within Europe, too, the opposition of the European Parliament towards the regulation of the legal profession and others faded, and a rather hurried compromise Second Amending Money Laundering Directive was passed in 2001 which considerably extended the number of sorts of business (e.g. auction houses) required to report suspicions.

Conclusions

The dynamics of policy development and tactical objectives change over time and between nations. Policies emerge and are transferred in a process of active construction and reconstruction, depending on the far-sightedness and diplomatic skills of 'leadership' and the environments in which they operate, which are subject to exogenous changes such as those caused by '9/11'. Neo-liberal economic models have been the primary philosophical approach and implementation objectives of the IMF and World Bank in their prescriptions for the indebted Third World (Stiglitz, 2002; Griffiths, 2003).

However, the demands of crime control and systemic economic risk management have generally won the support of Finance Ministers and have proven to be significant in enhancing global transparency compared with the 1980s, though there is no evidence that this has had any deep effects on inter-corporate beha-

28. One impact was via the need of banks operating in the USA to control vigorously their correspondent banks, i.e. banks without a substantial physical presence in the country that pay fees for the right to use other banks to clear their currency transactions.

29. Though the US at the last minute proposed and received a special exemption for itself, to allow it more time to implement full details for amounts under its existing reporting limit of \$3,000 for money transmitters.

viour such as international money flows and transfer pricing – which it was never intended to affect. There has been a convergence of the following policy issues that are of concern to many First and Third World countries to varying degrees:

- Concern about terrorism and its financial underpinnings
- Concern about international supply-side drugs controls
- Concern about domestic scandals, in relation to which international investigations increase the risk of exposure and enhance the profile of laundering
- Concern about tax evasion/avoidance³⁰
- Concern about lack of transparency in derivatives traded from Offshore Centres (Long-Term Capital Management, Enron, Parmalat)
- Concern about the international 'level playing field' in the award of contracts by governments
- Concern about loss of welfare (including aid income) in poor countries from Grand Corruption by their political leaders, referred to in banking circles as Politically Exposed Persons (PEPs).

The AML process has imposed a substantial layer of monitoring and compliance costs, as well as regulatory fines and occasional prosecutions, upon the financial services industry and a growing number of professions and commercial activities such as car dealers, jewellers, and the real estate sector. To that extent, this constitutes far more than a symbolic set of commitments. Though methodological coherence and standardisation have only recently been formally developed in anti-laundering policies – the involvement of the IMF since 2002 has made some difference to this – mutual evaluation has gained increasing popularity as a *method*: it offers an apparently non-imperialistic rationale for intervention, since it is a component of a peer review process for instruments to which the jurisdiction has formally subscribed and therefore acquired some ownership. At a cultural or ideological level, it is difficult to argue that financial services centres and firms should be oblivious to funds of criminal origin or that may be used for terrorism. Consequently, an evaluation process (whether by peers or by agency experts following voluntary review³¹) is built into all late modern regimes for dealing with corruption (Council of Europe 'Greco' and OECD) as well as money laundering and proceeds of crime confiscation (Council of Europe, EU, FATF, Financial Stability Forum, IMF and World Bank).

In many respects, the policy transfer process in AML and anti-corruption – assisted by foreign aid for particular developments and economic sanctions for undesired developments – has been a major success. One interpretation might be that 'Power Works': however illegitimate it may have been seen to be in the eyes of non-FATF and even some FATF members³², and whatever the impact of loss of

30. This has been carried forward principally by the OECD's deeply controversial and far less successful Harmful Tax Avoidance Initiative. It is less obvious what sanctions can be imposed in the context of poor tax co-operation.

31. The 'voluntariness' is open to critique, since those not agreeing may find themselves subjected to financial sanctions.

32. The criticism is not so much that listed countries do not deserve to be there, but that other,

government income on those jurisdictions that were already very poor, the introduction of sanctions in the NCCT process in 2000 (and subsequently, though stopped after the IMF became involved, because of the IMF prohibition of formal compulsion) produced dramatic changes in legislation and institutions (a) among those that were blacklisted and (b) among those that judged themselves at risk of it and, in the words of one leading OFC regulator to me, "would do anything to make sure we are not on that list" because of the flight of business that flowed from being on the list.³³

However, 'Power Works' would be too crude an explanation, not least because it is too soon to tell whether the compliance it generated will work itself through to the behavioural level of criminals and (especially non-international) financial institutions and if so, for how long compared with a more democratically arrived at process. It is clear that AML has generated a rationale for greater coercive intervention by the UK in its 'offshores', but reflection on implementation experience and changes in the regulatory environment also played their part. Even before the NCCT initiative which brought an end to (relatively) pure mutuality in evaluations, substantial changes had occurred in customer information recording and international mutual legal assistance, making the money trail more transparent and followable. Without this period of voluntary and quasi-voluntary policy transfer and adoption, it would have been politically impossible to introduce the blacklisting process, not least because so many countries would have felt threatened and because there would have been no graduated warning process.

Thus, the *sequencing* process was important to political 'success'. The net effect has been to drive up regulatory costs in some jurisdictions so that both their comparative cost and their freedom from regulation advantage in banking and company formation has been largely lost: essentially, the pure 'brass plate' jurisdictions have been driven out of a business that had no underlying substance other than secrecy.

Nevertheless, (a) the goal of affecting the organisation and levels of serious crimes has been displaced in practice by the more readily observable goal of enhancing and standardising rules and systems; (b) the critical evaluation of what countries actually do with their expensively acquired suspicious transaction report data remains in its infancy³⁴; and (c) the evaluation of and economic sanctions for poor AML performance, though apparently similar internationally, in practice has focussed more sharply upon smaller and weaker jurisdictions than upon the Great Powers, raising questions about the equity of the process. Moreover, it is not just a question of equity. If the UK, US (especially the State of Delaware) or other

unlisted countries are no less deserving of this status. Furthermore, scepticism has been expressed – even by FATF member country representatives – that the tighter control of the 'offshores' is aimed at generating a competitive advantage for the core FATF members who are controlled in some respects less strictly than the 'offshore' finance centres.

33. Some higher status offshore jurisdictions made the calculated gamble that they would be better off losing up to a third of their business to obtain a top rating from whichever evaluation group they were dealing with.

34. See Gold and Levi (1994); Levi and Osofsky (1995); and KPMG (2003) for some rare non-internal evaluations.

powers are allowed *not* to identify beneficial owners of companies or land, but members of the Offshore Group of Banking Supervisors and smaller economies *are* required to identify them on pain of economic sanctions, how can policy effectiveness as well as intellectual and moral consistency be justified? Likewise, with requirements on European but not American accountants and lawyers to report suspected transactions.³⁵

Thus, mutual evaluation is a very useful process to international bodies who are concerned with effectiveness (or rather, efficiency and coherence) of implementation, which also offers a political mode of integration well beyond the mere passage of legislation: it does not by itself orient States to judging the impact of regulation on the extent and organisational form of primary criminal behaviour itself. Indeed, whereas there is a clear connectedness of anti-transnational bribery policies to fairer trade and of *some* 'good governance' controls to better flows of famine and (relative) poverty relief, the measurement of the relationship between anti-laundering controls and actual outcomes such as the reduction of crime in general or even particular forms of crime remains very much in its infancy.

As for the private sector, the Wolfsberg model of a consultation process between multinationals seeking to reduce transnational bribery with trusted third party outsiders is currently under tentative adoption – again in the face of scandal and criminal proceedings – by other global industries, at the bounded rationality rather than coercive end of the spectrum of policy adoption. As with some other changes discussed here, it is unlikely that these processes would have occurred without these examples of successful policy to draw on, but it is also unlikely that they would occur in the absence of real prospective financial and legal sanctions for law violation. Responsive regulation may be an ideal mode, but the possibility of sanctions makes mutual controls more pressing and, in world that elevates economic rationality to a principle, gives senior executives the excuse they may need to take social externalities into account.

The prospects for mutual evaluation as a mode of future governance seem positive, but there is now some substantial concern, especially for smaller jurisdictions with a smaller number of competent bureaucrats, as an increasing number of international bodies take up scarce time and resources in visits and questionnaires. There is no international and almost no national collective costing of AML or anti-organised crime efforts, nor are benefits in terms of crime reduction outcomes critically examined. It may be that existing bodies can take on board the shift in policy focus from banking secrecy to corporate secrecy, in the drive to make beneficial ownership more transparent to combat terrorist finance. But as with the contemporary debates on accounting standards in the post-Enron era, what the processes may be less good at, especially as the number of participants

35. US legislation such as the USA Patriot Act 2001 and the Sarbanes-Oxley Act 2001 have complicated the legal position of professionals. At their 2003 summer conference, the American Bar Association finally allowed their members to make reports, but in 2003, the Canadian government withdrew on the courthouse steps from a constitutional challenge by all the Bar Associations against its actual legislation requiring lawyers to report suspicions of their clients based on their funds transfers.

grows and procedures bureaucratise, is looking critically at what is being achieved in terms of *crime reduction outcomes* (Levi and Maguire, 2004; Reuter and Truman, 2005). It can point to genuine changes in legislation, financial intelligence and investigation units and court processes, and to private sector compliance units, etcetera.

Whatever the moral and analytical objections (Naylor, 2002), these may generate higher proceeds of crime confiscation yields in the fullness of time, especially as what I term the 'Western wave' of civil forfeiture – by-passing the need for conviction – rolls East from the US, Ireland, and the UK (and from Australia) against cultural and jurisprudential resistance from most parts of Continental Europe, just as the reversal of the burden of proof post-conviction for assets linked to offenders did before it. But even disregarding the vast annual gap between estimated proceeds of crime (both stocks and flows) and asset forfeitures/taxes on crime, it remains uncertain and seldom asked, whether or not it is harder to practise as an 'organised criminal', a fraudster or a terrorist now compared with 1988, when the UN Vienna Convention and the Basle Committee on Banking Supervision ushered in the Brave New World of seeking on a global basis to control the criminal money trail.

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Appendix A US cash transfer and suspicious activity reports

Type of Form1	Filed in FY 2003	Filed in FY 2004	Percent e-filed in FY 2004
Currency Transaction Reports (all types)	13,341,699	13,674,114	11%
Suspicious Activity Reports (filed by all covered industries)	413,052	663,655	17%
Reports of Foreign Bank and Financial Accounts	199,738	218,667	0%
Registrations of Money Services Business	5,858	17,037	0%
Designations of Exempt Person	69,450	80,763	0%
Reports for Cash Payments Over \$10,000 Received in a Trade or Business (Form 8300)	129,824	151,998	0%
Total	14,159,621	14,806,234	11%