THE LEGALIZATION OF THE INTERNATIONAL ANTI-MONEY LAUNDERING REGIME:
The Role of the Financial Action Task Force

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Abstract

The emergence of an international regime of soft law principles and rules to prohibit money laundering by financial institutions and other intermediaries is an important step in reducing systemic risk in the international financial system. This paper analyses the various international instruments and principles adopted by leading states at the international level to combat money laundering by financial institutions. It argues that these multilateral initiatives have facilitated the development of effective international principles and rules that have been adopted as binding national legislation in many leading states. This has had a major impact in reducing international financial crime, and thereby reducing systemic risk in the international financial system.

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Introduction

This paper analyses the international regime of rules, principles, and standards designed to reduce the risk of money laundering in the international financial system. The international anti-money laundering regime includes a variety of soft law (non-binding) principles and rules that involve voluntary cooperative arrangements amongst states that have evolved in recent years towards a more specific legal framework that binds an increasing number of major states. In particular, the Financial Action Task Force ('FATF') and its member states have played a crucial role in developing international norms and rules that require financial institutions to adopt minimum levels of transparency and disclosure to prevent financial crime. The FATF has focused its anti-money laundering efforts on financial institutions because of the ease by which criminal groups have used financial institutions to transmit the proceeds of their illicit activities and because of the threat that money laundering poses to the systemic stability of financial systems.

This paper will also analyse other international efforts to combat financial crime, including recent initiatives by the European Union to require EU member states to implement 'know your customer' regulations for financial institutions and to require member state regulatory authorities to exchange information in the investigation of financial crime. Moreover, the global initiatives of the United Nations and the Basle Committee on Banking Supervision will be discussed in respect to their impact on the international anti-money laundering regime.

In this paper, I define an international regime as a system of norms, standards, procedures, institutions and rules of conduct that constrain and shape state behaviour in a particular issue area. A regime may be

formal, such as the General Agreement on Trade in Services of the World Trade Organisation, or informal, such as a regime which is merely implicit from the actions of the states involved. A regime may encompass not only the various soft law rules that are inherent in international relations but also the 'hard' law obligations of a developed legal system. Indeed, the purpose of international regimes is to regulate and control certain transnational relations and activities by establishing international procedures, rules, and institutions.[1]

The Financial Action Task Force and other international bodies have developed international norms and rules to combat money laundering because they view the unilateral efforts of individual states to be inefficient and unsuccessful in addressing the global threat of financial crime.[2] Most experts agree that a concerted multilateral effort is necessary to facilitate detection and cessation of international money laundering.[3]

I. FINANCIAL CRIME: The International Dimension

The growth in money laundering is due in part to its increasing complexity and international character.[4] The greater integration of the world economy, the removal of barriers to the free movement of capital, and the sheer speed of computer generated financial transactions have combined to create new commercial opportunities. Unfortunately, these factors also make the job of concealing criminal proceeds easier.[5] Reports suggest that now, more than ever, criminal groups can manipulate an expanding array of tools to shield their wealth, without regard to international borders. Indeed, in testimony before the US Senate Banking Committee, a US Treasury official stated:

Once the funds go abroad, either through our financial system or by being physically smuggled, there is virtually a smorgasbord of business structures, supported by the laws of dozens ofcountries, that serve to obscure ownership and frustrate the government's ability to unravel schemes. Funds can be moved among corporate entities and

financial institutions in many countries in the blink of an eye through wire fund transfers, making the untangling more and more difficult at every stage.[6]

Money laundering today is inherently a transnational phenomenon in which well organised, abundantly financed criminal organisations exploit national differences by shifting business to and through countries with less stringent controls.[7]

It is difficult to quantify the amount of criminal profits that enter into the international financial system each year.[8] Experts cite figures in the scores and even hundreds of billions of dollars.[9] Most acknowledge, however, that while a defensible estimate has yet to be developed,[10] the amount is staggering by any calculation.[11] Not surprisingly, drug trafficking accounts for a significant portion of the illegally generated proceeds seeping into regular commercial channels. Money laundering extends far beyond drug proceeds, however, to include virtually all profit-motivated crimes: from bank, securities, trade, and insurance fraud to prostitution, illegal gambling, extortion, arms smuggling, and terrorism.[12] And while it is difficult to offer credible estimates regarding the magnitude of the money laundering problem, most experts believe that the phenomenon is on the rise, particularly on the non-drug side.[13]

The dangers that money laundering poses to an economy are manifold. Laundering undermines and manipulates legitimate businesses by allowing considerations other than sound business practice to influence decisions. It corrupts public officials, perhaps even entire governments, by buying votes and influencing the actions of politicians and career officials. It distorts macroeconomic estimates, skews currency markets, and destabilises financial institutions through the creation of illegal economies. Most important, money laundering is inextricably linked to the underlying illegal activity that creates it. Laundering renders criminal conduct lucrative, thus providing the incentive and the means for that conduct to persist.

A. Financial Institutions and Electronic Payments Systems

The recent emergence of alternative payment technologies such as smart cards and Internet banking may present even greater opportunities for criminals seeking to move and conceal illicit profits. Although these so-called "electronic money" systems are in their early stages of development, they could possess features which would render them attractive to money launderers when the systems are mature and more widely accepted.[14]

In recent years, many governments have redirected their money laundering enforcement strategies to the role played by banks and other financial institutions in the laundering process. Tainted funds must pass through banks and financial institutions at some point before the link between the funds and their criminal origin has become sufficiently attenuated. While passing through these institutions, the funds, as well as their custodians or beneficiaries, encounter several points wherein they are vulnerable to detection. These "choke points" include, at the placement stage, the deposit and withdrawal procedures of banks or non-bank financial institutions such as money remitters. At the integration stage they encompass more sophisticated transactions where cash is not normally the form of exchange and electronic funds transfer through financial institutions. Legislative and regulatory efforts to combat money laundering concentrate on exploiting these choke points.[15]

By the early 1990s, most major states had enacted laws to criminalize money laundering for drug trafficking as well as for the proceeds from other serious crimes. These national efforts have been facilitated by the work of international agencies, such as the Financial Action Task Force,[16] that seek to establish international minimum standards of disclosure and transparency for financial institutions operating in the major market economies. While the movement to an international anti-money laundering legal regime is a positive trend in confronting transnational crime, new money laundering problems resulting from technological developments potentially jeopardize the gains that have

been made. Additionally, the problems caused by insider trading and credit card fraud result in the loss of untold millions of dollars every year to the legitimate international economy. The nature of the threat to the international payments system is clear; but the solutions are not, especially as they raise issues involving bank secrecy laws, international legal cooperation, and the nature of global finance.

B. The Problem of Bank Secrecy in Offshore Jurisdictions

The lack of adequate regulation and the numerous obstacles against customer identification in offshore centres have undermined the efforts of other countries to implement and enforce anti-money laundering laws. Indeed, increasing integration of financial systems has led to a dramatic increase in the number of jurisdictions offering financial services without appropriate control or regulation and protected by strict bank secrecy. The proliferation of these countries and territories has exacerbated the problem of regulatory arbitrage between these offshore centres and well-regulated jurisdictions. These poorly-regulated jurisdictions contribute to worsening standards of risk management by financial institutions.

The Financial Action Task Force (FATF) has addressed these concerns by adopting criteria for defining whether the regulatory practices of non-cooperative countries or territories are in compliance with minimum international standards of transparency and disclosure. These standards require all financial centres in the world to have comprehensive control, regulation, and supervision systems in place to identify all customers and suspicious transactions of financial institutions.[17] The member states of the FATF also require all financial intermediaries or agents operating in all jurisdictions to be subject to strict obligations, such as the prevention, detection and punishment of money laundering. In this regard, the FATF continues to specify principles of disclosure and transparency for financial institutions and to utilise these principles as criteria to designate non-cooperative jurisdictions with the possibility of imposing sanctions for non-compliance.

III. The International Anti-Money Laundering Regime

Efforts made during the mid-1980s to deal with the problem of transnational drug trafficking stimulated the creation of an international anti-money laundering legal regime based on the premise that attacking the profits of such activities is the best strategy against large, multinational criminal organizations. The international anti-money laundering legal regime then gained momentum through such international agreements as the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (U.N. Drug Convention).[18] Another important cornerstone in the international anti-money laundering legal regime was the creation of the Financial Action Task Force on Money Laundering (FATF) at the 1989 and 1990 Economic Summits of the Group of Seven leading economic (G-7) countries.[19] This body of countries sought to "establish a global consensus on legislative and regulatory actions to curb the flow of drug proceeds through both banking and non-banking financial institutions."[20] In April 1990, the FATF, by then expanded to fifteen participating financial centre countries,[21] released a ground-breaking report containing forty recommendations that paralleled the U. N. Drug Convention and established high international standards for legislative and regulatory actions to control money laundering.

A. Defining Money Laundering

The Financial Action Task Force ("FATF") defines money laundering as follows:

The conversion or transfer of property, knowing that such property is derived from a criminal offence, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequence of such actions; the concealment or disguise of the true nature, source, location, disposition, movement,

rights with respect to, or ownership of property, knowing that such property is derived from a criminal offence; [and] the acquisition, possession, or use of property, knowing at the time of receipt that such property was derived from a criminal offense or from an act of participation in such offence.[22]

Based on this definition, the overriding objective of money laundering is to allow criminals to access the profits of their illegal conduct by distancing themselves from it.[23] Indeed, the ability to sanitise ill-gotten gains permits narcotics trafficking operations, terrorist groups, and perpetrators of financial fraud to finance and profit from their illegal activities.[24] The cycle comes a full circle because the ability to use illegal profits for any purpose enables criminals to maximise their benefit from criminal conduct. The objective of an effective international anti-money laundering regime is to take the profit out of crime.[25]

The international framework that has emerged to combat international money laundering has involved a number of multinational initiatives introduced between 1980 and 1992. Collectively, these initiatives have defined the elements of what would become the most widely accepted framework for fighting money laundering in the financial services sector.

B. The Council of Europe Recommendation

The Council of Europe undertook the first systematic international effort to focus on the problem of money laundering. Established in 1949 "to promote European unity, foster social and economic progress and protect human rights," the Council of Europe accords a high priority to activities in the legal context.[26] Until relatively recently, the Council's membership was limited to the countries of Western Europe. With the collapse of the former Soviet Union, however, the Council has played a critical role in reaching out to and integrating the newly emerging nations of Central and Eastern Europe.[27] Its efforts to promote reforms in the legal structures of its

members, and close cooperation among them, have given rise to 160 international treaties.[28] Of these, twenty relate to criminal law.

In the late 1970s, concern over a growing number of criminal acts such as kidnapping prompted the Council to examine the problems that had arisen in European countries as a result of money laundering. In 1977, a Select Committee of Experts was established to examine the issue. As the first phase of its work, the Committee was compelled to focus "on the serious problems raised in many countries by the illicit transfer of funds of criminal origin frequently used for the perpetration of further crime."[29] A process of examination and deliberation followed, culminating in 1980 with the adoption of a formal recommendation entitled Measures Against the Transfer and Safekeeping of Funds of Criminal Origin.[30]

The Recommendation focuses on the importance of combating money laundering through prevention and on the central role banks can play in this respect.[31] Among the measures advanced in furtherance of this objective is the notion of customer identification. The Recommendation states that all private and public banks should, "as a minimum" undertake identity checks on customers whenever "an account or securities deposit is opened; safe deposits are rented; cash transactions involving sums in certain magnitude are effected, bearing in mind the possibility of transactions in several parts; [and] inter-bank transfers involving sums of a certain magnitude are made, bearing in mind the possibility of transactions in several parts."[32]

The Council of Europe Recommendation was neither widely accepted nor implemented.[33] Its significance, however, cannot be discounted. The Recommendation marks the first time the international community articulated the proposition that success in countering money laundering demands the support of the financial sector. In particular, the Recommendation highlighted the critical impact that "know-your-customer" procedures have on the financial institution's ability to insulate its facilities from criminal infiltration, and to cooperate with investigative authorities. These concepts would be

further refined and elaborated in subsequent initiatives which garnered more widespread acceptance.[34]

In 1986, the European Ministers of Justice requested that the European Committee on Crime Problems, in consideration of the work of the United Nations, develop "international norms and standards to guarantee effective international co-operation between judicial (and where necessary police) authorities as regards the detection, freezing and forfeiture of the proceeds of illicit drug trafficking."[35] The Committee on Crime Problems, in turn, established a Select Committee of Experts to investigate the practice of national and international money laundering, especially by way of normal banking operations.[36] The Select Committee worked for more than two years, addressing the issues of non-drug related money laundering as well as those related to narcotics trafficking. Its work culminated with the adoption of the Council of Europe Convention.[37]

Unlike the 1980 Recommendation, however, the Convention is essentially an international law agreement governing investigative conduct and does not embrace measures to enhance the role of financial institutions in preventing and detecting money laundering. Consequently, a detailed examination of the Council of Europe Convention is beyond the scope of this paper.

C. The 1988 United Nations Convention

The Council of Europe Recommendation was the first international agreement to focus on money laundering. The issue was not given much further attention, however, until 1988 when the United Nations adopted the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.[38] As its title suggests, the U.N. Convention addressed the threat posed by international narcotics trafficking. Yet it was not the first such initiative in this area.[39] Indeed, international initiatives to regulate drug abuse and illicit trafficking date back to the International Opium Convention of 1912 and the 1931 Convention Limiting the Manufacture and Regulating the Distribution of Narcotic

Drugs.[40] Earlier agreements emphasised controlling the production of drugs and preventing their diversion into the marketplace.[41] While contributing significantly to the anti-narcotics movement, it grew increasingly apparent that these agreements did not adequately address the complexities of the modern drug trade.[42] The perception was that the earlier initiatives did not focus sufficiently on legal tools and law enforcement strategies to combat drug trafficking.

In December of 1984, the U.N. General Assembly unanimously adopted a resolution expressing the conviction that "the wide scope of the illicit traffic in narcotic drugs and its consequences make it necessary to prepare a convention which considers the various aspects of the problem as a whole and, in particular, those not envisaged in existing international instruments."[43] The General Assembly requested that the U.N. Economic and Social Council instruct the Commission on Narcotic Drugs in preparing a draft convention as a matter of priority.[44] Pursuant to that mandate, in 1986 the Commission adopted a resolution identifying fourteen elements for inclusion in a draft convention. This, in turn, began a lengthy process of negotiation, culminating in the 1988 U.N. Conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in Vienna, Austria.

The Vienna Conference, attended by representatives of 106 countries, succeeded in adopting a detailed treaty text consisting of 34 articles and an annex.[45] The Convention recognised, for the first time, that providing the law enforcement community with the tools to undermine the financial strength of drug trafficking organisations - and doing so in a manner that comports with the realities of international cooperation - is a central component of an effective strategy to combat such illicit activity.

Article 3 of the Convention sets forth a strict obligation for each participating country to criminalize a comprehensive list of activities connected to drug trafficking - from production, cultivation, and possession to the organisation, management, and financing of

trafficking operations.[46] It also requires establishing a criminal offence for drug-related money laundering. Further, it obliges each party, to the extent not contrary to its domestic constitutional principles and the basic precepts of its legal system, to criminalize "the acquisition, possession or use of property, knowing, at the time of receipt" that it was derived from drug trafficking.[47]

The term "money laundering" is not used in the text of the Convention. Rather, the concept is defined as follows:

(i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences if his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences.[48]

It also requires each party to establish a criminal offence for conspiracy, aiding and abetting, and facilitating the commission of a drug trafficking offence, including money laundering.[49] Many of the remaining provisions of the Convention were designed to ensure that money laundering and other narcotics-related offences are accorded the requisite level of seriousness by the judicial and prosecutorial authorities of each participating State. For example, one provision requires that each country ensure that "their courts and other competent authorities" be permitted to take into account a non-exhaustive list of factors which render these offences particularly grave. Some of the enumerated factors relevant to money laundering

activity include whether organised criminal groups are involved, whether the offender holds public office and the offence is connected to that office, and whether violence has been used.

Article 5 of the Convention addresses another issue which impacts upon the ability to combat money laundering. Article 5 requires party States to enact far-reaching domestic laws providing for the "confiscation" (i.e., freezing, seizing, and/or forfeiting) of all forms of property, proceeds, or instrumentalities used in or derived from covered offences. Parties are obliged to take necessary steps to enable authorities to identify, trace, freeze, or seize property, proceeds, instrumentalities, or any other objects as preliminary steps to eventual confiscation.

Notably, the Convention requires parties to empower courts or other competent authorities to compel the production or seizure of bank, financial, or commercial records necessary to trace, identify, seize, and forfeit proceeds and instrumentalities of drug trafficking.[50] In this vein, it specifies that "a party shall not decline to act... on the grounds of bank secrecy."[51] Thus, States are under an affirmative obligation not to shield materials which are needed in forfeiture proceedings from discovery.[52]

Article 5 also emphasises the importance of international cooperation in forfeiture proceedings by requiring party states, upon the request of another, to assist in taking measures to identify, trace, freeze or seize proceeds, property, instrumentalities or any other objects for the purposes of eventual confiscation either by the requesting party or its own authorities. In this connection, the Convention establishes procedures by which one country may ask another to assist it by forfeiting proceeds or instrumentalities located in the requested party's territory. The Convention also contemplates parties entering into agreements providing for the sharing of confiscated assets.

The U. N. Convention entered into force on November 11, 1990 - "a near record in terms of time for a instrument of its kind." By

September of 1994, it had attracted 101 States plus the European Community as parties. In addition to the major drug consumer nations in North America and Western Europe, the Convention was signed by key transit states in the Caribbean and Central America. Perhaps of even greater significance is the fact that a growing number of producer nations have accepted its obligations.[53] Indeed, so widespread is its acceptance, the Convention is now regarded as "the foundation of the international legal regime" in the anti-money laundering field.[54] It cleared the way for large-scale efforts to address the problem of money laundering through financialnstitutions.

Recent United Nations efforts to combat money laundering include the UN International Drugs Control Programme (UNDCP) that went into effect in October 1996. This initiative will be implemented in cooperation with the UN Crime Prevention and Criminal Justice Division (CPCJD) and thus will extend to anti-money laundering efforts that cover proceeds derived not only from drug trafficking but also from any other illegal activity.

D. The Basle Committee Statement

In the same year that the U. N. Convention highlighted the importance of money laundering for the international community, the Basle Committee on Banking Regulation and Supervisory Practices adopted a Statement of Principles focusing attention on the problem of money laundering through financial institutions.[55] The Basle Committee consists of the banking regulatory authorities of the Group of Ten Nations,[56] which meet semi-annually to discuss banking supervision. Generally, the Committee concerns itself with supervisory responsibilities in matters such as the capital adequacy, solvency, liquidity, and foreign exchange operations of financial institutions. The Basle Committee adopted a Concordat in 1975 that sought to encourage the exchange of information between home and host country regulatory authorities in the supervision of banking institutions, and to assure that banking organisations operating on a transnational basis are properly supervised.

In 1988, the Basle Committee adopted its Statement of Principles on money laundering. The Statement marks the first time the Committee prescribed ethical standards of professional conduct to which banks should adhere. The Committee recommended that while bank supervisors are not primarily responsible for ensuring that every bank transaction is legitimate, they nevertheless cannot be indifferent to exploitation of the banking system by money launderers.[57] It highlighted the integrity of bank managers and "their vigilant determination to prevent their institutions [from] becoming associated with criminals or being used as a channel for money laundering" as the "first and most important safeguards against money laundering."[58] In furtherance of this notion, the Committee outlined some basic policies and procedures for bank management to implement.

The Committee instructed that "banks should make reasonable efforts to determine the true identity of all customers requesting the institution's services."[59] It admonished banks to institute effective procedures for obtaining the requisite identification from new customers, and to refuse to engage in significant transactions with existing customers who fail to provide evidence of their identity. The Committee also recommended that "banks cooperate fully with national law enforcement authorities to the extent permitted by specific local regulations relating to customer confidentiality."[60]

The Statement advises that when banks become aware that deposits are the proceeds of criminal activity, or that transactions are illegally motivated, they must take appropriate steps - such as denying assistance, severing ties with the customer, and closing or freezing accounts. Further, the Committee endorses measures to promote effectuation of the aforementioned principles by banks, including "implementation of specific procedures for customer identification and for retaining internal records of transactions," according attention to staff training, and arranging for internal audits.[61]

The Basle Statement has no binding legal effect on the G-10 countries, nor does it contain any mechanism to promote compliance with its provisions. The Statement, however, does serve as a form of soft law[62] by reinforcing the notion, introduced by the Council of Europe Recommendation of 1980, that financial institutions are the linchpin to effective money laundering prevention and detection. The Statement also emphasises the importance of national legal systems adopting vigilant "know-your-customer" procedures for financial institutions. This concept, which resurfaces in subsequent international initiatives, has come to be regarded as one of the central components of a comprehensive national anti-money laundering programme and an important principle of the international anti-money laundering regime.

E. The European Community Money Laundering Directive

The European Council Directive on Money Laundering has defined the basic contours of the European approach to preventing money laundering.[63] The E.C. Directive developed in response to fears among E.C. leaders that an integrated European financial system could permit drug trafficking and money laundering to flourish, thereby undermining the integrity of the financial system and disrupting markets. The E.C. leaders were also troubled by the prospect of ad hoc efforts to curb money laundering by individual nations, which they perceived as having an equally destructive effect on a unified system. To address both concerns, the Directive prescribed a series of anti-money laundering measures to be adopted by all member nations.

The Directive prohibits the knowing acceptance and disposition by financial institutions and non-bank finance companies of the proceeds of non-drug related crimes, as well as the proceeds of narcotics trafficking.[64] The Directive thus requires that memberscriminalize the laundering of the proceeds of drug offences as set forth in the U. N. Convention and "any other criminal activity designated as such for the purposes of this Directive by each Member State."[65]

1. Defining Financial Institutions

The Directive primarily focuses on money laundering prevention and detection by financial institutions.[66] The Directive intends to cover the entire financial system. It apples to all *credit institutions*, which are defined as undertakings "whose business is to receive deposits or other repayable funds from the public and to grant credits for its own accounts".[67] Article 1 of the Directive defines a *financial institution* as an undertaking other than a credit institution whose main activity is to carry out one or more of the enumerated functions listed in the Second Banking Directive. Some of these functions include *inter alia*: lending (consumer and mortgage credit), financial leasing, money transmission services, guarantees and commitments, trading for own account or for customer's account, money broking, portfolio management and advice.[68] Financial institutions also include insurance companies authorised in accordance with the insurance directives, such as Directive 79/267/EEC as last amended by Directive 90/619/EEC.

The First Commission Report on the implementation of the Money Laundering Directive[69] stated that it would apply to any professional financial intermediary, including all credit institutions, investment firms, life insurance companies, credit card issuers, leasing and factoring companies and "bureaux de changes". Credit and financial institutions include branches located in EC states whose home offices are based outside the Community.

Moreover, Article 12 of the Directive provides that Member States must extend either all or part of the Directive to professions and categories, other than credit and financial institutions referred to in Article 1, which engage in activities which are particularly likely to be used for money laundering purposes. This would include casinos and money changers.[70]

2. *Know Your Customer*

Like the Basle Statement, it provides that institutions must require identification of their customers when entering into business relations, such as opening an account.[71] This applies in all cases when entering into business relationships, especially when opening an account or savings account or when offering safe custody facilities. This would apply to transactions involving sums of 15,000 euros or more. Where the institution does not know the sum at the time of the transaction, it shall proceed with identification as soon as it knows the sums and has established that the amount involved meets the threshold requirement. Even in cases where the amount of the transaction is less than 15,000 euros, the institution must require identification if it suspects money laundering.

Article 3 permits various derogations or exemptions from the above identification requirements; for example, as in the case involving insurance policies written by insurance undertakings within the meaning of Directive 79/267/EEC where the annual periodic premium amounts paid do not exceed 1000 euros. Moreover, Member States may waive the identification requirement for insurance policies in respect of certain pension schemes. Also, where there is doubt that the customers are working on their own behalf or where it is certain they are not, credit and financial institutions are required to take reasonable measures to obtain information as to the true identity of the persons on whose behalf the customers are acting.

In addition to "know-your-customer" procedures, the Directive includes provisions to ensure the diligence of credit and financial institutions in detecting potential money laundering. The Directive obliges institutions to "examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering."[72] They are also required to "refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities...."[73] Where such a

transaction, however, is suspected of giving rise to money laundering, and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation, the Directive provides that "the institutions concerned shall apprise the authorities immediately afterwards."[74]

The most distinctive aspect of the Directive is its effort to ensure that the authorities charged with investigating suspected money laundering receive the necessary cooperation from credit and financial institutions. Like the FATF recommendations, the Directive embraces suspicious transaction reporting as the most effective method of accomplishing this goal. But while the FATF provides for members to maintain systems whereby financial institutions merely are permitted to report suspicious transactions, the Directive makes such reporting mandatory. To that end, the Directive states that credit and financial institutions must inform the authorities, "on their own initiative, of any fact which might be an indication of money laundering."[75]

It was recognised that reaching out and engaging the financial and credit institutions to such an unprecedented extent would require measures to ensure that the institutions are, in fact, in a position to play their part effectively. As a consequence, the Directive obliges credit and financial institutions to establish adequate internal control and communications systems. In addition, it requires them to "take appropriate measures so that their employees are aware of the provisions contained in [the] Directive," including "participation of their relevant employees in special training programmes to help them recognise operations which may be related to money laundering as well as instruct them as to how to proceed in such cases."[76]

In addition, the Directive commands special attention because it is the first multilateral effort to give expression to these countermeasures in compulsory terms. Unlike its predecessors, the Directive binds European Union member nations to its standards. Members were obliged to implement the Directive's provisions by January 1, 1993. The Directive has had an impact on the establishment of anti-money

laundering systems in most European Union states. Although a 1995 European Commission Report concluded that "significant progress" had been made by members to implement the Directive, several states had lacked the necessary legislation to implement the Directive.[77] In contrast, the British government adopted the necessary legislation to prohibit money laundering through the Drug Trafficking Offences Acts of 1986 and 1994, which outlawed the laundering of drug proceeds, and the Criminal Justice Acts of 1988 and 1993.[78]

The European Commission brought its first action to enforce the money laundering directive in May 2000 when it instituted proceedings against Austria for failing to enact the necessary laws to implement the directive. Basing its authority on article 226 of the European Community Treaty, the Commission alleged that Austrian legislation did not comply with the EC money laundering directive. Specifically, it claimed that article 40 of the Austrian Banking Act ('Bankwesengesetz' – BWG) expressly provides for an exemption to the obligation to identify customers when opening a passbook account. This had the effect of allowing persons to open as many passbook accounts as they desired without declaring their identity. This provision clearly violated the directive, which requires member states to enact laws prohibiting financial institutions from keeping anonymous accounts and to take appropriate measures to identify customers.

Austria responded to the action and to pressure from other international bodies by amending article 40 to prohibit the issuance of anonymous passbook accounts after November 1, 2000, as well as the obligation to identify all depositors after this date (with the exception of transfers from deposits of securities).[79] Disbursing funds from anonymous passbook accounts will only be possible until June 30, 2002; after this date, financial institutions will be obliged to mark all anonymous accounts and only pay out money after the identity of the customer has been ascertained.

The issuance of the Directive marks the E.C.'s adoption of the strictest anti-money laundering standards in the world. The Directive perpetuates the "know-your-customer" concept first introduced in the Basle Statement and subsequently broadened in the FATF recommendations. It also adds teeth to the suspicious transaction reporting advanced by the FATF by making such reporting mandatory. In effect, the evolution of "know-your-customer" and suspicious transaction reporting principles culminated with the E.C. Directive.

IV. The Financial Action Task Force

The principles first introduced in the Council of Europe Recommendation, and later reinforced by the Basle Statement and European Community Directive, were refined and expanded through another major international initiative undertaken by the Financial Action Task Force on Money Laundering ("FATF"). The FATF was established in 1989 by the leaders of the Group of Seven Nations (the G-7), and is the only international body dedicated solely to fight money laundering. Convinced of the need to address the financial aspects of narcotics trafficking, the G-7 leaders vested the FATF with the following mandate:

To assess the results of the cooperation already undertaken to prevent the utilization of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventive efforts in this field, including the adaptation of the statutory and regulatory systems as to enhance multilateral legal assistance.[80]

A. Forty-Point List

In furtherance of its mission, in 1990 the FATF issued a forty-point list of recommendations on money laundering countermeasures.[81] Intended to constitute a "minimal standard in the fight against money laundering," the forty points prescribe a range of actions focusing on improvements in national legal regimes, enhancement of the role of

the financial system, and strengthening international cooperation. With respect to legal improvements, the recommendations urge countries, *inter alia*, to criminalize drug-related money laundering and adopt measures to permit the identification, freezing, and seizure of assets related to money laundering.[82] To promote international cooperation, the recommendations encourage countries to take steps to facilitate the execution of compulsory process, asset seizures, and extraditions. In the months following the creation of the FATF, "more than one hundred and thirty experts from various ministries, law enforcement authorities, and bank supervisory and regulatory agencies met and worked together."[83] Their work culminated in the FATF report, which analysed the extent and nature of the money laundering process, reviewed national measures and programs already in place to combat the problem, and set forth the forty recommendations for action.[84]

The FATF recommendations also place extensive responsibilities on financial institutions.[85] Echoing the Basle Statement, the FATF reaffirms the importance of maintaining effective customer identification procedures. But the FATF took the Basle Statement a step further by delineating concrete steps that banks should take to put this notion into practice. Recommendations 10, 11, and 12 call upon financial institutions not to be satisfied with vague information about the identity of clients for whom they conduct transactions.[86] Instead, they should attempt to determine the beneficial owner(s) of the accounts they maintain. This information should be immediately available for the administrative financial authorities and for judicial and law enforcement authorities.

This means that financial institutions should refuse to maintain anonymous accounts or accounts with obviously fictitious names. Instead, laws, regulations, or other strictures should be in place, requiring banks to "identify, on the basis of an official or other reliable identifying document, and record the identity of their clients... when establishing business relations or conducting transactions...."[87]

The recommendations caution that particular attention should be paid when opening accounts or passbooks, entering into fiduciary transactions, renting safe deposit boxes, and performing large cash transactions.[88] These measures advise financial institutions to take reasonable measures to ascertain the identity of the ultimate beneficiary of accounts or transactions. In this light, those "domiciliary companies... that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located" are singled out for particular scrutiny.[89]

The forty recommendations also go beyond the Basle Statement by emphasising a new prevention measure - suspicious transaction reporting. The recommendations instruct that "financial institutions should pay special attention to all complex, unusual or large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose." They state that banks should examine the background and design of such transactions to the extent possible, and that they should reduce their findings to writing in order to assist the relevant authorities. If financial institutions suspect that funds are connected to criminal activity, "they should be permitted or required to report promptly their suspicions to the competent authorities." [90] To promote the reporting of suspicious transactions, the recommendations suggest that financial institutions be insulated from civil or criminal liability when they make such reports in good faith.

For example, Recommendation 14 states:

Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.[91]

Financial institutions should keep records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the account is closed. These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.

Although the FATF recommendations were initially non-binding in a legal sense, some of the forty recommendations have become mandatory. For example, all member states must criminalize money laundering and require financial institutions of member states to implement vigilant "know your customer" procedures and other forms of transparency. The recommendations provide detailed guidelines to show financial institutions how to go about getting to "know" their customers. They also stress, for the first time in an international forum, the need to leverage the expertise of financial institutions to detect anomalous transactions and to engage the appropriate authorities. Moreover, the FATF has defined criteria for determining whether member states are adopting the necessary laws to prevent money laundering. An essential element is requiring financial institutions of member states to cease the practice of maintaining anonymous, numbered accounts. Member states that fail to eliminate the practice will be subject to sanctions.

B. **FATF Sanctions**

In 1996, the FATF adopted a formalized policy for sanctioning members that fail to comply with the 40 Recommendations.[92] The FATF sanctions policy consists of a series of graduated steps designed to pressure members to enact the necessary reforms to achieve compliance. Initial steps include the issuance of a letter from the FATF President to the non-complying government, and the dispatch of a special delegation led by the FATF President to the subject country. More serious measures include invocation of FATF

Recommendation 21, which authorizes the FATF to urge financial institutions world-wide to closely scrutinize business relations and transactions with persons, companies, and financial institutions domiciled in the subject country.[93] The ultimate sanction is expulsion from membership of the organization.

The FATF has never expelled a member. It has invoked Recommendation 21, the most severe sanction outside of expulsion on two occasions. The first case involved the government of Turkey. In October 1996, after exhausting all other efforts to encourage the government of Turkey to pass legislation criminalizing money laundering and to take other steps necessary to adhere to the 40 Recommendations, the FATF issued a press release cautioning financial institutions to scrutinise transactions with persons or businesses domiciled in Turkey.[94] The public shame created by the statement, and Turkish political objectives to become a member of the European Community, led Turkey to enact a law making money laundering a criminal offence, and to implement other mandatory FATF standards.[95]

As mentioned above, Austria was already under investigation by the European Commission when the FATF began to investigate in 1999 Austrian bank secrecy laws. The FATF investigation exposed Austria to further negative publicity in a period when it was already under international scrutiny because of the participation of the right wing Freedom Party in its governing coalition. On February 3, 2000, the FATF threatened the ultimate sanction against a member state – suspension from the group – unless it fulfilled two conditions: (1) made a clear statement that all necessary steps to eliminate the system of anonymous passbook accounts in accordance with the Forty Recommendations would be taken by June 2002; and (2) the introduction and support of a Bill into Parliament to prohibit the opening of anonymous passbook accounts and to eliminate existing anonymous accounts.

The Austrian government responded in June 2000 by stating that it would conform completely to the FATF demands.[96] On June 7, 2000, the First Chamber of the Austrian Parliament adopted an amendment to the Banking Act that will lead to the elimination of anonymous passbook savings accounts. The measures adopted by Austria addressed the concerns of the FATF and significantly enhance Austria's anti-money laundering programme. As a result, Austria will not be suspended from the FATF.

While the FATF has no authority to sanction the governments of non-member states, it may apply Recommendation 21 to financial institutions operating in non-member jurisdictions that have not complied with FATF standards. For example, it may require its member states to impose restrictions on financial institutions that operate in non-complying offshore jurisdictions. The FATF threatened this course of action in the case of the government of the Seychelles, which had enacted a law designed to facilitate money laundering.[97] The law in question, the Economic Development Act (EDA), granted immunity from criminal prosecution to investors who placed $10 million or more in approved investment schemes, and protected their assets from compulsory acquisition or sequestration. An exception to this immunity existed only for acts of violence or drug trafficking in the Seychelles itself. The FATF's admonition drew a great deal of international media attention.[98] It also prompted some governments to issue advisories of their own. Eventually, the ensuing international pressure forced the government of the Seychelles to enact legislation that effectively rescinded the EDA.

Although the FATF approach owes much to the Basle Statement, it has evolved into a more ambitious undertaking because its member states can agree to impose sanctions against non-complying countries or territories. The FATF took the work of the Basle Committee a step further by stressing the importance of requiring its member states to implements its standards. In 1991, the FATF issued a statement indicating that its members had agreed to a process of mutual assessment to ensure that the forty recommendations were being put

into practice.[99] The members also agreed to expand the membership of the task force and to influence non-member jurisdictions to follow the forty points.[100] Significant components of the FATF's work thus have been devoted to promoting compliance with the forty recommendations and to cultivating anti-money laundering efforts in non-member nations or regions. As part of its agenda, therefore, the FATF conducts on site, peer evaluations of member adherence to the forty recommendations. An evaluation team composed of legal, regulatory, and law enforcement experts from the co-member states visits the subject country and conducts a thorough review of its anti-money laundering infrastructure. The results of this evaluation are published in a report which is reviewed internally by the FATF membership.[101]

The FATF also engages in a second procedure to evaluate compliance with the recommendations. This procedure takes the form of a detailed questionnaire circulated to each member. On the basis of the responses received, a "compliance grid" is prepared providing an overview of members' adherence to the specific recommendations addressed.[102]

C. **Designating Non-Cooperative Jurisdictions**

In February of 2000, the FATF issued a report describing a process to identify jurisdictions that were not cooperating in taking measures against money laundering, and to encourage them to implement international standards adopted by the FATF. This process involves twenty five criteria to identify detrimental rules and practices that impede international cooperation in the fight against money laundering. The essential issues identified by the criteria are:

- Loopholes in financial regulations that allow no, or inadequate supervision of financial institutions, weak licensing or customer identification requirements, excessive financial secrecy provisions, or lack of suspicious transaction reporting systems;

- Weak commercial regulations, including the identification of beneficial ownership and the registration procedures of business entities;
- Obstacles to international cooperation, regarding both administrative and judicial levels;
- Inadequate resources for preventing, detecting and repressing money laundering activities.[103]

As part of the review process, the FATF established four regional groups to begin reviews of a number of jurisdictions, both within and outside the FATF membership. The reviews involve the gathering of all relevant information, including laws and regulations as well as any mutual evaluation reports, self-assessment surveys or progress reports. The information derived from these reviews will be analysed with respect to the twenty five criteria and a draft report will be prepared and sent to the jurisdictions concerned for comment. Once the reports are completed, the FATF will consider further steps to encourage constructive anti-money laundering action, including the publication of a list of non-cooperative jurisdictions.

On June 18, 2000, the Financial Action Task Force published the names of non-cooperative jurisdictions. They include: Andorra, Anguilla, Aruba, The Bahamas, Barbados, British Virgin Islands, Belize, Cayman Islands, Channel Islands, Cook Islands, Dominica, Grenadines, Isle of Man, Israel, Liberia, Liechtenstein, Monaco, Maldives, Marshall Islands, Monsterrat, Nauru, Niue, Panama, Philippines, Russia, Samoa, St. Lucia, St. Kitts and Nevis, St. Vincent, Turks and Caicos Islands, and Vanuatu. The FATF has threatened to impose sanctions against these jurisdictions, unless they require all institutions operating within their territories to comply with international minimum standards on disclosure and transparency as set forth by the FATF.

The FATF's agenda has proven a powerful instrument of reform. In the ten years since the FATF's inception, its membership has swelled to twenty-six countries, three observer countries, and two

international organisations. Moreover, all FATF members have enacted legislation to comply with the forty recommendations.[104] For example, mandatory suspicious transaction reporting procedures, virtually non-existent before the FATF came into being, are in place in all but one of the FATF member jurisdictions.

Considering that it has been in existence for only ten years, the FATF's impact is extraordinary by international standards. Despite its having a rather limited membership and informal legal status, it established the standard for effective money laundering prevention and control on a global basis. The FATF has become the single most important international body in terms of formulating anti-money laundering policy and developing international standards for disclosure and transparency for financial institutions. Moreover, it has played a key role in mobilising global awareness of the complex issues involved in countering this new and sophisticated form of criminality.[105]

Conclusion

This paper described the various multinational initiatives to combat money laundering at the international level and how they have facilitated the development of soft law principles and rules into binding legal obligations for many major states. In particular, the efforts of the Financial Action Task Force have been instrumental in developing and formalising an international regime of rules and principles to combat financial crime. An important FATF objective has been to focus on how financial institutions facilitate financial crime and to require them to adhere to certain standards of transparency and disclosure. These international standards have been important in strengthening and reinforcing national legal efforts to prohibit money laundering by financial institutions, and thereby to enhance systemic stability in the international financial system.

The effectiveness of the international anti-money laundering regime can be attributed primarily to political pressure exerted by major

states and to the threat or use of sanctions by international bodies, such as the FATF and its member states, against non-complying states or non-cooperative jurisdictions. Given the importance of reducing systemic risk in the global financial system, the international anti-money laundering regime may serve as a model of how a high degree of international cooperation and coordination amongst national and regional regulators may result in an effective legal framework to address threats to the international financial system. For this to occur, it is necessary that leading states define the specific threat to the international system and then develop a political consensus on what measures should be adopted at the national and/or international levels. The efforts of the twenty-six member states of the Financial Action Task Force in achieving political consensus to adopt minimum standards of disclosure and transparency for banking institutions have become an essential component of the international anti-money laundering regime.

Notes

[1] "International regime" is a term from international organization theory that emerged in the early 1970s. International regimes have been defined as "norms, rules, and procedures agreed to in order to regulate an issue-area": E. B. Haas, Why Collaborate? Issue-Linkage and International Regimes, 32 World Pol. 357, 358 (1980) (emphasis omitted); see *Transnational Relations and World Politics* (R. O. Keohane & J. S. Nye, Jr. eds., 1972) (providing an early discussion of what came to be known as "international regimes").

[2] W. Gilmore, 1995.

[3] P. Solomon, 1994: 434-37.

[4] Cf. FATF, 1996, Typologies Report.

[5] U.S. Treasury Department, 1992.

[6] The Anti-Money Laundering Act of 1993: Hearings on S.1664 Before the Senate Comm. on Banking, Housing and Urban Affairs, 103d Cong. 38 (1994) (statement of R. K. Noble, Assistant Secretary for Enforcement, United States Treasury Department).

[7] See Gilmore, supra note 2, at 14; also Intriago, 1991 and Smith, 1992.

[8] Alford, 1994, also House of Commons Paper 18-11, 1994-95.

[9] FATF, 1990 report.

[10] See Gilmore, supra note 2, at 14; also Harte, 1995.

[11] "The profits of crime that are bled into the financial system each year are staggering and detrimental by any calculation." Hearings Before the Subcomm.on Oversight of the House Comm. Ways and Means, 103d Cong. 6, 12 (1994) (statement of R. K. Noble, Under Secretary for Enforcement, United States Treasury Department). The Financial Times recently published a figure estimating the "gross criminal product" generated from global organised crime and drug trafficking in 1996 at $1,000 billion. See V. Boland, 'Earnings from Organized Crime Reach $1,000 bn,' *Fin. Times*, Feb. 14, 1997, at 9.

[12] See, e.g., Raine Marcus, Shalal: Russian Mafia Could Take Over Nation, *Jerusalem Post*, Dec. 25, 1995.

[13] Gilmore, supra note 2, at 14. See also U.N. ESCOR Commission Report, 1993.

[14] Cf. FATF, 1996, Typologies Report; also Nash, 1996.

[15] See FATF 1990 Report.

[16] The Financial Action Task Force (FATF) is an independent international body whose Secretariat is located at the OECD. The twenty six member countries and governments are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, China, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States. Observe states are: Argentina, Brazil, and Mexico. Two international organisations are members: the European Commission, and the Gulf Cooperation Council.

[17] FATF Report 2000.

[18] United Nations Convention 1988.

[19] FATF-I Report 1990; also Zagaris, 1989.

[20] U.S. Dep't of State Report 1991.

[21] In addition to the G-7, the following eight countries had joined FATF: Australia, Austria, Belgium, Luxembourg, the Netherlands, Spain, Sweden, and Switzerland. See FATF-III 1991-92.

[22] FATF Report-II(B) 1990.

[23] U.S. General Accounting Office Report 1994.

[24] President's Committee on Organized Crime, 1984.

[25] The idea of taking the profit out of drug trafficking is found in a number of U.S. Government press releases. See, e.g. U.S.Dep't of Justice Press Release, 1989.

[26] See Gilmore, supra note 2, at 133.

[27] Ibid.

[28] See Gilmore, supra note 2, at 134.

[29] Council of Europe, Rec. No. R.(80) 10 (June 27, 1980).

[30] Ibid.

[31] See Gilmore, supra note 2, at 135. The Recommendation states that "the banking system can play a highly effective preventative role, while the cooperation of the banks also assists in the repression of such criminal acts by the judicial authorities and

the police." Council of Europe Recommendation, supranote 28, at 10.

[32] Council of Europe Recommendation, supranote 28, at 10.

[33] See Gilmore, supra note 2, at 136, 1991.

[34] In the late 1980s, the Council of Europe once again appeared at the vanguard of international anti-money laundering policy with its Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. See Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, 1990.

[35] Gilmore, supra note 2, at 136, citing Explanatory Report on the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, (1990) at 192.

[36] See Gilmore, supra note 2, at 136-37.

[37] Gilmore, supra note 2, at 136 at 195.

[38] U.N. Convention, 1992.

[39] See Gilmore, supra note 2, at 61-62.

[40] See Bassiouni, 1986.

[41] See Gilmore, supra note 2, at 62. Other agreements in this area include the 1961 U.N. Single Convention on Narcotic Drugs, as amended by a 1972 Protocol, which provided for international controls over the production and availability of opium and its derivatives, synthetic drugs having similar effects, cocaine, and cannabis.

[42] As one scholar notes: '[An] international drug control regime based primarily on controlling the production of, and regulating legal trade in, dangerous drugs has... increased the costs and difficulties of illegal trafficking. It also provides a firm basis for further forms of international co-operation. Alone, however, it is completely inadequate to the problem - in large part because of its conceptual narrowness' (Donnelly, 1991).

[43] Gilmore, supra note 2, at 63.

[44] General Assembly Resolution, 1985.

[45] See Gilmore, supra note 2, at 63.

[46] See U.N. Convention, 1990.

[47] Ibid.

[48] Ibid.

[49] Ibid.

[50] See U.N. Convention, 1992. 5(3).

[51] Stewart, 1990, at 395.

[52] U.N. Convention, 1992 5(3).

[53] See Gilmore, supra note 2, at 64. These include Afghanistan, Bolivia, Colombia, India, Iran, Mexico, Morocco, Myanmar, Nepal, and Pakistan.

[54] Gilmore, supra note 2, at 64.

[55] See Basle Committee Report, 1988.

[56] The so-called “G-10 Nations” include Belgium, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, the United States, and Luxembourg. The European Community also participates in the G-10.

[57] See Basle Committee Report, at Preamble para. 3.

[58] Basle Committee Report, Preamble para. 6.

[59] Basle Committee Report, at sec. II. The Committee observed that “particular care should be taken to identify ownership of all accounts and those using safe custody facilities.”

[60] Basle Committee Report, at sec. IV.

[61] Basle Committee Report, at sec. V.

[62] For a discussion of soft law in international banking supervision, see K. Alexander, 2000.

[63] See E.C. Council Directive, 1991.

[64] E.C. Council Directive, 1991 at arts. 1 & 2.

[65] Ibid.

[66] The E.C. leaders articulated their fear that “when credit and financial institutions are used to launder proceeds from criminal activities, the soundness and stability of the institution concerned and confidence in the financial system as a whole could be seriously jeopardized.” Ibid.

[67] E.C. Council Directive, 1989.

[68] Ibid.

[69] COM (95) 54 final – section II.4.1 of the Report.

[70] E.C. Council Directive 91.

[71] "Member States shall ensure that credit and financial institutions require identification of their customers by means of supporting evidence when entering into business relations, particularly when opening an account or savings accounts, or when opening safe custody facilities...." E.C. Council Directive, at 7, art. 3.

[72] Ibid. at 80, art. 5.

[73] Ibid. at 80, art. 7.

[74] Ibid.

[75] Ibid. at 80, art. 6. The Directive prohibits credit and financial institutions and their employees from disclosing to the customer concerned or to third parties that information pertaining to suspicious transactions has been reported to the authorities or that a money laundering investigation is being conducted.

[76] E.C. Council Directive, at 81, art. 11.

[77] E.C. Commission Report, 1995.

[78] See Drug Trafficking Act 1986 and Drug Trafficking Act 1994 § 52.

[79] See FATF Report, 2000.

[80] FATF Report, 1990, at Introduction.

[81] FATF Report III(A)-(D) 1990.

[82] See FATF Report, 1990, at III(B), Recommendation 4.

[83] FATF Report, 1990, at Introduction.

[84] Ibid. at I-III.

[85] Ibid. at III(D), Recommendations 33 - 40.

[86] The crucial role played by the US government in fostering an international consensus should be noted. In the negotiations which preceded issuance of the 40 FATF Recommendations, the US lobbied for a recommendation mandating the reporting of all currency transactions over an established amount. The vast majority of the FATF's membership resisted this effort. See FATF Report, 1990, at III(C)(5).

[87] Ibid. at III(C), Recommendation 12.

[88] Ibid.

[89] Ibid. at III(C), Recommendation 13.

[90] Ibid.

[91] Ibid. at III(C), Recommendation 14.

[92] FATF Report VII, 1996-97.

[93] FATF Report, 1990, at III(C), Recommendation 21.

[94] OECD Press Release, Sept. 19, 1996.

[95] OECD Press Release, Dec. 12, 1996.

[96] OECD Press Release, June 15, 2000.

[97] OECD Press Release, Feb. 1, 1996.

[98] See Graham, Seychelles Condemned Over "Money Launders' Charter", Fin. Times, Feb. 2, 1996, at 3.

[99] FATF Report III(A), 1990.

[100] Ibid.

[101] See FATF Report II, 1990, at III(A).

[102] See FATF Report II, 1990, at III(A).

[103] See FATF Report, 2000.

[104] See Telephone Interview with John Carlson, Deputy Secretary, Financial Action Task Force on Money Laundering (Feb. 4, 1997).

[105] As part of its "external relations" strategy, FATF members seek to influence countries or territories with which they have historical or cultural links. See FATF Report II, 1990, atIII(A).

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