Institute of Advanced Legal Studies
School of Advanced Study
University of London

Haseeb Ur-Rehman

The Convergence of Anti-Money laundering Laws: legitimacy and Effects on Offshore Centres

LLM 2009-2010
International Corporate Governance, Financial Regulation and Economic Law (ICGFREL)

R6703.

Dissertation.

LLM in International Corporate Governance, Financial Regulation and Economic Law.

1st September 2010.

The Convergence of Anti-Money Laundering Laws: Legitimacy and Effects on Offshore Centres.

Abstract.

Globalisation and technology have resulted in an increase in international commerce, capital flows and the movement of goods and services across borders. Such factors have also increased opportunities to launder money and reintegrate the proceeds of crimes into the legitimate economy. In response to such developments, as well to perceived threats to their national economies and tax-bases, the G7/G8 and the OECD have created various International initiatives, to combat money-laundering, which have targeted jurisdictions offering limited financial regulation, bank confidentiality and low levels of taxation. These initiatives, however suffer from a legitimacy gap, owing to the vertical unilaterality of the regimes they seek to institute. This work will attempt to examine the origins and purposes of the homogenising global anti-money laundering regime. It shall also examine its legitimacy and effectiveness, with emphasis on Offshore Financial Centres.

.

Table of Contents:

"*Vectigalia nervi sunt rei publicae*."

Marcus Tullius Cicero.

"*In medio stat virtus*."

Quintus Horatius Flaccus.

Chapter 1:

The Crime of Money Laundering. Is money laundering a universal crime or secondary crime?

Money laundering is the basis by which, the perpetrators of criminal or illegal acts seek to exert control over the proceeds of their activities without drawing attention to the underlying criminal acts [1]. In the UK and other common law jurisdictions as well in the EU [2] money laundering generally amounts to taking action with any form of property [3], derivative of a criminal act that will disguise the fact that that property is the proceeds of a crime or obscure its beneficial ownership [4]. In other jurisdictions, such as the US money laundering is engaging in financial transactions to conceal the identity, source, or destination of illegally gained money, whereas in other cases the offence of 'handling' the proceeds of crime suffices to include money laundering [5]. It has been estimated that laundered monies account for between 2 and 5 percent of the world's gross domestic product [6].

[1] Deitz.A. & Buttle. J., *Anti-Money Laundering Handbook.* Sydney: Thomson Lawbook Co. 2008. Pg.4.

[2] As under the definition given under Art.1 of Council Directive 91/308/EEC money laundering is "the conversion or transfer of property derived from criminal activity 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 activity in evading the legal consequences of his action..".

[3] Including intangibles as under Art3(3)2005/60/EC.

[4] Under the Common Law, although this definition is extensively expanded upon under the Proceeds Of Crime Act 2002 Part 7 and the Money Laundering Regulations 2007.

[5] Deitz.A. & Buttle. J., *Loc. Cit.*

[6] Although the FATF-GAFI state that it is absolutely impossible to produce a reliable estimate of the amount of money laundered and therefore does not publish any figures in this regard. From FATF-GAFI., *Money Laundering FAQ* 2010.

The motivations of the perpetrators of predicate offences [7] to present the money, as having been acquired otherwise than by crime are *prima-facie* founded in the possibility, that the illicitness of the proceeds, would link the authors of the offence, to the initial criminal act. The offenders must nevertheless bridge the gap between themselves and the rest of society to benefit from the proceeds of their offences and thus must present them as licit [8] . Other motivations include tax avoidance or evasion [9] and the avoidance of the seizure of criminal proceeds.

The motivations to illegalise money laundering are to target the profitability of predicate offences and those who render such activity profitable, rather than the person committing the predicate offence alone [10]. This is thought to mitigate the overall adverse effects of the predicate offence and indirectly disincentivises and deters criminal activity [11] .

---

[7] The primary offence by which the proceeds to be laundered are generated. Article 1(e) of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988) (Vienna Convention) limits predicate offences to drug trafficking offences. Article 2(2) of the *United Nations Convention against Transnational Organized Crime* (2000) (Palermo Convention) extends money laundering to the "the widest range of predicate offenses" as does the FATF in its 40 Recommendations of 2003. From Schott. P.A *Reference guide to anti-money laundering and combating the financing of terrorism.*Washington: World Bank Publications, 2006.Pg. I-3. The scope of Predicate offences is also very wide under European law. Council Framework Decision 2001/500/JHA Art1(b) refers to offences punishable by deprivation of liberty or a detention order for a maximum of more than one year as a minimum.

[8] Hinterseer.K., *Criminal Finance: The Political Economy of Money Laundering in a Comparative Legal Context.* The Hague: Kluwer Publishers. 2002. Pg.11.

[9] A predicate offence in the UK and other common law jurisdictions.

[10] Ormerod.D.C., *Smith & Hogan Criminal Law*. 12th Edition. Oxford University Press.2008. Pg.951.

[11] From Ormerod.D.C., *Op. Cit.* Pg.954. Also from the dicta of Lord Wolf CJ in *R v Sekton* [2003] 1WLR 1655. Alldridge however states that the idea that prevention of the perpetrators from profiting from the predicate offence will deprive them of an incentive to commit it, is based on 18th century notions regarding the handling of stolen goods, created in situations where 'the courts had foreclosed the natural avenue(s) of complicity that the new offence was created'. Alldridge.P., *Relocating Criminal Law*. Aldershot: Dartmouth Publishing Company Ltd. 2000. Pg.170.

Money laundering activities imply and necessitate interaction with the legitimate economy and thus have been described as the 'Achilles heel' [12] of organised crime as although they expose criminals to the possibility of being caught, they are necessary for the continuation of their operations[13]. From a regulatory point of view, an anti-money laundering infrastructure primarily allows authorities to confiscate the proceeds of predicate offences to which they would otherwise not have access to under normal market conditions[14]. Criminalising[15] laundering techniques over and above the predicate offences provides a means for confiscating the proceeds as well as the 'value' such proceeds may have been converted into. Similarly this allows for money laundering as an offence to extend to persons other than the perpetrators of the predicate offence. The Crown Prosecution Service in the UK [16] divides money laundering into 'own proceeds' where the perpetrator launders the proceeds of his own offending and secondly into laundering by a person other than principle offender. Both forms of laundering can be charged as secondary counts to the principal offence, or charged separately without the jury considering the principal

---

[12] Froomkin.S.M., *Offshore Centres and Money Laundering.* Journal of Money Laundering Control. Vol.1 No.2. 2007. Pg.167.

[13] Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Pg.86.

[14] *Ibid.* Pg.85. In the UK, in *R v Cuthbertson* [*1981*] AC 470-86 an appeal was allowed against the forfeiture of the proceeds of drug offences exposing the limitations in forfeiture laws. This led to Hodgson Committee 1984 inquiring into the vacuum created in the law by the Cuthbertson case and subsequently to the *Drug Trafficking Offences Act 1986*; the first UK statute to categorize money laundering as a criminal offence.

[15] Although recovery of laundered assets or the proceeds of crime is possible in civil law. In the UK under the *Proceeds Of Crime Act 2002*. ss.240 to 288 it is possible to possible to recover property acquired though "unlawful conduct" without the need for a criminal conviction. This is parallel to the FATF's Recommendation 2(b) where civil liability should be sought where criminal liability is unavailable and Recommendation 3 requiring Countries to consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction. Civil forfeiture is also possible in US law. *18 U.S.C. § 981 (2000).*

[16] *Proceeds Of Crime Act 2002*. s. 340(4).

offence[17]. The criminalisation of money laundering also provides a means for high level criminals to be brought to account, who though normally are not directly involved in the committal of predicate offences are nevertheless beneficiaries and exposed to the proceeds[18].

The common analysis [19] of money laundering generally comes from earlier ideas about the integration of the proceeds of narcotics trafficking [20] into the financial system, and although relevant is not necessarily "borne out in reality" [21] This model breaks down into three stages; placement, layering and integration. The placement stage is the moving of the funds away from their source. This involves detracting from the illegal origins of the proceeds of the predicate offences, typically by use of bank deposits, currency smuggling or exchange, conversion to negotiable instruments etc., use of legitimate and front/shell business vehicles or through some compliant third party such as a banker, accountant or lawyer who 'places' the proceeds through use of their client accounts [22].

Layering involves creating the semblance of legitimate financial activity by dividing the total sum and passing its constituent monies, through sets of complex

---

[17] CPS Legal Guidance. *Proceeds of Crime Act 2002 Part7 - Money Laundering Offences.* 2010.
[18] Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Pg.86.

[19] Schroth.P.W., *Bank Confidentiality and the War on Money Laundering in the United States*. In BLANCHIMENT D'ARGENT ET SECRET BANCAIRE. Paolo Bernasconi. 1996. Pg.290. This basic model accepted by the British CPS, the UN, FATF and other organisations and is reflected in UK law under Part 7 of the *Proceeds Of Crime Act 2002.*

[20] Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008. Pg.438

[21] Mwenda. K.K., *Can insider trading predicate the offence of money laundering.* Michigan State University Journal of Business and Securities Law. (2006) 6. 127. 2006. Pg.148.

[22] From Lilliey, P. *Asian Money Laundering Explosion, Fighting Corruption in Asia - Causes, effects and remedies*. Singapore: World Scientific Co. Ltd. 2003.

transactions. This has the purpose of disguising the source and ownership of the money as well as making detection of laundering activity through accounting and audit methods much harder [23]. Money launderers are attracted to offshore financial centres (OFCs) during the layering stage, as it allows them to move money between jurisdictions with little impediment, as well as to receive money in their own jurisdiction from seemingly legitimate sources. OFCs reciprocally provide money launderers with confidentiality and bank privacy, limited withholding [24] and other taxes and lax corporate and financial supervision, as part of their attempts to attract money into their jurisdictions. Similarly OFCs provide adequate corporate and financial infrastructures to facilitate laundering [25].

Integration of the laundered money, involves bringing it back into the normal economy, to be used as capital or for the purposes of consumption by the perpetrator of the predicate offence/money launderer. This may be achieved by a wide variety of methods such as the receipt of remuneration, as the officer of an OFC based front/shell business vehicle, the use of financial instruments [26] such as letters of credit, bonds, bank notes, bills of lading and guarantees to repatriate the money or using the resultant proceeds of real estate transactions, gambling, stock purchases or corporate loans etc. as the means of reintegration [27].

The 'three stages' analysis model of infusing the proceeds of crime into the financial system is not necessarily the only money laundering model and not all predicate offences are detectable from their audit trail. The yields from insider trading, undiscovered non-disclosures or false disclosures/misrepresentations in

---

[23] Buchanan.B., *Corporate Governance and Social Responsibility: Combating Money Laundering in the Asia-Pacific Region*. Contemporary Studies in Economic and Financial Analysis. Emerald Group Publishing Limited. 2005. Pgs.439-440.

[24] Whereby payers of certain amounts, especially interest, dividends, and royalties, to foreign payees withhold income tax from such payment and pay it to the government.

[25] FATF-GAFI: *Money Laundering FAQ.* 2010.

[26] Buchanan.B., *Loc.Cit.*

[27] From He.P., *A typological study on money laundering*. Journal of Money Laundering Control. Vol. 13 No. 1, 2010.

securities issues and other unjust enrichments or undue influence are normally easily integrated into the financial system without third-party payments, withdrawals or layering or placement activities[28].

Since 2001, regulators have increasingly associated money laundering with terrorist financing. Even prior to 9/11 [29] law enforcement agencies were equating the threat from organised crime with terrorism[30]. The United States had already announced the creation of the Foreign Terrorist Asset Tracking Centre (FTATC) a year before 9/11 [31] and in 2002 the US Department of the Treasury followed by describing terrorist financing as a part of money laundering [32]. The United Nations in 1999, addressed terrorist financing in the *Convention for the Suppression of the Financing of Terrorism*, and followed in 2001 adopting Resolutions 1267 and 1333 to sanction suspected perpetrators of terrorist events [33]. The Financial Action Task Force (FATF) prior to 9/11 acknowledged the lack of consensus regarding the relationship between terrorist finance and money laundering but following 9/11 adopted nine special recommendations to provide

---

[28] Mwenda. K.K., *Can insider trading predicate the offence of money laundering.* Michigan State University Journal of Business and Securities Law. (2006) 6. 127. 2006. Pg.148. Also see Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Pg.83.

[29] Describing the terrorist events perpetrated in New York on the 11th of September 2001.

[30] Alldridge.P., *Relocating Criminal Law*. Aldershot: Dartmouth Publishing Company Ltd. 2000. Pg.171.

[31] Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.253.

[32] The 2002 Strategy seeks to deny terrorist groups access to the international financial system, to impair the ability of terrorists to raise funds, and to expose, isolate, and incapacitate the financial networks of terrorists. From US Department of the Treasury: *The 2002 National Money Laundering Strategy*. 4. 2002.

[33] Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.253.

international standards for specifically combating terrorist financing as part of its overall anti-money laundering framework [34]. Currently the link between terrorist finance and money laundering is generally well established and the former is thought to be a specialised form of the latter.

Commentators [35] drawing parallels between terrorist finance and money laundering refer to a process known as 'money dirtying'. This is the process of concealment for the purposes of separating channelled funds from their destination to enable acts of terrorism, where the flows of funds across borders, increases the probability that the terrorism will be discovered [36]. In effect, this suggests that terrorist financing is the reverse of money laundering. Funds, rather than originating as outputs from predicate offences, are following a layering process, ultimately employed as inputs for the purposes of committing a criminal offence [37]. In recent terrorist events, such processes took the form of avoidance of internet communications and bookkeeping systems and reliance on informal alternative remittance systems [38]. The perpetrator in the case of terrorist financing requires anonymity to avoid criminal responsibility and to protect his ability to engage in the same activity subsequently [39].

---

[34] FATF-GAFI: *9 Special Recommendations (SR) on Terrorist Financing (TF).* 2004.

[35] Such as Masciandaro. D., *Economics of Money Laundering : A Primer. Paolo* Baffi Centre Bocconi University Working Paper No. 171.2. 2007, Compin.F., *The role of accounting in money laundering and money dirtying.* Critical Perspectives on Accounting 19 (2008) 591–602. 2008 and Deitz.A. & Buttle. J., *Anti-Money Laundering Handbook.* Sydney: Thomson Lawbook Co. 2008.

[36] Masciandaro. D., *Op.Cit.* Pg. 22.

[37] Beare, M.E. & Schneider.S., *Op.Cit.* Pg. 309.

[38] An informal (often oral) banker's draft, used in transmitting currency from one country to another employing extensive use of connections such as family relationships or regional affiliations. It makes minimal (often no) use of any sort of negotiable instrument. Compin.F., *The role of accounting in money laundering and money dirtying.* Critical Perspectives on Accounting 19 (2008) 591–602. 2008. Pg.599. Cuéllar. M.F., *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*. 93 Journal of Criminal Law & Criminology 311-465. 2003. Pg.335.

[39] Cuéllar. M.F., *Op.Cit.* Pg. 334.

The central idea behind equating terrorist finance with money laundering comes from the anglo-centric [40] notion that crime prevention relates to the containment of subsequent criminal activity through exerting control over the finances and proceeds of criminal activities [41]. The only anti-money laundering mechanisms, which would be pertinent to anti-terror initiatives would invariably be preventative diligence alerting to the possibility of a terrorist event, such as identifying the perpetrator [42]. Even these however are likely to have little effect if the funds are legitimate in origin. This is exacerbated by the fact that the amounts employed in money dirtying operations are insignificant compared to those dealt with in narcotic and other laundering offences [43]. Terrorists and indeed criminal financiers of any kind, do not seek to directly enjoy the gains of their activities in the same manner that money launderers might. As a result money dirtying operations do not require the reintegration of funds into the mainstream financial system as such, except for the perpetration of the ultimate criminal event. Yet again the amounts in question detract from the likelihood of detection.

---

[40] This may possibly be owing to the fact that jurisdictions such as Belgium, France and the Netherlands etc. have normally not accepted an extraterritorial jurisdiction over attempts or other inchoate offences, which do not have "effects" (discussed below) in their jurisdiction unlike the US and the UK. Wolswijk.H.D., *Locus Delicti and Criminal Jurisdiction*. Netherlands International Law Review (1999), 46:361-382 Cambridge University Press.1999. Pgs. 270-276. Notably though, knowledge, intent or purpose required as an element money laundering offences may be inferred from objective factual circumstances under Article 1(5) of Directive 2005/60/EC.

[41] Alldridge.P., *Relocating Criminal Law*. Aldershot: Dartmouth Publishing Company Ltd. 2000. Pg.170. Cuéllar. M.F., *Op.Cit.* Pg. 381.

[42] Such as the "Know Your Customer" requirements, ascertaining customer identify, typically through comparisons with lists of known offenders. See Financial Services Authority. *Reducing money laundering risk - Know Your Customer and anti-money laundering monitoring*. DP22. 2003.

[43] Compin.F., *The role of accounting in money laundering and money dirtying.* Critical Perspectives on Accounting 19 (2008) 591–602. 2008. Pgs. 599-600. Also see National Commission on Terrorist Attacks Upon the United States: *Final Report of the National Commission on Terrorist Attacks Upon the United States.* 2004.

Unlike money laundering terrorist financing is far less financially sophisticated and can be sourced from both legal and illegal activities [44]. The 9/11 Commission identifies the use of legitimate charitable organisations and NGOs as the primary source of terror financing,[45] whilst other commentators point towards legitimate businesses and criminal activities [46]. Terrorist financiers, nevertheless irrespective of the source of funds, unlike money launderers have the advantage of not requiring to place the money in question as such, and their deposits can, at least on the face it, have a *bona-fide* commercial or personal reason. Similarly money dirtying enjoys the lack of an immediate financial victim who has an incentive to report [47].For such reasons, and generally low success rates [48], contrary to the view of the FATF [49] money laundering and money dirtying operations are thought not to be closely related and it seems unclear whether anti-money laundering or the private sector are the appropriate fora for dealing with terrorist finance [50].

---

[44] Cuéllar. M.F., *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*. 93 Journal of Criminal Law & Criminology 311-465. 2003. Pg.318.

[45] National Commission on Terrorist Attacks Upon the United States: *Op.Cit.* Pg.171.

[46] Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.276. Such sources of funds were not used for the purposes of 9/11.

[47] Cuéllar. M.F., *Op.Cit.* Pg.335.

[48] Beare, M.E. & Schneider.S., *Op.Cit.* Pg.312.

[49] Prior to 9/11 the FATF had agreed that terror finance should not be included in the anti-money laundering framework. This was supported by FinCEN (the US Financial Intelligence Unit) who post 9/11 showed that anti-money laundering tools can not spot the financing of terrorism. Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*. University of Warwick: CSGR Working Paper No 161/05. May 2005. Pg.13.

[50] A view supported in Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008. Compin.F., *The role of accounting in money laundering and money dirtying.* Critical Perspectives on Accounting 19 (2008) 591–602. 2008. Cuéllar. M.F., *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*. 93 Journal of Criminal Law & Criminology 311-465. 2003. Levi.M.,*Combating the financing of terrorism: a history and assessment of the control of "threat finance*". British Journal of Criminology. 2010. and Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global*

Tax evasion is generally a predicate offence [51]. For the purposes of laundering, money launderers shall trade-off the full returns [52] normally expected from the proceeds of the predicate offence, for avoidance of the risk of seizure and confidentiality. In other words they pay for confidentiality by accepting a non-risk adverse investment position or alternatively lower yields [53]. Money launderers would thus be attracted by low tax rates that jurisdictions, other than those where the tax is due, may provide in order to offset the return to risk-confidentiality trade-off. Similarly the institution of taxation requires an attachment of the state to the financial affairs of the individual, which is undesirable for the purposes of predicate offenders [54]. Laxity of tax liability in OFCs (or in this contest tax-havens) makes them attractive to money launderers. They realise more than they would in other circumstances with little lost to tax.

In a wider context, OFCs/tax-havens through strict banking secrecy, opaque corporate requirements, limited information exchanges and low taxation requirements provide tax avoidance opportunities for investors and make themselves attractive to high net worth individuals and multi-national

---

Anti-Money Laundering Regime. University of Warwick: CSGR Working Paper No 161/05. May 2005. Pg.13.

[51] Such as in the UK, under ss2,3,4,etc. of the *Fraud Act 2006*, or 'Cheating the public revenue' in the common law etc. In the US similarly under s. 7201 of the Internal Revenue Code (IRC), it is a federal crime for anyone to wilfully attempt to evade or defeat the payment of federal income taxes. It is probable that in countries where the scope of predicate offences extends to "the widest range", tax evasion is a predicate offence for the purposes of money laundering.

[52] Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Pg.18.

[53] Mullineux. A.W. & Murinde.V., *Handbook of international banking.* Elgar Original Reference Series. Edward Elgar Publishing, 2003. Pg.553.

[54] Brittain-Catlin.W., *Offshore: The Dark Side of the Global Economy*. New York: Picador, 2006. Pg.28.

corporations. Offshore jurisdictions, in order to attract investment, therefore institute, nominally effective or no taxation on corporate activities, dividend payments, capital gains, inheritance, gifts or other large transfers [55].Such jurisdictions also 'ring-fence' their domestic taxation regime to exclude only non-resident investors from revenue collection, whilst denying them access to local markets[56]. This approach identifies how such jurisdictions are seeking to attract passive investment activity [57] from geographically mobile financial services providers or companies seeking to relocate to benefit from taxation

Corporations with multinational operations, based in high tax jurisdictions, in turn seek to allocate large proportions of their taxable income to OFCs/tax-havens in order to avoid the taxation of their foreign income by their home country [58]. They achieve this through processes such as 'offshoring' financial services and other operations [59] or 'corporate inversion' i.e. converting an offshore subsidiary into the parent company, whilst maintaining manufacturing infrastructure (if any) in the original home state etc. [60] Such trends detract from the interests of the home countries of multinational companies, whose infrastructure and financial depth is employed to develop the multinational's businesses, but are unable to benefit from revenue and tax that they may collect from the multinational. Since all corporations and economic actors, in a jurisdiction do not have access to extra-jurisdictional tax avoidance opportunities, and the parties that do are motivated by revenue protection rather than economic efficiency, provision

---

[55] OECD Report., *Harmful tax Competition: An Emerging Global Issue.* 1998. Paras.52-56.
[56] *Ibid.* Para.62.
[57] Which do not relate to any *bonafide* commercial or industrial activity.
[58] Desai.M.A. et al *The demand for tax haven operations*, Journal of Public Economics 2006, (513) 515. 2006. Pg.513.

[59] Brittain-Catlin.W., *Offshore: The Dark Side of the Global Economy*. New York: Picador, 2006. Pg.42.
[60] *Ibid* .Pg.92.

of tax evasion/avoidance facilities by OFCs/tax-havens can create significant market and competition distortions [61].

Tax evasion is detrimental to the jurisdiction where taxable revenues are generated as money laundering is to the jurisdiction where the predicate offence was committed. Although pursuit of tax evaders in criminal law is possible, it is not entirely possible or desirable by states to prevent the international movement of corporations in order to protect their tax base.

Using a conservative definition of money laundering, this offence generally arises, where the proceeds of underlying 'predicate offences' are sought to be integrated into the mainstream financial system. Money laundering can be seen as a secondary crime entirely dependent on the existence of the predicate offence as conceivably, activities, which would become criminal subsequent to the predicate offence, would not be so otherwise.

Activities akin to those of money laundering [62] are not objectionable behaviour unto themselves but become so as part of wider criminal or illegal activities [63]. This position is apparent in English law as in *R v Louis Everson and others* followed by *R v Greaves and others* [64] where the Court of Appeal accepted

---

[61] From Craig.W.Y., & Kumar,A., *Tax Harmonisations for Europe and the world: could the ECJ show the way*, , I.C.C.L.R., 2007, 18(10), 341-348, Kluwer Law International, 2003.

[62] Such as 'deep discounting' by supermarkets, achieved by large cross-border flows of goods and funds to minimise the retail price of the goods.

[63] Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Pg.85. Mitsilegas.V., *Money Laundering Counter-Measures in the European Union: a new paradigm of security governance versus fundamental legal principles.* Volume. 20 of European business law & practice series. European law library. Kluwer Law International, 2003. Pg.33.

[64] *R. v Greaves (Claude Clifford), R. v Botcher (Henrik), R. v Jenkins (Fraser)* [2010] EWCA Crim 709; [2010] Lloyd's Rep. F.C. 423.

that the primary crime differed from the money laundering offence for the purposes of sentencing [65].

It would follow that many activities of money launderers would not be illegal but for the illegality of predicate offence. This is demonstrable from the UK *Proceeds of Crime Act 2002*, under which the prosecution must show that the laundered proceeds are 'criminal property' resultant of conduct, which constitutes an offence in the UK [66]. This means that revenues generated from any criminal conduct, which is an offence in the UK but not in other jurisdictions, and remitted back to the UK would be subject to a reporting obligation under the 2002 Act or to UK anti-money laundering laws.

Creating the separate primary crime of money laundering relates largely to the possibility that money laundering may not be conducted in the same jurisdiction as the predicate offence. This possibility, in turn allows the perpetrators of predicate offences to enjoy the proceeds of their activities, within the jurisdiction where the predicate offences were committed, particularly where the launderers are unconnected third parties [67]. Whilst the proceeds of predicate offences, within a jurisdiction can adequately become subject to handling offences or forfeiture laws, this may not be true if the proceeds are moved elsewhere. The recipient jurisdiction may be uncooperative or suffer from regulatory laxity or employ deliberate financial opaqueness or secrecy, making the proceeds of crime harder to recover [68]. The 'effects doctrine' [69] has been

---

[65] *R. v Louis Everson, Kamalesh Soneji, David Bullen* [2001] EWCA Crim 2262 2001 WL 1346987

[66] As under s.340 of *Proceeds Of Crime Act 2002*. This position is mirrored by Art.3(3) of Directive. 2005/60/EC.

[67] *Proceeds Of Crime Act 2002.* s.340(4).

[68] Such as non recognition of the predicate offences as was the case with the Seychelles in 1995, where the government seeking inward investment enacted the Economic Development Act, whereby those investing US$10million or more were able to claim immunity from prosecution for criminal offences and security from possible seizure of their assets, as long as they did not commit serious crime in the Seychelles. This "money launderers' charter" was repealed following FATF pressure. Fisher.H.,*FATF Lifts its Warning about Investment Law in Seychelles*. OECD/FATF-GAFI Oct. 2000.

entrenched into US law for the purposes of money laundering under 18 U.S.C. § 1956(f), where the perpetrator is a US citizen or a non-US citizen operating in the US [70]. This position is also reflected in Article.1(3) of Directive 2005/60/EC [71] whereby money laundering is regarded as such, even where the activities were conducted in a third country. Although, potentially foreign corporate crimes may be addressed by the nationality principle [72], e.g. in cases of the use of subsidiaries in lax jurisdictions to launder money or ideas of effects, protection[73], or passive personality [74], the effectiveness of such extraterritoriality is questionable. Such bases tend to lack a sound, legislative or theoretical base and are unlikely to succeed [75] (short of sanctions or conflict) if the jurisdiction, where the actual laundering is taking place is uncooperative or has a vested interest in laundering offences [76]. It is for such reasons that FATF and other international efforts, must

---

[69] Applicable in European and American competition cases where domestic competition laws are applicable to foreign undertakings and domestic undertakings located outside domestic jurisdiction where their transactions produce an "effect" within the domestic jurisdiction T-102/96, Gencor Ltd v Commission, (1999) E.C.R., page II-0753, at paras. 89-92. Use of the effects doctrine in a money laundering case was highlighted in United States v. Noriega, 746 F.Supp. 1506, 1511 (S.D.Fla.1990).

[70] Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Pg.221.

[71] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

[72] The nationality principle recognizes that a sovereign can adopt criminal laws which govern the conduct of the sovereign's nationals while outside of the sovereign's borders. Under this principle, for example, a sovereign can make it a crime for its nationals to engage in sexual relations with minors while outside of its borders or to pay bribes outside of its borders to public officials of another sovereign.

[73] The protective principle emphasizes the actual or possible effects of an offense and provides for jurisdiction over conduct deemed harmful to specific national interests of the forum state.

[74] The passive personalty principle recognizes that a sovereign can adopt laws that apply to conduct of foreign nationals who commit crimes against the sovereign's nationals while the sovereign's nationals are outside of the sovereign's territory, as in *United States v. Noriega,* 746 F.Supp. 1506, 1511 (S.D.Fla.1990).

[75] From Felkenes. G.T., *Extraterritorial Criminal Jurisdiction: Its impact on criminal justice*. Journal of Criminal Justice. Vol. 21, No. 6, pp. 583-594, 1993.

[76] Although it may be unfeasible or impractical to extend an extraterritorial jurisdiction over the offence of money laundering, under International criminal law (Article 6(2)(c) of the UN Convention Against Transnational Organized Crime) predicate offences for the purposes of establishing liability

rely on bolstering and homogenising the legal and regulatory framework of other jurisdictions, which seemingly are the only vehicle to adversely affect the laundering of the proceeds of predicate offences. The FATF's first recommendation is thus to to criminalise money laundering separately to predicate offences[77]. The offence of money laundering may be a secondary crime, akin to handling offences for domestic purposes but must be constructed as a primary, universal crime in order to make anti-money laundering efforts effective globally.

---

under the money laundering provisions may take either inside *or* outside the jurisdiction of the regulating state. In the latter case it may only be treated as a predicate offence for the purpose of money laundering laws if the behavior constitutes a criminal offence in *both* states.

[77] FATF-GAFI: *FATF 40 Recommendations.*

Chapter 2:

Offshore Centres and the Effects of Money Laundering.

OFCs are jurisdictions that attract and oversee a disproportionate level of non-resident financial activity,[78] with their financial sectors accounting for an inordinate part of their economy. They may represent developing countries or emerging economies; described as 'low capacity' countries by the FATF, [79] which exclusively by merits of their legislative competence seek to attract foreign investments. Developed jurisdictions such as Luxembourg or the City of London also exhibit offshore characteristics [80]. The infrastructure of OFCs generally includes investor incentives such as low taxes, no ,[81] light and flexible incorporation, lax licensing and supervisory regimes, flexible use of trusts and SPVs and high levels of confidentiality. OFCs typically do not offer such incentives to domestic investors or residents with a view to attract foreign investment,[82] and require a degree of financial framework as well as access to onshore financial markets. The traditional OFCs account for between 3 and 4 percent of the World's GPD and manage up to a quarter of the World's assets [83].

---

[78] Rose.A.K. & Spiegel. M.M.,*Offshore Centres, Parasites or Symbionts?* The Economic Journal, 117 (October), 1310–1335. Royal Economic Society 2007. Pg.1310.

[79] FATF-GAFI: *The fight against money laundering and terrorist financing in low capacity countries*. 21st Aug 2009.

[80] Levin. M., '*The prospects for offshore financial centres in Europe*', CEPS Research Reports, No. 29. 2002. Pg.2.

[81] See Footnote 24.

[82] Financial Stability Forum., *Report of the Working Group on Offshore Financial Centres*. 2000. Pgs.9-10.

[83] Levin. M., *Op.Cit*. Pg.i.

OFCs generally also have the characteristics of tax-havens, which have the result of attracting corporate migrations or high net worth individuals.[84] Tax-havens however are not necessarily money laundering centres in every event.[85] The OECD test for a tax haven is "no or only nominal tax on …income" [86]. The OECD further distinguishes 'Harmful Preferential Tax Regimes' as jurisdictions, which although collecting revenue, allow preferential treatment to result in low or no taxation, for certain kinds of income [87]. Jurisdictions, which only have rates of taxation lower than other countries, yet collect 'significant' revenues are not tax-havens or Harmful Preferential Tax Regimes, under the OECD guidance [88]. The OECD describe tax competition [89], to at worst be a "race to the bottom", [90] which is the idea that fiscal measures taken by jurisdictions to attract investments creates a downward spiral in tax revenues, and a 'beggar thy neighbour' rivalry between competing countries [91]. Any advantages gained are offset by competitors, compelling the further creation of tax advantages [92]. In a wider context, capital flight and erosion of the tax base of onshore jurisdictions, incentivised by tax

---

[84] Levin. M., '*The prospects for offshore financial centres in Europe*', CEPS Research Reports, No. 29. 2002. Pg.2.

[85] Following from the Organisation for Economic Co-operation and Development (OECD) distinction and According to US Security Agencies. *From Mitchell, D `US Government agencies confirm that low tax jurisdictions are not money-laundering havens' (2004) 11 J. of Financial Crime 127.* In Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008.

[86] OECD Report., *Harmful tax Competition: An Emerging Global Issue.* 1998. Pg.19.

[87] *Ibid.*Pg.20

[88] *Ibid.*Pg.19.

[89] Tax competition; a form of regulatory competition, exists when governments are encouraged to lower fiscal burdens to either encourage the inflow of productive resources or discourage the exodus of those resources. Often, this means a governmental strategy of attracting foreign direct investment, foreign indirect investment (financial investment), and high value human resources by minimizing the overall taxation level and/or special tax preferences, creating a comparative advantage.

[90] OECD Report., *Op.Cit.* Pgs.19-20.

[91] Gurtner.B., *The Race to the Bottom. Incentives for New Investment?* Tax Justice Network. Oct 15th to 17th, 2008.

[92] *Ibid.*

opportunities offshore, is thought to result in increased unemployment onshore, [93] as well as shifting tax burdens from capital to labour [94]. Other commentators [95] point towards the lack of empirical evidence, as tax revenues globally generally remain stable, with little movement from the taxation of capital to the taxation of labour, often cited in the relevant literature [96].

OFCs are often portrayed as laundering centres, particularly by the various multilateral or international organizations, particularly the FATF and OECD, owing to perceived laxities in reporting, transparency and taxation. The UN for instance suggests that the common feature of 'all' OFCs is that criminal organisations make use of the opportunities, such financial centres provide in order to launder money and thus impede law enforcement agencies.[97] Money launderers are attracted to OFCs to offset losses they would incur onshore though risk-confidentiality trade-offs. Within the layering and integration phases, money launderers often rely on OFCs which can provide adequate corporate, financial or business infrastructure yet simultaneously provide limited anti-money laundering protections. It has been suggested that the increased confidentiality offshore shall increase the demand for bank deposits which in turn shall increase an OFC bank's loanable funds and reduce its interest rate, [98] which is why OFCs themselves have an interest in attracting the proceeds of predicate offences.

---

[93] Huffington.A., Offshore *Corporate Tax Havens: Why Are They Still Allowed?* Global Policy Forum. June 1 2010.

[94] Persaud.B., *OECD Curbs on Offshore Financial Centres. A Major Issue for Small States*. The Round Table (2001), 359 (199–212). Pg.207.

[95] Levin. M., '*The prospects for offshore financial centres in Europe*', CEPS Research Reports, No. 29. 2002. Pg.1.

[96] *Ibid*.

[97] From United Nations., *UN Global Program against Money Laundering.*

[98] Mullineux. A.W. & Murinde.V., *Handbook of international banking.* Elgar Original Reference Series. Edward Elgar Publishing, 2003. Pgs. 560-562. Also see Footnote. 53.

The FATF suggests that regulatory laxity by developing countries and OFCs attracts the deposit of the proceeds of crime to be re-integrated into the global financial system. Countries, which source the proceeds (i.e suffer the predicate offence) are exposed to detriment to their economies and financial systems and also bear the costs of any subsequent criminal activity, derivative of the reintegration of criminal money. The FATF and commentators [99] suggest that for such reasons global harmonisation of anti-money laundering legislation is imperative to achieve any success in the fight against money laundering. This shall have the effect of 'levelling the playing field' and preventing regulatory arbitrage at the expense of jurisdictions, which have enacted stricter anti-money laundering regimens.

Money laundering, amongst other financial crimes is thought to systemically threaten banking [100] and economic stability internationally [101]. It results in the misallocation of resources towards socially disruptive, criminal and non-productive activities [102] rather than towards legitimate investments and

---

[99] Such as Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Also Schott. P.A, World Bank, International Monetary Fund. *Reference guide to anti-money laundering and combating the financing of terrorism.*Washington: World Bank Publications, 2006.

[100] The Basel Committee holds that public confidence in Banks is undermined by inadvertent association with criminals as well as exposure to undesirable customers, who simply by association with the Banks' officers can corrupt them. From Mitsilegas.V., *Money Laundering Counter-Measures in the European Union: a new paradigm of security governance versus fundamental legal principles.* Volume. 20 of European business law & practice series. European law library. Kluwer Law International, 2003. V.33.

[101] Alexander.K. Dhumale.R. & Eatwell.J., *Global Governance of Financial Systems. The International Regulation of Systemic Risk.* Oxford University Press. 2006. Pg.31.

[102] The UK CPS, the UN, FATF etc. identify the illegal arms and drugs trade, people trafficking, prostitution and other organised criminal activities, a general lack of transparency and economic and political corruption, the disintegration of financial and governance systems, the distortion state revenues and misallocation of resources, competition problems and financing of terrorist activities as direct consequences of money laundering.

potentiates further criminal activity [103]. It also corrupts financial markets and generally lowers public confidence in the International financial system [104]. Money laundering results in the distortion of the corporate governance structures of financial institutions both internationally and in money laundering jurisdictions, as well as the loss of government revenues, where tax evasion is the motivating factor to launder money [105].

Commentators [106] suggest that money laundering has particularly adverse effects upon developing economies, including tax havens and OFCs. A jurisdiction, which identifies as a haven for money laundering shall see increases in corruption [107] and crime, particularly in the form of bribery to facilitate money laundering efforts as well as a loss of confidence in its financial sector [108]. Financial institutions, both domestic and foreign, operating in high risk

---

[103] Commentators have sought to demonstrate that money laundering acts as a multiplier of the volume of the economic endowments that concerns to criminal and illegal agents. Masciandaro. D., *Economics of Money Laundering : A Primer. Paolo* Baffi Centre Bocconi University Working Paper No. 171.2. 2007. This is a view supported by the FATF who maintain that "…money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue." (FATF-GAFI: *Money Laundering FAQ.* 2010.) as well as the World Bank and IMF . Schott. P.A, World Bank, International Monetary Fund. *Reference guide to anti-money laundering and combating the financing of terrorism.* Washington: World Bank Publications, 2006. Pg. II-2

[104] Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Pg.87.

[105] Mwenda. K.K., *Can insider trading predicate the offence of money laundering.* Michigan State University Journal of Business and Securities Law. (2006) 6. 127. 2006. Pg.149.

[106] Such as Schott. P.A, World Bank, International Monetary Fund. *Reference guide to anti-money laundering and combating the financing of terrorism.* Washington: World Bank Publications, 2006. Also Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000.

[107] Including lawyers and bankers, seeking to reduce estimations of the extent of money laundering, so as to dilute anti-money laundering measures. Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Pg.87.

[108] Schott. P.A, World Bank, International Monetary Fund. *Reference guide to anti-money laundering and combating the financing of terrorism.* Washington: World Bank Publications, 2006. PgII-3

jurisdictions shall in turn be exposed to the markdown or devaluation of their assets, as well as difficulties in raising legitimate capital owing to increases in operational and reputational risks [109] Foreign financial institutions may limit or end relationships with high risk jurisdictions or impose extra costs or scrutiny, reducing access of legitimate businesses, in such jurisdictions to foreign capital markets [110]. This subsequently can weaken legitimate businesses and reduce the value of the mainstream economy, particularly where front/shell companies can cross-subsidize their activities, with illicit funds at the expense of domestic competitors [111]. Foreign development aid or foreign private investments are also likely to be very limited for high risk jurisdictions [112].

The large amounts of money involved in money laundering activities, rapidly entering and exiting the market can result in an increase in concentration risk, particularly for emerging economies, as loans are not rationally distributed [113] with excessive credit or loan exposure to individual borrowers. Deposits from money launderers cannot be employed adequately as bank funding as they are subject to unanticipated withdrawals, which thus causes liquidity problems for the financial institution in question [114]. As launderers seek confidentiality rather than yields and higher rates of return, money laundering distorts foreign exchange and interest rates, particularly where the amounts involved are globally significant [115]. Other costs of money laundering activities to developing economies can include asset seizures, legal risks and the costs of increased

---

[109] Alexander.K. Dhumale.R. & Eatwell.J., *Global Governance of Financial Systems. The International Regulation of Systemic Risk.* Oxford University Press. 2006. Pg.31.

[110] Schott. P.A, World Bank, International Monetary Fund., *Loc.Cit.*

[111] *Ibid.* Pg. II-6. Also in Mwenda. K.K., *Can insider trading predicate the offence of money laundering.* Michigan State University Journal of Business and Securities Law. (2006) 6. 127. 2006. Pg.149.

[112] *Ibid.* Pg. II-3.

[113] Alexander.K. Dhumale.R. & Eatwell.J., *Loc.Cit.*

[114] Schott. P.A, World Bank, International Monetary Fund., *Op.Cit.* Pg.II-5.

[115] Mwenda. K.K., *Can insider trading predicate the offence of money laundering.* Michigan State University Journal of Business and Securities Law. (2006) 6. 127. 2006. Pg.149.

regulation and intervention as well as those of penalties and fines. Such developments create a symbiosis between jurisdictions with offshore infrastructures and the illicit economy. Laundering incentivises and necessitates the influx of illegitimate funds to sustain the markets of jurisdictions, which facilitate money laundering activities, by requiring affirmation of its reputation of regulatory laxity [116]. This, thus makes the jurisdiction more reliant on the proceeds of criminal and other illegitimate activities. The FATF similarly suggest that given that launderers rely on jurisdictional arbitrage; failures by developing countries to reduce differences between theirs and more robust anti-money laundering systems shall entrench organised crime [117].

[116] Masciandaro. D., *Economics of Money Laundering : A Primer. Paolo* Baffi Centre Bocconi University Working Paper No. 171.2. 2007. Pg.381.

[117] FATF-GAFI: *Money Laundering FAQ.* 2010.

Figure 1: The Entrenchment of Money Laundering

In contrast to the FATF model, commentators [118] suggest that relationship between onshore and offshore financial centres, is a trade-off between positive and negative externalities, where although they facilitate money laundering and tax evasion by lowering costs, they also offer benefits, in terms of competitive pressure on onshore banks and jeopardise onshore banking oligopolies, causing them to modify their behaviour [119]. Legitimate offshore activities allow International companies to maximise profits and operating performance, issue securitised products flexibly and protect their assets from claimants [120]. For such reasons large multinational corporations such as Apple Computers Inc., General Motors and Swatch A.G. amongst others, all have a historical and consistent track-record of operating through OFCs, with a view to avail corporate flexibility and tax benefits that OFC's provide [121].

A symbiosis [122] between onshore and offshore may be argued to exist, as OFCs do not operate in an economic vacuum, independent of external economic structures [123]. Onshore patronage of OFCs, is the result of the demand for respite, from inhospitable tax regimes and the inability to efficiently invest domestically (such as was the case with the petro-dollar surplus of the 1960s). Growth of onshore banks and multinationals over the past few decades is directly linked to the ability of such organisations to profit maximise offshore. OFC's also focus on developing liquidity and are at the *avant-garde* of the use of electronic commerce

---

[118] Rose.A.K. & Spiegel. M.M.,*Offshore Centres, Parasites or Symbionts?* The Economic Journal, 117 (October), 1310–1335. Royal Economic Society 2007. Pgs. 1312-21. Also see. Persaud.B., *OECD Curbs on Offshore Financial Centres. A Major Issue for Small States*. The Round Table (2001), 359 (199–212).

[119] Rose.A.K. & Spiegel. M.M., *Op.Cit.* Pg. 1329.

[120] Persaud.B., *Op.Cit.* Pg. 205.

[121] Brittain-Catlin.W., *Offshore: The Dark Side of the Global Economy*. New York: Picador, 2006. Pgs. 49-51.

[122] Rose.A.K. & Spiegel. M.M., *Op.Cit.* Pg. 1329.

[123] Donaghy.M & Clarke.M., *Are offshore financial centres the product of global markets?* A sociological response. Economy and Society, 32: 3, 381 — 409. 2003. Pg.390

and financial innovation. Other products such as insurance and re-insurance, fund and trust management, hedging and shipping are all constituents of legitimate industries, which OFC's can efficiently provide as ancillaries to their financial markets [124]. The existence of OFCs with adequate anti-money laundering infrastructure such as Jersey and other Crown dependencies [125] begs the question as to whether international concern over money laundering, is at least partially based on revenues losses through the leniency of OFC tax regimes.

An alternative view comes from commentators [126] who argue that there is sparse evidence as to the impact of money laundering on International growth and development at all. The primary drivers to internationally criminalise money laundering come from an attempted conflation of International development with good global governance [127]. Notably earlier ideas originating from the OECD, prior to the inception of the FATF, considering the economic effects of money laundering, in a given national economy gave far greater significance to the laundering offence rather than the predicate offence [128] .

---

124 Persaud.B., *OECD Curbs on Offshore Financial Centres. A Major Issue for Small States*. The Round Table (2001), 359 (199–212). Pgs. 205-207.

125 From Rosdol.A., "*Are OFCs leading the fight against money laundering?"*, Journal of Money Laundering Control, Vol. 10 Iss: 3, pp.337 – 351. 2007.

126 Such as Hülsse. R.,*Creating Demand for Global Governance: The Making of a Global Money-laundering Problem*. Global Society, Vol. 21, No. 2. Routledge Publishers. April, 2007. Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*. University of Warwick: CSGR Working Paper No 161/05. May 2005. Williams.D., *Governance, Security and 'Development": The Case of Money Laundering.* City University Working Papers on Transnational Politics. CUTP/001. February 2008.

127 Williams.D., Op.Cit. Pg.2. In 2009-2010 approximately 42% of the World Bank's resources were dedicated to the creation of governance systems in member countries reflecting international standards of good conduct; governance-enhancing and anti-corruption initiatives including anti-corruption measures, public services and judiciary reforms, tax and administration policies, decentralisation, and public services supply.

128 From Hinterseer.K., *An economic analysis of Money Laundering*. Journal of Money Laundering Control. 1. 1997.

The harm to developing countries, identified by proponents of a homogenised anti-money laundering regime does not adequately account for the benefits to such countries from the attracted investment. **Becoming an OFC may be seen as a rational development strategy for smaller states. In effect such states attract investment and expertise and improve local employment and wages [129], by offering global financial markets, multinational companies and investors, an investment avenue, with lower tax, fiscal and judicial risks. This may be particularly useful where, as is the case with small island nations there are limited resources and few opportunities, [130] or where nations are underdeveloped for lack of infrastructure and thus need to incentivise foreign investment.**

It has been suggested that a motivator against the influx of business to developing countries is against the interests of developed economies [131]. Money laundering "in and of itself" per empirical evidence [132] does not have substantial negative repercussions for an economy, and furthermore laundering reintegrates at least portions of untaxed funds from the illegitimate to the legitimate economy producing wealth and revenue [133].

Arguably the illegalisation of the proceeds of crime is the result of a failure in the criminal law to address the committal of predicate offences. Similarly the investment of the proceeds of crime into legitimate businesses or other unlawful investments does not detract from the mischief in the predicate offence [134]. **The**

---

129 Levin. M., '*The prospects for offshore financial centres in Europe*', CEPS Research Reports, No. 29. 2002. Pg.4.

130 Brittain-Catlin.W., *Offshore: The Dark Side of the Global Economy*. New York: Picador, 2006. Chapters 1 and 2. Describing the situation in the Cayman Islands.

131 Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008. Pg.447.

132 Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.304.

133 *Ibid.*

134 Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008. Pg.451.

idea that international money laundering potentiates or acts as a multiplier for further criminal activity is also largely unfounded. It seems in this case that "the crucial hypothesis (being made) is that both legal and illegal investment (at least part of the latter) need to be financed by 'clean' liquidity" [135] . It is more likely that the proceeds of criminal activity are employed locally within a jurisdiction to further criminal purposes, in the case of more minor criminal activity [136] and is a problem more pertinently addressed by municipal laws dealing with receipt, handling or dealing with stolen goods [137] rather than top heavy anti-money laundering laws. Commentators have for such reasons described the UK *Proceeds Of Crime Act 2002,* which itself develops from handling offences as 'draconian' [138] as the *mens-rea* for laundering offences is diminished to mere suspicion [139] or objective tests of fault with no requirement to prove dishonesty, as under the

[135] Masciandaro. D., *Money Laundering: the Economics of Regulation.* European Journal of Law and Economics. No.7. Kluwer Academic Publishers.1999. Pg.227.

[136] "..money laundering, in a '*given economy'* with legal and illegal sectors, can play the role of multiplier" [Emphasis added]. From Masciandaro. D., *Economics of Money Laundering : A Primer. Paolo* Baffi Centre Bocconi University Working Paper No. 171.2. 2007. Pg.2.

[137] For example in the UK there is a clear relationship between the *Proceeds of Crime Act 2002* dealing with money laundering and earlier handling offences. Under s. 22 of the *Theft Act 1968* handling stolen goods is an alternative charge to theft, where a person handles stolen goods if knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, disposal or realisation by or for the benefit of another person, or if he arranges to do so. *The Proceeds of Crime Act 2002* ss. 327 to 329 offences are generally quite similar. The 2002 Act like the *Theft Act* maintains the idea of equity's darling; the *bona fide* purchaser (From Shaw.N., *Tax and the Proceeds of Crime. GITC Review VolII.No.2. 2003).* and s.4 of the *Theft Act* 1968 defines property is generally parallel to the *Proceeds of Crime Act 2002* definition of "criminal property" including money and all other property, real or personal, including things in action and other intangible property with the exclusion of real estate unless stolen in the capacity of a trustee, personal representative or attorney etc.

[138] The increased draconianism of the *Proceeds Of Crime Act 2002* has been argued to result from the increased threat of money laundering. (Millington.T. & Williams .M.K., *The Proceeds of Crime, Law and Practice of Restraint, Confiscation, Condemnation and Forfeiture*. 2nd Edition. Oxford University Press. 2007. Pg.9.) Alternatively in *R (on the application of Wilkinson v DPP)* [2006] EWHC 3012 (Admin) *and R v Whitham* [2008] EWCA Crim 239 the High Court and the Court of Appeal respectively accepted that handling should be charged rather than money laundering in less serious cases, but also maintained that the court could not cause the prosecution not to charge under POCA 2002.

[139] *R v. Da Silva* [2006] EWCA Crim 1654.

***Theft Acts* of 1968 and 1978. Subsequent criminal activity does not required laundered or integrated funds in order to occur, however the *Proceeds Of Crime Act 2002* allows for prosecution without conviction for the predicate offence [140]. The criminalisation of money laundering, in fact incites criminals to yet more surreptitious means to hide and reintegrate the proceeds and creates a secondary criminal industry to do so [141]. Local decriminalisation of more minor predicate offences or more effective mechanisms to address them [142], may in fact be more effective and efficient than attempting to institute a homogenous global anti-money laundering regime.**

The primary drivers behind an increased interest in International money laundering are the 'problemisation'[143] and 'securitisation' of failures in governance in developing countries, which are perceived to be threat (if only potentially) to developed nations following the events of 9/11 in 2001, with a view to integrate developing countries into harmonised and standardised international

140 *R v. Sabaharwal* [2001] 2 Cr App R (S) 81.

141 Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.298.

142 Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008. Pg.451.

143 Williams.D cites the works; Buzan.B, Waever.O and de Wilde.J *Security: A New Framework for Analysis.* Lynne Rienner, Boulder.Co. 1998. Waever,O., '*Securitization and Desecuritization*', In Lipschutz.R., (ed.), *On Security.* Columbia University Press,1995, and Waever.O., Buzan.B., Kelstrup.M., & Lemaitre.P., *Identity, Migration and the New Security Agenda in Europe.* London, Palgrave Macmillan, 1993. etc. known as the "Copenhagen School" the work of which has been subject to some controversy. "Securitization… involves an investigation into the ways in which issues, processes and events become seen as matters of 'security', and thus cast as existential threats that require special measures to address". (From Williams.D., *Governance, Security and 'Development": The Case of Money Laundering.* City University Working Papers on Transnational Politics. CUTP/001. February 2008. Pg.3.) Hülsse draws parallels between securitisation and "problemisation" which he describes as an analysis of "discourse" of money laundering as compared to an analysis of its "institutional frame" and security outcomes. Hülsse. R.,*Creating Demand for Global Governance: The Making of a Global Money-laundering Problem*. Global Society, Vol. 21, No. 2. Routledge Publishers April, 2007.Pg.168.

governance regimes,[144] and "to relieve competitive pressures from specialised and offshore financial centres" [145], The 'moral panic' of money laundering has similarly been argued to been employed to "advance enforcement powers, redraw the depositors relations with his… bank and embed international interdependence in(to) criminal law enforcement [146]" It is perhaps for such reasons that money laundering has been associated with terrorist financing and steps have been taken against hawala/hundi and other aspects of informal economy.

[144] Arnone.M. & Padoan.P.C., *Anti-money laundering by international institutions: a preliminary assessment.* Eur J Law Econ (2008) 26:361–386. Springer Science+Business Media, LLC 2008. Pg.362. Also Williams.D., *Op.Cit,*Pg.2.

[145] Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*. University of Warwick: CSGR Working Paper No 161/05. May 2005. Pg.2.

[146] Alldridge.P., *Relocating Criminal Law*. Aldershot: Dartmouth Publishing Company Ltd. 2000. Pg.169.

Chapter 3:

The Anti-Money Framework: Structures and Regimes.

Cooperation between national judicial authorities on the basis of treaty has been previously been posited, as the basis to collect evidence abroad [147]. This model has been superseded by 'new modes' of international cross-border evidence gathering, and enforcement [148] founded in unilaterality, both in terms of extraterritorial jurisdiction and the profusion and promulgation of international paradigm and standard setting.

The current international anti-money laundering regime has both preventative and repressive aspects [149]. The *ex-ante* preventative model exists under municipal and international law, which relates to processes such as reporting, customer due-diligence and preventative interaction with the financial institutions and economic actors, which may potentially facilitate money laundering activities. The *ex-post* repressive model under the criminal law is retributive and involves investigation, prosecution, conviction and confiscation of the laundered and launderable proceeds. Other mechanisms can have preventative and retributive elements, in different contexts, such as international sanctions.

---

[147] Such as Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008 and Berman,P.S., *`The Globalization of Jurisdiction'.* 151. University of Pennsylvania Law Rev. 311. 2002.

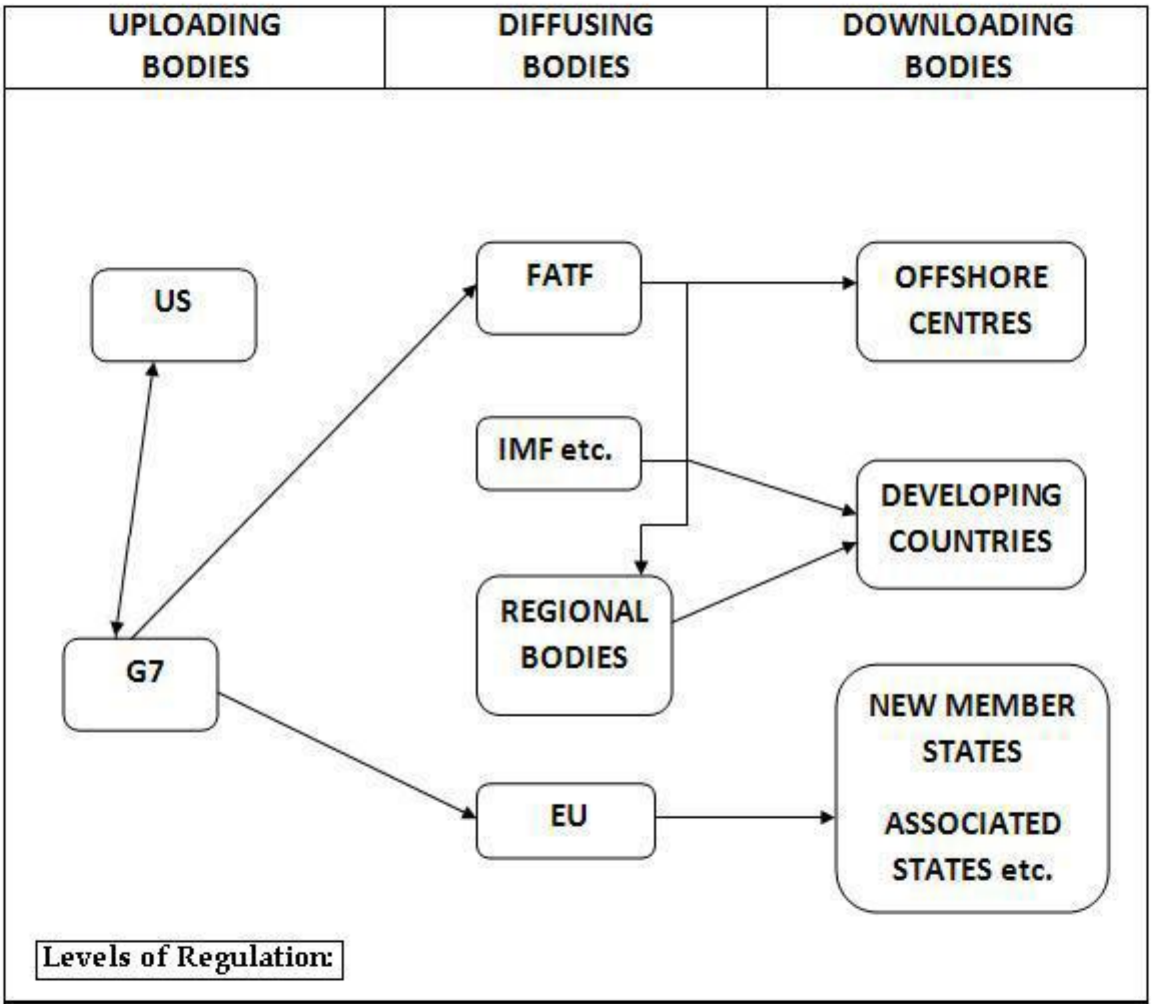
[148] Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000.

[149] Alldridge.P., *Op. Cit.* Pg.442, Stessens.G., *Op. Cit.*Pg.109, and Arnone.M. & Padoan.P.C., *Anti-money laundering by international institutions: a preliminary assessment.* Eur J Law Econ (2008) 26:361–386. Springer Science+Business Media, LLC 2008. Pg.361.

Commentators [150] indicate that models of regulation within the international anti-money laundering framework are 'uploaded' by influential parties including the G7 and the US to a global level and diffused horizontally through regional and central bodies such as the IMF, the EC and the FATF. The 'downloading' actors are mostly developing countries, OFCs, newer members to the EC and other treaty based organisations [151].

[150] Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*. University of Warwick: CSGR Working Paper No 161/05. May 2005, following Lutz.S., '*Convergence within National Diversity: The Regulatory State in Finance*' in Journal of Public Policy, 24/2, 169- 197.2004.

[151] Tsingou.E., *Op.Cit*.Pgs.7-9.



From Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*.CSGR Working Paper No 161/05. May 2005. pg.9.

Figure 2: Levels of Regulation

3.1: The Global Framework.

The FATF was established in 1989 by the leaders of the [152] states and under the auspices of the OECD [153] with a current mandate to extend through to the end of 2012[154]. Its formation was amidst a general sense of a global governance deficit [155] and perceived threats to global financial stability from money laundering. The FATF is the foremost, [156] most successful [157] and only international body, which solely deals with money laundering and more recently terrorist financing [158]. It currently has 36 member states [159] and seeks to cooperate in international anti-

---

[152] The meeting of the finance ministers from a group of seven industrialized nations. It was formed in 1976, when Canada joined the Group of Six: France, Germany, Italy, Japan, United Kingdom, and United States.

[153] The FATF claims to be fully independent of the OECD, although is highly representative of the such countries. The FATF previously was an exclusive club of which membership was limited to only OCED members until the late 90s. (Hülsse. R.,*Creating Demand for Global Governance: The Making of a Global Money-laundering Problem*. Global Society, Vol. 21, No. 2. Routledge Publishers April, 2007. Pg.170.) Exceptions to OECD membership are the ex-soviet eastern European countries which the FATF describes as present(ing) an increasingly attractive target for money launderers as they liberalise their economic and financial systems. See Table 1 below.

[154] Damais.A., *The Financial Action Task Force.* Paris. 2007. Pg.72. In Muller.W.H.. Kälin.C.H. & Goldsmith.J.G., *Anti-money laundering: international law and practice*. John Wiley and Sons, 2007.

[155] “The fall of the Soviet Union and the end of the Cold War, the diffusion of democracy, globalization of markets, and the development of internet and information & communication technology made possible an incredible flow of information, goods, and money. This resulted in increased difficulties for the authorities, equipped only with nation-wide only preventive and repressive powers, to limit the growth of illegal financial activities internationally.” Arnone.M. & Padoan.P.C., *Anti-money laundering by international institutions: a preliminary assessment.* Eur J Law Econ (2008) 26:361–386. Springer Science+Business Media, LLC 2008. Pg.362.

[156] Para. 5 of Directive.2005/60/EC

[157] Alexander.K. Dhumale.R. & Eatwell.J., *Global Governance of Financial Systems. The International Regulation of Systemic Risk.* Oxford University Press. 2006. Pg.73.

[158] *Ibid*. Pg.67.

[159] FATF member countries are: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, European Commission, Finland, France, Germany, Greece, Gulf Co-operation Council, Hong Kong, China, Iceland, India, Ireland, Italy, Japan, Kingdom of the Netherlands: Netherlands, Netherlands Antilles and Aruba., Luxembourg, Mexico, New Zealand, Norway, Portugal, Republic of

money laundering efforts. It operates by issuing regularly updated recommendations, which are targeted at its members as well as other countries, with a view to lead states to implement necessary legal and regulatory measures to prevent use of their financial systems for criminal or terrorist purposes. Its mandate is purely policy based and it seeks to generate the necessary political will to bring about national legislative and regulatory reforms to combat money laundering.

The FATF has also assisted in the creation of regional affiliated bodies known as FATF Style Regional Bodies [160] to which regional oversight is delegated and which assist in regional FATF compliance reviews. The FATF currently has Forty Recommendations on money laundering creating a framework for detecting and preventing money laundering, which are intended for universal global application across the World. These recommendations include repressive elements such as the criminalisation of money laundering, [161] the seizure of illicit funds and proceeds [162] and dissuasive criminal or civil sanctions [163] as well as preventative elements such as limiting the negative effects of bank secrecy and confidentiality [164], customer identification and record-keeping rules [165] and the adoption of increased diligence by financial institutions [166] Following the terrorist

---

Korea, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States.

[160] There are currently eight such FSRBS which are the Asia/Pacific Group on combating money laundering (APG),Caribbean Financial Action Task Force (CFATF), Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism of the Council of Europe (MONEYVAL),Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Financial Action Task Force on Money Laundering in South America (GAFISUD), Intergovernmental Action Group against Money-Laundering in West Africa (GIABA) , and the Middle East and North Africa Financial Action Task Force (MENAFATF).

[161] FATF-GAFI: *FATF 40 Recommendations.* 2010. Recommendation 1.
[162] *Ibid*. Recommendation 3.
[163] *Ibid*. Recommendation 17.
[164] FATF-GAFI: *FATF 40 Recommendations.* 2010. Recommendation 4.
[165] *Ibid*. Recommendations 5 to 11.
[166] *Ibid*. Recommendations 5 to 6 & 8 to 11.

attacks in 2001, the FATF issued a further nine recommendations focusing on the combating of terrorist financing [167].

The recommendations are not legally binding, however are effective as non-compliance can potentially result in what effectively constitute international sanctions[168]. These 'countermeasures' can include restrictions by FATF members (and via FSRBs) on financial institutions operating in jurisdictions the FATF's deems 'Non Cooperative Countries and Territories' (NCCTs) (popularly known as the Blacklist) [169] or restrictions by member states on other members, that insufficiently apply the FATF recommendations [170] As of the 13th of October 2006, however all NCCTs have officially been delisted [171] . Under normal circumstances the FATF relies on peer pressure and a 'name and shame' policy to convince countries to comply and maintains the ultimate resort of suspension from the FATF for non-compliance [172]. Blacklisting has the effect of creating a disincentive for potential investors to patronise the blacklisted jurisdiction, in effect creating an indirect sanctioning mechanism[173]. Countries, thus voluntarily commit to the implementation of the recommendations, with about 130 jurisdictions

---

[167] FATF-GAFI: *9 Special Recommendations (SR) on Terrorist Financing (TF).* 2004.

[168] Alexander.K. Dhumale.R. & Eatwell.J., *Global Governance of Financial Systems. The International Regulation of Systemic Risk.* Oxford University Press. 2006. Pg.68 and Persaud.B., *OECD Curbs on Offshore Financial Centres. A Major Issue for Small States*. The Round Table (2001), 359 (199–212). Pg.200.

[169] Schott. P.A, World Bank, International Monetary Fund. *Reference guide to anti-money laundering and combating the financing of terrorism.*Washington: World Bank Publications, 2006. Pg.iii 11.

[170] FATF-GAFI: *FATF 40 Recommendations.* 2010. Recommendation 21.
[171] FATF-GAFI: *High-risk and non-cooperative jurisdictions.* 2010.
[172] Schott. P.A, *Op.Cit.* Pg. iii 9.
[173] Picard. P.M. & Pieretti.P., *Bank Secrecy, Illicit Money and Offshore Financial Centers.* "Paolo Baffi" Centre Research Paper Series No. 45. 2009. Pg.2.

representing over 90 percent of global economic output having made some political commitment to implementation[174].

The OECD in parallel to the FATF blacklist, maintains a 'grey-list' of countries, which are non-compliant with OECD tax cooperation rules, and through the Global Forum on Transparency and Exchange of Information for Tax Proposes (*inter-alia*) seeks to provide guidance on the adoption of norms or administrative practices in response tax or economic issues. The OCED promotes transparency and information exchange, between jurisdictions so as to prevent tax evaders from relying on regulatory laxity to hide their assets, and to prevent jurisdictions from adopting measures which encourage low taxation, harmful tax competition, bank secrecy and financial and corporate opaqueness It operates with a view to level the playing field for competing jurisdictions and corporations by setting guidelines for dealing with tax havens and harmful or preferential tax regimes [175]. Countermeasures in response to non-compliance with OECD tax cooperation rules, in parallel to FATF, relies on the threat of sanctions (supported by the G-20) [176] although the OCED has generally been reluctant to employ such measures[177] . Countermeasures on a national level are more widely and successfully employed [178].

---

174 Shehu,A.Y., *International initiatives against corruption and money laundering: an overview*. Journal of Financial Crime 2005, Vol. 12, Iss. 3, p.221-245.2005. Pg.231-232.

175 *Ibid.*

176 From OECD., *Promoting Transparency and Exchange of Information for Tax Proposes.*

177 Sharman.J.C., *Havens in a storm: The struggle for global tax regulation*, Cornell University Press 117.2006. Pgs.54-56.

178 Tax deferral by placing income in OFC corporations can be regulated by employing Controlled Foreign Corporation Rules on a national level, although distinguishing between acceptable and harmful deferral. (Mccann,H., *Offshore Finance*, Cambridge University Press. 2006. Pgs. 112-14.) The practice of 'transfer pricing' (i.e. the non-arm's length sale of goods/services between international

The Financial Stability Board (FSB), which is also essentially a G7 body with links to the OECD, operates so as to bring all OFCs in line with international standards of regulation, supervision, disclosure, diligence and information-sharing. The rationale to this agenda is that OFCs attract large volumes of financial activity and do not meet international reporting standards and thus pose a risk to overall financial stability [179] .

The Wolfsberg Group of Banks is a private sector initiative consisting of large global banks [180] It seeks to institute international standardised preventative policies for financial services and products, know your customer requirements as well as anti-money laundering and terrorist finance. It came about in 2000, in response to a perceived need for greater harmonisation [181] The Wolfsberg Group operates sets of principles related to anti-money laundering in private banking, inter-bank relationships and client quality whilst endorsing the FATF recommendations on money laundering and terrorist finance.

---

divisions or subsidiaries of a parent company, to the end of either achieving a tax arbitrage or engineering the product price to limit taxation.) (Brittain-Catlin.W., *Offshore: The Dark Side of the Global Economy*. New York: Picador, 2006. Pgs.47-53.) has been addressed widely by local measures. Other measures can include thin capitalisation rules and limits to tax deductibility of certain kinds of coupon/interest payments.

[179] Levin. M., '*The prospects for offshore financial centres in Europe*', CEPS Research Reports, No. 29. 2002. Pg.17. Information also available at http://www.financialstabilityboard.org/

[180] Banco Santander, Bank of Tokyo-Mitsubishi UFJ, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase, Société Générale and UBS.

[181] Pieth.M & and Aiolfi.G., *"The Private Sector becomes active: The Wolfsberg Process".* Wolfsberg Group of Banks. 2005.

The Egmont Group of Financial Intelligence Units [182] is an informal association of FIUs, representing 108 jurisdictions by 2010 and an observer member of the FATF [183] . The Egmont Group is led by the US Financial Crimes Enforcement Unit (FinCEN United States), and seeks to support its member governments in addressing financial crimes, including money laundering [184]. Agencies of various governments, (subsequently FIUs) tailored to combat financial crime came together in 1995, to create the Egmont Group and was followed by its acceptance of financial bodies from many other jurisdictions. This may in some cases have been prompted by Recommendation 26 of the FATF promoting the creation of national FIUs so as to report suspicious transactions and information related to terrorism or money laundering [185]. For the purposes of money laundering, the Egmont Group provides support for national money laundering initiatives in dealing with international crimes [186]. Each FIU operates through interaction with domestic financial institutions, as well as local judicial and law enforcement authorities, whilst being able to rapidly communicate and exchange information with external FIUs to deal with international aspects of financial crime [187] . This is facilitated by the Egmont International Secure Web

---

[182] A FIU defined by the Egmont Group is a central, national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime and potential financing of terrorism, or (ii) required by national legislation or regulation, in order to counter money laundering and terrorism financing. From http://www.egmontgroup.org/ This definition is entirely consistent with the requirements of the Forty Recommendations. Schott. P.A, World Bank, International Monetary Fund. *Reference guide to anti-money laundering and combating the financing of terrorism.* Washington: World Bank Publications, 2006. Pg.VE-32.

[183] All observer members of the FATF are required to endorse FATF standards. From FATF-GAFI: *Policy on Observer Members.* 2008.

[184] Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.43.

[185] FATF-GAFI: *FATF 40 Recommendations.* 2010.

[186] Schott. P.A, *Op.Cit.* Pg.IR-30.

[187] From Egmont Group., *Information Paper on Financial Intelligence Units and the Egmont Group.* 2004.

System, which is used to communicate trends, analytical tools and financial intelligence between FIUs internationally [188] .

The International Monetary Fund is an intergovernmental organization of 187 countries, which primarily oversees macroeconomic stability and growth as well as offering leveraged loans to developing countries. The IMF and the World Bank (the second Bretton Woods organisation) both have parallel and identical goals for the purposes of anti-money laundering[189] . Both bodies are able to influence the way a country deals with the proceeds of crime or other illicit monies; the IMF through monitoring and the World Bank through conditions attached to development and other loans[190]. For such reasons the IMF is quite important in the diffusion and homogenisation of anti-money laundering laws, as after the FATF it is the only global organisation that can take *ex-post* enforcement action. The IMF defers to the FATF, in as much as endorsing the Forty Recommendations as the key set of standards in the global anti-money laundering regime [191]. The World Bank is an observer member of the FATF [192]. The IMF has also established a Multi-Donor Trust Fund to which its members have pledged over US$30 million for the purposes of developing global anti-money laundering infrastructure [193]. In addition the IMF provides technical support and inspects

---

188 Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.43.

189 Schott. P.A, World Bank, International Monetary Fund. *Reference guide to anti-money laundering and combating the financing of terrorism.*Washington: World Bank Publications, 2006. Pg.X-1.

190 Alldridge.P., *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery. Criminal Laundering & Taxation of the Proceeds of Crime*. Oregon: Hart Publishing. 2003. Pg.104.

191 Beare, M.E. & Schneider.S., *Op.Cit*. Pg.46.

192 FATF-GAFI: *Members and Observers.* 2010.

193 International Monetary Fund Factsheet: *The IMF and the Fight Against Money Laundering and the Financing of Terrorism*. April 5, 2010.

anti-money laundering targets into its macroeconomic surveillance and global operations [194].

The United Nations Office on Drugs and Crime (UNODC) has a global anti-money laundering programme, which covers terrorist finance and the proceeds of crime. It creation came about in 1997 by mandate given to UNODC through the UN Convention against *Illicit Traffic in Narcotic Drugs and Psychotropic Substances* of 1988, followed by the extension of its ambit, to all serious crimes in 1998 [195] . The UNODC has observer status with the FATF [196]. The United Nations as a whole, subscribes to the Forty Recommendations [197] and on an operational level seeks to aid Member States implement measures against money-laundering and terror finance as well as in detecting, seizing and confiscating criminal proceeds [198].

Other global bodies, which mainly diffuse and contribute to the *ex-ante* preventative anti-money laundering model, within the framework of the Forty Recommendations, as well as against harmful tax competition, include the Basel Committee and the International Organization of Securities Commissions amongst others.

[194] Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.47.
[195] From UNODC., *UNODC on money-laundering and countering the financing of terrorism.*
[196] FATF-GAFI: *Members and Observers.* 2010.
[197] Resolution 1617 (2005) of the UN Security Council: '' Strongly urges all Member States to implement the comprehensive ,international standards embodied in the Financial Action Task Force's(FATF) Forty Recommendations on Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing;'' Resolution 60/288 of the UN General Assembly (20 Sept 2006): Annexed Plan of Action: 'To encourage States to implement the comprehensive international standards embodied in the Forty Recommendations on Money-Laundering and Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force, recognizing that States may require assistance in implementing them;''

[198] From UNODC., *UNODC on money-laundering and countering the financing of terrorism.*

3.2: The Regional Framework.

Aside from the FRSBs discussed above, the most important regional actor in the International money laundering framework is the European Union. The European Union operates a single common market and the institutions' directives; the principal legal basis to the Union's money laundering regime are binding, in as much as the result to be archived but with discretion upon the members states' as to the means of implantation [199]. Money laundering is seen as an impediment to economic integration and a significant threat to the integrity of the common market [200]. The first money laundering directive (91/308/EEC) was based on the Forty Recommendations. This was followed by then Directive 2001/97/EC which extended the definition of predicate offences to those beyond drugs trafficking and both directives were consolidated into Directive 2005/60/EC [201]. This 'third' directive implements the revised FATF Recommendations and also those related to terrorist finance,[202] and has the main purpose of aligning the anti-money laundering systems of the European member states with the FATF [203]. Article.21 requires the establishment of FIUs by the member states, in parallel to both the FATF and Egmont Group's requirements and definitions [204]. Article 1(3) of 2005/60/EC [205] creates the possibility of the European institutions exerting an extraterritorial jurisdiction, regardless of whether the activity was criminal in the

[199] Art. 288 of the Treaty on the Functioning of the European Union.
[200] Levin. M., '*The prospects for offshore financial centres in Europe*', CEPS Research Reports, No. 29. 2002. Pg.25
[201] Directive 2005/60/EC European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
[202] From Euractiv Network., *Money Laundering.* 27 May 2005.
[203] Katz.E., *Implementation of the Third Money Laundering Directive – an overview*. Pg.207.
[204] See Footnote. 185.
[205] Money laundering shall be regarded as such even where the activities which generated the property to be laundered were perpetrated in the territory of another Member State or in that of a third country. OJ 25. 11. 205. L309/15.

country where it occurred [206]. The directive implements a 'parent' form of extraterritoriality, where European undertakings must subject their subsidiaries in third countries to the customer due diligence and disclosure requirements [207].

Although there seems to be a drive towards harmonisation across the European Union, there are tensions as to the implementation of the third money laundering directive between member states [208] . The UK, France, and Germany, which are G7 members are strongly in favour of harmonised implementation. EU jurisdictions, which have an established offshore status such as Luxembourg and the British Crown Dependencies, as well as non-EC European States Lichtenstein and Switzerland etc. are subject to the territorial and extraterritorial scope of 2005/60/EC mainly through pressure from other members.

The European Commission is a member of the FATF and establishes by declaration, that the FATF is its reference for money laundering prevention [209]. The Commission is instrumental in implementing FATF countermeasures against NCCT's trading with EU members [210]. The EU Financial Intelligence Units' platform operates under the Commission, which is an organization of the member states FIUs and gathers financial intelligence from the Member States.

Europol and Eurojust (the European law enforcement and judicial cooperation agencies) have observer status of the FATF [211]. The European Central

---

[206] Zerk.J.A., "*Extraterritorial jurisdiction: lessons for the business and human rights sphere from six regulatory areas*." Corporate Social Responsibility Initiative Working Paper No. 59. 2010. Pg.116.

[207] Article.31 of Directive. 2005/60/EC

[208] Demonstrable from the aftermath of the Clearstream Affair Discussed in Robert.D & Backes.E., *Revelation$*. LesArênes, 2001.

[209] European Commission., *Financial Crime*. 2010.

[210] Turco.M., *Written Question E-3497/01 to the Commission. EU cooperation with countries which do not cooperate with the FATF (Financial Action Task Force on Money Laundering, established within the OECD).* Official Journal 277 E , 14/11/2002 P. 0006 – 0008. 2002.

[211] FATF-GAFI: *Members and Observers.* 2010.

Bank, which also has observer status, endorses the FATF's Forty Recommendations and convergence of anti-money laundering regulation across the member states [212].

Relocation to avoid taxation has also been a concern in the European Union, as has the trend of 'Belgian dentists' [213] relying on European OFCs such as Luxembourg, Liechtenstein and Switzerland to avoid home taxes [214]. To such ends, the Economic and Financial Affairs Council (ECOFIN) under the Council of the European Union created a non-legally binding Code of Conduct for business taxation [215], which prevents the creation of new harmful tax measures, by member states (including the UK Crown Dependencies) as well as homogenisation, is as much as differences of the policies of member states, with the Code of Conduct [216].

Other measures include the automatic sharing of information by member states regarding beneficial recipients of interest income within the EU, under the Tax Savings Directive, [217] preventing citizens within the single market from failing to disclose returns on their savings in their home country. Currently structural allowances have been made for Austria, Belgium and Luxembourg in the form of an incrementally increasing withholding tax [218].

[212] OJ C 40, 17.2.2005 Para.5.

[213] Generic term for the European retail buyer of eurobonds, representing high-income professionals keen to minimise tax and maximise yields. From Carew.E., *The Language of Money*. Allen & Unwin Academic. 1996.

[214] Sharman.J.C., *Havens in a storm: The struggle for global tax regulation*, Cornell University Press 117.2006. Pgs.28-29.
[215] Conclusions of the ECOFIN Council Meeting 98/C2/01.
[216] *Ibid.*
[217] (Council Directive 2003/48/EC,
[218] Paying agents will automatically deduct tax from interest income earned and pass it to their local tax authority, indicating how much of the total amount relates to customers in each Member State. The local tax authority will then keep 25% of the total amount collected and remit 75% to the various tax authorities within the Member States. The receiving country gets a bulk payment preserving

In April 2009 the Commission adopted anon-binding Communication identifying good governance in the tax matters for member states (including transparency, exchange of information and fair tax competition) which follows the principles and conclusions of the G20 and OECD concerning uncooperative tax jurisdictions [219].

The Council of Europe, although not an institution of the European Union is a political intergovernmental organisation of 47 members states. The Council has had an anti-money laundering initiative since 1977, which in 2002 was developed into the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) [220] . MONEYVAL operates as the regional FSRB for the Council of Europe member countries, which are not members of the FATF, although MONEYVAL itself is an associate member of the FATF, subsequent to its observer status until 2006 [221]. The members of MONEYVAL include most non-OECD European countries [222] and MONEYVAL also cooperates with the Bretton Woods organizations.

anonymity. The rate of withholding tax will be 15% from July 2005, 20% from 1st July 2008, and possibly 35% from July 2011. Para.1 (Council Directive 2003/48/EC,)

[219] Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee., *Promoting Good Governance in Tax Matters.* Brussels, 28.4.2009 COM(2009) 201 final. 2009.

[220] From Council Of Europe., *MONEYVAL in brief. What are MONEYVAL's objectives?*
[221] *Ibid.*
[222] Council Of Europe., *Country Profiles.* 2010.

3.3 The National Framework.

National enforcement is usually within the jurisdiction of national judicial and law enforcement authorities. For the purposes of the FATF, states are required to create FIUs [223] to provide a mechanism for suspicious transactional reporting by financial institutions etc. and international information sharing, [224] which interact with local authorities in order to act against money laundering and terror finance. The role and functions of FIUs, however are left to the Egmont Group of which, FIUs (via their countries') should seek to become members of upon formation [225], Although FIUs are basically required to receive, analyse and disseminate financial intelligence [226], they can vary hugely in terms of both structure and effectiveness depending on the jurisdiction in question [227].

On a national level, the main actor and initiator of global anti-money laundering and more recently anti-terrorist financing projects is the US. The motivations for such initiatives perhaps come from the fact that the US is estimated to account for more than half of all money laundered globally [228], of which, according to the US Treasury 99.9% is laundered successfully [229].

---

[223] See Footnote. 185.
[224] FATF-GAFI: *FATF 40 Recommendations.* 2010. Recommendations. 26 and 31.
[225] *Ibid.* Recommendations. 26. Interpretive Notes.
[226] Schott. P.A, World Bank, International Monetary Fund. *Reference guide to anti-money laundering and combating the financing of terrorism.* Washington: World Bank Publications, 2006. Pg.VE.32.
[227] Great Britain: Parliament: House of Lords: European Union Committee. *Money Laundering and the Financing of Terrorism.* The Stationery Office, 2009. Pgs.55-59.

[228] Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*. University of Warwick: CSGR Working Paper No 161/05. May 2005. Pg.7, citing an FBI Report of 2001. Also in Petras. J., *US Bank Money Laundering-Enormous By Any Measure*. 9-1-2. New York. Binghamton University Aug.2010.

[229] *Ibid.*

The *Bank Secrecy Act* of 1970; an early initiative requires threshold based record keeping by financial institutions, securities brokers and dealers etc. of their customer transactions and accounts, so as to create an audit trail, whilst precluding the necessity for the cooperation of other jurisdictions [230]. This reporting regime was amended by the *Comprehensive Crime Control Act* of 1984, setting the threshold at transactions in excess of $10,000 [231]. In addition the US emphasised the scope of its money laundering regime, taking extraterritorial jurisdiction in a number of cases on the basis that the interests of the US in enforcing the Court's of their courts outweighed the interests of bank secrecy in other jurisdictions [232]. The 1984 Act after further amendments was followed by the *Money Laundering Control Act* of 1986, which criminalised money laundering and the knowing assistance by third parties to acts of money laundering, [233] in effect laying down the template for the FATF's 40 Recommendations.

Upon impetus from the events of 9/11, the US *Patriot Act* [234] was enacted in 2001 to consolidate existing and proposed anti-money laundering regulation and introduced the idea that money and security transfer systems should not be utilized by anonymous persons or persons hostile to the United States [235]. The 2001 Act is implemented by a variety of organisations including FinCEN, the FBI and the Office of Foreign Asset Control (OFAC) prohibiting front/shell banks from

---

[230] Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Pg.97.

[231] *Ibid.*

[232] Such as in *United States vs. Bank of Nova Scotia*, 740 F.2d 817, *823,* 824, *(11th Cir.* 1984*).*

[233] From Gurule.J., *The Money Laundering Control Act of 1986: creating a new federal offense or merely affording federal prosecutors an alternative means of punishing specified unlawful activity?* American Criminal Law Review, Vol. 32, 1995.

[234] An act to "*Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001,*"

[235] Muller.W.H.. Kälin.C.H. & Goldsmith.J.G., *Anti-money laundering: international law and practice*. John Wiley and Sons, 2007. Pg.111.

maintaining US accounts [236] and also creating further diligence and reporting requirements for 'high risk jurisdictions' [237] as designated by the FATF [238]. The *Patriot Act*, extending the scope of the *Money Laundering Control Act* of 1986 creates formalised extraterritorial powers for US authorities allowing the [239] of records, data and other information held by foreign banks, and the right to seize the funds of foreign banks held in US inter-bank accounts [240].

The global anti-money laundering regime is progressively converging and homogenising, primarily as almost all global initiatives rely on the FATF as the principal standard-setting organisation. The FSRB structures derivative of the FATF, are for the purposes of policy, essentially offshoots of the greater body. All other international initiatives, including the Bretton Woods organisations and the UN as well the Egmont Group fully endorse the 40 Recommendations. This position is also true on the regional and national level, with all new-comers to the anti-money laundering regime, necessarily enacting multilateral or domestic initiatives in conformity to the FATF.

---

[236] s.313.

[237] s.312.

[238] Zerk.J.A., "*Extraterritorial jurisdiction: lessons for the business and human rights sphere from six regulatory areas*." Corporate Social Responsibility Initiative Working Paper No. 59. 2010.Pg.128.

[239] Roughly similar to a claim form in the UK. An order directed at persons/corporations requiring an appearance in court to testify/produce documents. The *Patriot Act* etc. allows foreign corporations to constitute persons for such purposes.

[240] Zerk.J.A., *Op.Cit*. Pg.127.

Chapter 4:

The Anti-Money Framework: Globalisation, Homogenisation and Legitimacy.

Money laundering "reflects and energises" globalisation more than any other crime [241]. The FATF maintain that the globalisation of anti-money laundering regulation is founded in a response to the increasingly International nature of criminal activities, including bribing foreign officials, drug trafficking, corruption and terrorism [242]. Such internationalisation of criminal activities has occurred in parallel with the globalisation of the World economy [243]. On this basis the FATF seeks to extend the scope of a normative illegality to money laundering globally. The European Union takes a similar position, such as in Recital. 35 of the preamble to Directive 2005/60/EC, whereby money laundering and terrorist financing are international problems and the effort to combat them should be global. The liberalisation of financial markets, exchange controls, internet based commerce and instantaneous payment systems have markedly increased the volume and flow of international transactions, [244] which in turn provide ample and flexible opportunities to disguise illicit funds [245], as well as detract from any adequate identification of the *locus delicti* of international offences.

Methods to avoid detection of money laundering such as money transfer between jurisdictions through the use of electronic money and wire transfers or

[241] Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008. Pg.438.

[242] FATF-GAFI: *Money Laundering FAQ.* 2010.
[243] Stessens.G., *Money laundering: a new international law enforcement model*. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000. Pg.90.
[244] Hinterseer.K., *Criminal Finance: The Political Economy of Money Laundering in a Comparative Legal Context.* The Hague: Kluwer Publishers. 2002. Pg.24. Also Alldridge.P., *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery. Criminal Laundering & Taxation of the Proceeds of Crime*. Oregon: Hart Publishing. 2003. Pg.92.
[245] Stessens.G., *Op.Cit.* Pg.92.

informal methods such as hundi/hawala [246] as well as reliance on corporate anonymity, attorney-client privilege and banking confidentiality, competitive pressures and regulatory arbitrage [247] opportunities in other jurisdictions all aggravate and indeed highlight the global nature of money laundering. The progressive internationalisation of the global economy [248] necessitates the regulation of that, which can only be regulated by international cooperation and to such ends the FATF maintains that global coverage, implementation of the set principles of the FATF and global compliance are critical to the fight against money laundering[249]. The effect of these efforts of the FATF is a generally homogenised strategy against money laundering and terrorist financing in its largely OECD member states [250] and beyond.

This is particular as the FATF is the principal diffusing body of anti-money laundering law [251]. The Forty Recommendations are endorsed and implemented by the various regional FSRBs and implementing states, in what seems like a primarily vertical relationship, through funding and guidance provided centrally by the FATF [252]. There is very little (if not any) consideration of local political and economic issues with virtually no input from the affected parties' and stakeholders. The nature of the implementation of the FATF recommendations

---

[246] FATF-GAFI: *Report on New Payment Methods.* 2006.
[247] Regulatory arbitrage is where a regulated institution takes advantage of the difference between its real (or economic) risk and the regulatory position.
[248] FATF-GAFI: *Revised Mandate. 2008 to 2012.*

[249] FATF-GAFI: *Towards Global Coverage and Compliance*. Speech by FATF President Paul Vlaanderen to the 8th Ad Hoc GIABA Ministerial Committee Meeting Praia, Cape Verde, 5 May 2010.
[250] Cuéllar. M.F., *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*. 93 Journal of Criminal Law & Criminology 311-465. 2003. Pg.376.

[251] Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*. University of Warwick: CSGR Working Paper No 161/05. May 2005. Pgs.7-9.

[252] Hülsse.R. & Kerwer.D.,*Global Standards in Action: Insights from Anti-Money Laundering Regulation*. DOI: 10.1177/1350508407080311. Organization 2007; 14; 625. Sage Publications. 2007.Pg.636.

remains 'a one size fits all' model and the ambit of the FATF is maintained as an exclusive organisation.

The FATF claim that money laundering occurs across the World, wherever 'money generating crime' can occur [253]. Alternatively other sources such as the US Department of State [254] and commentators [255] show most developing nations are generally (with some exceptions) at lower levels of risk in terms of potential money laundering. FATF non-compliers and non co-operative jurisdictions, do not necessarily constitute countries posing significant money laundering risks, but are rather simply countries which do not implement FATF's guidance and recommendations to adequate levels. A country, for instance, cannot argue that its exposure to money laundering is so low that it need not adopt the FATF's criminalisation of money laundering or establish a financial intelligence unit [256].

253 FATF-GAFI: *Money Laundering FAQ.* 2010,

254 US Department of State., *International Narcotics Control Strategy Report: Major Money Laundering Countries*. 2007. See Table.1.

255 From Lilliey, P. *Dirty Dealing.* 3rd edition, Kogan Page. 2006.

256 De Koker.L., *Identifying and managing low money laundering risk: perspectives on FATF's risk-based guidance.* Journal of Financial Crime.2009.

FATF MEMBER STATES	OECD MEMBER STATES	Above World GDP(PPP) $10,500. (WB 2009).	EXCHANGE MARKETCAP $100bn+ (WFE/Wikinvest 2009).*	MONEY LAUNDERING RISK INDEX RATING †	OECD GDP $m 2009. (World Bank 2009).\\
Argentina		Y	Y	C	
Australia	Y	Y	Y	PC	924843
Austria	Y	Y	Y	PC	384908
Belgium	Y	Y	Y‡	C	497586
Brazil		Y	Y	PC	
Canada	Y	Y	Y	PC	1336067
China			Y	PC	
Denmark	Y	Y	Y	LR	309596
EC Commission	Y	n/a.	n/a.	n/a.	n/a.
Finland	Y	Y	Y	M	237512
France	Y	Y	Y‡	PC	2649390
Germany	Y	Y	Y	PC	3346702
Greece	Y	Y		PC	329924
Hong Kong		Y	Y	PC	
Iceland	Y	Y		M	12133
India			Y	PC	
Ireland	Y	Y	Y	C	227193
Italy	Y	Y	Y	PC	2112780
Japan	Y	Y	Y	PC	5067526
Luxembourg	Y	Y	Y	PC	52449
Mexico	Y	Y		PC	874902
Netherlands	Y	Y	Y‡	PC	792128
New Zealand	Y	Y	Y	M	125160
Norway	Y	Y	Y	M	381766
Portugal	Y	Y	Y	C	227676
Rep.of Korea	Y	Y	Y	C	832512
Russian Fed.		Y	Not Available.	PC	
Singapore		Y	Y	PC	
South Africa		Y	Y	C	
Spain	Y	Y	Y	PC	1460250
Sweden	Y	Y	Y	M	406072
Switzerland	Y	Y	Y	PC	500260
Turkey	Y	Y	Not Available.	PC	617099
United Kingdom	Y	Y	Y	PC	2174530
United States	Y	Y	Y	PC	14256300
Gulf Co-op. Council		Y§	n/a.	C¶	
	Chile	Y	Y	C	
	Czech Rep.	Y		C	
	Hungary	Y		C	
	Poland	Y	Y	C	
	Slovak Rep.	Y		C	
	Slovenia	Y		M	
Total: \\					**40137264**

LEGEND CODES: PC= Primary Concern. C=Concern. M=Monitored Only. LR= Low to No Risk. Y= Yes.

* Collectively accounting for 75 % (approx.) of total global market capitalisation. The World Federation of Exchanges. Statistics. WFE.2009.

† US State Dept. Data: *Major Money Laundering Countries*. 2007.

‡ Including Euronext.

§ Member States.

¶ The UAE is of Primary Concern and only Oman is Monitored.

\\ Accounting for 70% of World GDP. (World Total $58,133,309m)
From: The World Bank., World Development Indicators database. Gross domestic product. World Bank. 2009.

Table 1: Analysis of FATF member states.

Other evidence suggests that although many mechanisms, which promote financial globalisation are in place, the global financial market is in fact far from globalised. The US alone for instance imports about 72% of all global capital exported with a majority originating in Japan [257]. Similarly there is a 70% 'home bias' in terms of portfolio diversification for the US and 63% for a sample of developed countries [258]. Other indicators include the lack of correlation between savings and investment levels within countries, which should conform globally as investors diversify their portfolios across different markets. It seems that such capital flows are mostly concentrated in the OECD [259] and it is therefore more accurate to say that the global financial system is polarised towards wealthier nations, which suggests that contrary to the FATF's claims, money laundering is more likely to occur in wealthier nations. This is particular if deeper financial integration does indeed motivate deeper financial criminality. [260] Furthermore, many developing nations simply do not have the financial infrastructure to facilitate money laundering,

Most OECD countries and indeed FATF countries are of primary concern as money laundering nations [261] however action by the FATF is geared towards non-(G7)G8 member countries although by FATF's own standards, non-compliance is highly evident of its more powerful member states [262].

The 'new order' of international regulation against OFCs represents a radical change in accepted banking principles. It exceeds anything that OECD

---

[257] From Stulz.R., *The Limits of Financial Globalization.* Journal of Finance. 1595 LX. 2005.
[258] *Ibid.*
[259] Scott.H.S., *International Finance: Law and Regulation.* Sweet & Maxwell 2007. Pg.13.
[260] Shown empirically by Picard. P.M. & Pieretti.P., *Bank Secrecy, Illicit Money and Offshore Financial Centers.* "Paolo Baffi" Centre Research Paper Series No. 45. 2009.

[261] US Department of State., *International Narcotics Control Strategy Report: Major Money Laundering Countries*. 2007.
[262] Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.41.

countries have achieved amongst themselves in terms of tax cooperation and compliance shall directly benefit OECD countries and their tax authorities at the expense of OFCs and their economies [263].

The FATF suffers from a severe 'input legitimacy' [264] gap. It is in essence an OECD body, with legitimacy inputs from the IMF and World Bank [265] and is mainly representative of developed economies [266] The recommendations themselves are focused on the US-centric criminal and regulatory enforcement approaches to combating money laundering and disrupting criminal finance,[267] and the FATF has often accepted guidance and funding from the US [268].

In spite of the extent of global commitment to the FATF (130 jurisdictions) only its 33 members were instrumental in framing the Forty Recommendations having the power of final approval with little or no input from the jurisdictions to be subjected to the FATF regimen[269] The various regional FSRBs are required to endorse and implement the Forty Recommendations rather than develop any of

---

[263] Persaud.B., *OECD Curbs on Offshore Financial Centres. A Major Issue for Small States*. The Round Table (2001), 359 (199–212). 2001. Pg.206.

[264] Input legitimacy describes the understanding that rules are legitimate as rule making has followed some democratic procedures, through representation or inclusion of the affected stakeholders; (those parties' to whom principal entities' 'should' discharge an accountability to. From Standard and Poor's definition. In Bradley.N., *Corporate Governance: A Risk worth Measuring*. UNCTAD/ITE/TEB/2003/3). Scharpf,F.W., *Democratic Policy in Europe*. European Law Journal. Volume 2, Issue 2, pgs. 136–155, July 1996 Scharpf. F.W, *Governing in Europe. Effective and Democratic?* Oxford: Oxford University Press, 1999.

[265] Drezner.D.W.,*The Viscosity of Gloobal Governance: When is Forum Shopping Expensive.The Fletcher School. Tufts University*. November 2006. Pg.17.

[266] See Table.1.

[267] Cuéllar. M.F., *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*. 93 Journal of Criminal Law & Criminology 311-465. 2003. Pg.375.

[268] From Wechsler.W.F., *Follow the Money*. From Foreign Affairs, July/August 2001.

[269] Alexander.K. Dhumale.R. & Eatwell.J., *Global Governance of Financial Systems. The International Regulation of Systemic Risk.* Oxford University Press. 2006. Pgs.73-73.

their own, and receive extensive technical and financial assistance from the FATF [270]. On a national level compliance with the Forty Recommendations consists of extremely intrusive 'micro management', with highly detailed legislative and administrative directives prescribing the nature of 'improvements' that states must enact [271]. The FATF has thus been described as a deliberately unrepresentative agency attempting to enforce its selected standards globally [272].

Although suggestions have been made as to the possibility of FATF having a degree of 'output legitimacy' [273] i.e. where enacted policies meet the interests of the concerned stakeholders [274], this can only be the case if jurisdictions, which are non-compliant or are otherwise domestically politically or economically disincentivised from compliance with the FATF are excluded from the class of stakeholders.

The FATF is not created out by treaty and its regimen has none of the legitimacy of the consent of the jurisdictions subject to the Forty Recommendations and countermeasures, which potentially may violate international law [275]. Such lack of legitimacy (amidst complaints from the IMF and

---

[270] Hülsse.R. & Kerwer.D.,*Global Standards in Action: Insights from Anti-Money Laundering Regulation*. DOI: 10.1177/1350508407080311. Organization 2007; 14; 625. Sage Publications. 2007. Pg.636.

[271] Such as the case of the Bahamas as cited by Doyle.T., *Cleaning up anti-money laundering strategies: current FATF tactics needlessly violate international law*. Houston Journal of International Law. 2002.

[272] Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008. Pg.443.

[273] Such as that the FATF seeks to balance between input and output legitimacy, and thus between legitimacy and effectiveness, whereby output legitimacy increases as parties' subject to the FATF's regime increasingly participate and contribute. Hülsse.R. & Kerwer.D., *Loc.Cit.*

[274] Scharpf. F.W, *Governing in Europe. Effective and Democratic?* Oxford: Oxford University Press, 1999. Pg.99.

[275] Such as Art.2 of the UN Charter setting out sovereign equality and non intervention. The General Assembly resolution 2131 (XX) of December 1960 on *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States* holds:
i) No state has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal affairs or external affairs of another state. The armed intervention and all other forms of interference

World Bank [276] is thought to be why the FATF (temporarily) ceased its practice of blacklisting as subject jurisdictions could argue that FATF being an 'exclusive club' cannot interfere in national internal affairs and competences directly [277]. In its pursuit of legitimacy, the FATF wound down its NCCT list, seemingly in exchange for endorsement of the Forty Recommendations by the IMF [278]. The FATF, nevertheless recently issued a 'statement' (short of unreserved blacklisting) which listed Iran, Pakistan. Turkmenistan, Uzbekistan and São Tomé and Príncipe as threats to the International financial system [279]. Currently the FATF suggests that "as of 13 October 2006, there are no Non-Cooperative Countries and Territories"[280], although other sources [281] suggest that a form of default blacklisting with the threat of sanctions, is a continuing FATF strategy, with a movement away from explicit labelling of jurisdictions as NCCTs.

---

or attempted threats against the personality of the State or against its political, economic and cultural element, are condemned.
ii) No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to get him to make the exercise of its sovereign rights to away from it advantages of any kind. In addition, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrown the regime of another State, or interfere in civil unrest in another State.
Art.41 of the UN Charter similarly requires the Security Council to legitimise sanctions.
The FATF may also violate International Trade law possibly under GATT. Alexander.K. Dhumale.R. & Eatwell.J., *Global Governance of Financial Systems. The International Regulation of Systemic Risk.* Oxford University Press. 2006. Pg.74.

[276] Hülsse. R.,*Creating Demand for Global Governance: The Making of a Global Money-laundering Problem*. Global Society, Vol. 21, No. 2. Routledge Publishers April, 2007. Pg.167.

[277] Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008. Pg.444

[278] Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*. University of Warwick: CSGR Working Paper No 161/05. May 2005. Pg.11.

[279] FATF-GAFI: *FATF Statement.* February 2009.
[280] FATF-GAFI: *High-risk and non-cooperative jurisdictions* . 2010.
[281] Daily Times., *FATF blacklists Pakistan for terror financing, Saturday, February 20,* 2010. The Anti Money Laundering Network and Group Companies. *Sanctions: Not quite FATF NCCT. But close*. 19 February 2010. Reuters., *Group to reveal laundering, terror funding blacklist* 17 Feb 2010.

The blacklisting procedures of the FATF have also been argued to be reserved specifically for non-G7/G8 [282] countries, in spite of evidence of non-compliance by more powerful FATF members. The United States, Canada and Luxembourg, although consistently shown to fail to meet the standards required of the Forty Recommendations have had no likelihood of ever appearing on NCCT list or being subject to any FATF countermeasures [283]. It has also been suggested that blacklisting may be counterproductive by certifying and signalling the offshore opportunities a jurisdiction provides, to that jurisdiction's benefit [284]. Notably regulatory reform alone, subsequent to blacklisting does not in fact detract from a position of non-cooperation (the false friend effect) [285] as jurisdictions simply enact legislative changes etc. to be removed from the blacklist, with significant money laundering occurring in jurisdictions such as the Bahamas and the Caymans long after removal from the NCCT list [286]. This may simply be because the extent of pressure exerted by the FATF jurisdictions, is only enough to just compel compliance, and is biased towards domestic profits rather than the elimination of criminality [287].

---

[282] Russia joined the FATF after being delisted.

[283] Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.41, Blickman.T., *Countering Illicit and Unregulated Money Flows,Money Laundering, Tax Evasion and Financial Regulation*. Crime & Globalisation, Transnational Institute Briefing Series December 2009. Pg.19. Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*. University of Warwick: CSGR Working Paper No 161/05. May 2005. Pg.4.

[284] Masciandaro. D., *Money Laundering and Financial Offshore Centres: A Political Economy Approach.* Eisevier B.V. 2006. Pg.338.

[285] Masciandaro. D., *Economics of Money Laundering : A Primer. Paolo* Baffi Centre Bocconi University Working Paper No. 171.2. 2007. Pg337.

[286] From Murphy.R., *The EU money laundering white list*. Tax Research UK. June 2010, and Pinder .M.N., *Bahamas Still A Major Money Laundering Centre, Report Claims.* The Bahama Journal.2005.

[287] Picard. P.M. & Pieretti.P., *Bank Secrecy, Illicit Money and Offshore Financial Centers.* "Paolo Baffi" Centre Research Paper Series No. 45. 2009. Pg.30

The implementation of the Forty Recommendations, as well as FATF and OECD blacklisting and threats to sanction detract from the commitments to the free movement of capital and goods of the OECD [288] in as much as non-OECD members and the EU, with regards to third states. If effect, the FATF acts as the protectionist arm of the OCED, with the purpose of although allowing the OECD to avail all the benefits of globalisation, externalising the externalities of money laundering and domestic tax evasion to poorer nations. The costs of implementation and compliance with reporting requirements and disclosure standards are thought to be much higher for developing countries and may have the effect of actually driving liquidity from the formal market to the underground economy [289]. The costs of compliance are disproportionately high on developing countries' financial operations as compared to those in the developed world, which can internalise such costs owing to better national financial infrastructure, market depth and economies of scale [290]. Estimates given by FinCEN suggest the figure of $109million annually in compliance costs alone, without considering training, FIU/institution building and other costs [291]. A second global figure, alleged to be from the American Bankers Association cites $10 billion in overall implementation costs [292].

The FATF's trade-off between democracy and effectiveness and the policy asymmetries that the Forty Recommendations entail, are a clear rejection of

[288] OECD., *Trade and the economic recovery: why open markets matter*. May 2010.
[289] Alexander.K. Dhumale.R. & Eatwell.J., *Global Governance of Financial Systems. The International Regulation of Systemic Risk.* Oxford University Press. 2006. Pgs.72-73.

[290] *Ibid.* It seems that these costs may also be too high, for developing countries, where for lack of any evidence of the general effectiveness of implementing money laundering regulations, in pursuit of "uncertain positive effects" doubts have been raised as to the investment of 400m SEK ($54m) in improving the anti-money laundering infrastructure of banks and regulators. Magnusson.D., "*The costs of implementing the anti-money laundering regulations in Sweden*". Journal of Money Laundering Control, Vol. 12 Iss: 2, pp.101 – 112. 2009.
[291] Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.74.
[292] *Ibid.*

economic efficiency and the possibility of regulatory competition, in terms of movement of capital to jurisdictions of least regulation and taxation [293]. Hülsse amongst other commentators suggests that the FATF has essentially 'talked' money laundering, as a global problem, requiring a global solution into existence, whilst employing a mixture of coercion and persuasion in order to implement their purpose. In his analysis of the discourse surrounding the issue of money laundering, and active 'problemisation' [294] of money laundering by the FATF, he describes the worldwide nature of money laundering as suggested by the FATF (as opposed to an exclusively Western phenomenon) as 'constructed' by merits of the mandate given to the FATF by the World's richest countries [295]. This, along with FATF domination of the institutional framework of the World's anti-money laundering regime and expert knowledge and advice provided by the FATF makes it extremely difficult for other countries, to cast doubts as to the FATF's views. In the course of its problemisation of money laundering, the FATF rhetorically necessitates the phenomenon, as an objective problem through 'raising awareness' about money laundering and by merits of its domination of the institutional framework, does not need to justify its position [296]. The FATF has possibly owing to its waning legitimacy, problemised money laundering by 'firmly linking it to other, arguably better established political problems, such as crime and

---

[293] Doyle.T., *Cleaning up anti-money laundering strategies: current FATF tactics needlessly violate international law*. Houston Journal of International Law. 2002. Pg.11

[294] "(B)y problemisation we mean the way in which experience comes to be organised so as to render something as a "problem " to be addressed and rectified: interpretive schemes for codifying experience, ways of evaluating it in relation to particular norms, and ways of linking it up to wider social and economic concerns and objectives." From Miller.P. & N . Rose, "*Production, Identity, and Democracy*" Theory and Society. 24 1995 Pg. 429. In Allen.B., *Corporate Theory: Jurisprudence's Heart of Darkness*. The University of British Columbia. 1996.

[295] Hülsse. R.,*Creating Demand for Global Governance: The Making of a Global Money-laundering Problem*. Global Society, Vol. 21, No. 2. Routledge Publishers April, 2007. Pg.169.

[296] *Ibid*. Pg.170.

terrorism'[297] and creating it as a 'meta crime' behind organised crime and terrorism[298].

The Egmont Group suffers from issues, between the different forms and architectures of FIUs across the World, with some being closer to law enforcement and thus more effective than others [299] and some FIUs being mere token organisations [300]. Not all FIUs are in fact capable of exchanging sensitive information related to policing or law enforcement, which can lead to misunderstandings or miscommunications and ultimately failures in taking action against serious financial crime [301].

The US position following 9/11 has been highly aggressive and extraterritoriality under the *Patriot Act* has been seen to conflict with competences in other jurisdictions. This is particular as the scope of the US criminal jurisdiction under the 2001 Act has been extended *exclusively* to cover money laundering though foreign banks. This jurisdiction also extends to foreign account holding institutions in the US for the purposes of penalties even if the questionable transaction, is without of the US [302]. The 2006 Society for Worldwide Interbank Financial Telecommunications (SWIFT) case demonstrates the potential for conflict originating from the *Patriot Act*. SWIFT a European undertaking with

---

297 *Ibid.* Pg.173.

298 *Ibid.*

299 Great Britain: Parliament: House of Lords: European Union Committee. *Money Laundering and the Financing of Terrorism.* The Stationery Office, 2009. Paras. 55 to 59.

300 Such as Saudi Arabia, which was seemingly admitted to the Group to incentivise its efforts in the War on Terror. Dorsey. J.M., *Saudis fail to halt terrorism funding despite minor gains*. Deutsche Welle.20 Dec 2009.

301 Great Britain: Parliament: House of Lords: European Union Committee. *Money Laundering and the Financing of Terrorism. Loc.Cit.* Also discussed in Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.43.

302 Doyle,C., *The USA Patriot Act: A Sketch*.CRS Report for Congress. April 18, 2002. Zerk.J.A., "*Extraterritorial jurisdiction: lessons for the business and human rights sphere from six regulatory areas*." Corporate Social Responsibility Initiative Working Paper No. 59. 2010.

a US presence was subpoenaed by OFAC. Amidst accusations of commercial espionage and of the US seeking competitive advantages, [303] compliance with the subpoena according to the Belgian Data Protection Authority had resulted in violations of Belgium's enactment of Directive 95/46/EC (Data Protection Directive) and possibly the right to protection of personal data under the *Charter of Fundamental Rights of the European Union* (Article. 8) [304]. The European Parliament rejected an interim EU/US agreement data sharing agreement regarding SWIFT on grounds that it did not protect European civil liberties and fundamental rights in February 2010, although the Council did attempt to negotiate an agreement with the US [305].

The OECD by way of its efforts to limit harmful tax practices seeks to 'level the playing field' [306] between competing actors, may be unfounded as the OCED alone accounts for nearly three quarters of the World's wealth [307]. The OCED has not included its member states with OFC/tax-haven characteristics in the thirty-eight jurisdictions deemed co-operative by the OCED, which by default therefore escape OECD countermeasures and condemnation [308]. Although the interests of onshore citizens who bear the cost of offshore activities are in no way compatible

---

303 Levi.M.,*Combating the financing of terrorism: a history and assessment of the control of "threat finance*". British Journal of Criminology. 2010. Pg.659.

304 From Graves.R.J. & Ganguli.I., *Extraterritorial Application of the USA PATRIOT Act and Related Regimes: Issues for European Banks Operating inthe United States.* Privacy & Data Security Law Journal.October 2007.

305 Dretzka.E., & Mildner.S-A.,*Anything but SWIFT: Why Data Sharing is Still a Problem for the EU.* American Institute for Contemprary German Studies. John Hopkins University May 2010. Pgs.4-5.

306 OECD Report., *Harmful tax Competition: An Emerging Global Issue.* 1998.
307 See Table.1.
308 OECD., *Jurisdictions Committed to Improving Transparency and Establishing Effective Exchange of Information in Tax Matters*.2009.

with money laundering and terror finance, they nevertheless also bear the costs of legitimate capital flight from onshore jurisdictions. The OECD in a similar fashion to the FATF seeks to penalise OFCs/tax-havens for capital flight and corporate migration, which its members (possibly owing to regulatory capture [309]) generally fail to address domestically [310].

Financial globalisation is not occurring in parallel with economic globalisation, with the global financial system polarised towards wealthier nations. The global anti-money laundering regime is progressively homogenising although lacking in democratic legitimacy and effectiveness. The OECD and the FATF, seem in effect to be affirming the 'Lucas Paradox' [311] on the fora of anti-money laundering and harmful tax competition, with a view to protection of OECD financial markets and a disregard for economic efficiency, competition and inputs from countries falling under the FATF/OECD regime.

---

309 Regulatory capture occurs when a state regulatory agency created to act in the public interest instead acts in favour of the commercial or special interests that dominate in the industry or sector it is charged with regulating.

310 From Huffington.A., Offshore *Corporate Tax Havens: Why Are They Still Allowed?* Global Policy Forum. June 1 2010.

311 The observation that capital is not flowing from developed countries to developing countries despite the fact that developing countries have lower levels of capital per worker and thus offer greater yields. From Lucas.R., "*Why doesn't Capital Flow from Rich to Poor Countries?*", American Economic Review 80 (2): 92–96. 1990. Also Alfaro.L. Kalemli-Ozcan.S & Volosovych.V., "*Why Doesn't Capital Flow from Rich to Poor Countries? An Empirical Investigation*," NBER Working Papers 11901, National Bureau of Economic Research, Inc. 2005.

OECD Members Financial Centre	Ranking by External Assets (June 2008) $m *	Non-OECD OFC ‡	Ranking by External Assets (June 2008) $m *
United Kingdom†	5647300	Caymans	1828000
United States	5309100	Singapore	484900
France	2144900	Jersey	442860
Germany	1986500	Hong Kong	323500
Netherlands	1631000	Bahamas	247200
Italy	1436400	Guernsey	184400
Ireland	1371800	W.Indies(Avge)	128600
Spain	1252400	Bermuda	104100
Luxembourg	1057900	Dutch Antilles	74700
Switzerland	868700	Panama	74600
Belgium	757800	Bahrain	61400
Japan	651000	Isle of Man	42500
Australia	373300	Gibraltar	21100
Canada	359300	Barbados	19400
		Mauritius	17500
		Macao	7900
		Lebanon	6500
		Aruba	2100
		Samoa	1500
		Vanuatu	120
Total:	**24847400**		**4072880**
OECD's Largest Financial Centres Ranked by Bank's External Assets.		**Non-OECD's Largest Offshore Financial Centres Ranked by Bank's External Assets.**	
* Data on Financial Assets: Bank for International Settlements. 2008.			
† Excluding Crown Dependencies.			
‡ Including Crown Dependencies.			

Table 2: OFCs Assets

Chapter 5:

The Effects of Regulation on Offshore Centres.

Westphalian Sovereignty [312] holds that the government of a country is sovereign within its own territory and countries shall not interfere with each others' affairs [313]. This position agrees with Article. 2 of the UN Charter [314]. Commentators have suggested that for the purposes of the OFC's and their regulation (multilateral or otherwise) that either OFCs cannot be abolished without challenging state sovereignty or alternatively that OFCs deliberately abuse or engineer their sovereignty in order to benefit at the expense of other nation states [315]. OFCs, by merits of their ability to make their own laws, facilitate legal financial services with tax advantages and conversely the opportunity to channel illegal funds [316]. Since onshore centres are very likely to be tax havens, anti-money laundering actions exerted by onshore institutions may also be (partially) motivated by the desire to reduce tax losses [317]. It has been suggested that the FATF's blacklisting procedures although *prima-facie* aimed at money

---

312 From the '*Peace of Westphalia*' denoting a series of European peace treaties signed between May and October 1648.

313 Osiander.A., *Sovereignty, International Relations, and the Westphalian Myth. International Organisation*. 55, 2, Spring 2001. Cited by Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*. University of Warwick: CSGR Working Paper No 161/05. May 2005, and Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008.

314 See Footnote. 278.

315 From Tranøy.B.S., '*Offshore finance and money laundering: the politics of combating parasitic state strategies*', Rpt no 11, The Globalisation Project, Ministry of Foreign Affairs, Norway. 2002, and Palan.R., '*Tax havens and the commercialisation of state sovereignty*'. International Organisation, 56/1, 151-176. 2002.

316 Picard.P.M. & Pieretti.P., *Bank Secrecy, Illicit Money and Offshore Financial Centers.* "Paolo Baffi" Centre Research Paper Series No. 45. 2009.Pg,4.

317 *Ibid.*

laundering, in fact place too much attention low-tax jurisdictions [318] in parallel to the OCED. This may well be the case, as the FATF is more likely to implement countermeasures, which on a forum of anti-money laundering are far more effective than the OECD's grey-listing and other harmful tax competition efforts. The OCED, which along with the FATF leads the campaign against tax-havens and OFCs accounts for more than 60% of offshore assets by way of its financial centres [319]. The extent to which, such funds relate to illicit activity is unclear, however it is noteworthy that the US is estimated to account for more than half of all money laundered globally, [320] The limited implementation of the Forty Recommendations in OCED countries and the dichotomy of symbioses of OFCs, with the licit and illicit economies, cast doubts as to the integrity of constructions of money laundering as a global crime. For such reasons, it is fair to assume the possibility of competition between the OCED and non-OECD OFCs as a driver to the homogenization of the FATF regime. It is also clearly the case that if money is to be laundered at all then a 'rational politician' might wish to have it happen in his own, rather than an adjacent jurisdiction [321].

The effects of the various anti-money laundering campaigns on OFCs is complex and mixed [322]. Although the flow of foreign financial assets to NCCT jurisdictions does not seem to have greatly diminished [323] a return to traditional

---

[318] Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007. Pg.71.

[319] See Table.2.

[320] Tsingou.E., *Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*. University of Warwick: CSGR Working Paper No 161/05. May 2005. Pg.7, citing an FBI Report of 2001. Also in Petras. J., *US Bank Money Laundering-Enormous By Any Measure*. 9-1-2. New York. Binghamton University Aug.2010.

[321] Alldridge.P., *Relocating Criminal Law*. Aldershot: Dartmouth Publishing Company Ltd. 2000. Pg.171.

[322] See Table.3.

[323] Masciandaro. D., *Money Laundering: the Economics of Regulation.* European Journal of Law and Economics. No.7. Kluwer Academic Publishers.1999. Pg.388.

onshore banking has been observed [324] as OFCs are seen to be falling behind in terms of asset growth and as it is also becoming harder to hide money in OFCs [325]. A movement away from debts to equities in pursuit of higher yields, particularly in Europe [326] and the US [327] as well as lower tax pressures, market depth and increased liquidity have been cited as contributory to the movement away from OFC's, which cannot compete adequately in this area. It is possible that as the traditional markets of OFCs are eroded by OECD and FATF pressures, such centres may in fact attract more illicit funds than before.

Blacklisting alone does not seem to have the desired effects of the FATF, without the possibility of countermeasures to compel compliance [328]. Countries on the first NCCT list [329] such as the Bahamas and the Caymans [330] have had much wider and comprehensive compliance results as compared to later additions, whose cosmetic efforts are thought to be the result of 'false friend' [331] or 'reluctant friend' [332] approaches by such NCCTs to the FATF. The FATF having moved away from open sanctions and blacklisting to a lighter-touch methodology, for its

---

[324] Levin. M., '*The prospects for offshore financial centres in Europe*', CEPS Research Reports, No. 29. 2002. Citing a 2001. Report by PriceWaterhouseCoopers. Pg.5.

[325] *Ibid.*

[326] *Ibid.*

[327] From Gerson Lehrman Group., *Institutional Investors Shifting Toward Equity Market Neutral Strategies.* November 25, 2009.

[328] Masciandaro. D., *Money Laundering: the Economics of Regulation.* European Journal of Law and Economics. No.7. Kluwer Academic Publishers.1999. Pg.389.

[329] FATF-GAFI: Review to identify NCCTs: Increasing the Worldwide Effectiveness of AML Measures. 2000. Available at:

[330] As an example, in the Caymans, the Proceeds of Criminal Conduct Law has criminalised the laundering of proceeds of crime since 1996. The 2007 revision enables the restraint and freezing of the proceeds of crime, the disclosure of information about them and the confiscation or forfeiture of assets. It also establishes CAYFIN, the Caymans FIU, disclosure to which, regarding the proceeds or suspected proceeds of criminal conduct, money laundering or suspected money laundering and the financing of terrorism does not breach Cayman disclosure rules under the *Confidential Relationships (Preservation) Law (1995 Revision).*

[331] Masciandaro. D., *Op.Cit.* Pg.388.

[332] Masciandaro. D., *Money Laundering and Financial Offshore Centres: A Political Economy Approach.* Eisevier B.V. 2006. Pg.309.

legitimacy gap, mainly seeks to homogenise anti-money laundering regulation in developing countries, as can be seen from recent FATF 'statements' [333] regarding jurisdictions subject to money laundering risks. Blacklisting on the other hand has had the effect of inciting OFCs to widen their services such as creating or expanding stock exchanges, as in the Channel and Cayman Islands respectively, or to enter into the electronic banking and online brokerage arenas [334].

The effects of FATF regulation have been widely different for different kinds of OFCs.

Luxembourg, an OECD and EU member, has maintained its bank secrecy laws, in spite of intense pressure by the OECD and the FATF and has consistently rejected the OECD's regime regarding harmful tax competition [335]. Directive 2003/48/EC, shall make an automatic exchange of information mandatory by 2011, and an incrementally increasing withholding tax is currently in place, until this date. Luxembourg also collects withholding taxes on behalf of the US Internal Revenue Service [336]. As of yet in the both the cases of the EU and US, Luxembourg does not disclose account holders' identities. Luxembourg, has taken steps to abolish its 1929 *Holding Company Laws*, which exempted such companies from taxation by December 2010. This was in response to such laws being held to constitute a State Aid under Article.107 (ex-87) of the *Treaty on the Functioning of the European Union* [337]. In spite of such measures Luxembourg generally remains a successful financial centre, catering to private wealth unimpeded [338] and

---

[333] FATF-GAFI: *FATF Statement.* February 2009.
[334] Levin. M., '*The prospects for offshore financial centres in Europe*', CEPS Research Reports, No. 29. 2002. Citing a 2001. Pg.5.
[335] *Ibid.* Pg.52
[336] *Ibid.*
[337] From Parize.H., *Luxembourg in perspective*. European Lawyer, Vol. 77, (48) 48.2008.
[338] Parize.H., *Luxembourg in perspective*. European Lawyer, Vol. 77, (48) 48.2008.

maintaining generally low levels of taxation, including the lowest rates of VAT in Europe [339].

Jersey, another European OFC jurisdiction has seen a near doubling of its GDP between 2001 and 2010 and foreign bank deposits increasing from £167bn in 2001[340] to £212bn in 2008 [341]. Its financial sector has also grown proportionally. The Bailiwick maintains a low tax regime, with no capital gains or inheritance taxes, but currently maintains a withholding tax regime similar to Luxembourg's and is phasing out income tax reliefs by 2011[342].

Caribbean basin based OFCs, possibly for being well within the US sphere of influence [343] implemented the criminalisation of money laundering, for fear of capital flight, very early on in the anti-money laundering campaign [344]. Jamaica, for instance created money laundering and forfeiture legislation in the early nineties [345]. The Cayman Islands, which was considered on the FATF's first NCCT report in 2000,[346] in compliance tightened it regulations, 'much too fast in its desperation not to fall afoul' of the US and OECD [347]. By 2009, its legal framework

---

339 International Tax Review., *World Tax 2007. Luxembourg, Country Report*.2007.
340 Levin. M., '*The prospects for offshore financial centres in Europe*', CEPS Research Reports, No. 29. 2002. Citing a 2001. Pg.52.
341 Jersey Finance., *Quarterly Report.* 2008-09.
342 LOWTAX.NET., *Jersey: Personal Taxation*.

343 The distance between two jurisdictions for the purposes of offshoring, lowers cross-holdings, characterised as an 'iceberg' cost that diminishes the value of the OFCs holdings. Shared land border, geographical proximity, a common language or currency raises cross-holdings, between jurisdictions. From Rose.A.K. & Spiegel. M.M.,*Offshore Centres, Parasites or Symbionts?* The Economic Journal, 117 (October), 1310–1335. Royal Economic Society 2007.

344 Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007.

345 *Forfeiture of Proceeds Act 1994.*
346 FATF-GAFI: Review to identify NCCTs: Increasing the Worldwide Effectiveness of AML Measures. 2000.
347 Brittain-Catlin.W., *Offshore: The Dark Side of the Global Economy*. New York: Picador, 2006. Pg.217.

was found to be fully comprehensive, to FATF standards [348]. However, this was amidst a climate of declining corporate registrations and foreign investments and a generally stifled economy [349]. The Caymans have also bi-laterally implemented measures equivalent to Directive 2003/48/EC (Savings Tax Directive) exchanging information on the interest bearing accounts of European citizens. It is thought such disclosure may cost the Caymans up to $50 million dollars annually from business lost from EU investors [350]. The Cayman economy's growth rate has fallen from a consistent 4 to 5 percent through the 90s to 1.7 percent in 2005. It fell again to 1.1percent in 2008 then to -6percent in 2009. Growth is expected to fall further [351] with increasing unemployment, poverty and crime[352]. Similar trends are observable in other Caribbean OFCs such as the Bahamas [353] and the Turks and Caicos Islands, which according to some commentators is unlikely to survive as a financial centre, following economic crisis and the imposition of direct rule by the UK in 2009 [354]. Based on such developments, it has been suggested that only OFCs that are capable of 'adapting to the new order' are capable of surviving [355].

---

348 Caribbean Financial Action Task Force., *Cayman Islands: Report on the Observance of Standards and Codes, FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism.* IMF Country Report No. 09/324. December 2009.

349 Brittain-Catlin.W., *Op.Cit.* Pg.218.
350 *Ibid.*
351 US Department of State., *International Narcotics Control Strategy Report: Major Money Laundering Countries*. 2007.
352 Brittain-Catlin.W., *Op.Cit.* Pg.223.
353 In response to the attack by the OECD, the FATF, and the FSB (then FSF) the Bahamas enacted eleven new anti-money laundering statutes by the end of 2000, and was thought to be one of the most highly regulated, anti-money laundering jurisdictions in the World. The results were economic slowdown and negative competitive effects resultant from 'excessive' tax information demands by OECD countries. From Maynard Counsel and Attorneys., Anti *Money Laundering Law and Practice in The Bahamas*. Maynard Law Publishing. 2004.

354 Hampton.M.P. & Christensen.J.,*Offshore Finance Centres and Tax Havens: what next for OFCs in small economies?* Sidney Sussex College, Cambridge.13 November 2009.
355 From PriceWaterhouseCoopers., *A Practitioner's Guide to the FSA Regulation of Banking*. London : City and Financial Publishing. 2002.

Singapore according to the OECD is amongst the top private wealth centres in the World and the third leading financial centre [356] The World Bank have also rated Singapore the World's easiest place to do business for both 2009 and 2010 [357]. Although it is an FATF member and endorses the Forty Recommendations, it is not an OECD member [358]. Taxation is generally low with no capital gains, dividend taxes and income taxed at 20% after US$235000. There are also very favourable exemptions and tax reliefs for start-up businesses [359]. Singapore is considered a jurisdiction of primary concern by the US State Department, for the purposes of money laundering, [360] owing to bank secrecy, the lack of reporting requirements,[361] limited withholding taxes, reliefs for foreign sourced income [362] as well as no defined tax offences under the *Corruption, Drug Trafficking and other Serious Crimes Act 1992.* **It is also a primary destination for capital flight [363] with high potential for a being a hub for terror finance.**

A similar case can be seen with the Russian Federation also an FATF member but not part of the OCED. The Federation is also a jurisdiction of primary concern for money laundering and terror finance,[364] and has a flat income tax regime at 13%. Dividend income is at 9% with exemptions and corporate tax is

---

356 From Lysaght.B., *London Keeps Lead as Finance Center; Confidence Wanes*. Bloomberg. March 2009.

357 World Bank., *Doing Business 2010 Report*. World Bank 2010.
358 See Table.1.
359 LOWTAX.NET., *Singapore Domestic Corporate Taxes*.
360 See Table.1.
361 US Department of State., *International narcotics control strategy report: Southeast Asia* and the Pacific. 2007.
362 LOWTAX.NET., *Singapore Domestic Corporate Taxes*.
363 US Department of State., *International narcotics control strategy report: Southeast Asia* and the Pacific. 2007.
364 See Table1.

roughly at 20% [365]. In spite of it tax regime, revenue collection is sparse with endemic corruption [366] and the high risk of money laundering and terror finance[367].

The FATF/OECD regime may also have the effect of precluding under-developed jurisdictions from providing offshore facilities. The offshore aspirations of countries like the Seychelles[368] for instance were more or less extinguished in their inception. Other factors such as the prohibitive costs of reporting, diligence and establishing FIUs make it economically unviable for developing countries to operate offshore operations, within the ambit of FATF guidelines. It is also likely that jurisdictions with OFC characteristics, under FATF pressure, find it more viable and expedient to move towards and specialise in tax-haven activity which as of yet has not been sanctionable by the OECD.

---

365 Worldwide Tax. *Russia*.

366 From Ries.N., *Business, Taxes and Corruption in Russia* . Colgate University.2006, and Welu.C.M. & Muchnik.Y.,*Corruption: Russia's Economic Stumbling Block. American and European anti-corruption laws could help solve a longtime problem in Russia.* Bloomberg. Aug.2009.

367 Despite a general rating of compliance by the FATF (FATF-GAFI: "*Second Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism: Russian Federation*," Paris, France: FATF, June 2008.) the Russian Federation remains one of the World's primary laundering centres, (Financial Times, *Khodorkovsky "laundered $23bn*" FT. February 9 2007.) with extensive links to US banks and the City of London. Economic & Social Research Council., *Bank of New York Linked to Russian 'Mafia' via Money Laundering.* Transnational Communities Programme. Oxford University. July 2010.

368 Fisher.H.,*FATF Lifts its Warning about Investment Law in Seychelles*. OECD/FATF-GAFI Oct. 2000.

OECD/Non-OECD Members Financial Centre	Indicated as affected by FATF/FSRB or International Regulation. *	Average Real Growth Rate % (2005-2010). Positive/Negative Trends. †	Strength of Alternative (Non-Financial) Industries. †	
United Kingdom	N	1.3 ↔	S	
United States	N	1.75 ↔	S	
France	N	1.1↔	S	
Germany	N	0.7 ↔	S	
Netherlands	N	1.18↔	S	
Italy	N	-1.3↓	S	
Ireland	N	1.6 ↓	S	**OECD's Largest Financial Centres Ranked by External Assets.**
Spain	N	1.8 ↓	S	
Luxembourg	Y	1.9 ↓	S	
Switzerland	Y	1.57 ↔	S	
Belgium	N	1.3↔	W	
Japan	N	2↓	S	
Australia	N	2.6↑	S	
Canada	N	2.2↔	S	
Caymans	Y	1.1 ↓	W	
Singapore	N	4 ↔	S	
Jersey	Y	Not Available.	S	
Hong Kong	N	3.4 ↔	S	
Bahamas	Y	0 ↓	W	
Guernsey	Y	3 ↔	S	
West Indies	Y	0 (Average) ↓	W	**Non-OECD's Largest Offshore Financial Centres Ranked by External Assets.**
Bermuda	N	5 ↑	W	
Dutch Antilles	Y	1 ↑	W	
Panama	Y	7.4 ↑	S	
Bahrain	Y	5.7 ↑	S	
Isle of Man	N	5 ↔	W	
Gibraltar	N	5 ↔	W	
Barbados	Y	2 ↓	W	
Mauritius	Y	3.5 ↔	W	
Macao	N	11.5 ↑	W	
Lebanon	N	3.5 ↑	S	
Aruba	Y	2.4 ↔	S	
Samoa	Y	3.5 ↓	W	
Vanuatu	Y	5↑	W	

LEGEND CODES: Y=Yes. N=No. ↑ =Growing. ↓=Falling. ↔ = Stationary. S= Strong. W=Weak.

* Indicated by domestic/international press, Financial Times or OECD and FATF sources.

† From IndexMundi (http://www.indexmundi.com) , US State Department, CIA Factbook and other sources.

Table 3: OFCs; Relationship with Regulation

Chapter 6:

6.1: Observations.

From a governance perspective, the two main questions to be asked are; who should be served by the financial apparatus of OFCs and how should such purposes be determined. Within the Westphalian framework envisioned by the UN, these questions should rightly be answered by the competences of the OFC jurisdiction in question. States within the OCED/FATF are stakeholders to the activities of OFCs, in as much as money laundering affects them, as much so as OCED/FATF countries are stakeholders to OFC countries, regarding the repercussions for OFC economies from failures within wealthier nations, to control predicate offences. The FATF represents a kind of 'stakeholder activism' through which the OECD via the FATF, seeks to create itself a 'principal' to competing economies, setting itself at the end of the agency chain as the primary beneficiary.

In a wider context, the global anti-money laundering campaign has an intrinsic relationship and parallelism with the War on Drugs [369]. The shape of money laundering as a criminal offence originates in the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988) (Vienna Convention), which created the idea of separating the underlying

[369] Following President Nixon's declaration of a War on Drugs June 1971. NPR Frontline Series., *Timeline: America's War on Drugs.* April 2, 2007.

predicate offences from the laundering the proceeds. These in turn were extended, to eventually result in the 40 Recommendations of the FATF [370].

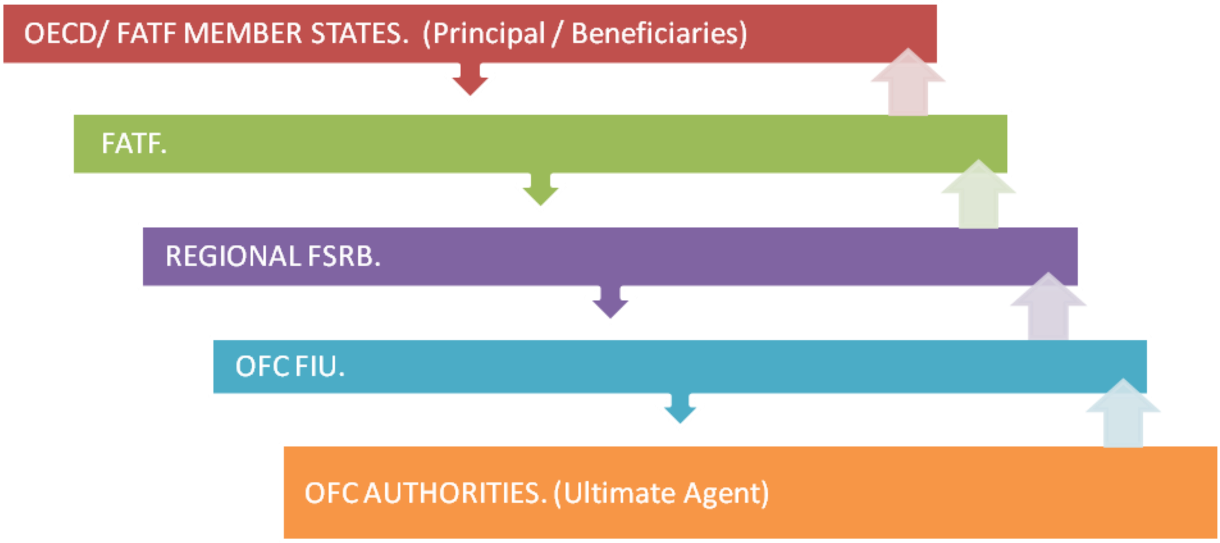


Figure 3: Reporting Structure and Governance Chain for OFCs.

Far from being a problem created exclusively by producer countries such as Afghanistan and Columbia, the drugs and narcotics trade is a response by criminal entrepreneurs in these countries to market demand in more developed countries [371]. It seems however that governments in the developed World find it more expedient to act against foreign governments [372] rather than seek to

---

[370] Schott. P.A, World Bank, International Monetary Fund. *Reference guide to anti-money laundering and combating the financing of terrorism.*Washington: World Bank Publications, 2006. Pg.I-3.

[371] Hinterseer.K., *Criminal Finance: The Political Economy of Money Laundering in aComparative Legal Context.* The Hague: Kluwer Publishers. 2002. Pg.32.

[372] The Mexican War on Drugs, initially prompted by US pressures, has resulted in a situation, where the continuation of the campaign could potentially result in the failure of the state. This has resulted in calls to legalise drugs in Mexico, simply to prevent the spill-over violence originating from traffickers, who seek mainly to smuggle drugs into the US. From Luksza.J.C., *Mexico sees sense in war*

remediate the problem domestically, either through more effective domestic control strategies or legalisation, which mitigates against the problem of the proceeds being laundered[373].

In parallel, it may be argued that jurisdictions, which implement the means to facilitate laundering of illicit proceeds are responding both to the supply of illicit funds to be laundered and the demand for the laundering of such funds. Moreover most funds to be laundered globally originate in OECD countries, which is primarily why the FATF have sought to instigate a global anti-money laundering infrastructure, yet nevertheless externalise money laundering controls to other jurisdictions, rather than concentrate domestic predicate offences. Notably the growing legitimacy gap of the FATF, has seemingly been filled by the US shift from the War on Drugs to the War on Terror [374].

In a further parallel, the international criminalisation of money laundering incites more sophisticated means to legitimise illicit funds, much in the same way that the War on Drugs incentivises the sale and distribution of illicit substances, by giving extra value to the proceeds [375].

The OCED countries collectively account for up to 75% of total World market capitalisation and 70% of the total World GDP [376]. In terms of capacity,

---

on drugs; The Mexican president has finally realised that the legalisation debate could offer his country a better future. guardian.co.uk, Monday 23 August 2010. Also reported on BBC Radio 4. Sunday 29th August 2010.

373 Alldridge.P., *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery. Criminal Laundering & Taxation of the Proceeds of Crime*. Oregon: Hart Publishing. 2003. Pg.43. Also discussed in Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008.

374 Williams.D., *Governance, Security and 'Development": The Case of Money Laundering.* City University Working Papers on Transnational Politics. CUTP/001. February 2008. Pg.9.

375 From Oscapella.E., *How Drug Prohibition Finances and Otherwise Enables Terrorism. Submission to the Senate of Canada Special Committee on Illegal Drugs.* October 2001.

376 See Table.1. The US accounting for 50% global (See Footnote. 323.) sums laundered, represents about 35% of OECD GDP. (See Table 1) Hypothetically, even if 100% of all OECD assets held by

GDP, tax revenues, and financial depth and infrastructure, it is unlikely that non-OECD countries, (other than OFCs) account for any substantial percentage of global funds, resultant of the proceeds of crime or laundering, particularly as the US alone is estimated to account for more than half of all laundered sums [377]. The FATF nevertheless does target such countries, simply to instigate legislative change, possibly to preclude potential competition, if not to prevent money laundering.

For lack of legitimacy, the 'War on Money Laundering' may well fail, much as the War on Drugs.

6.2: Conclusions:

Money Laundering, as constructed as a separate crime to its predicate offence, is necessitated owing to the regulatory and jurisdictional independence of OFCs. The progressive internationalization of the global economy, requires the regulation of money laundering, which can only be regulated by international cooperation. National measures alone shall only cause geographical shifts, which is why although OFCs are independent states with their own competences and jurisdictions, as of yet the most successful of anti-money laundering efforts rely on non-treaty based coercive counter-measures.

The extent of globalization reduces the extent of differences between onshore and offshore. Financial globalisation nevertheless remains polarised

---

traditional non-OECD OFCs, were the proceeds of crime to be laundered through these economies, they would only account for an estimated maximum of 16% to 20% of all global monies laundered. If laundering in other OCED countries in considered, the amounts laundered by developing countries, which do not have OFC characteristics is probably negligible. Extrapolated from Tables 1,2 and 3.

[377] See Footnote. 323

towards wealthier nations. The negative effects of money laundering and indeed tax competition are mostly felt in the developed World. The negative effects of such practices on OFCs and the developing World, as suggested by the FATF etc. are overstated, as OFCs are merely responding to market demand for lower taxation, corporate flexibility and indeed venues to launder money. The idea that rejecting illicit funds, in favour of preserving against the entrenchment of money laundering and banking integrity, does not seem to actually be beneficial to the banking infrastructure of developing countries. This is particular, as OFCs are competing with laundering banks in wealthier countries. The non-blacklisting of FATF/OECD members, also problematically suggests that such countries are not accountable for laundering the proceeds of predicate offences, committed without of the OECD, under FATF standards. This is symptomatic of biases towards domestic economies and profits rather than the criminality of money laundering. The FATF/OECD regime, in effect seems to be geared to allow the developed World to take the benefits of globalisation, whilst insulating against competition and costs.

OFCs although conducive to money laundering and other unproductive offshore activities, offer competition to increasingly oligopolistic banking sectors in the OECD, particularly as the OCED itself accounts for a large percentage of global laundered funds. It is also noteworthy that not all OFC activity actually relates to money laundering.

The prevention of money laundering and terror finance, both require exerting control over funds originating outside the OECD, which may form the rationale the FATF to associate the two. Controlling terror finance in the same context as money laundering also allows the FATF/OECD to employ an existent extraterritorial infrastructure and criminal jurisdiction. It is the urgency of the

threat of terror, which currently allows the FATF to bridge its overall legitimacy gap.

Terror finance (at least academically) does not adequately relate to money laundering, although there may be superficial technical similarities between the techniques of cross-border movements of funds, in both cases. The global homogeneity of the mechanisms and structures of the FATF are well suited to prevent terrorist events, however the forum of anti-money laundering is not adequate for such purposes. On the forum of the threat of terror, the US and the FATF have nevertheless hugely extended the scope of the international anti-money laundering framework, with emphasis on homogenisation

The role of the FATF and OECD seem to be inclined against the movement of wealth on certain bases, from developed countries to developing countries, on the fora of anti-money laundering, controlling terror finance and acting against competitive and harmful tax policies of other jurisdictions; all of which are a consequence of financial globalization. The primary basis to achieve these objectives, however have not been to address predicate offences, domestic tax issues, or corporate freedom domestically, but to coercively externalize the costs of crime from wealthier nations to the developing world including OFCs, in parallel to War on Drugs model. Blacklisting and the instigation of FIUs etc. is generally ineffective for the purposes of OFCs and seem mainly to have the purpose of homogenising money laundering laws in developing jurisdictions to FATF standards.

6.3: Recommendations.

The FATF's legitimacy gap is founded in possible contraventions of International law, a democratic deficit and inconsistencies in applied standards with undertones of protectionism and anti-competitiveness. The FATF have resultantly stepped back on their blacklisting procedures, having sought legitimacy through the imperatives of fighting terror and from the IMF.

It is quite commonsensical to assume that criminals should not be allowed to keep their wealth or benefit from their crimes [378]. Money laundering *inter-alia* results in corruption, increased social costs and a loss of confidence and stability in the banking and financial systems and for such reasons adequate international controls are quite necessary. These issues, however do not justify externalizing the costs of crime from wealthier nations to the developing world including OFCs. FATF and OECD members should remove their own propensity to launder money and harmful tax regimes before demanding anything of other jurisdictions. It seems that the 'all crimes' model for defining predicate offences, is unnecessary and unjust. Local decriminalisation of more minor predicate offences or more effective mechanisms (such as handling) to address them would be more efficient.

To viably bridge the legitimacy gap, a more liberal, cooperative and multilateral approach is necessary, taking all stake-holding parties, including OFCs and their sovereignty into account, if it is indeed the purpose of the FATF/OCED to prevent money laundering. More practically, the top-heavy model of international regulation is impeded by the inability of regulators to monitor compliance or enforce regulation internationally and is ineffective and prejudicial having no effect on the 'costs and benefits' of regulating states. A more multilateral approach is more practicable and economical.

[378] The dicta of Lord Wolf CJ in *R v Sekton* [2003] 1WLR 1655.

Stricter requirements for client information, with preclusion from access to the market for failing to do so, has been identified as a basis to respect OFC sovereignty and also protect from money laundering [379]. This possibly may be unviable owing to the symbioses of OFCs, with both the legitimate and illegitimate economies,

Another possibility is an increased concentration upon the prevention of predicate offences, or reducing the viability of such offences through legalisation, as suggested by some commentators [380]. Such measures may only however have any relevance to funds resultant of drugs and narcotic offences.

A third possibility is a basis by which, the value derivative of laundered money is distributed between the jurisdiction of the predicate offence and the jurisdiction processing the money. This may on the one hand, take the form of the FATF instituting a regime of domestic bank charges within its member states, based upon the risk of money being transferred to their jurisdictions, being derivative of criminal acts. Alternatively or simultaneously, employing the existent 'know your customer' principles, OFCs upon identifying the source of money transfers to their jurisdiction can withhold a levy on funds, which demonstrate the risk of being the proceeds of crimes, and remit these back to the jurisdiction the funds originated from. OFCs would be incentivised to do so as they would not need to divulge the identity of their customer and would benefit from some partial decriminalisation of the offence of money laundering. This approach is viable, as it detracts from lapses in preventing predicate offences, for the purposes of the originating jurisdiction, and provides that jurisdiction with at least a percentage of the untaxed monies through reintegration of funds from the

---

379 Doyle.T., *Cleaning up anti-money laundering strategies: current FATF tactics needlessly violate international law*. Houston Journal of International Law. 2002. Pg.13.

380 Alldridge.P., *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery. Criminal Laundering & Taxation of the Proceeds of Crime*. Oregon: Hart Publishing. 2003. Pg.43. Also discussed in Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008.

illicit to the licit economy. The OFC can retain its bank secrecy, as well as retain a percentage of the transferred funds.

Bibliography:

Alexander.K. Dhumale.R. & Eatwell.J., *Global Governance of Financial Systems. The International Regulation of Systemic Risk.* Oxford University Press. 2006.

Alfaro.L. Kalemli-Ozcan.S & Volosovych.V., "*Why Doesn't Capital Flow from Rich to Poor Countries? An Empirical Investigation*," NBER Working Papers 11901, National Bureau of Economic Research, Inc. 2005.

Alldridge.P., *Money Laundering and Globalization.* Journal of Law and Society. Volume 35, No. 4, December 2008.

Alldridge.P., *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery. Criminal Laundering & Taxation of the Proceeds of Crime*. Oregon: Hart Publishing. 2003.

Alldridge.P., *Relocating Criminal Law*. Aldershot: Dartmouth Publishing Company Ltd. 2000.

Allen.B., *Corporate Theory: Jurisprudence's Heart of Darkness*. The University of British Columbia. 1996.

Arnone.M. & Padoan.P.C., *Anti-money laundering by international institutions: a preliminary assessment.* Eur J Law Econ (2008) 26:361–386. Springer Science+Business Media, LLC 2008.

Bank of International Settlements., *Statistical Annex: The International Banking Market.* June 2008. Available at:
http://www.bis.org/publ/qtrpdf/r_qa0812.pdf#page=36.

BBC., *Q&A: Mexico's drug-related violence*.25 August 2010. Available at:
http://www.bbc.co.uk/news/world-latin-america-10681249

Beare, M.E. & Schneider.S., *Money laundering in Canada: chasing dirty and dangerous dollars.* Toronto: University of Toronto Press, 2007.

Berman,P.S., *`The Globalization of Jurisdiction'.* 151. University of Pennsylvania Law Rev. 311. 2002.

Blickman.T., *Countering Illicit and Unregulated Money Flows,Money Laundering, Tax Evasion and Financial Regulation*. Crime & Globalisation, Transnational Institute Briefing Series December 2009. Available at:
http://www.idpc.net/sites/default/files/library/Countering%20illicit%20and%20unregulated%20money%20flows.pdf

Bowden. C., *U.S.-Mexico 'war on drugs' a failure*. Special to CNN. Cable News Network. April 2, 2010.

Bradley.N., *Corporate Governance: A Risk worth Measuring*. UNCTAD Publication: ITE/TEB/ 2003/3).

Brittain-Catlin.W., *Offshore: The Dark Side of the Global Economy*. New York: Picador, 2006.

Buchanan.B., *Corporate Governance and Social Responsibility: Combating Money Laundering in the Asia-Pacific Region*. Contemporary Studies in Economic and Financial Analysis. Emerald Group Publishing Limited. 2005.

Carbo Valverde.S.et al., *Estimating the intensity of price and non-price competition in banking.* Documento de Trabajo, Fundación BBVA. 2005.

Carew.E., *The Language of Money*. Allen & Unwin Academic. 1996.

Caribbean Financial Action Task Force., *Cayman Islands: Report on the Observance of Standards and Codes, FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism.* IMF Country Report No. 09/324. December 2009.

Cuéllar. M.F., *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*. 93 Journal of Criminal Law & Criminology 311-465. 2003.

Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee., *Promoting Good Governance in Tax Matters.* Brussels, 28.4.2009 COM(2009) 201 final. 2009.

Compin.F., *The role of accounting in money laundering and money dirtying.* Critical Perspectives on Accounting 19 (2008) 591–602. 2008.

Council Of Europe., *Country Profiles*. Available at:
http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Country_profiles_en.asp

Council Of Europe., ***MONEYVAL in brief. What are MONEYVAL's objectives?*** **Available at:**
http://www.coe.int/t/dghl/monitoring/moneyval/About/MONEYVAL_in_brief_en.asp

CPS Legal Guidance. ***Proceeds of Crime Act 2002 Part7 - Money Laundering Offences.*** **2010. Available at:**
http://www.cps.gov.uk/legal/p_to_r/proceeds_of_crime_money_laundering/

Craig.W.Y., & Kumar,A., ***Tax Harmonisations for Europe and the world: could the ECJ show the way,*** **, I.C.C.L.R., 2007, 18(10), 341-348, Kluwer Law International, 2003.**

Daily Times., ***FATF blacklists Pakistan for terror financing, Saturday, February 20,*** **2010. Available at:**
http://www.dailytimes.com.pk/default.asp?page=2010\02\20\story_20-2-2010_pg7_12

Deitz.A. & Buttle. J., ***Anti-Money Laundering Handbook.*** **Sydney: Thomson Lawbook Co. 2008.**

De Koker.L., ***Identifying and managing low money laundering risk: perspectives on FATF's risk-based guidance.*** **Journal of Financial Crime.2009.**

Desai.M.A. et al ***The demand for tax haven operations*****, Journal of Public Economics 2006, (513) 515. 2006.**

Devereux.M. Lockwood.B. & Redoano.M., ***Is there a "Race to the Bottom" in Corporate Taxes An Overview of Recent Research.*** **University of Warwick. Available at:http://www2.warwick.ac.uk/fac/soc/csgr/research/keytopic/race/Lockwood_Overview_May03.pdf/**

Donaghy.M & Clarke.M., ***Are offshore financial centres the product of global markets?*** **A sociological response. Economy and Society, 32: 3, 381 — 409. 2003.**

Dorsey. J.M., ***Saudis fail to halt terrorism funding despite minor gains*****. Deutsche Welle.20 Dec 2009.**

Doyle,C., ***The USA Patriot Act: A Sketch*****.CRS Report for Congress. April 18, 2002.**

Doyle.T., ***Cleaning up anti-money laundering strategies: current FATF tactics needlessly violate international law*****. Houston Journal of International Law. 2002.**

Drezner.D.W.,***The Viscosity of Gloobal Governance: When is Forum Shopping Expensive.The Fletcher School. Tufts University*****. November 2006.**

Dretzka.E., & Mildner.S-A.,***Anything but SWIFT: Why Data Sharing is Still a Problem for the EU.*** **American Institute for Contemprary German Studies. John Hopkins University May 2010.**

Duffield.M., ***Global Governance and the New Wars: The Merging of Development and Security*****. London: Zed Publications, 2001.**

Economic & Social Research Council. ., ***Bank of New York Linked to Russian 'Mafia' via Money Laundering.*** **Transnational Communities Programme. Oxford University. July 2010.**

Egmont Group and World Bank., ***Executive Summary Of the Final Report on Survey of FIU Governance Arrangements*****. January 19, 2010.**

Egmont Group., ***FIU 's in action, 100 cases from the Egmont Group*****. Available at: http://www.egmontgroup.org/**

Egmont Group., ***Information Paper on Financial Intelligence Units and the Egmont Group*****. 2004.**

Euractiv Network., ***Money Laundering.*** **27 May 2005.Available at: http://www.euractiv.com/en/financial-services/money-laundering/article-139944**

European Central Bank., ***Opinion on the prevention of the use of the financial system for money laundering and terrorist financing.*** **(CON/2005/2) OJ C 40, 17.2.2005, p. 9.**

European Commission., ***Financial Crime*****. 2010. Available at: http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm**

FATF-GAFI: ***FATF 40 Recommendations*****. 2010.**

FATF-GAFI: ***9 Special Recommendations (SR) on Terrorist Financing (TF).*** **2004 Available at: http://www.fatf-gafi.org/document/9/0,2340,en_32250379_32236920_34032073_1_1_1_1,00.html**

FATF-GAFI: ***FATF Statement.*** **February 2009. Available at:** **http://www.fatf-gafi.org/dataoecd/18/28/42242615.pdf**

FATF-GAFI: ***High-risk and non-cooperative jurisdictions*** **. 2010 Available at:** **http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236992_1_1_1_1_1,00.html**

FATF-GAFI: ***Members and Observers.*** **2010 Available at:** **http://www.fatf-gafi.org/document/52/0,3343,en_32250379_32236869_34027188_1_1_1_1,00.html**

FATF-GAFI: ***Money Laundering FAQ.*** **2010 Available at:** **http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1_1,00.html**

FATF-GAFI: ***Non-Cooperative Countries and Territories.*** **2010 Available at:** **http://www.fatf-gafi.org/document/4/0,2340,en_32250379_32236992_33916420_1_1_1_1,00.html**

FATF-GAFI: ***Policy on Observer Members.*** **2008. Available at:** **http://www.fatf-gafi.org/dataoecd/26/24/41112594.pdf**

FATF-GAFI: ***Report on New Payment Methods.*** **2006 Available at:** **http://www.fatf-gafi.org/dataoecd/30/47/37627240.pdf**

FATF-GAFI: Review to identify NCCTs: Increasing the Worldwide Effectiveness of AML Measures. 2000. Available at: **http://www.fatf-gafi.org/dataoecd/56/43/33921824.pdf**

FATF-GAFI: ***Revised Mandate. 2008 to 2012*** **Available at:** **http://www.fatf-gafi.org/dataoecd/3/32/40433653.pdf**

FATF-GAFI: "*Second Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism: Russian Federation,*" Paris, France: FATF, June 2008. Available at: **http://www.fatf-gafi.org/dataoecd/31/6/41415981.pdf**

FATF-GAFI: ***The fight against money laundering and terrorist financing in low capacity countries.*** **21st Aug 2009. Available at:** **http://www.fatf-gafi.org/document/16/0,3343,en_32250379_32236879_43576016_1_1_1_1,00.html**

FATF-GAFI: ***Towards Global Coverage and Compliance*****. Speech by FATF President Paul Vlaanderen to the 8th Ad Hoc GIABA Ministerial Committee Meeting Praia, Cape Verde, 5 May 2010. Available at:**
http://www.fatf-gafi.org/document/54/0,3343,en_32250379_32236879_45139510_1_1_1_1,00.html

Felkenes. G.T., ***Extraterritorial Criminal Jurisdiction: Its impact on criminal justice*****. Journal of Criminal Justice. Vol. 21, No. 6, pp. 583-594, 1993.**

Financial Services Authority. ***Reducing money laundering risk - Know Your Customer and anti-money laundering monitoring*****. DP22. 2003, Available at:**
http://www.fsa.gov.uk/Pages/Library/Policy/DP/2003/discussion_22.shtml

Fisher.H.,***FATF Lifts its Warning about Investment Law in Seychelles*****. OECD/FATF-GAFI Oct. 2000. Available at:**
http://www.oecd.org/dataoecd/57/60/3571445

Financial Stability Forum., ***Report of the Working Group on Offshore Financial Centres*****. 2000. Available at:**
http://www.financialstabilityboard.org/publications/r_0004b.htm

Financial Times, ***Khodorkovsky "laundered $23bn*****" FT. February 9 2007.**

Froomkin.S.M., ***Offshore Centres and Money Laundering*****. Journal of Money Laundering Control. Vol.1 No.2. 2007.**

Gerson Lehrman Group., ***Institutional Investors Shifting Toward Equity Market Neutral Strategies.*** **November 25, 2009. Available at:**
http://www.glgroup.com/News/Institutional-Investors-Shifting-Toward-EquityMarket-Neutral-Strategies-45037.html

Graves.R.J. & Ganguli.I., ***Extraterritorial Application of the USA PATRIOT Act and Related Regimes: Issues for European Banks Operating inthe United States.*** **Privacy & Data Security Law Journal.October 2007.**

Great Britain: Parliament: House of Lords: European Union Committee. ***Money Laundering and the Financing of Terrorism.*** **The Stationery Office, 2009.**

Gurtner.B., ***The Race to the Bottom. Incentives for New Investment?*** **Tax Justice Network. Oct 15th TO 17th, 2008.**

Gurule.J., *The Money Laundering Control Act of 1986: creating a new federal offense or merely affording federal prosecutors an alternative means of punishing specified unlawful activity?* American Criminal Law Review, Vol. 32, 1995.

Hampton.M.P. & Christensen.J.,*Offshore Finance Centres and Tax Havens: what next for OFCs in small economies?* Sidney Sussex College, Cambridge.13 November 2009.

He.P., *A typological study on money laundering*. Journal of Money Laundering Control. Vol. 13 No. 1, 2010. Emerald Group Publishing Limited.

Her Majesty's Revenue and Customs., *An Anti-Money Laundering Strategy for the Inland Revenue*. 2008. Available at:
www.hmrc.gov.uk/specialist/antimoneylaunder-strat.pdf

Hinterseer.K., *An economic analysis of Money Laundering*. Journal of Money Laundering Control. 1. 1997.

Hinterseer.K., *Criminal Finance: The Political Economy of Money Laundering in a Comparative Legal Context.* The Hague: Kluwer Publishers. 2002.

Hubbard, R. *Murphy*, D. O'Donnell, F. & DeFreitas, P. Money Laundering *and* Proceeds of Crime, Toronto: Irwin Law.2004.

Huffington.A., *Offshore Corporate Tax Havens: Why Are They Still Allowed?* Global Policy Forum. June 1 2010. Available at:

http://www.globalpolicy.org/nations-a-states/state-sovereignty-and-the-global-economy/tax-havens/49183.html

Hülsse. R.,*Creating Demand for Global Governance: The Making of a Global Money-laundering Problem*. Global Society, Vol. 21, No. 2. Routledge Publishers April, 2007

Hülsse.R. & Kerwer.D.,*Global Standards in Action: Insights from Anti-Money Laundering Regulation*. DOI: 10.1177/1350508407080311. Organization 2007; 14; 625. Sage Publications. 2007. Available at
http://org.sagepub.com/cgi/content/abstract/14/5/625

International Monetary Fund Factsheet: *The IMF and the Fight Against Money Laundering and the Financing of Terrorism*. April 5, 2010. Available at: http://www.imf.org/external/np/exr/facts/aml.htm

International Tax Review., *World Tax 2007. Luxembourg, Country Report*. Available at

http://www.internationaltaxreview.com/default.asp?page=62&PUBID=262&ISS=22907&type=2&SID=662113

Jersey Finance., *Quarterly Report*. 2008-09. Available at: http://www.jerseyfinance.je

Katz.E., *Implementation of the Third Money Laundering Directive – an overview*. Allen & Overy. May 2007.

Levi.M.,*Combating the financing of terrorism: a history and assessment of the control of "threat finance*". British Journal of Criminology. 2010.

Levin. M., *'The prospects for offshore financial centres in Europe'*, CEPS Research Reports, No. 29. 2002.

Lilliey, P. *Asian Money Laundering Explosion, Fighting Corruption in Asia - Causes, effects and remedies*. Singapore: World Scientific Co. Ltd. 2003.

Lilliey, P. *Dirty Dealing*. 3rd edition, Kogan Page. 2006.

LOWTAX.NET., *Jersey: Personal Taxation*. Available at: http://www.lowtax.net/lowtax/html/jjepetx.html

LOWTAX.NET., *Singapore Domestic Corporate Taxes*. Available at: http://www.lowtax.net/lowtax/html/singapore/singapore_information_business_taxation_investment.asp

Lucas.R., "*Why doesn't Capital Flow from Rich to Poor Countries?*", American Economic Review 80 (2): 92–96. 1990.

Luksza.J.C., *Mexico sees sense in war on drugs; The Mexican president has finally realised that the legalisation debate could offer his country a better future*. guardian.co.uk, Monday 23 August 2010.

Lutz.S., *'Convergence within National Diversity: The Regulatory State in Finance'* in Journal of Public Policy, 24/2, 169- 197.2004.

Lysaght.B., ***London Keeps Lead as Finance Center; Confidence Wanes*****. Bloomberg. March 2009.**

Magnusson.D., "***The costs of implementing the anti-money laundering regulations in Sweden*****", Journal of Money Laundering Control, Vol. 12 Iss: 2, pp.101 – 112. 2009.**

Masciandaro. D., ***Economics of Money Laundering : A Primer. Paolo*** **Baffi Centre Bocconi University Working Paper No. 171.2. 2007.**

Masciandaro. D., ***Money Laundering and Financial Offshore Centres: A Political Economy Approach.*** **Eisevier B.V. 2006.**

Masciandaro. D., ***Money Laundering: the Economics of Regulation.*** **European Journal of Law and Economics. No.7. Kluwer Academic Publishers.1999.**

Maynard Counsel and Attorneys., Anti ***Money Laundering Law and Practice in The Bahamas*****. Maynard Law Publishing. 2004.**

Mccann,H., ***Offshore Finance*****, Cambridge University Press. 2006.**

Millington.T. & Williams .M.K., ***The Proceeds of Crime, Law and Practice of Restraint, Confiscation, Condemnation and Forfeiture*****. 2nd Edition. Oxford University Press. 2007.**

Mitsilegas.V., ***Money Laundering Counter-Measures in the European Union: a new paradigm of security governance versus fundamental legal principles.*** **Volume. 20 of European business law & practice series. European law library. Kluwer Law International, 2003.**

Muller.W.H.. Kälin.C.H. & Goldsmith.J.G., ***Anti-money laundering: international law and practice.*** **John Wiley and Sons, 2007.**

Mullineux. A.W. & Murinde.V., ***Handbook of international banking.*** **Elgar Original Reference Series. Edward Elgar Publishing, 2003.**

Murphy.R., ***The EU money laundering white list*****. Tax Research UK. June 2010.**

Mwenda. K.K., ***Can insider trading predicate the offence of money laundering.*** **Michigan State University Journal of Business and Securities Law. (2006) 6. 127. 2006.**

National Commission on Terrorist Attacks Upon the United States: *Final Report of the National Commission on Terrorist Attacks Upon the United States.* 2004. Available at: http://www.9-11commission.gov/report/911Report.pdf

NPR Frontline Series., *Timeline: America's War on Drugs.* April 2, 2007. Available at: http://www.npr.org/templates/story/story.php?storyId=9252490

OECD Report., *Harmful tax Competition: An Emerging Global Issue.* 1998. Available at: www.oecd.org/dataoecd/33/0/1904176.pdf

OECD., *Jurisdictions Committed to Improving Transparency and Establishing Effective Exchange of Information in Tax Matters*.2009.Available at: http://www.oecd.org/document/19/0,3343,en_2649_33745_1903251_1_1_1_1,00.html

OECD., *Promoting Transparency and Exchange of Information for Tax Proposes.* Available at: http://www.oecd.org/dataoecd/32/45/43757434.pdf

OECD., *Report towards global tax co-operation: Progress in identifying and eliminating harmful tax practices of the OECD*. 2000.

OECD., *Trade and the economic recovery: why open markets matter*. May 2010. Available at : http://www.oecd.org/document/24/0,3343,en_2649_37431_45274200_1_1_1_1,00.html

OECD., *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. 2010. Available at: http://www.oecd.org/document/24/0,3343,en_2649_33753_1915490_1_1_1_1,00.html

OECD., *Transparency and Exchange of Information for Tax Proposes.* August 2010. Available at: http://www.oecd.org/dataoecd/32/45/43757434.pdf

Office of the Comptroller of the Currency. *Money Laundering: A Banker's Guide to Avoiding Problems.* Washington: December 2002. Available at: http://www.occ.treas.gov/moneylaundering2002.pdf

Ormerod.D.C., *Smith & Hogan Criminal Law.* 12th Edition. Oxford University Press.2008.

Oscapella.E., ***How Drug Prohibition Finances and Otherwise Enables Terrorism. Submission to the Senate of Canada Special Committee on Illegal Drugs.*** **October 2001.**

Osiander.A., ***Sovereignty, International Relations, and the Westphalian Myth. International Organisation*****. 55, 2, Spring 2001.**

Palan.R., '*Tax havens and the commercialisation of state sovereignty*'. International Organisation, 56/1, 151-176. 2002.

Parize.H., *Luxembourg in perspective*. European Lawyer 2008, Vol. 77, (48) 48. Available at:
http://www.oostvogels.com/Articles/Luxembourg%20in%20perspective.pdf

Persaud.B., *OECD Curbs on Offshore Financial Centres. A Major Issue for Small States*. The Round Table (2001), 359 (199–212). 2001.

Petras. J., *US Bank Money Laundering-Enormous By Any Measure*. 9-1-2. New York. Binghamton University Aug.2010.

Picard. P.M. & Pieretti.P., *Bank Secrecy, Illicit Money and Offshore Financial Centers.* "Paolo Baffi" Centre Research Paper Series No. 45. 2009.

Pieth.M & and Aiolfi.G., *"The Private Sector becomes active: The Wolfsberg Process"*. Wolfsberg Group of Banks. 2005. Available at:
http://www.wolfsberg-principles.com/pdf/Wolfsberg-Process.pdf

Pinder .M.N., *Bahamas Still A Major Money Laundering Centre, Report Claims.* The Bahama Journal.2005.

PriceWaterhouseCoopers., *A Practitioner's Guide to the FSA Regulation of Banking.* London : City and Financial Publishing. 2002.

PriceWaterhouseCoopers., *The future of OFCs in asset management.* AM News Sept.2009.

Reuters., *Group to reveal laundering, terror funding blacklist*
17 Feb 2010, Available at:
http://www.alertnet.org/thenews/newsdesk/LDE61G0T7.htm

Ries.N., ***Business, Taxes and Corruption in Russia*** **. Colgate University.2006.**

Rosdol.A., *"Are OFCs leading the fight against money laundering?",* **Journal of Money Laundering Control, Vol. 10 Iss: 3, pp.337 – 351. 2007.**

Rose.A.K. & Spiegel. M.M.,*Offshore Centres, Parasites or Symbionts?* **The Economic Journal, 117 (October), 1310–1335. Royal Economic Society 2007.**

Scharpf. F.W., *Democratic Policy in Europe***. European Law Journal. Volume 2, Issue 2, pgs. 136–155, July 1996.**

Scharpf. F.W, *Governing in Europe. Effective and Democratic?* **Oxford: Oxford University Press, 1999.**

Schott. P.A, World Bank, International Monetary Fund. *Reference guide to anti-money laundering and combating the financing of terrorism.***Washington: World Bank Publications, 2006.**

Schroth.P.W., *Bank Confidentiality and the War on Money Laundering in the United States***. In BLANCHIMENT D'ARGENT ET SECRET BANCAIRE MONEY LAUNDERING AND BANK SECRECY. Paolo Bernasconi. 1996.**

Scott.H.S., *International Finance: Law and Regulation.* **Sweet & Maxwell 2007.**

Scott-Joynt.J.,IMF blocks terror fund blacklist. BBC News.Available at: http://news.bbc.co.uk/1/hi/business/2223601.stm

Sharman.J.C., *Havens in a storm: The struggle for global tax regulation*, **Cornell University Press 117.2006.**

Shaw.N., *Tax and the Proceeds of Crime. GITC Review VolII.No.2. 2003.* **Available at: www.taxbar.com/documents/tax_proceeds_crime_ns_000.pdf**

Shehu,A.Y., *International initiatives against corruption and money laundering: an overview***. Journal of Financial Crime 2005, Vol. 12, Iss. 3, p.221-245.2005.**

Stessens.G., *Money laundering: a new international law enforcement model***. Cambridge Studies in International and Comparative law. Vol.15. Cambridge University Press, 2000.**

Stulz.R., ***The Limits of Financial Globalization.*** **Journal of Finance. 1595 LX. 2005.**

The Anti Money Laundering Network and Group Companies. ***Sanctions: Not quite FATF NCCT. But close*****. 19 February 2010.**
Available at:
http://www.bankinginsurancesecurities.com/sanctions_closures_fi_frauds/Sanctions/sanctions_not_quite_fatf_ncct_but_close

The World Bank., ***World Development Indicators database.Gross domestic product. World Bank. 2009.*** **Available at:**
http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf.

The World Federation of Exchanges. ***Statistics.*** **WFE.2009. Available at**
http://www.world-exchanges.org/statistics

Tranøy.B.S., ***'Offshore finance and money laundering: the politics of combating parasitic state strategies'*****, Rpt no 11, The Globalisation Project, Ministry of Foreign Affairs, Norway. 2002.**

Tsingou.E., ***Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime*****. University of Warwick: CSGR Working Paper No 161/05. May 2005.**

Turco.M., ***Written Question E-3497/01 to the Commission. EU cooperation with countries which do not cooperate with the FATF (Financial Action Task Force on Money Laundering, established within the OECD).*** **Official Journal 277 E , 14/11/2002 P. 0006 – 0008. 2002.**

United Nations., ***UN Global Program against Money Laundering.*** **Available at: http://www.imolin.org/**

UNODC.,***GPML Mandate*****. Available at:**
http://www.unodc.org/documents/money-laundering/GPML-Mandate.pdf

UNODC. ***Money-Laundering and Globalization.*** **2010 Available at:**
http://www.unodc.org/unodc/en/money-laundering/globalization.html

UNODC., ***UNODC on money-laundering and countering the financing of terrorism.*** **Available at: http://www.unodc.org/unodc/en/money-laundering/index.html**

US Department of the Treasury: ***The 2002 National Money Laundering Strategy*****.4 .2002. Available at:**
http://www.ustreas.gov/offices/enforcement/publications/ml2002.pdf

US Department of State., ***International Narcotics Control Strategy Report: Major Money Laundering Countries*****. 2007. Available at:**
http://www.state.gov/p/inl/rls/nrcrpt/2007/vol2/html/80883.htm

US Department of State., ***International narcotics control strategy report: Southeast Asia*** **and the Pacific. 2007. Available at:**
www.state.gov/p/inl/rls/nrcrpt/2006/vol1/html/62110.htm

Wechsler.W.F., ***Follow the Money*****. From Foreign Affairs, July/August 2001. Available at: http://www.scribd.com/doc/16571632/T4-B12-Wechsler-Follow-the-Money-Fdr-Entire-Contents-JulAug-01-William-F-Wechsler-Article-1st-Pg-Scanned-for-Reference-023**

Welu.C.M. & Muchnik.Y.,***Corruption: Russia's Economic Stumbling Block. American and European anti-corruption laws could help solve a longtime problem in Russia.*** **Bloomberg. Aug.2009.**

Williams.D., ***Governance, Security and 'Development": The Case of Money Laundering.*** **City University Working Papers on Transnational Politics. CUTP/001. February 2008.**

Wolswijk.H.D., ***Locus Delicti and Criminal Jurisdiction*****. Netherlands International Law Review (1999), 46:361-382 Cambridge University Press.1999.**

World Bank., ***Doing Business 2009 Report*****. World Bank 2009.**

World Bank., ***Doing Business 2010 Report*****. World Bank 2010.**

Worldwide Tax. ***Russia*****.Available at:**
http://www.worldwide-tax.com/russia/indexrussia.asp

Zerk.J.A., ***"Extraterritorial jurisdiction: lessons for the business and human rights sphere from six regulatory areas."*** **Corporate Social Responsibility Initiative Working Paper No. 59. 2010.**