



Defeating a Legitimate Criminal Enterprise: The Global Anti-Money Laundering Regime

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Abstract:

Money laundering is a major threat facing governments, which has been more of a negative side effect of globalization. The threat money laundering poses lies in its feat to fund international terrorism and transnational criminal activities. Those lying threats led the international community to establish administrative bodies to combat them through the construction of global anti money laundering regimes. For example, this includes the establishment of the Financial Action Task Force (FATF), which was established by the G7 in 1987, to detect and root out money laundering activities. The FATF and similar bodies stem out from the fact that detecting money laundering is not an easy task. In fact, even researchers face difficulty in doing just that, to the extent that most research and studies conducted on money laundering have produced conflicting or widely varying results. In addition, the state-centric nature of the Anti-Money Laundering Regime (AMLR), as well as the occasional mismanagement that may sometimes occur may hinder the efforts of the AMLR. As a giant web interlinking nation states that are financially vulnerable while assisting them logistically, politically and internationally, the AMLR acts towards ending the five wars of globalization. Thus, the international ties and relation between these nation states in their struggle to combat money laundering is bolstered. Finally, the international community needs to invest in its multilateral relations to promote, develop and strengthen the AMLR in order to put an end, or at least limit transnational crime and corruption.

Résumé :

Le blanchiment de fonds représente à la fois un effet indésirable de la mondialisation et une menace majeure contre les gouvernements. L'essence de cette menace se trouve dans la proximité des activités de blanchiment d'argent au financement terroriste international et aux activités criminelles transnationales. La communauté internationale a établi des organismes administratifs pour combattre ce problème; un d'entre eux est le Groupe d'Action Financière (GAFI) qui a été formé en 1987 par le G7 afin de détecter et d'éradiquer des activités de blanchiment de fonds. L'existence du GAFI et d'autres organismes similaires est nécessaire car la détection du blanchiment de fonds n'a rien de simple. Le fait que la recherche ne soit pas plus facile mène souvent à des conclusions incompatibles et contradictoires. De plus, le Anti-Money Laundering Regime (AMLR; "le Régime anti-blanchiment de fonds") est très centré sur l'état et

sa mauvaise gestion occasionnelle entrave ses efforts. L'AMLR est un réseau qui connecte les états-nations financièrement vulnérables en les aidant logistiquement, politiquement, et internationalement afin de d'agir contre les cinq guerres de la mondialisation. Ainsi, la lutte contre le blanchiment de fonds est soutenue par les liens et les relations internationales entre ces états-nations. Enfin, la communauté internationale doit investir dans ses relations multilatérales afin de promouvoir, de développer et de renforcer l'AMLR et par conséquent, restreindre ou même éliminer les crimes transnationaux et la corruption.

An unfortunate phenomenon that is ever so present in the world, and whose role is that of enabler of widespread crime and corruption, is that of money laundering¹. Perhaps, because of the lack of a perceived direct and emphasized role within the very lives of individuals, as compared to international terrorism for example, money laundering has not been accorded a strong degree of attention from individuals all around the globe. Yet, such a perception, be it purposely enforced by those who engage in money laundering or through sheer ignorance, is miscalculated at best. Money laundering has indeed been present throughout the ages and always been synonymous with illegitimate and at times illegal financial transactions. Interestingly, the presence of money laundering has been in parallel with a number of other global phenomena standing out in the role that humans have played in shaping and perpetuating while at the same time taking measures for their hindrance. According to Moises Naim, governments have been fighting the five wars of globalization unsuccessfully for centuries, stressing on the fact that the five wars, “drugs, arms, intellectual property, people, and money”, are the real wars governments face as a result of globalization.²

Dating the establishment of the sovereign state system to the 1648 Peace of Westphalia—a historical account disputed by certain scholars, such as Andreas Osiander³—the losing trend for sovereign territorial states would be estimable at roughly three centuries.⁴ The recent decades of globalization, which can be derived in part from technological advancements, have brought forth a global institutionalized structure, which in turn has reconfigured and further enabled international money laundering. Most notably, the proliferation of criminal behaviours and actors

¹ Naim, Moises. “The Five Wars of Globalization” *Foreign Policy* Vol. 134 (2003): 29.

² Naim, “The Five Wars.” The five wars are empowered by globalization and the new strategies each war defeats. An interesting one that may be less obvious for the non-initiated readers is that of money laundering; like the other wars, ML is not bound by geography, defeating traditional notions of sovereignty. In turn these wars affect markets and governments by clouding their activities.

³ Osiander, Andreas. “Sovereignty, International Relations, and the Westphalian Myth” *International Organization* Vol. 55, 2 (2001): 251 – 287.

⁴ Osiander, “Sovereignty, International Relations.”

practicing a deterritorialized and transnational logic of organization has been established. Essentially, the phenomenon of transnational money laundering is illustrative of deterritorialized criminal activity.

Empirical Data

Notwithstanding the methodological constraints in accurately measuring the volume of money laundered empirically, international multilateral institutions have published varying results. Although it remains uncertain whether the factual volume of the global total is at US\$2.85 trillion, US\$25 billion⁵, or in between, what is certain are the negative qualitative derivatives entailed in money laundering (ML). While the figures may be discouraging, contrary to Naim's diagnosis, it does not so much signal the oncoming defeat of governments than to prompt actors in the global system to adapt to new forms of behaviour.⁶ One such type of interunit adaptation is the emergence of an anti-money laundering regime (AMLR). Therefore, Naim's views demonstrate an asociological historical perspective, exhibiting a limited conception of what constitutes governance;⁷ he defines asociological as a linkage of societies' behaviour and manifestation of the latter. By examining the phenomenon of transnational money laundering and the role of the anti-money laundering regime, a clear trend emerges in the positive evolution of the unitary state's effort in combating money laundering to one that is multilateral and international in character and substance. The international community has recognized the very international nature of money laundering of the present day; such realization has prompted a truly multi-faceted and dynamic response that is clearly manifested in its trans-border character.

⁵ Marco Arnone and Leonardo Borlini. "International anti-money laundering programs: Empirical assessment and issues in criminal regulation" *Journal of Money Laundering Control* Vol. 13, 3 (2010): 234.

⁶ Eleni Tsingou. "Global financial governance and the developing anti-money laundering regime: what lessons for international political economy?" *International Politics* Vol. 47, 6 (2010): 622.

⁷ Naim, "The Five Wars."

This has, over time, created the need for the implementation of a global regime of governance that effectively reflects the international causes and effects of money laundering. As states realized that money laundering is a phenomenon in which various countries share a linked role, the construction of a global anti money-laundering regime was indeed being implemented. Most importantly, the identifying factors of community, transparency, and cooperation, which are reflected in the effort to combat money laundering, are crucial in achieving the greater aims of global governance in a time of international financial instability and corruption.

Quantitatively attributing the current level of transnational money laundering to globalization may raise doubts as to whether globalization and transnational money laundering have a causal relationship. Grahame Thompson has maintained that the year 1914 was a more economically globalized world than it is today,⁸ that is at least the case in terms of quantifiable international trade. Extrapolation then presents us with the clear notion that globalization in itself does not necessarily accompany the multiplication of transnational money laundering. One may infer instead that the globalization trend of the recent decades is qualitatively at variance with previous historical junctures.

Qualitative Data Linking to International Relations

A distinct qualitative feature of the recent globalization, according to John Farlane and Karen McLennan, is the threat to national and international security that transnational crime poses now.⁹ However, rather than money laundering being a direct output of globalization, its prevalence is better understood in the hypothesis of the unique qualitative configuration that globalization has

⁸ Thompson, Grahame. "Economic Autonomy and the Advanced Industrial State" *Global Politics*. Ed. Anthony G. McGrew and Paul G. Lewis et al. Cambridge: Polity Press. 1992. 257.

⁹ John. Farlane and Karen McLennan. *Transnational Crime: the New Security Paradigm*. Working Paper No. 294 (Australian National University, 2005): 2.

ushered for the phenomenon to be present. This recent qualitative distinctiveness has been attributed by the United Nations to the availability of new technological tools¹⁰ nonexistent during past globalization processes.

Detecting and Tracing the ML Trail

As mentioned, there exists a disagreement regarding the actual amount of money involved in transnational money laundering. This academic disagreement is not exclusively a matter of intellectual disputation between erudite individuals, but is also fundamentally a matter of methodological procedure. There are several methods available for measuring the magnitude of money laundering, which leads to disagreements among scholars—stemming from methodological differences. The following methods have been proposed by Brigitte Unger: field and case studies; surveys and interviews; suspicious or unusual transactions analysis; statistical discrepancy indicators (e.g. hot money method, residual approach and currency demand approach); latent variable approach; gravity model; abnormal prices for trade-based money laundering observation; and measurement by theory.¹¹ However, these methods, and perhaps all methods in general, are not completely lacking in limitations. There will always be issues of representativity, biases, data interpretation,¹² and so forth in the research process.

Further complicating the task is that different jurisdictions and financial institutions do not necessarily observe the same reporting guidelines;¹³ a state of affairs that the Financial Action Task Force (FATF) endeavours to ameliorate by developing guidelines for financial

¹⁰ United Nations. *The Impact of Organised Criminal Activities Upon Society at Large: Report of the Secretary General*. (UN Doc. E/CN.15/1993/3. 1993): 4.

¹¹ Brigitte Unger. “Money Laundering – A Newly Emerging Topic on the International Agenda” *Review of Law & Economics* Vol. 5, 2 (2009): 808.

¹² *Ibid*, 810.

¹³ *Ibid*, 809.

institutions.¹⁴ The FATF is an inter-governmental policy making body established to set standards and methods bolstering effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other threats to the integrity of the international financial system.¹⁵ The biggest challenge lies conceivably in attempting to measure a phenomenon that is meant to be clandestine and makes measurement complicated as it implies a degree of detection. With such methodological challenges involved, it is perhaps no surprise that estimates of global money laundering have not been uniform.

The IMF's estimated figures were between 2 and 5 per cent of the world's GDP,¹⁶ that is between US\$800 billion and US\$2 trillion,¹⁷ while Reuter and Truman promote estimates ranging between US\$25 – US\$150 billion.¹⁸ Conversely, Masciandaro et al¹⁹ estimates significantly higher figures. As a consequence, the global estimates feature a range as outstretched as US\$2.85 trillion and US\$200 – 500 billion,²⁰ while Thachuk surmises as low as around 1 trillion.²¹ Considering the far-ranging divergence in calculations, Naylor's estimate may be the most accurate of all. He quipped that “the only thing that can be stated with certainty is that the actual figure is not likely to be less than 0 per cent or more than 100 per cent.”²² To enable further skepticism regarding the ability to obtain accurate empirical data, money

¹⁴ Bruce Zagaris. “The Merging of the Counter-Terrorism and Anti-Money Laundering Regimes” *Law and Policy in International Business* Vol. 34, 1 (2002): 84.

¹⁵ Bruce Zagaris. “The Merging of the Counter-Terrorism and Anti-Money Laundering Regimes” *Law and Policy in International Business* Vol. 34, 1 (2002): 86.

¹⁶ Daniel Lindner. “Money Laundering Between States: A Comparison of International Money Laundering Control Mechanisms” *Defense Counsel Journal* Vol. 74, 1 (2007): 53.

¹⁷ Naim Moises. “The Five Wars of Globalization” *Foreign Policy* Vol. 134 (2003): 34.

¹⁸ Marco Arnone and Leonardo Borlini. “International anti-money laundering: Empirical assessment and issues in criminal regulation” *Journal of Money Laundering Control* Vol. 13, 3 (2010): 234.

¹⁹ Masciandaro, Donato, Elöd Takáts, and Brigitte Unger. *Black finance: the economics of money laundering*. Edward Elgar Publishing, 2007. 35.

²⁰ Leonardo Borlini. “Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization” *SSRN Working Paper Series* (2008): 18.

²¹ Kimberly L. Thachuk, “Foreword” *Transnational Threats: smuggling and trafficking in arms, drugs and, human life*. Ed. Kimberly L. Thachuk. (Westport: Praeger Security International. 2007): 17.

²² Eleni Tsingou. “Global financial governance” 622.

laundering is argued as multiplying itself through its own mechanisms; it is expected that an additional increase of 6 – 10% should be expected years ahead.²³ Although arguably, the more convincing lesson is that the figures are not static, but rather fluctuate up and down.

Process of AML and Conceptual Core of ML Actors

Money laundering as a phenomenon may be dissected in three stages: 1. Disassociating the funds from the illegal method by which it was procured; 2. Concealing the process of re-legitimization; and, 3. Reintroduction into the legal sphere disguised as legally obtained money.²⁴ In short, “disassociation, obfuscation, and legitimation.”²⁵ Leonardo Borlini refers to them as “placement, layering, and integration”²⁶— a process by which money acquired through illegal means is made to appear legal. The forms of illegal activity employed to obtain the money, a method employed to re-legitimize the money and the ultimate use of the money laundered, can be infinitely diversified.

As stated by Margaret Beare and Stephen Schneider, the only limitation is the creative imagination of the managing actors of the operation.²⁷ Indeed, individuals engaged in money laundering are not bound to local national procedural obstacles or international mistrust; whereas states differ in their agendas and priorities, money launderers have the one aim of perpetuating money laundering, which brings out a multi-faceted and harmonized effort on their part. Naylor reports that corporate actors are the prime executors and beneficiaries of transnational money

²³ Leonardo Borlini. “Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization” *SSRN Working Paper Series* (2008): 17.

²⁴ R. T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underground Economy* (Ithaca: Cornell University Press. 2004): 142.

²⁵ R. T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underground Economy* (Ithaca: Cornell University Press. 2004): 142.

²⁶ Leonardo Borlini. “Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization” *SSRN Working Paper Series* (2008): 20.

²⁷ Margaret. E. Beare and Stephen. Schneider, *Tracing of Illicit Funds: Money Laundering in Canada*. (Ottawa: Solicitor General of Canada. 1990): 304.

laundering, and such findings should be met with a sober and calculated response, especially in considering that the current capitalist regime is indeed the driving force behind the economies of the First World. Nevertheless, the diversity of beneficiaries and launderers can include drug dealers, diplomats, bankers, religious authorities, politicians, dictators, and terrorists.²⁸ Diagnostically, assembling an exhaustive compendium of every possible type of actors involved in money laundering would be equivalent to assembling a list of every possible type of person in the world. Even the pope can be a money launderer if he were part of a chain that obtained funds illegally, concealed the illegal origins of the money, and reintroduced them into the legal economy as legitimate. In other words, perpetrators of money laundering are part of all the steps in the process yet are more often ignorant of their own role in this complicated chain of intertwined licit and illicit activities.

The endless possible forms of laundering methods can be exemplified in race tracks, lotteries, mixed payments, purchases and retail, receipt of payments by cheque, underground banking, transport of money or goods by mail, diplomatic pouches, property, and scams. Unorthodox schemes have also been attempted such as aspirations to purchase and create microstate countries – having a small geographical area, possessing their own political unit within a small population thus creating a “sovereign state” – an example is Vatican City.²⁹ The feat of owning banks has however been done,³⁰ Peter Quirk recounted the story of how an IMF team discovered 100 small banks without legitimate banking business in a country of less than 100,000 people.³¹ Equally infinite in possibility is the manner in which the successfully

²⁸ Leonardo Borlini. “Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization” *SSRN Working Paper Series* (2008): 37.

²⁹ R. T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underground Economy* (Ithaca: Cornell University Press. 2004): 168.

³⁰ R. T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underground Economy* (Ithaca: Cornell University Press. 2004): 168.

³¹ Peter J. Quirk. “Money laundering: Muddying the macroeconomy” *Finance and Development* Vol. 34, (1997): 7.

laundered money will be utilized. One such manner is the funding of terrorist operations,³² which is why, post-9/11, a main international preoccupation came to be the financing of terrorist organizations through money laundering. Accordingly, provisions addressing the issue were integrated into the anti-money laundering regime.³³

Roots and History of ML

Ontological inquiry into money laundering requires a distinction between the historical origin and the causal origin of the practice. Considering the insufficiently explored nature of money laundering in academia, as pointed out by Unger,³⁴ only a hypothesis for its causal origin and its historical origin can be offered here. Naylor hypothesized that the practice of money laundering may date its origin between 1792–1750 BC, at the same time as the institution of the first genuine tax code in Hammurabi's Babylonia.³⁵ If Naylor's hypothesis is grounded on the reasoning that a government created a situation inducing the beginning of money laundering, then there is insufficient empirical evidence available to support the claim that this was the very first case. Due to its untestable nature, this is ultimately pure speculation. More convincing is Naylor's aphorism that "as long as there has been a need to hide a financial transfer, something like money laundering has occurred."³⁶ From Naylor's hypothesis, a clear presence of dependent and independent variables is occurring thus satisfying the threshold of testability. There is moreover no automatic assumption that all laundered money is illegally generated. Proceeds

³² Norman Mugarura. "The institutional framework against money laundering and its underlying predicate crimes" *Journal of Financial Regulation and Compliance* Vol. 19, 2 (2011): 181.

³³ Eleni Tsingou. "Global financial governance and the developing anti-money laundering regime: what lessons for international political economy?" *International Politics* Vol. 47, 6 (2010): 625.

³⁴ Brigitte Unger. "Money Laundering – A Newly Emerging Topic on the International Agenda" *Review of Law & Economics* Vol. 5, 2 (2009): 807.

³⁵ R. T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underground Economy* (Ithaca: Cornell University Press. 2004): 134.

³⁶ *Ibid.*

from drug trafficking may notably be illegally generated, but tax evasion is a case where money is legally generated and afterwards stolen, further necessitating its concealment and subsequent laundering.

Having appraised the scale and typology of transnational money laundering, a delineation of its detrimental effects from a political economy and legal perspective is necessary. In this manner, the pressures for global international behavioural adaptation, mostly carried out through institutional innovation, becomes the focal point in combating money laundering. This paper endorses the view that transnational money laundering should be studied through a multidisciplinary approach inclusive of sociology and criminology, but here, only a less ambitious approach of focusing on the political economy and legal perspectives can be afforded.

Transnational money laundering in certain cases implies the existence of underground networks of criminal organization spanning multiple national jurisdictions relatively unimpeded by territorial borders.³⁷ The presence of money laundering can portend ruinous activities in institutions and society in general. For there to be money laundering, there has to be criminal activity; otherwise, concealment of the money procurement procedure and the effort to reintroduce the money as legitimate would be unnecessary. Money laundering in political institutions can be evidence of corruption. In the case of financial institutions, it can entail circumstances of fraudulent behaviour and embezzlement that jeopardizes the reputation of the institution.³⁸ Marco Arnone and Leonardo Borlini have asserted that money laundering facilitates crime and corruption,³⁹ which impedes economic growth by decreasing economic efficiency by

³⁷ Leonardo Borlini. "Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization" *SSRN Working Paper Series* (2008): 2.

³⁸ Leonardo Borlini. "Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization" *SSRN Working Paper Series* (2008): 16.

³⁹ Marco Arnone and Leonardo Borlini. "International anti-money laundering programs: Empirical assessment and issues in criminal regulation" *Journal of Money Laundering Control* Vol. 13, 3 (2010): 234.

misallocating financial services away from efficient economic activity.⁴⁰ It also draws economies away from their production possibilities frontier. In these conditions, the stability of financial systems is endangered by market distortions from mass reallocation and redistribution of illegal money.⁴¹ This is especially true in developing countries where amassed laundered money can exceed the resources of the state.⁴² Alarming, mass movements of illegal money can alter exchange rates and interest rates,⁴³ as shown in Nigeria's experience.⁴⁴

Just like sham banks, money laundering can also entail the proliferation of front companies, also known as "shell" companies.⁴⁵ Front companies are owned by criminal social forces for the purpose of mixing laundered money with legitimate money to transform money from illegal to legal.⁴⁶ However, an accretion of legitimate private enterprises falling into the ownership of criminal elements purchased with laundered money risks the capture of the legitimate economy under criminal hands.⁴⁷ An alternative version of a front organization recently emerged in the form of non-profit organizations, where the goals of such organizations, generally being seen as positive, overshadow or distract from their sources of finance and the procurement thereof.⁴⁸ Money laundering is incontrovertibly an economic issue.⁴⁹ As a corollary,

⁴⁰ Ibid.

⁴¹ Navin Beekarry. "The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law" *Northwestern Journal of International Law & Business* Vol. 31, 1 (2011): 153.

⁴² John McDowell and Gary Novis, *The Consequences of Money Laundering and Financial Crime*. (District of Columbia: United States of America: Bureau of International Narcotics and Law Enforcement Affairs, US Department of State, 2001).

⁴³ Ibid.

⁴⁴ Aluko, Ayodeji and Mahmood Bagheri. "The impact of money laundering on economic and financial stability and on political development in developing countries" *Journal of Money Laundering Control*. Vol. 15, 4 (2012): 33.

⁴⁵ Leonardo Borlini. "Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization" *SSRN Working Paper Series* (2008): 22.

⁴⁶ ⁴⁶ Leonardo Borlini. "Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization" *SSRN Working Paper Series* (2008): 15.

⁴⁷ Leonardo Borlini. "Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization" *SSRN Working Paper Series* (2008): 23.

⁴⁸ Marco Arnone and Leonardo Borlini. "International anti-money laundering programs: Empirical assessment and issues in criminal regulation" *Journal of Money Laundering Control* Vol. 13, 3 (2010): 239.

transnational money laundering represents a transnational economic phenomenon that affects contrasting economic systems. For instance, the proceeds of criminal economic activity in developing countries often ultimately integrates the licit economy through financial institutions of developed countries. The majority of recipient countries of money for laundering are developed nations; the leading recipient country is the United States.⁵⁰ In comparison, the constraining effect on economic growth by money laundering decelerates the economic development of developing countries.⁵¹

ML and its Challenge to Developing Nations

The steps by which laundered money traverses to reach legitimate and legal status in world markets are important to note: economic inefficiencies occur, financial institutions get compromised, and criminal activity transpires. These are among other events supplanting any one state institution to clearly track the progress of the money involved. The money laundering process essentially sustains criminal activities and multiplies them effectively to the detriment of legitimate global markets.⁵² Disconcertingly, criminal organizations use laundered money to bribe politicians to buy them political influence in order to mould the executive decisions and laws of a political community.⁵³ As Louis Shelley points out, the more money criminal

⁴⁹ Leonardo Borlini. "Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization" *SSRN Working Paper Series* (2008): 2.

⁵⁰ D. Masciandaro, E. Takats and B. Unger. *Black Finance: The Economics of Money Laundering* (Northampton: Edward Elgar Publishing, 2007): 78.

⁵¹ Aluko, Ayodeji and Mahmood Bagheri. "The impact of money laundering on economic and financial stability and on political development in developing countries" *Journal of Money Laundering Control*. Vol. 15, 4 (2012): 42.

⁵² Kimberly L. Thachuk, "Foreword" *Transnational Threats: smuggling and trafficking in arms, drugs and, human life*. Ed. Kimberly L. Thachuk. (Westport: Praeger Security International, 2007): 12.

⁵³ Peter G. Peterson Institute for International Economics. "Corruption as an International Policy Problem: Overview and Recommendations" *Corruption and the Global Economy*. Ed. Kimberly Ann Elliott. (District of Columbia: Peter G. Peterson Institute for International Economics, 1997): 179.

organizations have, the more influential they become.⁵⁴ The most susceptible actors are new⁵⁵ and weak states⁵⁶ whose politics are very much dependent and linked to their economic state. Additionally, money laundering's effects spill over to other sectors of society, while governing the phenomenon through an individualist state strategy is very much ineffective. If the state is in retreat (and according to Van Creveld⁵⁷ and Shelley⁵⁸ it is in decline), the regime of global governance is in advance; at least, in regard to combating transnational money laundering. Indisputably, the state remains the primary institutional pillar of the world order. It is the only type of institution that can impose a comprehensive system of taxation. Neither can any other institution rival its ability to organize military forces. Nevertheless, institutions capable of governing beyond the territorial logic of the sovereign state are needed and the anti-money laundering regime is such an institution.

Response Strategies

Robert Keohane's rational choice account of institutional emergence presupposing the existence of shared interests among actors appears valid in the case of the anti-money laundering regime.⁵⁹ The G7 held common concern for the ramifications of the global movement of illegal money,⁶⁰

⁵⁴ Louis I. Shelley. "Transnational Organized Crime: The New Authoritarianism" *The Illicit Global Economy and State Power*. Ed. H. Richard Friman and Peter Andreas. (New York: Rowman & Littlefield Publishers, Inc. 1999): 33.

⁵⁵ Frank Madsen. *Transnational Organized Crime* (New York: Routledge. 2009): 185.

⁵⁶ Kimberly L. Thachuk, "Foreword" *Transnational Threats: smuggling and trafficking in arms, drugs and, human life*. Ed. Kimberly L. Thachuk. (Westport: Praeger Security International. 2007): 9.

⁵⁷ Martin Van Creveld. *The Rise and Decline of the State* (Cambridge: Cambridge University Press. 1999): 417.

⁵⁸ Louis I. Shelley. "Transnational Organized Crime: The New Authoritarianism" *The Illicit Global Economy and State Power*. Ed. H. Richard Friman and Peter Andreas. (New York: Rowman & Littlefield Publishers, Inc. 1999): 26.

⁵⁹ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press. 1984): 79.

⁶⁰ Navin Beekarry. "The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law" *Northwestern Journal of International Law & Business* Vol. 31, 1 (2011): 167.

counting the United States as its most vocal supporter.⁶¹ The centrepiece of the regime is the FATF,⁶² which is an intergovernmental institution founded in 1989 by the G7. The FATF is comprised of 34 member jurisdictions and 2 regional organizations representing major financial centres all over the globe. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system.⁶³ The multilateral architecture of the regime, which affects its durability,⁶⁴ is consistent with Christian Reus-Smit's argument that institutional design is influenced by systemic norms.⁶⁵ Its institutional matrix,⁶⁶ in addition to the International Monetary Fund (IMF), World Bank (WB), United Nations (UN), and other regional organizations,⁶⁷ is comprised of 31 member states.⁶⁸

The anti-money laundering regime employs continuously evolving governance tools. Among these instruments is the ability to promulgate norms intended to regulate a diverse array of actors. These norms function as non-binding standards,⁶⁹ also referred to as "soft laws". In particular, the FATF's 40+9 recommendations are considered to be standards or guidelines that

⁶¹ Marco Arnone and Leonardo Borlini. "International anti-money laundering programs: Empirical assessment and issues in criminal regulation" *Journal of Money Laundering Control* Vol. 13, 3 (2010): 241.

⁶² Marie Wilke. "Emerging Informal Network Structures in Global Governance: Inside the Anti-Money Laundering Regime" *Nordic Journal of International Law* Vol. 77, 4 (2008): 515.

⁶³ Ibid :517

⁶⁴ Alastair Iain Johnston. "Treating International Institutions as Social Environments" *International Studies Quarterly* Vol. 45, 4 (2001): 496.

⁶⁵ Christian Reus-Smit. "The Constitutional Structure of International Society and the Nature of Fundamental Institutions" *International Organization* Vol. 51, 4 (1995): 569.

⁶⁶ John Gerard Ruggie. "The United Nations and Globalization: Patterns and Limits of Institutional Adaptation" *Global Governance* Vol. 9, 3 (2003): 302.

⁶⁷ Marco Arnone and Pier Carlo Padoan. "International anti-money laundering: Empirical assessment and issues in criminal regulation" *Journal of Money Laundering Control* Vol. 13, 3 (2010): 365.

⁶⁸ Norman Mugarura. "The institutional framework against money laundering and its underlying predicate crimes" *Journal of Financial Regulation and Compliance* Vol. 19, 2 (2011): 182.

⁶⁹ Marie Wilke. "Emerging Informal Network Structures in Global Governance: Inside the Anti-Money Laundering Regime" *Nordic Journal of International Law* Vol. 77, 4 (2008): 512.

require conformity in bona fides.⁷⁰ The FATF standards advise national legislative institutions on crime legislation while also providing guidelines for financial institutions to follow.⁷¹ Moreover, new instruments are being devised for imputing criminal liability on corporations by reconsidering the role of corporate officers and the circumscribed catalogue of culpable offences.⁷² Therefore, one can extrapolate the existence of analytic institutions within the FATF.⁷³ By adopting and practicing these norms, a coordinated pattern of behaviour comes forth indicative of order encompassing states and non-state actors designed to respond to transnational money laundering.

Consideration in Eradicating ML

Moreover, the FATF developed an enforcement method to strengthen the effectiveness of its soft laws by constructing a comprehensive peer-reviewed monitoring process,⁷⁴ and gained the ability to measure the level of compliance of members and non-members to its transmitted norms. Compliance is regarded as the absence of major deviations from the soft laws and it is inherently a measure of consistency between the soft laws and domestic legislation.⁷⁵ Deficiency in corrective action from members and non-members provides basis to be listed in the Non-cooperative Countries and Territories List.⁷⁶ Arriving at this situation entails a damaged

⁷⁰ Navin Beekarry. "The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law" *Northwestern Journal of International Law & Business* Vol. 31, 1 (2011):171.

⁷¹ Bruce Zagaris. "The Merging of the Counter-Terrorism and Anti-Money Laundering Regimes" *Law and Policy in International Business* Vol. 34, 1 (2002): 82.

⁷² Leonardo Borlini. "Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization" *SSRN Working Paper Series* (2008): 41.

⁷³ Andre Broome and Leonard Seabrooke. "Seeing like an International Organisation" *New Political Economy* Vol. 17, 1 (2012): 3.

⁷⁴ Navin Beekarry. "The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law" *Northwestern Journal of International Law & Business* Vol. 31, 1 (2011): 173

⁷⁵ *Ibid*:177.

⁷⁶ *Ibid*:180.

reputation, inciting doubts regarding the country's legitimacy to conduct business globally.⁷⁷ Even more serious, is Recommendation 21, also known as the "name and shame" procedure which was introduced in 1999. This involves the FATF urging global "financial institutions to closely scrutinize financial relations and transactions with persons, companies, and financial institutions" from the non-complying country.⁷⁸ The effectiveness of these instruments appears relatively context-dependent. Countries with a more developed financial sector have more to lose, thus are more sensitive and more compliant.⁷⁹ The well proven assumption behind the "name and shame" doctrine is that governments would not risk gaining notoriety as hubs or enablers of money-laundering, since the short term gains that the phenomenon might provide them with would be much more offset by the long term consequences their economies would face from the backing out of mistrustful international and local investors. Even the Republic of Seychelles was forced to repeal pro-money laundering legislation.⁸⁰

Setbacks, Obstacles, and Criticisms Facing the AMLR

Eliciting legislative compliance from states also does not equate to actual results. The FATF also has its weaknesses, which consist of an exclusive and limited membership, and a lack of an appeal and oversight mechanism.⁸¹ This results in the absence of clearly defined criteria for what constitutes success for the anti money-laundering regime.⁸² Furthermore, Tsingou characterized the regime as "state-centric".⁸³ However, rather than proving the lack of efficiency of the system

⁷⁷ Ibid:181.

⁷⁸ Ibid:181.

⁷⁹ Ibid:186.

⁸⁰ Ibid:187.

⁸¹ Ibid:191.

⁸² Eleni Tsingou. "Global financial governance and the developing anti-money laundering regime: what lessons for international political economy?" *International Politics* Vol. 47, 6 (2010): 622.

⁸³ Eleni Tsingou. "Global financial governance and the developing anti-money laundering regime: what lessons for international political economy?" *International Politics* Vol. 47, 6 (2010): 629.

of global governance related to money laundering, such difficulties are rather clear indications of “growing pains” by which all nascent institutions inevitably progress through, but only with the clear understanding of what is being replaced and what the short and long term goals are. Considering the current institutional configuration of the world, state-centrism for an international regime may be arduous to avoid, though not impossible; a firm-centric regime has existed before.⁸⁴ Regardless, state-centrism is not necessarily a shortcoming, while the anti-money laundering regime is relatively new and requires further adjustments and refinement.⁸⁵ Tsingou raised doubts regarding the anti-money laundering regime’s effectiveness, accusing it of being mostly symbolic.⁸⁶ These sentiments are not without foundation. Many areas of further improvements, though not exhaustive, have been supplied above and, at least, something is being done: the regime’s formation was done; the regime’s soft laws were done; and the regime’s continued evolution is being done.

The Light at the End of the Tunnel?

The recent trend of globalization certainly created circumstances and opportunities that were and still are, in some cases, being exploited, especially through the unique and original methods employed by criminals. The ingenuity and potential of the agents of governance should however not be underestimated. The same forces that unleashed a deluge of transnational criminal activity are calling forth a social reorganization in governance, capitalization of newly available

⁸⁴ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984): 190.

⁸⁵ Marco Arnone and Pier Carlo Padoan. “International anti-money laundering: Empirical assessment and issues in criminal regulation” *Journal of Money Laundering Control* Vol. 13, 3 (2010): 369.

⁸⁶ Eleni Tsingou. “Global financial governance and the developing anti-money laundering regime: what lessons for international political economy?” *International Politics* Vol. 47, 6 (2010): 629.

technology and development of new instruments of governance as answers to the new challenges.

By tracing the practice of money laundering as far back as Hammurabi's Babylonia (1792 BC – 1750 BC),⁸⁷ Naylor implies that money laundering precedes the existence of the sovereign territorial state, a mode of socio-political organization possessing a distinct mode of governance. Considering the lineage, the designation as “the second oldest crime” may not be far off in accuracy. Conjointly, medieval Europe is another historical juncture that underlines the point that money laundering preceded the international system.⁸⁸ These implications hint to Hendrik Spruyt's contribution to historical sociology and its implicit insinuations; pertaining to this matter, the sovereign territorial state is not the sole historical institution capable of functioning as a social mechanism of governance.⁸⁹ To quote Martin Van Creveld, “government and state are not the same... The latter is merely one of the forms which, historically speaking, the organization of government has assumed.”⁹⁰

Recommendations

It is not asserted here that the system of sovereign territorial states has passed. Rather, an approach that most simply can be described as cooperative, transparent, and harmonious in aims and efforts is called upon so that all states participate towards ending the exponential growth of money laundering. Whether or not the process will ever be completed shall be determined in hindsight, yet the steps towards success have already been undertaken with much diligence on

⁸⁷ R. T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underground Economy* (Ithaca: Cornell University Press. 2004): 134.

⁸⁸ R. T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underground Economy* (Ithaca: Cornell University Press. 2004): 134.

⁸⁹ Hendrik Spruyt, *The Sovereign State and Its Competitors* (Princeton: Princeton University Press. 2004): 153.

⁹⁰ Martin Van Creveld. *The Rise and Decline of the State* (Cambridge: Cambridge University Press. 1999): 415.

the part of global actors. Individual states still appear inclined to withhold their monopoly in criminal matters in varying degrees,⁹¹ which counteracts the optimal operation of the anti money-laundering regime. A regime provides an institutional solution to the deterritorialized criminal elements seeking to evade the domestic governance of states. A regime does so by performing inter-territorial governance, which is one alternative of coping with the problems posed by the recent trend in globalization. Yet, it is not by a long shot the only possible solution.

In the realms of concepts such as money laundering, the only limitation is the human imagination; the sovereign state institutional form emerged from and resolved many medieval-based problems. It may not be farfetched to expect that new institutional forms, whether as regime or other unit types will emerge and resolve the problems wrought by the recent trend of globalization. Contrary to Naim's views, governance is not losing but rather evolving into a multi-layered purpose and effort. No longer do states see their integrity and wellbeing as solely achievable by their individual effort and accord. Sovereignty still lies with the state but it no longer has monopoly over governance; and perhaps, it never did. The currently forming anti-money laundering regime is a proof that the globalizing world, characterized by international threats and issues, can only be remedied by a unified and harmonized system of governance.

⁹¹ Leonardo Borlini. "Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization" *SSRN Working Paper Series* (2008): 28.

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