

ABOUT THE AUTHOR

William F. McDonald is a professor of sociology, and co-director, Institute of Criminal Law and Procedure, Georgetown University. He received a D.Crim. from the University of California, Berkeley; a M.Ed. Boston College and a B.A. from the University of Notre Dame. He has taught criminology, criminal justice, research methods and statistics, and comparative criminal justice systems. His published work include books on immigration and crime, the globalization of law enforcement; the victim; the prosecutor; and the defense counsel; plea bargaining; fifty prosecutor relationships; illegal immigration; pretrial release; drug law enforcement; victimology and comparative criminal justice.

59 International Cooperation to Combat

Money Laundering

Adam Graycar

MONEY LAUNDERING

Money laundering is a process that turns "dirty money" into "clean money." The proceeds of crime – dirty money – are disguised to hide their illicit origins, and then the money is integrated into the legitimate economy. The process washes dirty money until it appears to be clean. Often, but not always, the cleaning of dirty money involves moving it across national borders and integrating it into another economy.

Criminals disguise the illegal origins of their wealth, and terrorist organizations try to conceal the destination and the purpose for which the money has been collected. Money laundering plays a part in corruption as corrupt public officials need to hide the kickbacks they receive and the public funds they may have misappropriated. Organized criminal groups have substantial proceeds from drug trafficking and commodity smuggling. Together, these activities have profound social consequences and require cooperative international activity to combat them.

There is a great deal of international and national activity to counter financial crime and money laundering. Legislation exists in most countries to criminalize money laundering and the associated activities such as opening accounts in false names. Law enforcement agencies have investigated and prosecuted those accused of money laundering and prison sentences have been imposed. Money laundering is certainly big business and is significant for many economies. In its Global Anti-Money Laundering Survey 2007, KPMG opens with these words: "Estimated money laundering flows are reported to be in excess of US\$1 trillion being laundered every year by drug dealers, arms traffickers and other criminals" (KPMG, 2007: 4).

There are both domestic and international cooperative efforts to combat money laundering. The US Money Laundering Threat Assessment (2005) offers a detailed analysis of thirteen money laundering methods, ranging from well-established techniques for integrating dirty money into the financial system to modern innovations that exploit global payment networks, as well as the Internet. The methods the report describes in detail are Banking; Money Services Businesses (Money Transmitters, Check Cashers, Currency Exchangers, Money Orders, Stored Value Cards); Online Payment Systems; Informal Value Transfer Systems; Bulk-Cash Smuggling; Trade-Based Money Laundering; Insurance Companies; Shell Companies and Trusts; and Casinos.

GLOBAL COOPERATIVE EFFORTS

There are numerous international agencies and collaborative networks that toil actively against money laundering and which have striven for uniform standards and cooperative development. Among them are the World Bank, the International Monetary Fund, the African Development Bank, the Asian Development Bank, Interpol, the United Nations Global Program against Money Laundering, and the Financial Action Task Force (FATF). Details on all of these can be found on their Web sites. In addition several United Nations conventions have money laundering as the key.

United Nations

The 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances was the first international convention that criminalized money laundering. It contained legal instruments for nations to use. The International Convention for the Suppression of the Financing of Terrorism came into force in April 2002. This requires member states to take measures to protect their financial systems from being misused by persons planning or engaged in terrorist activities. This was followed by two other UN conventions, the UN Convention Against Transnational Organized Crime in 2003, and in 2005 by the United Nations Convention Against Corruption (UNCAC).

Together, these conventions require explicit commitments against money laundering. States are to develop domestic regulatory and supervisory regimes for banks and nonbank financial institutions as well as mechanisms to deter and detect all forms of money laundering. States are also to emphasize requirements for customer identification, record keeping, and

the reporting of suspicious transactions and develop an ability to cooperate and exchange information at the national and international levels. State parties, the UNCAC Convention says, shall endeavor to develop and promote global, regional, subregional, and bilateral cooperation among judicial, law enforcement, and financial regulatory authorities in order to combat money laundering.

These form the UN's Global Program against Money Laundering, Proceeds of Crime, and the Financing of Terrorism. The objective is for all states to adopt legislation for the legal instruments against money laundering and to counter the financing of terrorism. Through technical assistance programs the UN helps equip states with the knowledge, means, and expertise to lay in place legal frameworks, as well as to investigate and prosecute complex financial crimes. This is backed by information exchange and mutual legal assistance.

The Financial Action Task Force (FATF)

To complement the work of the United Nations, the FATF is a policy-making body that works to bring about national reforms and to generate the political will to counter money laundering. An intergovernmental body, the FATF was established in July 1989 by a Group of Seven (G-7) Summit in Paris, initially to examine and develop measures to combat money laundering. At that time the FATF comprised fifteen jurisdictions, plus an international organization. It now comprises thirty-four members.

Its role is clearly summarized on its Web site (www.fatf-gafi.org): "The FATF monitors members' progress in implementing necessary measures, reviews money laundering and terrorist financing techniques and countermeasures, and promotes the adoption and implementation of appropriate measures globally. In performing these activities, the FATF collaborates with other international bodies involved in combating money laundering and the financing of terrorism."

The four essential objectives of the FATF are to:

- Revise and clarify the global standards and measures for combating money laundering and terrorist financing.
- Promote global implementation of the standards.
- Identify and respond to new money laundering and terrorist financing threats.
- Engage with stakeholders and partners throughout the world.

The FATF has established the international standards for combating money laundering and terrorist financing, in what are known as the 40+9 Recommendations – that is forty initial recommendations plus nine special recommendations to deal with terrorist financing.

The forty recommendations were initially developed in 1990, revised in 1996, and thoroughly reviewed in 2003. The FATF Web site has extensive discussion on the forty recommendations and the methodologies for implementing and evaluating them. The recommendations are very comprehensive, and are grouped as follows.

The first three of the forty recommendations relate to legal issues and legal systems and cover the scope of the criminal offence of money laundering and provisional measures and confiscation.

The bulk of the recommendations relate to measures to be taken by financial institutions and nonfinancial businesses and professions to prevent money laundering and terrorist financing. These cover:

- Customer due diligence and record-keeping
- Reporting of suspicious transactions and compliance
- Other measures to deter money laundering and terrorist financing
- Measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations
- Regulation and supervision.

The remaining recommendations relate to institutional and other measures necessary in systems for combating money laundering and terrorist financing. They cover:

- Competent authorities, their powers and resources
- Transparency of legal persons and arrangements
- International cooperation
- Mutual legal assistance and extradition
- Other forms of cooperation.

The FATF standards have been endorsed directly by 180 jurisdictions around the world, as well as by the Boards of the International Monetary Fund and the World Bank. In addition, the United Nations Security Council in its Resolution 1617 of July 2005 stated that it “strongly urges all Member States to implement the comprehensive international standards embodied in the FATF Forty Recommendations on Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing.”

The FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in the areas addressed by the 40+9 Recommendations.

Following the terror attacks of September 11, 2001, nine special recommendations were developed by FATF. These cover topics such as criminalizing the financing of terrorism and associated money laundering; freezing and confiscating terrorist assets; reporting suspicious transactions related to terrorism; international cooperation; and several recommendations on the movement of money and special remittances through wire transfers and cash couriers. There is also a recommendation on nonprofit organizations.

Nonprofit organizations are particularly vulnerable to terrorist organizations posing as legitimate entities, and can be used as conduits for terrorist financing, and to conceal or obscure the clandestine diversion to terrorist organizations of funds intended for legitimate purposes. We can, therefore, see the issue is broader than banks and financial institutions alone.

ENFORCEMENT

The UN and the FATF are mostly concerned with developing positions and instruments for use by various countries. Enforcement has been both country-based, and when cooperation has been required, a prominent role has been played by Interpol which would provide information on money laundering activities to national law enforcement agencies. Interpol was formed in 1923 to facilitate police to police cooperation on a global scale. Noting that the breach of customs controls are crucial elements in money laundering, The World Customs Organization has since 1952 been working on harmonization of customs procedures and the provision of information to its members about the movement of illicit money and goods.

There are many players, the UN and its constituent parts, the FATF, Interpol, and World Customs Organization, plus many more operators such as International Monetary Fund (IMF), Commonwealth Secretariat, Organization for Security and Cooperation in Europe (OSCE), Asian Development Bank (ADB), UN Counter-Terrorism Executive Directorate (CTED), UN Counter-Terrorism Implementation Task Force (CTITF), regional development banks, European Union, United Nations Commission on International Trade Law (UNCITRAL), as well as the US Department of Justice (OPDAT), US Department of Treasury – Office of Technical Assistance (OTA), Inter-American Drug Abuse Control Commission of the Organisation of American States (OAS/CICAD), FATF-style regional bodies, and a number of individual country technical assistance providers. The one that gets closest to actual enforcement is the Egmont Group of Financial Intelligence Units.

Most countries have created Financial Intelligence Units (FIUs), and they operate in a wide range of different systems, and use different methods. These

are the people who analyze financial intelligence, and if there is sufficient evidence of unlawful activity they then pass the information on to a prosecuting authority. Formed in 1995, The Egmont Group of Financial Intelligence Units is an informal international gathering of 116 national financial intelligence units. These FIUs meet regularly to find ways to cooperate, especially in the areas of information exchange, training, and the sharing of expertise.

While the international conventions specify the mandatory reporting of suspicious transactions to the national authorities there have not been any accepted standards or formats. The Egmont Group has provided support. In some countries, the FIU follows a police model, such as the NCIS in the United Kingdom. In these situations, suspicious transactions are reported directly to a law enforcement body for investigation. More commonly, and especially in Europe, there is a judicial model, where the office of the public prosecutor takes on the task of investigating. In other countries there is a hybrid model, where the FIU is a specifically designated administrative agency, which plays a reporting role and works with police, prosecutors, and the private sector. This model prevails in Australia (AUSTFAC – the head of which was, until 2009, Chair of the Egmont Group) and the United States (FinCEN). The Egmont Group has a formal relationship with the FATF, and in 2002 was accorded observer status at FATF meetings.

CONCLUSION

International cooperation is essential for combating money laundering. International conventions are based on the premise that if crime crosses borders, so too must law enforcement. Terrorists, criminals, drug dealers, traffickers in people and others who undo the works of civil society take advantage of the open borders, the free markets, and the technological advances that shape modern society.

Responses to money laundering are different to responses to volume crimes such as robbery, motor vehicle theft, burglary, assault, larceny, and even homicide. Two things stand out.

First, legal and illegal activities have the same *modus operandi*. Money from legal sources is converted in the same sorts of ways and into the same sorts of assets as is money from illegal sources. The challenge for enforcers is to regulate and investigate so as not to impede or taint the movement of legitimate capital. Responding to volume crime does not pose this dilemma for law enforcement.

Second, many of the agencies described above which work to combat money laundering do not deal in actual enforcement. The United Nations, the FATF, and the Egmont Group as well as the plethora of other agencies,

are all framework constructors and information sharers. Much of the understanding of combating money laundering lies in understanding the problem, why it is a problem, and how regulatory arrangements are circumvented, rather than doing what needs to be done to investigate and prosecute. However, the very international nature of the problem requires international cooperation. Learning about this is a necessary first step in combating money laundering.

REFERENCES

- Australian Institute of Criminology. (2009). Charges and Offences of Money Laundering. *Transnational Crime Brief*, No 4, Canberra. Australian Institute of Criminology. Retrieved from www.aic.gov.au/publications/tcb/tcb004.pdf
- Financial Action Task Force (FATF). (2006). *Trade Based Money Laundering*. Retrieved from www.fatf-gafi.org/dataoecd/60/25/37038272.pdf
- Financial Action Task Force (FATF). (2008). *FATF Annual Report 2007-2008*. Retrieved from <http://www.fatf-gafi.org/dataoecd/58/0/41141361.pdf>
- Financial Crimes Enforcement Network (2007). *Civil Money Penalties Assessed Against American Express Bank*. International and American Express Travel Related Services Company, Inc. Media release 6 August. Retrieved from www.fincen.gov/aebi_joint_release.pdf
- Gilmore, W. C. (2004). *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*. France: Council of Europe Publishing.
- KPMG. (2007). *Global Anti-Money Laundering Survey 2007 – How Banks Are Facing Up to the Challenge*. Retrieved from www.kpmg.com/SiteCollectionDocuments/Global%20Anti-money%20lauding%20survey%202007.pdf
- Levi, M. & P. Reuter. (2006). Money Laundering. In M. Tonry (Ed.), *Crime and Justice: A Review of Research*, Vol. 34. Chicago: University of Chicago Press, pp. 289-375.
- US Department of Justice. (2005). *U. S. Money Laundering Threat Assessment*. Retrieved from www.usdoj.gov/dea/pubs/pressrel/011106.pdf
- World Bank. (2003). *Anti-Money Laundering and Combating the Financing of Terrorism*. Washington, World Bank, Working Paper number 27185 www.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2003/11/12/000160016_20031112164246/Rendered/PDF/271850AntiMoneyLaundering010West0Africa.pdf

UNITED NATIONS CONVENTIONS

- United Nations Convention against Illicit Traffic In Narcotic Drugs And Psychotropic Substances, 1988
- www.unodc.org/pdf/convention_1988_en.pdf
- United Nations Convention Against Transnational Organized Crime And The Protocols Thereto, 2004

www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf
United Nations Convention Against Corruption 2004 www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf
Various international conventions and multilateral conventions can be found at http://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml&menu=MTDSG

WEB SITES

Australian Institute of Criminology www.aic.gov.au
Australian Transaction Reports and Analysis Centre (AUSTRAC) www.austrac.gov.au
The Egmont Group www.egmontgroup.org
Financial Action Task Force (FATF) www.fatf-gafi.org
International Monetary Fund www.imf.org
United Nations International Money Laundering Information Network (IMOLIN) www.inolin.org
United Nations Office of Drugs and Crime (UNODC) www.unodc.org/unodc/en/money-laundering/index.html
World Bank www.worldbank.org

ABOUT THE AUTHOR

Dr. Adam Graycar has worked at senior levels of government, and has also been the Director of the Australian Institute of Criminology and Dean of the School of Criminal Justice at Rutgers, the State University on New Jersey. He is now a professor at the Australian National University.