The International Money Laundering Regime and the Asia Pacific: Pairing Multilateral Co-operation with Domestic Institutional Reform

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Abstract

International efforts to combat money laundering have gained momentum in the past decade. One United Nations Convention and another planned convention, along with numerous multilateral governmental initiatives and bilateral agreements, have contributed to the development of a broad set of national and international legal standards. However, this emergent 'regime' has developed unevenly, the most significant advances occurring in regions dominated by the United States and its allies. This paper explores the prospects for the expansion of the global regime into the Asia Pacific, given the heterogeneous political and economic climate of the region. It concludes that there is reason for optimism regarding the development of the regime in the Asia Pacific, despite the lack of a dominant state or alliance of states as regional advocate(s). This is due primarily to the characteristics of incrementalism and co-operation at the bureaucratic/technocratic level demonstrated in those regions where the regime is already embedded. However, progress on money laundering and the extension of the existing regime is possible only in tandem with broader movement on the question of institutional reform in the key states of the region.

In this decade, the strategic concerns of the chief actors in world politics have turned increasingly from military to economic issues. The forces of 'globalisation' have had a profound impact on the world's leading economies. High-tech currency trading, growth in overseas investment, lowering of tariff barriers and other integrating trends have created a world where economic autonomy for the nation-state is at best a mirage. The new focus on economics goes beyond earlier attempts at co-ordination of post-war Keynesian policies, to a mounting concern with perceived harmful elements within the global economy. Beyond the consequences of fluctuations in the legal economy, even greater anxieties loom in the form of new opportunities for organised crime, fraud and corruption. Crime and corruption have always been business opportunities, if illegal ones, and it is only logical that the new markets and global opportunities – trumpeted as the fruits of the end of the Cold War – present equal opportunity to criminal and corrupt economic actors.

Since 1988, these concerns have manifested themselves most clearly in the area of action against transnational crime. While initial multilateral attempts at co-ordinated action took trafficking in narcotic drugs as their focus, recent efforts demonstrate an equal or greater concern with the financial structures and networks underpinning transnational criminal activities. In particular, money laundering, "the processing of criminal proceeds in order to disguise their legal origin"[1] and thus avoid confiscation of assets and detection of predicate crimes, has been the subject of an intensive international legal/regulatory effort. Following the impetus and with the support of the G8, the United Nations, and the OECD, a growing institutional network with both multilateral and bilateral components has aggressively pursued an agenda of common regulatory standards, criminalisation, and institution-building, as well as co-operative investigative, prosecutorial and preventive techniques. Such is the degree of co-ordination amongst leading international actors on this issue, that we may term these developments as the emergence of a global regime on action against money laundering.[2]

We say *may* because to posit the existence of an international *regime* – by which is commonly understood a set of rules and principles, often articulated through international institutions, around which the expectations of state actors converge, at least partially independent of the interests of participating states – is controversial. The relative autonomy of international institutions vis-à-vis the interests of the most powerful states is a long-running debate. Many observers of international law and politics are reluctant to see regime 'outcomes' as anything more than the direct consequence of the preferences of the most powerful state actors. In this view, regimes as international institutional arrangements are no more than window dressing on power politics. In the most famous dismissal of this

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[1] Financial Action Task Force on Money Laundering, "The Forty Recommendations," pamphlet, 1996, p. 3 (also available at www.oecd.org/fatf/recommendations.htm).

[2] The concept of regimes in international relations theory is best introduced in the collection edited by Stephen D. Krasner (*International Regimes*, Ithaca: Cornell University Press, 1983); subsequent debate remains divided over the question over the independent power of institutions in a world of anarchic states. See Robert O. Keohane, *After hegemony : co-operation and discord in the world political economy*, Princeton, N.J.: Princeton University Press, 1984; Mark W. Zacher, "Toward a theory of international regimes", *Journal of International Affairs* , 44, Spring/Summer 1990, pp. 139-57; Keohane and Lisa L. Martin, "The promise of institutionalist theory", *International Security* , 20, Summer 1995, pp. 39-5; Keohane, *International institutions and state power: essays in international relations theory*, Boulder: Westview Press, 1989; Keohane, "International institutions: can interdependence work?" *Foreign Policy*, no. 110, Spring 1998, pp. 82-96; Martin, "Interests, power, and multilateralism", *International Organization* , 46, Autumn 1992, pp. 765-92; and for a recent refutation see John J. Mearsheimer, "The false promise of international institutions", *International Security* , 19, Winter 1994-95, pp. 5-49.

concept, Susan Strange argued that "all those international arrangements dignified by the label regime are only too easily upset when either the balance of bargaining power or the perception of national interest (or both together) change among those states who negotiate them."[3] Strange suggested it was precisely the peripheral and unimportant nature of the issues around which 'regimes' were said to have emerged – airline regulation, maritime safety – which allowed inter-governmental co-operation in the first place. Substantive issues with direct implications for sovereignty, such as military affairs, or issues of public security and human rights, were notably lagging in regime formation.[4] In the context of the Cold War, this meant in practical terms that those sceptical of the autonomous nature of regimes expected little significant regional (intra-bloc) co-operation unless the dominant superpower wished; in turn, there would be little global (inter-bloc) co-operation without the rare agreement of both superpowers. In the post-Cold War era, the same might be expected of the United States alone across a variety of issues, commonly in regional terms but occasionally (e.g. nuclear weapons proliferation or intellectual property rights) with a global scope.

From this standpoint, it might be argued that progress achieved to date on developing an international money laundering regime has depended entirely on the ability and willingness of the most powerful states – in particular the US – to 'push' the issue, by bringing influence to bear on recalcitrant states and jurisdictions. While there is considerable evidence to suggest that the regime has begun to have substantial independent effect on policy decisions affecting national sovereignty amongst G8, OECD, and even numerous Caribbean and Latin American states, these instances represent 'easy cases' in a test of the regime's autonomy. The extent to which the regime has made inroads in these regions is not surprising when one considers the degree of a) ideological homogeneity and/or b) US political dominance to be found there. Success in the Asia Pacific region, by contrast, will represent greater confirmation of the independent strength of the money-

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[3] Susan Strange, "*Cave! hic dragones*: a critique of regime analysis". *International Organization* 36, 2, Spring 1982; p. 487.

[4] Strange suggests that regime theory falls into the trap of assuming that nodes of governmental activity indicate areas of greatest political importance, which while true domestically is probably untrue internationally. "The matters on which governments, through international organisations, negotiate and make arrangements are not necessarily the issues that even they regard as most important, still less the issues that the mass of individuals regards as crucial" (*ibid.*, p. 491). On the issue of regimes in the realm of 'high politics' see also Robert Jervis, "From balance to concert: a study of international security co-operation," *World Politics*, 38, October 1985, pp. 58-79

laundering regime as an autonomous institution, rather than simply the successful manifestation of concerted US policy. In that region, no one state influences decision-making and policy to the extent the US is able in the Caribbean and the Americas; in addition, there is greater political, cultural and economic heterogeneity in the Asia Pacific than in any other region of the world.

The paper explores the prospects for the expansion of the global money-laundering regime into the Asia Pacific. The body of the essay is organised into three sections. First, we review the background: efforts in the last decade to build a global regime combating money laundering. Second, we examine the unique challenges facing those pursuing legislative and regulatory overhaul and the development of co-operative international arrangements. Finally, we evaluate the prospects of international efforts against money laundering in the context of this regional analysis.

We conclude that given the development of the regime to date, there are good reasons to be optimistic despite the lack of a leading regional guarantor in the Asia Pacific. While the regime's expansion has to date been in regions dominated by the US and its ideological allies, this expansion has been pursued actively within the leading states by state bureaucracies with as much regard for occupational concerns as for broader state interests. There is thus reason to be optimistic that the regime may spread in the Asia Pacific despite the lack of a dominant regional guarantor, contingent on the participation of similar bureaucratic actors. Second, however, we will argue that progress in addressing the problem in the Asia Pacific is contingent on the adoption of a strategy which recognises money laundering as embedded in a larger set of problematic national and international practices. Such progress will progress in step with advances in institutional reform in the leading states of the Asia Pacific. Moreover, it will depend not simply on the actions of these states but on the commitment of capital exporting countries to support measures promoting good governance and the rule of law in the region. An Asia Pacific money laundering agenda only makes sense in the broader context of international action against financial crime and corruption.

I. The evolution of international co-operation against money laundering since 1988

Since 1988, the international community has used both the criminal law and the regulation of the financial industry in its efforts to curtail the laundering of drug-related funds. As one commentator describes it:

> Out of the [increasing recognition of the negative impact which vast flows of 'dirty money' can have on the financial sector] a twin track solution to the problem has gradually emerged. On the one hand it calls for the strengthening of the criminal law since it is widely acknowledged that the principle burden must be carried by invoking penal means. On the other hand, it is now generally accepted that the financial system can and must play an effective preventative role. In relation to each, however, it is clear that national initiatives on their own would be insufficient.[5]

The *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*[6] is the chief vehicle of the former aspect of this "twin track solution," while the latter is typified by the Basle Committee Statement of Principles and the Financial Action Task Force recommendations.

The 1988 UN Convention

The UN Convention was adopted in Vienna on 19 December 1988 and came into force 11 November 1990. By 1997, 136 countries had signed and ratified the Convention, while 13 more had signed but not yet ratified it.[7]

Article 2(1) of the Convention states:

> The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension.

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[5] William C. Gilmore, "Money laundering: the international aspect", in David Hume Institute, *Money laundering* (Hume Papers on Public Policy, vol. 1, No. 2) (Edinburgh: Edinburgh University Press, 1993) 1 at 2.
[6] Reprinted in "United Nations", Release 95-3 (July 1995), in vol. I, Fletcher N. Baldwin, Jr. & Robert J. Munro, eds., *Money laundering, asset forfeiture and international financial crimes* (3 vols.), New York: Oceana Publications, 1993, with updates.
[7] "Signatories to UN Narcotics Convention", Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report, 1997* (Washington, DC: U.S. Department of State, March 1998) [hereinafter *1997 INCSR*].

"The Convention", as Baldwin and Munro remark, "established a basis for placing international controls on money laundering thus setting the standard for international anti-money laundering efforts to follow."[8] It did so by requiring states to make money laundering itself an offence, to co-operate in money laundering investigations and related proceedings (including extradition), and to pass laws facilitating the tracing, seizing and forfeiture of proceeds of crime.

States parties are required under Article 3 to criminalise money laundering, adopt laws enabling the confiscation of proceeds derived from crimes detailed in the Convention, and facilitate the pre-confiscation identification, tracing, freezing or seizing of such proceeds and property. Regarding bank secrecy, long a buffer between concerned authorities and criminal financial activities, Article 5(3) states:

> In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

The Convention imposed on Parties an obligation to afford each other the widest measure of legal assistance with respect to the offences established under Article 3. Article 7(2)(g) expressly states that mutual legal assistance may be requested in respect of the identification or tracing of "proceeds, property, instrumentalities or other things for evidentiary purposes." Of relevance for financial institutions, Article 7(5) declares similarly to 5(3) that "A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy."

Finally, Art. 9(1) requires parties to co-operate closely in aiming to suppress the crimes dealt with under the Convention. Art. 9(1)(b)(ii) expressly applies this duty to inquiries relating to the movement of proceeds or property derived from the commission of offences dealt with under the Convention.

Each of these provisions may have some relevance for those working in, investigating or regulating the financial services industry. With the exception, however, of

[8] *Op. cit.*, p. 1; see also Gilmore, "Money laundering" pp. 3-5.

Arts. 5(3) and 7(5), pertaining to bank secrecy, the Convention nowhere affects industry interests in a direct way. In a sense, the UN Convention – intended as it was for ratification by the international community at large – represents the lowest common denominator in dealing with the financial aspects of international crime. It was left to other organisations with more closely similar interests – such as the Basle Committee and the G7 – to expand the policies behind the Convention into areas of more direct relevance for the financial services industry.[9]

The Basle Committee

The Basle Committee on Banking Supervision consists of representatives from the central banks and supervisory authorities of the G-10 group of industrialised nations. It exists to improve banking supervision and strengthen prudential standards in member, and increasingly in non-member, countries. It issued its *Statement of principles on the prevention of criminal use of the banking system for the purpose of money-laundering* on 12 December 1988.

The Statement, drafted by United States representatives from the Federal Reserve, the Federal Deposit Insurance Corporation and the Comptroller of the Currency, was the first significant step towards the international preventive regulation of financial institutions with respect to money laundering. Its function is to "encourage the banking sector to adopt a common position in order to ensure that banks are not used to hide or launder funds acquired through criminal activities and, in particular, through drug trafficking."[10] Thus, the Statement declares its purpose to be:

> ...to outline some basic policies and procedures that banks' management should ensure are in place within their institutions with a view to assisting in the suppression of money laundering through the banking system, national and international. The Statement thus sets out to reinforce existing best practices among banks and, specifically, to encourage vigilance against criminal use of the payments system, implementation by banks of effective preventive

[9] The current discussions at the UN Crime Commission in Vienna towards a Convention on Transnational Organised Crime are directed in large towards those issues dealt with tangentially or broadly by the 1988 Convention dealing with organised crime. In part, this is due to the realisation that tying criminalisation, multilateral co-operation and regulation to drugs alone ultimately created as many loopholes as it plugged.
[10] Gilmore, *op. cit.*, at 6.

> safeguards, and co-operation with law enforcement agencies.[11]

The Statement presented banks and their supervisors with a new task. The role of supervisory authorities had normally been limited to overseeing prudential standards aimed at ensuring the financial stability of the institutions for which they are responsible. The Statement expanded that role to include a duty to discourage certain types of (laundering-related) transactions. The rationale for this expansion was that large-scale fraud or crimes such as money laundering might endanger the well being of individual institutions and so of the financial sector as a whole. More importantly, the stability of these businesses might be threatened by a loss of public confidence resulting from perceived toleration of criminal enterprises by financial institutions. Whatever the merit of these justifications, the Statement clearly rested on the assertion a public duty to prevent, or at least not be indifferent to, crime.[12]

The five sections of the Statement can be summarised briefly. After setting out its purpose in Part I, Part II indicates that banks should make reasonable efforts to learn the true identity of all those seeking to use its services, including those holding or seeking to open accounts. Part III asks bank management to adhere to high legal and ethical standards, stating that although it might not always be possible to know whether (particularly foreign) laws are being broken, banks should not offer services or provide active assistance in transactions which they have good reason to suppose are associated with money laundering. Part IV urges banks to give full co-operation to national law enforcement authorities to the extent that specific local confidentiality regulations permit. Finally, Part V declares that all banks should adopt policies --especially with respect to customer identification and internal transaction-record retention-- consistent with the Statement and advise their staff concerning these policies.[13]

The scheme laid out by the Basle Committee was fundamental to the way in which banks have come to be regulated in this area. Its basic philosophy of preventative regulation continues to be the defining one. Although non-binding itself, the Statement

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[11]Statement of Principles, s.I, "Purpose," ¶2, in "Basle Committee on Banking Regulation and Supervisory Practices," Release 93-2, at 7, in vol. I, Baldwin & Munro, *op. cit.*.
[12]Baldwin & Munro, *ibid.*, at 3; see also the Preamble to the Statement of Principles itself, at *ibid.*, 5 - 7.
[13]See the Statement in Baldwin & Munro, *ibid.*, and the discussion in J. Drage, "Countering money laundering: the response of the financial sector," in David Hume Institute, *op. cit.*., at 60, 64-65.

contemplates that bank management will be required by local law or policy to put in place procedures designed to prevent 'dirty money' from entering the system. The Statement thus aimed to co-ordinate internationally regulation that had previously been left to the domestic efforts of individual states.[14] Nevertheless, the Statement does not impose reporting or recording requirements, it does not extend to non-bank financial institutions, its focus is very much on self-regulation, and its guidelines are stated to operate within the framework of (unexamined) local standards of client confidentiality. The Basle Statement is the product of drafters knowledgeable about and sensitive to the needs of the banking community, which is as conscious of its need to assure clients of confidentiality as it is of the need to assure the public that criminal monies are not being solicited. The balance struck by the Statement is decidedly more generous to the banks than the later legislation of some nations would prove to be.

The 40 Recommendations and the greater co-ordinating ability of the Financial Action Task Force (FATF) have superseded the Statement. This must not be taken to mean that the Basle Committee has become irrelevant to the development of an international anti-money laundering regime. On the contrary, its role in developing supervisory standards and in promoting internationally co-ordinated regulation, a topic of increasing importance recently (and to be discussed below), has given it an important place in regime development complementary to that of the FATF.

The Financial Action Task Force

It was the FATF that provided – and continues to provide – the impetus to give legislative form to the policy framework set up by the Basle Committee. The Financial Action Task Force was established by the G7 at the Paris Economic Summit in 1989. It has grown to include 28 members.[15] It is the leading international body on money laundering policy. Its most important report, and the one to which later reports have largely provided only a gloss, was its first, of April 1990. This report reviewed the nature and extent of

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[14] The Committee commended its standards to supervisory authorities world-wide, and the Statement has been endorsed by the Offshore Group of Banking Supervisors, which includes such important centres as Hong Kong and Singapore: Gilmore, *op. cit.*., at 6.

[15] "Group of Seven," Release 94-4, in Baldwin & Munro, vol. I, *op. cit.*, p. 7. The members are Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Turkey, the United Kingdom, the United States, as well as the Commission of the European Communities and the Gulf Co-operation Council.

money laundering, considered programs in place nationally and internationally to address it, and made 40 recommendations for a co-operative international regime. The recommendations fall into three main areas: the improvement of national legal systems, the enhancement of the role of the financial system, and the strengthening of international co-operation.[16]

The recommendations may be summarised as follows:

- National authorities should seek to apply these recommendations to both bank and non-bank financial institutions [in an attempt to deal with the phenomenon of displacement].

- With regard to customer identification, financial institutions should record and "know" the identity of their clients when establishing relations or conducting transactions, should not keep anonymous accounts, and should keep relevant records for at least five years from the transaction date. Records should be available to competent authorities for purposes of criminal investigation or prosecution.

- Financial institutions should pay special attention to all unusual or suspicious transactions. Legal provisions should be established to protect financial institutions and their employees from civil or criminal liability for breach of confidentiality where disclosure of suspected criminal activity is made in good faith to competent authorities.

- Financial institutions reporting to authorities, whether under a mandatory or a voluntary reporting scheme, should in so doing comply with the instructions of the competent authorities, developing compliance programs as necessary.

- Special vigilance should be accorded transactions related to countries that do not apply these recommendations in full or in part, and to branches and subsidiaries located abroad.

- The feasibility of measures to monitor cash crossing over borders should be studied, subject to safeguards ensuring both proper use of the information and the freedom of capital movements. Countries should also consider the feasibility and utility of a system where financial institutions and intermediaries would report all currency transactions of a fixed amount to a central agency which would make the information available for use in money laundering cases. Countries should encourage a general movement away from cash transfers towards other secure techniques of money management (like credit cards, cheques, direct deposits).

- In each country, the competent authorities should ensure that institutions have adequate money laundering prevention programs. Such authorities should co-operate on money laundering investigations. They should ensure effective

[16] The Recommendations are reprinted in David Hume Institute, *op. cit.*, at 21 - 32, and with most of the remainder of the 1990 report in Baldwin & Munro, *ibid.*, 27-41.

> implementation of these regulations in other professions dealing with cash. They should establish guidelines to assist financial institutions in their efforts to comply, and should seek to prevent the influence or take-over of financial institutions by criminal organisations or their associates.

At the Houston Summit of July 1990, leaders of participating nations endorsed the recommendations and committed their governments to their implementation. When the FATF (essentially an *ad hoc* creation of the G7) was given its most recent five-year extension in 1994, its mandate was defined in terms of three main goals. These are, first, to continue the process of mutual evaluation commenced in the third year of its operation (1991/92), whereby teams of experts from other member countries visit individual member jurisdictions, examine the way in which the recommendations have been implemented, and report back to the FATF Secretariat.[17] Secondly, the Task Force studies recent developments in money laundering techniques based on the experience of its members. Interpretative notes updating the 40 recommendations are issued from time to time in light of what is known about new laundering strategies (and the recommendations were revised in 1996 on the basis of these).[18] Finally, the FATF is involved in an 'outreach' program encouraging implementation of the recommendations by non-member states, many of which are important financial centres.[19] In particular, its focus is on the Caribbean, Eastern Europe and East Asia.

The FATF has been and remains the most significant nexus in the emerging international regime against money laundering. It designed the regime, it administers the process whereby member states review each other's implementation of it, and it undertakes the research necessary to ensure that the regime responds adequately to emerging technologies, new laundering trends, and law enforcement needs. The impetus provided by the FATF (particularly through its peer-review mechanism) is largely responsible for the fact that there is an international anti-money laundering regime of which to speak today.

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[17] These evaluations remain confidential between the evaluators, the FATF Secretariat, and the government of the member evaluated. Summaries of these reports are made available to the public through the FATF Annual Reports.

[18] *Financial Action Task Force 1997-98 Report on Money Laundering Typologies*, Financial Action Task Force, 12 February 1998. This report, as well as the 1995-96 and 1996-97 typologies reports, are available on-line from the FATF at www.oecd.org/fatf/reports.htm.

[19] Baldwin and Munro, *op. cit.*, at 11; and Sherman, Tom, "International efforts to combat money laundering: The Role of the Financial Action Task Force", in David Hume Institute, *op. cit.*, p.12, at 18 - 19.

Recent Developments

The international nature of the drug economy and of the technology which moves financial data around the globe demands that efforts against the drug trade, to be effective, be equally international in orientation. In this area, the efforts of the FATF have been important in encouraging nations outside the major consumer markets, in less developed producer and financial intermediary countries, to adopt its recommendations.

At the December 1994 Summit of the Americas, the heads of state and government of the Western Hemisphere agreed to intensified collective and individual action in a co-ordinated hemispheric response to drug production, trafficking and related money laundering.[20] At a December 1995 ministerial conference in Buenos Aires, the governments involved endorsed a wide-ranging statement of principles and action plan.[21] The plan encourages nations to ratify the *UN Convention* and commits them to international information sharing and legal assistance. Subsequent OAS and CICAD initiatives include semi-annual Experts Group meetings geared toward the development of a co-ordinated anti-money laundering infrastructure in the region, including training, typologies exercises, and the common implementation of Financial Intelligence Units (FIUs).[22]

The Kingston Declaration was adopted by a ministerial conference held in Kingston, Jamaica in November, 1992. Present were representatives of some twenty Caribbean states involved in the Caribbean Financial Action Task Force (CFATF), an organisation established in 1990. In essence, the Declaration adopts the forty FATF recommendations and adds to them a number of others which take account of conditions felt to be peculiar to the Caribbean.[23] The CFATF has since expanded to include all jurisdictions bordering or within the Caribbean with the exception of Cuba. Its activities have been focused on the development of typologies exercises and the implementation of the mutual evaluation process.

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[20]In general, see "Organisation of American States" (Release 95-3)(September 1995), in vol. I, Baldwin and Munro, *op. cit.*

[21]*Ministerial Communiqué*, Summit of the Americas Ministerial Conference Concerning the Laundering of Proceeds and Instrumentalities of Crime (Buenos Aires, Argentina, 2 December 1995).

[22] Inter-American Drug Abuse Control Commission (CICAD), *Meeting Of The Group Of Experts To Control Money Laundering* (May 12-14, 1998, Washington D.C.), OEA/Ser.L/XIV.4, CICAD/LAVEX/doc.23/98, 14 May 1998 (original: English). Available at www.oas.org/EN/PROG/w3/en/legal/moneylaundering.htm

[23]For an overview, see "Caribbean Financial Action Task Force Annual Report" Release 95-4 (December 1995), at 2 - 8, in vol. I, Baldwin and Munro, *op. cit.*

II. Challenges of the Asia Pacific

Taken as a whole, recent advances in the development of the international regime against money laundering have been concentrated in those countries having the highest levels of economic development: probably not coincidentally, these countries give the most prior evidence of the rule of law and democratic institutionalisation. The states of the OECD have as a rule moved swiftly to implement those recommendations of the FATF not already in place. Where there have been discrepancies, the FATF's mutual evaluation procedure has been remarkably effective given the voluntary nature of compliance. The swift response of the Canadian government to FATF in the latter half of 1997, regarding suspicious transactions reporting and currency export provisions, is perhaps a case in point.[24] What is even clearer is the influence of the United States in encouraging compliance. This is evident not only in the Canadian case[25] but in others, including the relaxation of Swiss bank secrecy laws resulting from the US-Swiss tax treaty negotiations of 1994-96 and continued pressure on the Swiss in FATF fora,[26] and the development of the Caribbean offshoot of the FATF with the Kingston declaration in 1992.

The Asia-Pacific region presents a tougher "test case" for the emergence of the regime. In Europe, North America, and other highly developed areas, common and active membership in multilateral intergovernmental organisations is arguably the rule, and there is a high degree of homogeneity regarding legislative structures and policy goals. A glance at the Asia Pacific reveals a heterogeneous mix of cultures, languages, legal systems, attitudes

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[24] At the Denver summit and the FATF XIII annual meeting, pressure was brought to bear on Canada regarding suspicious transactions reporting and cross-border currency controls, neither of which were established in Canadian proceeds legislation. At time of writing the legislation is being drafted and is anticipated by the end of 1998. See the Hon. Andy Scott (Solicitor General of Canada), *Annual Statement on Organized Crime* (Address to House of Commons, November 27, 1997), Minister of Public Works and Government Services Canada 1997, Cat. No. JS43-3/1997; Michael Hanlon, "New Laws to Target Money Laundering," *Toronto Star*, May 12 1998.

[25] The Canadian legislative initiative took place in the context of several consultations between Solicitor General Andy Scott & US Attorney General Janet Reno on organised crime issues between November 1997 and May 1998. See also "US Cites Canada For Lax Rules on Drug-Money Flow," *Christian Science Monitor,* April 4th, 1997.

[26] Through tax negotiations, various criminal investigations and the intervention of the Nazi-gold episode, the US has remained consistently engaged with the Swiss on this issue for the better part of a decade: the US-Swiss tax treaty was signed October 2nd 1996. See "US, Swiss: Partners against crime," *Christian Science Monitor*, April 26th 1989; "Swiss to end anonymous bank accounts," *Washington Post*, May 4th 1991; "FATF Presses Swiss Governments on Laundering," *International Enforcement Law Reporter*, November 1997, Volume 13, Issue 11 (http://www.ielr.com/1c.html); "Swiss Attorney General Seeks 'Clean' Banking," *Christian Science Monitor,* September 13, 1996.

and political orientations, suggesting that any attempt at international co-operation or co-ordination must progress in the absence of any external facilitating factors. The situation is seemingly rendered doubly difficult through the absence of any one dominant regional actor willing and able to press the case for regulatory reform and regional co-operation. This is contrary to the experience of Latin America and the Caribbean, where the dominant position of the United States has enabled it with some degree of success to underwrite the costs of, and press other states to adhere to, the regulatory and co-operative stances described above. Such tactics, if appealing to the leading FATF states, are politically infeasible in the Asia Pacific.

As a problem, money laundering in the Asia Pacific flows from an impressive array of organised criminal activities and official corruption, and flourishes in several different settings. While drug traffic accounts for the largest part, the portfolio of money laundering in the region is more diverse than in other areas of the world, and incorporates revenue from *inter alia* the international sex trade, official corruption, illegal migration, organised large-scale auto theft, and plastic card fraud.[27] Key areas of concern are the major financial centres of the region (Hong Kong, Shanghai, Singapore, Tokyo, Taipei, Seoul and Sydney); the South Pacific islands (Vanuatu, the Cook Islands, Nauru, Niue, Kiribati, Tuvalu and Western Samoa); and regions and cities most closely tied to the illegal economy (e.g. the states of the Golden Triangle, Bangkok, and Macao).

With respect to governmental domestic and multilateral attempts to combat the problem, there have been areas of progress. The island nations of the South Pacific, through the voice of the South Pacific Forum, have to some extent recognised the need to address the fact of money laundering as the countries in that part of the world increase in importance as financial centres. In 1992, a declaration was issued recommending that member states consider ratifying the *UN Convention*, adopt all or part of the FATF recommendations, and review domestic bank secrecy laws for the purpose of facilitating

[27] The IMF & IBRD estimate global annual turnover in criminal proceeds to be in the region of $400 billion, of which it is arguably reasonable to assume at least 25% originates in the Asia Pacific. However, estimates of amounts such as these are notoriously unreliable – as they are dependent in turn on the existence of sufficient oversight capacities to guess at the scale of activity – and not particularly useful. The moment at which truly reliable data is obtained, accurately pinpointing the amount of criminal money moving through key points in the financial system, will necessarily be the moment when sufficient oversight and regulatory capacity is in place to thwart such activity. Until that point, incomplete but existing information and experience on the ground are the basis on which action will be taken.

international law enforcement co-operation.[28] Despite limited resources work has progressed on training of government and financial sector personnel regarding money laundering; in general, however, the sudden growth of laundering activity in the region has encountered a regulatory and policing infrastructure ill-equipped to deal with the demands of detection, enforcement and prosecution.[29]

Of greater significance to the Asia Pacific has been the establishment of the FATF Asia Pacific Group on Money Laundering (APG), operating from Sydney, Australia. An Asia Pacific Secretariat was founded in early 1995 under the auspices of the FATF 'external relations' program to encourage non-member states to endorse and then implement the 40 recommendations. With the creation of the Asia Pacific Group in February 1997, the Secretariat adopted its present role servicing the latter. Apart from implementation of the recommendations, the Group seeks to promote contact between relevant personnel in regional legal, financial and law-enforcement agencies and to co-ordinate or even provide the relevant training. It provides a forum in which regional expertise and information can be shared, and in which responses tailored to the particular needs of the region can be developed against the background of the FATF framework. As with the FATF and CFATF, typologies exercises are a central part of APG operations – progress towards mutual evaluation is still at an early stage. An autonomous and voluntary grouping, the APG now has 16 members.[30] The creation of the APG has been welcomed by APEC (the forum for Asia Pacific Economic Co-operation) – although this statement represents the sum total of APEC recognition of the issue to date.[31] As conceived, the APG is designed to play the leading role in doing for member states what the FATF does for its members: providing a forum for keeping abreast of the most current money laundering trends and devising strategies for countering them. The remarks concerning political sensitivity above are particularly true for the APG, which as a creature of the FATF and thus of the

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[28] Gilmore, *op.cit.* at 11.

[29] "Paradise for Crooks: Secretive islands prove a safe stop for laundered money", *Far Eastern Economic Review*, November 6, 1997, pp. 31-34; "Washing Up: Dirty money takes a tortuous path", *ibid.*, pp 34-35; "The World's Safest Safes: Many Are Also Tax Havens", *Asiaweek*, March 8, 1996, online at www.pathfinder.com/asiaweek/96/0308/feat8.html

[30] Australia, Bangladesh, China, Chinese Taipei, Fiji, Hong Kong, India, Japan, New Zealand, North Korea, the Philippines, Singapore, Sri Lanka, Thailand, United States and Vanuatu: see generally the FATF factsheet, "Anti-money laundering efforts in the Asia/Pacific region".

[31] Joint Ministerial Statement, Meeting of APEC Finance Ministers, (Cebu, the Philippines, April 1997), quoted in *ibid.*

OECD/G8 must surmount the (reasonable) perception that it represents the priorities of actors external to the region.

Notwithstanding the efforts of the South Pacific Forum & the APG (and often with them, the co-ordinated activities of the Commonwealth Secretariat), specific legislative and institutional progress has been sporadic across the Asia Pacific.[32] A number of regional states have signed and ratified the 1988 Vienna Convention.[33] While it awaits ratification after signature by other countries,[34] the instrument remains unsigned by several jurisdictions.[35] Legislative progress is highly uneven. Some jurisdictions have highly developed legislative and institutional frameworks,[36] others have very nearly none of the applicable infrastructure, and a range of accomplishments presents itself between. The most obvious signs of regime development deserve mention. By 1997, money laundering was criminalised[37] and seizure and forfeiture permitted in narcotics cases in 10 jurisdictions.[38] Mandatory suspicious transaction reporting requirements exist in some, but fewer, countries.[39] Legislation does not, of course, necessarily imply effective enforcement.[40] At the same time, not all Asia Pacific jurisdictions pose significant problems

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[32] See the *1997 INCSR* country reports for details.
[33] Including Australia, Burma, China, Fiji, Japan, Malaysia and the Philippines.
[34] Indonesia, New Zealand.
[35] These include Cambodia, North Korea, Hong Kong, Korea, Laos, the Federated States of Micronesia, Papua New Guinea, Samoa, Singapore, Taiwan, Thailand, Vanuatu and Vietnam. When Hong Kong became a Special Administrative Region of the People's Republic of China on 1 July 1997, it maintained its own currency, financial market, and money laundering legislation, but became party through China to the 1988 Convention.
[36] Australia and Hong Kong are among the most advanced, both having extensive mutual assistance legislation and agreements in place, and both participating in the Egmont Group of Financial Intelligence Units.
[37] Australia, Burma, Cambodia, China, Hong Kong, Japan, New Zealand, Singapore, Taiwan and Vanuatu. The offence extends beyond narcotics proceeds in Australia, China, Hong Kong, New Zealand, Taiwan and Vanuatu.
[38] Australia, Burma, China, Hong Kong, Japan, Malaysia, New Zealand, Singapore, Taiwan and Thailand.
[39] Australia, Hong Kong, Japan, New Zealand, Singapore, Taiwan. Australia has the most sophisticated system, requiring significant (i.e. large) as well as suspicious transactions to be reported, with major financial institutions filing electronically with the Australian Transactional Analysis Center (AUSTRAC). Because reporting systems depend on the institution's ability to spot a particular transaction as different from the client's ordinary course of conduct, they depend on the implementation of 'know your customer' rules. The *1997 INCSR* mentions Australia, Hong Kong and Singapore in particular as having developed such rules.
[40] The *1997 INCSR* mentions a lack of enforcement in Burma, where high level acquiescence or even encouragement of money laundering is suspected. Enforcement in Japan is reported as minimal, despite sophisticated laws. Widespread corruption is alluded to as a factor in Burma, Cambodia, Indonesia and Thailand. Moreover, a number of tax haven or offshore financial centres exist in the area, including the Cook Islands, Hong Kong, Labuan (Malaysia), Macau, Marshall Islands, Nauru, Somoa, Singapore, Taiwan, Thailand, and Vanuatu.

at present from a money-laundering perspective,[41] and there is a wide range of development in the financial markets of regional states.[42] But with increasing momentum in market development (which the current financial crisis may in some ways help as well as hinder), a number of jurisdictions present opportunities for money launderers which, even if not presently used, call out for preventive regulation.[43]

The adoption of new laws and participation in regional fora are important and necessary steps, and it is possible that with increased pressure from outside the region, greater progress can be anticipated in the future. However, the problems posed by the Asia Pacific extend beyond those solved through adoption of regulations and nominal adherence to treaties and multilateral initiatives. At a practical level, the prevalence of cash-based transactions in large denominations as a regular feature of legitimate business practice in many Asian countries is a significant impediment to the implementation of oversight and reporting schemes – schemes which have been a central part of the FATF approach in other regions. Reporting regulations, typically affecting transactions at or above a threshold of $10,000, allow investigators and private institutions in the West to distinguish more easily between criminals (who deal mainly in cash) and legitimate businesses (where cheques and credit are preferred instruments). This distinction is necessarily blurred in an economy dominated by cash.[44] An additional impediment is that there exists (as in the Caribbean) an overlap between tax havens and money laundering opportunities, accounting for significant inertia on behalf of smaller jurisdictions whose economies are dominated by financial services.[45]

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[41] American officials suspect significant money laundering activity in Australia, Burma, Cambodia, Hong Kong, Indonesia, Japan, Macao, Singapore, Taiwan and Thailand: *1997 INCSR*.
[42] Australia, Hong Kong, Japan and Singapore are probably the most highly developed.
[43] The *1997 INCSR* mentions under-regulated financial sectors in Burma, Cambodia, China, Indonesia, Laos, Macao (which will revert to China in 1999) and Thailand. Money laundering laws are absent in Cambodia, Indonesia, North and South Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Thailand and Vietnam.
[44] The reliance on cash in the region is unlikely to improve in the near future given the uncertainty of the recent history vis-à-vis financial institutions.
[45] Parenthetically, this is a tension that has received less attention than it deserves. Recent issues of the world's leading popular economic publications, including *FEER* and *The Economist*, have contained numerous serious articles on the perils posed by money laundering, corruption and tax evasion, but have devoted still more space to advertisements for second passports, offshore trusts and anonymous banking. Without engaging in unnecessarily conspiratorial thinking, it is reasonable to ask how much genuine progress can be made on the issue of criminal funds when so much of the elite in the developed world is clearly dedicated to the maintenance and utilisation of the same elaborate financial networks for personal gain. See in particular *The Economist*, May 31 – June 6 and July 26 – August 1, 1997.

Other significant problems exist in the region on a broader scale. The opaque tradition of banking, business transactions and corporate decision-making, which together conspired to bring 'transparency' to the top of the agenda following the recent economic slump in East Asia, contributes in large measure to the ability of criminals to move assets through the region undetected. The practices of *fei chi'en* and *hawala*, involving the passage of informal and hard-to-trace financial instruments within the Chinese and South Asian communities respectively, compound the difficulty of identifying the movement of criminal assets (let alone arresting and convicting the perpetrators).[46]

Practical considerations aside, there remains one further distinction with respect to the situation in the Asia Pacific. As argued above, the question of extending an effective money-laundering regime to the region rests on whether the regime can survive and promote adherence to its norms in the absence of a regional guarantor state. We would argue that in the absence of a regional 'hegemon' in this issue area, there is still room for optimism concerning regime formation when other instances of regional co-operation are considered.

In the European case, the broader integrative processes of the last decades have occurred for two reasons: because state leaders so wished, but also (and importantly) because there was a core bureaucracy in the leading states committed to the integrative process – composed in part of key experts and operational-level individuals able to fashion policy alternatives in the manner they chose. This bureaucracy, beginning with the post-war European Coal and Steel Commission, facilitated existing co-operative agreements but also led from below through policy innovation and mimicry, suggesting enhanced co-operation to successive governments.[47] Much the same may be said of the development to date of the international regime concerning money laundering. While state leaderships have demonstrated interest, the process has relied on the bureaucracy of leading states such as the United States, Australia, Canada, and the EC countries (as well as the multilateral bureaucracies in the UN, OAS and OECD). Through incrementalism and regular contact, the agenda on money laundering and adherence to regime norms has been pursued as much by the bureaucracy as by state leaderships. Without negating the role of self-interest, and the natural empire-building tendencies of bureaucracy, this two-tier development must also

[46] Phil Williams, "Money Laundering," *IASOC Criminal Organizations* Vol. 10, No. 4 (web publication). On-line at www.acsp.uic.edu/iasoc/crim_org/vol10_4/art_3a.htm.

be said to be the result of the existence of a body of individuals committed to the establishment and maintenance of the rule of law and the extension of state regulatory capacity into areas previously free. This in turn requires adequate social as well as legal sanction for corrupt or illegal practices in official capacity, appropriate compensation for public servants, and above all a degree of commitment to democratic institutions. No regime attempting to combat criminality and corruption can exist in the absence of a professional bureaucracy relatively free from corrupt interference and committed to the rule of law.

In this region, any attempt at a co-ordinated response to money laundering in the region must recognise that even with political will from above, the essential bureaucratic infrastructure is only fully present in a portion of the countries concerned. Where it is present, it is often embedded within endemic corruption. We suggest in this paper that rather than adding corruption to the list of things to be eradicated, along with money laundering, we recognise that these compounding problems exist on the broader agenda of building democratic institutions and faith in the rule of law in a region where democracy has been the exception rather than the rule.

III. Implications for an effective regional money laundering regime

The analysis presented so far points to several ingredients needed to advance the entrenchment of the international anti-money laundering regime in the Asia Pacific. While one could go into considerable detail, we will narrow our focus to three factors. These are to enlist the support of operational-level personnel in the jurisdictions affected, to have the governments of those jurisdictions accept the need for greater transparency and oversight of their economies and to acknowledge, at the international level, that organised (especially drug-related) crime and corruption are intrinsically also questions of development, and not only of law enforcement. Each of these factors rests on a foundation of political will, without which their realisation would be impossible.

The first problem will be in creating operational-level support for participation in the anti-money laundering regime. Investigating officers, prosecutors, judges, bankers, banking regulators and others involved in a nation's international affairs must see it in their

[47] See Mark Kesselman & Joel Krieger, *European Politics in Transition*, Toronto: Heath 1987, p. 15.

interests to be part of this international mechanism. Winning the support of these personnel, who are most often working at the mid-level of their institutions, can be essential to the momentum of a regime's entrenchment. In fact, this kind of operational support might push other and higher-level support in situations where there are conflicting national interests at stake (as is usually the case in this area, and always the case where corruption and the attraction of flight-capital are in play). We may find a sort of natural impetus in this direction in states that are undergoing a process of transformation in the direction of a market economy, to the extent that the self-interest of regulators ideally becomes somewhat autonomous vis-à-vis the financial and political elite. Nonetheless, part of the commitment that has to be shown by development banks, aid programmes and intergovernmental organisations is in this area. Technical assistance can be crucial in building international allegiances in national personnel. Training programmes, awareness raising as to international standards, assistance in implementing co-operative procedures and, importantly, provision of the infrastructure necessary co-ordinate internationally, all have significant long-term potential in this regard. The FATF has expressed a willingness to co-ordinate and in some cases provide training, and various agencies of the United States government have been doing so recently.[48]

Acceptance of transparency in the police, in government and particularly in the economy is the second important factor determining the success of the anti-money laundering regime in the Asia Pacific. This includes curtailing bank secrecy, but means also much more than this. It means enforcing the 'know your customer', recording and reporting requirements across the full range of institutions and technologies, as recommended by the FATF. It means, significantly, moving over time towards the sort of supervision of financial institutions (including second-tier institutions) that has been the subject of ongoing Basle Committee regulation.[49] The sort of transparency needed is that

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[48] See FATF factsheet, "Anti-money laundering efforts in the Asia/Pacific region"; INCSR 1997.

[49] The Committee released its *Core Principles for Effective Banking Supervision* in September 1997, inviting non-member countries to endorse them by October 1998. The Principles were elaborated in close collaboration with supervisory authorities in 15 non-member emerging market economies, and in consultation with a number of other non-member states. The Committee suggested that the IMF and World Bank use these principles in their efforts to promote macroeconomic and financial stability. The Committee's supervision of the world wide co-ordinated closure of the Bank of Credit and Commerce International gave the initial impetus to the development of internationally standardised and co-ordinated regulation. See Duncan E. Alford, "Basle Committee minimum standards: International regulatory response to the failure of BCCI" *George Washington Journal of International Law & Economics*, v. 26 p. 241, 1992. The Committee has been increasing its international influence by involving non-member nations and international organisations in its

which consists of an institutional system of checks and balances safeguarding prudential standards and consumer interests, without being subject to overwhelming criminal influences. Such transparency and supervision seek to ensure that markets are not distorted to the detriment of society as a whole by corrupt practices, incompetent management or similar phenomena. International approaches to dealing with corruption take into account the need for such supervision.[50] More importantly, recent statements by the G8 and by international lending institutions in the wake of the Asian economic crisis have made a link between corrupt and distorting practices and that crisis.[51] The result has been commitment by Asia-Pacific governments to move in the direction of increased accountability in their economies.[52] If the commitment to scrutiny and balance is a sustained one, we might expect the emergence of an institutional culture that will make the entrenchment of counter-money laundering measures, and then the detection of laundering itself, increasingly possible. After all, the institutional climate in a culture of endemic corruption has to be characterised by opacity and resistance to accountability. Change one, and the other can follow, provided the political will and the resources are made available. The resources, in this case, include those provided by donor governments and international institutions for infrastructure, training and other technical assistance.

This latter point directs us to the third factor and final factor, that of the need for acknowledging crime and corruption as developmental and not just compliance or 'law and order' issues. This question is the broadest, and takes us well beyond what criminal or even regulatory law can deal with. It is obvious that questions of criminal economies (in particular, drugs) and official corruption are ultimately questions of development in the

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work, and these efforts have been welcomed by the G7 Heads of Government. As such, the Committee appears set to play a role complementary to that of the FATF in establishing conditions within which money laundering becomes increasingly difficult. The Core Principles state, at Principle 15: "Banking supervisors must determine that banks have adequate policies, practices and procedures in place, including strict "know-your-customer" rules, that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements."

[50] The General Assembly resolution on 'International co-operation against corruption and bribery in international commercial transactions' refers to the need for "transparent and accountable government": GA Res. 52/87 (2 February 1998), ¶3. Similarly statements are made in the *United Nations Declaration Against Corruption and Bribery in International Commercial Transactions*, Annex to GA Res. 51/191 (21 February 1997), preambular ¶1 ("stable and transparent environment ") and GA Res. 51/59 (28 January 1997), ¶7 ("transparency and integrity of financial systems").

[51] "G8 Birmingham Summit: Final Communiqué" (on-line at birmingham.g8summit.gov.uk/docs/final.pdf.

[52] The *Joint Press Statement* of the Second ASEAN Finance Ministers Meeting of February, 1998 makes a commitment to proceed immediately with an ASEAN Surveillance Mechanism and the establishment of a

sense that they involve questions of the macro-management of the economic and political system to reduce the incentives that create these phenomena.[53] On an economic level, participants in illegal economies must be given adequate incentives to switch to other, licit activities.[54] Threat of criminal sanction is only one factor, and it will never be the most important. As British criminologist Michael Levi remarks, "to catch some offenders – even major ones – is not necessarily to reduce crime and vice: the latter depend on the organisation of the criminal markets and upon the willingness and capacity of new or existing offenders to enter them."[55]

It can confidently be said that to convict or deter drug *traffickers* is not necessarily to reduce drug *trafficking* to the same extent. Nor will the imposition of regulations on financial institutions necessarily stem the flow of illicit funds (given the likely ability of new technologies and human ingenuity to keep ahead of the regulators). We are dealing with structural phenomena, depending on the existence of markets that provide attractive alternatives to whatever a given country calls licit economic activity. This is more than a question of directing more resources to finding viable alternative crops for Golden Triangle farmers (who are often also members of marginalised indigenous groups) or increasing opportunities for the underclass in Western societies to live fulfilled lives without pharmaceutical supplementation. It is a question of providing incentives to officials in Asia Pacific jurisdictions to keep out of illegal profit-making sidelines, to immersing them in a legal culture that rewards professionalism and protects whistle-blowers. But this is a tall order. The low level corruption that everywhere greases the wheels of the drug economy is partly the product of an underpaid civil service. This in itself is but one sign of the inability of much of the Third World to direct adequate resources towards developing its own

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Surveillance Secretariat. It also endorses the Basle Committee Core Principles: *Joint Ministerial Statement*, APEC Finance Ministers Meeting (Kananaskis, Alberta, Canada, May 23-24, 1998), ¶6.

[53] The developmental question is also one quite apart from those asking whether and which drugs should be dealt with by the criminal law and which by other forms of regulation.

[54] This point was recently made by Pino Arlacchi, Executive Director of the UN Office for Drug Control and Crime Prevention, in a statement to the Commission for Social Development. He pointed out that such incentives come from the active support of donor countries for alternative development programs: "Economic alternatives to illicit drug cultivation, trafficking must be created, head of UN Drug Control Office tells Social Development Commission", UN Doc. SOC/4440, 18 February 1998. The point needs to be made, as such programs are declining: José Bengoa (Special Rapporteur), *The relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution* (Final Report), UN Doc. E/CN.4/Sub.2/1997/9, 30 June 1997, ¶¶49-53.

[55] M. Levi, "Regulating money laundering: the death of bank secrecy in the UK" (1991) 31 *British Journal of Criminology* 109 at 123.

society, owing in part to contemporary economic relations and to historical influences, including those of colonialism. Hemming officials in with a web of laws will not be enough. Rather, the systemic factors supporting corruption must be addressed. Thus, the ability of an anti-money laundering regime in the Asia Pacific to rise to some level of adequacy in relation to the phenomena it addresses will ultimately only occur against a backdrop of development towards increasingly 'good governance'. Movement towards political and regulatory forms to match increasing economic freedom must be supported on a long-term and substantial basis. Whether such support will be forthcoming, either on the part of the governments of the jurisdictions in question or on that of donor or investor countries, remains to be seen.

IV. Conclusion

We have argued that the prospects of the regime depend in part on the institutional issues outlined above. Without the support of operational-level personnel, without an emphasis on transparency and sound supervision of the economy, and without recognising the underlying developmental issues that crucially affect both regime integration and criminal activity, we cannot expect significant and lasting progress to be made. The bright side of such a prognosis is that there is reason to expect it to be fulfilled over the middle and long term, at least to a sufficient extent to safeguard the regime under discussion. The money laundering regime is inevitably engaged in a perpetually uphill battle against advancing technologies that slip money into ever newer channels outside of regulatory scrutiny as the scope of that regulation broadens. Moreover, there will always be incentives for some jurisdictions and some institutions to look the other way, to trade the fast buck for the clean one. An anti-money laundering regime is not a panacea. Ultimately, it is a secondary phenomenon, as criminal justice measures almost always are. It can tip the balance in favour of deterrence where other institutional factors are present (notably, when other economic opportunities are available to potential players in illicit economies, and where financial institutions see their reputations as being on the line). But it can never, alone, do the whole job itself. Thus, measuring the progress of the regime in the Asia Pacific has to be in terms of institutional reform in the leading states. These states will set the tone and determine the basic parameters for the rest. Such progress depends, at present

at least, on the commitment of capital-exporting countries to support measures promoting good governance and the rule of law in the region. Pointed declarations by the G8 must be followed up by substantive and sustained assistance in political, technical and financial terms. The anti-money laundering agenda only makes sense in the broader context of action against financial crime and corruption, and this action itself must be undertaken in a spirit of understanding that takes into account the social, political and economic roots of such crime.