

**Performing the Twelve Labors:
The G8's Role in the Fight against Money Laundering**

Denisse V. Rudich, MA
London Metropolitan University

G8 Governance

Number 12

May 2005

Abstract

In recent years, the leaders of the most industrialized democratic nations in the Group of 7, now Group of 8, (G7/8) have identified money laundering as a threat to nation-states and are working within the G7/8 institutional system to curb rogue financing. This article seeks to identify future labors for the G7/8 and the Financial Action Task Force (FATF) in global anti-money laundering (AML) efforts. It assesses the G7/8's role in the fight against money laundering, provides a historical analysis of money laundering in the G7/8 Summits system, and identifies systemic conditions that have induced cooperation amongst states. The FATF and the emerging international legal regime are also examined. The central argument lies in that the G7/8 has been able to adopt a leadership role, setting the international agenda and acting as a catalyst for the formation of an international AML regime. While it has not emerged as an effective center of global governance, it remains a significant institution capable of promoting cooperation amongst willing states and coordinating national policies. The G7/8 has played a productive role, leading international AML efforts and although its achievements have been impressive to date, they remain in their infancy with much work remaining for ensuing Summits.

Acknowledgements

Several people have assisted the completion of this article which I would like to thank. First, Peter Hajnal, Research Fellow at the Munk Centre for International Studies, University of Toronto, for providing research material and guidance in the early stages of this project. Second, Professor John J. Kirton, founder of the G8 Research Group, for his support and advice during my former studies on the G7/8 institution. Third, my supervisor, Professor Dermot McCann, for his words of encouragement during the course of this project, and Raymund Acevedo from Georgetown University for his assistance in the final stages of this study. I would also like to thank the two anonymous reviewers for their comments as well as Heidi Ullrich and Madeline Koch for all their hard work.

Table of Contents

Abstract	2
Acknowledgements	2
Table of Contents	3
Introduction: A Herculean Feat	4
Background: Money Laundering	5
Money Laundering and the G7/8: Developing the Anti-Money Laundering Machine	8
The FATF and beyond—A new Anti-Money Laundering Regime?	19
Conclusion: A New Labor?	25
Annex A: Money Laundering in the G7/8 System, 1989-2004	27
Annex B: An Emerging Regime: International AML Initiatives & Conventions*	29
Bibliography	31

Introduction: A Herculean Feat

“...he first shot an arrow at him,
but when he perceived that the beast was invulnerable,
he heaved up his club and went after him.”¹

In like manner, the leaders of the eight most industrialized democratic nations use their own ‘club’, the Group of 7, now Group of 8 (G7/8) institutional system to go after those engaged in money laundering.² Money laundering has emerged as a major threat to states, facilitated by the removal of capital controls and the liberalization of global finance. A “dark side” of globalization, money laundering has been recognized as the lifeblood of transnational criminal networks, including drug smugglers, terrorist and human trafficking groups.³ Corrupt government officials and established corporations also launder money to hide public capital, circumvent currency controls, bribe prospective clients, and defraud shareholders.⁴ While globalization facilitates the prevalence of money laundering, Wechsler argues that this phenomenon makes possible the mobilization against it by equipping policymakers with new devices to influence events on a global scale.⁵ Regulators attempted to face the problem unilaterally but due to the transnational character of money laundering, international cooperation proves essential. Indeed, fighting this foe is proving to be a Herculean feat.

Given the gravity of the threat posed by money laundering, various states have come together within international institutions to address this issue. Such institutions include the G7/8 and its protégé, the Financial Action Task Force (FATF). This article seeks to answer the following

¹ Apollodorus of Athens, *Library and Epitome*, Sir James George Frazer (translator), (London: Heinemann, 1921). Available at: www.perseus.tufts.edu.

² The acronym G7/8 will be used for the remainder of the paper to refer to the Group of 7 and Group of 8 institutional system. This is necessary to reflect the continued co-existence of the G7 and the G8 and the ongoing integration of Russia into the economic institutional process. Members of the G7/8 include Canada, France, Germany, Italy, Japan, the United States, the United Kingdom and Russia. The European Union also meets with the G7/8 but as a ‘less-than-full’ participant.

³ “G7 finance ministers vow to hit money laundering,” *Toronto Star*, (July 11, 2000): A7.

⁴ One corrupt government official is Slobodan Milosevic, former leader of Yugoslavia alleged to have laundered roughly \$2.9 billion through banks in Greece, Cyprus and Switzerland. Source: “Through the wringer,” *The Economist* (12 April 2001). Such corporations include Gulf Oil and the Lockheed Corporation. The former laundered \$4 million through the Bahamas and the latter laundered \$25 million through a Liechtenstein trust. Source: Jeffrey Robinson, *The Laundrymen*, (London: Pocket Books, 1998), p. 24.

⁵ William F. Wechsler, “Follow the Money,” *Foreign Affairs*, Vol.80, No.4 (July/August 2001), p.53.

question: What is the role of the G7/8 in the fight against money laundering? It argues that the G7/8 has adopted a leadership role, setting the international agenda and acting as a catalyst for the formation of an international anti-money laundering (AML) regime. The G7/8 has been able to do so because of the cooperative behavior of its members. While the G7/8 has not emerged as an effective center of global governance, it is a significant institution capable of promoting cooperation amongst willing states and coordinating national policies.

This article consists of four sections. The first provides background information on money laundering. The second develops a historical analysis of money laundering in the G7/8's institutional system and looks at various factors that encourage cooperation amongst its members. The third focuses on the FATF and the emerging international legal regime, arguing that neo-liberal institutionalism and Beth Simmons' model of "Regulatory Harmonization" effectively explain the rise of such a regime.⁶ The fourth and final section summarizes the central argument developed herein and puts forward policy recommendations for the upcoming 2005 Summit in Gleneagles, Perthshire.

Background: Money Laundering

The FATF defines money laundering as:

The conversion or transfer of property, knowing that such property is derived from a criminal offence, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in commission of such an offence or offences to evade the legal consequences of such actions; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to ownership of property, knowing that such property is derived from a criminal offence; [and] the acquisition, possession or use of property, knowing at the time of receipt that such property was derived from a criminal offence or from an act of participation in such an offence.⁷

However, there exists a multitude of definitions of money laundering. The common element amongst them is "the transfer of illegal [assets] into the official economic system."⁸ Money laundering involves a three-stage process: the *placement* of cash into the financial system, the

⁶ See Beth Simmons, "The International Politics of Harmonization: The Case of Market Regulation," UCIAS Edited Volume, Vol.1, Article 1 (2002). Available at: <http://repositories.cdlib.org/eciaspubs/editedvolumes/1/1>.

⁷ Financial Action Task Force, quoted in Kern Alexander, "The International Anti-Money Laundering Regime: The Role of the Financial Action Task Force," *Journal of Money Laundering Control*, Vol.4, No.3 (2001), p.233.

⁸ Javier Garcia, "International Measures to Fight Money Laundering," *Journal of Money Laundering Control*, Vol. 3, No.1 (2000), p.39.

layering of proceeds through complex operations, and the *integration* of funds into legal channels.⁹ This is supported by increasingly sophisticated methods.¹⁰ Once the money goes through the ‘wash cycle’ it emerges clean, difficult for authorities to detect and ready for criminals to invest.

Due to the clandestine nature of money laundering, many troubles surround its quantification. The retiring chairman of the FATF concluded in 1998 that there ‘is not...any economic *deus ex machina* that will allow the accurate measurement of money laundering worldwide.’¹¹ Appraisals of that amount range from 2% to 5% of global economic output, or using the 1996 International Monetary Fund (IMF) statistic, from \$590 billion to \$1.5 trillion.¹² Money laundering is known as the ‘alternate economy’, thriving as the world’s third largest business after foreign exchange and natural gas.¹³ Part of the difficulty in seizing this culprit relates to the particular qualities of money:

Money is the most fungible of all commodities. It can be transmitted instantaneously and at a low cost...It can change its identity easily and can be traced only with great effort...These characteristics work to the disadvantages of governments and their efforts to tax, regulate and control economic activity.¹⁴

Globalization complements these characteristics by accelerating the mobility of goods, capital and services, aggrandizing the scope of money laundering.¹⁵

For that reason, money laundering has emerged as a modern transnational security threat, posing danger to the international system, the state and the individual.¹⁶ Terrorists and persons engaged in the weapons trade often employ laundered money to fund their activities. Extremist,

⁹ Ibid.

¹⁰ These include ‘smurfing,’ which involves the use of multiple cash deposits smaller than the minimum cash reporting requirements, correspondent bank transfers, barter of luxury goods, parallel credit transactions, misinvoicing, and the use of shell companies and Internet-based schemes. For additional methods see Peter J. Quirk, “Money Laundering: Muddying the Economy,” *Finance & Development*, Vol.34, No.1 (March 1997). Available at: www.worldbank.org/fandd/english/0397/articles/0110397.htm.

¹¹ Quoted in John Walker, “How Big is Money Laundering?” *Journal of Money Laundering Control*, Vol.3, No.1 (2000), p.25. In subsequent years, the FATF and others had attempted to generate such a *machina*, meeting with little success.

¹² As quoted in Nigel Morris-Cotterill, “Think Again: Money Laundering,” *Foreign Policy*, (Summer 2001), p. 16.

¹³ Jeffrey Robinson, *The Laundrymen*, (London: Pocket Books, 1998), p.16.

¹⁴ Laurence Krause quoted in Phil Williams, “Transnational Criminal Organisations and International Security,” *Survival*, Vol.36, No. 1 (Spring 1994), p.318.

¹⁵ Garcia, *op. cit.*, p.39.

guerrilla and other bellicose groups use these weapons in uprisings against their governments, often agitating their regional surroundings. The events of September 11, 2001 (9/11) led to a destabilization of the international system, with the United States of America (U.S.), the global hegemonic power, embarking upon a ‘War on Terror’ and corresponding military campaigns in Afghanistan and Iraq. This created a cleavage amongst allies, challenging the *status quo*, and given the instability present in the Middle East, the imminent danger to the international system is high. The 1997 Asian financial crisis revealed the structural weaknesses of under-regulated financial centers, leading policymakers to wonder about the effects of financial abuses in undermining the credibility of the international financial system.¹⁷

At the state level, money laundering distorts economic data, affecting the ability of governments to manage economic policy.¹⁸ This leads to interest and exchange rate volatility, adverse income distribution effects, and contagion effects on legal investment causing economic growth to suffer. Harmful tax practices can wear away national tax bases, distort trade, and challenge the fairness of the tax structure. It is estimated that offshore tax evasion results in the loss of \$70 billion annually by the U.S. Treasury.¹⁹ Money laundering can also “undermine the democratic and economic basis of societies,” resulting in a “weakening of institutions and a loss of confidence in the rule of law.”²⁰ This occurred in Russia following the 1998 meltdown of the national economy that resulted in the transfer of \$74 billion from Russian banks to offshore financial centers (OFCs). Inflation rose by 200%, the unemployment rate by an estimated 12% and crime by 4%.²¹

At the individual level, money laundering contributes to the rise in violent crime and the distribution of drugs in local neighborhoods. Insurance fraud makes people pay more and the

¹⁶ This follows the three levels identified in Barry Buzan, *People, States and Fear*, (Brighton: Wheatsheaf, 1983).

¹⁷ Weschler, *op. cit.*, p.45.

¹⁸ Peter J. Quirk, “Money Laundering: Muddying the Economy,” *Finance & Development*, Vol. 34, No. 1 (March 1997). Available at: www.worldbank.org/fandd/english/0397/articles/0110397.htm.

¹⁹ “Treasury Chief: Tax Evasion is on the Rise,” *The New York Times*, July 19, 2001, p. C1. Senator Carl Levin (D-Michigan) cited an IRS estimate that the U.S. government “loses \$70 billion in taxes annually from tax evasion.”

²⁰ G8, *Communiqué*, (Birmingham, 17 May 1998). Available at: www.g7.utoronto.ca/Summit/1998birmingham/finalcom.htm.

²¹ For statistical data see Stephen Moore and James Carter, “The Russian Meltdown: Don’t Blame Capitalism,” (Cato Institute, 23 October 1998), available: <http://www.cato.org/dailys/10-23-98.html>, and Vladimir Petrovich Vorozhtsov, “Chapter 17 - Combating Crime in Russia: The Particular and the Common,” in Sergey Oznobishchev and James H. Brusstar, *U.S.-Russian*

transfer of funds to OFCs forces governments to hike taxes.²² Because of the global reach of money laundering, countries cannot fight it alone. The G7 acknowledged this in the late 1980's.

Money Laundering and the G7/8: Developing the Anti-Money Laundering Machine

The issue of money laundering emerged on the G7/8 agenda at the G7 Paris Summit in 1989. Reasons included the collapse of the Soviet Union, a growing recognition by leaders of the negative effects of globalization, plus the accession of Russia into the G7/8 system. Since the Paris Summit, money laundering received mention in eight of the sixteen G7/8 Summit communiqués, was addressed in ten declarations and statements, and in thirty-five Ministerial documents between 1998 and 2004. The issue of money laundering also led to the creation of the FATF, a task force designed to:

...assess the results of cooperation already undertaken in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventative methods in that field, including the adaptation of the legal and regulatory systems as to enhance multilateral judiciary assistance.²³

Although the FATF has been cited as the “most durable Summit decision,” the G7/8's treatment of money laundering has lacked consistency.²⁴ When the leaders first addressed the issue, they treated it with such vigor that it led analysts to argue that due to the catalytic force behind the original initiative, money laundering “did not need Summit attention for ten years.”²⁵ To date no penetrating study of the Summits' treatment of AML exists. In analyzing G7/8 Summit documentation, it becomes evident that the topic has come up time and again (See Graph 1).

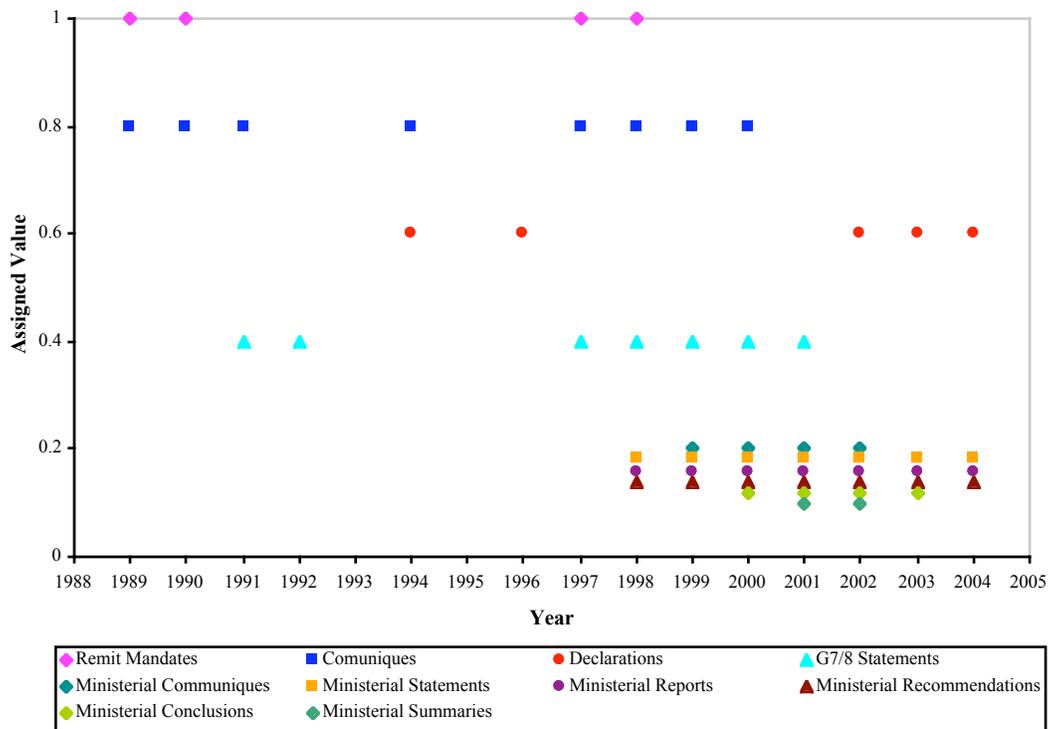
Partnership: Meeting the New Millennium, (Washington, D.C.:National Defense University, 1999).

²² The distinction between money laundering and tax evasion is blurred in much of the literature on money laundering as some countries do not charge their citizens taxes and as such, do not consider ‘tax evasion’ an offense.

²³ G7, *C o m m u n i q u é*, (Paris, 16 July 1989). Available at: www.g7.utoronto.ca/Summit/1989paris/communiqué/drug.html.

²⁴ Nicholas Bayne, *Hanging in There: The G7 and G8 Summits in Maturity and Renewal*, (Ashgate: Aldershot, 2000), p.196.

²⁵ Emphasis added by the author. Nicholas Bayne, “Reforming the International Financial Architecture: The G7 Summit's Successes and Shortcomings,” in Michele Fratianni, Paolo Savona and John J. Kirton, (eds.), *Governing Global Finance: New Challenges, G7 and IMF Contributions*, (Aldershot: Ashgate, 2002), p.36.

Graph 1: Incidence of "Money Laundering" in G7/8 Documentation

1.0 : Remit Mandates (formal instructions contained in G7/8 documents specifying that the leaders will address an item at the Summit in the following year or in a number of years)

0.8 : Final Communiqués (leaders' declaration containing international obligations, recommendations, assignment of tasks to other international organizations and decrees establishing new bodies)

0.6 : Political Declarations (document ranking second in 'the hierarchy of Summit scripture')

0.4 : Statements (not necessarily a consensus document that covers a range of regional and global issues)

0.0 — 0.2 : Ministerial Level Documents (includes Communiqués, Statements, Reports, Recommendations, Conclusions, and Summaries)

* Source for document descriptions: Hajnal, Peter.²⁶

Graph 1 illustrates the importance accorded to money laundering in the G7/8 institutional system through its reference in G7/8 issued documents of varying degree. Documentation has been assigned numerical values ranging from 0 to 0.8, with remit mandates equaling 1. Remit mandates are not actual documents but remain significant as they specify that the leaders will address an item at a later time. As depicted by Graph 1, the G7/8's focus on money laundering has ranged from clear commitments and recommendations in Summit and Ministerial documentation to casual passing reference and complete neglect. Money laundering appeared with regularity during the Fourth Summit series (1989 to 1993) and decreased in frequency

²⁶ See Peter Hajnal, "The Documentation of the G7/8 System," *G8 Governance*, No.4 (June 1998). Available at: www.library.utoronto.ca/g7/governance/gov4.

during the Fifth Summit series (1994 to 1997).²⁷ Discussions on money laundering increased during the Sixth Summit series (1998 to 2001) with AML surfacing in various Ministerial documentation. AML appeared regularly within both Ministerial and Summit documents during the Seventh Summit series (2002 to present). From Paris to Evian, the G7/8 has addressed this policy issue in an evolutionary manner, executing an ambitious and flexible strategy extending throughout the G7/8 system (See Annex A for an overview of money laundering initiatives in the G7/8 System, 1989-2004).

G7/8 Summits and Money Laundering: From Paris to Sea Island

During the Fourth Summit Series, including the Paris Summit (1989), and subsequent G7 Summits in Houston (1990), London (1991) and Munich (1992), the G7 executed a robust initiative, establishing an international network of AML experts within the context of the fight against drug trafficking. At the Paris Summit, the leaders issued a firm, viable, and credible commitment to strengthen international cooperation and mutual legal assistance on drug-related issues and to advocate the ratification of the Vienna Convention.²⁸ They pledged to convene a financial action task force to prevent money laundering, scheduling its first meeting for April 1990. The stimulus generated at the Paris Summit proved powerful enough to make the FATF the “effective institutional home” of AML-related issues, laying the foundation for the G7/8’s device to fight money laundering.²⁹

During the Houston Summit, the leaders endorsed the FATF’s report and pledged to implement the 40 Recommendations (FATF 40). At the London Summit, the G7 focused on “stepping up the fight against money laundering.”³⁰ Leaders supported the development of a mutual evaluation initiative to assess progress in the adoption of the FATF 40 and the recommendation that the Organization for Economic Cooperation and Development (OECD) house the FATF Secretariat. The G7 reaffirmed its involvement against the laundering of drug proceeds during the Munich Summit but failed to address money laundering at the Tokyo Summit (1993). The leaders began to deal with AML less directly as the FATF gained vitality, particularly during the Fifth Summit Series.

²⁷ Bayne provides detailed explanations of the various Summit Series in *Hanging in There*.

²⁸ Formally known as the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

²⁹ Bayne, *op cit.*, p.66.

³⁰ G7, *Prime Minister [John Major]’s Statement on the Economic Declaration*, (London, 17 July 1991). Available at: www.g7.utoronto.ca/Summit/1991london/statement.html.

The Fifth Summit series lasted throughout the Naples (1994), Halifax (1995), Lyon (1996), and Denver (1997) Summits, with the G7 exerting its leadership by broadening the context within which to address AML and paving the way forward for the FATF. This sequence is marked by a greater presence of Russia in the G7 system and recognition by the Heads of State and Government that globalization ‘has led to increased economic interdependence’.³¹ At the Naples Summit, leaders called for the implementation of effective AML efforts to tackle transnational organized crime and for the FATF to continue its work for five more years.³² During both the Halifax and Lyon Summits, the issue of money laundering was placed on the shelf along with other public order issues, including crime and drugs.

The Denver Summit of the Eight incorporated money laundering into discussion on combating financial crime and corruption. For the first time, the G7 identified money laundering as a major threat to democracy and the “financial integrity of...our countries.”³³ It called on the FATF to consider expansion and issued two remit mandates for the following Summit. The first asked experts to report on international cooperation between financial regulators and law enforcement agencies and to make recommendations for improvements. The second assigned the FATF to examine ways to advance its work. Thus, the Denver Summit of the Eight ended the G7’s latent treatment of AML. Although the identification of money laundering as a menace to democratic governance signifies a breakthrough in the G7/8’s approach, it overlooked many flaws of the FATF and failed to build upon the success of the earlier AML initiatives. The Birmingham Summit brought a change to this.

The G7/8 enhanced its leadership and institutional capacities during the Sixth Summit Series, beginning at Birmingham (1998) and continuing through the Köln (1999), Okinawa (2000), and Genoa (2001) Summits. This series is distinguished by an increased treatment of specialized issues at the Ministerial level, with Russia unable to engage in economic discussions due to the 1998 economic meltdown. The Ministerial meetings held before the Birmingham Summit focused on gaps in the G7/8’s AML model. The Foreign and Finance Ministers unveiled a new strategy, supporting efforts of less developed countries (LDCs) to create regional AML groupings. Although their joint statement obscures the kind of support to be provided, it marks a practical way of fighting money laundering by working with money laundering hot spots, many of which lack the regulatory structures to detect this offense. The G7 Finance Ministers presented

³¹ Bayne, *op. cit.*, p.66.

³² The FATF lacks permanent status with its life span extended by the G7/8.

³³ G7, *Confronting Global Economic and Financial Challenges: Denver Summit Statement by the Group of Seven*, (Denver, 21 June 1997).

recommendations in the area of tax competition, including creating tax information exchange agreements and adopting suspicious transaction reporting mechanisms. The G7/8 leaders endorsed the work of their Ministers and the FATF's initiative to build a global AML network at the Birmingham Summit. They committed to establish Financial Intelligence Units (FIUs) in line with "national constitutions and legal systems," making these structure more flexible and easy to adapt.³⁴ This, however, created problems in situations where money laundering applies to certain crimes in one country but not another. The G7 also settled on the need for legislation to facilitate the confiscation of assets and issued a remit mandate urging the Lyon Group to intensify its work and report on progress made the following Summit.³⁵

At the Köln Summit, the G8 agreed to deepen cooperation on law enforcement and AML. The G7 welcomed the FATF's strategy to 'name and shame' non-cooperative countries and territories (NCCTs) to induce compliance with the FATF 40. The G7/8 thereby granted the FATF *de facto* enforcement privileges and generated momentum for the publication of the list of 15 NCCTs in June 2000.³⁶ Ministerial meetings leading up to the Okinawa Summit addressed AML in a more technical light, particularly in the report on *Actions Against Abuse of the Global Financial System* (Fukuoka Report) delivered at the Okinawa Summit. The Fukuoka Report provides an overview of the FATF's efforts against NCCTs. It contains parallel initiatives regarding tax evasion and OFCs, and a pledge to review and report on progress in the area of 'gatekeepers', the international payments system, corporate vehicles, and stolen assets.³⁷ It also includes an offer to provide small states with technical assistance to expedite reform of their financial institutions. Despite the inclusion of Russia on the list of NCCTs, the leaders endorsed the Fukuoka Report and pledged to take necessary action to combat financial crime. Thus, the G7 effectively took responsibility for the international fight against money laundering.

Clear progress transpired between Okinawa and Genoa, with four jurisdictions taken off the list of NCCTs. Only three countries, including Russia, remained at risk of sanctions. In meetings prior to the Genoa Summit, the G8 Ministers of Justice resolved to enhance the effectiveness of

³⁴ G8, *Statement: Drugs and International Crime*, (Birmingham, 16 May 1998). Available at: www.g7.utoronto.ca/Summit/1998birmingham/drugs.htm.

³⁵ The Lyon Group is a Senior Experts Group on Transnational Organized Crime established at the Halifax Summit in 1995 to combat transnational organized crime

³⁶ These include the Bahamas, the Cayman Islands, the Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, the Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines. Source: Financial Action Task Force, *Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of AML Measures*, (22 June 2000), p.12. Available at: www.oecd.org/fatf.

international cooperation and mutual legal assistance in the confiscation of illicit assets. The G7 Finance Ministers committed to continuing dialogue with NCCTs. They called on the FATF to recommend coordinated countermeasures where dialogue failed to induce progress and on the World Bank and IMF to help these countries implement the FATF 40. They also produced a follow-up report to the Fukuoka Report—*Fighting the Abuses of the Global Financial System* (Rome Report), which the leaders approved.³⁸ The Rome Report summarizes the actions taken to complement the publication of the 15 NCCTs and lists remaining challenges. It asks the FATF to include originator identification in international wire transfers in the reviewed FATF 40 and to resolve the dilemma of gatekeepers. It calls on national authorities to exchange information on beneficial ownership and control of corporate vehicles and for broader cooperation regarding foreign stolen assets. The Sixth Summit Series saw the most comprehensive treatment of the issue at hand by the G7/8 leaders and their Ministers, setting the stage for the adaptation of the AML machine to fight terrorist financing.

Building on Bayne's work on Summitry, this article argues that the Genoa Summit marks the end of the Sixth Summit Series. The Seventh Summit series, running through the Kananaskis (2002), Evian (2003), and Sea Island (2004) Summits, is distinguished by the post-9/11 international environment, a rise in public dissent with G8 leadership, and a greater involvement of non-G8 members in the Summits process.³⁹ After the September 11, 2001 terrorist attacks on the United States, money laundering emerged as both foe and ally in the war on terrorism.

Following the 9/11 attacks, the G7 Finance Ministers issued an Action Plan to fight terrorist financing, directing the FATF to design measures for this.⁴⁰ They appealed to the Egmont Group to promote information exchange flows amongst its members, requesting that all countries establish functional FIUs.⁴¹ They welcomed the swift completion of a compliance assessment framework for the FATF 40 and anti-terrorist financing recommendations drafted by the FATF, IMF and World Bank and promised to provide assistance only to those countries embracing both

³⁷ 'Gatekeepers' are professionals such as lawyers and accountants that play an uncertain role in assisting money launderers.

³⁸ Together, these documents represent the G7/8's most extensive and comprehensive treatment of money laundering to date.

³⁹ These include leaders from African nations, emerging market economies, and other international forums.

⁴⁰ The G7 specified that these needed to comprise a revised FATF 40 including special anti-terrorist financing recommendations, identified terrorist financing typologies with guidelines for financial institutions to guard against these, and processes to identify terrorist financing havens. See G7 Finance Ministers, *Action Plan to Combat the Financing of Terrorism*, (Washington, D.C., 6 October 2001). Available at: www.g8.utoronto.ca.

⁴¹ The Egmont Group comprises all existing FIUs and promotes cooperation amongst them.

types of standards. The G8 Justice Ministers stressed that although crime and terrorism share similar elements and employ money laundering techniques, they would continue to distinguish these as “separate threats to public safety.”⁴² At the Kananaskis Summit, the G8 leaders committed to implement the FATF’s Special Recommendations on Terrorist Financing (SRs) and related conventions. They pledged to remove legal obstacles to facilitate the tracing of funds and ensure that “mutual legal assistance is not refused on grounds of banking secrecy or that the request involves a fiscal offense.”⁴³ They further approved their Ministers’ recommendations.

The leaders reaffirmed their commitment to fight corruption and financial abuses at the Evian Summit, encouraging accession to and ratification of the *UN Convention of Transnational Organized Crime* for the universal criminalization of money laundering, corruption and similar crimes.⁴⁴ They also welcomed the release of the revised FATF 40 (FATF 40+8). Prior to the Sea Island Summit, G7/8 Ministers continued to tackle AML and terrorist financing, revealing two ambitious areas of focus for money laundering prevention—the abuse of non-profit organizations and the informal financial sector. The G7 Finance Ministers settled on a timetable of actions to strengthen asset-freezing regimes and to tackle financial abuse in these areas. They urged more capacity building and encouraged efforts to make the formal financial sector increasingly accessible and the informal financial sector more transparent. They promised to implement the FATF 40+8 and reaffirmed the commitment to collaborate with other multilateral bodies.⁴⁵ Following the terrorist attacks in Madrid and Riyadh in the spring of 2004, the G7 Finance Ministers formally assumed responsibility as international financial leaders in the fight against terrorist financing.⁴⁶ At the Sea Island Summit, the leaders reaffirmed their Minister’s commitments.

As Bayne argues, the G7’s work on money laundering “proved its worth” after 9/11.⁴⁷ The FATF provided the G7/8 with the only economic weapon having a direct impact on terrorism.⁴⁸

⁴² G8 Justice and Interior Ministers, *G8 Justice and Interior Minister’s Meeting: Chairperson’s Summary*, (Mont-Tremblant, 13-14 May 2002). Available at: www.library.utoronto.ca/g7/adhoc/justice2002chair.htm.

⁴³ G8, *G8 Recommendation on Counter-Terrorism*, (Kananaskis, 13 June 2002). Available at: www.library.utoronto.ca/g7/foreign/fm130602f.htm.

⁴⁴ See G8, *Fighting Corruption and Improving Transparency: A G8 Declaration*, (Evian, 2 June 2003), Available at: www.g7.utoronto.ca/Summit/2003evian/corruption_en.html.

⁴⁵ Particularly the World Bank and IMF who have made terrorist financing and money laundering assessment a permanent part of their work.

⁴⁶ See G7 Finance Ministers, *Statement on Combating Terrorist Financing*, (Washington, D.C. 23 April 2004). Available at: www.g8.utoronto.ca.

⁴⁷ Nicholas Bayne, “Reforming the International Financial Architecture: The G7 Summit’s Successes and Shortcomings,” p.35.

The adaptation of the AML framework to the fight against terrorist financing led G7/8 and other FATF members to revise their national legislation to facilitate the identification and tracking of terrorist groups.⁴⁹ The G7/8's action on money laundering and the war on terrorist financing have also had mutually beneficial effects. The established AML model allowed for the speedy mobilization against terrorist funding while the war on terrorism has forced the G7/8 to modify earlier defects, with countries implementing recommendation at the domestic level and concentrating on non-traditional sectors of the economy.

From Paris to Sea Island: An Assessment

Since the issue of money laundering first appeared on the agenda in 1989, the G7/8's action on AML has come a long way. The G7/8 has dealt with this issue in an evolutionary manner, first establishing the FATF to counter the laundering of drug proceeds, then endorsing the work of the FATF as it gained ground and enlisting the aid of other reputable international financial institutions (IFIs). The G7/8 has provided effective leadership to the international community, setting the international agenda and gathering the involvement of non-G7/8 and OECD members, with emerging market economies and LDCs adopting the FATF 40+8 and pushing forward the development of FATF-style regional bodies. The G7/8 developed an ambitious and flexible strategy by linking money laundering to other transnational issues of economic and political character. It also assumed responsibility for the international fight against the laundering of funds and terrorist financing. After a slow start, the G7/8's approach has had "durable effects," setting the G7/8 AML machine in motion.⁵⁰

The G7/8's Anti-Money Laundering Machine

Founded as a one-time-only Summit, the G7/8—both "an institution and an anti-institution"—has developed a mechanism capable of tackling complex issues associated with money laundering.⁵¹ With the G7/8 addressing increasingly complicated topics, commitments and agreements have grown more technical and difficult to prepare, necessitating the involvement of more actors.⁵² This has spurred the creation of an elaborate engine with leaders, ministers, international institutions, task forces and expert groups working together to analyze and counter this threat.

⁴⁸ Ibid.

⁴⁹ Ibid., p.36.

⁵⁰ Ibid., p.37.

⁵¹ Bayne, *op. cit.*

⁵² Andre Belelieu, "The G8 and Terrorism: What Role can the G8 Play in the 21st Century?" *G8 Governance*, no. 8, (2002). Available at <http://www.g7.utoronto.ca>.

The leaders congregating at the annual Summits provide the physical structure visible to those outside the system and carry out several important functions. By reaching decisions through political consensus, G7/8 leaders effectively execute concerted responses to salient issues. This show of unity gives credibility to G7/8 initiatives and allows the G7/8 to influence non-member states, which has not only led to the establishment of the FATF but has induced NCCT's to reform their financial regulations and participate in mutual self-assessment procedures.

The G7/8 leaders also mobilize international public opinion. Following the attacks of 9/11, the G8 received worldwide support for its condemnation of terrorism and decision to combat terrorist financing. The leaders further reconcile domestic and international pressures at the Summits. For example, the AML initiative has had its share of protests, particularly from those anxious about banking secrecy laws, the costs of implementation, and the view that AML standards yield competitive advantages to banks in non-compliant jurisdictions. The show of support from non-member nations, particularly Switzerland, has allayed these objections, leading various countries to pass national legislation in line with the FATF 40 and increasing cooperation across domestic sectors. While the leaders make up the pinnacle of the G7/8 system, they need the assistance of other actors to hold the system together.

Such is the role of the G7/8 Ministers, who have become increasingly important with the passing time. Meeting throughout the year, they strive to ensure the effective functioning of the system, executing the preparatory and follow-up work of the Summits. The direct involvement of the G7/8 Finance, Foreign and Justice Ministers has generated a more extensive treatment of AML, a highly technical issues that at times lies beyond the immediate grasp of G7/8 leaders.⁵³ The ministers often identify problems in the existing regime, such as the failure to advance the creation of international legal mechanisms required to prosecute criminals, and reach conclusions on matters that stray across gray lines, such as the decision to continue treating AML-related crimes as distinct. As Belelieu asserts, the G7/8 Ministers play an important role by serving as a 'bridge' between the leaders and the lower level.⁵⁴ They often cite expert opinions in their own reports, declarations and statements, which are then endorsed by the leaders. This has become regular practice since the inception of the FATF, illustrating the importance of other actors to the G7/8 AML machine.

The network of task forces, working and expert groups provide support and expert advice for the development of the AML mechanism and kindle the spark behind the G7/8's bolder initiatives. During the preparatory stage of the Summits, these different actors prepare

⁵³ Ibid.

background documents to facilitate dialogue amongst the leaders.⁵⁵ While the FATF produces reports assigned to it by the G7/8, it also identifies money laundering typologies and proposes initiatives and recommendations independently. The G7/8 has also invited other IFIs to work with the FATF to produce a compliance assessment model and look into the challenges posed by OFCs and tax havens for terrorist financing. Similar groups, formed on an *ad hoc* basis, assist in specifying recommendations for the Summits and identifying new areas for collaboration. They further stimulate cooperation amongst participants and non-participants. The presence of these different actors ensures that the G7/8 system sustains its efforts year round, addressing new issues swiftly and expediently as they arise.

The development of such a machine would not have been possible within another international forum, such as the UN.⁵⁶ Although the UN has worldwide membership, reaching consensus is often difficult. The bureaucratic structure lacking resources often generates rivalries amongst groups, complicating the efficient execution of tasks and collective management. The G7 established the FATF specifically because they saw a paucity in the approach of international organizations in the fight against drugs. The G7/8's AML machine has flourished because of the strong financial backing provided by the G7/8 and the show of consensus and cooperation of its members.

Explaining Cooperation: Systemic Conditions of the G7/8

Cooperation in the G7/8 institution has resulted in the development of an international AML network. Institutions, defined by Robert Keohane as “persistent and connected sets of rules (formal and informal) that prescribe behavioral roles, constrain activity, and shape expectations,” create the conditions under which states willingly work together.⁵⁷ Although the G7/8 has no secretariat or founding statute, its unique institutional capacity lies in its small size, selected membership, flexible structure, and the shared values and belief in democracy and liberal capitalism amongst its members.⁵⁸ Institutions facilitate cooperation amongst states and reduce transaction costs by harvesting the “practice of iteration.”⁵⁹ This dissuades members to betray

⁵⁴ Belelieu, *op. cit.*

⁵⁵ *Ibid.*

⁵⁶ See Nicholas Bayne, “The G7 Summit and the Reform of Global Institutions,” *Government and Opposition* (1995). Available at www.g7.utoronto.ca/scholar/bayne1995/index.html.

⁵⁷ Robert O. Keohane, *International Institutions and State Power: Essays in International Relations*, (Boulder: Westview Press, 1989), p.3.

⁵⁸ Peter R. Weilemann, “The Summit Meeting: The Role and Agenda of Diplomacy at its Highest Level,” *NIRA Review*, (Spring 2000), p.19.

⁵⁹ *Ibid.*, p.30.

others as they assume their relationship will carry on for an indefinite period of time.⁶⁰ By issuing four remit mandates since the Paris Summit, the G7/8 set a long-time horizon and regularity of stakes in the area of AML for its members.⁶¹ In addition, the G7/8 raised the cost of defection for recipients of large flows of foreign direct and portfolio investments by endorsing the FATF's strategy against NCCTs. Warnings issued by G7 countries to their domestic institutions held deep economic consequences for defecting NCCTs.⁶²

In the G7/8, political-economic bargaining takes place amongst a small, 'privileged' group of governments "intensely interacting with one another and monitoring each others' behavior."⁶³ As Charles Lipson asserts, a small group with extensive interplay, such as the G7/8, is important for the establishment and diffusion of conventions.⁶⁴ This often leads to the development of international 'soft' law, which has been the case in the area of AML. Indeed, G7/8 cooperation is noteworthy because, under anarchy, 'policymakers generally have an incentive to cheat'.⁶⁵ The G7/8 institution can, and has, altered the extent to which governments expect their present actions to affect the behavior of others. Through the creation of FIU's, the G7/8 and FATF have facilitated the exchange of information, enhancing concerted action in international AML initiatives.⁶⁶ By influencing the strategic choices of the member states, the G7/8 has induced cooperation in the field of money laundering. This largely accounts for the development of a soft international AML law regime.

⁶⁰ Robert Axelrod and Robert O. Keohane, "Achieving Cooperation Under Anarchy: Strategies and Institutions," *World Politics*, Vol.38, No.1 (October 1985), p. 228.

⁶¹ Kirton, *G7/8 Summit Remit Mandates, 1975-2003*, (24 June 2003). Available at: www.g7.utoronto.ca/evaluations/factsheet/factsheet_remits.html.

⁶² Several of these jurisdictions, including the Bahamas, the Cayman Islands, Liechtenstein, and Panama (and later Russia amongst several others), enacted legislative reforms, fearing further action against them.

⁶³ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, (Princeton: Princeton University Press, 1984), p.77.

⁶⁴ Charles Lipson, "International Cooperation in Economic and Security Affairs," in David Baldwin (ed.), *Neorealism and Neoliberalism: The Contemporary Debate*, (New York: Columbia University Press, 1993), p.67.

⁶⁵ Quoted in Robert D. Putnam, "Diplomacy and domestic politics: the logic of two-level games," *International Organization*, Vol. 32, No. 3 (Summer 1988), p.438.

⁶⁶ Established FIUs enhance the rapid exchanging information between jurisdictions, particularly between financial institutions and law enforcement/prosecutorial authorities. See US Department of State, "The Fight Against Money Laundering," *Economic Perspectives*, Vol.6, No.2 (May 2001), p.15.

The FATF and beyond—A new Anti-Money Laundering Regime?

An international regime is defined as “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations.”⁶⁷ When standards become commonly accepted by various jurisdictions over time, they develop into soft law. The term ‘soft law’ relates to the lack of “justiciability of the instruments in which the rules are enshrined...rather than the content of the rules themselves.”⁶⁸ As Stessens argues, the fight against money laundering has generated two important evolutions in the norm-making process: the international impetus for the creation of AML law and the growth of soft international law.⁶⁹ Although AML principles were issued in the 1988 Vienna Convention and the 1988 Basle Committee Statement of Principles on Money Laundering, it was not until the FATF surfaced that the AML regime took force. The FATF 40 have been dubbed the “crown jewel of soft law” and have led to the internationalization of AML law enforcement efforts.⁷⁰ Since 1989, an AML regime has stuttered forward, spurring an array of AML institutions and conventions, and getting other states and international bodies on board (See Annex B for a table of international AML initiatives and conventions).

The FATF: An In-Depth Look

Comprising thirty-three countries, the FATF is the only international body solely designed to combat money laundering.⁷¹ It has evolved into ‘the most important body in terms of AML policy’, assuming various roles.⁷² In its policy-making or advisory role, the FATF developed the FATF 40 and the SRs, issuing the latest revised version in June 2003.⁷³ While these standards are

⁶⁷ Stephen D. Krasner, (ed). *International Regimes*, (Ithaca, NY: Cornell University Press, 1983).

⁶⁸ Kern Alexander, “The Legalization of the International AML Regime: The Role of the Financial Action Task Force,” Working Paper for the ESRC Centre for Business Research, University of Cambridge, no. 177, (September 2000), p.15.

⁶⁹ Guy Stessens, *Money Laundering: A New International Law Enforcement Model*, (Cambridge: Cambridge University Press, 2000), p.15.

⁷⁰ *Ibid.*, p.17.

⁷¹ Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, China, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Commission and Gulf Co-operation Council are also members of FATF. *Ibid.*, p.20.

⁷² Garcia, *op. cit.*

⁷³ Changes include: specifying crimes linked to AML, expanding customer due diligence processes, improving transparency requirements, enhancing measures for higher risk customers and transactions, extending AML measures to non-financial businesses and professions, adopting key institutional measures regarding international cooperation, extending AML requirements to cover terrorist financing, and prohibiting the existence of shell banks.

not binding under international law, they exist as a “useful instrument in unifying policies to fight money laundering.”⁷⁴ This work is complemented by the annual typologies exercise to review trends and countermeasures. The FATF adopted a policing role in the mid-1990’s, monitoring implementation through annual self-assessment exercise and mutual evaluation procedure, publishing the list of NCCTs, and adopting a sanctioning procedure against non-compliant members. It has threatened sanctions against two countries—Turkey and Austria, and has exerted strong political pressure on non-member states.⁷⁵ Today, the list of NCCTs includes six countries.⁷⁶ The FATF has also undertaken a communications role, spreading the “anti-money laundering message” worldwide through the development of a global network, regional AML groupings, and FIUs. It works with other IFIs to foster the sharing of information and the provision of technical assistance.

Despite these many efforts, the FATF’s record remains mixed. Some blame the FATF of engineering AML standards to divide the most powerful industrialized states and the “small, developing, pressure-sensitive countries.”⁷⁷ The international banking community, regarding the new rules as “burdensome and ineffective,” continues to voice frustration at the cost and complexity of implementing AML standards.⁷⁸ There is also a sense that the high costs of implementation yield low enforcement actions.⁷⁹ In the United Kingdom (U.K.), however, the Financial Services Authority (FSA) has yielded £6,095,000 in fines for breaching AML requirements since 2002.⁸⁰ With regards to domestic implementation of the FATF 40, it was not

See FATF web site for overview of the FATF 40 and FATF 40+8 at www.fatf-gafi.org. FATF, “New Anti-Money Laundering Standards Released,” (Berlin, 20 June 2003).

⁷⁴ Alexander, *op. cit.*, p.213.

⁷⁵ In 1996 the government of Seychelles adopted a law to facilitate money laundering. Under the Economic Development Act (EDA), a person who placed more than \$10 million in approved investment schemes was granted immunity from criminal proceedings and given citizenship. This drew such severe condemnation from the FATF and other members of the international community that the government of Seychelles annulled the law. *Ibid.*, p. 25.

⁷⁶ The Cook Islands, Indonesia, Myanmar, Nauru, Nigeria, and the Philippines.

⁷⁷ William Allen, “The War on Terrorism Financing,” *Journal of Money Laundering Control*, Vol. 6, No.4 (2003), p.306.

⁷⁸ Nicholas Bayne, “The Financial Dimensions of Combating Terrorism,” Lecture for G8 Online (2002). Available at: www.g7.utoronto.ca/g8online/english/2002/15.html.

⁷⁹ See George Von Furstenberg, “Terrorist Finance: Within the Grip of the G8?” In M. Fratianni, J. J. Kirton, A. M. Rugman and P. Savona, eds., *New Perspectives on Global Governance: Why America Needs the G8*, pp. 194-202 (2005, Ashgate, Aldershot).

⁸⁰ The Financial Services Authority (FSA) fined the following financial institutions for breaches of anti-money laundering requirements: Bank of Ireland £375,000 (2 September 2004), Raiffeisen Zentralbank Österreich's London branch £150,000 (6 April 2004), Bank of Scotland Plc £1,250,000 (15 January 2004), Northern Bank £1,250,000 (7 August 2003), Abbey

until a compliance assessment revealed that Canada and the U.S. were not meeting most of the required standards that they reformed their national AML legislation.⁸¹ Authorities in the U.K., having received a better score, had difficulties tracking down the stolen funds of former Nigerian President Sani Abacha said to be in London. The redistribution of seized assets poses additional challenges. Today, industrialized countries assisting in international investigations split the proceeds or fund additional law enforcement efforts rather than allocating these in an equitable manner.⁸² Despite these issues, the FATF's efforts have been successful in creating an international AML regime and in promoting the ratification of financial regulations to counter money laundering at the state-level. The G7/8's institutional system has played a key role in this.

Understanding Effectiveness

Part of the difficulty in assessing G7/8 effectiveness in the area of money laundering lies in the lack of quantitative data available for measuring success and records of achievements by member countries. For that reason, G7/8 effectiveness is here defined by the global impact of the G7/8's work in AML. More specifically, G7/8 AML initiatives have spurred the creation of 7 FATF-style regional bodies and operational FIU's in 94 countries that analyze and disseminate sensitive financial disclosures and promote cooperation.⁸³ It has also prompted the development of over 23 related conventions and initiatives. In 2003, the IMF and World Bank recognized the FATF 40 and SRs as the international standards for fighting money laundering and terrorist financing, drafting a common methodology with the FATF for assessing compliance. Many countries have adopted new legislation or reformed existing financial regulations as the FATF 40 +8 are revised and continue to partake in self-assessment procedures and mutual self-evaluation procedures to assess compliance. In effect, the G7/8's initiatives have been effective in generating international

National was fined £2, 320, 000 (10 December 2003), Royal Bank of Scotland Plc £750,000 (17 December 2002). See www.fsa.gov.uk.

⁸¹ 'Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001' signed into law on 26 October 2001 by the U.S Congress and *Bill C-22: the Proceeds of Crime (Money Laundering Act)* signed into law in Canada on 29 June 2000.

⁸² See Louise Shelley, "The Disposal of Seized Laundered Assets," in Alan Jones, Barry Rider, Graham Saltmarsh and Louise Shelley, *Killing Development: Money Laundering in the Global Economy*, (Centre for Post-Collectivist Studies, 2000), p.48.

⁸³ These regional bodies include the APG (Asia/Pacific Group on Money Laundering), CFATF (Caribbean Financial Action Task Force), the ESAAMLG (Eastern and Southern Africa Anti-Money Laundering Group), GAFISUD (Financial Action Task Force for South America), the MONEYVAL Committee of the Council of Europe (the Select Committee of experts on the evaluation of anti-money laundering measures) and the OGBS (Offshore Group of Banking

awareness, creating an international legal framework, and prompting international cooperation in the area of AML.

Kirton's concert equality model and Putnam and Bayne's 'American Leadership' model help explain G7/8 effectiveness.⁸⁴ Kirton's model holds that the causes of G7/8 effectiveness lie in the distinct characteristics of the G7/8—its equalizing capabilities, intensifying interdependence, common principles and problems, and multi-level political control.⁸⁵ Putnam and Bayne assert that effectiveness arises out of three different elements. First is strong U.S. leadership "in alignment...with at least one other power."⁸⁶ Second is "reigning" policy ideas and interpretative learning by leaders. Third is the creation of a "mutually supported transnational alliance," facilitated by the absence of domestic political and electoral pressures. Although these models account for the G7/8 countries, they lack explanatory power for the adoption of international AML standards by the financial institutions of member and non-member states.

Beth Simmons' model of 'Regulatory Harmonization' places emphasis on that aspect of the AML regime. According to Simmons, policy coordination in finance depends on two factors: incentives faced by other regulators to adopt new standards set by the 'dominant regulator'—the U.S., and the nature of the externalities as faced or anticipated by the dominant state.⁸⁷ Following the adoption of the "Kerry Amendment" in 1988, the U.S. gained the support of the U.K. and France for its AML policy and for the creation of a task force to combat money laundering.⁸⁸ Following the Paris Summit, these countries exerted immense political pressure to get others on board and adopt the FATF standards. As Simmons asserts, "it is not necessarily in the direct financial interest" of the financial institutions to adopt AML behavior."⁸⁹ These efforts provide no clear economic benefit and yield immediate and sunk costs associated with enhancing operational

Supervisors). For a list of operational FIU's, see http://www.egmontgroup.org/list_of_fius_062304.pdf.

⁸⁴ Other models include Bergsten and Henning's 'False New Consensus' model and Kokotsis' 'Democratic Institutionalism' model. For an overview of these, see Michael Hodges, John Kirton, and Joseph P. Daniels (eds.), *The G8's Role in the New Millennium*, (Aldershot: Ashgate, 1999), p.5.

⁸⁵ John Kirton, "Explaining G8 Effectiveness in the Approach to the New Millennium," Paper prepared for academic workshop on the *G7 in the New Millennium*, (London, 14 May 1998). Available at: <http://www.g7.utoronto.ca/annual/kirton1998/index.html>.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ The "Kerry Amendment" required the U.S. Treasury to negotiate with foreign countries in order to have foreign banks record cash deposits totaling more than US\$10,000 and to provide information to U.S. authorities in the event of narcotic-related investigation. See Simmons, *op. cit.*

⁸⁹ Ibid.

capacities to detect AML. Not only are market incentives against the adoption of the FATF 40 but also, due to broad-based application of these measures, expectations of non-compliance are high.

Policy coordination in AML has resulted through direct centralized pressure from the FATF and the threat of sanctions.⁹⁰ The FATF, backed by the G7/8, has employed its political muscle to induce states to adopt legislation and coordinate policies. The G7/8 has supported the FATF as its members perceive the economic and social costs yielded by the laundering of drug, terrorist and other criminal funds as higher than those of implementing AML regulations. Policy convergence, although detectable, has been “hard fought and far from complete.”⁹¹ Essentially, policy coordination has not resulted in harmonization and many enforcement problems remain.

Wrestling the Lion: The Problems of Enforcement

Although an international law enforcement regime is emerging, developments remain in their infancy. Stessens defines an international law enforcement regime as ‘a global arrangement among governments to cooperate against particular transnational crimes’.⁹² Of particular difficulty is prosecuting money laundering criminals and tracing their proceeds. Success against them ultimately depends on a network of treaties, conventions and bilateral agreements that are not essential in the investigation and prosecution of other international crimes.⁹³

The lack of existing tools that promote cooperation in international investigations largely account for remaining legal processes challenges. Although many countries have Mutual Legal Assistance Treaties (MLATs) to address this, others depend on archaic legislation that lacks the necessary provisions for international cooperation. For example, in common law countries, police or customs officers carry out investigations, enabling enforcement authorities in one country to work with their counterparts in a different jurisdiction.⁹⁴ In civil law countries, however, the courts and the system of examining magistrates approve investigations, causing delays and investigators to lose the criminal trail.⁹⁵ Countries may also refuse to provide search warrants for foreign investigations on grounds of national interest and in cases where legal requirements of

⁹⁰ Simmons, *op. cit.*

⁹¹ Ibid.

⁹² Quoted in Stessens, p19.

⁹³ George Staple, “Jobs, Crime and Money: Challenges for the G8 Summit in 1998,” *Journal of Money Laundering Control*, Vol.2, No.2 (1999), p.129.

⁹⁴ Ibid., p.131.

⁹⁵ For example, in Switzerland, local enforcement authorities may be able to trace the whereabouts of a person or make informal inquiries from a witness but can do little else without the authority of an examining magistrates. See Staple, *op. cit.*

search and seizure powers are not met or legal professional privilege protects evidence.⁹⁶ Moreover, countries that do not cooperate in international fraud investigations render it impossible to gather incriminating evidence without allowing investigations to be carried out overseas.⁹⁷ These countries often base their refusal on claims of sovereignty-related rights.

Once persons have been accused of money laundering, other hurdles must be crossed for a conviction. Experts and witnesses must be brought from abroad to explain the complexities of the transactions involved or to testify during trial. Persons cannot be forced to attend trial and some may be subject to secrecy laws and penalized in their own country if they testify.⁹⁸ The G7 Ministers of Justice addressed this issue, agreeing to intensify efforts to employ ‘video-link technology’ to secure evidence from witnesses abroad, sanctioning the use of satellite technology.⁹⁹ Some courts now permit the admission of hearsay through business and other records without a witness to bring these forward. A newly recognized problem is the role of gatekeepers—whose confidential work is regulated by a code of ethics. Although the FATF has recommended that AML measures be extended to these professions, the effects are uncertain.¹⁰⁰ Extradition also poses a challenge as some countries assert worldwide jurisdiction over their citizens on the basis that the home state will prosecute them regardless of where they carry out their crimes.¹⁰¹ Several authorities, particularly in the U.S., have begun employing unilateral measures that gives them “an extraterritorial reach in order to obtain evidence,” including the seizures and confiscation of assets.¹⁰² This is a controversial issue in the development of international criminal law.

The fluidity of international law further prevents effectiveness in enforcement. International lawyers generally refer to the source of law in order to make their case. The two most important sources of AML law are the Vienna Convention and the FATF 40. While the Vienna Convention specifies provisions for international cooperation, the FATF 40 is less precise.¹⁰³ In the amended

⁹⁶ Ibid., p.132.

⁹⁷ Ibid.

⁹⁸ Ibid., p. 130.

⁹⁹ Ibid., p.131.

¹⁰⁰ Ibid.

¹⁰¹ George Staple, “Combating Transnational Financial Crime,” in Hodges, Kirton and Daniels, *The G8’s Role in the new Millennium*, p.176.

¹⁰² Stessens, *op. cit.*, p.278

¹⁰³ Article 7(1) of the Vienna Convention asserts that all parties shall grant one another “the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3, paragraph 1 [i.e. drug trafficking and drug money laundering].” See *United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, in D.C. Gilmore (ed.),

FATF 40, the FATF calls on countries to specify crimes “that must underpin money laundering,” leaving each country to its own devices in identifying these crimes.¹⁰⁴ Local practice poses further challenges. For example, while in the U.S. it is compulsory to pay taxes by law, in the Bahamas, residents do not pay taxes. As such, tax evasion is not a crime. Essentially, when states adopt AML standards, their respective countries’ histories, values, and customs impacts how these laws are interpreted and enforced, causing confusion during investigations and preventing the harmonization of policies. The FATF and related bodies need to resolve these many issues.

Conclusion: A New Labor?

This article maintains that the G7/8 has adopted a leadership role in the fight against money laundering, setting the international agenda and acting as a catalyst for the formation of an international AML regime. The FATF and the various international institutions and conventions that have emerged from G7/8 initiatives provide evidence for this. The G7/8 has been able to play such a role because of the cooperative behavior exhibited by its members. While effective, G7/8 efforts in the field of money laundering remain international, not global in scope. Nevertheless, the G7/8 has effectively promoted cooperation and policy coordination amongst states and has ushered the development of the international AML legal regime.

Though the G7/8’s achievements have been impressive to date, much work remains for ensuing Summits. The G7/8 Heads of State and Government have slain the Nemean Lion with their club—the FATF. It now follows that they must complete their Twelve Labors and reform the international AML regime. The leaders must show at the 2005 Gleneagles Summit that they remain committed to fighting money laundering and terrorist financing. They must not only carry forward the new initiatives unveiled at the Sea Island Summit but they will need to consider the work of the FATF and the deficiencies present in its structure and delivery of substance as well as those in the international AML network. At the structural level, the G7/8 can begin by granting the FATF permanent legal status. The FATF will then have to establish formal procedural rules and processes. It needs legal—*de jure*—authority to enforce AML and terrorist financing regulations with the full backing of G7/8 and FATF national governments. The G7/8 should also recommend that the FATF broaden its membership to include other emerging market economies and industrializing states. The G7/8 should contemplate creating a forum, housed at the FATF, for greater civil society and private sector participation in the fight against money laundering and

International Efforts to Combat Money Laundering, Chapter II, (Cambridge: Grotius Publications Limited, 1992).

¹⁰⁴ Ibid.

terrorist financing. These groups often help bridge the gap between people and government and act as source of information. It should also consider creating or working closer together with an existing international court to try money laundering cases and settle transnational disputes. These steps can enable the FATF to carry out its functions as a credible institution, transparent and accountable with the broad support of its members.

With regards to the delivery of substance, the G7/8 reaffirms its commitments to fight AML year after year, directing IFI's and other bodies to aid its efforts. Due to the wide variety of AML-related undertakings, there needs to be an effective division of labor amongst institutions. Furthermore, because of the high costs of implementing AML and anti-terrorist financing standards, a worthy enterprise for seized drug trafficking and terrorist financing assets would be the creation of a Global AML Fund under the auspices of the IMF or World Bank. This Fund could be used to assist LDCs develop the necessary technical and legal capacities to fight AML, finance monitoring and compliance exercises as well as outreach activities to generate greater awareness of the dangers posed by AML.

The G7/8 should also promote the development of e-Reporting mechanisms to address the challenges posed by customer due diligence reporting and of a centralized procedure capable of sifting through the millions of reports recorded each year. In law enforcement efforts, the G7/8 and countries committed to fighting AML must work together to enhanced multilateral judiciary assistance. The FATF's publication of the amended FATF 40 poses a new test for G7/8 effectiveness.

It is essential that the G7/8 carry forward the momentum generated at the Sea Island Summit and increase the leaders' credibility in the eyes of the world's public. The G7/8 must now clean up the stables and kill the seven-headed hydra by doing more than cutting off its head. It must show a more innovative and proactive approach to AML.

Annex A: Money Laundering in the G7/8 System, 1989-2004

- 1989 G7 Paris Summit Final Communiqué (16 July)
- 1990 G7 Houston Summit Final Communiqué (11 July)
- 1991 G7 London Summit Final Communiqué (17 July)
Prime Minister's Statement on the Economic Declaration (17 July)
- 1992 Chairman's Statement — Munich (7 July)
- 1994 Chairman's Statement (Political) — Naples (10 July)
G7 Naples Summit Communiqué (10 July)
- 1996 Chairman's Statement [Political Declaration] — Lyon (29 June)
- 1997 G7 Statement: Confronting Global Economic and Financial Challenges — Denver (21 June)
Denver Summit of the Eight Communiqué (22 June)
- 1998 Conclusion of the Joint Meeting of G8 Foreign and Finance Ministers (9 May)
Conclusions of the G7 Finance Ministers — London (9 May)
G8 Statement: Drugs and Crime — Birmingham (16 May)
G8 Birmingham Summit Communiqué (17 May)
Conclusion of G7 Finance Ministers — London (14 September)
- 1999 Statement of G7 Finance Ministers and Central Bank Governors — Washington, D.C. (26 April)
G7 Statement — Köln (18 June)
Report of G7 Finance Ministers to the Köln Economic Summit — Köln, Germany (18-20 June)
G8 Köln Summit Communiqué (20 June)
Statement of G7 Finance Ministers and Central Bank Governors — Washington, D.C. (25 September)
Moscow Ministerial Conference on Combating Transnational Organized Crime, Communiqué (October)
- 2000 Statement of G7 Finance Ministers and Central Bank Governors — Tokyo (22 January)
Statement of G7 Finance Ministers and Central Bank Governors — Washington, D.C. (16 April)
Conclusions of the Meeting of the G8 Foreign Ministers' Meeting — Miyazaki, Japan (13 July)
G7 Finance Ministers Report: Actions Against the Abuse of the Global Financial System — Fukuoka (21 July)
G7 Statement — Okinawa (21 July)
G8 Okinawa Summit Communiqué (23 July)
Statement of the G7 Finance Ministers and Central Bank Governors — Prague, Czech Republic (23 September)
- 2001 Statement of G7 Finance Ministers and Central Bank Governors — Palermo, Italy (17 February)
Communiqué, Conference of the G8 Ministers of Justice and Interior — Milan (26-27 February 2001)
Statement of G7 Finance Ministers and Central Bank Governors — Washington D.C. (28 April)
Fighting the Abuses of the Global Financial System: Report of the G7 Finance Ministers and Central Bank Governors — Rome, Italy (7 July)
Strengthening the International Financial System and the Multilateral Development Banks: Report of the G7 Finance Ministers and Central Bank Governors — Rome, Italy (7 July)
G7 Statement — Genoa (20 July)
Statement of the G7 Ministers of Finance — Prague, Czech Republic (23 September)
Statement of G7 Finance Ministers and Central Bank Governors — Washington, D.C. (6 October)

- 2002 G7 Finance Ministers Action Plan: Progress on Combating the Financing of Terrorism — Ottawa (8 February)
Statement of G7 Finance Ministers and Central Bank Governors — Ottawa (9 February)
Statement of G7 Finance Ministers and Central Bank Governors — Washington, D.C. (20 April)
Chairperson's Summary: G8 Justice and Interior Ministers' Meeting — Mont Tremblant (13-14 May)
G8 Foreign Ministers' Recommendations on Counter-Terrorism (13 June)
Statement of G7 Finance Ministers — Halifax (15 June)
G8 Africa Action Plan — Kananaskis (27 June)
Statement of G7 Finance Ministers and Central Bank Governors — Washington, D.C. (27 September)
G7 Combating the Financing of Terrorism: First Year Report — Washington, D.C. (27 September)
- 2003 Statement of G7 Finance Ministers and Central Bank Governors — Paris (22 February)
Statement of G7 Finance Ministers and Central Bank Governors — Washington, D.C. (12 April)
Finance Minister's Statement — Deauville, France (17 May)
G8 Declaration on Fighting Corruption and Improving Transparency — Evian (2 June)
Statement of G7 Finance Ministers and Central Bank Governors — Dubai (20 September)
- 2004 Statement by the U.S. Treasury Secretary John Snow following the G7 Finance Ministers Meeting — Boca Raton (7 February)
G7 Finance Ministers Statement on Combating Terrorist Financing — Washington, D.C. (23 April)
Statement of G7 Finance Ministers and Central Bank Governors — Washington, D.C. (24 April)
G8 Declaration: Fighting Corruption and Improving Transparency — Sea Island (10 June)

Annex B: An Emerging Regime: International AML Initiatives & Conventions*

Bank for International Settlements (BIS)	Basle Committee on Banking Supervision — Prevention of criminal use of the banking system for the purpose of money-laundering — Basle (December 1998) Basle Committee on Banking Supervision — Customer Due Diligence for Banks — Basle (October 2001)
Caribbean Financial Action Task Force (CFATF)	CFATF 19 Recommendations — Aruba (June 1990) Kingston Declaration on Money Laundering — Kingston (5-6 November 1992)
Council of Europe	Convention on Laundering, Seizure and Confiscation of the Proceeds of Crime (ETS N° 141) — Strasbourg (8 November 1990)
Egmont Group of Financial Intelligence Units (FIUs)	Statement of Purpose — The Hague (13 June 2001) Information paper on the Egmont Group and Financial Intelligence Units (October 2001) List of Operational FIUs (25 July 2003)
European Union (EU)	Council Directive on prevention of the use of the financial system for the purpose of money laundering (91/308/EEC) — Brussels (10 June 1991) Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on the prevention of the financial system for the purpose of money laundering — Brussels (28 December 2001)
Financial Action Task Force (FATF)	FATF 40 (April 1990; revised 1996, 2003) 8 Special Recommendations on Terrorist Financing (30 October 2001)
International Association of Insurance Supervisors	AML Guidance Notes for Insurance Supervisors and Insurance Entities — Tokyo (9 January 2002)
Organization of American States/Inter-American Drug Abuse Control Commission (OAS/CICAD)	Summit of the Americas Ministerial Conference Concerning the Laundering of Proceeds and Instrumentalities of Crime — Ministerial Communiqué — Buenos Aires (2 December 1995) Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Other Serious Offenses, (amended) — Washington, D.C. (October 1998)
United Nations (UN)	Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances — Vienna (20 December 1988) Political Declaration and Action Plan Against Money Laundering Adopted at the Twentieth Special Session of the United Nations General Assembly — New York (1998) International Convention for the Suppression of the Financing of Terrorism — New York (9 December 1999) UN Security Council Resolution 1371 (2001) [S/RES/1373(2001)] [Terrorist Financing] — New York (28 September 2001) UN Security Council Resolution 1390 (2002) [S/RES/1390(2002)] [Terrorist Financing] — New York (16 January 2002)
UN Office for Drug Control and Crime Prevention/Global Programme against Money Laundering	Model Legislation on Laundering, Confiscating and International Co-operation in Relation to the Proceeds of Crime [for civil law jurisdiction] — Vienna (1999) Model Money Laundering Proceeds of Crime Bill [for common law jurisdictions] — Vienna (2000)

Wolfsberg Group of
Banks

Global AML Guidelines for Private Banking [*“The Wolfsberg AML
Principle”*] — Wolfsberg (October 2000)

The Suppression of the Financing of Terrorism [*“The Wolfsberg
Statement”*] — Wolfsberg (January 2002)

Bibliography

- Alexander, Kern. "The Legalization of the International AML Regime: The Role of the Financial Action Task Force." *Journal of Money Laundering Control*, Vol.4, No.3 (2001): 231-245.
- Allen, William. "The War on Terrorism Financing." *Journal of Money Laundering Control*, Vol. 6, No.4 (2003): 306-310.
- Apollodorus. *Library and Epitome*. Sir James George Frazer (translator). London: Heinemann, 1921. Available: www.perseus.tufts.edu.
- Axelrod, Robert and Robert O. Keohane. "Achieving Cooperation Under Anarchy: Strategies and Institutions." *World Politics*, Vol.38, No.1 (October 1985): 228.
- Bayne, Nicholas. "Reforming the International Financial Architecture: The G7 Summit's Successes and Shortcomings." Michele Fratianni, Paolo Savona and John J. Kirton, (eds.). *Governing Global Finance: New Challenges, G7 and IMF Contributions*. Aldershot: Ashgate, 2002a.
- Bayne, Nicholas. "The Financial Dimensions of Combating Terrorism." Lecture for G8 Online (2002b). Available at: www.g7.utoronto.ca/g8online/english/2002/15.html.
- Bayne, Nicholas (2000). *Hanging in There: The G7 and G8 Summits in Maturity and Renewal*. Ashgate: Aldershot, 2000.
- Bayne, Nicholas. "The G7 Summit and the Reform of Global Institutions." *Government and Opposition*, No.30 (Autumn 1995): 492-509.
- Belelieu, Andre. "The G8 and Terrorism: What Role can the G8 Play in the 21st Century?" *G8 Governance*, No.8 (2002). Available: www.g7.utoronto.ca.
- "G7 Finance Ministers Vow to Hit Money Laundering." *Toronto Star* (July 11, 2000): A7.
- G7. *Confronting Global Economic and Financial Challenges: Denver Summit Statement by the Group of Seven*. Denver, 21 June 1997.
- G7. "Prime Minister's Statement on the Economic Declaration." London, 17 July 1991. Available: www.g7.utoronto.ca/Summit/1991london/statement.html.
- G7. "Communiqué." Paris, 16 July 1989. Available: www.g7.utoronto.ca/Summit/1989paris/communique/drug.html
- G8 Ministers of Justice and the Interior. "Chairperson's Summary." Mont Tremblant, 13-14 May (2002a). Available: www.library.utoronto.ca/g7/adhoc/justice2002chair.htm
- G8. "G8 Recommendation on Counter-Terrorism." Kananaskis, 13 June 2002b. Available: www.library.utoronto.ca/g7/foreign/fm130602f.htm.
- G8. "Communiqué." Birmingham, 16 May 1998a.

- G8. "Statement: Drugs and International Crime." Birmingham, 16 May 1998b. Available: www.g7.utoronto.ca/Summit/1998birmingham/drugs.htm.
- Garcia, Javier. "International Measures to Fight Money Laundering." *Journal of Money Laundering Control*, Vol. 3, No.1 (2000): 39-43.
- Hajnal, Peter. "The Documentation of the G7/8 System." *G8 Governance*, No.4 (June 1998). Available: www.library.utoronto.ca/g7/governance/gov4.
- Keohane, Robert O. *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton: Princeton University Press, 1984.
- Keohane, Robert O. *International Institutions and State Power: Essays in International Relations*. Boulder: Westview Press, 1989.
- Kirton, John. *G7/8 Summit Remit Mandates, 1975-2003*. 24 June 2003. Available: www.g7.utoronto.ca/evaluations/factsheet/factsheet_remits.html.
- Kirton, John. "Explaining G8 Effectiveness in the Approach to the New Millennium." (14 May 1998). Available: <http://www.g7.utoronto.ca/annual/kirton1998/index.html>.
- Lipson, Charles. "International Cooperation in Economic and Security Affairs." David Baldwin (ed.). *Neorealism and Neoliberalism: The Contemporary Debate*. New York: Columbia University Press, 1993.
- Moore, Stephen and James Carter. "The Russian Meltdown: Don't Blame Capitalism." *Cato Institute*, 23 (October 1998). Available: <http://www.cato.org/dailys/10-23-98.html>.
- Morris-Cotterill, Nigel. "Think Again: Money Laundering." *Foreign Policy* (Summer 2001).
- Putnam, Robert D. "Diplomacy and domestic politics: the logic of two-level games." *International Organization*, Vol.32, No.3 (Summer 1988): 427-460.
- Quirk, Peter J. "Money Laundering: Muddying the Economy." *Finance & Development*, Vol.34, No.1 (March 1997). Available: www.worldbank.org/fandd/english/0397/articles/0110397.htm.
- Robinson, Jeffrey. *The Laundrymen*. London: Pocket Books, 1998.
- Simmons, Beth. "The International Politics of Harmonization: The Case of Market Regulation." *UCIAS Edited Volume*, Vol.1, article 1 (2002). Available: <http://repositories.cdlib.org/eciaspubs/editedvolumes/1/1>.
- Stessens, Guy. *Money Laundering: A New International Law Enforcement Model*. Cambridge: Cambridge University Press, 2000.
- "Treasury Chief: Tax Evasion is on the Rise," *New York Times* (19 July 2001): C1.
- Von Furstenberg, George. "Terrorist Finance: Within the Grip of the G8?" In M. Fratianni, J. J. Kirton, A. M. Rugman and P. Savona, eds., *New Perspectives on Global Governance: Why America Needs the G8*, pp. 194-202 (Ashgate: Aldershot, 2005).

Vorozhtsov, Vladimir Petrovich. "Chapter 17 — Combating Crime in Russia: The Particular and the Common," in Sergey Oznobishchev and James H. Brusstar, *U.S.-Russian Partnership: Meeting the New Millennium*. Washington, D.C.: National Defense University, 1999.

Walker, John. "How Big Is Money Laundering?" *Journal of Money Laundering Control*, Vol.3, No.1 (2000): 25-37.

Wechsler, William F. "Follow the Money." *Foreign Affairs*, Vol.80, No.4 (July/August 2001): 40-57.

Weilemann, Peter R. "The Summit Meeting: The Role and Agenda of Diplomacy at its Highest Level." *NIRA Review* (Spring 2000): 16-20.

Williams, Phil. "Transnational Criminal Organisations and International Security." *Survival*, Vol.36, No. 1 (Spring 1994): 96-113.