Anti-Money Laundering & Combating Terrorism Financing

By/ Tariq Abdulaziz Mohamed Sadiq

Introduction

Due to the tremendous complexity in financial globalization, a necessity for combined roles i.e. financial, regulatory and law enforcement compilation have come to surface to combat money laundering (the **"ML"**) in around 34 nations, European Commission and the Gulf Cooperation Council.[1]

The Financial Action Task Force (the "FATF") in this trend has been the legitimate fetus of the G-7.[2] FATF is an inter-governmental body that works to create norms and enhance cooperation in the field of Money laundering. These standards known as the 40 recommendations, additionally the FATF normally disseminate the outcome of new money laundering methods used by criminal, which called the "typologies exercise".[3]

The definition of money laundering has expanded primary from hiding the proceeds of organized crime to include in general any dealings with property or fund got in a criminal manner i.e. illicit proceeds.[4]

Generally the organized crime in drug trafficking and financial crime still remain the core elements in practicing the ML, however; recently terrorism financing has occupied its seat in the typologies exercise of AML. [5]

In non- banking sector, the *bureau de change* considered as an encouraging area where launderer could utilize the crime proceeds. These entities are not monitor by the

[1] United states, department of the treasury, financial crimes enforcement network, FinCEN advisory, <http://www.fincen.gov/news_room/rp/advisory/html/advissu4.html>
[2] Ibid.
[3] P Aldridge, 'Money Laundering and Globalization' (2008) 35 Journal of Law and Society 437, 463. DOI 10.1111/j.1467-6478.2008.00446.x, at 443.
[4] UoL, LLM in international business law, money laundering module, week 1, lecture notes, at 1
[5] United states, department of the treasury, financial crimes enforcement network, FinCEN advisory, <http://www.fincen.gov/news_room/rp/advisory/html/advissu4.html> at 3, accessed on 8/9/2012

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normal banks regulation the point where launderers could deposit a magnitude of funds that most likely require no identifications, which ease the anonymity.

The *bureau de change* e.g. would not often request the source of funds, which actually gained from an origin person who desire to wire-transfer his fund via an intermediate person. The laundered fund would then utilize in purchasing property in the name of the said intermediate person at his home nation that constitutes a safe resort. The origin launderer then restores the fund in heavily huge interest via the normal banking system in an agreed maturity period.

This typology is attractive to money launderers in consequence of its free monitoring lines that guided the traditional financial institutions. [6]

The drug trafficking in easy-planted areas would enhance the committing of another crime. The finance of terrorism recently considers a demanding AML. In certain area, criminals plant drugs to be smuggled in a distribution point to other nations.

The return comes most properly via charities entities whose have access to bank system in their names as donation or charity equipment……etc. The origin launderer got the illicit goods in return; the local launderer got the money via the said entity.

This typology attract the bad doing in areas where war remain ignites as to act an exploitation practices to the needs of farmers e.g.

Anti- money laundering regulation, in my opinion, is an increasing need /demand to parallel the rapidly development in technology especially the cyber-payments in electronic transactions.

Body

[6] Ibid, at 5.

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Shell Companies

The shell companies have significance role in contributing in ML. Such companies have no usual business activities, assets and liabilities. For these reasons, shell companies most likely used as intermediary for the transfer of funds to end activities of ML by disguising the track of said fund.[7]

As the ease process of set-up, the shell i.e. merely has an address e.g. letterbox, manager and various bank accounts. Therefore, shell companies are the ideal camouflage for illicit funds. [8]

On my practical experience, an (X) company is hiding its losses by transferring the same into its offshore shell company in *Cayman Island* in order to process new banks loan worldwide i.e. millions of dollars.

In my view, this is constitutes a fraud situation, since the (X) company has deceived the respective banks by hiding losses to get funds/loans which not supposedly to earn! These loans offered by banks derived out of illicit act like any other acts of ML.

Would it be possible to draft global recommendations/monitoring over offshore companies/banks by FATF?

Financial Institutions/PEP

The financial institutions should not build business relationship with Political Exposed Persons (the "**PEPs**") if they aware or suspected the relative funds derived from illicit source. Bank of Jamaica, 2004 (revised 2007) guidance notes on the detection and prevention of money laundering and terrorist financing activities http://www.boj.org.jm/news/news_htmls/aml_guidance_notes_-_revised_march_2007.pdf

The interesting point in this realm is when PEPEs are involved in criminal actions in line of their political functions. Often the most frequent way on this practice is when

[7] Krzysztof WODA, Money laundering techniques with electronic payment system, at 32-33
[8] Ibid.

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PEPs conceal their assets/funds via networks of shell companies or in offshore financial institutions as a safe haven.

In such situation, PEPs normally utilize the service of intermediate that most likely would be a family member or alike. This move constitutes similar lines measures of ML.

In this concern, such institutions heavily demanded to detect these hidden aspects by executing *due diligence* process for those countering ML.

Money laundering's definition most properly is in the path that would require the including of a vast variety of techniques akin to ML.

I would image the realm of ML as a phenomenon that has stepped the path unpredictably in gloomy facets.

ML has many trends and methods, this is the reason why it describes in typologies with the support of 40 recommendations and 9 special by the FATF.

As long as high profile person in line of ML has exercised these typologies, the same category but the good one should also do the counter action/measures.

The US Bank Secrecy Act (BSA)

United States Federal Government has stepped its first paces towards a Statute that pertains to ML by enacting the Bank Secrecy Act (the "BSA") which enacted in 1970. [9]The Act requires banks/financial institutions to keep certain a record of any transaction takes place e.g. deposit, withdrawal, exchange of money……..etc. to eventually be reported to the Secretary of Treasury. [10]

[9] Bank Secrecy Act (USA) 1970 <http://www.fincen.gov/statutes_regs/bsa/> accessed 15/9/2012.
[10] EJ Gouvin, 'Bringing out the Big Guns: The USA PATRIOT Act, Money Laundering, and the War on Terrorism' (2003) 55 Baylor Law Review, at 963

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The Act has set up firm regulation with regards such transaction in reporting any exceed of $ 10.000 which in violation could lead to the forfeiture of funds whether in purpose or inadvertent. [11] In this respect, the Act has required to do all the perfect measures in the proper application by the regulated financial institutions e.g. compliance, monitoring, supervising and training of personnel.

It is true to say that, bankers and customers were not familiar with BSA, nonetheless, the importance of BSA came into surface subsequent to the ruling of Supreme Court that, the BSA was constitutional because the information required by the Government may not constitute a privilege between bank- customer relationships. [12]

It could also be observed that, the limited amount of funds which should be reported i.e. $ 10,000 has exposed/ detected the *smurfing* phenomena that is, breaking up deposit into multiple transactions in less than $ 10,000. By imposing such an amount by BSA, banks/ finance constitutional have managed the way to implement the requirement for compliance procedures to aggregate such transactions in order to fight such brilliant idea created by the wrongdoers and detect suspicious activities.

In consequence of the critics happened to the BSA, the Congress passed a new Act in 1978 called the ***Privacy Act***. This Act has given some sort of protection to customers. In other words, generally forbid any disclosure to a Government authority without the consent of the relevant customer, with an exception of subpoena, warrant …etc. The placement of those two Acts has comfort the U.S laundering scheme and frames the legitimate privacy interests and law enforcement interests in one unite agreeable path [13]

The relevance between the BSA and the current US AML regime, has commenced by the development of BSA 1970, the Privacy Act 1978.

[11] Ibid.
[12] Ibid, at 965
[13] Ibid, at 966

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The enact of the Money Laundering Control Act of 1986 and the ML Prosecution Improvement Act 1988[14] have eventually make the US one of the first countries worldwide to criminalize the AML and provided the Treasury authority to require more reporting obligations for designated geographic places.[15]

The BSA 1970 has paved the way to introduce the benchmarks that utilized in establishing the norms/regulations of AML in the U.S, despite the criticism that had initially faced.

The Patriot Act 2000

The Patriot Act 2000[16], which enacted in consequence of the 11th September 2001 tragedy. This happened to track AML and combating Terror Financing (the **"CTF"**) is the fruition *per se* of the developed of the norms/regulations of United States' BSA 1970.

It is clear that the international criminal organizations have structured their own internal system by a robust role in the realm of efficiency, intellectuality and know how, compared to that in formal government department/Ministries in many countries.

This informal discipline has led these organizations to act in criminal manner, using all the proper means of modern management/information technology.

Moreover, these organizations, most likely, possess banks, financial institutions, transport lines and tourism activities.

All these elements have burdened the combating of money laundering and crimes that producing dirty money. In this respect, a combined international regulator to

[14] Money laundering control act, 1986, pub. L. No. 99-570, 100 stat. 3207-18 (1986).
[15] EJ Gouvin, 'Bringing out the Big Guns: The USA PATRIOT Act, Money Laundering, and the War on Terrorism' (2003) 55 Baylor Law Review, at 967.
[16] USA Patriot Act 2001<http://www.fincen.gov/statutes_regs/patriot/> accessed 15/9/2012

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create counter spaces in high expertise and efficiency needs in combating the ML/ CTF.

Under the BSA 1970, the financial institute with FinCEN should file the Suspicious Activity Report (the "SAR") document no later than 30 days following a suspected incident of ML or fraud by those who authorized to do so. *Suspicious activity report (SAR) http://searchfinancialsecurity.techtarget.com/definition/Suspicious-Activity-Report-SAR.*

Under the US's Federal Law, the said category of personnel may not notify anyone involved in the transaction that it reported! Financial crimes enforcement network FinCEN. *http://searchfinancialsecurity.techtarget.com/definition/Financial-Crimes-Enforcement-Network-FinCEN*

Challenges arise when money launderers likely own most of the respective financial institution that supposedly to report SAR with FinCEN by their own officers, managers, auditors ….etc.

Some observers believe the PA enacted too quickly without prolonged discussion. [17] The American society shocked by the tragic awful acts caused by the terrorist group. Hence, the PA aimed in the first place to deter and punish those terrorist responsible all around the world. To achieve such target it has to enhance law enforcement and investigatory tools. [18]

There was a question on the PA's constitutional area. Many people feel PA has violated their civil rights that they enjoy. In this sense, on March 9, 2006 an improvement and reauthorization Act of 2005, passed due to pressure took place by civil liberties group and those who are not in agreement with the PA. [19]

[17] Kristen Lawrence MBA, Mohammed Abdullah: the US patriot act: does it infringe civil liberties and constitutional right? April 21, 2008, at 3.
[18] Ibid.
[19] Ibid.

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Certain provisions in the PA have stipulated the ambit of AML leverage in the scope of financial institutions and its relevance with ML.

Section 313 of PA provides that, all US correspondent accounts with foreign shell banks prohibited. The section affirmed the dilemma of these banks in promoting the ML and relatively terrorist activities.

Section 314 of PA has stipulated the cooperation efforts that supposed to deter the ML. the Section illustrate this cooperation between financial institutions and other government entities e.g. enforcement authorities. It has given 120 days of enactment for the Secretary to regulate further cooperation between these entities especially the individual and organization suspected for ML.[20] the related Section has concentrated on the exchange of information and the track of a suspicious transactions that might deal with ML and terrorist activities. The Section encourages the appointment of personnel to entrust for this purpose. The Secretary in this regards has to report semiannually for all suspected transactions monitored by this mechanism.

Section 316 of PA provides the right to contest the confiscation as per what called the "*anti-terrorist forfeiture protection*". If the property were not deemed to belong to terrorist resource, it would be an affirmative evidence to plead innocent, if the mechanism of federal rules of civil procedures were not existed. [21]

Section 326/iii of PA provides the verification of identification. Its consults the applicable list of terrorist individual or organization. The Section has enforced the system known as KYC by the financial institutions. Subsequently, the ML/CTF by such enforcement could monitor and track.

[20] Betty santangelo, tim O'neal lorah and megan Elizabeth murray, Summary of AML provisions of US patriot act 2001, at 23
[21] Ibid.

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I would say, in addition to the pros in this procedure, a regular update would enhance the process in general and would take the proper steps to detect the originality of identities. [22]

Section 330 of PA provides the ways and means in international cooperation in investigation of ML and the finance of crimes and the terrorist group. This Section conferred the power to the President to instruct the Secretary of State, Attorney General or the Secretary of Treasury. Both have to negotiate with the internal financial advisory and foreign authorities to seek the proper methods i.e. joint legal assistance treaties and international agreement to maintain proper records of transactions and voluntary exchange of information of any terrorist individual or organization that might be available to the US law enforcement.[23]

Section 376 of PA provides the punishment of laundering the proceeds of terrorist activities. The section considers any material support or resource of such terrorist acts as a "predicate" offense to ML under the ML statue 18 USC – 1965. [24]

On March 9th2006, President *Bush* has signed the US Patriot Improvement and Reauthorization Act 2005 (the "PIRA") as a reform to PA. This Act is in response to voices claim for civil liberties and other opponents to the PA. The PIRA has renewed some of the provision about to expire and extend certain authorization.[25]

The main changed pillars provided by the PIRA are:

First: recipients of subpoenas for information in terrorism have the right to challenge the reveal of such information.

[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Kristen Lawrence MBA, Mohammed Abdullah: the US patriot act: does it infringe civil liberties and constitutional right? April 21, 2008, at 6

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Second: recipients of administrative subpoenas for records requested by FBI, no longer abide to reveal the name of attorney consulted.

Third: libraries of any kind of service will not be subject to national security letters requesting information about suspected terrorist with an exception of ISP. [26]

This Act is a reflection of the traditionally freedom enjoyed by US citizens that has been in action in the area of terrorism acts vis-à-vis the PA 2001. It observed in this subsequent Act that, some of the contemplated liberty has provided, nevertheless, not in major financial institutions. The Act has proven to mitigate the waves of criticism the PA had faced.

However, I think the PA is a significance area in the war of terrorism. The war on terrorism will need proper tools that would eventually lead to the elimination of such phenomena. Secondly, the PA will narrow the gap that previously illustrates in the relationship amongst the government agencies and law enforcement. [27]

The war has to take its role and time with the cooperation of all different states worldwide that supposed to contain a variety of various ethnic, religion and cultures components eventually to apprehend the terrorist whether individual or organization and bring them to justice.

The PA and the subsequent US government actions in term of terrorist acts and financial institutions, tend to secure the lives of innocent people who would relatively claim their civil rights and freedom. To keep a given society's well fare, some sacrifices have to render.

It is not bothered to lesser certain social values of freedom/civil rights; in return, such values hoped to have taken the path to ensure that the system is in order.

[26] Ibid.
[27] Ibid.

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Middle East & North Africa Financial Action Task Force

In the Middle East and North Africa region (MENA) most of its states including Oman the country where I live, have established a kind of organization called the Middle East & North Africa Financial Action Task Force (MENAFATF). This organization is a voluntary organization set up by a territory agreement, which has its own cultural values, constitutions and legal systems.

The core purpose in this gathering is to ensure the acquaintance/comply of the members by the standards and measures of the **FATF 40+9** Recommendations in order to establish an effective robust system of AML and CFT. The resolutions and procedure in MEAFATF are determined thru a consensus process between the members within the ambit of the FATF's core principles and guidance. *IBA, anti-money laundering forum, available at http://www.anti-moneylaundering.org/FATF.aspx.*

There are multi similar organizations of states worldwide e.g.

- •Asia/Pacific Group on Money Laundering (APG).
- •Caribbean Financial Action Task Force (CFATF).
- •Financial Action Task Force on Money Laundering in South America (GAFISUD
- •Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).
- •Eurasian Group (EAG).
- •Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
- •Intergovernmental Anti-Money Laundering Group in Africa (GIABA).
- •Offshore Group of Banking Supervisors (OGBS).

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It is worth mentioning here, these organizations need to create combined principles/regulations that touched by the US's BSA, 80s, 90s and the Patriot Act. Such method would endeavor the efficiency of AML/CTF.

The FATF's Ninth Special Recommendations

I would have the sentiment that, subsequent to the issuance of the FATF's Ninth special recommendations in 2001 following the origin 40 recommendations, it became clear the tendency aimed to unite the AML/CTF pursuit into one universal instrument. *IBA, anti-money laundering forum, available at http://www.anti-moneylaundering.org/FATF.aspx accessed on 19/9/2012*

Initially, the FATF has meant to ensure universal action to combat ML/TF. It has been the forefront in designing the counter criminal efforts in using the financial system. By the terrorist attacks of 11th September 2001, Patriot Act 2001 has tailored to utilize the "Big Guns" in US and elsewhere. This is the reality why most of the foreign capitals have fled the US's jurisdiction to its origin jurisdiction thereafter, but returned with conjectural e.g. Arabs' capitals. **Big Guns have to aim for the heart not the legs.**

European Union (the "EU")

The EU has taken countermeasures from their inception. This has been evaluated by the contribution in UN convention of 1988 on drug trafficking and Europe ML convention on 1990. [28]

In addition, the EU's Member States and the European Commission (the "EC") have proactively participated in the FATF along with its 40 recommendations.

[28] M Mitsilegas and others, 'The EU Legislative Framework against Money Laundering and Terrorist Finance: A Critical Analysis in the Light of Evolving Global Standards' (2007) 56 International and Comparative Law Quarterly at 119.

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These prior active components have paved the way for EU to occupy a potential seat in the combat of ML and terrorist arena. [29]

In further steps thereof, in 1992 the first ML Directive has been introduced with a FATF's flavor in preventing ML and drugs trafficking in two-pronged approach i.e. criminalization and combat ML, thus becoming the pioneer regional instrument which adopting a relatively guideline of AML.[30] Two Directives have followed i.e. 2001and 2005 directives. The later has repealed the previous ones, however lately amended by the Directive 2008/20/EC.

The MLs' countermeasures in EU since then have developed in parallel steps with the international standards under the patronage of the FATF's ad-hoc norms.[31]

The *Lisbon* Treaty has done major amendments in the basic treaties that govern the EU. One of these changes happened in the Treaty on the Functioning of the European Union (the "TFEU").

In combat crimes affecting the financial interests especially ML in EU, Article 86 of TFEU provides the right to the council to establish a European Public Prosecutor's Office from Eurojust.[32]

However, in further actions suggested for more efficiency in fighting ML. **First**: the Article has stated the normal related functions of the suggested office, nevertheless does not specify the multi resources high qualified exerts especially in the area of AML. **Second:** there should be links worldwide with international countries in connection of sources of ML. Hence, a concerned department in this regard should be established to know- how the updated mechanism and modern typologies.

[29] Ibid.
[30] UoL, LLM in business international law, ML module, week 3, DQ, at 1
[31] M Mitsilegas and others, 'The EU Legislative Framework against Money Laundering and Terrorist Finance: A Critical Analysis in the Light of Evolving Global Standards' (2007) 56 International and Comparative Law Quarterly at 119-120.
[32] TFEU, Article 86

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Third: a unified section/department of various Financial Intelligence Units (the "FIUs") in Member States should join the office to establish consistency harmonized method in the legal process for the pursuit of AML.

The positive impact of the new TFEU on judicial cooperation in criminal matters provides in Article 82.

The said Article has limited the measures in enhancing such cooperation to specific ad-hoc entities i.e. European parliament and the council to draw the general policies and regulation. This would enhance the certainty in anti-financial crimes/ ML. The said bodies e.g. have the right to enact rules, prevent the conflict of jurisdiction and support training ….etc. [33] Identified less numbered entities will always keep the proficiency and certainty.

The cooperation on criminal matters between judicial Member States would thus address the high authority at the EU, in which comfort those judicial for the level they appreciated to consider. In return cooperation among judicial shall cohere the assigned legal tasks in ML.

The importance of police and judicial cooperation between the Member States in AML is the reflection that embodied in the common culture, religion and society expressed in the supranational concept. The unified currency i.e. Euro, unlike Britain, is also a good factor in constituting the said cooperation.

The methods adopted in EU in terms of AML/CTF are familiar with TATF's standards and norms.

EU initially commenced the robust steps in fighting financial crimes and drugs trafficking more than 2 decades age, the reason why made it easier for the Member States to respond the anti-measures for the new phenomenon of ML and TF.

[33] TFEU, Article 82

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European Public Prosecutor (the "EPPO")

The ***corpus juris*** is the first proposal submitted for the setting up of the European Public Prosecutor (the "EPPO"). ***Barry Donoghue, speech, European Public Prosecutor: will it happen? Law society annual conference, Budapest, 2008, at 2-3***

The said document drafted and refined by a group of a distinguished group of academic scholars. This group provided a useful study on the comparative criminal laws of the EU's Member States. The *corpus juris* intended basically, to frame a comprehensive criminal code in relation to fraud on the European budget, which eventually concluded market rigging, corruption, and abuse of office, misappropriation of funds, disclosure of secrets, conspiracy and money laundering.

In connection with the Financial Intelligence Units (**the "FIUs**") *corpus j*uris has been a useful guide in boosting information exchange between national FIUs regardless of their nature and state i.e. the performance should not affected by the internal status.

This obviously indicates the robust link between the *corpus juris* and the EPPO in establishing the unification and integration in line with supranational perspective among the EU Member States. The EPPO then would be a proactive instrument in the fight recently occurs against ML and TF.

UK Financial Services Act 2000("FSA")

The Financial Services Act 2000 (the "FSA") currently holds the peak body for the principal regulator of the financial industry in U.K.

In terms of AML, the issuance of regulations are the first elements in UK's AML. The second in this regards is the FSA, an independent non- government body that has a statutory supervision power that granted by the Financial Services and market

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Act 2000. In 1996, the FATF has assessed UK endeavors in AML as comprehensive and impressive [34]

In UK, the AML legislations have spread through a plethora of statutes e.g. Proceeds of Crime Act 2002 (the "POCA"), the Serious Organized Crime and Police Act 2005 (the "SOCPA") and 3 sets of ML regulations, however, currently the FSA remains the peak body thereof. [35]

Approaches set by FSA in ML policy in recent decade

At the outset, I agree with *Dr. Ryder* that, the plethora of regulations and Acts pertain to ML in UK have complicated and blurred the right steps toward the mechanism of AML. [36] Nevertheless, there have been serious approaches throughout the last decade embodied in the following:

In 2005, the FSA has published a consultation paper that illustrates its plans to best lesser the tough restrictions under the Handbook. This reflected by the strong support from the regulated sector to replace the heavy regulations of ML by high-level requirements for companies in order to participate in risk-based controls in ML.

In 2006, the FSA has announced the simplification of ML to the extent that, the new system will be designed to provide the regulator sector with a high degree of flexibility. [37]

How successful has the FSA in achieving AML and overall statutory objectives

FSA has an investigative power that led to detect the suspicious transactions. In achieving this target, the FSA has adopted two policies: 1/ devised a list of services

[34] UoL, International Business Law, LLM programme, money-laundering module, week 4, DQ at 1.
[35] Nicholas Ryder, 'The Financial Services Authority and Money Laundering' (2008), the Cambridge law journal, 67,635-653
[36] Ibid.
[37] Ibid.

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and product that consider at risk. 2/ draft appropriate new process to ensure the identity of a client by various companies. [38]

In statutory objectives, the FSA did not impose any AML on companies or otherwise provide the SIB with any AML powers.[39]

In my view, in addition to the previously mentioned, I think the designated sole power has constituted a success for FSA that led to detect even the high profile secret accounts e.g. former presidents of state and multinational banks.

Why has the UK government proposed the abolition of the FSA?

In consequence of 2008 meltdown, the UK has taken the measurement for two rescue plans to enhance the liquidity of local banks. Despite those plans, the UK entered into recession. This had analyzed to be failings in the UK financial regulatory framework. This framework blamed to the FSA, the Bank of England (the "BoE") and the Government Treasury. The new entity anticipates being the BoE as to represent by the Financial Policy Committee (the "FPC [40]

I would say the unforeseeable events that did occur, might planned most likely by both three entities, and were the core reason for abolishment.

Conclusion:

I suggest that, UK needs to establish a unified sole AML Act that might combine all the relevant prior regulations/Acts as to harmonize with the general ways and means of ML in UK e.g. purchasing of property, cash smuggling and investment in front companies. [41]

[38] Ibid, at 640
[39] Ibid, at 638
[40] UoL, International Business Law, LLM programme, money-laundering module, week 4, DQ at 7.
[41] Nicholas Ryder, 'The Financial Services Authority and Money Laundering' (2008), the Cambridge law journal, 67, at 637

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The FSA has done it role in achieving the goals as stated above. The new era of rapid technology has pressured to hire the services of new Acts that would be coincided with the phenomena.

The FSA's risk-based approach of AML has laid a burden on the regulated sector to act as frontline financial police officers to deter the financial crimes. ***Nicholas Ryder, 'The Financial Services Authority and Money Laundering' (2008), the Cambridge law journal, 67, at 641***

The subsequent process has required FSA to apply a goodwill approach towards the managers, directors and employees re the regulated sectors. This process has transferred the responsibility from FSA to the regulated sector to apply its own unique risk based AML policy. The flexibility gained by this has contributed in the reduction of numbers of SARs that submitted to SOCA.

At the end, the new proposed body in lieu of the FSA would be better if a degree of goodwill initiative approaches such regulated sector eventually to enhance the detection and deterrence of ML and TF in greater flexibility and streamline the complexity in procedures.

Dealings of HSBC in Saudi Arabia (the "KSA") with Al Rajhi bank.

Al Rajhi bank is one of the huge Islamic banks in the world with total assets of almost $ 42 billion. It is also one of the largest joint stock companies in KSA. Al Rajhi Company ultimately controlled by Mr. Suleiman Al Rajhi – Saudi national (the father) and his four sons i.e. family control company in ownership and management. Al Rajhi bank 'head office http://banksdaily.com/info/alrajhi-bank

Al Rajhi family historically has a sincere goodwill and business relationship with *bin Laden's family* further in a company which also has a tremendous business in KSA estimates as 4 billion.

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These interrelationships focused under the former trusteeship of UK via various commercial and political aspects. Thus, the UK's banking presence in KSA expands to multi decades.

Indeed, I do not think that, HSBC in purpose had involved in ML in KSA except for the maintaining of the previously mentioned old relationship with KSA. However, HSBC might inadvertently did the same.

Al Rajhi – the individual - remains the financial benefactor to the most of Islamic philanthropy; however, I do not think he would do the same to the radical Islamic group.

This is the reason why HSBC reactivated its business relationship with KSA in 2005 after a grace period of forbid its affiliates from doing business in KSA. *British national party 'breaking news-overlooked HSBC scandal – funding terrorism and drugs' (18 July 2012) http://www.bnp.org.uk/news/national/breaking-news-overlooked-hsbc-scandal-%E2%80%93-funding-terrorism-and-drugs.*

Retail Distribution Programme of FSA

I think the created retail distribution programme of FSA needs to innovate a category level in terms of small and huge companies in retail investment sector.

The current function process of the programme equalizes both small and huge companies into one stream. This has created a "one-size fits all" level of obligations on the regulated sector to impose such obligations regardless the nature and size of a respective company. ***Nicholas Ryder, 'The Financial Services Authority and Money Laundering' (2008), the Cambridge law journal, at 642***

I think this is not a well practice towards small companies. However, it would contradict the basic rule in treating customers fairly in retail investment sector.

To this end, the current role of FSA needs to differentiate or categorize the groups of companies by relying to vary obligations vis-à-vis a given company in accordance

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with its corporate structure. This is might be genuinely one of the reasons that considered for the abolishing of FSA in addition to lack of prudential factor.

Tough Joint Programme of AML & CTF

In early 2002 a tougher joint programme in AML and CTF was adopted by the international money fund (the "IMF") World Bank (the "WB") and the Financial Action Task Force (the "FATF"). The aim of this programme tends to evaluate and assess the countries' AML respective framework and the far undertaken of FATF's standard and its style regional bodies (the "FSRBs"). The programme has authorized FATF, IMF and WB to conduct the assessment with the support of external experts. [42]

On the other hand, the programme set as an additional instrument for the international financial institutions in their way for the "rule of law" and the establishing of the international standard for economic development that adopted by other financial institutions to support solving any potential crisis.

The role of then multilateral financial institutions has stimulated sensitive institutions e.g. the African Union, the council of Europe, EU, League of Arab States, OECD, NGO in addition to IMF and WB.[43]

Rule of Law Programme

This programme "Rule of Law" constitutes an international effort for establishing global standards measures for AML. On the latest financial crisis occurred on 2007, the programme had relatively effected.

US considered the major player in the programme thru its leverage in all financial institution worldwide, specifically in the AML. The financial crisis has effect this

[42] M Arnone and others, 'Anti-Money Laundering by International Institutions: a Preliminary Assessment' (2008) 26 European Journal of Law and Economics, at 362
[43] Ibid, 362-363

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major role in the application of the programme. The US's regulation of capital markets likely to mitigate its leverage towards other capital markets therefore the global standard of ML would automatically effected by the internal financial pressure of one of major players for the global standards in AML that would be blurred. [44]

The possibility of blurred universal standards of AML shall enhance the international financial institutions (the "IFIs") and major markets to concentrate on mature markets. The US properly will not assist then in the application of the global standards practice as its internal financial system blurs itself.[45]

The significant factor that affects AML in the financial crisis most likely would be the role of IMF. The IMF is an intergovernmental institute that plays a major in exploring the ML. A question will arise in its capability in solving the financial crisis along with the application of the contemplated global standards in AML. Dr. *Mosley* suggest that, will the IMF e.g. reform the loan programme ends with European governments be conditional on such reform i.e. one –size fits all ? He further suggests that, back towards public sector unlike private sector properly would be consistent with the global standards efforts in this regards. [46]

Financial crisis likely is a consequence of irresponsible conduct caused by number of private sector entities worldwide. The establishing of global standards measures of AML needs a robust correlation between both public and private sectors in each FATF's member under the "rule of law" umbrella in order to face a given financial crisis, if any.

Public outrage / private Sector

Upon financial crisis the entire undesirable practices e.g. insider trading, tax avoidance, corruption and money laundering had revealed risen one another.

[44] L Mosley, 'An End to Global Standards and Codes' (2009) 15 Global Governance, at 12
[45] Ibid, at 12-13
[46] Ibid. at 14

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The fortunate denial attitude of public's outrage had led the regulatory and prosecutorial agencies in general to do their work in action and further inspire the proper methods for global standards in AML after the collapse of most of financial markets. ***Tomasic, Roman. "Journal of Financial Crime" 2011, Vol. 18 issue 1, at 7.***

Additionally, the financial crisis that faced the UK financial institutions in liquidity in 2007 has revealed the magnitude of risks that taken by banks and financial institutions. This crisis had driven the way to threatening and jeopardizing the safety of the entire financial system. Such irresponsible behavior had had led to inject the required liquidity for to revive the economy by the public funds; this was determined by the House of Common, the Treasury Committee in 2008.

Should the contemplated global standard measure in ML waits until another public outrage!

Intergovernmental organizations i.e. IMF and WB

Financial crisis genuinely is the consequence of undesirable practices e.g. corruption, ML, insider trading, tax avoidance…..etc.

The elimination of these behaviors depends on the adoption of tough international rule of law eventually to evade another financial crisis. The IFIs most likely are the suitable entities for setting tools in capturing the rule of law thus diminish these practices, including ML. The joint programme set by IMF, WB and FATF in 2002 was a true reflection of application for the rule of law in assessing countries' AML framework that comprises also FSRBs. ***M Arnone and others, 'Anti-Money Laundering by International Institutions: a Preliminary Assessment' (2008) 26 European Journal of Law and Economics, at 362***

Thus, IMF has a major role beside the WB and FATF in setting the said rule of law, however this has become a benchmark for economic development. The ML has stimulated the public awareness in putting a catalyst role of multilateral financial institutions.

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As far as rule of law is concerned, the IMF has increased its collaboration with WB to direct countries for codes of good conducts on fiscal, monetary and financial policy transparently. This reflects the unsatisfactory attitude of IMF for the said undesirable practices.

Abdullahi Shehu, has expressed the major activities of IMF and WB re ML in developing countries by raising the awareness about the danger and impact of ML in addition in organizing training programme for FSRBs e.g. CFATE,APG,GAFISUD and GIABA. ***Shehu, Abdullahi Y. Journal of Financial Crime. Mar2005, Vol. 12 Issue 3, at 233***

In developed countries, *Mosley* has expressed the idea re universal standards in current financial crisis that is the behavior of IMF in resolving the crisis towards European Governments be conditional on regulatory reforms. ***L Mosley, 'An End to Global Standards and Codes' (2009) 15 Global Governance, at 14.***

In concluding, the intergovernmental organizations i.e. IMF and WB have contributed in AML efforts beside FATF. Conversely, ML in its nature as undesirable practice had contributed in financial crisis 2007; however, the adopted roles of law by IMF and WB had affected the financial crisis in identifying the best methods in AML. IMF, however, has the precession in consequence of its political and economic leverage parallel role in establishing the directions and codes of conducts for loans worldwide.

International financial institutions (IFIs)

International financial institutions (IFIs) accompany with of G7 governments particularly the US; have endeavored remarkable efforts to create a set of global financial standards. These standard have targeted the governance of chain areas that

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including the terms of macroeconomic information, regulation of national securities exchange and the enactment of international guidelines for accounting [47]

The impetus for these international standards norms has become more demanding after the sequence of financial crisis. The frequent financial crisis has reflected the need for diagnosing the real reasons behind it.

The IMF, FATF and WB (comprises of IBRD and IDA) on their capacities as intergovernmental organizations, have been the focal points for establishing the required global standards paralleled with the efforts to fight ML and TF after the tragedy of September 11th 2001.

Recommendation 23 is one of the significant recommendations dispatched by the FATF. This recommendation demands the countries to assure that, the internal financial institution should be subjected for frequent monitor/supervision, accurate regulation and effectively apply the FATF 40+9 recommendations. [48]

By this recommendation, a covenant had laid over countries to step a proper function in AML and CTF. Once a suggested global standard for ML delivered by such covenant, any country should establish a proper path in doing so by necessary legal and regulatory measures and preventing criminals in held management jobs in a financial institution that compliance in similar manner for AML and CTF. The non-compliance will lead a given country to face bad lists that structure by FATF i.e. gray or black. [49]

The above compliance will likely awake the internal public awareness and drives a base for, at least, knock - a - door to join the global standards in AML.

[47] L Mosley, 'An End to Global Standards and Codes' (2009) 15 Global Governance, at 9
[48] M Arnone et al, 'Anti-Money Laundering by International Institutions: a Preliminary Assessment' (2008) 26 European Journal of Law and Economics, at 375
[49] Ibid.

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Nevertheless, the matter of awareness needs more collaboration between countries in order to meet the core principles. The FATF itself has found that, it is necessary to raise AML/CTF awareness in different regions. This move by FATF has intended to construct a global consensus re a problem worldwide. [50]

The IFIs may have robust role in export the idea for AML. Now we know most of world's countries need the support of these IFIs, even the developed countries.

The path for global standards in AML needs to enhance the role of IFIs by way of the rule of law. This could be done by adopting the required resolutions by UN for more leverage and influence to be rendered to IFIs.

By such authority, the IFIs could do better in the field of AML. The transnational nature of corruptions and ML is an insisting reason to develop the instrument for combating the phenomena at a global level. [51]

In transnational crimes, the better method is to establish such instrument by providing the theory of collective security unlike isolation. [52] Consensus in this respect is required to put the limestone remedy in AML.

The IFIs could do better in the onerous way of AML by imposing hard contract terms with recipient countries and similar on queue for loans. This witnessed nowadays by the increased attentions drawn to IFIs. In such mechanism, IFIs did investigate the inner problematic issues attributed to ML hence did do the proper methods in stimulation internal financial institutions to structure the proper means in AML. For example, we witnessed the set-up of ***Egmond*** group in FIUs and the ***Wolfsberg*** gathering of banks.

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[50] R Hülsse, 'Creating Demand for Global Governance: The Making of a Global Money-laundering Problem' (2007) 21:2 Global Society 155, at 172 <http://www.gsi.uni-muenchen.de/personen/wiss_mitarbeiter/huelsse/5_publ_huelsse/pdf_huelsse/global_society2007.pdf> accessed 10 October 2012.

[51] Shehu, Abdullahi Y. Journal of Financial Crime. Mar2005, Vol. 12 Issue 3, at 221

[52] ibid

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All these efforts by IFIs have paved the way for stimulating the globe to do what is required for AML. However, it is a prolonged way to capture the fruition, but better to come than not.

It is my special note to be careful in this path in evading the injustice that might occur sometime in identifying the bad and good. Criminal are bad persons who might have had the evil spirit in their practice. Good persons however might step for the same practice but in good spirit. What I mean here is the Philanthropy practice that might happen in terms of assisting the vulnerable indigent people those who have nothing but the assistance of their benefactors.

In my opinion, this might constitute the cons in the practice of IFIs in their persistence for AML. Absolutely, this is should not be considered free hand for Philanthropy to the practice in the vacuum of surveillance/supervision, but to examine the KYC more better by structure a percentage of a given practice normally happen e.g. a year – a month …etc.

On the other hand, it should considered as a normal practice if the benefactor is well known person in Philanthropy issues and had a good records in this arena.

This is might unite the globe in rethinking the core remedy far from suspicious; hence globally endeavor the proper standards in AML by IFIs.

IFIs have major role in AML and CTF. These intergovernmental bodies have absolute the effective cure; however need the support of UN in adopting more authority and power. The world financial system needs to confront the bad illicit practices i.e. corruption, bribes ….etc. in order - to better identify ML.

Philanthropy should be considered and govern in goodwill methods in order to enhance the support of different cultured countries in our way to defeat the ML/TF and like.

The Converge and Diverge in AML Law/Indonesia

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The colonization and decolonization of Southeast Asia nations by Europeans had introduced a hybrid legal system that contains the inherited laws beside the one that derived from local culture.

Indonesia the world biggest Islamic nation is a good example in introducing the different approaches to laws including the AML. The Islamic sacred law "sharia" is the main sources of laws in Indonesia. Indonesia has been vulnerable to ML and one of its primary concerns since the financial and political crisis 1997 is to combat ML. [53]

Since ML is a transnational crime, Indonesia has worked initially with national and international bodies e.g. FATF to address the ML. the fruition for this cooperation was the enactment of law No. 15 of 2002 on the crime of ML as amended by law No. 25 of 2003.[54]

In consequence, to its efforts towards AML, Indonesia took off the non-cooperative countries and territories list (the "NCCT"). Eight years later, Indonesia enacted the new law on prevention and eradication of the crime of ML on 22 October 2010 in replacement of the old law.[55]

In its efforts to combat ML, Indonesia has established the financial and transaction reports and analysis centre, (the "PPATK"). The centre detects a large amount of suspicious large bank account that includes a variety of high and young civil servant along with police officers. The centre undergoes a quarterly checking up, says the chairperson Mr. *Mohammed Yusuf*. [56]

[53] Asian legal business, arbitration week 15-18 October 2012< http://asia.legalbusinessonline.com/industry> accessed 14 October 2012.
[54] Ibid.
[55] Ibid.
[56] Jakarta Globe, Indonesia AML agency report 1,800 official to corruption authority <http://www.thejakartaglobe.com/news/indonesia-anti-money> accessed 14 October 2012.

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Indonesia joined the Asia Pacific Group (the "APG") in August 1999 and has co-chaired the APG from 2006 to 2008. [57]

Indonesia's approach towards terrorist is relatively slow. This is might relate to the unbalance of internal political power. President *Megawati* enforced to distance himself from certain aspects of international action against terrorist. By contrast, People Republic of China politically facilitated in cases related to Muslim groups. [58] This might explain the different approach taken by Indonesia re terrorism in consequence of its unbalance of power.

Indonesia has adopted the *Sharia principles* in its bank regulation, amendment of1998. This is indicates the effectiveness of local laws by intervention with inherited law to constitute both a different hybrid law with particular different approach and reaction to AML regulation.

International norms and regulations re AML if coincided with relevant local laws would likely enhance the path towards one united approach of AML. The current mechanism might converge in law but diverge in execution.

The new Indonesian AML law of 22 October 2010

The new Indonesian AML law of 22 October 2010 has stipulated significant changes compared with the old one No. 25 of 2003. ***Asian legal business, arbitration week 15-18 October 2012 http://asia.legalbusinessonline.com/industry.***

These changes evaluated to enhance the role of law in combating ML process in Indonesia. The main changes comprised in the new law manifest as follows:

[57] APG members <apgml.org/apg-members/default.aspx?> accessed 14 October 2012.

[58] N Dorn and others, 'East Meets West in Anti-Money Laundering and Anti-Terrorist Finance: Policy Dialogue and Differentiation on Security, the Timber Trade and 'Alternative' Banking' (2008) 3 Asian Journal of Criminology, at 100

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- It gives the right for a financial service provider to submit a suspicious transaction report and a cash report to the PPATK if the value of the transaction in over $ 55,000 in one day. Additionally, international fund transfer's reports have been one of the most frequent methods for AML and CTF in Indonesia. However, the threshold of a minimum requirement for international transfer regulated by the PPATK.

- It widened the area of KYC for whom supposedly to be a reporting party. The new law has given the right to other parties e.g. suppliers of goods, motor vehicle dealers ….etc. to report simultaneously with the origin authority i.e. financial service providers.

- A key change illustrates in the new law happens to give the financial service provider and goods/service provider the right to suspend a transaction for 5 business days if the relevant party considers the transaction to be a suspicious one. PPATK has this right along with other judicial bodies who have the origin authority.

- The investigation power in the old law attributes only to the Indonesian national police. Now the same power given to official of institutions, those who under the new law have rendered the authority to investigate.

These changes contained in the new AML law would therefore 1/ facilitate ML crime investigation 2/ gives more quality due to the specialist investigators 3/ provide leniency in investigation in consequence of the well-trained professionals.

I envisage, Indonesia under the wise leadership of President Mr. *Yuhoyono* and the adoption of democratic political system would rather be one of the most influenced countries in Southeastern in fighting ML and CTF.

The unbalanced power in governing the system might relates to the inherited political corruption and an unidentified legal framework. The *Sharia l*aw has proven

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its immunity in confronting a respective financial crisis by the support of various Islamic finance methodologies.

I would rather hope to see Indonesia adopts the *Sharia* law in its financial institutions, eventually to combat ML/CTF in a more effective manner.

The Twin ML / TF, People Republic of China

It seems that, the twin i.e. ML and TF are always mention together while in fact constitute different phenomena. ***N Dorn and others, 'East Meets West in Anti-Money Laundering and Anti-Terrorist Finance: Policy Dialogue and Differentiation on Security, the Timber Trade and 'Alternative' Banking' (2008) 3 Asian Journal of Criminology, at 101***

The People Republic of China (**PRC**) has utilize the CTF following 11th September to arm length the cooperation US in confronting its separatist movements in Tibet and western region of Xingjian.

These two movement occupy almost one third of PRC and are rich in national resources i.e. oil & gas, mineral …etc. PRC cleverly has utilized the situation after 11th September to exchange cooperation with US mainly in intelligence sharing, TF and AML. Moreover has linked the *Uighurs Xingjian* region and the Late Osama bin Laden.

This is, first reflects that fact that, PRC is not earnest to follow the 40+9 recommendation but rather keen to fight its oppositions group, those who might have raised the red flag for their own legitimate demands!

The second point, terrorist's definition might have been blurred internationally; the reason that might have given likely the impetus for certain countries worldwide to practice a massive power against movements/group/people, who scarify to fight for their rights!

Macau /AML

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Due to the consequence of the abundance of material evidences laid in public. *Robert*o in his mastery post has mentioned the issue of *Macau* and the tremendous amount of gambling turnover around $ 30 billion per year in addition to the art sales, which represent another unbelievable amount of money. He rightfully has analyzed the assassination of the British businessperson the Late Mr. *Neri Heywood* in connection with PEP person. ***Global Post China's art bonanza dishing up fool is gold?***

H.E Ping has clarified in-depth the situation of ML in PRC. He has clarified the percentage of compliance as low, particularly in the context of the size of the country and the level of ML risk. He described the dominant crimes in PRC e.g. drugs, smuggling, corruption and other organized as brothers to ML. ***H.E Ping, the measures on combating ML and TF in the PRC from the perspective of FATF, journal of ML control, (2008) 11, 4, at 322 – doi 10.1108/13685200810910394***

He further stated that, underground bank shops and shell companies, considered as conductive factors to ML, are rampant in PRC. He gets the notion that, not many ML cases are available in PRC that means criminals are taking advantage thereof.

Wise in his valuable post has provided also marvelous clarification of the situation in PRC under the umbrella of the communist theory.

By these entire factors, I do believe PRC yet to achieve its commitment towards the FATF in practical manner. It is not rationale to understand given figures in the vacuum of a touching actions towards AML

As I concluded in my initial post, the mechanism in a given Southeast country might converge with the 40+9 standard; nevertheless, enforcement diverges in another story.

Islamic finance *Ijara* and *Murabah*

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These two methodologies of Islamic finance *Ijara* and *Murabah* have proven the efficiency vis-à-vis the frequent financial crisis.

In lieu of conventional interest charges, theses methodologies provide the golden rule that ***NO BODY GETS HURT***, on a win-to-win basis.

Anti-corruption, AML systems

Corruption is a common practice that spread in a wide range of behavior than ML thus, simply defined. Transparently International **(the "TI")** has formulated/defined corruption as "the misuse of entrusted power for private gain". [59]

Corruption most likely is a prior pace to ML. As a result, the existence of, and differences within ML's market on a given policy of AML's defection depends largely on the size or economic significance of a given country. [60]

TI index for 2011 has stated that, unstable governments often with a legacy of conflict continue to dominate the bottom rungs of the Corruption Perceptions Index (the "CPI"). Burma (Myanmar) has shared the second to last place with a score of 1.5 in the list, No 180 [61]

Four decades of military rule, political massive violence and repression of democratic opposition, Burma faces major challenges of inhabitant corruption. The informal data suggests that, organized crime, human trafficking, and illegal logging are

[59] JC Sharman and others, 'Corruption and Anti-Money-Laundering Systems: Putting a Luxury Good to Work' (2008) 22 Governance , at 30

[60] H Hinnerk Gnutzmann and others, 'Dancing with the Devil: Country Size and the Incentive to Tolerate Money Laundering' (2010) 30 International Review of Law and Economics, at 245

[61] The guardian <http://www.guardian.co.uk/news/datablog/2011/dec/01/corruption-index-2011-transparency-international> accessed on 20/10/2012

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rampant. Junta likely approached for all these crimes for just political reasons and ethnic earnings. [62]

A report, by the auditor-general's office to the parliament's public accounts committee, claimed that 6 ministries were involved in the "misuse" of billions of government funds along with other illegal transactions. These illegal acts took place under the name of country's military junta, from 2009 to 2011, prior to *Mr. Thein Sein* took office as president.[63]

The Upper House speaker Mr. *Khin Aung Myint* has said, fighting of all these crimes are the most significant targets that faces Burma today. The ex-minister has said the current anti-corruption legislation is out-of date and suggests certain alterations to lodge to Parliament for approval.[64]

Burma, still suffers under the misuse of government corruption and dictator system that would lead this country probably to the far edge of TI's CPI. Burma, like other corrupted countries, would express its willingness to comply with the international standards for anti-corruption, however most probably would continue to abuse the authority that having being taken by force in humiliating its inhabitant just for no rationale reasons.

A good example reflects here is, the bad treatment/jailing of the Nobel Prize winner the Lawyer Mrs. *Aung San Suu Kyi.*

Although of the hallow commitments/efforts and resources made by developing countries in pretending abiding with international standards for anti-corruption,

[62] Anti-corruption resource centre http://www.u4.no/publications/overview-of-corruption-in-burma-myanmar/
[63] Asia pacific, <http://www.ft.com/cms/s/0/1a78c348-6e92-11e1-a82d 00144feab49a.html#axzz29rJI0nuv> accessed on 20/10/2012.
[64] The Irrawaddy, Corruption is Burma's Biggest Problem: Upper House Speaker http://www2.irrawaddy.org/article.php?art_id=23286 accessed on 20/10/2012.

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AML systems , as described by *Sharman*, are seen as a totem to impress the outside audiences rather than a tool to tackle insisted local problems.[65]

Corruption / Judiciary

The independence of the Judiciary and its neutrality most likely is the guarantee for combating corruption in principle. Judges are responsible to hold justice rigidly wherever injustice prevails.

Sudan- Khartoum, as an example, colonized by Britain in 19th century, post of many colonized powers. ***Sudan: a present – day crisis http://teaching.quotidiana.org/our/2006/sudan/***

The Sudanese people thereafter had acquired good methodologies that comprise principles of common law accompanied with Sharia laws. Two mixtures of law schools had rolled the Judiciary as a good example in integrity, accountability and the dominance of law.

The University of Khartoum i.e. to this extent, had been called the ***Oxford of Africa*** in responding to the way that the system works, in comparison. Corruption is an endemic disease in each country. The degree might differ.

Corruption, Religious Traditions.

Corruption, religious traditions. Religion is the spiritual guidance that supposedly to lead human to the well track and self-confidence. *Patrick and Richards*, claim that, two theories will have to explain the level of corruption in a given population.

[65] JC Sharman and others, 'Corruption and Anti-Money-Laundering Systems: Putting a Luxury Good to Work' (2008) 22 Governance, at 43

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First: religious values drive individual human behavior i.e. beliefs that enhance the law abidance, thus not using a public office for private gain. ***Patrick Flavin and Richard Ledet "Religiosity and Government Corruption in the American States" at 5 www.calvin.edu/…/Symp08FlavinLedet.pdf***

Second: worship is a kind of social activity that helps into close networks associated with less corruption.

In my view, I think the writers have vital perspective to what most likely could combat corruption by exercising religion methodology. Religion is the most significant pillar in our daily life, if we touch it wisely.

However, religion is our trial in live, not expected to solve the endemic disease of corruption other than trial it for a success in the Judgment Day.

Thus, if we believe so, it would then suffice to give a helping approach in combating corruption by conscience. No matter to get the fruition. The path its self is a successful step in combating corruption. Christianity and Islam have taken this concept.

Corruption / Egypt

Transparency International has monitored corruption in Egypt in its frequent index reports as high.

Egypt is a developing large Arab country in the Middle East. The population turns around 80 million. Egypt has recently succeeded a revolution by its people that ousted the regime of former *President Mubarak*.

The rate of corruption during Mubarak's tenure has reached a considerable high level. Mubarak and his family i.e. two sons, have been indicted of corruption and

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illicit enrichment, of a total $ 70 billion distributed in various banks accounts at home and abroad. [66]

This is a specific case of corruption in a developing country that evaluated of using ML as a method for combating this sort of crime.

Generally, the information that exists to investigate the corruption in Egypt seems unavailable. The Government did not carry out serious measures to assess the level of corruption in the country.

During the tenure of *Mubarak*, general dealings were relying on *wasta*, a term in Arabic means mediation or influence, while facilitation payments conducted for businesses. [67] There were efforts to combat corruption in the country by initiating committees specialized for anti- corruption transactions. However, Mubarak and his family never let these committees to function in absolute transparency and integrity manner. [68]

While Egypt has criminalized the bribery in its Penal code, there is no explicitly evidence takes the same effect towards the foreign officials. [69]

Egypt has joined many international initiatives towards anti-bribery, especially the MENA – OCED task force for anti – bribery. [70]

For all the above facts, it seems the former President had intentionally weakened the Governmental bodies in order to ease the way for him and his family to enjoy the way for corruption.

[66] The Guardian <www..co.uk/world/2011/feb/04/hosni-mubarak-faimly-fortune> accessed 24/10/2012
[67] Andrew Puddephatt, corruption in Egypt, global partners & associates (March 2012), at 5 http://global-partners.co.uk/wp-content/uploads/Corruption-in-Egypt-Report.pdf
[68] Ibid, at 6
[69] Ibid, at 7.
[70] Ibid, at 8.

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It observed that while Egypt in 2010 has scored the number 178, in 2011 has upgraded its position to 112. This is has been reflected by the Transparency International report on 2010.[71]

It seems the revolution occurred in 2011 has given some certainty to the serious measures that having been taken by the new regime to combat corruption inside the governmental realm.

Recent global financial integrity report has indicated that, corruption and crime cost Egypt $ 6 billion per year. [72] The corruption has also extended it limit to cost the treasury this amount of money, which in return would affect to other economic sectors.

A second facet of corruption in Egypt is the facilitation fees that supposed to pay upon signing contracts. This a normal practice in the business area that has created a level of recognition by public. Therefore, normality has been one of the serious example that would jeopardize the certainly of prevailing laws and the values that believed over the public.

During Mubarak tenure, the policy of privatization has given the path for the opportunists to stake a corrupted cake by way of nepotism. Nepotism has been the mutual factors among the corrupted officials in the government of Mubarak. Many ventures with foreign participation being conducted in consequence of a percentage in favor of some corrupted government officials. [73]

[71] The guardian <http://www.guardian.co.uk/news/datablog/2011/dec/01/corruption-index-2011-transparency-international> accessed on 20/10/2012

[72] Task force for financial integrity & economic development (2011) www.financialtaskforce.org/2011/01/26/egypt-lost-57-2-billion-from-2002-2008

[73] Andrew Puddephatt, corruption in Egypt, global partners & associates (March 2012), at 12 http://global-partners.co.uk/wp-content/uploads/Corruption-in-Egypt-Report.pdf

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There is no evidence hitherto that, AML implemented in Egypt. The Government of Egypt has yet declared the abidance of regulation. The new government aspires to reflect the good impression toward the international community.

By these approaches, it might be possible to determine the better methods in the application of AML regulation i.e. the FATF and the 40 + 9 recommendations.

Egypt is now stepping the right paces for integrity and accountability. Many factors seem to determine the right path in the near future. Amongst AML would be.

By using the recommendations dispatched by FATF. **First** Egypt should enact the proper law for AML in order to illustrate the dominance of law. **Second** should structure the better vehicle for enforcement.

A big deal of the complex financial transactions in Egypt likely relate to illicit resources. Crime constitutes a huge number in the community. A number of deposits of money into the normal cycle of banks are proceeds of crimes.

In the new government is keen in better future, I would envisage AML would affect significantly in the eliminating a large number of crime scale in Egypt.

AML if implemented seriously would contribute effectively in anti- corruption in consequence to the complexity of various financial transactions that undisputedly had touched the Egyptian community to believe the legality of illegal practices.

Compliance industry

Compliance industry (**the "CI"**) represents all corporations and professionals that take part in the developing tools or services that may enhance AML operations by financial institutions. These services or tools likely comprise software for monitoring, advice on proper application of AML and training of compliance officers and certain selected employees.

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CI is a rapid growing market of suppliers of services and products that supposedly to underpin and simplify the AML compliance by financial institutions. [74]

The rapid growth of CI has given more certainly in the financial institutions in check and balances and commercial benefit areas. E.g. The operational management division in a given financial institutions has become more clear about the effectiveness of cost in consequence of the compliance strategy. In this regards, the financial institutional once served by CI will become more expose to their monitoring systems hence endeavor the best ways to rebuild a solid framework of procedures and have a clear image to the ML's principle i.e. KYC, further evade reputation risks. [75]

Further, in consequence of the frequent development of new advanced AML, the CI has become indispensable in the structure of a given financial institutional. As a result, most likely financial institutions will be orientated to utilize the services of CI and buy the newest technologies; hence AML most likely be upgraded by CI for new services and products. [76]

The potential negative consequences of the growth of AML's CI might reflect in the diversity of the players, those involved in the AML process. This diversity may lead to fragmentations approach vis-à-vis AML.

The vacuum of common plan for each player in AML, likely disperses the efforts that might establish in the path towards AML. E.g., Lacking of transparent, working plan and starting point are factors that might jeopardize the potential growth in the general fight of AML in line with CI process.[77]

[74] A Verhage, 'Supply and Demand: Anti-Money Laundering by the Compliance Industry' (2009) 12 Journal of Money Laundering Control, at 373
[75] Ibid, at 385
[76] Ibid. at 386
[77] Ibid, at 388-389

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Other negative consequence might be the irrational confidence of CI for their role in AML.[78] This concept will lead CI to emphasize the necessity of their role; subsequently it will result in a demand of huge magnitude of professional cost and probably a degree of illicit acts i.e. favoritism in certain cases.

A potential reform would envisage in the constructing of a system that black listed the incompliant financial institutions.

This is would clarify the tasks that financial institutions need to do to further produce quality and reliability to such lists. The Government supervision / management hence would be of a major role.[79]

CI is an imperative factor in detecting ML; however compliance needs to harmonize the financial legislations enacted and further will need to adopt a system of good governance in such industry within its two facets i.e. corporations or professional expertise.

Harmonization /Compliance /Financial Legislation

Such industry has proven to some extent its capabilities in detecting ML. However not far to predict a financial crisis. E.g. *KPMG, E&Y* and *Delliote* are pillars in CI, nonetheless had missed to speculate/imagine the potential financial crisis. At this end, something has to do in guiding CI in their significant role towards AML/CTF and further evade any potential crisis.

What to do here? Legislations bodies in a given country will have to enact relevant laws in constructing the better ways and means for CI. How such financial regulations would be? It should balance the interests for both parties. In other words, harmonization over such interests is the contemplated good practice in doing so. The Governments' involvement will then constitute the vehicle for enacted regulations,

[78] Ibid, at 387
[79] Ibid, at 389

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without it, efforts of the prevention of ML would not be as high as they are today. ***A Verhage, 'Between the Hammer* and *the Anvil? The Anti-Money Laundering-Complex and Its Interactions with the Compliance Industry' (2009) 52 Crime, Law and Social Change, at 30***

There are certain issues that should tackle. The exaggeration in professional fees has to limit by legislation i.e. counter proliferation. Corporate Governance has to govern the CI's financial practice i.e. accountability, transparency and justice ….etc.

The enacted financial regulations should balance/harmonize the interests of all players in restricting the CI. By common sense, CI will brought on board prior to such regulations, and not vice –versa.

Compliance Industry / Fragmentation

The fragmentation derives from the diversity of services, tools, instruments and corporation. ***A Verhage, 'Supply and Demand: Anti-Money Laundering by the Compliance Industry' (2009) 12 Journal of Money Laundering Control, at 389.***

Hence, the lacks of transparent work principles, common starting point among such diversity have no positive impact on the general battle against ML.

To this end, in general, local authorities/ governments would have significant guidance in reducing such fragmentation subsequently the lacks of transparency and the common starting point.

One of the solutions on tackling those problems by the authorities is by providing a blacklist scheme into the financial institutions. This would enhance the financial institutions for further assurance on CI, quality, and reliability of such lists. However, the AML would not be accomplished by enacted laws other than just a beginning thereof.

Blacklists scheme will then need to take into account the authorities' official approval. If we look at the FATF's list, it would be clear enough that such lists are very limited

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and will not do the job. Even FIU will not help. As *Verhage* says, *if you only use this list as a compliance officer, you are not doing a good job.* So, I think, any reform in CI should takes into account the blacklists scheme in a better involvement of authorities/ governments.

CI has to adopt a system that identify in practical manner the obstacles that hinder its mission, rather than depends on theoretical issues. Check and balances in this concept has to control officially the negative overstated professional fees belong to CI.

Blacklists scheme adopted by local authorities is most likely a better solution in identifying AML/CTF unlike the intergovernmental ones e.g. the list of the UN regarding *"the individuals belonging to or associated with the Taliban"*

Sultanate of Oman / AML

The Sultanate of Oman is an Arab country located in the Arabian Peninsula. Geographically it is within the Middle East & North Africa (the "MENA") region.

Oman is a member of the Gulf Cooperation Council (the "GCC") that likely adopts the unification approach of laws between its members.

The Omani Anti- Money Laundering and combat of terrorism finance regulations first issued by the Royal Decree No. 79/2010. The law defined as "the Law of Combating Money Laundering and Terrorism Financing".

As a resort of stability and quietness in a disturbing region, the Sultanate of Oman leans not to take a counter pace with regard ML or TF. As noted by the U.S Department of State, the long coastline remains a threat that exposed to regional criminal activity that includes terrorism, piracy, smuggling and the sale of illegal drugs.

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The Omani AML/CTF has established a framework for categorize, investigating and punishing ML and TF offences. [80]

FATF recommendations on ML/TF have influenced Oman Government to develop its AML framework by repealing the previous AML law No. 34/2002 into promulgate the second version law No. 79/2010 that harmonize the latest development in FATF's recommendations/typologies and FIUs methodologies.

The general elements of Oman AML/ATF law have gotten severe penalties for breaching the AML/CTF regulations. The law has addressed businesses and individuals to the same degree of punishment. It should note here, the law has identified certain punishment for TF illicit actions.

In another note, businesses further exposed for punishment in addition to imprisonment and fines levied. This is likely including the dissolution of company's commercial license or prohibiting trading in Omani financial markets.

The Law prior to the new Omani AML/CTF has given more power to the Financial Intelligence Unit (the "FIU") unlike the previous law. The law has clearly indicated that, FIU shall annex to the Royal Oman Police (the "ROP"). ROP has established certain department for FIU that concerns to investigate all suspicious actions reports **(the "SAR")** from various bodies whether private or public sectors.

In this respect, the ROP as per Article (6) of the law, FIU shall be independence under the supervision of the Assistant Inspector General. [81]

Compared with another GCC member i.e. United Arab Emirates (the "UAE"), the FIU as per the federal law No. 4 of 2002 (the "AML law") shall annex within the UAE Central Bank.

[80] Oman's Anti Money Laundering and Combating Terrorist Financing <omanlawblog.curtis.com/.../Oman -anti-m> accessed on 30/10/2012
[81] FIU Oman www.fiu.gov.om/

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The said Federal Law has adopted joining of the ***Egmond*** **Group**. Any suspicious transactions in this sense should report to the unit directly. This unit named the **"Anti – Money Laundering and Suspicious Cases Unit" (the "AMLSCU").** [82]

One will observe here, the restrict approach by Omani Government towards AML/CTF by rendering the FIU authority to police power and guidance other than commercial entity like the UAE's Central Bank.

The Omani's FIU is similarly endeavoring to join the **Egmont Group**. The Omani police officer col. ***Mohsin*** said. He further stated that, FIU has the power to provide safeguarding measures by freezing transactions for up to 48 hours. [83]

The Omani AML/ CTF framework has effectively met its goal in the application of the AML/CTF law. In this respect, the Omani Criminal Court has recently sentenced six convicted persons to jail on money laundering charges. These convicted persons had manipulated in business portfolios via three companies. This is surely constitutes a rigid punishment in terms of corporate wise, and further shows the involvement of AML/CTF in business arena in Oman. [84]

The development of the Omani AML/CTF has progressed wisely depending on events, gathering and conferences with the internationally, locally and regionally professionals/ organizations. These occasions have meant to develop, apply policies, ways and means of AML/CTF activities.

These gatherings have taken place by banks and Government bodies. E.g., 1/the Omani Arab Bank has organized a seminar on the procedures for detecting

[82] IBA Anti-Money Laundering Forum - United Arab Emirates www.anti-moneylaundering.org/.../Unite
[83] 209 money laundering cases reported last year: ROP - Muscat Daily www.muscatdaily.com/.../Oman/209-money-launder accessed on 30/1-/2012
[84] Gulfnews.com/Oman/six-jailed-for-money-laundering
http://www.google.com.om/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&cad=rja&ved=0CDAQFjAC&url=http%3A%2F%2Fgulfnews

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suspicious transactions. 2/the, FIU has organized a seminar on the use of bank accounts for receiving suspicious funds. 3/ national committee has organized an awareness raising meeting for law enforcement agencies.4/ workshop held on tackling ML/TF to raise awareness within financial institutions. 5/ campaign against ML held at capital market authority. 6/ FIU held a meeting with compliance officers from the financial sector. 7/ bank Muscat and FIU host AML/CTF for tackling financial crimes. [85]

The development of Omani AML/CTF relies on similar seminars and conferences. The intergovernmental bodies i.e. FATF, World Bank and IMF have attended such seminars in furtherance and updating of the Omani local legislation in AML/CTF.

Some of GCC members have taken the initiative to cooperate bilaterally in FIUs functions. We had observed the signing of the Memorandum of Understanding (the "MoU") between Qatar represented by the Financial Information Unit and UAE represented by the AMLSCU.[86] I suggest, such bilateral agreement within the GCC system shall take further approach towards the unification of AML/CTF in the GCC countries.

The Omani AML/CTF law compared by other GCC countries has doubled the punishment towards the accused persons in case of: 1/ crime committed in complicity with one or more persons. 2/ the offender committed the crime via organized crime. 3/ if the crime has been committed incorporated with other criminal activities. 4/ if the offender takes privilege of the power vested in his office. 5/ if the offender is the perpetrator involved in an original crime.

The Omani law, conversely, has provided a ***Tender of Pardon***. This happen when the accused involved in an offence of ML or TF reveals the hidden incidents, even if the report take place after the awareness of the concerned authorities. This might happen once it leads to the confiscation of the proceeds of the crime or the arrest of

[85] Events, Gatherings and Conferences – FIU www.fiu.gov.om/events.html accessed on 30/10/2012
[86] Central Bank signs MoU with Qatar's FIU - UAE Interact< www.uaeinteract.> Accessed on 30/10/2012.

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other perpetrators. The court of law then could suspend a punishment for the reporting perpetrator. [87]

As far as the TF is concerned, the Omani AML/CTF law has not clarified the limit that supposedly determine for fines in the TF. The basic punishment determined is for ten years imprisonment and a minimum fine of R.O 10,000, however, the law does not limit the maximum for such fine other than not to exceed the origin fund that used for the crime. [88]

The Omani Central Bank may have the initiative in framing the financial limitation related to the AML/CTF crimes. The Central Bank of Oman is the significance body that regulate and monitoring the ML typologies and TF tracking. The FIU of ROP has the enforcement power then to prosecute and bring to justice the violators of the Central Bank's circulations related to the AML/CTF law.

The key elements of the Omani AML/CTF law's framework, depends on the international standards that tackled to harmonize the local customs and the interrelationship with the Oman's commitments of GCC regulations and unified agreements. The effectiveness, of these factors, likely will establish a robust system among the GCC countries in the battle against ML and TF.

Seminars/conferences and gatherings have the key factor in devolving the Omani AML/CTF law. The Oman international relations/ commitment have supported the local enactment of such international law in order to evade the reputational risk that might occur within the political area.

Oman as an Arab country has assured, by way of internationally track, its condemnation to TF that claimed to link to Arabs. ML accidently has been the other twin that supposedly will receive the same condemnation and denouncement as well.

[87] Oman Law Blog: May 2011 <omanlawblog.curtis.com/2011_05_01_ar
[88] Ibid.

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Oman new Law of Anti-Money Laundering / Terrorist Finance

On June 2, 2016, Oman issued the new Anti-Money Laundering and terrorist financing Law comprised (109) Articles.

It is observed that, the new Law comprised the latest 9th recommendations of TAFT, which shall crafted more closer to the international norms and principles of anti-money laundering and combating terrorism financing .

The Sultanate of Oman by issuing the new Law shall be the pioneer Arab country that managed to develop its legal frame in ML and CTF, despite its lesser discovered crime that shifted by General Prosecutor to the local courts.

Conclusion

FATF in its capacity as an inter-government entity has endeavored well, so far, in the areas of AML/CFT through the evolving/updates of its recommendations.

The main body that most likely, contributed in the core mechanism of FATF structure is definitely the FIUs that regarded to establish in local member states, in accordance with the FATF's recommendation No. 29.

The significance of a related FIU is relying basically on the AML/CFT prerogative in member states that, the Unit has evolved the potential pathway in combating ML and TF by relying basically on FATF's 40 recommendations, however, the point is, how much the members are willing to adopt the proper implementation? The FIU in this trend should comprise the various high-qualified staff pertinent to the phenomenon of ML and TF.

Those staff along with their ex-related well experience in the field should obtain the related new technology in the software.

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The best type that seems effective in FIU for AML/CFT in this Oman has adopted this type of FIU, and it seems doing well by its autonomy absolute nature to the extent to propose a new Bill that will issue soon as per the FATF's new recommendations. On the contrary, UAE has remained dormant with no effective approaches; because of its un-independent nature by the concept will be a hybrid structure.

Involvement of the Central Bank. Thus, UAE's AML prerogative shall remain ineffective, unlike Oman. Although the financial system in Oman considered simple, however the areas of ***KYC, STRs*** and ***PEPs*** relatively evaluated well considering the nascent establishment of FIU.

The UAE despite its old membership with the ***Egmont*** **group**, nevertheless, no adoption in its current law stipulated in the areas of KYC, STRs and PEPs, despite of its complex financial system.

The hybrid structure of a Unit will enable a smooth method/way to harmonize the various staff background, one another. This method will probably provide the impetus of the targeted issues so required to achieve by relying to different knowledge and provisional careers that are, civilian and military staff in a related Unit.

However, the ***Hawala*** system adopted in both States seems one of the serious mechanisms that challenge the combating of ML/TF.

Therefore, FATF should adopt a recommendation re *Hawala*, to enhance the better AML/CFT prerogative in FIUs, for all the member States, so related. The area of public awareness for the people of member States seems an imperative factor to fill the gaps in proper application of FATF's recommendations. Region, politics and economy considered important areas to provide ML/TF knowledge to local people. Therefore, FATF should harmonize its updated recommendations to fill this gap for a better ML/TF prerogative re local FIU.

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The adoption of a regional unified ML/TF laws in regional organizations seems unrealistic. Despite, the commitment to regional treaties and FATF recommendations, the approach itself is no longer thoughtful for the vulnerable structure of membership so related to these regional organizations.

The membership of regional organizations seems vulnerable in the best practice of AML/CFT and its related principles in *STRs, KYC* and *PEPs*. Therefore, I think the best approach in this concept is the adoption of one State standard membership. The organizations, likely, cannot unite for one mutual method in AML/CFT in direct consequence of areas related to sovereignty, politics and economy factors.

The FAFT has its characteristic as an inter-governmental body along with its international community recognition, for example the united nation. ***The FATF, 'UN and member countries focus on preventing and suppressing terrorist financing'http://www.fatfgafi.org/documents/documents/thefatfunandmembercountriesfocusonpreventingandsuppressingterroristfinancing***.html

The current situation of FATF structure as a semi- international body, might not reach the aspirations contemplated in combating the Ml and TF. Therefore, I would suggest the establishment of a complete structure that to be connected to the UN other bodies in order to affect the seriousness of rapid evolving of typologies in ML along with TF. This can achieve through a UN Resolution in one of its consecutive General Assembly.

The FATF, UN and member countries focus on preventing and suppressing terrorist financing.***http://www.fatfgafi.org/documents/documents/thefatfunandmembercountriesfocusonpreventingandsuppressingterroristfinancing.html.***

The two groups that established according to the FATF principles/regulations. Further, have an indirect relationship with it, are the ***Egmond and Wolfsberg*** *Groups*; seem so vulnerable to confront the phenomenon of ML, so I would recommend the merger of both groups to establish a one component with the FATF, subsequently to be annexed with UN related bodies as a new international body in combating ML and TF.

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In this regard, it noted, ***Wolfsberg* group** currently has no obvious recognition by TATF recommendations, except between its distinguished banks members.

The proposed one body of FATF at the UN will be more effective in AML/CFT through the unified international mechanism of the UN that could approve by a Resolution by way of a major or consensus votes of members. This could lead eventually, to the dismantling of this criminal industry and its ramification level of corruptions. The various departments of the contemplated UN body could better guard the combating/ dismantling of this criminal activity.

The AML/CFT/FIU pathways shall always be full of thorns/hurdles; however, a united international contribution/approach in establishing a UN relevant body/office could definitely defeat the criminals.

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