The intersection of commercial corruption and money laundering: a look at international responses and the adequacy of regulations

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1. INTRODUCTION

Commercial corruption and money laundering have presented the international authorities with a very difficult dilemma in fashioning out the correct recipe to contain the malaise. The fact remains that on account of globalisation and trade liberalizations, some individuals and juristic personalities have been involved in acts that are not compatible with civilised behaviours. They set out to subvert the systems that they are supposed to be effective guardians in protecting, and engage in corrupt activities calculated to escape the regulatory radar.

In most cases, the large corrupt sums acquired undergo the money laundering process to disguise their illicit origin. It is at this point that the intersection scenario presents itself. In view of the fact that the illicit siphoned sums emit very significant negativities to the financial systems and society in general, the authorities responded to find solutions to this. Some are in form of 'soft laws' like FATF and OECD, and others are convention-based like the United Nations Convention Against Corruption (UNCAC 2003) and the International Chamber of Commerce (ICC) initiatives. This article examines the linkage and adequacy of the responses in place to tackle the threat presented by money laundering.

2. DEFINING CORRUPTION AND MONEY LAUNDERING

The word corruption is a derivative of the Latin word 'corruptus'. The word on its own simply means to break. Its popular meaning is an encapsulation of the fact that agents and public officers do break the confidence that is usually entrusted on them

The Oxford English Dictionary (1889 edition) defined corruption as the perversion or destruction of integrity in the discharge of public duties by bribery or favour; the use or existence of corrupt practices, especially in a state, public corporations etc. The adjective 'corrupt' is defined as 'perverted from uprightness and fidelity in the discharge of duty; influenced by bribery or the like venal.' The verb 'corrupt' is defined in a similar fashion except that it extended to other duties irrespective of whether they are a public duty or not. It means to 'induce to act dishonestly or unfaithfully, to make venal; to bribe.' The verb 'bribe' is defined as 'to influence corruptly, by reward or consideration, the action of (a person), to pervert the judgment or corrupt the conduct by a gift'.

But it has to be noted that in this day and age the restricted definition of corruption in relation to to public duties is no longer a reflection of the state of the English law, or most modern nations (see the United Kingdom Bribery Act 2010, which completely removes the distinction between public and private sector bribery). Perhaps the most concise definition is the one coined by Transparency International (TI), which defines corruption as 'the misuse of entrusted power for private gain' (http://www.cpi.transparency.org/cpi2011, accessed 14 June 2012). This definition seems very simple, although it excludes the bribery that occurs in the private sector. It is inclusive of other related offences that can be committed in corruption process. But generically, corruption is the abuse of a position of trust to gain an unfair advantage.

Money laundering, which is intricately linked to and is a conveyor belt for corruption, is the process whereby criminals must give their money an apparent legal origin (Levi, M and Reuter, P "Money Laundering, Crime and Justice: A Review of Research"). It is the practice of engaging in a series of

financial transactions in order to conceal the ownership, source, control or destination of illegally gained money. Money laundering is a process whereby proceeds of crime are usually made to appear to have a legitimate origin. The crime proceeds can be generated by a number of criminal acts, including drug dealing, corruption, accounting and other types of fraud, and inclusive of tax invasion (Financial Action Task Force, Money-Laundering-FAQ-http://www.fatf-gafi.org./document-accessed 10th June 2012.)

Most major jurisdictions define money laundering as any financial transaction that involves the proceeds of an underlying criminal offence. The definitional problems can possibly be attributed to different systems of law. A bold attempt to reach a unified definition of the term can be found in the first piece of European Union legislation that brought money laundering into the legal agenda (Council Directive 91/308/EEC of 10 June 1991).The money laundering process can be said to involve three stages, comprising placement, layering and integration circles. However, it is pertinent to point out that the pattern of money laundering activities does not necessarily fall within this definition, which follow this process, which is basically academic in nature.

3. WHAT COMMERCIAL CORRUPTION MEANS

An in-depth understanding of the concept of commercial corruption is very important in order to have a full grasp of the meaning. In public corruption, the illegal payment is made or directed to someone who is a recognisable public official. But in commercial corruption, this same illegal payment is made to a private party.

The term "commercial corruption" is often used interchangeably with other terms as 'private corruption', "private to private corruption", "commercial private corruption" and "non-official corruption". It is often characterised by the payment to or acceptance of a kickback or commission by an individual in the private sector. The aim is simply to make the recipient to act in a manner which is favourable to the briber without proper consideration to the interests of the employer, principal, fiduciary or client.

3.1 The interaction of corruption and money laundering

In order for most corrupt proceeds to be reused they must undergo the money laundering process. It is during this process that corruption and money laundering in most cases interact at some point and form what could be described as a family-like relationship. However, for the money laundering process to be completed, corruption is highly noticeable as a facilitative ingredient. It has been observed that in almost all cases involving significant corrupt practices across a very large spectrum, the proceeds do usually undergo the money laundering process.. Corruption instruments contain provisions on the link or interaction between corruption and money laundering.

The relationship between corruption and money laundering tends to be very clear. Corrupt money is often laundered in order to legitimise it ("Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities and Action Plan", Word Bank 2007, June 2007). The World Bank noted this close link and observed:

> *"Corruption and money laundering are a related and self–reinforcing phenomenon. Corruption proceeds are disguised and laundered by corrupt officials to be able to spend or invest such proceeds. At the same time, corruption in a country's AML institutions (including financial institutions, regulators, Financial Intelligence Units (FIUs), police, prosecutors and courts) can render an AML regime of a country ineffective"* (World Bank 2007, "Strengthening Engagement", p 68).

Both the World Bank and the International Monetary Fund (IMF) recognise that they have an anti-money laundering (AML) role to play. Rather than portraying itself as a standard-setter, the Bank has provided assistance by virtue of assessing compliance with Financial Action Task Force Recommendations (FATF). This is done through programmes such as Report on Observance of Standards and Codes plus the Financial Sector Assessment Programs. The Bank also provides technical assistance in implementation of the Recommendations.

Some pointers on how to solve the problems associated with the twin-like link at the intersection points were provided by the Bank. The following lessons were learned from its anti-corruption and AML efforts:

- Firstly, an effective system of customer due diligence (CDD) of the type that is found under AML requirements – such as the provision of details of client backgrounds and beneficiary identity – would definitely play a significant role in enhancing a general financial transparency that would hinder corruption.
- Secondly, the very close cooperation between the Financial Intelligence Units (FIUs), anti-corruption and law enforcement agencies, and the private sector would definitely help to combat corruption.
- Finally, in many polities it is noted that the law enforcement agencies specify corruption is the main offence that usually generates the illicit money that is the subject of laundering activities. On account of this, AML policy is to a large extent fundamentally a sort of anti-corruption tool (World Bank 2007, "Strengthening Engagement", p68).

The importance of this link prompted the Bank via its

Article

Financial Market Integrity Unit to look at the use of anti-money laundering information for corruption issues. This involved 15 anti-corruption agencies around the globe. It was based on how countries can make use of AML data to fight corruption, hence the intersection or nexus.

Another World Bank project was conducted with the Egmont Group. This related to the governance of FIUs which could serve as part of the Bank's wider perspective to re-draft its governance and anti-corruption strategy. The Bank sponsored a further project that related to the nexus or link. This involved studies of grand corruption and politically exposed persons (PEPs), and was conducted by Richard Gordon and Braddock Stevenson of Case Western University. It focused on the instruments and methods used in laundering the corruption proceeds, where the money was kept, and how this was detected and investigated. The Asia/Pacific Group on Money Laundering (APG) scoping paper recognised the nexus that existed between commercial corruption and money laundering. It observed:

"When viewing corruption as a facilitative activity to support money laundering, the involvement of private sector players cannot be ignored. Corruption can be a key step in money laundering by securing the corrupt cooperation of bankers, accountants, lawyers, remittance agents etc, for the purposes of concealing the laundering activities and ensuring access to funds and profits" (FATF/PLEN (2007) 37, p 77).

In April 2007, the World Bank and United Nations Office for Drugs and Crime (UNODC) launched the StAR Initiative which focused on returning stolen assets. UNODC, one can rightly point out, is perhaps the guardian of all subsequent UN treaties that beamed a search light on the link. In emphasising on the close links or family-like nexus, it pointed out:

"There are important links between corruption and money laundering. The ability to transfer and conceal funds is critical to the perpetrators of corruption, especially large scale or ''grand corruption''. Moreover, public sector employees and those working in key private sector financial areas are especially vulnerable to bribes, intimidation or other incentives to conceal illicit activities. A high degree of co-ordination is thus required to combat both problems and to implement measures that impact on both areas" (UNODC p 20).

The above joint initiative indicated further that:

"Money laundering statutes can contribute significantly to the detection of corruption and related offences by providing the basis for financial investigations. Identifying and recording obligations as well as reporting suspicious transactions, as is required by the UN Convention against Transnational Organised Crime and the United Nations Convention against Corruption, will not only facilitate detection of crime of money-laundering but will also help identify the criminal acts from which the illicit money proceeds originated, it is therefore essential to establish corruption as a predicate offence for money-laundering" (UNDOC, p 432).

The UNODC Global Program on the money laundering and corruption nexus plays a vital role in extending technical assistance to the larger society with emphasis on the developing world. It listed this link as a very significant area of its research. To buttress the above, it sponsored a report in 1998, entitled *'Financial Havens, Banking Secrecy and Money Laundering'* (see UNDOC 1998 sponsored paper via Global Programme Against Money Laundering). This report identified many common trends, like risks posed by loosely unregulated or under-regulated corporate service providers plus anonymous corporate vehicles that existed at the intersection points between money laundering and corruption. The knit link between corruption and money laundering was identified by the Vienna Convention as far back as 1988. It called on all the signatories to criminalise the proceeds of drug crimes (Art 23 Vienna Convention 1988). Not only this, the nexus was also identified and recognised in the 2000 Palermo Convention. As one of its objectives, it identified the fight against corruption and money laundering, and. required signatories to criminalise money laundering (Art 6). It The Palermo Convention went further and indicated the need for customer due diligence and suspicious transaction reporting (Art 7). It encouraged countries to set up FIUs, following the recommendations of international AML bodies.

A close perusal of UNCAC clearly indicates that it highlighted the close nexus between corruption and money laundering. This is indicated in the wording of Articles 14, 23, 52 and 58 respectively. Apart from UNCAC, the 1997 OECD Anti-Corruption Convention that emanated from the Working Group on Bribery in International Business Transactions is very significant on the nexus and contains various AML clauses. Interestingly, it called upon signatories that had made the offence of bribing a domestic official a predicate offence for money laundering to extend same to the bribery of a foreign public official (Art 7 OECD Anti-Corruption Convention, 1997).

OECD 2006 Working Group in its Mid Term Review of Phase 2 Reports recognised the absence of common comparable data. It emphasised the important need for greater efforts on data collection standardization (OECD Anti-Bribery Convention 1997, Mid Term Review May 2006 Working Group p 83). It was seriously concerned at lacunae in the linkage that could be noticeable in suspicious transaction reports. It indicated:

"A better measure in evaluating the effectiveness of the Convention is weather suspicious transaction reporting systems have led to the discovery of foreign bribery and related money laundering cases. If one assumes that foreign bribery is a prevalent phenomenon, and that the crime frequently involves money laundering (of the bribe

or proceeds of bribery), then one could reasonably expect reporting systems to detect foreign bribery cases regularly"(OECD Review 1997, 87).

The review faced the problem of why suspicious transaction reports (STRs) in most of the examined countries did not lead to bribery investigations. It supposed that the FIUs and the reporting entities may not possibly be adequately aware of the money laundering and corruption link. Very few of them issue corruption-related examples in their typologies, with the notable exceptions of Belgium and the USA (World Bank 2007, *Strengthening Engagement*, p 11).

The OECD examined three common features of foreign bribery in its September 2007 paper *'Potential Obstacles to the Detention of Bribery of Foreign Public Officials by AML Systems'*. This differentiated the said offence from many other predicate offences that could significantly impact its detection on the AML nexus. They were identified as the offences of generation of two kinds of illicit funds: the payment of the bribe, and bribe proceeds. Secondly, there is the element of the offence occurring abroad, and lastly the relative newness of the offence. The paper pointed out the problems of detecting bribery that is concealed during a normal business interaction. These included dual criminality obstacles associated in international cooperation, plus awareness training in money laundering and corruption typologies in foreign bribery offences.

Other notable organisations that recognised this nexus include the Asian Development Bank/OECD Anti-Corruption for Asia and Pacific. In their 2007 and 2008 work plan, they expressed their intention to work with APG towards the nexus in the region (ADB/OECD 2007:6). It focused on *Mutual Legal Assistance, Extradition and Asset Recovery of Proceeds of Corruption in Asia and Pacific*. It indicated possible easier substitutes for mutual legal assistance in the corruption and money laundering nexus or intersection.

There is also the example of the conviction of a former Pakistan Prime Minister for money laundering in Switzerland. His assets were forfeited to Pakistan (ADB/OECD 2007 p 57). ADB/OECD indicated that one of the most effective alternatives to formal mutual legal assistance (MLA) in the link is good cooperation between FIUs. This was identified in its paper titled *'Denying Safe Havens to the Corrupt and Proceeds of Corruption'* (ADB/OECD 2006).

The corruption and money laundering nexus was also recognised by the Commonwealth as a big problem. In 2005, it brought out a report by its Commonwealth Expert Working Group which put forward some important notable recommendations. These included the removal of immunities for serving heads of states and political figures from prosecution. Countries should also have effective conviction-based, non conviction-based and confiscation measures as part of AML laws. Bilateral treaties should not be required in aiding assistance in this. Enhanced scrutiny should be applied to both foreign and domestic PEPS. Finally, mechanisms should be devised to deal with corruption by serving heads of states (World Bank 2007, p 13).

Asia-Pacific Economic Cooperation (APEC) under the "Bussan Declaration" emphasised the importance of promoting transparency. It focused on UNCAC's Articles 14, 23 and 24 respectively. FATF-style regional bodies (FSRBs) also focused on the issue, notably the Inter-governmental Action Group against Money Laundering in West Africa (GIABA) which commissioned a study on corruption and money laundering linkage. The study was contained in its paper, *Corruption and Money Laundering in West Africa: Assessment of Problem Status and Effectiveness of National and Regional Control Initiatives.* (see World Bank 2007, Strengthening Engagement, p 68). Interestingly, another FSRB – the Eastern and South African Anti-Money Laundering Group (ESAAMLG) – also assessed the link. This organisation, in its 2005-08 Strategic Plan, reiterated the need for a greater appreciation of corruption and money laundering link (ESAAMLG, 2005:12).

In Europe, the Council of Europe's Group of States against Corruption (GRECO) efforts in monitoring its 46 members' implementation of the Criminal and Civil Conventions on Corruption are a conspicuous indication of the importance of the corruption and money-laundering nexus. In its second round evaluation, it urged its members to amend their criminal codes. This would allow criminal law prosecutions in cases where corruption offences were committed abroad. The evaluation also urged more robust international cooperation in the repatriation of proceeds of crime, and corruption prevention measures that relate directly to AML issues, (World Bank 2007, "Strengthening Engagement", p 68).

However, money laundering does not occur in all corruption cases A writer indicated:

> *"Without money laundering, there would still be corruption, but bribes would have to be paid (and held) in cash or readily movable valuables such as gold, diamonds and art. Not all bribes received have to be laundered: some cash can be redistributed as ''grease' payments or simply spent. Corrupt public and corporate officials, as well as other criminals, often use laundering agents, relying on them to show discretion in handling funds-and to be uncooperative in any criminal investigations that arise"*(Levi, M (2001), ''Money Laundering: Private Banking Becomes Less Private'', in Hodess, R,Banfield, J and Wolf, T (Eds), *Global Corruption Report*, Transparency International, Berlin, p 206).

The nexus is also very noticeable where organised crime exists in tandem with the insecurity of corrupt political elites in developing and transitional countries.

4. INTERNATIONAL RESPONSES TO COMMERCIAL CORRUPTION AND MONEY LAUNDERING

As a result of the issues presented by the intersection of commercial corruption with money laundering, the international community has come up with some remedial responses. As already discussed, some of these are convention-based, while others are in form of soft laws (notably from FATF and OECD) which attain compliance status indirectly via the surveillance and conditionality requirements of the World Bank and the IMF.

The International Chamber of Commerce (ICC) is a notable NGO that since 1997 has urged countries to take concerted efforts against commercial corruption. It argues that this distorts competition in the same manner that public corruption causes incalculable injuries to the markets (See World Bank 2007 Strengthening Engagement p75). The organisation is a strong advocate of the criminalization of private sector bribery (Art 1, ICC, 2005 ed).

More importantly, ICC's Article 8 deals with accurate financial recording, auditing and independent audit committees. These are key measures that may prevent corporations being the subject of fraudulent and corrupt conduct but also as very significant vehicles for the crime of money laundering. This article can rightly be seen as a sort of intersection rule between corruption and money laundering. ICC has advocated consistently that the dichotomy that exists between private and public corruption is becoming very opaque as a result of privatisation. For this reason it believes that there should not be any difference between the two. To buttress its interest on the intersection, it sponsored a study of private bribery laws simply to promote its rules of conduct (see Gunter Heine and Thomas Rose, *Private Commercial Bribery: A Comparison of National and Supranational Legal Structures,* Max-Planck Institute for Foreign and International Criminal Law and ICC, Paris 2003). It recommended that the prohibition of private to private bribery has to be incorporated into the relevant OECD instruments. TI supported this.

It is generally accepted that private to private corruption that culminates in money laundering is an international concern. As a result of this, since the 1990s prohibitive measures have been incorporated in several international and regional instruments. In Europe for instance, there is the Council of Europe (COE) Criminal Law Convention on Corruption which came into force in July 2002. As at May 2011 it had 43 ratifying states (Arts 7-8,of the CoE Civil Law Convention on Corruption, deal with both active and passive bribery in the private sector).

Another important measure is the Council of Europe Civil Law Convention 1999. It entered into force on 1 November 2005 and was ratified by 28 states (Arts 1 and 2 of the COE Convention on Corruption require state parties to provide remedies to victims of private corruption).There is also the Framework Decision of Council of European Union on Combating Corruption in Private Sector 2003 (Art 2 requires Member States to criminalize both passive and active corruption in private sector, within profit and non-profit entities).

The African Union (AU) Convention on Preventing and Combating Corruption 2003 was signed by 21 parties. Article 5 clearly indicates that it requires state parties to establish as offences the types of conduct contained within Article 4. These are examples of conduct classified as both active and passive corruption in the private sector.

A significant convention that contains various articles dealing with private corruption and money laundering is UNCAC 2003. Article 12(1) elucidates this. UNCAC, Article 12 is inclusive of subsections that also facilitate AML objectives. For instance, it promotes transparency in the "identity of both legal and natural persons involved in establishments of cooperate entities" (see Art 12(2)(d)UNCAC). It also deals with the imposition of an internal auditing control that detects acts of corruption (Art 12(2)(f) UNCAC).The prohibition of certain acts, like the falsification and destruction of records, is also dealt with (Art 12(2)3 UNCAC). The tax deductibility of private bribes is also forbidden. This is simply in tandem with its prohibition on public bribes.

More significantly, Article 21 could be classified as the most important of the UNCAC provisions regarding private sector bribery. It can rightly be said that UNCAC has mirrored the illegitimate practices that ICC condemned (Art 21, UNCAC wording). However, it is not obligatory for state parties to criminalise private corruption due to the toning down of the text which was reached as a result of compromise. This is in contrast to the mandatory provisions of Article 16 on bribery of foreign public officials, and measures in Article 17 addressing embezzlement.

UNCAC requires signatories to set up AML supervisory arrangements. These have to include customer due diligence, establishment of beneficial ownership, and suspicious transaction reporting systems. Signatories should also consider setting up arrangements to monitor trans-border cash movements plus negotiable instruments. Relevant transaction information should also be included in electronic transfers. Parties should follow the standard of extant AML organisations and should demonstrate cooperation amongst law enforcement, judicial and financial regulatory bodies (Art 14 UNCAC). The mandatory criminalization of money laundering by signatories is also called for (Art 23 UNCAC).

Furthermore, UNCAC reacted to the intersection of corruption and money laundering in Article 52 by indicating

that accounts of PEPs are to be subjected to enhanced scrutiny by financial institutions. There has not been a conflating view on how to identify PEPs, but the ICC pointed out that the differences between private and public corruption should be disregarded. Private corruption can also involve the activities of PEPs. The corrupt proceeds are concealed and laundered, hence the intersection.

The FATF plays significant role in relation to the corruption and money laundering intersection. The organisation was created in 1989 in recognition of the threat posed to the financial stability by money laundering. It has also become the single most important international body in terms of formulating AML policies and developing international standards for disclosure and transparency for financial institutions through its Forty Recommendations. These have been endorsed by over 180 countries. The nine FATF Special Recommendations have been absorbed into the recent Forty Recommendations. The FATF has been evolving since its formation to combat financial crime and to keep pace with the intersection between corruption and money laundering.

In line with the call for criminalization of corruption and money laundering on the basis of Articles 7-8 in the Vienna and Palermo Conventions, FATF recommendation 3 called for countries to apply the crime of money laundering to all serious offences. This was with a view to including a range of predicate offences. Some key FATF recommendations of FATF that deal with the corruption and money laundering intersection on the basis that most corrupt proceeds end up being laundered are recommendations 10, 11, 12, 13, 14, 16, 18, 20 and 22 respectively.

Some interesting European Union initiatives have also been taken against money laundering. The Tampere EU Council in October 1999 stated:

> *"Money laundering is at the heart of organised crime. It should be rooted out wherever it occurs. The European Council is determined to ensure that concrete steps are taken to freeze, seize and confiscate the proceeds of crime."*

The European Union Convention on Mutual Assistance in Criminal Matters between the Member States, and the 2001 Protocol that came into force on 23 August 2005 and 5 October respectively, are vital. Provisions for spontaneous information exchange between competent authorities of Member States and the use of intercepted communications in their territories were made. The 2001 Protocol extended the scope to fiscal issues such as money laundering. The First EU Money Laundering Directive (91/308/EEC) and the Second Directive (2001/97/EC) were consolidated by the Third Directive (2005/60/EC). Importantly, the Directives and various conventions focused on the intersection points, for instance, customer due diligence or know your customer (KYC) aspects and reporting obligations.

The combined effect of the convention, the 2001 Protocol and the Third Directive is that tax advisers based in EU can now be subject to money laundering charges if they aid their EU-based clients to evade their taxes. There is also the European Convention that came into force on 2 October 1998 but started full activity on 1 July 1999. It now deals with all forms of international crime (See Annex to the European Convention).

The United Nations Political Declaration and Action Plan against Money Laundering 1998 is important (Resolution S-20/4D) and the UN Security Council Resolution 1373 (2001) and UN Security Council Resolution 1390 (2002) are seen as very relevant steps. There is also the Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime (Strasbourg Convention) (Council of Europe, ETC No 141 Strasbourg, 8 XI 1990).The Caribbean Financial Action Task Force is also important, with its 19 recommendations of 1990 and later the Kingston Declaration of 1992. The Basel Committee on Banking Supervision's Preventing Criminal Use of Bank System (1988) and its customer due diligence (2001) are vital.

5. ADEQUACY OF THE REGULATIONS FOR COMBATTING MONEY LAUNDERING AND CORRUPTION

5.1 The international soft law aspect

The international community has not sat on its hands, and has responded reasonably to tackle the problems posed by the intersection of corruption and money laundering. We have pointed out the various responses earlier in this article, and here will look further at how the system of regulations is influenced by soft laws.

International soft laws refer to the legal norms, principles, codes of conduct and transactional rules of state practice that are recognised in either formal or informal multilateral agreements. It needs to be recognised that soft law has the characteristics of presuming consent to the basic standards and norms of state practice. But generally, this is done without the necessary *opinio juris* required to form binding obligations under customary international law.

Put differently, they are international rules usually created by a group of specially affected states with the common intention of voluntarily observing the contents and adopting the rules into their national laws and obligations. But it can be said that it is the absence of legal obligations that provides the ammunition to the standard setters in the form of flexibility to respond rapidly to developments at the intersection points of corruption and money laundering.

Examples of soft laws that keep on evolving to tackle the

problems encountered at the intersection points are those emanating from the Basel Committee, OECD, ICC and FATF. The implementation of soft laws, especially those of the FATF, is enhanced by the surveillance and conditionality programmes of World Bank and IMF.

5.2 Basel Committee on Banking Regulation and Supervisory Practices

The above committee can rightly be classified to be one of the most influential financial standard-setting bodies. It exercises massive influence either directly or indirectly over the development of banking laws for most countries (Kern Alexander *et al* 138). The committee was set up in 1974 and comprised central bankers and bank regulators of the 13 G10 countries. They first met in Switzerland at the Bank for International Settlements (BIS).

In recognition of the problems associated with money laundering, which in most cases are as a result of corruption, the committee issued various documents to combat the problems at the intersection points. The Basel Committee can rightly be said to be the source from which other subsequent "soft law" organisations tactically copied and improved on research to minimise the effects of corruption and money laundering.

The committee issued a statement of principles in 1988 in recognition of the fact the criminals can infiltrate financial organisations, with the banks being the prime targets. This was a very significant step by the Committee to help prevent the use of the banks for money laundering (1985 159 CLR 1, pp 17-18).Major concerns included customer identification, legislative compliance, conforming to high ethical standards, and local laws and regulations. Issues of record keeping and systems, training of staff, and cooperation with national law enforcement organs without breach of customers' confidentialities were high on the agenda. This was seen as a major self-regulatory initiative.

In October 2001, the Basel Committee issued a significant paper on w customer due diligence for banks. The paper focused on verification and know your customer (KYC), with trans-jurisdictional perspectives (Bank for International Settlements (BIS), *Customer Due Diligence for Banks,* October 2001). This came into play as a result of divergent national standards which were seen as being inadequate. These two papers recognised that adherence to their proposals would go a long way to minimise the problems in corruption and money laundering identified at their intersection points.

5.3 Financial Action Task Force (FATF)

The FATF is the only international body set up with the sole purpose of fighting financial crime. It came into play in 1989 through G7 in recognition of the threats to financial stability posed by money laundering. Its original mandate was in broad terms to focus on the cross-border fight against money laundering. This also included standards that would lead nations to adopt the necessary legal and regulatory measures that would prevent the use of their financial set-ups for criminal purposes (FATF, 1990).

The FATF relied heavily on the work conducted by the Basel Committee, particularly in the area of CDD. It took this to another level in the fight against money laundering. The FATF has undergone a metamorphosis in reacting to corruption and money laundering through its recommendations in 1996, 2001, 2003, 2008 and 2012 respectively, which have been adhered to by more than 180 countries.

The most recently revised FATF Recommendations of 12 February 2012 now fully integrate counter-terrorist financing measures with anti-money laundering controls. The recommendations also introduced new measures in order to counter financing of the proliferation of mass destruction weapons, and better addressed the laundering of the proceeds of corruption and tax crimes. In fact, they also make very strong requirements for higher risk situations and do allow countries to embark on a more targeted risk based approach.

The FATF recommendations are rigorously assessed by its mutual valuation processes via the assessment processes of the IMF and the World Bank. Some of the key recommendations were identified earlier in this article.

5.4 IMF and World Bank

The IMF Executive Board called money laundering "a problem of global concern" that threatened to undermine the stability and integrity of the global financial markets (IMF, 2001a). The IMF Articles of Agreement empower it to oversee the international monetary system in order to ensure its effective operation. In doing this, the IMF exercises its treaty-sanctioned surveillance powers over countries exchange rate policies. These powers have been used to access member countries' compliance with international standards. (In 2001, the IMF called on its members to ratify and implement in full the UN instruments to counter terrorism. In 2002, the IMF and the World Bank started a joint assessment programme concerning the international standards initiated by the FATF and the Offshore Group of Banking Supervisors (OGBS). In 2003/04, requests were made from more than 100 countries to help them develop and set up institutional infrastructures to help fight money laundering and terrorism. A positive response was made to these requests. In April 2004 both the IMF and the World Bank agreed and adopted a more close knit and comprehensive approach in conducting assessments of international standards to prevent money laundering. It is submitted that without their "carrot and stick approach", the potency of some of the various regulations would have been

seriously undermined.

5.5 European Union Directives

The EU produced three Directives on prevention of the use of financial systems to tackle money laundering. The First Money Laundering Directive in 1991 was limited to credit and financial institutions, but members were encouraged to be more expansive. It was restricted to drug trafficking in accordance with the Vienna Convention.

There were certain limitations on the First Directive, which were addressed in the Second Directive. There were radical and extensive changes; non-financial sector businesses were included, and new EU entrants were required as a condition of admission to adopt the Directive.

The Third Directive (2005/60/EC) came into play in 2005. It contained more detailed requirements for oCDD, and indicated that this should be done on a risk- based approach. Articles 7 and 11 contained the main changes.

5.6 The Vienna and Palermo Conventions

The Vienna Convention of 1988 can arguably be classified as the mother of all other subsequent UN conventions on money laundering, and possibly corruption. The convention was directed towards drug-orchestrated money laundering issues, but members were encouraged to expand the scope. A comprehensive definition of money laundering is embedded in Article 111. The convention was ratified by more than 100 nations and came into effect in November 1990. It urged members to criminalise drug trafficking and money laundering; enact legislation to confiscate drug proceeds; implement measures to permit international assistance; and implement measures for courts to order financial organisations to make evidence available to enforcement agencies irrespective of issues of confidence. The Palermo Convention is perhaps the most significant treaty to address organised and financial crime. States are obliged to implement measures to combat money laundering (Art 7). They are expected to establish participation in organised crime, corruption and obstruction of justice and money laundering as offences. The convention recognised the intersection of corruption and money laundering by criminalising the proceeds in Article 6 and corruption in Article 8.

5.7 Wolfsberg Principles

The Wolfsberg Principles came into play due to international discontent in the 1990s that private banks were not viewed to be doing enough to combat money laundering and corruption. Ten international banks, that later increased to 12, formed the association working closely with Transparency International. They produced Anti-Money Laundering Principles for Private Banks, which first appeared in 2001 and were revised in May 2002.

It was in recognition of the fact that the proceeds of corruption can be used to fund terrorism by laundering them through the banking system that the Anti-Money Laundering Principles for Correspondent Banking were published in November 2002. Other notable publications included Guidance for Mutual Funds and Other Pulled Investment Vehicles. In 2007 the group in collaboration with TI and Basel Committee issued a statement against corruption (Wellens *et al* p 14). Although the Wolfsburg Principles are soft law, there are commercial and regulatory implications for private banks found to be non-compliant on account of risk management issues.

5.8 Egmont Group

This was founded in 1995 by various FIUs of different FATF nations. Article 41 1(b) and Article 58 of UNCAC are very relevant here. They aim to enhance communication amongst FIUs in the fight against global financial crime. The Egmont Group currently has over 100 members, including what was the Serious Organised Crime Agency (SOCA) in the UK. This has has now been subsumed into the National Crime Agency (NCA), which started operation in October 2013. A Memorandum of Undertstanding was established to share intelligence, but the intelligence is owned by the FIU that provides it and can only be made accessible to another FIU provided that the original FIU has independent status and is not part of the investigating authorities (http://www.egmontgroup.org).

5.9 Offshore Group of Banking Supervisors (OGBS)

The OGBS was formed in Basel, when the representatives of some offshore centres met with members of the Basel Committee on Banking Supervision. The organisation's objectives included the requirement for offshore centres to define their common grounds more clearly. They were also expected to participate in the definition and the implementation of international banking standards used in the cross-border supervision of banks, and respond to approaches made by other supervisory authorities, for assistance in prudent supervision of international banks. A condition of membership is that a clear political commitment has to be made to implement FATF rules.

5.10 Financial Stability Forum (FSF) and Commonwealth Secretariat

The G7 set up the Financial Stability Forum (FSF) in 1999 on the recommendations of the Tietmeyer Report. This brought together the national regulators, central banks, Treasury departments and financial institutions to tackle international financial issues on a more coordinated global basis (Kern *et al* p 74). The principal aim was to strengthen international cooperation and coordination in the areas of financial market

supervision and surveillance (Kern *et al* 74). FSF focused on corruption and money laundering, and has been given the tag of a "talk-shop" and a think tank with nowhere to go because unlike other soft law bodies like FATF and OECD it lacks the mandate to generate standards. The Commonwealth Secretariat has embarked on various activities. Some of these, focused on the corruption and money laundering intersection, have been especially targeted at developing countries. For example, it produced a model law in 1996 on the prohibition of money laundering. Its finance ministers agreed and endorsed a comprehensive and practical set of guardian notes for the financial sector enabling members to call into play effective anti-money laundering mechanisms. This has been revised at various times as a code of best practice, taking cognisance of the evolving patterns of FATF recommendations and IMF's methodology.

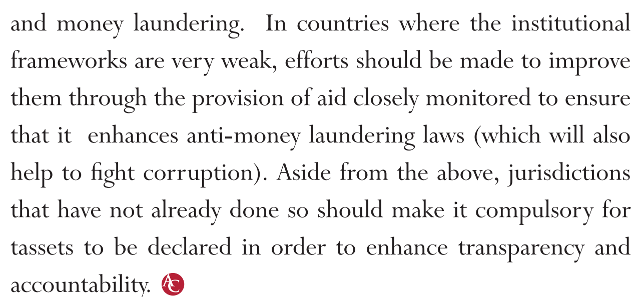
6. CONCLUSION

Corruption and money laundering were initially treated as separate issues in the international financial arena. However, more recently it has been realised the two processes have a close relationship arising from their intersection. The fact remains that most corrupt activities, pursued through private or public endeavours, would want to employ money laundering processes to hide their illicit funds in order to be able to reuse them without being detected.

Anti-money laundering responses were triggered at international level, and more significantly there were reactions in form of soft laws and convention-based mechanisms. Some of the soft laws like those created by the FATF, OECD, ICC and Basel Committee were backed by IMF and World Bank through their surveillance and compliance powers. This helped the soft laws to have a positive effect on various countries. However, the similarity in most of the responses was i the criminalisation of corruption and money laundering.

The fact still remains that irrespective of the responses, the menace is still with us. It is suggested that to minimise the effects of money laundering a more robust approach needs to be employed by the authorities. Since the IMF and World Bank pull the strings, they could require the soft laws to make institutions include the subject of corruption and money laundering as a compulsory module in appropriate professional and vocational training courses. This would help the awareness level further – something TI is doing a good job on.

Some banks and professionals help to aid or exacerbate the problem of corruption and money laundering. Every effort must be made to detect those responsible. Individual culprits must be struck off by their professional bodies, and bank licences revoked. The fines handed out to some banks are perhaps very meagre, taking into account the excessive profits that they make from their involvement in aiding corruption



and money laundering. In countries where the institutional frameworks are very weak, efforts should be made to improve them through the provision of aid closely monitored to ensure that it enhances anti-money laundering laws (which will also help to fight corruption). Aside from the above, jurisdictions that have not already done so should make it compulsory for tassets to be declared in order to enhance transparency and accountability.

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