

**FROM DRUGS TO TERRORISM: THE FOCUS SHIFTS IN THE
INTERNATIONAL FIGHT AGAINST MONEY LAUNDERING AFTER
SEPTEMBER 11, 2001**

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“11th September changed the face of money laundering. It was no longer seen as just the laundering of criminal proceeds, much of which came from the illegal drug trade, but as the means by which terrorists hide their revenue generating processes and gain access to their funds.”¹

I. INTRODUCTION

Money laundering, the process by which criminals hide, disguise, and legitimize their ill-gotten gains, is a daunting international problem.² The International Monetary Fund estimates that laundered money generates \$590 billion to \$1.5 trillion per year, which constitutes approximately two to five percent of the world’s gross domestic product.³ Before September 11, 2001, international anti-money laundering efforts were aimed at thwarting the proceeds of drug trafficking.⁴ Indeed, slowing down the global drug trade served as the impetus for the first international anti-money laundering measures.⁵ After September 11, 2001, the international community’s focus shifted from anti-drugs

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1. Jackie Johnson, *11th September, 2001: Will It Make a Difference to the Global Anti-Money Laundering Movement?*, 8 J. MONEY LAUNDERING CONTROL 9, 10 (2002).

2. See OFF. ON DRUGS AND CRIME, U.N., GLOBAL PROGRAMME AGAINST MONEY LAUNDERING, at http://www.unodc.org/unodc/en/money_laundering.html (last visited Sept. 3, 2003) [hereinafter GLOBAL PROGRAMME].

3. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, BASIC FACTS ABOUT MONEY LAUNDERING, at http://www.fatf-gafi.org/MLaundering_en.htm (last visited Jan. 19, 2004) [hereinafter BASIC FACTS]. The lower figure, \$590 billion, roughly equals the total output of an economy the size of Spain. *Id.*

4. Johnson, *supra* note 1, at 9 (stating that the growth of the drug trade and the inability of law enforcement to deal with its magnitude drove the institution of the global anti-money laundering movement).

5. GUY STESENS, MONEY LAUNDERING: A NEW INTERNATIONAL LAW ENFORCEMENT MODEL 11 (2000). Money laundering was first addressed by the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *opened for signature* Dec. 19, 1988, 28 I.L.M. 493 [hereinafter U.N. Convention Against Illicit Traffic].

to anti-terrorism.⁶ Rather than simply looking at funds with an illegal *source* (the drug trade), the international community also began to examine funds whose *purpose* (financing terrorism) was illegitimate.⁷

This Note will examine the status of anti-drug money laundering efforts post-September 11, 2001. First, the Note will discuss what money laundering is, why it is a problem of global concern, and how the money laundering process works. Second, this Note will look at what the international community is doing to combat money laundering and how the role of international organizations has expanded after September 11. Of particular interest are how the global standards for anti-money laundering were altered to delete all references to drugs after September 11, 2001 and how the United States changed its role from reluctant participant in multilateral anti-money laundering initiatives before September 11 to leader of the global anti-terrorism funding and money laundering effort post-September 11. Third, this Note will examine the progress of one jurisdiction, the Cayman Islands, in its efforts to adhere to the international community's numerous anti-money laundering measures and recommendations. Due to its formidable offshore financial sector, the Caymans play a significant role in the fight against money laundering.⁸ Finally, this Note argues that anti-drug money laundering efforts have fared better after September 11 because of increased attention and resources devoted to anti-terrorism money laundering. This section also suggests measures that countries should implement to strengthen the current anti-drug money laundering framework.

6. Johnson, *supra* note 1, at 10. While it is true that some drug trafficking proceeds go towards funding terrorist organizations, observers and this Note treat them as separate categories because many drug proceeds have no relation to terrorism. Indeed, "proceeds from drug trafficking would be seized or frozen even if they were not intended to finance terrorism." Ilias Bantekas, *The International Law of Terrorist Financing*, 97 AM. J. INT'L L. 315, 316 (2003); see also Mariano-Florentino Cuellar, *The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*, 93 J. CRIM. L. & CRIMINOLOGY 311, 318-320 (2003) (stating that "sponsors of terrorism may start with money that originates from non-criminal sources and is never in physical currency form" like the proceeds from a drug deal).

7. Johnson, *supra* note 1, at 10.

8. BUREAU FOR INT'L NARCOTICS AND LAW ENFORCEMENT, U.S. DEP'T OF STATE, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT (2002), <http://www.state.gov/documents/organization/8703.pdf> (last visited Sept. 11, 2004) [hereinafter INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT].

II. MONEY LAUNDERING -- WHAT IS IT, WHY DO WE CARE ABOUT IT, AND HOW IS IT DONE?

A. What is Money Laundering?

After completing a sale of cocaine, a dealer is left with “dirty money”⁹ in his hands. Because the money is evidence of his crime, he is susceptible to detection by law enforcement.¹⁰ More importantly to the trafficker, his profits could be seized.¹¹ The trafficker therefore attempts to disguise the “dirty money” as legitimate, or “clean,” money. That process is money laundering.¹²

Drug trafficking is big business. It accounts for \$400 billion in profits annually, or 8% of all international trade.¹³ Like any other business, a drug trafficking operation incurs many expenses, as the product must be produced, transported, and sold. If the profits from their operations could not be used legitimately (for example, to purchase homes or cars), traffickers would not be in business.¹⁴ Therefore, money laundering plays a critical part in a drug trafficking operation. Money laundering also provides “the protective shield” against law enforcement by thwarting authorities’ efforts to detect and confiscate drug profits.¹⁵ Thus, money laundering allows traffickers to continue funding their operations¹⁶ and to research and develop new ways of evading anti-money laundering measures.¹⁷

9. “Dirty money” is a term commonly used to refer to criminal proceeds that have yet to be disguised as legitimate. See GLOBAL PROGRAMME, *supra* note 2.

10. See OFF. ON DRUGS AND CRIME, U.N., THE MONEY LAUNDERING CYCLE, at http://www.unodc.org/unodc/money_laundering_cycle.html (last visited Sept. 3, 2003) [hereinafter THE MONEY LAUNDERING CYCLE].

11. *Id.*

12. ROGER C. MALANDER ET AL., CYBERPAYMENTS AND MONEY LAUNDERING 5 (1989), <http://www.rand.org/publications/MR/MR965/MR965.pdf/MR965.chap2.pdf> (last visited Sept. 3, 2003).

13. Bruce Zagaris & Scott Ehlers, *Drug Trafficking & Money Laundering*, FOREIGN POL’Y IN FOCUS, May 2001, at 1, <http://www.fpip.org/pdf/vol6/18iflaunder.pdf> (last visited Sept. 3, 2003).

14. See Edward H. Jurith, *International Cooperation in the Fight Against Money Laundering*, 9 J. OF FIN. CRIME 212, 212 (2002); Michael Levi, *Money Laundering and Its Regulation*, 582 ANNALS AM. ACAD. POL. & SOC. SCI. 181, 182-83 (2002).

15. OFF. OF NAT’L DRUG CONTROL POL’Y, ONDCP FACT SHEET: INT’L MONEY LAUNDERING AND ASSET FORFEITURE, at <http://www.whitehousedrugpolicy.gov/publications/international/factsht/laundering.html> (last visited Sept. 3, 2003) [hereinafter ONDCP FACT SHEET].

16. *Id.* “Money laundering is the lifeblood of the drug syndicate.” STESENS, *supra* note 5, at 8 (quoting former U.S. Attorney General Edwin Meese).

17. Zagaris & Ehlers, *supra* note 13, at 1.

B. Why Do We Care About Money Laundering?

If money laundering is such a vast and daunting criminal operation, why does the international community even bother trying to stop it? While it is true that laundered money eventually returns to the legitimate economy, the harmful and long-term consequences of money laundering outweigh the short-term benefit of a cash infusion into the economy. Most fundamentally, money laundering allows criminals to profit from their crimes; therefore, curbing money laundering eliminates those profits.¹⁸ In addition, the United Nations has recognized four major consequences of money laundering: it is bad for business, bad for development, bad for the economy, and bad for the rule of law.¹⁹

1. Money laundering furthers (but also exposes) criminal activity

Money laundering enables criminal organizations to realize profits from committing crime²⁰ and to fund future criminal activity.²¹ Removing the financial incentive to commit crime and the financial ability to commit future crimes plays a major role in crime prevention.²² In addition, fighting money laundering aids in the fight against crime because of the paper trail created by money laundering.²³ Investigating the money laundering aspect of such crimes as embezzlement, robbery, or fraud leads law enforcement to the source of the underlying criminal activity.²⁴ Thus, targeting money laundering is often “the only way” to retrieve and return stolen money to victims.²⁵

18. BASIC FACTS, *supra* note 3.

19. OFF. ON DRUGS AND CRIME, U.N., INTRODUCTION TO MONEY LAUNDERING, at http://www.unodc.org/unodc/en/money_laundering.html (last visited Sept. 3, 2003) [hereinafter INTRODUCTION TO MONEY LAUNDERING].

20. BASIC FACTS, *supra* note 3.

21. ONDCP FACT SHEET, *supra* note 15; *see also* Levi, *supra* note 14, at 183 (stating that money laundering “facilitates crime by capacitating crime groups and networks to self-finance, diversify, and grow.”).

22. *See* BASIC FACTS, *supra* note 3.

23. *Id.*

24. *Id.*

25. *Id.*

2. Money laundering is bad for business

Financial institutions and businesses rely on their good reputations to gain more business.²⁶ If those institutions develop a reputation for dealing with drug traffickers who use their business to launder money, the institutions' ability to build relationships with legitimate businesses decreases, as does their prestige.²⁷ Encouraging or participating in repeated laundering activity could also draw institutions into the criminal network.²⁸ Additionally, money laundering causes other harmful effects on business, including "prudential risks to bank soundness, contamination effects on legal financial transactions, and increased volatility of international capital flows and exchange rates."²⁹ Free and legitimate business is jeopardized because it requires a free and competitive market to survive; money laundering undermines such a market.³⁰

3. Money laundering is bad for the economic growth of developing countries

Money laundering impedes a country's commercial economic development.³¹ Many small, developing countries use the financial services sector as a quick way to raise funds³² and diversify their economies.³³ In order to

26. INTRODUCTION TO MONEY LAUNDERING, *supra* note 19.

27. *Id.*; *see also* Levi, *supra* note 14, at 183-84 (stating that money laundering "can have a corrosive impact on financial institutions" and is therefore harmful to the country's financial system because money laundering "creates serious reputational risk").

28. BASIC FACTS, *supra* note 3.

29. *Id.*

30. For example, Organization of Economic Cooperation and Development's spokesperson Nicholas Bray stated that "[c]ompetition between financial service providers should be based on quality and price, rather than on the basis of non-transparent practices that encourage tax evasion." Keri Geiger, *An Inconsistent Response: Caribbean Nations with Substantial Offshore Financial Sectors Have Not Responded Uniformly to International Efforts to Crack Down on Money Laundering and Tax Evasion*, LATINFINANCE, Apr. 1, 2002, at 35, 35, 2002 WL 15266515. When forced to compete with banks in jurisdictions with secrecy laws, banks located in countries that crack down on money laundering risk becoming uncompetitive in the global marketplace. *See Through the Wringer: The Challenge of Money Laundering: Banks are Doing More Than Ever to Clamp Down on Money Laundering. But is it Enough?*, ECONOMIST, Apr. 14, 2001, 2001 WL 7318519 [hereinafter *Through the Wringer*].

31. Paulina L. Jerez, *Proposed Brazilian Money Laundering Legislation: Analysis and Recommendations*, 12 AM. U. J. INT'L L. & POL'Y 329, 330 (1997).

32. *Through the Wringer*, *supra* note 30. The offshore financial services market exceeds over 50% of some small countries' gross domestic product. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-9.

develop a strong financial sector, these countries become “ideal financial havens” by implementing strong bank secrecy laws that hinder international efforts to investigate money launderers.³⁴ Prosecution of money laundering crimes is therefore impeded, and social instability “thwart[s] legal commercial development.”³⁵ These developing countries use “‘dirty money’ as a short-term engine of growth” and then find that legitimate businesses do not wish to invest in a country with such unstable dealings.³⁶ As the amount of illegitimate money increases, the more “entrenched” organized crime becomes in a country’s economy.³⁷ Therefore, money laundering harms the development of growing nations because long-term growth investors are hesitant to invest their money in economies fueled by illicit funds.³⁸

4. Money laundering is bad for the global and national economies

When countries harbor money launderers, global and national economies are affected.³⁹ Money laundering “can erode and distort competition, credit institutions, markets, and exchange and interest rates.”⁴⁰ These negative effects on business, institutions, and markets in turn have a negative impact on the world economy. As noted previously, money laundering removes between \$500 billion and \$1 trillion from the legitimate economy annually.⁴¹ Those billions of dollars, which could have been spent in the legitimate economy, instead detract from the world’s economic growth and make interest rates and demands for cash more

33. See *IMF Paper Warns Caribbean Countries About Going into Offshore Financial Business*, BBC MONITORING, Aug. 6, 2002, 2002 WL 25159150 (describing a Working Paper released by the IMF cautioning countries that are “looking for ways to diversify their small and vulnerable economies” about the downsides of entering the offshore financial services sector); *Small States, Big Money: The Pressures on the Tiddlers of the Caribbean*, ECONOMIST, Sept. 23, 2000, 2000 WL 8143720 (stating that “many Caribbean islands have seen financial services as a way to diversify.”).

34. INTRODUCTION TO MONEY LAUNDERING, *supra* note 19; See INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-8 to XII-9.

35. Zagaris & Ehlers, *supra* note 13, at 3.

36. INTRODUCTION TO MONEY LAUNDERING, *supra* note 19.

37. BASIC FACTS, *supra* note 3.

38. *Id.*

39. See *Through the Wringer*, *supra* note 30 (stating that money laundering is “intrinsicly global” because all countries must implement the same measures, or the compliant countries’ economies will be become uncompetitive “in the global marketplace”).

40. Edgardo Rotman, *The Globalization of Criminal Violence*, 10 CORNELL J.L. & PUB. POL’Y 1, 13 (2000).

41. OFF. OF DRUGS AND CRIME, U.N., MONEY LAUNDERING AND GLOBALIZATION, at http://www.unodc.org/unodc/en/money_laundering.html (last visited Sept. 3, 2003) [hereinafter MONEY LAUNDERING AND GLOBALIZATION].

volatile.⁴² Given the globalization of the world's economy, each country's financial health affects other countries' financial well-being. In addition, governments spend enormous amounts of money every year to combat money laundering. This money could be allocated to fight other crimes, such as human trafficking, if money laundering were not such a vast problem.⁴³

5. Money laundering is bad for the rule of law

The societal consequence of money laundering may sound abstract, but it poses a real threat in many parts of the world. Money laundering furnishes criminal organizations with their profits, which may be used to bribe officials.⁴⁴ Such corruption affects the everyday lives of many people by creating an environment where criminal activity permeates a country's economic and political system.⁴⁵ Criminal influence can hinder a country's transition to a more democratic form of government.⁴⁶ In addition, trafficking organizations recruit legitimate businessmen to launder the dirty money, turning businessmen into criminal accomplices.⁴⁷ Money launderers also form networks with international crime operations, thereby strengthening global organized crime.⁴⁸ Thus, money laundering breeds corruption and violence and undermines the rule of law.⁴⁹

42. INTRODUCTION TO MONEY LAUNDERING, *supra* note 19; BASIC FACTS, *supra* note 3. Instability to international markets results, for example, from a large stock of laundered capital being transferred from one jurisdiction to another. Peter Alldridge, *The Moral Limits of the Crime of Money Laundering*, 5 BUFF. CRIM. L. REV. 279, 306 (2001). The total assets controlled by a trafficking organization would be so large as to cause exchange and interest rates to fluctuate on a domestic level, and the global integration of financial markets makes a domestic problem an international problem as well. *Id.* Money laundering is inefficient in an economic sense because it allocates dirty money around the world on the basis of the ease of avoiding controls, not on the basis of expected rates of return. *Id.*

43. Zagaris & Ehlers, *supra* note 13, at 3.

44. See BASIC FACTS, *supra* note 3.

45. *Id.* Because corruption erodes respect for the law and norms "[t]he corrupting power of the drug trade does strange things to an otherwise decent people." Ivelaw L. Griffith, *Illicit Arms Trafficking, Corruption, and Governance in the Caribbean*, 15 DICK. J. INT'L L. 487, 503-504 (1997) (quoting Anthony Maingot, *Laundering the Gains of the Drug Trade: Miami and Caribbean Tax Havens*, 30 J. INTERAMER. STUD. & WORLD AFF. 173 (1988)).

46. BASIC FACTS, *supra* note 3. In fact, countries in which the influence of drug traffickers is particularly dominant are sometimes referred to as "narco-cracies." STESSENS, *supra* note 5, at 10-11.

47. STESSENS, *supra* note 5, at 13.

48. Rotman, *supra* note 40, at 13.

49. See Zagaris & Ehlers, *supra* note 13, at 3.

C. Cleaning “Dirty Money”: The Laundry Cycle and Law Enforcement Obstacles

The cycle of money laundering has three steps: placement, layering, and integration.⁵⁰ At each step, launderers take action to subvert existing impediments to money laundering.⁵¹

1. Placement

Placement, the first step in the money laundering process, occurs when dirty money first enters the legitimate financial system by being deposited into a financial institution.⁵² This initial step is the most vulnerable to law enforcement detection because it involves the physical disposal of cash.⁵³ While cash is anonymous – an attractive quality for criminal proceeds – it is bulky and difficult to physically transport.⁵⁴ For example, 44 pounds of cocaine worth \$1 million equates to 256 pounds of street cash worth the same amount; the cash weighs more than six times the drugs.⁵⁵ Transferring that same \$1 million through a series of international transactions is much simpler and more discreet than the logistical nightmare of moving that much cash. In addition, cash is easily lost, stolen, or destroyed.⁵⁶

Even where the placement is effected by wire transfer or other non-cash transaction, money launderers face additional problems in the placement stage: financial institution policies and reporting requirements.⁵⁷ In recent years, countries have recognized that financial institutions⁵⁸ are in a unique position to

50. THE MONEY LAUNDERING CYCLE, *supra* note 10.

51. *See id.*; *see also* MALANDER, *supra* note 12, at 5 (describing current legal obstacles to money laundering activities and what money launderers do to bypass those obstacles).

52. THE MONEY LAUNDERING CYCLE, *supra* note 10.

53. MALANDER, *supra* note 12, at 5.

54. *Id.*

55. *Id.*

56. THE MONEY LAUNDERING CYCLE, *supra* note 10. For instance, \$40 million in cash was found rotted in a California basement because its owner, a Colombian drug kingpin, could not move it through the laundry cycle quickly enough. Henry B. Gonzalez, *New and Continuing Challenges in the Fight Against Money Laundering*, 20 FORDHAM INT'L L.J. 1543, 1545 (1997).

57. MALANDER, *supra* note 12, at 5-6.

58. Note that the term “financial institutions” does not simply include banks. Rather, “financial institutions” encompasses a broad range of institutions. The Financial Action Task Force’s lengthy definition of “financial institutions” includes “any person or entity” who performs any of thirteen functions, including banking, lending of credit, leasing, transferring money, issuing/managing means of payment (such as credit cards), issuing

combat money laundering⁵⁹ because traffickers use them to deposit illegal profits.⁶⁰ Therefore, countries have instituted programs that require financial institutions to “know their customers,”⁶¹ meaning banks and other institutions should only conduct transactions, such as accepting deposits from or opening accounts for, customers who show identification.⁶² By requiring potential launderers to verify their identity and thus relinquish their anonymity, banks aid in deterring money laundering.⁶³

Also, many jurisdictions have implemented reporting requirements for financial institutions.⁶⁴ In the United States, for example, financial institutions must file Currency Transaction Reports for each transaction that involves more than \$10,000.⁶⁵ Additionally, individuals must file a Report of International Transportation of Currency and Monetary Instruments when they transport more than \$10,000 into or out of the United States.⁶⁶ A final measure that financial institutions must implement in many countries is filing Suspicious Activity Reports (SARs) when they suspect a transaction is illegal.⁶⁷

To counter those measures, however, launderers engage in “structuring.”⁶⁸ This occurs when traffickers hire many people to make small deposits totaling slightly less than the mandatory reporting amount.⁶⁹ Launderers

financial guarantees, managing portfolios, investing/administering funds on behalf of another person, trading in money market instruments, underwriting/placing life insurance, and changing currency. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, THE FORTY RECOMMENDATIONS 13 (2003), http://www.fatf-gafi.org/pdf/40Recs-2003_en.pdf (last visited Jan. 19, 2004) [hereinafter THE FORTY RECOMMENDATIONS].

59. See FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, REPORT OF FEB. 6, 1990, reprinted in INTERNATIONAL EFFORTS TO COMBAT MONEY LAUNDERING 4, 17 (W. C. Gilmore ed., 1992) [hereinafter FATF 1990 REPORT] (noting that financial institutions have the ability to “screen undesirable customers”).

60. See MALANDER, *supra* note 12, at 5.

61. Cuellar, *supra* note 6, at 382. These laws are often called “know-your-customer” laws. *Fighting Dirty Money: Governments Claim Progress in the War Against Money Laundering*, ECONOMIST, June 23, 2001, 2001 WL 7319487 [hereinafter *Fighting the Dirt*].

62. STESSENS, *supra* note 5, at 146. This know-your-customer policy is necessary given the sheer volume of financial transactions that occur everyday. For example, over 465,000 wire transfers (totaling more than \$2 trillion) occur daily in the United States. Zagaris & Ehlers, *supra* note 13, at 2.

63. STESSENS, *supra* note 5, at 146.

64. As of March 2002, 100 out of 181 jurisdictions had requirements that financial institutions record large transactions. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-63 to XII-71.

65. MALANDER, *supra* note 12, at 6.

66. *Id.*

67. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-63 to XII-71.

68. Cuellar, *supra* note 6, at 327-328.

69. *Id.* Some also refer to this process as “smurfing.” MALANDER, *supra* note 12, at 7.

will also have family, friends, or acquaintances who are trusted in the community conduct business on the launderers' behalf, thereby disguising the source of the illicit funds.⁷⁰ Other launderers use a cash-intensive business, such as a restaurant, to justify large deposits that exceed reporting requirements.⁷¹

2. Layering

The second step of the money laundering process, layering, occurs when the launderer separates the illicit proceeds from their source through a series of financial transactions.⁷² This step is called "layering" because the layers of financial transactions disguise the drug proceeds' owner and obscure the money trail.⁷³ Layering is the most international and complex step of the laundry cycle because funds are typically moved from one foreign account to another.⁷⁴ The Cayman Islands' primary connection with money laundering is in the layering stage, due to the Caymans' large offshore financial sector.⁷⁵

Law enforcement finds that detecting money laundering is particularly difficult when the countries involved in the layering process are tax havens or strict bank secrecy jurisdictions.⁷⁶ An example of a layering process is when a money launderer sends funds electronically from one bank to a different bank in another country, then invests and moves the funds within an overseas market to avoid detection.⁷⁷ Each transaction that a launderer makes creates an additional layer that law enforcement must analyze in order to follow the paper trail, and "[t]he deeper the 'dirty money' gets into the international banking system, the more difficult it is to identify the origin."⁷⁸

3. Integration

The third and final step of the money laundering process is integration.⁷⁹ During integration, the illicit funds return to the legal economy and appear as

70. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, REPORT ON MONEY LAUNDERING TYPOLOGIES 3 (2003), http://www.fatf-gafi.org/pdf/TY2003_en.pdf (last visited Oct. 23, 2003).

71. Cuellar, *supra* note 6, at 328.

72. MALANDER, *supra* note 12, at 5.

73. Zagaris & Ehlers, *supra* note 13, at 1.

74. THE MONEY LAUNDERING CYCLE, *supra* note 10.

75. See INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-96 to XII-97.

76. MALANDER, *supra* note 12, at 5.

77. THE MONEY LAUNDERING CYCLE, *supra* note 10.

78. MONEY LAUNDERING AND GLOBALIZATION, *supra* note 41.

79. THE MONEY LAUNDERING CYCLE, *supra* note 10.

legitimate business proceeds.⁸⁰ For example, after being deposited in a U.S. bank account and wire transferred through Cayman financial institutions, laundered drug proceeds arrive in a bank account in Colombia. The Colombian trafficker then withdraws the money from the bank account and spends it in the legitimate economy on such items as cars or guns.

The paper trail created through the layering process complicates law enforcement's task of determining which funds within the legitimate economy are illegal.⁸¹ Unless law enforcement has established an audit trail during the first two stages of the laundry cycle, the funds' illicit origin will not be discovered.⁸² For this reason, the launderer may use the funds for whatever purpose he chooses, including buying luxury goods, such as automobiles or aircraft, and investing in legitimate business enterprises,⁸³ such as tourism or real estate ventures.⁸⁴

D. Law Enforcement Challenges in the Laundry Cycle

Three main challenges to detecting money laundering exist. First, money is laundered in an inordinate number of ways.⁸⁵ Second, just as law enforcement officials familiarize themselves with current laundering methods, traffickers develop new methods.⁸⁶ And third, countries have responded to the international community's call to thwart money laundering differently,⁸⁷ creating inconsistencies in the global enforcement effort.

The first challenge is that there are an "infinite" number of ways to launder money.⁸⁸ Laundering schemes range from simple to complex.⁸⁹ They can involve few or many countries.⁹⁰ They encompass traditional and non-traditional financial transactions.⁹¹ The schemes involve "currency exchange houses, stock brokerage houses, gold dealers, casinos, automobile dealerships, insurance companies, and trading companies,"⁹² as well as gems and precious metals, "private banks, correspondent banks, offshore banks, internet banking and gaming, international business companies, international trusts, wire transfers,

80. MALANDER, *supra* note 12, at 6.

81. *Id.*

82. *Id.*

83. THE MONEY LAUNDERING CYCLE, *supra* note 10.

84. Zagaris & Ehlers, *supra* note 13, at 1.

85. *Id.*

86. *Id.*

87. Jackie Johnson, *In Pursuit of Dirty Money: Identifying Weaknesses in the Global Financial System*, 5 J. MONEY LAUNDERING CONTROL 122, 129, 131 (2001).

88. Zagaris & Ehlers, *supra* note 13, at 1.

89. MALANDER, *supra* note 12, at 7.

90. *See id.*

91. *Id.* at 7.

92. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-4.

concentration accounts, automated teller machines, pass-through accounts, mortgages, and brokerage accounts.”⁹³ Even pre-paid telephone cards are used as a way to disguise money laundering activity.⁹⁴

The second challenge in detecting the money laundry cycle is the vast amount of resources that traffickers can devote to innovative money laundering techniques. Just when law enforcement discovers and takes steps to block a trafficking organization’s laundering scheme, the organization “switch[es] methods, industries, geographic routes, intermediaries, [and] technologies.”⁹⁵ With their seemingly never-ending cash flow, traffickers hire people to use the newest technology, intelligence, and laundering schemes.⁹⁶ These innovations allow traffickers to keep one step ahead of law enforcement,⁹⁷ and the money laundering battle continues.

The third major challenge to detecting the money laundry cycle is inconsistency among nations’ anti-money laundering efforts. Through the international organizations discussed in Part III, *infra*, most countries have implemented anti-money laundering measures.⁹⁸ The amount of resources actually allocated to enforcing those laws, however, varies greatly between countries.⁹⁹ Many smaller countries receive aid and training from international organizations and other countries, including international asset sharing programs,¹⁰⁰ but this too is inconsistent.¹⁰¹ Such varying responses to money

93. Zagaris & Ehlers, *supra* note 13, at 1-2.

94. Law enforcement estimates that anywhere from \$300,000 to \$50 million have been laundered by phone card sale businesses, which are expected to have a large amount of legitimate cash flow. See INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-24 to XII-25.

95. Zagaris & Ehlers, *supra* note 13, at 1.

96. *Id.*

97. *Id.* “[L]ooking for evidence of money laundering is not merely like looking for a needle in a haystack, but rather for ‘a needle in a needlestack.’” *Through the Wringer*, *supra* note 30.

98. As of March 2002, 137 out of 181 countries/jurisdictions had criminalized the act of money laundering and 118 out of 181 countries/jurisdictions had established a system of identifying and forfeiting assets. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-63 to XII-71.

99. See *id.* at XII-44.

100. For example, the U.S. asset sharing program, which shares assets with countries that facilitate the forfeiture of criminal proceeds from drug trafficking and money laundering, shared over \$21 million in forfeited laundering proceeds to countries such as the Cayman Islands, Honduras, Mexico, Switzerland, and Panama to assist in their investigations of money launderers from 1994 to 2001. *Id.* at XII-43. The goal of the asset sharing program is to provide a financial incentive for countries to assist in the international fight against drugs and money laundering. See *id.* at XII-42.

101. Inconsistency occurs because not all countries receive assets, because the country implementing the asset sharing program chooses with which countries it will share, and because the amounts given to different countries varies widely. The United States, for

laundering among countries is a significant challenge because launderers seek out and conduct their illegal operations in countries with weak anti-money laundering regimes.¹⁰² The international money laundering effort is only as strong as its weakest link.

III. THE INTERNATIONAL LEGAL FRAMEWORK FOR COMBATTING MONEY LAUNDERING

The genesis of the international community's war against money laundering was the mounting global drug crisis in the 1980s.¹⁰³ The magnitude of the international drug trade and its resulting profitability drove the United Nations to adopt a pledge to bring an end to money laundering in 1988.¹⁰⁴ That pledge, the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,¹⁰⁵ served as the impetus for a number of international organizations whose mission is to thwart money laundering, including the Financial Action Task Force, regional Financial Action Task Forces, and the Egmont Group.¹⁰⁶

While there are a number of international anti-money laundering organizations, their recommendations, policies, and programs are merely "soft law," not binding international law.¹⁰⁷ The effectiveness of the organizations therefore relies on country compliance with international "soft law" recommendations.¹⁰⁸ The principal organizations are the Financial Action Task Force, regional Financial Action Task Forces, the Egmont Group, the International Monetary Fund, and the United Nations. Each arose "primarily within a drug trafficking context"¹⁰⁹ and before September 11, 2001.

example, transferred over \$1.6 million to Liechtenstein and only slightly more than \$14,000 to the Cayman Islands in 2001. *Id.* at XII-43.

102. *See* STESSENS, *supra* note 5, at 428-30.

103. *Id.* at 11.

104. Jackie Johnson & Y.C. Desmond Lin, *Money Laundering: Has the Financial Action Task Force Made a Difference?*, 10 J. FIN. CRIME 7, 8 (2002).

105. U.N. Convention Against Illicit Traffic, *supra* note 5. The Convention was opened for signature in Vienna on December 20, 1988.

106. *See* STESSENS, *supra* note 5, at 20.

107. *Id.* at 15. The reason global anti-money laundering measures are in the form of soft law appears to be due both to custom and to the absence of a "formal international legislator." Money laundering was initially fought by banks in the form of internal regulation rather than by government regulation. Also, because individual governments, not a singular international body, create anti-money laundering legislation, soft law establishes the international standard for the individual country's anti-money laundering laws. *See id.* at 15-16.

108. *See id.* at 15-16.

109. INTERNATIONAL EFFORTS TO COMBAT MONEY LAUNDERING ix (W. C. Gilmore ed., 1992).

A. Financial Action Task Force

In 1989, the G7 group of nations¹¹⁰ met in Paris and established the Financial Action Task Force, or FATF.¹¹¹ The FATF's charge was to examine anti-money laundering measures, particularly those regarding illicit funds from the drug trade.¹¹² From that summit came the FATF's Forty Recommendations, "[t]he crown jewel of soft law" on money laundering.¹¹³ Indeed, the FATF "is widely recognized by governments and international organizations as the world's preeminent counter-laundering body, and its policies are looked to as a source of customary international law."¹¹⁴

1. FATF's Forty Recommendations

110. The G7, or Group of Seven, consisted of the United States, Japan, Germany, France, United Kingdom, Italy, and Canada, as well as the Commission of the European Communities. Eight other countries (Sweden, Netherlands, Belgium, Luxembourg, Switzerland, Austria, Spain, and Australia) were also invited at the 1989 summit to join FATF. FATF 1990 REPORT, *supra* note 59, at 4. Currently, FATF membership includes those original 15 countries and the European Commission, as well as 15 additional countries (Argentina, Brazil, Denmark, Finland, Greece, Hong Kong/China, Iceland, Ireland, Mexico, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, and Turkey) and the Gulf Co-Operation Council. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, MEMBERS AND OBSERVERS, at http://www.fatf-gafi.org/Members_en.htm (last visited Jan. 19, 2004) [hereinafter MEMBERS AND OBSERVERS].

111. STESENS, *supra* note 5, at 17.

112. Johnson & Lin, *supra* note 104, at 8. The G7 stated that the FATF's "mandate is to assess the results of cooperation already undertaken in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventive efforts in this field, including the adaptation of the legal and regulatory systems so as to enhance multilateral judicial assistance." Group of 7 Economic Declaration, July 16 1989, DEP'T STATE BULLETIN, Sept. 1989, *reprinted in* INTERNATIONAL EFFORTS TO COMBAT MONEY LAUNDERING, *supra* note 109, at 3.

113. STESENS, *supra* note 5, at 17.

114. Jesse S. Morgan, Note, *Dirty Names, Dangerous Money: Alleged Unilateralism in U.S. Policy on Money Laundering*, 21 BERKELEY J. INT'L L. 771, 782 (2003).

Issued by the FATF in 1990,¹¹⁵ the Forty Recommendations are “designed to provide a comprehensive strategy for action against money laundering.”¹¹⁶ The Recommendations address all institutions that affect or are affected by money laundering, including financial institutions, law enforcement, legislative bodies, and international authorities.¹¹⁷ They are intended to be flexible so as to allow individual countries’ governments to implement the guidelines according to their particular constitutional and legal frameworks.¹¹⁸

The first, and most fundamental, of the Forty Recommendations is that governments should criminalize the act of money laundering itself, not just predicate offenses, such as drug trafficking.¹¹⁹ Furthermore, money laundering should be included in a government’s range of serious offenses in order to have a maximum deterrent effect.¹²⁰ Countries should also provide adequate resources to law enforcement to investigate, identify, and confiscate illicit criminal proceeds.¹²¹ In addition, countries should establish a Financial Intelligence Unit (FIU) and designate specific law enforcement authorities that are responsible for anti-money laundering efforts.¹²² An FIU serves as a national agency whose sole mission is to coordinate a country’s anti-money laundering efforts by receiving, analyzing, and referring (when appropriate) suspicious activity reports submitted by financial institutions, and by disseminating information on current money laundering trends and activities to local law enforcement.¹²³

115. The Forty Recommendations have been revised twice since 1990: first in 1996 to keep up with changes in money laundering trends and again in 2003 following the global response to September 11, 2001. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, MORE ABOUT THE FATF AND ITS WORK, at http://www.fatf-gafi.org/AboutFATF_en.htm (last visited Jan. 19, 2004) [hereinafter MORE ABOUT THE FATF]. For the most part, the changes to the Recommendations have been expansions on ideas in the original version rather than major revisions; for this reason, this Note will use the most current – 2003 version – of the Forty Recommendations. The most important differences between the Forty Recommendations pre- and post- September 11, 2001 will be highlighted in Part IV, *infra*.

116. Johnson & Lin, *supra* note 104, at 8.

117. See FATF 1990 REPORT, *supra* note 59, at 15, 17, 20, 22.

118. MORE ABOUT THE FATF, *supra* note 115.

119. THE FORTY RECOMMENDATIONS, *supra* note 58, at 1. This is Recommendation 1.

120. *Id.* The FATF provides for variation in defining a “serious offense,” depending on the country’s framework for criminal sanctions. However, the FATF recommends a sentence of at least six months to a year imprisonment. *Id.*

121. *Id.* at 2. This is Recommendation 3.

122. *Id.* at 8. These are Recommendations 26 and 27.

123. See THE FORTY RECOMMENDATIONS, *supra* note 58, at 8; ONDCP FACT SHEET, *supra* note 15. This is Recommendation 26. In an effort to address corruption within law enforcement, Recommendation 30 reminds countries to “have in place processes to ensure that the staff of those authorities are of high integrity.” THE FORTY RECOMMENDATIONS, *supra* note 58, at 9.

The majority of the Forty Recommendations addresses regulatory changes and efforts that financial institutions should make to prevent money laundering.¹²⁴ First, countries should implement legislation governing secrecy within financial institutions, and financial institutions should obey those laws.¹²⁵ Stringent bank secrecy laws, those that keep clients' identities confidential from law enforcement,¹²⁶ are usually the hallmark of an offshore financial haven for money launderers because law enforcement cannot identify the source of the illicit funds.¹²⁷ Therefore, transparency in financial dealings is one of the most important aspects of the anti-money laundering legal framework.

Also, financial institutions should know who their clients are, verify client identities, and refuse to accept funds from unknown or anonymous sources.¹²⁸ Financial institutions should keep records on clients for at least five years so that law enforcement can access client information.¹²⁹ Institutions should also "pay special attention to all complex, unusual[ly] large transactions."¹³⁰ Financial institutions should report any activity that they believe is suspicious to the government's FIU.¹³¹ This final Recommendation is key, for a government's ability to investigate and confiscate illicit proceeds depends directly on the private sector's compliance with banking laws.¹³²

The final portion of the Forty Recommendations addresses international cooperation. First, countries that are members of the FATF should take steps to meet all Recommendations.¹³³ Also, countries should provide as much assistance to other countries' anti-money laundering efforts as possible.¹³⁴ Such assistance includes responding promptly to a country's request for the freezing or seizing of assets and extraditing an individual for prosecution of money laundering crimes.¹³⁵

2. Implementation of International Anti-Money Laundering Measures

124. The financial institutions portion of the Forty Recommendations, one of four portions, consists of 22 of the Forty Recommendations. THE FORTY RECOMMENDATIONS, *supra* note 58, at 2-8.

125. *Id.* at 2. This is Recommendation 4.

126. *See* INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-5, XII-57.

127. *See* MALANDER, *supra* note 12, at 5.

128. THE FORTY RECOMMENDATIONS, *supra* note 58, at 1-2. This is Recommendation 5.

129. *Id.* at 4. This is Recommendation 10.

130. *Id.* at 5. This is Recommendation 11.

131. *Id.* This is Recommendation 13.

132. Of course, if a financial institution does not comply with banking law, the institution itself could be held criminally liable. THE FORTY RECOMMENDATIONS, *supra* note 58, at 10.

133. *Id.* at 11. This is Recommendation 23.

134. *Id.* at 10-11. These are Recommendations 36-40.

135. *Id.* These are Recommendations 38 and 39.

All FATF members are expected to adopt all of the Forty Recommendations.¹³⁶ Two mechanisms to monitor members' compliance with the Forty Recommendations are currently in place: self-assessment exercises and mutual evaluation procedures.¹³⁷

Self-assessment is completed by each member country on an annual basis.¹³⁸ In its self-assessment exercise, which consists of a questionnaire, a member country reports on how effectively it has implemented the Forty Recommendations.¹³⁹ All member country responses are tabulated and analyzed to ascertain individual country and FATF-wide performance.¹⁴⁰

Mutual evaluation processes, the second monitoring mechanism, are more detailed than self-assessment exercises.¹⁴¹ The FATF conducts on-site visits to member countries to examine firsthand how well member countries or jurisdictions are (or are not) implementing the Forty Recommendations.¹⁴² At the conclusion of the on-site visit, a report is issued describing the strengths of a member country's anti-money laundering efforts and areas for improvement.¹⁴³ If a member country is deemed by the FATF to be non-compliant with the Forty Recommendations, the FATF may take a number of steps.

It is important to recall that the Forty Recommendations are not binding international law, but rather "soft law."¹⁴⁴ The FATF made a "deliberate choice not to cast the recommendations into the mould of a treaty" for two reasons: to avoid a time-consuming and extensive ratification process and to provide for flexible adaptation of the Recommendations by member countries.¹⁴⁵ The non-binding status of the Forty Recommendations has been called into question, however, because of the FATF's actions with respect to countries and jurisdictions deemed by the FATF to have failed to comply with the Forty Recommendations.¹⁴⁶

In dealing with non-compliant countries and jurisdictions, the FATF takes a "graduated approach," beginning with the least aggressive measures and

136. Johnson & Lin, *supra* note 104, at 8.

137. MORE ABOUT THE FATF, *supra* note 115.

138. *Id.*

139. *Id.*

140. *Id.*

141. Johnson & Lin, *supra* note 104, at 8.

142. MORE ABOUT THE FATF, *supra* note 115. The FATF sends a team of 3-4 experts from other member governments to evaluate a member country or jurisdiction. *See id.*

143. *Id.*

144. STESENS, *supra* note 5, at 15, 17-18.

145. *Id.* at 18; *see also International Legal Developments: Sub-Group 1: Critical Review of Terrorist-Related Legislation and the Monitoring of New Legislation*, 6 J. MONEY LAUNDERING CONTROL 201 (2003) [hereinafter *International Legal Developments*].

146. *International Legal Developments*, *supra* note 145.

increasing in severity as a member country persists in non-compliance.¹⁴⁷ First, the FATF will “reinforc[e] peer pressure” on a member country to strengthen its anti-money laundering scheme.¹⁴⁸ The member country in question is then required to submit progress reports at FATF plenary meetings.¹⁴⁹ If the country remains uncooperative, the FATF President may send a letter or even a high-level delegation to the country’s government.¹⁵⁰ Upon further failure to comply, the FATF may apply Recommendation 21 and issue a statement to financial institutions warning them to “give special attention to business relations and transactions with persons, companies and financial institutions domiciled in the non-complying country.”¹⁵¹ Finally, the FATF may suspend the membership of the non-complying country.¹⁵²

While the monitoring mechanisms apply to member countries only, the FATF has also initiated perhaps its most notable program: the identification of “non-cooperative countries or territories,” or NCCTs.¹⁵³ This program effectively extends the FATF’s applicability to non-member countries. In June 2000, after four months of review, the FATF issued its first list of NCCTs.¹⁵⁴ The “blacklist,”¹⁵⁵ as it has come to be known, identified fifteen jurisdictions¹⁵⁶ that met criteria indicative of undermining the global fight against money laundering.¹⁵⁷ The criteria include obstacles within a jurisdiction’s financial regulatory regime (for example, stringent bank secrecy laws), inadequate or lack of resources devoted to anti-money laundering efforts, and obstacles to international cooperation.¹⁵⁸ FATF member countries applied political pressure on

147. MORE ABOUT THE FATF, *supra* note 115.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. MORE ABOUT THE FATF, *supra* note 115.

153. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, NON-COOPERATIVE COUNTRIES AND TERRITORIES, at http://www.fatf-gafi.org/NCCT_en.htm (last visited Sept. 5, 2004) [hereinafter NON-COOPERATIVE COUNTRIES AND TERRITORIES].

154. See INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-44.

155. See, e.g., Morgan, *supra* note 114, at 771-72; see also, Hans P. Belcsak, *Hot Spots: Cayman Islands*, BUSINESS CREDIT, July 1, 2002, at 65, 2002 WL 11637040.

156. Those countries and territories were: Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines. NON-COOPERATIVE COUNTRIES AND TERRITORIES, *supra* note 153.

157. See FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, REPORT ON NON-COOPERATIVE COUNTRIES AND TERRITORIES 10-12 (2000), http://www.fatf-gafi.org/pdf/NCCT_en.pdf (last visited Jan. 19, 2004) [hereinafter REPORT ON NON-COOPERATIVE COUNTRIES AND TERRITORIES].

158. See INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-44. See REPORT ON NON-COOPERATIVE COUNTRIES AND TERRITORIES, *supra* note 157,

NCCTs to adopt legislation that corrects deficiencies and threatened to implement countermeasures against money originating from NCCTs if NCCTs did not correct identified problems within one year.¹⁵⁹ FATF member countries took action almost immediately after issuing their list: in 2000, after the first list was made public, FATF member countries advised financial institutions to pay special attention to transactions from NCCTs.¹⁶⁰ This inhibited or nearly precluded most transactions from some of the NCCTs.¹⁶¹ Such sanctions and actions threatened by the FATF persuade most NCCTs to pass the necessary laws¹⁶² to part ways with the “unsavory company” of the blacklist.¹⁶³ Of the original 15 NCCTs, only three remain on the list of NCCTs, although six additional jurisdictions have been added.¹⁶⁴ Thus, the FATF’s influence extends beyond its membership and into the law-making bodies of non-member countries and jurisdictions.

B. Regional FATFs

Regional FATF-style bodies address geographic-specific money laundering concerns.¹⁶⁵ The regional FATF of interest to this Note is the Caribbean Financial Action Task Force (CFATF), because the Cayman Islands, discussed in detail in Part V, *infra*, is a member of CFATF.¹⁶⁶ Regional FATFs are observer bodies to the FATF,¹⁶⁷ and they are essentially mini-FATFs because they perform the same functions as the FATF does over its member countries, but on a smaller, regional scale.

at 10-12, for a complete list of all 25 criteria defining non-cooperative countries or territories.

159. See REPORT ON NON-COOPERATIVE COUNTRIES AND TERRITORIES, *supra* note 157. Sanctions include denying licenses to banks from blacklisted countries to operate in FATF member nations. Peter Richards, *Finance: Caribbean States Uneasy Over International Blacklist*, INTER PRESS SERVICE, June 25, 2002, 2002 WL 4914452.

160. Zagaris & Ehlers, *supra* note 13, at 1.

161. *Id.*; see also *Fighting the Dirt*, *supra* note 61 (identifying barring the NCCT-based banks from dealing with FATF member countries as a consequence of being listed as a NCCT).

162. See *International Legal Developments*, *supra* note 145.

163. Morgan, *supra* note 114, at 771.

164. NON-COOPERATIVE COUNTRIES AND TERRITORIES, *supra* note 156. The three original jurisdictions that remain on the list of NCCTs are Cook Islands, Nauru, and Philippines. The six new jurisdictions are Egypt, Guatemala, Indonesia, Myanmar, Nigeria, and Ukraine. *Id.*

165. SEE MORE ABOUT THE FATF, *supra* note 115.

166. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, CARIBBEAN FINANCIAL ACTION TASK FORCE, at http://www.fatf-gafi.org/Ctry-orgpages/org-cfatf_en.htm (last visited Sept. 5, 2004).

167. MEMBERS AND OBSERVERS, *supra* note 110.

The islands of the Caribbean play a key role in the international drug industry as money laundering and transit sites.¹⁶⁸ The CFATF is comprised of thirty jurisdictions,¹⁶⁹ and its mission is to facilitate member jurisdiction compliance with the FATF's Forty Recommendations and CFATF's own Nineteen Recommendations.¹⁷⁰ Despite their small population and land size, jurisdictions in the Caribbean are a significant financial sector: in 1999, \$50 billion of the \$600 billion in illicit funds laundered worldwide moved through financial institutions located in the Caribbean.¹⁷¹ In recognition of this, the CFATF has "Cooperating and Supporting Nations," which provide assistance and expertise in implementing mechanisms to further the Forty Recommendations.¹⁷² In addition, the Caribbean Anti-Money Laundering Programme (CALP) is a formal means for assistance to nations of the Caribbean basin.¹⁷³ Funded by the European Union, United Kingdom, and United States, CALP serves many functions, including training the legal, judicial, law enforcement, and financial sectors of CFATF member jurisdictions.¹⁷⁴ Like the FATF, CFATF also conducts

168. *Profile: Central America/Caribbean*, in NACLA REPORT ON THE AMERICAS 16 (2002), 2002 WL 12670006.

169. In addition to the Cayman Islands, CFATF's membership includes Antigua & Barbuda, Anguilla, Aruba, The Bahamas, Barbados, Bermuda, The British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Republic of Haiti, Honduras, Jamaica, Montserrat, The Netherlands Antilles, Nicaragua, Panama, St. Kitts & Nevis, St. Lucia, St. Vincent & The Grenadines, Suriname, The Turks & Caicos Islands, Trinidad & Tobago, and Venezuela. CARIBBEAN FINANCIAL ACTION TASK FORCE, CFATF: AN OVERVIEW, at <http://www.cfatf.org/> (last visited Jan. 19, 2004) [hereinafter CFATF OVERVIEW].

170. See CFATF OVERVIEW, *supra* note 169. Ensuring compliance is primarily achieved through self-assessment and mutual evaluation, just as FATF does. See MORE ABOUT THE FATF, *supra* note 115; see also Fitz-Roy Drayton, *Dirty Money, Tax and Banking: Recent Developments Concerning Mutual Legal Assistance and Money Laundering in the Caribbean Region and the Region's Responses*, 5 J. MONEY LAUNDERING CONTROL 338, 341 (2002). The CFATF's Nineteen Recommendations discuss money laundering issues specific to the region and can be found at <http://www.cfatf.org/eng/recommendations/cfatf/>.

171. See CARIBBEAN FINANCIAL ACTION TASK FORCE, THE CARIBBEAN ANTI-MONEY LAUNDERING PROGRAMME (2002), at <http://www.cfatf.org/training/training.asp> (last visited Sept. 26, 2003) [hereinafter THE CARIBBEAN ANTI-MONEY LAUNDERING PROGRAMME]. Also, 42% of the world's offshore banks are in the Caribbean and Latin America. Drayton, *supra* note 170, at 338.

172. See CFATF OVERVIEW, *supra* note 169. Those Cooperating and Supporting Nations are Canada, the Netherlands, France, United Kingdom, and the United States. *Id.*

173. See THE CARIBBEAN ANTI-MONEY LAUNDERING PROGRAMME, *supra* note 171.

174. See *id.* For example, legal and judicial experts assist member jurisdictions with drafting anti-money laundering or asset forfeiture legislation, and financial sector advisors train on implementation of anti-money laundering regulations. Alan Lambert, *The Caribbean Anti-Money Laundering Programme*, 5 J. MONEY LAUNDERING CONTROL 158,

studies on current money laundering trends in an effort to keep abreast of current techniques employed by criminals.¹⁷⁵

C. The Egmont Group

The Egmont Group¹⁷⁶ is an informal, global network of 84 individual countries' financial intelligence units (FIUs).¹⁷⁷ FIUs are specialized government agencies that receive, analyze, and refer to authorities (if necessary) suspicious transaction reports submitted by financial institutions.¹⁷⁸ The Egmont Group is yet another international mechanism to encourage global cooperation and mutual exchange of information in the fight against money laundering.¹⁷⁹ Specifically, members of the Egmont Group are wired into the Egmont Secure Web, which allows FIUs to quickly exchange information about suspicious or unusual transaction reports via a secure electronic system.¹⁸⁰ In addition, Egmont Group members participate in annual meetings designed to facilitate international cooperation.¹⁸¹ The Egmont Group has become a "genuine international forum. . .

160 (2001). In an effort to encourage participation, delegates from CFATF member jurisdictions attend all CALP seminars and training courses totally free of charge. *Id.*

175. CFATF OVERVIEW, *supra* note 169.

176. The name "Egmont Group" derives from the original 1995 meeting place of the FIUs, the Egmont-Arenberg Palace in Brussels. THE EGMONT GROUP, INTERPRETIVE NOTE CONCERNING THE EGMONT DEFINITION OF A FINANCIAL INTELLIGENCE UNIT, *at* http://www.egmontgroup.org/egmont_final_interpretive.pdf (Jan. 19, 2004) [hereinafter EGMONT GROUP INTERPRETIVE NOTE].

177. THE EGMONT GROUP, THE EGMONT GROUP FINANCIAL INTELLIGENCE UNITS, *at* http://www.egmontgroup.org/about_egmont.pdf (last visited Jan. 19, 2004) [hereinafter EGMONT GROUP FINANCIAL INTELLIGENCE UNITS]. For a complete list of member FIUs, *see* THE EGMONT GROUP, THE EGMONT GROUP FINANCIAL INTELLIGENCE UNITS OF THE WORLD, http://www.egmontgroup.org/list_of_fius_062304.pdf (last visited Jan. 19, 2004). In order to become a member of the Egmont Group, a FIU must meet the Egmont Group's specific definition of a financial intelligence unit. THE EGMONT GROUP, PROCEDURE FOR BEING RECOGNISED AS AN EGMONT GROUP FINANCIAL INTELLIGENCE UNIT, http://www.egmontgroup.org/procedure_for_being_recognised.pdf (last visited Jan. 19, 2004). For the Egmont Group's definition of a FIU, *see* EGMONT GROUP INTERPRETIVE NOTE, *supra* note 176.

178. THE EGMONT GROUP FINANCIAL INTELLIGENCE UNITS, *supra* note 177.

179. While cooperation and exchange of information are the main goals of the Egmont Group, it is important to note that individual FIUs may be more or less able to interact with other FIUs as their country's laws permit. *See id.*

180. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-55.

181. *Id.*

that has taken the lead in addressing major issues” dealing with money laundering.¹⁸²

D. The United Nations and the International Monetary Fund

The United Nations (UN) and the International Monetary Fund (IMF) play lesser roles than the FATF and regional FATFs in the fight against money laundering. Through its Global Programme Against Money Laundering (GPML), the United Nations Office for Drug Control and Crime Prevention (ODCCP) provides member nations with assistance in complying with international anti-money laundering standards.¹⁸³ Most importantly, the GPML maintains, in partnership with a number of international organizations including the FATF,¹⁸⁴ the International Money Laundering Information Network (IMoLIN), a website that furnishes anti-money laundering information and tools to national and international anti-money laundering organizations.¹⁸⁵ Thus, the UN’s role in anti-money laundering efforts is a complementary one to the leadership of the FATF.

The IMF plays a role similar to that of the UN in the fight against money laundering: important, but secondary to organizations whose sole focus is anti-money laundering. Among the IMF’s functions is surveillance.¹⁸⁶ The IMF ensures that nations comply with international financial supervisory principles¹⁸⁷ by examining member nations’ economic and financial systems.¹⁸⁸ However, the IMF has restricted its involvement with international anti-money laundering efforts, stressing that enforcement of money laundering continues to rest with each

182. *International Legal Developments*, *supra* note 145, at 201.

183. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-52.

184. *Id.* at XII-54.

185. OFF. ON DRUGS AND CRIME, U.N., ABOUT IMoLIN, at http://www.unodc.org/unodc/en/money_laundering_about_imolin.html (last visited Sept. 3, 2003). A particularly significant feature of IMoLIN is the Anti-Money Laundering Information Database (AMLID). AMLID analyzes individual countries’ domestic anti-money laundering laws and lists contacts in individual countries. *Id.* The GPML also lists ten basic, yet insightful, anti-laundering maxims on IMoLIN; an example is: “[t]he more deeply imbedded legal activities are within the legal economy and the less their institutional and functional separation, the more difficult it is to detect money laundering.” OFF. ON DRUGS AND CRIME, U.N., TEN FUNDAMENTAL LAWS OF MONEY LAUNDERING, at http://www.unodc.org/unodc/en/money_laundering_10_laws.html (last visited Sept. 3, 2003).

186. William E. Holder, *The International Monetary Fund’s Involvement in Combating Money Laundering and the Financing of Terrorism*, 6 J. MONEY LAUNDERING CONTROL 383, 386 (2003).

187. *Id.*

188. *Id.* at 383.

country's government.¹⁸⁹ Furthermore, the IMF has endorsed the FATF's Forty Recommendations as the global anti-money laundering standard.¹⁹⁰ The IMF's measured steps into the anti-money laundering arena, coupled with its enthusiastic endorsement of the Forty Recommendations, demonstrates the IMF's acceptance of its limited role compared with that of the FATF.

IV. THE SHIFT IN FOCUS OF THE INTERNATIONAL COMMUNITY'S FIGHT AGAINST MONEY LAUNDERING FROM DRUGS TO TERRORISM

A. The United States' (ironic) leading role in anti-money laundering efforts

The United States' call for global support was the main reason why "money laundering moved into the spotlight" after September 11, 2001.¹⁹¹ Responding to the 9/11 terrorist attacks on U.S. soil, President George W. Bush announced on September 24, 2001 that the United States would "starve the terrorists of funding" by working "with the United Nations, the EU and through the G-7/G-8 structure to limit the ability of terrorist organizations to take advantage of the international financial systems."¹⁹² This announcement of reinvigorated multilateral cooperation led by the United States, however, was a marked departure from U.S. anti-money laundering policy just a few months earlier.¹⁹³

Prior to September 11, the U.S. anti-money laundering landscape looked much different than after the 9/11 terrorist attacks.¹⁹⁴ In Spring 2001, Clinton-era anti-money laundering proposals were at a virtual standstill in Congress¹⁹⁵ due to strong lobbying by the banking industry.¹⁹⁶ Senate Banking Committee Chairman Phil Gramm boasted, "I killed the (Clinton) administration's anti-money-laundering legislation last year" and stated that anti-money laundering efforts

189. *Id.* at 386.

190. *Id.*

191. Johnson, *supra* note 1, at 10-11.

192. Press Release, The White House, President Freezes Terrorists' Assets (Sept. 24, 2001), <http://www.whitehouse.gov/news/releases/2001/09/20010924-4.html> (last visited Feb. 22, 2004) [hereinafter White House Press Release].

193. See Morgan, *supra* note 114, at 789-790.

194. See Peter Carbonara, *Dirty Money; Terrorism Has Shed New Light on Global Money Laundering. Here's How it Works, Why it Exists and Why the Proposed Government Crackdown Could Change the Way We All do Business*, MONEY, Jan. 1, 2002, at 90, 2002 WL 2091024 (stating "[u]ntil Sept. 11, few people in Washington, D.C. – and nobody in the Bush Administration – seemed to be up nights worrying about" dirty money).

195. See *id.* at 90.

196. See Johnson, *supra* note 1, at 10.

were “not on [his] agenda.”¹⁹⁷ The Bush Administration’s 2001 National Money Laundering Strategy, which outlines the U.S. response to global crimes such as money laundering, was to be submitted to Congress by February 1, 2001.¹⁹⁸ The White House did not submit the report to Congress until after September 11, 2001, even though it had only received an extension for one month.¹⁹⁹ The sluggishness of the Bush Administration is further illustrated by the words of then-Treasury Secretary Paul O’Neill. In May 2001, O’Neill wrote in a Washington Times commentary that the United States would not be cooperating with efforts to put pressure on countries named as tax havens by the Organisation for Economic Co-operation and Development (OECD),²⁰⁰ an international body that had identified countries with tax laws that harbor secrecy and hinder disclosure for prosecution of tax crimes.²⁰¹ O’Neill stated that the United States would work alone to prosecute tax evaders who use offshore entities and that only “in appropriate circumstances, organizations like the OECD” may be helpful in exchanging information needed to prosecute illegal activity.²⁰² O’Neill’s guarded language was indicative of U.S. reluctance to join the global push towards implementation of anti-money laundering measures such as transparency in banking and law enforcement cooperation.²⁰³

The United States’ position on multilateral anti-money laundering efforts dramatically changed following the terrorist attacks of September 11, 2001. Indeed, before September 11, the United States’ “legacy” was that “it failed to observe a good number of the (FATF’s) earlier rules against money-laundering.”²⁰⁴ After the President’s clear statement on September 24, 2001 that the United States would work with international organizations to stop terrorist

197. *Through the Wringer*, *supra* note 30.

198. Morgan, *supra* note 114, at 786.

199. *Id.*

200. See Paul O’Neill, Commentary, *Confronting OECD’s ‘Harmful’ Tax Approach*, WASH. TIMES, May 11, 2001, at A17, 2001 WL 4152992. The OECD investigates harmful international tax practices and is closely linked with the FATF. See Morgan, *supra* note 114, at 783-785 for a detailed discussion of the complementary roles of the two organizations. In fact, the FATF’s headquarters are located in those of the OECD. Press Release, Financial Action Task Force on Money Laundering, FATF Acts Against Terrorist Financing, Money Laundering and Non-Cooperative Jurisdictions (Feb. 1, 2002), http://www.fatf-gafi.org/pdf/PR-20020201_en.pdf [hereinafter FATF Press Release].

201. Morgan, *supra* note 114, at 783-784.

202. O’Neill, *supra* note 200. Although O’Neill did not mention the FATF by name, it was on the Treasury’s mind – the Treasury’s Acting Deputy Assistant Secretary Joseph Myers had called the FATF’s practice of NCCT identification “controversial” in remarks just weeks earlier. Morgan, *supra* note 114, at 787.

203. The United States’ reluctance to enact stronger “know your customer” and reporting suspicious activity legislation stemmed from the influential banking lobby. Johnson, *supra* note 1, at 10.

204. *Follow the Money – Cutting off Terrorists’ Financing*, ECONOMIST, June 1, 2002, 2002 WL 7246296.

funding,²⁰⁵ the United States began galvanizing the international anti-money laundering effort.²⁰⁶

B. The Global Response to the United States' Anti-Terrorist Funding Call

The international community came swiftly to the United States' side after September 11, 2001, and the pre-9/11 focus of anti-money laundering efforts on drug trafficking disappeared just as quickly. Perhaps most telling of the international shift in focus from drugs to terrorism is in the Forty Recommendations of the FATF. Just over one month after September 11, 2001, the FATF convened in Washington, D.C. for a plenary meeting.²⁰⁷ At that plenary meeting, the FATF "expanded its mission beyond money laundering to focus its energy and expertise on a world-wide effort to combat terrorist financing."²⁰⁸ Thus, the international community redirected its pre-9/11 efforts designed specifically towards anti-drug money laundering and the drug trade in response to the September 11, 2001 attacks.

Following the United States' lead, the FATF altered the existing Forty Recommendations to delete specific references to drugs and to expand existing Recommendations. In the Introduction to the 2003 version of the Forty Recommendations, the FATF states "[t]he original FATF Forty Recommendations were drawn up in 1990 as an initiative to combat the misuse of financial systems

205. White House Press Release, *supra* note 192. In his Rose Garden speech, President Bush declared that the United States is "working with friends and allies throughout the world to share information" and "limit the ability of terrorist organizations to take advantage of the international financial systems." *Id.*

206. In addition to meeting with international organizations after September 11, the United States enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT") Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified in scattered sections of 18 U.S.C. and 31 U.S.C.). The USA PATRIOT Act was signed into law on October 26, 2001, and the Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 was included as Title III of the USA PATRIOT Act. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-27. Title III includes numerous anti-money laundering measures previously blocked, such as increasing transparency in banking, mandating information sharing between law enforcement and financial institutions, and requiring financial institutions to implement anti-money laundering programs. *Id.* at XII-27 to XII-28. For a detailed account of all U.S. anti-money laundering measures post-9/11, see *id.*

207. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-44 to XII-45.

208. *Id.* Although the FATF's life span is not "unlimited," it will continue to exist until member countries agree that it is no longer necessary. MORE ABOUT THE FATF, *supra* note 115. Thus, given the large global terror threat, it does not appear likely that the FATF will be in danger of elimination in the near future.

by persons laundering drug money.”²⁰⁹ Both the 1990 and 1996 versions of the Forty Recommendations stated that “each country should extend the offence of *drug* money laundering to one based on serious offences.”²¹⁰ The specific reference to drugs found in previous versions of the Forty Recommendations was removed in the 2003 version of the Forty Recommendations.²¹¹

In addition to removing references to drugs in the Forty Recommendations, the FATF added eight new Special Recommendations focused solely on anti-terrorism.²¹² One hundred thirty jurisdictions completed self-assessment questionnaires to update the FATF on their adoption of the Special Recommendations,²¹³ and the FATF currently provides technical assistance to countries that have not fully implemented the anti-terrorist financing money laundering measures.²¹⁴ In addition, the FATF expanded its non-cooperative countries identification initiative to include jurisdictions that do not take appropriate action to adopt the Special Recommendations on terrorist funding as well as the Forty Recommendations.²¹⁵

In addition to the FATF, many other international organizations have joined the global anti-terrorism funding effort. The United Nations (UN) Security Council unanimously adopted Resolution 1368 on September 12, 2001.²¹⁶ Resolution 1368 condemned the 9/11 attacks and called for a unified global response to terrorism.²¹⁷ On September 28, 2001, the Security Council unanimously adopted Resolution 1373, which calls on all UN member states to

209. THE FORTY RECOMMENDATIONS, *supra* note 58.

210. This is the language of Recommendation 5 of the 1990 version, FATF 1990 REPORT, *supra* note 59, and the language of Recommendation 4 of the 1996 version. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, THE FORTY RECOMMENDATIONS (1996), http://www.fatf-gafi.org/pdf/40Recs-1996_en.pdf (last visited Jan. 19, 2004) (emphasis added) [hereinafter 1996 version].

211. Compare Recommendation 1 of the 2003 version of THE FORTY RECOMMENDATIONS, *supra* note 58, with the 1990 version, FATF 1990 REPORT, *supra* note 59 and the 1996 version, *supra* note 210.

212. MORE ABOUT THE FATF, *supra* note 115. See also FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, SPECIAL RECOMMENDATIONS ON TERRORIST FINANCING, at http://www.fatf-gafi.org/SRecsTF_en.htm (last visited Sept. 13, 2004) (listing the Eight Special Recommendations). The Recommendations include such measures as criminalizing terrorist funding, stressing international cooperation and information-sharing, and ensuring that measures are in place to stop terrorists from using legitimate non-profit organizations to launder money for terrorist purposes. *Id.*

213. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, 2002-2003 ANNUAL REPORT 5 (2003), http://www.fatf-gafi.org/pdf/AR2003_en.pdf (last visited Sept. 8, 2004).

214. *Id.* at 13.

215. See FATF Press Release, *supra* note 200.

216. Res. 1368, U.N. SCOR, 4370th mtg., at 1, U.N. Doc. S/RES/1368 (2001), <http://www.un.org/Docs/scres/2001/sc2001.htm> (last visited Nov. 11, 2004).

217. *Id.* at 1.

prevent terrorist financing.²¹⁸ Resolution 1373 creates the UN Counter-Terrorism Committee, an international mechanism for monitoring implementation of anti-terrorism funding measures, and requires member states to exchange information about terrorist funding.²¹⁹ Most importantly, Resolution 1373 makes the anti-terrorism effort legally binding by invoking Chapter VII of the UN Charter.²²⁰ Chapter VII authorizes the Security Council to take all necessary action to see that all the Resolution's objectives are met.²²¹

In addition to the United Nations, the IMF and World Bank adopted the FATF's eight new Special Recommendations as well as the Forty Recommendations as the standard for anti-money laundering methodology.²²² The IMF and World Bank reaffirmed their limited role of assessing the world's financial sector and continuing to provide technical assistance to countries developing their financial sectors.²²³ Also, the Egmont Group, which consists of countries' financial intelligence units, held a special meeting in October 2001 to respond to the 9/11 attacks.²²⁴ At that meeting, the Egmont Group expanded its global network of information exchange to encompass terrorist financing as well as money laundering.²²⁵ Lastly, regional FATFs, such as the Caribbean Financial Action Task Force, have responded positively to the anti-terrorism funding effort.²²⁶

V. A CASE STUDY IN ADOPTION OF ANTI-MONEY LAUNDERING EFFORTS: THE CAYMAN ISLANDS

Why do the Cayman Islands play such an important role in the international drug trade and money-laundering scheme? Although the Cayman

218. Res. 1373, U.N. SCOR, 4385th mtg. at 1-2, U.N. Doc. S/RES/1373 (2001), <http://www.un.org/Docs/scres/2001/sc2001.htm> (last visited Nov. 11, 2004) [hereinafter Res. 1373].

219. *Id.* at 3.

220. *International Legal Developments*, *supra* note 145; Res. 1373, *supra* note 218, at 1-2. Chapter VII of the U.N. Charter is available at <http://www.unhchr.ch/html/menu3/b/ch-chp7.htm> (last visited Feb. 22, 2004).

221. *See* U.N. CHARTER arts. 39, 48-49, *available at* <http://www.unhchr.ch/html/menu3/b/ch-chp7.htm> (last visited Feb. 22, 2004); *International Legal Developments*, *supra* note 145.

222. *See* Holder, *supra* note 186, at 386-387.

223. *See id.* at 386.

224. *International Legal Developments*, *supra* note 145.

225. *See id.*

226. For example, the CFATF conducted assessments of member jurisdictions on terrorist financing in 2002. CARIBBEAN FINANCIAL ACTION TASK FORCE, 2002-2003 ANNUAL REPORT 22, *at* <http://www.cfatf.org/documentation/getfile.asp?fileid=112&option=1>.

Islands is not considered a significant drug producing or consuming territory,²²⁷ it plays a key role in money laundering and drug trafficking largely because of its extensive offshore financial center (OFC).²²⁸ The Caymans is particularly vulnerable to money laundering in the layering stage because its OFC is conducive to aiding complex financial transactions,²²⁹ and until a few years ago, the Caymans was known for its lax anti-money laundering regime.²³⁰ The Caymans has since made progress,²³¹ but it should take further steps to strengthen its existing anti-money laundering measures.

A. The Caymans: An Overview

The Cayman Islands is a British Overseas Territory consisting of three tiny islands²³² and has a population of 40,900.²³³ The Caymans' economy depends

227. CARIBBEAN FINANCIAL ACTION TASK FORCE, CAYMANS ISLANDS OVERVIEW, at <http://www.cfatf.org/profiles/profiles.asp> (last visited Sept. 26, 2003) [hereinafter CFATF CAYMANS OVERVIEW]. The Cayman Islands is an occasional transshipment point of cocaine from South America and marijuana from Jamaica, but the small amount of drugs trafficked through the Caymans is a lesser priority for the international community than the amount of money laundered through the Cayman Islands' financial sector. See U.S. DRUG ENFORCEMENT ADMIN., THE DRUG TRADE IN THE CARIBBEAN: A THREAT ASSESSMENT, CAYMAN ISLANDS, at <http://www.dea.gov/pubs/intel/03014/03014.html#cayman> (last visited Feb. 22, 2004) [hereinafter DEA THREAT ASSESSMENT].

228. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-96. Another reason may be geography. Located in the Caribbean, the Cayman Islands is situated between the South American drug producers and the drugs' major consumers in North America and Europe, right along the transshipment route of drugs. See Drayton, *supra* note 170, at 338; see also THE CARIBBEAN ANTI-MONEY LAUNDERING PROGRAMME, *supra* note 171.

229. See INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-96 to XII-97. For example, a Colombian national recently laundered his drug trafficking proceeds through dozens of wire transfers to the Caymans, Panama, and the Bahamas by keeping the amounts laundered under \$10,000 and by telling his bank that his business was actually distributing hydraulic equipment and importing and exporting beer and leather goods. Ivan Roman, *Puerto Rican Bank to Pay \$21.6 Million Fine Over Drug Money Laundering*, KNIGHT-RIDDER TRIBUNE BUS. NEWS: ORLANDO SENTINEL, Jan., 18, 2003, 2003 WL 10239848.

230. See *Cayman Islands: Review*, AM. REV. WORLD INFO., Sept. 23, 2002, at 1, 2002 WL 100886030.

231. See CFATF CAYMANS OVERVIEW, *supra* note 227 (listing actions taken by the Caymanian government in anti-money laundering legislation).

232. *Id.* The archipelago's total area is just 492 square miles. *Id.* Because it is an Overseas Territory of the U.K., the Caymans is subject to the 1998 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and a 1986 U.S.-U.K. Mutual Legal Assistance Treaty. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-97.

on two industries, tourism and financial services,²³⁴ and funds itself mainly from license fees and import duties that those two industries provide.²³⁵ The Cayman Islands boasts one of the world's highest standards of living²³⁶ and is the fifth largest financial center in the world, handling \$500 billion per year.²³⁷ It is home to over 600 banks and trust companies,²³⁸ 47 of which are in the world's top 50 banks,²³⁹ and approximately 45,000 offshore companies are registered in the Cayman Islands.²⁴⁰ The Caymans' financial sector provides a wide array of services, including private banking, brokerage services, mutual funds, trusts, company formation and management services, and insurance.²⁴¹

How did the Caymans achieve this impressive success? Due to its lack of income, capital gains, corporation, inheritance, and sales taxes,²⁴² and its creditor-friendly insolvency laws,²⁴³ the Cayman Islands became a "veritable 'paradise' for money laundering."²⁴⁴ This transformation from a small territory of just 12,000 people in the 1970s to a formidable offshore financial center spanned

233. CFATF CAYMANS OVERVIEW, *supra* note 227. Of the 40,900 people living in the Caymans, only 53% are Caymanian. *Id.*

234. Belcsak, *supra* note 155, at 65 (adding that a large problem for both industries is that there are not enough qualified people to fill the jobs).

235. *Id.*

236. The Caymans' per capita GDP exceeds USD 35,000 annually. CIA, THE WORLD FACTBOOK – CAYMAN ISLANDS, at <http://www.cia.gov/cia/publications/factbook/geos/cj.html> (last visited Nov.6, 2004) [hereinafter FACTBOOK].

237. *French Banks Reticent About Cayman Links: Parliamentary Report*, AGENCE FRANCE-PRESSE, Apr. 11, 2002, 2002 WL 2383057 [hereinafter *French Banks Reticent About Cayman Links*]. In addition, the Caymans' GDP is USD 1.2 billion per year. FACTBOOK, *supra* note 236.

238. Felicity Clarke, *Sink or Swim*, LEGAL WEEK, Nov. 28, 2002, 2002 WL 26454470.

239. Belcsak, *supra* note 155, at 65.

240. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-96. That works out to more than one company per capita on the Cayman Islands. *See id.* Notably, 692 of those corporate entities were established by the Enron Corporation. *Calm After the Storm?*, INT'L MONEY MKTG., June 11, 2002, at 44, 2002 WL 11697421. Enron created the offshore companies "as part of a complex web of subsidiaries which helped [Enron] to conceal the true of state of its accounts." *Id.*

241. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-96. Significantly, the Caymans has asset protection trusts, which bar an individual's assets from being seized to pay foreign civil judgments. *Id.* Also, the Caymans is home to the world's second-largest captive insurance market (behind Bermuda) with over 600 captive insurance companies. Clarke, *supra* note 238; INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-96. The Caymans also houses over 3,000 mutual funds. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-96.

242. Belcsak, *supra* note 155, at 65.

243. Antonia Hardy, *Securing the Future of SPVs*, LEGAL WEEK, Nov. 28, 2002, 2002 WL 26454471.

244. *French Banks Reticent About Cayman Links*, *supra* note 237.

thirty years,²⁴⁵ but in that time, the Caymans gained a reputation as “a tax haven offering its services to anyone with a suitcase of cash to deposit.”²⁴⁶ That reputation caused the Cayman Islands to come under significant international scrutiny, particularly by the Financial Action Task Force.²⁴⁷

B. The Cayman Islands and International Money Laundering Efforts

A member of the Caribbean Financial Action Task Force, the Cayman Islands volunteered to be the first member to participate in CFATF mutual evaluations in 1995.²⁴⁸ An evaluation team from other Caribbean jurisdictions visited the Caymans and interviewed government and non-government bodies involved in anti-money laundering efforts.²⁴⁹ Also, in 2000, the Caymans underwent major anti-money laundering assessments by the FATF and the accounting firm KPMG.²⁵⁰

In February 2000, the FATF issued a report listing 25 criteria that are indicative of non-cooperative countries or territories in the international fight against money laundering.²⁵¹ The more criteria that are met, the more non-compliant a jurisdiction is.²⁵² The report’s introduction stated, “[e]xisting anti-money laundering laws are undermined by the lack of regulation and essentially by the numerous obstacles on customer identification, in certain countries and territories, notably offshore financial centres.”²⁵³ The FATF’s next step was to identify non-compliant jurisdictions using the 25 criteria.²⁵⁴

In June 2000, the international spotlight focused on the Caymans when the FATF identified it on the FATF’s first-ever list of Non-Cooperative Countries and Territories (NCCTs).²⁵⁵ While the FATF applauded the Caymans on its progress and leadership in Caribbean anti-money laundering programs up until

245. Clarke, *supra* note 238.

246. Belcsak, *supra* note 155, at 65.

247. See *Cayman Islands: Review*, *supra* note 231.

248. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, CAYMAN ISLANDS, at http://www.fatf-gafi.org/Ctry-orgpages/cctry-cm_en.htm (last visited Feb. 22, 2004) [hereinafter FATF CAYMAN ISLANDS].

249. *Id.*

250. CFATF CAYMAN OVERVIEW, *supra* note 227.

251. REPORT ON NON-COOPERATIVE COUNTRIES AND TERRITORIES, *supra* note 157, at 10-12.

252. See *id.*

253. *Id.* at 1.

254. *Id.*

255. See NON-COOPERATIVE COUNTRIES AND TERRITORIES, *supra* note 153 (including a list of the 14 other jurisdictions identified as non-compliant). The NCCTs were listed as such because of “critical deficiencies in their anti-money laundering systems or a demonstrated unwillingness to co-operate in anti-money laundering efforts.” *Id.*

that time, the FATF still found many deficiencies.²⁵⁶ Of the FATF's 25 criteria that identify rules and practices that impede international cooperation in the global fight against money laundering, the Caymans met or partially met seventeen.²⁵⁷ Typical of a tax haven, the Caymans did not have any legal requirements for customer identification and record keeping.²⁵⁸ Also, the Caymans' anti-money laundering authority was barred from accessing information on customer identities.²⁵⁹ Significantly, the Caymans had only a voluntary system of reporting suspicious transactions, rather than a mandatory reporting scheme, and large numbers of management companies were unregulated.²⁶⁰ The FATF identified those deficiencies while at the same time recognizing that the Caymans had served as president of the CFATF and had closed several financial institutions because of money laundering concerns.²⁶¹ In response to the FATF's blacklisting of the Caymans, the United States Treasury Department issued an advisory in July 2000 that warned U.S. financial institutions to scrutinize transactions with the Cayman Islands.²⁶²

After the FATF's blacklist exposed rampant deficiencies in the Cayman Islands' anti-money laundering framework, the Caymanian government responded quickly despite the financial sector's protests that members employed sound practices.²⁶³ Between June 2000 and April 2001, the government enacted and implemented nine laws designed to adhere to the FATF's Forty Recommendations.²⁶⁴ The laws include requirements that banks know their

256. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, REVIEW TO IDENTIFY NON-COOPERATIVE COUNTRIES OR TERRITORIES: INCREASING THE WORLDWIDE EFFECTIVENESS OF ANTI-MONEY LAUNDERING MEASURES 4 (2000), http://www.fatf-gafi.org/pdf/NCCT2000_en.pdf (last visited Feb. 22, 2004) [hereinafter FATF 2000 NCCT REPORT].

257. *Id.* Specifically, the Caymans met criteria 1, 5, 6, 8, 10, 11, 13, 14, 15, 16, 17, 18, and 23 (largely bank secrecy and anti-international cooperation) and partially met criteria 2, 3, 7, and 12. *Id.*

258. *Id.*

259. *Id.*

260. FATF 2000 NCCT REPORT, *supra* note 256.

261. *Id.*

262. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-97.

263. *See Cayman Islands: Review, supra* note 230. Indeed, not only businesses complained of the FATF's handling of the Caymans. The CFATF's chair called the blacklist a "severe blow" that led to the perception that large countries were bullying smaller countries, and the Caribbean community called the methodology "amateurish." *See All Havens in a Storm: Tax Havens in the Spotlight*, ECONOMIST, July 1, 2000, 2000 WL 8142669.

264. *See* FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, REVIEW TO IDENTIFY NON-COOPERATIVE COUNTRIES OR TERRITORIES: INCREASING THE WORLDWIDE EFFECTIVENESS OF ANTI-MONEY LAUNDERING MEASURES 8 (2001), at <http://www.fatf->

customers and keep adequate records.²⁶⁵ Specifically, banks must request identification from individuals who establish new business relationships, who engage in a one-time transaction over \$15,000, or who may be laundering money.²⁶⁶ The government also enacted requirements that banks maintain a staff and physical presence in the Caymans,²⁶⁷ as well as provisions requiring mandatory training for the staff of all relevant financial entities.²⁶⁸ Additionally, the new laws criminalized failing to report a suspicious transaction, thereby replacing the voluntary reporting scheme with a mandatory scheme.²⁶⁹ The new provisions also granted the Cayman Islands Monetary Authority (CIMA), the body overseeing the Caymans' anti-money laundering efforts, the authority to access account information and identification, including audited information, without having to first obtain a court order as previous versions of the law had required.²⁷⁰ The laws also implemented regulatory supervision of management companies.²⁷¹ Lastly, in a move to bolster international cooperation, the Office of the Attorney General "established an international division to respond to international requests for judicial cooperation."²⁷²

Due to the extensive anti-money laundering legislation adopted by the Caymans, the FATF removed the Cayman Islands from its list of NCCTs in June 2001.²⁷³ In its evaluation of the Caymans, the FATF also applauded the Caymans'

gafi.org/pdf/NCCT2001_en.pdf [hereinafter FATF 2001 NCCT REPORT]. For a complete list of the laws, see *id.*

265. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-97.

266. *Id.* In its guidelines for implementing the regulations, the Cayman Islands Monetary Authority (CIMA) states that financial companies should "be satisfied that a prospective customer is who he/she claims to be; and is the ultimate client" and that companies should also inquire about future patterns of transactions. CAYMAN ISLANDS MONETARY AUTHORITY, GUIDANCE NOTES ON THE PREVENTION AND DETECTION OF MONEY LAUNDERING IN THE CAYMAN ISLANDS 15, http://www.cimoney.com.ky/pages/policy/Guidance_Notes_September_2003.pdf [hereinafter CIMA GUIDANCE NOTES]. For existing clients, banks are advised to conduct risk assessments and take action on clients identified as high risk. *Id.* at 59.

267. Belcsak, *supra* note 155, at 65. Requiring a physical presence in the Caymans is a measure aimed to eliminating the islands' shell banks, which are banks that have no more presence than a mail drop. Geiger, *supra* note 30.

268. Hardy, *supra* note 243.

269. The Amendments to the Proceeds of Criminal Conduct Law took this action. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-97.

270. The Companies Law (2001 Second Revision) and Monetary Authority Law contained such provisions. *Id.*

271. The Amendments to the Companies Management Law (2001 Revision) took this action. *Id.*

272. *Id.*

273. See FATF 2001 NCCT REPORT, *supra* note 264, at 7, 8, 18.

increase in human and financial resources to financial supervision and its FIU.²⁷⁴ When it removed the Caymans from the blacklist, however, the FATF warned that it would continue to “pay particular attention to” the Caymans’ cooperation with foreign governments and implementation of know-your-customer laws.²⁷⁵ Also in June 2001, the Egmont Group of Financial Intelligence Units accepted the Caymans as a member and the United States Treasury Department withdrew its advisory against the Caymans.²⁷⁶

C. The Cayman Islands’ Anti-Money Laundering Regime

The Cayman Islands’ anti-money laundering legal framework has undergone great changes under the watchful eye of the Financial Action Task Force. The Caymans, “once a haven for investing drug profits,”²⁷⁷ now “substantially” complies with all international anti-money laundering recommendations²⁷⁸ as a result of the international pressure associated with being placed on the FATF’s blacklist.²⁷⁹ The United Kingdom has praised its Overseas Territory for implementing the comprehensive anti-money laundering measures,²⁸⁰ and the Caymanian financial sector is taking steps to publicize what the regulations mean to new clients.²⁸¹

274. *See id.* at 8.

275. *Id.* at 9.

276. INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *supra* note 8, at XII-97. “A 2001 amendment to the Proceeds of Criminal Conduct Law revise[d] the legal definition of FIU to adopt the Egmont Group’s definition,” thereby making the Caymans’ Financial Reporting Unit eligible for Egmont Group membership. *Id.* In March 2002, the U.S. State Department stated that the Caymans “has made notable progress toward addressing the serious systemic problems that characterized its counter-money laundering regime less than two years ago.” *Id.*

277. DEA THREAT ASSESSMENT, *supra* note 227.

278. FATF CAYMAN ISLANDS, *supra* note 248.

279. *See Hardy, supra* note 243.

280. *Further Progress on Financial Regulation in the Caribbean Overseas Territories and Bermuda*, M2 PRESSWIRE, May 23, 2002, 2002 WL 19044217. “[T]here is a strong feeling that the British flag conveys an assurance of stability that is beneficial for the crucial tourist and financial sectors” of the Caymans. Belcsak, *supra* note 155, at 65.

281. A complimentary island guide distributed to tourists details the Caymans’ transformation from blacklisted jurisdiction, how the Caymans fit into the international anti-money laundering scheme, and why new anti-money laundering laws make the Caymans a better place to conduct business. *Rewriting the script*, DESTINATION CAYMAN 2003, at 95-96 (on file with the author). Also, in the Cayman Airways in-flight magazine, the Cayman Islands’ Bankers’ Association lists the necessary information to open an account and offers this explanation for their inquisitiveness: “The better we know you the better we can serve you.” *Banking in the Cayman Islands*, HORIZONS (CAYMAN AIRWAYS INFLIGHT MAGAZINE), Nov./Dec. 2003, at 79 (on file with the author).

Fortunately, compliance with the FATF has not hindered the Caymans' financial sector.²⁸² While the Caymans has enacted a multitude of anti-money laundering legislation, it remains attractive to customers because it still has no income, capital gains, corporation, inheritance, or sales taxes²⁸³ and because it retains its creditor-friendly insolvency laws.²⁸⁴ In its guidelines for implementing anti-money laundering policies, the Cayman Islands Monetary authority recognized that financial companies "exist to make a profit" but stated that the financial industry "should give due priority to establishing and maintaining an effective compliance culture."²⁸⁵ The financial services industry continues to attract multinational businesses with its well-developed infrastructure that includes communications facilities, representations by well-regarded law and accounting firms, and services provided by top banks.²⁸⁶ Indeed, one commentator argues that compliance has had a positive effect on the Caymanian economy because offshore structurers and investors favor jurisdictions that have chosen to commit to international measures.²⁸⁷ Yet another observer reports that the Caymans' offshore center plays an important role, despite the fact that "the traditional attraction to [its] veil of secrecy is a thing of the past."²⁸⁸

In the aftermath of September 11, the Cayman Islands Monetary Authority stressed to financial institutions the importance of cooperating with investigators to prevent the Caymans from becoming a terrorist fund transit point.²⁸⁹ Because the Caymans already had enacted new measures to comply with the international community's anti-money laundering standards as of September 11, 2001, its financial sector had no need to make dramatic changes to its practices when the international community focused its attention on money laundering following the 9/11 terrorist attacks.²⁹⁰ Indeed, one practitioner predicted in early 2002 that "the Cayman Islands' regime will meet or exceed the test [requiring disclosure of owners of offshore structures] required by the Patriot Act."²⁹¹

Despite the strong anti-money laundering legislation and "progressive attitude" adopted by the Caymans,²⁹² however, challenges in the fight against

282. Belcsak, *supra* note 155, at 65.

283. *Id.*; *see also* Clarke, *supra* note 238 (stating that the Caymans' "tax-free regime [] remain[s] on track").

284. Hardy, *supra* note 243.

285. CIMA GUIDANCE NOTES, *supra* note 266, at 10.

286. Belcsak, *supra* note 155, at 65.

287. *See* Hardy, *supra* note 243. The commentator points to the increasing number of financial services providers and law firm growth as evidence of this fact.

288. Clarke, *supra* note 238.

289. *Cayman Islands: Review*, *supra* note 230.

290. *See* Clarke, *supra* note 238.

291. *Id.* "The Patriot Act is a somewhat restricted endeavour on the part of the U.S. to play catch-up with the very strict compliance and due diligence regime already in place in the Cayman Islands." *Id.*

292. FATF CAYMAN ISLANDS, *supra* note 248.

money laundering still exist there. First, the Caymanian government itself has been criticized for failing to fully cooperate with the international community by exchanging information about financial clients.²⁹³ For example, in 2002, Spanish Judge Baltasar Garzon was investigating allegations of misappropriation and fraud by one of Spain's largest banks.²⁹⁴ Judge Garzon requested documents from Caymanian authorities regarding possible money laundering by drug trafficking cartels and received no response.²⁹⁵ The Caymans must ensure that it follows through with its pledge to the international community to exchange information and implement the anti-money laundering measures already on the books. In addition, the Cayman Islands has not produced statistics on how the new anti-money laundering laws have affected its banking systems, making it difficult to assess the laws' effectiveness.²⁹⁶

Therefore, while the Cayman Islands has made significant progress in the fight against money laundering, further efforts are needed to strengthen the Caymanian anti-money laundering regime. Specifically, increased compliance with foreign governments, thorough monitoring of financial institutions via the Caymanian FIU, and internal audits to identify weaknesses in the anti-money laundering system would help to further that end.

VI. THE STATUS OF DRUG MONEY LAUNDERING EFFORTS IN THE POST-9/11 WORLD: WHERE WE ARE AND WHERE WE MUST GO

Following the terrorist attacks of September 11, 2001, the international community's focus on thwarting money laundering has expanded from drug trafficking proceeds to terrorist funding.²⁹⁷ This change, however, does not appear to have hindered anti-drug money laundering efforts. To the contrary, September 11 revitalized global interest in those efforts; though the spotlight is on anti-terrorism, the anti-drug movement benefits because increased resources are being devoted to anti-money laundering as a whole.²⁹⁸ Countries that were reluctant to commit to anti-money laundering efforts before September 11 were "overcome by the sheer size and ferocity of the terrorist attacks" and were compelled to join the global anti-money laundering fight.²⁹⁹ Also, the new laws and regulations adopted

293. See, e.g., Tito Drago, *Spain: Tax Havens Stymie Bank Money Laundering Probe*, INTER PRESS SERVICE, Apr. 30, 2002, 2002 WL 4913771.

294. See *id.*

295. See *id.*

296. Geiger, *supra* note 30.

297. See Johnson, *supra* note 1, at 10.

298. *Id.* at 15.

299. *Id.*

by jurisdictions after September 11 strengthened compliance with the FATF.³⁰⁰ This increased compliance bolsters anti-drug money laundering measures, as banks and law enforcement agencies who investigate suspicious activities will not only discover terrorist-related activity, but also drug-related laundering activity.³⁰¹ September 11 has essentially strengthened and expanded the international community's anti-money laundering net.

While it is true that money laundering enforcement activity has had an effect on drug and money laundering organizations,³⁰² much progress remains to be made. For instance, despite the international community's efforts, only \$3 billion in dirty money had been seized in 20 years of fighting money laundering as of April 2003, the same amount laundered in just three days.³⁰³ According to U.S. Treasury officials, 99.9% of the foreign criminal and terrorist money deposited in the United States successfully gets into secure bank accounts.³⁰⁴

Moreover, even where anti-money laundering laws have been passed, the fight against money laundering cannot succeed unless those laws are enforced.³⁰⁵ Gauging whether the laws are well enforced in a particular jurisdiction is a further challenge.³⁰⁶ Because "the laundering of drug dollars follows the path of least resistance,"³⁰⁷ it is essential that each jurisdiction form a unified global front against money laundering. If one country strongly enforces anti-money laundering legislation but its neighbor does not, drug money launderers will simply move their operations next door. The problem has not been solved; it has

300. Currently, nine jurisdictions comprise the FATF's blacklist of non-compliant countries and territories; as of September 2001, nineteen jurisdictions were on the blacklist. See NON-COOPERATIVE COUNTRIES AND TERRITORIES, *supra* note 156.

301. See Johnson, *supra* note 1, at 15.

302. Jurith, *supra* note 14, at 214.

303. Lucy Komisar, *Offshore Banking: The Secret Threat to America*, DISSENT, Apr. 1, 2003, at 45, 2003 WL 13255220. In fiscal year 2001, for example, the U.S. Departments of Treasury and Justice forfeited \$241 million in assets related to money laundering. *The Administration's National Money Laundering Strategy for 2002: Hearing Before the Comm. on S. Banking, Hous., & Urban Affairs*, 107th Cong. (2002) (statement of Kenneth W. Dam, Deputy Secretary of the Treasury), 2002 WL 100237797. As noted previously, the amount laundered annually is estimated to be between \$590 billion and \$1.5 trillion. BASIC FACTS, *supra* note 3. But that number is only an estimate of how dirty money is laundered – indeed, the effectiveness of the fight against money laundering is hard to evaluate given the fact that the extent of the problem can only be estimated. See STESSENS, *supra* note 5, at 424.

304. Komisar, *supra* note 303, at 45.

305. *Fighting the Dirt*, *supra* note 61. A large portion of the cost of enforcement often falls on the private sector, as companies take costly measures (both in terms of dedicated resources and reports that must be filed) to comply with anti-money laundering regulations. See STESSENS, *supra* note 5, at 422.

306. *Fighting the Dirt*, *supra* note 61.

307. Jurith, *supra* note 14, at 214.

only been moved.³⁰⁸ The same is true for methods of money laundering; jurisdictions must clamp down on all forms of money laundering so that launderers cannot simply change their method and continue their illegal activity undeterred.³⁰⁹ Equally enforcing current anti-money laundering laws and regulations is the most important step in furthering the international fight against money laundering.

To aid in the critical step of ensuring consistency throughout the international community, the FATF's Forty Recommendations should be made international public law. Turning international standards that presently exist as "soft law" into binding international law will aid in efforts to compel change in non-cooperative jurisdictions. Indeed, the result of the FATF's blacklist has been to create two tiers of jurisdictions – those that comply and those that do not.³¹⁰ With binding law, non-compliance would have real consequences, such as sanctions or punitive taxes, in addition to the peer pressure that is currently applied by the international community.³¹¹ Enforcement of that international law would ensure that all jurisdictions are unified in the fight against money laundering,³¹² and all jurisdictions' governments, financial institutions, and FIUs must be sure to cooperate with their global counterparts. Binding law is crucial to strengthening the global anti-money laundering regime.

What else may be done to bolster anti-drug money laundering efforts? Jurisdictions must ensure that anti-drug money laundering initiatives are not impaired by anti-terrorist funding efforts. Specifically, countries should not divert funding from anti-drug agencies to national security agencies for anti-terrorist money laundering efforts. Such a shift in funding could cause complacency against drug traffickers and previous gains against the drug trade will be lost. Also, countries and territories should respond with equal force to anti-terrorist money laundering and anti-drug money laundering.

Another measure to bolster international anti-drug money laundering efforts is to increase international support and assistance to smaller nations and territories. For example, in the Cayman Islands, the United Kingdom should use its influence to apply pressure on the Caymanian government to regulate and eradicate private banking services for drug traffickers posing as legitimate businesses. Also, the Caymanian government should be sure to comply with

308. For instance, when the FATF removed the Cayman Islands and three other jurisdictions from its blacklist in June 2001, the FATF added six other jurisdictions. *See* NON-COOPERATIVE COUNTRIES AND TERRITORIES, *supra* note 153. Of those six, five remain on the list. *See id.*

309. *See* STESSENS, *supra* note 5, at 428 (noting that strong compliance within the financial sector has caused a shift in money laundering methods to other sectors of the economy).

310. Hardy, *supra* note 243.

311. *See* STESSENS, *supra* note 5, at 430.

312. Of course, enforcement of the international law must be uniform; no preference should be given to larger, non-compliant countries.

international requests for information on clients of Caymans' financial services sector. These steps will help to thwart the layering process of money laundering where the Caymans can make the biggest difference in anti-money laundering efforts.

Finally, international anti-money laundering agreements, recommendations, and standards should include language regarding anti-drug efforts, not only anti-terrorist funding efforts. When the FATF removed the anti-drug money laundering language from its Forty Recommendations after September 11, it sent an implicit message to drug traffickers: the spotlight is off you and we are now turning to other issues. This message is ill-advised because the global drug trafficking problem is bigger than ever.³¹³ By adding anti-drug language next to anti-terrorism language, drug traffickers will be on notice that the global community considers drugs to be as important a problem as terrorism.

Therefore, while international efforts against anti-drug money laundering have been aided by the post-9/11 spotlight on money laundering and compliance with international anti-money laundering standards has increased, steps must be taken to improve the fight against anti-drug money laundering. Only then will the underlying problem – the staggering world drug problem – be addressed.



313. As previously noted, drug trafficking accounts for \$400 billion in profits a year, which is 8% of all international trade. Zagaris & Ehlers, *supra* note 13, at 1.