

## **International Relations Perspectives on Anti Money Laundering Governance**

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### **Abstract**

This essay examines why and how money laundering creates a 'legitimacy crisis' for post-September 11 global governance. It considers the securitisation of Anti Money Laundering as a discourse; how September 11 has changed its theoretical knowledge base; why the Financial Action Task Force has created new norms that must be understood in terms of English School and Constructivist perspectives; the debates on globalization, identity politics, and sovereignty; and regional trends in the South-east Asian region. Critical theorists discussed include Martha Finnemore, Susan Strange, Noreena Hertz, R.T. Naylor, Martin van Creveld, Barry Buzan, Robert Cooper, Richard Falk, and Thomas Biersteker. Throughout, this essay reveals how political shibboleths obscure the links between money laundering, extra-territorial violence and 'low intensity' financial warfare.

## Defining Money Laundering

Anti Money Laundering (AML) compliance has become a priority counterterrorist initiative for corporate strategists and government policymakers in the post-September 11 era. Peter Lilley defines money laundering as “the process whereby the identity of dirty money that is the proceeds of crime and the real ownership of these assets is transformed so that the proceeds appear to originate from a legitimate source.”<sup>1</sup> Money Laundering goes through three stages: ‘placement’ of the dirty money into a financial institution, ‘layering’ with other transactions, and ‘separation’ to hide the illicit source of funds or to avoid domestic taxation.

Several high-profile cases have raised public awareness of money laundering as a transnational threat. The investigation into the \$A66 million heist of Ireland’s Northern Bank in December 2004 uncovered Irish Republican Army (IRA) financiers who had front companies in Bulgaria and Libya. Spanish police smashed the Marbella-based Costa del Crime ring in March 2005. Money laundering has also been implicated in major business fraud cases. Frankfurt authorities began a probe of DB Real Estate in February 2005 into a \$A33.6 billion scandal involving bribery, money laundering and tax evasion. Identity thieves stole the personal details of 200,000 people from the credential verification firm ChoicePoint in February 2005.

The popular image of AML depicts forensic accountants as a counter-terrorist vanguard waging an urgent battle to ‘drain the swamps’ and thwart future terrorist attacks. Popular books that address the threats of money laundering and terrorist financing range from the frightening anecdotes of Jeffrey Robinson’s *The Sink* (2003) and Peter Lilley’s *Dirty Dealing* (2003), to the vast ‘new economy of Terror’ depicted in Loretta Napoleoni’s *Terror Inc* (2004), and Rachel Ehrenfeld’s seething jeremiad against Saudi Arabia in *Funding Evil* (2005). Media sound-bites portray money laundering as the dark side of neo-liberal globalization, and by connecting it with ‘failed states’ and international crime cartels, as a threat to the international global order. Yet the geopolitical realities of money laundering are far more complex and nuanced.

This essay examines why and how money laundering creates a ‘legitimacy crisis’ for post-September 11 global governance.<sup>2</sup> It considers the securitisation of Anti Money Laundering as a discourse; how September 11 has changed its theoretical knowledge base; why the Financial Action Task Force has created new norms that must be understood in terms of English School and Constructivist perspectives; the debates on globalization, identity politics, and sovereignty; and regional trends in the South-east Asian region. Critical theorists discussed include Martha Finnemore, Susan Strange, Noreena Hertz, R.T. Naylor, Martin van Creveld, Barry Buzan, Robert Cooper, Richard Falk, and Thomas Biersteker. Throughout, this essay reveals how political shibboleths obscure the links between money laundering, extra-territorial violence and ‘low intensity’ financial warfare.

## **IR Theory as a Conceptual Frame for AML**

International Relations (IR) theory provides an expanded conceptual frame to understand the global flows and regional dynamics that money laundering occurs in. Integrating this frame into existing tools like forensic accounting and social network analysis can help policymakers and strategists to develop more robust compliance strategies.

The majority of AML-related work falls into three traditional IR paradigms: the realist tradition; the liberal internationalist; and the neo-Marxist. Each paradigm has a critical narrative that resonates with AML concerns: respectively, the specter of transnational crime and anarchic global governance; neo-liberal globalization and the perceived decline of the international state; and core/periphery development perspectives that critiques global finance and the Washington Consensus institutions for causing structural dislocation.

Inclusion of alternate IR perspectives—notably the English School, Constructivist, Postmodernist, and Environmental—can provide rich insights, highlight complex dynamics, and offer new policy options. A post-positivist understanding of IR theory that acknowledges how it provides a context for praxis can overcome the limits of conventional positivist models. Finally, IR theory provides a conceptual frame that can inform forensic accounting, laundering detection systems, and other tools.

## **The Securitisation of Anti Money Laundering Norms and Discourse**

Despite this richness of IR theory, criminology and security studies discourses have largely defined the AML domain to the exception of other perspectives. This is because AML brings together regulatory, law enforcement, revenue collection, and national security programs. Consequently, this knowledge base has shaped AML norms, which Martha Finnemore defines as “constitutive and generative, creating new interests and values for actors.”<sup>3</sup> AML norms and discourse has shaped investigators’ biases, how money laundering is framed as a transborder security problem, and the governance solutions adopted by nation-states and non-state actors to combat it.

The geopolitical roots of AML norms and discourse are traceable to the Reagan Administration’s War on Drugs during the 1980s. Reagan Administration counterterrorism officials viewed money laundering within the context of Cold War politics, state-sponsored terrorism, and proxy wars. Therefore, the priority targets included the Cali and Medellin drug cartels in Colombia, Ayatollah Khomeini’s Iran regime, and ‘old terror’ networks including the IRA and the Palestinian Liberation Organisation (PLO).<sup>4</sup> Rachel Ehrenfeld’s contemporary analysis of the PLO, Saudi Arabia, Hizbullah, and ‘narco-terrorists’ exemplifies this style.<sup>5</sup>

Such analytical priorities meant that AML was situated in knowledge communities of economic security and the international political economy. Throughout the 1990s the post-Cold War environment was framed by economic espionage and illegal technology transfer.<sup>6</sup> Susan Strange deftly summed up this strange period of geopolitical flux and

triumphalism which involved “Russians, Chechens and Georgians [who] have dealt not only in drugs, but in arms, illegal immigrants and even nuclear materials.”<sup>7</sup> Hence AML narratives combined the language of strategic threats with fears of globalization run amok. Jessica Stern’s narrative of post-Soviet economic decline, money laundering, and nuclear smuggling exemplifies the realist view of this complex inter-relationship.<sup>8</sup> Intelligence analysts focused on transborder criminal networks involved in drug trafficking and people smuggling.

Constructivist theorists and risk sociologists are now displacing the realist security paradigm. Phil Williams suggests this shift is because transnational crime is a “new variant of anarchy” that challenges realist and neo-liberal conceptions of global order.<sup>9</sup> For sociologist Ulrich Beck, the variant signals the arrival of a ‘world risk society’ which thwarts consequentialist thinking due to the “unintended consequences of radicalized modernization.”<sup>10</sup> Globalisation analyst Mark Daniell contends that “‘compounded risk’ has become the new meta-norm in a networked society.”<sup>11</sup> The logical conclusion to this shift is the emergence of boutique consultancies that offer intelligence on global risks, and use the ‘politics of fear’ to gain clientele.<sup>12</sup> Global debt critic Noreena Hertz argues that “debt vultures” who operate “at extremes of business” blur the ethical line between legal companies and globalisation parasites.<sup>13</sup>

Another way to grasp this shift is via the structure—agency debate within IR theory. Drawing on Barry Buzan’s constructivist interpretation, Ralf Emmers suggests contemporary security is “primarily about survival against existential threats.”<sup>14</sup> Yet the traditional ‘risk calculus’ remains unable to deal with structural shifts and non-state actors. Four asymmetries have combined to mutate both structure and agency: nation-state boundaries and transborder problems; a hyperspeed environment for decision-making; the complexity of emerging issues; and the battle between Washington Consensus institutions and the anti-globalization movement.<sup>15</sup> For Andrew Linklater, global markets now allow “transnational harm” to be “*transmitted* across boundaries” on a vaster scale than international history to-date.<sup>16</sup>

Regarding structure, Buzan notes that ‘economic security’ has expanded to include “military production; economic dependencies; existing inequalities; illegal trade, technology transfer, and environmental crisis; and instability of the global order.”<sup>17</sup> The Worldwatch Institute and other non-government organisations also believe this imperative demands close integration with sustainability initiatives and the strengthening of collective security arrangements.<sup>18</sup>

Regarding agency, Robert Cooper observes that “The postmodernist state defines itself by its security policy.”<sup>19</sup> Criminal and terrorist networks have likewise adapted to the postmodernist environment with intelligence and risk management capabilities. For Louise Shelley, organised crime has even taken over the welfare state’s traditional functions. Transnational criminal organisations such as the Triads and the Yakuza now engage in “social welfare functions”, and Hamas has adopted similar strategies in the Palestinian territories.<sup>20</sup> Terrorist agency has morphed beyond non-state actors to develop a ‘quasi-sovereignty’ that encroaches on the Westphalian nation-state. Even this

agency is corruptive because illegal transborder groups have “no formal rules governing their behaviour” and “focus their attention primarily on maximising profits.”<sup>21</sup>

## **The Post-September 11 Environment**

Geopolitical strategists viewed money laundering during the Cold War as a type of financial warfare, which Martin Navias defines as “a form of economic warfare whose context is the global financial markets and whose aim is to constrain the enemy’s capability both to generate funds and to shift monies across borders for the purposes of supporting and sustaining international operations.”<sup>22</sup> This definition highlights the continuity of threats between Joseph Stiglitz’s ‘roaring ‘90s’ and the post-September 11 world.

For Thomas Biersteker, “9/11 has overcome lack of political will to target terrorist finances.”<sup>23</sup> This political will was redirected to initial responses against Al Qaeda; to strengthening intelligence and law enforcement capabilities via the US Patriot Act; and more long-term multilateral initiatives to strengthen the liberal economic order. The emphasis prior to September 11 on state-centric solutions— multilateral agreements, embargoes, and sanctions—has been augmented by the growing awareness of non-state actors, transborder flows, and business resilience. AML rapidly became integrated into counter-terrorism’s strategic concerns, notably ‘failed states’, nuclear proliferation, and terrorist networks.

The initial responses after the September 11 attacks involved asset freezes and seizures. Strategies used to shutdown transnational criminal organisations were now adopted to fight terrorist networks. The FBI used the US Racketeering Influences and Corrupt Organizations Act (RICO) to prosecute Al Qaeda members for the 1998 US embassy bombings in East Africa.<sup>24</sup> RICO however imposed an older model onto a new threat: Al Qaeda was an amorphous network closer to a decentralised and entrepreneurial risk management agency than the command-and-control structure envisaged by FBI prosecutors.

The US Government targeted the al Qaeda network and its community of support in the months afterwards, closing bank accounts, shutting down financial institutions, and targeting other avenues. The Western media’s narrative emphasised how Al Qaeda acquired “charity funds used to launder money.”<sup>25</sup> To succeed the US sought to build a global coalition; it was successful because other countries recognised Al Qaeda’s threat to the liberal economic order required multilateral action. “By 8 January 2002 the United States had frozen more than \$33 million in assets belonging to more than 150 individuals and organisations, while a similar amount was frozen by European and other countries,” Navias notes.<sup>26</sup> Regulatory and transparency initiatives such as the Sarbanes-Oxley legislation will only further reinforce these compliance pressures.

Michael Sullivan perceives contrary to Navias, that little has changed in the global economy: “Investment, development, and capital flows are the surface foci, but traditional debates about power and hegemony suggest that the names of the games that

players play have changed, but familiar issues and contests have reemerged.”<sup>27</sup> The rush to shutdown Muslim charities and the ‘hawala’ barter network deflected attention from Enron and Worldcom’s corporate governance failures. Contemporary ‘media spectacles’ also reconstruct money launderers as ‘outsider’ threats that undermine domestic order, a comparable ‘barbarian’ narrative to global terror networks.

## **AML Governance and International Norms**

Immanuel Kant’s *Perpetual Peace* (1795) argued that inter-state commerce and trade could end wars. Kant did not foresee that chaotic global flows create instabilities. The emergence of AML global governance is usually depicted as an iteration of the post-World War II liberal economic order. However it is better understood as an institutional form that reflects the English School’s perspective on international society, and the creator of constructivist norms for multilateral action. For neoconservatives, AML global governance also occurs against the backdrop of Great Power politics that involves the realignment of the United States, Russia, India, and China.<sup>28</sup>

Initial guidance on AML was provided by the US Presidential Commission on Organized Crime (1984), the 1988 Vienna Convention, and the 1990 Strasbourg Convention. These international laws codified “intersubjective norms” regarding governance that were “collectively held ideas about behaviour.”<sup>29</sup> The G7 founded the Financial Action Task Force (FATF) in 1989 and gave it responsibility for “ongoing due diligence” and “scrutiny of transactions” for member states. The FATF released its influential 40 Recommendations in 1990 and currently has Australia and 32 other countries as members.

By creating the FATF, the G7 embodied Martha Finnemore’s process of “the construction of social structures by agents as well as the way in which those structures, in turn, influence and reconstruct agents.”<sup>30</sup> For Valsamis Mitsilegas, an important step in the FATF’s legitimation was the 1996 revision of the 40 Recommendations, which expanded their scope to demand sovereign nation-states adapt to a multilateral structure in order to defeat laundering.<sup>31</sup> The 40 Recommendations closely fit Hedley Bull’s model of “rules of coexistence”, particularly as their Westphalian roots meets the criteria “which prescribe behaviour that sustains the goal of the stabilisation of each state’s control or jurisdiction over its own persons or territory.”<sup>32</sup>

The G7 initially conceived the FATF as a neo-liberal instrument bolstered by a neo-realist analysis of geostrategic hotspots, structural fissures, and emerging threats. The latter theoretical framework has been adopted by the US Treasury’s Office of Terrorism and Financial Intelligence, and by global consultancies—Accenture, Boston Consulting Group, Deloitte Touche Tomatsu, IBM, and KPMG—that offer AML turnkey solutions. In contrast the FATF personifies Buzan’s insight that the “drive to post-sovereign institutions is being driven by economic security logic.”<sup>33</sup> This drive also mirrors the English Schools understanding of the consensus required to create an international society that could impose order on neo-realist anarchy.

The FATF's directives create new compliance norms that challenge national sovereignty but do not go as far as the interventionist debates about human rights and regime change. The FATF's list of non-compliant countries and territories (NCCT) has a similar function for AML compliance entities that the U.S. State Department's list of Designated Terrorist Groups (DTGs) has for counterterrorism units. The FATF's act of labeling an NCCT deligitimates the problematic entity and aims to pressure them into compliance. Non-compliant countries include Nauru, Nigeria, Burma and until late 2003, the Philippines.

The NCCTs and DTGs show, in a constructivist sense, how compliance institutions create new norms to enhance their agency whilst imposing structures on others. This constructivist viewpoint is necessary because cartels and networks that disrupt the nation-state will be adaptive and agile regarding international norms. The FATF's reliance on shaming nation-states still means, however, that it is still anchored in the Westphalian system. Critics contend the NCCTs can be abused as political spin-docotoring when bilateral debt and export credit controls go wrong. The FATF has also had great difficulty in dealing with NCCTs such as Burma and North Korea that have chosen autarky and isolationist policies rather than embrace globalisation.

This tension between the Westphalian model and emerging post-sovereign groups has created "norm contestation" battles between the FATF and non-government organisations. Amnesty International, Human Rights Watch, and Transparency International have particularly sought to expand AML compliance to refugee smuggling and sex trafficking. Transborder criminal groups could avoid this legitimation problem because they were "rule-free organisations, whereas governments are rule-bound."<sup>34</sup>

Finally, the FATF's norm-based strategy differs from global consultancies whose AML compliance systems rely on information technologies. Such systems fail to capture the intentions and moral goals of users, or national differences in DTGs. The data-mining capabilities, digital knowledge assets and pattern recognition software may also imply judgments about individuals and companies that are incorrect.<sup>35</sup> Digital cash and e-commerce initiatives like PayPal are often not regulated by domestic legislation on financial transaction reporting.

Technology solutions have an important role in AML compliance. Yet because they can be readily acquired by non-state actors, technology solutions will be outmanouvered through control of norms and the social context. For example, the Muslim 'hawala' network and hardcore criminal subcultures both use social networks and trust to launder money, rather than traceable transactions in financial institutions. This survival strategy is also why groups seek to control 'failed states' where "hierarchical norms are no longer operative."<sup>36</sup> A broader perspective on AML and globalization is helpful to grasp this.

## Globalization and Anti Money Laundering

Financial markets and global trade flows are often conceived in neo-realist terms as a structural-level complex adaptive system. The demise of the Bretton Woods monetary system under Richard Nixon in 1971 foreshadowed the dominance of economic rationalist policymakers in the United States, the United Kingdom, and Australia from the late 1970s onwards. The removal of capital controls, the state privatisation of assets, and the deregulation of industries created a new environment for money laundering to occur.

Niall Ferguson conveys this dramatic shift by summarising the global bond market's growth from 1982 to 1997 "by a factor of six, to around \$25 trillion [US dollars]."<sup>37</sup> The growth of transborder capital flows in international derivatives, bank lending and foreign exchange markets has been massive. "The amount of so-called "over-the-counter" (OTC) instruments traded outside established exchanges rose from \$8.5 trillion to an astonishing \$51 trillion."<sup>38</sup> For neo-liberal advocate Thomas Friedman, the heirs of this growth were "the Electronic Herd" of bond speculators and currency traders.<sup>39</sup>

Realist scholar Susan Strange is more sceptical of this "casino economy", because Friedman's heroes in the bond and capital markets often have a coevolutionary relationship with country debt and macroeconomic indicators. Strange, George Soros, Richard Falk, and other critics believe that stockmarket chaos and unpredictable money markets will create macro-economic instability. The cyclical currency crises in Russia, Latin America and Asia throughout the 1990s led to exchange rate volatility. Balkanisation and capital outflows can destabilise regions and undermine international norms that operate in multiple jurisdictions. This is perilous Martha Finnemore suggests because, "We tend to forget that markets actually require extensive normative and social support." Soros is more pessimistic in suggesting the Open Society is endangered by global capitalist instabilities.

Money launderers have a symbiotic relationship with global flows, and, by creating front companies and corrupting government officials, turns Friedman's 'Electronic Herd' against itself. Soros confirms they can do this by manipulating the same asymmetries and instabilities that Friedman's traders do.<sup>40</sup> These "side-effects of financial market globalization" were acknowledge before September 11, notes Thomas Biersteker, "but most of the negative consequences associated with these practices seemed to have been more than offset by the general benefits of financial market integration."<sup>41</sup> International casinos were early targets but now launderers look elsewhere. Globalisation instabilities can create the pretext for corporate downsizing, which in turn influences disgruntled employees who may become potential security risks.

Financial institutions in nation-states undergoing the transition from authoritarian to democratic governments are particularly vulnerable. Bank staff and corrupt government officials are relied upon to execute the 'placement' stage. Commoditised payments by insiders are easier for the 'layering' stage. Foreign exchange deals (FOREX) can create 'moral hazards' for staff, whilst an entrepreneurial culture without safeguards can lead to



fraud and tax evasion. Changing international norms have undermined bank privacy laws, and outsourcing has pressured the back-end processes for managing transactions.

Finally, money launderers can infiltrate financial institutions by creating ‘virtual’ shell banks in jurisdictions with weak governance. Once the licensing fee is paid, the new bank can use loopholes to create a ‘correspondent account’ with high-profile institutions, and use the loopholes in this relationship for the ‘placement’ and ‘layering’ stages. This enabled three Russian institutions to defraud the Bank of New York in 1999. Despite several high-profile cases, the critical area of ‘correspondent accounts’ is still self-regulated by financial institutions in Australia and other countries.

## **The Specter of Identity Politics**

One unforeseen side-effect of these trends has been how money launderers use diaspora communities for the ‘layering’ and ‘separation’ stages. Launderers have manipulated the remittance processing services for overseas workers. The societal tensions that globalisation unleashes can include resurgent ethnonationalism and “market dominant minorities” according to Amy Chua. A long-term strategy against this ‘blowback’ has been to shift from laundering to philanthropy activities.<sup>42</sup> At its political extremes, note Ian Buruma and Avishai Margalit, these identity politics can metamorphose into an ‘Occidentalism’ worldview that views neo-liberal globalisation as “a threat because its promises of material comfort, individual freedom, and the dignity of unexceptional lives deflate all utopian pretensions.”<sup>43</sup> Stephen Krassner might suggest that such outcomes are not surprising given that “rulers have not always enjoyed autonomy over their relations with those they rule”, and that restrictive structures inevitably heighten demands for greater agency.<sup>44</sup>

Noreena Hertz, John Perkins, and other critics counter that the liberal economic order has abused its hegemony and created its own instabilities.<sup>45</sup> Past errors include the ‘institutional drift’ of the Washington Consensus institutions from their original aims, the politicisation of development funding, and how banks responded to the 1973 OPEC oil crisis by financing Third World loans with petro-dollars. Hertz notes that during the Cold War, the World Bank lent to Nicaragua’s Somoza regime, Zaire’s Mobutu Sese Seko, Ethiopia’s Mengistu regime, Tito’s Yugoslavia, Argentina’s military junta, and South Africa’s apartheid government.<sup>46</sup> Influenced by a neo-Marxist structural critique, R.T. Naylor takes this viewpoint to its logical conclusion: money laundering is closely linked with global banking’s profit maximisation, which also creates structural violence.<sup>47</sup>

Naylor’s contrarian argument is comparable to the tension in counterterrorism studies between analysts who focus on terrorist networks and those who believe state terrorism has been more dangerous. Yet globalisation has clearly empowered laundering’s clientele, which has evolved from the black operations of intelligence agencies and drug traffickers, to tax evaders and currency speculators. How is this select clientele a transborder threat to sovereignty?

## AML as a Transborder Threat to Sovereignty

Money laundering poses several transborder threats to the Westphalian model of nation-state sovereignty. Currency unions and free trade agreements at a multilateral level require consensus amongst the sovereign stakeholders. Capital flight and altering inter-regional flows can destabilise governments. The specter of ‘failed states’ becomes “a magnet for criminal elements both inside and outside its borders.”<sup>48</sup> In a postmodern world, sovereignty is no longer just in the government’s hands. To prevent the extradition of their drug smugglers to the United States, the Cali and Medellin cartels have tapped into Columbian nationalism and ‘defensive’ sovereignty.<sup>49</sup> This involves hijacking how the sovereign nation-state projects its power in the region.

The three key AML problems will each have different effects on nation-state sovereignty. This is because as Benjamin Cohen claims, “monetary sovereignty . . . continues to exist as a constitutive rule.”<sup>50</sup> Launderers may attempt to infiltrate the domestic banking system and gain legitimacy via correspondent accounts. Using charities to ‘layer’ and ‘separate’ proceeds can destabilise non-government organisations and undermine the collective sense of international society. Alternatives such as bartering and the Muslim ‘hawala’ network bypass the Westphalian nation-state altogether, relying instead on kinship, religious, and tribal bonds.

These three AML problems exist in a transitional space where monetary sovereignty is undergoing its own symbolic transformation to a post-Westphalian model, and the appropriate governance processes and systems are not yet in place. John Urry suggests that the contours of global complexity have shattered the Westphalian nation-state into many different postmodern types.<sup>51</sup> Brian Schmidt concurs that this collective conception has been ‘ruptured’ by the changing genealogies of international anarchy.<sup>52</sup> At its most extreme, AML embeds transborder criminal networks in war-zones and other shadow economies that Carolyn Nordstrom’s groundbreaking anthropological narratives have depicted.<sup>53</sup> Further research needs to be done in this area.

Launderers have infiltrated Russia and Panama, corrupting their governance systems and creating “captured states.”<sup>54</sup> A “political criminal nexus” comes to power, Roy Godson argues, and creates a shadowy form of sovereignty that controls a weak state’s infrastructure, economy, and foreign policy decisions.<sup>55</sup> Richard Falk fears that traditional IR theorists have ignored this “pathological anarchism” at their peril, and the FATF’s strategies are a way to use regionalism strategically to establish order.<sup>56</sup> Ironically, geopolitical strategist Thomas P.M. Barnett includes Russia in a list of ‘Functioning Core’ countries that have internalised the legal, political, and social frameworks to benefit from neo-liberal globalisation.<sup>57</sup> Analysts study the “political criminal nexus”, and the geopolitical conditions it thrives in, in order to create the FATF’s terrorist financing typologies.<sup>58</sup>

Journalist Chris Masters uncovered a different truth to Barnett’s optimism: \$A200-500 billion dollars had been looted from Russia throughout the 1990s, including via the

‘virtual’ banks DKB and SINEX. The launderers paid Nauru an \$A18,000 licence fee to establish the institutions and to have little examination by compliance authorities of their activities. Masters also found an ‘iron triangle’ of corrupt officials, oligarchs, and organised crime syndicates who operated with immunity.<sup>59</sup> In their assessment of the OECD’s Anti-Bribery Convention Russell Mokhiber and Robert Weissman note that such activities are common in countries in the transition to democracy, notably “in the Third World and in the former Eastern Bloc.”<sup>60</sup> Martin van Creveld counters that money launderers were able to manipulate Russians only because the Communist state had collapsed, and was unable to provide welfare functions. The launderers simply stepped into the gap.<sup>61</sup> Attempts to shutdown the dangerous ‘correspondent accounts’ became caught up in bureaucratic infighting and ‘issues attention’ policymaking cycles.

Where the nation-state remains strong, transborder criminal cartels and terrorist networks will engage in transnational money-laundering in an attempt to protect their profits from law enforcement.”<sup>62</sup> Until the FATF became dominant in the late 1990s this was achieved through tax havens created in post-colonial nations. Ken Silverstein explains that havens such as Liechtenstein and the Bahamas created “international business companies as front shells” for launderers.<sup>63</sup> Accountants and lawyers often promoted the havens as “domestic “asset protection” schemes.”<sup>64</sup> The FATF’s pressure on Switzerland’s bank secrecy laws has meant the Russians and other money launderers have turned to Nauru and renegade NCCT areas for protection.<sup>65</sup> Tax havens defend their sovereignty, and the Westphalian norm of non-intervention in domestic affairs, by claiming that their banking system is one of the few viable local industries to survive the legacy of decolonisation.

For Robert Cooper, the FATF’s success exemplifies the distinction between pre-modern states that have become money laundering havens, and postmodern states that rely on ‘symbolic analysts’ and cultural capital. The tension between pre-modern and postmodern states is driven by Great Power geopolitics and resource scarcity.<sup>66</sup> For Cooper, Mary Kaldor, and other ‘new war’ theorists, money launderers use ‘failed’ states as havens and turn pre-modern norms against postmodern nation-states and cosmopolitan elites.<sup>67</sup> They can achieve this because globalisation’s boons empower transnational organised crime and terrorist networks to undermine the Westphalian nation-state’s critical infrastructure. Without a Weberian monopoly on territorial-bound violence, pre-modern states are unable to impose their sovereign will on non-states. Transborder crime can then spread, Cooper believes, and creates the ‘contagion’ effect.

Osama bin Laden’s nation rebuilding projects in Sudan and Afghanistan show how terrorist networks create parasitical modernity to corrupt sovereign governments. Saudi Arabia’s investment in Wahhabist madrassas that indoctrinate separatists and potential terrorists with extremist beliefs provides another example. Robert Kaplan’s visit to West Africa’s Togo captures the influential ‘tragic realist’ view on why money laundering destabilises the sovereign-nation state. Kaplan recounts a nightmarish 400-mile journey of frequent border searches and having to bribe a Togo immigration official. Reflecting on this dystopian future he observes, “International cartels have discovered the utility of weak, financially strapped West African regimes.”<sup>68</sup>

Does South-east Asia face a similar dystopian future?

## Regional Trends in South-east Asia

Counterterrorism analysts have labeled South-east Asia as the 'second front' in the War on Terror. AML initiatives have dealt with Indonesia's Jemaah Islamiyah and the Philippines' Abu Sayyaf. Yet the region is also still recovering from the 1997 Asian currency crisis and the 2004 tsunami humanitarian disaster. These terrorist groups tapped into popular discontent during the 1997 Asian currency crisis. The sporadic attacks by Abu Sayyaf and Jemaah Islamiyah were counterpointed by widespread riots against the International Monetary Fund.<sup>69</sup> Such events are a reminder that debt and 'contagion' effects on markets can create regional instabilities that trigger political violence.

The region's peak multilateral institutions have been slow to adjust to new AML norms, in part due to the early 1990s 'Asian values' debate and Western frustration at 'crony capitalism'. Ralf Emmers assesses that ASEAN "limited its focus from 1976 until 1997 to the abuse and illegal trafficking of drugs."<sup>70</sup> ASEAN's policymaking shift was mandated by international pressure and its admission of Burma and Laos. At a domestic level, Thailand's prime minister Thaksin Shinawatra has used AML to attack media outlets and delegitimize his critics. The FATF is represented by the Asia Pacific Group on Money Laundering, which spearheads regional compliance strategies.

The post-September 11 focus on Jemaah Islamiyah and Abu Sayyaf have uncovered the network of Salafist and Wahhabist madrassas that may be enmeshed with money laundering operations. Zachary Abuzza observes that Muslim *Zakat* taxes are a major funding source for paramilitary training. Non-government organisations "are almost completely unregulated in Southeast Asia, allowing for egregious financial mismanagement and the diversion of funds to terrorist cells."<sup>71</sup> The Abu Sayyaf Group rapidly grew as a terrorist group due to international funding from Al Qaeda-related groups.

However by 2000, Abuzza notes, Abu Sayyaf had lost its funding and had "completely degenerated into a bunch of kidnapping gangs."<sup>72</sup> Although successful in this case, the counterterrorist perspective has obscured the the coexistence of traditional threats including the Asian Triads and Chinese mafia. Waiting for a terrorist group to fall apart likewise ignores more long-term strategies such as "foreign aid triage" that undertakes capacity-building, to mobilise "social capital" and engages in post-conflict reconstruction.<sup>73</sup>

Australian policymakers adopted elements of this strategy when they embraced the new norm of pre-emptive intervention in the Solomon Islands.<sup>74</sup> Their goal was to prevent the Solomon Islands from becoming a 'failed' state, because Godson's 'political criminal nexus' had already undermined the region. Other problems in the Pacific Rim are still viewed through the 'arc of instability' lens that has defined Australian foreign policy. For example, Papua New Guinea's instability attracts criminal gangs involved in

gambling, fraud, people smuggling, prostitution and fraud. It also implicates police and politicians who have undermined AML initiatives.<sup>75</sup>

In contrast, Australia's recent joint security treaty with Indonesia in February 2005 highlights a more successful governance outcome. The FATF pressured Indonesian Finance Minister, Jusuf Anwar to adopt AML legislation, along with the Philippines and the Cook Islands. Australian Securities and Investments Commission analysts used this legislation to create stronger links with Indonesian regulators.

## Conclusions

This essay has surveyed how different IR theorists have surveyed the Anti Money Laundering domain. The neo-liberal and 'tragic realist' frames of AML have been augmented by new perspectives. Critical security studies discourse has expanded the dimensions of threats and 'risk calculus' in the post-September 11 world. Hedley Bull's work in the English School and Martha Finnemore's work on Constructivist norms provide new ways to understand the Financial Action Task Force's global governance initiatives. Critical and postmodernist IR theorists have offered differing explanations of the structural causes of money laundering, the agentive identity of transborder cartels and networks, and their effects on the political sovereignty of the Westphalian nation-state.

Given this theoretical clarification, what are the mid-term options to enhance the AML compliance infrastructure at a domestic level? Thomas Biersteker proposes six key strategies: clarifying political language, involving the private sector, enabling financial institutions to trace funds retroactively, intelligence systems for multilateral investigations, adopting global 'best practices', and investing in pattern recognition technology and data-mining.<sup>76</sup> Robert Keohane and Joseph Nye's work has been used to propose a multisector network of public-private governance that has multiple checks and balances for accountability, spreads risks, and hedges against reputation loss.<sup>77</sup> AML governance could also be reframed as part of Corporate Social Responsibility practices, based on firms adopting the neo-liberal ideal of the effective global citizen.

In April 2004 the FATF began an inquiry into Australia's compliance with its 40 Recommendations, and the Australian Government is expected to soon release draft legislation for public discussion. Rumours of the legislation have created tension between the financial sector and industry regulators. The legislation is likely to be framed by the language of risk sociology, and to shift compliance responsibility to accountants, lawyers, and other professionals who assist money laundering schemes. The post-9/11 climate also demands that AML responsibility is integrated at senior organisational levels: a business ethics and culture issue. This is despite the reality that "scant attention is being given to accounting and auditing as instruments of corporate regulation" by financial analysts.<sup>78</sup> The FATF's demands require organisational and cultural change that have not been dealt with.

How Australian firms and government agencies meet these demands will have implications for two final AML-related social practices. Compliance is now linked to

human resources practices to ensure that information systems remain uncompromised if a person leaves. This has implications for authentication and hiring processes. Second, business continuity and operations sustainability have become new discourses. This enables managers to shift their security responsibility to vendors, and transfer risk to individuals. The final irony of the FATF's 40 Recommendations is that, even with the rich perspectives of IR theories, the adoption of these international norms will probably lead to a reconfigured domestic sphere and a push towards a post-sovereign polity.

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