

## CHAPTER II

### REVIEW OF LITERATURE

#### 1 Money laundering and financing of terrorism

Money laundering and financing of terrorism have been topics of great concern to the world leaders, in other words the highest authorities in the world, not only as serious and highly sophisticated forms of crime but also as threats to human rights, democracy and the rule of law. Evolution of technology is one factor that has contributed to the growth of ML and FT activities and deficiency in international cooperation and coordination is another factor to weaken the AML-CFT mechanism.

##### 1.1 Definitions of money laundering

The term “money laundering” started to draw attention in the early nineties and it has been defined in different ways. Regardless of definitions, the core meaning of the term is the process of turning illegally gained money into legal and lawful money with the purposes (i) to disguise original source of criminal or illegal money and (ii) to eliminate the trail of flowing illicit money. In fact the term “money laundering” is applied not only to financial transactions related to criminal activities but to any financial transaction which generates an asset as a result of illegal acts – corruption, tax evasion, false accounting, etc. It seems that the process of ML has long ago been used by criminals such as robbers and pirates although the money laundering has come to the attention of the international community only in the nineteenth century. Although the definition of money laundering is not stated in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention, 1988), the concept of money laundering can be inferred from Article 3 of the Convention that defines criminal offenses and the laundering of proceeds of crime. It reads:

1. *Each Party shall adopt such measures as may be necessary to establish as criminal offenses under its domestic law, when committed intentionally:*
  - (a) (i) *The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention and the 1961 Convention as amended or the 1971 Convention;*
  - (ii) *The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;*
  - (iii) *The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;*

- (iv) *The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;*
- (v) *The organization, management or financing of any of the offenses enumerated in (i), (ii), (iii) or (iv) above.*
- (b) (i) *The conversion or transfer of property, knowing that such property is derived from any offense or offenses established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions;*
- (ii) *The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offense or offenses established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offense or offenses.*
- (c) *Subject to its constitutional principles and the basic concepts of its legal system:*
- (i) *The acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from an offense or offenses established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offense or offenses;*
- (ii) *The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;*
- (iii) *Publicly inciting or inducing others, by any means, to commit any of the offenses established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;*
- (iv) *Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offenses established in accordance with this article.*

Besides, the United Nations Convention against Transnational Organized Crime (2000) – known as the Palermo Convention – Article (6) defines the criminalization of the laundering of proceeds of crime. It reads:

1. *Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally:*

- (a) (i) *The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of his or her action;*
- (ii) *The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*
- (b) *Subject to the basic concepts of its legal system:*
- (i) *The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*
- (ii) *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offenses established in accordance with this article.*

Money laundering is a process of three stages – placement stage, layering stage and integration stage – which may occur simultaneously or stage by stage or they may overlap. As the process of money laundering has become the centre of attention, money laundering cases have been analyzed seriously, thoroughly and systematically. The common features of money laundering are hiding the true ownership and origin of the funds, taking care of the proceeds in good condition, transforming the proceeds using sophisticated methods and constant pursuit of profit or financial gain with elevated motivation. Money laundering has taken place in one form or another as long as profit has existed. The most prominent methods used by money launderers are use of the advanced technological means, professional assistance and transnational movement of funds by taking advantage of differences in language and criminal justice systems in different countries.

## 1.2 Definitions of financing of terrorism

Despite the fact that the definition of terrorism is highly controversial, it is generally accepted that terrorism is use of violence for political gain or ideological or ethnic struggle by such groups as separatists, freedom fighters, liberators, militants, paramilitaries, guerrillas, rebels, jihadists and mujaheddins or fedayees<sup>1</sup>. Acts of terrorism can be committed by individuals acting alone or carried out by groups of clandestine or semi-clandestine actors outside the framework of legitimate wars through their psychology and social circumstances, regardless of religion and nationality.

The following are the proposed definitions<sup>2</sup> for the term “terrorism”.

- League of Nations Convention (1937):

<sup>1</sup> “Terrorism” Wikipedia, the free encyclopedia , <http://en.wikipedia.org/wiki/Terrorism> ,[ Read September, 2005]

<sup>2</sup> UNODC, [Definitions of Terrorism](http://www.unodc.org/unodc/terrorism_definitions.html) , [http://www.unodc.org/unodc/terrorism\\_definitions.html](http://www.unodc.org/unodc/terrorism_definitions.html), [ Read September 2005 ]

*All criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.*

- UN Resolution language (1999):
  1. *Strongly condemns all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed;*
  2. *Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them ( GA Res. 51/210 Measures to eliminate international terrorism).*

- Short legal definition proposed by A.P. Schmid to United Nations Crime Branch (1992):

*Act of Terrorism = Peacetime Equivalent of War Crime*

- Academic consensus definition:

*Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat – and violence-based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought( Schmid, 1988 ).*

The legal definition for terrorist financing predicate offense stated in the 1999 International Convention for the Suppression of the Financing of Terrorism (Article 2) is:

1. *Any person commits an offense within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:*
  - (a) *An act which constitutes an offense within the scope of and as defined in one of the treaties listed in annex; or*
  - (b) *Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking any active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international*

*organization to do or to abstain from doing any act.*

2. (a) *On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact.*
- (b) *When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.*
3. *For an act to constitute an offense set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offense referred to in paragraph 1, subparagraph (a) or (b).*
4. *Any person also commits an offense if that person attempts to commit an offense as set forth in paragraph 1 of this article.*
5. *Any person also commits an offense if that person:*
  - (a) *Participates as an accomplice in an offense as set forth in paragraph 1 or 4 of this article;*
  - (b) *Organizes or directs others to commit an offense as set forth in paragraph 1 or 4 of this article;*
  - (c) *Contributes to the commission of one or more offenses as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:*
    - (i) *Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offense as set forth in paragraph 1 of this article; or*
    - (ii) *Be made in the knowledge of the intention of the group to commit an offense as set forth in paragraph 1 of this article.*

In summary the term terrorist financing refers to the act of providing the funds or something of value to individual terrorists or terrorist groups or persons and groups engaged in terrorist activities or engaging in financial transactions with terrorist groups knowingly and unlawfully. FATF Special Recommendation II encourages countries to criminalize the financing of terrorism, terrorist acts and terrorist organizations – consistent with Article 2 of the Convention against Financing of Terrorism – and ensure that such offenses are designated as money laundering predicate offenses.

Terrorism includes not only the incidents that have happened in different parts of the world (Please see Chapter 1, heading 1 – Growing threats and international response.) but also the substantive offenses for unsuccessful violent attacks whose nature is extremely serious about violent attacks. For example, the terrorist plot to blow up US-

bound jetliners, as many as 10 passenger jets leaving Britain for the United States, over the Atlantic and kill thousands in 2006, was disrupted by British police and quite a number of terrorist suspects were arrested and the police have continued surveillance on potential terrorist attacks.

Tracking terrorist financial transactions seems more difficult than following the money trails of criminal groups for two reasons, among others, (i) the amount of funds required for terrorist attacks is comparatively small and (ii) the financing of terrorism is overshadowed by the larger financial resources allocated for the group's political and social activities.

### **1.3 Processes with different destinations**

Even though the 3-stage-process of FT is almost the same as that of ML – placement, layering and integration – terrorist organizations put more emphasis on an adequate financial infrastructure, rather than financial gain, through which to support their performances financially. Another difference between ML and FT is that individual terrorists or terrorist groups may sometimes rely on legitimate, generated sources of income as terrorist groups use fund-raising methods and it is common practice to obtain financial support as a charity from the affluent people, especially from many religious communities. Bank accounts, especially in jurisdictions with low level of effective regulation and corrupt governance are used by terrorist groups to support themselves with funding from both legitimate and non-legitimate sources.

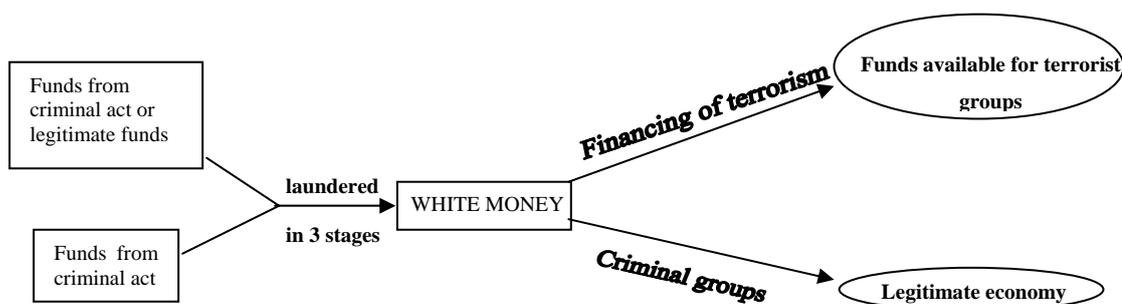
ML as well as FT is not a single act but a process whose prominent stages as stated earlier are: placement; layering; and integration.

**Placement** refers to the beginning stage of entry into legal financial systems. Various criminal groups endeavor to place large amounts of illegitimate cash into the legitimate financial systems. They choose any State, regardless of distance far or near, which is poorly regulated and that has lax banking system to deposit their illicit money. Sanitization or whitewashing is done to clean up the portrayal of particular issues and facts that may conflict with the official point of view.

**Layering** refers to the creation of complex and sophisticated networks and transactions which attempt to blur the link between the initial stage and the end of the laundering cycle. Having entered the proceeds into the legitimate financial systems, money launderers and the criminals who finance the terrorists attempt to obscure the entry point of legal financial systems and evade scrutiny by regulators or law enforcements by using sophisticated methods such as smurfing, using different bank accounts, buying gold bullions, etc. In other words, in order to shrink the huge volumes of cash generated by the initial criminal activity, a large amount of money is transformed into various forms of property, for example, buying precious stones that have less attraction to the authorities concerned.

**Integration**, which is the final stage in the process, refers to the return of funds to the legitimate economy for later extraction. Integration of laundered money into the legitimate economy is accomplished by the money launderer and terrorist financier by making it appear to have been legally earned. It is, therefore, extremely difficult to distinguish legal and illegal wealth from the integrated affluence.

The process of terrorist financing seems to be similar to that of money laundering carried out by criminal organizations but in principle the financing of terrorism is different from criminal organizations' performance of money laundering. The destination of the dirty money owned by money launderers, after being disguised, is the legitimate financial system. On the other hand, terrorist financing involves the funds that come from a legal or illegal source and the destination of the funds is a place where the funds are available to the terrorist organizations whenever they want. In a way, terrorist financing is a branch of ML but their destinations are different.



**Figure 1 : Showing processes of ML and FT**

In one way or another, these two processes are sometimes connected. There appears to be little difference between the methods – connected accounts, bank drafts and similar instruments, bureaux de change, remittance services, credit and debit cards, cash couriers, companies, professionals, and so forth – to hide or obscure the links between the source of the funds and their eventual destinations or purposes. In fact criminalities – smuggling, different types of fraud, misuse of non-profit organizations (NPOs) and charity fraud, drug trafficking – provide a much more consistent revenue stream to criminal organizations and terrorist organizations. There has been a tug of war between global criminals, and international regulators, legal professionals and/or law enforcement agencies due to advances in science and technology. Criminals are always intellectually alert to invention of new methods and ready to overcome the obstructions of their money laundering process.

#### 1.4 Money laundering methods

The APG, as one of the FATF-style regional bodies (FSRB) on money laundering, has studied and analyzed the methods, techniques and trends of money laundering and terrorist financing since its establishment in 1997. Findings from typologies work enable the regulatory, supervisory and law enforcement agencies to understand the current and emerging trends of money laundering and terrorist financing. The following are a few key money laundering and terrorist financing methods, techniques, schemes and instruments<sup>3</sup>.

1. Association with corruption ( bribery, proceeds of corruption and instances of corruption undermining AML-CFT measures)
2. Currency exchanges / cash conversion

<sup>3</sup> APG, “Typologies”, <http://www.apgml.org/frameworks/>, [ Read October, 2005]

3. Cash couriers / currency smuggling
4. Structuring / smurfing
5. Use of credit cards, checks, promissory notes, etc)
6. Purchase of portable valuable commodities (gems, precious metals, etc)
7. Purchase of valuable assets (real estate, race horses, vehicles, etc)
8. Commodity exchanges (barter)
9. Use of wire transfers
10. Underground banking / alternative remittance services (hawala / hundi, etc)
11. Trade-based money laundering and terrorist financing
12. Gaming activities (casinos, horse racing, internet gambling, etc)
13. Abuse of non-profit organizations (NPOs)
14. Investment in capital markets
15. Mingling (business investment)
16. Use of shell companies / corporations
17. Use of offshore banks / businesses, including trust company service providers
18. Use of nominees, trusts, family members or third parties, etc.
19. Use of foreign bank accounts
20. Identified fraud / false identification
21. Use of “gatekeepers” professional services (lawyers, accountants, brokers, etc)
22. New payment technologies

More description of certain money laundering typologies will be seen in Chapter 3, heading 5.4 – “knowledge of untraceable ML-FT methods” of this paper.

## 1.5 International efforts

World leaders have realized that international efforts are indispensable to counter money laundering and terrorist financing. Governments create agencies to serve as the national centre for AML programs and provide the exchange of information between financial institutions and law enforcements. These agencies are called financial intelligence units (FIUs). Eventually FIUs have become focal points not only for national AML programs but also for CFT programs because money laundering and terrorist financing are mingled. In June 1995, the Egmont Group of Financial Intelligence Units (Egmont Group) – a worldwide network of 106 financial intelligence units (as of July 2007)<sup>4</sup> to fight money laundering and terrorist financing – was established. A completely effective, multi-disciplined approach for combating and preventing financial crime is often beyond the reach of any single law enforcement or prosecutorial authority.

The Palermo Convention (2000), article 7 (1) (b), states that each country should establish an FIU to serve as a national centre for the collection, analysis and dissemination of information regarding money laundering related crimes. It says:

*Each State Party shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national*

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<sup>4</sup> FinCEN, [The Egmont Group – Financial Intelligence Units of the world](http://www.fincen.gov/int_egmont.html), [http://www.fincen.gov/int\\_egmont.html](http://www.fincen.gov/int_egmont.html) [Read 23 January 2008]

*and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.*

It is obvious that the world will be insecure and extremely dangerous if there is a place where the funds are available for future terrorist financing activities regardless of legitimate or illegitimate source. It is, therefore, critical to cut off the financing of terrorism from either source. UNSC resolutions 1333 and 1373 call on all Member States to freeze the funds and financial assets not only of the terrorist Usama Bin Laden and his associates, but terrorists all over the world. Countries are required to ratify the United Nations Convention on the Suppression of Terrorist Financing (1999) and to make legal professionals work within their governments to consider additional measures and share lists of terrorists for it is necessary to ensure that the entire network of terrorist financing is addressed. Sharing of information among FIUs is also critical to cut off the flow of resources to terrorist organizations and their associates. All countries have been encouraged to establish asset-tracking centers or similar mechanisms and to share the information on a cross-border basis. Governments are unified to deny terrorists access to the resources that are needed to carry out the twin evil acts, money laundering and terrorist financing. International concerted effort is essential to freeze terrorist assets, to enact legislation to criminalize terrorist financing, and to improve information sharing between the financial intelligence units of the world.

With the guidance of the Basel Committee on Banking Supervision, financial supervisors and regulators around the world have exerted control on financial sectors making sure that they are not abused by terrorists. The International Monetary Fund (IMF) has assessed the adequacy of supervision in offshore financial centers and is providing the necessary technical assistance to strengthen their integrity.

The role of enhanced international cooperation and coordination in AML-CFT system based on two important factors – creation of a robust law enforcement body and exchange of police intelligence – is crucial on the worldwide political agenda. Concerning the maintenance of international peace and security and friendly relations among nations, countless international conventions have been conducted since the end of the Second World War. Only the most prominent conventions related to money laundering and terrorist financing, however, are to be discussed in this chapter.

## **2 International legal instruments**

Due to the growing threat of money laundering and financing of terrorism, the world leaders – including confronted governments and policy makers worldwide – had to meet and find out the means to combat the sophisticated transnational criminal activity. They adopted the international conventions, and the United Nations had to make appropriate resolutions and act as depository thereof. Owing to international efforts a number of invaluable international conventions have come into existence since December 1988.

## 2.1 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)

What can be regarded as the first international legal instrument for suppression of money laundering is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), which was adopted on 19 December 1988 and came into force on 11 November 1990. The number of the parties is 183<sup>5</sup> and it is composed of 34 Articles: Article 5 focuses on confiscation; Articles 6 – 13 on international cooperation; Articles 14 – 20 and 24 on measures to eradicate illicit cultivation of narcotic plants and to eliminate illicit demand for narcotic drugs and psychotropic substances; and Articles 21-23 deal with mechanisms for implementation of measures.

The Convention is restricted to drug trafficking and does not use the term money laundering. It, however, implies the concept of money laundering – Article 3, paragraph 1-b (i), (ii), 1-c (i), (ii) – and cooperation in respect of confiscation, extradition and mutual legal assistance is described in Articles 5, 6 and 7 respectively. It also calls upon world nations to criminalize the activity, whereas only drug-related offenses are predicate offenses under this Convention. What then is the extent of the threat? To cite the ADB's 2003 Manual<sup>6</sup> where it states that the IMF estimated the aggregate size of money laundering worldwide as somewhere between 2% and 5% of global gross domestic product, adding that, using 1996 estimates, these percentages would indicate that money laundering ranged between US\$590 billion and US\$1.5 trillion.

One reason, among many others, for the world leaders concluding the Vienna Convention is that although, prior to this convention, there were two major treaties – the UN Single Convention on Narcotic Drugs (1961) amended by 1972 Protocol and the UN Convention on Psychotropic Substances (1971) – they were inadequate to the task of dealing with sophisticated modern international drug trafficking. The drug cartels use all possible means to disguise the sources of great amount of drug-related money that can be easily noticed by law enforcement officials. Consequently, dirty money derived from drug is laundered by the mentioned three basic stages. Criminals from different regions of the world – regardless of educational qualification, sex, age, religion, or nationality – are organized at the behest of powerful and affluent drug cartels. Above all, legitimate business corporations with highly educated, disciplined and skilled professionals who can disguise the illegal nature and origin of the drug-related money are used by the drug cartels.

Another reason is that some outcomes of drug trafficking have a negative impact on national economy, health and welfare of people, domestic political stability, etc. In the first preamble of the Convention, the States Parties clearly state:

*Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and*

<sup>5</sup> UN, The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), [www.unodc.org/pdf/treaty\\_adherence\\_convention\\_1988.pdf](http://www.unodc.org/pdf/treaty_adherence_convention_1988.pdf), [Read 29 August 2006, January 2008]

<sup>6</sup> ADB, Asian Development Bank Manual on Countering Money Laundering and Financing of Terrorism, 2003: pp.4 – 5

*psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society.*

Thirdly, the world leaders have noticed that however much the international conventions have done to combat ML and FT, as far as corruption exists in the AML-CFT system, the objectives of the system will never be fully achieved. The extremely profitable illicit drug trade tempts the leading politicians, judges, etc. and some politically exposed persons are involved in the many differing levels of the trade. As a result, it corrupts the central organs of State power. Since corruption is the major factor to hinder the combating of money laundering related to various types of serious crimes, the preamble of the Convention (paragraph 5) hints:

*Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels.*

Accordingly, the United Nations Convention against Corruption (UNCAC) was adopted on 31 October 2003 and came into force on 14 December 2005. (Please see heading 2.4 – UN Convention against Corruption.)

Last but not least, one of the most alarming features of drug trafficking which make the international community vigilant is that the movement of drugs from producers (developing countries in South America, Southeast Asia and Southwest Asia) to consumers (developed countries located in advanced industrialized economies, such as the United States, North America and Western Europe) by using transit countries (Caribbean, Central America) can pose an indirect threat to the maintenance of international peace and security. In addition, Europe has been an exporter of psychotropic substances to different parts of the world. During the convention the States Parties, including drug-producing countries, drug-consuming countries and transit countries, expressed their determination to improve international cooperation in the combating of money laundering<sup>7</sup>.

Although the initial concern over money laundering began with drug trafficking, nowadays, illicit monies are produced from a vast range of criminal activities – sales of weapons, cyber crime, homicide, human trafficking, and corruption. Regardless of the crime, money launderers use the same process – placement, layering and integration – to legitimize the proceeds derived from the criminal activities. Despite the fact that the Vienna Convention lacks the term “money laundering”, this Convention is now widely regarded as constituting the foundation of the international anti-money laundering regime. Countries, therefore, have taken appropriate steps to ratify and implement the Vienna Convention in order to combat money laundering effectively.

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<sup>7</sup> UN, The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), Articles 5 – 10.

## 2.2 International Convention for the Suppression of the Financing of Terrorism (1999)

Starting with the Vienna Convention the world community had developed over the years measures to address the problem of proceeds of serious crimes and money laundering. Having observed the connection between money laundering and financing of terrorism, the world leaders recalled the previous conventions and treaties related to terrorist financing and were all geared up for a convention for the suppression of terrorist financing.

Long before the attacks on the United States in September 2001, the financing of terrorism had been an international concern. There were several United Nations General Assembly (UNGA) and UNSC Resolutions such as GA Resolution 49/60 of 9 December 1994, GA Resolution 50/6 of 24 October 1995, GA Resolution 51/210 of 17 December 1996 (paragraph 3a to 3f), GA Resolution 52/165 of 15 December 1997, GA Resolution 53/108 of 8 December 1998, and SC Resolution 1189 of August 1998 on international terrorism.

France proposed a convention for the suppression of terrorist financing at the United Nations General Assembly on 23 September 1998. UNGA Resolution 53/108 of 8 December 1998 empowered an *ad hoc* committee to elaborate a draft of international convention for the suppression of terrorist financing to supplement related existing international instruments.

Consequently the International Convention for the Suppression of the Financing of Terrorism – the Convention against FT – was adopted by the UN on 9 December 1999 and came into force on 10 April 2002. As of 1 January 2006, the number of the parties<sup>8</sup> is 154 and it is composed of 28 Articles; Article 2 defines the predicate offense of terrorism (Please see Chapter 2, heading 1.2 – Definition of financing of terrorism), Articles 4-9 deal with measures against terrorist acts and financing of terrorism, and Articles 10-22 with international cooperation.

The following are nine international treaties made between 1970 and 1997 set out in the Annex to the Convention.

1. *Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.*
2. *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.*
3. *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.*
4. *International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.*
5. *Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.*

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<sup>8</sup> Inventory of International Nonproliferation Organizations and Regimes, Center for Nonproliferation Studies, International Convention for the Suppression of the Financing of Terrorism, 8-10-2006: p.1

6. *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.*
7. *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.*
8. *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.*
9. *International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.*

Regarding the universal instruments against terrorism, please see Chapter 4, heading 4.7 – Thailand and universal instruments.

It requires ratifying States (1) to criminalize terrorism, terrorist organizations and terrorist acts, (2) to engage in wide-ranging cooperation with other States Parties and provide them with legal assistance in the matters covered by the Convention, and (3) to enact appropriate requirements concerning the role of financial institutions in the detection and reporting of evidence of financing of terrorist acts. The significance of the definition of financing of terrorism is seen in the combination of two elements – the *mental element* and the *material element* of the offense in Article 2 (1) – where it says: “Any person commits an offense within the meaning of the Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out....” Thus, this single provision covers the material element of providing or collecting funds or financing the terrorist acts as well as the mental element of intent or knowledge of the funds being used for terrorist activities.

The mental element covers willfully providing or collecting funds as well as the intent or knowledge, whereas the material elements relate to financing and terrorist acts defined in the Convention.

The UN actively undertook the significant action to fight money laundering and terrorist financing as it has the ability to adopt international treaties or conventions that have the effect of law in a country once that country has signed, ratified and implemented the Convention, depending on the country’s constitution and legal practice.

### **2.3 United Nations Convention against Transnational Organized Crime (2000)**

As the threats posed by the activities of crime groups are regarded as both serious and increasing, both developed and developing countries are vulnerable. Although some organized crime groups are involved in one form of criminal activity, others engage in various illicit activities. Even though the criminal organizations initially pose the threats in their own countries, coordination and cooperation among crime groups have increased and they are tempted to operate across international frontiers in the pursuit

of profit. One research project<sup>9</sup>, among many others, conducted by the AMLO (Thailand) in 2005 proves that there is a strong linkage between organized crime groups in Asia and Europe.

The Vienna Convention and the Convention against FT were followed by the United Nations Convention against Transnational Organized Crime. This Convention known as the Palermo Convention was adopted on 15 November 2000 and came into force on 29 September 2003. The number of parties<sup>10</sup> is 135 and 147 countries have signed the Convention. It is composed of 41 Articles: Articles 5, 6 and 8 deal with criminalization (1) of participation in an organized criminal group, (2) of the laundering of proceeds of crime and (3) of corruption respectively; Articles 7 and 9 deal with measures to combat ML and corruption. Similar to the Vienna Convention and the Convention against the Financing of Terrorism, Articles 13-29 of this Convention emphasize international cooperation.

The purpose of this Convention is to promote international cooperation to prevent and combat transnational organized crimes more effectively. It for the first time mentions the term “laundering of proceeds of crime”, i.e. money laundering, and urges the countries to criminalize money laundering as a predicate offense. Article 6 defines the predicate offenses including, among others, money laundering as follows:

*The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of his or her action.*

With respect to the scope of application, unlike the Vienna Convention, the Palermo Convention deals with predicate offenses inclusive of money laundering, whether committed within one’s jurisdiction or outside of the country. In Article 3(2) it says:

*For the purpose of paragraph 1 of this article, an offense is transnational in nature if: (a) it is committed in more than one State; (b) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) it is committed in one State but has substantial effects in another State.*

Although transnational organized crime was restricted to drug trafficking and related money laundering initially, later it has been broadened to include a large number of serious crimes including financing of terrorism.

## **2.4 UN Convention against Corruption (2003)**

The links between corruption and organized crime are now universally recognized. Corruption, connecting with different types of crime, such as terrorism, human rights

<sup>9</sup> AMLO - The Asia Europe Meeting (ASEM) Anti-Money Laundering Project – Research Paper(2), “Case Studies on the Links between Organized Crime Groups in Asia and Europe” 2005: p.74

<sup>10</sup> UNODC, Signatories to the UN Convention against Transnational Crime and its Protocols [http://www.unodc.org/unodc/crime\\_cicp\\_signatures.html](http://www.unodc.org/unodc/crime_cicp_signatures.html) , [Read 3 September 2007]

abuses, environmental degradation and poverty, and economic crime – including money laundering, malfeasance and price collusion – is not only a local but also a transnational phenomenon that affects the political stability, the stability and security of societies, and national economies. Preventing and combating corruption must, therefore, be seen as part of an overall effort to create the foundation for democracy, development, justice and effective governance.

In order to implement and maintain effective, coordinated anti-corruption policies – that promote the participation of society and reflect the principles of law, proper management of public affairs and public property, integrity, transparency and accountability – countries must not only establish and promote effective practices aimed at the prevention of corruption but also periodically evaluate legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption. The existence of an anti-corruption body is one crucial factor in combating corruption. Each country should grant the body/bodies the necessary independence to enable them to carry out its/their functions effectively and free from any undue influence.

There have been cases of corruption, locally and internationally, that involve vast quantities of assets, which may constitute a substantial proportion of the resources of countries. In order to prevent and detect international transfers of illicitly acquired assets, and strengthen international cooperation in asset recovery, a comprehensive and multidisciplinary approach is required. Since all States are responsible to prevent and eradicate corruption, they must cooperate with one another in combating corruption effectively.

Consequently, there are several conventions on combating corruption and UN Resolutions concerning corruption. The conventions are:

- the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 October 1996, and the Convention of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,
- the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organization for Economic Cooperation and Development on 21 November 1997,
- the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,
- the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999, and
- the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003.

The famous UN Resolutions are:

- A/RES/55/61 in 2000 – An Effective International Legal Instrument against Corruption and
- A/RES/55/186 in 2000 – Preventing and Combating Corrupt Practices and Illegal Transfers of Funds and Repatriation of Funds to the Countries of Origin.

As corruption strikes at the core of the priority concerns of the UN, the Convention against Corruption was adopted by the UN on 31 October 2003 in Vienna, Austria, and came into force on 14 December 2005. Its critical focus is prevention of corruption and the purposes of this Convention are:

1. to promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
2. to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and
3. to promote integrity, accountability and proper management of public affairs and public property.

This Convention applies to the prevention, investigation and prosecution of corruption including freezing, seizure, confiscation and return of the proceeds of offenses. The UN Convention against Corruption consists of the following major points.

- General provisions
- Preventive Measures for Public Sector: ethics and anti-corruption policies, ethics and anti-corruption bodies, codes of conduct, public procurement and finance, public reporting, and political party funding
- Preventive Measures for Private Sector and Civil Society: accounting standards, combating money laundering, society participation
- Punishment of Corruption: identification and criminalization of corrupt acts, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witness and victim, and law enforcement
- Promoting and Strengthening International Cooperation: mutual legal assistance, law enforcement cooperation, and joint investigation
- Recovery of Assets: preventing money laundering, cooperation on confiscation and return of assets.
- Measures for International Cooperation: technical cooperation and monitoring implementation.

Ratifying this Convention, countries have legal obligations of the Convention:

- to criminalize an array of corrupt practices;
- to develop national institutions to prevent corrupt practices and to prosecute offenders;
- to cooperate with other governments to recover stolen assets; and
- to help each other, including with technical and financial assistance, to fight corruption, reduce its occurrence and reinforce integrity.

Domestic legislative framework of each country must reflect the provisions of the Convention in combating corruption. United Nations Information Services

(UNIS/CP/484, 10 May 2004) states<sup>11</sup>:

*Quantifying the magnitude of the corruption both at the national and international level is a challenge. Some studies have suggested that the cost of corruption exceeds by far the damage caused by any other single crime. More than US\$ 1,000 billion is paid in bribes each year, according to ongoing research at the World Bank Institute (WBI). This figure is an estimate of actual bribes paid worldwide in both rich and developing countries. The World Bank estimates that one Asian country has lost US\$ 48 billion over the past 20 years to corruption, surpassing its entire foreign debt of US\$ 40.6 billion.*

Since the UNODC, as the custodian of this Convention, has maximized the impact of international assistance, its program of technical assistance is being expanded to those countries whose needs are the greatest. In order to achieve corruption-free countries, technical cooperation projects focus on four areas:

1. providing national anti-corruption policies and mechanisms;
2. strengthening judicial integrity and capacity;
3. promoting integrity in the public and private sectors, and
4. denying the proceeds of corruption and facilitating the recovery of illicit assets

## **2.5 United Nations resolutions**

Since 1945, the United Nations, as the world leader, has taken an active role to promote the harmonization of countermeasures and the strengthening of international cooperation.

In 1998, ten years after the Vienna Convention (1988), the UNGA Special Resolution S-20/4d “Countering Money Laundering” upgraded and updated the Convention to strengthen the action of the international community against the global criminal economy. As a result of UNGA Resolution 53/108 of 8 December 1998, the International Convention for the Suppression of Financing of Terrorism was adopted by the United Nations on 9 December 1999. The scope of money laundering under the terms of the Palermo Convention (2000) includes proceeds derived from all serious crimes. It urges the countries to cooperate with each other in the detection, investigation and prosecution of money laundering, terrorist financing and other serious money laundering related criminalities.

Following the tragic events of September 2001 the United Nations Security Council acted promptly by deliberating on the issues of terrorism and terrorist financing and passing two resolutions – UNSC Resolution No. 1368, dated 12 September 2001, and UNSC Resolution No. 1373 (2001), dated 28 September 2001. While Resolution 1368 is a quick political response to the terrorist attacks by condemning them in the strongest term, the other – Resolution 1373 – is a legal response to tackle the issues of terrorist financing. In its preamble the Resolution calls on all States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions against

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<sup>11</sup> UN Information Service, United Nations Convention against Corruption, (Fact sheet) UNIS/CP/484, <http://www.unis.unvienna.org/unis/pressrels/2004/uniscp484.html> , 10 May 2004.

terrorism. Furthermore, it recognizes the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism. Measures to be taken by States are shown in detail in paragraphs 1 to 9 of the Resolution.

The Resolution obligates member States to criminalize actions to finance terrorism, deny all forms of support for terrorist groups, suppress the provision of safe haven or support for terrorists, prohibit active or passive assistance to terrorists, and cooperate with other States in criminal investigations and sharing information about planned terrorist acts. In fact, this crime has been recognized officially since long before this particular incident – the tragic event of September 11, 2001 – took place. Most of the UNSC resolutions reaffirm the UNGA Resolution 2625 (adopted on 24 October 1970) which affirms the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States. In addition to this, the UNSC Statement S/2350 (31 January 1992) focuses on commitment to collective security, peacemaking and disarmament, arms control and weapons of mass destruction. Pursuant to the UNSC Resolution 1373 (2001), there are a number of resolutions adopted by the UNSC.

## **2.6 FATF 40 + 9 Recommendations**

Aside from the aforesaid conventions and resolutions, much earlier effort has been made by international bodies and regional bodies to combat money laundering. The Financial Action Task Force on Money Laundering (FATF), an intergovernmental policy-making-body, is one of such organizations. The FATF designed a comprehensive framework, in 1990, for countries throughout the world to use in developing their own efforts against ML covering the criminal system and its regulation, and international cooperation. The framework based on the Vienna Convention (1988), the Palermo Convention, and the Statement of Principles for the bank supervisors issued on 12 December 1988 by the Basel Committee on Banking Supervision as cornerstones is known as the Forty Recommendations on Money Laundering. In response to the 9/11 attacks and other terrorist attacks around the world the FATF mandate was expanded to include measures to combat financing of terrorism. Experts from various ministries, law enforcement authorities, bank supervisory and regulatory agencies worked together with concerted effort to obtain a fruitful and expressive report of the Recommendations.

### **2.6.1 Forty Recommendations**

The major purpose of the 1990 Forty Recommendations is to develop and promote policies at both national and international levels to combat money laundering especially firmly rooted in the issue of the financial power of inveterate drug trafficking syndicates and other organized crime groups whereas none of the Recommendations was terrorist specific. The Recommendations were to focus on 3

areas<sup>12</sup>:

1. Improvements to national legal systems;
2. Enhancement of the role of the financial system; and
3. Strengthening of international cooperation.

The Forty Recommendations – revised for the first time in 1996 to take into account changes in money laundering trends and to anticipate potential future threats – have since been revised to take account of new developments in the world. A questionnaire was distributed to the members of the FATF to collect their views on what sorts of alteration should be made to the Recommendations and Interpretative Notes. The results of the consultation questionnaire were prepared and it was agreed to focus on eight major issues<sup>13</sup> of substance identified by the consultation exercise in order to facilitate the progress. The eight major issues are as follows:

1. The extension of the predicate offenses for money laundering beyond drug trafficking;
2. The expansion of the financial recommendations to cover non-financial businesses;
3. The expansion of treatment of customer identification;
4. The imposition of a requirement for the mandatory reporting of suspicious transactions;
5. Cross-border currency monitoring;
6. Asset-seizure and confiscation;
7. Shell corporations; and
8. Controlled delivery.

Since terrorism has emerged again as an influential actor in the criminal world, the FATF standards were updated and reinforced. Among some other issues, terrorist financing is integrated into the overall anti-money laundering in the 2003 version of the Revised FATF Recommendations, which is flexible for any country to implement the principles in accordance with its own circumstances and constitutional requirements. The FATF has also elaborated various Interpretative Notes which are designed to clarify the application of specific Recommendations and to provide additional guidance. The 2004 Revised FATF Recommendations essentially cover the following areas:

- (a) Legal systems (Recommendations 1 – 3);
- (b) Measures to be taken by financial institutions and non-financial businesses and professions (NFBPs) to prevent money laundering and terrorist financing (Recommendations 4 – 25);
- (c) Institutional and other measures necessary in systems for combating money laundering and terrorist financing (Recommendations 26 – 34); and
- (d) International cooperation (Recommendations 35 – 40).

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<sup>12</sup> Gilmore, W.C., Dirty Money, the Evolution of International Measures to Counter Money Laundering and Financing of Terrorism, third edition, Council of Europe Publishing, November 2004 : pp. 94 - 98

<sup>13</sup> Gilmore, W.C., Dirty Money, the Evolution of International Measures to Counter Money Laundering and Financing of Terrorism, third edition, Council of Europe Publishing, November 2004: p. 100

## **2.6.2 Nine Special Recommendations**

Growing attention has been paid to combating international terrorism and CFT has thrust to the top of the political agenda in the aftermath of the 9/11 attacks. Prior to the attacks in New York, Washington D.C. and Pennsylvania, the issue of terrorist financing was mentioned neither in the 1990 nor in the 1996 Recommendations of the FATF on money laundering. Immediately after those incidents, in October 2001 the FATF extended its mission to include the fight against the financing of terrorism and to that effect the FATF issued Eight Special Recommendations and revised the Forty Recommendations to include specific treatment of terrorist funding.

The Special Recommendations combined with the 2003 Forty Recommendations provide a framework for the prevention, detection and suppression of the financing of terrorism. The content of the first five Special Recommendations is similar to that of the 1999 Palermo Convention and UNSC Resolution 1373, whereas the remainder emphasizes alternative remittance systems, wire transfers and non-profit organizations.

In its introduction, the FATF clearly defines its purpose as “the development and promotion of policies to combat money laundering – the processing of criminal proceeds in order to disguise their illegal origin” – and states that “these policies aim to prevent such proceeds from being utilized in future criminal activities and from affecting legitimate economic activities.” On 22 October 2004, the FATF issued one more criterion known as Special Recommendation IX related to cash couriers. In its Interpretative Note, it states that “Special Recommendation IX was developed with the objective of ensuring that terrorists and other criminals cannot finance their activities or launder the proceeds of their crimes through the physical cross-border transportation of currency and bearer negotiable instruments ....”

## **3 Methodology of assessing compliance**

It is essential to monitor the effectiveness of applying the FATF 40 + 9 Recommendations to financial institutions, businesses and professions, and non-financial businesses and professions in AML-CFT regimes and to assess the implementation of criminal laws, plus performance of authorities concerned in the legal and institutional AML-CFT framework. Much as countries wish to work very hard to have effective and robust AML-CFT regimes, there might be loopholes without proper guidance, or criteria for how to assess their AML-CFT regimes. These criteria are clearly identified in the text of the AML-CFT methodology.

### **3.1 FATF assessment methodology for AML-CFT**

The international effort against ML and FT has been highlighted and assessments that measure compliance with the FATF 40 + 9 Recommendations have been conducted by the FATF in cooperation with the IMF and the World Bank (WB). Before the FATF assessment methodology was endorsed by the FATF, a number of versions were prepared: August 2001, February 2002, April 2002 and September 2002 which is a draft of an integrated comprehensive methodology. In 2002, the IMF adopted the FATF methodology to apply in a 12-month pilot program of AML/CFT assessments that would be conducted in accordance with the comprehensive and integrated

methodology based on the FATF 40 + 8 Recommendations.

After the revision of the FATF 40+8 Recommendations in June 2003, the revised assessment methodology was adopted by the FATF in February 2004 that consists of more than 200 criteria<sup>14</sup>. Having been revised several times, the 2004 Methodology (updated as of February 2005) consists of 250 criteria – 212 essential criteria and 38 additional elements – against which countries will be assessed for their compliance with the FATF 40 + 9 Recommendations. On the other hand, the 2004 Methodology updated as of October 2005, June 2006 and February 2007 consists of 249 criteria – 211 essential criteria and 38 additional elements for the essential criterion 16.4 does not exist in those updated versions.

The AML Assessment Methodology<sup>15</sup> focuses on the criteria necessary for an effective AML regime that has been developed by the Basel Committee on Banking Supervision, the IOSCO, and the IAIS. The draft AML Assessment Methodology – piloted in four Financial Sector Assessment Programs (FSAPs) in Luxembourg, the Philippines, Sweden and Switzerland – was circulated in August 2001.

### 3.2 Mutual evaluation

Since a regular assessment of progress is the best instrument for any system, a decision was made to perform three rounds of mutual evaluation to monitor implementation by FATF member countries for assessing compliance with the FATF Forty Recommendations.

- The initial round of mutual evaluation was completed in 1995. The major purpose of the evaluation was to assess the degree of formal compliance with the Recommendations.
- The second round was initiated in early 1996 and was completed in late 1999. The emphasis was placed on the effectiveness of practicing the measures taken by members.
- The third round of evaluation commenced in late 2004. The focus was placed exclusively on compliance with the revised parts of the Recommendations, the areas of significant deficiencies identified in the second round, and generally the effectiveness of the countermeasures.

The 1990 Recommendations were used in the first round and the second round evaluation, whereas the 2003 Revised 40 Recommendations and 8 Special Recommendations were used in the third round evaluation. Annual assessments and two rounds of mutual evaluations showed most jurisdictions' insufficient compliance with the Forty Recommendations in AML-CFT regimes.

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<sup>14</sup> WB, Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, second edition, 2004: p III-12

<sup>15</sup> Joint Progress Report on the Work of the IMF and World Bank, Intensified Work on AML-CFT, 17 April 2002. <http://www.imf.org/external/np/mae/aml/2002/eng/091002.htm>, [Read October 2006; 4 September 2007]

### **3.3 List of Non-Cooperative Countries and Territories (NCCT list)**

Measures regarding confiscation are treated in Article 5 of the Vienna Convention. On the other hand, without international cooperation no confiscation can be successful and effective. Since international cooperation in ML and FT is critical, Articles 6 – 13 of the Vienna Convention deal with international cooperation. Being a dynamic process, neither ML nor FT is that easy to be fought to the end. Competent authorities, therefore, are responsible to obtain documents and information that can be used in investigations and prosecutions of ML-FT predicate offenses. On the other hand, if competent authorities or governments of countries provide their territories as havens for the criminals, that will create hazardous situations in combating ML and FT. Services provided in the ever-growing number of the financial havens and offshore centers are serious hindrances to combating money laundering and terrorist financing.

One of the most important factors to combat the crimes effectively is enhanced international forfeiture cooperation supported by operative and productive mechanisms to promote international cooperation, such as, mutual legal assistance in investigations, prosecutions and judicial proceedings relating to money laundering and terrorist financing, including arrest, extradition and asset seizure. As far as there are some jurisdictions with corrupt governance and lax AML-CFT frameworks, the world cannot be secure from the crimes and it is difficult to achieve the effective implementation of agreed anti-money laundering measures. As money launderers continuously seek new ways to achieve their illegal ends they exploit weaknesses in lax jurisdictions to continue their illegal activities.

In order to eliminate those countries – havens for criminals, reduce the vulnerability of the financial system to money laundering and financing of terrorism, and increase the worldwide effectiveness of AML-CFT regimes with every single country's cooperation, the FATF initiated the NCCT exercise based on 25 criteria in June 2000 to assess whether non-FATF jurisdictions are cooperating in the fight against money laundering. The assessments are based on the principles of ROSC and NCCT's 25 criteria. Besides, the AML-CFT issues are broadly addressed in FSAP and OFC (Offshore Financial Centers) assessments. The FATF set up four regional review groups: (1) Americas, (2) Asia/Pacific, (3) Europe, and (4) Africa and Middle East to analyze the anti-money laundering frameworks of the jurisdictions against twenty five criteria.

The FATF also published, in February 2000, the initial report on NCCTs which included the twenty five criteria. In October 2004, the FATF consolidated the four review groups into two: (1) the Review Group on Asia/Pacific and (2) the Review Group on the Americas, Europe and Africa/Middle East.

A non-cooperative county/territory was informed, beforehand, of the work to be carried out by the FATF review group. When the review group is satisfied that the NCCT has taken adequate steps to have effective implementation of AML measures, the jurisdiction will be recommended to be removed from the NCCT list. This initiative has been successful and made significant progress as all of the twenty three NCCTs identified initially by the FATF have gradually been removed from the list.

### 3.4 Financial Sector Assessment Program (FSAP)

The Financial Sector Assessment Program<sup>16</sup> (FSAP) was launched in May 1999 with the aim to increase the effectiveness of efforts to promote the soundness of financial systems in member countries. That is the fruitful result of a significant effort exerted by the IMF and the WB. The FSAP supported by experts from a range of national agencies and international standard setters emphasizes prevention and mitigation rather than crisis resolution. The objectives of the FSAP are:

- To identify the strengths and vulnerabilities of a country's financial system;
- To determine how key sources of risk are being managed;
- To ascertain the sector's developmental and technical assistance needs; and
- To help prioritize policy responses.

Detailed assessments of observance of relevant financial sector standards and codes are a key component of the FSAP. The FSAP also forms the basis of Financial System Stability Assessments (FSSAs) and Financial Sector Assessments (FSAs). The Detailed Assessment Questionnaire (DAQ) forms are provided to individual countries. All evaluations of financial sector strengths and weaknesses conducted under the FSAP include an assessment of the jurisdiction's AML-CFT regime. The country is assessed against the following core principles<sup>17</sup>:

- Core principles for effective banking supervision
- Insurance core principles
- Objectives and principles of securities regulation
- Core principles for systematically important payment systems
- Code of good practices on transparency of monetary and financial policies
- Recommendations for securities settlement systems
- Standards for anti-money laundering
- Countering terrorist financing

### 3.5 Reports on the Observance of Standards and Codes (ROSCs)

International financial stability, essential for a healthy international financial system, can be imperiled by financial crises in individual countries in the world of integrated capital markets. In this regard, international standards that can help identify vulnerabilities as well as provide guidance on how to reform policy in an individual country are set and applied to both international and individual national AML-CFT systems. In order to serve the objectives of the international standards effectively, the scope and application of such standards needs to be assessed in each individual country in the context of the country's overall development strategy.

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<sup>16</sup> Bank of Thailand, Financial Sector Assessment Program (FSAP)  
[http://www.bot.or.th/BoThomepage/BankAtWork/Financial\\_Supervision/FSAP/FSAPindex.asp](http://www.bot.or.th/BoThomepage/BankAtWork/Financial_Supervision/FSAP/FSAPindex.asp) ,  
 [Read December 2006]

<sup>17</sup> HM Treasury, Financial Stability, The IMF Financial Sector Assessment Program (FSAP),  
[http://www.hm-treasury.gov.uk/documents/financial\\_services/fin\\_stability/fin\\_finstability\\_fsap.cfm](http://www.hm-treasury.gov.uk/documents/financial_services/fin_stability/fin_finstability_fsap.cfm), [Read December 2006]

Considering this, the IMF and the WB initiated a joint pilot program “*Reports on the Observance of Standards and Codes*” (ROSCs) that relate to policy transparency, financial sector regulations and supervisions, and market integrity. The objectives<sup>18</sup> of the program include: to assist countries in making progress in strengthening their economic situations; to inform WB and IMF work; and to inform market participants. The two institutions have undertaken a large number of summary assessments of the observance of selected standards relevant to private and financial sector development and stability that are collected as “ROSC modules”.

An ROSC module is a summary assessment of a member’s observance of an internationally recognized standard in one of the areas endorsed by the IMF and the WB Boards. All modules follow a common structure with a description of country practice, an assessment of the extent to which the member meets the standard, and a list of prioritized recommendations for reform. In other words, Reports on the Observance of Standards and Codes – prepared and published at the request of the member countries – summarize to what extent countries have complied with certain international standards and codes. They are used to help sharpen the institutions’ policy discussions with national authorities, and in the private sector (including rating agencies) for risk assessment. Short updated modules are produced regularly and new reports are produced every few years.

The following 12 areas and associated standards are used to assess AML-CFT regimes.

1. Accounting,
2. Auditing,
3. Anti-money laundering and countering the financing of terrorism (AML-CFT),
4. Banking supervision,
5. Corporate governance,
6. Data dissemination,
7. Fiscal transparency,
8. Insolvency and creditor rights,
9. Insurance supervision,
10. Monetary and financial policy transparency,
11. Payment systems, and
12. Securities regulations.

Modules for the financial sector are derived from FSAPs, and the World Bank has been asked to lead in three areas – corporate governance, accounting and auditing, and insolvency regimes and creditor rights – covered by Reports on Observance of Standards and Codes (ROSCs).

## 4 International standard setters

As national legal systems of countries vary according to constitutional requirements of respective countries it is hard to adopt specific laws that are identical to those of

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<sup>18</sup> IMF and WB, *The Standards and Codes Initiative – Is It Effective? And How Can It Be Improved*, approved by Mark Allen and Danny M. Leipziger, 1 July 2005: pp. 5 – 7  
<http://www.imf.org/external/np/pp/eng/2005/070105a.pdf> , [Read 6 September 2007]

another country. International standards, therefore, are necessary to be set for facilitation in combating money laundering and financing of terrorism. The prominent international standard setters are:

- (1) The United Nations (UN)
- (2) The Financial Action Task Force on Money Laundering (FATF)
- (3) The Basel Committee on Banking Supervision
- (4) International Association of Insurance Supervisors (IAIS)
- (5) International Organization of Securities Commissioners (IOSCO)
- (6) International Council of Securities Associations (ICSA)
- (7) The Egmont Group of Financial Intelligence Units
- (8) Regional bodies and relevant groups

Without the cooperation between the above-mentioned international standard setters it would be quite tough in combating money laundering and financing of terrorism. The UN initiated to take steps to fight money laundering and financing of terrorism. As a result of an increased concern about ML, the UN adopted the Vienna Convention in 1988 and the FATF – established in 1989 with the purpose to develop and promote policies for combating ML in accordance with the Vienna Convention – issued Forty Recommendations on how to combat ML, but no specific measures for financing of terrorism were included.

Due to the ever-increasing terrorist attacks around the world, the UN adopted the International Convention for the Suppression of the Financing of Terrorism in 1999 and the Palermo Convention – more wide-ranging than the Vienna Convention – in 2000. In 2001, the FATF issued eight Special Recommendations on terrorist financing and included specific measures for financing of terrorism in the revision of the FATF 40 Recommendations in accordance with the Convention against Financing of Terrorism and the Palermo Convention. The FATF Special Recommendation IX related to cash couriers was issued in 2004. Consequently, FATF 40+9 Recommendations exist as international standards for the global AML-CFT regime. The UN strongly urges all member States to implement the FATF 40+9 Recommendations (UNSC Resolutions 1617, paragraph 7) on July 2005.

Since money launderers use both the banking system and non-banking system through which great amounts of money are transmitted, and they use financial institutions and non-financial institutions as focal points for financial misuse, regulations for those systems are crucial in implementing AML-CFT standards. It would therefore be impossible to combat money laundering and terrorist financing without financial institutions' assistance. The Basel Committee on Banking Supervision is one of the key international banking regulators and issues guidelines on international standards for the banks and systematizes supervisory standards and guidance to implement the AML-CFT standards in accordance with their own national systems. The International Organization of Securities Commissioners (IOSCO) and the International Association of Insurance Supervisors (IAIS) are two important standard-setting bodies for the non-banking sector. Considering AML-CFT as a high priority, the bodies revise and provide globally accepted frameworks for the securities industry and the insurance sector. The International Council of Securities Associations (ICSA) regulates the vast majority of the equity, bond and derivatives markets.

Regarding implementation of AML-CFT standards, the performance of FIUs – central agencies to receive, analyze, and disseminate financial information to combat money laundering and terrorist financing – is extremely important. The Egmont Group provides FIUs of countries and jurisdictions with guidance on exchange of information among themselves in order to have efficient and effective international cooperation in combating money laundering and financing of terrorism.

Last but not least, the regional FATF-style bodies (FSRB) play a key role, as facilitators, in the implementation of AML-CFT standards within their respective regions. The work of the FATF has been supported by FSRBs by encouraging implementation and enforcement of FATF Recommendations 40+9. They are fundamental to the global fight against ML and FT. They help their members in different ways: sharing the information on ML trends and methods, and other developments for ML; assessing the effectiveness of AML-CFT systems; and identifying the weaknesses of their members in order to enable the member countries to take remedial action. Membership is open to any country within the region as far as it is willing to abide by their rules and objectives. Similarly, the FATF earnestly wish to help its FSRB. The FATF, with the intention of strengthening its partnerships with the regional groups, has organized and will organize yearly joint plenary meetings of the FATF typologies with one of the regional groups.

#### 4.1 United Nations

The United Nations (UN) founded after the end of the Second World War in 1945 by 51 States is a global association of governments, which consists of 192 member States as of 2006. The UN is divided into such principal organs as – UN General Assembly (UNGA), UN Security Council (UNSC), UN Economic and Social Council, UN Trusteeship Council, UN Secretariat, International Court of Justice – and specialized agencies , such as WHO, UNICEF and so forth.

The United Nations Global Program against Money Laundering<sup>19</sup> (GPML), the key instrument of the United Nations Office on Drugs and Crime (UNODC), is a program which encourages anti-money laundering policy development, monitors and analyses the problems and responses, and raises public awareness about money laundering. The UN helps the States, through GPML, not only to introduce legislation against money laundering and terrorist financing but also to develop and maintain the mechanisms that combat the twin evils with the goal of increasing the effectiveness of international action against money laundering by offering technical expertise, training and advice to member countries upon request.

The UNGA and the UNSC are the two administrative bodies of the UN to produce the resolutions for combating ML and FT. The following are twelve universal instruments<sup>20</sup> related to the prevention and suppression of international terrorism adopted by the United Nations.

<sup>19</sup> International Money Laundering Information Network (IMOLIN), United Nations Global Program against Money Laundering, <http://www.imolin.org/imolin/gpml.html>, [Read August 2006]

<sup>20</sup> UNODC, Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols, 2004: pp.2 [http://www.unodc.org/pdf/Legislative%20Guide%20Mike%2006-56981\\_E\\_Ebook.pdf](http://www.unodc.org/pdf/Legislative%20Guide%20Mike%2006-56981_E_Ebook.pdf) [Read September 2006]

- Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Aircraft Convention )  
Signed : 14 September 1963 (Tokyo)  
Came into force : 4 December 1969
- Convention for the Suppression of Unlawful Seizure of Aircraft (Unlawful Seizure Convention)  
Signed : 16 December 1970 (The Hague)  
Came into force : 14 October 1971
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Civil Aviation Convention)  
Signed : 23 September 1971 (Montreal)  
Came into force : 26 January 1973
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents (Diplomatic Agents Convention)  
Signed : 14 December 1973 (New York)  
Came into force : 20 February 1977
- International Convention against the Taking of Hostages (Hostage Taking Convention)  
Signed : 17 December 1979 (New York)  
Came into force : 3 June 1983
- Convention on the Physical Protection of Nuclear Material (Nuclear Material Convention)<sup>21</sup>  
Signed : 26 October 1979 (Vienna)  
Came into force : 8 February 1987
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (Airport Protocol)  
Signed : 24 February 1988 (Montreal)  
Came into force : 6 August 1989
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Maritime Convention)<sup>22</sup>  
Signed : 10 March 1988 (Rome)  
Came into force : 1 March 1992
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Fixed Platform Protocol)<sup>23</sup>

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<sup>21</sup> International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention)

Signed: 13 April 2005 (New York)

Came into force: (Not yet)

Amendment to the Convention on the Physical Protection of Nuclear Material (Amendment to the Nuclear Material Convention)

Signed: 8 July 2005 (IAEA, Vienna)

Came into force: (Not yet.)

<sup>22</sup> Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Protocol 2005 to the Maritime Convention )

Signed: 14 October 2005 (London)

Came into force: (Not yet.)

<sup>23</sup> Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed

- Signed : 10 March 1988 (Rome)
- Came into force : 1 March 1992
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (Plastic Explosives Convention)
  - Signed : 1 March 1991 (Montreal)
  - Came into force : 21 June 1998
- International Convention for the Suppression of Terrorist Bombings (Terrorist Bombings Convention)
  - Signed : 15 December 1997 (New York)
  - Came into force : 23 May 2001
- International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention)
  - Signed : 9 December 1999 (New York)
  - Came into force : 10 April 2002

In addition to the twelve instruments, some United Nations Security Council Resolutions<sup>24</sup> play the crucial roles in combating money laundering and terrorist financing. Although the United Nations Security Council may not be successful in restoring international peace and security in most cases, it nonetheless has passed a number of resolutions dealing with terrorism, including terrorist financing, in addition to a host of terrorism-related international conventions and protocols.

## 4.2 Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) established by the G-7 Summit in Paris in 1989 – an organization without having a tightly defined constitution or an unlimited life span<sup>25</sup> – has been working efficiently, effectively and fruitfully since 1989. Its responsibility initially was to analyze money laundering methods and set out the measures to be taken to combat money laundering and later has expanded to the matters related to terrorist financing. The main purpose of the FATF comprised of 33 member jurisdictions<sup>26</sup> is to develop and promote policies for combating money laundering and terrorist financing.

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Platforms Located on the Continental Shelf (Protocol 2005 to the Fixed Platforms Protocol)  
Signed: 14 October 2005 (London)

Came into force: (Not yet.)

<sup>24</sup> UNSC Resolution 1189 (1998)  
UNSC Resolution 1267 (related to Usama Bin Ladin – 1999)  
UNSC Resolution 1269 (1999)  
UNSC Resolution 1368 (2001)  
UNSC Resolution 1373 (2001)  
UNSC Resolution 1377 (2001)  
UNSC Resolution 1617 (2005)

<sup>25</sup> FATF-GAFI, What is the FATF?, [http://www.fatf-gafi.org/document/57/0.3343.en\\_32250379\\_32235720\\_34432121\\_1\\_1\\_1\\_1.00.html](http://www.fatf-gafi.org/document/57/0.3343.en_32250379_32235720_34432121_1_1_1_1.00.html), [Read December 2005]

<sup>26</sup> Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; the European Commission; Finland; France; Germany; Greece; The Gulf Cooperation Council; Hong Kong; China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Netherlands; New Zealand; Norway; Portugal; Russia; Singapore; South Africa; Spain; Sweden; Switzerland; Turkey; the United Kingdom; and the United States.

Due to the general commitment made by G7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom and the United States), and the Commission of European Communities to define a strategy to combat money laundering, i.e. the FATF 40 + 9 Recommendations – revised several times to ensure that they remain up to date and relevant to evolving threats of money laundering – the FATF has become the spearhead of the global combat against money laundering and financing of terrorism. (Please see heading 2.6 FATF 40 + 9 Recommendations). There are seven FSRBs which have committed to implement the FATF Recommendations and agreed to undergo a mutual evaluation of their AML-CFT systems.

The FATF was established in 1989 and it was unanimously agreed, during 1993-1994 round, that the FATF should remain in being until 1998-1999. Again in April 1998, a ministerial meeting of members held in Paris extended the FATF's span of life until 2004. In May 2004, the life of the Task Force was extended again for eight more years until December 2012<sup>27</sup>.

The major tasks<sup>28</sup> the FATF has performed are:

- *Setting international AML/CFT standards: The FATF develops international AML/CFT standards (The "FATF 40+9 Recommendations") as well as additional interpretation or guidance and best practices.*
- *Monitoring compliance with AML/CFT standards: The FATF monitors the compliance of its members with the FATF 40 + 9 Recommendations through a peer or mutual evaluation process.*
- *Promoting worldwide application of the FATF standards: The FATF encourages the universal implementation of FATF standards by supporting FATF-style regional bodies (FSRBs) in all parts of the world and through partnerships with international and regional organizations.*
- *Encouraging compliance of non-FATF members with FATF standards: The FATF urges non-member countries to implement AML/CFT standards through its cooperation with the FSRBs, as well as through various mechanisms designed to encourage countries to adhere to international standards, such as the NCCT initiative and technical assistance needs assessments (TANAs).*
- *Studying the methods and trends of money laundering and terrorist financing: The FATF examines current typologies on an ongoing basis to ensure that its AML/CFT policy making is relevant and appropriate in dealing with the evolving ML/FT threat.*

Apart from the 40 + 9 Recommendations, the FATF has undertaken a review of the NCCT initiative. After examining 47 countries and territories, 23 jurisdictions were on the NCCT list<sup>29</sup>. All listed countries have made legislative reforms and placed concrete measures as required in order to comply with international anti-money laundering standards and as of 13 October 2006 there are no Non-Cooperative

<sup>27</sup> Gilmore, W.C., Dirty Money, the Evolution of International Measures to Counter Money Laundering and Financing of Terrorism, third edition, Council of Europe Publishing, November 2004 : p. 91

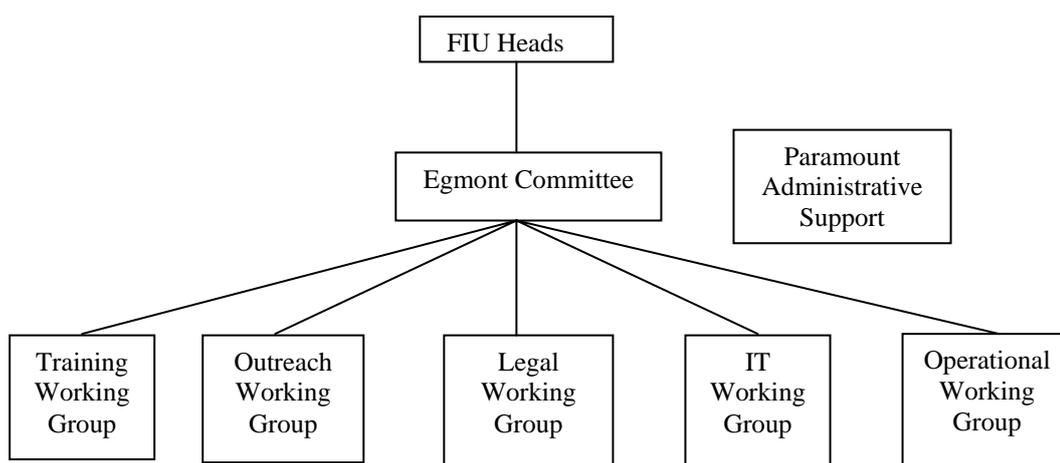
<sup>28</sup> FATF, FATF 2004-2005 Annual Report, <http://www.oecd.org/dataoecd/41/25/34988062.pdf>, 10 June 2005: pp. 6 – 7 [Read October 2006]

<sup>29</sup> FATF, FATF 2004-2005 Annual Report, <http://www.oecd.org/dataoecd/41/25/34988062.pdf>, 10 June 2005: p.5

Countries and Territories<sup>30</sup>. And yet there are some questions: (1) Are the AML-CFT regimes in the de-listed countries compliant with international anti-money laundering standards?; (2) Does the FATF realize the real situation of money laundering process in those countries?; and (3) Are all the de-listed countries not safe havens?.

### 4.3 Egmont Group

Over the past years, governments have created financial intelligence units to deal with the problem of ML. In the early 1990s, despite the fact that FIUs were created in jurisdictions their performances were isolated and not as effective as they should be due to lack of international cooperation. In order to overcome this problem, the Egmont Group (named for the location of the first meeting at the Egmont Arenberb Palace in Brussels), a global organization of FIUs established in 1995, with the mission of development, cooperation, and sharing of expertise, has developed five working groups<sup>31</sup> and an Egmont Committee that serves as the consultation and coordination mechanism for the Heads of FIUs. The Egmont Committee consisting of five working groups<sup>32</sup> holds meetings three times a year.



**Figure 2 : Showing organization of Egmont Group**

The major purpose of the Egmont Group is to provide a forum for FIUs to improve support to their respective national anti-money laundering programs, such as expanding and systematizing the exchange of financial intelligence information,

<sup>30</sup> FATF, Non-Cooperative Countries and Territories, [www.fatf-gafi.org/document/4/0,2340,en\\_32250379\\_32236992\\_33916420\\_1\\_1\\_1\\_1.00.html](http://www.fatf-gafi.org/document/4/0,2340,en_32250379_32236992_33916420_1_1_1_1.00.html), [Read November 2006]

<sup>31</sup> US Department of Treasury - Financial Crimes Enforcement Network, Egmont Working Groups/Committee, [http://www.fincen.gov/int\\_fius.html](http://www.fincen.gov/int_fius.html)

<sup>32</sup> 1.The Legal Working Group  
2.The Outreach Working Group  
3.The Training Working Group  
4.The Operational Working Group  
5.The IT Working Group

improving expertise and capabilities of personnel of FIUs and fostering better communication among FIUs through the application of advanced technology. Member-FIUs of the Egmont Group affirm their commitment to encourage the development of FIUs and cooperation among and between them in the interest of combating ML and assisting with the global fight against terrorist financing.

The two documents relating to ML and FT, among others, the Egmont Group has published are:

1. Principles for information exchange between Financial Intelligence Units for Money Laundering and Terrorism Financing Cases (Annex to “Statement of Purpose”<sup>33</sup>): this document contains 5 parts.
  - A. Introduction
  - B. General framework
  - C. Conditions for the exchange of information
  - D. Permitted uses of information
  - E. Confidentiality – Protection of privacy

Allowing countries necessary flexibility to foster the development of FIUs and information exchange, this provides the principles to overcome the obstacles preventing cross-border information sharing, including the conditions for the exchange of information, the permitted uses of information, as well as confidentiality issue.

2. Best Practices for the Exchange of Information between Financial Intelligence Units: this document contains two parts: (1) legal issues for some countries where there might be restrictions that limit the free exchange of information with other FIUs or the access to information relevant to a requesting FIU, and (2) practical issues which provide guidelines regarding (i) request, (ii) processing the request, (iii) reply, and (iv) confidentiality to be taken into account for the exchange of information between FIUs.

As the major purpose of the Egmont Group is to strengthen the exchange of financial intelligence information between FIUs and its commitment is to development of FIUs, it should find out periodically whether the FIUs in the developing countries have carried out their duties effectively and efficiently and accordingly give guidance and assistance to the FIUs, especially the countries that lack advanced technology.

#### **4.4 Basel Committee**

One of the key international banking regulators is the Basel Committee on Banking Supervision, which was established in 1974 to promote the supervision of internationally active banks. The Basel Committee is made up of Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden,

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<sup>33</sup> Egmont, Annex to the Egmont Group “Statement of Purpose”, [http://www.egmontgroup.org/princ\\_info\\_exchange.pdf](http://www.egmontgroup.org/princ_info_exchange.pdf)

Switzerland, the United Kingdom and the United States<sup>34</sup> that are represented by their central-bank or the authority with formal responsibility for the prudential supervision of banking business where this is not the central bank. Its Secretariat is located at the Bank for International Settlements in Basel, Switzerland. The Committee has recognized its work under four subcommittees<sup>35</sup>: (i) the accord implementation group; (ii) the policy development group; (iii) the accounting task force; and (iv) the international liaison group. The Basel Committee meets regularly four times a year and its four main working groups - subcommittees also meet regularly.

The Committee is responsible for issuing guidelines on supervisory standards which the international community expects from banks and bank supervisors. It systematizes supervisory standards and guidelines without intending to have supervisory and enforcement authorities and recommends statements of best practice to implement them in accordance with their own national systems, and it does not have these authorities.

One of its objectives is to improve supervisory standards and the quality of supervision worldwide in three ways: exchanging information on national supervisory arrangements; improving the effectiveness of techniques for supervising international banking business; and setting minimum supervisory standards in areas where they are considered desirable.

Since the Committee has been concerned with money laundering issues, in June 2003, it participated in a joint issuance – a statement of what each of the three sectors (banking, insurance, and securities) has done and should do in the future to deter ML and combat the FT – along with the IAIS and the IOSCO.

#### **4.4.1 Statement on prevention of criminal use of the banking system for the purpose of money laundering, 1988**

The Committee issued its “*Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering*” in 1988. It encourages banks’ management to put in place effective procedures to ensure that all customers are properly identified for their legal financial transactions but not to give active assistance in transactions associated with money laundering. It also suggests to banks to cooperate with enforcement authorities according to the policies and procedures consistent with this Statement focusing on four crucial points:

- Customer identification
- Compliance with law
- Cooperation with law enforcement authorities
- Adherence to the Statement

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<sup>34</sup> Bank for International Settlements (BIS), [History of Basel Committee and its membership](http://www.bis.org/bcbs/history.htm) [Read December 2006 , 7 August 2007]

<sup>35</sup> Bank for International Settlements (BIS), [About the Basel Committee](http://www.bis.org/bcbs/), [Read August 2007]

#### 4.4.2 Core principles for effective banking supervision

The Committee introduced twenty five Core Principles for Effective Banking Supervision, the most important global standard for prudential regulation and supervision, in 1997. It was revised and published in 2006. The intention of the revision was not to radically rewrite the Core Principles but rather to focus on those areas where adjustments to the 1997 framework were required to ensure their continued relevance.

The Core Principles<sup>36</sup> are divided into 7 categories:

- Objectives, independence, powers, transparency and cooperation (Principle 1)
- Licensing and structure (Principles 2 to 5)
- Prudential regulations and requirements (Principles 6 to 18)
- Methods of ongoing banking supervision (Principles 19 to 21)
- Accounting and disclosure (Principle 22)
- Corrective and remedial powers of supervisors (Principle 23)
- Consolidated and Cross-border banking (Principles 24 to 25)

Core Principle 18 deals with an important part of AML-CFT institutional framework which is known as “Know Your Customer” or “KYC” policies and procedures.

*Supervisors must be satisfied that banks have adequate policies and processes in place, including strict “know-your-customer” rules, that [which] promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities.*

#### 4.4.3 Core principles methodology

Since the Principles may be interpreted in different and incorrect ways there may be inconsistencies among assessments. In order to be objective and as uniform as possible, the Basel Committee also issued a “Core Principles Methodology” in May 1999 and revised it in 2006.

It describes under what conditions assessments should be made and the preconditions for effective banking supervision that should be taken into account when forming an assessment. It also raises a few basic considerations for conducting an assessment and compilation of the results. Two categories of criteria – essential criteria and additional criteria – for each Core Principle are discussed in the document. The essential criteria must be met without any significant deficiencies. On the other hand, when the essential criteria are insufficient to achieve the objective of the Principle, the additional criteria may also be needed in order to strengthen banking supervision.

#### 4.4.4 Customer due diligence for banks

Customer due diligence (CDD) is a key part of controlling a bank. According to the

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<sup>36</sup> Basel Committee on Banking Supervision, Core Principles for Effective Banking Supervision, October 2006.

review of the findings of an internal survey of cross-border banking in 1999, the Basel Committee identified deficiencies in many countries' KYC policies. Concerning KYC, the Committee issued "Customer Due Diligence for Banks" in October 2001 and "Consolidated KYC Risk Management" in October 2004.

The extent of KYC robustness is closely associated with the field of anti-money laundering and combating the financing of terrorism. There are four types of interrelated risks<sup>37</sup> banks can have owing to the inadequacy of KYC standards. They are:

1. *Reputational risk*
2. *Operational risk*
3. *Legal risk*
4. *Concentration risk*

#### ***Reputational Risk***

*Reputational risk poses a major threat to banks, since the nature of their business requires maintaining the confidence of depositors, creditors and the general market place. Reputational risk is defined as the potential that adverse publicity regarding a bank's business practices and associations, whether accurate or not, will cause a loss of confidence in the integrity of the institution. Banks are especially vulnerable to reputational risk because they can so easily become a vehicle for or a victim of illegal activities perpetrated by their customers. They need to protect themselves by means of continuous vigilance through an effective KYC program. Assets under management, or held on a fiduciary basis, can pose particular reputational dangers.*

#### ***Operational Risk***

*Operational risk can be defined as the risk of direct or indirect loss resulting from inadequate or failed internal processes, people and systems or from external events. Most operational risk in the KYC context relates to weaknesses in the implementation of banks' programs, ineffective control procedures and failure to practice due diligence. A public perception that a bank is not able to manage its operational risk effectively can disrupt or adversely affect the business of the bank.*

#### ***Legal Risk***

*Legal risk is the possibility that lawsuits, adverse judgments or contracts that turn out to be unenforceable can disrupt or adversely affect the operations or condition of a bank. Banks may become subject to lawsuits resulting from the failure to observe mandatory KYC standards or from the failure to practice due diligence. Consequently, banks can, for example, suffer fines, criminal liabilities and special penalties imposed by supervisors. Indeed, a court case involving a bank may have far greater cost implications for its business than just the legal costs. Banks will be unable to protect themselves effectively from such legal risks if they do not engage in due diligence in identifying their customers and understanding their business.*

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<sup>37</sup> Basel Committee on Banking Supervision, Customer Due Diligence for Banks, October 2001 <http://www.bis.org/publ/bcbs85.pdf>, [Read October 2006, 8 September 2007]

### **Concentration Risk**

*Supervisory concern about concentration risk mostly applies on the assets side of the balance sheet. As a common practice, supervisors not only require banks to have information systems to identify credit concentrations but most also set prudential limits to restrict banks' exposures to single borrowers or groups of related borrowers. Without knowing precisely who the customers are, and their relationship with other customers, it will not be possible for a bank to measure its concentration risk. This is particularly relevant in the context of related counterparties and connected lending.*

*On the liabilities side, concentration risk is closely associated with funding risk, particularly the risk of early and sudden withdrawal of funds by large depositors, with potentially damaging consequences for the bank's liquidity. Funding risk is more likely to be higher in the case of small banks and those that are less active in the wholesale markets than large banks. Analyzing deposit concentrations requires banks to understand the characteristics of their depositors, including not only their identities but also the extent to which their actions may be linked with those of other depositors. It is essential that liabilities managers in small banks not only know but maintain a close relationship with large depositors, or they will run the risk of losing their funds at critical times.*

The document explains in detail on four essential elements: customer acceptance policy, customer identification (general identification requirements and specific identification issues), ongoing monitoring of high risk accounts, and risk management.

Specific identification issues include the following topics.

1. Trust, nominee and fiduciary accounts
2. Corporate vehicles
3. Introduced business
4. Client accounts opened by professional intermediaries
5. Politically exposed persons
6. Correspondent banking

The Committee has produced more than 100 documents on a variety of subjects<sup>38</sup> concerning the improving of international standards of banking supervision that can be seen on the BIS websites.

One of the key international banking regulators is the Basel Committee on Banking Supervision,

There is no doubt to say that the Basel Committee on Banking Supervision has made every effort to improve supervisory standards and the quality of supervision worldwide in three ways: exchanging information on national supervisory arrangements; improving the effectiveness of techniques for supervising international banking business; and setting minimum supervisory standards in areas where they are considered desirable. On the other hand, what could be done if the authorities in

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<sup>38</sup> Bank for International Settlements (BIS), [History of Basel Committee and its membership](http://www.bis.org/bcbs/history.pdf) <http://www.bis.org/bcbs/history.pdf> , [Read August 2006]

certain countries – such as Zimbabwe, Myanmar, Iraq, etc – cannot implement the guidelines on supervisory standards issued by the Basel Committee due to certain factors? Money launderers and financiers of terrorists/terrorism may use those countries as their strongholds for the regions.

#### 4.5 International Association of Insurance Supervisors (IAIS)

The International Association of Insurance Supervisors (IAIS), an organization that sets out principles fundamental to effective insurance supervision on which standards are developed, was established in 1994. Its membership includes insurance regulators and supervisors from over 190 jurisdictions in nearly 140 countries<sup>39</sup>. Its objectives<sup>40</sup> are:

- To cooperate to ensure improved supervision of the insurance industry on a domestic as well as on an international level in order to maintain efficient, fair, safe and stable insurance markets for the benefit and protection of policyholders.
- To promote the well development of well-regarded insurance markets.
- To contribute to global financial stability.

The IAIS revised and expanded its *Insurance Core Principles and Methodology* and it was adopted in October 2003 – that provides a globally-accepted framework for the regulation and supervision of insurers and re-insurers – with the purpose to contribute towards the creation of a sound insurance system. Considering AML-CFT as a high priority, the ICP deals with AML-CFT, and in accordance with ICP 28, the FATF Recommendations applicable to the insurance sector and insurance supervision must be satisfied to reach this objective.

##### **ICP 28**

*The supervisory authority requires insurers and intermediaries, at a minimum those insurers and intermediaries offering life insurance products or other investment related insurance, to take effective measures to deter, detect and report money laundering and financing of terrorism consistent with the Recommendations of the Financial Action Task Force on Money Laundering (FATF).*

##### **Essential Criteria**

- a. *The measures required under the AML-CFT legislation and the activities of the supervisors should meet the criteria under those FATF Recommendations applicable to the insurance sector<sup>41</sup>.*
- b. *The supervisory authority has adequate powers of supervision, enforcement and sanction in order to monitor and ensure compliance with AML-CFT requirements. Furthermore, the supervisory authority has the authority to take the necessary*

<sup>39</sup> IAIS, *Annual Report 2006-07* [http://www.iaisweb.org/temp/2006-2007 Annual report.pdf](http://www.iaisweb.org/temp/2006-2007%20Annual%20report.pdf), [Read October 2007]

<sup>40</sup> *ibid.*: [Read October 2007]

<sup>41</sup> FATF Recommendations 4-6, 8-11, 13-15, 17, 21-23, 25, 29-32 and 40 as well as Special Recommendations IV, V and the AML-CFT Methodology for a description of the complete set of AML-CFT measures that are required.

*supervisory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in an insurer or an intermediary.*

- c. *The supervisory authority has appropriate authority to cooperate effectively with the domestic Financial Intelligence Unit (FIU) and domestic enforcement authorities, as well as with other supervisors both domestic and foreign, for AML-CFT purposes.*
- d. *The supervisory authority devotes adequate resources – financial, human and technical – to AML-CFT supervisory activities.*
- e. *The supervisory authority requires insurers and intermediaries, at a minimum those insurers and intermediaries offering life insurance products or other investment related insurance, to comply with AML-CFT requirements, which are consistent with the FATF Recommendations applicable to the insurance sector, including:*
  - *performing the necessary customer due diligence (CDD) on customers, beneficial owners and beneficiaries*
  - *taking enhanced measures with respect to higher risk customers*
  - *maintaining full business and transaction records, including CDD data, for at least 5 years*
  - *monitoring for complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose*
  - *reporting suspicious transactions to the FIU*
  - *developing internal programs (including training), procedures, controls and audit functions to combat money laundering and terrorist financing*
  - *ensuring that their foreign branches and subsidiaries observe appropriate AML-CFT measures consistent with the home jurisdiction requirements.*

ICP 5 states the supervisory authority cooperates and shares information with other relevant supervisors subject to confidentiality requirements.

In November 2005, the IAIS issued a comprehensive compendium entitled “*Insurance Principles, Standards and Guidance Papers*”<sup>42</sup> that includes the following documents for insurance companies to comply with the anti-money laundering and counter-terrorist financing standards.

1. IAIS supervisory standard on the exchange of information (January, 2002)
2. Insurance Core Principles and Methodology (October, 2003)
3. Guidance paper on anti-money laundering and combating the financing of

<sup>42</sup> IAIS: [Insurance Principles, Standards and Guidance Paper](http://www.iaisweb.org/133_ENU_HTML.asp), November 2005, [http://www.iaisweb.org/133\\_ENU\\_HTML.asp](http://www.iaisweb.org/133_ENU_HTML.asp) > [Read 17 Jan 2006]

- terrorism (October, 2004)
4. Examples of money laundering and suspicious transaction involving insurance (October 2004)
  5. Supervisory standard on fit and proper requirements and assessments for insurers (October, 2005)
  6. Guidance paper on combating the misuse of insurers for illicit purposes (October, 2005)

The IAIS has observer status in the FATF plenary meetings and is also closely involved in the FATF Working Group on Typologies (Insurance Project) with a number of IAIS members participating in the working group.

It would be better if the IAIS has more seminars or conferences where insurance companies can share their experiences and the IAIS also has opportunities to provide assistance to solve their problems.

#### **4.6 International Organization of Securities Commissioners (IOSCO)**

The Inter-American regional association created in 1974 was transformed into the International Organization of Securities Commissioners (IOSCO) consisting of eleven securities regulatory agencies from North and South America in Quito, Ecuador in April 1983. Securities regulators from France, Indonesia, Korea and the United Kingdom were the first agencies to join the membership from outside the Americas in 1984. In July 1986, the IOSCO Paris Annual Conference decided to create a permanent General Secretariat for the Organization that is based in Madrid, Spain.

It is one of the world's key international standard-setting bodies – an organization of securities commissioners and administrators from more than 100 different countries. The primary objectives<sup>43</sup> of the organization are:

- to cooperate together to promote high standards of regulation in order to maintain just, efficient and sound markets;
- to exchange information on their respective experiences in order to promote the development of domestic markets;
- to unite their efforts to establish standards and an effective surveillance of international securities transactions; and
- to provide mutual assistance to promote the integrity of the markets by a rigorous application of the standards and by effective enforcement against offenses.

The IOSCO Statement of Principles provides a comprehensive framework relating to CDD requirements complementing the FATF Forty Recommendations on anti-money laundering. It also provides guidance to industry on the following issues.

1. Identification and verification requirements with respect to omnibus accounts.
2. Ongoing due diligence obligations; record keeping requirements for client

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<sup>43</sup> OICV-IOSCO, General Information on IOSCO, <http://www.iosco.org/about/>, [Read 17 January 2006]

- identification information.
3. Third party reliance.

Regarding money laundering, in its report “objectives and principles of securities regulations” (May 2003), the IOSCO states<sup>44</sup>:

*Securities regulators should consider the sufficiency of domestic legislation to address the risks of money laundering. The regulators should also require that market intermediaries have in place policies and procedures designed to minimize the risk of the use of an intermediaries business as a vehicle for money laundering.*

The following are the prominent achievements of the IOSCO<sup>45</sup>.

- A comprehensive set of Objectives and Principles of Securities Regulation (IOSCO Principles, 1998) – International benchmark for all markets.
- A multilateral memorandum of understanding (IOSCO MOU, 2002) – Designed to facilitate enforcement and exchange of information among the international community of securities regulators.
- A comprehensive methodology (IOSCO Methodology, 2003) – To enable the objective assessment of the level of implementation of the IOSCO Principles in the jurisdictions of IOSCO members and the development of practical action plans specifically designed to correct identified deficiencies.

#### **4.7 International Council of Securities Associations (ICSA)**

The International Council of Securities Associations (ICSA), established in 1988 is now comprised of 15-member associations<sup>46</sup> that are engaged in a wide variety of regulatory and policy issues that affect both national and international securities markets. The members of the ICSA meet every year at the annual general meeting to discuss critical issues related to the international securities market. The ICSA’s Secretariat is domiciled in the New York offices of the Securities Industry Association.

The objectives of the International Council of Securities Associations are:

- To aid and encourage the sound growth of the international capital market by promoting and encouraging harmonization and, where appropriate, mutual recognition in the procedures and regulation of that market; and
- To promote the mutual understanding and exchange of information among ICSA members.

The ICSA published a *Statement on Regulatory and Self-Regulatory Consultation Practice*, important elements of which are included in the IOSCO’s recently approved public consultation program.

<sup>44</sup> IOSCO, Objectives and principles of securities regulations, May 2003, p.16 [Read October 2007] <http://www.apgml.org/documents/docs/15/IOSCO%20Principles.pdf>

<sup>45</sup> OICV-IOSCO, IOSCO Historical Background, <http://www.iosco.org/about/index.cfm?section=history>, [Read 17 January 2006]

<sup>46</sup> ICSA, About ICSA, <http://www.icsa.bz/html/history.html> [Read October 2007]

Being international organizations consisting of governmental regulatory and supervisory entities, guidelines or recommendations or suggestions of both the International Organization of Securities Commissioners (IOSCO) and the International Council of Securities Associations (ICSA) are mostly of mandatory nature. Therefore, once a member country has approved or accepted any recommendation or suggestion, that member is bound to comply with it. That is why their recommendations or suggestions are usually highly professional and mostly comprehensive.

## 4.8 Regional bodies and relevant groups

In addition to the above-mentioned international standard setters there are other regional organizations organized continent-wise that play vital roles in the combating of money laundering and terrorist financing.

### 4.8.1 FATF-style regional bodies (FSRBs)

The development of FATF-style regional bodies, the global network committed to combating money laundering and terrorist financing, that have the potential to enhance regional cooperation in the fight against terrorist financing is an important complement to the work of the FATF. There are seven FATF-style regional Bodies (FSRBs)<sup>47</sup> that effectively take part in AML-CFT performance.

#### 4.8.1.1 Asia/Pacific Group (APG)

As Thailand is a member of the Asia/Pacific Group, only this FATF-style regional body on money laundering is to be described in this chapter. The APG was established as an FATF-style regional body for the Asia-Pacific region on money laundering in February 1997 to assist member countries and other jurisdictions in the Asia Pacific region to implement anti-money laundering standards. The APG consists of 36 members and it has 6 observers<sup>48</sup>. The major purpose of the APG is to ensure the adoption, implementation and enforcement of internationally accepted anti-money laundering and counter-terrorist financing standards as set out in the FATF Forty Recommendations and Nine Special Recommendations. The responsibilities of the APG include<sup>49</sup>:

- Providing secretariat services to and serving as a focal point for the APG;

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<sup>47</sup> 1. Asia/Pacific Group on Money Laundering (APG) for Asia-Pacific region.  
 2. Caribbean Financial Action Task Force (CFATF) for Latin America and Caribbean.  
 3. Council of Europe (MONEYVAL) for Europe, including countries in Caucasus.  
 4. Eurasian Group (EAG) for countries in Europe and Asia-Pacific region.  
 5. Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) for Africa.  
 6. Financial Action Task Force on Money Laundering in South America (GAFISUD) for South America.  
 7. Middle East and North Africa Financial Action Task Force (MENAFATF) for Middle East and North Africa.

<sup>48</sup> APG, APG overlapping memberships of multilateral institutions, September 2007  
<http://www.apgml.org/jurisdictions/>  
<http://www.apgml.org/jurisdictions/docs/36/APG%20Overlapping%20Memberships%20Sept07.pdf>  
 f [Read November 2007]

<sup>49</sup> APG, Asia Pacific Group on Money Laundering Secretariat  
<http://www.apgml.org/about/secretariat.aspx>, [Read: 8 September 2006]

- Providing expertise and material concerning money laundering to member jurisdictions and other interested parties;
- Organizing and conducting the APG's annual and other meetings;
- Preparing, conducting and chairing specialist law enforcement typology workshops (methods, trends and case studies on money laundering);
- Reporting to and advising the APG Annual Meeting and APG Working Groups;
- Attending FATF meetings and liaising regularly with the FATF Secretariat;
- Providing advice and information to and linkages between agencies regionally and internationally (especially financial, legal and law enforcement agencies) on anti-money laundering matters;
- Establishing and maintaining effective working relationships with relevant international and regional organizations in order to advance the APG's work and its regional strategy;
- Implementing the APG's technical assistance and training strategy; and
- Preparing assessment mechanisms and coordinating the conduct of mutual evaluations of APG members.

The first meeting regarding anti-money laundering matters of the APG was held in Tokyo in 1998 and then annually thereafter. Following the 9/11 events in 2001, the APG expanded its scope to include the countering of terrorist financing. The APG enables regional factors to be taken into account in the implementation of anti-money laundering and counter-terrorist financing measures while assisting countries and territories of the region. In order to achieve fruitful results, the APG is supported by a Secretariat in Australia – the focal point for its activities.

The first joint plenary meeting between the FATF and the APG, one of its regional partners, was held on 10 June 2005 in order to keep with the objective of strengthening the global network against money laundering and terrorist financing. During this meeting the members of the two groups discussed issues of effective measures to be put in place to combat money laundering and terrorist financing. They agreed to further cooperation on issues related to: (1) the links between corruption and the fight against ML-FT; and (2) the implementation of anti-money laundering and counter-terrorist financing measures for alternative remittance systems.

Working as a facilitator for the adoption of international standards and norms to help prevent the financing of terrorism and money laundering in the Asia-Pacific region, the APG plays vital roles. The APG has a number of roles that include: (1) assessing APG member jurisdictions' compliance with international AML-CFT standards through a program of mutual evaluations; (2) supporting implementation of the international AML-CFT standards, including coordinating technical assistance and training with donor agencies; (3) conducting research and analysis into money laundering and terrorist financing trends and methods; and (4) participating in, and co-operating with, the international AML-CFT network and contributing to the global policy development of the standards through associate membership in the FATF.

Among these core roles, the first two roles are related to the assessment of compliance with international AML-CFT standards and the follow-up support in implementation of the standards. The third role is related to money laundering typologies used by

criminals. However, the general feeling is that the APG should exert more effort in relation to implementation of the recommended suggestions.

Besides the FATF-style regional bodies, there are some other relevant groups<sup>50</sup> that take part in the combating of money laundering and terrorist financing.

#### 4.8.2 Asia-Europe Meeting (ASEM)

The Asia-Europe Meeting (ASEM) – a process of dialogue initiated in Bangkok in March 1996 – is indeed a historic occasion. It is the prime forum for dialogue between the twenty five States of Europe<sup>51</sup> plus the European Commission, and thirteen Asian countries<sup>52</sup>. The ASEM is a unique process to enable the two regions to engage in international and inter-regional issues of common interest, including anti-money laundering and counter-terrorism. Key characteristics of the ASEM process include<sup>53</sup>:

1. Informality (complementing rather than duplicating the work already being carried out in bilateral and multilateral fora);
2. Multidimensionality (devoting equal weight to political, economic and cultural dimensions);
3. Equal partnership (emphasis on equal partnership, eschewing any “aid-based” relationship in favor of a more general process of dialogue and cooperation); and
4. Meeting at high level (focus on fostering people-to-people contacts in all sectors of society)

The ASEM is a gathering of leaders from Asia and Europe who have come to talk together to discuss any topic of mutual interest and talk about a common vision for the future. Their collective presence shows the political will and commitment to construct a strong foundation for closer and more productive relations between the two regions. The two main aims of the ASEM are:

1. To encourage greater understanding between the peoples of the two regions, providing a unique opportunity for the parties to explore new avenues of cooperation in the political, economic and social fields; and
2. To provide the leaders with an opportunity to get to know one another, hoping that the ensuing close consultations will allow the leaders to build rapport.

In the political area, leaders from the two regions are provided with an opportunity to

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<sup>50</sup> 1. ASEM  
2. IMF and World Bank  
3. Wolfsberg Group of Banks  
4. The Commonwealth Secretariat  
5. Organization of American States’ CICAD (Inter-American Drug Abuse Control Commission)  
6. ASEAN

<sup>51</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom

<sup>52</sup> Brunei, China, Cambodia, Indonesia, Japan, Korea (South), Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam

<sup>53</sup> ASEM, External Relation, [http://europa.eu.int/comm/external\\_relations/asem/intro/](http://europa.eu.int/comm/external_relations/asem/intro/), [Read May 2007]

exchange views on current regional and global issues and consultations on political and security issues at the highest levels serve to generate greater trust and confidence amongst the jurisdictions between the two regions so that global stability can exist. In the area of economic corporation, economic relations between the two regions are strengthened by promoting greater economic growth and development. The Head of State and Government summits are held every second year and there are also a range of several ministerial and other meetings and activities at the working level.

Much has changed in the two parts of the world – Asia and Europe – in which the ASEM operates. There are significant developments in the two regions that have direct impact on how the ASEM should evolve. Yet the international norms and institutions built are under stress and unable to cope with the increasing demands and insecurity of the twenty-first century. It is therefore timely to review whether the existing ASEM and its management and coordination methods are still appropriate. If yes, how can the methods be improved and if not, what needs to be done to ensure the continued relevance of the ASEM in an increasingly interdependent world?

Increasing public awareness of the process and its benefits would be necessary for the support for and commitment to the ASEM process. There should be overall consensus on whether the ASEM should be developed as a state-to-state or a region-to-region structure.

#### **4.8.3 International Monetary Fund and the World Bank**

The International Monetary Fund (IMF) that came into existence in December 1945 has been working since then to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty. Because of its influence on the global economy the IMF, which started with 29 countries, has grown into an organization of 184 countries at present.

The World Bank<sup>54</sup> (WB) whose activities are focused on developing countries – in particular, human development, agricultural and rural development, environmental protection, infrastructure and governance – came into formal existence in December 1945 as well. The WB is a group of five international organizations<sup>55</sup>.

Regarding combating money laundering and terrorist financing, both the IMF and the WB have the same goals and recognized that money laundering is a global problem that affects not only major financial markets but smaller ones as well. They also recognized the FATF Forty plus Nine Recommendations as the relevant international standards for anti-money laundering and counter-terrorist financing and started a successful 12-month pilot program using a universal, comprehensive AML-CFT assessment methodology in 33 countries in 2002.

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<sup>54</sup> “World Bank Group”, [Wikipedia - the free encyclopedia](http://en.wikipedia.org/wiki/World_Bank_Group), [http://en.wikipedia.org/wiki/World\\_Bank\\_Group](http://en.wikipedia.org/wiki/World_Bank_Group) [Read: September 2006]

<sup>55</sup> 1. International Bank for Reconstruction and Development (IBRD);  
 2. International Finance Corporation (IFC);  
 3. International Development Association (IDA);  
 4. Multilateral Investment Guarantee Agency (MIGA); and  
 5. International Centre for Settlement of Investment Disputes (ICSID).

Moreover, they have made the following resolutions<sup>56</sup>:

- To make AML-CFT work a permanent part of their activities;
- To continue their collaboration with the FATF;
- To endorse the FATF Recommendations as the new standard for which Reports on the Observance of Standards and Codes (ROSCs) are prepared and the revised methodology to assess that standard; and
- To devote additional resources to this work in the future.

As mentioned above, the IMF and the World Bank have recognized that money laundering is a global problem and accepted the FATF 40+9 Recommendations as the relevant international standards for AML-CFT. The most important factor to be considered by the IMF and the World Bank is how to improve technocracy of developing countries regardless of their governments' policies in order to eliminate alternative remittance systems. People in certain developing countries have no choice to use these systems. Money launderers and financiers of terrorists/terrorism who are seeking for places where only these systems can be used grab the opportunity to transfer the illegal money. If a country has advanced technology the innocent people of the country will use the formal financial institutions conveniently to transfer money. Consequently, it may be easier to tackle the illegal informal remittance systems.

#### **4.8.4 Wolfsberg Group of Banks**

The Wolfsberg Group of Banks was named after Chateau Wolfsberg in north-eastern Switzerland where it was formed in 2000<sup>57</sup>. It is an association of twelve global banks, which aims to develop financial services industry standards, and related products, for KYC and AML-CFT policies.

The Wolfsberg Group has published AML-CFT related guidelines and principles particularly for the private banking sector known as Wolfsberg Standards. They are:

1. Global AML guidelines for private banking (October 2000, revised in May 2002)
2. Wolfsberg statement – the suppression of the financing of terrorism (January 2002)
3. Wolfsberg AML principles for correspondent banking (November 2002)
4. Wolfsberg statement – monitoring, screening and searching (September 2003)
5. Wolfsberg statement – guidance on a risk-based approach for managing ML risks (March 2006)
6. Wolfsberg statement – AML guidance for mutual funds and other pooled investment vehicles (March 2006)
7. Wolfsberg statement against corruption (early 2007<sup>58</sup>)

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<sup>56</sup> WB, "Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", second edition, 2004: p. X-3

<sup>57</sup> The Wolfsberg Group, Global Banks: Global Standards, <http://www.wolfsberg-principles.com/>, [Read May 2006]

<sup>58</sup> *ibid.*: [Read May 2006]

The article “Wolfsberg AML Principles –Global Banks: Global Standards”<sup>59</sup> by the Wolfsberg Group states that it has established four sets of principles for private banking.

1. Anti-money laundering principles for private banking – 11 principles
2. Statement on the suppression of the financing of terrorism
3. Anti-money laundering principles for correspondent banking – 14 principles
4. Monitoring screening and searching Wolfsberg Statement

The first three sets have stated the need for appropriate monitoring of transactions and customers to identify potentially unusual or suspicious activities and transactions, and for reporting such activities and transactions to competent authorities. The last one deals with the roles of financial institutions, risk-based approach and standards for risk-based transaction monitoring.

The Wolfsberg Group believes that a risk-based approach that may require a differentiated level of implementation of *real time screening, retroactive searches and transaction monitoring systems* should be embedded in an integrated anti-money laundering program. Real-time transaction screening can effectively be used for filtering of payment instructions prior to their execution or for enforcing embargoes and sanctions. Retroactive searches are used to search for specific data. Clarity and uniformity among financial institutions and governmental authorities regarding how retroactive searches should be conducted are two important factors to be effective searches. Risk-based transaction monitoring approach is used to accomplish unusual and potentially suspicious activities.

An effective risk-based transaction monitoring process should have the following standards.

- Compare the client’s account/transaction history to the client’s specific profile information and a relevant peer group and/or compare the clients account/transaction history against established money laundering criteria/scenarios, in order to identify patterns of suspicious activities or anomalies;
- Establish a process to compare customer or transaction specific data against risk scoring models;
- Be capable of recognizing patterns and of “learning” which transactions are normal for a client rather than designating certain transactions exceeding as unusual (for example, not all large transactions are unusual and may easily be explained);
- Issue alerts if unusual transactions are identified;
- Track those alerts in order to ensure that they are appropriately managed within the institution and that a suspicious activity is reported to the authorities as required;
- Maintain an audit trail for inspection by the institution’s audit function and by bank supervisors; and
- Provide appropriate aggregated information and statistics.

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<sup>59</sup> The Wolfsberg Group, *Global Banks: Global Standards*, <http://www.wolfsberg-principles.com/>, [Read May 2006]: [Read May 2006]

Regarding AML-CFT, the Wolfsberg Group of Banks has issued principles and guidelines for the private banking sector whereas the Basel Committee has produced the principles and guidelines for the public banking sector. Therefore they complement each other in AML-CFT programs for the whole banking sector of the world.

#### 4.8.5 Commonwealth countries

The Commonwealth is an association of 53 countries whose citizens make up approximately 30 percent of the world's population. The Commonwealth Secretariat was established in London in 1965. Regarding AML-CFT, the association provides assistance to governments to implement the FATF Forty plus Nine Recommendations. It has published "A Manual for Best Practices for Combating Money Laundering in the Financial Sector"<sup>60</sup> for government policy makers, regulators and financial institutions.

Commonwealth Countries is an organization exclusively dealing with 53 member countries. It means that their AML-CFT programs may not have a universal coverage like those of international standard setters.

#### 4.8.6 Inter-American Drug Abuse Control Commission (CICAD)

The Inter-American Drug Abuse Control Commission, known by its Spanish acronym as CICAD, is an agency of the Organization of American States (OAS). The CICAD's core mission is to strengthen the human and institutional capabilities and harness the collective energy of its member states to reduce the production, trafficking and use and abuse of drugs in Americas. In other words, its mission is to control the growing problem of drug-trafficking in the Western Hemisphere.

The article "CICAD and European Commission Join Forces to Address Consequences of Drug Dependency"<sup>61</sup> states:

*In an age of globalization, no part of the planet is immune to substance abuse and drug addiction, and no one region has all of the answers to this very complex problem," said James F. Mack, CICAD Executive Secretary. "Through this program, we will establish partnerships that will help us share ideas and experiences that have been shown to be effective in tackling these difficult problems.*

Its responsibilities relating to all aspects of the drug problem are:

- To serve as the Western Hemisphere's policy forum;
- To foster multilateral cooperation;
- To execute action programs;
- To promote drug-related research; and

<sup>60</sup> WB, Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, second edition, 2004: p.IV-9

<sup>61</sup> CICAD (Inter-American Drug Abuse Control Commission), CICAD and European Commission Join Forces to Address Consequences of Drug Dependency, <http://www.cicad.oas.org/en/default.asp>, 2006<http://www.cicad.oas.org/en/news/default.asp>

- To develop and recommend minimum standards.

As the AML-CFT program is global, each and every part of the world has to perform its duty effectively and efficiently in combating money laundering and financing of terrorism. The Inter-American Drug Abuse Control Commission, therefore, is a regional organization for the western hemisphere of the world.

#### 4.8.7 Association of Southeast Asian Nations (ASEAN)

The Association of Southeast Asian Nations (ASEAN), whose members are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam, was born on 8 August 1967 in Bangkok<sup>62</sup>. The purposes of the Association are:

- To accelerate the economic growth; and
- To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.

The following are the fundamental principles of the ASEAN.

- Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
- The right of every State to lead its national existence free from external interference, subversion or coercion;
- Non-interference in the internal affairs of one another;
- Settlement of differences or disputes by peaceful manner;
- Renunciation of the threat or use of force; and
- Effective cooperation among themselves.

The ASEAN – a successful association – with a population of more than 500 million people has a total area of 4.5 million square kilometers.

The organization has taken gradual steps in matters of AML-CFT. Some of its members, however, have demonstrated far more active roles than the organization itself at both national and international levels. Most of the ASEAN's AML-CFT activities are largely based on the recommendations and guidelines set by such international standard setters as the FATF and the APG. Evidently, on the issues of money laundering, the ASEAN's 2002 Work Program<sup>63</sup> states as follows:

*Action Line: ASEAN Member Countries to refer to typologies and trends available on the Asia/Pacific Group on Money Laundering and the Financial Action Task Force on Money Laundering websites.*

With regard to the issue of terrorism and terrorist financing, the ASEAN has adopted

<sup>62</sup> Association of Southeast Asian Nations (overview), <http://www.aseansec.org/64.htm>

<sup>63</sup> ASEAN, Work Program to Implement the ASEAN Plan of Action to Combat Transnational Crime, Kuala Lumpur, 17 March 2002

9-point practical measures<sup>64</sup> since November 2001, which, among others, call for the early signing/ratification of or accession to all relevant anti-terrorist conventions including the International Convention for the Suppression of the Financing of Terrorism. As a result of the 2002 Work Program, the ASEAN has taken an initiative by signing a regional pact on 29 November 2004 – known as the Treaty on Mutual Legal Assistance in Criminal Matters. This treaty streamlines the process by which member States could request from and render to each other assistance in the collection of evidence to be used in investigations or proceeding of criminal matters such as drug trafficking, human smuggling and terrorism.

The following table shows what the ASEAN has done in relation to transnational crime and international terrorism<sup>65</sup>.

**Table 1: ASEAN’s joint declarations on transnational crime and international terrorism**

<b>Joint Communiqués</b>	<b>Press Releases</b>	<b>Declarations</b>	<b>Other Documents</b>
Joint Communiqué of the Fifth ASEAN Ministerial Meeting on Transnational Crime (AMMTC), Ha Noi, 29 November 2005	Joint Press Statement of the Informal ASEAN Ministerial Meeting on Transnational Crime Plus China Consultation, Ha Noi, 30 November 2005	Joint Declaration on Cooperation to Combat Terrorism, 14th ASEAN-EU Ministerial Meeting, Brussels, 27 January 2003	Treaty on Mutual Legal Assistance in Criminal Matters, Kuala Lumpur, 29 November 2004

<sup>64</sup> ASEAN, 2001 ASEAN Declaration on Joint Action to Counter Terrorism, Bandar Seri Begawan, 5 November 2001.

1. Review and strengthen our national mechanisms to combat terrorism;
2. Call for the early signing/ratification of or accession to all relevant anti-terrorist conventions including the International Convention for the Suppression of the Financing of Terrorism;
3. Deepen cooperation among our front-line law enforcement agencies in combating terrorism and sharing “best practices”;
4. Study relevant international conventions on terrorism with the view to integrating them with ASEAN mechanisms on combating international terrorism;
5. Enhance information/intelligence exchange to facilitate the flow of information, in particular, on terrorists and terrorist organizations, their movement and funding, and any other information needed to protect lives, property and the security of all modes of travel;
6. Strengthen existing cooperation and coordination between the AMMTC and other relevant ASEAN bodies in countering, preventing and suppressing all forms of terrorist acts. Particular attention would be paid to finding ways to combat terrorist organizations, support infrastructure and funding and bringing the perpetrator to justice;
7. Develop regional capacity building programs to enhance existing capabilities of ASEAN member countries to investigate, detect, monitor and report on terrorist acts;
8. Discuss and explore practical ideas and initiatives to increase ASEAN’s role in and involvement with the international community including extra-regional partners within existing frameworks such as the ASEAN + 3, the ASEAN Dialogue Partners and the ASEAN Regional Forum (ARF), to make the fight against terrorism a truly regional and global endeavor;
9. Strengthen cooperation at bilateral, regional and international levels in combating terrorism in a comprehensive manner and affirm that at the international level the United Nations should play a major role in this regard.

<sup>65</sup> ASEAN, Transnational Crime and Terrorism, <http://www.aseansec.org/4964.htm>, November 2006

**Table 1: ASEAN's joint declarations on transnational crime and international terrorism**

<b>Joint Communiqués</b>	<b>Press Releases</b>	<b>Declarations</b>	<b>Other Documents</b>
Joint Communiqué of the Second ASEAN Plus Three Ministerial Meeting on Transnational Crime (AMMTC+3), Ha Noi, 30 November 2005	"ASEAN Strongly Condemns Terrorist Attacks in Bali, Indonesia", Statement by the 39th Chair of the ASC, Kuala Lumpur, 2 October 2005	Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues, Phnom Penh, 4 November 2002	Agreement on Information Exchange and Establishment of Communication Procedures
Joint Communiqué of the 25th ASEAN Chiefs of Police Conference, Bali, Indonesia, 16-20 May 2005	Statement by H.E. Somsavat Lengsavad, Deputy Prime Minister and Minister of Foreign Affairs of the Lao People's Democratic Republic, Chairman of the 38th ASEAN Standing Committee in connection with the terrorist bombing in Jakarta on 9th September 2004	Declaration on Terrorism by the 8th ASEAN Summit, Phnom Penh, 3 November 2002	Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime, Kuala Lumpur, 17 May 2002
Joint Communiqué of the 24th ASEAN Chiefs of Police Conference, Chiang Mai, Thailand, 16-20 August 2004	Co-Chairs' Statement of the Bali Regional Ministerial Meeting on Counter-Terrorism, Bali, Indonesia, 5 February 2004	2001 ASEAN Declaration on Joint Action to Counter Terrorism, Bandar Seri Begawan, 5 November 2001	Memorandum of Understanding between the Governments of the Member Countries of the Association of Southeast Asian Nations (ASEAN) and the Government of the People's Republic of China on Cooperation in the Field of Non-traditional Security Issues
Joint Communiqué of the First ASEAN Plus Three Ministerial Meeting on Transnational Crime (AMMTC+3), Bangkok, 10 January 2004	Statement by the Chairman of the ASEAN Regional Forum (ARF) on the Tragic Terrorist Bombing Attacks in Bali, Phnom Penh, 16 October 2002	Manila Declaration on the Prevention and Control of Transnational Crime (1998)	ASEAN Efforts to Counter Terrorism
Joint Communiqué of	ARF Statement on	ASEAN Declaration	ASEAN-United

**Table 1: ASEAN's joint declarations on transnational crime and international terrorism**

<b>Joint Communiqués</b>	<b>Press Releases</b>	<b>Declarations</b>	<b>Other Documents</b>
the Fourth ASEAN Ministerial Meeting on Transnational Crime (AMMTC), Bangkok, 8 January 2004	Measures Against Terrorist Financing, Bandar Seri Begawan, 30 July 2002	on Transnational Crime, Manila, 20 December 1997	States of America Joint Declaration for Cooperation to Combat International Terrorism, Bandar Seri Begawan, 1 August 2002
Joint Communiqué of the Special ASEAN Ministerial Meeting on Terrorism (AMMTC), Kuala Lumpur, 20-21 May 2002	Statement by the Chairman of the ASEAN Regional Forum (ARF) on the Terrorist Acts of the 11th September 2001, Bandar Seri Begawan, 4 October 2001		ASEAN Standing Committees Chairman's Letter to US Secretary of State Colin Powell on Terrorists Attack, Bandar Seri Begawan, 13 September 2001
Joint Communiqué of the Third ASEAN Ministerial Meeting on Transnational Crime (AMMTC), Singapore, 11 October 2001			ASEAN Plan of Action to Combat Transnational Crime
Joint Communiqué of the Second ASEAN Ministerial Meeting on Transnational Crime (AMMTC), Yangon, 23 June 1999			

Despite the joint declarations on transnational crime and international terrorism, there may be some obstacles to implement the ASEAN Plan of Action to Combat Transnational Crime because of the ASEAN's principles and political situations in certain countries. Cooperation in the ASEAN has progressed based on 3 key principles: (1) consensus decision-making; (2) respect for national sovereignty; and (3) non-interference in the domestic affairs of member countries.

First, it is really hard to obtain cooperation in fighting ML and FT between countries if the political situation of a certain country is not stable and even if the members of the association cannot provide any suggestion to improve the political situation in that particular country because of those principles.

Second, although the process of consultations and consensus is supposed to be a democratic approach to decision making, the actual process has been managed through close interpersonal contacts among the top leaders only.

Last but not least, since international cooperation is essential to obtain an effective AML-CFT framework and also essential to cope with the growing international pressure as well as to comply with the international standards fully and effectively, the ASEAN countries should exert more to have cooperation among themselves. The principle of non-interference has made the leaders share a reluctance to institutionalize and legalize cooperation.

International observers have criticized the ASEAN for being too “soft” in its approach to promoting human rights and democracy in the junta-led Myanmar. Lately, 121 Myanmar migrant workers were smuggled – human trafficking – into Thailand and 54 of which died of suffocation in a container truck on the way. If there had been law enforcement cooperation and information sharing between the two countries concerned this particular tragic incident would not have happened.

Having known what money laundering and terrorist financing are, policy makers are encouraged to implement the requirements stated in the international conventions relating to AML-CFT in their respective countries in fighting against money laundering and terrorist financing. In addition, AML-CFT regimes must find out how much they are compliant with international standards set by the FATF and other international standard setters including regional bodies and relevant groups. In order to measure the degree of compliance, AML-CFT regimes should focus on the AML-CFT framework.