Dirty Names, Dangerous Money: Alleged Unilateralism in U.S. Policy on Money Laundering

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By Jesse S. Morgan*

Laundering activity is the prime activity in this fin de siècle—the laundering of a dirty history, of dirty money, of corrupt consciousness, of the polluted planet—the cleansing of memory being indissolubly linked to the—hygienic—cleansing of the environment or to the—racial and ethnic—cleansing of the populations.

—Jean Baudrillard

I.

INTRODUCTION

A. Dirty Laundry in the News

According to the International Herald Tribune, Clinton Treasury Secretary Lawrence Summers, "did something unusual" in mid-2000 when he "agreed to join U.S. trading partners in placing Israel on a list of 15 countries that lacked adequate legal safeguards against money laundering." The Tribune viewed the administration's refusal to make "special deals for friends"—by putting Israel in the "unsavory company" of transparency-averse Cayman Islands, Panama, Lebanon, Liechtenstein, the Philippines and Russia—as an indication of a high degree of U.S. commitment on the laundering issue. Meanwhile, regulatory reform in blacklisted countries appeared to be occurring so quickly that the U.S. Treasury was credited with catalyzing a small turning point in the fight against global corruption. Here was an indication of just how much could be accomplished "when the leaders of the global economy decide to take a problem seriously."

However, one year later, George W. Bush was president, Paul O'Neill was Secretary of Treasury, and the papers were saying something very different about the U.S. commitment to clean money. On June 1, 2001, the Financial

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1. Jean Baudrillard, The End of the Millennium or the Countdown, 15 THEORY, CULTURE & SOC'Y 1, 1 (Feb. 1998).


3. Id.
Times reported that, notwithstanding its position "at the forefront of an international campaign to discourage money laundering by cracking down on countries seen as havens for financial secrecy," the United States was reconsidering its policy. Le Monde accused the Bush administration of "backtracking on another sensitive international issue: the battle against tax havens and money-laundering." The Hindu reported: "Thus ends with a whimper a decade long saga of a multilateral effort to curb money laundering. Any hope that the U.S. would cooperate in the future with developing countries for a wider or more comprehensive arrangement is misplaced."

But the terrorist attacks of September 11, 2001 changed everything. On September 24, President Bush identified money as the "lifeblood of terrorist operations" and announced the creation of the "international financial equivalent of law enforcement's 'Most Wanted' list." Banks and financial institutions around the world were put on notice: "If you do business with terrorists . . . you will not do business with the United States." A few weeks later, the president added sixty-two names to the blacklist and drew attention to the al Taqua group, which he described as "an association of off-shore banks and financial management firms that have helped al Qaeda shift money around the world."

B. Dirty Money Saga

Like a wire transfer sent to Hong Kong from Poland via New York and Nauru, the recent trajectory of U.S. counter-laundering policy is not particularly easy to follow. While the above allegations of dirty money unilateralism are traceable to specific U.S. policy moves made during the first nine and a half months of the George W. Bush administration, the rationale underlying the emergent Bush laundering policy is harder to reconstruct. Hardest of all is knowing what ultimate impact recent U.S. policy zigzags will have on the international counter-laundering campaign. The current and previous administrations—taken together—have contributed little in the way of clarity to the project. Nevertheless, the U.S. government cannot be blamed for all of the uncertainty surrounding a multifaceted issue available in only one color—gray.

For U.N. counter-laundering consultant Michael Levi, the paradox of the laundering saga is that "for centuries, onshore and offshore bankers have been tolerantly laundering proceeds of many crimes and from many countries without

6. S. Subramanian, Colour Does Not Matter, THE HINDU, Aug. 2, 2001 (reporting that the U.S. "will unilaterally enter into information-sharing agreements with tax havens and it will not have collective or multilateral arrangements for action").
8. Id.
obvious harm to them or to their economies." While money might be posited as the lifeblood of everything from universities to yacht racing, President Bush's symbolism is not unfamiliar. Similarly, in a 1995 speech President Clinton stated, "[C]riminal enterprises are moving vast sums of ill-gotten gains through the international financial system with absolute impunity. . . . We must not allow them to wash the blood off profits from the sale of drugs, from terror or organized crimes." Dickens, Frazer, Freud, Marx, Mill, and Paul the Apostle are among those who have commented on the dark side of money. Western cultural notions about money's self-contradicting, contaminating nature may ultimately explain how secret bank ledgers and furtive wire transfers can metonymically represent suicide cells and cocaine distributors. Why, after all, does so much of the world's money bear a scarlet watermark? To make it easier to spot? Harder to spend? To keep it from mixing with clean money? These rationales advance but do not end the inquiry.

II.

BLAME, SHAME AND MULTILATERAL COOPERATION

This article is about the use, disuse and potential misuse of "most wanted" lists, especially two recently created by the G-7/8-created Financial Action Task Force (FATF) and Organization for Economic Co-Operation and Development (OECD) for the purpose of "naming and shaming" states determined to be tax havens or lax on laundering. It does no harm, from the outset, to draw attention to some of the contradictions pervading this history such as President Bush's stern warnings to the financial industry that helped elect him and the far-reaching counter-laundering provisions of the Patriot Act that were passed during the tenure of Bush's first Treasury Secretary Lawrence Lindsey. In 1999 Lindsey described the counter-laundering regime as "the kind of blanket search that the writers of the Constitution sought to prohibit." Perhaps recent twists and turns in counter-laundering policy imply evolution and adaptability. Alter-

13. Id. (citing various "dizzying [nineteenth century] contradictions of money," including money as "dangerously dirty," "fetishized and all-powerful," a "forbidden deity," and "contaminating or self-contradicting").
15. Lawrence Lindsey and Paul O'Neill both resigned from the Bush cabinet in December 2002.
natively, in *Wages of Crime: Black Markets, Illegal Finance and the Underworld Economy*, economics professor R. T. Naylor raises the possibility that "the entire follow-the-money exercise is simply insane." 17

Stewart Patrick believes that, for the time being, U.S. multilateralism will continue to be "ambivalent and selective." 18 But he distinguishes between a "critical" or unavoidable ambivalence ("grounded in a realistic assessment of trade-offs" and not the result of "unreasonable fears") and the counterproductive practice of opting out of multilateral initiatives in the pursuit of "immediate gain" or flight from "short-term pain." 19 Such uncritical ambivalence occurs at the expense of international law, global norms, and the U.S. reputation as "an enlightened world leader." 20 After providing historical context for the FATF/OECD soft-law initiatives, this article will argue that ambivalence does, in fact, characterize recent U.S. engagement with the FATF and OECD "name and shame" campaigns. However, further analysis of recent U.S. actions requires an acknowledgement that the nature and scope of the dirty money threat is murky, while symbolic counter-laundering measures such as the blacklist are experimental and controversial.

While drawing attention to some of the tough dilemmas at the heart of the dirty money saga, this article argues that no equivalently rigorous debate on these issues has yet taken place at the U.S. domestic level. In turn, the possibility arises that, despite being again at the forefront of the international counter-laundering campaign, the United States may not know exactly where the campaign is headed.

In the instant case, then, multilateral frustration and accusations of unilateralism may owe less to a U.S. refusal to join the game than to a tendency to continually change the way that it is played—for reasons not immediately apparent to multilateral partners. A realistic assessment of laundering trade-offs would be worthwhile if only in the interests of helping the United States better communicate its interests and intentions to its multilateral partners. Meanwhile, if money turns out to have more than figurative polluting potential, or if restricting access to financial services turns out to be a rational (and possible) objective, continued multilateral communication and cooperation will be imperative in preventing dangerous money from seeping through national borders and regulatory regimes.

After discussing in Part III how dirty money became a national security issue, in Part IV I define money laundering and situate the phenomenon within the global economy. Part V discusses financial secrecy and financial havens and their connection to money laundering. Part VI describes the U.S. and international counter-laundering regimes and the roles played by the FATF and OECD.

19. *Id.*
20. *Id.*
Parts VII, VIII, and IX detail U.S. counter-laundering policy during the Clinton and Bush administrations. By all accounts, the terrorist attacks of September 11 have had a major impact on counter-laundering law and policy.\(^{21}\) I therefore structure discussion of the Bush administration's counter-laundering policy according to its pre- and post-September 11 manifestations.

Part X begins an analysis of the limited U.S. capacity for sustained multi-lateral cooperation, as evidenced by its on-and-off support for G-7/8 financial governance initiatives. Part XI continues the analysis by identifying the short-term pains and gains that temporarily may have diverted U.S. counter-laundering policy from the course apparently charted for it during the Clinton administration. Part XII proposes an alternative to a "war" on laundering. In part XIII, I discuss the follow-up and support other countries should expect from Washington on the laundering front, keeping in mind that the United States was the first to alert the world to the dangers of certain kinds of money.

III.
MONEY LAUNDERING: CRIME, WAR OR FOREIGN POLICY?

While the focus of this article is money laundering concerns in governance and foreign policy, it is important to keep in mind that money laundering is also a crime, tailor-made for the purposes of the U.S. Drug War. In 1978, before there was such a crime, the head of the U.S. Drug Enforcement Administration (DEA) told Congress that the "acquisition of vast capital" made it "essential to attack the finances that are the backbone of organized drug trafficking."\(^{22}\) Congress agreed, but the strategy has proven exceptionally difficult to implement.

While Nixon's Drug War\(^{23}\) rattles on, the recently elaborated Bush doctrine promises a new conflict "fought on many fronts against a particularly elusive enemy over an extended period of time."\(^{24}\) The doctrine demands that the enemy's assets be identified, blocked and frozen, making "no distinction between terrorists and those who knowingly harbor or provide aid to them."\(^{25}\) No doubt, the identification process will be the most difficult part of the process. If the


\(^{22}\) Naylar, supra note 17, at 250.

\(^{23}\) After his election in 1988, George H. W. Bush also declared a "War on Drugs." Mark Frost et al., The Ideal Enemy: Why the War on Drugs May Replace the Cold War, 2 J. FOR INSTITUTIONAL INNOVATION, DEVEL. AND TRANSITION 59, 65 (1998).


\(^{25}\) Id.
people allegedly behind the September 11 massacres are a representative sample, then terrorists use checking accounts, wire transfers and ATM cards like the rest of us. This suggests both that terrorists operate with considerable financial anonymity and that financial services providers are among those who have to worry most about providing aid to them.

An evaluation of the policies that govern U.S. participation in the global financial system may be especially appropriate at a time when Americans are asking hard questions about who and what should be allowed to enter their homeland. While the Bush doctrine proposes that "terrorists are organized to penetrate open societies," perhaps it is just as much the case that modern societies are organized with inviting harbors and havens at their center. As an example, next door to al Taqua, in the Bahamas, is the Cayman Islands post office box—number 1350—where approximately 500 companies affiliated with the Enron Group receive their mail. Similarities between the counter-laundering campaign and the War on Drugs will be highlighted below. Like cocaine, money laundering was once perceived as an exotic threat menacing the United States from abroad. However, the recent implosion of giant skyscrapers, corrupt corporations and the global economy may have, for many Americans, further collapsed distinctions between trouble at home and trouble overseas. In turn, this suggests that multilateral cooperation may be a matter of self-defense rather than luxury.

IV. MONEY LAUNDERING—DEFINITIONS AND SCOPE

Money laundering is often defined as the disguising of the proceeds of crime so they can be saved, spent or reinvested with less risk. The laundering of wealth has been compared to child adoption or the acquisition of citizenship through naturalization, because in each case the end result is a new legal status. While the term "money laundering" apparently had no legal referent before United States v. $4,255,625.39, efforts to hide or disguise wealth are naturally much older. In Criminal Finance: the Political Economy of Money Laundering, Kris Hinterseer shows how the law is like a wall separating the

26. Id. at 3.
30. Kris Hinterseer, The Political Economy of Money Laundering in a Comparative Legal Context 23 (2002). Nigel Morris-Cotterill, Think Again: Money Laundering, Foreign Policy, May/June 2001, at 16 (citing examples of wealth laundering in ancient China). Nayler assumes the term "money laundering" was coined in the 1920s but that laundering itself is at least as old as Hammurabi's tax code (circa 1780 B.C.E.) Nayler, supra note 17, at 134, 137.
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formal and informal (that is, underground) economies. He defines money laundering as activity that channels funds through the ambiguities, contradictions, and loopholes in that porous legal wall. Once the money is on the other side, it has entered the formal economy and become less risk-laden. This definition is helpful because it touches on both the legal and economic components of the laundering phenomenon.

Almost by definition, there are no reliable estimates for underground economic phenomena like money laundering. Despite unfounded estimates that become “facts by repetition,” there appears to be no consensus on the actual scope of the laundering problem; this fundamental ignorance undoubtedly impedes counter-laundering policymaking. While quantitative descriptions of the underground narcotics industry and some other sectors of organized crime exist, these are not particularly helpful in determining the global scope of money laundering, since much laundered money is linked to tax evasion rather than drugs.

Trading tainted cash for a winning lottery ticket (sold by a corrupt vendor) is an example of instant tabula rasa. The lottery “winner” may even pay his due in taxes, if this lends legitimacy to the transaction. Serial wire transfers, splitting of large sums into smaller ones, mingling of bad money with good, and physical transport of currency across borders are all core laundering methods. A recent FATF report mentions more sophisticated methods that involve front companies, securities and life insurance chicanery, and the purchase of precious stones and metals. In introducing a multitude of laundering motives and methods, Hinterseer distinguishes between “dirty” money, or crime proceeds; “gray money,” or funds that are disguised for tax purposes; and “hot money,” which is associated with capital flight or other efforts to foil fiscal controls.

Since the difference between a legal and illegal transaction can be very technical, Hinterseer suggests that a certain “ethical indeterminacy” attaches to the laundering process. In a similar vein, Naylor depicts money laundering as a victimless crime. But Hinterseer ultimately embraces the dirty money paradox, finding that “money laundering threatens to undermine the principles associated with a free, fair and transparent democratic society because money

31. HINTERSEER, supra note 30, at 39.
32. Levi, supra note 10, at 188 (calling the absence of research on laundering and organized crime “remarkable”).
34. According to Hinterseer
In developed countries, the emerging norm of ethical indeterminacy . . . which does not tend to associate criminal conduct with the circumvention and avoidance of regulations in financial markets, means that money laundering is often deemed to be an acceptable economic activity in which to engage. This is especially the case when grey money issues [tax evasion] are involved. In developing countries, the incentive to engage in such activity is often already entrenched as a social norm especially because of the inability of many governments to adequately create the conditions for economic growth and to fulfill the social welfare function.

HINTERSEER, supra note 30, at 96.
35. NAYLOR, supra note 17, at 252-53.
laundering enables criminals to operate with legal impunity.\textsuperscript{36} If counter-laundering tactics are sometimes more symbolic than practical, perhaps this is because the clearest danger that money laundering poses is a conceptual one—a threat to democratic principles, if not democratic economies.

In a seminal 1998 U.N. study, Financial Havens, Banking Secrecy and Money Laundering, Blum, et al. posited ten laws of money laundering.\textsuperscript{37} Taken together, these laws predict that the process of economic globalization will make money laundering easier to accomplish and harder to detect.\textsuperscript{38} The tenth law is portentous: "The worse becomes the current contradiction between global operation and national regulation of financial markets, the more difficult the detection of money laundering."\textsuperscript{39} While a multilateral counter-laundering campaign might be one way to ameliorate this contradiction, global markets today continue to be regulated mostly at a national level.

V.
VIRTUAL PARKING LOTS OF THE CARIBBEAN

The topic of offshore finance is rarely absent from discussions of money laundering, even though there are myriad ways to launder money that do not involve offshore jurisdictions. In the wake of Enron’s collapse in the fall of 2001, a national television network affiliate in Texas drew the general public’s attention to offshore banking services already familiar to the business community. According to the televised report, "The Caymans . . . offer freedom from U.S. government oversight and regulation, as well as a financial services system that caters to businesses, with 600 banks and innumerable investment houses."\textsuperscript{40} As it turns out, the Caymans is the world’s fifth largest financial center (behind New York, London, Tokyo and Hong Kong).\textsuperscript{41} At its most basic level, offshore finance is "the provision of financial services by banks and other agents to non-residents."\textsuperscript{42} As a result, much "offshore" finance actually takes place in the large financial centers just mentioned. The meaning of "offshore financial center" (OFC) varies with the context, but a recent International Monetary Fund (IMF) definition points to centers where most business transactions involve non-residents and some or all of the following services: banking secrecy and ano-

\textsuperscript{36} HINTERSEER, supra note 30, at 387.
\textsuperscript{38} Id. Pro-laundering trends include: higher ratios of services to goods (Law Four); increased use of non-cash instruments (Law Six); greater financial deregulation (Law Seven); and increased reliance on financial services "supermarkets" combining various products and services under one roof (Law Nine).
\textsuperscript{39} Id.
\textsuperscript{41} HINTERSEER, supra note 30, at 223.
nymity; moderate or light financial regulation; and low or zero taxation.43 Many of the OFC jurisdictions appearing in a recent IMF background paper are Caribbean island nations; nevertheless Europe and Asia appear as hosts to a dozen OFCs each. A sampling of listed OFCs include Andorra, Bahamas, Cyprus, Dublin, Guam, Israel, Lebanon, Liberia, Nauru, Netherlands, Panama, Puerto Rico, Singapore, Switzerland, Tangier, Thailand, and the United States.44

For Ronen Palan, financial havens45 are virtual or "purely juridical" parking lots. Those who rent space in the Bahamas or Caymans usually do not relocate—they just relocate their money.46 Meanwhile, the parking lot proprietors "could not care less about the business of their customers"—as long as all spaces are paid for.47 But Palan does not believe the OFC system is either inherently abusive or proof that onshore taxes are too high.48 Instead, he argues that "commercialization of sovereignty" is the natural outgrowth of "a system characterized by increasing economic integration within the context of political fragmentation."49

Meanwhile, the combination of close-to-zero taxes and strict privacy laws favoring account holders and corporate officers make OFCs an attractive place to do business. From the perspective of tax-collecting governments, the tax and secrecy features of offshore regimes are related worries, since offshore privacy laws may prevent them from discovering and taxing their citizens' hidden wealth. While the financial policies of offshore jurisdictions like the Caymans and other privacy havens are no doubt attractive to those managing "clean" money, they are even more attractive—so the argument goes—to those whose money is "dirty." Thus, for those attempting to identify the passageways between the formal and informal economies, OFCs are among the usual suspects, due to the veil of legal secrecy that enshrouds them.

OFCs do not like to be called "tax havens," because the term connotes cheating. Where criteria have been elaborated for the purpose of identifying tax havens or harmful tax practices (as in the OECD "name and shame" campaign) countries identified as such are likely to disagree either with the criteria, or the way they are applied in particular cases. Given that the offshore sector accounts for a substantial part of the income of some impoverished states, it is not surprising that national governments sometimes acknowledge a desire to have economies and regulatory policies resembling those of wealthier countries, while insisting that development in that direction will take time.50 All Caribbean na-

43. Id.
44. Id.
45. "Tax haven" and "financial haven" can probably be used interchangeably, although the latter term may be preferable because customers seek refuge for a variety of reasons.
47. Id.
48. Id.
49. Id.
50. Blum et al. observe that “most modern financial havens are countries with growing populations, limited resources, and a crisis in their traditional sources of livelihood. Their agricultural sectors are cramped by lack of fertile land or the dumping of products on world markets by highly
tions that have appeared on the OECD blacklist have been hurt economically, while nations unlucky enough to have appeared on both the OECD and FATF blacklists have suffered double damage.\textsuperscript{51}

VI. THE COUNTER-LAUNDERING FRAMEWORK

A. U.S. Regime

As a result of past Republican and Democratic efforts, U.S. anti-laundering laws are older and more comprehensive than those of most other countries.\textsuperscript{52} The U.S. counter-laundering regime subjects potentially "dirty" money to suspicion, surveillance, discipline and punishment. The Bank Secrecy Act (BSA),\textsuperscript{53} Money Laundering Control Act (MLCA),\textsuperscript{54} and Racketeering Influenced and Corrupt Organizations Act (RICO) are its three pillars.\textsuperscript{55} Under the Bank Secrecy Act, financial institutions are required to report to the government on most types of transactions over $10,000.\textsuperscript{56} Since 1996, they also have been required to file reports on suspicious activity, including suspected money laundering.\textsuperscript{57} European Union reporting requirements differ somewhat, providing for reporting on suspicious but not routine activity.\textsuperscript{58} The Money Laundering Control Act works to dirty certain bundles of money—such as those that have recently passed through the underground economy—in the attempt to soil with criminal


\textsuperscript{52} In a 2001 Senate hearing, Senator Carl Levin narrated the recent history of bipartisan concern over money laundering and related matters: The Reagan administration (Republican) worked to coerce cooperation from financial havens; the first Bush administration (Republican) helped establish the FATF; and the Clinton administration (Democrat) wrote the first National Money Laundering Strategy and was otherwise very active on counter-laundering issues. Meanwhile, the Bank Secrecy Act was passed during the presidency of Richard Nixon (Republican). Hearing on What Is the U.S. Position on Offshore Tax Havens? Before the Senate Permanent Subcomm. on Investigations, 107th Cong. (2001) (opening statement of Sen. Carl Levin, Chairman, Permanent Subcomm. on Investigations) at 1-2, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate.hearings&docid=f:75473.pdf (last visited Feb. 22, 2003) [hereinafter Statement of Carl Levin].


\textsuperscript{57} HINTERSEER, supra note 30, at 184-85.

\textsuperscript{58} Id.
liability any who knowingly have dealings with the bundles in the future.\(^5^9\) Under its provisions, financial institutions may be fined $500,000 and individuals imprisoned for up to twenty years for, *inter alia*, disguising, concealing, moving or using money known to be crime proceeds.\(^6^0\) Under the extensive and often criticized civil (in rem) forfeiture provisions of RICO and related statutes, the government may seize property when there is "probable cause to believe that the property is connected to a crime." No charges are brought and no trial takes place since the property, not the owner, is the guilty party.\(^6^1\) Since no criminal procedure is involved, innocence (i.e., where the property is crime-linked but the owner is not) is no defense and double-jeopardy, due process and excessive-fines constitutional protections "apply shakily, if at all."\(^6^2\)

Counter-laundering responsibilities are widely distributed throughout the government, including within the Department of Justice, Department of State, and Department of Treasury. Each year, Justice and Treasury are required by law to create and publish a "National Money Laundering Strategy."\(^6^3\)

### B. International Regime

Multilateral counter-laundering cooperation can also be traced to efforts to control drugs. Under the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (signed in 1988 and enacted two years later) the United States and other states agreed to criminalize proceeds derived from drug traffic; enable the confiscation of narcotics-linked money and property purchased therewith; and provide other signatories with the widest measure of mutual legal assistance in investigating, prosecuting and confiscating narcotics-linked money from those who engage in acts deemed criminal under the Convention.\(^6^4\) A surprising number of international bodies besides the United Nations address money laundering, including the G-7/8 (FATF and OECD), the Basel Committee on Banking Regulations and Supervisory Practices, the Council of Europe Convention on Laundering, Search Seizure and Confiscation of Proceeds of Crime of September 1990, the Egmont Group of Financial Intelligence Units, and Interpol. Given the amount of money they control, Jonathan Winer intimates, International Financial Institutions (IFIs) like the IMF and World Bank might be expected to engage more in counter-laundering governance.\(^6^5\)

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60. *Hinterseer, supra* note 30, at 192-208.
63. Money Laundering and Financial Crimes Strategy Act, 31 U.S.C. § 5341(a)(1) ("The President, acting through the Secretary [of the Treasury] and in consultation with the Attorney General, shall develop a national strategy for combating money laundering and related financial crimes.").
C. FATF and the Clean Money Message

In recent years, FATF and OECD efforts to counter money laundering and the harmful effects of financial secrecy have been at least as prominent as those of the United Nations. The thirty-one-member FATF—created by the G7 in 1989—is an inter-governmental standard-setting body that works to establish norms and facilitate cooperation. While the Task Force has its offices at the OECD headquarters in Paris, it receives funding and has often accepted guidance from the United States in the past. The FATF is widely recognized by governments and international organizations as the world’s preeminent counter-laundering body, and its policies are looked to as a source of customary international law. The forty counter-laundering recommendations (intended for implementation by national governments) that it issued in 1990 (amended in 1996) are widely recognized, including by the IMF and World Bank. The recommendations encourage governments and financial institutions to adopt “know-your-customer” and other due diligence practices and to monitor and possibly report all cash transactions over certain threshold amounts. They create a framework for counter-laundering cooperation requiring states to do their utmost to help one another identify, freeze and confiscate tainted money. Here, commitment and cooperation are the watchwords. In addition to keeping everyone else in line, the FATF researches and reports on new laundering typologies and supports the establishment of regional groupings with mandates similar to that of the FATF.

But have the technocrats at the FATF fallen prey to their own modest successes? Phil Williams finds that the Task Force emphasizes form over substance and deludes itself about the actual effect it has on laundering. In a 2002 annual report, the organization finds itself “spreading the anti-money laundering that embezzlement of World Bank funds is endemic and that IFIs would be well-situated to help implement a “comprehensive, global code of conduct to combat money laundering,” given their capacity for enforcing bargains made with sovereign nations), available at http://www.fao.no/pub/rapp/380/380.pdf (last visited Mar. 6, 2003).


68. Naylor goes so far as to call the FATF “U.S.-run.” NAYLOR, supra note 17, at 33.


71. Id.

72. Williams, supra note 66, at 124. FATF-type groups have been established for the Caribbean, Asia/Pacific, South American, and East and Southern African regions.

73. Id. at 136 (noting that self-delusion results from a focus “on whether states meet FATF standards rather than the far more important question of whether participating states are effective in combating money laundering”).

https://scholarship.law.berkeley.edu/bjil/vol21/iss3/14
DOI: https://doi.org/10.15779/Z38XP9N
message to all continents and regions of the globe." However, Williams thinks the FATF is more likely to be displacing, rather than erasing, money laundering, precisely due to its limited geographical reach. On a similarly critical note, British counter-laundering consultant Nigel Morris-Cotterill has written that the FATF has "[u]nfortunately . . . taken on a hugely political role in the last three years." He argues that while the FATF consistently overlooks the failings of its own members, FATF blacklist pressure has led some countries hurriedly to pass counter-laundering legislation in the absence of the financial, technological and human wherewithal needed to effectuate the changes demanded of them.

D. OECD and Harmful Tax Competition

The OECD describes itself as "a unique forum to discuss, develop and refine economic and social policies" and a source of "soft law." Comprising thirty highly industrialized states, most of them in Europe, the OECD works to protect and enhance the financial well-being of its members by promoting trade, education, good governance, sustainable development, and better technology. The organization deals with issues ranging from food safety to international migration.

In 1998, "harmful tax competition" became an OECD priority, as "affluent countries began to recognize that a lack of transparency resulting from globalization was beginning to affect the area of taxes." In a 1998 report entitled, Harmful Tax Competition: An Emerging Global Issue, the OECD defined the terms tax haven and harmful preferential tax regime and made recommendations for domestic legislation and international best practices. In a follow-up report in 2000, the organization identified countries with tax laws that it considered harmful. The report emphasized multilateral action, involving both OECD members and nonmembers, and committed the organization to a "consensus-building, co-operative approach" in its quest for "transparency, fairness, and disclosure."

The OECD work on harmful tax practices is understood to "overlap" and "reinforce" that of the FATF in efforts to pressure OFCs into changing their laws. States are targeted by the OECD according to the following controversial criteria: 1) inadequate disclosure requirements with respect to financial...
flows; 2) weak regulatory or supervisory structures; 3) obstacles that hinder the exchange of information with foreign fiscal agencies; 4) ability to establish and operate foreign-owned companies and legal entities without the need for these legal entities to have a substantive local presence; and 5) no or nominal effective tax rates. By making and keeping "scheduled commitments" to reform their harmful tax practices, targeted states are theoretically able to remove themselves from the OECD list of non-cooperators. Compared to the FATF, the OECD is a newcomer to the name and shame game. Also, the FATF's demands reach further than do those of the OECD. The FATF demands of all OFCs: criminalization of money laundering; prevention of bank ownership by convicted launderers; prevention of the creation of anonymous bank accounts; elimination of offensive secrecy laws; creation of well-organized, well-funded, well-functioning counter-laundering programs; and, most of all, elimination of loopholes.

As regards the intersection of good governance and legal secrecy, OECD policy is probably less constrained than that of the FATF by notions of "clean" and "dirty" money. In September 2002 OECD Financial, Fiscal, and Enterprise Affairs Director William Witherell reported that the Organization was interested in "developing mechanisms to prevent the misuse of corporate entities by ensuring that supervisors and law enforcement authorities are able to obtain information on the beneficial ownership and control of corporate entities and to share that information with foreign authorities." Witherell warned that corporations, trusts, foundations and partnerships could be used for "illicit purposes, including money laundering, bribery and corruption, improper insider dealings, illicit tax practices, [and] financing of terrorist activities." A few weeks before Witherell made his remarks, former Enron executive, Michael Kopper, pleaded guilty to charges of money laundering and agreed to return $12 million in illegally obtained assets.

VII.
COUNTER-LAUNDERING DURING THE CLINTON ADMINISTRATION

While significant counter-laundering milestones were reached under the Nixon, Reagan, and the first Bush administrations, it wasn't until the close of the Cold War that transnational crime was identified as a national security concern and began to draw increased governmental attention. Bill Clinton presided over a number of important bilateral and multilateral counter-laundering develop-

82. HINTERSEER, supra note 30, at 251-53.
83. Id. at 236-40 (describing twenty-five overlapping criteria in four areas used by the FATF to identify non-cooperative countries and territories).
opments during his two terms in office.\textsuperscript{87} It was during his tenure that the FATF evolved from ideas on paper into an international standard maker with considerable bark and some bite. Additionally, and with special relevance for the present examination of wobble in U.S. transparency policy, Clinton encouraged the creation of an OECD “Forum on Harmful Tax Practices,” which the United States co-chaired.\textsuperscript{88} It was this group and their objectives that the Bush administration would later disavow, eliciting accusations of unilateralism.

Clinton’s engagement with issues of transnational crime dates to his 1995 “bloody profits” speech, delivered before the U.N. General Assembly on the occasion of that body’s 50th anniversary. The following day, Clinton signed Presidential Decision Directive 42 (PDD-42), directing a coordinated government response to transnational crime.\textsuperscript{89} The directive required various agencies, including the Justice, Treasury, and State Departments, “to integrate their efforts against international crime syndicates and money laundering” and to “[w]ork more closely with other governments to develop a global response to the threat of international crime.”\textsuperscript{90} In 1998, Jonathan Winer, Deputy Assistant Secretary for the Bureau for International Narcotics and Law Enforcement, reported to a Congressional committee that these three departments had identified “egregious overseas money laundering centers, or ‘safe havens;’” that negotiations with relevant governments had already strengthened anti-laundering regimes and weakened safe havens; and that stronger measures would be employed if needed.\textsuperscript{91} The 1998 Crime Control Strategy—described by a General Accounting Office report as a “dynamic, evolving roadmap for a coordinated, long-term attack on international crime”—was another notable counter-laundering step taken by the Clinton administration.\textsuperscript{92} In a section entitled, “Counter Financial Crime,” the United States indicated its intent to “[e]nhance bilateral and multilateral cooperation against all financial crime” and “[t]arget safe havens of international fraud, counterfeiting, electronic access device schemes, and other financial crimes.”\textsuperscript{93} In 1998, Clinton also signed the Money Laundering and Financial Crimes Strategy Act of 1998, which included the creation of the National Money Laundering Strategy, among other provisions.\textsuperscript{94} Finally, in response to the December 2000 attacks on U.S. embassies in Kenya and Tanzania,


\textsuperscript{88} Slocum, supra note 27, at 22.


\textsuperscript{90} Id. at 21.


\textsuperscript{92} GAO, \textit{Federal Response Needed}, supra note 89, at 2-3.

\textsuperscript{93} Id. at 22.

\textsuperscript{94} 31 U.S.C. § 5341.
the administration released the International Crime Threat Assessment, which included a section on money laundering. 95

In July 2001, William F. Wechsler, Clinton’s Special Adviser to the Secretary of the Treasury (from 1999 to 2001), described the Clinton-era “name and shame” game:

Led by Treasury Secretary Lawrence Summers, the Clinton administration worked with its allies to develop a three-pronged strategy on rogue banking, money laundering and tax evasion. Three multilateral organizations—the G7’s FSF, the FATF and the OECD—were asked to address these issues separately but to proceed on similar timetables so that they could conclude their work before the G7 summit in July 2000. Their objective was to “name and shame” those nations that had developed underregulated financial centers and threaten appropriate countermeasures if the pressure was not sufficient. The three efforts each followed a ‘top-down’ approach in which nations committed to regulatory and law enforcement regimes would establish international standards and evaluative criteria before engaging with those who lacked commitment. 96

VIII.

BUSH ADMINISTRATION POLICY PRIOR TO SEPTEMBER 11

A. Mixed Messages

According to a General Accounting Office report, as of April 2001, the framework for U.S. response to international crimes such as money laundering, “established primarily by PDD-42 and the International Crime Control Strategy” was under review by the new Bush administration. 97 No estimate could be given as to how long the process would take. 98 While the administration’s 2001 National Money Laundering Strategy was to be submitted to Congress on February 1, 2001, it was not received until after September 11, even though the administration had only received a one-month extension of the original deadline. 99 When the Laundering Strategy was finally released in late September, Senate Banking Committee Chairman Paul Sarbanes noted that a “confused and hazy situation” had resulted from the president’s failure to clarify his views on money laundering. 100


96. Wechsler, supra note 86, at 46.


98. Id.


B. The O’Neill Treasury—On Their Own

Reports of disagreements between O’Neill and his G-7/8 counterparts on financial secrecy in OFCs were substantiated by a May 2001 statement in the Washington Times, entitled “Confronting OECD’s Notions on Taxation.” 101 O’Neill explained that the OECD’s “harmful tax practices” initiative was “too broad and . . . not in line with this administration’s tax and economic priorities.” He was concerned about “the potentially unfair treatment of some non-OECD countries” and said “the United States does not support efforts to dictate to any country what its own tax rates or tax system should be, and will not participate in any initiative to harmonize world tax systems.” 102 He described a policy that de-emphasized multilateral cooperation:

If the United States believes that a particular U.S. taxpayer is illegally evading the U.S. tax laws through the use of offshore entities or secret bank accounts, the United States must make every effort on our own to obtain the necessary information to enforce the U.S. tax laws. In addition, the United States has negotiated individual treaties or agreements with over 60 countries so it can obtain needed information in cases of tax evasion. Finally, in appropriate circumstances, organizations like the OECD can be used to build a framework for exchanging specific and limited information necessary for the prosecution of illegal activity. We do—and will—guard against over-broad information exchanges in which foreign governments seek information for improper purposes or without proper safeguards. 103

O’Neill’s caveat that “in appropriate circumstances, organizations like the OECD” may be useful for exchanging information suggests that his remarks may have been intended as a swipe at the FATF as well. 104 Prior to September 11, Treasury sent mixed messages about the Task Force. In a June 22, 2001 press release, O’Neill lauded the FATF for its effectiveness and characterized the recent removal of four countries from its blacklist as “dramatic results.” 105 Just a few weeks earlier, Treasury’s Acting Deputy Assistant Secretary Joseph Myers had called the FATF policy of naming non-cooperators “controversial.” 106

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102. Id.
103. Id. (emphasis added).
C. What is the U.S. Position on Tax Havens?

The Senate gave the Bush administration an opportunity to clarify its position in a July 18, 2001 hearing. In his opening statement, Subcommittee Chairman Levin—architect of the money laundering provisions within the Patriot Act—said that he and others “in Congress who worked on tax haven issues over the years” were “stunned” by O’Neill’s repudiation of the OECD tax haven project, which paralleled FATF counter-laundering efforts. Statements by O’Neill and Levin at the hearing suggest widely diverging viewpoints. Levin focused on the way that offshore secrecy contributes to lost tax revenue, while O’Neill emphasized the difficulty inherent in defining the term “tax haven,” the “enormous complexity” of the U.S. tax system, concerns about national sovereignty, and accounting flaws within Treasury’s counter-laundering programs. Asked by Levin whether or not it was a problem that 360,000 offshore companies had been created in the British Virgin Islands (BVI) while only 185 BVI bank accounts appeared on U.S. tax returns, O’Neill would only acknowledge being amused by “a bunch of numbers parading across the

108. Morris & Tosti, supra note 104, at 3283.
111. Statement of Carl Levin, supra note 52, at 4.
112. Id. (estimating that $70 billion in U.S. tax revenue is “lost each year to assets hidden offshore, a figure so huge that if even half that amount were collected, it would pay for a Medicare prescription drug program without raising anyone’s taxes or cutting anyone’s budget”).
113. Tax Haven Hearing, supra note 109, at 12-13 (statement of Paul O’Neill, Secretary of the Treasury) (testifying that, for some non-Americans, the United States may look like a tax haven, because “we do not tax investment interest income for foreign-based individuals in the United States.” Similarly, he noted Italian Finance Minister Trumanti’s recent observation that OECD definitions might make Italy a “tax haven.”), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:75473.pdf (last visited Feb. 23, 2003).
114. Id. at 11.
115. Id. at 9.
116. O’Neill said he “was astounded to find that from one year to the next our spending on money laundering went down from $1 billion to $650 million,” referring to what he later determined to be a bookkeeping error. Id. at 10.
table." To Levin's suggestion that "our inability to get information from... tax havens" lay at the heart of things, O'Neill responded:

I think the heart of the problem may be a human characteristic that is pretty hard for us to do anything about, which is to cheat. The whole problem begins with the intent not to do what your role as a citizen is. That is the nub of the problem. There are then organizations and individuals who facilitate human weakness, and indeed, that is really a heck of a problem, but underneath it, there are still an awful lot of people who obviously do not want to fulfill their obligations as a citizen.118

U.S. policy on tax havens has lacked clarity and purpose for decades. In 1985, Senate Governmental Affairs Subcommittee Chairman William Roth noted: "[W]e have repeatedly heard testimony about... criminals who use offshore institutions to launder their ill-gotten profits or to hide them from the Internal Revenue Service. . . . It would appear that the use of offshore haven secrecy laws is the glue that holds many U.S. criminal operations together."119 Nevertheless, it may be the complex nature of the tax haven-money laundering nexus itself, rather than a lack of political will, that often turns U.S. policy to mush in this area.

Hinterseer does nothing to detract from this complexity and his analysis provides support for arguments made by both Levin and O'Neill. In essential agreement with Levin, Hinterseer asserts that "without international organizations like the FATF, OECD and FSF to push reform, the questionable practices facilitated by OFCs would tend to proliferate rather than be curtailed."120 Yet, he points out that there is much more to OFCs than secrecy: "[E]ven if financial secrecy laws were eliminated in OFCs tomorrow, the financial activity being routed through jurisdictions would still be substantial."121 For Hinterseer, the fact that "the financial services industry is an industry that can be mobilized in support of sustainable development" is "inextricably inter-linked" with money laundering.122 He cautions against "denounc[ing] the questionable, detrimental, and nefarious activities sheltered by OFCs . . . without further analysis of the development related issues."123

IX.  
MONEY LAUNDERING DIPLOMACY AFTER SEPTEMBER 11

A. 180 Degrees

Critical of U.S. unilateralism prior to September 11, Michael Hirsh writes that "for the Bush administration it is a sharp irony that America's main ally in

117. Id. at 14 (O'Neill said, "by looking at these numbers, I can see a bunch of numbers parading across the table, and I can make inferences about it probably for the next four hours, but they would all be inferences and I know the difference between a fact and inference. So, I am amused by this data.").
118. Id. at 11.
120. HINTERSEER, supra note 30, at 233.
121. Id. at 229.
122. Id. at 232-33.
123. Id. at 232.
the war on terror has turned out to be the global community." Indeed, following the attacks, U.S. concerns regarding know-your-customer banking protocols, "overbroad exchanges of information," and the cost of U.S. counter-laundering programs appeared to evaporate amid a "reorientation" of privacy values and urgent pleas to banks for help in identifying would-be terrorists. For better or worse, the attacks have ushered in a "new era of financial oversight."

B. An Example of Terrorist Finance

While it is unlikely that better enforcement of money laundering laws would have prevented the September 11 attacks, in the interests of providing a concrete example of terrorist finance, it may be noted that nine of the alleged hijackers are believed to have used cash deposits to open accounts at Florida SunTrust Bank in the months immediately preceding the attacks. This was accomplished, in some cases, by "fill[ing] in random numbers in spaces reserved for applicants' Social Security numbers." Also, between July and September 2000, four wire transfers ranging between approximately $10,000 and $70,000 were allegedly sent from the United Arab Emirates (UAE) to a separate Florida SunTrust account held jointly by supposed hijackers Mohammed Atta and Marwan al-Shehhi. Sources appear to be in disagreement as to whether or not the transfers resulted in any Suspicious Activity Reports (SARs) being sent to Treasury's Financial Crimes Enforcement Network. But sources holding that SARs were sent say that they did not result in any investigation or follow-up.

125. Levi, supra note 10, at 187 (noting that opposition to know-your-customer banking regulations, organized by the banking lobby, subsided after "terrorism reoriented privacy values in 2001.").
129. Moussaoui, supra note 127, at 11-12.
C. Multilateral Measures

By all accounts, multilateral cooperation on transparency issues received a shot in the arm after September 11. On September 28, the U.N. Security Council unanimously adopted Resolution 1373, requiring all 189 member states to criminalize and freeze any funds making their way to terrorists.131 Member states were to submit progress reports by the end of 2001. In October, the thirty members of the FATF committed themselves to eight new recommendations on terrorist financing and to developing a process of “self-assessment” for non-FATF nations thought to be vulnerable to terrorist finance.132 In a Rose Garden address on September 24, 2001, President Bush announced his intention to “starve the terrorists of funding, turn them against each other, root them out of their safe hiding places and bring them to justice.”133 This would be accomplished, he said, by “working with our friends and allies throughout the world to share information.”134 He promised cooperation “with the United Nations, the EU and through the G-7/G-8 structure to limit the ability of terrorist organizations to take advantage of the international financial systems.”135

D. Counter-laundering Provisions of the Patriot Act

Washington’s break with the “on our own” school of counter-laundering is manifest in the Patriot Act,136 the most significant piece of counter-laundering legislation since laundering became a crime in 1986.137 In its findings, Congress said that money laundering is a threat to “global financial and trading systems upon which prosperity and growth depend”138 and deserving of “national, as well as bilateral and multilateral action.”139 It is no doubt ironic, as has been widely observed, that many of the counter-laundering provisions appearing in Title III of the Patriot Act originally belonged to pieces of legislation that foes of banking regulation (led by former Senator Phil Gramm) vociferously and successfully opposed during the Clinton administration.140 While a minimum level of deliberation preceded the passage of the Act itself, the provisions

134. Id.
135. Id.
137. Laundering Hearing, supra note 99.
139. § 302(a)(9), 115 Stat. at 302.
of Title III represent years of bipartisan effort on the part of Senators Levin, Kerry, Grassley and others\textsuperscript{141} that made little progress prior to September 11.\textsuperscript{142}

Dirty money dangers notwithstanding, the motivating threat behind the Patriot Act was obviously terrorism. The Act therefore makes knowingly providing financial services or false documentation to a terrorist organization a predicate offense for money laundering and, thus, grounds for forfeiture of property.\textsuperscript{143} It also increases civil and criminal laundering penalties\textsuperscript{144} and the "long arm" jurisdiction of Washington over foreign launderers.\textsuperscript{145} Professor Fletcher Baldwin has spoken of the strictness of the law: "persons who are willfully blind \ldots are [under the law] the equivalent of terrorists."\textsuperscript{146}

Title III, devoted to tightening and clarifying existing U.S. money laundering laws,\textsuperscript{147} has been described variously as the Act's "center piece"\textsuperscript{148} and its "least objectionable part."\textsuperscript{149} It ranges broadly, touching on everything from the Federal Rules of Evidence\textsuperscript{150} to how the government may deputize international financial institutions (like the IMF) in the fight against terrorism.\textsuperscript{151} However, Title III probably affects banks the most.\textsuperscript{152} According to Fletcher, the Bank Secrecy Act was "sound asleep" prior to September 11.\textsuperscript{153} Title III awakens banks and demands they be more thorough in fulfilling their surveillance and reporting duties, especially where cross-border transactions are involved. Title

\textsuperscript{141} See Sarbanes Statement, supra note 110.

\textsuperscript{142} Fletcher N. Baldwin, Jr., \textit{Organized Crime, Terrorism, and Money Laundering in the Americas}, 15 FLA. J. INT'L L. 4, 4 (2002) (stating that no action was taken before September 11, despite the fact that "strong legislation" governing offshore and correspondent banking was "sitting on the desk of the Chair of the Senate Commerce and Banking Committee"); Pasley, supra note 136.

\textsuperscript{143} § 376, 115 Stat. at 376 (amends 18 U.S.C. § 1956(c)(7)(d)). This section of the Patriot Act is called "Laundering the Proceeds of Terrorism." The predicated offense being added to the list is 18 U.S.C. § 2339B ("Providing material support or resources to designated foreign terrorist organizations"). Material support is defined as "currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials." 18 U.S.C. § 2339A(b).

\textsuperscript{144} § 363, 115 Stat. at 363 (amends 31 U.S.C. § 5321(a), § 5322) (penalties to be not less than two times the amount of the transaction but not more than \$1,000,000).

\textsuperscript{145} § 317, 115 Stat. at 317 (amends 18 U.S.C. § 1956(b)).

\textsuperscript{146} Baldwin, supra note 142, at 7.

\textsuperscript{147} HINTERSEER, supra note 30, at 419.

\textsuperscript{148} Baldwin, supra note 142, at 5.

\textsuperscript{149} Malkin & Elizur, supra note 140, at 60. \textit{But see} Baldwin, supra note 140, at 8 (arguing the Patriot Act countenances a forfeiture regime more aggressive than that of most other states, bares student educational records to government surveillance, and redefines "who is an alien and \ldots who is a terrorist").

\textsuperscript{150} § 316(b), 115 Stat. at 316 (codified as 18 U.S.C. § 983) ("In considering a claim filed under this section, a court may admit evidence that is otherwise inadmissible under the Federal Rules of Evidence, if the court determines that the evidence is reliable, and that compliance with the Federal Rules of Evidence may jeopardize the national security interests of the United States").

\textsuperscript{151} § 360, 115 Stat. 272 at 360 (amends 22 U.S.C §§ 262p-4r) (Executive branch may instruct United States Executive Directors of such institutions to use their "voice and vote" to steer money toward countries that cooperate with the United States (§ 360(a)), and away from individuals who "commit, threaten to commit, or support terrorism" (§ 360(b))).

\textsuperscript{152} Baldwin, supra note 142, at 7 ("Title III is the key. Title III \ldots amends the Bank Secrecy Act \ldots [and] places much greater burdens on record keeping and reporting financial transactions in our banks.").

\textsuperscript{153} Id. at 4.
DIRTY NAMES, DANGEROUS MONEY

III requires U.S. financial institutions to have comprehensive anti-laundering programs in place by April 2002.\footnote{154}

With regard to financial havens, Title III prohibits shell banks—those having no physical location—and foreign banks that service shell banks from opening U.S. bank accounts.\footnote{155} U.S. financial institutions must inquire into the corporate identity of the foreign banks with which they transact.\footnote{156} Under Section 312 of Title III, "Special Due Diligence for Correspondent Accounts,"—when a U.S. bank does business with an offshore bank via a correspondent account—the U.S. bank is to identify not only its offshore customer (that is, the owner(s) of the offshore bank), but also its customer's customers as well (that is, the identity of the owners of any foreign bank(s) holding correspondent accounts with the offshore bank).\footnote{157} Finally, with respect to multilateral cooperation, Title III invokes "international anti-money laundering principles and recommendations" and specifically identifies the United States as a member of the FATF.\footnote{158} Particularly relevant to the present discussion, Title III makes the judgments of "credible international organizations or multilateral expert groups" an explicit part of the criteria by which the Secretary of the Treasury is to identify "jurisdiction[s] . . . of primary money laundering concern."\footnote{159} Under this provision, the counter-laundering experience of the FATF and OECD would appear to be relevant in guiding U.S. policy.

E. Following the Money into the Future

If Washington’s follow-the-money zeal has waned in the days since September 11, it is not yet obvious. Efforts are ongoing to effectuate the provisions of the Patriot Act, to better regulate non-bank systems such as hawalas,\footnote{160} and to improve cooperation with other countries on finance intelligence matters. In the 2004 budget that Bush sent to Congress, he allocated an extra $10 million for the Justice and Treasury departments’ counter-laundering initiatives.\footnote{161}

\footnotesize
\begin{itemize}
\item \footnote{154}{§ 352(b), 115 Stat. at 272, 352 (amends 31 U.S.C. § 5318).}
\item \footnote{155}{§ 313, 115 Stat. at 313 (amends 31 U.S.C. § 5318).}
\item \footnote{156}{§ 312, 115 Stat. at 312 (amends 31 U.S.C. § 5318).}
\item \footnote{157}{§ 312, 115 Stat. at 312 (codified as 31 U.S.C. §§ 5318(f)(2)(B)(i)-(iii)) (obligating banks “to ascertain whether such [offshore] foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information”); see also Laundering Countermeasures, supra note 21, at 20 (“It is the intent of Congress as expressed in Title III that banks and other financial institutions begin to practice know your customer with enhanced due diligence.”).}
\item \footnote{158}{§ 302(a)(10), 115 Stat. at 302.}
\item \footnote{159}{§ 311(a), 115 Stat. at 311 (amends 31 U.S.C. § 5318); see also Laundering Countermeasures, supra note 21, at 20.}
\item \footnote{160}{Naylor believes that underground banking systems always co-exist with significant trade diasporas. NAYLOR, supra note 17, at 144.}
\end{itemize}
U.S. policy changes may already be affecting don’t-ask-don’t-tell practices customary in U.S. business culture. "[B]efore September 11, a customs officer or a bank examiner with an unproven suspicion would most likely hesitate to start a bothersome investigation that might dead-end itself and his career along with it." 162 Since September 11, however, the career rewards are said to be "exactly the reverse." 163

The Bush administration appears now to be cooperating with the OECD, to some degree, regarding financial secrecy concerns. In late 2002, a U.S. delegation was sent to the Cayman Islands for a meeting of the "Group on Accounts" where "participating partners [both OECD and OFC states] confirmed the common aim of fostering a transparent and well-regulated global financial system based on common standards." 164 Even the OECD "tax haven" blacklist survives: Liechtenstein, Liberia, Monaco, Marshall Islands and Vanuatu appear on the one issued in April 2002. 165

X.
MULTILATERAL AMBIVLANCE

A. Long Term Objectives

Given the U.S. engagement, disengagement and re-engagement with the FATF and OECD counter-laundering/pro-transparency regimes, other countries may perceive the United States as ambivalent about the need to develop multilateral methods for protecting the global financial commons. While the issues surrounding financial havens and money laundering present a veritable Bermuda Triangle of tradeoffs and dilemmas, there is no indication that the Bush administration disrupted multilateral cooperation because it felt compelled to. In other words, there is no evidence that long-term U.S. interests and priorities, as they were perceived at the turn of the millennium, dictated this result. Instead, the potential short-term "pains and gains" of U.S. banks may have been foremost in the minds of policymakers as they began to turn their backs on multilateral cooperation.

There is nothing particularly surprising about the United States wanting to reconsider certain aspects of emergent international soft-law on money laundering. If unilateralism means going it alone, it is also important to note that Switzerland and Liechtenstein abstained in key votes on the OECD tax competition initiative, while a number of non-OECD Caribbean states were vocal in defend-

162. Malkin & Elizur, supra note 140, at 67.
163. Id.

https://scholarship.law.berkeley.edu/bjil/vol21/iss3/14
DOI: https://doi.org/10.15779/Z38XP9N
ing the U.S. position. Furthermore, as discussed earlier, the counter-laundering strategies of the FATF are flawed. Thus, what is both ironic and regrettable, is that, instead of raising its concerns regarding the direction of the pro-transparency campaign openly and transparently, the United States resorted to mixed messages and obfuscation.

B. Money Laundering and National Security

Perhaps the best indication that U.S. opposition to the FATF/OECD blacklist campaign did not result from a thorough consideration of U.S. realities is that the September 11 attacks required renovation of the brand new policy. The new Bush administration may have intended to adjust U.S. counter-laundering programs to make them less burdensome for banks or more cost-effective. It was unrealistic, however, to encourage or tolerate widespread speculation about the impending demise of active U.S. opposition to financial havens or money laundering, without first taking into account the way these two issues are linked (at least conceptually) to other issues, such as organized crime, terrorism, and drugs. Terrorism had been identified as a serious threat to the United States long before September 11, and money laundering has always been associated with the financial activities of the transnational criminal underground. Thus, prior to September 11, the Bush administration’s money laundering policy seems to have been skewed in the direction of the “administration’s tax and economic priorities.”

In December 2000, a National Intelligence Council (NIC) report, “Global Trends 2015: A Dialogue About the Future With Nongovernment Experts,” concluded that one of the three main challenges that states would have to confront during the first fifteen years of the new century would be defending against criminal networks that had become “increasingly adept at exploiting the global diffusion of information, as well as financial and transportation networks.” The September 11 hijackers did just that, sabotaging the U.S. transportation system by exploiting U.S. banks, credit card companies and the internet. Thus, after September 11, the Bush administration was forced to re-evaluate its understanding of FATF/OECD pro-transparency policies, having originally failed to take into account the connection between these policies and national security.


169. As already stated, there is no indication that Bush administration policies related to money laundering made the work of terrorists any easier than it would have been during the Clinton era.
XI.
SHORT TERM PAINS AND GAINS

Stewart Patrick expects that unilateral shortcuts taken in pursuit of low-hanging fruit will cost the United States in the long run. In the instant case, the relevant short-term pains and gains have inured to the benefit of U.S. banks and their close allies.

Blum’s seventh “law” of money laundering is: “the greater the degree of financial deregulation for legitimate transactions, the more difficult will be the job of tracing and neutralizing criminal money flows.”170 On the other hand, cleaner money—presumably like cleaner air—comes with a price. Increased scrutiny of the money flow may result in loss of customers to competing systems that are less regulated, increased administrative costs, and slower-moving money. Regardless of whether the quantity of questionable money passing through a bank is hundreds of dollars a year or hundreds of millions of dollars a year, routine reporting requirements can be burdensome, and the requirement to report “suspicious” transactions can be a nightmare, depending on what the penalties for non-compliance are (such as criminal liability under terrorism laws).

Adam Cohen, writing for Time, attributed the Bush administration’s reluctance to increase scrutiny of financial flows to the influence of the Texas banking lobby, which had less pull over the preceding administration. In Cohen’s view, the harshest critics of reporting requirements, which are intended to ferret out suspicious foreign accounts, were “officials from Texas banks that, because of their proximity to the Mexican border, finance many cross-border projects, and are believed to be a favorite repository for Mexican fortunes whose owners sometimes don’t welcome scrutiny.”171 Enron did not welcome scrutiny either. Prior to September 11, key foes of government regulation and fans of Enron including, among others Dick Armey, Phil Gramm, and Wendy Gramm (not to mention Lawrence Lindsey and Paul O’Neill) successfully resisted any pro-transparency shifts in law or policy whose burden would be borne by U.S. banks.

The tradeoff between “clean” money and fast money is implicit in the Bush Treasury’s March 2001 reaction to Report on Correspondent Banking: A Gateway For Money Laundering, a report yielding the results of a year-long legislative investigation into domestic dirty laundry.172 The report—neither the first nor last to indicate that U.S. banks are not immune to “dirty” money—demanded that Washington “shut the door to high-risk foreign banks” responsible for involving the United States in numerous instances of drug trafficking, high-yield investment scams, tax evasion, internet gambling, and money launder-

170. Blum et al., supra note 37, at 23.
Correspondent relationships with "high risk" foreign banks "seemed to fly under the radar screen of most U.S. banks' anti-money-laundering programs" because of "a culture of lax due diligence" and an "atmosphere of complacency." Treasury's sanguine response was that, "World trade depends upon the rapid and reliable clearing of dollar accounts held at U.S. financial institutions," and thus "any regulatory solution to the problem of abuse in this area would have to be extremely carefully targeted to avoid interfering with this trade . . . [and the] competitive position of these institutions in the global economy." While it may seem reasonable for U.S. banks to absorb some of the costs of safeguarding the integrity and stability of the global system—especially the portion in dollars—Malkin and Elizur explain that this has not always been U.S. policy:

"Traditionally, the U.S. Treasury has welcomed foreign money from any source to fill the gap in the country's balance of payments. Only in the last years of the Clinton administration did the Treasury begin to draw the line at laundered money, and even then it was tentative, lest it impede global money flows into Wall Street."

After Bush took office, this line disappeared entirely.

XII.

COUNTER-LAUNDERING AS HARM REDUCTION

Malkin and Elizur liken the Bush and Clinton money laundering campaigns to "apples and oranges," because for Clinton the enemy was corrupt dictators overseas, while for Bush the enemy is "terror." Of course, when the laundering hostilities began, the drug lords were across the trenches from the bankers. Malkin and Elizur further argue that the Bush Treasury was, "forced by events to impose tighter money-laundering regulations," and that "it will be no easy task for the administration to merge an all-out war against terrorists with the previously phony war against money launderers."

As should be clear by now, the laundering saga has important political and rhetorical components that should not be ignored. Nevertheless, the problem with phony wars—a label often applied to the War on Drugs, as well—is that they can be just as vicious and debilitating as other conflicts. Furthermore, it is sometimes unclear where phony wars end and real ones—like the one presently ravaging Colombia—begin. As an alternative to war, money laundering policy can be conceptualized as a tool. This approach parallels the notion of "harm

173. Id. at 4 (noting that money laundering through correspondent bank accounts "is not a new or isolated problem. It is longstanding, widespread and ongoing").
174. Id. at 4, 26.
176. Malkin & Elizur, supra note 140, at 67.
177. Id. at 61.
178. Id. at 68-69.
179. Ultimately, Le Monde's "battle against tax havens and money laundering" may reflect social and cultural aspirations as much as any coherent legal mandate deriving from identifiable bodies of domestic and international law. See supra note 5.
reduction” in drug policy, the leading alternative to the prohibition paradigm and the “clearest lens through which to view the possibilities for change."^{180} A harm reduction-type model facilitates comparison between different types of counter-laundering tools in terms of cost, suitability for achieving given ends and potential drawbacks. Under this approach, “fighting drugs” is a matter of prioritizing drug-related harms, which range from a “sense of public disorder and disarray” to “strained international relations,” and matching them with appropriate remedial measures.^{181} The same strategy may turn “U.S. law enforcement’s fixation with chasing the money,”^{182} into a useful component of multilateral financial governance.

Under Bush’s 2001 counter-laundering strategy: “The goal of the 2001 Strategy is to disrupt and dismantle large-scale money laundering organizations and prosecute money launderers to the fullest extent of the law.”^{183} But like the drive to eradicate drugs, fewer and fewer people believe that stopping money laundering is either possible or an end in itself. At the same time, Levi’s observation on the paradoxical harmlessness of laundering does not mean that tax evasion, smuggling and whatever other predicate offenses give rise to laundering liability are harmless. Thus, money laundering should probably be viewed as a symptom of other problems, rather than as the harm per se. In the hypothetical jurisdiction where money laundering has yet to be criminalized and slave traders purchase hospitals and banks, the problem is not money laundering so much as it is the slave traders’ activities.

XIII.
CRYING WOLF IN THE GLOBAL VILLAGE

Various strains of dangerous money including Cayman Grey,^{184} Colombian Drug,^{185} Chinese Soft,^{186} and Saudi Blood^{187} have, at one time or another, been alleged to endanger the physical, civic, and economic well-being of Ameri-

^{180} Id. at 386.
^{182} Naylor, supra note 17, at 249.
^{183} National Strategy, supra note 99, at foreword.
^{184} Statement of Carl Levin, supra note 52 (“An estimated $70 billion in U.S. tax revenue is lost each year to assets hidden offshore, a figure so huge that if even half that amount were collected, it would pay for a Medicare prescription drug program without raising anyone’s taxes or cutting anyone’s budget”). See also Weintraub, supra note 21, at 56 (“Cayman Island banks grew during the last three years from $500 billion to $800 billion,” citing Manhattan District Attorney Robert Morgenthau).
^{185} Hearing on U.S. Policy in the Andean Region Before the Senate Caucus on International Narcotics Control, 107th Cong. (2001) (statement of Sen. Mike DeWine), available at http://drug caucus.senate.gov/hearings_events.htm (last visited Mar. 7, 2003) (“If we fail to sever the ties between the drug money and terrorism, then we risk losing fragile democracies around the world. And not just around the world, right here in our own backyard in countries such as Colombia and Haiti.”).
^{186} Donald R. Liddick, Jr., Campaign Fund-Raising Abuses and Money-Laundering in Recent U.S. Elections: Criminal Networks in Action, 34 Crime, Law & Soc. Change 111, 111-12, 124. Liddick uses case studies to show how “Republican and Democratic operatives” used shell companies, straw donors, political action committees and non-profit organizations to funnel “Communist Chinese money,” and funds from “tycoons” in Hong Kong and Macao into “soft money” coffers.
DIRTY NAMES, DANGEROUS MONEY

In global trade in cannabis, coca, and opium, the United States has often seen itself as a victim rather than a trading partner. Yet, having widely sowed shame and sanctions, the United States has yet to reap any measure of control over the underground narcotics sector. The "tired, ineffectual, [and] unilateral" process by which Washington draws up lists of Drug War cooperators and non-cooperators is similar to the OECD/FATF "name and shame" game in that both have important symbolic components. In 1995, the State Department declared that Colombia was "uncooperative" in the Drug War while waiving all sanctions for reasons of "national interest." Similarly, the FATF and OECD often threaten but rarely impose countermeasures against non-cooperators.

For over a decade, Juan Gabriel Tokatlian has been chronicling the success of certification of similar unilateral tactics at paralyzing and poisoning U.S.-Colombian relations while having no impact on narcotics smuggling. Even when the drug remedies the United States prescribes to Colombia do not explicitly call for U.S. soldiers, cops or spies, they have been coercive. U.S. attempts to change Colombian law, including its Constitution, using blacklists, threats and hard-line rhetoric about lack of commitment have become so commonplace that they sometimes go unremarked, even in Colombia. Tokatlian demonstrates how the stigma of dirty drugs and dirty money (methodically and successfully engineered by Washington) have served to weaken the Colombian government, making Bogota even more vulnerable to the drugs and thugs that Washington expects it to vanquish. During the Gaviria Administration

187. Mike Robinson, Feds: His Charity Went to Terrorists, S.F. EXAMINER, Oct. 10, 2002 (Leader of Chicago-area Islamic charity, Benevolence International Foundation, indicted for money laundering charges "with Attorney General John Ashcroft vowing, 'We will find the sources of terrorist blood money.'").

188. "[Washington] then retreated to the same tired, ineffectual unilateral certification process—whereby drug-producing nations must demonstrate that they are making major progress in the fight against drugs or face sanctions, that has justly created so much ill will for America in the region. The time has come to revive the multilateral efforts." Rafael Pardo, Send Lawyers, Guns and Money, FOREIGN AFF., July-Aug. 2000, at 73. Pardo was a special adviser for peace negotiations to Colombian President Virgilio Barco from 1986 to 1990 and Colombia's first civilian Minister of Defense from 1991 to 1994. Id.


190. See, e.g., Juan Gabriel Tokatlian, Político Público Internacional Contra Las Drogas de la Administración Gaviria y las Relaciones Entre Colombia y Estados Unidos, in DROGAS ILICITAS EN COLOMBIA: SU IMPACTO ECONOMICO, POLITICO Y SOCIAL 461 (1997); JUAN GABRIEL TOKATLIAN, EN EL LIMITE: LA (TORPE) NORTEAMERICANIZACION DE LA GUERRA CONTRAS LAS DROGAS (1997) [hereinafter LAS DROGAS].

191. LAS DROGAS, supra note 190, at 133-134. Tokatlian remarks that an "extraordinary lack of internal debate" regarding U.S. efforts to influence Colombian policies on extradition exacerbates Washington's hard-line tendencies. U.S. drug fears were the inspiration behind a 1979 U.S.-Colombia extradition treaty. Credited with having worsened anti-government subversion, the extradition of Colombians was precluded altogether by Article 35 of the Colombian constitution of 1991. Id. at 131. Constitutional amendments in 1997 that reinstated extradition resulted from U.S. threats of decertification and were borne more "from anguish than conviction." Id. at 137.

192. During the administration of Ernesto Samper, Washington applied pressure so liberally that it had the perverse effect of weakening the Colombian government "at the very time when guerrilla and paramilitary groups were becoming even stronger." Russell Crandall, Clinton, Bush and Plan Colombia, 44 SURVIVAL 159, 161 (2001).
Bogota made an explicit attempt to "denarcotize" its historically strong relations with the United States by flatly refusing to be shamed and blamed in a "unilaterally disproportionate" way and by refusing to let the drug problem taint all other bilateral issues, especially those of greater importance. While Colombia eventually buckled and relations were "re-narcotized," Tokatlian indicates that the experiment alerted Colombia to the possibility that more sophisticated, locally appropriate policies might profitably be substituted for "indiscriminate combat" and Drug War logic purchased wholesale from Washington.

One key difference between the counter-drug and counter-tax haven campaigns is that the latter is not a unilateral U.S. effort. Another is that the tax-haven initiative has been credited with success, while the U.S. drug certification program has not. Nevertheless, counter-laundering strategies such as the FATF/OECD blacklists may yet end up on the same reef as the Drug War. This may happen if developed countries overestimate the degree to which states like Narau and the Bahamas are responsible for the laundering phenomenon, while underestimating their own role.

Developing countries hosting OFCs run a high risk of being trapped in a one-issue, zero-sum dysfunctional relationship with more powerful countries. Five recent law review pieces conclude that the FATF and/or OECD "name and shame" campaigns are overly coercive or violative of national sovereignty. A British Virgin Islands politician said this about being forced to "rubber stamp" legislation determined by the United States and Great Britain to be appropriate for fighting crime in the Islands:

Here in this measure we find ourselves unequally yoked, not because it's something we want to do as a Legislative council but because our metropolitan masters have deemed it fit to enter into a Treaty with . . . a friendly foreign power, a superpower if you please, and have entered into that Treaty with the object and intent and the power to ensure that it takes place, of us having to comply.

Meanwhile, there simply is no evidence that Caribbean or South Pacific states are primarily or even substantially responsible for money laundering. Beyond the evidence that Treasury simply categorized as "anecdotal information," it is likely the United States launders its fair share of the load, due to the sheer volume of money that passes through the U.S. banking system daily, estimated at trillions of dollars a day; its reticence to impede this flow; and

193. Tokatlian, supra note 190, at 467, 534.
194. Id. at 534.
195. James, supra note 51, at 1; Benjamin R. Hartman, Coercing Cooperation from Offshore Financial Centers: Identity and Coincidence of International Obligations Against Money Laundering and Harmful Tax Competition 24 B.C. INT'L & COMP. L. REV. 253 (2001); Kimberly Carlson, When Cows Have Wings: An Analysis of the OECD's Tax Haven Work As It Relates to Globalization, Sovereignty and Privacy, 35 J. MARSHALL L. REV. 163, 171, 178. (2002); Doyle, supra note 69, at 281; Townsend, supra note 166, at 215. But see Taylor Morgan Hoffman, 2 CHI. INT'L L. 511, 519 (2001) (asserting that "developed nations, as represented under the umbrella of the OECD, have legitimate complaints about secrecy and discriminatory tax policies that need to be addressed").
money launderers' affinity for the squeaky clean image that only the United States can offer.

However, having identified a problem, alerted other nations, and helped create both the FATF and OECD Forum on Harmful Tax Practices, the United States can hardly abandon counter-launderers now. It is the very complexity of the bundle of legal, economic and social issues that make up the laundering debate that compels the United States to remain involved. Is there more to money laundering law than sending drug traffickers to prison and seizing their speedboats? Will it be easier to “name and shame” Virgin Island bankers than Colombian coca growers? Will SARs help prevent hijackings? Will it ultimately be possible for the imaginary offshore parking lots of the world to identify their customers and their customers’ customers? These questions are the kind that can only profitably be addressed in a multilateral forum in which the United States participates.

Violence and corruption in states such as Colombia and Mexico are tightly linked, not only to U.S. drug habits, as the recently discontinued government-sponsored television commercials suggest, but also to U.S. law and foreign policy. With regard to drugs, money laundering, and other wars, U.S. allies deserve good intelligence—on who the enemy is, where the front lines are, what the rules of engagement are—if they are to come running each time the United States calls. Meanwhile, Tokatlian calls for refusal of an accumulation of laws “whose value is symbolic rather than practical” in addressing an issue whose solution lies with fewer sanctions and penalties and more “operative justice.” Calling for a global summit on the global drug trade, Tokatlian also insists that any successful remedy for the world’s drug problems will have to be a multilateral one.

XIV.
CONCLUSION

Clearly, the tax competition issue and the War on Drugs have tainted the multilateral counter-laundering campaign. The notion that smugglers or other criminals will become discouraged and give up on crime because money laundering laws make crime proceeds too hot to handle taxes the imagination. Meanwhile the follow-the-money forfeiture regime—Naylor calls it “license to loot”—leads to the anomaly that drug sales fund the Drug War. Ann-Yu Chi demonstrates that civil forfeiture is big business and that “as long as the underlying financial reward exists for law enforcement agencies that participate in for-

198. LAS DROGAS, supra note 190, at 162.
199. In order to “avoid the abyss—if it is still possible,” Tokatlian calls for a global summit on drugs; adjudication within the U.N. and other multilateral forums of the legitimacy under international law of the more punitive and retaliatory aspects of the U.S. Drug War; and the formation of heterogeneous, non-governmental coalitions, that bring together North, South, center and periphery in identifying prohibition alternatives. Id. at 161-63.
feiture, these agencies will not change their practices, but, instead, will find ways to circumvent procedural safeguards." 200

While some believe that tax havens will eventually be forced out of business, this will not resolve the problem of citizens (and sovereigns) who cheat. Nevertheless, if following the money simply means keeping a multilateral pulse on global money systems to keep them healthy and detect global economic ailments before they become serious, then the laundering saga may yet emerge from the fog. While the sheer volume of the money flow bespeaks opacity rather than transparency, there is probably no argument to be made for letting global money channels go unlicensed, unregulated, or unattended.

Given the complexity of the laundering phenomenon itself, Hinterseer believes that controlling it "will inevitably require a coherent, comprehensive, and holistic set of interlocking laws, regulations and policies." 201 Morris-Cotterill finds it "ironic that the international community would fail to produce a single, unified set of rules to take on a criminal activity that thrives precisely on exploiting differences in laws and regulations." 202 Something beyond irony is involved if "[t]he abolition of tax havens would require [such] a degree of cooperation among the major industrialized countries and a limit on the sovereign rights of states [as to] spell out the end of the so-called Westphalian system." 203 However, if abolition, prohibition and shame are not suitable paradigms, alternative modes of cooperation should be articulated. Even if the danger of dirty money turns out to be overstated or wrongly stated, threats to the United States, such as those posed by smuggling, tax evasion and terrorism will remain, often changing shape and location. Because few foreign policy quandaries can be resolved by the United States alone, "posing unilateralism and multilateralism as equally viable options" creates a false choice. 204 It is likely that only by working in concert with other countries can the United States effectively address most modern threats.

While the FATF is a young, relatively inexperienced actor, it is unclear who would inherit its role if it left the stage (although the World Bank and IMF are clearly becoming increasingly involved with laundering issues, in collaboration with the FATF). Since September 11, the Task Force has made combating terrorist finance a primary focus, which suggests that the organization may be capable of taking on new tasks and adapting to changing notions regarding the dangers of certain financial transactions and possible solutions. It remains to be seen what will be proposed beyond the usual criminalization, surveillance, reporting, and forfeiture. Looking forward, the interests of the United States will be better served by working to shape the laundering and tax policies of the FATF and OECD from the inside, rather than confronting these bodies or undermining them with mixed messages. Given U.S. funding for the FATF, the depth

201. HINTERSEER, supra note 30, at 401.
203. Palan, supra note 46, at 173.
204. Patrick, supra note 18, at 10.
of past U.S.-FATF collaboration, and the Task Force's expressed interest in addressing terrorist finance, improved relations with the Paris-based group are not too much to ask and may even represent an opportunity for laundering Franco-American relations. Meanwhile, in view of Congress's manifest interest in better articulating the proper role for financial havens within the global economy, the tax competition issues that have been identified by the OECD need to be negotiated rather than assaulted.

The fragile nature of multilateral organizations and endeavors has become all too obvious in recent months. Had the Bush administration better communicated its emergent interpretation of money laundering and tax haven issues to its FATF and OECD partners, angry headlines might have been preempted. Just as importantly, states around the world that look to the United States, not only as a leader in business and technology but also as a champion of both privacy and transparency, might have ended up with a map by which to navigate the Bermuda Triangle of laundering issues. Instead, they were given the opportunity to follow the United States in the one-step-forward-two-step-back line dance. In the summer of 2001, Tax News reported:

Rather than helping to create an intellectual argument for a policy in the Americas, most regional OBCs [OFCs] have adopted the OECD/FATF-devised legislation in varying degrees—hedging that if the U.S. position develops in significant contrast to the Europeans, they will simply ignore the concessions already made in the domestic laws. 205

The commentators agreed that this was indeed "a troubling manner in which to conduct international affairs or maintain the legitimacy of laws." 206 While, on many issues, significant differences have developed since 2001 between the policies of the Bush Administration and those of governments of other countries, counter-laundering policy does not need to be one of those issues.

205. Morris & Tosti, supra note 104, at 3283-84.
206. Id.