Corruption and Anti-Money-Laundering Systems: Putting a Luxury Good to Work

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Systems of laws, regulations, and institutions developed to counter money laundering provide powerful tools for fighting corruption. Currently, however, the potential benefits anti-money-laundering (AML) systems can provide in fighting corruption go largely unrealized, especially in developing countries. This mismatch poses a puzzle: Why are developing countries failing to best capitalize on their expensive AML systems by using them to fight corruption? The article is built on three core claims. The first claim is that it is logical to use AML systems for anti-corruption purposes because of a pronounced overlap in the standards required for each and the rising costs of the former. The second section demonstrates specifically how AML systems could significantly augment anti-corruption efforts, focusing on the importance of financial intelligence, asset confiscation, and international cooperation. Finally, although powerful outsiders have successfully diffused AML systems among developing countries, a lack of "ownership" in the latter explains why these systems are often established only as tokens to enhance international legitimacy and reputations.

Introduction

It has become commonplace that corruption is one of the greatest threats to economic development and good governance. The Bretton Woods institutions, national governments, and non-governmental organizations like Transparency International have put this issue at the top of the policy agenda worldwide. In particular, corruption represents a major problem in developing states. The head of the World Bank has recently estimated that African countries lose 25% of their gross national product to corruption ("Countries to Get Help Recovering Stolen Assets," *The New York Times*, September 17, 2007). The World Bank further states that corruption is "the single greatest obstacle to reducing poverty" (World Bank anti-corruption Web site; see also Rose-Ackerman 1999). By their actions in committing to global and regional anti-corruption instruments, developing country governments have endorsed this dominant anti-corruption norm. Yet despite

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all the attention devoted to this issue and the efforts to combat corruption, there is yet little indication that the problem is being tamed.

A common policy package designed to combat money laundering (obscuring the illicit origins of the proceeds of crime) has recently been adopted by a large majority of developing states. Through instituting these policies, authorities gain access to a much greater pool of financial intelligence to help "follow the money" in criminal cases, augment their powers to confiscate money derived from illegal activity, and lower the barriers for international cooperation among regulators, law enforcers, and judiciaries. This article argues that these anti-money-laundering (AML) systems are potentially a highly effective tool for reducing corruption, but because countries have generally failed to use AML systems in this manner, they are needlessly missing out on substantial benefits. These advantages are greatest in the developing world, but not necessarily because developing countries suffer from more corruption than developed nations.

Following from this, the failure to capitalize on these benefits poses a puzzle: Why are developing countries not using their AML systems to fight corruption? Establishing an effective AML regime that meets international standards imposes a relatively greater burden on poor countries than rich countries, especially since more money laundering probably takes place in the latter than the former. In this context, the leading work on the cost effectiveness of AML systems notes that for poorer countries, "an effective AML regime is essentially a luxury good" (Reuter and Truman 2004, 7). This article argues that poor- or low-capacity countries could do much more to recoup the costs of this luxury good by pressing AML systems into service in tackling corruption. Techniques for countering money laundering are not a magic bullet or panacea for corruption. But because poor countries have by and large already paid the costs of setting up AML systems, and because corruption is such a big problem, linking these two priorities involves very small extra marginal costs in return for potentially large benefits. Two rival explanations might account for poor countries' failure to capitalize on their AML investment by using such systems in an AML role. The first emphasizes the self-interested obstruction of corrupt elites. The second argues that AML policy is adopted by developing countries to maintain a good reputation among outsiders rather than with an interest in solving domestic problems. In first of all establishing that there is a puzzle to be solved (that developing countries could and should use their AML regimes to fight corruption but are not), and then resolving this puzzle, the article is organized around three main propositions, considered in turn.

The first is based on the facts that developing countries have already invested a good deal of resources in their AML infrastructure and that there is a very large degree of overlap in meeting international standards in AML and anti-corruption treaties. Given this investment and complementarity, it makes imminent sense to use AML tools where they can make the most substantial contribution to national welfare, namely, fighting corruption. The following section illustrates specifically how the intelligence, asset confiscation, and international collaboration measures developed to combat money laundering can productively be used to detect and investigate corruption. The remainder of the article explains why this opportunity to tackle corruption has so far been missed. The self-interested reticence of corrupt Third World leaders is not a sufficient explanation. Instead, drawing on the IR literature on compliance, it is argued that developing countries perceive money-laundering reforms as necessary to satisfy powerful outside interests rather than a policy that can deliver significant local benefits. Developing countries value the legitimacy that comes with publicly committing to generally accepted international standards, and a reputation for then formally complying with these standards (Guzman 2002; Schimmelfennig 2001; Simmons 1998, 2000). Officials from such countries are thus weakly socialized into instrumentally playing appropriate roles (Checkel 2005). As a result, developing countries bear all the costs of compliance in maintaining an expensive system for fighting financial crime to satisfy powerful outsiders, without deploying the system where it could do the most good.

It must be stressed from the outset that corruption is also an important problem in many rich countries, including at the highest levels of government, and responses may leave much to be desired. For example, a 2006 decision by the British government to abort an investigation of alleged bribes and kickbacks associated with an $86 billion arms deal between British Aerospace Systems and Saudi Arabia on "national security" grounds has attracted much criticism. The Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Group in particular has noted its "serious concerns" on this matter (OECD 2007; see also sustained coverage in *The Guardian*).

Money Laundering and Corruption

Money laundering refers to the process of obscuring the illicit origins of money derived from crime. Money laundering occurs after a "predicate offence" has brought money into the hands of criminals. Predicate offences such as robbing a bank, selling heroin or, most germane for this article, accepting a bribe, are motivated by criminals' desire for profits. But receipt of the illicit funds may leave the offenders with the problem of reintegrating large sums of money into the legitimate financial system without arousing the suspicions of law enforcement authorities. Money provides both the motive for many crimes and the means, in terms of working capital. By disrupting this illicit finance, AML aims to make the predicate offences less profitable, and thus less attractive, as well as denying criminals working capital. By countering money laundering as an offence distinct from the underlying crime, it is hoped that the number of predicate offences will fall (Gilmore 1995; Levi 2002; Masciandaro 2004).

More than any other single issue, concerns about the international drug trade in the 1980s put money laundering on the policy agenda as a problem requiring a coordinated response from states. AML systems were, until the late 1990s, largely confined to the OECD countries. Since this time, however, AML policies and institutions have diffused worldwide, and over 170 countries either have established such a system or are in the process of doing so (Financial Action Task Force [FATF] 2007, 2). The leading standard-setter and diffuser of global AML standards has, since 1990, been the FATF, an inter-governmental body composed of 34 mainly rich country members headquartered in Paris.

Corruption covers a much wider range of behavior than money laundering and thus is less amenable to simple definition. Perhaps the most concise attempt is that formulated by Transparency International: "the misuse of entrusted power for private gain" (Transparency International homepage). The International Financial Institutions Anti-Corruption Task Force (made up of the World Bank, International Monetary Fund, African Development Bank, Asian Development Bank [ADB], European Investment Bank and European Bank for Reconstruction and Development) released a Uniform Framework for Preventing and Combating Fraud and Corruption on September 17, 2006. The Framework defines corruption as "the offering, giving, receiving, soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party." More explicit is the 2003 United Nations Convention Against Corruption (UNCAC). The UN Convention defines corruption to include all of the following activities: the active and passive bribery of domestic and foreign public officials as well as officials from international organizations, the embezzlement or diversion of public property by a public official, trading in influence or illicit enrichment by a public officials, and bribery and embezzlement in the private sector (Articles 15–22).

Previously corruption was seen as something of little import for economic development. This sanguine view changed from the mid-1990s. The OECD established a working group on corruption and in 1997 agreed to a convention outlawing the bribery of foreign officials by member states. More importantly for the developing world, the World Bank under the leadership of James Wolfensohn began to put corruption and issues of "good governance" more generally at the center of the economic development agenda. Lurid examples of spectacular grand corruption by political leaders such as Suharto in Indonesia, Mobutu in Zaire (now Congo), and Sani Abacha in Nigeria established the connection between corruption and poverty among the international development policy community (Transparency International 2004). Intellectually, there has been an explosion of research on corruption, and the economic effects of corruption (see the World Bank's 131-page annotated bibliography on corruption research, *Literature Survey on Corruption 2000–2005*).

More recently there is a growing realization that, rather than representing separate problems, money laundering and corruption may be linked.

Furthermore, a few actors have begun to articulate the idea that the strategies in place to combat one kind of crime may be effective in reducing the other. For example, in 2007 the World Bank has observed:

> Corruption and money laundering are a related and self-reinforcing phenomenon. Corruption proceeds are disguised and laundered by corrupt officials to be able to spend or invest such proceeds. At the same time, corruption in a country's AML institutions (including financial institutions regulators, Financial Intelligence Units (FIUs), police, prosecutors, and courts) can render an AML regime of a country ineffective. (World Bank 2007, 67)

As discussed in the following section, the complementarities between policies in each area have found expression in international conventions, but as yet rarely within actual policy practice.

The Logic of Using AML Systems for Anti-Corruption Purposes

As a crime premised on secrecy, the effects of corruption are obviously difficult to quantify. But, as noted above, the International Financial Institutions regard it as one of, if not the greatest, causes of underdevelopment. Corruption has created political instability and brought down governments. Beyond the general significance of corruption, this section is based on two further compelling reasons for using AML systems to fight corruption. The first is the degree of overlap whereby meeting international anti-corruption standards largely requires fulfilling international AML standards. The second, and more important, factor is the expense and current under-utilization of AML systems. Previously limited to rich countries, the spread of the AML regime into the developing world has seen poor countries bearing higher and higher direct and indirect costs to meet best international practice in this area. Because many developing countries have less sophisticated financial crime (with much smaller financial sectors and more local-based illicit drug economies compared to developed countries), corruption is often the major source of funds to be laundered (World Bank 2007, 68). But so far expensive AML regimes have not been deployed against corruption.

Complying with prevailing international anti-corruption standards entails meeting international AML standards. The complementarities in responding to these related types of financial crimes has been increasingly recognized in international conventions, even if this has not filtered down to the level of implementation. This legal overlap is most obvious in the 2003 United Nations Convention against Corruption, as of June 2008 signed by 140 countries and ratified by 117 (United Nations Office on Drugs and Crime [UNODC] homepage). But other UN conventions devoted to fighting the drug trade (the 1988 Vienna Convention), organized crime (the 2000 Palermo Convention), and the financing of terrorism (2002) also call upon signatories to adopt the main planks of AML policy. In combination, these three conventions call on state parties to criminalize money laundering, set up systems to apply due diligence to the customers of financial institutions, institute a reporting regime for suspicious transactions, set up FIUs to gather and collate financial data to pass on to the police, and follow the recommendations of international AML bodies. The UNCAC calls for the same commitments (see especially Articles 14, 23, 52, and 58), as well as such steps as setting up arrangements to monitor cross-border movements of cash, sender and receiver information on wire transfers, applying extra scrutiny to the finances of public officials, and ensuring cooperation among judicial, law enforcement and financial regulatory authorities (Commonwealth/Chatham House 2006). Similar provisions are found in the various regional conventions aimed at the same sort of problems, whether by the Organization of American States, the ADB, or the African Union (The Inter-American Convention against Corruption, the ADB/OECD Action Plan for the Asia-Pacific, respectively). Thus, if countries are to meet international standards in combating the illicit drug trade, organized crime, the financing of terrorism, and especially corruption, they must adopt the laws, regulations, and institutions that together constitute the AML system.

Yet probably the more convincing reason for developing countries to employ AML systems in an anti-corruption capacity is economic rather than legal. At present AML systems are both expensive and under-used in poor countries. Although data are scarce, the costs of AML systems for developing countries have so far probably outweighed the benefits (Sharman and Mistry 2008). The centerpiece of any national AML system is the FIU responsible for receiving and sifting through suspicious transaction reports from private financial institutions and passing significant intelligence on to law enforcement bodies. Those staffing FIUs must combine a knowledge of financial and legal issues, which has meant that suitably qualified personnel generally command high salaries. The need to communicate and monitor the extensive regulatory requirements imposed on the private sector can require a sizable FIU. Other public regulatory bodies (such as central banks, insurance supervisors, securities regulators, and company registers) have also acquired AML responsibilities, generally involving re-training, additional staff, and more money.

The accounting firm KPMG has conducted two rounds of surveys on the costs of the AML system to prominent banks around the world, with results published in 2004 and 2007. In 2007 it was reported that banks' AML compliance costs had increased by an average of 58% since 2004, far in excess of expectations (KPMG 2007, 8). Regionally, the increase was 37% in the Asia-Pacific, 59% in Latin America and the Caribbean, 60% in the former Soviet Union, and 70% in the Middle East and Africa (KPMG 2007, 14). The leading factor behind these rising costs was the requirement to monitor for suspicious transactions, and the need to train staff in AML principles and procedures. A study commissioned by the Commonwealth Secretariat found that the direct and indirect costs of the

AML system in Vanuatu, Mauritius, and Barbados over the four-year period 2002–2005 were $6.25 million, $40 million, and $42.5 million, respectively, a heavy burden for such small economies (Sharman and Mistry 2008). As more and more countries join the global AML regime, and as the standards expected of them become more demanding, these costs are likely to increase steeply. KPMG reports that international banks expect compliance costs to increase by "only" another 34% to 2010, a figure KPMG (2007, 15) suggests is overly optimistic. Furthermore, the Commonwealth survey suggests that such large international banks are perhaps the firms least impacted by rising regulatory standards in this area compared to smaller firms in insurance, accounting, stockbroking, and company formation (Sharman and Mistry 2008). International reviews of developing countries' AML compliance conducted in the last few years almost always identify a long list of deficiencies to be fixed, requiring yet more resources.

The increasing burden of the AML regime on the developing world would be less remarkable if it had resulted in a slew of convictions, large sums of dirty money confiscated, or a reduction in associated predicate crimes. But there is very little sign of either domestic or international benefits as a result of developing countries being incorporated within the global AML regime. Most developing countries have yet to record a single money laundering conviction or dollar confiscated (even most developed countries have only a handful of convictions; Rider 2004). In Niger, for example, one of the poorest and least developed countries in the world, the FIU set up at the beginning of 2006 had 18 months later only received one suspicious transaction report (which turned out to be sent in error), with no investigations or prosecutions. Explaining why such countries end up with an AML regime, Reuter and Truman note: "It is an article of faith to the authorities in industrial countries that all nations need to have effective AML regimes, but resources are scarce. The global threat posed by weaknesses in poor countries may be quite minor" (2004, 184).

More broadly, the bedrock of international AML standards, the FATF's 40 Recommendations on money laundering and 9 Special Recommendations on the financing of terrorism, were drawn up to operate in the context of its members' large and sophisticated financial environments. It is questionable to what extent these standards are applicable to economies where cash and barter are the norm, identity documentation is lacking, and people often do not even have recorded, fixed addresses. The problem is compounded because hitherto FATF studies of money laundering have been based on developed countries' experiences. Even allowing for their relative novelty, the lack of results associated with AML systems in the developing world means that they seem to be an expensive distraction from other urgent development needs, one that imposes a significant regulatory burden on small, fragile financial sectors. Unlike the prominent corporate interests that energetically and successfully lobbied for a strong global intellectual property rights regime, it is much harder to find beneficiaries from the spread of AML regulations. A small cadre of international civil servants has gained prominence and influence as a result. But perhaps the bigger winners are private consultants and large Western financial service firms (particularly the Big Four accounting firms) that possess the particular expertise in such complex systems. But these relatively small gains stand in stark contrast to the scale of costs imposed on poor countries. Yet the position could be otherwise; the following section spells out the potential for existing AML systems in developing countries to produce significant benefits by helping to reduce corruption. This then leads back to the original question of why developing countries have not seized these benefits.

Potential Benefits of AML Systems in an Anti-Corruption Role

Inherent in the policy response for attacking money laundering are mechanisms for gathering large volumes of financial intelligence, the provision of powerful legal instruments to confiscate the proceeds of crime, and new means of international cooperation for tracing and responding to financial crime. These three features of AML systems constitute potentially powerful tools for addressing corruption. This section considers each in turn, together with a brief illustration of their potential in relation to the still ongoing hunt for assets stolen by Ferdinand Marcos, former president of the Philippines.

The practice of AML involves collecting and analyzing large quantities of financial data, and results in a major increase in overall financial transparency. Corruption is a crime that depends on secrecy and one where the victims are typically unaware of their loss. As a result, countering corruption may be viewed in large part as a problem of information, though it is important to note that information per se may not be enough to secure a conviction in court. Because most (but not all) corruption, and nearly all large-scale or grand corruption, involves the transfer of money or assets, gathering and analyzing financial information is vital. To the extent that parties involved in corruption can render their financial dealings opaque to the outside world, the chances of catching them, or deterring others with similar inclinations, drop dramatically. With this in mind, the significance of the huge amounts of financial information generated and collated in the AML system for fighting corruption can be appreciated.

As noted above, perhaps the central provision of AML systems is the requirement that private financial firms report suspicious transactions. At first limited to banks, this responsibility has recently been expanded to encompass credit unions, insurance companies, wire transfer offices, bureaux de change, casinos, and dealers in gems and precious metals. Examples of what constitute a suspicious transaction might include depositing or paying with a large volume of cash, moving money through a series of accounts with no apparent business purpose, major purchases inconsistent with reported income, or transacting with individuals, firms, or jurisdictions that are themselves under suspicion. These reports, which may number in the thousands every year, are passed on to the FIU for analysis.

More general requirements seek to ensure that each particular activity within the financial system is linked with a specific, identifiable person, the Know Your Customer principle. Opening a bank account requires multiple forms of confirming identification (such as a passport, national identity card, drivers license, and utility bill), with copies kept on file in the bank. Wire transfer agencies must include and record the full details of the sender and the recipient. Those crossing borders with large amounts of cash (typically more than $10,000 or the local equivalent) must declare this fact. Any corporate vehicle (most usually a company, but also including trusts, partnerships, foundations, and so on) must be able to be linked with those individual enjoying beneficial ownership or control. Just as important as these new sources of information, the requirements also remove some of the barriers to accessing financial data that have previous impeded investigations. Financial institutions in general have a duty to keep their customers' information confidential, and some may have a more specific fiduciary duty to advance their customers' best interests, but AML reporting supersedes these rules. Even in the countries that have become known for their particular banking secrecy (e.g., Switzerland, Liechtenstein, Panama, and various other tax havens), the duty to report suspicious transactions and provide information on account holders for money laundering investigations is paramount (OECD 2006a). In countries like the United Kingdom and Australia, even lawyer–client confidentiality is suspended for the purposes of reporting suspicious transactions, but although being emulated elsewhere, other countries like France and the United States have decided against this measure. The Canadian government passed such a measure, only to have it overturned as being unconstitutional, and it is currently still negotiating with the Canadian Bar Association on a compromise solution.

As can readily be appreciated, collecting mountains of data by itself does little, if anything, to stop crime. It is the responsibility of the FIUs to receive, collate, analyze, and disseminate this information. In fulfilling this role, the FIU may check transactions against lists of individuals under suspicion of committing financial crimes, or analyze networks of transactions between specific people or companies. They may ask for further details from the reporting institution and pass the resulting information on to various law enforcement agencies. These agencies may request information from the FIU regarding persons of interest.

Often, investigations into money laundering, corruption, or other kinds of financial crime have been stymied because of the slowness of the investigatory process relative to the speed with which ill-gotten gains can be spirited out of the country and laundered. Confiscating the proceeds of corruption may act as one of the most effective deterrents, as criminals are sometimes willing to spend time in jail rather than give up the funds they have illicitly acquired. The freezing and confiscation provisions that are a major focus of the response to money laundering can help to remedy both of these problems. To comply with international standards, those within the global AML regime must be able to expeditiously freeze funds connected with ongoing investigations (covered in FATF Recommendation 38).

The most powerful response is the methods provided to authorities to confiscate laundered money, including that deriving from corruption offenses. In keeping with the vast sums of money looted by corrupt officials, the assets recovered may be sufficient to make a significant contribution to the national budget. For example, Mohammed Suharto of Indonesia is estimated to have looted between $15 billion and $35 billion during his 31-year rule (Transparency International 2004). Jean-Claude Duvalier, dictator of Haiti, is estimated to have stolen funds equivalent to between 1.7% and 4.5% of the national GDP every year he was in power. In Nigeria, $505 million of the money stolen by Sani Abacha has been repatriated (in addition to $800 million recovered within Nigeria), while as discussed further in the next sections, the Philippines has so far recovered $658 million stolen by former President Marcos and his family (UNODC/World Bank 2007, 10–11).

In the past, even where laws have allowed for the confiscation of the proceeds of crime (initially in the United States for drug offenses), they have proved difficult to apply in practice. Confiscation generally required the case to be proven beyond a reasonable doubt, and the money or assets in question had to derive directly from criminal activity. Both of these propositions are especially difficult to establish in corruption cases, even with access to information from the AML system. Recent changes, however, have lowered the threshold under which seizure may occur. In addition to confiscation based on a criminal conviction, governments can now use non-conviction-based civil forfeiture. Civil forfeiture cases brought by the government against a corrupt official's assets on money laundering grounds are required to meet a lower standard of proof for recovery of funds, namely, on the "balance of probabilities" rather than the "beyond a reasonable doubt" standard. Under this non-conviction-based approach, the case proceeds against an individual's assets directly rather than seeking to expropriate the assets as a by-product of successfully prosecuting the individual (for detailed discussion, see Kennedy 2006). Thus, in pursuing the assets of Vladimir Montesiños, the former Peruvian intelligence chief who fled after being accused of demanding bribes in return for defense contracts, the United States seized and repatriated $20 million. Those responsible for prosecuting the case in the United States are adamant that if conviction-based asset-confiscation measures had been the only option, none of the money could have been recovered (Interview, U.S. Justice Department 2007).

The third fillip that AML systems can provide to assist the fight against corruption relates to enhanced international cooperation. Particularly, when it comes to grand corruption or corruption in international business transactions, successful investigations and asset recovery depend on unraveling international financial networks. The experiences of Peru and Nigeria illustrate the necessity of being able to secure assistance from other countries in tracking and recovering the proceeds of corruption. A number of international organizations have declared the international recovery of assets to be a priority, and have released work on this topic (e.g., ADB/OECD 2000; UNODC/World Bank 2007). The enhanced forfeiture powers provided by AML laws can not only be used in a domestic role but also in confiscating and returning the proceeds of corruption from a third country. Using AML confiscation powers described previously helps to ameliorate probably the single greatest obstacle to the recovery of stolen assets: the delays and expense associated with investigation and gathering evidence in complex legal proceedings and mutual legal assistance provisions. An example would be the pursuit of the Marcos money, now into its third decade, as discussed later (Chaikin 2005). Thus previously, if a corrupt senior official in country A hid bribe money in country B, country A had to rely on time-consuming formal international provisions such as Mutual Legal Assistance Treaties. Now, however, country A could provide intelligence leads and evidence of the underlying predicate offense to enable country B to bring money laundering charges under its domestic criminal code, confiscate the money in question, and return it to country A in line with the principle enshrined in the United Nations Convention against Corruption of compensating the "victim" country (ADB/OECD 2000).

The body that has done most to ease the flow of financial intelligence from one country to another is the Egmont Group, a club of the world's FIUs. Founded in 1995, the Egmont Group now includes agencies from over 100 countries and has recently established a permanent secretariat in Toronto. Both formally and informally, Egmont has worked assiduously to ensure the free flow of financial intelligence to assist the investigation of international financial crimes. A notable achievement in this regard has been the establishment of a secure Web site via which FIUs can instantaneously exchange information. Related moves have been to facilitate the conclusion of the Memoranda of Understanding and Exchanges of Letters between member agencies in different countries to lay the legal groundwork for exchanging information. Less formally but just as important, the regular plenaries and committee meetings serve to build up familiarity and trust within the global FIU community, which makes it more likely that important intelligence will be available where it is needed in a timely fashion. Once again, because FATF standards mandate that corrupt conduct should be a predicate offense for money laundering, this highly developed and responsive network is available for anti-corruption purposes.

In considering the significance of the contributions of AML system to fighting corruption, it is helpful to provide a little detail of the Marcos case, which, as of mid-2008, is still the subject of legal proceedings in five countries. President of the Philippines from 1965, Marcos and his family were forced from power and into exile in Hawaii after a people power uprising in 1986. During his time in office, Ferdinand and Imelda Marcos and their children illegally amassed wealth estimated in excess of $10 billion through the embezzlement of foreign aid and state property, skimming public contracts and accepting kickbacks, and the creation, operation, and sale of monopolies. With Imelda's acquittal on 32 criminal charges in March 2008, it remains true that neither Marcos himself (who died in 1989) nor any of his family or cronies were ever convicted of a single criminal offense, or spent even one day in jail despite their systematic plundering. What have the sort of measures previously discussed done to ameliorate this lack of accountability, and what more could they have done? The actual contribution has been in terms of non-conviction-based forfeiture measures; the potential contribution is above all the Know Your Customer requirement for bank accounts.

Even though the former president and his entourage escaped all criminal convictions, in 2003, the Philippine government won the return of $356 million frozen by Swiss authorities in 1986, which with interest had grown to $658 million. This partial success was because of the ability to reverse the burden of proof under Philippine law, specifically, requiring the Marcos family to prove the legal source of the money in their Swiss bank accounts, rather than the Philippine government having to prove that these funds were acquired illegally. Because Marcos had declared his wealth upon attaining office ($7,000) and his salary was public knowledge, his legal wealth should have been $2.4 million in 1986. This left his lawyers to rebut the presumption that the vast majority of the funds were illicit and thus should be forfeited to the state. In direct contrast to all the criminal charges, requiring guilt to be proven beyond a reasonable doubt, which failed, the non-conviction-based civil forfeiture action proved a success (albeit a very belated one). Yet by all accounts, this is at best only a very partial success; the majority of the proceeds of corruption from the Marcos era remain unaccounted for. The major stumbling block has been that most of the wealth in question was not held in the Marcos family's own names but instead was obscured by the use of intermediaries to disguise their ownership. In the Philippines but even more so in Switzerland, the failure of banks to practice the Know Your Customer dictum has frustrated efforts to repatriate the greater share of the corrupt funds. Although Marcos used a variety of often complex schemes to hide the link between himself and the proceeds of corruption, two examples will suffice. The first was the ability of Swiss lawyers to open bank accounts for their clients without revealing that client's identity to the bank in question (this practice was banned after 1992 as part of AML reforms). They could then refuse to disclose any information concerning this arrangement on the grounds of lawyer–client confidentiality. The second tactic was to open bank accounts in the name of Liechtenstein foundations (roughly equivalent to trusts in common law countries). In this case, the identities of both the party controlling the foundation and the ultimate beneficiary were hidden (Chaikin 2001). Both arrangements, and the multitude of more complicated but essentially similar ploys, are ruled out under current international AML standards. Had these standards been enforced for the Marcos accounts, the Philippine government would in all likelihood been able to track down and recover a much greater proportion of the illicit funds. In addition, current AML international information exchange procedures would greatly speed the flow of bank documents between Switzerland and the Philippines; during the case, the transfer of these documents was held up in court by the Marcos lawyers for 4 years.

Before moving on to resolve the question of why developing countries have not used the intelligence, asset confiscation, and international cooperation features of AML systems in tackling corruption, it is appropriate to point out some of the limits. In adapting measures designed to fight money laundering for other purposes, it might seem insufficiently ambitious to stop at corruption. In particular, what could the tools previously detailed do in reducing tax evasion and enhancing state revenue? Almost alone among OECD countries, Australia permits tax authorities to routinely trawl through AML intelligence to check on tax compliance (Australia's FIU was founded shortly after a major tax evasion scandal), with claimed benefits of $82 million from mid-2006 to mid-2007 (Australian National Audit Office 2008; Austrac 2007, 20). Few if any other states have allowed the AML system to be turned into a de facto engine of tax collection. This reticence reflects appropriate caution in balancing the right to privacy, including privacy in one's financial affairs, with the need to extract tax payments (Sharman Forthcoming). Despite (or because of) the potency of the instruments designed to counter money laundering, they should be used judiciously.

The Limits of Compliance

The article so far has set out a case for why countries should employ AML systems in an anti-corruption role and how provisions of AML regimes can be of assistance to those charged with fighting corruption. Yet if the case for using AML systems in an anti-corruption role is so compelling, this begs the question of why developing countries have not already come to this realization and acted to exploit this potential. This final section thus explores why policymakers in the developing world so far have not capitalized on the opportunities and potential benefits earlier sections have outlined. The answer is held to be that outside pressure has prompted compliance with AML policy templates but that this has not been matched in developing countries with a genuine interest in substantive policy effectiveness.

Perhaps the first reason that might come to mind in accounting for this otherwise strange omission is the self-interested opposition of corrupt

Third World elites. Despite some superficial plausibility, this reasoning does not seem to explain the gap between potential and actuality. Even the extreme case of thoroughly kleptocratic governments and leaders should have an interest in effective, if selective, anti-corruption policies. They can police subordinates and ensure that the returns to grand corruption are not diminished by those further down, as well as monopolizing the distribution of illicit largesse. Corrupt leaders can also target their corrupt predecessors, or at least their assets (even with the best anti-corruption policies in the world, prosecuting incumbent heads of state and government will remain unlikely). In fact, the main reason why these benefits have not been realized is because of a lack of "ownership" (to use the development jargon) among developing countries. Developing countries have unenthusiastically complied with the demands of powerful Western states and international organizations to adopt AML systems. The IR literature on compliance with international regimes helps to understand this dynamic. This work seeks to explain why states comply with international standards given that these standards are often costly, given the absence of a central sanctioning authority or world government (Checkel 2005; Guzman 2002; Simmons 1998, 2000). There are three closely related mechanisms that, in combination, explain this pro forma compliance, that is, why developing countries would commit to international AML standards, go to the expense of building such systems, without then using them to maximum effect. The first is the search for legitimacy in the international community, the second is the desire to protect reputation, and the third is the influence of weak socialization. These mechanisms are explained later. Evidence supporting the proposition that these mechanisms explain the lack of ownership of AML standards systems is presented immediately afterward.

The search for legitimacy reflects states', or more precisely governments', desire to be regarded as modern, progressive, advanced, and, in general, in step with the values of modernity. Governments signal their alignment and compliance with generally accepted norms and models by publicly committing to international standards in a vast range of areas, even though these standards may be ill-suited to local conditions on technical–functional grounds. The Stanford School of Sociology has done large-scale survey studies showing the tendency for governments in developing states in particular to adopt policy and institutional models from OECD countries that have very little relevance to local conditions and priorities (Boli and Thomas 1999; Meyer et al. 1997). This work has inspired similar conclusions among IR scholars (in particular, Barnett and Finnemore 2004; Finnemore 1996a, 1996b). AML standards now comprise one of these key markers of international respectability. Thus, even in the mid-1990s, it was observed that "Ratification of the Vienna Drug Convention is becoming virtually an indicator of responsible membership in the international anti-drug and anti-money laundering world community" (quoted in Gilmore 1995, 64). The coercive corollary of this is that governments fear the stigma of standing out for failing to observe these standards, of being part of an isolated, deviant minority.

Having signed up to the various hard- and soft-law AML international agreements in search of legitimacy, developing states are reluctant to jeopardize their reputation by obviously failing to comply. In this context, compliance means, as far as possible, observing the FATF standards and obtaining good rating in international reviews. Getting value for money from expensive AML measures by promoting good governance locally is not relevant for protecting a state's international reputation. In general, countries are keen to protect their international reputations for complying with generalized standards because defections may prevent them from being able to credibly commit to beneficial international cooperative arrangements in the future. Thus, "According to the standard argument, a major—if not the major—reason why states keep their commitments . . . is because they fear that any evidence of unreliability will damage their current co-operative relationships and lead other states to reduce their willingness to enter into future agreements" (Downs and Jones 2002, 95–96).

The final mechanism is "conscious instrumental role-playing": "Agents may behave appropriately by learning a role—acquiring the knowledge that enables them to act in accordance with expectations—irrespective of whether they like the role or agree with it. The key is the agents knowing what is socially accepted in a given setting or community" (Checkel 2005, 804). This weak socialization is distinguished from strong or deep socialization whereby agents sincerely internalize new norms and genuinely want to comply in substance as well as in form. The search for international legitimacy, protection of reputation, and weak socialization and role playing jointly explain the lack of ownership and the puzzle of why developing states have adopted AML systems without using them where they could do the most good. AML policy is deployed for foreign consumption, not to solve domestic problems like corruption.

In keeping with this, interviews with a number of officials from FIUs and related government agencies from five countries in Africa, Asia, and the Caribbean indicate that money laundering is not a domestic priority. Instead, the fact that so many developing countries are passing laws and regulations and establishing institutions to combat money laundering is a matter of impressing powerful outsiders. Further interviews with officials from international organizations and bilateral aid agencies providing technical assistance in this field confirm the picture that although it may be "an article of faith" among rich countries that poor countries need AML systems (Reuter and Truman 2004, 184; Pieth and Aiolfi 2004 entitle their chapter on the diffusion of these same rules "Spreading the Gospel," p. 12), the latter have a much more ambivalent and pragmatic attitude to the subject. This skepticism is accentuated given the expense of the exercise and the so-far modest results outlined earlier.

In part, this lack of enthusiasm in the developing world reflects the reasons why money laundering became a policy priority in OECD countries in the first place. Initially, and especially in the United States, money laundering was seen as an outgrowth of the huge sums of money generated by sales of illicit drugs imported mainly from the developed world (hence the first international standards on money laundering being in a convention on the international drug trade, the Vienna Convention). AML standards have also come to be seen as a means for protecting the large and lucrative financial sectors of the advanced economies, as well as another front in the "war on terror" (Levi 2002; Masciandaro 2004). But if a country is not a substantial market for the importation of illicit drugs, does not have a significant financial sector, and does not feel vulnerable to international terrorism, the advantages of a comprehensive AML system are much less clear. These reservations are strengthened considering the many other obvious and pressing demands on government time and money: basic sanitation and health care, malnourishment, primary education, and roads among a long list of others. The rapid diffusion of the AML regime in the developing world so far has reflected sentiments that failure to introduce such a system will lead to negative reactions from influential foreign states, firms, and international organizations. This is in contrast to the view that such laws and institutions will lead to positive benefits (beyond the avoidance of negative consequences) and are in line with local needs and circumstances. In an interview focusing on whether a particularly poor African country could really afford to have an AML system, an official from an international organization replied to the authors "Do you think it can afford not to?"

The negative consequences befalling those countries bucking the trend toward joining this new international standard derive primarily from the actions of international organizations and firms. As described previously, the FATF has been the lead body in both setting and enforcing AML standards among states. Among its members, this has been a patient and consensual process of exchanging notes, peer review, deciding on best practice, and incremental changes (Levi and Gilmore 2002). However, the FATF membership is drastically skewed to favor rich countries. It includes, for example, Iceland, Luxembourg, and New Zealand, but excludes India, all Middle Eastern countries, and all African countries except South Africa. The most prominent means of propagating the FATF's 40 + 9 Recommendations in the developing world has, from 2000 to 2006, been by blacklisting. As part of the Non-Cooperative Countries and Territories list, 47 non-member jurisdictions were assessed against FATF standards, and 23 that failed to measure up were publicly labeled as being "non-cooperative in the fight against money laundering." The effect of this has been to damage the reputation of those countries on the list and restrict their access to international banking networks, as major banks have been reluctant to be tainted by the association with unacceptably lax regulatory standards and crime (Johnson 2001, 2003; Sharman 2006). The Non-

Cooperative Countries and Territories blacklist (now suspended) has successfully diffused AML standards and established the status of the FATF as an organization not to be trifled with (Wechsler 2001), but it has done little to persuade countries that compliance can provide local benefits, especially in fighting corruption. As a result, developing countries often view AML laws and systems as a costly "paper exercise" in regulation as foreign policy.

In the regional AML bodies devoted to spreading the FATF's standards (there are different organizations for Europe, Latin America, the Caribbean, Eastern and Southern Africa, West Africa, and the Asia-Pacific), the main impetus for reform and compliance again seems to be avoiding international embarrassment rather than securing domestic benefits. Mirroring the FATF, member countries of FATF-style regional organizations undergo regular peer review against the 40 + 9 Recommendations and are publicly rated on the extent to which they are in compliance. Given the difficulty that even FATF founding-member countries have in scoring well, it is no surprise that developing countries generally receive low scores (Non-compliant or Partially Compliant rather than Largely Compliant or Compliant). Individual officials and whole governments rarely like being told they are doing a bad job, or are somehow substandard or illegitimate in public (Slaughter 2004). In this way, the process of peer review is an effective spur to reform (Levi and Gilmore 2002), but again, the priority is satisfying foreign states in the region, rather than adapting AML standards to meet local priorities.

Conclusions

Currently, there is a near-ironic policy mismatch in developing countries: These countries are sorely afflicted by corruption and yet are failing to capitalize on the investment they have made in AML systems that could assist in countering corruption. Because corruption is the single most important financial crime in the majority of developing countries, and perhaps even the greatest obstacle to economic development, even modest progress here would provide significant benefits to national welfare. The elements that jointly constitute AML systems, like financial intelligence and asset confiscation provisions, have great utility for following the money trail in corruption cases. But too often, despite the commitments of effort and resources made by developing countries in complying with international standards in this area, AML systems are seen as a totem with which to impress outside audiences rather than a tool to tackle pressing local problems.

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