Fighting Transnational Organized Crime via the Fight against Money Laundering:

The Financial Action Task Force and the Limits of Experimentalist Governance[1]

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1. Introduction

   Money laundering is central to the operations of organized crime. Defined as a multistage process by which criminal actors conceal the illicit origins of their profits and then reintroduce their proceeds of crime within the licit economy as seemingly legitimate assets, money laundering (ML) enables organized criminal activity to flourish in any jurisdiction and across borders. In the globalized economy, transnational organized crime groups (TOC) are increasingly sophisticated in their ability to commit profit-driven crime regardless of state borders and they devise ever more sophisticated means to legalize their proceeds of crime through transnational ML mechanisms.

   In response, governments and international organizations have adopted international cooperation to control ML as a fundamental component in the global policy toolkit to combat organized crime. A G7 initiative in Paris in 1989 first created the *Financial Action Task Force* (FATF) to examine ML techniques and trends and to establish a program to combat it. Composed of the G7 member states, the European Commission, and eight other countries, the FATF produced its first report in 1990, including a set of *Forty Recommendations* intended to provide a comprehensive plan of action against ML (FATF, 2016b). Since then, the FATF has expanded its mandate and its membership. The FATF now anchors a global regime of anti-money laundering (AML) regulation encompassing 37 member states, multiple FATF-style regional bodies (FSRB), numerous initiatives, expanded norms and recommendations, and policy support by FATF observer organizations like the World Bank, the IMF, and Interpol. In

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addition to fighting ML, the FATF's mandate now also includes standards against terrorism financing, financing of illicit proliferation of weapons of mass destruction, maritime piracy and kidnapping for ransom, and corruption.

Despite the FATF's significant global regime, however, opportunities in the global economy for ML by organized crime groups persist. Evidence continually emerges to suggest that TOC groups launder billions of dollars of revenues generated by drug trafficking and other criminal pursuits – often with the complicity of legitimate financial institutions. In 2012, for example, HSBC PLC – Europe's largest bank by market share – agreed to pay a record USD$1.92 billion fine to US authorities to settle various money laundering allegations, including that it enabled the laundering of at least $881 billion in drug trafficking proceeds through its US bank and that its staff members hid transactions with Iran, Libya and Sudan to evade U.S. sanctions (Colchester, 2015). In February 2016, families of Americans murdered by Mexican drug cartels filed a lawsuit against HSBC "for allegedly providing 'continuous and systematic material support' to Mexico's Sinaloa, Juárez, and Los Zetas cartels by laundering billions of dollars" (Estevez, 2016). The lawsuit's allegations illustrate the intimate link between money laundering and organized crime: the cartels' ability to integrate their illicit proceeds into HSBC's global financial networks enabled their acquisition of corrupt personnel, weapons, planes, communication devices, and raw materials for drug production (Estevez, 2016). Similarly, in March 2016 Mexican authorities arrested Álvarez Inzunza, alleged to be the Sinaloa Cartel's top money launderer and charged with laundering more than $4 billion for the Sinaloa Cartel over the last decade (Tabory, 2016). Most recently, the Panama Papers, an immense leak of confidential documents from the Panamanian law firm Mossack Fonseca, reveal how elites across the world use legitimate offshore shell companies in order to hide their assets, in some cases facilitating corruption and money laundering (Harding, 2016; Pachico, 2016). In sum, plenty of evidence reveals a global financial architecture to support illicit finance that remains robust, intrinsically intertwined with the licit global economy, and available to support extensive TOC operations – despite concerted international and political efforts to control money laundering through the FATF and related instruments. What explains this apparent paradox?

Analysing the FATF through the lens of experimentalist governance (EG), this chapter illuminates both the functional elements and the inherent weaknesses of the FATF AML regime, which help to explain both the regime's resilience in global governance (Jakobi, 2013, 2015; Nance and Cottrell, 2014) and its apparent lack of effectiveness at curbing ML as a route to controlling organized crime (Levi, 2015; Madsen, 2009; Zoppei, 2015). EG is an especially useful theoretical framework with which to examine the FATF. Currently at the centre of a burgeoning literature in EU studies, global governance, and international relations, theories of EG are concerned with the trade-offs of legitimacy, process, policy effectiveness, and compliance in global policy making (De Búrca et al. 2014; Eckert and Börzel 2012; Nance and Cottrell 2014; Sabel and Zeitlin 2010). Conceived as a deliberative approach to policy making in multi-level settings in which durable and effective rules are difficult to create and enforce, EG entails consensus-building and coordination under conditions of polyarchy, strategic uncertainty, and complex coordination among public and private sector actors across multiple levels of authority (Sabel and Zeitlin, 2012). EG represents a shift in governance arrangements away from more traditional state-centric and hierarchical modes, fixed and uniform rules, and rule enforcement, toward network-based approaches, flexible and reversible standards, and an emphasis on problem-solving (Nance and Cottrell 2014).

Our analysis explores the extent to which the FATF exhibits four key features typically associated with EG[2]: (1) broad framework goals, including loosely defined, somewhat open-ended global policy objectives; (2) the privileging of national or 'lower level' implementation strategies, including discretion to adapt global policy norms to local contexts; (3) continuous feedback from local contexts, with reporting and monitoring outcomes subject to peer review; and (4) periodic reviews and revisions, in light of multilateral experience, of the policy objectives and measures (De Búrca et al., 2014; Sabel and Zeitlin, 2012).   These governance mechanisms are considered 'experimentalist' to the extent that global policy making is

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[2] De Búrca and colleagues (2014: 477) list five key elements, including as a first step "initial reflection and discussion among stakeholders with a broadly shared perception of a common problem", which we omit from our present analysis of the FATF.

developed incrementally, based on feedback and learned experience at various stages of design, implementation, review, and evaluation.

As Nance and Cottrell (2014) have noted, the FATF largely operates according to the expectations of EG. It is a functional, problem-solving "learning system" endowed with "dynamic accountability" (Fossum 2012, p. 3) which operates on the basis of a broad framework of open-ended policy objectives intended to be implemented by members on a national basis. In addition, it includes a robust system of reporting and peer review, and revises its objectives periodically based on members' experiences. These EG-like elements of the FATF explain both the regime's durability and its significantly expanded mandate over time. At the same time, certain aspects of EG actually hinder effective AML control; the limitations of EG help to explain the pernicious persistence of ML and the difficulties states face in controlling organized crime though this route. Specifically, experimentalism within the FATF encourages a focus on process as opposed to an emphasis on outcomes, effectiveness, or enforcement. Insufficient and low quality data on ML hamper the impact of regular reporting and inhibit the learning and policy adaptation that peer review is supposed to support. Different jurisdictions possess both widely varying capacities to implement global standards and vastly different political will to enforce standards in the national context. EG's instrumental conception of consent and accountability (Best, 2014) also enables global power dynamics to undermine the FATF's legitimacy and effectiveness. The FATF's EG approach enables powerful actors – such as the United States, its allies, and their elites – to structure global AML policy to further their own interests, specifically with respect to offshore finance. As a state-centric organization in which major powers meet the low threshold of visible action while shaping the regime to their advantage (Tsingou, 2010), the FATF AML regime may be more about politics and appearance than genuine action and achieved results. In sum, the EG approach of the FATF may itself explain the persistence of ML and other illicit financial activities which enable organized crime.

The next section presents background information on the FATF AML regime and its place in the fight against TOC, while the third section examines the four key elements of EG in the FATF: broad framework goals, implementation at lower levels of authority, peer review reporting and assessment, and periodic revision of framework goals. Taking a more critical stance, section

four considers the limitations of the experimentalist approach to AML governance and discusses some important shortcomings of the FATF regime in the fight against TOC. The chapter concludes with some final thoughts on the relationship between ML, organized crime, and politics.

2. The FATF in the Fight against Money Laundering and Transnational Organized Crime

Governments have long known that following the money trail can be an effective way to tackle organized crime and criminal activity. The origins of the FATF trace back to United States efforts in the 1970s and 1980s to control the influence of organized crime in politics and to stymie the illicit trade in drugs that financed it. Designed to deprive criminals of the proceeds of their crimes (Madsen, 2009: 108), the U.S. Racketeer Influenced and Corrupt Organizations Act (RICO) and the U.S. Bank Secrecy Act – both enacted in 1970 – were important precursors to later national and global strategies to combat TOC. The primary purpose of RICO was to hamper the influence of organized crime in the licit economy (Madsen, 2009: 83). The Bank Secrecy Act, for its part, required U.S. financial institutions to assist U.S. government agencies to detect and prevent ML, tax evasion, or other criminal activities (Bank Secrecy Act, 2016) and provided the legislative basis for further control of ML. In 1984, the United States Presidential Commission on Organized Crime under Ronald Reagan promised a national strategy to target ML as "the keystone of organized crime" (*The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering*, 1984: 63; quoted in Levi, 2015: 275). Part of this strategy included an effort to internationalize the control of ML. Subsequent international cooperation against TOC has been almost totally concentrated on efforts to control criminals' access to the financial proceeds of crime through AML regulation (Madsen, 2009: 96).

The first international call for states to criminalize ML as a means for controlling TOC came with the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Subsequently, the G7 took steps specifically to control ML on a multilateral basis (Hülsse, 2007). As part of the global outcry against the illicit international drug trade, the 1989 G7 summit's economic statement urged all countries to join in efforts "to

counter drug production, to reduce demand, and to carry forward the fight against drug trafficking itself and the laundering of its proceeds" (G7 Summit, 1989). The G7 resolved to convene a financial action task force to assess existing efforts to prevent ML and "to consider additional preventive efforts in this field, including the adaptation of the legal and regulatory systems so as to enhance multilateral judicial assistance" (G7 Summit, 1989: 7) Soon after, the newly created FATF released its original *Forty Recommendations* to provide a "comprehensive plan of action" (FATF, 2016b) to fight ML. The *Forty Recommendations* launched a new era of AML governance, focused on improvements to national legal systems, an enhanced role for financial systems and the private sector, and increased international cooperation (Gilmore, 2004: 90). In 2001, following the September 11 terrorist attacks in the United States, the FATF added eight new recommendations to target the illicit financing of terrorist activities and since then its mandate has continued to expand and evolve (Halliday et al., 2014).

Within the short span of a few decades the FATF emerged as the central actor in a complex and multi-layered global system to address money laundering and other illicit financial activities which sustain organized crime (Favarel-Garrigues et al., 2009; Heng and McDonagh, 2008). In its standard-setting and assessment capacity, the FATF has produced substantial cooperative efforts to control ML, prevent terrorism, freeze and recover proceeds of crime, ease the financial investigation and prosecution of offenders, and fight organized crime on an international basis (Halliday et al., 2014: 10; Jakobi, 2015). The extent to which these efforts are *effective* at controlling ML, however, remains a source of contention.

3. The FATF as Experimentalist Governance

The FATF anti-money laundering regime exemplifies experimentalist governance in international regulation. Experimentalist Governance is defined as "an institutionalized process of participatory and multilevel collective problem solving, in which the problems (and the means of addressing them) are framed in an open-ended way, and subjected to periodic revision by various forms of peer review in the light of locally generated knowledge" (De Búrca et al., 2014: 477). Preferring the term "provisional governance", Best (2014) describes the

strategies of this kind of governance in the global financial realm as developing global standards, fostering country ownership, managing risk and vulnerability, and measuring results. As Nance and Cottrell (2014: 278) put it, EG "utilises standards and recommendations, an iterated standard-setting process, increased participation at multiple societal levels, and experimentation to generate new knowledge about the challenges stakeholders face". Drawing on Sabel and Zeitlin (2010), Eckert and Börzel (2012) note that regulatory expansion in EG rests on:

> … a recursive process of framework rulemaking and revision across levels and sectors. While framework goals are being set at the supranational level, actors involved in governance at lower levels enjoy a considerable degree of autonomy in achieving these goals. This dynamic architecture relies on reporting duties, peer review, and deliberative processes (Eckert and Börzel, 2012: 372).

In effect, EG represents a shift in governance strategies from more traditional, hierarchical and state-centric modes to network-based approaches; from "fixed and uniform rules to flexible and revisable standards"; and from "rule enforcement to problem-solving" (Jakobi, 2015; Nance and Cottrell, 2014: 285–286; Sabel and Zeitlin, 2010).

Sabel and Zeitlin (2010) set out four key elements of EG, intricately linked in practice in an iterative cycle: (1) broad framework goals; (2) discretion granted to lower levels of governance authority when implementing the goals; (3) practices of regular reporting and assessment; and (4) periodic revision of framework goals (Eckert and Börzel, 2012: 372). Below, we examine each of the four elements as they manifest in the FATF AML regime.

Broad Framework Goals

EG is defined, in part, by the pursuit of open-ended, often loosely-defined policy objectives (De Búrca et al., 2014) rather than the firm rules and binding commitments of a hard law regime. For the governance of areas characterized by strategic uncertainty and which require complex coordination across multiple levels of authority, the open-ended standards of EG encourage learning, adaptation, and thus greater effectiveness over time.

As a global policy problem, the control of ML would appear to be tailor-made for the broad framework goals of an EG approach. The scope of ML and its impact on various outcomes in world politics and the global economy remain remarkably difficult to define and measure (Andreas and Greenhill, 2010; Schneider, 2010). Although global estimates assert that 2%-5% of global GDP is laundered each year (UNODC, 2016), such estimates are subject to political manipulation and are notoriously difficult to verify (Andreas and Greenhill, 2010). With advances in technology and growing complexities in the interconnected global economy, increasingly sophisticated ML techniques call for equally sophisticated, flexible, and responsive strategies of control. Given the intricate interconnections between the licit and illicit global economies (Andreas, 2011), isolating the ML activities of TOC from legitimate financial activity in the offshore world (Palan, 2003; Sharman, 2011) is particularly difficult. In light of this uncertainty, the FATF has crafted a broad framework of global standards to fight ML (Kerwer and Hülsse, 2011). The FATF's stated objectives are "to set standards and promote effective implementation of legal, regulatory and operational measures for combating ML, terrorist financing and other related threats to the integrity of the international financial system" (FATF, 2016a).

The FATF first articulated its global standards to combat ML through the 1990 *Forty Recommendations*, which established that countries should outlaw ML and provide legal means for confiscating the proceeds of crime. They also suggested that governments create dedicated Financial Intelligence Units to coordinate AML activities with the state, and promulgate procedures for relevant private-sector institutions to detect, prevent, and report suspected instances of ML. The latter is particularly noteworthy as it entails the incorporation of the private sector as a key dimension in the global regime. (Hameiri and Jones, 2015; Sharman, 2011). Subsequent reviews and updates to the FATF's global standards – in 1996, 2001, 2003, and 2012 – reflect both the open-endedness of the framework goals and the learning, and policy revision that are hallmarks of EG. At the same time, the FATF's standard-setting role has always been provisional. Since its inception, the FATF has operated on a fixed life-span, with its mandate requiring periodic renewal (Jakobi, 2015); the current mandate, approved in 2012, runs to 2020.

Implementation at 'lower levels' of authority

In contrast to direct governance, EG relies on the implementation of global standards by and through "contextually situated actors who have knowledge of local conditions and considerable discretion to adapt the framework norms to these different contexts" (De Búrca et al., 2014: 478).   As the FATF's broad framework goals are outcome-based, states remain free to enact legislation as they see fit to achieve the intended outcomes within national contexts (Nance and Cottrell, 2014: 290). Governance, in this mode, is therefore centered on changes within states' internal institutions as they adapt to new global standards – a form of state transformation (Hameiri and Jones, 2015).

Ideally, the implementation of global standards at lower levels of authority within local institutions and contexts provides the flexibility and learning possibilities associated with an experimentalist process. The FATF produces interpretive notes on its recommendations to assist states in this regard. According to Nance and Cottrell (2014: 90), this design aims to enhance effectiveness – by ensuring that laws fit within a state's specific institutional context – as well as learning, as locally generated ideas and solutions become integrated into the *Recommendations* as the standards are revised.

At the same time, national level implementation equally implies that the responsibility to enforce compliance with national level regulations remains at the national level, and not with the global institution. Thus, despite similar commitments to the same global standards, national AML efforts within the FATF regime remain highly varied (Verhage, 2015) and AML policies within individual jurisdictions may remain ineffective in the fight against organized crime (Sproat, 2009).

Regular reporting and peer review assessment

The third element of EG is "continuous feedback" from local contexts, "allowing for reporting and monitoring across a range of contexts, with outcomes subject to peer review" (De Búrca et al., 2014: 478). Experimentalist systems of mutual evaluation and peer review assess the degree to which actors have implemented global standards in their local contexts. In cases where an actor is deemed not to have met global standards, it is expected to adopt corrective measures informed by the experience of its peers (Sabel and Zeitlin, 2012). In cases of persistent deficiencies, non-cooperation penalties and other sources of pressure can be invoked (Eckert and Börzel, 2012: 3). In the absence of supranational enforcement authority, regular reporting and peer review assessment are the FATF's main enforcement tools.

Since its inception, the FATF regime has completed three rounds of peer review, coordinated through several regional bodies and networks of regulators tasked with evaluating states' implementation of the FATF *Recommendations* (Hameiri and Jones, 2015: 11). The reporting and peer review system "monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally" (FATF, 2016a). The FATF began its fourth round of peer review in 2016. Consistent with the flexibility, learning, and adaption of EG, the peer review system provides learning opportunities for jurisdictions, encouraging effective implementation of the global standards at the local level. Of note, the FATF has also revised the peer review system itself in light of experience. For instance, following the third round of peer-assessment the FATF introduced the concept of 're-rating', when governments demonstrate via follow-up reports to the plenary that they have made requested adjustments.

Starting in 2000, the FATF began to identify jurisdictions deemed by the peer review to be deficient in their implementation of FATF standards as *High Risk and Non-Cooperative Jurisdictions*. Initially, the FATF placed fifteen non-member states on a 'blacklist' of non-cooperative jurisdictions for failing to implement the global standards established in the *Forty Recommendations*. With this move, the FATF adopted the strategy of "naming and shaming" (Nance, 2015) as a way to enforce the implementation of its standards and support international cooperation to contain illicit finance. "Blacklisting" proved a potent signal of

investment risk to private sector financial institutions. As Hameiri and Jones (2015) note, FATF blacklisting carries the risk of isolation from global capital flows and creates a powerful disincentive for non-compliance. As an enforcement strategy, however, the impact of blacklisting has varied across jurisdictions (Kudrle, 2009; Sharman, 2009) and it has faced political opposition on legitimacy grounds (Hülsse, 2008).

With renewed interest in the work of the FATF in the post 2007-2008 financial crisis, blacklisting has made a comeback. Under a new initiative, non-cooperation with the FATF results in either a "call to action" or "monitoring". While only two countries are being called to action (Iran and North Korea), eleven countries are being monitored, including some facing civil unrest and where the national financial system is in disarray (such as Syria, Iraq and Yemen).

Periodic Revision of Framework Goals

The fourth element of EG is the expectation that both policy objectives and the measures to achieve them are subject to revision based on learning and experience. In EG, "goals and practices should be periodically and routinely re-evaluated and, where appropriate, revised in light of the results of the peer review and the shared purposes" (De Búrca et al., 2014: 478). Within the FATF, such periodic revision of framework goals is readily evident. The FATF actively investigates ML and other illicit financial activities. The findings of this research are used to refine AML policies and procedures and to support states in their implementation of the AML recommendations. FATF reports on, for example, AML typologies, best practices, and risk-based approaches provide guidance to states and implementing agencies. In response to feedback, learning, and new research, the FATF standards themselves have evolved and developed over time, including the addition of such new topics as corruption, proliferation financing, and financial inclusion. The FATF reviews its standards annually and issues interpretive notes to clarify the intentions of recommendations and regularly issues notes on best practices to diffuse effective solutions. Through these feedback mechanisms members are granted input on the evolution of standards. The standards themselves are revised as new

ideas generated from the review mechanisms identify best practise and solutions to common problems (Nance and Cottrell, 2014, p. 290)

In response to new research on the evolving techniques and patterns of illicit finance, the FATF produced a comprehensive revision of AML standards in 2003, including standards to combat terrorist financing. Another comprehensive review of FATF led to revised recommendations again in 2012. The 2012 revisions, intended to "strengthen global safeguards and further protect the integrity of the financial system by providing governments with stronger tools to take action against financial crime" (FATF, 2016b); they also expanded the standards to fully integrate the recommendations on terrorist financing and to encompass measures against financing of proliferation of weapons of mass destruction, and to be clearer on transparency and tougher on corruption (FATF, 2016c).

In addition to enhancing the flexibility of EG, this periodic revision of framework goals also heightens the role of expertise as a driver of standards and practices within the FATF. This is important, as reliance on expertise can be an important gateway through which less powerful actors can increase their influence within an EG framework. Research by Nance and Cottrell shows, for instance, that individuals within the FATF's AML network can strongly influence outcomes "if they are seen as especially knowledgeable, regardless of their home jurisdiction" and eager states "can play a role that is larger than their share of the financial markets would imply they could" (Nance and Cottrell, 2014: 289).

4. The Limits of Experimentalist Governance in the Fight against Money Laundering and Transnational Organized Crime

While the flexibility of EG provides opportunities for tackling such complex global policy problems as ML, this mode of governance includes important limitations (Posner, 2015). Within the FATF, in particular – where supranational authority is lacking, implementation capacities vary greatly across states, and information sharing across public and private actors is especially challenging – the open-ended flexibility of EG may be the perfect arrangement to provide the appearance of activity with little real, effective action to address the policy problem

at hand. For one thing, the EG approach apparently has encouraged a focus on the *process* of AML governance as opposed to a focus on the *effectiveness* of AML regulations. While ongoing monitoring and repeated peer review assessments examine the extent to which states formally comply with FATF standards, less attention is paid to whether countries actually enforce their domestic AML regulations once implemented – or whether the regulations themselves actually work (Halliday et al., 2014: 5). In response to this gap, the FATF's latest methodology for the peer-review exercise does include measures to assess the effectiveness of national legislation (FATF, 2013). What this will accomplish remains to be seen.

An additional and related problem is that of insufficient and low quality data on ML. It remains tremendously challenging to obtain reliable, meaningful indicators of ML activity and EG amplifies this problem. As Best (2014) rightly notes, the development of measures and indicators for reporting does not guarantee better outcomes on effectiveness. Bad data lessen the impact of regular reporting, inhibit the learning and policy adaptation that peer review is supposed to support (Fossum, 2012: 3), and hamper the evaluation of formal compliance, program implementation, and outcome effectiveness (Halliday et al., 2014: 6).

A third challenge is that different jurisdictions possess both widely varying capacities and vastly different political interests to implement and enforce global standards in the national context. For instance, it may be simply unrealistic to expect certain countries which lack fundamental governance mechanisms such as the rule of law or which experience various degrees of political corruption to attain FATF objectives (Halliday et al., 2014). Where governments do implement AML standards in ways that suit local or regional contexts, opportunities for crime and illicit finance may persist to varying degrees, especially to the extent they are concentrated in particular financial institutions and in certain countries. As Levi (2015: 285) notes "it is open to question whether a national/regional focus is the appropriate one", especially since ML is a *transnational* phenomenon. Transnational financial flows of various kinds – ranging in sophistication from the smuggling of physical money across borders to complex transactions involving agents and advisors – remain commonplace. It is not clear that state-based AML rules implemented on a local, national, or regional scale can address such transnational ML flows.

AML regulations relying on EG are also subject to the vagaries of international politics. Flexibility, its greatest strength, may also be the most significant shortcoming of the EG approach as it can enable the most powerful actors to shape the regime to fulfil their own interests. In practice, EG enables powerful interests to "evade the 'deadlocked' politics of multilateral organizations, generate regulations by fiat, then exert pressure on states to adapt to meet these new standards" (Hameiri and Jones, 2015: 2). In this way, EG constitutes a reallocation of socio-political power from local actors to the transnational sphere, where powerful states may dominate – especially in the context of peer review. As Best (2014) notes, assessment practices in EG reflect an instrumental conception of consent and accountability. From this viewpoint, the hidden power dynamics inherent to EG undermine the authority of global institutions which rely on their claims of expertise to secure compliance. Thus, EG may simply be another way for powerful actors to structure global governance to achieve their own desired ends. Put differently, EG can be conceived as a new covert form of power politics.

There is a twist to this argument as it relates to AML: powerful states may not be as dedicated to fighting illicit finance as their rhetoric suggests. Despite their obvious role in facilitating ML and other illicit financial activities, for instance, powerful states have been especially reluctant to target offshore financial centers. The United Kingdom, itself a central player in the world of offshore finance, is a prime example (Shaxson, 2012). Rather than curtail their own support of illicit financial activity, powerful states have tended to target smaller, weaker jurisdictions – especially when such enforcement action could be justified for security reasons in the fight against the drug trade, ML and terrorism financing. Powerful states' actions against weaker ones in this regard can be described as a form of unwarranted bullying (van Fossen, 2003).

Part of the problem is that states wishing to control offshore ML have not been willing to tackle related offshore financial activity such as tax competition (Helleiner, 1999). Although the FATF excludes offshore tax evasion and tax competition from its mandate, it is practically impossible to disentangle one form of illicit financial activity (tax evasion) from another (ML) or licit financial activity (legal offshore trusts) from illicit ones. Thus while several offshore financial centers have only half-heartedly implemented FATF-standard ML controls, powerful

states have been reluctant to press them for better compliance (Young, 2013).   As Sharman (2011) notes, economically powerful states benefit from access to offshore services, and have therefore enabled offshore centers to thrive. Though the place and role of offshore centres in the international political economy has come under more scrutiny since the global financial crisis of 2007-2008, powerful states continue to reject policies that would actually eliminate offshore finance (Zucman, 2015).

The FATF, in sum, could be said to serve the interests of powerful states by giving the appearance of AML action without achieving results. Tolerated as the collateral effect of a deregulated financial system, therefore, opportunities for ML – by TOC groups and others – persist alongside a mostly symbolic control regime (Zoppei, 2015: 131).

5. Conclusion

The FATF is at the centre of an extensive global regime to control ML. Originally promoted by the United States to control the impact of organised crime on politics, the FATF's experimentalist approach to AML governance has proved remarkably adaptive and resilient in light of a growing menu of global challenges. Yet the United States and its allies in the FATF are caught in a paradox: these states promulgate strong norms against organized crime, money laundering, and other illicit financial activities, but for political reasons remain unwilling to regulate against complex transnational financial arrangements and the offshore tax havens in which licit and illicit finance remain intimately intertwined. Under the circumstances, the FATF's aim to stop ML and curtail TOC is likely to remain aspirational.

Aside from the limitations of the FATF's EG approach, which this chapter has explored, other serious challenges in the fight against ML remain. To begin with, there is little systematic research on ML itself (Levi, 2015: 282) and scant evidence collected or published about the impact of AML regulation on levels of crime (Halliday et al., 2014: 7; Levi, 2015: 283). The FATF's focus on controlling criminal groups' use of proceeds of crime may also serve the unintended consequence of encouraging reinvestment of illicit proceeds into further organized crime activities. The FATF's approach, in other words, ignores the way in which the financial

system can be misused for *financing* organized crime and thus promoting illegal activity (Levi, 2015: 278). New technologies and the rise of virtual currencies, combined with increasingly sophisticated means of exploiting the licit financial system, will undoubtedly present further challenges down the road. While the EG structure of the FATF suggests that it is well placed to adapt to such challenges, the question of political will remains. We can make no argument that organized crime directly influences the politics of the FATF. However, the politics of the FATF's member states – especially advanced industrial economic powers in which elite preferences sustain a thriving offshore economy for both licit and illicit purposes – do inhibit the FATF's capacity meaningfully to control ML and related practices in the global economy. As a key component in the policy toolkit against TOC, the FATF is thus at best an ancillary tool.

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