# "Winning Battles, but losing the War?"
# Where are we in the fight against money laundering?

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There is something emotive about the use of the word "War". Whether it is a war against hunger, poverty, crime, drugs, or in this context, money laundering, it conjures up an image of commitment and determination. Even if we go to war against a verb or noun, rather than a country it nevertheless signifies that we mean business. There are even "weapons", "battles" and "people on the frontline". But is there, that most vital element of any war, victory?

In this article I will seek to argue that, if we are at war, then we must look to what we are seeking to achieve. Unless we do so victory will continue to elude us. To do this we have to establish the criteria for success and evaluate if those criteria have been achieved. In other words "how can we tell if we're winning, how can we tell if we've won?"

## The War on Money Laundering 1988

Whilst attempts to counter money laundering existed prior to this date, the most significant international initiative was the 1988 Vienna Convention[1] which was followed in 1989 by the creation of the Financial Action Task Force (FATF).

When the FATF was established, its prime focus was on the proceeds of the illegal drugs trade. The very first FATF Annual Report[2], in describing its origins stated:

"Amongst other resolutions on drugs issues, they [the G7] convened a Financial Action Task Force from summit participants."[3]

The first FATF 40 recommendations included the criminalisation of drugs money laundering. Indeed much initial national anti money laundering legislation had the word "drug" in its title. The aims were simple, track down the cash from the illegal drugs trade and, by following the money trail, catch the producers, distributors, dealers and the laundrymen. Furthermore by making it more difficult to

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[1] United Nations Vienna Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances
[2] 1990
[3] Introduction – 1990 FATF Annual Report

recover the proceeds from trafficking, the profits from it will be reduced so making the drugs trade less attractive.

The role of the battle against money laundering has grown to include other criminal offences and, in particular, significant focus over the last few years has been on countering the financing of terrorism. However, for the purpose of establishing criteria for success, this article will concentrate on the initial target, namely the drugs trade and ask whether sixteen years later, are we winning?

## Criteria for success

One way to judge success in anti money laundering is by the number of suspicious activity reports received by the authorities or by the number of successful prosecutions of launderers.

In the case of reports, certainly these have grown. For example, between 1992 and 2002 the number of suspicious activity reports received each year by the UK National Criminal Intelligence Service (NCIS) rose from 11,750 to 56,126[4]. This had leapt to over 150,000 by 2004[5]. Whilst this leap clearly shows that awareness of the threat of money laundering is growing, it does not necessarily evidence more than this. This is particularly because the expansion of activities covered by the requirement to report suspicious activities has grown substantially and now includes lawyers and accountants as well as others.

A better test would be whether the increase in reports has resulted in more prosecutions for money laundering.

In respect of prosecutions the UK again provides a good example given its leading role in the fight against money laundering. However, figures prior to 2001 are difficult to establish as laundering generally came under the heading "drugs offences " or "fraud and forgery" in the Home Office criminal statistics[6]. In 2001, however, 182 people were prosecuted and 75 convicted in England and Wales for money laundering[7] offences (although there were no prosecutions for failure to disclose knowledge or suspicion of money laundering[8] and only one conviction for "tipping off"). In 2003 only 58 people were committed for trial for money laundering[9].

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[4] NCIS Annual Report And Accounts 2002/03
[5] NCIS UK Threat Assessment- The threat from serious and organised crime 2004/5 - 2005/6
[6] Prior to the Proceeds of Crime Act 2002, laundering was dealt with under the Drug Trafficking act 1994 and the Criminal Justice Act 1988 (as amended by the Criminal Justice Act 1993). It now appears under "vehicle and other theft"
[7] Figures provided by Home Office under the Freedom of Information Act
[8] s.52 Drug Trafficking Act 1994
[9] Criminal Statistics, England and Wales 2003

Generally the level of money laundering prosecutions is surprisingly varied. For example, according to the FATF[10], since 2000 Australia has recorded only 51 charges under the POCA[11] and the money laundering offence of the Commonwealth Criminal Code (which came into effect in January 2003) with just 21 defendants whose charges were proven between 1 January 2000 to 7 March 2005. This is despite an estimated AUD $2-3 billion being laundered there each year[12].

On the other hand, in Norway, there were 553 money laundering prosecutions in 2004,[13] an increase of almost 300% over the previous four-year period, mostly in convictions for negligently assisting in securing the proceeds of crime for another person.

One must also be careful of using any increases in convictions as a sole criterion for success, as in a number of countries self laundering ("doing one's own laundry") is now an offence[14]. Therefore a thief, who pays the cash he has stolen into his bank account, may also be prosecuted for laundering. Useful as a prosecution tool, but this can disguise the success or otherwise of the detection and prosecution of more traditional laundering (i.e. of other people's money).

On the other hand one cannot simply use the low conversion rates from suspicious reporting to prosecutions as evidence of failiure. For example a large number of reports may be in respect of the same individuals. Additionally the reports may have value in detecting and prosecuting offences other than money laundering.

Therefore, whilst conviction rates may well be indicative (and as such indicate a number of successful battles but do not support the contention that the war is being won) they are not in themselves an adequate assessment tool.

So what other criteria can be used? Well, as the FATF was set up as part of the fight against the drugs trade, and as according to the UK Home Office, 280,000 problem drug users cause around half of all

[10] FATF Third Mutual Evaluation Report - Anti-Money Laundering and Combating The Financing of Terrorism - Australia (14 October 2005)
[11] Proceeds of Crime Act
[12] Australian Gov't estimate referred to in FATF Report
[13] FATF Third Mutual Evaluation Report - Anti-Money Laundering and Combating The Financing of Terrorism - Norway (10 June 2005)
[14] E.g. Section 327 The UK Proceeds of Crime Act 2002

UK crime[15], is it therefore reasonable, at least in so far as drugs money is concerned, to say that success can be judged by the answers to the following?

1. The availability of illegal drugs has decreased. Drug trafficking is generally a profit motivated crime. Taking the profit out by tracking down laundered money should reduce supply as prospective dealers will consider that the lower profits they are able to extract and the greater risk of capture outweigh the potential benefits of trafficking.

2. The cost of illegal drugs has increased. Even if supply does not diminish, the cost should increase. This is because the losses incurred through laundered asset seizures means that traffickers will need to increase price to maintain their margins.

If these are valid criteria then the war is clearly being lost, the cost of illegal drugs has significantly fallen, not increased. For example, according to the Home Office, in 1997 an ounce of heroin was £74, the latest figures show this has fallen to £53. Similarly cocaine has dropped to £51 compared with £71 in 1997. Cannabis is £61 an ounce compared to nearly double that in September 1996.

In respect of usage, recent tests on cocaine residue found in the Thames indicated that cocaine usage in London was sixteen time higher than the Government estimate of 9,588 25mg "lines" taken by Londoners each day.[16]

However there are too many other factors, outside the sphere of money laundering to which these criteria are subject to make them valid assessment tools. For example the recent events in Afghanistan has resulted in a dramatic increase in the production of opium[17]

We are therefore left with one criterion, "has the level of money laundering decreased?" (After 16 years there should be some visible reduction). So, do reliable measurements exist to enable us to gauge this or not?

[15] Pg 9 Home Office "One Step Ahead: A 21st Century Strategy to Defeat Organised Crime" CM6167 2004

[16] Sunday Telegraph "The Thames, awash with cocaine" (November 6 2005)

[17] For example, Presidential Determination No. 2005-36 - Memorandum for the Secretary of State: Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2006 (September 15 2005) stated that "Despite the Government of Afghanistan's counternarcotics efforts, we remain concerned about the disturbing magnitude of the drug trade and the prospect that opium poppy cultivation will likely increase in 2006."

## The level of money laundering

In their first report FATF quoted the UN estimate of the proceeds of drug trafficking in 1987 as $300 billion.[18] They also provided an alternative, based on drug seizures, and estimating that these represented 10% of the total of illegal drugs on the market; this suggested a figure of $122 billion for the USA and Europe of which the UN considered about $85 billion could be available for laundering and subsequent investment.

One must be careful about comparing these figures to the latest estimates, not least because the totals presently given today include the proceeds of crimes other than drug trafficking.

One figure frequently quoted is an IMF estimate that the total scale of laundering is between 2% and 5% of Global GDP[19]. If one were to assume that the UK was at the bottom of the range, this would make the annual amount laundered there at $34 billion; the USA on a similar basis would be $220 billion (equivalent to the GDP of Greece). Assuming Global GDP at $41 trillion, this would put the scale of laundering between $840 billion and $ 2 trillion or somewhere between the economy of India and that of France.

Whilst suitably scary, using a percentage of GDP to measure the scale of money laundering is useless for the purposes of determining whether laundering is decreasing. Indeed as global GDP goes up, so under this assessment, does laundering.

The IMF figure does appear to be supported by the UK Home Office who have stated that "so called 'dirty money' or assets derived from crime represents around 2% of the UK's GDP, or £18 billion[20] – up to half of which is derived from illegal drug transactions"[21]

Yet if these figures are right then the fight against money laundering has been a failure. Whatever successes in recovering laundered money there have been, the amounts tracked down barely even scratch the surface of the problem. Even major successes such as the Spanish "Operación Ballena Blanca"[22] represent a tiny fraction of the sums being laundered.

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[18] [18] Proceeds means the value of final sales of illegal drugs without deduction of costs or distinguishing between cash and other valuable consideration given for the drugs (gold etc)

[19] "Macroeconomic Implications of Money Laundering," Working paper 96/66 - Peter Quirk

[20] The difference between the IMF and Home Office figures may be due to exchange rate differences or differences in the date of the GDP used

[21] Home Office website "Organised and International Crime" www.homeoffice.gov.uk

[22] "Operation White Whale", an investigation into money laundering on the Costa del Sol

However, I cannot be the only person to doubt these figures, even given a margin of variance of over a trillion dollars (i.e. more than Canada's GDP). The fact is that this assessment is now nearly ten years old, yet is still quoted as if it is received wisdom[23]

The fact is we cannot yet agree on what constitutes laundered money for the purposes of statistics. Again this is not helped by our definition of laundering. Of course, if we include the entire black economy of every country, then the figure will be huge, but it is also meaningless.

Under the IMF definition, much of what is included in the laundering figure is simply outside the reach of AML activities. It is not organised laundering, rather it is the proceeds from such things as payments in cash which are not subsequently declared to the revenue authorities.

The FATF itself attempted in 1998 to quantify the problem; however it concluded that the "fundamental data necessary for this very complex study are often incomplete, or may be conflicting"[24]. Nevertheless FATF agreed "it should continue to develop this study and that all FATF member jurisdictions should participate"[25]. It is now six years later yet no assessment has been produced.

On a further note, one must also be wary of certain money laundering figures because some are produced by those with a conflict of interest, for example because they may directly benefit from a bigger figure because their own funding to counter the threat will similarly increase. There is a particular moral hazard present in the fight against money laundering. Money laundering is big business for more than just the launderers. The last sixteen years have spawned numerous anti money laundering publications, conferences, consultants and computer software programmes. Talking down the problem and its scale is not always in their interest.

Yet we cannot know how close to or far from victory we are unless we have reliable figures. No figures can be entirely accurate but some assessment based on clear parameters must be possible. Indeed, the UK Home Office has launched a programme to estimate of the level of money laundering undertaken in the UK and in turn

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[23] For instance, in October 2005 it was still referred to on the FATF website "Frequently Asked Questions" page

[24] FATF Annual Report 1998-1999

[25] Ibid

to determine the value of the stock of criminal assets available for confiscation[26].

If the critical victory measurement in the war against laundering is that we are slowing or even stopping its growth, then we cannot gauge our success without knowing how big the problem really is.

Furthermore, if we can measure on a jurisdictional basis we can see whether implementation of various AML procedures actually produce the desired result. For example the FATF recently held Australia to be non compliant with nine of the forty FATF recommendations[27], yet the available statistics indicate that laundering in Australia is about 0.25% of GDP compared with 2% in the UK, which complies with far more recommendations.

The effect of this failure is that we are currently in a war with no basis from which to determine how near or far we are from victory. No war can be successfully fought in such a vacuum, nor can any true cost/benefit analysis of the value of any anti money laundering initiative be undertaken.

Rather than simply adding more regulations and more international obligations on businesses, the next multilateral initiative must therefore be on developing measurement criteria. It is only in this way that we can move to a position where we no longer use as our basis of money laundering levels a 1996 study with a variance the size of Canada's GDP.

If we cannot measure we cannot improve and we will simply become Captain Ahabs' in pursuit of our own white whales.

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[26] Joint HM Treasury, Home Office, Foreign and Commonwealth Office "Anti-Money Laundering Strategy" - October 2004

[27] FATF Third Mutual Evaluation Report - Anti-Money Laundering and Combating The Financing of Terrorism - Australia (14 October 2005)