

Article

New Financial Action Task Force Recommendations to Fight Corruption and Money Laundering

Stuart S. Yeh

Department of Organizational Leadership, Policy, and Development, University of Minnesota, Minneapolis, MN 55455, USA; yehxx008@umn.edu

Abstract: A model Anticorruption Protocol to the United Nations Convention against Corruption (APUNCAC) would implement international requirements to report the beneficial ownership of funds involved in certain financial transactions. The purpose is to discourage laundering of illicit funds by attaching legal consequences to each failure to obtain and submit a required report of beneficial ownership, and each failure by a front man who poses as a beneficial owner to supply true information regarding the identity of the actual beneficial owner. This article is the fourth in a series of articles describing APUNCAC's anti-money laundering (AML) provisions and focus on beneficial owner transparency. The companion articles focused on issues regarding international jurisdiction and enforcement of APUNCAC regarding distant offshore personnel and illustrated the application of APUNCAC to specific money laundering channels. This article translates APUNCAC's key provisions into proposed Financial Action Task Force (FATF) recommendations, provides guidance regarding the necessary domestic conforming legislation, responds to frequently asked questions, and discusses the rationale for expansion of existing FATF recommendations.

Keywords: money laundering; international law; beneficial ownership; financial reporting; anti-corruption; treaties; regulation



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1. Introduction

Despite efforts to control money laundering and financial crime, gaps remain in the international financial system, suggesting the need for aggressive measures. According to documents obtained by the International Consortium of Investigative Journalists (ICIJ), trillions in tainted dollars flow freely through major banks, swamping a broken enforcement system (ICIJ 2020). This article is the fourth in a series of articles describing the anti-money laundering (AML) provisions of a model Anticorruption Protocol to the United Nations Convention against Corruption (APUNCAC).¹ APUNCAC would permit investigators to trace international flows of funds into and out of bank secrecy havens such as the British Virgin Islands, the Cayman Islands, and Panama, and would permit investigators to follow illicit funds related to terrorism, transnational criminal organizations, and activities of corrupt individuals that currently go unpunished.

APUNCAC would implement international requirements to report the beneficial ownership of funds involved in certain financial transactions. The purpose of the requirements is to discourage laundering of illicit funds by attaching legal consequences to each failure to obtain and submit a required report of beneficial ownership, and each failure by a front man, who poses as a beneficial owner, to supply true information regarding the identity of the actual beneficial owner.

Three companion articles described how APUNCAC would extend the jurisdiction of parties who sign and ratify the protocol by imposing reporting requirements on distant

¹ Anticorruption Protocol to the United Nations Convention against Corruption (hereinafter APUNCAC), (<https://tinyurl.com/y6bkpott>, accessed on 22 December 2021).

offshore banking and financial service personnel (Yeh 2020a, 2020b, 2020c). The companion articles focused on issues related to international jurisdiction and enforcement of APUNCAC regarding distant offshore personnel and illustrated the application of APUNCAC to specific money laundering channels. This article translates APUNCAC's key provisions into proposed Financial Action Task Force (FATF) recommendations, provides guidance regarding the necessary domestic conforming legislation, responds to frequently asked questions, and discusses the rationale for expansion of existing FATF recommendations.

The purpose of this article is to address the possibility that it is not feasible to obtain the level of consensus that would be required of United Nations Member States to draft, sign, and ratify an international treaty such as APUNCAC. A significant barrier is that it may not be possible to obtain agreement regarding APUNCAC's detailed language. This article describes an alternative strategy.

Instead of presenting APUNCAC as a single 200-page international treaty, this article breaks APUNCAC into a series of 19 FATF recommendations. This approach serves to bypass the need to obtain agreement among contentious UN Member States regarding a single consolidated text, bypasses the need to obtain ratification by those states, and bypasses the complications and delays that are involved in drafting and pursuing an international convention. In short, the alternative strategy would be more feasible than the strategy of implementing a single complex international convention.

While FATF recommendations are not legally binding in the way that an international convention is binding, over 200 countries and jurisdictions have committed to the implementation of FATF recommendations (FATF 2019, p. 72, 2021b). The recommendations are, therefore, extremely influential in shaping the international AML regulatory regime. The analysis presented in this article suggests how the international community might seek to influence FATF to promote the adoption of 19 concrete recommendations across 200+ jurisdictions that would fight poverty, promote economic and social development, and restore human rights. The recommendations are stated in straightforward, concise language, facilitating comprehension and consensus among stakeholders who would need to coordinate to implement the recommendations. If agreement can be obtained among domestic leaders regarding the recommendations, detailed language would be drafted by parliamentary committees and implemented by government regulators.

This process would occur independently within each country. There would be no need to coordinate international action. Individual countries could choose to adapt specific provisions in ways that facilitate internal domestic agreement among legislators and regulators. Each country could implement the recommendations at its own pace. While this may result in uneven implementation, the benefit is that there would be no need to obtain consensus across nations. Individual nations could implement the recommendations when they are ready, in a form that is acceptable to domestic stakeholders, without depending on the agreement of other nations.

If the 38 OECD member countries implemented the proposed FATF recommendations, the path towards an international convention, involving a single consolidated text, would be easier. In that case, the key provisions would already have been incorporated into the domestic laws and regulatory regimes of influential jurisdictions, paving the way for broad agreement that those provisions are indeed feasible, practical, and sensible. In short, the strategy of breaking APUNCAC into a series of FATF recommendations may be the best approach for incorporating the APUNCAC language into law and regulation.

2. New FATF Recommendations

Substantive issues regarding jurisdiction, enforcement, and application to specific money laundering channels have been addressed in the three companion articles. This article focuses, instead, on the task of breaking APUNCAC into a series of FATF recommendations, providing guidance regarding the necessary domestic conforming legislation, responding to frequently asked questions, and discussing the rationale. The focus is to explain and illustrate how key provisions might be incorporated into the FATF regime in a

way that permits each jurisdiction to make an independent judgment about each provision and to adapt each provision in a way that is acceptable to the domestic stakeholders who would need to coordinate their actions.

2.1. New FATF Recommendation #1—Beneficial Owner Reporting Rule

Require the beneficial sender and the beneficial recipient to digitally certify ownership when funds are transferred in amounts exceeding USD 3000 and require individuals who assist with those transactions to submit those certifications to a centralized Financial Crimes Enforcement Network (FINCEN) database.

Model conforming language: APUNCAC Articles 21, 22, 30, 31, 32.

Frequently asked questions (FAQ):

1. *What prevents a sender/recipient from posing as a beneficial owner when he/she is not in fact the true beneficial owner?* Nothing prevents a person from posing as a beneficial owner except that it would be readily detected and punishable by debarment, fines, and imprisonment (Yeh 2020a, 2020b, 2020c). If authorities obtain e-mail or text messages directing the “beneficial owner” to send/receive funds, that would be sufficient to prove that the named person is not in fact the true beneficial owner (because only the beneficial owner can issue instructions). In many cases, it may be easier for investigators to obtain e-mail and text messages (compared to the task of proving that funds are illicit).² The APUNCAC rule requires the fake beneficial owner to certify information that is demonstrably false. In contrast, the existing AML regime does not require the fake beneficial owner to certify information that is demonstrably false.
2. *Why not rely on customer identification program (CIP) regulations that require financial institutions to verify the identity of individuals wishing to conduct financial transactions with them?* When money laundering occurs, the identity of the beneficial owner is hidden from financial institution personnel. The “customer” is typically a front man or agent of the true beneficial owner who does not reveal the true identity of the beneficial owner. The existing AML regime permits this deception. The APUNCAC regime criminalizes this deception.
3. *How does the APUNCAC rule address the issue that criminals use anonymous corporate/legal entities to hide illicit funds?* The APUNCAC rule would permit investigators to trace the path of illicit funds into and out of anonymous corporate/legal entities. No other strategy would accomplish this.
4. *Would the cost of implementation be massive?* No. The technology already exists and is currently deployed, for example, via the current generation of chip-based secure electronic transaction credit card technology.³ It would be no more expensive than developing a credit card and deploying the credit card to all users.
5. *Would this rule slow down all manner of legitimate payments?* No. Transactions would be processed in the same way that credit card companies process millions of transactions per day. Credit card transactions are designed to be swift and may be automated. Typically, a credit card transaction posts within a day of the transaction. However, improper authorization may cause reversal of the transaction. The same rules and procedures would apply to APUNCAC beneficial owner reporting.⁴

² Regarding access to encrypted communications, see (Casey 2002), Practical Approaches to Recovering Encrypted Digital Evidence. *International Journal of Digital Evidence* 1: 1–26. (Fukami et al. 2021), A New Model for Forensic Data Extraction from Encrypted Mobile Devices. *Forensic Science International: Digital Investigation* 38: 1–10. <https://doi.org/10.1016/j.fsidi.2021.301169>.

³ See “What is SET?” (https://teaching.shu.ac.uk/aces/rh1/ebiz/what_is_set.htm, accessed on 27 December 2021). The original version of secure electronic transaction technology has now been replaced by 3D SET.

⁴ APUNCAC offers each beneficial owner the option of pre-certifying beneficial ownership of all funds sent/received from the corresponding account. When a beneficial owner elects this option, an electronic autoreply flag would be set to “Yes, I certify beneficial ownership of all funds sent/received from my account”. This would permit electronic communication of this information when queried, eliminating delays that might

6. *What is the threshold amount that triggers the rule?* USD 3000. Structuring a sequence of transactions to avoid the threshold is prohibited under APUNCAC.
7. *What verification is necessary?* The use of digital certificate technology provides assurance that the named individual is in fact the person who authorized certification of his/her identity.
8. *How would the information be stored?* The information would be electronically encrypted and transmitted to FINCEN where it would reside in a secure database operated by FINCEN.
9. *Would this violate privacy laws?* No. FATF members have already agreed to collect beneficial owner information.
10. *Would this require massive amounts of paperwork?* No. It would require no more paperwork than is currently required when consumers apply for a credit card and use a credit card.
11. *Would this massively increase the volume of reports that FINCEN would need to investigate?* FinCEN struggles to follow up on the majority of suspicious activity reports.⁵ However, the volume of money laundering, and FinCEN's struggle to keep up, are arguably due to a complete failure to trace the beneficial owner whenever funds are transmitted. If front men thought there was a credible probability of being caught, the volume of willing accomplices would shrink, perhaps dramatically. The first order of business is to track the beneficial owner and apply criminal penalties when fake information is supplied. The starting point of every investigation would be to cross-check beneficial owner information against known information drawn from tax databases. This would quickly identify smurfs and other front men whose annual income is grossly inconsistent with the volume of their financial transactions. Recommendation #1 would permit investigators to pressure the front men into cooperation agreements, facilitating the collection of testimony and evidence against the criminals who orchestrate the activity. Investigations would be vastly more efficient than the current strategy of trawling through millions of suspicious activity reports. This could be expected to have a potent deterrent effect.
12. *How would this work across borders?* It would work in the same way that credit card transactions work across borders.
13. *What is the utility of this rule?* The APUNCAC rule would permit investigators to trace the path of illicit funds into and out of anonymous corporate/legal entities. No other strategy would accomplish this.
14. *How would this work if a transaction is conducted via an automated computer program?* The program would have to submit certification regarding the beneficial owners involved in the transaction to FINCEN. Essentially, each beneficial owner would need to set a flag on his/her account ["YES, I (the beneficial owner) pre-certify beneficial ownership"] (Figure 1). The program would read the flag for each beneficial owner involved in the transaction. If the flags are set to "YES," then the program would process the transaction. Otherwise, the transaction would pause until certification is received.

otherwise occur when contacting the beneficial owner to request certification. A beneficial owner who chooses not to certify beneficial ownership of all funds sent/received from his/her account would need to reply to an electronic request for certification. This could be accomplished via a smartphone application, using digital certificate technology and password or 2-factor authentication. However, the point-of-sale transaction could proceed without delay, pending this reply, in the same way that credit card transactions proceed, and are ultimately posted, after all required digital communication is completed (usually within 24 h). If the beneficial owner desires the simplicity and speed of automated certification, he or she would need to elect automatic beneficial ownership certification of all funds sent/received from his/her account (See Figure 1).

⁵ "FinCEN" is a unit of the U.S. Treasury Department. "FINCEN" is an international version of FinCEN that would be established by implementing New FATF Recommendation #2.

2.2. New FATF Recommendation #2—FINCEN Database

Create a centralized database maintained by a Financial Crimes Enforcement Network (FINCEN) modeled on the U.S. Treasury Department's FinCEN but operated by the United Nations. The database would serve as a central repository of beneficial owner information for each covered financial transaction and would facilitate the investigation and prosecution of financial crime and associated crime.

Model conforming language: APUNCAC Article 19.

Frequently asked questions (FAQ):

1. *Would this be a single database, or would each jurisdiction maintain its own database?* Since criminals use loopholes in the international financial system, it is desirable to maintain a single integrated database. However, if it is not possible to obtain agreement regarding a single integrated database, each jurisdiction or region may maintain its own database, with provisions to facilitate mutual assistance in cross-border investigations.
2. *Would debarred individuals be publicly identified?* Yes, the FINCEN database would include a publicly accessible list of debarred individuals.
3. *Would the database be publicly accessible?* Only authorized financial crime investigators would have access to beneficial owner information via a secure web portal.
4. *What about data security?* While sophisticated hacking is always a possibility, FinCEN, the U.S. Internal Revenue Service, and Interpol have demonstrated the capacity to securely store and manage large amounts of sensitive data.

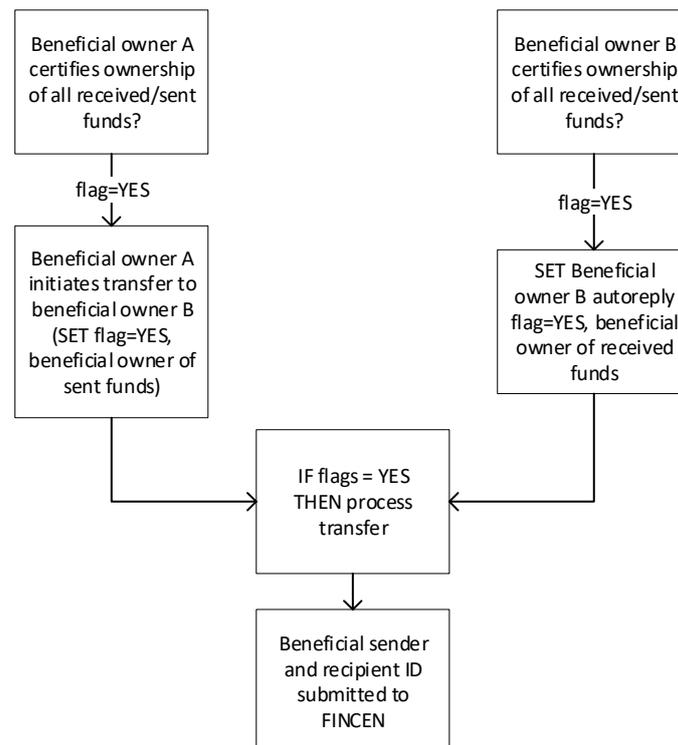


Figure 1. Pre-certification autoreply flags facilitate rapid electronic processing and submission of beneficial owner information to FINCEN.

2.3. New FATF Recommendation #3—AML Regulations

Implement APUNCAC AML provisions and the Model Guarantee.

Model conforming language: APUNCAC Articles 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, and the Model Guarantee.

Frequently asked questions (FAQ):

1. *Is there a precedent and model for these regulations?* Yes. The language is based on U.S. AML laws and regulations.
2. *What is the most significant difference, vis-à-vis U.S. law and regulations?* The most significant difference is the establishment of a beneficial owner reporting rule (see New FATF Recommendation #1) that would apply to nationals of States Parties to the rule and transactions involving funds sent to or from the jurisdiction of States Parties to the rule, and a database maintained by FINCEN that would serve as a central repository of beneficial owner information for each covered financial transaction and would facilitate the investigation and prosecution of financial crime and associated crime (see New FATF Recommendation #2). In addition, New FATF Recommendation #3 would implement regulations intended to isolate debarred individuals.

2.4. New FATF Recommendation #4—Penalties

Impose penalties including debarment, fines, and imprisonment for individuals who violate the APUNCAC AML rules, and individuals who do not cooperate in isolating debarred individuals.

Model conforming language: APUNCAC Articles 18, 19, 39, 40.

Frequently asked questions (FAQ):

1. *Is there a precedent and model for this type of arrangement?* Yes. Debarment would isolate recalcitrant individuals who refuse to observe AML regulations in the same way that recalcitrant individuals who continue to do business with individuals on the U.S. Treasury Department's Specially Designated Nationals and Blocked Persons (SDN) List are subject to criminal penalties.
2. *How would penalties be enforced?* Arrests could occur if suspects travel to the jurisdiction of any of the 189 nations that are parties to the United Nations Convention against Transnational Organized Crime (UNTOC), which are legally bound by the terms of UNTOC, including the terms whereby any party can request extradition of a suspect from the jurisdiction of another party for violations of UNTOC's requirements to properly identify customers and maintain records for the purpose of detecting and deterring money laundering.⁶ Under UNTOC, a suspect who violates a customer identification and recordation requirement may be extradited.⁷

2.5. New FATF Recommendation #5—Dedicated Courts

Establish a system of domestic courts and prosecutors funded by the UN and staffed by judges and prosecutors vetted by the UN Commission on Crime Prevention and Criminal Justice, dedicated to the adjudication and swift resolution of charges of corruption.

Model conforming language: APUNCAC Article 8.

Frequently asked questions (FAQ):

1. *Is there a precedent and model for this type of arrangement?* Yes. Ukraine implemented a system where a council of non-Ukrainian international experts review, and vet, individuals nominated for Ukraine's anticorruption court ([Council of Europe 2018](#); [Zabokrytskyi 2020](#)). The law establishing the anticorruption court was signed by Ukrainian President Petro Poroshenko, a corrupt oligarch—suggesting that this type

⁶ United Nations Convention Against Transnational Organized Crime, 12 December 2000, 2225 U.N.T.S. 277.

⁷ United Nations Convention Against Transnational Organized Crime, 12 December 2000, 2225 U.N.T.S. 277.

of court can be established even when corrupt individuals control the office of the president (UNIAN 2018).

2. *How would the integrity of these courts be assured?* The courts would be periodically evaluated by the UN Commission on Crime Prevention and Criminal Justice. Failure of a dedicated anticorruption court or prosecutor to observe the highest standards of judicial or prosecutorial conduct would warrant disciplinary action by the Commission on Crime Prevention and Criminal Justice. Such action may include a letter of reprimand, redirection of funding to higher performing courts or prosecutors, or a recommendation to a national judicial council to suspend, demote, or remove a judge or prosecutor whose conduct contributes to unnecessary delays or falls below the highest standards of judicial or prosecutorial conduct.

2.6. New FATF Recommendation #6—UN Inspectors

Establish an International Commission against Corruption (ICAC), employing duly qualified inspectors funded by the UN, with strong powers to investigate allegations of corruption. Require cooperation with inspectors and protection of inspectors; provide for privileges, immunities, and discipline of inspectors; and include a mechanism to censure noncooperation.

Model conforming language: APUNCAC Articles 6, 7, 12, 13, 14, 15.

Frequently asked questions (FAQ):

1. *Is there a precedent and model for this type of arrangement?* Yes. The International Commission against Impunity in Guatemala (CICIG) was established via a bilateral treaty with the United Nations.⁸ This “hybrid” UN-backed mission combined international and national capacities working through Guatemalan laws and courts. CICIG successfully investigated and helped prosecute multiple high-ranking Guatemalan officials, ex-military officers, and business elites, and resulted in the imprisonment of the sitting president and vice president in 2015 (Call and Hallock 2020). CICIG investigations led to 1540 indictments in 120 cases involving over 70 illicit networks (Call and Hallock 2020). This experience suggests that it is feasible to implement an international agreement that involves intrusive criminal investigations led by UN investigators even in a country where the rule of law is extremely weak, where powerful and violent criminal cartels have gained control of several government departments, where impunity prevails, and where the prospects for implementing UN inspectors are less than favorable.
2. *Would there be one mission for all jurisdictions that choose to participate or a separate mission for each jurisdiction?* There would be a single mission, involving a single set of UN-backed inspectors who would be available to respond to allegations of corruption. Individual jurisdictions could join via separate agreements.
3. *What would prevent the type of failure that occurred when Guatemalan President Jimmy Morales chose to end the CICIG arrangement?* Unlike CICIG, the mandate of the ICAC would be permanent, not temporary, and could not be ended by refusing to sign an extension to the mandate.

2.7. New FATF Recommendation #7—Obstruction of Justice

Make obstruction of justice a crime that may be investigated by a UN inspector, including any attempt to arrest or interfere with UN inspectors, staff, witnesses, victims or individuals who assist with ICAC investigations, contrary to the wishes of UN inspectors; any attempt to delay or thwart the effort of a UN inspector or surrogate to obtain or execute

⁸ Agreement between the United Nations and the State of Guatemala on the Establishment of an International Commission against Impunity in Guatemala, *opened for signature* 12 December 2006, 2472 UNTS 47 (entered into force 4 September 2007) [hereinafter CICIG].

a warrant for arrest, in excess of the discretionary authority of the judge who receives the request for a warrant; any attempt to delay or thwart the execution of a lawful warrant for arrest presented by a UN inspector or surrogate, contrary to the wishes of the inspector or surrogate; any attempt to delay or thwart the lawful prosecution, trial, disciplinary hearing or oversight hearing of an individual accused of corruption or obstruction of justice, in excess of the discretionary authority of the prosecutor, judge, disciplinary body or oversight agency exercising jurisdiction over the relevant case; or a prosecution, trial, disciplinary hearing or oversight hearing regarding an individual accused of corruption or obstruction of justice that is substantially irregular, violates accepted prosecutorial, judicial, disciplinary or oversight norms and practices, and perverts the course of justice.

Model conforming language: APUNCAC Article 10.

Frequently asked questions (FAQ):

1. *Who decides whether obstruction of justice has occurred?* UN inspectors or their surrogates may, at their discretion, seek a judicial opinion from a judge in the state where the investigation is conducted regarding any alleged act involving obstruction of justice.
2. *What happens if a UN inspector concludes that prosecution for the crime of obstruction has been perverted?* If a UN inspector subsequently determines that prosecution, discipline, or oversight of an individual accused of obstruction of justice has been perverted, the inspector would prepare and submit a report to the appropriate prosecuting authorities, disciplinary bodies, parliamentary institutions, or other institutions exercising oversight. The inspector would submit the report to be published online by Transparency International.

2.8. *New FATF Recommendation #8—Class Actions*

Permit class actions and permit plaintiffs to seek treble damages.

Model conforming language: APUNCAC Articles 60, 61, 62, 63.

Frequently asked questions (FAQ):

1. *Is there a precedent and model for this type of arrangement?* Yes. Articles 60, 61, and 62 are based on Florida's version of the Racketeer Influenced and Corrupt Organizations (RICO) Act. Article 63 is drawn from U.S. rules of civil procedure.
2. *What would this accomplish?* It would permit an NGO such as International Justice Mission to file a class action and seek treble damages when citizens have knowledge of corruption.

2.9. *New FATF Recommendation #9—RICO*

Implement the RICO Act.

Model conforming language: APUNCAC Articles 60, 61, 62.

Frequently asked questions (FAQ):

1. *Is there a precedent and model for this type of arrangement?* Yes. Articles 60, 61, and 62 are based on Florida's version of the RICO Act.
2. *What would this accomplish?* It would permit prosecutors to build cases against peripheral individuals such as accountants, attorneys, and financial service personnel who aid and abet money laundering, pressure them into cooperation agreements, and build cases against the criminals who orchestrate the criminal activity.

2.10. *New FATF Recommendation #10—Conflicts of Interest*

Establish rules regarding prohibited interests and conduct of public officials, establish reporting rules, establish penalties for violations of those rules, and establish a Conflicts of

Interest Board to promulgate rules as necessary to implement those rules, render advisory opinions, receive required financial disclosure statements filed by public servants, receive complaints alleging violations of those rules, and direct a criminal investigator, public prosecutor, or a UN inspector to conduct an investigation of any matter related to the board's responsibilities.

Model conforming language: APUNCAC Articles 41, 42, 43, 44, 45, 46, 52, 53, 54, 55, 56, 57.

Frequently asked questions (FAQ):

1. *Is there a precedent and model for these rules?* Yes. Articles 41, 42, 43, 44, 45, 46, 52, 53, 54, 55, 56, and 57 are based on New York's conflicts of interest rules and regulations.
2. *What would this accomplish?* These rules and regulations seek to control conflicts of interest that would otherwise facilitate corruption.

2.11. *New FATF Recommendation #11—State Assets*

Implement APUNCAC Article 47.

Model conforming language: APUNCAC Article 47.

Frequently asked questions (FAQ):

1. *What would this accomplish?* These rules and regulations seek to control corruption in the sale of valuable state assets.
2. *How would this be accomplished?* This would be accomplished by requiring each recipient in a chain of recipients to post information regarding the true beneficial owner on a publicly accessible website designated by the Conflicts of Interest Board, in a form and manner approved by the Board.

2.12. *New FATF Recommendation #12—Loans*

Implement APUNCAC Article 48.

Model conforming language: APUNCAC Article 48.

Frequently asked questions (FAQ):

1. *What would this accomplish?* These regulations seek to control corruption that occurs when "loans" are used to bribe corrupt associates.
2. *How would this be accomplished?* This would be accomplished by requiring public servants to report details of any loan extended or received on a secure website designated by the Conflicts of Interest Board in a form and manner approved by the Board.

2.13. *New FATF Recommendation #13—Whistleblowing*

Implement APUNCAC Article 51.

Model conforming language: APUNCAC Article 51.

Frequently asked questions (FAQ):

1. *What would this accomplish?* It would establish an avenue for whistleblowers to report allegations of corruption.
2. *How would this be accomplished?* The Conflicts of Interest Board would maintain a publicly accessible website to permit any individual to submit information in support of allegations of corruption, criminal activity, or conflicts of interest involving a public servant.

2.14. New FATF Recommendation #14—Transfer Pricing

Implement APUNCAC Article 50.

Model conforming language: APUNCAC Article 50.

Frequently asked questions (FAQ):

1. *What would this accomplish?* It would prevent multinational firms from manipulating intercompany pricing and reported cost figures in a way that serves to cheat citizens of tax revenue that would otherwise be available to pay for social services, human services, public services, and government infrastructure.
2. *How would this be accomplished?* Firms that operate within the territory of a State Party would be required to conform to OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as determined by rule of the Conflicts of Interest Board.

2.15. New FATF Recommendation #15—Public Procurement

Implement APUNCAC Article 58.

Model conforming language: APUNCAC Article 58.

Frequently asked questions (FAQ):

1. *What would this accomplish?* It would assist in detecting and deterring procurement fraud.
2. *How would this be accomplished?* Article 58 establishes procedures where a duly qualified independent monitor would have access to all relevant documents and meetings for the purpose of monitoring public tendering and contracting processes and deterring procurement fraud.

2.16. New FATF Recommendation #16—False Claims

Implement APUNCAC Article 59.

Model conforming language: APUNCAC Article 59.

Frequently asked questions (FAQ):

1. *Is there a precedent and model for this Article?* Yes. Article 59 is based on the U.S. False Claims Act (FCA).
2. *What would this accomplish?* It would provide incentives for whistleblowers to pursue civil actions when they have knowledge of corruption.
3. *How would this be accomplished?* Article 59 establishes procedures where private individuals who have knowledge of fraud (but were not convicted of criminal conduct arising from their role in the violation) may file a *qui tam* suit, on behalf of the government, for violations of the FCA. If the government intervenes in the *qui tam* action, the person bringing the action (the "relator") is entitled to receive between 15 and 25 percent of the amount recovered by the government through the *qui tam* action. If the government declines to intervene in the action, the relator's share is increased to 25–30 percent. Under certain circumstances, the relator's share may be reduced to no more than 10 percent. If the relator planned and initiated the fraud, the court may reduce the award without limitation. The relator's share is paid to the relator by the government out of the payment received by the government from the defendant. If a *qui tam* action is successful, the relator is also entitled to receive legal fees and other expenses of the action from the defendant.

2.17. *New FATF Recommendation #17—Campaign Reform*

Implement APUNCAC Article 68 regarding campaign reform.

Model conforming language: APUNCAC Article 68.

Frequently asked questions (FAQ):

1. *Is there a precedent and model for this Article?* Yes. Article 68 is based on a model campaign finance law developed by the Center for Governmental Studies, a non-profit, nonpartisan organization that helps civic organizations and decision-makers to strengthen democracy and improve governmental processes.
2. *What would this accomplish?* Article 68 would reduce the negative influence of large campaign contributions by limiting the size of campaign contributions and establishing a system where competitive candidates who can secure a large number of small contributions receive matching contributions from the public treasury. This effectively increases the resources available to popular candidates and limits the ability of wealthy individuals to outspend their opponents. The law seeks to encourage popular candidates to run against well-financed opponents, thereby serving to moderate the influence of wealthy individuals who may have obtained their wealth through corruption or may seek to preserve their wealth through corruption.

2.18. *New FATF Recommendation #18—Conspiracy*

Implement APUNCAC Article 69 regarding conspiracy.

Model conforming language: APUNCAC Article 69.

Frequently asked questions (FAQ):

1. *Is there a precedent and model for this Article?* Yes, Article 69 is based on U.S. law.
2. *What would this accomplish?* Article 69 makes it a crime to conspire to commit the crimes outlined above. It is often easier for a prosecutor to prove conspiracy than to prove that the associated crime was committed.

2.19. *New FATF Recommendation #19—Definitions*

Implement APUNCAC Article 70 regarding definitions.

Model conforming language: APUNCAC Article 70.

Frequently asked questions (FAQ):

1. *Are there precedents and models for the definitions listed in Article 70?* Yes, the definitions are primarily adapted from U.S. law or regulations.
2. *Why is it important to include definitions?* Definitions determine what is included and excluded when laws and regulations are applied.

3. Rationale

Implementation of these 19 recommendations would fill gaps in the international legal and regulatory regime that permit criminals to utilize the international financial system to cover their tracks. Recommendations #1 and #2 would establish a centralized database that would permit investigators to track illicit funds from source to destination. Recommendation #1 would force beneficial owners to reveal their identities, unless front men knowingly elect to risk debarment, fines, and criminal penalties by falsely “certifying” beneficial ownership. This risk of debarment, fines, and criminal penalties does not currently exist because the existing AML regime does not require beneficial owners to certify ownership when funds are sent or received. Forcing front men to certify false information is necessary because it is the only means by which prosecutors can gain the

leverage needed to force front men to cooperate in revealing the identities of the criminals orchestrating the criminal activity. In the absence of this leverage, front men have no reason to cooperate. Prosecutors will continue to struggle to identify criminals. Rampant criminal activity will continue.

The current focus on beneficial owner corporate registries is misplaced. Criminals will simply avoid jurisdictions that require beneficial owner registration, avoid vehicles that are covered by the rules, or use front men to hide their ownership. Recent moves by the European Union (EU) and the U.S. to establish beneficial owner registries fail to address these issues.

Unlike corporate registries, Recommendation #1 focuses on the weak link when illicit funds are moved around the world. Criminals instruct front men to perform financial transactions—to send and receive money. In many cases, it is not difficult for prosecutors to obtain these text messages (via court orders). The messages are irrefutable evidence that the front men are not true beneficial owners. Only beneficial owners can issue instructions. This evidence may be sufficient to convict a front man for the crime of posing as a beneficial owner. However, the crime would only exist if Recommendation #1 is implemented.

Tracking the beneficial owner when funds are moved around the world is an obvious solution to an urgent problem. Perhaps the greatest barrier to Recommendation #1 is the belief that it would be impractical. However, the technology currently exists and has been widely deployed, for example, via the current generation of chip-based secure electronic transaction credit card technology.⁹ It would be no more difficult or expensive than developing a credit card and deploying the credit card to all users. The underlying technology is the same. When a credit card transaction occurs, it triggers a sequence of digital communications. The use of digital certificates permits the identity of the consumer to be verified, permits the identity of the merchant to be verified, and permits the information to be securely transmitted and recorded on a centralized server. In cases where verification fails, the transaction is rejected and reversed. The details about how this works would be similar when implementing Recommendation #1.

Recommendations #3 and #4 would implement the same type of AML regulations that are effective in the U.S., plus additional regulations that reinforce Recommendations #1 and #2. Recommendations #5 and #6 would establish dedicated anticorruption courts, plus independent, UN-funded inspectors who could not be easily manipulated by powerful domestic elites. Recommendation #7 would make obstruction of justice a crime that could be investigated by a UN inspector. Recommendation #8 would permit an NGO such as International Justice Mission to file a class action and seek treble damages when citizens have knowledge of corruption. Recommendation #9 would permit prosecutors to build cases against peripheral individuals such as accountants, attorneys, and financial service personnel who aid and abet money laundering, pressure them into cooperation agreements, and build cases against the criminals who orchestrate the criminal activity. Recommendation #10 would implement rules and regulations to control conflicts of interest that would otherwise facilitate corruption. Recommendation #11 would control corruption in the sale of valuable state assets. Recommendation #12 would control corruption that occurs when “loans” are used to bribe corrupt associates. Recommendation #13 would establish an avenue for whistleblowers to report allegations of corruption. Recommendation #14 would prevent multinational firms from manipulating intercompany pricing and reported cost figures in a way that serves to cheat citizens of tax revenue that would otherwise be available to pay for social services, human services, public services, and government infrastructure. Recommendation #15 would assist in detecting and deterring procurement fraud. Recommendation #16 would provide incentives for whistleblowers to pursue civil actions when they have knowledge of corruption. Recommendation #17 would reduce the negative influence of large campaign contributions by limiting the size of campaign

⁹ See “What is SET?” (https://teaching.shu.ac.uk/aces/rh1/ebiz/what_is_set.htm, accessed on 27 December 2021). The original version of secure electronic transaction technology has now been replaced by 3D SET.

contributions and establishing a system where competitive candidates who can secure a large number of small contributions receive matching contributions from the public treasury. Recommendation #18 makes it a crime to conspire to commit the crimes outlined above. Recommendation #19 defines key terms.

APUNCAC combines all 19 recommendations into a single consolidated text. Ideally, the convention would be adopted by all UN Member States. Since treaty obligations supersede domestic law, APUNCAC would quickly impose needed reforms that would fill gaps in the international legal system that permit criminals to abscond with the proceeds of their crimes, enable criminals to escape prosecution, and perpetuate poverty, underdevelopment, and violations of human rights. However, there seems to be little appetite among UN Member States to pursue another international convention devoted to anticorruption. For this reason, I have converted APUNCAC into 19 proposed FATF recommendations.

4. FATF

The Financial Action Task Force (FATF) describes itself as the global money laundering and terrorist financing watchdog ([FATF 2021b](#)). The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system. The FATF has developed the FATF Recommendations, or FATF Standards, which ensure a coordinated global response to prevent organized crime, corruption, and terrorism. To comply with the recommendations, individual states can and must write their own regulations that meet the goals set forth in the relevant recommendations. The FATF shapes the regulations written in response to the FATF recommendations, thereby shaping the capacity of domestic authorities to pursue criminals dealing in illegal drugs, human trafficking, and other crimes. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. As a policy making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

The FATF is influential. Over 200 countries and jurisdictions have committed to the implementation of FATF recommendations ([FATF 2019](#), p. 72, [2021b](#)). In principle, if all UN Member States adopt the 19 APUNCAC recommendations, the effect would be roughly comparable to the adoption by all UN Member States of APUNCAC. However, the outcome would differ if individual jurisdictions selectively adopted some, but not all, recommendations, or chose to alter the model language. Regardless, the FATF could play a key role in influencing the adoption of the recommendations, in some form, across a broad range of jurisdictions.

The FATF members include 39 countries and other non-country entities ([FATF 2021c](#)). In North America, FATF members include Canada, the United States, and Mexico. In Europe, FATF members include Austria, Belgium, Denmark, Finland, Germany, France, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain, Portugal, Switzerland, Sweden, the United Kingdom, and the European Commission. In South America, FATF members include Argentina and Brazil. Other FATF members include Australia, China, Hong Kong, India, Israel, Japan, Malaysia, New Zealand, South Africa, South Korea, the Russian Federation, Saudi Arabia, Singapore, and Turkey. Indonesia maintains observer status. The Gulf Cooperation Council, representing small, oil-producing countries in the Persian Gulf, is a non-country member of the FATF.

In addition, nine FATF-Style Regional Bodies (FSRBs) have been established, constituting a global network to combat money laundering and the financing of terrorism ([FATF 2021c](#)). The nine FSRBs include:

- Asia/Pacific Group on Money Laundering (APG) based in Sydney, Australia.
- Caribbean Financial Action Task Force (CFATF) based in Port of Spain, Trinidad and Tobago.

- Council of Europe Anti-Money Laundering Group (MONEYVAL) based in Strasbourg, France (Council of Europe).
- Eurasian Group (EAG) based in Moscow, Russia.
- Eastern & Southern Africa Anti-Money Laundering Group (ESAAMLG) based in Dar es Salaam, Tanzania.
- Financial Action Task Force of Latin America (GAFILAT) based in Buenos Aires, Argentina.
- Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) based in Dakar, Senegal.
- Middle East and North Africa Financial Action Task Force (MENAFATF) based in Manama, Bahrain.
- Task Force on Money Laundering in Central Africa (GABAC) based in Libreville, Gabon.

In total, 200+ jurisdictions have committed to adoption of FATF recommendations, implying that adoption of the 19 APUNCAC recommendations by FATF would potentially influence the legal and regulatory regime in 200+ jurisdictions (FATF 2019, p. 72; 2021b). The FATF exerts its influence by monitoring countries to ensure they implement the FATF Standards fully and effectively, publicly identifying noncompliant jurisdictions, requiring noncompliant jurisdictions to adopt “enhanced due diligence” or, if those measures are insufficient, asking FATF members to adopt “countermeasures” (FATF 2019, p. 65). Enhanced due diligence measures include obtaining additional information on customers, obtaining information on the source of funds and source of wealth of individual customers, and enhanced monitoring of business relationships (FATF 2021a). Countermeasures range from enhanced due diligence and systematic reporting of transactions involving the noncompliant jurisdiction, to a limitation or prohibition of financial transactions with the jurisdiction (FATF 2021a).

4.1. FATF Review Process

The FATF review process begins with “mutual evaluations”. A mutual evaluation is a form of peer review conducted by a team of expert examiners, drawn from FATF members, who review the level of implementation of the FATF Recommendations. The peer reviews provide an independent, unbiased evaluation that identifies a country’s strengths as well as areas in need of improvement. The nature of the process, involving a review by ‘peers’, encourages countries to swiftly implement the necessary reforms to comply with the FATF Recommendations.

To assess effectiveness, the FATF established 11 ‘Immediate Outcomes’ that serve as metrics for assessing compliance with FATF’s anti-money laundering and countering the financing of terrorism (AML/CFT) objectives. These desired outcomes include international cooperation to provide necessary information, information regarding beneficial ownership, financial intelligence, and evidence needed to take action against criminals and their assets; proper supervision, monitoring, and regulation of financial institutions; the proper investigation and prosecution of money laundering, terrorist financing, and related financial crimes; preventive measures, financial sanctions, and confiscation of the proceeds of crime.

Following a mutual peer review, a report is drafted, vetted, and presented to the FATF Plenary for adoption. Each mutual evaluation report rates the country on its effectiveness in key areas and identifies priority actions for the country to strengthen its anti-money laundering and counterterrorist financing measures. The FATF Plenary discusses the findings, adopts the final report, and recommends actions. The report is then published, together with recommendations for action.

Noncooperative countries that fail to implement the recommendations are subjected to further review. In 2000, the FATF established its Non-Cooperative Countries and Territories (NCCT) Initiative, the predecessor to the FATF’s current process of identifying high-risk jurisdictions (FATF 2019, p. 63). The purpose of the NCCT initiative was to reduce the vulnerability of the financial system to money laundering by ensuring that all financial

centers adopt and implement measures for the prevention, detection, and punishment of money laundering. The FATF publicly identified jurisdictions that presented significant weaknesses in the way they had implemented these measures, encouraging them to make the necessary reforms. The initiative ended in 2007, when the last of the 23 identified jurisdictions remedied its deficiencies and was removed from the list (FATF 2019, p. 63).

In 2007, the NCCT Initiative was replaced by a strengthened monitoring process which now ranks, at the international level, among the most extensive. The FATF created the International Co-operation Review Group (ICRG). Through the ICRG, the FATF continues to identify jurisdictions with significant weaknesses in their AML/CFT regimes and works with them to address those weaknesses. In 2009, the G20 called on FATF to strengthen the ICRG procedures and publicly name countries with deficient AML systems (Nance 2018, p. 139). Through the ICRG process, the FATF reviews jurisdictions based on threats, vulnerabilities, or risks arising from the jurisdiction. A robust follow-up process ensures that countries take the necessary action. Progress can be reflected in a re-rating of a country's technical compliance or effectiveness.

ICRG review may be initiated if:

- (a) a jurisdiction is nominated by a FATF member or an FSRB. The nomination is based on specific money laundering, terrorist financing, or proliferation financing risks or threats coming to the attention of delegations; or
- (b) a jurisdiction does not participate in an FSRB or does not allow mutual evaluation results to be published in a timely manner; or
- (c) a jurisdiction has achieved poor results on its mutual evaluation, specifically:
 - i it has a non-compliant or partially compliant rating for technical compliance on 20 or more of the 40 FATF Recommendations; or
 - ii it is rated non-compliant or partially compliant on 3 or more core FATF Recommendations; or
 - iii it has a low or moderate level of effectiveness for 9 or more of the 11 Immediate Outcomes, with a minimum of two low ratings; or
 - iv it has a low level of effectiveness for 6 or more of the 11 Immediate Outcomes.

4.2. FATF Blacklist

The FATF publishes two statements at the end of each plenary session. The statements reflect the different levels of risks posed by the jurisdictions under review. One statement identifies jurisdictions with strategic deficiencies in their anti-money laundering and counter-terrorist financing regimes that are undergoing review by the FATF according to the agreed milestones and timelines. A second "FATF Public Statement" identifies two groups of jurisdictions: (a) jurisdictions for which the FATF calls on its members and non-members to apply "enhanced due diligence measures" and (b) jurisdictions that have failed to make progress after the FATF calls for enhanced due diligence and continue to exhibit serious, longstanding strategic deficiencies, for which the FATF calls on its members and non-members to apply "counter-measures," in addition to enhanced due diligence. The "Public Statement" essentially identifies a "gray" list and a "black" list of jurisdictions that warrant either "enhanced due diligence" or "countermeasures" (see above). As of February 2019, the FATF had reviewed 81 countries and publicly identified 69 of them. Of these 69, 44 made the necessary reforms and were removed from the process (FATF 2019, p. 66). The FATF asserts that:

The success story of the ICRG process includes Israel and Russia. Both countries were included on the very first public statement in 2000. Both countries committed at the highest political level to drive through the necessary reforms. Each made the fight against money laundering and terrorist financing a priority and successfully implemented a robust framework of legal, law enforcement and operational measures. Both countries have since become active and valuable members of the FATF, participating in policy development and sharing their

national experiences with members of the FATF Global Network. (FATF 2019, p. 66)

This does not imply that all FATF country members could be persuaded to adopt all 19 APUNCAC recommendations. However, the results suggest that adoption of the 19 APUNCAC recommendations by FATF could potentially be influential in reshaping the international legal regime regarding money laundering and financial crime, enabling progress in fighting poverty, promoting development, and restoring human rights. When asked why states do not want to be blacklisted, a German treasury official responded, “Fear. Loss of reputation, [debt] ratings, a loss of image” (Nance 2018, p. 134). The general opinion among government officials is that FATF blacklisting caused the damage (Nance 2018, p. 134). While systematic evidence to support this belief is lacking, the German treasury official stated: “It’s simply believed,” suggesting that this belief was sufficient to enforce conformity (Nance 2018, p. 134).

4.3. Civil Society Influences

While FATF responds to the leadership of its constituent members, it also responds to a broader set of stakeholders, including private sector representatives, the banking industry, lawyers, accountants, law enforcement representatives, and non-profit organizations (NPOs). National delegations generally include representatives from any department that might be responsible for aspects related to money laundering or counter-terrorism financing. This typically includes the justice and treasury ministries. Thus, FATF exhibits a transnational, multi-level network structure, rather than the quasi-hierarchical structure of many international organizations (Nance 2018, p. 137).

By tradition, FATF decision-making is consensus-based. The FATF only acts when members arrive at an agreement about the actions to be taken. FATF delegates interact with the secretariat and the president, who is selected by consensus. Delegates hammer out agreements informally, before the plenary, in working groups or in social gatherings adjacent to the plenary meetings. Meetings are run by the president, a one-year office that rotates among members that volunteer for the position. The secretariat is small, comprised of roughly 15 people, most of whom are seconded from the OECD. The secretariat has no vote but has recently begun to play a more active role in the FATF’s core monitoring functions (Nance 2018, p. 138).

The FATF is increasingly under pressure by civil society organizations to rethink its approach. Over the last four years, the Global NPO Coalition on FATF has mobilized support from a diverse network of NPOs, involving 123 organizations in 46 countries, including service organizations, peace builders, donors, and human rights and transparency groups (*openDemocracy* 2016). The Global NPO Coalition on FATF aims to ensure that civil society is effectively engaged in the debate on anti-money laundering and combating the financing of terrorism. The Coalition advocates for improvement in the quality and effectiveness of FATF Mutual Evaluations. This agenda is driven by a desire to shape FATF policy and the international anti-money laundering legal and regulatory regime.

Since 2014, four civil society organizations have developed strategies, and facilitated and coordinated the Coalition, supported by a core group of NPOs representing a wide range of interests spanning countries and regions, funded in part by the Open Society Foundation’s Human Rights Initiative and the Sigrid Rausing Trust (*Global NPO Coalition on FATF* 2021). The four CSOs are:

- Charity & Security Network (CSN);
- European Center for Not-for-Profit Law (ECNL);
- European Foundation Center (EFC);
- Human Security Collective (HSC).

Global Witness, which investigates and campaigns to prevent natural resource-related conflict and corruption and associated environmental and human rights abuses, has been active over the past decade in pressuring FATF to adopt more aggressive measures to tackle corruption. Global Witness has urged FATF to adopt aggressive measures to detect and

deter money laundering involving the international banking system, to require publication of beneficial owner information, and to require banks to obtain full originator and beneficiary information prior to processing of wire transfers (Global Witness 2010). In 2012, Global Witness proposed a series of reforms to the mutual evaluation process to strengthen the AML regime (Nance 2018, p. 145). The 2013 FATF common methodology and the 4th round evaluation reports closely reflect many of those proposals (Nance 2018). Global Witness continues to expose gaps in the AML regime that permit banks, including Barclays, Citibank, HSBC, and Bank of America, to conduct business with corrupt regimes, facilitating corruption, enabling criminals, undermining social and economic development, and perpetuating poverty (Nance 2018).

The analysis presented in Section 4.3 suggests that FATF may be influenced via the concerted action of civil society organizations. This suggests how the international community might, if it chooses, influence FATF recommendations and promote the adoption of 19 concrete recommendations across 200+ jurisdictions that would fight poverty, promote economic and social development, and restore human rights.

5. Gaps in the AML Regime

A 2010 U.S. Senate committee report exposed gaps in the international banking system and the anti-money laundering regulatory regime that permit the transfer of millions of illicit dollars into the U.S.¹⁰ While more than a decade has elapsed since the publication of the report, progress has been slow. In 2016, a leak of more than 11.5 million financial and legal records (the “Panama Papers”) exposed major gaps in the international anti-money laundering regime (ICIJ 2021a). An investigation by ICIJ demonstrated systemic failures in international law and regulation. This was followed by a leak of more than 11.9 million confidential files (the “Pandora Papers”) from 14 offshore services firms from around the world that set up shell companies and other opaque offshore entities for clients seeking to hide their financial activities. An ICIJ analysis of the secret documents identified 956 companies in offshore havens tied to 336 high-level politicians and public officials in 91 countries and territories, including country leaders, cabinet ministers, ambassadors, and others (ICIJ 2021b). More than two-thirds of those companies were set up in the British Virgin Islands. A leak of 13.4 million confidential records (the “Paradise Papers”) from two offshore services firms and 19 corporate registries exposed the involvement of over 120 politicians and world leaders in offshore transactions that appear to involve money laundering and other financial crimes (ICIJ 2017).

An investigation into the Estonian branch of Danske Bank, the largest financial institution in Denmark found that, over a nine-year period from 2007 through 2015, the bank had engaged in transactions with 6200 customers, the “vast majority” of which were suspicious, involving a flow of EUR 200 billion (Bruun and Hjejle 2018, pp. 6–7). On May 3, 2018, however, the Danish FSA issued a statement that it had not found sufficient basis, with regard to existing fitness and propriety regulations, to launch cases against members of Danske’s management (Bruun and Hjejle 2018, p. 86). In April 2021, Danish prosecutors dropped all charges against former Chief Executive Thomas Borgen, former Chief Financial Officer, Henrik Ramlau-Hansen, and former Head of International Banking Lars Morch (ERR News 2021). According to Per Fiig, Acting Attorney General of Denmark, “There is no legal evidence that any individual has broken the law” (ERR News 2021). In sum, money laundering had occurred, but the crimes were not the result of prosecutable crimes by Danske Bank management or staff. There was no legal basis to prosecute Danske Bank officials.

However, the fact that money laundering can occur on a grand scale in the absence of any violation of law by a bank official implies a gross failure of international banking laws.

¹⁰ Senate Perm. Subcomm. on Investigations, Keeping Foreign Corruption Out of the United States: Four Case Histories, Majority and Minority Staff Report, 111th Cong., 2d Sess. (2010).

The Danske Bank money laundering case illustrates the existence of loopholes that permit criminals to conduct criminal transactions on a massive scale, undetected for years.

While the FATF, FSRBs, and other intergovernmental institutions seek to develop and promote national and international policies to combat money laundering and terrorist financing, both money laundering and terrorist financing persist. Global banks defy U.S. crackdowns by serving oligarchs, criminals, and terrorists. According to documents obtained by the ICIJ, trillions in tainted dollars flow freely through major banks, swamping a broken enforcement system (ICIJ 2020). The FATF “40 Recommendations” urge nations to strengthen domestic AML laws and regulations, related domestic financial system regulations, and measures to improve international cooperation. However, the scope and persistence of money laundering suggest a need to consider stronger measures.

6. Conclusions

This article has contributed 19 model FATF recommendations, drawn from APUNCAC’s provisions, that aim to fill major gaps in the international legal and regulatory system. The APUNCAC language offers a model for the domestic conforming legislation that would be required upon adoption of the recommendations. Issues regarding feasibility, sensibility, practicality, and extraterritorial jurisdiction and enforcement have been previously addressed (Yeh 2011a, 2011b, 2012a, 2012b, 2013, 2014a, 2014b, 2015, 2020a, 2020b, 2020c, 2021a, 2021b).

The APUNCAC language was translated into 19 model FATF recommendations because it may be easier to implement FATF recommendations than to implement a new international convention. In principle, if the members of FATF are in agreement, FATF could simply adopt the model recommendations. It would not be necessary to agree on the type of detailed language contained in APUNCAC. Individual jurisdictions could adapt the language as needed. To implement the FATF recommendations, all that would be needed is agreement regarding the language of the model FATF recommendations.

Implementation of the recommendations via FATF would avoid the lengthy, time-consuming process of drafting an international convention, resolving disputes about detailed language, and reconciling the discordant views of diverse UN Member States. It would avoid the need to build the level of consensus needed for signature and ratification in each Member State. Instead, FATF could simply agree to promulgate a new set of recommendations that are not, in principle, controversial.

FATF has already urged members to implement beneficial owner identification and AML regulations. Other recommendations are novel, but arguably needed: to create an ICAC, employing UN inspectors; create dedicated anticorruption courts; permit class actions and recovery of treble damages; make obstruction of justice a crime that could be investigated by a UN inspector; implement RICO to permit prosecutors to pursue peripheral individuals and turn them into cooperating witnesses; implement rules and regulations to control conflicts of interest that would otherwise facilitate corruption; control corruption in the sale of valuable state assets; control corruption that occurs when “loans” are used to bribe corrupt associates; prevent multinational firms from manipulating intercompany pricing and reported cost figures in a way that serves to cheat citizens of tax revenue that would otherwise be available to pay for social services, human services, public services, and government infrastructure; assist in detecting and deterring procurement fraud; provide incentives for whistleblowers to pursue civil actions when they have knowledge of corruption; and reduce the negative influence of large campaign contributions by limiting the size of campaign contributions, and establishing a system where competitive candidates who can secure a large number of small contributions receive matching contributions from the public treasury.

These recommendations move beyond the current set of 40 FATF Recommendations yet are arguably needed to fight corruption and restore the integrity of the international legal and regulatory system. There is a need for independent inspectors whose careers cannot be easily manipulated by domestic authorities. There is a need for dedicated

anticorruption courts, prosecutors, and judges vetted by the UN Commission on Crime Prevention and Criminal Justice. There is a need to provide incentives for whistleblowers to pursue civil actions when they have knowledge of corruption. There is a need to permit class actions and recovery of treble damages. There is a need to make obstruction of justice a crime that may be investigated by a UN inspector. There is a need to implement RICO to permit prosecutors to pursue peripheral individuals and turn them into cooperating witnesses, to implement rules and regulations to control conflicts of interest that would otherwise facilitate corruption, and to control procurement fraud and corruption in the sale of valuable state assets. There is a need to prevent multinational firms from manipulating intercompany pricing and reported cost figures in a way that serves to cheat citizens of tax revenue that would otherwise be available to pay for social services, human services, public services, and government infrastructure. There is a need to reduce the negative influence of large campaign contributions by limiting the size of campaign contributions and establishing a system where competitive candidates who can secure a large number of small contributions receive matching contributions from the public treasury.

The establishment of these recommendations is arguably feasible, practical, sensible, and aligned with FATF objectives. If FATF members and the international community truly desire to make progress in fighting corruption and the social ills associated with corruption, perhaps the way forward would be to work toward FATF agreement and implementation of these recommendations.

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References

- Bruun and Hjejle. 2018. *Report on the Non-Resident Portfolio at Danske Bank's Estonian Branch*. Copenhagen: Bruun and Hjejle.
- Call, Charles T., and Jeffrey Hallock. 2020. Too Much Success? The Legacy and Lessons of the International Commission against Impunity in Guatemala. Available online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3526865 (accessed on 6 November 2020).
- Casey, Eoghan. 2002. Practical Approaches to Recovering Encrypted Digital Evidence. *International Journal of Digital Evidence* 1: 1–26.
- Council of Europe. 2018. Twelve Candidates Have Been Nominated for the Public Council of International Experts for the Creation of an Anti-Corruption Court. Available online: https://www.coe.int/en/web/corruption/bilateral-activities/ukraine/-/asset_publisher/plqBCeLYiBJQ/content/twelve-candidates-have-been-nominated-for-the-public-council-of-international-experts-for-the-creation-of-an-anti-corruption-court?inheritRedirect=false (accessed on 4 November 2020).
- ERR News. 2021. Denmark Prosecutor Drops All Former Danske CEO Money Laundering Charges. Available online: <https://news.err.ee/1608196822/denmark-prosecutor-drops-all-former-danske-ceo-money-laundering-charges> (accessed on 27 December 2021).
- FATF. 2019. *FATF 30 Years—1989–2019*. Paris: FATF.
- FATF. 2021a. High-Risk and Other Monitored Jurisdictions. Available online: [https://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc(fatf_releasedate)) (accessed on 27 December 2021).
- FATF. 2021b. Who We Are. Available online: <https://www.fatf-gafi.org/about/whoweare/> (accessed on 27 December 2021).
- FATF. 2021c. FATF Members and Observers. Available online: <https://www.fatf-gafi.org/about/membersandobservers/> (accessed on 27 December 2021).
- Fukami, Aya, Radina Stoykova, and Zeno Geradts. 2021. A New Model for Forensic Data Extraction from Encrypted Mobile Devices. *Forensic Science International: Digital Investigation* 38: 1–10. [CrossRef]
- Global NPO Coalition on FATF. 2021. About. Available online: <https://fatfplatform.org/about-us/> (accessed on 27 December 2021).
- Global Witness. 2010. Financial Crime Watchdog's Chance to Show Its Teeth. Available online: https://cdn2.globalwitness.org/archive/files/import/press_release_at_beginning_of_the_week_final.pdf (accessed on 27 December 2021).
- ICIJ. 2017. Offshore Trove Exposes Trump-Russia Links and Piggy Banks of the Wealthiest 1 Percent. Available online: <https://www.icij.org/investigations/paradise-papers/paradise-papers-exposes-donald-trump-russia-links-and-piggy-banks-of-the-wealthiest-1-percent/> (accessed on 27 December 2021).

- ICIJ. 2020. Global Banks Defy U.S. Crackdowns by Serving Oligarchs, Criminals and Terrorists: The FinCEN Files Show Trillions in Tainted Dollars Flow Freely through Major Banks, Swamping a Broken Enforcement System. Available online: <https://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists/> (accessed on 27 December 2021).
- ICIJ. 2021a. The Panama Papers: Exposing the Rogue Offshore Finance Industry: A Giant Leak of More Than 11.5 Million Financial and Legal Records Exposes a System That Enables Crime, Corruption and Wrongdoing, Hidden by Secretive Offshore Companies. Available online: <https://www.icij.org/investigations/panama-papers/> (accessed on 27 December 2021).
- ICIJ. 2021b. Offshore Havens and Hidden Riches of World Leaders and Billionaires Exposed in Unprecedented Leak. Available online: <https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/> (accessed on 27 December 2021).
- Nance, Mark T. 2018. Re-Thinking FATF: An Experimentalist Interpretation of the Financial Action Task Force. *Crime, Law and Social Change* 69: 131–52. [CrossRef]
- openDemocracy. 2016. In the Name of Security: When Silencing Active Citizens Creates Even Greater Problems. Available online: <https://www.opendemocracy.net/en/openglobalrights-openpage/in-name-of-security-when-silencing-active-citizens-creat/> (accessed on 27 December 2021).
- UNIAN. 2018. Poroshenko Signs Law on Establishing High Anti-Corruption Court. Available online: <https://www.unian.info/politics/10165775-poroshenko-signs-law-on-establishing-high-anti-corruption-court.html> (accessed on 16 November 2020).
- Yeh, Stuart S. 2011a. Corruption and the Rule of Law in Sub-Saharan Africa. *African Journal of Legal Studies* 4: 187–208. [CrossRef]
- Yeh, Stuart S. 2011b. Ending Corruption in Africa through United Nations Inspections. *International Affairs* 87: 629–50. [CrossRef]
- Yeh, Stuart S. 2012a. Anti-Corruption Inspections: A Missing Element of the IMF/World Bank Agenda? *Journal of African Policy Studies* 18: 1–41.
- Yeh, Stuart S. 2012b. Is an International Treaty Needed to Fight Corruption and the Narco-Insurgency in Mexico? *International Criminal Justice Review* 22: 233–57. [CrossRef]
- Yeh, Stuart S. 2013. Why UN Inspections? The Accountability Gap in Sub-Saharan Africa. *International Public Policy Review* 7: 1–29.
- Yeh, Stuart S. 2014a. Building a Global Institution to Fight Corruption and Address the Roots of Insurgency. *International Public Policy Review* 8: 7–24.
- Yeh, Stuart S. 2014b. Poverty and the Rule of Law in Africa: A Missing International Actor? *Poverty and Public Policy* 6: 354–79. [CrossRef]
- Yeh, Stuart S. 2015. Why UN Inspections? Corruption, Accountability, and the Rule of Law. *South Carolina Journal of International Law and Business* 11: 227–60.
- Yeh, Stuart S. 2020a. An International Law Approach to End Money Laundering. *Journal of International Banking Law and Regulation* 35: 148–63.
- Yeh, Stuart S. 2020b. An International Treaty to Fight Money Laundering. *Journal of International Banking Law and Regulation* 35: 190–207.
- Yeh, Stuart S. 2020c. Application of a Model International Treaty to Money Laundering. *Journal of International Banking Law and Regulation* 35: 443–62.
- Yeh, Stuart S. 2021a. APUNCAC and the International Anti-Corruption Court (IACC). *Laws* 10: 1. [CrossRef]
- Yeh, Stuart S. 2021b. APUNCAC: An International Convention to Fight Corruption, Money Laundering, and Terrorist Financing. *Law and Development Review* 14: 633–64. [CrossRef]
- Zabokrytskyy, Ihor. 2020. Transnational Civil Society Influence on Anti-Corruption Courts: Ukraine’s Experience. *Global Jurist* 20: 1–12. [CrossRef]