

Institution: The University of Edinburgh
Unit of Assessment: 20 Law
Title of case study: Case Study 3: Prioritising enforcement in international money laundering regimes
<p>1. Summary of the impact</p> <p>This research has influenced a shift in the international framework for tackling the proceeds of crime. It helped to move state practice away from a focus on formal compliance with the international rules to an emphasis on effectiveness and enforcement. Gilmore's monographs on <i>Dirty Money</i> (1995-2004) and appointments with the Council of Europe (CoE) – the body charged with coordinating government responses to money laundering – established a direct conduit for the uptake of research by transnational regulators. States regulated through CoE standards now focus intensively on confiscation of the proceeds of crime rather than on formal criminalisation of related activities.</p>
<p>2. Underpinning research</p> <p>Gilmore was appointed at Edinburgh in 1979 and in 1995 published the first edition of <i>Dirty Money</i> (3.1). His research broke new ground as the first monograph to address money laundering through the prism of international law. The research focuses on the regional dimension of international standard-setting, primarily by the Council of Europe (CoE) and its specialised body MONEYVAL, which is dedicated to implementing and monitoring standards and practices. A multi-layered, cooperative system to coordinate state responses to money laundering was already in place under the broad regulatory remit of the Financial Action Task Force (FATF), the global standard-setting body on money laundering. Gilmore's work was the first evaluation of this system and of the standards imposed on states, notably by the CoE's 1990 Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. This called on contracting states to criminalise money laundering, focusing on formal legal obligations and international cooperation.</p> <p>The second edition of <i>Dirty Money</i> (1999) was a substantially developed project (3.2). With the rise of the internet and other technologies, moving and masking the proceeds of crime – especially to off-shore jurisdictions – became easier. Moreover, tracing these processes had become increasingly complex. Gilmore argued that: (1) governments were focusing overwhelmingly on achieving formal compliance with international standards by criminalising money laundering and associated activities. However, they were not, he suggested, (2) paying due attention to the real-world effectiveness of enforcing the agreed rules through confiscation of the proceeds of crime. The criminal conviction of persons connected to money laundering did not, in other words, preclude the continued circulation of the financial proceeds of their crimes.</p> <p>By 2004, when the third edition of <i>Dirty Money</i> was published, the political environment had altered beyond measure (3.4). In the aftermath of the 9/11 attacks, development of an effective international strategy to deal with the financing of terrorism was an acute political priority (3.5). Evaluation of peer-reviewed state reports submitted to the FATF revealed little by way of progress on the ground (3.3). Gilmore's analysis was therefore significantly hardened:</p> <ol style="list-style-type: none"> 1. he stressed the need for the inculcation of a culture of effectiveness and enforcement; 2. he advocated a deliberate rebalancing of priorities within national laws, away from the dominant focus on criminalisation to dealing also with the enforcement of rules on the tracing, freezing and confiscating of criminal profits. <p>Tellingly, Gilmore highlighted the fact that no FATF evaluation round had undertaken a comprehensive evaluation of national confiscation laws. He concluded that governments had to reconceptualise entirely the nature of the challenge they now faced, but that international</p>

cooperation could and should assist them through a recalibration of emphasis within the international regulatory framework.

3. References to the research

Publications

(3.1) W Gilmore, *Dirty Money* (Council of Europe Publishing 1995) [to be supplied by HEI on request]

(3.2) W Gilmore, *Dirty Money: The Evolution Money Laundering Counter-Measures* (2nd edn, Council of Europe Publishing 1999) [to be supplied by HEI on request]

(3.3) W Gilmore and M Levi, 'Terrorist Finance, Money Laundering and the Rise and Rise of Mutual Evaluation: A New Paradigm for Crime Control?' (2002) 4 *European Journal of Law Reform* 337-64 [to be supplied by HEI on request]

(3.4) W Gilmore, *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism* (3rd edn, Council of Europe Publishing 2004) [to be supplied by HEI on request]

(3.5) W Gilmore, 'International Financial Counterterrorism Initiatives' in C Fijnaut, J Wouters, and F Naert (eds), *Legal Instruments in the Fight Against International Terrorism* (Martinus Nijhoff 2004) 189-201 [to be supplied by HEI on request]

4. Details of the impact

After the publication of *Dirty Money* in 1995, Gilmore was appointed as the sole scientific (legal) expert to MONEYVAL, in recognition of his status in the field. He remains the only holder of this position. This, and related appointments with the Council of Europe, including as sole legal advisor to the Committee charged with the re-negotiations on the Warsaw Convention that came into force on 1 May 2008 (CETS 198 2005, eif 08), enabled Gilmore to feed his research findings directly into the international standard-setting process. The core message he conveyed was the importance of effective enforcement, which implied the need for a shift in emphasis from criminalisation to confiscation among institutions and state actors. Importantly, the work on the Warsaw Convention – which reinforced the original Convention provisions on money laundering and the confiscation of criminal proceeds to achieve greater effect in practice – endorsed Gilmore's conclusions developed in the second edition of *Dirty Money*. These conclusions were confirmed in Gilmore's MONEYVAL-commissioned 'horizontal' study of country reports examining peer-review evaluation on compliance, required by the FATF (2006-7): the system was not working (5.1). These steps served as the platform for the impact during the REF period, which involved two important contributions.

1. Gilmore's discussions with the then Head of the Dutch delegation to FATF, Andrew Strijker, led directly to the shaping of the Dutch FATF presidency agenda for 2009-2010, in meetings from November 2007 onwards. Regarding Gilmore's input, Mr Strijker has said that: '...his authorship of "Dirty Money" that has a broad audience, his horizontal review of country assessments and 'lessons learned' from international practice, and his role as scientific expert for MONEYVAL, acted as the major trigger to draw from his experience'. Moreover, '...those first discussions with Professor Gilmore turned out to be rather important when looking at new FATF recommendations of 2012 and the latest FATF work' (5.2).

Reflecting the reach of Gilmore's research, the Dutch presidency led a targeted review of FATF standards, a process concluded in February 2012. A Dutch priority, flowing from the early discussions, was significantly to reinforce confiscation methods and to embed this objective in the culture of national enforcement practices. The achievement of this goal is reflected in the adoption of revised, markedly strengthened FATF Recommendations (R30 and R31, replacing former R27 and R28), grounded in Gilmore's research conclusions. This is confirmed by John Ringguth, Executive Secretary to MONEYVAL: '[d]uring the review of the FATF standards, begun under the Dutch Presidency, Professor Gilmore encouraged MONEYVAL to promote a global level greater

focus on the strengthening of those FATF standards which relate to law enforcement, effective criminalisation of money laundering, and effective confiscation. This advice was followed'. (5.3)

2. In its 2008-2009 session, the House of Lords European Union Committee published a report, 'Money Laundering and the Financing of Terrorism', in which Gilmore is acknowledged as its 'sole specialist adviser' whose 'unrivalled knowledge of the subject and wise guidance [was] invaluable' (p10). This work placed considerable emphasis on confiscation and the need further to enhance cooperation at the international (FATF) and regional (CoE and European Union) levels. MONEYVAL gave evidence acknowledging that '...many of the technical legal problems...have been addressed in the new Warsaw Convention', directly endorsing Gilmore's prior input (p 202). (5.4)

The Report strongly supports the work of MONEYVAL and stresses the need for the UK Government to participate in the realisation of FATF enforcement objectives. As summarised in the recommendations: 'The review of the FATF Recommendations is a good opportunity to re-examine, not just the text of Recommendation 38, but the manner in which it is implemented, and the way in which compliance is measured. (para 72)...We commend the Commission for its efforts to increase cooperation among Member States over confiscation of the proceeds of crime. We urge the Government to take a lead in driving this agenda forward with renewed vigour' (para 74). (5.4)

The UK Government endorsed the House of Lords Report and confirmed that its approach will inform UK negotiating positions within FATF and the CoE. In particular, on the review of the FATF Recommendations, it stated: 'We welcome this conclusion of the Committee, which recognises that improving international cooperation in confiscating the proceeds of crime is paramount in ensuring a confiscation regime with truly global reach'. (p 5) (5.5)

5. Sources to corroborate the impact

(5.1) Council of Europe, MONEYVAL (2007) 22, Horizontal Review of the Second Round of MONEYVAL Mutual Evaluations, December 2007, available at: [http://www.coe.int/t/dghl/monitoring/moneyval/Publications/MONEYVAL\(2007\)22-HORIZONTALREVIEW_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Publications/MONEYVAL(2007)22-HORIZONTALREVIEW_en.pdf) or (<http://tinyurl.com/oszbc47>) (Gilmore acknowledged as sole author) Provides an example of the chain of evidence from MONEYVAL-commissioned work that reflects Gilmore's research findings and their subsequent adoption by international bodies.

(5.2) Testimonial from former Head of the Dutch Delegation of the FATF [to be supplied by HEI on request] Can corroborate the direct influence of Gilmore's research findings on the Dutch Presidency in deciding to undertake a major review of FATF standards to focus on enforcement.

(5.3) Testimonial from Executive Secretary to MONEYVAL [to be supplied by HEI on request] Can corroborate that the international agency followed Gilmore's recommendations to focus attention on enforcement in revising and strengthening international FATF Recommendations.

(5.4) House of Lords European Union Committee, 19th Report of Session 2008-2009, Money Laundering and the Financing of Terrorism, Volume I: Report (HL Paper 123-I), esp para 12; available at: <http://www.publications.parliament.uk/pa/ld200809/ldselect/lducom/132/13202.htm> or (<http://tinyurl.com/nlwrg7w>). This provides evidence of direct endorsement by the UK of the work and recommendations of MONEYVAL, as directly influenced by Gilmore's research, and thereby extending its reach.

(5.5) Government Reply, Money Laundering and the Financing of Terrorism, Cmnd 7718, (2009), esp. p 5: <http://www.parliament.uk/documents/upload/moneylaunderinggovresponsecm7718.pdf> or (<http://tinyurl.com/ngbcrwf>). This provides yet further endorsement by UK government of the House of Lords' position at 5.1 - focussing on the need to improve enforcement mechanisms - the key finding of the underpinning research.