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Measuring Effectiveness in International Financial Crime Prevention: Can We Agree on a Performance Metric?

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FLORIDA INTERNATIONAL UNIVERSITY

Miami, Florida

MEASURING EFFECTIVENESS IN INTERNATIONAL FINANCIAL CRIME
PREVENTION: CAN WE AGREE ON A PERFORMANCE METRIC?

A dissertation submitted in partial fulfillment of the

requirements for the degree of

DOCTOR OF PHILOSOPHY

in

PUBLIC MANAGEMENT

by

Jayesh D'Souza

2009

To: Dean Kenneth Furton
College of Arts and Sciences

This dissertation, written by Jayesh D'Souza, and entitled Measuring Effectiveness in International Financial Crime Prevention: Can We Agree on a Performance Metric?, having been approved in respect to style and intellectual content, is referred to you for judgment.

We have read this dissertation and recommend that it be approved.

John Zdanowicz

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Valerie Patterson

Howard Frank, Major Professor

Date of Defense: November 7, 2008

The dissertation of Jayesh D'Souza is approved.

Dean Kenneth Furton
College of Arts and Sciences

Dean George Walker
University Graduate School

Florida International University, 2009

DEDICATION

I dedicate this dissertation to my parents, Jerry and Saroj D'Souza. Without their patience, understanding, and support, the completion of this work would not have been possible.

ACKNOWLEDGMENTS

I wish to thank the members of my committee for their advice. Their gentle but firm direction has been most appreciated. Their expertise in different aspects of the subject was particularly helpful in guiding me. I would like to thank my major professor, Dr. Howard Frank. From the beginning, he had confidence in my abilities to not only complete this degree, but to complete it with excellence. I am grateful to Dr. Paulette Johnson for providing technical direction to this study. Finally, I would like to thank the Jack D. Gordon Institute for Public Policy and Citizenship Studies and the Miami-Florida European Union Center of Excellence for partially funding this research.

ABSTRACT OF THE DISSERTATION

MEASURING EFFECTIVENESS IN INTERNATIONAL FINANCIAL CRIME
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by

Jayesh D'Souza

Florida International University, 2009

Miami, Florida

Professor Howard Frank, Major Professor

The attempts at carrying out terrorist attacks have become more prevalent. As a result, an increasing number of countries have become particularly vigilant against the means by which terrorists raise funds to finance their draconian acts against human life and property. Among the many counter-terrorism agencies in operation, governments have set up financial intelligence units (FIUs) within their borders for the purpose of tracking down terrorists' funds. By investigating reported suspicious transactions, FIUs attempt to weed out financial criminals who use these illegal funds to finance terrorist activity.

The prominent role played by FIUs means that their performance is always under the spotlight. By interviewing experts and conducting surveys of those associated with the fight against financial crime, this study investigated perceptions of FIU performance on a comparative basis between American and non-American FIUs. The target group of experts included financial institution personnel, civilian agents, law enforcement personnel, academicians, and consultants. Questions for the interview and surveys were

based on the Kaplan and Norton's Balanced Scorecard (BSC) methodology. One of the objectives of this study was to help determine the suitability of the BSC to this arena.

While FIUs in this study have concentrated on performance by measuring outputs such as the number of suspicious transaction reports investigated, this study calls for a focus on outcomes involving all the parties responsible for financial criminal investigations. It is only through such an integrated approach that these various entities will be able to improve performance in solving financial crime. Experts in financial intelligence strongly believed that the quality and timeliness of intelligence was more important than keeping track of the number of suspicious transaction reports. Finally, this study concluded that the BSC could be appropriately applied to the arena of financial crime prevention even though the emphasis is markedly different from that in the private sector. While priority in the private sector is given to financial outcomes, in this arena employee growth and internal processes were perceived as most important in achieving a satisfactory outcome.

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LIST OF ACRONYMS

AML	Anti-Money Laundering
CTF	Counter-Terrorist Financing
MOT	Meldpunt Ongebruikelijke Transacties (Office For The Disclosure Of Unusual Transactions)
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FINCEN	Financial Crimes Enforcement Network
AUSTRAC	Australian Transaction Reports and Analysis Centre
FATF	Financial Action Task Force
BSC	Balanced Scorecard

CHAPTER I

INTRODUCTION

This chapter examines the problem of terrorist financing and related areas of financial crime. Traditionally, financial crime “involve[d]: 1) transactions to avoid government-imposed impediments to the efficient conduct of business and to avoid taxation; and 2) criminal transactions involving drugs, robbery, contract murder, prostitution, racketeering, and the like – basically economically motivated criminal activities.”¹ In more recent times, it has come to include raising funds to finance terrorist activity. During the recent past, the public has been deluged with reports about the negative consequences of terrorism. This study specifically focuses on financial crime that has come under the microscope lately: those that relate to the financing of terrorist activity including money laundering and to a lesser extent, tax evasion. Besides impacting individuals and commercial interests, financial crime of this nature adversely affects national economic systems as a whole. The Interpol website outlines the importance of countering financial crime due to its potential economic impact on the individual, corporations and economies.²

Issues pertaining to terrorism created new challenges for public administrators after the terrorist attacks of September 11, 2001 when four commercial jets were hijacked

¹. Ingo Walter, *The Secret Money Market: Inside The Dark World Of Tax Evasion, Financial Fraud, Insider Trading, Money Laundering, And Capital Flight* (New York : Harper & Row, Ballinger Division 1990).

². Interpol, “Financial Crime,” August 25, 2005. [cited on September 10, 2005] Available from World Wide Web: (<http://www.interpol.int/Public/FinancialCrime/Default.asp>).

and three of them were crashed into significant landmarks in the United States.³ This created a sense of vulnerability which was heightened around the world after bombings of civilian targets in Bali, London and Madrid. While focus has mainly been on the United States after the attacks there, other Western countries have been also been on a constant state of alert. Then Australian Prime Minister, John Howard, claimed that even before the bombings in neighboring, Indonesia, on October 12, 2002, Al Qaeda had explored targets for destruction in Australia in 2000 or 2001.⁴ At the other end of the globe, Canada faced its own experience with peril. An account of domestic terrorism by the Canadian Broadcasting Corporation cited a Canadian Security Intelligence Service report that Al Qaeda recruits were being trained in Canada.⁵ A year later, in 2006, the Royal Canadian Mounted Police arrested seventeen men who were allegedly planning bomb attacks on targets around Southern Ontario.⁶

Europe has not been spared either. The United Kingdom has had a history of terrorist attacks, the most notorious, in recent memory being those committed by the Irish Republican Army and the suicide bombings on the London public transport system on

³. CNN, "Terror Attacks Hit U.S.," September 11, 2001. [cited on March 29, 2007] Available from World Wide Web: (<http://archives.cnn.com/2001/US/09/11/worldtrade.crash/index.html>).

⁴. USA Today, "Al-Qaeda plotted strikes in Australia before 9/11," June 3, 2003. [cited on December 12, 2005] Available from World Wide Web: (http://www.usatoday.com/news/world/2003-05-29-australia-alqaeda_x.htm).

⁵. CBC, "Al-Qaeda's Canadian recruits 'highly prized': report," May 2005. [cited on December 12, 2005] Available from World Wide Web: (<http://www.cbc.ca/story/canada/national/2005/05/14/alqaeda-canada050514.html>).

⁶. CTV, "RCMP arrests 17, foiling alleged Ontario bomb plot," June 3, 2006. [cited on March 20, 2007] Available from World Wide Web: (http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20060603/toronto_arrests_060603/20060603/).

July 7, 2005 that left approximately 52 civilians dead and 700 of them injured.⁷ In other parts of Europe, police have made related arrests. In 2004, Dutch police arrested terrorist suspects of a radical Muslim network in the Hague, Amsterdam and Amersfoort.⁸ Terrorism is a problem with no borders.

Many countries have already established financial crime-fighting systems within and across borders to monitor and minimize this menace. These include the set-up of units within governmental agencies to deal exclusively with crime of this nature highlighting the importance of dealing with the problem. For example, in the United States, the tax-collection agency, the Internal Revenue Service of the U.S. Treasury Department, has a Criminal Investigation unit that investigates financial crime and the U.S. Secret Service has a Financial Crimes division with the same mandate. At the international level, the United States is a member of Interpol which is an international police force that works globally to counter money laundering among other crime. Understandably so, it becomes important to monitor the outcome of all these efforts in terms of results produced by action taken and money invested to fight financial crime.

This is a study about the monitoring of outcomes of the governments' anti-terrorist financing effort. Outcome monitoring is defined as "the regular (periodic, frequent) reporting of program results in ways that stakeholders can use to understand

⁷. Anonymous, "Dutch Anti-Terror Raids Net Seven," November 2004. [cited on December 12, 2005] Available from World Wide Web: (<http://news.bbc.co.uk/2/hi/europe/3998347.stm>).

⁸. Anonymous, "London bomber called accomplices," August 24, 2005. [cited on December 12, 2005] Available from World Wide Web: (http://news.bbc.co.uk/2/hi/uk_news/4181454.stm).

and judge those results.”⁹ It creates an accountability framework for programs by compelling managers to answer questions such as what they should measure, how many measures they should have, how and when to measure performance, and how to present performance results.¹⁰ Regrettably, some studies suggest that outcome monitoring instills fear in program managers and forces them to shy away from measuring the true impact of their programs. A Congressional Research Service report stated that “the parameters used to measure progress can set the framework for the measurement of failure.”¹¹ In the context of the ‘war on terror’, government has been accused of an over reliance on quantitative measures such as “those which may correlate with progress but not accurately measure it, such as the amount of money spent on anti-terror efforts.”¹² But why is outcome monitoring needed in this realm? The following section discusses this further.

General Statement of Problem Area

The problem to be examined in this study involves the high rates of financial crime¹³ and the possible lack of outcome measurement of public administration practices adopted by financial intelligence units (FIUs) to counter it. The lack of the focus on outcomes by government agencies, in this regard, is brought to light.

⁹. Dennis Affholter, *Outcome Monitoring*. Handbook of Practical Program Evaluation. (Jossey-Bass Inc., CA, 1994).

¹⁰. Ibid.

¹¹. Perl, R. “Combating Terrorism: The Challenge of Measuring Effectiveness,” *CRS Report for Congress* (November 23, 2005).

¹². Ibid.

¹³. Terrorist financing and related money laundering and tax evasion.

Research Purpose

The primary purpose of this research is to study organizational performance among FIUs and their ability to counter financial crime. The secondary purpose is to determine a set of performance metrics that could be adapted among FIUs globally in order to close the gaps in tackling financial crime.

Research Problem

There are three facets of the research problem: (1) The large-scale misuse of funds to commit financial crime; (2) The ease with which criminals continue to circumvent government controls to commit financial crime due to the lack of organizational effectiveness; and (3) Inter-jurisdictional differentials in organizational standards that compromise efficiency in solving financial crime that necessitate coordinating the ‘war on terror’, both, within national boundaries and on a global scale.

Significance of the Study

The study is significant for three reasons. First, most related studies have called for inter-agency co-ordination to solve financial crime. This study goes further by examining business processes, human resources, financial principles and customer satisfaction tenets employed by FIUs in tackling financial crime. Second, most studies on this subject have been parochial in nature, that is, single-jurisdictional case studies. This study explores public administration practices of FIUs within different regions of the world: the Asia-Pacific region, Europe, and North America. It is, in this sense, unique to the field. Third, the recommendations at the conclusion of this study will spur agencies

the world over to consider for adoption as a means of a more effective way to counter financial crime.

Conceptual Framework

Soon after the attacks of September 11, 2001, one question lingered in people's minds: "[Would] federal interagency competition and conflicts, combined with differences in organizational cultures and missions, would confound the homeland security initiative [?]"¹⁴ There were a number of organizational management models suggested to enhance the coordination of this initiative. For example, Waugh and Sylves (2002) called for the use of network management to co-ordinate the number of actors involved, not only for this but other major governmental programs and policy initiatives. Under network management, coordination can be improved and goals met through a sort of regulatory or contractual structure or partnership where goals are listed, each agency's role in achieving them defined and target requirements outlined. In short, a system of performance management throughout the network must exist.¹⁵

The same principle applies to financial crime. There are a number of parts of the financial-crime fighting network: financial and other entities that report suspicious transactions, the FIU that processes, analyzes and disseminates this information, intelligence agencies and law enforcement that charge criminals with the help of information disseminated to them, prosecutors who attempt to prove charges against these criminals and those responsible for convicting them. The coordination of the

¹⁴. William Lee Waugh et al., "Organizing the War on Terrorism," *Public Administration Review, Special Issue* (September 2002): 145-153.

¹⁵. Waugh et al., 148.

activities of all of these entities in the network calls for effective performance management (PM) which leads to accountability.

Following in the footsteps of private enterprises, many governments around the world are in the process of finding ways to measure and new means of evaluating performance within their jurisdictions. This is a result of a public administration reform movement called New Public Management (NPM) which was first introduced in Australia and New Zealand and subsequently adopted by the OECD. An example of NPM is Australia's PM system or as it is locally known, Outcomes and Outputs Framework (1997), which is structured down-up on the basis of:

- i) what government wants to achieve, that is, outcomes;
- ii) how government achieves this, that is, outputs and administered items produced;
- iii) how government knows it is succeeding, that is, what it is held accountable for.¹⁶

Other jurisdictions, such as the United Kingdom and Canada, have adopted similar PM systems. And it seems to be working. Over the last couple of decades, there have been instances of PM, via targeting setting and performance measurement, enhancing accountability through improved practices and processes within the public sector.

Among its many roots, measuring performance essentially stems from the need to 'do more with less', that is, how governments maximize value for each taxpayer's dollar. In today's global society, this demand is partly placed on government by a more educated

¹⁶. Australian Department of Finance and Administration, "The Outcomes & Outputs Framework Guidance Document," (November 2000): 3-4.

citizenry who place the burden of achieving value-for-money on politicians and bureaucrats. On the other hand, legislators' limited terms in office places responsibility on them to achieve results within their tenure in government. Spurred by the motive to 'reinvent government,' much of the public sector around the world has caught on to this concept of measuring and managing performance. The reach of PM can be considered bimodal with many government agencies still to participate in the complete implementation and utilization of PM practices. Nevertheless, the scale of benchmarking and cross-jurisdictional comparisons has increased among practitioners with the adoption of advanced PM systems such as ActiveStrategy and Enterprise Resource Planning. In fact, research has stamped the utility of performance measurement in determining investment levels for program initiatives.¹⁷ As a result of its strategic importance, performance management has been increasingly used in many important government initiatives, the countering of financial crime being one of them.

Next is a discussion of PM within the context of governmental re-organization in the aftermath of the terrorist attacks cited at the beginning of this chapter. The global 'war on terror' has resulted in new fiscal pressures on government. Program and policy initiatives as a result of the recent terrorist attacks have cut across different levels of government, sectors, and national boundaries. Among the various security measures initiated and upgraded by government, the role and performance of intelligence agencies has been brought to the forefront. In recommending an appropriate PM system for these agencies in the U.S., a recently published Governmental Accounting Office (GAO) report

¹⁷. Howard A. Frank and D'Souza, Jayesh, "Twelve Years into the Performance Measurement Revolution: Where We Need to Go in Implementation Research." *International Journal of Public Administration* 27:8&9 (July/August 2004): 701-718.

cited the central theme of the 9/11 Commission report that “one of the major challenges facing the intelligence community is moving from a culture of a ‘need to know’ to a ‘need to share’.”¹⁸ This culture can be percolated through an organization with the help of strong leadership which can use PM to tie strategy and implementation to outcomes. This has been a forgotten practice in the ‘war on terror.’

By connecting implementation to strategy, an agency can become more results-oriented, customer-focused and collaborative with agencies performing overlapping functions. The ideal end result is streamlined operations through the elimination of redundancy, reduced costs and a happier workforce and customer.¹⁹ All these, in some way, shape, or form, constitute the core of the framework of this study, the Balanced Scorecard (BSC), which is discussed in detail in the methodology section of this dissertation. One of the underlying assumptions of this study is that the BSC can assist decision-makers in assessing outcomes in prosecuting ‘the war on terror’.

The thrust of a sound PM system is its metrics because metrics help an organization monitor its progress towards strategic aims. Stated simply, agencies need to ask, “What must we measure?” It is important for an agency to get this right because knowing what it must measure “can help send unmistakable messages about the behavior that the organization values and that support the organization’s mission and goals, as well as provide a consistent message to employees about how they are expected to achieve results. Thus, as transformation efforts are implemented, individual performance and

¹⁸. United States General Accounting Office, “Intelligence Reform: Human Capital Considerations Critical to 9/11 Commission's Proposed Reforms,” *GAO-04-1084T* (September 14, 2004):7.

¹⁹. Ibid, 2.

contributions [should be] evaluated on competencies such as change management, cultural sensitivity, teamwork, collaboration, and information sharing. Leaders, managers, and employees who demonstrate these competencies [should be] rewarded for their successful contributions to the achievement of the transformation process.”²⁰ This would replace the bureaucratic lock-step compensation process currently in place.

The establishment of an effective PM system is a matter of trial and error. The difficulty is in designing PM systems and proof of this is reflected in the experience of certain U.S. government agencies. James Carroll (2003) wrote, “Perhaps the greatest challenge is establishing a conceptual and institutional capacity to formulate a strategic vision of the roles and missions of government, how these relate to each other, and how these can be pursued. A provision of the *Government Performance and Results Act*, in effect, requires the Office of Management and Budget (OMB) to develop a government-wide performance plan. OMB has interpreted this provision narrowly.”²¹

Research Questions

In accordance with the framework of this study, this research attempts to support the following hypothesis by answering the questions referenced below:

Main Question

The success in countering financial crime is impacted by the focus, measurement and monitoring of outcomes by governmental financial-crime fighting agencies. Can the Balanced Scorecard assist in determining this?

²⁰. Ibid, 8.

²¹. James D. Carroll, “The Domestic Security State,” *Government Foresight* (September 2003): 22.

Additional Questions

- 1) What are the drivers and impediments in countering financial crime?
- 2) What are the outcome measures that will help further reduce the incidence of financial crime?
- 3) Do American and foreign FIUs need to focus on different outcomes?
- 4) Is there a consensus on performance metrics that measure the performance outcomes of FIUs?

Responses to these questions form the core of this study and provide evidence to support or reject the hypotheses.

Chapter Summary

This chapter concludes with a summary of what drives a public agency towards becoming a high-performing organization in the realm of performance management. A forum conducted by the GAO involving practitioner and academic participants revealed that in order to sustain high performance, organizations need to constantly take stock of their own performance and evaluate it in relation to that of other organizations. It is also important for organizations to create the right culture for managing and guiding their performance. Driven by a commitment from management, organizations must train their employees in the intricacies of their PM systems so that these systems run smoothly. In the context of fighting terrorism, governments must move beyond merely ‘throwing money at the problem’ to concrete performance-enhancement measures by setting performance targets and metrics to achieve them. This was best described at a sub-committee hearing at the U.S. House of Representatives, “Without establishing minimal

preparedness levels and equipment and performance standards that the Federal Government and State and local communities can strive to attain, the United States will have created an illusion of preparedness based on boutique funding initiatives without being systematically prepared.”²²

In conclusion, the objective of this study is to help government agencies find more effective organizational practices, using the Balanced Scorecard, to counter financial crime. This is done by utilizing a unique set of data that questions how governments can use performance management to monitor progress towards countering financial crime. In order to apply PM to a government initiative, it is important to first define the problem. Chapter II explores the depth and breadth of the problem.

²². Hearing before the Subcommittee on National Security, “Combating Terrorism: Preparing and Funding First Responders.” Emerging Threats and International Relations, One Hundred Eighth Congress, September 9, 2003, page 2.

CHAPTER II

FINANCIAL CRIME: AN ANALYSIS OF THE PROBLEM

Given the expansive nature of financial crime, the global network of financial criminals, and the necessity of international cooperation to counter it among a variety of players in the field, it is necessary to properly understand the very nature of the problem. Chapter 2 explains how terrorist financing, and related money laundering and tax evasion constitute financial criminality. It also introduces the reader to the working of FIUs.

Terrorist Financing

Terrorist financing is the lifeline of terrorism. In simplistic terms, it is “the act of knowingly providing something of value to persons and groups engaged in terrorist activity”²³ and is a global problem. The OECD Observer reports that European and American authorities have found a number of methods used by terrorists to raise funds for their activities such as forming front companies, channeling funds through delicatessens and unlicensed remittance schemes.²⁴ Terrorist financing is further defined by the source of funds and the mode of transfer of funds both of which are discussed next.

²³. Jeff Breinholt, "Reaching the White Collar Terrorist: Operational Challenges," *IMF Seminar Program* (September 2004): 3.

²⁴. OECD Observer, "Dirty Money: The Financial War on Terrorism," October, 2004. [cited on December 12, 2005] Available from World Wide Web: (http://www.oecdobserver.org/news/fullstory.php/aid/1270/Dirty_money.html).

Sources of Funds

The Financial Action Task Force (FATF)²⁵ has identified the major sources of terrorist funding as drug trafficking, extortion and kidnapping, robbery, fraud, gambling, smuggling and trafficking in counterfeit goods, direct sponsorship by certain countries, contributions and donations, sale of publications (legal and illegal) and funds derived from legitimate businesses.²⁶ The more prominent of these in the context of the ‘war on terror’ are discussed below:

State Sponsors – According to a U.S. Department of State release in April 2001, Iran, Iraq, Syria, Libya, Cuba, North Korea, and Sudan were designated state sponsors of international terrorism by the U.S. Secretary of State.²⁷ A later update (2004) suggested that while Libya and Sudan were co-operating in the global war on terrorism and the terrorist-supporting regime in Iraq had been expelled from power, the rest of the countries were still associated with state-sponsored terrorism.²⁸

Individual/Corporate Contributors – The stand-out among individual contributors of terrorist funding is Osama bin Laden. According to U.S. prosecutors, bin Laden is not

²⁵. “A constituency of thirty-one countries and territories, and two regional organizations, the FATF is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is therefore a ‘policy-making body’ created in 1989 that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas.” FATF, 2005 (www.fatf-gafi.org/).

²⁶. Anonymous. "The law in context; Sub-group 2: Impact of the initiatives against terrorist property on banks and financial institutions." *Journal of Money Laundering Control* 6 (2003): 233.

²⁷. U.S. Department of State, “Patterns of Global Terrorism - 2000,” April 30, 2001. [cited on August 25, 2005] Available from World Wide Web: (<http://www.state.gov/s/ct/rls/pgtrpt/2000/2441.htm>).

²⁸. U.S. Department of State, “Patterns of Global Terrorism - 2003,” April 29, 2004. [cited on August 25, 2005] Available from World Wide Web: (<http://www.state.gov/s/ct/rls/pgtrpt/2003/31644.htm>).

only the mastermind behind a number of strikes on U.S. targets but also used an estimated \$250 million in personal wealth to fund his causes.²⁹ His personal businesses including a bakery, a furniture company, and a cattle-breeding operation were used to funnel money for the purpose of financing and committing terrorist acts.³⁰

Non-profit Organizations – According to Interpol, a non-profit organization that supports a terrorist's cause could support the terrorist's activity through a charitable donation to the concerned terrorist. Since these funds are cash-based, it is difficult to verify either the origin or final destination of the funds.³¹ December 2001 marked one of the first times since 9/11 when the U.S. Treasury Department took action against the charitable organizations, Global Relief Foundation and Benevolence International Foundation for suspected providing funds in support of terrorist activity.³² In mid-2004, the Holy Land Foundation for Relief and Development was indicted by a federal grand jury in Dallas for providing more than \$12.4 million in support of the Palestinian terrorist group, Hamas.³³

²⁹. CNN, "Bin Laden, millionaire with a dangerous grudge," September 27, 2001. [cited on August 25, 2005] Available from World Wide Web: (<http://archives.cnn.com/2001/US/09/12/binladen.profile/>).

³⁰. Brooks, Richard, Richard A Riley Jr, and Jason Thomas. "Detecting and preventing the financing of terrorist activities: A role for government accountants." *The Journal of Government Financial Management* 54 (2005): 12.

³¹. Interpol, "The links between intellectual property crime and terrorist financing," July 16, 2003. [cited on August 25, 2005] Available from World Wide Web: (<http://www.interpol.com/Public/ICPO/speeches/SG20030716.asp>).

³². CNN, "Islamic charity fights asset freeze," January 28, 2002. [cited on August 26, 2005] Available from World Wide Web: (<http://archives.cnn.com/2002/LAW/01/28/inv.charilty.lawsuit/>).

³³. Mintz, John. "Muslim Charity, Officials Indicted; Funding Groups With Hamas Ties at Issue." *The Washington Post* (July 28, 2004): A.01.

Government Programs – The oil-for-food program in Iraq was a humanitarian program introduced by the U.N. Security Council to help Iraqis cope with the consequences of the sanctions imposed after the 1991 Gulf War.³⁴ According to the program, Iraq could sell a limited amount of crude oil and use the proceeds to purchase essentials such as food and medicine. Also, Iraq could determine to whom to sell oil and from whom to buy essentials. However, Iraq dictator, Saddam Hussein, cheated the program of billions of dollars by engaging in operations outside the scheme and accepting kickbacks for these.³⁵ Furthermore, an opinion published in the *Wall Street Journal* suggested that some of this money may have been used to finance terrorism: “In a world beset right now by terrorist threats -- which depend on terrorist financing -- it's time to acknowledge that the U.N.'s Oil- for-Food program was worse than simply a case of grand larceny. Given Saddam's proclivities for deceit and violence, Oil-for-Food was also a menace to security.”³⁶

Illegal Sources – Sources of funding for terrorist activity through illegal means can take the form of any one or a combination of kidnappings, extortion and ‘revolutionary taxes’ or, protection money. A good example is the financing of terrorist activity in Colombia using ransom money through kidnappings and extortions. Some of these criminals also force people to grow coca and charge them a ‘tax’ on the proceeds.³⁷ Commodities such

³⁴. Congressional Research Service, “Iraq: Oil-For-Food Program, Illicit Trade, and Investigations,” September 27, 2001. [cited on August 25, 2005] Available from World Wide Web: (<http://www.opencrs.com/document/RL30472/>).

³⁵. Anonymous. "The biggest scandal ever?; The UN's oil-for-food row." *The Economist* 371 (May 1, 2004): 58.

³⁶. Rosett, Claudia "Oil-for-Terror." *Wall Street Journal* (April 28, 2004): A.16.

³⁷. Brooks, 12.

as contraband cigarettes, counterfeit goods, and illicit drugs and liquor are also used by terrorist groups to raise funds. An example of this is how Islamic resistance group, Hezbollah raised funds for its activities from profits derived by buying cigarettes at a lower price in lower tax states and selling them in other states at higher prices.³⁸

Some interesting issues arise with respect to the sources of terrorist financing. Firstly, the FATF questions whether distinguishing between legal and illegal sources of funding has an effect on the ability of countries to use anti-money laundering measures to detect, investigate and prosecute potential terrorist-related money laundering.³⁹ Secondly, the FATF notes that raising funds for terrorism through state sponsorship has declined resulting in an increase in organized crime for this purpose.⁴⁰

Modes of Transfer of Funds

Funds used to finance terrorist activity are essentially moved through the banking system (and savings and investment houses such as brokerage houses, insurance companies, mutual funds and other investment companies that operate along similar lines) and what are known as, alternative modes such as the informal value-transfer system. Each of these is discussed next.

³⁸. United States General Accounting Office, "Combating Terrorism: Federal Agencies Face Continuing Challenges in Addressing Terrorist Financing and Money Laundering," *GAO-04-501T* (March 4, 2004).

³⁹. Anonymous. "The law in context; Sub-group 2: Impact of the initiatives against terrorist property on banks and financial institutions." *Journal of Money Laundering Control* 6 (2003): 233.

⁴⁰. Ibid.

Formal Banking System - The most common mode of transfer of terrorist finances is through the banking system. Terrorist financiers use banks to open and transfer funds through: legitimate accounts which is regular bank account used to facilitate cash transactions, dormant accounts which are only used when circumstances demand, telegraphic transfer that are used to wire funds from one destination to another and money service businesses that channel funds between parties.⁴¹ While it is difficult to estimate the amount of money moved through the banking system to finance terrorism, evidence suggests the need to strengthen regulatory and procedural guidelines to deal with the problem.

Financial Sector Initiatives

In view of the above, both the public and private sectors have attempted to enforce measures that will result in banks being more vigilant in detecting and reporting suspicious activity. The thrust for banking reform to counter the financing of terrorism has come from three main entities: i) the Basel Committee; ii) the Wolfsberg Group; and iii) individual government efforts. Established in 1974, the Basel Committee is a group of representatives from central banks and banking authorities from ten countries: Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, United Kingdom and United States. The task of this Committee is to create standards and guidelines, and a set of best practices for member nations to establish in their respective jurisdictions.⁴² In the context of counter terrorist financing, the

⁴¹. Anonymous. "The law in context; Sub-group 2: Impact of the initiatives against terrorist property on banks and financial institutions." *Journal of Money Laundering Control* 6 (2003): 233.

⁴². Bank For International Settlements, "Bank Committee on Banking Supervision," [cited on August 27, 2005] Available from World Wide Web: (<http://www.bis.org/publ/bcbs110.htm>).

Committee issued *Customer Due Diligence For Banks* in October 2001 which was reinforced, in 2003, by a *General Guide* that outlined the following elements:

- customer acceptance policy;
- customer identification;
- on-going monitoring of higher risk accounts; and
- risk management.⁴³

The private sector has been no less active through the efforts of the Wolfsberg Group which comprises 12 prominent banks around the world, namely, ABN Amro Bank N.V. (the Netherlands), Santander Central Hispano, S.A. (Spain), Bank of Tokyo Mitsubishi, Ltd. (Japan), Barclays (United Kingdom), Citigroup (United States), Credit Suisse Group (Switzerland), Deutsche Bank AG (Germany), Goldman Sachs (United States), HSBC (China), J.P. Morgan Chase (United States), Societe Generale (France), UBS AG (Switzerland). In 2000, this group released a set of compliance norms known as the Wolfsberg Principles that engage banks in identifying account holders' true identity, the sources of their funds and monitoring accounts for suspicious transactions or patterns.⁴⁴

The philosophy behind the Wolfsberg Principles is encompassed in legislation in the many countries involved in the anti-terrorism fight. The Financial Services Authority (FSA) in the United Kingdom published a consultation paper *Reviewing the FSA Handbook* right after the London bombings that was expected to take the fight against

⁴³. Bank For International Settlements, "Consolidated KYC Risk Management," [cited on August 27, 2005] Available from World Wide Web: (<http://www.bis.org/publ/bcbs110.htm>).

⁴⁴. Anonymous. "Anti-Laundering Plan Criticized." *American Banker* 166 (January 10, 2001): 4.

terrorist financing and money laundering to a higher level.⁴⁵ In Consultation Paper 142 *Operational Risk Systems and Controls* published in July 2002, the FSA establishes a framework for risk management and compliance for financial services.⁴⁶

In the United States, Sections 314 and 326 of the USA Patriot Act of 2001 (which fortifies the Bank Secrecy Act) lay down specific requirements for banks. Section 314 calls for banks to inspect their client records for suspected terrorists and money launderers forwarded to them by law enforcement agencies. Section 326 requires banks to obtain enhanced client identification for the purpose of identity verification, as part of the new 'know your customer' policy.⁴⁷ Australia passed similar legislation in the form of Resolution 1373 in September 2001 and the Suppression of the Financing of Terrorism Act of 2002.⁴⁸

There are cases where government initiatives that work in some countries may not work as effectively in others. Australia and Canada are seen as having efficient systems for collecting information from wire transfers of funds. It should be noted here that this was the mode of transfer used by the 9/11 hijackers who wired more than \$130,000 in funds.⁴⁹ However, because of the sheer volume of international transfers in the United

⁴⁵. Financial Services Authority, "Fighting money laundering and terrorist financing more effectively - proposals in our Consultation Paper, *Reviewing the FSA Handbook*," July 12, 2005. [cited on August 27, 2005] Available from World Wide Web: (http://www.fsa.gov.uk/pubs/other/letter_jmlsg.pdf).

⁴⁶. Haynes, Andrew. "The Wolfsberg Principles - An Analysis." *Journal of Money Laundering Control* 7 (2004): 207-217.

⁴⁷. Anonymous. "Two and A Half Years After 9/11, Terrorism Remains A Key Concern For Banks." *EFT Report* 28 (2004): 1.

⁴⁸. Latimer, Paul. "Bank Secrecy in Australia: Terrorism Legislation as the New Exception to the Tournier Rule." *Journal of Money Laundering Control* 8 (2004): 56-65.

⁴⁹. Swartz, Nikki. "U.S. Wants International Bank Record Access." *Information Management Journal* 39 (2005): 12-14.

States and the limited resources available to the U.S. government, the viability of having a system in the U.S. similar to those of Australia and Canada has been under a lengthy process of study.⁵⁰

The challenge that lies ahead is getting banks to follow set guidelines and comply with these principles. The most notorious case of non-compliance has been Riggs Bank whose lack of compliance with anti-money laundering regulations resulted in it paying millions of dollars in penalties.⁵¹

Alternative Financing Mechanisms – A 2003 GAO report *U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms* cites a number of modes of transfer of funds that terrorists use to finance their activities including the illicit drug trade, the misuse of charities and the currency trade.⁵² However, the most common method that falls in this category is the informal banking system also known as hawala or hundi. All of these methods are described next.

Informal Banking System

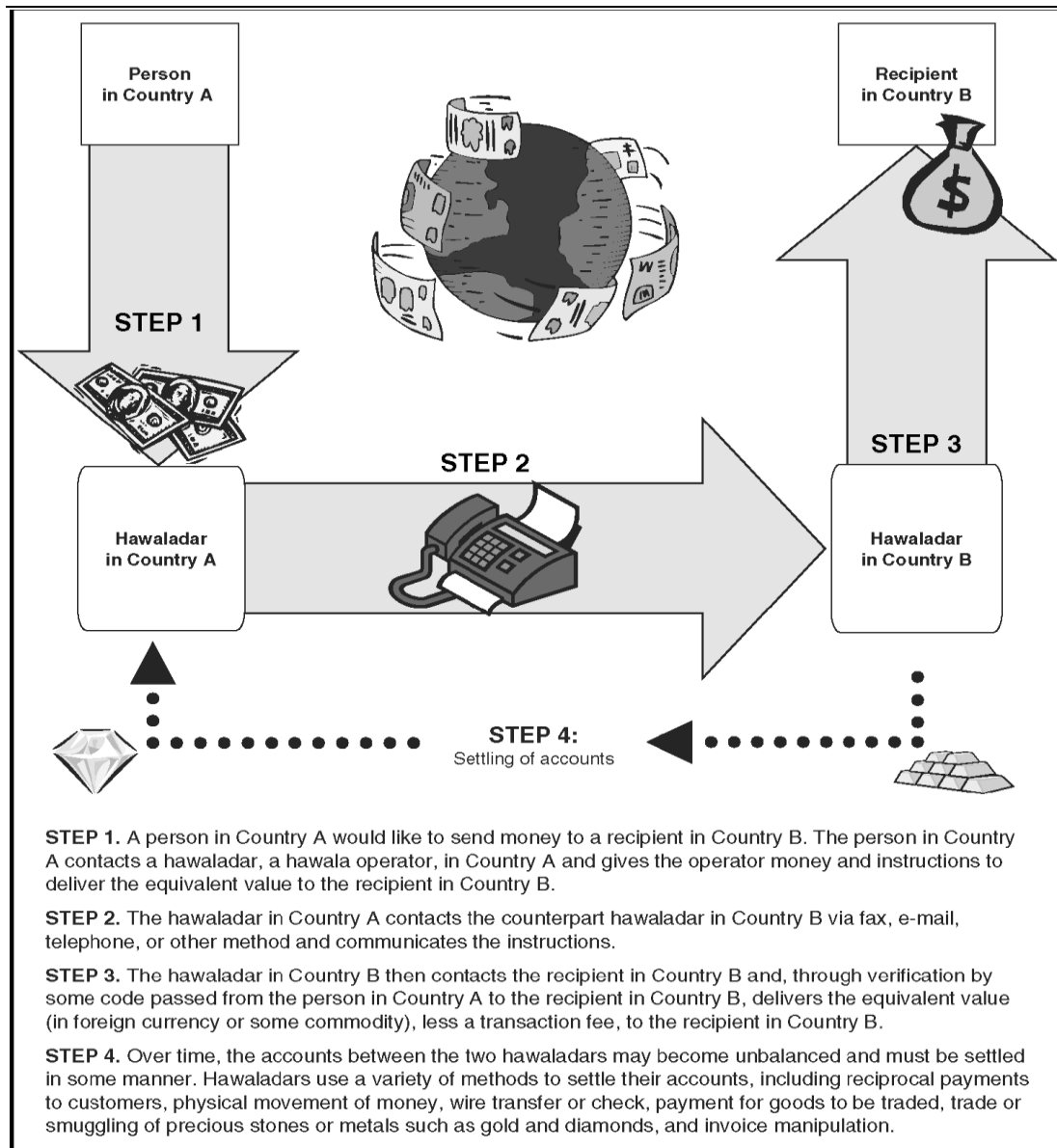
The most common type of informal banking system is known as hawala or hundi. It is a legitimate remittance system that serves as an alternative to the banking one. It is based more on the use of connections in the form of family ties or acquaintances and transactions often take place based on trust rather than the use of a negotiable instrument. It is conducted through a series of steps described in Figure 2-1.

⁵⁰. Blackwell, Rob. "A Sharp Split On 'Report All Wires' Idea." *American Banker* 170 (2005): 1.

⁵¹. Dash, Eric. "Riggs Bank Is Penalized \$16 Million." *The New York Times* (Jan. 25, 2005): C4.

⁵². United States General Accounting Office, "U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms," *GAO-04-163* (November 2003).

Figure 2-1: Steps Involved In a Typical Hawala Transaction



Source: GAO-04-63: U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms

The advantage of using hawalas over traditional methods to transfer funds is that the former is less costly (compared to bank charges for changing currency) and more efficient (than sending a bank draft or sending money through an international wire

transfer).⁵³ The disadvantage is that they are often used to transfer funds for illegal activities such as terrorism.

Charity

The crackdown on the funding of terrorist activity after September 11, 2001 has led to the U.S. and foreign governments identifying charities, both, inside and outside the United States, as vehicles for the movement of terrorists' funds.⁵⁴ On February 12, 2003, the U.S. Department of Justice indicted University of Idaho student, Sami Omar Al-Hussayen, who fronted a Michigan-based charity, the Islamic Assembly of North America (IANA). The purpose of this charity was to spread the word of Islam through media such as the Internet which contained messages to accumulate financial and human resources for terrorist activity against the United States.⁵⁵ The Department of Justice found that non-student aid funds of approximately \$100,000 that flowed to Al-Hussayen's bank accounts from overseas sources were remitted to IANA and people connected to it. The charges brought against Al-Hussayen were visa fraud and offences for making false statements.

Charities have also come under scrutiny in the U.K. In May, 2006, the offices of Sanabel Relief Agency were raided and its assets frozen. Sanabel was accused by the

⁵³. Interpol General Secretariat, "The Hawala alternative remittance system and its role in money laundering," [cited on December 29, 2008] Available from World Wide Web: (<http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/Hawala/default.asp>).

⁵⁴. Francis, David. "The war on terror money: Will nations' efforts to cut off terrorists' financing stop future attacks?" *The Christian Science Monitor* (April 8, 2004): 14.

⁵⁵. United States Department of Justice, "Terrorist Financing," 51:4 (July 2003): 19.

U.S. government of being a front for Al-Qaeda and channeling money to a terrorist group responsible for making an attempt on the life of Libya's head, Muammar Gadafy.⁵⁶

Commodities

In relation to funds moved through commodities, the GAO study on alternate terrorism financing mechanisms uncovered that "to carry assets across borders without detection, terrorists seek to smuggle bulk cash or convert their assets into commodities that are relatively liquid and easy to conceal. Terrorists can also convert their assets into internationally traded commodities that serve as forms of currency, such as gold, but are not subject to standard financial reporting requirements. Commodities that can be smuggled owing to their ease of concealment are particularly attractive."⁵⁷ Other commodities, besides gold, include illicit drugs, weapons, cigarettes and precious stones. Another commodity is honey. Reports suggest that members of the terrorist group, Al-Qaeda, started moving funds through commodities instead of banks when the U.S. government froze \$220 million worth of gold deposited in the Federal Reserve system by Taliban and Al Qaeda operatives post-911.⁵⁸ On record is the fact that Osama bin Laden used a network of honey stores for the purpose of raising money and smuggling contraband.⁵⁹

⁵⁶. Fickling, David. "Islamic charity target of anti-terror raids" *Guardian UK* (May 24, 2006).

⁵⁷. United States General Accounting Office, "U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms," *GAO-04-163* (November 2003).

⁵⁸. Farah, Douglas and Richard Schultz. "Al Qaeda's Growing Sanctuary." *The Washington Post* (July 14, 2004): A 19.

⁵⁹. BBC, "Bin Laden's Honey Connection," Thursday, 11 October, 2001. [cited on June 30, 2008] Available from World Wide Web: (<http://news.bbc.co.uk/2/hi/business/1594143.stm>).

A combination of the simplicity of raising funds and complexity in the methods of transferring them has led experts to claim that it is more difficult to track funds used by terrorists than by other criminals because of the low cost of carrying out terrorist acts and the general practice of using legitimate source to fund terrorism.⁶⁰ According to the 9/11 Commission Report, the U.S. government has still been unable to trace the source of funds used to finance the terrorist attacks of September 11, 2001. It also claims that the funding for the attacks, estimated at \$30 million by the CIA, was raised almost entirely through personal donations.⁶¹ In contrast to money laundering, terrorism is financed through small sums of money which make it hard to track especially when raised from legitimate sources.⁶² Besides this, there are reports that dispute the effectiveness of the new banking laws. One report states that “under the [pre 9/11] Bank Secrecy Act, about 85 per cent of banks engage in some sort of customer profiling, filing Suspicious Activity Reports (SAR) with agencies like the FBI, the Secret Service, and the Customs Service. All US attorneys and 59 law-enforcement agencies can search the SAR database without probable cause. Yet none of them saw the \$100,000 received by Mohamed Atta weeks before 11th September, even though that transaction was in the database and Atta's name was on the FBI's list of ‘most wanted’ terrorists.”⁶³

⁶⁰. Breinholt, 4.

⁶¹. 9/11 Commission, “The 9-11 Commission Report,” *Final Report of the National Commission on Terrorist Attacks Upon the United States* (July 22, 2004): 169.

⁶². FINTRAC, 1.

⁶³. Latimer, Paul. "Bank Secrecy in Australia: Terrorism Legislation as the New Exception to the Tournier Rule." *Journal of Money Laundering Control* 8 (2004): 56-65.

The scale of misuse of funds for financing terrorism calls for the need to invest in sufficient crime-fighting resources and broad-scale co-operation among law enforcement agencies, both, domestically and internationally.⁶⁴ Just as it is difficult to trace funds raised through terrorist financing, it is as hard to trace funds raised through money laundering. This is another method through which terrorists raise money to support their activities and a discourse on it follows.

Money Laundering

Defined generally, money laundering is “the process of concealing the existence, illegal source, or application of income derived from criminal activity, and the subsequent disguising of the source of that income to make it appear legitimate.”⁶⁵ Such criminal activity includes illegal arms sales, smuggling, drug trafficking, prostitution rings, embezzlement, insider trading, bribery, and computer fraud schemes. Much like terrorist financing, money laundering not only affects the integrity of business and financial services but also the economic development of countries where it occurs.⁶⁶ It adversely influences public confidence in banks and financial markets especially in emerging economies.⁶⁷

⁶⁴. Passas, 66.

⁶⁵. Moneylaundering.com, “Money Laundering,” [cited on December 29, 2004] Available from World Wide Web: (<http://www.moneylaundering.com/freeresources/mldefinition.aspx>).

⁶⁶. OECD, “Money Laundering,” *OECD Policy Brief* (1999): 3.

⁶⁷. Norgren, Claes. “The Control of Risks Associated with Crime, Terror and Subversion.” *Journal of Money Laundering Control* 7 (2004): 201-206.

Due to the similarities between terrorist financing and money laundering, government agencies adopt similar strategies in countering money laundering and terrorist financing. But there are also differences between these two crimes. While money launderers work with ‘dirty money,’ this is not necessarily true for terrorists who sometimes use money earned through legal means for their activities; these amounts are, generally, smaller than laundered funds. Whereas, in terrorist financing, the act is committed after money has been moved to the entities committing the act, in the case of money laundering, criminal activity takes place prior to funds being laundered. In other words, “money laundering cleans dirty money; terrorist financing dirties clean money.”⁶⁸

Money laundering is generally carried out in three steps. The first step in the money laundering process is placement. This is when ‘dirty money’ first enters the financial system, for example, when drugs are sold illegally for cash and then deposited at a financial institution.⁶⁹ Another example is using this ‘dirty money’ to purchase money orders.⁷⁰ The next step is layering, which perhaps represents the most complex stage of the process. Here the launderer, through a series of financial transactions, attempts to conceal the original source of the funds.⁷¹ This may involve transferring the ‘dirty money’ from one bank to many banks after breaking it down into smaller

⁶⁸. Waszak, John. "The Obstacles to Suppressing Radical Islamic Terrorist Financing." *Case Western Review Journal of International Law* 36 (2004): 673(38).

⁶⁹. UNODC, “The Money Laundering Cycle,” [cited on December 29, 2004]. Available from World Wide Web: (http://www.unodc.org/unodc/en/money_laundering_cycle.html).

⁷⁰. Molander, Roger C., David A. Mussington, and Peter A. Wilson. *Cyberpayments and Money Laundering: Problems and Promise* (Santa Monica, CA: RAND, 1998).

⁷¹ Molander et al., *Cyberpayments*, 6.

amounts.⁷² This is followed by the last step, integration, which occurs when the illicit funds are assimilated with the commercial economy through legal commercial transactions. Together, these constitute money laundering, one of the most notorious forms of criminal activity which provides a means for criminals such as drug dealers, terrorist organizations, arms dealers and other criminals to make illegally earned funds appears legitimate.⁷³

There are as many as 176 ‘specified unlawful activities’ that constitute money laundering in the United States.⁷⁴ A list of these is shown in Appendix 1. An example of terrorism-related money laundering is the case of Haji Subandi, an Indonesian who conspired to sell arms to the terrorist organization, Liberation Tigers of Tamil Eelam (Tamil Tigers) in exchange for money deposited in an undercover bank account in Maryland. A report described this as follows, “This transfer was a down payment for the arms, and the conduct is reflected in the money laundering charge contained in count three of the superseding indictment. An additional \$452,000 payment was transferred on Sept. 28, 2006 for the arms.”⁷⁵

⁷². UNODC, 1.

⁷³. The Canadian Institute of Chartered Accountants, *Canada’s Anti-Money Laundering and Anti-Terrorist Financing Requirements* (February 2004).

⁷⁴. Anonymous, “The U.S. Money Laundering Laws - “Specified Unlawful Activities,” [cited on December 14, 2005]. Available from World Wide Web: (<http://www.moneylaundering.com/freeresources/mlsualist.aspx>).

⁷⁵. U.S. Immigration and Customs Enforcement, “Indonesian pleads guilty to conspiracy to provide material support to a foreign terrorist organization, money laundering and attempted export of arms,” March 8, 2007 [cited on June 28, 2008]. Available from World Wide Web: (<http://www.ice.gov/pi/news/newsreleases/articles/070308baltimore.htm>).

Of lesser significance than money laundering and terrorist financing, financial crime involving tax evasion has also become a part of the agenda of anti-terrorist financing agencies. The specifics of this form of financial crime is addressed below.

Tax Evasion

Tax evasion is related to terrorist-financing under the simple assumption that terrorists do not pay taxes on income they use to finance their activities. Also, money launderers are involved in tax evasion schemes as they often attempt to make laundered funds appear to stem from non-taxable sources. Government initiatives to counter tax evasion in the context of terrorist financing and money laundering are wide-spread. For example, in the United States, the IRS has a Criminal Investigation Unit (IRS-CI) and a Small Business/Self-Employed (SB/SE) Division that oversee different aspects of this financial crime in order to encourage tax compliance; the former deals with investigative issues while the latter enforces compliance with regard to the registration, reporting and record-keeping.⁷⁶ The IRS-CI is a recipient of \$3 million in funding, annually, to staff its task forces in HIFCAs.⁷⁷ Also under the IRS' jurisdiction is ensuring compliance in

⁷⁶. Rettig, Charles, Edward Robbins Jr., "Structuring Transactions and Currency Violations: The 'Tax Crime' of the Future," *Tax Practice and Procedure* 7:1 (February /March 2005): 35.

⁷⁷. "High Risk Money Laundering and Related Financial Crimes Areas or HIFCAs were first announced in the 1999 National Money Laundering Strategy and were conceived in the Money Laundering and Financial Crimes Strategy Act of 1998 as a means of concentrating law enforcement efforts at the federal, state, and local levels in high intensity money laundering zones. HIFCAs may be defined geographically or they can also be created to address money laundering in an industry sector, a financial institution, or group of financial institutions." FINCEN, 2005 (http://www.fincen.gov/le_hifcadesign.html).

relation to the maintenance of off-shore accounts through the Report of Foreign Bank and Financial Accounts (FBARs).⁷⁸

FIUs with the responsibility of exposing money launderers and financiers of terrorism have also been entrusted with tracking down tax evaders and have had success in doing so. An Australian government audit report released in the year 2000 discloses, “Over the last five financial years, \$160 million (Australian) has been raised in assessments for additional tax and penalties that can be directly attributed either wholly, or in part, to the use of AUSTRAC data. Although the use of AUSTRAC data does not contribute significantly to the Australian Tax Office’s (ATO) overall revenue collection (\$47 million Australian in 1998–99), it does make a valuable contribution to tax administration. It is an important intelligence source that aids compliance activities. There are also indirect benefits associated with using AUSTRAC data. The level of voluntary compliance, which flows from ATO audit activity and community and industry awareness of the ATO/AUSTRAC relationship, assist in deterring potential tax evaders.”⁷⁹

⁷⁸. “A Report of Foreign Bank and Financial Accounts (FBAR) must be filed annually by any U.S. person who had a financial interest or signature or other authority over any financial accounts, including bank, securities, or other types of financial accounts in a foreign country if the aggregate value of those accounts exceeds \$10,000 at any time during the calendar year. The courts have interpreted the terms “financial account” and “control or other authority” very broadly, to include such things as a ledger entry on the books of a Swiss corporation and the ability to give oral instructions as to the disposition of funds in an account.” IRS, 2005 (<http://www.irs.gov/businesses/small/article/0,,id=105719,00.html#13>)

⁷⁹. The Australian Taxation Office, “The Australian Taxation Office’s Use of AUSTRAC Data,” 2000. [cited on December 29, 2004] Available from World Wide Web: (<http://www.anao.gov.au/WebSite.nsf/Publications/4A256AE90015F69B4A2569510020CC9D#Recommendation>).

On the international front, funds channeled through tax havens⁸⁰ for possible financing of terror-related activities has received special attention from the OECD. While it does not have the authority to enforce its principles on countries, it publishes a list of Uncooperative Tax Havens. By choosing to cooperate, countries commit to transparency of operations and the exchange of information which will result in a more coordinated effort to counter financial crime.⁸¹ Included in this list of tax havens are offshore financial centers (OFCs)⁸². Also active in this regard is the International Monetary Fund (IMF). The IMF oversees the OFC assessment program⁸³ that assesses the compliance by OFCs to international standards against financial crime.⁸⁴

There are other instances where anti-money laundering (AML) and counter-terrorist financing (CTF) initiatives have also been charted multilaterally.⁸⁵ The United Nations and the FATF have been among the chief initiators and coordinators of these

⁸⁰ "A tax haven is a country, which provides a no-tax or low-tax environment. The U.S. is considered a tax haven by some countries. In some offshore jurisdictions the reduced tax regime is aimed towards entities organized in the country with all operations occurring outside the country. These countries seek to encourage investment and make up revenue losses by charging a variety of fees for the start up of the entity and on an annual basis." IRS, 2005 (<http://www.irs.gov/businesses/small/article/0,,id=106572,00.html>).

⁸¹ Jeffrey Owens, "The OECD Work on Tax Havens," OECD Center for Tax Policy and Administration, *The Friedrich Ebert Foundation Conference on Money Laundering and Tax Havens – The Hidden Billions for Development*, July 8-9, 2002.

⁸² "This term, when used in this context, and when referring to a country, means a jurisdiction that offers financial secrecy laws in an effort to attract investment from outside its borders. When referring to a financial institution, "offshore" refers to a financial institution that primarily offers its services to persons domiciled outside the jurisdiction of the country in which the financial institution is organized." IRS, 2005 (<http://www.irs.gov/businesses/small/article/0,,id=106572,00.html>).

⁸³ This is a voluntary program.

⁸⁴ Herbert Morais, "The War Against Money Laundering, Terrorism and the Financing of Terrorism," *Lawasia* (2002): 23.

⁸⁵ Foreign Affairs Canada, "Terrorist Financing," July 4, 2002. [cited on December 28, 2004] Available from World Wide Web: (http://www.dfait-maeci.gc.ca/internationalcrime/financing_terrorism-en.asp).

efforts. The United Nations was responsible for the first international treaty that proposed the criminalization of money laundering through the adoption of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* in 1988. Key among the U.N.'s programs is the Global Program Against Money Laundering run by its Office on Drugs and Crime and administered for the purpose of providing member nations assistance in developing the tools to combat money laundering.⁸⁶

Similarly, the FATF has adopted a counteractive stance against money laundering and terrorist financing through the publication of a written supplement famously known as the *Forty Recommendations on Money Laundering*. The *Forty Recommendations* are a set of drafted guidelines for governments and financial institutions of practical measures to counter financial crime⁸⁷ The FATF conducts a periodic evaluation of nations' effectiveness in implementing its standards known as 'mutual evaluations'. It is currently on its third round of evaluations.⁸⁸ In June 2000, FATF announced a 'name and shame' policy whereby countries that did not comply with international standards and improve their weak anti-money laundering regimes would be disclosed by the FATF. They would face the possibility of counter-measures that included would restrict or ban transactions with such territories.⁸⁹

⁸⁶. Bruce Zagaris, "The merging of the counter-terrorism and anti-money laundering regimes," *Law and Policy in International Business* 34:1 (Fall 2002): 45.

⁸⁷. Herbert Morais, "The War Against Money Laundering, Terrorism and the Financing of Terrorism," *Lawasia* (2002): 8.

⁸⁸. FATF, "FATF Standards: Third Round of Mutual Evaluations," taken from the 2004-2005 FATF Annual Report. [cited on December 28, 2004] Available from World Wide Web: (http://www1.oecd.org/fatf/TerFinance_en.htm).

⁸⁹. OECD, "Name and shame can work for money laundering," *OECD Observer*, October 2000. [cited on December 12, 2005] Available from World Wide Web:

While on the international front, these efforts are supported by the International Monetary Fund (IMF) and the World Bank through assessments, technical assistance and policy development guidance⁹⁰, they are also bolstered regionally by AML and CTF measures imposed by regional bodies like the European Union and regional development banks such as the Inter-American Development Bank, the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ABD).⁹¹ At the center of these initiatives, is the FIU.

The roles of the FIUs and the length of time they've been in existence vary by country. The United States' Financial Crimes Enforcement Network (FinCEN) came into existence in April 1990⁹² while the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is relatively new, having been established in July 2000.⁹³ The responsibilities of FINTRAC cover money laundering and terrorist financing detection while those of the Australian Transaction Reports and Analysis Centre (AUSTRAC), set up in 1988, include the deterrence of tax evasion as well.⁹⁴ A number of FIUs transcend

(http://www.oecdobserver.org/news/fullstory.php/aid/358/%93Name_and_shame%94_can_work_for_money_laundering.html).

⁹⁰. International Monetary Fund, "The IMF and the Fight against Money Laundering and the Financing Of Terrorism," September 2005. [cited on January 15, 2006] Available from World Wide Web: (<http://www.imf.org/external/np/exr/facts/aml.htm>).

⁹¹. Morais, 25.

⁹². Federation of American Scientists, "Fincen – History," August 30, 1998 [cited on December 28, 2004] Available from World Wide Web: (<http://www.fas.org/irp/agency/ustreas/fincen/history.htm>).

⁹³. Department of Finance, Canada, "FINTRAC receives increased funding to combat terrorist financing," October 25, 2001. [cited on December 28, 2004] Available from World Wide Web: (<http://www.fas.org/irp/agency/ustreas/fincen/history.htm>).

⁹⁴. AUSTRAC, "About AUSTRAC," June 8, 2004. [cited on December 28, 2004] Available from World Wide Web: (<http://www.austrac.gov.au/about/>).

national boundaries and work together as part of an informal group called the Egmont Group.⁹⁵ Any attempt to study the performance of FIUs involved in this study must be pre-empted by the study of its role. What therefore follows is a conspectus of the organization and set-up of FIUs.

Function Of Financial Intelligence Units

FIUs differ from one another in structure and reporting authority. The FIUs in this study serve as a link between the entities that report to it such as financial institutions, and law enforcement and essentially perform the same functions. The Egmont Group views an FIU as a ‘central, national agency’ that serves as a point of exchange for information for other FIUs within this Group and performs three core functions: receiving, analyzing, and disseminating financial information disclosed to it to the relevant authorities.⁹⁶ Recommendation 26 of the FATF’s 40 Recommendations elaborates on this, stipulating, “Countries should establish a FIU that serves as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of suspicious transaction report (STR) and other information regarding potential money laundering or terrorist financing. The FIU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it

⁹⁵. OECD, “The Egmont Group of Financial Intelligence Units,” August 25, 2003. [cited on December 28, 2004] Available from World Wide Web: (http://www1.oecd.org/fatf/ctry-orgpages/org-egmont_en.htm).

⁹⁶. The Egmont Group, “Interpretive Note Concerning The Egmont Definition of a Financial Intelligence Unit,” November 15, 2004. [cited on January 7, 2006] Available from World Wide Web: (http://www.egmontgroup.org/egmont_final_interpretive.pdf).

requires to properly undertake its functions, including the analysis of STR.”⁹⁷ These functions are detailed next.

Receiving Information

FIUs receive information from reporting entities, other FIUs, and domestic agencies. Reporting entities vary with the means used by criminals to carry out their illegal activities and range from financial institutions, insurance and securities companies and casinos to dealers in precious metal and precious stones, and to real estate agents, lawyers, notaries and accountants. The kind of information reported to FIUs varies with the jurisdiction. While in most jurisdictions, entities are required to report ‘suspicious’ transactions to their FIU, in jurisdictions like the U.S., entities are required to report suspicious activities.⁹⁸ A suspicious transaction report (STRs) is defined as “a report that financial institutions must file to a country’s FIU if a transaction is suspected to be linked to criminal activity or to terrorism.”⁹⁹ Suspicious activities are broader in scope than suspicious transactions and failure to file either of these with the concerned FIU can result in the non-compliant entity being fined, in some cases, losing its authorization to operate or even imprisoned.¹⁰⁰ In the Netherlands, entities report ‘unusual’ transactions¹⁰¹

⁹⁷. Financial Action Task Force, “The Forty Recommendations,” [cited on January 7, 2006] Available from World Wide Web: (http://www.fatf-gafi.org/document/28/0,2340,en_32250379_32236930_33658140_1_1_1_1,00.html#40recs).

⁹⁸. Reuter, Peter, Edwin Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (Washington, DC : Institute for International Economics, c2004): 106.

⁹⁹. Reuter et al., 207.

¹⁰⁰. Gottselig, Glenn and Sarah Underwood, *Financial Intelligence Units: An Overview* (Washington, D.C.: International Monetary Fund : World Bank Group, c2004): 43, 56.

which will be discussed later in the chapter. Due to the heavy volume of information received, and FIU must have the capacity to store and analyze information reported to them. This leads us to the next function of FIUs.

Analyzing Information

Once data are received from reporting entities, the FIU must analyze in order to distinguish unusual transactions from those that are potentially related to criminal activity.¹⁰² There are three kinds of analyses performed by FIUs:

Tactical Analysis is looking at the data from the perspective of building a case and establishing the facts that render a criminal offense.¹⁰³ In other words, the FIU attempts to establish a link between received information and information from its own database, sources available publicly, other government and non-government databases, and other FIUs.¹⁰⁴ This is a preliminary step to future action by the FIU.

Operational Analysis: Tactical analysis leads the FIU to believe that an individual, group of individuals, or organization has engaged in suspicious activity. FIUs undertake operational analysis to examine patterns of criminal activity, identify all possible entities/individual potentially involved and predict possible future activity.¹⁰⁵ That is, the

¹⁰¹. Gottselig et al., 46.

¹⁰². Schott, VII-5.

¹⁰³. Schott, VII-6.

¹⁰⁴. Schott, VII-6,VII-7.

¹⁰⁵. Schott, VII-7.

FIU produces operational intelligence for law enforcement to take action on. One method used in this process is financial profiling which involves “gathering, organizing, and presenting evidence related to the financial status of subjects. The relevance of the profile is to show that the target cannot demonstrate a legitimate source for the difference between his or her outflow of cash versus the income. The tracing of a person’s assets may also provide leads linking the subject with predicate offenses.”¹⁰⁶ Once the FIU completes this process, it is in the hands of law enforcement to pursue the case further.

Strategic Analysis involves documenting new issues and trends from recently completed cases and incorporating them into current procedures for future intelligence operations and analysis. For example, recent evidence might suggest the emergence of criminal patterns or a number of ‘suspicious’ transactions within a particular industry or region. This might necessitate the FIU imposing new requirements on reporting entities or expanding the types of entities that report to it. This kind of analysis has broader AML/CTF implications (than the other two).¹⁰⁷

Disseminating Information

After the FIU has received and analyzed data, it must ‘disseminate’ or distribute it to the appropriate agency – domestic or international. The FIU has the responsibility of forwarding the results of its analysis to law enforcement, other intelligence agencies or

¹⁰⁶. Schott, VII-7.

¹⁰⁷. Gottselig et al., 60, 61.

prosecution if its analysis reveals criminal activity.¹⁰⁸ FIUs also share information with other FIUs guided by the *Principles for Information Exchange* (June 2001) and *Best Practices for the Exchange of Information* (November 2004).¹⁰⁹

Chapter Summary

It can be argued that it would not have been possible to fund the attacks of September 11, 2001 if the money supply to the terrorists involved had been cut off prior to, and over the course, of planning these attacks. Consequently, governments have deemed it imperative to focus their efforts on preventing terrorism by stopping the financing of terrorist activity. In pursuit of this endeavor, most governments have sharpened their focus on financial intelligence and attempted to strengthen processes and procedures in monitoring suspicious financial transactions. This chapter documents the fact that a major portion of the AML/CTF initiatives have taken place in the form of policy, program and legal initiatives. The focus on government in achieving its objectives through public administration and performance management has been minimal.

Terrorist financing is a critical component of terrorists' activities. Experts believe that it is not possible to completely stop funds to finance terror from flowing into the wrong hands. It is, however, possible to interrupt this flow by instituting measures at key 'checkpoints' in the laundering and transfer process. Effectiveness in countering financial crime is, therefore, measured in terms of disrupting the movement of funds to terrorists at

¹⁰⁸. Gottselig et al., 61.

¹⁰⁹. The Egmont Group, "Information Paper on Financial Intelligence Units and the Egmont Group," September, 2004. [cited on January 7, 2006] Available from World Wide Web: (http://www.egmontgroup.org/info_paper_final_oct_2004.pdf).

the place and time they expect these funds to reach them. Experts suggest a change in the outlook in fighting financial crime: "...the metrics most often used to assess efforts against terrorism financing – the total amount of money seized and the overall number of designations – are both inadequate and misleading."¹¹⁰ The focus of this study is how to improve success in countering financial criminals. The next chapter discusses the approach of the study.

¹¹⁰. Matthew Levitt, "Follow the money: challenges and opportunities in the campaign to combat terrorism financing," *The Washington Institute PolicyWatch/PeaceWatch*, March 6, 2007.

CHAPTER III

METHODOLOGY

Arnold M. Rose (1976) stated, “Facts do not simply lie around waiting to be picked up. Facts must be carved out of the continuous web of ongoing reality, must be observed within a specified frame of reference, must be measured with precision, must be observed where they can be related to other relevant facts. All of this involves ‘methods’.”¹¹¹ The first step involved in ‘carving’ out the facts was choosing a research design for this study: quantitative, qualitative, or both. As discussed earlier, this is a multiple case study of the performance management of financial intelligence units (FIUs). “...A case study, basically, is a depiction either of a phase or the totality of relevant experience of some selected datum...the datum may in sociological study be any of the following, taken singly or in combination: 1) a person, 2) a group of persons such as a gang or family, 3) a class of persons such as professors or thieves, 4) an ecological unit such as a neighborhood or community, 5) a cultural unit such as a fashion or institution.” explains Paul Foreman (1976).¹¹²

Any case study must begin with the collection and review of past literature. This study is preceded by a review of relevant literature from books, journals, newspapers, the Internet and other print media for the past 25 years. The purpose of this is to provide background material for the study. The literature review that constitutes the theoretical construct in this study is supported by primary data through interviewing financial intelligence government officials and related stakeholders. This provides in-depth

¹¹¹. James Black et al. *Methods and issues in social research* (New York: Wiley, c1976).

¹¹². Black et al. *Methods and issues in social research*, 89.

analyses of the organizational issues being studied from the perspective of those within the respective organizations. The pros are accepted with the cons and an attempt is made to control the potential shortcomings of case study research. Case studies offer limited generalization; what is relevant to one organization, for example, may not be applicable to another even if the nature of business of the two organizations is the same.

This study evolves from the notion of triangulation, that is, it represents the integration of interviews (qualitative research), surveys (quantitative research) and content analysis. The following sections are a description of each of these that constitute the methodology of this study.

Interviews

Interviews form a key component of this study. The rationale for conducting these interviews is discussed in Chapter IV. In drawing up questions for the interview, the Balanced Scorecard was chosen as the appropriate framework. Other options were considered such as the traditional results management approach, the program logic model, risk management approach, the scenario-based planning approach, the managing to system standards approach, and the capabilities-based planning and assessment approach. These are discussed below as outlined in an article¹¹³ published by Sharon Caudle of the GAO.

¹¹³. Caudle, Sharon. "Homeland Security: Approaches to Results Management." *Public Productivity and Management Review*, March 2005: 356.

Traditional Results Management Approach

This approach is also known as management by objectives (MBO), the components of which include developing a mission statement for the organization, establishing a strategic plan for it, identifying its key result areas, developing indicators, creating performance plans for individual employees, setting performance standards, conducting evaluations against these standards and finally, taking corrective action, if necessary.¹¹⁴

Program Logic Model

This is a performance management model. It involves a series of steps tying inputs (factors that go into the program) to outputs (what comes out of the program) and then to outcomes (results or impact of the program) based on how the program is expected to work and taking into account external factors that might influence the implementation of the program.¹¹⁵

Risk Management Approach

According to GAO report, *GAO-02-208T* (in the context of the ‘global war on terror’), risk management is “a systematic, analytical process to consider the likelihood that a threat will harm an asset or individuals and to identify actions that reduce the risk and mitigate the consequences of an attack or event. Risk management principles

¹¹⁴. Bacal, Robert, *A Critical Look At Performance Management Systems – Why Don’t They Work* (Bacal & Associates, October 1, 1994).

¹¹⁵. Anonymous, “Program Development and Evaluation,” 2005. [cited on December 11, 2005] Available from World Wide Web: (<http://www.uwex.edu/ces/pdande/evaluation/evallogicmodel.html>).

acknowledge that while risk generally cannot be eliminated, enhancing protection from known or potential threats can reduce it.”¹¹⁶

Scenario-Based Planning

This approach enhances the planning process by forcing organizations to think about different operational scenarios it will face in the future and how they will deal with the outcomes. The aim of this is to eliminate uncertainty.¹¹⁷ There are a number of steps involved in developing scenarios. The first of these is to identify a decision, list factors that could affect the outcome of the decision, rank them in order of effectiveness, draw out scenarios based on these rankings that could affect how decisions are made and analyze how these scenarios should affect decisions.¹¹⁸

Managing to System Standards

This approach involves an organization assessing its performance against that of other similar ones or against a government-established standard such as the ISO 9000, the quality management standard.¹¹⁹

¹¹⁶. United States General Accounting Office, “Homeland Security: A Risk Management Approach Can Guide Preparedness Efforts,” *GAO-02-208T* (October 31, 2001).

¹¹⁷. Anonymous, “Scenario Based Strategic Planning *Reader*: A Brief Overview and Introduction to Scenario Planning.” [cited on December 11, 2005] Available from World Wide Web: (http://www.opensourcescenarios.org/Scenario_planning_reader.PDF).

¹¹⁸. Caudle, Sharon. “Homeland Security: Approaches to Results Management.” *Public Productivity and Management Review*, March 2005: 363.

¹¹⁹ Caudle, Sharon. “Homeland Security: Approaches to Results Management.” *Public Productivity and Management Review*, March 2005: 365,366.

Capabilities-Based Planning and Assessment Approach

Policy think-tank RAND describes capabilities-based planning (CPB) as planning taking into consideration an organization's environment (such as economic) and other challenges to which it is exposed.¹²⁰

Balanced Scorecard (BSC)

One method commonly used in government adopted from the private sector is the balanced scorecard. The BSC was developed by Robert Kaplan and David Norton. It does not focus only on an organization's finances but serves as a means for an organization to carry out its strategy more effectively. The BSC examines an organization from four perspectives and uses metrics to document the organization's performance along the line of these perspectives.¹²¹ The first of these is the learning and growth perspective that deals with human resource development issues such as training and other employee advancement issues. The second is business process perspective which pertains to operational issues like the smooth flow of work processes. The third perspective is about the customer and customer satisfaction. The final perspective is financial which includes financial data and investment decisions based on cost-benefit and risk analysis. Metrics including elements from all perspectives must be developed and enforced by

¹²⁰. Paul Davis, "Analytic Architecture for Capabilities-Based Planning, Mission-System Analysis, and Transformation," RAND National Defense Research Institute (2002).

¹²¹. Arveson, P., "What is the Balanced Scorecard?," 1998. [cited on February 15, 2005] Available from World Wide Web: (<http://www.balancedscorecard.org/basics/bsc1.html>).

governments in order to ‘turn strategy into action’ and satisfy the requirements of the balanced scorecard.¹²²

Paul Niven who theorized on adopting the BSC to the public sector (2003) states, “Strategy remains at the core of the Scorecard system, regardless of whether it’s a local theater company, city government, Fortune 500 company or a mom and pop store.”¹²³ However, there are differences in applying the BSC to the private and public sectors, both, from an overall perspective and for each of the BSC perspectives. For starters, the missions of public sector organizations are easily discernible from their private sector counterparts and shape the four perspectives that constitute the framework. In this regard, Niven advises public sector managers, “While you are accountable for the efficient allocation of funds that is not your ultimate aspiration. You exist to serve a higher purpose, for example: ‘reducing the incidence of HIV,’ ‘bringing classical music to your community,’ or ‘increasing public safety.’”¹²⁴

Under the precept discussed above, the customer perspective assumes prime importance. Customer satisfaction stems from the organization’s mission and takes priority over fiscal gain.¹²⁵ In both sectors, how well an organization is able to satisfy its customers is impacted upon by financial constraints.¹²⁶ This is supplanted by employee

¹²². Ibid.

¹²³. Paul Niven., “Adapting the Balanced Scorecard to fit the public and nonprofit sectors?,” [cited on December 15, 2007] Available from World Wide Web: (http://www.balancedscorecard.biz/articles/adapting_BSC_Public_Sectors.html).

¹²⁴. Ibid.

¹²⁵. Ibid.

¹²⁶. Ibid.

growth and development, how employees are prepared to meet the demands of customers within these financial restrictions.¹²⁷ All four perspectives form a key part of the qualitative research section of this study.

The BSC was selected as the framework for this study because it has become widely accepted. It allows for the break-down of organizations in the study based on the four different perspectives, the assessment of the organizations' strengths and weaknesses and the establishment of a set of performance metrics to monitor the performance of these organizations. This study is a preliminary effort at meeting the critical need for development of metrics in the fight against financial crime by deploying the BSC. Financial indicators are needed because this fight does not have unlimited resources and the domestic-international funding balance may need shifting. A customer-orientation comes into play because the government must partner with banks and other private and public institutions in promulgating policies that are effective. Interdicting 'dirty' money is all about process; those prosecuting 'the war on terror,' for example, must ascertain which processes are most effective. And lastly, the employee learning and growth perspective may be, in some ways, the most critical. As noted at the onset, financial criminals are wily and adaptable. Those fighting them must adapt accordingly. This study, in part, is an effort at deploying the BSC in the context of fighting financial crime and the interview questions were framed along these lines.¹²⁸ However, interview research has its limitations which are discussed next.

¹²⁷. Ibid.

¹²⁸. Paper presented by Dr. Howard Frank and Jayesh D'Souza at the Annual Conference of the Association for Budgeting and Financial Management, Washington D.C., November 2005.

Limitations Of Interviews

Standardized interviews are exposed to certain biases in that the researcher assumes that all interviewees are equally knowledgeable about the areas covered in the interview. The researcher might also assume that the interviewees clearly understand the wording of the questions and all interviewees interpret the questions in the same way.¹²⁹

Dean and Whyte further elaborate on the short-comings of the standardized interview. The researcher must show caution against taking interviewee comments at face value. For example, interviewees might be under bureaucratic pressure to answer questions in a certain way or not disclose all the facts. The interviewee too might overlook certain observations or might not remember them as they happened. The researcher could create a distorted report for these and other reasons.¹³⁰ By depending on the research group involved in this study to provide responses to the best of their abilities and by reporting the results of the interviewees as accurately as possible, the biases mentioned above were controlled.¹³¹ This is followed by the final step in the triangulation process.

The next task is to conduct a content analysis of primary and secondary data. By going through data gathered from interviews, links between the findings of the interviews and the literature review are identified and generalizations drawn.¹³² In order for the

¹²⁹. Bruce Berg *Qualitative research methods for the social sciences* (Boston : Allyn and Bacon, 1989).

¹³⁰. Paul Atkinson et al. *Key Themes In Qualitative Research: Continuities and Change* (Walnut Creek, Calif.: AltaMira Press, c2003): 120.

¹³¹. Black et al. *Methods and issues in social research*, 92.

¹³². Yvonne Darlington *Qualitative research in practice stories from the field* (Crows Nest, NSW : Allen & Unwin, 2002).

researcher to draw inferences from generalizations made during the earlier research processes, it is helpful to conduct a survey. This methodology is discussed next.

Surveys

Survey research is of two types: self-administered and interviewer-administered. The former includes mail and electronic surveys while the latter includes telephone and person-to-person surveys.¹³³ This study involves self-administered surveys and the use of these has some advantages over other quantitative methodologies. In the context of public administration, surveys provide a convenient way of determining whether government programs intended to benefit the public are perceived as doing so. They are especially useful when the sample is large and dispersed. Given the spread of the sampling units in this study, surveys seem best suited to the purpose.¹³⁴ Another important advantage of surveys is ease of measurement of the results. The researcher doesn't have to modify the questions for each respondent and "can impute the same intent" to each response.¹³⁵

The target respondents for the survey were the same as those for the interviews: reporting entities, law enforcement, politicians and bureaucrats, and experts on the subject. For both the interviews and survey, all the requirements of the Institutional Review Board (IRB) were complied with, the consent of interviewees prior to recording the interviews was obtained and confidentiality regarding the subject matter of the

¹³³. SPSS, "SPSS Survey Tips," April 15, 2007. [cited on April 15, 2007] Available from World Wide Web: (<http://www.spss.com>): 9.

¹³⁴. Charles Backstrom and Gerald Hursh-Cesar *Survey Research* (MacMillan Publishing Company; 2nd edition, 1981).

¹³⁵. Earl Babbie *The Practice of Social Research* (Wadsworth Publishing Company, 1988).

interviews and (in certain cases, the identity of the interviewee) was ensured.¹³⁶ Survey results were tabulated by inputting the data from the completed surveys into a statistical package, SPSS. Analysis and conclusions from a slew of descriptive statistics and cross-tabulations followed. The data analysis of primary and secondary literature was collectively used to test the hypothesis of the study.

Chapter Summary

This chapter discussed the methodology of conducting research for this study and the rationale for deploying the BSC. The methodology included triangulation: a combination of interviews, surveys and content analysis. The purpose of the interviews is to sensitize differences in approaches FIUs in this study adopt in countering financial crime. The surveys, on the other hand, are intended to explore these differences further. Both the interviews and the surveys are structured along the lines of the BSC which is now commonly used in the field. The next two chapters present the results of, both, qualitative and quantitative research discussed in this chapter, first the interviews and then the surveys.

¹³⁶. Norman Denzin et al. *Strategies of qualitative inquiry* (Thousand Oaks, Calif. : Sage Publications, c2003).

CHAPTER IV

A QUALITATIVE ANALYSIS OF THE PERFORMANCE OF SELECTED FINANCIAL INTELLIGENCE UNITS – DEPLOYING THE BALANCED SCORECARD

Criminals are constantly finding new means to commit financial crime. The necessity to counter the high incidence of this crime has forced jurisdictions to sharpen crime-fighting modes and methods. Countries across the world have been setting up specialist financial intelligence units (FIUs) whose roles are to “collect information on suspicious financial transaction reports that come from banks and other financial institutions. They also monitor large amounts of cash crossing [their respective country’s borders], and support investigations into money laundering.”¹³⁷ This chapter explores the role and performance of FIUs through interviews with FIU officials and related entities in the Netherlands, the United States, Canada and Australia. It begins with a rationale for each of the questions that were posed in the course of the interview.

Rationale For Interview Questions

Interviews form an integral part of the study. The interview questions are based on an assessment of the organizations being studied, the four Balanced Scorecard components, comparison with other FIUs and specific policy issues dealing with new and emerging trends in financial crime. The organizations whose employees were interviewed for this study are listed in Appendix 2. A sample questionnaire used in the interviews can be found in Appendix 3. The interviews are formal or standardized, that is, the same set of questions were asked to interview participants from different FIUs with slight

¹³⁷. New Zealand Police, “Financial Crime”, March 17, 2004 [cited on December 28, 2004] Available from World Wide Web: (<http://www.police.govt.nz/service/financial/>).

modifications that were adapted to the situation of the jurisdiction of the interviewee. The ultimate goal here was to be able to compare responses for the purpose of benchmarking the performance and practices of one FIU against the other. The rationale for selection of the questions was as follows:

Introductory Questions

The purpose of these questions was to understand the overall working of the organizations and to gain an assessment of their performance from a broad perspective.

- 1) How would you assess your FIU's performance in fighting financial crime? What has the reaction been from politicians? Citizens? People within the organization?
- 2) Please discuss your FIU's strengths, weaknesses, opportunities and threats (SWOT analysis). What steps have been taken to improve its effectiveness and efficiency of operations post-9/11?
- 3) How does your FIU define success? For example, would you consider it a success if its investigations led to 50% of financial criminals being caught in (the jurisdiction of study)? What are the factors that lead to success for your FIU? What are the impediments to success?

Responses to these questions provide an overall assessment of the FIU under study. A report by the RAND National Security Division rightly asserted that, "At a time when 'transformation' is underway in defense and other areas of government, intelligence must keep pace or run the risk of increasing irrelevance and potential decline. And, in whatever form change comes, it must ultimately remain focused on the key goal of intelligence--outthinking and outsmarting our adversaries."¹³⁸ The first question outlines this sentiment – the respondent's assessment of the ability of his/her home FIU to 'outthink and outsmart its adversaries' and the assessment of the FIU's stakeholders,

¹³⁸. RAND Corporation, "Toward a revolution in intelligence affairs," 2005. [cited on April 11, 2006] Available from World Wide Web: (http://rand.org/pubs/technical_reports/2005/RAND_TR242.pdf).

namely, politicians, citizens and the FIU's employees, of the FIU's performance in doing so.

While simplistic in its orientation, SWOT analysis is an essential management tool to evaluate an organization's internal and external environment. This concept originated at the Stanford Research Institute with a view to finding an evaluative framework for corporate planning. It was the response of Fortune 500 companies to the opinion that long-range planning, up to 1960, was ineffective and costing companies too much.¹³⁹

In relation to countering terrorism, a US Congressional Research Service report highlights the importance of defining success, "How one perceives and measures progress is central to formulating and implementing anti-terror strategy. The perception of progress has a major impact on establishing priorities and allocating resources. The parameters used to measure progress can also set the framework for measurement of failures. To better define the parameters of success, it is important to determine what both the terrorists, and those who fight them, see as their goals and priorities."¹⁴⁰ Besides this, each respondent was asked about his/her perception of success and barriers to achieving it to probe cultural differences between jurisdictions and find out if these differences, if any, have an influence on the performance of FIUs in tackling financial crime.

¹³⁹. Albert Humphrey, "The origin of SWOT analysis," [cited on April 11, 2006] Available from World Wide Web: (<http://www.european-quality.co.uk/Frequently-Asked-Questions/Business-Improvement-definitions/The-origin-of-SWOT-Analysis/>).

¹⁴⁰. Perl, R. "Combating Terrorism: The Challenge of Measuring Effectiveness," *CRS Report for Congress* (November 23, 2005).

Questions Based on the Balanced Scorecard Approaches

This set of questions is intended to get a detailed perspective of the organization's functions and an evaluation of specific areas of performance.

- 4) Business Process Perspective: How is your FIU set up to ensure it performs to maximum potential? How do you know it is doing a good job? How would you assess the processes and procedures followed by your FIU? What measures of performance do you think it should use to improve business processes?
- 5) Customer Satisfaction Perspective: Who does your FIU see as its customers? How does it measure customer satisfaction and dissatisfaction? What measures of performance do you think it should use to improve customer satisfaction?
- 6) Human Resource Perspective: How does your FIU assess its staffing needs and how does it train people to meet these needs? What kind of performance appraisal system does it have in place? How does your FIU tie staffing to strategic aims/goals? How would you assess the performance of the staff at your FIU? What measures of performance do you think your FIU should use for staff?
- 7) Financial Perspective: Is your FIU producing expected return on investment? Which area or programs in financial crime is investment needed in? Which areas of your FIU could benefit from increased funding? What measures do you use to determine financial performance? How do you suggest your FIU measure financial performance?

These questions form the crux of the interviews and are based on the Balanced Scorecard. The BSC is a model for organizational performance revolving around key performance indicators in four areas, *financial, customer, internal processes, and employee learning and growth*. Indicators in these four areas are in turn embedded in strategies keyed to mission. The BSC is deployed here as a mechanism for assisting decision-makers and analytics in improving financial crime policy, but may also prove useful in other facets of the 'war on terror'.¹⁴¹

¹⁴¹. Paper presented by Dr. Howard Frank and Jayesh D'Souza at the Annual Conference of the Association for Budgeting and Financial Management, Washington D.C., November 2005.

General Questions

These questions are meant to cover those areas that the interviewee's responses might not have covered previously. This ensures the comprehensiveness of the interview.

Do you have any suggestions for your FIU to improve:

- a) implementation
- b) information-sharing or
- c) strengthening its planning process, both short- and long-term?

Lack of coordination, information-sharing and planning have been common complaints against agencies involved in fighting financial crime, both, in the United States and abroad. The table below shows the number of agencies with responsibility for preventing terrorist financing that gives an example of the fragmented approach to solving the problem.

Table 4-1: Key U.S. Government Entities Responsible for Deterring Terrorist Financing

Department	Bureau/Division/Office	Role
Central Intelligence Agency		Leads gathering, analyzing, and disseminating intelligence on foreign terrorist organizations and their financing mechanisms; charged with promoting coordination and information-sharing between all intelligence community agencies.
Homeland Security	Bureau of Customs and Border Protection	Detects movement of bulk cash across U.S. borders and maintains data about movement of commodities into and out of the United States.
	Bureau of Immigration and Customs Enforcement (ICE - formerly part of the Treasury's U.S. Customs Service)	Participates in investigations of terrorist financing cases involving U.S. border activities and the movement of trade, currency, or commodities.
	U.S. Secret Service	Participates in investigations of terrorist financing cases, including those involving counterfeiting.
Justice	Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)	Participates in investigations of terrorist financing cases involving alcohol, tobacco, firearms, and explosives.

	Civil Division	Defends challenges to terrorist designations.
	Criminal Division	Develops, coordinates, and prosecutes terrorist financing cases; participates in financial analysis and develops relevant financial tools; promotes international efforts and delivers training to other nations.
	Drug Enforcement Administration (DEA)	Participates in investigations of terrorist financing cases involving narcotics and other illicit drugs.
	Federal Bureau of Investigation (FBI)	Leads all terrorist financing investigations and operations; primary responsibility for collecting foreign intelligence and counterintelligence information within the United States.
National Security Council		Manages the overall interagency framework for combating terrorism.
State	Bureau of Economic and Business Affairs	Chairs coalition subgroup of a National Security Council Policy Coordinating Committee, which leads U.S. government efforts to develop strategies and activities to obtain international cooperation.
	Bureau of International Narcotics and Law Enforcement Affairs	Implements U.S. technical assistance and training to foreign governments on terrorist financing.
	Office of the Coordinator for Counterterrorism	Coordinates U.S. counterterrorism policy and efforts with foreign governments to deter terrorist financing.
Treasury	Executive Office for Terrorist Financing and Financial Crime	Develops U.S. strategies and policies to deter terrorist financing, domestically and internationally; develops and implements the National Money Laundering Strategy as well as other policies and programs to prevent financial crimes.
	Financial Crimes Enforcement Network (FinCEN)	Supports law enforcement investigations to prevent and detect money laundering, terrorist financing, and other financial crime through use of analytical tools and information-sharing mechanisms; administers the Bank Secrecy Act.
	Internal Revenue Service (IRS) Criminal Investigation	Participates in investigations of terrorist financing cases with an emphasis on charitable organizations.
	IRS Tax Exempt and Government Entities	Administers the eligibility requirements and other IRS tax law that apply to charitable and other organizations that claim exemption from federal income tax.
	Office of Foreign Assets Control	Develops and implements U.S. strategies and policies to deter terrorist financing; imposes controls on transactions; and freezes foreign assets under U.S. jurisdiction.

	Office of the General Counsel	Chairs Policy Coordination Committee for Terrorist Financing, which coordinates U.S. government efforts to identify and deter terrorist financing; coordinates U.S. government actions regarding implementation of, and imposition of, economic sanctions under Executive Order 13224 with respect to the freezing of terrorist-related assets.
	Office of International Affairs	Provides advice, training, and technical assistance to nations on issues including terrorist financing deterrence.

Source: GAO, GAO-04-163, November 2003

A GAO report released in 2004 declared that US law enforcement agencies faced continuing challenges in coordinating their efforts under the National Money Laundering Strategy (NMLS).¹⁴² In an earlier report, the GAO stated effective leadership, manageable priorities and accountability mechanisms as necessary components of any successful strategic plan.¹⁴³

Comparative Questions

This question assesses where the FIU stands in comparison to those outside of its national boundaries.

- 8) How does your FIU (or other intelligence agencies dealing with financial crime) compare to those abroad? Better, same or worse?

Benchmarking is the process of “examining best-in-class organizations and attempting to emulate their results.”¹⁴⁴ This process encourages organizations to evaluate

¹⁴². United States General Accounting Office, “Investigating Money Laundering and Terrorist Financing: Federal Law Enforcement Agencies Face Continuing Coordination Challenges,” *GAO-04-710T* (May 11, 2004).

¹⁴³. United States General Accounting Office, “Combating Money Laundering: Opportunities exist to improve the national strategy,” *GAO-03-813* (September 2003).

¹⁴⁴. Paul Niven, *Balanced scorecard step-by-step for government and nonprofit agencies* (Wiley: June 25, 2003).

their own processes and compare them with those of similar organizations in order to achieve the best results. It potentially leads to the organization serving customers better, in other words, increased customer satisfaction.¹⁴⁵ However, some critics argue that benchmarking is too time-consuming and expensive.¹⁴⁶

Technical Question

This question determines the performance of FIUs in countering newer methods of financial crime which terrorists use to raise funds.

- 9) How would you evaluate your FIU's focus on financial crime committed through:
- a) international trade through the abnormal pricing of goods?
 - b) the use of informal banking systems, credit/debit cards and the Internet?

In Chapter 2, emerging methods of financial crime were discussed. These have grown in prominence as governments have clamped down on more traditional modes of committing financial crime.

Analysis Of The Administrative Practices In The Netherlands, Canada, The United States And Australia

The roles of the FIUs and the length of time they've been in existence vary by country. The United States' Financial Crimes Enforcement Network (FinCEN) came into existence in April 1990¹⁴⁷ while the Financial Transactions and Reports Analysis Centre

¹⁴⁵. Dennis Affholter, *Outcome Monitoring*. Hand book of Practical Program Evaluation. (Jossey-Bass Inc., CA, 1994).

¹⁴⁶. Howard Risher and Charles Fay, *Managing employees as a source of competitive advantage*. The performance imperative : strategies for enhancing workforce effectiveness (San Francisco : Jossey-Bass, c1995).

¹⁴⁷. Federation of American Scientists, "FINCEN – History," August 30, 1998 [cited on December 28, 2004] Available from World Wide Web: (<http://www.fas.org/irp/agency/ustreas/fincen/history.htm>).

of Canada (FINTRAC) is relatively new, having been established in July 2000.¹⁴⁸ The responsibilities of FINTRAC cover money laundering and terrorist financing detection while those of the Australian Transaction Reports and Analysis Centre (AUSTRAC), set up in 1988, include the deterrence of tax evasion as well.¹⁴⁹ A number of FIUs transcend national boundaries and work together as part of an informal group called the Egmont Group.¹⁵⁰

Administrative-Type FIUs

FIUs differ from one another in structure and reporting authority. This study deals with administrative-type FIUs which serve as a link between the entities that report to it such as financial institutions, and law enforcement. They are “either attached to a regulatory/supervisory authority, such as the central bank or the ministry of finance, or an independent administrative authority.”¹⁵¹ The advantages and disadvantages of administrative-type FIUs are listed in Table 4.

Table 4-2: Administrative-Type FIUs

Advantages

1) The FIU acts as an interface between the financial and other sectors subject to the reporting obligation, on the one hand, and law enforcement authorities on the other hand, thus avoiding the creation of direct institutional links between these institutions and law

¹⁴⁸. Department of Finance, Canada, “FINTRAC receives increased funding to combat terrorist financing,” October 25, 2001. [cited on December 28, 2004] Available from World Wide Web: (<http://www.fas.org/irp/agency/ustreas/fincen/history.htm>).

¹⁴⁹. AUSTRAC, “About AUSTRAC,” June 8, 2004. [cited on December 28, 2004] Available from World Wide Web: (<http://www.austrac.gov.au/about/>).

¹⁵⁰. OECD, “The Egmont Group of Financial Intelligence Units,” August 25, 2003. [cited on December 28, 2004] Available from World Wide Web: (http://www1.oecd.org/fatf/ctry-orgpages/org-egmont_en.htm).

¹⁵¹. Paul Allan Schott, “Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism: A Manual for Countries to Establish and Improve Their Institutional Framework,” The World Bank (2002): VII-9.

enforcement agencies while bringing disclosures to the attention of law-enforcement agencies.

2) Financial institutions are more confident about disclosing information if they know that dissemination will be limited to cases of money laundering and financing of terrorism and will be based on the FIU's own analysis rather than the reporting institution's limited information.

3) The FIU is a "neutral," technical, and specialized interlocutor for the reporting parties.

4) If the FIU is placed in a regulatory agency, it is the natural interlocutor of the financial institutions.

5) Information can be easily exchanged with all types of FIUs.

Disadvantages

1) Because the FIU is not part of the law-enforcement administration, there may be a delay in applying law-enforcement measures, such as freezing a suspicious transaction or arresting a suspect, on the basis of financial disclosures.

2) The FIU usually does not have the range of legal powers that law enforcement agencies and judicial authorities have to obtain evidence.

3) The administrative-type FIUs (unless they are truly independent) are more subject to the direct supervision of political authorities.

Examples of countries with administrative-type FIUs include Andorra, Aruba, Australia, Belgium, Bolivia, Bulgaria, Canada, Colombia, Croatia, the Czech Republic, France, Israel, the Republic of Korea, Liechtenstein, Malta, Monaco, the Netherlands, the Netherlands Antilles, Panama, Poland, Romania, Russia, Slovenia, Spain, Ukraine, the United States, and Venezuela.

Source: International Monetary Fund, The World Bank Group, 2004

Nineteen interviews were conducted for this study involving personnel from administrative-type FIUs: the Office For The Disclosure of Unusual Transactions (Meldpunt Ongebruikelijke Transacties - MOT) in the Netherlands, the Financial Transactions and Reports Analysis Centre of Canada, the Financial Crimes Enforcement Network in the United States and the Australian Transaction Reports and Analysis Centre

and related entities. What follows is a country-by-country write-up of these interviews segmented along the lines of the BSC and an analysis of the responses beginning with the Netherlands. The names of the interviewees have not been disclosed to protect confidentiality.

Case 1: The Netherlands - Office For The Disclosure of Unusual Transactions (Meldpunt Ongebruikelijke Transacties - MOT)

Legal Underpinnings and Organization

The Office For The Disclosure of Unusual Transactions reports to the Dutch Ministry of Justice and is located in Zoetermeer. The head of the agency is supported by three units – Financial Investigations, Policy and Analysis, and Systems Management in addition to administrative staff which together constitute 26 employees.¹⁵² Guided by the *Wet Melding Ongebruikelijke Transacties* (Act on the Disclosure of Unusual Transactions of 1994) which obligates financial service providers to report unusual transactions to MOT¹⁵³, the agency employs fifteen investigators, two policy advisors and two information technology specialists to carry out its duties.¹⁵⁴ It also works closely with the Bureau for Police Support of the National Public Prosecutor (BLOM).¹⁵⁵

¹⁵². MOT, “Disclosure of Unusual Transactions: Annual Overview 2004,” [cited on December 30, 2004] Available from World Wide Web: (http://www.justitie.nl/mot/images/Nieuws/MOT_annual_report_2003.pdf).

¹⁵³. Ibid.

¹⁵⁴. Anonymous, interview by author, written notes, The Netherlands, June 15, 2005.

¹⁵⁵. MOT, “Disclosure of Unusual Transactions: Annual Overview 2004,” [cited on December 30, 2004] Available from World Wide Web: (http://www.justitie.nl/mot/images/Nieuws/MOT_annual_report_2003.pdf).

The expansion of MOT's role over the past 10 years to reporting not only on financial but also non-financial transactions, the disclosure of information to other governmental agencies such as customs authorities and tax administration and the broadening of the definition of money laundering to include tax fraud have generally resulted in the annual number of unusual transactions recorded by MOT rising steadily from year to year.¹⁵⁶ After September 11, 2001, the scope of reporting requirements imposed by MOT on reporting entities was expanded to include terrorist financing in addition to money laundering. In relation to this, the objective of MOT is to ensure that transactions involving either of these activities does not take place in the Dutch financial system, stated an auditor.¹⁵⁷

While MOT does not have regulatory authority (this is entrusted to the Ministries of Justice and Finance), it receives, analyzes and disseminates information just like any other FIU stated a civilian agent.¹⁵⁸ Among those that report to MOT are banks, insurance and credit card companies, casinos, lawyers, accountants, notaries, real estate brokers, tax advisors, high-value traders, art dealers, auctioneers, and jewelers.¹⁵⁹ Objective and subjective indicators are used to decide whether transactions are 'unusual'; if they are, there is a legal obligation to report them to MOT. Objective indicators are a set of criteria according to which entities are obligated to disclose transactions. Subjective indicators are those which would require disclosure subject to the judgment of the entity, that is,

¹⁵⁶. Ibid.

¹⁵⁷. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

¹⁵⁸. Anonymous, interview by author, written notes, The Netherlands, June 15, 2005.

¹⁵⁹. Van Der Krans, Anatoli. "Terrorism and Financial Supervision." *Utrecht Law Review* (December 2005): 127, 128.

transactions where the institution has reason to believe that they are connected with money laundering or the financing of terrorism.¹⁶⁰ A list of indicators is provided in the table below:

Table 4-3: List of Indicators - Unusual Transactions Act

1 November 2005	
<p>1) All indicators require disclosure of intended transactions as well as executed transactions.</p> <p>2) The amounts mentioned apply to: Euro or the equivalent value in foreign currencies.</p> <p>3) Transactions which are reported to the police or judicial authorities in connection with money laundering, must also be reported to the MOT (number: B 0510111)</p> <p>4) Transactions have to be reported as soon as possible, but at least within fourteen days after the detection of the unusual character of the transaction.</p>	
Objective indicators (Disclosure obligation)	
Transactions with nominated countries	
B 0510100	Transactions with (legal) persons situated in countries or areas, which are nominated by the minister of Finance and Justice as an unacceptable risk for money laundering and terrorism financing.
Explanation	No countries have been nominated so far.
Cash transactions	
B 0510133	Cash transactions exceeding € 15,000 whereby one currency is exchanged into another currency or whereby small denomination notes are exchanged for larger denomination notes.
Explanation:	This indicator is only used for cash exchange, i.e. transactions using coins or banknotes and not for cash deposits or withdrawals.
Money transfers	
T 0510141	Cash transactions exceeding € 2,000 in which monies are furnished in the form of notes and coins, checks or by means of a credit or debit card, or are made payable in the form of notes and coins, checks or through deposits into an account.
Explanation:	The money transfer was added to the MOT Act as a financial service in 1998. The indicator can be used by money transfer institutions. To prevent mistakes concerning the concept of money transfer the MOT newsletter of July 2001 contains an explanation of the definition and examples of MTs.

¹⁶⁰. Nederlandse Vereniging van Banken, "List of Indicators Unusual Transaction Act (Wet MOT)," [cited on January 21, 2005] Available from World Wide Web: (<http://www.nvb.nl/scrivo/asset.php?id=12012>).

Subjective indicator (Disclosure obligation if according to the judgment of the financial institution the following situation is applicable.)

Connected with money laundering or financing of terrorism

B 0510211 Transactions where the institution has reason to believe that they are connected with money laundering or the financing of terrorism.

Source: Nederlandse Vereniging van Banken, November 1, 2005

The system of indicators used by MOT changes with time as some indicators are deleted and new ones added.¹⁶¹ A banker explained that recently, the number of objective criteria were reduced while the number of subjective ones were increased giving banks more liberty to define their own criteria in reporting potential money launderers and terrorist financiers.¹⁶² The changes in these indicators along with other factors could have an impact on the number of unusual transactions reported. In 2004, the unusual transactions reported fell for the first time since 1996 to 175,000. The bulk of these involved money transfers, that is, money transferred into and out of the Netherlands without using financial institutions as an intermediary.¹⁶³ The reports submitted by MOT to the police rose from 38,000 in 2003 to 41,000 involving EUR 3.2 million.¹⁶⁴ Such a large value calls for the need to conduct investigations effectively and efficiently. What follows is a dissection of MOT's performance using the BSC.

¹⁶¹. MOT, "Administrative Processing of Reports," Reports of Unusual Transactions Newsletter (January 2003).

¹⁶². Anonymous, interview by author, written notes, The Netherlands, June 14, 2005.

¹⁶³. Dutch Ministry of Justice, "Increased number of unusual financial transactions," [cited on January 21, 2005] Available from World Wide Web: (http://www.justitie.nl/english/press/press_releases/archive/archive_2005/%5C50715Increased_number_of_unusual_financial_transactions.asp).

¹⁶⁴. Ibid.

Business Process Perspective - MOT prides itself on the sophistication of its technology which, according to a civilian agent, enables it to process a fairly large volume of reports received, analyze them and disseminate them to the relevant police region.¹⁶⁵ The Suspicious Transactions Intranet is the medium through which all 26 police regions can view these reports. Besides offering the advantages of a paper-free operation, the Intranet enhances cooperation. This is because “each region can also view information about suspicious transactions notified to other regions. In this way, the regions can examine whether cooperation would be desirable in a given case.”¹⁶⁶ On a broader scale, the Dutch Ministry of Justice was awarded a grant for the development of FIU.NET, “a decentralized computer network designed to connect (EU) Financial Intelligence Units (FIUs) using modern technology and computers [in order] to (bilaterally) exchange financial intelligence information.”¹⁶⁷ Besides the police, MOT also works closely with the Dutch Intelligence and Security Services (AIVD¹⁶⁸) and especially with the

¹⁶⁵. Anonymous, interview by author, written notes, The Netherlands, June 15, 2005.

¹⁶⁶. Dutch Ministry of Justice, “Record number of unusual transactions reported”, May 15, 2000 [cited on January 21, 2005] Available from World Wide Web: (http://www.justitie.nl/english/press/press_releases/archive/archive_2000/150500record_number_of_unusual.asp).

¹⁶⁷. FIU.NET, “Welcome to FIU.NET”, [cited on January 21, 2005] Available from World Wide Web: (<http://www.fiu.net/>).

¹⁶⁸. Algemene Inlichtingen- en Veiligheidsdienst

Rotterdam-Rijnmond regional police¹⁶⁹ to counter drug smuggling in the Netherlands Antilles and Aruba.¹⁷⁰

Operational issues that MOT could address are the lack of influence of its policy-makers in the decision-making process and the absence of a website in English that would help promote its work. Also, MOT uses only a sole qualitative performance measure and does not use quantitative performance measures nor does it compare its performance to that of other FIUs, according to a civilian agent.¹⁷¹ So, how can MOT enhance the business aspect of its performance? An auditor calls for it to “invest more in expertise, in estimating and analyzing the nature and the size of money laundering in the Netherlands, and in establishing an integral approach towards money laundering (taking the whole system as a starting point and all the activities: risk analysis and problem definition, prevention, reporting, data-analysis, investigating, administrative punishment, prosecuting, criminal punishment, etc.).”¹⁷²

Customer Perspective - According to one civilian agent, the relationship between MOT and its aforementioned public service counterparts is of utmost importance in the AML/CTF chain. As mentioned earlier, MOT has taken concrete steps towards collaboration with law enforcement. In fact, plans are underway, to merge with the police

¹⁶⁹. Dutch Ministry of Justice, “Increased number of unusual financial transactions,” July 12, 2005 [cited on January 21, 2005] Available from World Wide Web: (http://www.justitie.nl/english/press/press_releases/archive/archive_2005/%5C50715Increased_number_of_unusual_financial_transactions.asp).

¹⁷⁰. Anonymous, interview by author, written notes, The Netherlands, June 15, 2005.

¹⁷¹. Anonymous, interview by author, written notes, The Netherlands, June 15, 2005.

¹⁷². Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

and form a law-enforcement-type FIU that will increase its staff to seventy-five. However, the civilian agent pointed out that there exists frustration that not enough of cases result in prosecution as per MOT's expectations nor is there enough feedback from the police-force.¹⁷³ Besides these public service counterparts, reporting entities are viewed as MOT's customers. The civilian agent revealed that the reporting entities find compliance activities time-consuming.¹⁷⁴ A banker stressed that some of the reporting entities have found MOT's reporting criteria not clear "especially, the criteria for international transfers by cash, by banks, need special interpretation."¹⁷⁵ On the positive side, noted the banker, MOT's decision to align its requirements with international Customer Due Diligence requirements has resulted in convenience in reporting.¹⁷⁶

This banker suggested that in order for reporting entities to better comply with the concerned regulations, MOT would be better served if its staff were less technical and bureaucratic in dealing with reporting entities.¹⁷⁷ Also, if MOT imposes non-compliance penalties that are too soft or compliance requirements that over-impose on customer confidentiality or result in heavy compliance costs to the reporting entities, an auditor opined, then, the level of compliance could be low.¹⁷⁸ An auditor also suggested that a satisfaction survey with multiple choice and open answer questions conducted among

¹⁷³. Anonymous, interview by author, written notes, The Netherlands, June 15, 2005.

¹⁷⁴. Anonymous, interview by author, written notes, The Netherlands, June 15, 2005.

¹⁷⁵. Anonymous, interview by author, written notes, The Netherlands, June 14, 2005.

¹⁷⁶. Anonymous, interview by author, written notes, The Netherlands, June 14, 2005.

¹⁷⁷. Anonymous, interview by author, written notes, The Netherlands, June 14, 2005.

¹⁷⁸. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

reporting entities would provide useful feedback to MOT in establishing and revising reporting requirements. MOT would also enhance its relationship with reporting entities by reporting back to them on the outcome of law enforcements' investigations of cases these entities reported.¹⁷⁹ MOT's performance with respect to reporting entities can be enhanced by keeping track of the transaction costs incurred by these entities in reporting unusual transactions, providing clarity in reporting instructions, guaranteeing confidentiality of reported information. A good measure with respect to MOT's public counterparts relates to the quality of information it distributes to them, deliberated an auditor.¹⁸⁰

Learning and Growth Perspective - Among the qualities a financial intelligence analyst must ideally possess are technical knowledge in the areas of money laundering and terrorist financing and as an auditor put it, "the ability to analyze the reported information not only on a case [by] case basis, but also to determine trends and structure within money laundering [and terrorist financing]."¹⁸¹ Based on these criteria, MOT staff members seem well-trained in their field, determined one interviewee. The interviewee further added that staff members are set clear expectations, both, for themselves individually and for the groups they work in. Specialists within the organization are free to enhance their skill and knowledge level by enrolling in appropriate courses. For example, one of the policy analysts at MOT has completed a course in compliance. Also,

¹⁷⁹. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

¹⁸⁰. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

¹⁸¹. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

learning on the job is a key component of training. Whenever necessary, technical training is provided as with the new intelligence software, Business Objects. Performance appraisals are conducted regularly, one of which is a competencies evaluation by the Ministry of Justice twice a year. This is besides an annual appraisal conducted by the employee's manager. If an employee fails to perform up to expectations within a period of two competency evaluations and an appraisal, he/she is dismissed, a civilian agent explained.¹⁸²

Financial Perspective - Perhaps the biggest impact of budgetary constraint at MOT, in a civilian agent's opinion, is an expanding agenda with the same number of staff members.¹⁸³ Recently, the Dutch government committed more than EUR 400 million over five years to counter terrorism and radicalization. This translates to approximately 600 full-time personnel "being added to the intelligence, security and investigation services involved."¹⁸⁴ However, an auditor clarified that these funds will be directed towards the National Security Agency (AIVD) and other such organizations involved in the fight of terrorism and not particularly terrorist financing.¹⁸⁵ Perhaps, this is where funds are best invested, an auditor and banker felt: expertise in understanding how

¹⁸². Anonymous, interview by author, written notes, The Netherlands, June 15, 2005.

¹⁸³. Anonymous, interview by author, written notes, The Netherlands, June 15, 2005.

¹⁸⁴. Government of the Netherlands, "Extra Budget For Combating Terrorism," January 24, 2005. [cited on February 3, 2006] Available from World Wide Web: (http://www.government.nl/actueel/nieuwsarchief/2005/01January/24/0-42-1_42-54369.jsp).

¹⁸⁵. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

transgressors operate, work within the criminal network and infiltrate the systems of financial and other such institutions.^{186,187}

The success of the government's investment will ultimately be determined not by its size, pointed out an auditor, but by the way in which it is used, that is, outcomes. This translates to what return the government is getting on its investment but when one considers the grand scheme of things, the amount of assets frozen or funds confiscated (or even money recovered) pale in comparison to the volume of money laundered or used to finance terrorism, insisted another interviewee. The auditor went on to explicate that it might, therefore, be worth the government's while to invest in researching new methods of money laundering, such as, the use of underground banking and the Internet to launder funds while at the same time (in relation to MOT) continue investing in staff (both in terms of adding new staff and enhancing skills and knowledge of existing staff members) and the availability and improvement of technology.¹⁸⁸ The best indicator of MOT's performance, mused one banker, would be the amount of financial crime these investment efforts help deter.¹⁸⁹

The Dutch began tightening their AML/CTF laws in the 1990s. Until then, stated an auditor, its financial system was considered to be a "relatively free haven for money laundering and other financial crimes."¹⁹⁰ Also, Aruba and the Netherlands Antilles, both

¹⁸⁶. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

¹⁸⁷. Anonymous, interview by author, written notes, The Netherlands, June 14, 2005.

¹⁸⁸. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

¹⁸⁹. Anonymous, interview by author, written notes, The Netherlands, June 14, 2005.

¹⁹⁰. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

part of the Kingdom of the Netherlands, were notorious for being drug trafficking centers. This changed, especially, after the events of September 11, 2001 when the Dutch government adopted the National Security and Anti-Terrorism Action Plan which restructured the supervision of financial markets by streamlining supervisory tasks among the Dutch National Bank, the Chamber that oversees the Dutch pension and insurance sector, and the Authority of Financial Markets (AFN). However, the system is plagued administratively owing to the number of players in the fight against financial crime, their over-lapping tasks and the lack of coordination among them. Secondly, there seems to be a need for re-evaluation as to what the problem really is, whether the state should be involved and if so, how the problem should be defined and approached. Only once this is done can an agency establish a suitable performance management system.¹⁹¹ A fragmented approach to the problem as well as a lack of vision in solving the problem are current business practices that need to be addressed for this to happen.

According to one auditor, the success of any such system is naturally judged by the percentage of money launderers or terrorist financiers caught. Such a system will depend on the approach adopted by all the financial crime-fighting units in the system: repressive, that is, the focus is on catching and punishing all money launderers and terrorist financiers or preventive, that is, making the possibility of laundering money or financing terrorism as difficult as possible.¹⁹² A banker noted that while MOT operates retroactively and the reports it produces in the AML/CTF process are key in money laundering and terrorist financing prevention, the success of an AML/CTF system

¹⁹¹. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

¹⁹². Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

depends, perhaps, even more so on its preventative measures.¹⁹³ Suggested performance measures based on the entire chain (financial institutions, MOT, police, justice, special investigating institutions, supervisory bodies, etc.) included:

“a) Catching ratio: (what is the chance that a money launderer is caught by the chain):

- number of money launderers that investigating institutions have caught in relation to the estimated population of money launderers or
- amount of money that is caught by investigating institutions in relation to the estimated total amount of money being laundered

b) Punishing ratio: (what is the chance that a caught money launderer will get punishment from the chain):

The number of caught money launderers that have received a form of punishment/sanction (this can be an administrative fine or a sentence to jail).

c) Recidivist ratio: Number of caught money launderers that have been caught and punished in earlier cases (indicator of the success of the punishments that are used: low punishments are not a barrier to commit the crime again).¹⁹⁴

An auditor touched upon the cruciality of gathering data to producing the performance metrics listed above. The auditor elaborated that data relevant to the indicators mentioned above, include “the number and sort of institutions that report unusual transactions the number of processed reports and the processing time of unusual cases by MOT, the number of suspicious transactions or cases that are reported by MOT to investigating institutions, the number of cases with an administrative sanction, the number of cases handed over to justice, the number of cases brought before court, the number of convictions, the total amount of money confiscated, the total amount of money prevented from being misused (by catching money launderers before they have laundered money), the number and type of suspects, the usage of MOT-information in other

¹⁹³. Anonymous, interview by author, written notes, The Netherlands, June 14, 2005.

¹⁹⁴. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

cases.”¹⁹⁵ Such information, tracked from the beginning of the cycle (information reported by an entity) to the end (the court’s judgment) should be gathered on an annual basis, so that performance can be monitored one year against the other.¹⁹⁶ These would help enhance a system that the FATF described in its first round of mutual evaluations as “a well-designed, legally comprehensive system which should provide a very effective response to the challenge posed by money laundering.”¹⁹⁷

In contrast to MOT, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) uses an elaborate system of performance measures. It is also subject to privacy legislation that distinguishes it from other FIUs. The next analysis covers these and other aspects of FINTRAC.

Case 2: Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

Legal Underpinnings and Organization

FINTRAC was created in 2000 as an arm’s length agency from law enforcement (no prosecutorial authority) and other government agencies to assist in the fight against transnational crime like money laundering and terrorist financing.¹⁹⁸ Its core function is financial transaction case disclosure – “when there are reasonable grounds to suspect that the financial transactions would be relevant to an investigation or prosecution of a money

¹⁹⁵. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

¹⁹⁶. Anonymous, interview by author, written notes, The Netherlands, June 13, 2005.

¹⁹⁷. OECD, “FATF Mutual Evaluations – The First Round (1992-1995),” Financial Action Task Force (2005).

¹⁹⁸. Hubbard, Robert, Daniel Murphy, Fergus O’Donnell, and Peter DeFreitas, *Money laundering and proceeds of crime* (Toronto: Irwin Law Inc., 2004): 322-323.

laundering or terrorist activity financing offence or threats to the security of Canada, FINTRAC provides the financial intelligence to the appropriate law enforcement, intelligence or other designated agencies.”¹⁹⁹ One interviewee disclosed that it made its first disclosure in 2002 and has made 450 disclosures since then.²⁰⁰ It works to ensure that reporting entities are in compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and works actively with international anti-financial crime bodies to accomplish its overall objective.

There are two characteristics of FINTRAC that distinguish it from other, more prominent FIUs, according to one interviewee: 1) FINTRAC’s threshold for suspicious transactions being reported is “the reasonable suspicion that a transaction is subject to prosecution.”²⁰¹ While it has no written guidelines to help its analysts determine whether a transaction is related to money laundering or terrorist financing, it bases its analysis on indicators and typologies issued by other FIUs and the FATF.²⁰² 2) FINTRAC’s authority is limited by Section 8 of the *Charter of Rights and Freedoms* which states “Everyone has the right to be secure against unreasonable search or seizure.”²⁰³ and the *Privacy Act* which “imposes obligations on some 150 federal government departments

¹⁹⁹. FINTRAC, “FINTRAC’s Annual Report 2004, Overview,” November 4, 2004. [cited on February 5, 2006] Available from World Wide Web: (http://www.fintrac.gc.ca/publications/annualreport/2004/1_e.asp).

²⁰⁰. Anonymous, interview by author, written notes, Canada, September 8, 2005.

²⁰¹. Anonymous, interview by author, written notes, Canada, September 8, 2005.

²⁰². Office of the Auditor General of Canada, “Implementation of the National Initiative to Combat Money Laundering,” November 23, 2004. [cited on February 13, 2006] Available from World Wide Web: (<http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20041102ce.html>).

²⁰³. Electronic Frontier Canada, “Canadian Charter of Rights and Freedoms,” [cited on February 13, 2006] Available from World Wide Web: (<http://www.efc.ca/pages/law/charter/charter.text.html>).

and agencies to respect privacy rights by limiting the collection, use and disclosure of personal information.”²⁰⁴ FINTRAC has to work around the restrictions imposed by these acts. For example, a government administrator commented on how legislation would have to be changed to implement all of the FATF’s 40 recommendations.²⁰⁵ Also, its scope of authority is restricted by legislation and hence, it does not cover certain industries like precious metals, explained the administrator.²⁰⁶

Built around a workforce of 250 employees, FINTRAC is headquartered in Ottawa with three regional offices in Montreal, Toronto and Vancouver. While staff members located at its Ottawa headquarters are multi-functional, staff members in the other offices play liaison and compliance roles. The Director of FINTRAC oversees the operational, management and administrative functions of the agency.²⁰⁷ However, the main function of suspicious transaction monitoring is performed by the Financial Intelligence Analysis department. Being an administrative-type FIU, its duties include “analysis to determine whether transactions provide reasonable grounds to suspect that the transaction is related to the commission of money laundering or terrorist financing offences, assess general trends and patterns of activity, and prepare recommendations for disclosures to law enforcement and other appropriate agencies.”²⁰⁸ It receives functional

²⁰⁴. Office of the Privacy Commissioner of Canada, “Privacy Legislation in Canada,” December 17, 2004. [cited on February 13, 2006] Available from World Wide Web: (http://www.privcom.gc.ca/fs-fi/02_05_d_15_e.asp).

²⁰⁵. Anonymous, interview by author, written notes, Canada, August 9, 2006.

²⁰⁶. Anonymous, interview by author, written notes, Canada, August 9, 2006.

²⁰⁷. FINTRAC, “FINTRAC Performance Report,” April 30, 2004. [cited on December 30, 2004] Available from World Wide Web: (http://www.fintrac.gc.ca/publications/DPR/2003/2_e.asp).

²⁰⁸. Ibid.

support from the External Relationships, Information Technology, and Corporate Management departments.²⁰⁹

External Relationships develops and maintains relationships between FINTRAC and the outside world. It is comprised of International Relationships which is responsible for FINTRAC's foreign relationships, and Domestic Relationships which is responsible for relationships with domestic partners like the Canada Revenue Agency (CRA), Citizenship and Immigration Canada (CIC), the Canadian Security and Intelligence Service (CSIS) and the Royal Canadian Mounted Police (RCMP), reporting entities and other domestic stakeholders. External Relationships is also comprised of Communications which caters to the information needs of FINTRAC's stakeholders and maintains FINTRAC's website, and Compliance which ensures FINTRAC adheres to laws and regulations.²¹⁰

FINTRAC's Information Technology Department serves the technological needs of FINTRAC including those of Corporate Management which performs administrative functions such as human resources and financial administration for the agency.²¹¹ Next, the performance of FINTRAC based on the Balanced Scorecard is analyzed.

Business Process Perspective - A law enforcement official explained that like other FIUs, FINTRAC is a central depository for suspicious financial transactions and therefore,

²⁰⁹. Government of Canada Info Source, "Financial Transactions and Reports Analysis Centre of Canada: Organization," November 28, 2005. [cited on February 6, 2006] Available from World Wide Web: (http://infosource.gc.ca/inst/cfc/fed04_e.asp).

²¹⁰. Ibid.

²¹¹. Ibid.

serves as a point of contact for other agencies, both national and international.²¹² It is one of the most technologically-intensive FIUs in the world. Of the 10-11 million suspicious transaction reports it receives each year, 99% are received electronically, estimated another civilian agent. However, this civilian agent added that its database is inaccessible to law enforcement and other agencies, giving it more control over the information it disseminates and helping it abide by Section 8 of the *Charter of Rights and Freedoms* and the *Privacy Act*.²¹³

One government administrator reported that FINTRAC falls under Canada's Department of Finance.²¹⁴ Another civilian agent elucidated the sub-organization of FINTRAC. FINTRAC's staff members at its three regional offices (Western, Central, Eastern) are assigned various sectors within their region where they ensure that reporting entities adhere to compliance guidelines. Each regional office includes a director with four deputy directors in charge of corporate, financial intelligence analysis, information technology and external relations (compliance) functions. FINTRAC has MOUs with regulatory bodies to conduct compliance inspections. What is reported by reporting entities is listed in the MOU and FINTRAC works with these entities to ensure consistency with reporting guidelines and meeting reporting deadlines. Non-compliance penalties include up to \$2 million (Canadian) in fines and up to five years imprisonment.²¹⁵

²¹². Anonymous, interview by author, written notes, Canada, September 6, 2005.

²¹³. Anonymous, interview by author, written notes, Canada, September 8, 2005.

²¹⁴. Anonymous, interview by author, written notes, Canada, August 9, 2006.

²¹⁵. Anonymous, interview by author, written notes, Canada, September 8, 2005.

Operationally, FINTRAC does have its limitations. The events of 9/11 led to FINTRAC's mandate being expanded to include terrorist financing from just money laundering and this has resulted in a gush of requests and information to the agency, explained a law enforcement official. But due to constraints, FINTRAC can handle only a certain volume of transactions.²¹⁶ An auditor's report revealed that "law enforcement and security agencies normally find that the information FINTRAC discloses is too limited to warrant action, given their existing caseloads and scarce resources [and legislation limiting the type of information that can be disclosed]. In short, as the system now works, FINTRAC disclosures do contribute to existing investigations but rarely generate new ones."²¹⁷ This might compromise the security net, in the opinion of a law enforcement official.²¹⁸

The report of the Auditor General on Canada's Implementation of the National Initiative to Combat Money Laundering, in 2004, revealed a number of organizational inconsistencies²¹⁹ within FINTRAC. It found that FINTRAC's reporting requirements imposed undue administrative burden and expense on reporting entities, computer connectivity problems between FINTRAC and the Canada Border Services Agency resulted in a large backlog of unprocessed reports on cross-border transactions, lack of an

²¹⁶. Anonymous, interview by author, written notes, Canada, September 6, 2005.

²¹⁷. Office of the Auditor General of Canada, "Implementation of the National Initiative to Combat Money Laundering," November 23, 2004. [cited on February 13, 2006] Available from World Wide Web: (<http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20041102ce.html>).

²¹⁸. Anonymous, interview by author, written notes, Canada, September 6, 2005.

²¹⁹. One government administrator disclosed that this report was prepared during the early stages of FINTRAC's establishment but modern customer satisfaction surveys show satisfaction with FINTRAC's product. (Anonymous, interview by author, written notes, Canada, August 9, 2006.)

agreement between FINTRAC and the Canada Revenue Agency as to the criteria for detecting money-laundering related tax evasion and reluctance on the part of law enforcement to always share information with FINTRAC or give much weight to its unsolicited disclosures. Law enforcement reportedly found reports received from banks more current and useful than those received from FINTRAC; FINTRAC's reports lacked context, that is, "what led FINTRAC to suspect the presence of money laundering or terrorist financing?"²²⁰ Thus, the reluctance on the part of law enforcement to allocate scarce resources to what might be an exercise in futility.²²¹

Customer Satisfaction - According to one civilian agent, FINTRAC's customers include a wide spectrum of entities involved in the financial intelligence community. FINTRAC has "26 MOUs with other countries and with regulatory bodies such as the Office of the Superintendent of Financial Institutions Canada."²²² A government administrator explained the benefits of having MOUs with domestic regulatory agencies, "There is a two-way benefit. People operating within the sectors don't have to see two people show up at their door. It helps FINTRAC in its responsibility as FINTRAC has to cover a lot of ground for a small agency."²²³ For example, one regulator disclosed, "FINTRAC and the Office of the Superintendent of Financial Institutions (OSFI) meet regularly to discuss

²²⁰. Office of the Auditor General of Canada, "Implementation of the National Initiative to Combat Money Laundering," November 23, 2004. [cited on February 13, 2006] Available from World Wide Web: (<http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20041102ce.html>).

²²¹. Ibid.

²²². Anonymous, interview by author, written notes, Canada, September 8, 2005.

²²³. Anonymous, interview by author, written notes, Canada, August 9, 2006.

shared information with respect to federally regulated financial institutions (FRFIs) AML/CTF programs and their compliance with the PCMLTFA.”²²⁴

FINTRAC’s other customers are reporting entities. Its website lists the following entities as having reporting obligations: “financial entities (includes banks, credit unions, caisses populaires²²⁵, trust and loan companies and agents of the Crown that accept deposit liabilities), life insurance companies, brokers or agents, securities dealers, portfolio managers and investment counselors who are provincially authorized, persons engaged in the business of foreign exchange dealing, money services businesses (including alternative remittance systems, such as hawala, hundi, chitti, etc.), agents of the Crown when they sell money orders, accountants and accounting firms (when carrying out certain activities on behalf of their clients or receiving fees for such activities), real estate brokers or sales representatives (when carrying out certain activities on behalf of their clients), casinos (including those authorized to do business in Canada, with slot machines or roulettes or card games, but excluding certain temporary charity casinos).”²²⁶ FINTRAC has an extensive outreach program that included more than 500 information sessions involving reporting entities in the 2003-04 fiscal year and responses to 1,800 inquiries from reporting entities during this period.²²⁷ A good source of feedback, suggested a law enforcement official, would be those who are the first in line in

²²⁴. Anonymous, interview by author, written notes, Canada, January 6, 2009.

²²⁵. Credit union.

²²⁶. FINTRAC, “What Must Be Reported?,” May 30, 2006. [cited on September 5, 2006] Available from World Wide Web: (http://www.fintrac.gc.ca/publications/brochure/may-2003/pamphlet2_e.asp).

²²⁷. FINTRAC, “Performance Report, For The Period Ending March 2004,” November 5, 2004. [cited on February 13, 2006] Available from World Wide Web: (http://www.fintrac.gc.ca/publications/DPR/2004/6_e.asp).

the receipt of financial transaction information.²²⁸ A regulator noted that FINTRAC provides substantial feedback to reporting entities.²²⁹

Finally, FINTRAC's customers are law enforcement and other intelligence agencies. Customer satisfaction is measured through feedback from law enforcement. If FINTRAC is unable to produce a report on a person or entity that law enforcement needs information on, then law enforcement is unhappy, opined one civilian agent.²³⁰ A government administrator laid down the following guidelines as a means of measuring customer satisfaction, "Can people receiving FINTRAC's product make a contribution? Was it of use? What type of use was it put to? Did it identify activities that were not known?"²³¹

One civilian agent noted the legal structure that prevents FINTRAC from achieving a higher level of satisfaction for its customers. The flow of information from FINTRAC to other agencies and law enforcement is restricted due to the nature of FINTRAC's relationship with them which is arms-length. Therefore, the police force can only follow up on investigations with a judicial order in hand. Another problem is that the definition of money laundering differs among these agencies, law enforcement and FINTRAC which is bound to cause operational problems. FINTRAC can help overcome these constraints up to a certain extent by sharing information in a timely manner and

²²⁸. Anonymous, interview by author, written notes, Canada, September 6, 2005.

²²⁹. Anonymous, interview by author, written notes, Canada, January 6, 2009.

²³⁰. Anonymous, interview by author, written notes, Canada, September 8, 2005.

²³¹. Anonymous, interview by author, written notes, Canada, August 9, 2006.

increasing its credibility with law enforcement through the relevance of its disclosures.²³²

This was reinforced by a law enforcement official who stated that FINTRAC would certainly benefit from further streamlining data to other agencies.²³³

Learning and Growth Perspective - Half of FINTRAC's staff members come from government while the other half come from the private sector, stated a government administrator, "People are hired from sectors that have a reporting obligation to FINTRAC because it looks for specialized skills when recruiting."²³⁴ One law enforcement official deliberated that FIU staff members should ideally possess a high level of knowledge about money laundering. The official felt that FINTRAC staff members fit the bill as many of them used to work for the police force and use their experience to their advantage.²³⁵ A civilian agent expounded on the opportunities for employee growth and development at FINTRAC. Employees are evaluated based on expectations and commitments through two performance appraisals each year. The agency trains its employees by providing opportunities to attend workshops and conferences like money laundering methodologies, both, within and outside the

²³². Anonymous, interview by author, written notes, Canada, September 8, 2005.

²³³. Anonymous, interview by author, written notes, Canada, September 6, 2005.

²³⁴. Anonymous, interview by author, written notes, Canada, August 9, 2006.

²³⁵. Anonymous, interview by author, written notes, Canada, September 6, 2005.

organization.²³⁶ One government administrator mentioned that performance agreements are established for each employee.²³⁷

Employee training at FINTRAC is based on function. Compliance officers can avail themselves of workshops that develop their expertise in policy interpretation, risk assessment, and quality assurance while financial analysts can advance their knowledge in tracking terrorists online, operations of casinos and tax havens. Interaction with experts in the academic community and law enforcement agents is encouraged.²³⁸ FINTRAC also runs security awareness sessions for its employees to help them maintain compliance with the Center's security and privacy policies and practices.²³⁹ A civilian agent added that a mentorship program for newcomers would be beneficial.²⁴⁰

One civilian agent interviewed revealed that FINTRAC spends approximately 4% of its budget salary on training. Proposals for increased funding for organizational development are submitted by the Ministry of Finance on FINTRAC's behalf. For certain items, legislation is required to provide funding to FINTRAC.²⁴¹

One of the characteristics of FINTRAC's organizational development program is the Rewarding Excellence initiative which includes "recognition through informal,

²³⁶. Anonymous, interview by author, written notes, Canada, September 8, 2005.

²³⁷. Anonymous, interview by author, written notes, Canada, August 9, 2006.

²³⁸. Treasury Board of Canada Secretariat, "DPR 2004-2005," October 26, 2005. [cited on February 13, 2006] Available from World Wide Web: (http://www.fintrac.gc.ca/publications/DPR/2004/6_e.asp).

²³⁹. FINTRAC, "Performance Report, For The Period Ending March 2004," November 5, 2004. [cited on February 13, 2006] Available from World Wide Web: (http://www.tbs-sct.gc.ca/rma/dpr1/04-05/FINTRAC-CANAFE/FINTRAC-CANAFEd4501_e.asp).

²⁴⁰. Anonymous, interview by author, written notes, Canada, September 8, 2005.

²⁴¹. Anonymous, interview by author, written notes, Canada, September 8, 2005.

instant awards as well as organization-wide celebratory events recognizing both individual merit as well as team-based achievements.”²⁴² A workforce satisfaction measurement program is in the works.²⁴³ As suggested by one government administrator, appropriate performance indicators would be the amount of training funds allocated and the degree of learning plan development.²⁴⁴

Financial Perspective - Interviewers disclosed that new investment at FINTRAC is needed for investigations, analysis and technology. A law enforcement official felt that investigation is an important part of FINTRAC’s business and additional investment here will help produce reports on a more timely basis.²⁴⁵ A civilian agent said that there currently appears to be more work than hands and FINTRAC would be better off upgrading its analytical ability. Other potential investment areas include creating a reporting structure for potential reporting entities such as jewelers and dealers in precious stones, the numerous money service businesses that are unlicensed and unregulated, and information technology would also be beneficial.²⁴⁶ Financial performance is based on feedback. A government administrator suggested taking into account value for

²⁴². FINTRAC, “Performance Report, For The Period Ending March 2004,” November 5, 2004. [cited on February 13, 2006] Available from World Wide Web: (http://www.fintrac.gc.ca/publications/DPR/2004/6_e.asp).

²⁴³. Ibid.

²⁴⁴. Anonymous, interview by author, written notes, Canada, August 9, 2006.

²⁴⁵. Anonymous, interview by author, written notes, Canada, September 6, 2005.

²⁴⁶. Anonymous, interview by author, written notes, Canada, September 8, 2005.

investment as an indicator of financial performance which can be derived through feedback from the agency's stakeholders.²⁴⁷

One civilian agent reported that FINTRAC is pending a review by the FATF through the third round of mutual evaluations this year.²⁴⁸ To its advantage, it has, in place, an elaborate performance management system that ties resources, activities, outputs and outcomes.²⁴⁹ When it comes to implementation and planning, affirmed one law enforcement official, "FINTRAC is well on its way considering it is a relatively new agency."²⁵⁰ It has begun providing feedback to reporting entities on their contribution to specific money laundering and terrorist financing cases.²⁵¹ It is in the process of solidifying its relationships with its clients by attempting to enhance the utility, timeliness and relevance of its product, assessed a civilian agent. He added that if these lead to additional investigations and prosecutions resulting in 20-25% of terrorist financiers being caught, it would deem this a success²⁵² even though politicians would very much like to see money laundering and terrorist financing eliminated completely, disclosed a former parliamentarian.²⁵³

²⁴⁷. Anonymous, interview by author, written notes, Canada, August 9, 2006.

²⁴⁸. Anonymous, interview by author, written notes, Canada, September 8, 2005.

²⁴⁹. FINTRAC, "Annual Report 2005," January 24, 2006. [cited on February 13, 2006] Available from World Wide Web: (http://www.fintrac.gc.ca/publications/annualreport/2005/42_e.asp).

²⁵⁰. Anonymous, interview by author, written notes, Canada, September 6, 2005.

²⁵¹. FINTRAC, "Performance Report, For The Period Ending March 2004," November 5, 2004. [cited on February 13, 2006] Available from World Wide Web: (http://www.fintrac.gc.ca/publications/DPR/2004/6_e.asp).

²⁵². Anonymous, interview by author, written notes, Canada, September 8, 2005.

²⁵³. Anonymous, interview by author, written notes, Canada, October 3, 2005.

Nevertheless, FINTRAC continues to have a strong emphasis on performance. According to a government administrator interviewed, “Output is measured quarterly and annually. It falls on each department to measure success.”²⁵⁴; FINTRAC issues an annual Departmental Performance Report. In its performance management plan, FINTRAC ties expected results to strategic outcomes.²⁵⁵ However, the Auditor’s Report mentioned above found that FINTRAC’s performance management focused only on operations and not on the impact of its programs. Even the operational measures such as “numbers of reports received, disclosures made, compliance initiatives introduced, contacts made with stakeholders, and memoranda of understanding signed”²⁵⁶ lacked performance targets.²⁵⁷ However, FINTRAC is developing an Integrated Performance Management Framework²⁵⁸ and its implementation should provide the backbone for enhanced accountability and disclosure of results of this relatively new FIU.

A report presented by the Solicitor General of Canada to Parliament, in 1997, noted that “the illicit drug trade in Canada, only one of many profit-rich criminal enterprises, generates profits of \$10 billion.”²⁵⁹ Working with its international partners by adhering to best practices in information-sharing and developing international

²⁵⁴. Anonymous, interview by author, written notes, Canada, August 9, 2006.

²⁵⁵. FINTRAC, “Report on Plans and Priorities for the years 2005-2006 to 2007-2008,” April 30, 2004. [cited on November 28, 2005] Available from World Wide Web: (http://www.fintrac.gc.ca/publications/rpp/2006_2007/1_e.asp).

²⁵⁶. Ibid.

²⁵⁷. Ibid.

²⁵⁸. Ibid.

²⁵⁹. Hubbard, Robert, Daniel Murphy, Fergus O’Donnell, and Peter DeFreitas, *Money laundering and proceeds of crime* (Toronto: Irwin Law Inc., 2004): xxv.

comparators to counter money laundering and terrorist financing globally would help FINTRAC control such criminal activity and fulfill its obligation to those it is ultimately accountable to – the citizens of Canada, levels a former parliamentarian.²⁶⁰

The next FIU studied is the Financial Crimes Enforcement Network in the United States. This FIU is entrusted with receiving and analyzing suspicious activity reports from a vast network of reporting entities across the country. It then disseminates these reports to an array of financial crime-fighting agencies. In the ensuing analysis, these functions are discussed according to the perspectives of the BSC.

Case 3: United States of America - Financial Crimes Enforcement Network (FINCEN)

Legal Underpinnings and Organization

FINCEN was created in 1990 as part of the United States Treasury Department by Treasury Order Number 105-08.²⁶¹ Its mission was “to provide a government-wide multi-source financial intelligence and analysis network.”²⁶² But its scope of responsibility was expanded, in 1994, “to include regulatory responsibilities for administering the Bank Secrecy Act...”²⁶³ After the 9/11 attacks, the USA Patriot Act of 2001 further expanded

²⁶⁰. Anonymous, interview by author, written notes, Canada, October 3, 2005.

²⁶¹. FINCEN, “About FINCEN/FAQs,” [cited February 23, 2006] Available from World Wide Web: (http://www.fincen.gov/af_faqs.html).

²⁶². FINCEN, “FINCEN Annual Report 2004,” [cited February 21, 2006] Available from World Wide Web: (<http://www.fincen.gov/fincenannualreport2004.pdf>).

²⁶³. Ibid.

FINCEN's responsibility to terrorist financing besides money laundering.²⁶⁴ However, FINCEN is not the only governmental agency within the U.S. Treasury Department with these responsibilities; it shares a similar mandate with the Office of Foreign Assets Control and the Internal Revenue Service Criminal Investigation Division.²⁶⁵

FINCEN's function is two-fold, "[It]... is responsible for expanding the regulatory framework to industries vulnerable to money laundering, terrorist financing, and other crime. Second, FINCEN analyzes and shares the BSA information with U.S. law enforcement at the federal, state, and local levels, and its international counterparts, to help them identify and track the financial aspects of criminal investigations."²⁶⁶ In order to facilitate carrying out its responsibilities, FINCEN is structured into the Regulatory Policy and Programs Division, the Analytics and Liaison Division, the Management Programs Division, the Information and Technology Division. Each of these has sub-divisions that support its functions which are detailed below.²⁶⁷

The Regulatory Policy and Programs Division engages in activities geared towards the administration of the Bank Secrecy Act (BSA) like developing and implementing an anti-money laundering program and reporting regulations, and providing support and assisting with compliance with the Act such as imposing civil money penalties on non-compliant institutions. The Division also performs risk

²⁶⁴. FINCEN, "FINCEN Annual Report 2006," [cited August 10, 2008] Available from World Wide Web: (http://www.fincen.gov/news_room/rp/files/annual_report_fy2006.pdf).

²⁶⁵. FINCEN, "FINCEN Strategic Plan for the fiscal years 2003-2008," [cited on December 30, 2004] Available from World Wide Web: (http://www.fincen.gov/strategicplan2003_2008.pdf).

²⁶⁶. Ibid.

²⁶⁷. FINCEN, "About FINCEN/Organization," [cited on December 30, 2004] Available from World Wide Web: (http://www.fincen.gov/af_organization.html).

management as per Section 311 of the USA Patriot Act of 2001 imposing measures on a jurisdiction or financial institution that cause a money laundering concern. It houses the new Office of Compliance established as a result of the Riggs Bank case to enhance the administration and implementation of the BSA and oversee BSA compliance activities conducted by other agencies.²⁶⁸

The Analysis and Liaison Division is the intelligence arm of FINCEN responsible for collecting financial intelligence and analyzing it to determine links to money laundering, terrorist financing and other financial crime which it forwards to law enforcement and other intelligence agencies. It serves as FINCEN's liaison with these and international agencies and organizations. Its products include "threat assessments, industry reports, and technical guides to financial transaction mechanisms."²⁶⁹ The Management Programs Division performs functions such as human resources, financial management and administrative services while the Information and Technology Division provides technical support to FINCEN.²⁷⁰ What follows is a dissection of FINCEN along the lines of the BSC.

Business Process Perspective - FINCEN, noted one civilian agent, "as the nation's financial intelligence unit, is responsible for collecting data on certain financial

²⁶⁸. United States Department of the Treasury's Office of Inspector General, "Terrorist Financing/Money Laundering: Status Report on the Establishment of the Financial Crimes Enforcement Network (FinCEN) Office of Compliance," OIG-05-030 (March 10, 2005).

²⁶⁹. FINCEN, "FINCEN Annual Report 2004," [cited February 21, 2006] Available from World Wide Web: (<http://www.fincen.gov/fincenannualreport2004.pdf>).

²⁷⁰. FINCEN, "About Us," [cited February 21, 2006] Available from World Wide Web: (http://www.fincen.gov/aboutus/bio_associate_director_mp.pdf).

transactions, analyzing that data, and making the data and our findings available to authorized law enforcement and regulatory agencies. The Financial Crimes Enforcement Network analyzes new money laundering methods and threats as they arise. These analyses are often included in *The SAR Activity Review –Trends, Tips, and Issues*, which [it] publishes under the auspices of the Bank Secrecy Act Advisory Group. In the past several years, *The SAR Activity Review –Trends, Tips, and Issues* has included analyses of informal value transfer systems, computer intrusion at banks, food stamp fraud using electronic benefit transfer cards, and use of automated teller machines to avoid Bank Secrecy Act (BSA) reporting requirements.”²⁷¹ Reporting entities include depository institutions, securities and futures industries, money services businesses, and casino/card clubs.²⁷² The number of annual SAR filings by entity group is presented below:

Table 4-4: SAR Filing by Reporting Entity Group

Number of Suspicious Activity Report Filings by Year										
Form	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Depository Institution	62,388	81,197	96,521	120,505	162,720	203,538	273,823	288,343	381,671	251,092
Money Services Business	-	-	-	-	-	-	5,723	209,512	296,284	177,943
Casinos and Card Clubs	85	45	557	436	464	1,377	1,827	5,095	5,754	2,827
Securities & Futures Industries	-	-	-	-	-	-	-	4,267	5,705	3,305
Subtotal	62,473	81,242	97,078	120,941	163,184	204,915	281,373	507,217	689,414	435,167
Total	2,643,004									

Source: FINCEN: 2006

²⁷¹. Anonymous, interview by author, written notes, United States, December 16, 2005.

²⁷². FINCEN, “SAR Activity Review,” [cited February 21, 2006] Available from World Wide Web: (<http://www.fincen.gov/fincenannualreport2004.pdf>).

FINCEN has attempted to streamline its structure to help operate more efficiently and effectively. In 2004, it cut the number of its managers from 41 to 26.²⁷³ It has also successfully cut down the time it takes to process civil penalty referrals. A 1998 GAO report stated, “In 1992, GAO reported that Treasury was taking about 21 months, on average, to process civil penalty referrals²⁷⁴ for BSA violations. Since then, the average has grown to about three years, according to FinCEN data.”²⁷⁵ However, the current time for processing these penalties is 1.3 years, noted one civilian agent.²⁷⁶ FINCEN has also been at the forefront in its global outreach efforts. It hosts the Egmont Secure web which allows FIU members of the Egmont Group to share information through this web system.²⁷⁷ An intelligence operative expressed that due to the global nature of the problems of money laundering and terrorist financing, it is imperative for FINCEN to work with other FIUs in spite of the legal restrictions of doing so.²⁷⁸

However, there are a number of other challenges that FINCEN faces with regard to its business processes. One of the biggest of these is how to get money service

²⁷³. FINCEN, “FINCEN Annual Report 2004,” [cited February 21, 2006] Available from World Wide Web: (<http://www.fincen.gov/fincenannualreport2004.pdf>).

²⁷⁴. According to 1992 GAO report GAO/T-GGD-92-57, Money Laundering: Civil Penalty Referrals for Violations of the Bank Secrecy Act Have Declined, Enacted in 1970, the Bank Secrecy Act requires the recording and reporting of certain transactions exceeding \$10,000 that involve currency and monetary instruments. Violations of the act can result in criminal and/or civil penalties. Violations that have the potential for a civil penalty are referred to the Assistant Secretary of the Treasury for Enforcement by regulatory and enforcement agencies.”

²⁷⁵. United States General Accounting Office, “FINCEN’s Law Enforcement Support, Regulatory, and International Roles,” *GAO/T-GGD-98-83* (April 1, 1998).

²⁷⁶. Anonymous, interview by author, written notes, United States, December 16, 2005.

²⁷⁷. FINCEN, “FINCEN Annual Report 2004,” [cited February 21, 2006] Available from World Wide Web: (<http://www.fincen.gov/fincenannualreport2004.pdf>).

²⁷⁸. Anonymous, interview by author, written notes, United States, January 23, 2006.

businesses (MSBs) to register so that they can be monitored better. An audit report by the Treasury Report recommended “FINCEN needs to develop and track performance indicators to measure how registration is improving BSA compliance by the MSB industry, consider clarifying guidance regarding the dollar threshold for MSB designation, and continue efforts to address data quality issues with the publicly available MSB registration list.”²⁷⁹

Another challenge for FINCEN is to improve reporting entities’ use of its BSA e-filing system which is a technological report filing option available to reporting entities to enhance the security, accuracy and completeness of their reports. It also improves report processing times. A Treasury report called for increased outreach on the part of FINCEN to raise awareness of this new system created as a result of a requirement by the USA Patriot Act.²⁸⁰

One of the drawbacks that FINCEN encounters as a result of the environment it operates in, according to one interviewee, is that the United States government is fragmented and the resulting lack of coordination impacts the functioning of agencies like FINCEN. A former senior government official asserted the need for a central czar, “Just as the Office of National Drug Control Policy coordinates U.S. anti-drug policy, it should be the same for financial crime. At the moment, money launderers are more coordinated

²⁷⁹. United States Department of the Treasury’s Office of Inspector General, “Bank Secrecy Act: Major Challenges Faced by FINCEN in Its Program to Register Money Service Businesses,” OIG-05-050 (September 27, 2005).

²⁸⁰. United States Department of the Treasury’s Office of Inspector General, “Additional Outreach and System Enhancements are Needed to Encourage Greater Use of FinCEN’s BSA E-Filing,” OIG-05-034 (March 31, 2005).

and sophisticated than the United States government”²⁸¹ FINCEN attempts to alleviate “the inherent risk of fragmentation, lack of uniformity, and potential lack of accountability”²⁸² by conducting a number of internal control reviews of its operations as well as external evaluations.²⁸³ A former senior government official conceded that a number of former leaders at FINCEN have retired or left for the private sector. Hence, in order to improve its business process, FINCEN would be better off contracting out business or hiring former employees as consultants.²⁸⁴

Customer Perspective - FINCEN’s customers include those from the financial, law enforcement and regulatory communities. Service to customers includes issuing case support to more than 165 federal, state, and local agencies, issuing approximately 6,500 intelligence reports each year.²⁸⁵ It delegates authority to a number of its federal regulatory partners to conduct compliance exams. These federal regulators are assigned responsibility by type of financial institution²⁸⁶ as shown in the table below:

²⁸¹. Anonymous, interview by author, written notes, United States, August 22, 2006.

²⁸². FINCEN, “FINCEN Strategic Plan for the fiscal years 2006-2008,” [cited on February 24, 2006] Available from World Wide Web: (http://www.fincen.gov/strategicplan2006_2008.pdf).

²⁸³. Ibid.

²⁸⁴. Anonymous, interview by author, written notes, United States, August 22, 2006.

²⁸⁵. FINCEN, “About FINCEN/FAQs,” [cited February 23, 2006] Available from World Wide Web: (http://www.fincen.gov/af_faqs.html).

²⁸⁶. U.S. Senate Committee on Banking, Housing, and Urban Affairs, “Statement of William J. Fox,” [cited February 23, 2006] Available from World Wide Web: (http://banking.senate.gov/_files/ACF23.pdf).

Table 4-5: Regulatory Agencies and Reporting Entities

<p>1) <i>Depository Institutions</i> – The Board of Governors of the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration have been delegated authority to examine the depository institutions they regulate for Bank Secrecy Act compliance.</p> <p>2) <i>Securities Broker-Dealers, Mutual Funds, and Futures Commission Merchants/Introducing Brokers</i> – FINCEN has delegated examination authority to the Securities and Exchange Commission and the Commodity Futures Trading Commission, and relies on their self-regulatory agencies (such as the NASD, the NYSE, and the NFA) to examine these entities for compliance.</p> <p>3) <i>Other Financial Institutions</i> – The Internal Revenue Service (Small Business/Self-Employed Division) has been delegated responsibility for examining all other financial institutions subject to Bank Secrecy Act regulation for compliance, including, for example, depository institutions with no federal regulator, casinos, and Money Services Businesses (MSBs).</p>
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Source: US Senate Committee on Banking, Housing, and Urban Affairs

Customers have expressed the need for FINCEN to follow up on its reports in terms of finding out how the information it distributes relates to outcomes. FINCEN could also enhance its utility if it by-passed sending reports to the headquarters of agencies and distributed them directly among regional offices. At present, FINCEN distributes reports to multiple agencies; ensuring that information is better coordinated among agencies will also increase its utility. This is especially important in the post-9/11 era which has probably seen an increase in the number of reports distributed, opined an intelligence operative.²⁸⁷ Generally, stated this operative, customers find FINCEN

²⁸⁷. Anonymous, interview by author, written notes, United States, January 23, 2006.

responsive to them. FINCEN staff members clarify clients' inquiries on reports if something is unclear and are very cooperative in this regard.²⁸⁸

FINCEN's stakeholders include individuals and businesses that seek regulatory advice and guidance, explained a former senior government official.²⁸⁹ It helps other FIUs to get started and co-ordinates its AML/CTF efforts with other prominent FIUs such as Britain, France, Belgium and Australia.²⁹⁰ FINCEN should measure efficiency by assessing its ability to analyze the information forwarded to it by reporting entities and produce final reports for authorized law enforcement and regulatory agencies in a timely manner, proposed an intelligence operative. This interviewee assessed that agencies appear satisfied in this regard.²⁹¹ A former senior government official suggested measuring performance by "the number of leads forwarded to law enforcement agencies and cases for which FINCEN data is used."²⁹² This interviewee cautioned that FINCEN's resources are mostly directed towards the regulated sectors and more could be spent on enhancing its service to law enforcement.²⁹³

Learning and Growth Perspective - FINCEN has fewer than 200 employees most of which are permanent staff with experiential backgrounds in intelligence, the financial

²⁸⁸. Anonymous, interview by author, written notes, United States, January 23, 2006.

²⁸⁹. Anonymous, interview by author, written notes, United States, December 16, 2005.

²⁹⁰. FINCEN, "About FINCEN/FAQs," [cited February 23, 2006] Available from World Wide Web: (http://www.fincen.gov/af_faqs.html).

²⁹¹. Anonymous, interview by author, written notes, United States, January 23, 2006.

²⁹². Anonymous, interview by author, written notes, United States, August 22, 2006.

²⁹³. Anonymous, interview by author, written notes, United States, August 22, 2006.

industry and computers. Additionally, it has 40 long-term detailees²⁹⁴ from 21 regulatory and law enforcement agencies.²⁹⁵ FINCEN has a training office that assesses and strengthens the competencies of its employees. It has also implemented a new employee performance system²⁹⁶ which is linked to the organization's strategic plan and replaces the old pass-fail employee rating system.²⁹⁷ Finally, FINCEN conducts employee satisfaction surveys and follows up on recommendations from them.²⁹⁸

When it comes to current personnel, a former senior government official complained that FINCEN lacks "leadership, vision and organization. FINCEN staff is well-trained but middle and senior management is inexperienced."²⁹⁹ This former official added that FINCEN looks for employees to have the skill and knowledge to carry out all-source analysis.³⁰⁰ Producing outcomes in terms of human resources is time-consuming for intelligence agencies. An intelligence official cited an example that if an agency wants to hire analysts, it will have to find those who fit the bill, that is, those who will be willing to work at a particular salary, those who clear necessary security checks and those

²⁹⁴. These personnel work for FINCEN but their salaries are paid by their home agencies.

²⁹⁵. FINCEN, "About FINCEN/FAQs," [cited February 23, 2006] Available from World Wide Web: (http://www.fincen.gov/af_faqs.html).

²⁹⁶. Anonymous, interview by author, written notes, United States, December 16, 2005.

²⁹⁷. FINCEN, "FINCEN Annual Report 2004," [cited February 21, 2006] Available from World Wide Web: (<http://www.fincen.gov/fincenannualreport2004.pdf>).

²⁹⁸. FINCEN, "FINCEN Strategic Plan for the fiscal years 2003-2008," [cited on December 30, 2004] Available from World Wide Web: (http://www.fincen.gov/strategicplan2003_2008.pdf).

²⁹⁹. Anonymous, interview by author, written notes, United States, August 22, 2006.

³⁰⁰. Anonymous, interview by author, written notes, United States, August 22, 2006.

who pass the training program.³⁰¹ The former senior government official mentioned the need for FINCEN to hire more personnel with a law enforcement background.³⁰²

Financial Perspective - FINCEN conducts assessments to find out the necessity of strengthening management control over its resources.³⁰³ Over the past two years, explained a civilian agent, FINCEN has “invested heavily in [its] regulatory function (tasks required in [its] role as Administrator of the Bank Secrecy Act) and in a new Bank Secrecy Act data management and dissemination system called BSA Direct.”³⁰⁴ Additional investment in technology to hasten criminals being caught would be helpful. Financial performance should be measured in terms of improved efficiency and not in terms of case size. Cases differ in size and importance and it is important to stop crime irrespective of these factors, opined an intelligence operative.³⁰⁵

According to a civilian agent, it is difficult to judge success in the AML/CTF world as no one quite knows the number of money launderers or the amount of money laundered. FINCEN doesn’t compare its performance to that of other FIUs but measures performance by how well it progresses towards its goals. This includes a number of self-evaluations, a list of which is presented in the table below.³⁰⁶

³⁰¹. Anonymous, interview by author, written notes, United States, January 23, 2006.

³⁰². Anonymous, interview by author, written notes, United States, August 22, 2006.

³⁰³. FINCEN, “FINCEN Strategic Plan for the fiscal years 2006-2008,” [cited on February 24, 2006] Available from World Wide Web: (http://www.fincen.gov/strategicplan2006_2008.pdf).

³⁰⁴. Anonymous, interview by author, written notes, United States, December 16, 2005.

³⁰⁵. Anonymous, interview by author, written notes, United States, January 23, 2006.

³⁰⁶. Anonymous, interview by author, written notes, United States, December 16, 2005.

Table 4-6: Internal/External Reviews Conducted by FINCEN

<ol style="list-style-type: none">1) Internal work process reviews that are used as a basis for improving programs and processes.2) Internal control reviews used to evaluate and, if needed, to strengthen management controls over resources.3) Internal reviews of technology, case management and other issues that are used as a basis for making strategic decisions.4) Customer satisfaction surveys, which are used to identify strengths and opportunities to improve services to external clients, including law enforcement agencies, regulators, and the financial industry.5) Employee satisfaction surveys, which are used as a basis for making decisions related to human resources activity, employee communications, and other management areas.6) External evaluations of major program activities, which are contracted for as needed and used in strategic planning.
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Source: FINCEN 2006

A former senior government official raised a number of questions that serve as food for thought about the future direction of FINCEN, “Planning should focus on its mission: should it be a law enforcement agency?, should it be split into two bodies – regulatory and law enforcement, is law enforcement doing enough with FINCEN data? (They don’t have adequate resources to do everything.)”³⁰⁷ However, this interviewee conceded that it has been hard for FINCEN because it was incepted at around the same time as the regulation it oversees and therefore, has had to evolve with the regulation.³⁰⁸

The general issue with American intelligence seems to be the lack of vision to alleviate the risk associated with preventing terrorist attacks, summed up one

³⁰⁷. Anonymous, interview by author, written notes, United States, August 22, 2006.

³⁰⁸. Anonymous, interview by author, written notes, United States, August 22, 2006.

academician in the field. This interviewee stated that legislators have allocated billions of dollars towards the effort but need to be more vigilant as to how these funds are being used. The focus of the U.S. Government should be on proximate outcomes and not just by looking at a 'high-risk list' or analyzing worst-case scenarios. There are institutional inconsistencies in the U.S. Government's 'war on terror'. For example, a lack of security clearances for local government officials compromises information-sharing with them. This should be a time for establishing relationships, strategic analysis and reporting, and capacity-building within established networks.³⁰⁹

A lawyer backed up this claim that FINCEN lacked vision. He stated that intelligence officials have a tendency to "shoot first and ask questions later."³¹⁰ This interviewee further explained that the government's first course of action is to freeze action and conduct an investigation later. It takes time to trace money, therefore, advised this interviewee, intelligence agencies should "look before they leap."³¹¹ Former GAO director of federal budget issues, Dr. Paul Posner, provides a fitting conclusion, "Roles and responsibilities within and between levels of government and with the private sector are evolving and need to be clarified...Officials also need a baseline set of performance goals and measures upon which to assess and improve preparedness, especially considering that capabilities to respond to an attack vary widely across the country..."³¹²

³⁰⁹. Anonymous, interview by author, written notes, United States, November 11, 2005.

³¹⁰. Anonymous, interview by author, written notes, United States, November 25, 2008.

³¹¹. Anonymous, interview by author, written notes, United States, November 25, 2008.

³¹². CNN, "One year later: Security tighter, cities stretched," September 12, 2002. [cited on August 25, 2005] Available from World Wide Web: (<http://archives.cnn.com/2002/US/09/06/prepared.cities.overview/index.html>).

In other words, it takes more for the government to solve the problem than just throw money at it.

Money laundering and terrorist financing are major problems in the U.S. Its proximity to the drug-producing countries of South America along with its size and sophisticated financial systems make the U.S. the object of money laundering activity.³¹³ Its status as a global powerhouse, combined with aggressive foreign policy, have made it a target for terrorists. The implementation of the FATF's Forty Recommendations against money laundering and terrorist financing is seen as an overall government responsibility (not just FINCEN), one interviewee reported.³¹⁴ The U.S. is still awaiting evaluation in the third round of mutual evaluations with the FATF. In the second round of mutual evaluations, the FATF reported that "the U.S. anti-money laundering system is very complex; and the large number of law enforcement and regulatory agencies, the huge number of financial institutions, the diversity of federal and state laws, and the absence of comprehensive statistics to inform resource allocation decisions militate against a fully effective and efficient system. However, the U.S. commitment to combating money laundering at all levels of government is outstanding."³¹⁵

³¹³. FATF, "Annual Report 1996-97," June 1997. [cited on September 7, 2006] Available from World Wide Web: (<http://www.fincen.gov/faftsum.pdf>).

³¹⁴. Anonymous, interview by author, written notes, United States, December 16, 2005.

³¹⁵. FATF, "Annual Report 1996-97," June 1997. [cited on September 7, 2006] Available from World Wide Web: (<http://www.fincen.gov/faftsum.pdf>).

Case 4: Australian Transaction Reports and Analysis Centre (AUSTRAC)

Legal Underpinnings and Organization

Established in 1989, AUSTRAC serves as: 1) Australia's specialist FIU and 2) Australia's anti-money laundering regulator operating under the provisions of the *Financial Transaction Reports Act 1988* (FTR). As an administrative-type FIU, AUSTRAC first collects data on financial transactions reported to it by financial services and gaming entities, solicitors and the public. It then analyzes the data before dispersing it to the appropriate government agency. Within this mandate, AUSTRAC provides assistance to law enforcement efforts to prevent tax evasion, smuggling, money laundering and drug trafficking, and terrorist financing. AUSTRAC also plays the role of anti-money laundering regulator, monitoring reports of financial transactions stipulated under the *FTR Act*, especially from the financial services and gaming industries.³¹⁶

AUSTRAC has set up offices around the country to carry out its responsibilities with its head office in Sydney. Work is dispensed through three main branches – Money Laundering Deterrence, Money Laundering Targeting and Information Technology. The role of the Money Laundering Deterrence branch involves educating cash dealers, solicitors and the public associated with the financial services and gaming industries on the financial transaction reporting provisions contained in the *FTR Act*, and evaluating reporting systems. It ensures the accuracy of the data it receives and disseminates and conducts periodic inspections of its reporting entities. The Branch plays a role in ensuring the relevancy of anti-money laundering legislation through regular updates. Part

³¹⁶. AUSTRAC, "2003-04 Annual Report," October 28, 2004. [cited on December 30, 2004] Available from World Wide Web: (<http://www.austrac.gov.au/publications/annualreports/200304/index.htm>).

of its duty includes providing corporate assistance to AUSTRAC by handling financial management and budgetary, human resources, property management, and privacy and security issues. The Branch is comprised of the Reporting and Compliance section, the Privacy and Security section, the Strategic Coordination section, and the Corporate Services section that help it carry out its responsibilities.³¹⁷

The Money Laundering Targeting branch analyzes and disseminates financial transaction reports information to the 28 law enforcement, revenue, national security, and social justice agencies and the 35 overseas FIUs with which AUSTRAC has information exchange agreements. The Branch is divided into the Partner Liaison and Support, the Monitoring and Analysis, and the International sections to perform its duties effectively. The Monitoring and Analysis section plays a key role in tracking suspicious financial transactions through an automated monitoring system, TargIT. Assessment reports are then provided to partner agencies for the purpose of assisting them in their respective investigations. The International section provides technical assistance to foreign FIUs and participates in various forums through AUSTRAC's membership in the Egmont Group of FIUs and the Asia/Pacific Group on Money Laundering.

AUSTRAC's third branch, Information Technology, provides technology support to the other branches.³¹⁸ It is a key driver of the organization's performance which is discussed next based on the Balanced Scorecard methodology.

³¹⁷. Ibid.

³¹⁸. Ibid.

Business Process Perspective – The information AUSTRAC receives from reporting entities is represented in Table 1. A policy analyst cited ‘defensive reporting’ as a criticism

Table 4-7: Types of Information Reported to AUSTRAC

- | |
|---|
| <p>1) <i>Significant Cash Transaction Reports</i>: cash dealers and solicitors are required to report all domestic transactions involving AUD \$10,000 cash or more.</p> <p>2) <i>Suspect Transactions Reports</i>: cash dealers provide these reports when they suspect tax evasion or a breach of Commonwealth, state or territory law. Suspect Transactions Reports are reported without the customer’s knowledge.</p> <p>3) <i>International Funds Transfer Instructions Reports</i>: cash dealers are required to provide these reports when funds are telegraphically transferred or wired into or out of Australia. The funds may be for any amount, cash or otherwise.</p> <p>4) <i>International Currency Transfer Reports</i>: individuals are required to provide these reports when they physically transport cash of \$10,000 (Australian or foreign equivalent) or more into or out of Australia.</p> |
|---|

Source: Australian Taxation Office, 2005

whereby entities report more than what is necessary in order to comply with the regulations and avoid punishment.³¹⁹ One consultant confirmed that this raises a question about the quality of data received, that is, is it suspicious?³²⁰ The policy analyst also

³¹⁹. Anonymous, interview by author, written notes, Australia, May 15, 2006.

³²⁰. Anonymous, interview by author, written notes, Australia, May 16, 2006.

brought to attention the cost burden imposed on reporting entities.³²¹ A civilian agent explained that AUSTRAC analyzes reported data before proceeding to disseminate it based on typology - tax evasion, welfare fraud, money laundering and terrorist financing.³²²

One of the strengths of AUSTRAC's business process is the involvement of outside parties. One policy analyst disclosed that it uses external consultants and that it has an information-exchange system with law enforcement, "Round-table meetings for all areas of financial crime such as the Office of National Assessments and state police are held every month. Documents and conclusions are drafted from these meetings. For example, the future of cyber crime is looked into: what's going to happen in 10 years."³²³

One consultant informed us that AUSTRAC has set the bar for FIUs when it comes to technology.³²⁴ This includes its data mining applications which have "greatly strengthened [its] ability to analyze data, identify financial networks and locate reporting and compliance information to assist in its regulatory function"³²⁵, ProviderNet and its electronic data delivery system (EDDSWeb system) which allow cash dealers to report electronically, AUSTRAC's Regulatory Risk Assessment System (ARRAS) with which it is able to identify entities and industries at risk and take appropriate action and its TRAQ Enquiry System (TES) database through which its partner agencies can access

³²¹. Anonymous, interview by author, written notes, Australia, May 15, 2006.

³²². Anonymous, interview by author, written notes, Australia, May 17, 2006.

³²³. Anonymous, interview by author, written notes, Australia, May 15, 2006.

³²⁴. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³²⁵. AUSTRAC, "2004-05 Annual Report," August 31, 2006. [cited on September 4, 2006] Available from World Wide Web: (<http://www.austrac.gov.au/annualreport/index.htm>).

financial transaction reports. AUSTRAC shares its technological prowess with other FIUs through a mentoring program.³²⁶

When it comes to measuring performance, a policy analyst prescribed monitoring the percentage of suspect transaction reports.³²⁷ In 2004-05, AUSTRAC received 17,212 of these, up 49.9% from the previous year.³²⁸ However, one consultant insisted that the quality of intelligence in reports is important and not the number.³²⁹

Customer Perspective – The interviewees revealed that AUSTRAC’s customers are law enforcement to whom it provides intelligence. Its customers are also industry sectors to whom AUSTRAC provides training on regulation and software for reporting. Its other customers include government, partners in intelligence and the FATF.^{330 331 332}. The policy analyst and consultant made it known that AUSTRAC has been successful in forming partnerships with other agencies. In total, it has established memoranda of understanding (MOUs) with 28 partner agencies in Australia.^{333,334} The policy analyst

³²⁶. Ibid.

³²⁷. Anonymous, interview by author, written notes, Australia, May 15, 2006.

³²⁸. AUSTRAC, “2004-05 Annual Report,” August 31, 2006. [cited on September 4, 2006] Available from World Wide Web: (<http://www.austrac.gov.au/annualreport/index.htm>).

³²⁹. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³³⁰. Anonymous, interview by author, written notes, Australia, May 15, 2006.

³³¹. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³³². Anonymous, interview by author, written notes, Australia, May 17, 2006.

³³³. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³³⁴. Anonymous, interview by author, written notes, Australia, May 15, 2006.

felt that the majority of the Australian public wasn't aware or interested in money laundering. Nevertheless, tighter regulations affect the customer in terms of time and money. For example, a customer might find it a nuisance to produce identification just to play at the slot machine at the casino.³³⁵

AUSTRAC has established a strong bond with the international community, as one consultant revealed, "As an FIU, AUSTRAC is held in high esteem. The requests for AUSTRAC processes and provisions have been numerous."³³⁶ AUSTRAC recently completed the Australia-Indonesia Intelligence Unit Cooperation Project through which it helped Indonesia develop its FIU.³³⁷ It also has established a strong relationship with other anti-money laundering networks and FIUs like FINCEN through its 46 MOUs with FIUs and its association with the Egmont Group and the Asia Pacific Group on Money Laundering explained one consultant.³³⁸

AUSTRAC uses technology to reach out to its customers. An example of this is the AML eLearning application which serves as "a tool in providing basic education on the process of money laundering, the financing of terrorism and the role of AUSTRAC in identifying and assisting investigations of these crimes."³³⁹ It has a regulatory educational program for cash dealers that helps high risk and new dealers to fulfill their reporting

³³⁵. Anonymous, interview by author, written notes, Australia, May 15, 2006.

³³⁶. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³³⁷. AUSTRAC, "2004-05 Annual Report," August 31, 2006. [cited on September 4, 2006] Available from World Wide Web: (<http://www.austrac.gov.au/annualreport/index.htm>).

³³⁸. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³³⁹. AUSTRAC, "2004-05 Annual Report," August 31, 2006. [cited on September 4, 2006] Available from World Wide Web: (<http://www.austrac.gov.au/annualreport/index.htm>).

obligations under the *FTR Act* and to report correctly and on time.³⁴⁰ AUSTRAC also gets reporting entities, industry bodies and partner agencies involved in the decision-making process via consultations through the Provider Advisory Group (PAG) and Gaming Provider Advisory Group (GPAG).³⁴¹ It convenes and participates in various working groups and fora in which relevant personnel from industry and government agencies participate.³⁴²

AUSTRAC personnel work onsite with its partner agencies like the Australian Security Intelligence Organization and personnel from partner agencies like the Australian Crime Commission work onsite at AUSTRAC's Sydney office to enhance cooperation and collaboration.³⁴³ AUSTRAC provides law enforcement with access to its system but the relationship between the two could be improved by increasing mutual feedback, according to a consultant. This interviewee said that AUSTRAC could also improve its relationship with cash dealers by providing feedback to them.³⁴⁴ Overall, this would help AUSTRAC increase its efficiency in tracing money laundered through new trends. As the consultant put it, "With regard to industry sectors, AUSTRAC should monitor trends internationally, report trends to reporting community and reflect trends in their own analytical systems in-house. Police, on the other hand, should be reporting new

³⁴⁰. Ibid.

³⁴¹. Ibid.

³⁴². Ibid.

³⁴³. Ibid.

³⁴⁴. Anonymous, interview by author, written notes, Australia, May 16, 2006.

trends to AUSTRAC. It is a 2-way street.”³⁴⁵ A good measure of performance, suggested this consultant, is the percentage of intelligence provided that is actually being used in investigations.³⁴⁶

Learning and Growth Perspective – According to a civilian agent, AUSTRAC engages in workforce planning to make sure that employees develop skills appropriate to performing their jobs well.³⁴⁷ One consultant elaborates, “AUSTRAC has a specialist in workforce planning that does a skill inventory analysis. Staff can avail of a number of courses from technical to management development. A Myers Briggs test is used. A gap analysis is conducted before training employees. The mutual evaluation outcome has been communicated to staff.”³⁴⁸ Personnel are evaluated on a quarterly basis based on their performance agreements. Employees can avail of training and development opportunities to meet the requirements of their performance agreements.³⁴⁹ In spite of offering employees opportunities for growth and development, AUSTRAC has a hard time retaining personnel as they have to compete with the private sector. One consultant opined that the best personnel in the field are hired by consulting agencies.³⁵⁰

³⁴⁵. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³⁴⁶. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³⁴⁷. Anonymous, interview by author, written notes, Australia, May 17, 2006.

³⁴⁸. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³⁴⁹. AUSTRAC, “2004-05 Annual Report,” August 31, 2006. [cited on September 4, 2006] Available from World Wide Web: (<http://www.austrac.gov.au/annualreport/index.htm>).

³⁵⁰. Anonymous, interview by author, written notes, Australia, May 16, 2006.

In order to manage performance, one consultant suggested measuring the time employees have been on the job in relation to competencies acquired on the job and competencies acquired in relation to the requirements of the job.³⁵¹ A policy analyst suggested that AUSTRAC should prepare its personnel for increased reporting as a result of impending new money laundering legislation that will increase the number of reporting entities. It should also get them ready to analyze new trends in money laundering and terrorist financing that this new legislation will result in, “What is important here is what you do in training, how often you do it and how imaginative you are (mode of delivery). Organizations do not spend enough time and resources on training. They don’t take money laundering seriously enough.”³⁵²

Financial Perspective - The Australian government determines priorities for AUSTRAC and ties these to outputs and outcomes. There is essentially one output, that is, to reduce money laundering. AUSTRAC develops a business plan and sets targets to achieve this. According to a civilian agent, it is up to the Australian government to decide whether to adopt a broader range of outputs and outcomes.³⁵³

One consultant suggested that AUSTRAC would benefit by increasing investment in compliance inspections of reporting entities.³⁵⁴ A policy analyst commented about the reality of the nature of financial crime, that is, if the government invests in countering

³⁵¹. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³⁵². Anonymous, interview by author, written notes, Australia, May 15, 2006.

³⁵³. Anonymous, interview by author, written notes, Australia, May 17, 2006.

³⁵⁴. Anonymous, interview by author, written notes, Australia, May 16, 2006.

one method of financial crime, occurrences of crime through other methods will increase. Criminals are always finding ways to re-invent themselves. Subsequently, investment in implementing the FATF's 40 Recommendations will not stop money laundering but mitigate it.³⁵⁵ A suggested measure for monitoring an agency's financial performance by one consultant is the ability of the agency to meet its budget.³⁵⁶

In October 2005, Australia went through a third round of mutual evaluation with the FATF. This report noted that the amount of money laundering in Australia was estimated to be between 2 and 3 million Australian dollars. Criminals use financial service and gaming providers to launder money using false identities in the process. They move these funds offshore through international funds transfers and also move funds using alternative remittance dealers among other methods.³⁵⁷ The report suggested that AUSTRAC apply due diligence requirements to other financial entities such as insurance companies besides cash dealers. It questioned the reliability of documents that can be used to meet the requirements of the 100-point identification system that is used by banks. AUSTRAC was characterized as an agency with limited resources that lacked the necessary "supervisory skills and training required to conduct on-site inspections and enforcement related activities"³⁵⁸ and with limited powers to impose criminal sanctions.

³⁵⁵. Anonymous, interview by author, written notes, Australia, May 15, 2006.

³⁵⁶. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³⁵⁷. FATF, "Mutual Evaluations Programme - Australia" October 2005. [cited on September 4, 2006] Available from World Wide Web: (http://www.fatf-gafi.org/document/32/0,2340,en_32250379_32236982_35128416_1_1_1_1,00.html).

³⁵⁸. MinterEllison, "News Alert – Anti-money laundering report card" 20 October 2005. [cited on September 4, 2006] Available from World Wide Web:

However, much of this responsibility lies with other agencies such as the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC).

AUSTRAC is an agency with one output, that is, to reduce money laundering, commented one civilian agent.³⁵⁹ It is considered the most advanced FIU in the world, suggests another, even though this might be because it has a lot fewer people to deal with given the relatively small size of the Australian population. However, there are both micro- and macro-policy issues to consider within the AML/CTF framework in Australia. The micro-issues include maintaining autonomy for AUSTRAC, as one consultant points out, it is now under the Attorney-General's portfolio.³⁶⁰ This consultant also laments that the industry sectors lack knowledge on money laundering typologies and fail to adopt these in their risk-based strategic plans.³⁶¹ Another policy analyst prescribes 'lateral thinking' in countering terrorism, that is, thinking along the same lines as terrorists and other criminals. This analyst cites the example of hawalas – the government should first admit that they exist and then find how to deal with them. They should not only talk to these businesses but also their customers. If these businesses are required to register, there are those that will use unregistered businesses. The analyst stated that alternative methods of terrorist financing like over- and under-invoicing of goods is used because

(<http://www.minterellison.com/public/connect/Internet/Home/Legal+Insights/News+Alerts/NA++Anti-money+lauding+report+card>).

³⁵⁹. Anonymous, interview by author, written notes, Australia, May 17, 2006.

³⁶⁰. Anonymous, interview by author, written notes, Australia, May 16, 2006.

³⁶¹. Anonymous, interview by author, written notes, Australia, May 16, 2006.

trade receipts and records are not being scrutinized.³⁶² Like with the previous three FIUs discussed earlier, AUSTRAC's focus on outcome monitoring is limited. This and other findings are discussed next.

Key Findings

This chapter exposed problems common among FIUs. The most mentioned among them is the lack of performance metrics that integrate the outcome of reporting of suspicious transactions, analyzing them, gathering evidence and building a case against suspected financial criminals, and indicting and prosecuting them. Interviewees questioned the value of output measures, such as the number of SARs received, currently used by FIUs. They stressed the importance of outcome measures such as the number and value of prosecutions and convictions as well as qualitative measures such as the timeliness and accuracy of reports forwarded by the FIU to law enforcement and other intelligence agencies.

Each FIU in this study has its own method of self-assessment. The ones in North America and Australia use operational performance measures while the one in Europe does not. It cannot be denied that the effectiveness of the FIU in achieving its objective depends as much on its own performance as on that of other links in the chain of authority: financial institutions, MOT, police, justice, special investigating institutions, supervisory bodies etc. Therefore, even if each national system possesses or lacks a set of operational performance measures, there must be a broader set of measures to track the performance of the entire chain of authority in countering financial crime. In other words,

³⁶². Anonymous, interview by author, written notes, Australia, May 15, 2006.

the current focus on outputs or widget counting must lead to a broader focus on outcomes. Performance measures suggested by the interviewees are presented in the table below. It should be noted here that some of these measures also constitute outcome measures.

Table 4-8: Suggested Performance Measures by Country Using the Balanced Scorecard

	Business Process	Customer Satisfaction	Learning and Growth	Financial
The Netherlands	None	<ul style="list-style-type: none"> - Amount of transaction costs incurred by reporting entities - Clarity in reporting instructions provided to reporting entities - Quality of information provided to public counterparts 	None	<ul style="list-style-type: none"> - Return on investment in terms of how much financial crime did FIU's efforts help deter.
Canada	None	<ul style="list-style-type: none"> - Value of information provided by FIUs to law enforcement 	<ul style="list-style-type: none"> - Percentage of funds allocated to training - Degree of learning plan development 	<ul style="list-style-type: none"> - Value of investment based on feedback from customers
The United States	<ul style="list-style-type: none"> - Number of cases for which FIU data is used 	<ul style="list-style-type: none"> - Number of leads to law enforcement agencies 	None	<ul style="list-style-type: none"> - Degree of improved efficiency resulting in monetary savings
Australia	<ul style="list-style-type: none"> - Number of suspect transaction 	<ul style="list-style-type: none"> - Percentage of intelligence provided that is 	<ul style="list-style-type: none"> - The time employees have been on the job 	<ul style="list-style-type: none"> - Ability of the FIU to meet its budget

	reports - Quality of intelligence in suspicious transaction reports	used in investigations	in relation to competencies acquired on the job - Competencies acquired on the job in relation to the requirements of the job	
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General Outcome Measures:

- 1) Number of money launderers interdicted in proportion to the total number of money launderers.
- 2) Amount of laundered money interdicted in proportion to the total amount of laundered money.
- 3) Number of money launderers convicted
- 4) Number of repeat offenders

Chapter Summary

The FIUs in this study are at a stage where much progress has been made over the years and with changing times and events. Yet, there is also room for improvement on a number of fronts based on the assessment of a policy analyst. These are:

- Lack of resources to perform vital functions such as trend analysis is a common problem among FIUs. Investment in infrastructure is always beneficial but some FIUs have focused too much on technological resources and not enough on human resources.
- FIU success is a product of political will. When FIUs are not part of a country's national strategy, as is the case with some countries, they lack the power to make an impact in the fight against financial crime. FIUs play an important role in the fight against financial crime just as much as the FBI and IRS and one of its vital functions is to share information with them.

- Problems encountered by FIUs take time to fix and a long-term commitment. As is often the case, FIUs are too quick to take credit for success and do not take the time to think through solutions to these problems. In order to solve problems, FIUs must work within the system, within the context of who they are serving, whether it is prosecution, law enforcement or another entity.
- High staff turnover at FIUs due to more attractive private sector salaries continues to be a concern as well as the rising average age of FIU staff members. FIUs have relied on outsourcing to get around the problem of losing their institutional memory.

The interviewee suggested that in order to be successful, FIUs must first look within their borders and estimate the nature and size of the problem as success is measured against the magnitude of the problem. Investment in money laundering and terrorist financing should vary with the prevailing degree of the problem and should justify a menace that “touches more people than murder.”³⁶³ Another policy analyst noted that communication in the form of feedback between FIUs and those entities that it deals with is an essential ingredient for FIU performance enhancement. However, feedback is restricted by confidentiality and security issues.³⁶⁴ An attempt was made to substantiate the findings of this chapter with the help of surveys that reached out to a much larger sample. The next chapter summarizes the results of the survey.

³⁶³. Anonymous, interview by author, written notes, Europe, March 17, 2007.

³⁶⁴. Anonymous, interview by author, written notes, Europe, January 7, 2009.

CHAPTER V

QUANTITATIVE ANALYSIS OF ISSUES AFFECTING THE COUNTERING OF FINANCIAL CRIME

The objective of this chapter is to test some of the findings of the interviews conducted in the previous chapter with the help of the knowledge and expertise of a substantially larger group of those experienced in the field of financial crime. It gathers expert opinion, both within and outside the U.S., on what the drivers of financial crime are, the impediments to countering them, how FIUs have performed in countering the various types of financial crime, how they have performed before and after 9/11, the adequacy of their funding and which performance measures will enhance their performance. This is part of the triangulation strategy adopted for the study aimed at answering questions stated at the outset. This chapter details the specifics involved in carrying out this quantitative part of the study next.

Administration Of The Survey

The study involved a self-administered survey of a purposive sample. The target respondents are the same group of experts that were used for the interviews: reporting entities, law enforcement, politicians and bureaucrats and experts on the subject. The survey was conducted among 300 experts in the field of financial crime – 150 in the United States and 150 abroad. The reason for the split was to avoid over-sampling one group over the other. A total of 100 responses were received – 50 from the United States and 50 from abroad – which represented a response rate of approximately 30% which was anticipated. These included 27 financial institution personnel, 3 civilian agents, 20 law enforcement personnel, 8 academicians, and 42 consultants. The U.S. group has an

average of approximately 14 years of work experience while the non-U.S. group has an average of approximately 8 years of work experience. The respondent group had a high level of education. A majority of the respondents in the U.S. (52% or 26) hold a post-graduated degree, 34% (or 17) of these respondents are college graduates while 14% (or 7) of these respondents have some college education. Among the non-U.S. group, 54% (or 27) of the respondents have Masters, Ph.D., or J.D. degree, 44% (or 22) of the respondents have an undergraduate degree and 2% (or 1) of them have some college education.

In analyzing the results, a non-parametric test was used because in addition to lack of generalizability, the sample was relatively small and purposive. Due to the small size of known experts in the field, the process of snowballing was used. Earl Babbie explains snowball sampling as “collecting data on the few members of the target population you can locate, and then asking those individuals to provide the information needed to locate other members of that whom they happen to know.”³⁶⁵ Specifically, the Mann-Whitney U test was used in order to test the statistical significance of the difference in responses between the U.S. and non-U.S. groups. This test was used because the involved sample is not random and relatively small. If the p-value is greater than 0.05, then the Mann-Whitney test concludes that the observed differences between the U.S. and non-U.S. groups have no statistical significance at the 95% significance level. The corollary is: if the p-value is less than 0.05, then the Mann-Whitney test concludes that the observed differences between the U.S. and non-U.S. groups do have

³⁶⁵. Earl Babbie *The Practice of Social Research* (Wadsworth Publishing Company, 1988).

some statistical significance at the 95% significance level. What follows is an analysis of the survey responses.

The purpose of this survey is to solicit responses to the following questions from experts and practitioners in the field:

Question 1: Is there a difference in performance between U.S. and non-U.S. FIUs?

Question 2: What are the drivers of financial crime and the impediments to countering it successfully?

Question 3: What is the funding shortfall in countering financial crime?

Question 4: What are the performance metrics that will help enhance the performance of FIUs?

These questions were framed based on responses received during the interviews that needed further probing. For example, the international comparative aspect of this study necessitates the first question. The drivers of financial crime and the impediments in solving them were touched on by the interviewees in Chapter IV; the responses to the second question will help rank them in order of impact. Lack of funding has been a constant problem cited by interviewees in countering financial crime. The third question is aimed at garnering responses that specify a range of funding shortfall. Finally, the fourth question enables respondents to rate performance metrics they think are most important in tackling the problem at hand. Responses to this and the other questions serve as a means to support or reject this study's hypothesis.

Results Of The Survey

The survey findings can be summarized in four main points. These are supported by anecdotal evidence not only covering financial crime but also the larger context of terrorism.

I. America is more of a terrorist target than other countries due to its unique global position as ‘superpower’ and its representation as vanguard of Western civilization, secularism and values. However, its FIUs do not face a more difficult task countering financial crime nor does their level of performance significantly vary from their non-U.S. counterparts.

America’s uniqueness in the ‘war on terror’

There is no statistically significant difference between the perceptions of the U.S. and non-U.S. group. In describing America’s vulnerability to terrorism, Michael Kirk, producer of PBS’ Frontline suggested: “This is a fundamental war where people who have come through a time machine from 600 years ago have looked at our modern society and decided they don't like what they see. And they want to end it.”³⁶⁶ Survey respondents confirmed this sentiment. Among the total U.S. respondents, most either agreed (17 or 34%) or strongly agreed (14 or 28%) with it; only 12% of the total respondents either disagreed or strongly disagreed. Among the total non-U.S. respondents, the results were strikingly similar. Most either agreed (17 or 34%) or strongly agreed (10 or 20%) that America is more susceptible to terrorist attacks than other countries while 22% (or 11) disagreed or strongly disagreed with this. Flynn (2004)

³⁶⁶. Washingtonpost.com, “‘Target America’,” October 5, 2001. [cited on December 29, 2006] Available from World Wide Web: (http://www.washingtonpost.com/wp-srv/liveonline/01/attack/tv_frontline100501.htm).

outlines the serious threat posed to world capitalism if America is hurt as a result of terrorist attacks.³⁶⁷

While survey respondents confirmed expectations that America is more of a target of terrorists than any other country, contrary to expectations, they did not concur that it is more difficult for U.S. intelligence to combat financial crime than non-U.S. intelligence. However, 46% (or 23) of the total U.S. respondents and 40% (or 20) of the total non-U.S. respondents disagreed with this statement. To the contrary, only 22% (or 11) of the total U.S. respondents and 14% (or 7) of the total non-U.S. respondents agreed with this. A summary of the results are presented in the table below.

Table 5-1: U.S. and Non-U.S. Respondent's Opinion on America as a Terrorist Target and Its Relative Difficulty in Countering Terrorism

Ratings	America is more of a terrorist target than other countries		U.S. FIUs face a more difficult task countering crime	
	U.S. % (n=49)	Non-U.S. % (n=49)	U.S. % (n=50)	Non-U.S. % (n=49)
Strongly Disagree	8	10	6	20
Disagree	4	12	46	40
Somewhat Agree	24	22	20	20
Agree	34	34	22	14
Strongly Agree	28	20	6	4
Mann-Whitney Rank (p-value)	0.931		0.914	

While the U.S. has played the lead role in the 'war on terror,' it has sought and formed alliances with countries globally. This is substantiated in the preface of a 2001

³⁶⁷. Stephen Flynn, *America the Vulnerable: How Our Government is Failing To Protect Us From Terrorism* (HarperCollins, July 20, 2004).

report by the U.S. Department of State, *Patterns of Global Terrorism*, “[T]errorism cast its lethal shadow across the globe--yet the world's resolve to defeat it has never been greater. . . . This chilling report details the very clear and present danger that terrorism poses to the world and the efforts that the United States and our partners in the international community are making to defeat it. The cold, hard facts presented here compel the world's continued vigilance and concerted action.”³⁶⁸ Countering financial crime is a global effort and its difficulty is shared by all.

The performance of FIUs: U.S. vs. non-U.S.

The U.S. and non-U.S. respondents were congruent in their assessment of the performance of their respective FIUs before and after the September 11, 2001 attacks and there is no statistically significant difference between the two groups in this regard. Performance of FIUs has improved after the attacks which could be attributed to the tightening of AML/CTF controls post-9/11. In the U.S., only 20% (or 10) of the total respondents rated FIU performance as good or very good before 9/11. This number jumped to 50% (or 25) in post-9/11 ratings. Similarly, outside the U.S., 30% (or 15 of the total respondents) rated FIU performance as good or very good before 9/11 while 54% (or 27) rated FIU performance as good or very good after the attacks. The change in this perception is possibly a result of tightening the legislative noose around financial crime post-September 11, 2001 that gave intelligence agencies wide-ranging powers to track down financial criminals. However, general opinion suggests that there is still work to be

³⁶⁸. U.S. Department of State, “Patterns of Global Terrorism,” 2001. [cited on December 29, 2006] Available from World Wide Web: (<http://www.state.gov/s/ct/rls/pgtrpt/>).

done. Newly appointed CIA director General Michael Hayden proved this point in an interview when he was asked to describe U.S. anti-terrorism efforts, “Certainly, we have put a lot of energy into it. There have been a lot of successes. But as other folks in uniform are fond of saying, the enemy gets a vote, too.”³⁶⁹

Post-9/11 measures already discussed in this study have possibly resulted in the improvement in FIU performance. However, reports suggest there is even more room for improvement. For example, a bipartisan commission report, *Terrorist Financing*, released by the Council on Non-U.S. Relations accused the Bush government of lacking the political will to compel other governments to combat terrorist financing more stringently.³⁷⁰ In Canada, FINTRAC investigators “were reportedly surprised to discover that the cash tied to terrorism had risen to 10 percent of the total from less than 5 percent the previous year...Despite the large and apparently increasing scale of terrorist fundraising in Canada, the government has yet to file a charge.”³⁷¹ The table below is testimonial to the perceived differences in FIU performance before and after 9/11.

This table also reflects respondents’ views on FIU performance in countering traditional financial crime (committed through the banking system) and non-traditional methods of financial crime (such as that committed via international trade). A majority of the total U.S. respondents (52% or 26) rated FIU performance in countering traditional means of financial crime as either good or very good while only 20% (or 10) did so for

³⁶⁹. CIA Press Release, “Transcript of General Hayden’s Interview with WTOP,” June 1, 2007. [cited on May 31, 2008] Available from World Wide Web: (<https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2007/transcript-of-general-haydens-interview-with-wtop.html/>).

³⁷⁰. Maurice Greenberg, "Terrorist Financing," *Council on Non-U.S. Relations* (October 2002).

³⁷¹. Collacott, Martin. "Canada’s inadequate response to terrorism: the need for policy reform." *The Fraser Institute* (February 2006).

Table 5-2: Summary of U.S. and Non-U.S. Respondents' Views on FIU Performance

	Before 9/11		After 9/11		Traditional Financial Crime		Non- Traditional Financial Crime	
Performance (%)	U.S. % (n=49)	Non- U.S. % (n=50)	U.S. % (n=49)	Non- U.S. % (n=50)	U.S. % (n=49)	Non- U.S. % (n=50)	U.S. % (n=49)	Non- U.S. % (n=48)
Poor	36	40	12	36	10	10	46	36
Fair	42	30	34	32	32	34	30	32
Good	16	24	32	18	40	36	14	18
Very Good	4	6	18	6	12	16	6	6
Excellent	-	-	2	4	4	4	-	4
Mann-Whitney Rank (p-value)	0.458		0.735		0.940		0.443	

non-traditional means. Outside the U.S., the results were exactly the same for the traditional means of financial crime while 24% (or 12) of the respondents rated their respective FIU's performance as good or very good in countering non-traditional methods of financial crime. The difference in ratings between FIU performance in countering traditional and non-traditional methods of financial crime could be attributed to the following. Regulation of sectors through which traditional financial crime is committed increased immediately after the terrorist attacks early this decade. Regulation of sectors through which non-traditional financial crime is committed has only just begun to be addressed.

II. Money laundering is the most powerful driver of financial crime while political short-sightedness is the most significant impediment in successfully countering financial crime/terrorism.

Initial research for the study suggested that money laundering is the biggest driver of financial crime. Survey respondents confirmed this. On a scale of 5, drug and criminally-related money laundering received the highest average rating both within (4.5) and outside the United States (4.1). In the United States, both misuse of informal banking systems (Hawalas) and trade-based financial crime received the next highest average ratings at 3.8 followed by misuse of charities at 3.4. Outside the United States, trade-based financial crime was a close second with an average rating of 3.9 while misuse of informal banking systems (Hawalas) and misuse of charities were next with average ratings of 2.7. A summary of the ratings is presented in the table below.

Table 5-3: U.S. and Non-U.S. Respondents' Perceptions of Drivers and Impediments of Money Laundering

DRIVER (RATING SCALE: 1 – 5)	RESPONDENT		IMPEDIMENT (RATING SCALE: 1 – 5)	RESPONDENT	
	U.S.	NON-U.S.		U.S.	NON-U.S.
Drug and criminally-related money laundering	4.5 (n=50)	4.1 (n=50)	Lack of performance metrics	3.3 (n=48)	3.0 (n=50)
Misuse of informal banking systems (Hawalas)	3.8 (n=49)	2.7 (n=50)	Political short-sightedness	3.7 (n=49)	3.2 (n=50)
Misuse of charities	3.4 (n=49)	2.7 (n=50)	Fragmented legislative oversight	3.6 (n=50)	2.7 (n=50)
Trade-based money laundering and financial crime	3.8 (n=49)	3.9 (n=50)	A number of crime-fighting agencies with overlapping	3.4 (n=49)	2.8 (n=50)

			responsibilities		
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When it came to the impediments in countering financial crime, lack of performance metrics was expected to be the biggest of these since performance measures cannot be established without an organization having vision. Not so. In the United States, political short-sightedness was the most common response with an average rating of 3.7 followed closely by fragmented legislative oversight with an average rating of 3.6, a number of crime-fighting agencies with overlapping responsibilities at 3.4 and lack of performance metrics at 3.3. Outside the United States, political short-sightedness was again the highest rated response with an average rating of 3.2 followed by lack of performance metrics with an average rating of 3.0, a number of crime-fighting agencies with overlapping responsibilities with an average rating of 2.8 and fragmented legislative oversight with an average rating of 2.7. These results did not match initial findings.

When it comes to terrorist financing, governments' lack of vision, one can argue, has resulted in ineffectiveness in countering it. By increasing the level of regulation in vulnerable sectors or freezing the assets of suspected persons or entities, the government is merely pushing terrorists to find alternative means of financing their activities and "law enforcement does not just lose a conviction, but it may be unable to trace the funds as extensively as may be required to interrupt operations or to find those linked to terrorist networks."³⁷² This is particularly significant considering that those caught are, generally, lower down in the chain of command of the terrorist group and have limited contribution

³⁷². Ibid.

in masterminding terrorist attacks.³⁷³ One report even suggests that “SARs did not, nor should they have, nor would they now, discover any of the financial activity in which the September 11 hijackers engaged.”³⁷⁴

III. Intelligence agencies are underfunded.

The observed differences between the U.S. and non—U.S. groups, when it comes to determining if funding gaps exist, have no statistical significance. However, the observed difference between the groups when it comes to the extent of the shortfall is statistically significant. Soon after the terrorist attacks of September 11, 2001, Fareed Zakaria, in his column for *Newsweek* magazine, predicted the U.S. government’s course of action in the ‘war on terror’ would be to throw money at the problem. This makes sense since adequate funding has been a problem in this ‘war.’ Zakaria asserts that there is a pressing need to shore up the country’s intelligence capabilities rather than its military strength.³⁷⁵ An overwhelming majority (70% or 35) of the total U.S. experts are of the opinion that current FIU funding is not at the level where it should be. However, they felt that the funding gap wasn’t big with 72% (or 36) of the total respondents indicating that it was within 50%. With regard to the respondents outside the U.S., 56% (or 28) of the total respondents agreed that current FIU funding is not at the level that it should be with 70% (or 35) of these respondents estimating this gap to be up to 50%.

³⁷³. Ibid.

³⁷⁴. Laura K. Donohue. "Anti-Terrorism Finance in the United Kingdom and United States." *Michigan Journal of International Law* 27:303 (2006): 393-403.

³⁷⁵. Zakaria, Fareed. "The war on terror goes global." *Newsweek* (September 13, 2001).

Table 5-4: U.S. and Non-U.S. Respondents' Estimation of Gaps in FIU Funding

Level of Funding Gap	RESPONDENT		Range of Shortfall (%)	RESPONDENT	
	U.S. % (n=49)	NON-U.S. % (n=50)		U.S. % (n=50)	NON-U.S. % (n=46)
Grossly Underfunded	14	8	1-10%	18	26
Underfunded	56	48	11-25%	18	26
Adequately Funded	26	42	26-50%	36	18
Overfunded	2	3.9	51-75%	16	16
Grossly Overfunded	-	-	76-100%	10	6
Mann-Whitney Rank (p-value)	0.505		Mann-Whitney Rank (p-value)	0.039	

As seen in the table above, the results confirm expectations that not enough is spent on intelligence geared towards countering financial crime. In the editorial mentioned above, Zakaria emphasized the importance of gathering of information on organizations and people responsible for planning and carrying out terrorist acts such as those that took place on 9/11. He suggested investing, in wiretapping and satellite equipment but mainly in human intelligence, “We need, for example, to shore up an important weapon in our arsenal--covert operations. They remain the best way to penetrate a terrorist organization, foil a plot or pre-empt an attack on the United States.”³⁷⁶

³⁷⁶. Ibid.

IV. FIUs can improve performance by focusing on outcome measures.

The utility of performance measures by financial intelligence agencies is the core concept of this study. When asked to rate the utility or appropriateness of selected performance measures, respondents confirmed expectations that government agency performance in fighting financial crime would be enhanced with a strong emphasis on outcome monitoring. Among the twelve measures categorized on the basis of business-related measures, customer-related measures, learning and growth-related measures, finance-related measures, and outcome measures, respondents ranked two outcome measures in the top three and three of them in the top six. Following is respondents' ranking order of performance measures from highest to lowest:

- 1) The value of intelligence that leads to interdiction and prevention of financial crime.
- 2) The accuracy and timeliness of suspicious transaction reports.
- 3) The number of financial criminals convicted.
- 4) The number of support functions provided to reporting agencies, partner agencies and law enforcement.
- 5) The number of repeat offenders.
- 6) The amount of laundered money interdicted in relation to the estimated total amount of laundered money.
- 7) The number and dollar value of suspicious transactions identified annually.
- 8) The total number of financial criminals interdicted in relation to the estimated number of financial criminals.
- 9) The number of employees that complete training.

10) Percentage of payroll devoted to training.

11) The dollar value of suspicious transactions identified annually in relation to the total amount of the budget.

12) The dollar value of ‘dirty money’ interdicted per employee.

The table below displays the U.S. and non-U.S. respondent average ratings of selected performance measures that were either suggested by interviewees or currently being used by FIUs.

Table 5-5: U.S. and Non-U.S. Respondent Ratings of Performance Measures (Rating Scale: 5 = More Appropriate, 1 = Less Appropriate)

Measure Type	U.S. Rating by Frequency	Average U.S. Ratings	Non-U.S. Rating by Frequency	Average Non-U.S. Ratings
Business Process-related Measures	n(5) = 25 n(4) = 38 n(3) = 23 n(2) = 7 n(1) = 4	3.8	n(5) = 15 n(4) = 33 n(3) = 30 n(2) = 14 n(1) = 6	3.4
Customer-related Measures	n(5) = 41 n(4) = 39 n(3) = 14 n(2) = 3 n(1) = 1	4.2	n(5) = 22 n(4) = 36 n(3) = 25 n(2) = 10 n(1) = 5	3.6
Learning and Growth-related Measures	n(5) = 9 n(4) = 29 n(3) = 31 n(2) = 25 n(1) = 4	3.1	n(5) = 8 n(4) = 17 n(3) = 32 n(2) = 32 n(1) = 8	2.9
Finance-related Measures	n(5) = 4 n(4) = 19 n(3) = 37 n(2) = 22 n(1) = 15	2.8	n(5) = 5 n(4) = 11 n(3) = 32 n(2) = 37 n(1) = 10	2.6
Outcome Measures	n(5) = 40 n(4) = 58 n(3) = 57 n(2) = 27 n(1) = 14	3.4	n(5) = 39 n(4) = 68 n(3) = 42 n(2) = 30 n(1) = 17	3.4

Suggested Best Practice Measures

There is constant debate on which outcome measures are most suitable in achieving results. One scholarly report calls for moving beyond using the dollar amount of a seizure as an indicator of performance to more concrete measures of outcomes such as the seniority of the interdicted person or persons within the terrorist organization.³⁷⁷ Through an open-ended question, survey respondents suggested that FIUs target outcomes taking into account the following:

- The number of SARs that are actually investigated and prosecuted (successfully or unsuccessfully); total SAR positives in relation to SARs received monthly, the dollar value of ‘dirty money’ interdicted per state, SARs classified on the basis of financial sector, geographic zone, kind of economic activity, etc.;
- the quality of feedback to financial institutions. Specifically, (a) the turn around time of the FIU in responding to financial institutions on their reporting of suspicious cases; (b) circulation of list of black-listed (criminals) names among financial institutions; and (c) sharing of information about new crimes with financial institutions;
- the number of quality cases cleared and the number of interdictions that identify and negatively impact major money laundering organizations;
- measured objectives relating to the number of arrests made from information provided by the FIU to the appropriate enforcement agency (FINCEN, etc.), convictions per dollar expenditure as well as prosecutions as a result of FIU data or analysis;

³⁷⁷. Donohue, 405.

- peer to peer comparisons among banks about suspicious activity reporting, enhanced coordination between law enforcement and regulators, facilitated and frequent communication between banks and regulators about expectations/concerns/trends;
- measured objectives relating to budgeted training costs, number of training programs provided and number of employees trained annually; and
- the share of criminal proceeds that the police are allowed to keep (gainsharing).

Key Findings

This chapter set out to stamp mark the findings of the qualitative section of this study. The following is a recap of conclusions drawn from this chapter:

- 1) Drug- and criminally-related money laundering is perceived as the main means of committing financial crime; international trade is an emerging trend. Government's lack of vision in tackling the problem is considered the biggest impediment to countering financial crime.
- 2) U.S. and non-U.S. experts generally agree that America is more of a target for terrorists because of its unique position as a superpower and its representation as a vanguard of western civilization, secularism and values but U.S. intelligence agencies do not face a more difficult task in countering financial crime.
- 3) Experts generally agree that FIU performance in countering financial crime committed through traditional methods via banks, credit unions, brokerage houses, insurance companies etc. has been good. However, FIU performance in

countering financial crime committed through non-traditional means like the informal banking system (Hawalas) and international trade has been poor.

- 4) The performance of FIUs in countering financial crime before the terrorist attacks of September 11, 2001 was poor in the opinion of experts who also felt that post-September 11 changes brought about a marginal improvement in FIU performance.
- 5) American FIUs are underfunded by as much as 50% in the view of most American experts. A majority of foreign experts felt that their respective FIUs were underfunded by a comparatively smaller margin - as much as 25%.
- 6) Performance measures that are most useful are the value of intelligence that leads to interdiction and prevention of financial crime, the accuracy and timeliness of suspicious transactions reported, and the number of financial criminals convicted.

Chapter Summary

Chapter V puts in perspective what the literature review and the initial interviews revealed: the monitoring of outcomes is critical in achieving success in countering financial crime. Survey respondents were clearly in favor of FIUs moving beyond widget counting to more useful measures of performance, those that measure results. The survey also exposed the contrast in adapting the BSC to the private and public sectors. In the private sector, financial measures enjoy top billing but this is just the opposite when it comes to the public sector as evidenced by experts' low ratings of the suitability of financial performance metrics in helping counter financial crime. Here, the focus is on

cost efficiency rather than cost. The dissertation sought to answer if the BSC would be a suitable fit for this study and this segment of the study seemed to affirm this.

Instead, aspects of the FIU business process that involved receiving reported information accurately and on time, the value of intelligence reported by the FIU to law enforcement and other intelligence agencies were seen as having more value, according to experts. The same can be said for the training of FIU personnel. Modern day organizations engage in operational training which is “technical or specialized training to meet an organizational need or satisfy an organizational mandate for training in current or newly assigned work duties.”³⁷⁸ Financial criminals are constantly exploiting the system by finding new ways to raise funds for their illegal activities. Hence, experts in the field determined that training of FIU personnel to detect these new methods was of utmost importance. Chapter VI summarizes the results of this study and helps answer the big story posed at its outset.

³⁷⁸. Linda Bjornberg. "Training and Development: Best Practices." *Public Personnel Management* 31:04 (2002): 510.

CHAPTER VI

CONCLUSION

This concluding chapter is a recap of the conclusions from the qualitative and quantitative research sections of this study. It includes what constitutes effective performance for FIUs, and provides recommendations for improved practice based on the results of this study. Finally, it discusses the limitations of this study and opportunities for future research based on its findings. It begins with a summary of the results.

Summary Of Research

This study was undertaken to explore the possible lack of outcome measuring and monitoring in governments' fight against financial crime under the deployment of the Balanced Scorecard (BSC). The type of government agency that this study particularly focused on was the financial intelligence unit (FIU) specially set up to gather and analyze financial intelligence due to the growing nature of the problem. The study assessed the functioning of the FIU through the Balanced Scorecard (BSC) prism and generally found that while some participants found this an effective means of looking at the problem, others did not. The starting point was to determine perceptions of the drivers of financial crime and the impediments to success in countering it. This study also shed light on performance measurement and outcome monitoring at a number of different levels including the influence of cultural factors on opinions, discussed in detail below.

There is a common perception that while some government agencies across the globe have adopted performance measures, they have barely scratched the surface when it comes to monitoring outcomes. In the preliminary research for this study, it was found that the recent rise in terrorist activity has compelled governments to solidify existing

initiatives and adopt new ones within their borders to counter the financing of terrorist activity. These, generally, cover all levels of government and transcend a variety of sectors. Across borders, there is a pressing need for countries to collaborate and cooperate in intercepting funds of terrorists whose activities, in a number of cases, are trans-national. This study discussed a number of efforts such as the Wolfsberg Group and Basel Committee where entities from around the world have joined forces and put their heads together to tackle this problem collectively.

While tightening of regulations has been the first plan of action in the playbook of countries affected by terrorism, relatively little action has been taken on the performance management front. The results of this study make it profoundly evident that organizational effectiveness of intelligence agencies can no longer take a backseat to anti-terrorism legislation. In fact, the two must complement each other. In the case of financial crime, for example, much of the success of FIUs is dictated by what sectors its governing legislation allows it to monitor. Restrictions imposed by legislation, in this regard, were seen to have negatively affected the outcomes of FIU investigations in more than one country covered by this study. This is irrespective of the fact that the FIUs studied here are of the administrative type – they process and analyze reports of suspicious transactions passed on to them and then pass these on to investigative and prosecutorial authorities; they have no law-enforcement or judicial authority.

The FIUs (in this study) are subject to legislation that can be considered myopic (addressing the problem in the short-run), but the shortcomings in their operations are perceived to extend far and beyond this limitation. The participants in this study were FIU personnel and those associated with FIUs such as reporting entity personnel, law

enforcement, audit institution personnel, affiliated lawmakers, other intelligence personnel, former employees, civilian agents and consultants. A number of them felt that FIUs were found wanting when it came to the development and implementation of an outcome monitoring system. While the Dutch FIU lives by the sole metric of whether or not they are able to stop financial crime, the Australian, Canadian and American FIUs have a whole list of metrics which are, by and large, output-related. Experts recommended that FIUs set substantive targets and monitor progress towards them if they are to expect their performance in countering financial crime leapfrog from its current status. There were those that called for the current system of measuring the quantity of intelligence reports processed to be supplanted by the quality of intelligence reported. There were others who called for collective accountability, that is, a performance management system that would track financial intelligence from its source of dissemination to those responsible for indictment and prosecution of financial criminals. There were still others who called for performance comparisons between and among FIUs.

The results of the interviews were corroborated by the results of the surveys which formed the next part of the study. This time, with the help of a larger group of experts, perceptions about the similarities and differences between American and foreign FIUs were measured. This exercise was intended to expose possible cultural differences between the two groups' thoughts in relation to i) the drivers of financial crime and impediments to countering it; ii) the performance of their respective FIUs in countering traditional and non-traditional methods of financial crime; iii) the performance of their respective FIUs before and after the terrorist attacks of September 11, 2001; iv) the

performance metrics most suitable to countering financial crime; and v) the shortfall in funding that deters their respective FIUs from performing effectively.

In one sense, this exercise did not expose any cultural differences, as expected, as the only statistically significant difference in perceptions between American and foreign experts was in regard to the amount of funding shortfall experienced by their respective FIUs. In another sense, the opinions of one group of respondents were reinforced by the other group, thereby re-affirming perceptions on issues that were considered critical to this study. Culturally-influenced perceptions (or rather the lack of) aside, survey responses regarding the use of performance metrics overwhelmingly supported the hypothesis of the study: the success in countering financial crime is impacted by the focus, measurement and monitoring of outcomes by government intelligence agencies.

A key ingredient of outcome-driven performance management is the metrics used to measure the impact of FIU efforts in fighting financial crime. Those suggested include the number of money launderers interdicted in proportion to the total number of money launderers, the amount of laundered money interdicted in proportion to the total amount of laundered money, the number of money launderers convicted, and the number of repeat offenders. These should be monitored over a period of time, so that FIUs and their financial-crime fighting partners can make necessary adjustments in planning and implementation. However, this comes with the caveat that the exact amount of ‘dirty’ money is unknown leaving the success percentage of the financial-crime fighting regime a matter of conjecture. It is a foregone conclusion that outcome monitoring is more of a way to enhance the performance of FIUs rather than help them get rid of the problem completely.

Recommendations For Functional Improvement Of Financial Intelligence Units

As stated at the outset, the BSC was the chosen framework for this study on account of its utility in examining all aspects of an organization's operations. The study progressed along the lines of the BSC's four perspectives and culminated with the following lessons learned based on the literature review, interviews and surveys.

Business Process Perspective

- The operations of the FIU should tie in with its mission, objectives and goals. Subsequently the FIU should possess the technological capability to achieve these. Study participants opined that terrorists are constantly finding new ways to finance their activities. Advancement in technology could help counter some of these. Technological strength can also enable an FIU to process, analyze and disseminate a larger volume of STRs, thereby making it more efficient. Data mining technologies can also help the FIU meet its regulatory obligations. For example, an FIU can use programs such as GIS to track and register businesses such as money service businesses which might otherwise be difficult to do.
- Silos or bottlenecks existing within the FIU or the broader chain of authority should be dealt with effectively.³⁷⁹ If, for instance, the FIU decision-making process were to include employees to the greatest extent possible, it will eliminate feelings of isolation. Also, study participants stated that coordination among government agencies is a major impediment to fighting financial crime. The elimination of bottlenecks in the coordination process, will result in greater efficiency in countering financial crime.

³⁷⁹. Schott, 86, 87.

- Some recipients expressed dissatisfaction over reports forwarded to them by FIUs. Therefore, the FIU should add value to the information it receives in order to fulfill its role and meet the expectations of entities that follow it in the chain of authority.³⁸⁰ An FIU that adopts a more integrated approach in its operations, that is, operates in unison with other players in the fight against financial crime such as reporting entities, law enforcement and prosecution can alleviate the risk of fragmentation.
- An FIU must work to institute an effective mechanism that facilitates information-sharing and the avoidance of overlapping of duties among crime-fighting agencies. As one interviewee suggested, the creation of a central czar that oversees financial crime prevention and controls operations can help facilitate this.
- Along the same vein, well-drawn out MOUs between the FIU and reporting entities can enhance the quality of compliance inspections conducted by the FIU. This also increases the likelihood of regulated sectors meeting reporting requirements and reduces the possibility of them reporting what is not required. This addresses some of the major concerns expressed by reporting entities to FIUs.
- An FIU can improve accountability through internal reviews and external evaluations. This will enable it to take corrective action to improve performance. While some FIUs already undergo these evaluations, others would certainly benefit from them.

³⁸⁰. Schott, 86.

- Relevant performance metrics suggested by study participants include the number of internal and external reviews/evaluations of the FIU, the rate of technological advancement made by the FIU, the number of times the FIU shares information, and the accuracy, timeliness and relevance of analyses conducted by the FIU.

Customer Perspective

- As study participants suggested, it is essential for an FIU to forge relationships with its public service counterparts to economize and at the same time, maximize the scope of efforts to counter financial crime. For example, partnerships with regulatory agencies can help avoid reporting redundancy, that is, reporting to more than one agency.
- Reporting entities expressed a number of concerns in relation to compliance with FIU reporting requirements. Compliance on the part of reporting entities is key to the FIU performing its function; in turn, the FIU must keep in check administrative burdens or costs on reporting entities in order to encourage compliance. The FIU can also improve its relationships with reporting entities by providing clear guidelines or indicators as to what constitutes a suspicious transaction, thereby reducing complexity in the reporting process. FIU training of reporting entities in compliance will stem the flow of reported information that is not required from these entities to the FIU.
- A structure and reliable instrument for feedback from reporting entity to FIU and back, and from FIU to law enforcement and back on case details can result in more effective communication among financial crime-fighting partners. This was

a point made by a number of study participants. Outreach programs, whether on an FIU's physical space or via technology, can also help win the confidence and cooperation of the FIU's customers. An FIU can also create goodwill by including its customers in the decision-making process through their participation in various advisory groups.

- Cooperation extends beyond national borders and an FIUs can help other newly established, less developed FIUs catch up with the best among them by sharing operational and technical know-how. Study participants indicated that this is a widely prevalent practice.
- Relevant performance metrics, according to study participants, include the degree of compliance costs imposed by the FIU on reporting entities, the number of support functions provided by the FIU to reporting agencies, partner agencies and law enforcement, the ratio of resources allocated by the FIU in serving regulated sectors to resources allocated in serving law enforcement and the FIU's contribution to an investigation, that is, the percentage of information provided by the FIU that is used in investigations.

Learning and Growth Perspective

- The private sector is an important source with respect to the hiring of FIU personnel. Many of the tasks performed by an FIU involve dealings with private-sector entities such as banks, casinos, insurance companies, jewellers etc. It will benefit the FIU to hire those experienced in these businesses. Those with experience in law enforcement and other intelligence agencies are also valuable

assets to the agency. Former employees can be hired as external consultants. Intelligence analysis and technological expertise are also key to the FIU meeting performance targets. On the other hand, an FIU must find ways to attract the best and the brightest and avoid losing personnel to the private sector by offering competitive salaries and benefits that match the private sector's. FIU loss of employees to the private sector and the inability of FIUs to compete with higher private sector salaries are some of the grievances that study participants had.

- Study participants also cautioned against underestimating the importance of workforce planning. Through skills inventory and gap analysis, an FIU can design training programs for its employees. Additionally, the FIU must ensure that personnel are well trained in the technical areas of the business so that they understand trends in money laundering and terrorist financing, constantly changing money laundering and terrorist financing methods and are able to properly analyze information received from reporting entities. Cross-functional training, both through courses and on-the-job, will help achieve this. Part of the training program should also include compliance with the FIU's rulebook on security and privacy.
- The study revealed that FIUs are well aware of the importance of staff member training especially due to the highly technical nature of the job. From an organizational development perspective, FIU personnel attendance at workshops and conferences related to the field is integral. Through these and other avenues for interacting with the community outside the FIU, such as academicians and law enforcement, employees will gain different perspectives about the nature of the

FIU's work and hone a broad set of skills to provide solutions to problems. Since FIU work is computer-intensive in nature, the technical skills of personnel should constantly be upgraded. New FIU employees can certainly benefit from a mentorship program. It is also necessary for FIUs to ensure that their budgets for training keep up with the requirements of the job and are not cut as a result of government cutbacks.

- In the context of performance appraisals, FIU personnel can be made to understand what is expected of them in relation to the priorities of the agency. They should also be allowed to provide input during the appraisal process in what is known as participatory performance appraisal.³⁸¹ Employee performance should be linked to the agency's strategic plan. Regular performance evaluations and appraisals of personnel, at which their strengths and competencies are assessed, help achieve this. A rewards-based system recognizing individual as well as unit contributions to the performance of the agency can sustain motivation and instill a sense of empowerment among personnel. Study participants encouraged FIUs to be innovative in this area. In addition, newer methods of performance appraisals should be explored such as multisource or 360-degree appraisals where performance assessments are obtained from different sources such as customers that personnel deal with.³⁸²

³⁸¹. Gary E. Roberts. "Employee performance appraisal system participation: A technique that works." *Public Personnel Management* 32:01 (2003): 89.

³⁸². Angelo S. DeNisi and Avaraham N. Kluger. "Feedback effectiveness: Can 360-degree appraisals be improved?" *Academy of Management Executive* 14:01 (2000): 135.

- Relevant performance metrics that study participants suggested include the percentage of the FIU's budget allocated for training, the degree of learning plan development conducted by the FIU for its personnel, time worked at the job in relation to competencies acquired on the job and competencies acquired by FIU personnel in relation to the requirements of the job.

Financial Perspective

- The FIU must “strive to produce what it must produce in a manner proportionate to its resources devoted to it”³⁸³ A focus on outcomes in addition to the right amount and areas of investment will guide it in achieving this. Some study participants felt that FIUs' current focus on outputs is unproductive. Some others were of the opinion that too much is being invested in anti-terrorism security measures and not enough in terrorist financing.
- Specifically, study participants advocated FIU investment in human resources to enhance functions such as compliance inspections of reporting entities, investigations that will end up being more timely and accurate, and analyses that helps investigations.
- Additionally, study participants stressed the need for investment in technology related to reporting conduits, regulatory assignments, and data tracking and management systems.
- Study participants suggested internal financial performance metrics including the ability of the FIU to meet its budget, improved efficiency in proportion to

³⁸³. Gottselig et al., 87.

investment and the amount of investment in human and technological resources in relation to the amount of financial crime deterred. They also suggested external financial performance metrics such as feedback from the FIU's stakeholders to gauge value for investment, the dollar value of 'dirty money' interdicted per employee, and the number of prosecutions and convictions per dollar expenditure.

It is noteworthy that FIU performance is dependent on the performance of other entities within the chain of authority as well. So performance metrics would work only to the extent of the cooperation of its partners fighting financial crime. While the effectiveness of FIUs has constraints, so does this study have limitations. These are discussed next.

Limitations Of The Study And Areas For Future Research

While the study proceeded smoothly, there appeared to be some limitations in conducting it as planned. First, public entity performance dealing specifically with financial crime is an area that has been scarcely touched upon by public administration experts. Hence, literature on the subject was not easy to find. Secondly, a few potential participants like the National Criminal Intelligence Service (U.K.), the Belgian Financial Intelligence Processing Unit, and the Canadian Security Intelligence Service declined to be interviewed for the study. Next, members of the bureaucracy interviewed for this study seemed constrained in responding to questions during the interview phase and, at times, expressed this sentiment. Behind the veneer of cooperation, they were restricted by the concern for the consequences of their responses. Finally, getting responses for the

survey required constant follow-up and the use of snowballing to secure the valid number of responses.

Hopefully, this study will branch off further into less explored areas of terrorism or areas that have been researched without a consensus. These include:

Inter-organizational Coordination:

The ‘war on terror’ is an initiative that goes beyond just involving the different levels of government; it incorporates the efforts of private enterprise, non-profits and the average citizen as well. This gives rise to potential problems which one study elucidates, “The lack of coordination and overlapping jurisdictions have resulted in fragmentation and often in redundancies within the system.”³⁸⁴ Considering the inevitably, yet, vulnerability of partnerships in fighting ‘the war on terror,’ the study suggests improvement of inter-organizational relationships within the operational, financial, legal-regulatory, and political spheres.³⁸⁵ Often models appear good in theory but more research needs to be conducted on their practicality and suitability for coordinating the efforts of multiple players in the ‘war on terror.’

Emerging Trends in Financial Crime

We determined that terrorists are finding alternative means of terrorist financing as the authorities clamp down on more traditional means. The most prominent of these, as our survey respondents pointed out, is international trade. In fact, the FATF recently released a dossier *Trade Based Money Laundering* which specifies the typologies used by

³⁸⁴. Charles Wise and Nader, R., "Organizing the Federal System for Homeland Security: Problems, Issues, and Dilemmas," *Public Administration Review* (September 2002): 45.

³⁸⁵ Ibid.

terrorist financiers and money launderers to commit financial crime. However, this ploy by the terrorists extends beyond financial crime. They could potentially import terrorist material into a country because customs officials do not check the weights of these goods. Back to financial crime, one customs official pointed out, "We do get some customs questions generated by Operation Green Quest³⁸⁶, but it's difficult to get prosecutors or agents interested in this area."³⁸⁷ This is a niche in the area of financial crime that warrants further research given the volume of money moved through these means.

The Role of the Financial Action Task Force

The FATF's original scope of responsibility included money laundering until the attacks of September 11 when its responsibility was expanded to include terrorist financing. One report expresses the common sentiment on this, "The inclusion of terrorist funding in the AML regime is far from gathering consensus, even among FATF experts

³⁸⁶. "The initiative is designed to harness the formidable financial expertise and authority of the Treasury Department to freeze accounts, seize assets, and, where appropriate, bring criminal actions against individuals and organizations that finance terrorist groups. Operation Green Quest is led by the U.S. Customs Service, and includes agents and analysts from the Internal Revenue Service (IRS), the Secret Service, the Bureau of Alcohol, Tobacco and Firearms (ATF), the Federal Bureau of Investigation (FBI), the Office of Foreign Assets Control (OFAC), the Financial Crimes Enforcement Network (FinCEN), the U.S. Postal Inspection Service, and the Naval Criminal Investigative Service. Federal prosecutors from the Justice Department's Criminal Division also form an integral part of Operation Green Quest. (U.S. Customs and Border Protection": http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/legacy/2002/22002/02262002.xml).

³⁸⁷. Chris Hamblin, "Imports and exports: a black hole in US law enforcement ," April 7, 2003. [cited on April 3, 2007] Available from World Wide Web: (http://www.moneylaundering.com/NewsArticles/Complinet_20030407.aspx).

who, even before 9/11, expressed disagreement on this linkage.”³⁸⁸ On a different note, the FATF conducts its mutual evaluations of member nations through panels of financial crime experts. However, the composition of these panels changes with the country under review. One of our interviewees raised a question about this procedure stating, “Within the FATF, different panels evaluate different FIUs which leads us to ask if there is a political motivation between the FIUs.”³⁸⁹

The most pressing among all of these issues is the lack of inter-organizational coordination and there remains an imminent need to establish a suitable model to smoothen out this process. Based on experience of this study, future research will be conducted along slightly modified guidelines from this study as follows:

- a) random sampling will be replaced by clustered sampling to allow all segments of the population in each jurisdiction to be included in the study;
- b) the multi-jurisdictional will be replaced by a bi-jurisdictional one to gain a more in-depth analysis of the problem and utilize limited resources more efficiently; and
- c) secure a stronger representation of legislators in the study who were difficult to reach for this one and generally, cautious in their responses.

The Balanced Scorecard (BSC) methodology was found to be a useful one for a study of this nature. This study also proved the usefulness of applying the BSC to this arena and perhaps, could be a useful tool for internal agency reviews and external assessments

³⁸⁸. Amandine Scherrer, "Explaining Compliance with International Commitments to Combat Financial Crime: the G8 and FATF," Paper Presented at the 47th Annual Convention of the International Studies Association (March 2006).

³⁸⁹. Anonymous, interview by author, written notes, Australia, May 16, 2006.

mentioned earlier. The study also resulted in other important revelations which are discussed below.

The findings of this study succinctly reveal the following. Experts, both American and non-American, see money laundering-related terrorist financing as the primary menace and newer methods of financial crime such as Hawalas and trade-based financial crime as looming threats. These experts also regard the tendency of the bureaucracy to take care of problems for the short-term as the foremost impediment to tackling financial crime. From an administrative stance, this study heard a loud and clear call for FIUs to move from widget-counting such as keeping track of the number of suspicious transactions received to more outcome-oriented metrics such as the quality of reports prepared in terms of timeliness, accuracy and level of utility to the receiving entity.

The greater involvement of reporting entities, law enforcement and prosecution in fighting the good fight against financial crime is seen to potentially yield gains. These gains can be measured in terms of the number of financial criminals convicted, the number of repeat offenders, the total number of financial criminals interdicted in relation to the estimated number of financial criminals and the amount of laundered money interdicted in relation to the estimated total amount of laundered money. In the Introduction, outcome monitoring is defined as “the regular (periodic, frequent) reporting of program results in ways that stakeholders can use to understand and judge those results.”³⁹⁰ A judgment call to ascertain the contribution of the FIU in fighting financial

³⁹⁰. Dennis Affholter, *Outcome Monitoring*. Hand book of Practical Program Evaluation. (Jossey-Bass Inc., CA, 1994).

crime can only be made if it reports results periodically in ways that we, the public, can understand and measure.

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Appendix A

Channels Through Which Money Laundering Is Conducted

- Proceeds of crime derived from the activities of traffickers, in both people and illicit drugs, gambling operations and organized criminal groups;
- Money laundering as a means of disguising and hiding the proceeds of violent and serious crimes such as kidnapping, arms smuggling, hijacking, extortion, public corruption and crimes by terrorist groups;
- Money laundering as a means of tax evasion;
- The use and abuse of the services offered by offshore financial centers for the purposes of money laundering;
- The increasing use of professionals, including lawyers and accountants, for the purposes of money laundering;
- Structuring, or deliberately breaking down, currency transactions so as to avoid legal reporting requirements and detection;
- Purchasing of bank drafts and bank checks, as a substitute for currency, and transporting the drafts and checks via couriers or through the postal service;
- Physical removal of currency from jurisdictions by the making of false declarations or by the smuggling of large amounts through cargo containers or international courier services;
- Traditional electronic movement of funds by means of bank transfers or transfers through financial advisors and insurance or security brokers;
- Changes and innovations in technology that allow for undetected electronic movement of funds, such as transfers of funds over the internet, the purchase of goods and services over the internet with illegally derived funds and the use of emerging technologies such as stored-value cards;
- Movement of currency and other forms of funds by means of non-traditional banking services, such as underground and alternative banks, currency exchange houses and remittance facilities;
- The use of company formation agencies to form 'shell' companies and the use of 'shell' companies to disguise the true ownership and source of illicit funds and to facilitate transfers of those funds;

- Transfer of proceeds of crime outside the jurisdiction for the purpose of investment, including the purchase of real estate;
- The use of the gambling industry, including casinos, to transfer and disguise the proceeds of crime; and
- The use of negotiable instruments and credit and debit cards to transfer and disguise the proceeds of crime.

Source: Asia/Pacific Group on Money Laundering - Money Laundering Methods and Proceeds of Crime Typologies Workshop Public Summary Report

Appendix B

Specified Unlawful Activities Under U.S. Laundering Laws

Crime/Statute

Aircraft piracy/Title 49, USC Sec. 46502

Alien smuggling/Title 8, USC Secs. 1324*, 1327*, 1328*

Arms export/Title 22, USC Sec. 2778(c)

Bank fraud/Title 18, USC Sec. 1344*

Bank robbery and burglary of government property/Title 18, USC Secs. 2113, 2114

Bank Secrecy Act crimes/Title 31, USC Secs. 5322*, 5324*

Bankruptcy fraud/Title 11, USC Sec. 101* and Title 18, USC Sec. 152

Bribery/Title 18, USC Secs. 201*, 215, 224*

Congressional or Cabinet officer assassination/Title 18, USC Sec. 351

Conspiracy to kill, kidnap or maim a person or injure certain property in a foreign country/Title 18, USC Sec. 956

Contraband cigarettes, trafficking in/Title 18, USC Secs. 2341*, 2342*, 2343*, 2344*, 2345*, 2346*

Copyright infringement/Title 18, USC Sec. 2319**

Counterfeit goods, trafficking in/Title 18, USC Sec. 2320*

Counterfeiting and forgery/Title 18, USC Secs. 471*, 472*, 473*, 500, 501, 502, 503, 513

Customs crimes/Title 18, USC Secs. 542, 545, 549

Destruction by explosives or fire of government property or property affecting interstate commerce/Title 18, USC Secs. 844(f), 844(i)

Destruction of aircraft/Title 18, USC Sec. 32

Embezzlement and theft/Title 18, USC Secs. 641, 656, 657, 658, 659, 664, 666, 669

Emergency Economic Powers Act crimes/Title 50, USC Sec. 1705

Espionage/Title 18, USC Secs. 793, 794, 798

Export crimes/Title 50, USC App. 2410

Extortion and threats/Title 18, USC Sec. 875

Extortionate credit transactions/Title 18, USC Secs. 892*, 893*, 894*

Food stamp crimes/Title 7, USC Sec. 2024

Foreign corrupt practices/Title 15, USC Secs. 78m, 78dd-1, 78dd-2, 78ff

Foreign law violations: extortion; fraud against a foreign bank; kidnapping; murder or destruction of property by means of explosive or fire; narcotics; robbery/Title 18, USC Sec. 1956(c)(7)(B)

Fraud and false statements/Title 18, USC Secs. 1001, 1005, 1006, 1007, 1014, 1027, 1028, 1029, 1032, 1035

Gambling/Title 18, USC Sec. 1084*

Health care fraud/Title 18, USC Secs. 287, 371, 1347

Influencing, impeding or retaliating against federal official by threatening or injuring family member/Title 18, USC Sec. 115

Kidnapping/Title 18, USC Secs. 1201, 1203

Labor-management financial transaction fraud, union embezzlement/Title 29, USC Secs. 186*, 501(c)*

Mail fraud/Title 18, USC Sec. 1341*

Mail, theft from/Title 18, USC Sec. 1708

Malicious mischief/Title 18, USC Secs. 1361, 1363

Murder on a federal facility/Title 18, USC Sec. 1111

Murder of employees of the U.S./Title 18, USC Sec. 1114

Murder of foreign officials, official guests or foreign protected persons/Title 18, USC

Sec. 1116

Narcotics offenses/Title 21, Secs. 841, 842, 843, 844, 846, 848, 854, 856, 858, 859, 860, 861, 863, 952, 953, 955, 957, 959, 960, 962, 963

National resource conservation/Title 42, USC Sec. 6901

Nationality and citizenship, unlawful procurement/Title 18, USC Secs. 1425*, 1426*, 1427*

Obscenity/Title 18, USC Secs. 1461*, 1462*, 1463*, 1464*, 1465*

Obstruction of justice/Title 18, USC Secs. 1503*, 1510*, 1511*, 1512*, 1513*, 1518

Ocean dumping/Title 33, USC Secs. 1401, 1901

Passport and visa crimes/Title 18, USC Secs. 1542*, 1543*, 1544*, 1546*

Peonage and slavery/Title 18, USC Secs. 1581*, 1582*, 1583*, 1584*, 1585*, 1586*, 1587*, 1588*

Presidential assassination, kidnapping or assault/Title 18, USC Sec. 1751

Prohibited transactions involving nuclear materials/Title 18, USC Sec. 831

Racketeering/Title 18, USC Secs. 1951*, 1952*, 1953*, 1954*, 1955*, 1956***, 1957***, 1958*

Securities, fraud in the sale of/(Undefined)*****

Sexual activity, transportation for illegal/Title 18, USC Secs. 2421*, 2422*, 2423*, 2424*

Sexual exploitation of children/Title 18, USC Secs. 2251*, 2251A*, 2252*, 2260*

State felonies: arson, bribery, dealing in obscene matter, extortion, gambling, kidnapping, murder, robbery, narcotics/Title 18, USC Sec. 1961(1)(A)*

Stolen property, trafficking in/Title 18, USC Secs. 2312*, 2313*, 2314*, 2315*, 2318*, 2321*

Tariff Act/Title 19, USC Sec. 1590 Terrorism/Title 18, USC Secs. 2332, 2332a, 2332b, 2339A

Trading With The Enemy Act/Title 50, USC App. 16

Unauthorized sound and video recordings, fixation and trafficking in/Title 18, USC Sec. 2319A*

Violence against maritime navigation and fixed platforms/Title 18, USC Secs. 2280, 2281

Violence at international airports/Title 18, USC Sec. 37

Water pollution/Title 33, USC Sec. 1251 and Title 42, USC Sec. 300f

Wire fraud/Title 18, USC Sec. 1343*

* Incorporated from the definition of "racketeering activity" found in Title 18, USC Sec. 1961, the Racketeer Influenced and Corrupt Organizations Act.

** Copyright infringement is an SUA under the money laundering law (Title 18, USC Sec. 1956) and is incorporated from the U.S. RICO law (Title 18, USC Sec. 1961).

*** When Congress incorporated the predicate acts of the RICO law, called "racketeering activity," it did not exclude the U.S. money laundering laws (Title 18, USC Secs. 1956 & 1957). Thus, the anomaly exists that a money laundering violation is a "specified unlawful activity" under the money laundering laws (Title 18, USC Sec. 1961).

**** "Fraud in the sale of securities," which is incorporated from the U.S. RICO law (Title 18, USC Sec. 1961), is not identified by a particular statute in the RICO law.

Source: moneylaundering.com, 1999

Appendix C

Organizations Whose Personnel Were Interviewed For This Study

The Netherlands

Court of Audit

Melding Ongebruikelijke Transacties (MOT)

Garanti Bank

Canada

Royal Canadian Mounted Police

Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) - Local and national offices

Member of Parliament

Office of the Superintendent of Financial Institutions

The United States

Financial Crime Enforcement Network (FINCEN)

Government Accountability Office

Federal Bureau of Investigation

Global Consulting Services

Defense and Former Prosecutorial Lawyers

Australia

Australian Institute of Criminology

Australian Transactions Reports and Analysis Centre (AUSTRAC)

Independent Consultant

Financial Action Task Force

European Commission

Appendix D

Sample Questionnaire Used For Interviews

INTRODUCTORY QUESTIONS

- 1) What is your dealing with FATF's member FIUs? Please discuss, on a general level, their strengths, weaknesses, opportunities and threats (SWOT analysis). What steps have been taken to improve effectiveness and efficiency of operations post-9/11?
- 2) How do you think member FIUs should define success? For example, would you consider it a success if member FIUs' investigations resulted in 50% of money launderers being caught? What, in your opinion, are the factors that lead to success for member FIUs? What are the impediments to success?
- 3)

QUESTIONS RELATED TO THE BALANCED SCORECARD

Business Process Perspective

- a) How would you assess the processes and procedures followed by member FIUs? What measures of performance do you think they should use to improve business processes?

Customer Perspective

- b) Who are member FIUs' customers? How would you assess member FIUs in the performance of their duties and service to them? What measures of performance do you think they should use to improve customer satisfaction?

Learning and Growth Perspective

- c) How would you assess the staff at member FIUs? Do you have any suggestions for the way they are trained? What measures of performance do you think they should use for staff?

Financial Perspective

- d) Which area or programs in financial crime is investment needed in and how will FIUs benefit from this? How do you suggest they measure financial performance?

GENERAL QUESTION

- 4) Do you have any suggestions for member FIUs to improve:
 - a) implementation
 - b) information-sharing or
 - c) strengthening its planning process, both short- and long-term?

COMPARATIVE QUESTIONS

- 5) How do member FIUs compare? Do you use any international comparators?

TECHNICAL QUESTION

- 6) How would you evaluate member FIUs focus on financial crime committed through:
- a) international trade through the abnormal pricing of goods?
 - b) the use of informal banking systems, credit/debit cards and the Internet?

Appendix E

Survey To Assess The Performance of Financial Intelligence Units in Countering Financial Crime

This is a survey directed towards a study on financial intelligence units (FIUs). Please fill out **ALL** responses to the best of your knowledge. Responses will be treated in confidence.

For the purpose of this study:

- ‘financial crime’ is defined as terrorist financing and related money laundering and tax evasion.
- FIU is defined as “a central agency to receive, analyze, and disseminate financial information to combat money laundering and terrorist financing.” (IMF/World Bank, 2004) eg. FINCEN, FBI, IRS – Criminal Investigations, AUSTRAC, FINTRAC, MOT

Thank you for your participation in this study. If requested, I would be happy to send you a copy of the results.

I. Perceived Threats and Impediments

Success in interdicting money laundering is likely to be based on accurate assessment of threats.

A. Please rate the seriousness/probability of the following drivers of money laundering:

a) Drug and criminally-related money laundering

Low Probability/Threat 1 2 3 4 5 High Probability/Threat

b) Misuse of informal banking systems (Hawalas)

Low Probability/Threat 1 2 3 4 5 High Probability/

c) Misuse of charities

Low Probability/Threat 1 2 3 4 5 High Probability/

d) Trade-based money laundering and financial crime

Low Probability/Threat 1 2 3 4 5 High Probability/

B. Please rate on a scale of 1 to 5 the following impediments to successful financial crime fighting with 1 indicating low salience and 5 indicating high salience:

a) Lack of performance metrics

Low Salience 1 2 3 4 5 High Salience

b) Political short-sightedness

Low Salience 1 2 3 4 5 High Salience

c) Fragmented legislative oversight

Low Salience 1 2 3 4 5 High Salience

d) A number of crime-fighting agencies with overlapping responsibilities

Low Salience 1 2 3 4 5 High Salience

C. America's status as a superpower makes it a target for terrorists more than any other country.

Strongly Disagree 1 2 3 4 5 Strongly Agree

II. Performance

These questions are directed towards determining how well the government, specifically, FIUs have performed in countering financial crime.

A. Please let us know how you would rate:

a) the performance of FIUs in countering terrorist financing through traditional financial institutions such as banks, credit unions, brokerage houses, insurance companies etc.?

Poor Fair Good Very Good Excellent

b) the performance of FIUs in countering terrorist financing through **NON-traditional** financial systems such as hawalas and international trade?

Poor Fair Good Very Good Excellent

c) the performance of FIUs **before** the events of September 11, 2001?

Poor Fair Good Very Good Excellent

d) the performance of FIUs **after** the events of September 11, 2001?

Poor Fair Good Very Good Excellent

e) In your opinion, out of every dollar laundered, FIUs **should interdict** _____ cents.

f) American FIUs face a more difficult task interdicting “dirty money” than their foreign counterparts.

Strongly Disagree 1 2 3 4 5 Strongly Agree

B. Please let us know how you would rate (in your country of location):

a) the current level of FIU funding relative to need?

☐ Grossly underfunded ☐ Underfunded ☐ Adequately funded ☐ Overfunded ☐ Grossly Overfunded

b) what is the gap between current funding and what you believe is needed to address the threat?

☐ 1-10% ☐ 11%-25% ☐ 26%-50% ☐ 51%-75% ☐ 76%-100%

III. Performance Metrics

Some FIUs use performance measures to improve performance while others do not. The use of performance measures could potentially help FIUs improve their operations. These measures are currently being used by FIUs or have been suggested by experts in the field.

Please rate on a scale of 1 to 5 the utility of the following measures with 1 being less appropriate and 5 being more appropriate:

A. Business Process-related Measures

a) the number and dollar value of suspicious transactions identified annually

Less Appropriate 1 2 3 4 5 More Appropriate

b) the accuracy and timeliness of suspicious transaction reports

Less Appropriate 1 2 3 4 5 More Appropriate

B. Customer-related Measures

a) the number of support functions provided to reporting agencies, partner agencies and law enforcement

Less Appropriate 1 2 3 4 5 More Appropriate

b) the value of intelligence that leads to interdiction and prevention of financial crime

Less Appropriate 1 2 3 4 5 More Appropriate

C. Learning and Growth-related Measures

a) percentage of payroll devoted to training

Less Appropriate 1 2 3 4 5 More Appropriate

b) the number of employees that complete training

Less Appropriate 1 2 3 4 5 More Appropriate

D. Finance-related Measures

a) the dollar value of suspicious transactions identified annually in relation to the total amount of the budget

Less Appropriate 1 2 3 4 5 More Appropriate

b) the dollar value of ‘dirty money’ interdicted per employee

Less Appropriate 1 2 3 4 5 More Appropriate

E. Outcome Measures

a) the total number of financial criminals interdicted in relation to the estimated number of financial criminals

Less Appropriate 1 2 3 4 5 More Appropriate

b) the amount of laundered money interdicted in relation to the estimated total amount of laundered money

Less Appropriate 1 2 3 4 5 More Appropriate

c) the number of financial criminals convicted

Less Appropriate 1 2 3 4 5 More Appropriate

d) the number of repeat offenders

Less Appropriate 1 2 3 4 5 More Appropriate

IV. Demographics

a) Which country are you located in?

USA

Other

b) Which of the following categories best describes your current **job affiliation**:

FIU reporting entity – financial institution

FIU reporting entity – non-financial institution

Legislator

Regulator/Policy Analyst/Government Auditor

Law Enforcement

Academician

Consultant

Other: _____

c) How many years have you been in your current position: _____

d) What is your level of education:

High-School Some College College Graduate Masters Ph.D./J.D.

Additional comments:

What measures you would use to judge the efficiency and effectiveness of FIU's:

VITA

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1994	Bachelor of Business Administration Iona College New York, New York
1996	Master of Business Administration Barry University Miami, Florida
1998 - 2000	Officer TD Waterhouse Toronto, Ontario
2000 - 2002	Policy Analyst Government of Ontario Toronto, Ontario
2002 – 2009	Doctoral Candidate in Public Management Florida International University Miami, Florida

PUBLICATIONS AND PRESENTATIONS

2005	The Journal of Public Administration and Management <i>Public Administration And The New Public Management: A Case Study Of Budgetary Reform In The United Kingdom</i>
2006	The Handbook of Public Financial Management <i>Public Finance Reform In Selected British Commonwealth Countries</i>
2007	Southeastern Conference For Public Administration <i>The Role of Public Administration in the War on Terror: A Balanced Scorecard Approach</i>