

The Financial Action Task Force and the Anti–Money Laundering Act of the Philippines: Dynamics between Veto Players and a Nonveto Player in Policymaking

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Abstract

The article is about the dynamics between an international organization and the institutional actors vis-à-vis the policymaking process. It argues that the Anti–Money Laundering Law (AMLA) was exogenously driven, as the policy was instigated purely by external demand and enacted under external pressure. AMLA is considered an imposition of the Paris-based intergovernmental organization the Financial Action Task Force (FATF). The swiftness of the enactment of AMLA exemplifies the immense influence that an international financial organization can have on the policy actors as well as on the policymaking process. The policymaking process in this type of institutional engagement—between institutional actors (executive and legislature) within a polity and an international organization—is efficient in producing a policy output. However, the process represents an issue of international override on a state, as a nonveto player dictates to the institutional veto players. This experience supports the global pattern that in issues associated with global financial standards, policymaking will less be shaped by the institutional actors and will extensively be defined by international actors. The making of AMLA presents an archetype of how international organizations can hold sway over the state.

Keywords: Anti–Money Laundering Act; Financial Action Task Force; money laundering; veto players; international organization

Abbreviations:

- AML/CFT – anti–money laundering and combating the financing of terrorism
- AMLA – Anti–Money Laundering Act
- APG – Asia Pacific Group on Money Laundering
- BAP – Banking Association of the Philippines
- BBC – Bicameral Conference Committee
- BSP – Bangko Sentral ng Pilipinas
- CFATF – Caribbean Financial Action Task Force
- DFA – Department of Foreign Affairs
- DOF – Department of Finance
- DOJ – Department of Justice
- EAG – Eurasian Group
- EGFIU – Egmont Group of Financial Intelligence Units
- ESAAMLG – Eastern and South Africa Anti–Money Laundering Group
- FATF – Financial Action Task Force
- FSF – Financial Stability Forum
- FSRBs – FATF-style regional bodies
- GAFISUD – Grupo de Acción Financiera de Sudamérica (Financial Action Task Force on Money Laundering in South America)
- GIABA – Groupe Intergouvernemental d’Action contre le Blanchiment d’Argent en Afrique de l’Ouest (Inter-Governmental Action Group against Money Laundering in West Africa)
- HB – House Bill
- IFI – international financial institution
- IMF – International Monetary Fund
- MENAFATF – Middle East and North Africa Financial Action Task Force
- MONEYVAL – Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
- NBI – National Bureau of Investigation
- OFW – overseas Filipino worker
- PNP – Philippine National Police
- RA – Republic Act
- SB – Senate Bill
- SEC – Securities and Exchange Commission
- NCCT – Non-Cooperative Countries and Territories
- WB – World Bank

Introduction

Policymaking is not only about content but also process. In the past, the emphasis in the study of policy was always on content; as a consequence, the process in policymaking was invariably overlooked. This conception was underscored by the notion that success or failure was determined mainly by the substance of the policy. However, the development debacle of the postwar era, where generic policies prescribed by international financial institutions (e.g., World Bank and International Monetary Fund) and adopted by third world countries led to different outcomes, has cast doubt on the traditional thinking and put impetus on reassessment. A policy that works in one country may not work in another, or even in the same country at a different time (Stein et al., 2005). The experience has led to a changed outlook and the rationale to focus on the process of policymaking. Indeed, the process can shape the policy outcome.

In analyzing the process in policymaking, one needs to focus on the strategic engagement among the policy actors. In democracies, the central institutions are usually the executive and legislative branches. As their interaction and concurrence are necessary to produce policies, the two branches are considered veto players in the policymaking process. Another significant policy actor is international institutions. As external entities working outside the territorial confines of a state, they are considered nonveto players in the conventional policymaking process. Recently, international institutions, using the aegis of a global standard, have intensified their intrusion in the process. They have taken the role of setting the legislative agenda and led the effort to ensure that countries legislate laws that conform to a global standard.

This paper examines the influence of an international organization on the policymaking process of a polity. In particular, it will examine the enactment of the Anti–Money Laundering Act (AMLA) in relation to the interface between the Financial Action Task Force (FATF) and the institutional veto players of the policymaking process. The FATF set a global standard to combat money laundering, and the Philippine government was obliged to conform to that financial standard. To comply, the government (the Arroyo administration and the Congress) needed to collaborate to pass a money laundering law. Noncompliance would lead to the imposition of sanctions. The paper argues that AMLA is a direct consequence of an external demand where a nonveto player overwhelms the veto players. AMLA is an imposition of the FATF, as the international organization shaped the policy process and outcome and prevailed over the institutional policy actors.

The paper is organized as follows. First, the framework of analysis is presented; second, the effect of economic globalization and the need for regulatory standards are explained; third, the FATF's quest to establish a global standard on money laundering is traced and discussed; fourth, the steps and

politics behind the enactment of AMLA are identified and examined; and, lastly, the dynamics of the interaction between the international organization and institutional actors in the policymaking process are elaborated.

Framework of Analysis

The policymaking process is generally defined as the collective process of discussing, approving, and implementing public policy (Stein et al., 2005). Traditionally, policymaking is deemed as an endogenous process where solely the government exercises the prerogative of crafting policies within its territory. Usually, no other entity, whether in the domestic or international realm, can legitimately enact policies without going through the governmental policymaking process. In democracies, the typical institutional actors in the policymaking process are the executive and legislative branches of the government. The branches are central to policymaking, as both participate and control the process. In addition, the inputs of other political actors, whether internal (such as business groups, labor unions, the media, and other members of the civil society) or external (such as multinational corporations, international organizations, and foreign governments), are eventually manifested directly or indirectly in the executive-legislative engagement.

One way of examining the intricacies of the policymaking dynamics is through the veto players' theory. The theory contends that policies are produced when there is agreement among the veto players in a political system (Tsebelis, 2002). A veto player is an individual or collective actor who, through their control of an office or branch of government, can reject any policy proposal (Haggard and McCubbins, 2001; Tsebelis, 2002). Veto players are usually specified by the constitution. They are deemed institutional political actors, whose agreement is necessary to enact policies. In the presidential system, the central institutional actors in the policymaking process are the president, the Senate, and the House of Representatives. In the enactment of policies, the unanimous decision of all three institutions of government is indispensable, as the dissent of one is enough to thwart the enactment of a policy. For instance, a policy proposed by the president and agreed to by the members of the House of Representatives will not materialize into a law if the senators will not concur with it. Thus, policy production in this institutional arrangement is basically defined by the consensus among the veto players.

Other actors that may affect the policymaking process are considered as nonveto players. Unlike the institutional veto players, neither the consent or dissent nor the participation of nonveto players is necessary to the formal policymaking process. They are exogenous to the process, and their influence is always channeled through the veto players. Nonveto players could either be domestic or international actors. The former operate within and are subjected

to the authority of the state while the latter operate from the outside and are independent of the authority of the state.

One of the more active nonveto players in contemporary policymaking is international organizations. Although they are external entities, they have emerged as powerful actors in the process as they increasingly shape policy outcome. Their influence is strongest in policy areas with international character and implications (Howlett and Ramesh, 1995). One area where this trend is evident is in finance, particularly in the efforts of international financial organizations to set global standards to which sovereign states are obliged to conform by enacting specific policies. As financial organizations demand that governments comply with these standards, sustained pressure is applied to the institutional actors as well as to the policymaking process, in effect making noncompliance politically and economically costly. In this practice, international organizations acquire enormous leverage to set the agenda and define the particular policy output. The policymaking process under this arrangement—between institutional actors within a polity and international financial organizations—though effective in producing policies, ramifies into an issue of international override on a state. The engagement results in an asymmetrical relationship where the nonveto player dictates to the institutional veto players. As a consequence, the process becomes primarily externally driven as policymaking will less be shaped by the institutional actors within the state and will be extensively determined by international actors.

The study looks into the influence of an international organization on the institutional actors in the policymaking process using the veto players' framework. The focus is on the interface of the FATF and the executive and legislative branches of the Philippine government in the enactment of the financial regulation policy, Republic Act 9160 or the Anti-Money Laundering Act and its amendment, RA 9194. The engagement of the policy actors in the policymaking process is examined to determine how a nonveto player dominated the veto players performing their institutional role.

Economic Globalization and the Need for Regulatory Standards

As a consequence of technological advances and government deregulation policies, economic globalization is usually seen in terms of the intensification of the movement of trade, finance, labor, and information across state borders (O'Brien, 1992; Ohmae, 1996). In the financial realm, this phenomenon leads to greater interconnectedness and integration of financial markets, where capital and funds are mobile and financial transactions relatively easy. "With transactions able to be conducted in a few seconds, vast amounts of capital

could be shipped around the globe, in and out of national economies, at the behest of those who worked in the markets” (Gill, 2003).

With the unprecedented global financial mobility, issues have emerged that demand coordination among states to manage the volatility of the financial markets. The wave of financial crises in the 1990s (Latin America in 1994, Asia in 1997, Russia in 1998, and Brazil in 1999) as well as the current global economic recession that started in the United States, for instance, has underscored the susceptibility of the global financial system to downturns. Financial crisis in one area, whether a state or a region, cannot anymore be contained in isolation, as the interconnectedness of economies makes the crisis contagious, easily spilling over to other areas.

Moreover, financial mobility has resulted in the tremendous growth of transborder deposits, loans, branch networks, and fund transfers and has reshaped the banking system (Scholte, 2001). Although this development remarkably enhances the efficiency of the banking sector, it has its downside, particularly with regard to the problem of organized crime and terrorism. Nowadays, funding and fund transfers for organized criminal syndicates and international terrorist groups have become readily obtainable and accessible. The International Monetary Fund (IMF) in 1996 estimated that the aggregate size of money laundering in the world could be around 2%–5% of the global gross domestic product (FSA, 2007). Here, the IMF (2008) defines money laundering as “a process in which the illicit source of assets obtained or generated by criminal activity is concealed to obscure the link between the funds and the original criminal activity.” This concern has called for controls over the global movement of finance, specifically the necessity to restrict the flow and use of money by illicit groups. In constraining the finances of these groups, “it became necessary to cooperate with others on tightening financial controls, not only to prevent money laundering and possible disruption to the international financial order, but also to stop the flow of funds to [criminal and] terrorist organizations” (Yahuda, 2004).

Managing the vulnerability of the global financial system as well as precluding the transmission and utilization of illegitimate money entails that states put up financial regulations. To ensure their harmony and effectiveness, these regulations need to adhere to global standards. The dissemination of financial regulations has generally been assumed by international financial organizations, which have assumed the responsibility of persuading states to comply with global regulatory standards.

Financial Action Task Force¹ and Its Global Financial Standard

One leading international organization that promotes financial regulations to ensure the integrity of the global financial system is the FATF. The FATF is the product of the efforts of leading developed states in the 1980s to specifically combat the worldwide problem of money laundering. As a direct response to the problem, the FATF was formally established in 1989 during the G-7 Summit in Paris. The core membership came from the G-7 member states, the European Commission, and eight other countries. The organization does not have a tightly defined constitution or an unlimited life span. Since its inception, the FATF reviews its mission every five years and operates, requiring a specific decision among the members to continue. In 2004, the ministry representatives of FATF agreed to extend the term of the organization until 2012.²

At first, the mandate of the FATF was to cope mainly with the proliferation of illicit money, particularly the worldwide flow of drug money into banks and other financial institutions. As a consequence of the 9/11 terrorist attack against the United States, the mandate, however, was broadened. Thus, in October 2001, the mandate added terrorist financing to money laundering. Accordingly, the original mandate and the extension are evident in the official description of the organization: “The FATF is an intergovernmental body whose purpose is to develop and promote policies, both at national and international levels, to combat money laundering and terrorist financing” (FATF-GAFI, 2008a). The FATF therefore functions as a quasi policymaking body, which works to generate the necessary political will to persuade national legislatures to bring about such policies. The FATF has three principal activities: first, it sets international standards to combat money laundering and terrorist financing; second, it ensures effective compliance with FATF standards; and third, it reviews money laundering and terrorist financing techniques and countermeasures (FATF-GAFI, 2008b).

In setting standards, the FATF has instituted the Forty Recommendations and the Nine Special Recommendations on Terrorist Financing (the so-called 40 + 9 Recommendations) as the basic framework—a comprehensive plan of action needed to combat money laundering and terrorist financing. The Forty Recommendations (which were originally issued in 1990 and later revised in 1996 and in 2003) principally call for the criminalization of money laundering (FATF-GAFI, 2004b). On the other hand, the Nine Recommendations (eight were initially issued in 2001 and an additional recommendation was added in 2004) mainly call for the criminalization of the financing of terrorism (FATF-GAFI, 2004a). The 40 + 9 Recommendations, require the enactment of specific laws that would make both money laundering and financing of

terrorism a serious crime. The recommendations are intended to be of universal application. The FATF seeks the adoption by and compliance of members as well as nonmembers and makes the 40 + 9 Recommendations the globally recognized international standards for anti-money laundering and combating the financing of terrorism (AML/CFT).

Complying with the FATF standards means that countries must enact anti-money laundering laws and measures that conform to the 40 + 9 Recommendations and guarantee the effective application of such regulations. To ensure global adherence, the FATF monitors the progress of legislation in passing the necessary laws in each country and evaluates its implementation. Laws must not only be passed; there must also be full and proper enforcement and an effective system for doing so. Thus, criminalizing money laundering and terrorist financing must be accompanied by properly trained law enforcement and prosecutorial authorities that are equipped with sufficient powers and resources (FATF-GAFI, 2007b).

Countries are assessed through the mutual evaluation process, a critical mechanism that is considered a central pillar of the activity of the FATF (FATF-GAFI, 2008b). The process is deemed as peer review where the evaluations are based on 40 + 9 Recommendations and use the AML/CFT Methodology 2004.³ The evaluation is conducted by a team of experts from the legal, financial, and law enforcement areas and the FATF secretariat through an on-site visit to a country where the assessors engage in comprehensive meetings with government officials and the private sector. To ensure fair and consistent evaluations, the FATF has developed thorough and detailed instructions and procedures for conducting mutual evaluations. The procedures are laid out in the AML/CFT Evaluations and Assessments' Handbook for Countries and Assessors.⁴ The results of the evaluations are compiled in a Mutual Evaluation Report, which provides comprehensive information on the status of each country in relation to the actions taken to combat money laundering and terrorist financing.

The current membership of the FATF has only 32 countries. To have a global reach, the FATF operates in collaboration with FATF-style regional bodies (FSRBs), thus creating a network of more than 170 countries. The FSRBs are regional organizations that are deemed committed to implement the 40 + 9 Recommendations in their respective areas and have agreed to undergo the mutual evaluation process (FATF-GAFI, 2008a). In performing its mandate, the FATF works closely in partnership with FSRBs; at the moment, there are eight FSRBs, five of which were given associate member status in the FATF.⁵ As part of FATF's call for all countries, including nonmembers, to implement the FATF recommendations, countries that are not members are encouraged to join the FSRB in their region (FATF-GAFI, 2008b). In promoting the AML/CFT regime, the FATF also collaborates with other international organizations,

particularly, the international financial institutions (IFIs). Notable IFIs are the International Monetary Fund (IMF), the World Bank (WB), the Financial Stability Forum (FSB), and the Egmont Group of Financial Intelligence Units (EGFIU).

To ensure that the mutual evaluations process is effective and that countries cooperate and adopt the AML/CFT standard, the FATF utilizes the Non-Cooperative Countries and Territories (NCCT) initiative. The NCCT is basically a list of countries and territories that are identified as lacking in compliance or are noncompliant. In the assessments, the FATF uses the List of Criteria for Defining Non-Cooperative Countries or Territories. The list is made up of 25 criteria that identify detrimental rules and practices that hinder international cooperation in combating money laundering. The criteria are classified into four categories: (1) loopholes in financial regulations, (2) obstacles raised by other regulatory requirements, (3) obstacles to international cooperation, and (4) inadequate resources for preventing and detecting money laundering activities (FATF-GAFI, 2007a).⁶ Since the inception of the NCCT initiative in 1998, 47 countries have undergone the NCCT assessment. A total of 23 countries were identified as NCCTs: 15 in 2000 (including the Philippines) and 8 in 2001 (FATF-GAFI, 2007a).⁷

Unless the country identified as NCCT takes the necessary actions to address the deficiencies so as to adequately conform to the FATF standards, the country is susceptible to the imposition of countermeasures by the FATF. The basic measure against NCCTs is the application of Recommendation 21 and 22:

21. Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help competent authorities. Where such a country continues not to apply or insufficiently applies the FATF Recommendations, countries should be able to apply appropriate countermeasures.
22. Financial institutions should ensure that the principles applicable to financial institutions, which are mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply the FATF Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the parent institution should be informed by the financial institutions that they cannot apply the FATF Recommendations (FATF-GAFI, 2004b).

Moreover, in cases where the NCCTs fail to show adequate progress in addressing the deficiencies, the FATF can impose further countermeasures such as the following:

1. Stringent requirements for identifying clients and enhancing advisories (including jurisdiction-specific financial advisories) to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries;
2. Enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious;
3. Taking into account the fact that the relevant bank is from an NCCT, when considering requests for approving the establishment in FATF member countries of subsidiaries or branches or representative offices of banks;
4. Warning nonfinancial sector businesses that conducting transactions with entities within the NCCTs might run the risk of money laundering (FATF-GAFI, 2007a).

For countries to be removed from the list of NCCTs, they need to take the necessary steps for delisting. The steps deal with what precisely should be required by way of implementing legislative and regulatory reforms made by NCCTs to respond to the deficiencies identified by the FATF. The essential initial steps in delisting are the following:

1. An NCCT must enact laws and promulgate regulations that comply with international standards to address the deficiencies identified by the NCCT report that formed the basis of the FATF's decision to place the jurisdiction on the NCCT list in the first instance.
2. The NCCTs that have made substantial reform in their legislation should be requested to submit to the FATF, through the applicable regional review group, an implementation plan with targets, milestones, and time frames that will ensure effective implementation of the legislative and regulatory reforms. The NCCT should be asked particularly to address the following important determinants in the FATF's judgment as to whether it can be delisted: filing of suspicious activity reports, analysis and follow-up of reports, the conduct of money laundering investigations, examination of financial institutions (particularly with respect to customer identification), international exchange of information, and the provision of budgetary and human resources (FATF-GAFI, 2007a).⁸

As one of the countries identified as NCCT in 2000, the Philippines was expected to conform to the 40 + 9 standard of the FATF by legislating an

anti–money laundering law. As the FATF observed in its June 2000 Report on Non-Cooperative Countries and Territories:

1. The Philippines meets criteria 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 19, 23, 24 and 25. The country lacks a basic set of anti–money laundering regulations such as customer identification and record keeping. Bank records have been under excessive secrecy provisions. The country does not have any specific legislation to criminalize money laundering *per se*. Furthermore, a system for reporting suspicious transactions does not exist in the country.
2. During the past few years, the government has been unsuccessful in having Congress to pass several anti–money laundering bills. The Government of the Philippines urgently needs to enact an anti–money laundering bill during the current session of the Congress (June 2000 to May 2001), to criminalize money laundering, require customer identification as well as record keeping, introduce suspicious transaction reporting system and relax the bank secrecy provisions (FATF-GAFI, 2000).

As a consequence of being blacklisted, the Philippines was subjected to routine countermeasures, following Recommendations 21 and 22. The countermeasures implied that financial transactions involving the country would be stringently scrutinized and examined to ensure their lawfulness. The FATF gave the Philippines up to 30 September 2001 to comply and pass the anti–money laundering law. Failure to pass the law before the deadline meant that the country would face more severe and additional countermeasures.

The Politics of the Anti–Money Laundering Act

Political Inertia among Veto Players

Even before it was prodded by the FATF, the Philippines had shown its commitment to enact the AMLA when the government became a signatory to three international accords—the 1988 Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance, the 1998 United Nations Political Declaration and Action Plan against Money Laundering, and the 2000 United Nations Convention against Transnational Organized Crime. As a signatory to those multilateral agreements, the government was mandated to enact an anti–money laundering law. Congress over the years had been trying to enact the law. For instance, in the Tenth and Eleventh Congresses, Congressman Raul Gonzales filed the so-called Rico bill; it was approved in the House but did not prosper in the Senate. The anti–money laundering bill filed by the late Senator Robert Barbers in the Senate did not prosper beyond the committee level. The failure of the legislature to take decisive action, despite the existence

of a political obligation due to the international agreements, seems to suggest that the legislators saw no urgency in having an anti–money laundering law. The legislative body was lukewarm because the mandate obligates, but does not penalize noncompliance. Thus, there was little incentive for the legislators to prioritize the law over other bills.

The attitude of the legislators was shared by the executive branch. The Aquino, Ramos, Estrada, and Arroyo administrations were apparently half-hearted in pushing the law. No definite advisory came from the Office of the President declaring the urgency of such a measure. The Department of Foreign Affairs (DFA), which handles the correspondence of the government with international organizations, appeared not to see the necessity, as it did not bother to inform Congress of the discussions with the FATF. Furthermore, before the Eleventh Congress adjourned sine die, it had a special session, but its agenda did not include the anti–money laundering bill. Two bank-related laws—the revision of the General Banking Act and the amendments to the *Bangko Sentral Act*—were acted upon, yet the *Bangko Sentral ng Pilipinas* (BSP) never brought up the concern of the FATF.

The initial effort to enact an anti–money laundering law began only when President Arroyo made a commitment to the FATF in May 2001 that she would certify to the newly elected Twelfth Congress the urgency of passing the said law (FATF-GAFI, 2001). The formal efforts commenced in the executive department when the Inter-agency Committee composed of the Department of Justice (DOJ), Department of Finance (DOF), Securities and Exchange Commission (SEC), and the BSP was formed. The Inter-agency Committee conducted preliminary hearings where key stakeholders (such as the Banking Association of the Philippines [BAP], enforcers such as the National Bureau of Investigation [NBI], the Philippine National Police [PNP], and legal experts from the University of the Philippines Law Center) were invited. The hearings resulted in the executive version of the anti–money laundering law. As chairman of the Inter-agency Committee, Justice Undersecretary Jose Calida asserted that the draft was not only a product of careful deliberations and consultations with the stakeholders, but it was also patterned after the anti–money laundering laws of other countries.

According to BSP Governor Rafael Buenaventura, the anti–money laundering law must address five principal criteria to comply with the standards set by the FATF. First, make money laundering activity a criminal offence that will make it a crime per se. Second, a reporting system must be put in place so that covered individuals or institutions are required to make reports on unusual transactions. Third, an implementing agency must be created. Fourth, an exception must be made to the Bank Deposit Secrecy Law (Republic Act 1405), which makes it difficult to look into suspicious accounts (as the 1993 *Bangko Sentral Act* removed from the Monetary Board the authority to look into suspicious account without a court order or a waiver from the depositor).

Fifth, there must be a commitment to provide for international cooperation, particularly reciprocal exchange of information with foreign countries and institutions.

The formal efforts in the legislative branch commenced when the Senate and the House of Representatives conducted parallel committee hearings. In the House, the hearings were handled jointly by the Committee on Banks and Financial Intermediaries as the lead committee, headed by Congressman Jaime Lopez, and the Committee on Justice and the Committee on Economic Affairs. In the Senate, the hearings were conducted jointly by the Committee on Banks, Financial Institutions, and Currencies, chaired by Senator Ramon Magsaysay, and the Committee on Justice and Human Rights, chaired by Senator Francis Pangilinan. The hearings commenced on 22 August in the House and on 29 August in the Senate, 39 and 32 days, respectively, before the 30 September 2001 deadline of the FATF.

At the onset of the committee hearings, both chambers faced the difficult task of consolidating the multitude of bills filed before the approaching deadline—11 Senate Bills (i.e., SB 179, 279, 684, 879, 1338, 111, 1504, 1506, 1599, 1607, and 1662), and 9 House Bills (i.e., HB 39, 282, 817, 1319, 1425, 1543, 1832, 1903, and 2147). The task was made harder by the fact that enacting the law was deemed to touch on delicate matters such as the Bank Secrecy Law, which was considered sacrosanct in the Philippine financial system. To further complicate matters, Congress was scheduled to adjourn on September 5 and resume only on September 23, which would mean that the body had barely two weeks left to pass the law. With those concerns, the preliminary consensus among members of the Senate and House committees was that passing the law within the time frame was highly doubtful. Experience told them that enacting a highly complex and controversial law like the AMLA would take a longer time since that type of law usually goes through a lot of scrutiny and objections in Congress.

Moreover, the rejection of the plea of the Philippine government for extension of the FATF deadline further complicated the undertaking. Justice Undersecretary Calida informed the lawmakers that in the 4th Asia Pacific Group on Money Laundering (APG) meeting held on 22–24 May 2001, the Philippine delegates hand-carried a letter by President Gloria Arroyo to FATF President Jose Roldan. Citing the efforts taken by the government, such as administrative measures against money laundering put in place by the BSP, the letter specifically asked for leniency on the deadline. Another is the plea for extension made by Governor Buenaventura and Finance Secretary Isidro Camacho in their Tokyo meeting with the FATF. On both occasions, the FATF responded that although they sympathized with the Philippines, the demand for criminalizing money laundering is nonnegotiable. As aptly stated by Justice Undersecretary Calida, “unless we have that law [AMLA] no amount of pleading, or appeal for sympathy or leniency will get us out from the [NCCT]

list.” Thus, the unambiguous message is the Philippines either has it on time or face the countermeasures.

To deal with the situation, members of the committees of both chambers were advised that, if need be, they would have to work every day to meet the deadline. The advisory included the forming of a technical group that would work on the draft bill during the scheduled congressional recess. Another time-saving move was the motion in both the Senate and House committees to adopt the executive interagency draft of the anti-money laundering law as the main template in consolidating the bills. The motion was made to expedite the lawmaking process and to ensure that the versions of both chambers would be as close to each other as possible.

Although the legislators recognized the importance of having a policy for addressing the problem of money laundering, most of them believed that crafting the law must not be imposed on them and that the process must be based on their own pace, not on an externally prescribed deadline. This sentiment is obvious from the comments of lawmakers in the deliberations. For instance, Congressman Lopez stated, “We don’t feel that we are bound by whatever the FATF decides . . . we are not even a part of it, and so we don’t feel that we should be forced to rush the approval of this bill.” Another, Congressman Marcelino Libanan, the chairman of the House Committee on Justice, warned that as a lot of provisions might conflict with basic rights such as the constitutional rule on double jeopardy and the issue on the right to privacy, there was a need to take time in passing the law. Senator Edgardo Angara manifested that he would not “draw up and craft a bill that will make them [FATF] happy,” instead, he would “try to draw up or draft a bill that will suit our unique culture and customs.”

Adding confusion to the committee hearings of both chambers was the view espoused by the DFA vis-à-vis the deadline, which opposed the position of the DOJ, DOF, and BSP. The DFA, represented by Assistant Secretary Rosalinda Tirona, was the lead agency that handled the correspondence of FATF with the country prior to March 2001. The DFA argued that there was no legal basis for the FATF September 30 deadline. With this opinion, she urged Congress to follow instead the 2003 deadline set by the 1998 United Nations Political Declaration against Money Laundering. However, the DOJ, DOF, and BSP maintained that Congress should follow the FATF deadline. The split in the position of the executive agencies was resolved when President Arroyo replaced Assistant Secretary Tirona with Finance Secretary Camacho as the lead official of the executive department in dealing with the FATF. That signified the bonafide position of the executive department. Moreover, the seemingly lack of consensus among the government agencies was also manifested when the BSP complained at the committee hearings that the DFA did not inform the BSP of the correspondence with the FATF. As BSP Governor Buenaventura pointed out, there had been no advance warning at all, and it was not until June 2000

when the NCCT list came out that the BSP became aware of the situation. The governor also said that he took over in July 1999, and his predecessor, Governor Gabriel Singson, confirmed that the BSP was not aware of the FATF demand.

Deadline, Blacklist, and Countermeasures

The posturing among lawmakers against the FATF demand weakened when they became cognizant of the implications of the NCCT list as well as the possible additional countermeasures if the law was not passed before the deadline. Being in the NCCT list meant that financial transactions involving the Philippines would be examined more closely by the international financial community. The lack of an anti-money laundering law would mean that financial transactions relating to the country would be deemed suspicious. Other countries, particularly the FATF members, in turn, would inquire, investigate, and verify transactions emanating from the Philippines. Those actions would result in delays and additional costs.

The apprehensions about the countermeasures as well as the additional countermeasures were unambiguously stressed to the lawmakers, as the executive officials consistently underscored the “chorus” of threats. For instance, Finance Secretary Camacho said, “The sanctions that we can expect are things that could impede our transactions, private sector transactions between our country and other countries which over time if it were to be maintained, could make us uncompetitive either as an exporter or importer of trade and services.” In addition, Justice Undersecretary Calida cautioned the lawmakers, “If we don’t want to listen to FATEF, fine, but let’s be prepared for the additional countermeasures.” According to him, the additional countermeasures could be, first, enhanced surveillance of all transactions; second, more stringent requirements for identifying clients; third, intensified advisories to financial institutions to conduct strict identification of beneficial owners; fourth, more systematic reporting of all financial transactions; and fifth, a warning to the international business community who might want to put up business in the Philippines. He estimated that the transaction cost due to delays per day can reach P116 million in imports, P169 million in exports, P65 million in tourism, and around \$4 billion of OFW remittances. BSP Governor Buenaventura reported that a “particular correspondent bank has already requested that their banking correspondence here request for waiver of secrecy of deposits on any transactions they have before they handle the transactions . . . In effect, normal transactions that normally will just go through the normal business of remitting in and out are now being required to give more information on who is the remitter, the source of the remittance.” The governor further warned that it would be very inconvenient and costly for everyone, as legitimate business transactions would be subjected to more rigid scrutiny so that ordinary transactions that normally flow in and flow out will be subjected to flagging,

and more strict verification would be required on deposit accounts, remittances, import and export trade, and issuance of visas. These actions would consequently result in significant delay as well as substantial increase in the cost of financial transactions. International financial transactions of local banks and other financial institutions, which run into hundreds of million pesos a day, would no longer be automatically done. Instead, the requirements for flagging would force them to handle the transactions manually. This condition over time would make the Philippines uncompetitive and unattractive to investors.

This “chorus” of threats that the executive officials repeatedly aired in Congress profoundly shaped the mind-set of the lawmakers and the atmosphere of the deliberations. For instance, Congressman Lopez, stressing the aim of Congress, cautioned, “It will be useless for us to pass a law that will not be acceptable to the FATF . . . Our main objective here, I would like to emphasize, is for us to be delisted from the blacklist of the FATF so that we can have a reputation for integrity, that we are complying with the international standards.” Another lawmaker, Congressman Felix Alfelor, warned the body, “We should take heed of the fact that if we are not able to pass this law before September 30, there is a lot of sanction, economic sanctions which will be imposed on us, and a lot of these sanctions will be befalling our banks because a lot of the transactions that will be transacted by our banks with foreign clientele will be prejudiced.” Senator Magsaysay, in a foreword to the Senate committee hearing, stated, “The significance of the anti-money laundering legislation lies in the fact that the Philippines will remain in the blacklist of the FATF—Financial Action Task Force—and all our financial transactions will be closely scrutinized, making it difficult for the country to attract investments, business, and trade.” Adding pressure, the BAP, which was deemed the foremost industry that would be affected, fully supported the enactment of the anti-money laundering law. The bankers strongly lobbied the lawmakers, citing that the banking system faces not only increased transaction costs but also a serious reputational risk if the law is not passed. For instance, Mr. Leonilo Coronel, the executive director of BAP, informed the lawmakers that with the nonpassage of the AMLA, countermeasures may take the form of a particular requirement, such as the foreign financial community requiring customers from the Philippines to waive the bank secrecy law, or a more extensive requirement, such as limiting of foreign investments and downgrading of credit ratings. He also warned of the possibility that the Philippine banking system might be isolated, thereby making it very difficult to transact business with the international community.

Stressing the urgency of enacting the anti-money laundering law before the FATF deadline, Finance Secretary Camacho warned that passing the law on September 30 or on October 1 would make a world of difference. Passing the law a day after the deadline could mean that countermeasures had already been set in motion. For the countermeasures to be lifted, the Philippines would have to undergo a review process that could take several months as all major

FATF decisions that affect countries are taken in the plenary. Thus, missing the deadline by just a single day means the country will be burdened by the countermeasures until they are lifted.

Other powerful interest groups, such as the Overseas Filipino Workers (OFW), Trade Union Congress of the Philippines, and the Makati Business Club also intensified the pressure on the lawmakers by consistently feeding media with press releases and newspaper advertisements in support of the immediate enactment of the anti–money laundering law throughout the process. The news articles, columns, and advertisements served as a propaganda tool that painted the lawmakers as sluggish in performing their function and hinted that their dillydallying put the entire country at risk of sanctions. Moreover, amid fears that the FATF sanctions would hit the OFWs the hardest, unconventional tactics were also employed. According to Executive Director Noel Josue, the members of Kaibigan ng OFWs (Kaibigan), other OFW groups here and overseas bombarded the mobile phones and Web sites of each opposing senator and his staff with hate messages daily. The messages included warnings that the OFW groups would remember the names of the senators and that OFWs and their families would not vote for them in the elections (Nocum and Contreras, 2003).

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With the pressure on them, the legislators were determined to take exceptional efforts to avoid the FATF sanctions and to ensure the passage of the anti–money laundering law before the deadline. They engaged in express and marathon proceedings by putting the status of the bill as of primordial importance, taking precedence over all other pending legislative proposals. After the committee hearings, both chambers on the 24th of September immediately sponsored in plenary and approved for second reading the committee report: Committee Report no. 7 on House Bill 3083 for the House of Representatives and Committee Report no. 1 on Senate Bill 1745 for the Senate. For its immediate enactment on the same day, the president certified the committee reports of both chambers in line with constitutional provision article VI, section 26, paragraph 2, which states,

No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency.

In effect, the certification dispensed with the three readings on separate days so that the second and third readings could be done on the same day. Accordingly, marathon proceedings on the second and third readings as well

as the bill's approval were held simultaneously in the Senate and the House from September 24 to 27. The House held nonstop deliberations from 10:00 a.m. of September 26 to 4:15 a.m. of the following day. Senator Magsaysay remarked,

The Senate passed on third reading the Bill on Anti-money laundering this morning at 12:10 a.m. This is after almost 15 hours, nonstop. From Monday, the Senate spent 26 hours and 52 minutes to deliberate on one of the hardest legislations ever discussed by the Senate.

On the side of the executive officials, they “conspired” to quell any possible resistance in Congress to ensure that the FATF timetable in passing the law was met. The executive officials that took part in the committee deliberations not only clearly stated the seriousness of the threat of the international body, but also made subtle efforts to hasten and facilitate the process. There was apparently a deliberate attempt on their part to withhold or selectively disseminate information and data requested by legislators opposed to the bill. For instance, to check the truthfulness of the “common theme” of executive officials that the country would face “difficulties” in case the bill was not passed, Senator John Osmeña requested a catalog or detailed listing of all transactions in the banking sector that would experience difficulties or problems. To verify whether most countries have an anti-money laundering law, Senator Aquilino Pimentel requested the list of all countries in the world that passed or had an anti-money laundering law. He contended that “the Senate is being asked to enact a very important piece of legislation, and yet the executive department, particularly through the Finance Department and the Bangko Sentral ng Pilipinas, do not even furnish us with the required data upon which to base our actions.” On both occasions, the executive officials promised to send the requested information to the legislators, but no information came. As observed by Senator Joker Arroyo, “I think that the government agenc[ies] concerned with this—[BSP, DOF, DOJ, DFA and AMLC]—ha[ve] not been candid and frank with Senator Magsaysay and his committee . . . In short, there are certain information that has either been withheld from him or not necessarily misinterpreted but misstated.” The action taken by the executive officials made it very difficult for dissenting legislators to thoroughly scrutinize and oppose the bill. As the deadline neared, it became futile and pointless for the opposing lawmakers to hinder the enactment of the anti-money laundering law.

Another instance that patently shows the intent to enact the bill in time to meet the deadline was the shortcut taken on September 25 before the start of the second day of interpellations. The senators followed an unusual practice when Senator Magsaysay announced that 22 senators had agreed to simplify the proceedings by adopting a new report by substitution, which in effect replaced the committee report with the new working draft. This move,

according to Senator J. Osmeña, “is premature because we are still in the period of sponsorship and we cannot entertain amendments, even an amendment by substitution, until we close the period of sponsorship and we go to the period of amendments.” Moreover, he informed the body that “in parliamentary practice, if we were really to be strict, we would have to return that committee report to the committee and the committee would have to refer it back to the chamber.”

Immediately after the approval of the committee report, the Bicameral Conference Committee (BCC) convened and started its deliberations on the following day, September 28. The BCC took only a day—the deliberation started at eight-thirty in the morning and finished at ten o’clock at night. On the next day, September 29, straightaway within the day, the BCC Report was ratified in both chambers, and the resulting law, Republic Act 9160 or the Anti–Money Laundering Act was signed by the president in Malacañang Palace.⁹ Thus, after deliberations in record time of a little over a month, the AMLA was enacted a day before the September 30 FATF deadline.

The Express Proceedings Part 2

In June 2002, the FATF NCCT Report observed that R.A. 9160 did not fully satisfy the FATF standards. The FATF indicated that some stipulations inserted in the law were inconsistent with the 49 + 9 Recommendations. The FATF noted,

1. Although the Philippines’ authorities interpret the regulations as requiring the reporting of all suspicious transactions, this nevertheless conflicts with the AMLA, which only requires reporting of high threshold suspicious transactions.
2. The law allows the AMLC to access account information upon a court order, but a major loophole remains in that secrecy provisions still protect banking deposits made prior to 17 October 2001. Secrecy provisions also still restrict bank supervisor’s access to account information (FATF-GAFI, 2002).

In particular, the objection seems to refer to section 3, paragraph b and b1, and section 23 of R.A. 9160:

Section 3, paragraph b. “Covered Transaction” is a single, series, or combination of transactions involving a total amount in excess of Four million Philippine pesos (Php4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate within five (5) consecutive banking days except those between a covered institution and a person who, at the time of the transaction was properly identified client and the amount is commensurate with the business or financial capacity of the client; or those with an underlying legal or trade obligation, purpose, origin or economic justification.

It likewise refers to a single, series, or combination or pattern of unusually large and complex transactions in excess of Four million Philippine pesos (Php4,000,000.00) especially cash deposits and investments having no credible purpose or origin, underlying trade obligation or contract.

.....

Section 23. The provisions of this Act shall not apply to deposits and investments made prior to its effectivity.

Accordingly, Mr. Vicente Aquino, the executive director of the newly operating Anti–Money Laundering Council (AMLC), reported that the major concerns of the FATF were the following: first, the threshold was too high and should be lowered to the equivalent of US\$10,000 or roughly P500,000 in Philippine currency; second, although incorporated in the implementing rules and regulations, the suspicious transaction reporting requirement was not included in the law; third, the AMLC lacked the authority to inquire into or examine bank accounts or investments without the order of a competent court; and fourth, bank deposits and transactions prior to the effectivity of the law may be examined for the purpose of investigation and not for the purpose of prosecution.

With these deficiencies, the FATF again called on the Philippine government to take the necessary steps to amend the AMLA so as to comply with the FATF standards. To ensure prompt action, the call of the FATF was accompanied by an advisory that the process of delisting from the NCCT would not commence and that the country might still face sanctions in case of noncompliance. The FATF warned,

FATF has taken the serious step of recommending that its members impose additional countermeasures against Philippines due to the failure of the Philippines to enact legislation to address previously identified deficiencies in their anti–money laundering regime. The FATF calls upon the Philippine Government to enact the appropriate legislative amendments by 15 March 2003. Failure would lead to countermeasures to the Philippines as of that date (FATF-GAFI, 2003c).

The seriousness of the warning was echoed by Senator Magsaysay, the chairman of the Committee on Banks, Financial Institutions, and Currencies, on the opening of the committee hearings to amend R.A. 9160:

Our law was enacted last September 29, 2001 as the Philippines’ response to the call of the Financial Action Task Force or FATE, to address the problem of money laundering activities all over the world. However, compared with the money laundering laws in other countries, RA 9160 imposes a very high threshold level which the FATF believes is too high for reporting and

monitoring purposes. To this date, we remain in the list of non-cooperative countries and territories, NCCT, for failure of the Philippines to comply with the recommendations of the FATE, hence, the need to amend our present law so that countermeasures will not be imposed on our financial system and jurisdiction in the assessments to be conducted by FATF this October, this year, in Paris.

The move to amend AMLA began in the House of Representatives on 4 September 2002, when the Committee on Banks and Financial Intermediaries, Committee on Economic Affairs, and Committee on Justice conducted a joint committee hearing for House Bill no. 5168. In the Senate, the move commenced on 29 August 2002, when the Committee on Banks, Financial Institutions, and Currencies and Committee on Constitutional Amendments, Revision of Codes and Laws conducted a joint committee hearing for Senate Bills no. 2040, 2198, and 2262. The bills were filed by Senators Panfilo Lacson, Francis Pangilinan, and Sergio Osmeña, respectively.

The cudgel for amending the AMLA was taken up by the AMLC. After the face-to-face meeting between the Philippine delegation and the FATE, Executive Director Aquino reported to the committee hearings in both the Senate and House of Representatives that until the pertinent amendments in the AMLA are made, the FATF “would start imposing drastic sanctions and countermeasures against the Philippines.” As a concrete example of the consequences of sanctions, Mr. Aquino cited the case of the Republic of the Marshall Islands where the international banking community had imposed sanctions. “Right now, no inward and outward remittances could be made within the financial system of this territory” as they “could only send out and receive through mail, but not through wire transfers.” The effect of sanctions, he warned, would be more severe in the case of the Philippines, considering that the economy was mainly dependent on the dollar remittances of OFWs. In addition, Mr. Aquino observed that since the Philippines had been chosen by the Asia Pacific Group (APG) on Money Laundering to host the 2003 APG meeting, it would be a huge embarrassment for the Arroyo administration to host the said meeting while the country is on the dishonorable list of NCCTs.

After the committee hearings in both chambers, the respective committee reports were sponsored in the plenary session on 25 November 2002 in the Senate and 29 January 2003 in the House of Representatives. As the bill was certified as urgent by President Arroyo on 21 November 2002, it was approved after the second and third readings on 10 February 2003 in both chambers as Senate Bill no. 2419 (Committee Report no. 110) and as House Bill no. 5655 (Committee Report no. 1181).

For the consolidation of the Senate Bill and the House Bill, the BCC was convened on February 11 and given the February 12 deadline. The “new” deadline was supplied by Senator Magsaysay to the BCC members as the presumed deadline since the date coincided with the annual meeting of the

FATF. With this information, the BCC was able to come up with a Conference Committee Report close to midnight of February 12. This happened despite the presence of contentious provisions. For instance, Senator Magsaysay admitted that lowering the threshold and tampering with the Bank Secrecy Law will meet with a lot of resistance as “a lot of Congressmen and some Senators are going to fight this tooth and nail.” Both chambers subsequently approved the Conference Committee Report on the following day, February 13, 2003.

After the approval, however, there were immediate indications to the executive department and lawmakers that the approved BCC report would not be acceptable to the FATF. This development was substantiated by the February 27 letter of the president of the FATF, which identified the concerns that the amendment needed to address, such as the expansion of the definition of “covered transaction” to include any suspicious transaction regardless of threshold amount; to make P500,000 the threshold for reporting covered transactions; to broaden the definition of suspicious transactions; and to address the very high standard of diligence as well as the stringent penalties on bank officers reporting suspicious transactions, which could discourage them from performing their duties diligently.

With this apprehension, the ratification of the approved BCC report in plenary in both chambers was put on hold. The concerns in the letter were made the basis for the Arroyo government’s request for direct discussions between the lawmakers (16 senators and a number of congressmen) led by Senate President Franklin Drilon and the delegates of the FATF. At the meeting held on February 18, the lawmakers addressed the concerns of the FATF by suggesting proposals and submitting them to the delegates. To be certain that the proposals would be accepted, Senate President Drilon ensured that acceptance by the FATF delegates was not only verbal but also in writing.

On February 19 in the Senate and February 27 in the House, on the basis of the “informal” agreement between the lawmakers and the FATF delegates, there was a move in both chambers for the reconsideration of the approved BCC Report. As a consequence, the BCC was reconstituted on March 4 to modify and incorporate the agreed-upon amendments to the AMLA. To ensure that the lawmakers would adhere to the agreement, Senate President Drilon, who was not even a member of the BCC, practically took over the meeting by presiding and directing the discussions. For instance, when some lawmakers proposed to add changes to the bill, the senate president warned that if the BCC went beyond the agreement, then they might be guilty of nonconformity and would risk being cited as noncompliant with international standards. In support, Senator Lacson stated that to avoid the risk of being branded by the international delegates as not honoring the agreement, they should just limit the discussions to what the senators and the FATF agreed on. Senator Angara cautioned that if they added one word or another, it may require another round of negotiation or consultation. Moreover, to add pressure, the senate president

informed the BCC members that to avoid countermeasures, they must enact the law before the March 15 FATF deadline.

On the next day, March 5, the reconstituted BCC Report was ratified in both chambers, and the resulting law, Republic Act 9194, was signed by the President on March 7, 2003. Thus, Congress formally amended RA 9160. As FATF reported,

[RA 9194] amends the AMLA and addresses the legal deficiencies. It requires the reporting of all suspicious transactions, grants the BSP (the banking supervisor) full access to account information to examine for anti-money laundering compliance, and allows the AMLC to inquire into deposits and investments made prior to the AMLA coming into effect (2003a).

As a corollary to the compliance, the FATF decided not to impose countermeasures on the Philippines (FATF-GAFI, 2003b) but was quick to remind the Philippine government that with the passage of the appropriate law, the government must now adequately implement the anti-money laundering measures. Enforcement of the AMLA would be monitored by the FATF while its members evaluated the removal of the Philippines from the blacklist.

After almost two years of monitoring, the FATF removed the Philippines from the NCCT list in February 2005. However, it continued to monitor the country for a period of time as part of its standard monitoring process for delisted countries to ensure continuous and proper implementation (FATF-GAFI, 2005). After a year, in February 2006, the FATF eventually decided to end its formal monitoring of the Philippines (FATF-GAFI, 2006).

International Organization and Veto Players

The story of the making of AMLA is atypical. According to the policymaking process, there must be agreement among the institutional veto players in producing a policy. Dissent from one player is enough to block the enactment of the policy. In the case at hand, the institutional veto players, specifically the executive and legislative (i.e., the Senate and the House of Representatives) branches, were in agreement to push the AMLA; however, the swift action taken was made possible by virtue of an exogenous force that furnished incentives and bound the policy actors to cooperate.

What made the enactment of AMLA different was that it was based primarily on the demand of an international organization through an uncompromising time frame, the NCCT blacklist, and the threat of sanctions. As to the time frame, the FATF made it very clear from the beginning that its imposed deadlines—30 September 2001 on the initial legislation and 15 March

2003 on the call for amendments—were nonnegotiable. This determined stance was demonstrated on several occasions where the FATF declined the request of the Philippines for an extension of the deadline. As to the NCCT list, the processes of listing and delisting are unilateral undertakings of the FATF. As to the threat of sanctions, the FATF had warned they would impose additional countermeasures if the anti–money laundering law was not enacted before the deadline. The sanctions promised to be economically costly for the country.

For the enactment of AMLA in the Philippines, it is evident that the agenda was set by the FATF. The initiative for the policy came from the FATF, an outsider and a nonveto player whose consent and participation, by convention, were not needed in the policymaking process. In the name of global standards, the effect of the FATF on the process was overwhelming. The FATF was able to ensure that the institutional veto players cooperated and worked together. As the veto players were driven more by the common intent to avoid sanctions than the belief in the significance of such a policy, they made extraordinary efforts to pass the AMLA in record time and before the prescribed deadline. The pressures brought about by the threat of sanctions made it possible for an international organization to have a profound influence over the domestic policymaking process, enabling a nonveto player, like the FATF, to dictate to the institutional veto players and to shape the policy outcome. Thus, after years of apathy and lackluster efforts to enact an anti–money laundering law in Congress, it was only the demand by the FATF that set the ball rolling, so to speak.

The strategy that the FATF utilized to compel the veto players to conform was to make it appear that the undertaking was voluntary on the part of each sovereign country. The FATF argued that, generally, countries recognized that adopting the 40 + 9 Recommendations was important for the protection and soundness of their own financial system (FATF-GAFI, 2007b). In practice, however, the sustained pressure applied by the FATF to the policymaking process that made noncompliance very costly made the undertaking mandatory rather than voluntary. The mandatory nature of the FATF standard and the potency of its sanctions can be seen in the swift compliance by all countries that had been listed as NCCTs. All the 23 blacklisted countries responded rapidly to embrace the designated global regulatory standard. McDonnell, the current executive secretary of the FATF, stated that the FATF standard has now been adopted by 180 countries, representing more than 85% of the world (FATF-GAFI, 2008a). The overall pattern is similar to the Philippine experience, as initially the NCCTs did not make a serious effort to push an anti–money laundering law. Only after they were blacklisted and threatened with countermeasures did they make a resolute effort to have one. The comportment of the countries manifested the notion that had it not been for the fear of sanctions, the law would not have materialized. Furthermore, the pattern leads to an asymmetrical relation, where the international organization can “penalize” while the countries cannot

hold it accountable, nor have they the power to correspondingly sanction the organization.

The influence exerted by the FATF over the veto players is amplified considerably by its alliance with other international organizations, in particular the IFIs. The FATF has underscored that in the performance of its activities, it will collaborate with other international bodies involved in combating money laundering and the financing of terrorism. For instance, it has acknowledged the important contribution made by the IMF and the WB in the efforts to implement the AML/CFT regime in non-FATF member countries (FATF-GAFI, 2008b). The global cooperation implies that these international institutions will give the necessary support to ensure compliance with the global standard so that the FATF can count not only on its member countries but also on influential international institutions to recognize and support FATF's actions against a noncomplying state. For the veto players, that relationship translates into enormous pressure as they recognized the backlash that could ensue, given that the Philippines has robust political and economic ties with most FATF-member countries as well as with the IFIs.

Conclusion

The dynamics between the international organization and the institutional actors vis-à-vis the policymaking process that enacted AMLA is asymmetrical. The law was mainly exogenously driven—instigated by external demand and enacted under the threat of sanctions. AMLA is deemed an imposition of the FATF. The swiftness of its enactment exemplifies the immense influence an international organization can have on the policy actors as well as the policymaking process. The Philippines, after being blacklisted and threatened with countermeasures in the name of global standards, made extraordinary efforts to comply with the FATF standards by enacting AMLA. The efforts included prioritizing the bill, changing the executive officials and legislators from being disinterested to being committed policy actors, accelerating the formal policymaking process, and manipulating the BCC. In addition, when the FATF claimed that the enacted law did not meet the FATF standard, the policy actors promptly took action to amend the law. The compliance of the institutional veto players manifests the inexorable influence a nonveto player can have in the policymaking process and output. Typically, this is a case of an international organization defining the process and determining the outcome.

The policymaking process in this type of institutional interaction—between institutional actors within a polity and an international organization—though efficient in producing policies represents an issue of international override, where a nonveto player dictates to the institutional veto players and determines policy.

The experience in the making of AMLA is an archetype of the global pattern that, on issues associated with international financial standards, policymaking will less be shaped by the institutional actors and will be extensively defined by international institutions. The quest to put up universal standards has given international organizations the opportunity to “penetrate” the domestic policymaking process.

Notes

1. Information on FATF is obtained mainly from their official Web site: www.fatf-gafi.org.
2. FATF has 34 member jurisdiction (i.e., Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, India, Ireland, Italy, Japan, Kingdom of Netherlands, Luxembourg, Mexico, New Zealand, Norway, Portugal, Republic of Korea, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States) and two regional organizations (i.e., the European Commission and Gulf Cooperation Council).
3. AML/CFT Methodology 2004 is available here: <http://www.fatf-gafi.org/dataoecd/16/54/40339628.pdf>.
4. Available at <http://www.fatf-gafi.org/dataoecd/7/42/38896285.pdf>.
5. FSRBs/FATF associate members: the Asia Pacific Group on Money Laundering (APG), Caribbean Financial Action Task Force (CFATF), the Council of Europe Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism (MONEYVAL), the Financial Action Task Force on Money Laundering in South America (GAFISUD), and the Middle East and North Africa Financial Action Task Force (MENAFATF). FSRBs: the Eurasian Group (EAG), the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), and the Intergovernmental Action Group against Money-Laundering in Africa (GIABA).
6. Complete and detailed List of Criteria for Defining Non-Cooperative Countries or Territories (NCCTs) is available at <http://www.fatf-gafi.org/dataoecd/14/11/39552632.pdf> (see Annex 1).
7. In 2000, the following countries/territories have undergone NCCT assessment: Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines. In 2001,

the following countries/territories: Egypt, Grenada, Guatemala, Hungary, Indonesia, Myanmar, Nigeria, and Ukraine. No additional countries have been reviewed since 2001.

8. The complete steps for delisting are available at <http://www.fatf-gafi.org/dataoecd/14/11/39552632.pdf> (see Annex 2).
9. President Arroyo's speech during the signing of AMLA available at <http://www.ops.gov.ph/opnet/speech-2001sept29.htm>.

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