

The Politics of the Anti-Money Laundering Act of the Philippines: An Assessment of the Republic Act 9160 and 9194

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Abstract

The article is about the influence of international organizations on the policymaking process. It contends that the procedure followed in enacting Republic Act 9160 otherwise known as the Anti-Money Laundering Act (AMLA) and its amendment Republic Act 9194, as a financial regulation policy is atypical. The enactment of the policy exhibited an unusual pattern in the policymaking process. The AMLA was largely exogenously driven and was enacted mainly by virtue of external pressure. The policy was passed principally to satisfy the demand of the Financial Action Task Force (FATF) to conform to the global standard, to beat the deadline, to avoid the imposition of countermeasures, and to be removed from the list of Non-Cooperative Countries and Territories (NCCT). To avoid sanctions, the Philippine Government made extraordinary efforts to ensure compliance, such as the collaboration shown by the executive agencies, the swift action taken by the legislators, the circumvention of rules and procedures, and the manipulation of the Bicameral Conference Committee (BCC). The steps taken speak of the tremendous influence an international organization can have on the policy actors and the lawmaking proceedings; how an external entity would dictate to institutional actors and regulate the policymaking process.

Keywords: Anti-Money Laundering Law, Financial Action Task Force, Policy, Policymaking Process

1. Introduction

“The process of discussing, approving, and implementing public policy is collectively referred to as the policymaking process” (Stein et al 2005: 17). Conventionally, policymaking is deemed as an endogenous process where the state exercises the sole prerogative of crafting policies within its territorial domain. As a rule, no other entity whether in the domestic or international domain can legitimately enact policies without going through the governmental policymaking mechanism. In a democratic system, the usual key institutional actors in the policymaking process are the executive and legislative branches of the government. The actors are central to policymaking as they operate and dominate the process. For instance, in a bicameral presidential setup, the participation and concurrence of the President, the Senate, and the House of Representatives are indispensable in formulating and enacting policies. The inputs of other political actors such as business groups, labor unions, the media, and other members of the civil society in the policymaking process are eventually manifested directly or indirectly in the executive-legislative interface.

With the advent of globalization, the landscape of contemporary policymaking has changed as new actors emerge, such as international institutions, which have a profound interest in the process. Although they are external entities, international institutions have recently intensified their interference in the process and have increasingly shaped policy outcome. Their influence is strongest in policy areas that have international character and implications (Howlett and Ramesh 1995). One area where this trend is evident is in finance, specifically, the effort of international financial organizations to set global standards and oblige sovereign states to comply by enacting specific policies. As there is a demand for states to conform, sustained pressure is applied on the policy actors as

well as the policymaking process. In effect, noncompliance becomes politically and economically costly. In this practice, international organizations acquire enormous leverage to set the agenda and define the policy process.

The study examines the influence of an international organization on the policymaking process of a polity. This paper looks into the enactment of R.A. 9106 the Anti-Money Laundering Act (AMLA) and its amendment R.A. 9194 and, in particular, the interface between the Financial Action Task Force (FATF) and the institutional actors vis-à-vis the policymaking process. The engagement of the policy actors is traced to ascertain why the lawmaking proceedings deviated from its conventional pattern, and how the FATF “trampled” on the executive and legislative branches in performing their institutional role. The paper argues that the AMLA and its amendment are exogenously driven, as the policy is a direct consequence of external demand and was enacted mainly through pressure exerted by the international organization. In other words, the AMLA is an imposition of the FATF. The international organization, as it shaped the policy process, overrode the institutional policy actors. The study proceeds as follows: First, the participation of institutional actors and the dynamics of policymaking in the Philippines are discussed. Second, the FATF and its quest to establish a global standard on money laundering are explained. Third, the FATF demand and its complications are discussed. Fourth, the politics behind the enactment of the AMLA and its amendment are examined. And lastly, the implications of the interaction between the international organization and institutional actors in the policymaking process are elaborated.

2. Institutional Actors and Policymaking in the Philippines

In keeping with the principle of separation of powers and check and balance, Article 6, Section 1 of the 1987 Constitution, provides that “the legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives.” (Note 1) Here, legislative power pertains to the power to initiate, make, modify, and repeal laws (Santos 2001). The provision also explicitly designates Congress as the arena for the policymaking process where both the Senate and the House of Representatives are deemed indispensable actors.

Policymaking in the Philippines follows the typical procedure in the presidential system of enacting laws and policies. The process of legislation in both the Senate and the House of Representatives observes identical procedures. As Article 6, Section 26, paragraph 2 states, “No bill passed by either House shall become a law unless it has passed three readings on separate days.” (Note 2) The following are the typical steps in the passage of a bill (Santos 2001, De Leon 2005):

1. Filing of the Bill. The bill is filed with the Secretariat of either or both Houses, where it is given a corresponding number and calendared for first reading.
2. First Reading. This consists of the reading of the title of the bill, its number, and the names of the authors before the plenary session of Congress.
3. Referral of the Bill to the Proper Committee. The committee studies the bill, and may conduct public hearings and consultation meetings. It then approves or disapproves the bill. If approved, the bill is calendared for Second Reading; the approval of the bill can be with or without amendments, or recommend substitutions or consolidation with similar bills filed. If disapproved, then the bill is said to be dead.
4. Second Reading. This consists of the reading of the bill for the second time in its entirety and plenary debates. After the sponsorship speech of the author(s), interpellations and debates among the proponents and opponents of the bill follow. Amendments may be proposed at this stage by any member of Congress, subject to the acceptance of the sponsoring committee. The stage ends with the division of the House. If the bill gets the majority vote, then the bill is calendared for Third Reading. If not, the bill is dead or can be recommitted to the proper committee for further study.
5. Third Reading. At this stage, no amendment or debate is allowed. After the reading, the House votes on the bill. If the bill is passed, then it is transmitted to the other House for consideration. (Note 3)
6. Transmittal to the Other House. In this phase, the bill undergoes an identical procedure. If approved without changes or amendments, the final version of the bill is transmitted to the President.
7. Bicameral Conference Committee (BCC). If there are differences, between the Senate and House versions of the bill, both versions are forwarded to the BCC for a compromise or to reconcile conflicting provisions. The resulting version, upon approval of both Houses, is then transmitted to the President.
8. Action of the President. The President can approve or disapprove the bill, either by signing it into law or by vetoing it. In the latter case, the bill together with the objections is sent back to Congress for reconsideration. The Senate and the House of Representatives, however, can override the veto of the President. If after

reconsideration, both Houses approve the bill by two thirds of all the members of each House; the bill becomes a law. (Note 4)

The steps in enacting a law comprise a systematic procedure that outlines the basic framework of the policymaking process. Although the procedure comprises several steps, they are those considered primordial in the enactment of a law or policy. Typically, the committee deliberations and the Second Reading are deemed crucial stages. At these stages, the bill is not only thoroughly scrutinized and debated, it also opens opportunity for other sectors to participate in the process as well as influence it. In practice, this phase serves as the initial “battleground” for the proponents and opponents of the bill, as the deliberations and hearings will give an early indication of the strength of support the policy has from the lawmakers, the political parties, the administration, and the public. Thus, this phase shows whether the bill has a good prospect of becoming a law or concrete policy. As scholars say, this is the phase where the bill gets killed.

Although the committee deliberations and Second Reading are critical in the “survival” of the bill in the enactment process, the final shape of the bill is determined to a large extent in the BCC; as the output of the committee, not the Senate or House of Representatives, determines the final version of the law. The BCC can be considered a miniature congress, as the committee can make further amendments or even considerable changes to the bill. The latter, if carried out, can result in a policy that is substantially different from the one passed by both Houses. Moreover, as there are no more debates on the recommendations of the committee (Caoilli 2006), this stage is susceptible to tacit political maneuvering, such as insertion of riders (e.g., additional clauses, stipulations, or provisions) in the bill.

Another actor that is necessary to the policymaking process is the President. Article 6, Section 27, states that “Every bill passed by the Congress shall, before it becomes a law, be presented to the President.” The presidential power to veto the bill makes the President an essential actor in the legislation process; as the President can reject the policy output of Congress. Although the Constitution provides for the means to overturn the presidential veto by getting two thirds vote in both Houses, in practice, the number of required votes is usually difficult to obtain.

The participation of the President in the policymaking process is not confined to the exercise of reactive veto powers. The President can also exercise proactive power by proposing a legislative initiative to Congress and certifying it as a priority bill. A bill that is certified as important is one that urgently needs immediate attention of Congress. Usually, party mates and allies of the President in the legislature are utilized to sponsor the bill; as a bill can only be directly proposed in Congress by a legislator. One of the effective ways of carrying out the practice, for instance, is through the so-called Legislative-Executive Development Advisory Council (LEDAC), (Note 5) where the collaboration of the President and Congress in enacting policies and programs of government has been institutionalized (Caoilli 2006). This capability gives the executive branch access to set the legislative agenda. Here, the President spearheads while Congress takes the cue. Thus, the Presidential legislative initiative leads to a more extensive involvement of the President in policymaking process.

The participation of the President in the policymaking process is strengthened by the resources under the wing of the executive branch. For instance, the entire government bureaucracy provides the President with the support, expertise, and information essential for crafting specialized policies and programs. Moreover, the control over the release of governmental funds gives the President more influence in policymaking, as the power to release the countrywide development funds depends on the discretion of the President (Caoilli 2006). Considering that patronage politics remains central to political survival (Lande 1969, Hutchcroft and Rocamora 2003), the access to resources can be a persuasive inducement and bargaining chip. Thus, the prerogative to release pork-barrel appropriations generates for the President enormous political leverage over the lawmakers.

The policymaking process highlights the interface between the executive and legislative branches, and the conventional policymaking is deemed an endogenous process involving institutional actors. The principal arena is Congress, where the Senators and the members of the House of Representatives formally interact, along with the President. Thus, in the typical policymaking process, policies are determined mainly by the three institutional political actors. This arrangement, however, is suspect in legislating financial regulation policy, particularly, an anti-money laundering law where an international financial organization spearheads the process in the name of global standards. Here, the international organization as the primary driving force adds another dimension in the policymaking process, where an external actor interacts with institutional actors within a polity.

3. International Financial Standard and Financial Action Task Force (Note 6)

Economic globalization, which 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), has brought about unprecedented global financial mobility. This phenomenon has led 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: 230).

One consequence of global financial mobility is the tremendous growth of transborder deposits, loans, branch networks and fund transfers that has reshaped the banking system (Scholte 2001). This development, which has remarkably improved the efficiency and progress of the banking sector, has its downside, as organized crime and terrorist groups have learned to take advantage of the financial flexibility. Nowadays, funding and fund transfers for organized criminal syndicates and international terrorist groups have become readily obtainable and accessible. The International Monetary Fund (IMF) estimates that in 1996 the aggregate size of money laundering in the world could be around two to five percent of the global gross domestic product (Financial Services Authority 2007).

Money laundering, according to the IMF (2008), is “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 led to the call for regulations over the global movement of finance, specifically, the necessity to restrict the access and use of money by illicit groups. Managing this vulnerability on the international financial system entails the need for each state to put up “coordinated” financial regulations. In turn, these regulations necessitate the putting up of a global standard as well as the adherence of the community of states to such a standard to ensure the effectiveness of the regulations.

International financial institutions have assumed the burden of propagating these regulations, as these institutions have taken the responsibility of inducing states to adopt global regulatory standards. The main international organization that promotes the anti-money laundering law as an international standard 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. The FATF was formally established in 1989 during the G-7 Summit in Paris. Members 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 has reviewed its mission every five years. It operates under a specific decision among the members to continue. In 2004, the Ministry representatives of the FATF agreed to extend the term of the organization until 2012. (Note 7)

Initially, the mandate of the FATF was mainly to cope with the worldwide flow of drug money in banks and other financial institutions. As a consequence of the September 11 terrorist attack against the United States, however, the mandate was broadened to include international terrorist financing. (Note 8) Reflecting the expanded mandate, the FATF is now officially designated as “an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing” (FATF 2008a: 1). Here, it functions as quasi policymaking body, which works to generate the necessary political will to persuade national legislatures to bring about such policies. The FATF’s three principal activities are (1) setting international standards to combat money laundering and terrorist financing, (2) ensuring effective compliance with the FATF standards, and (3) reviewing money laundering and terrorist financing techniques and countermeasures (FATF 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 2004b); on the other hand, the Nine Recommendations (of which 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 2004a). The 40 + 9 Recommendations specifically 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, as the FATF seeks the compliance of members as well as nonmember states. The 40 + 9 Recommendations are recognized as the international standards for anti-money laundering and combating the financing of terrorism (AML/CFT).

Complying with the FATF standards means that a state must enact an anti-money laundering law that conforms to the 40 + 9 Recommendations. To ensure global adherence, the FATF monitors the progress of the enactment of the law in each country and evaluates its implementation; for not only must the law be passed, there must also be full and proper enforcement. Thus, criminalizing money laundering and terrorist financing must include properly trained law enforcers and prosecutorial authorities equipped with sufficient powers and resources (FATF 2007b).

The current membership of the FATF is composed of only 32 countries. To have a global reach, the FATF primarily operates in collaboration with FATF-style regional bodies (FSRBs) that form a network comprising

more than 170 countries. The FSRBs are regional organizations committed to implement the 40 + 9 Recommendations within their respective areas (FATF 2008a). At the moment there are eight FSRBs, five of which were given associate status in the FATF. (Note 9) As part of their mandate, FSRBs encourage all countries to implement the FATF Recommendations, and urge nonmember countries to join the relevant regional body (FATF 2008b). In promoting the AML/CFT regime, the FATF also collaborates with other international organizations, in particular, international financial institutions (IFIs); notable among which are the International Monetary Fund (IMF), the World Bank (WB), the Financial Stability Forum, and the Egmont Group of Financial Intelligence Units.

To ensure that states cooperate, the FATF utilized the Non-Cooperative Countries and Territories (NCCTs) initiative. The NCCT is basically a blacklist of countries and territories that are identified as lacking in compliance or noncompliant. The FATF makes use of 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. These 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 2007a). (Note 10) Since its inception in 1998, 47 countries have undergone the NCCTs process. A total of 23 countries were identified as NCCTs: 15 in 2000 (including the Philippines) and 8 in 2001 (FATF 2007a). (Note 11)

Unless a country identified as NCCT takes the necessary actions to address the deficiencies to adequately conform to the FATF standards, the country is susceptible to the imposition of countermeasures by the FATF. The basic measure to all NCCTs is the application of Recommendation 21 and 22 FATF 2004b: 7):

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.

In cases where the NCCTs fail to make adequate progress in addressing the deficiencies, the FATF can impose further countermeasures such as (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; and (4) warning nonfinancial sector businesses that conducting transactions with entities within the NCCTs might run the risk of money laundering (FATF 2007a: 4).

Countries that wish to be removed from the NCCT blacklist need to undertake the necessary steps for delisting. The steps primarily require the implementation of legislative and regulatory reforms that respond to the deficiencies identified by the FATF. The essential initial steps in delisting are (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; and (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; conducting money laundering investigations, examinations of financial institutions (particularly with respect to customer

identification), international exchange of information; and the provision of budgetary and human resources (FATF 2007a: 11). (Note 12)

4. FATF Demand: Deadline, Blacklist and Complications

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 cited by the FATF in their 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. It does not have any specific legislation to criminalize money laundering per se. Furthermore, a suspicious transaction reporting system does not exist in the country.
2. During the past few years, the government has been seeking unsuccessfully for the 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.

As a consequence of being on the blacklist, the Philippines was subjected to routine counter-measures, following Recommendations 21 and 22 of the FATF. The countermeasures imply that financial transactions involving the country will be stringently scrutinized and examined to ensure the lawfulness of the transactions. The Philippines was given up to 30 September 2001 by FATF to pass an anti-money laundering law. Failure to pass the said law within the deadline prescribed would put the country at risk from the imposition of additional countermeasures.

The initial effort to enact an anti-money laundering law began when President Gloria Arroyo made a commitment to FATF in May 2001 that she would certify the urgency of passing the said law to the newly elected Twelfth Congress (FATF 2001). The formal efforts commenced in the executive department when the Inter-agency Committee composed of representatives of the Department of Justice (DOJ), Department of Finance (DOF), Securities and Exchange Commission (SEC), and Bangko Sentral of the Philippines (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] and the Philippine the National Police [PNP]), legal experts (such as the University of the Philippines Law Center) were invited. The hearings came up with the executive version of the AMLA. As chairman of the Inter-agency Committee, DOJ Undersecretary Jose Calida, asserted that the draft was not only a product of careful deliberations and consultations with the stakeholders, but was also patterned after the anti-money laundering laws in other countries. The following are the main features of the inter-agency draft:

1. It criminalizes money laundering.
2. It provides for the prosecution of money laundering activities involving not only money but also property or other assets derived from crimes and offenses punishable under both Philippine laws and laws of other countries.
3. It establishes the administrative process and procedural rules for the prevention, detection, and prosecution of money laundering activities.
4. It requires covered institutions to report suspicious transactions and cooperate with the government in prosecuting offenders.
5. It imposes a heavy penalty for money laundering offenses.
6. It provides for the forfeiture of laundered money or property.
7. It authorizes access to deposit accounts for investigation and prosecution of money laundering cases.
8. It creates a national anti-money laundering board that will perform the functions of a financial intelligence unit (FIU).
9. It establishes clear procedures for international cooperation and assistance in the fight against money laundering.

In addition, according to BSP Governor Rafael Buenaventura, the AMLA must address five principal criteria to comply with the standards set by the FATF. First is to make money laundering activity a criminal offence that will make it a crime per se. Second is that a reporting system is put in place so that covered individuals or institutions are required to make reports on unusual transactions. Third is the creation of an implementing agency. Fourth is the

provision of an exception to the strict Bank Deposit Secrecy Law (Republic Act 1405) that makes it difficult to look into suspicious account, as the 1993 Banko Sentral Act removed from the Monetary Board the authority to look into suspicious account without a court order or waiver of the depositor. Fifth is the commitment to 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 and headed by Congressman Jaime Lopez, with the Committee on Justice and 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 the 22nd and 29th of August in the House and in the Senate, respectively; 39 and 32 days before the September 30 deadline of the FATF.

At the onset of the committee hearings, both chambers faced the difficult task of consolidating the multitude of bills filed within the approaching deadline: 11 Senate Bills (SB 179, 279, 684, 879, 1338, 111, 1504, 1506, 1599, 1607, and 1662), and 9 House Bills (HB 39, 282, 817, 1319, 1425, 1543, 1832, 1903, and 2147). The task was made harder by the fact that enacting the law would touch on delicate matters such as the Bank Secrecy Law, which is considered sacrosanct in the Philippine financial system. To further complicate matters, Congress was scheduled to adjourn on September 5 and to resume only on September 23, which would mean that the body had barely two weeks left from the deadline to pass the law. With these 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 AMLA would take a longer time, since this type of law usually undergoes much scrutiny and many objections in Congress.

Moreover, the rejection of the plea of the Philippine government for extension of the FATF deadline further complicated the undertaking. As DOJ Undersecretary Jose Calida informed the lawmakers, in the 4th Asia Pacific Group on Money Laundering (APG) meeting held on May 22-24, 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 was the plea for extension made by Governor Buenaventura and Secretary of Finance Isidro Camacho in their Tokyo meeting with the FATF. On both occasions, the FATF representatives responded that although they sympathized with the Philippines, the demand for criminalizing money laundering was non-negotiable. As aptly worded by DOJ 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 was— either the Philippines enacted the law on time or face the countermeasures.

To deal with the situation, members of the committees in 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 AMLA as the main template in consolidating the bills. The motion was made to expedite the lawmaking process, as it would 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 that addresses 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 was obvious from the comments of lawmakers in the deliberations. For instance, Congressman Lopez, stated that “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.” Congressman Marcelino Libanan, the Chairman of the House Committee on Justice, warned that as there were a lot of provisions that might conflict with basic rights such as the constitutional rule on Double Jeopardy and the issue on the right to privacy, therefore there was a need to take time in passing the law. And 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 Department of Foreign Affairs (DFA) vis-à-vis the deadline, which opposed the position of DOJ, DOF, and BSP. The DFA, represented by Assistant Secretary Rosalinda Tirona, was the lead agency handling the correspondence of FATF with the country prior to March 2001. She argued that there was no legal basis for the FATF September 30

deadline. She therefore urged Congress to follow instead the 2003 deadline set by the 1998 United Nations Political Declaration Against Money Laundering, while DOJ, DOF, and BSP maintained that Congress should follow the FATF deadline. The difference in position in the executive agencies was resolved when President Gloria Arroyo replaced Assistant Secretary Tirona with DOF Secretary Camacho as the lead official of the executive department in dealing with the FATF, thus signifying the bona fide position of the executive department. Moreover, the seemingly lack of coordination among the government agencies was also manifested when the BSP representatives complained in the committee hearings that they were not informed by DFA on the latter's correspondence with the FATF. BSP Governor Buenaventura pointed that there had been no advance warning at all and that it was only in June 2000 when the NCCT list came out that the BSP became aware of the situation. The Governor also observed that he took over only in July 1999, and that his predecessor, Governor Gabriel Singson, had confirmed that the BSP was not aware of the FATF demand.

The lawmakers' posturing against the FATF demand changed when they became cognizant of the implications of the NCCT list as well as the possible additional countermeasures if the law was not passed within the imposed deadline. Being in the NCCT list would mean that financial transactions involving the Philippines would be examined more closely by the international financial community. In the absence of an AMLA, financial transactions relating to the country would be deemed suspicious. This, in turn, would compel other countries, particularly the FATF members, to inquire, investigate, and verify transactions emanating from the Philippines. Such actions might result in delays and additional costs.

The apprehensions about the countermeasures as well as additional countermeasures were unambiguously stressed to the lawmakers by the executive officials. For instance:

1. BSP Governor Buenaventura cited that a "particular correspondent bank has already requested that their banking correspondence here requests for waiver of secrecy of deposits on any transactions they have before they handle the transactions... So, 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 heavier scrutiny where ordinary transactions that normally flowed in and flowed out would be subjected to flagging. More verification would be required on deposit accounts, remittances, import and export trade, and issuance of visas. These actions would result in significant delay as well as in a substantial increase in the cost of financial transactions. International financial transactions of local banks and other financial institutions, which ran into hundreds of million pesos a day, would no longer be automatically done. Instead, the requirement for flagging would force financial institutions to handle the transactions manually. This condition over time would make the Philippines uncompetitive and unattractive to investors.
2. DOF Secretary Camacho said that "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."
3. DOJ Undersecretary Calida cautioned the lawmakers that "if we don't want to listen to FATF, fine, but let's be prepared for the additional countermeasures." According to him, the additional countermeasures could be, first, stricter surveillance of all transactions; second, more stringent requirements for identifying clients; third, intensified advisories to financial institutions to strictly identify beneficial owners; fourth, enhanced systematic reporting mechanism of all financial transactions; and fifth, a warning to the international business community who might want to put up business in the Philippines. Furthermore, he estimated that the transaction cost due to delays per day could reach P116 million in imports, P169 million in exports, P65 million in tourism, and around \$4 billion of OFW remittances.
4. BSP Deputy Governor Alberto Reyes cited that "on foreign remittances wherein checks are being cleared through U.S. banks, some of the checks are being returned and inquiries are being made as to the details of the addresses of the payees." For example, the First Union Bank of Delaware in the U.S. informed its correspondent banks, 12 local banks, including Bank of the Philippine Islands (BPI), that it would impose more stringent requirements in processing transactions while the country remains in the NCCT list.
5. DFA Assistant Secretary Tirona said that since the FATF members were major trading and investment partners of the country, there was the possibility that they might issue business advisories "warning their businessmen to deal very carefully with the banks and other financial institutions in the Philippines... So [noncompliance] is not facilitating foreign direct investment and is really impeding increasing the volume of trade."

Adding pressure, the BAP, which was considered the foremost group that would be affected, fully supported the enactment of an AMLA. The bankers busily lobbied, and attempted to influence the lawmakers, citing that the banking system would face not only an increase in transaction cost but serious reputational risk, if the law was not passed. For instance, Mr. Leonilo Coronel, the Executive Director of BAP, informed the lawmakers that a countermeasure may take the form of a particular requisite— the foreign financial community could require customers from the Philippines to waive the bank secrecy law— or a more extensive form, such as limitation of foreign investments and downgrading of credit ratings. He also warned of the possibility that the Philippine banking system might be isolated, making it very difficult to carry on any transaction with the international community.

Other powerful interest groups, such as the Overseas Filipino Workers groups, Trade Union Congress of the Philippines, and the Makati Business Club also intensified the pressure on the lawmakers by consistently feeding the media with press releases and newspaper advertisements in support of the immediate enactment of the AMLA. The news articles, columns, and advertisements served as a propaganda tool that painted lawmakers as sluggish in performing their function, and concluded that their supposed dillydallying put the entire country at risk of sanctions. Moreover, amid fears that the FATF sanctions would hit the overseas Filipino workers the hardest, unconventional tactics were also employed. For instance, Kaibigan ng OFWs (Kaibigan), according to Executive Director Noel Josue, and other OFW groups here and overseas swamped the mobile phones and websites of each opposing senator and their staff with hate messages daily. The groups' message 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).

In addition, to emphasize the urgency of enacting the AMLA within the FATF deadline, DOF Secretary Camacho warned that passing the law on October 1, or a day after the deadline would be too late since the countermeasures would have already been in operation. For the countermeasures to be lifted, the Philippines would have to undergo a review process that might take several months as all major decisions of the FATF that affect countries are taken in plenary. Thus, missing the deadline by just a single day means the country would be burdened by countermeasures until they are lifted months later.

5. The Process That Created the AMLA

5.1 *The First Marathon Proceedings*

With the pressure exerted on them, the leadership in Congress was determined to take exceptional efforts to avoid the FATF sanctions and ensure the passage of the AMLA within the deadline. After the committee hearings, the legislators engaged in express proceedings as they considered the bill of primordial importance, taking precedence over all other pending legislative proposals.

In both chambers, the committee report was sponsored in plenary and considered for Second Reading on September 24: Committee Report no. 7 in House Bill 3083 for the House of Representatives and Committee Report no. 1 in Senate Bill 1745 for the Senate. On the same day, the President certified for immediate enactment the committee report in 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 dispenses with the three readings on separate days' clause, so that the Second and Third Readings can be disposed of on the same day. Accordingly, marathon proceedings for the Second and Third Readings as well as approval for the bill were done simultaneously in the Senate and the House on September 24-27. This included a non-stop deliberation in the House from 10:00 a.m. of September 26 to 4:15 a.m. of the following day. As 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, non-stop. From Monday, the Senate spent 26 hours and 52 minutes to deliberate on one of the hardest legislations ever discussed by the Senate.

One distinct instance that patently shows the intent to enact the bill to meet the deadline is 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 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 John 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 BCC convened and started its deliberations on the following day, 28 September. The BCC took only a day, as the deliberations started at 8:30 a.m. and finished at 10:00 p.m. On the next day, 29 September, 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 (AMLA) was signed by the President in Malacañang Palace. (Note 13) Thus, in record time of a little over a month, the AMLA was enacted a day before the September 30 FATF deadline. (Note 14)

5.2 The Second FATF Demand

After the Philippines met the deadline, in June 2002 the FATF NCCT Report revealed 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 that (FATF 2002: 14):

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.

Among the objections, the major ones are to section 3, paragraph b and b1, and section 23 of AMLA:

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.

Mr. Vicente Aquino, the Executive Director of the newly operating Anti-Money Laundering Council (AMLC), said 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 \$10,000.00 or roughly P500,000.00 in Philippine currency; second, although incorporated in the implementing rules and regulations, the suspicious transaction reporting requirement was not included in the law; third, AMLC lacked authority to inquire into or examine bank accounts or investments without order of a competent court; and fourth, the examination of bank deposits and transactions prior to the effectivity of the law will be 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 de-listing from the NCCT could not commence and that the country might still face sanctions in case of noncompliance. As warned by FATF (2003c):

FATF has taken the serious step of recommending that its members impose additional counter-measures 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 counter-measures to the Philippines as of that date.

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 FATF, 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 reportorial 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 FATF, 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.

5.3 The Second Marathon Proceedings

The move to amend the 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 FATF, Executive Director Vicente Aquino reported to the committee hearings both in the Senate and House of Representatives that until the pertinent amendments in AMLA were 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 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 overseas contract workers. Mr. Aquino also noted that since the Philippines was 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 NCCT.

After the committee hearings in both chambers, their respective committee reports were sponsored in plenary 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 Gloria Arroyo on 21 November 2002, the Second and Third Readings were approved in 10 February 2003 in both chambers: Committee Report no. 110 on Senate Bill no. 2419 and Committee Report no. 1181 on House Bill no. 5655.

For the consolidation of the Senate Bill and the House Bill, the BCC was convened on February 11 with the February 12 deadline in mind. 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, despite the presence of contentious provisions. For instance, as admitted by Senator Magsaysay, lowering the threshold and tampering with the Bank Secrecy Law would meet with much 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, 13 February 2003.

5.4 The Third FATF Demand and the Atypical Proceedings

After the approval of the BCC Report, however, there were immediate indications to the executive department and lawmakers that the approved 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 expansion of the definition of "covered transaction" to any suspicious transaction regardless of threshold amount; to make the threshold for reporting covered transaction to P500,000.00; to enlarge 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.

The concerns in the letter were made the basis for the prearranged dialogue set by the Arroyo Government between the lawmakers (16 Senators and a number of Congressmen) led by Senate President Franklin Drilon, and the delegates of the FATF. At the February 18 dinner meeting, the lawmakers addressed the concerns of the FATF in proposals that they submitted to the delegates. To ensure that the proposals were acceptable, Senate President Drilon asked that acceptance by the FATF delegates be 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 in 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 over the agreement, then they might be accused of not conforming 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 might cause another round of negotiation or consultation. Moreover, to add pressure, the Senate President also told the members of the BCC 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 into law by the President on 7 March 2003. Thus, Congress formally amended RA 9160. As FATF (2003a: 9-10) reports:

[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.

As corollary to the compliance, the FATF decided not to impose countermeasures on the Philippines (FATF 2003b), while quick to remind the Philippine government that as there is already the appropriate law, the government must now adequately implement the anti-money laundering measures. The enforcement of the AMLA would be monitored by the FATF while removal of the Philippines from the blacklist was being deliberated.

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 adequate implementation (FATF 2005). After a year, in February 2006, the FATF eventually decided to end its formal monitoring of the Philippines (FATF 2006).

6. Implications

6.1 *Inexorable FATF, Compliant Institutional Actors*

Even before the FATF came into the picture, the Philippines had made a commitment to enact the AMLA when the country 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 part of those multilateral agreements, the government had to enact an AMLA. Congress over the years had been trying to enact such a law. For instance, in the Tenth and Eleventh Congresses, Congressman Raul Gonzales filed the so-called Rico bill, which was approved in the House but did not prosper in the Senate. Another case is the anti-money laundering bill filed by the late Senator Robert Barbers in the Senate, but that did not prosper beyond the committee level. The failure of the legislature to take decisive action, despite the existence of political obligation due to the international agreements, suggests that the legislators did not see the urgency of having the AMLA at the moment. The legislative body was lukewarm, as the mandate obligates but does not penalize noncompliance. Thus, the legislators had little incentive 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 not interested in pushing the law. For instance, no definite advisory come from the Office of the President declaring the urgency of such a measure. Another, the DFA, which handled the correspondence of the government with international organizations, appeared not to see the necessity, as they did not bother to inform Congress of the discussions with the FATF. Furthermore, the Eleventh Congress before it adjourned sine die had a special session, yet the anti-money laundering bill was not included in the agenda. Two bank-related laws— the revision of the General Banking Act and the amendments to the Bangko Sentral Act— were acted upon, yet BSP never brought up the concern of the FATF.

The sudden change of attitude by the legislators and the executive branch, from disinterested to committed actors, in passing the AMLA reveals the inexorable influence an international organization can have in the

policymaking process. The involvement of the FATF was the principal impetus that moved the institutional actors to prioritize the law. Both in the initial action to enact and in the amendment of the law, the threat of sanctions was utilized by the FATF to determine the policy outcome. The fear of sanctions, in particular the apprehension with regard to the possible economic repercussions and ramifications of the countermeasures, was the primary moving factor from the beginning to the end of the policymaking process.

The sanctions were openly conveyed by the bureaucrats, as the repeated “chorus” of threats maintained by the executive agencies in Congress profoundly influenced the lawmakers and assured the interference of the FATF in the policymaking process. The pressure on the legislators was manifested in the following instances:

1. Senator Magsaysay, as foreword to the Senate committee hearing, stated that “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.”
2. Congressman Felix Alfelor reminded the body, that “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.”
3. Congressman Oscar Moreno, in the committee hearings, candidly expressed that “the issue here is whether we are willing to cooperate and align ourselves with international standards.”
4. Congressman Gonzales, highlighting the importance of the deadline during the House plenary debates, remarked that “there was a consultation with the Majority and the Minority and also with Office of the Speaker precisely because of the importance of this bill and considering further that we have to work on certain time frame, those were the reasons why we had to hold sessions until Thursday and Friday.”
5. Congressman Lopez, stressing the aim of Congress, cautioned that “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.”
6. Senator Angara, commenting on the clearance sought by AMLC on the proposed amendments with the FATF, pointed out that “it is quite strange—and this is the first time I encountered this kind of procedure—that the proposed content of a law is first cleared with a body external to Congress rather than that these very substantive provisions discussed first among us in Congress, among us in the Senate. I thought that was really a gross invasion and encroachment on the legislative prerogative of this Body.”

The executive agencies also “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 made subtle efforts to hasten and facilitate the policymaking 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 is 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 had an AMLA, another lawmaker, 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, but none was provided. As Senator Joker Arroyo observed, “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 Ramon Magsaysay and his committee...In short, there are certain [data] 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 the 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 AMLA.

The above illustrates that the FATF was forcefully able to set the legislative agenda, and even overwhelmed the political inertia among the policy actors. The absence of serious action among the institutional policy players was offset by the resoluteness of the international organization in ensuring the enactment of the AMLA.

6.2 *The BCC, a Powerful Body as well as the Soft Spot of Congress*

Although the “collaboration” between the executive officials and the legislators to comply with the demands of the FATF was evident throughout the legislative proceedings, the critical arena where the influence of the international organization in the policymaking process was distinctly conveyed was the BCC. While theoretically the BCC functions as a committee that reconciles or harmonizes the House and the Senate versions of the bill, in the post-EDSA legislative practice the BCC has evolved into a powerful body that can significantly change, modify, or alter bills passed by both Houses. The acquisition of an encompassing lawmaking authority has elevated the status of the committee; as Congressman Rodolfo Albano explicitly stated, “the [BCC] has always been called the Third Congress because more often than not, the [BCC] rewrites the whole bill... It only happened during the time of Cory, during the time of President Ramos, during the time of Erap where the BCC was more powerful than Congress itself.” According to lawmakers this legislative practice was underpinned by the Supreme Court jurisprudence which says that the BCC can come up with provisions outside what was passed by the Senate and the House.

The BCC is the most critical phase in the policymaking process, and the interference of the international organization was effectively felt in the committee deliberations. As a smaller but powerful body, the BCC was the main venue utilized by the executive branch and leadership of Congress to meet to the demands of the FATF; as the Committee afforded the legislators the covertness and flexibility necessary to expediently enact an AMLA that met FATF standards. The manipulation of the Committee was evident in the following instances:

First, to explicitly abide by the Task Force-imposed deadline (i.e., September 30, 2001, for R.A. 9160; February 12, 2003, for R.A. 9194, initial BCC Report; and March 15, 2003, for R.A. reconstituted BCC Report), all BCC deliberations took only a day each (September 28, 2001, for R.A. 9160; February 12, 2003, for R.A. 9194, initial BCC Report; and March 4, 2003, for R.A. reconstituted BCC Report) for such a complex law.

Second, despite the shortness of the time allotted to the BCC deliberations, on all occasions, instead of just harmonizing the Senate and House versions, the bill was substantially altered in the last-minute attempt of the committee members to rectify the bill so as to conform to the FATF standards. For instance, the BCC meeting was held strategically at the 5th floor, the Executive Lounge of the Central Bank, so that the committee questions could immediately be addressed by BSP and DOF. Senator Arroyo and Senator Osmeña grumbled that “while the bicameral meeting was ongoing, our own finance executive officials were frantically consulting on the phone with the foreign entities [FATF] while attempting to influence the outcome of the Report.” This action of “overhauling” the bill and deviating from some of the agreed-upon provisions negated the contribution and amendments made in the committee hearings and plenary. For example, the Sotto amendment, a motion to change the threshold amount from P500,000.00 to P2 million pesos, and the Arroyo amendment: a motion to require a court order to open suspicious transactions and deletion of retroactive effect, both were voted on and approved by the Senators; yet, these amendments were modified in the BCC.

Third, in line with the renewed call of the FATF to rectify the existing AMLA, the legislators took action to amend R.A. 9160. On 13 February 2003 the approved BCC Report was ratified by both the Senate and the House of Representatives at the closing phase of the amendment process, as only the signature of the President was keeping the bill from becoming a full-fledged law. However, immediately after the ratification, word came out that the soon-to-be-law was not acceptable to the FATF. The FATF continued to see a tinge of inconsistency with its global standard. Thus, sticking to the ratified version of the bill would mean another rejection as well as a demand from the FATF for another revision of the law. In addition, the country would continue to be in the NCCT list and could expect the full application of the countermeasures. To avoid such a scenario and to ensure that the output of Congress would be acceptable to the FATF, the lawmakers, spearheaded by Senate President Drilon, held direct talks with delegates of the international body. The gesture taken by the legislators could be viewed as a blatant capitulation to the will of the FATF, as the major provisions of the bill were presented to the FATF delegates for their clearance and approval. Hence, the agreement resulting in the said talks had severe repercussions. First, the undertaking made by the legislators of getting clearance from an international organization on the provision of the bill put into question the status of the legislature as an independent institution. This action unequivocally demonstrated the intrusive power of international institutions and illustrated the illusion of sovereignty in the policymaking process, as the approval of the FATF, in a sense, became the factor that defined the shape that the law would take. Second, the “gentlemen’s agreement” between the legislators and the FATF effectively discarded the ratified BCC Report and made it problematic for the members of the reconstituted BCC to make any changes outside the agreement. In the former, the external demand did not only define the policy but rendered ineffectual the legitimate legislative output, and the latter in effect placed Congress in “estoppel”, as the dinner meeting practically bound the whole of Congress.

Lastly, as a corollary to the “gentlemen’s agreement” between the FATF delegates and the lawmakers, the BCC was reconstituted to rewrite the bill (which practically threw away the ratified BCC Report) based on the “nod” of the FATF. This highly unusual move taken by the legislators unmistakably exemplified the strong influence of the FATF in the policymaking process. In the reconstituted BCC deliberation, the direct “meddling” of Senate President Drilon, who was strictly speaking not a member of the BCC, exemplified the strong interest of both the executive and legislative leadership in the final shape of the bill. The Senate President took an unofficial role of presiding over the opening of the meeting to “remind” his colleagues of the necessity that the body abide by the agreement with the FATF. For instance, in arguing against the changes proposed by some members of the BCC, Senate President Drilon appealed to them not to make any substantial changes as these could pose the danger of “inadvertently” inserting provisions unacceptable to the FATF. As stated by the Senate President, “we have crafted this provision, we have shown this to the FATF, and in writing they said...It’s acceptable to them...I read the sentence no less than five times; no less than five times, the FATF agreed; no less than five times, we agreed during a meeting with them. This agreement is confirmed in this written document that they sent to me, Now, if you want to alter it, you know, that’s a judgment call of the [BCC].” That was tantamount to saying that it would be risky to make changes, and a lot safer not to touch the provisions anymore. Thus, the BCC was already bound before the deliberations started.

The above shows that the BCC, although considered the most powerful body in the legislative proceedings, is also the body that is most vulnerable to external influence. The FATF was able to ensure that the AMLA conformed to the global standard, through the “linkup” with the policy actors controlling the BCC.

7. Conclusion

The policymaking process that produced the AMLA is atypical, as the enactment of the policy exhibited a peculiar pattern. Republic Act 9160 and its amendment, Republic Act 9194, as a financial regulatory policy was principally exogenously driven and was enacted mainly by virtue of external pressure. The involvement of the international organization was the decisive factor in setting the agenda, and in the enactment and the amendment of the AMLA. The law was enacted to satisfy the FATF demand— to conform to the global standard, to beat the deadline, to avoid the imposition of countermeasures, and to be removed from the NCCT blacklist. Bending to such demand, the Philippine government made extraordinary efforts to ensure compliance, such as the collaboration exemplified by the executive agencies, the swiftness of action taken by the legislators, the circumvention of rules and procedures, and the manipulation of the BCC. The steps taken spoke of the tremendous influence an international organization can have on the institutional actors and the policymaking process, as the absence of serious effort among the policy actors was offset by the resoluteness of the FATF. This condition was made possible primarily by the utilization of the threat of sanctions. The effort to avoid sanctions was the moving force from the beginning to the end of the policymaking process.

Acknowledgement

The author wishes to thank the anonymous reviewers, but takes full responsibility for the final manuscript.

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Notes

Note 1. Except to the extent reserved to the people by the provision on initiative and referendum.

Note 2. The separate days requirement can be dispensed with, if the President certifies the necessity of the bill's immediate enactment to meet a public calamity or emergency

Note 3. To speed up the process, in practice, the important bills are usually cosponsored in both Houses so that they undergo the stages simultaneously and get approval at almost the same time.

Note 4. If the President does not communicate his veto within 30 days from receipt of the bill, the bill shall become a law as if the President signed it.

Note 5. The members usually include the leaders of the Senate and the House of Representatives, together with the minority floor leaders, and the cabinet members.

Note 6. Information on FATF was mainly obtained from its official website at www.fatf-gafi.org.

Note 7. As of 2007, FATF has 32 members (Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Kingdom of the Netherlands, Luxembourg, Mexico, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States) and two regional organizations (European Commission and Gulf Co-operation Council). Currently, the FATF has two observer countries: India and South Korea.

Note 8. FATF made this official in October 2001

Note 9. 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 Middle East and North Africa Financial Action Task Force (MENAFATF). FSRBs: Eurasian Group (EAG); Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); Intergovernmental Action Group against Money-Laundering in Africa (GIABA).

Note 10. Complete and detailed List of Criteria for Defining Non-Cooperative Countries or Territories is available at <http://www.fatf-gafi.org/dataoecd/14/11/39552632.pdf> (see Annex 1).

Note 11. In 2000: Antigua & Barbuda, Bahamas, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Guernsey, Isle of Man, Israel, Jersey, Lebanon, Liechtenstein, Malta, Marshall

Islands, Mauritius, Monaco, Nauru, Niue, Panama, Philippines, Russia, Samoa, Seychelles, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines and Vanuatu. In 2001: Costa Rica, Czech Republic, Egypt, Grenada, Guatemala, Hungary, Indonesia, Myanmar, Nigeria, Palau, Poland, Slovakia, Turks & Caicos Islands, United Arab Emirates, Ukraine and Uruguay. No additional countries have been reviewed since 2001.

Note 12. The steps for delisting are available at <http://www.fatf-gafi.org/dataoecd/14/11/39552632.pdf> (see Annex 2).

Note 13. President Arroyo's speech during the signing of AMLA available at <http://www.ops.gov.ph/opnet/speech-2001sept29.htm>

Note 14. The law formally came into operation on 17 October 2001, whereas the implementing rules and regulations took effect on 2 April 2002.