

**U. N. OFFSHORE FORUM**

**THE CAYMAN ISLANDS**

**30 –31 MARCH 2000**

**GOING FORWARD : 2000 AND BEYOND**

IT IS ALWAYS AN HONOUR TO BE INVITED TO STAND AND BE COUNTED AMONG THOSE WHO WOULD JOIN THEIR VOICES IN THE CONDEMNATION OF THE SCOURGE OF DRUG TRAFFICKING, INTERNATIONAL ORGANISED CRIME AND MONEY LAUNDERING.

ALTHOUGH SUCH AN OPPORTUNITY AS THIS TO CONTRIBUTE TO THE CAUSE IS NEVER TO BE MISSED, JUDGES ARE HOWEVER ALWAYS WELL ADVISED TO BE RELUCTANT TO ENTER INTO ANY DEBATE WHICH MAY BE REGARDED AS ESSENTIALLY POLITICAL.

BEFORE I PROCEED I THINK I SHOULD THEREFORE EXPLAIN THAT WHILE THE ISSUES AT HAND ARE UNAVOIDABLY POLITICAL MY OWN OBJECTIVE IN WHAT I HAVE TO SAY IS SIMPLY TO SEEK TO STRIKE A BALANCE.

ALTHOUGH IT IS STILL A SOURCE OF MYSTERY TO ME WHY THIS HONOUR OF ADDRESSING YOU HAS BEEN BESTOWED, I IMAGINE IT COULD ONLY BE WHAT I TERM THE JUDICIAL PRESUMPTION OF INNOCENCE – THE EXPECTATION OF THE ABSENCE OF BIAS AND THE PRESENCE OF A MEASURE OF OBJECTIVITY.

IF YOU CONCLUDE THAT I MISS THE MARK OF STRIKING THAT BALANCE, THEN THE BLAME IS ALL MINE, NOT THOSE WHO HAVE INVITED ME TO SPEAK.

ALMOST BY DEFINITION, THE CREATION OF A FORUM BY THE UNITED NATIONS TO ADDRESS CONCERNS ABOUT MONEY LAUNDERING AND THE ABUSE OF FINANCIAL SYSTEMS BY ORGANISED CRIMINALS SHOULD BE A WELCOME EVENT.

THE UNITED NATIONS IS THE ONLY ORGANISATION THAT CAN CLAIM A TRULY GLOBAL CONSTITUENCY AMONGST NATIONS CARRYING A MANDATE TO PREVENT AND COMBAT THESE SERIOUS THREATS TO THE VERY WELL-BEING OF HUMANITY AND TO THE STABILITY OF NATIONS.

THE UNITED NATION'S BROAD MANDATE IN THIS REGARD GOES BACK TO ITS VERY INCEPTION IN 1945 WHEN ITS OBJECTIVES ADOPTED INTERNATIONAL AGREEMENTS WHICH WERE ALREADY IN PLACE TO COMBAT THE SCOURGE OF ILLICIT DRUGS.<sup>1</sup>

SINCE THEN THE UNITED NATIONS HAS CONTINUED TO GUIDE THE RESPONSE OF THE COMMUNITY OF NATIONS TO THESE THREATS AND WE HAD IN 1961 THE UN SINGLE CONVENTION ON NARCOTICS DRUGS AND ITS AMENDING PROTOCOL WHICH ARE REGARDED AS HAVING "ATTRACTED SUBSTANTIAL SUPPORT FROM THE INTERNATIONAL COMMUNITY"<sup>2</sup> . AS THE GROWING SOPHISTICATION OF THE DRUG TRAFFICKERS BECAME APPARENT, IT ALSO BECAME APPARENT THAT THE GLOBAL RESPONSE HAD TO MOVE BEYOND THE TRADITIONAL FOCUS ONLY ON THE CONTROL OF THE PRODUCTION AND TRADE IN ILLICIT DRUGS.

IT BECAME CLEAR THAT A NEW RESPONSE WAS REQUIRED TO COUNTER THE EXPANDING FINANCIAL AND INTERNATIONAL OPERATIONS OF DRUG TRAFFICKERS. THEY WOULD CONTINUE TO GROW FROM STRENGTH TO STRENGTH UNLESS THEY COULD BE DEPRIVED OF THE PROCEEDS OF THEIR CRIME. THIS COULD ONLY BE ACHIEVED BY GLOBAL CO-OPERATION. SO ONCE AGAIN THE UNITED NATIONS LED THE WAY AND THE FIRST GLOBAL INITIATIVE AGAINST MONEYLAUNDERING WAS BORN – THE 1988 UNITED NATIONS VIENNA CONVENTION.

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<sup>1</sup> Such as the International Opium Convention of 1912 and the 1931 Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs. The Commission on Narcotic Drugs was authorised by the General Assembly in 1946 to assume the functions entrusted by international conventions to the League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs. The earlier conventions were amended by a draft protocol approved by the Assembly in November 1946 and came into force among its members.

<sup>2</sup> See for example Professor William C Gilmore: "Dirty Money", Chapter 11, Council of Europe Publishing.

THIS CONVENTION NOW COMMANDS VIRTUALLY UNIVERSAL SUBSCRIPTION AND NO NATION CAN LAY CLAIM TO AN EFFECTIVE ANTI-MONEY LAUNDERING REGIME WHICH HAS NOT INCORPORATED THE VIENNA CONVENTION AS PART OF ITS DOMESTIC LAW.

DUE TO ITS INFLUENCE, MONEY LAUNDERING IS NOW WIDELY LEGISLATED AS AN OFFENCE; THE POTENTIAL OF BANK SECRECY LAWS FOR ABUSE IS NOW RECOGNISED AND THE NEED FOR INTERNATIONAL COOPERATION ACCEPTED AS A PRIORITY. IN ADDRESSING EACH OF THESE CONCERNS, THE VIENNA CONVENTION IS REGARDED AS HAVING MADE AN IMPORTANT CONTRIBUTION TO FUTURE PROGRESS IN THIS AREA.<sup>3</sup>

SINCE THE ADVENT OF THE VIENNA CONVENTION, THE WORLD COMMUNITY HAS CONTINUED TO BENEFIT FROM THE WORK OF THE U.N. IN THIS AREA THROUGH THE UN POLITICAL DECLARATION AND ACTION PLAN AGAINST MONEY LAUNDERING ADOPTED AT THE TWENTIETH SPECIAL SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY (RESOLUTION S20/4 OF JUNE 10 1998). NOW TO BE ADDED TO THE U.N. INITIATIVES, WILL BE THE MINIMUM PERFORMANCE STANDARDS WHICH WILL BE THE TOUCHSTONE FOR THE WORK OF THIS U.N. OFFSHORE FORUM.

IN THESE AND OTHER SIGNIFICANT WAYS THE ODCCP<sup>4</sup> WHICH BECAME OPERATIONAL IN 1991, HAS BECOME A LEADER IN THE INTERNATIONAL RESPONSE.

A FURTHER IMPORTANT ADVANCE EXPECTED THIS YEAR WILL BE THE U.N. INTERNATIONAL CONVENTION AGAINST ORGANISED TRANSNATIONAL CRIME.

IT IS THIS HISTORY OF GLOBAL RESPONSIBILITY AND RESPONSE WHICH MOST SUITS THE UNITED NATIONS TO THE ACTIVE ROLE IN WHICH IT NOW CASTS ITSELF IN LAUNCHING THIS OFFSHORE FORUM. IT IS THEREFORE TO BE EXPECTED THAT THE PROCESSES OF THE FORUM WILL BE ATTENDED

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<sup>3</sup> Gilmore op cit page 64.

<sup>4</sup> The United Nations Office for Drug Control and Crime Prevention, based in Vienna, Austria.

BY THE GOOD FAITH, IMPARTIALITY AND OBJECTIVITY WHICH HAVE COME TO DEFINE THE U.N.'S HISTORICAL ROLE. AND IT IS THIS REMIT WHICH WILL MAKE THE FORUM ACCEPTABLE TO THE COUNTRIES TO BE INVOLVED AND WHICH WILL ENABLE ITS SUCCESS.

IT IS AGAINST THE BACKGROUND OF THIS SAME HISTORY THAT I THINK I CAN MOST USEFULLY APPROACH MY OWN DAUNTING TASK OF ADDRESSING YOU ON THE WAY FORWARD.

SUBMISSION TO THE OBJECTIVES OF THE FORUM WILL BE IN ITSELF AN ARTICLE OF FAITH FOR THE COUNTRIES INVITED TO BE REVIEWED.

THIS IS THE FIRST TIME IN ITS RESPONSE TO THE GLOBAL PROBLEM OF DRUG TRAFFICKING AND ORGANISED CRIME THAT THE U.N. WILL BE SETTING FOR ITSELF AN OBJECTIVE WHICH COULD BE DESCRIBED AS LESS THAN GLOBAL IN ITS GEOGRAPHIC AMBIT.

THERE ARE LIMITATIONS AND EVEN DANGERS INVOLVED IN THE FORUM SETTING FOR ITSELF TOO NARROW A SCOPE.

BY FOCUSING ON THE SO-CALLED "OFFSHORE" COUNTRIES, THE U.N. WILL NOW RISK LENDING ITS AUTHORITY TO THE VIEW THAT COUNTRIES WHICH ARE SEEN TO FIT THAT DESCRIPTION DO PRESENT A SPECIAL RISK IN THE CONTEXT OF THE WIDER GLOBAL RESPONSE TO THE THREAT. FOR THE COUNTRIES INVOLVED, THE PEJORATIVE CONNOTATIONS ARE OBVIOUS: THE VERY FACT OF PARTICIPATION COULD BE SEEN AS AN IMPLICIT ACCEPTANCE OF THE PREMISE OF CONCERN.

THESE CONNOTATIONS DID NOT ESCAPE THE ATTENTION OF THE CONVENORS OF THE FORUM WHO CONSIDERED CHANGING THE NAME AND SCOPE TO INCLUDE ALL COUNTRIES INVOLVED IN THE BUSINESS OF INTERNATIONAL FINANCE<sup>5</sup>. THEIR CONCLUSION WAS THAT THE TITLE "OFFSHORE FORUM" IS NOT TO BE USED AS A GEOGRAPHIC DESCRIPTION BUT AS "A TERM TO DESCRIBE THOSE JURISDICTIONS WHICH PROVIDE

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<sup>5</sup> See page 11 of the Report of the Informal Advisory Group on the development of the initiative (The Forum Report).

FINANCIAL SERVICES TO PERSONS OUTSIDE THEIR JURISDICTION OF RESIDENCE.”

HOWEVER, AS CAYMAN’S FINANCIAL SECRETARY HON. GEORGE McCARTHY HAS OBSERVED<sup>6</sup>; TO THE EXTENT THAT THIS APPROACH BECOMES TRANSLATED INTO PRACTICE, ONLY THEN COULD THERE BE THE EXPECTATION OF A LEVEL PLAYING FIELD.

BY WAY OF EMPHASIS, THE FIRST OBSERVATION I WOULD MAKE ON THE WAY FORWARD IS THAT THE NEED FOR A LEVEL PLAYING FIELD IS A MATTER OF CRITICAL IMPORTANCE.

I SUBMIT THAT AN OBJECTIVE, HOWEVER WELL INTENDED, WHICH WOULD PROCEED UPON THE CHARACTERISATION OF A GROUP OF COUNTRIES AS ESPECIALLY AT RISK OR ESPECIALLY HARMFUL TO THE GLOBAL EFFORTS BECAUSE OF THEIR PARTICULAR FISCAL REGIMES, IS AN OBJECTIVE WHICH WOULD SEEK TO DENY THE REALITY THAT MONEY LAUNDERING IS A TRULY GLOBAL PROBLEM. IT WOULD SEEK TO DENY THE EMPIRIC EVIDENCE WHICH SHOWS THAT THE PRIMARY ABUSE BY THE ORGANISED CRIMINAL CONTINUES TO BE WITHIN THE “ONSHORE” JURISDICTIONS.

THIS CONCERN ABOUT FAIRNESS IS NOT TO BE SEEN AS MERELY THE SELF-SERVING CONCERN OF THE 61 COUNTRIES OR TERRITORIES WHICH HAVE BEEN INVITED. RATHER, TO THE EXTENT THAT THE FUNDAMENTAL FALLACY THAT OFFSHORE COUNTRIES PRESENT A SPECIAL RISK TAKES ROOT, TO THE SAME EXTENT WILL THE FURTHER FALLACY THAT FORCING THEM TO COMPLY WILL RESULT IN THE THREAT BEING CONTAINED.

I WOULD SUGGEST, THEREFORE, THAT THE FIRST STEP IN MOVING THESE FORUM OBJECTIVES FORWARD SHOULD BE THE RECOMMENDATION OF THIS GATHERING THAT THE FORUM’S REMIT WILL NOT START AND END WITH THE REVIEW OF THE 61 INVITED “OFFSHORE” JURISDICTIONS.

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<sup>6</sup> Hon. Goerge McCarthy in his Welcoming Remarks to the Forum given on 30.3.2000.

THERE CAN BE NO OBJECTION TO THE UNITED NATIONS - GIVEN ITS HISTORICAL ROLE, WIDE ACCEPTANCE AND UNPARALLELED CREDENTIALS IN THIS AREA - BEING INVITED TO ASSUME A WIDER ROLE. THE U.N. IS THE ONLY INSTITUTION THAT HAS THE GLOBAL ACCEPTABILITY TO BE ABLE TO STRADDLE THE JURISDICTIONAL, CULTURAL AND POLITICAL DIVIDES WHICH TEND TO ENGENDER SUSPICIONS AND DISTRUST. THERE IS, FOR INSTANCE THE GROWING DISTRUST THAT THE ANTI-MONEY LAUNDERING INITIATIVES CAN BE MANIPULATED BY THE POWERFUL COUNTRIES TO ADVANCE OTHER AGENDAS, SUCH AS THE O.E.C.D. TAX INITIATIVES.

ON THE OTHER SIDE OF THE DIVIDE, WE SHOULD ALSO NOTE THE DISTRUST OF “OFFSHORE” COUNTRIES MANIFESTED BY THE LATEST MEASURES TO WHICH THE FATF COUNTRIES HAVE RESORTED.

THIS FORUM INITIATIVE WILL NO DOUBT FACE GREAT DIFFICULTIES IN STRADDLING THAT DIVIDE, BUT IF ITS ULTIMATE MISSION IS TO SUCCEED IT MUST FIRST SUCCEED IN BUILDING A BRIDGE OF CONCENSUS OVER THE WIDENING GAP OF SUSPICION AND DISTRUST.

GIVEN ITS HISTORICAL ROLE, THE U.N. DOES NOT DESERVE, AND SHOULD BE SCRUPULOUSLY CAREFUL NOT TO ALLOW ITSELF TO COME UNDER SUSPICION FROM EITHER SIDE.

THESE CONCERNS ARE UNFORTUNATELY HOWEVER ONLY EXACERBATED BY THE DEFINITION OF “OFFSHORE FINANCIAL CENTRE” WHICH HAS BEEN ADOPTED IN THIS FORUM’S REPORT. AT PAGE 4, IN SHADES TOO CLOSE TO THE OECD APPROACH FOR COMFORT, IT DESCRIBES AN “OFC” AS –

“A COUNTRY, JURISDICTION OR REGION WHERE AN EFFORT HAS BEEN MADE TO ATTRACT FOREIGN BUSINESS BY GOVERNMENT POLICY SUCH AS THE ENACTMENT OF TAX AND EXCHANGE CONTROL INCENTIVES, MINIMAL DISCLOSURE REQUIREMENTS, SOFT REGULATION AND ENFORCED SECRECY. THIS LEGISLATION IS MARKET TARGETED AND ITS OBJECTIVE IS TO ARBITRAGE THE LAWS AND REGULATIONS OF FOREIGN GOVERNMENTS.”

IT IS DIFFICULT TO IMAGINE A MORE SWEEPING INDICTMENT OF ANY COUNTRY'S FISCAL REGIME THAN AN EVALUATION WHICH PLACES IT WITHIN SUCH A DEFINITION.

THE OBVIOUS QUESTION WOULD BE – WHY SHOULD THE DEFINITION OF AN “OFC” NOT BE THAT SUGGESTED ELSEWHERE IN THE TEXT IF FINANCIAL SECRETARY McCARTHY'S EXPECTATION IS TO BE REALISED, VIZ: THAT THE FORUM OBJECTIVES WILL BE TO SECURE COMPLIANCE BY “ALL JURISDICTIONS THAT PROVIDE CROSS-BORDER FINANCIAL SERVICES?”

USING THAT WIDER AND NEUTRAL DEFINITION AS THE PREMISE, THIS U.N. FORUM COULD THEN, WITH PERFECT LEGITIMACY, PROCEED AS A PRIORITY FIRST TO REVIEW THE INVITED JURISDICTIONS BECAUSE OF THEIR PERCEIVED PARTICULAR VULNERABILITIES, THEN PROGRESS WITH THE CERTAIN EXPECTATION THAT THE FORUM WOULD LATER COME TO REVIEW THE “ONSHORES” WITH THE FULL WEIGHT OF ITS GLOBAL MANDATE AND EXPERIENCE TO ADVISE THEM ALSO ON THE CHANGES THEY WOULD DOUBTLESS STILL NEED TO MAKE.

OTHERWISE, IT WOULD SEEM UNACCEPTABLE THAT WEAKNESSES WHICH OFC'S SHARE IN COMMON WITH ONSHORE JURISDICTIONS - SUCH AS BEARER SHARE COMPANIES, NOMINEE DIRECTORSHIPS, IBC'S; BANKING CONFIDENTIALITY AND OF COURSE “ETHICALLY CHALLENGED PROFESSIONALS”<sup>7</sup>; SHOULD BE DEEMED TO BE BEYOND THE REMIT OF THE U.N. SIMPLY BECAUSE THEY OCCUR IN “ONSHORE” JURISDICTIONS.

MOREOVER, THE U.N. SHOULD BECOME PROPERLY ENGAGED IN THE RESPONSE TO THE EMERGING THREAT OF THE ABUSE OF CYBERSPACE TECHNOLOGY BY ORGANISED CRIMINALS – A THREAT WHICH IS EMERGING PRIMARILY WITHIN THE ONSHORE COUNTRIES.<sup>8</sup>

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<sup>7</sup> See page 5 of the Forum Report.

This field of study has given us the most fertile new lexicon since the advent of the big bang theory.

<sup>8</sup> See FATF Annual Reports III an IV, pages 9 and 28 respectively. The primary abuse of “Onshore” centers is also recognised in the report of the Financial Stability Forum

FROM THAT RESOLVE TO MOVE IN THE RIGHT DIRECTION, THE 61 INVITED STATES COULD WITH EQUANIMITY ADDRESS THE FORUM OBJECTIVES AND ACCEPT THE LEGITIMACY OF THE STUDY WHICH THE ODCCP COMMISSIONED IN 1998.<sup>9</sup>

ALTHOUGH THIS STUDY HAS NOW COME TO BE CITED AS THE GENESIS OF THIS FORUM INITIATIVE<sup>10</sup>, ITS WIDER GLOBAL SIGNIFICANCE AND APPLICABILITY WAS NOT OVERLOOKED WHEN IT WAS THE SUBJECT OF A PANEL DISCUSSION HELD AT THE U.N. IN NEW YORK DURING THE SPECIAL SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY ON 10 JUNE 1998. THEN, U.N. UNDER SECRETARY GENERAL PINO ARLACCHI, THE EXECUTIVE DIRECTOR OF THE O.D.C.C.P. REMARKED:

“THE INTERNATIONAL COMMUNITY COULD ALSO CONSIDER NEW INTERNATIONAL AGREEMENTS THAT ADDRESS THE ISSUE OF FINANCIAL AND BANKING SECRECY HEAD ON. THE CHANGING PRIORITIES OF FINANCIAL LAW ENFORCEMENT SHOULD BE TAKEN INTO CONSIDERATION WHEN THE INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME IS CONSIDERED. I FAVOUR A SPECIAL PROTOCOL TO COMPLEMENT THE CONVENTION, DIRECTED TO COUNTERING MONEY LAUNDERING AND, IN PARTICULAR, TO STRENGTHENING TRANSPARENCY IN FINANCIAL BUSINESS.”<sup>11</sup>

IT IS NO LESS A BROAD AND GLOBAL INITIATIVE WHICH I WOULD SUBMIT THE U.N. SHOULD DESCRIBE FOR ITSELF AS ITS MANDATE AGAINST MONEY LAUNDERING AND ORGANIZED CRIME.

IT IS THIS MANDATE AND NOTHING LESS WHICH THE WORLD COMMUNITY SHOULD EXPECT TO BE ADVANCED BY THE PROPOSED CONVENTION

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<sup>9</sup> “Financial Havens, Banking Secrecy and Money Laundering” by Blum, Levi, Naylor and Williams.

<sup>10</sup> See page 2 of the Forum Report “Background”.

<sup>11</sup> Reported by Gilmore op. cit. Page 67 citing a UN publication.



AGAINST TRANSNATIONAL AND ORGANIZED CRIME WHICH THE UNITED NATIONS IS EXPECTED TO PRESENT THIS YEAR.<sup>12</sup>

SEEN AS PART OF SUCH A GLOBAL U.N. MANDATE, THIS FORUM IS TO BE WELCOMED AND ITS PROGRAMMES SUPPORTED.

VIEWS IN THE CONTEXT OF A LEVEL PLAYING FIELD, THE FORUM'S STATED GOAL "TO ENSURE THAT EACH JURISDICTION SUPERVISES AND REGULATES THE FACILITIES IN ITS TERRITORY AND DOES SO AT AN INTERNATIONALLY ACCEPTED LEVEL"<sup>13</sup> IS TO BE WELCOMED AND SUPPORTED. THIS IS NOT ONLY BECAUSE OF ITS EXPRESSED PROMISE OF ENCOURAGEMENT AND ASSISTANCE TO OFFSHORE COUNTRIES IN THE ATTAINMENT OF THESE STANDARDS; BUT ALSO BECAUSE OF ITS IMPLICIT PROMISE OF RESPECT FOR THE FISCAL SOVEREIGNTY OF THE COUNTRIES TO BE REVIEWED. THIS IS A PROMISE WHICH IS IMPLICIT IN THE STATEMENT THAT "REGULATORY GOVERNANCE IS VERY MUCH THE RESPONSIBILITY OF THE INDIVIDUAL STATE OR JURISDICTION."<sup>14</sup>

OF COURSE NOTHING LESS WOULD BE ACCEPTABLE COMING FROM THE UNITED NATIONS; WHICH HAS FOR LONG CHAMPIONED THE CAUSE OF SMALL STATES IN CLAIMING THE RIGHT TO SELF-DETERMINATION.<sup>15</sup>

AND NOTHING LESS COULD BE JUSTIFIED IN LIGHT OF THE PRELIMINARY CONCLUSIONS OF THE FINANCIAL STABILITY FORUM OF THE G7 THAT OFFSHORE COUNTRIES PRESENT NO THREAT TO WORLD FINANCIAL STABILITY.<sup>16</sup>

HAVING UTTERED SO MANY CAUTIONARY WORDS IN MY DELIVERY SO FAR, IT IS ONLY RIGHT THAT I SHOULD SHIFT GEAR SOMEWHAT AND SEEK TO FOCUS ON THE ELEMENTS OF THE OFFSHORE FORUM OBJECTIVES WHICH CAN ONLY BE REGARDED AS POSITIVE.

I WOULD SUGGEST THAT VIEWED AS A WHOLE AND ALTHOUGH STILL TO BE CLEARLY DEFINED, "THE MINIMUM PERFORMANCE

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<sup>12</sup> Gilmore op.cit. page 68.

<sup>13</sup> Forum Report, page 2.

<sup>14</sup> Forum Report, page 2.

<sup>15</sup> Pursuant to Article 73 of the U.N. Charter.

STANDARDS/TARGETS” ARE TO BE SEEN AS OBJECTIVE AND FAIR.<sup>17</sup>

FOR INSTANCE, THE REQUIREMENT OF A MEASURE OF MINIMUM PROGRESS TO BE SHOWN BEFORE A JURISDICTION CAN RECEIVE TECHNICAL ASSISTANCE AND TRAINING THROUGH THE FORUM, IS A FAIR WAY OF SHOWING THAT A COUNTRY CAN EXPECT THE ASSISTANCE OF THE FORUM IN NURTURING ITS FINANCIAL INDUSTRY BUT ONLY IF IT IS PREPARED TO MEET ITS REGULATORY AND LAW ENFORCEMENT OBLIGATIONS.

ANOTHER NEW ENTRANT TO THE MONEY LAUNDERING LEXICON – THE “MAINSTREAMING JURISDICTION”, ALTHOUGH A SOMEWHAT VAGUE CONCEPT, WHEN PROPERLY DEFINED SHOULD HAVE PRACTICAL VALUE, GIVEN THE ACCLAIMED SUCCESS OF PEER GROUP EXAMPLE AND REVIEW WHICH IS AT THE HEART OF THE PROGRAM CHAMPIONED BY THE FATF.

OF COURSE, THE CLAIM WHICH SOME OF OUR JURISDICTIONS WILL MAKE AS ROLE MODELS CAN BE NO IDLE CLAIM, AS THE FORUM WILL DOUBTLESS BE PARTICULARLY SCRUPULOUS IN ITS EVALUATION, IDENTIFICATION AND PROJECTION OF THESE ROLE MODELS.

A FURTHER SIGN OF ENLIGHTENMENT COMES FROM THE FORUM’S RECOGNITION OF THE NEED TO CREATE HARMONY BETWEEN THE FORUM ACTIVITIES AND THOSE OF THE FINANCIAL ACTION TASK FORCE, THE BASLE BANKING COMMITTEE, THE COMMONWEALTH SECRETARIAT AND OTHER ORGANISATIONS PROMOTING ANTI-MONEY LAUNDERING PROGRAMMES WHICH WILL AFFECT “OFFSHORE” COUNTRIES.

THIS IS A CRUCIAL MATTER FOR SMALL STATES FOR, IF I MIGHT BE EXCUSED YET ANOTHER COINAGE OF PHRASE: THE FORUM MUST BE ASTUTE TO AVOID VISITING UPON THE INVITED COUNTRIES THE ILLNESS OF “REVIEW FATIGUE.”

IT WOULD BE COUNTER-PRODUCTIVE SIMPLY TO IMPOSE YET ANOTHER ROUND OF QUESTIONNAIRES TO BE ANSWERED WHEN THE CURRENT

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<sup>16</sup> Preliminary report of the Financial Stability Forum working group on Offshore Financial Centres.

<sup>17</sup> Described at page 3 of the Report but yet to be clearly defined as to their specific application and the minimum tests to be applied.

DATA IS ALREADY LIKELY TO BE AVAILABLE (WITH THE CONSENT OF THE COUNTRY CONCERNED) FROM THE CICAD<sup>18</sup> OFFICE OF THE O.A.S., THE CFATF, FATF OR COMMONWEALTH SECRETARIAT, AS THE CASE MIGHT BE. VERY SENSIBLY, THE FORUM REPORT ALSO STATES, IN EFFECT, THAT THE INTENTION IS TO AVOID ATTEMPTING TO “REINVENT THE WHEEL.”<sup>19</sup>

INDEED, THE STATED INTENTION IS TO ADOPT THE CRITERIA AND STANDARDS SET OUT BY THE FATF, THE BASLE CONCORDATS AND BY OTHER ESTABLISHED STANDARD SETTING BODIES.

I BELIEVE, HOWEVER, IT IS A CAUSE OF REGIONAL DISAPPOINTMENT TO OBSERVE THE OMISSION OF THE CARIBBEAN FINANCIAL ACTION TASK FORCE FROM THIS, THE FORUM’S, NAMED LIST OF INTERNATIONAL STANDARD BEARERS.

FULLY A THIRD OF THE COUNTRIES INVITED TO THIS FORUM ARE WITHIN THE CFATF MEMBERSHIP. THE GOOD WORK OF THE CFATF IS TO BE RECOGNISED AND ENCOURAGED, NOT REPUDIATED OR IGNORED.

THE C.F.A.T.F., NOTWITHSTANDING THE CULTURAL AND POLITICAL DISPARITIES OF ITS MEMBERSHIP<sup>20</sup> AND THE OBSTACLES THIS CREATED IN ITS EARLY STAGES; WILL COMPLETE ITS FIRST ROUND OF MUTUAL EVALUATIONS OF ITS 26 MEMBERS THIS YEAR. IT INTENDS TO IMMEDIATELY COMMENCE A FURTHER ROUND BASED UPON THE REVISED FATF RECOMMENDATIONS AND THE LESSONS LEARNED FROM THE INFORMATIVE TYPOLOGIES EXERCISES WHICH THE CFATF HAS ITSELF CONDUCTED AMONG ITS MEMBERSHIP.<sup>21</sup>

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<sup>18</sup> The Inter-American Drug Abuse Control Commission of the Organisation of the American States which has actively promoted the adoption of the anti-money laundering regulations of the OAS among its members.

<sup>19</sup> Penultimate paragraph p. 3 of the Report.

<sup>20</sup> 26 States or territories some independent and others non-independent covering the Caribbean region having the English, Spanish, French and Dutch as primary language.

<sup>21</sup> 5 such exercises have been conducted to examine the methodologies of money laundering (i) through domestic financial institutions; (ii) in the Casino and Gaming industry; (iii) through offshore banks and other offshore financial intermediaries; including International Business Corporations (IBC’s); (iv) in non-financial institutions and (v) through Emerging Cyberspace and Cyberpayment Technologys Cos. The further exercises are on the agenda: The study of the vulnerability of the Free Trade Zones to money

THE CFATF REMAINS THE MOST LIKELY AND INDEED THE ONLY EXISTING DELIVERY MECHANISM FOR SECURING A COMPREHENSIVE ANTI-MONEY LAUNDERING NETWORK FOR THE CARIBBEAN REGION. SURELY, THE WAY FORWARD MUST BE FOR THIS FORUM TO PERSUADE AND ENCOURAGE OUR CARIBBEAN INTERLOCUTORS THAT IT IS IN THEIR INTEREST TO CONTINUE TO SUPPORT THE CFATF'S WORK.

THE POLITICAL COMMITMENT OF THE CFATF MEMBERS TO THE FORUM'S MINIMUM STANDARDS SHOULD BE READILY ANTICIPATED IN LIGHT NOT ONLY OF THEIR SUBMISSION TO THE CFATF EVALUATION PROCESSES, BUT ALSO IN LIGHT OF THEIR SUBSCRIPTION TO THE MEMORANDUM OF UNDERSTANDING<sup>22</sup> WHICH FORMALISES THEIR GOVERNMENTS' COMMITMENT TO THE WORK OF THE CFATF.

THE CURRENT FATF STRATEGY<sup>23</sup> - IN ITS RESOLVE TO NAME AND BLAME COUNTRIES IT DEEMS "NON CO-OPERATIVE." - IS THE ANTITHESIS OF THIS ENLIGHTENED APPROACH.

THERE ARE ALREADY CLEAR INDICIA THAT THIS NEW FATF STRATEGY WILL PROVE COUNTER-PRODUCTIVE:

- (I) IT CONVEYS A POLICY WHICH HAS BEEN DECLARED FROM "ON HIGH" BY THOSE COUNTRIES, WITHOUT PRIOR CONSULTATION.
- (II) WHILE THE FATF REPORT CONTAINS THE PALLIATIVE ADMISSION THAT MONEY LAUNDERING IS INDEED A GLOBAL PROBLEM AND THAT ITS OWN MEMBERS MUST ALSO BE REVIEWED, ITS CONCLUSION IS TO THE CONTRARY IN ITS RESORT TO COUNTER-MEASURES TO PROTECT THEIR ECONOMIES AGAINST ABUSE FROM THE SO-CALLED "NON-CO-OPERATIVE" JURISDICTIONS.
- (III) THE SUGGESTION IN THE FATF REPORT - THAT THE PROCESS BY WHICH "NON-CO-OPERATIVE" JURISDICTIONS WILL BE REVIEWED WILL INVOLVE THEIR PEER GROUPS THROUGH FATF REGIONAL AFFILIATE BODIES SUCH AS THE CFATF; SEEMS TO BE JUST ANOTHER PALLIATIVE FOR NOWHERE IS IT BORNE OUT IN THE CHAIRMAN'S LETTER TO THOSE COUNTRIES. INSTEAD THE FATF UNILATERALLY

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laundering and the link between drug money and gun running: money laundering and the ability of the Cartel's to maintain their armies.

<sup>22</sup> Adopted at the CFATF Council Meeting, October 9-10 1996, San Jose, Costa Rica.

<sup>23</sup> See FATF Report on Non-Cooperative Countries and Territories 14 February 2000.

NOMINATES THE RESPECTIVE REVIEW GROUPS  
COMPRISING PERSONNEL OF THE FATF'S OWN  
CHOOSING.<sup>24</sup>

THESE ARE ALL INDICIA WHICH WILL RESULT IN THE FATF PROCESS BEING ATTENDED BY SUSPICION AND DISTRUST. FOR ONE THING IT ALL TOO TRANSPARENTLY PATTERNS THE APPROACH TAKEN BY THE OECD<sup>25</sup>. MOREOVER, ITS IMPLICIT REPUDIATION OF THE IMPORTANT WORK OF THE CFATF AND OF OTHER REGIONAL GROUPINGS SUCH AS FATF ASIA/PACIFIC GROUP; SOUTHERN AND EASTERN AFRICA AND EASTERN EUROPE WILL LEAVE THEIR MEMBER STATES WONDERING WHAT THE ULTIMATE AGENDA IS.

THE FATF STRATEGY DOES NOT COMMEND ITSELF AS THE WAY FORWARD.

WHATEVER THE LEGITIMATE CONCERNS THE O.E.C.D. STATES MAY HAVE ON HARMFUL TAX COMPETITION, THE CONFUSION OF THOSE ISSUES WITH THE FAR MORE DETRIMENTAL ISSUES OF DRUG TRAFFICKING AND INTERNATIONAL CRIMINALITY CAN ONLY LEAD TO THE DILUTION OF THE POLITICAL WILL TO TACKLE THOSE GREATER PROBLEMS.

AN EARLY TEST FOR THIS FORUM WILL BE HOW WELL IT FULFILLS ITS DECLARED INTENTION TO "ASSURE HARMONY OF U.N.O.F. ACTIVITIES WITH THOSE OF THE FINANCIAL ACTION TASK FORCE" AND OTHER AGENCIES.

CERTAINLY, FROM THE POINT OF VIEW OF OBSERVERS IN THE CAYMAN ISLANDS, AND I BELIEVE I CAN VENTURE THE SAME SENTIMENT AS GENERALLY HOLDING TRUE FOR C.F.A.T.F. MEMBERSHIP, OUR HOPES AND EXPECTATIONS ARE THAT THE FORUM WILL BRING ITS MORE ENLIGHTENED APPROACH TO BEAR UPON THE FATF THINKING AND NOT THE OTHER WAY AROUND.

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<sup>24</sup> Letter dated 16 February 2000 from Mr. Gil Galvao, President of the FATF to "Non-Cooperative Countries".

IN SUMMARY, FROM ALL THE FOREGOING, AND IN CONCLUSION I WOULD PROPOSE THE WAY FORWARD –

- (i) THE U.N.’S OFFSHORE FORUM SHOULD BE SUPPORTED ONCE THE MINIMUM STANDARDS ARE CLEARLY DEFINED AND A NETWORK ESTABLISHED WITH REGIONAL BODIES SUCH AS THE CFATF;
- (ii) THE U.N.’S MANDATE SHOULD BE WIDENED; NOT CONFINED TO SECURING COMPLIANCE BY THE SO-CALLED “OFFSHORE” COUNTRIES;
- (iii) ONLY THE U.N. HAS THE MANDATE, CREDIBILITY AND CREDENTIALS TO SECURE COMPLIANCE WITH ANTI-MONEY LAUNDERING STANDARDS ON THE GLOBAL SCALE;
- (iv) IN THE LIGHT OF THE PROGRESS MADE SINCE THE 1988 VIENNA CONVENTION, THE PROPOSED INTERNATIONAL CONVENTION AGAINST ORGANISED TRANSNATIONAL CRIME SHOULD INDEED BE COMPLEMENTED BY A SPECIAL PROTOCOL AGAINST MONEY LAUNDERING, APPLYING THE STANDARDS LEARNED SINCE THE VIENNA CONVENTION. AN IMPORTANT ELEMENT OF THIS SHOULD BE RULES TO PREVENT THE ABUSE OF CYBERSPACE TECHNOLOGY.
- (v) THE U.N. ANTI-MONEY LAUNDERING REMIT WOULD REQUIRE THAT THE U.N. BE CONCERNED TO SECURE COMPLIANCE BY “ALL JURISDICTIONS THAT PROVIDE CROSS-BORDER FINANCIAL SERVICES.”
- (vi) IN SEEKING TO ENSURE HARMONY BETWEEN THE VARIOUS ANTI-MONEY LAUNDERING INITIATIVES, THE U.N. FORUM SHOULD SEEK TO DISSUADE THE DIVISIVE AND COUNTER-PRODUCTIVE USE OF BLACKLISTING AND ECONOMIC SANCTIONS;
- (vii) THE U.N. SHOULD RELY UPON THE STANDARDS RAISED BY THE FATF, CFATF, OAS, COUNCIL OF EUROPE, COMMONWEALTH SECRETARIAT AND BASLE COMMITTEE TO THE EXTENT POSSIBLE AND APPROPRIATE IN FULFILLING ITS GLOBAL MANDATE AND SHOULD WORK IN CONJUNCTION WITH THOSE AGENCIES ALREADY IN PLACE AT THE REGIONAL LEVELS;
- (viii) THE FORUM SHOULD BE ASTUTE TO AVOID FURTHER ENDLESS ROUNDS OF QUESTIONNAIRES AND REVIEWS AND SHOULD AS FAR AS POSSIBLE RELY ON DATA AVAILABLE FROM OTHER AGENCIES.
- (ix) AS A PRACTICAL MATTER THE U.N. SHOULD BE REPRESENTED BY ITS NOMINATED EXAMINER ON EACH

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<sup>25</sup> See the OECD Report on Harmful Tax Competition: An Emerging Global Issue adapted by OECD published on 28 April 1998 (Switzerland and Luxembourg abstaining). Following on this Report the OECD has deployed a similar Review process of the so-called Tax Havens identified.

AND EVERY MUTUAL EVALUATION EXERCISE CONDUCTED  
IN ACCORDANCE WITH THE FATF RECOMMENDATIONS.

**ANTHONY SMELLIE Q.C.**

CHIEF JUSTICE AND M.L.A.T. CENTRAL

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