

**Commission of Inquiry into
Money Laundering in British Columbia**

Public Hearing

Commissioner

The Honourable Justice
Austin Cullen

Held at:

Vancouver, British Columbia
via video link

Wednesday, June 3, 2020

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1
William Gilmore (for the Commission)
Examination by Ms. Latimer, Counsel for the Commission

Vancouver, B.C.
June 3, 2020

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2
3
4 THE REGISTRAR: Good morning, everyone. The hearing is
5 resumed.

6 THE COMMISSIONER: Thank you, Madam Registrar. Yes,
7 Mr. Martland.

8 MR. MARTLAND: Thank you, Mr. Commissioner. I have the
9 pleasure of passing the baton to Ms. Latimer for
10 today's witness.

11 THE COMMISSIONER: Thank you. Yes, Ms. Latimer.

12 MS. LATIMER: Yes, good morning, Mr. Commissioner. The
13 witness today is Emeritus Professor of
14 International Criminal Law, William Gilmore, of
15 the University of Edinburgh, and he's scheduled to
16 testify today and tomorrow, and we should be able
17 to let you know by the end of the day whether all
18 of tomorrow is required.

19 THE COMMISSIONER: Thank you. Does Professor Gilmore
20 wish to be sworn or affirmed?

21 MS. LATIMER: Professor Gilmore would like to be
22 affirmed, please.

23 THE COMMISSIONER: Thank you. Madam --

24
25 WILLIAM GILMORE, a witness
26 called for the Commission,
27 affirmed.
28

29 THE REGISTRAR: Thank you, and please state your full
30 name and spell your first name and last name for
31 the record.

32 A William Christopher Gilmore, W-i-l-l-i-a-m,
33 Gilmore is G-i-l-m-o-r-e.

34 THE REGISTRAR: Thank you.

35 THE COMMISSIONER: Thank you, Professor, and Ms.
36 Latimer, you may proceed.

37 MS. LATIMER: Thank you.
38

39 EXAMINATION BY MS. LATIMER:
40

41 Q Good morning, Professor Gilmore. Can you hear me
42 okay?

43 A I can hear you fine, Ms. Latimer.

44 Q Great, I can hear you well, as well.

45 MS. LATIMER: Madam Registrar, could we please have
46 document 15, which is Professor Gilmore's
47 *curriculum vitae*, presented onscreen, please?

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1 Q And, Professor Gilmore, do you recognize this
2 document as your own *curriculum vitae*?

3 A I do.

4 Q And this accurately sets out just a summary of
5 some of your professional accomplishments,
6 correct?

7 A Yes, in very summary form.

8 Q Thank you.

9 MS. LATIMER: Mr. Commissioner, I ask that this CV be
10 marked as the next exhibit, please.

11 THE COMMISSIONER: Very well. That will be Exhibit 18.

12 THE REGISTRAR: Exhibit 18.

13

14 EXHIBIT 18: Curriculum vitae of William Gilmore

15

16 MS. LATIMER: We don't need to have that document
17 displayed any further, Madam Registrar. I'm going
18 to just ask the witness about some of his
19 experiences. Just for the record, I'll be walking
20 through these experiences beginning on the first
21 page.

22 Q And so just beginning with your present post,
23 Professor Gilmore. You are Emeritus Professor of
24 International Criminal Law, School of Law,
25 University of Edinburgh, Scotland, correct?

26 A That is so.

27 Q And you were formerly Professor and Dean and Head
28 of School of that institution, right?

29 A Yeah, that is so.

30 Q And what has been the focus of your research and
31 teaching, please?

32 A Insofar as is relevant to today's proceedings, my
33 research commenced, I suppose, back in the 1980s
34 in a drug trafficking context, and this was in the
35 period leading up to and shortly after 1988. I'm
36 a public international lawyer by background, and I
37 was looking at innovations in international treaty
38 practice within the drug trafficking area. And
39 that shortly coincided with the conclusion of the
40 1988 UN so-called Vienna Convention, which was the
41 first international treaty instrument to address
42 the issue of money laundering. And I had a focus
43 on it initially in that context and then more
44 generally.

45 Shortly after, I had started to write in the
46 field of international drug trafficking and money
47 laundering. I was invited to spend a couple of

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1 years at the Commonwealth Secretariat in London to
2 run their operations in that and other areas
3 relating to financial crime, and that provided a
4 further impetus to academic research when I
5 returned from London. So I agreed to join them
6 and help them out for a two-year period, with the
7 consent of the law school. And during that two
8 years, money laundering was very much rising to
9 the top of the international agenda, and it was
10 part of my responsibility to take charge of that
11 agenda in a day to day sense for the Commonwealth
12 Secretariat, and that, I did.

13 Upon returning to the university, I continued
14 with my interest in international anti-money
15 laundering measures and associated issues
16 concerning international cooperation in criminal
17 matters. And I think in 1994, I wrote the first
18 edition of a book on anti-money laundering,
19 *International Anti-Money Laundering Initiatives*,
20 which was published in, I guess, 1995, by the
21 Council of Europe, who had requested permission to
22 take the publishing lead for that particular
23 output. And it stayed with them until the 4th
24 edition in 2012. There has been no edition since.

25 Q And that book that you're describing, that's your
26 book, *Dirty Money: The Evolution of International
27 Measures to Counter Money Laundering and the
28 Financing of Terrorism*, right?

29 A That's right.

30 Q Could you describe for us the nature of the
31 Council of Europe, what that body is for?

32 A It's a treaty-based pan-European political and
33 technical body which has membership in a
34 geographic sense from Russia to Iceland. It is
35 unrelated to the European Union, which is an
36 entirely separate creature. It predates the
37 European Union. And one of the areas that it has
38 specialized in is common European crime control
39 issues, and money laundering came onto their
40 agenda actually I think prior to the negotiation
41 of the UN Vienna Convention, and they stayed their
42 involvement to await the outcome of the UN
43 negotiations. And have had involvement in the
44 anti-money laundering area both as a standard-
45 setter in the sense that they concluded a multi-
46 lateral convention in 1990, the so-called
47 Strasbourg Convention on Money Laundering, and

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1 that was, in effect, superseded in 2005 by a
2 broader based treaty instrument dealing with money
3 laundering, confiscation of criminal proceeds and
4 the financing of terrorism.

5 So it's had a long standard-setting role in
6 the anti-money laundering area. I suppose it's
7 best known, outside its immediate membership, as
8 the body which houses the FATF-style regional body
9 for Europe known as Moneyval.

10 Q Okay, thank you. And you were also one of the
11 principal authors of the official United Nations
12 commentary on the 1988 UN Convention against
13 Illicit Traffic in Narcotic Drugs and Psychotropic
14 Substances, right?

15 A That is so.

16 Q Could you tell us a little bit about that?

17 A Yes. In the narcotics area, the UN and, I
18 suppose, before it, the League of Nations, has
19 taken the International Treaty League, and had
20 prior to the Vienna Convention, two foundational
21 multilateral treaty instruments, both of which
22 were widely ratified: the single convention on
23 Narcotic Drugs and the Psychotropic Substances
24 Convention.

25 Now, the reason I mention these is that the
26 decision was taken at the time of their conclusion
27 that there should be official UN commentaries for
28 both instruments. And so in the aftermath of the
29 negotiation and entry into force of the Vienna
30 Convention, it was felt within the UN that those
31 precedents should be followed and that an official
32 commentary dealing with the interpretation and
33 implementation of that convention should be
34 prepared. And myself and Professor David McClean,
35 then at the University of Sheffield, were invited
36 to take the lead in that process, which lasted, I
37 guess, several years, where we were, in turn,
38 assisted by I suppose you would describe it as
39 clusters of subject matter experts which were
40 brought together in Vienna, which is where the UN
41 Drugs Secretariat is based. And they were there
42 to assist us basically through background
43 discussion in our preparations of those clusters
44 of articles in which they had expertise. They
45 then would be replaced by another cluster of
46 experts relating to different provisions.

47 And I think myself and Professor McClean took

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1 the lead responsibility for the preparation of the
2 text save in relation to the final provisions of
3 the convention on signature ratification, entry
4 into force and like formal matters where they had
5 the services available to them of a recently
6 retired person who had spent his career dealing
7 with such matters. And it was a great relief.

8 So the substantive provisions were dealt with
9 by myself and David McClean within that wider
10 context. As I discussed, the remaining formal
11 provisions concerning signature ratification and
12 the like were dealt with as I had described.

13 Q Okay, thank you. I want to explore with you in a
14 little bit more detail the practical involvement
15 you've had in the international efforts to combat
16 money laundering. And you've described those a
17 little bit in your report.

18 MS. LATIMER: And so this might be a convenient time,
19 Madam Registrar, if you could bring up document
20 16, which is Professor Gilmore's report on the
21 list of documents.

22 Q And, Professor Gilmore, you recognize this
23 document as the report you prepared in May to
24 assist in the Commission process; is that right?

25 A Yes, that is so.

26 MS. LATIMER: Mr. Commissioner, I ask that this report
27 be marked as the next exhibit.

28 THE COMMISSIONER: All right, thank you. That will be
29 Exhibit 19.

30
31 EXHIBIT 19: Report of William Gilmore
32

33 MS. LATIMER: Madam Registrar, I don't need to have
34 that displayed anymore for now. Just for the
35 record, I'm going to ask the witness some
36 questions about his experiences which are
37 described in paragraph 1.

38 Q Professor Gilmore, you were head of the Commercial
39 Crime Unit and assistant Director of the Legal
40 Division of the Commonwealth Secretariat; is that
41 right?

42 A That is so.

43 Q Could you describe that body and what that role
44 entailed?

45 A The Commonwealth Secretariat is the headquarters
46 of structure for remaining Commonwealth
47 activities, so it includes all former parts of the

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1 old British Empire. Canada is a leading member.
2 I think the only non-members from the days of
3 empire would be Ireland, Burma, or Myanmar. And I
4 think Zimbabwe was expelled. I haven't -- I
5 haven't checked to see if it's been readmitted.
6 It runs a range of activities, from policy-based
7 activities through to political meetings. There
8 are periodic meetings of Commonwealth Heads of
9 Government, which the Canadian Prime Minister
10 traditionally attends.

11 It has, within its remit, a legal division
12 which, in my day, had as one of its subparts, if
13 you like, a commercial -- a so-called commercial
14 crime unit. This was a very small unit of perhaps
15 half-a-dozen people. And one of its functions was
16 to, if you like, oil the wheels of Commonwealth
17 cooperation in criminal matters. The Commonwealth
18 had concluded, in the era prior to my joining,
19 Commonwealth-based arrangements, known as schemes,
20 in the areas of extradition and mutual legal
21 assistance. And one of the functions of this
22 small unit was to seek to identify constraints on
23 Commonwealth cooperation, utilizing such
24 instruments.

25 It also, in those days at least, had a policy
26 interest in emerging issues, criminal justice
27 issues of international concern, of which money
28 laundering was one. And so one of my functions,
29 which became one of my primary functions just
30 because of the increasing levels of international
31 interest in the subject matter at the time, was to
32 position the Commonwealth to make relevant inputs
33 into international policy and political
34 discussions where money laundering was a relevant
35 consideration. And to a lesser extent, in my day,
36 to provide forms of training and technical
37 assistance to Commonwealth members upon request.

38 That was a relatively small part of my actual
39 mandate in those days, but became very much more
40 central in the activities of my successor, who was
41 from the Australia Attorney General's department,
42 and her successor, who was from the Canadian
43 Federal Attorney General's chambers. And in those
44 days, my successors spent very much more of their
45 time on the money laundering confiscation of
46 criminal assets type and a technical assistance
47 agenda. So that was broadly the scope of the

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1 remit and activity in that company.

2 Q Okay, and you acted as the scientific expert legal
3 to the Council of Europe Committee of Experts on
4 the Evaluation of Anti-Money Laundering measures
5 and the Financing of Terrorism, Moneyval, from its
6 creation in 1997 to December 2017; is that right?

7 A That is so.

8 Q Could you tell us a bit about what that role
9 entailed?

10 A Yeah. It consisted of providing legal advice and
11 legal input at all of the plenary meetings of the
12 Moneyval committee. In addition to myself as the
13 so-called scientific expert for legal matters, the
14 plenary was assisted by usually two similar
15 experts drawn from financial services regulation
16 or central banking, and by one such person from a
17 law enforcement backdrop. And we were there to
18 provide independent advice to the plenary when
19 issues of difficulty arose in the course of their
20 discussions.

21 In addition to that -- and I should say that
22 there are no parallel roles within the Financial
23 Action Task Force. This is part of the Committee
24 Heritage of the Council of Europe. As a distinct
25 body, so it wasn't special to the Moneyval
26 committee. It is something which is frequently
27 utilized within the Council of Europe setup. But
28 in a Moneyval-specific context, the scientific
29 experts, myself and my colleagues from financial
30 and law enforcement, were also entitled to
31 participate, if invited, in the mutual evaluation
32 process of individual jurisdictions. And it
33 became a pattern to have such involvement in a
34 range of mutual evaluations in all of the rounds
35 which had been conducted, mutual evaluation rounds
36 which had been conducted by Moneyval to date. I
37 did a number of them, as did all of my colleagues.

38 Q And did you receive training in the assessment
39 methodology?

40 A I think we were almost the creators of the
41 assessment methodology in the first two rounds.
42 But insofar as the more recent past is concerned,
43 in the -- for the current round, the FATF took the
44 decision very wisely, I think, that all evaluators
45 would have to undergo fourth round specific
46 training in the methodology. And I undertook such
47 training very early on in Moscow, so, in what must

1 have been 2013, late 2013. So, yes.

2 There was no such training on the methodology
3 of 2004, which governed the FATF third round. I
4 should perhaps mention at this stage that Moneyval
5 had conducted two separate rounds of evaluations
6 under the 2004 methodology, whereas the FATF
7 conducted only one, and so -- and the reason for
8 that -- I'm not sure if it's relevant for your
9 consideration -- but whilst the fact that the
10 cycle of evaluation, without a follow-up, would
11 have been a goodly number of years and there was
12 some pressure within the organization --
13 especially from countries which had performed less
14 well than they would have wished -- to, (a) be
15 able to -- as was the expectation -- to take steps
16 to improve their compliance, but then to have that
17 improvement in compliance reflected in a revised
18 recommendation. And it was decided to have a
19 follow-up round for that purpose. And it focused
20 on the core and key recommendations of the FATF
21 and those recommendations in which the assessed
22 country had done badly.

23 Q And can you explain why a country would want that
24 opportunity to improve their performance?

25 A Well, there are a variety of reasons.
26 Reputational reasons come to the fore, and the
27 worse you did, the greater the likelihood that
28 those reputational issues would be deeper.
29 Secondly, within the recommendations themselves,
30 there are injunctions upon obligated entities, in
31 certain circumstances, to pay particular attention
32 to high-risk jurisdictions. And if you had done
33 so badly as to fall into the basket of countries
34 which were regarded as high risk, then the
35 reputational damage could reach out to include the
36 imposition of requirements on national financial
37 institutions and others for intense due diligence
38 and so on. So there were practical financial
39 reasons for the worst performing states in
40 particular to seek both to rectify, promptly, the
41 primary deficiencies which had been identified,
42 and to get some credit for having done so.

43 Turning it on its head, you can say we may,
44 at some later stage, end up discussing aspects of
45 the evaluation of Canada by the Financial Action
46 Task Force. But if you take Canada's evaluation
47 in 2008, there wasn't another evaluation report on

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1 Canada until 2016. And that is a fairly lengthy
2 period for those earlier results to be the sole
3 point of major reference in the anti-money
4 laundering world. So I think that the Moneyval
5 committee perhaps did themselves a service.

6 And also some of the jurisdictions which had
7 done very badly then did very well. Russia, for
8 example, which was blacklisted by the FATF as a
9 country with systemic -- systemically important
10 money laundering deficiencies within a reasonable
11 period of time had not only addressed those
12 deficiencies, but addressed them sufficiently well
13 to be invited to become an FATF member. The same
14 with Israel. In fact, I think Israel and Russia
15 were blacklisted by the FATF on the same day. So
16 -- and for both -- Russia and Israel -- those early
17 very negative reports were regarded very serious
18 within their respective political service.

19 Q Okay, and you were co-chair of Moneyval's Working
20 Group on Evaluations, and is the work of that
21 group conducting these evaluations, or can you
22 tell us what the work of that group is?

23 A No, the work of that group -- and that's a
24 relatively recent innovation, from about 2015
25 would be my guess, was to assist the Moneyval
26 plenary by convening, in advance of any plenary
27 meeting, with limited numbers of representatives
28 of the member states present, to discuss
29 particular issues and difficulties with reports,
30 which were going -- mutual evaluation reports
31 which were going to be discussed by the plenary,
32 and to provide advice to the plenary on what the
33 most significant issues would be for their
34 discussion, and to try to resolve less significant
35 difficulties in a way which was broadly acceptable
36 and to put proposals to the plenary body for the
37 quick resolution of those lesser matters. And all
38 of this to expedite and to focus the period of
39 time available for plenary discussion of what can
40 be really quite lengthy and complex reports. And
41 so that was the primary function, rather than
42 undertaking the evaluation itself. So it was part
43 of the quality control mechanism, if you like, in
44 part. And the co-chairs were entitled to attend
45 the face to face meetings between the evaluated
46 jurisdiction and the evaluators, traditionally
47 held a couple of months before the plenary in

1 which disagreements or misunderstandings could be
2 raised and potentially resolved.

3 In going down this road, the Moneyval -- in
4 creating this body, the Moneyval plenary was, in
5 part, following the precedent in this regard which
6 had been set within the Financial Action Task
7 Force's comparison side. It wasn't regarded as a
8 significant innovation, but I think it was a
9 helpful -- it proved helpful to the Moneyval
10 plenary in helping to focus their discussions
11 within the time available. And the time available
12 tended to be one full working day at each plenary
13 meeting for each report which was on its agenda,
14 which is slightly more time I think than available
15 in the past, generally speaking.

16 Q Thank you. Now, you were the -- in the Council of
17 Europe context, you were the legal advisor to the
18 Committee of Government which negotiated the 2005
19 Convention on Laundering, Search, Seizure and
20 Confiscation of the Proceeds from Crime and on the
21 Financing of Terrorism; is that right?

22 A That is so, yeah.

23 Q Could you tell us a bit about that role?

24 A There, this was the negotiation of an instrument
25 to -- either to supplement or -- and it turned out
26 to be the "or" -- or to replace the earlier 1990
27 Council of Europe Convention on Money Laundering
28 and Confiscation of Proceeds in Relation to
29 Assets, and it was felt that that was an
30 instrument in need of modernization. It was
31 essentially a treaty negotiation session and it
32 was confined to Council of Europe members, and
33 non-Council of Europe members who were parties to
34 the 1990 multilateral treaty, which, in the end,
35 it aimed to functionally replace. And my role was
36 to advise the chair of the negotiations on matters
37 of substance which arose for discussion. And the
38 negotiations were chaired by the United Kingdom,
39 and indeed -- perhaps fortunately, from a
40 logistical point of view -- were chaired by United
41 Kingdom officials that it's just around the corner
42 from me. So, you know, I could never escape.

43 But that was the -- that was the central
44 function. You would quite often be asked by the
45 chair to try and redraft provisions in such a way
46 as to reflect the consensus, for example, which
47 had merged in the course of the negotiations and

1 discussions, or to put forward alternative
2 versions which might be capable of attracting
3 consensus where there had been division
4 previously. So it was those kinds of -- those
5 kinds of fairly technical roles which fell to me
6 in that instance.

7 Q Okay, and in 2009, you were the specialist advisor
8 to the inquiry conducted by the European Union
9 Committee of the House of Lords on Money
10 Laundering and the Financing of Terrorism, and can
11 you tell us what that group was looking at?

12 A Yes. That's one of the standing committees of the
13 House of Lords in the British Parliament. They
14 were -- Their Lordships were anxious to take a
15 look at the adequacy of anti-money laundering
16 measures, particularly as they had been reflected
17 in a series of legal instruments emerging within
18 the European Union, primarily but not exclusively
19 a series of directives on money laundering, and
20 also to look at the relationship between those
21 European Union legal instruments and the
22 underlying international standards, primarily the
23 FATF.

24 I suppose my job in the main was to advise
25 the chair of that committee on evidence which
26 might be taken on questions which might or should
27 be asked of those giving evidence and follow-up
28 questions to be asked in certain circumstances.
29 And also to play a role, but not the primary role,
30 in the formalization of the report of the
31 committee to the United Kingdom Parliament.

32 Q In 2017, you were awarded the Medal of Honour of
33 the Council of Europe Pro Merito, and could you
34 tell us what that award was about?

35 A I think they were probably so happy I was leaving,
36 after 20 years, that they decided to give me a
37 send-off. No, it was a very unexpected and
38 slightly embarrassing almost event at my last
39 plenary meeting, and this was an award which I had
40 no idea was coming my way and was presented on
41 behalf of the Secretary General. I suppose it was
42 presented by the Director for Human Rights and the
43 Rule of Law, and doesn't seem to get presented
44 very often, is all I could say. But it was a very
45 nice gesture on their part. It seemingly
46 constituted their recognition of my contributions
47 such as they had been to the development of the

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- 1 anti-money laundering terrorist finance agenda
2 within Europe.
- 3 Q Thank you. And you've also acted on an ad hoc
4 basis, I understand, as an advisor to several
5 jurisdictions and international bodies on related
6 issues.
- 7 A Mm-hmm.
- 8 Q Could you tell us what those jurisdictions are and
9 whether you've ever advised Canada in any respect?
- 10 A Right. I had been -- on Canada, I think the
11 answer to that would be -- I hope I'm not
12 violating any form of client confidentiality here.
13 If I'm about to, perhaps Commissioner Cullen could
14 intervene to save me. But failing such
15 intervention. I was asked, along with my
16 colleague, Professor John Asher, back in 2003, to
17 provide some advice to the Department of Justice
18 in Ottawa on the emergence of coverage within the
19 FATF and within the context of European
20 legislation of certain DNFBPs, but with particular
21 reference to the legal professions. And I was
22 asked to update both segments of that in 2010,
23 Professor Asher having passed away, regrettably,
24 in the meantime. I think that is the only
25 occasion on which I have been requested to provide
26 the Canadian -- the Government of Canada with any
27 advice relevant to these matters.
- 28 Elsewhere, it's been a range of international
29 bodies such as the European Union, the European
30 Commission, the UN, I suppose the various European
31 Governments, most recently the Government of
32 Jersey, in the context of national risk
33 assessments -- it's difficult to remember them
34 all. It's spread over a goodly number of years.
35 But a reasonably broad-based -- and a range of
36 Caribbean governments, as well, because I have a
37 long association with the Caribbean and have
38 occasionally been called upon to assist some of
39 the jurisdictions in that area.
- 40 Q Just for the record, you used a series of letters,
41 DNFBP, and does that stand for "designated non-
42 financial businesses and professions?"
- 43 A It does. But the primary interest of the Canadian
44 authorities at that time was on the manner in
45 which and the reasons behind which the legal
46 professions had become subject to AML obligations
47 in the FATF standards and in the parallel

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1 implemented European legislation.

2 Q Okay, thank you. I'm turning now off of your
3 qualifications and on to the Financial Action Task
4 Force, which begins -- your discussion of this
5 begins at page 4 of your report and at paragraph
6 2. Although I'm not asking that the report be
7 brought up at this time. I'm wondering if today
8 you could just begin, please, by explaining for
9 us, what is the Financial Action Task Force and
10 what's the sort of historic context that led to
11 the creation of this body?

12 A Well, the Financial Action Task Force, or FATF, as
13 it's generally referred to in the English-speaking
14 world, was created at the behest of the G-7 group
15 of industrialized countries, which includes
16 Canada, at their summit meeting in Paris in 1989,
17 to look at the adequacy of international efforts
18 to address the problem of drug trafficking, and in
19 particular, to look at the adequacy or otherwise
20 of existing measures to address the very
21 substantial proceeds of international drug
22 trafficking.

23 Now, this was in the immediate aftermath of
24 the conclusion of the Vienna Convention on Drug
25 Trafficking at the UN level, but before the entry
26 into force of that convention. And they asked the
27 collectivity of national experts from the seven
28 governments, joined by other interested
29 governments, who were all I think OECD,
30 Organization for Economic Cooperation and
31 Development members, to take a look at these
32 connected issues and to report back to the next
33 meeting, the next summit meeting of the G-7--
34 which I believe was in Houston, Texas in 1990.
35 Subject to correction. And this group met --
36 there were some fairly intensive discussions. I
37 was not party to those discussions. And they
38 formulated a report back to the G-7, and that
39 report contained 40 recommended actions, broadly
40 in the anti-money laundering and confiscation of
41 criminal proceeds area.

42 The G-7 took the decision to continue the
43 task force for initially I think only for one
44 additional year, to progress their discussions
45 further. And in the course of that, further
46 governments were -- further countries were invited
47 to participate. And after that one year, a

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1 further ministerial decision was made to extend
2 the life of the task force for a period of years.
3 I believe it was five years, but that, again, is
4 subject to correction. And at the time, there
5 was, I guess -- there was perhaps not a wide
6 expectation that this body would last as long as
7 it has.

8 At the Houston summit, for example, in 1990,
9 the G-7 created yet another task force, known as
10 the Chemical Action Task Force. Again, to look at
11 the adequacy of, in this case, controls on
12 precursor and essential chemicals utilized in the
13 creation of narcotic -- of both narcotic drugs and
14 psychotropic substances. And it followed a
15 similar kind of pattern, came back with
16 recommendations, including recommendations for
17 minor amendments to the Vienna Convention, which
18 was at that stage attracting increasing support in
19 the international community. But after a couple
20 of years, it was closed down and the mandate, in
21 effect, handed over to the UN drugs authorities in
22 Vienna. That was not to be the fate of the
23 Financial Action Task Force.

24 So it started off as an informal body of
25 limited membership primarily revolving around
26 major western or capitalists economies, and it has
27 remained a body of limited membership ever since.
28 I think at the moment it's probably -- 37 is a
29 number that comes to mind -- member states.

30 For a period in the late 1990s, the
31 membership was kept static and a decision was then
32 made to add, by invitation, strategically
33 important countries in the fight against money
34 laundering. And that has seen the introduction of
35 membership from Latin America, from China, from
36 Russia, and most recently, Israel. South Africa
37 is the sole FATF representative of the African
38 continent. But the decision has been to keep the
39 membership quite tight. I think currently there
40 are two countries, Indonesia and Saudi Arabia, who
41 are positioning themselves for possible FATF
42 membership. But the increase in membership has
43 been limited and incremental.

44 It is not a treaty-based body like the United
45 Nations, or indeed, the Council of Europe. It
46 convenes, in essence, under the auspices of the
47 relevant ministers, lead ministries of the member

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1 governments. And the sole agenda of the FATF is
2 in the anti-money laundering, financing of
3 terrorism area to which has been added somewhat
4 curiously, the financing of the proliferation of
5 weapons of mass destruction, like in 2008, and
6 there was one recommendation in the -- in the
7 current package.

8 So the FATF has very much that anti-money
9 laundering terrorist finance focus. The terrorist
10 finance part of that focus was added in an
11 emergency meeting following the 9/11 attacks
12 against the United States, and has become a very
13 important part of the mandate of the task force
14 since that time.

15 And so that's the -- in the broadest brush
16 possible -- way the -- the nature of the beast.
17 It's an informal, broadly informal international
18 grouping, with a limited agenda and limited
19 membership, but which plays, in fact, a pivotal
20 part, in my view, in the setting of the
21 international policy agenda in the anti-money
22 laundering area, and has done really since 1991.

23 Q Professor Gilmore, I've received a notification
24 that -- I should say, I can hear you just fine,
25 but I've received a notification that some people
26 are having some difficulty hearing you, so I'm
27 just going to ask, if you could, to try to keep
28 your voice up, not shouting, of course, and just
29 try to stay close to the microphone, if you would.

30 A Ms. Latimer, could I -- should I try and turn up
31 the volume, as a first step?

32 Q Sure. Do you know how to do that?

33 A Well, it's taking me to the limits of my
34 technological abilities, but -- is that -- is that
35 any better?

36 MS. LATIMER: As I say, I can hear you quite clearly,
37 so I think -- I hope it is, for those who are
38 having difficulty hearing, and I suggest we push
39 on with maybe just a few questions and then maybe,
40 Mr. Commissioner, I may ask for a break to see if
41 it can be resolved on the back end.

42 THE COMMISSIONER: All right. That makes sense. Thank
43 you.

44 MS. LATIMER:

45 Q And so, Professor Gilmore, I just -- I wanted to
46 finish off this bit of discussion about the
47 structure of the FATF.

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1 A Mm-hmm.

2 Q And I guess I was interested to hear you say it's
3 a body of limited membership and that its
4 membership was increased by invitation, and I was
5 wondering why countries would want to be a member
6 of a body like the FATF. Do you have a sense of
7 that?

8 A In part, I think it was reflective of the
9 importance of being afforded to the issue of money
10 laundering within the drugs context, at the very
11 outset, and this was a major area of common
12 international concern. I think that, in addition,
13 a body which has, as one of its primary -- as a
14 primary part of its mandate the articulation of
15 standards, along with a desire for those standards
16 to be accepted and embraced by the international
17 community more generally, including increasingly
18 by non-members, as a further inducement I think
19 for countries to wish to be inside the tent rather
20 than outside the tent. If that makes sense.

21 So I think that there are a variety of
22 different reasons. But I can assure you that,
23 from my experience within the Moneyval membership,
24 that there are a number of jurisdictions who have
25 made no secret of the fact that they would wish to
26 join the FATF, if the opportunity arose. Two
27 have, in the form of Russia and Israel, but there
28 would be a range of other countries who would be
29 anxious to participate in both bodies.

30 Q And you've mentioned the standard-setting function
31 of the FATF. Are there other key responsibilities
32 that that body takes charge of?

33 A Well, part of the -- one of the other threads that
34 has run through the life of the FATF has been to
35 seek to monitor developments in money laundering
36 practices, and to alert member states of such
37 developments in so-called typologies exercises,
38 and those have been run within the FATF from
39 fairly early on in the 1990s, and now quite often
40 result in publications which they make available
41 on their website.

42 They have also issued numerous guidance
43 papers and best practices papers to assist
44 regulatory bodies, to assist private sector
45 obligated entities on considerations that they
46 should have in mind in giving effect to the FATF
47 standards. But the two primary threads of

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1 activity have been monitoring compliance by their
2 own membership with the requirements of the
3 standards, or the expectations of the standards,
4 and secondly, promoting the widest possible
5 international acceptance of those standards. And
6 part and parcel of both of those, I suppose, is
7 ensuring that the standards themselves are kept up
8 to date.

9 So I think the monitoring of implementation
10 and the mobilizing of international acceptance of
11 the FATF standards, given that it is a body of
12 limited membership, have been two of the most
13 important dimensions of their work, for the time,
14 and both continue to a certain extent.

15 Q And you described your own participation in a
16 working group of Moneyval, and I'm wondering if
17 you could describe for us the decision-making
18 process at the FATF. Does it involve working
19 groups and a plenary as well?

20 A Yes. The two are broadly similar in terms of
21 their approach. The plenary meetings of all
22 member governments, in a FATF sense, this is
23 normally three times a year. They can have
24 additional meetings if required. I guess they
25 could have fewer meetings. And I don't know how,
26 for example, they will address the current medical
27 emergency in June -- well, June has come. But the
28 standard is three plenary meetings a year and
29 additional meetings in the case of emergency as,
30 for example, in the aftermath of the 9/11 attacks,
31 which I mentioned earlier, against the United
32 States.

33 The plenary is serviced by a range of working
34 groups. Traditionally, the Working Group on
35 Evaluations, it's a very similar function to that
36 in the Moneyval context. The International
37 Cooperation Review Group, which has no direct
38 parallel in the Moneyval instance, and it has
39 responsibility for the -- for addressing the
40 problem of countries which are insufficiently
41 focused on AML and terrorist financing measures
42 for which have displayed systemic weaknesses, and
43 the FATF has a black and greylisting system to
44 identify those jurisdictions which it feels have
45 displayed systemic weaknesses. The grey list,
46 which tends to be significantly longer, for those
47 jurisdictions which acknowledge the need to

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1 improve, have engaged with the FATF in the
2 elaboration of an action plan, and are working
3 towards the remediation of their position. And
4 then the blacklist, which at present, has only two
5 countries on it, where those features are not
6 present.

7 I think that at present, and for some years
8 now, the only two on the blacklist have been North
9 Korea and Iran. And there, the FATF, in addition
10 to listing the -- blacklisting the jurisdictions,
11 can and does articulate a call for mostly
12 financial countermeasures of specified kinds to be
13 applied in dealings with those blacklisted
14 jurisdictions.

15 For the rest, it's potentiality for being
16 regarded as a high-risk jurisdiction, with kinds
17 of enhanced due diligence that I mentioned
18 earlier, along with a certain fairly high degree
19 of visible embarrassment. And at present, I think
20 last time I saw, these lists are looked at at each
21 FATF plenary meeting, and so the current list
22 would have been formulated in February of this
23 year, and I think it had around about 18 countries
24 on it, only one of which was an FATF member, and
25 that was Iceland. And these countries come and
26 go. The listing process is a fairly active one.
27 Countries tend to be very anxious not to get on
28 the list and very anxious to get off. And so
29 there's quite a churn on the grey list in terms of
30 jurisdictions which are -- are added to it and
31 others which manage to do enough to be removed
32 from that public display of -- almost a public
33 shaming process, I suppose, one could regard as.

34 So -- and so there are a variety of working
35 groups that take forward the work, typologies and
36 the like, would have responsibility for the
37 organization and evaluation and similar matters,
38 and behind all of those and servicing all of those
39 is the FATF Paris-based Secretariat, and that
40 started off being very small, under the first
41 Executive Secretary, who was Dilwyn Griffiths,
42 from UK Treasury. It was just a couple of people.
43 And it's now very much more significant. I don't
44 have the exact numbers, but the numbers seem to
45 grow. And the number of my former students who
46 seem to find employment there seems to grow, as
47 well, so -- but quite a lot of the work of the

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1 marked as Exhibit 18 in these proceedings. What I
2 propose to do is to simply replace that document
3 with the same document, but with the contact
4 information removed, so that the public version of
5 the exhibit does not include that private
6 information. And I'll just pause to see if that
7 causes any concern for anybody.

8 THE COMMISSIONER: There doesn't appear to be any
9 concern.

10 MS. LATIMER: Okay.

11
12 EXAMINATION BY MS. LATIMER, continuing:

13
14 Q I'm moving now, Professor Gilmore, away from the
15 broader question of the nature of the FATF and on
16 to the question of the standards. And in terms of
17 the global standards, I understand these have
18 developed over time, and I'm wondering if you can
19 begin back in the early days and tell us what were
20 the concerns that animated the first set of
21 standards, which I understand were formulated in
22 1990?

23 A Yes, the -- as I mentioned at an earlier stage of
24 the evidence, the primary international concern at
25 the time that the task force was created related
26 to the international drugs trade and the very
27 substantial profits believed to be derived by
28 those involved in that form of criminal activity.

29 In addition, the Vienna Convention itself,
30 though the negotiations had been concluded, had
31 not entered into force. So none of the provisions
32 were binding in any sense or available for use in
33 any real sense for those -- for those reasons.

34 So, when the task force came back to the G-
35 7, two strands of the three in the
36 recommendations, as they were in body, covered
37 ground which was also covered, in some respects,
38 and in a very substantial way, by that
39 international convention.

40 So, firstly, there were recommendations to
41 address the need to strengthen domestic criminal
42 justice systems, in particular, through the
43 criminalization of drug-related money laundering,
44 and through the enactment of legislation to
45 provide for the confiscation or forfeiture of the
46 proceeds of drug trafficking. And in those days,
47 in those early days, relatively few countries had

1 taken the first step. I believe Canada
2 criminalized money laundering in the late 1980s,
3 and the United Kingdom was 1986 and 1987. But
4 both jurisdictions -- or all three jurisdictions,
5 counting Scotland, were slightly ahead of the
6 curve.

7 In addition, many common law jurisdictions
8 did not have modern structures for the post-
9 conviction confiscation of criminal proceeds. So
10 those were two of the central elements of the
11 theme of strengthening domestic criminal justice
12 systems. There were other elements to it in
13 relation to availability of law enforcement
14 techniques and the like.

15 The second strand which is also heavily
16 reflected in the Vienna Convention was in relation
17 to the provision of enhanced international
18 cooperation. To some extent, in relation to
19 extradition, but in very large measure, to make
20 provision for mutual legal assistance in the
21 investigation and prosecution of drug trafficking
22 offences as embodied in the convention. And in
23 those days, mutual legal assistance had not been
24 extensively progressed in a legislative way by
25 many common law jurisdictions, with the exception
26 of the United States. The first modern
27 legislation in the UK wasn't until 1990, and that
28 was to pave the way both for the FATF
29 recommendations and for the Vienna Convention
30 itself. So, international cooperation was the
31 second strand, but again, a fairly traditional
32 strand of concern in an international setting.

33 The third was very much more innovative, and
34 that was to come back with a series of
35 recommendations to involve the private sector, and
36 in particular, financial institutions, in the
37 effort to prevent and detect the laundering of the
38 proceeds of crime. And this was, although not
39 entirely unique, certainly a very rare and really
40 quite bold attempt to move beyond the normal range
41 of criminal justice actors in an attempt to better
42 address what was seen very much in those days as a
43 criminal justice problem.

44 So, out of the consideration of that matter
45 arose recommendations on the identification of
46 customers, customer due diligence rules,
47 recordkeeping rules for financial institutions.

1 And there was very much a focus on financial
2 institutions. And in reality, very much in the
3 very early days, a focus on banks and other
4 deposit takers. And the associated obligation to
5 consider introducing a system for the reporting by
6 obligated entities in the private sector of
7 reports of suspicion of money laundering,
8 suspicious transaction reporting. Although in the
9 very initial phase, there was not a requirement
10 that that be made mandatory. You could either go
11 down a permissive route or introduce mandatory
12 suspicious transaction reporting, although the
13 first of those options, the permissive form, was
14 removed subsequently in 1996, I believe. And
15 there were associated recommendations to ensure
16 that financial sector supervisors oversaw the
17 implementation of those obligations being imposed,
18 very much for the first time, on financial
19 businesses, financial institutions.

20 Q Thank you. And you began to discuss some of the
21 revisions to the standards that were made in 1995
22 and 1996, and were there other revisions at that
23 time that are noteworthy?

24 A Yeah, there were -- there were a series of changes
25 out of that stocktaking review. I guess in the
26 criminal justice area, which is the area I spent
27 most of my time in, there was -- were the first
28 moves away from a focus on drugs, drug-related
29 predicate offences, to encompass a wider range of
30 serious criminal activity. And there were further
31 clarifications of the scope of the obligations to
32 be imposed on the private sector, so non-financial
33 businesses, for example, but operating, in part,
34 financial service-type activities were captured
35 for the first time. So it wasn't a wholesale
36 reform, but there were a range of extensions and
37 tightenings of the underlying 1990 standards.

38 Q And you mention at paragraph 7 of your report,
39 there were another set of revisions in the
40 aftermath of September 11th, 2001. Can you tell
41 us, in a broad way, about those?

42 A Yeah. Prior to October 2001, there had been no
43 terrorism or terrorist finance-specific coverage
44 within the FATF recommendations. In the October
45 2001 discussions following the terrorist attacks
46 on the United States, the decision was taken that
47 it would be advantageous for the international

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1 community if there was a greater focus on the
2 financing of terrorist activity.

3 There had been negotiations on a UN
4 instrument, the United Nations Convention on the
5 Financing of Terrorism. I don't believe -- it had
6 not at that stage entered into force, and had been
7 only very lightly ratified, and it was felt that
8 urgent action was needed. But there were pointers
9 in that convention to the kinds of features which
10 might be of assistance. And so initially a
11 package of eight so-called special recommendations
12 on terrorist financing were promulgated at that
13 October 2001 meeting where terrorist financing was
14 also headed formally to the mandate of the task
15 force.

16 These covered a range of issues from a
17 recommendation that states promptly ratify and
18 implement the UN convention which had been
19 negotiated a couple of years earlier. After that,
20 they criminalized the financing of terrorism.
21 That they give effect to the resolutions of the UN
22 Security Council on the imposition of targeted
23 financial sanctions, under Security Council
24 Resolution -- I think it was 1267 and 1373 -- and
25 Chapter VII resolutions of the UN Security Council
26 are, in themselves, legally binding as a matter of
27 international law on all member states of the UN
28 to report suspicious transactions relating to the
29 financing of terrorism and like matters.

30 In addition, they flagged up in those
31 recommendations concerns flowing from the apparent
32 misuse of charitable bodies for terrorist finance
33 purposes, which was something which came from the
34 ex-post investigations into the financing of the
35 activities of some of those involved in that
36 terrorist -- that set of terrorist outrages. And
37 wire transfer and cash courier -- I think the cash
38 courier issue was added as a ninth special
39 recommendation later on, so wire transfer stuff
40 was included in the mix at that stage for the
41 first time.

42 And the expectation was that those special
43 recommendations, when read in conjunction with the
44 underlying and pre-existing 40 recommendations,
45 would together constitute an appropriate package,
46 a policy package for which to address this new
47 concern with the financing of terrorist activity.

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1 Q And just around that time, or beginning in 2001, I
2 understand there was also sort of a more broad
3 ranging or wide ranging review of the original 40
4 recommendations, and what was that concerned with?

5 A Yeah, the decision had been taken prior to the
6 9/11 attacks that the time was right for a
7 thoroughgoing review of the original FATF
8 recommendations in 1990, which had only been
9 tweaked in a series of relatively minor ways in
10 the 1995/96 stocktaking review. And this was --
11 this revision process was taken forward by the
12 FATF in two-thousand -- primarily in 2002 and
13 2003.

14 I apologize for these strange noises, but
15 it's beyond my technological competence to address
16 the source, I'm afraid. I do apologize. And was
17 concluded under the German presidency of the FATF
18 in 2003. And in paragraph 8 of my paper, I
19 summarize, in bullet point fashion, the more
20 significant of the substantive changes which were
21 agreed to at that time. And those changes went
22 across the full range of the areas of concern in
23 the 1990 recommendations. They addressed issues
24 of penal legislation or strengthening of domestic
25 criminal justice systems.

26 For example, the introduction of a broad list
27 of predicate offences for money laundering which
28 should be reflected in national law. The
29 expansion of customer due diligence. The
30 extension of anti-money laundering measures to the
31 list of designated non-financial businesses and
32 professions, which included a range of private
33 sector and professional actors who had not been
34 fully captured, or indeed, captured at all in most
35 cases, by the earlier recommendations. And this
36 included real estate agents, accountants, lawyers,
37 notaries, trust and company service providers and
38 the like. And it must be said that that was both
39 a bold and a controversial extension of the remit
40 of the imposition of obligations on non-
41 governmental actors.

42 On the law enforcement side, the --
43 significant tightening of the expectation that
44 specialist -- a specialist financial intelligence
45 unit would be created in each jurisdiction,
46 although it was clear that it did not have to be a
47 policing body. And I believe that Canada has

1 taken advantage of that particular dispensation,
2 if you care to think of it in those terms, in the
3 creation of an administrative FIU in the form of
4 FINTRAC, if I understand FINTRAC's status
5 appropriately. And the extension of transparency
6 and beneficial ownership obligations in respect of
7 legal persons and arrangements would be among the
8 more significant changes introduced and agreed to
9 in the summer of 2003.

10 Q Thank you, and I understand those revisions came
11 along with a glossary of definitions and some
12 interpretive notes, and I'm wondering what's the
13 significance of those documents?

14 A Insofar as the FATF is concerned, the standards
15 are reflected not just in the recommendations, but
16 in the associated interpretative notes where those
17 have been formulated, because they're not in
18 respect of every single recommendation, and the
19 glossary, similarly, is deemed to be part of the
20 FATF standard.

21 There had been a use of interpretative notes
22 in the 1990s, but this was greatly extended in the
23 2003 exercise, partially to give greater
24 specificity to some of the key standards
25 themselves. And rather than embody them all in
26 the text of individual recommendations, they
27 decided to go down the route of somewhat briefer
28 recommendations with a full elaboration or a
29 fuller elaboration of the substance of those
30 recommendations in interpretative notes when
31 necessary, with the glossary using -- taking up
32 the slack of providing definitional material
33 similarly regarded as forming part of this matter.

34 Q Okay, and then at paragraph 10, you set out the
35 most recent structured review which was proposed
36 in 2008, and those revised standards were adopted
37 in 2012. And can you give us the highlights of
38 that endeavour?

39 A Yeah, this was, again, started off as an effort
40 not for a wholesale reform of the FATF standards,
41 but more of a 1995/96 upgrading exercise. It was
42 something which was suggested back in 2008 by the
43 United Kingdom presidency of the FATF, along with
44 the support of the Netherlands, which was about to
45 take over the presidency, and Brazil, which was
46 the immediate past - had held the immediate past
47 presidency of the -- of the FATF.

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1 The structure of the recommendations was
2 completely reorganized. So not just the batting
3 order, if you like of the recommendations
4 themselves, but the integration of the counter-
5 terrorist finance special recommendations into the
6 body for the first time of the main body of the
7 recommendations themselves.

8 So, post-2013 you have no special
9 recommendations on terrorist financing, you have
10 40 recommendations and an extremely long series of
11 interpretive notes. And some of the structure --
12 structural issues are not merely stylistic because
13 in the 2013 -- 2012 recommendations, the
14 foundational recommendation 1 puts the assessment
15 and mitigation of anti-money laundering and
16 terrorist finance risk at the centre, for the
17 first time, at the centre of the FATF approach.
18 And there was no parallel in the previous
19 recommendations. Although issues of risk, of
20 course, were mentioned throughout the
21 recommendations on preventive measures.

22 Proliferation financing, you know, financing
23 of proliferation of weapons of mass destruction
24 became the subject of the specific recommendation
25 for the first time. The list of predicate
26 offences, required predicate offences for money
27 laundering, remained broadly intact, but with the
28 important addition of tax-related crimes, which
29 had been a problematic and controversial issue
30 over many years, but was eventually resolved in
31 favour of direct inclusion.

32 There was a significant deepening and
33 strengthening of the recommendations relating to
34 beneficial ownership and transparency in relation
35 to legal persons and legal arrangements, and --
36 and more, if I was to go down the list in
37 paragraph 11, but I think that perhaps gives you a
38 general flavour. So it wasn't quite as limited as
39 the British and the Dutch and the Brazilians had
40 anticipated when they suggested this exercise a
41 couple years earlier.

42 Q Okay, and at paragraph 12 and 13 of your report,
43 you -- and you've touched on it just now a little
44 bit -- you talked about sort of the progressive
45 expansion of the expectations set out in the
46 standards in respect of the scope of the
47 criminalization of money laundering. And here in

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1 your report, you note that in the current version
2 recommendation 3 states -- and I'll just read from
3 your report:

4
5 Countries should criminalize money laundering
6 on the basis of the Vienna Convention and the
7 Palermo Convention. Countries should apply
8 the crime of money laundering to all serious
9 offences, with a view to including the widest
10 range of predicate offences.

11
12 But you also say that, according to the glossary:

13 ... "the word *should* has the same meaning as
14 *must*".

15
16
17 And so I'm wondering if you can explain what's the
18 significance of that interpretive point?

19 A Well, in a variety of legal systems, including my
20 own, the use of the word "should" is often
21 regarded as potentially non-mandatory and "must
22 have to" and other similar rather stronger bits of
23 phraseology would normally be resorted to in a
24 text which was seeking to indicate an obligation.
25 And I think the drafters of the glossary were
26 anxious to make sure that "should" was not given a
27 flexible non-mandatory interpretation.

28 Q And so in giving it this mandatory interpretation,
29 what's the consequence for the members failing to
30 adhere to that?

31 A Well, the consequence is that that failure would
32 become evident in subsequent evaluations of that
33 country's compliance, and that country would
34 receive very negative ratings. I haven't talked
35 about ratings, but the mutual evaluation process
36 from 2004 on has come to include a ratings kind of
37 element.

38 In addition, I suppose, the recommendations
39 on the criminalization of both money laundering
40 and terrorist financing, amongst others, have
41 always been given a special importance within the
42 FATF, the so-called core recommendations, and that
43 concept continues, in effect, to exist. And a
44 negative rating in this -- in this regard would,
45 at a minimum, consign the jurisdiction in question
46 to a period of enhanced follow-up following the
47 mutual evaluation report.

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1 It's difficult to speculate, because I don't
2 believe it's happened, as to what wider
3 consequences there might be within the FATF
4 procedures under enhanced follow-up. There are
5 ultimately issues of suspension of membership or
6 expulsion from membership which are available and
7 which have been very infrequently resorted to in
8 practice, but they have been resorted to in
9 practice, not in the particular context that you
10 raise, but for example, in relation to Austria
11 many years ago, which had decided that it would
12 not prohibit anonymous savings accounts. Again,
13 in an area of particular sensitivity for the FATF
14 at that time. And they were, if memory serves me,
15 threatened with -- publicly threatened with
16 suspension of membership. The problem was very
17 quickly resolved thereafter.

18 And Turkey -- again, from memory, and I have
19 not reminded myself of the details of these events
20 prior to giving evidence today -- but my
21 recollection is that Turkey was, in effect,
22 threatened with the same potential consequences in
23 relation to -- I believe it was the
24 criminalization of the financing of terrorism.

25 But if the question is framed as would it be
26 unlawful not to abide by the requirements of
27 recommendation 3, then not directly as such,
28 because the recommendations of the FATF do not, as
29 such, certainly as a matter of international law,
30 have binding force. However, some of these
31 recommendations will be reflected in whole or in
32 part in existing treaty instruments such as the
33 Vienna Convention or the Palermo Convention on
34 Transnational Organized Crime, or the more recent
35 Merida Convention, UN Convention Against
36 Corruption.

37 So the elements of whatever recommendation it
38 is which is the source of difficulty may have a
39 formal public international law dimension to it
40 through alternate routes, but I don't think that
41 it can be argued that the FATF recommendations
42 themselves have an obvious status as a matter of
43 international law, let alone domestic law, unless
44 they have been incorporated legislatively, which
45 in the instance of your example, would not be the
46 case.

47 Q You say in your report that despite the sort of

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1 broadening of the scope of the -- of the
2 recommendations, or despite that it's becoming
3 increasingly challenging and more detailed to
4 implement, it has been sort of widely accepted by
5 the international community as a whole, and I'm
6 just wondering if you could reflect on what
7 accounts for that?

8 A Well, first of all, I mean, from the outset, the
9 FATF has put a lot of effort into cajoling members
10 of the international community into addressing the
11 anti-money laundering agenda, with a view to
12 getting as many countries as possible in different
13 parts of the world to accept and agree to
14 implement those recommendations. And that formed
15 part of a kind of regional mobilization strategy,
16 which started first in the Caribbean, then in
17 amongst the non-European -- the non-FATF European
18 countries, and then in -- in the Asia Pacific
19 region.

20 In addition, the FATF introduced, in the late
21 1990s, a new strategy which was very much more
22 coercive in nature than anything which had been
23 resorted to before called the Non-Cooperative
24 Countries and Territories, or NCCT process, which
25 focused almost exclusively on non-member states of
26 the FATF, and sought to hold them to not just the
27 40 recommendations, but the NCCT standards in some
28 respects went beyond the FATF standards. And they
29 used a kind of -- a very controversial name,
30 shame, punish blacklist process. And that was
31 very controversial, was the basis for significant
32 dissent. But eventually I think it had the effect
33 of encouraging the FATF to take a less
34 confrontational approach and non-FATF members to
35 take a more accommodating approach in relation to
36 those FATF standards.

37 And there were other -- many other countries
38 who were just good international citizens and said
39 this is a good thing to do, and we believe,
40 although we're not obligated to do it, but we
41 should do it, in any event. And so there were a
42 mix of -- a mix of factors. But if you talk to
43 FATF officials from that -- from the early 2000s
44 kind of period, many of them are convinced that
45 the NCCT process was a very important factor in
46 promoting international acceptance and
47 implementation of the standards.

William Gilmore (for the Commission)

Examination by Ms. Latimer, Counsel for the Commission

1 Certainly from within Moneyval, it was both
2 taken extremely seriously by Moneyval. Member
3 countries were very anxious not to be blacklisted.
4 But the double standards element of the process
5 was one which caused very considerable resentment
6 within that organization. And I think
7 subsequently both sides have learned helpful
8 lessons from it, and the new and current
9 International Cooperation Review Group process is
10 not regarded by non-FATF members in the same way.

11 Q Okay. I'm turning now away from standards and on
12 to methods and trends. And you set out in your
13 report about the FATF's work in researching new
14 trends and methods. This sort of begins at
15 paragraph 16. And you make reference to the
16 preparation of typology guidance and best practice
17 papers by the FATF. Can you just tell us a little
18 bit about what those are and what the purpose of
19 them is?

20 A Well, the typologies papers in particular are --
21 was the product of efforts within the FATF to
22 address particular practical concerns of the
23 methods of money laundering in a particular sector
24 or industry or utilizing particular attributes.
25 And these typologies exercises, at least in more
26 recent years, tend to be led by governments which
27 have either a particular background or interest in
28 the -- in the matter under consideration. And the
29 contributions tend to come from law enforcement
30 and from the regulatory and supervisory
31 authorities in the main, and those reports are
32 eventually agreed and, to the credit of the FATF,
33 I believe, are put into the public domain.

34 And so -- and there had been a range of
35 different topics over the years, from money
36 laundering in the football sector or soccer
37 sector, through to the diamond trade, and the
38 diamond trade study was led by, if I recall
39 correctly, by Israel, which has a very significant
40 position in the international diamond sector, and
41 the Tel Aviv Diamond Exchange is I think one of
42 the more significant players in that world. But
43 this is not an area -- law enforcement-related
44 typologies is not an area in which I have any
45 background or expertise.

46 Q You haven't participated in the preparation of any
47 of these typology reports yourself, I take it?

William Gilmore (for the Commission)

Examination by Ms. Latimer, Counsel for the Commission

1 A No. No, I haven't. And in addition to typologies
2 reports, they have also come out with a series of
3 guidance and best practice reports, which are on
4 different areas, some of which are mentioned in a
5 non-exhaustive list in the relevant footnote. And
6 those are intended to be helpful to a variety of
7 different actors, from policy makers and
8 regulators in relevant jurisdictions through to
9 and including concerned members of the private
10 sector.

11 Q So these reports -- in terms of the roles you've
12 held and work you've done with Moneyval and
13 related entities, sort of an in-depth
14 understanding of the workings of these various
15 typologies, is that something that you have to
16 have to do those roles that you've performed?

17 A No, no, no. Well, luckily not. On the advice
18 provided to plenary, the scientific experts,
19 limited number of scientific experts, were either
20 -- as with myself in the legal area -- all of the
21 law enforcement area or the, in effect, regulatory
22 -- financial regulatory area, and the division of
23 responsibility involves fairly clear-cut, and so
24 it would be -- in the Moneyval context, for my law
25 enforcement and regulatory colleagues to take
26 cognisance of most of these products from the
27 FATF.

28 And not just from the FATF. A range of the
29 FATF-style regional bodies have also involved
30 themselves heavily in the preparation of
31 typologies reports, either on their own or in
32 conjunction with the FATF and others. And I would
33 say that the Asia Pacific group, of which Canada
34 is also a member, perhaps has the strongest
35 reputation amongst the FSRBs for that type of --
36 that type of work and the contributions that kind
37 of work has made. So the understanding of money
38 laundering practices.

39 Q Okay. I'm turning now away from the issue of
40 typologies now to monitoring the global
41 implementation of these standards, and you address
42 this beginning at paragraph 17 of your report.
43 And you've explained in your report that this was
44 initially a system of self-assessment, but it's
45 moved to mutual evaluation. And I'm just
46 wondering if you can explain, if you know, what
47 does the system of self-assessment entail for the

William Gilmore (for the Commission)

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1 countries that participated in that?

2 A The self-assessment process was essentially a
3 questionnaire-based process sent to the head of
4 each member state delegation, which segmented out,
5 as I recall it, the individual ingredients, if you
6 like, of each recommendation, and asked for the
7 country in question to provide basic information
8 and assess itself against the implementation of
9 such requirements. It was a useful ground level
10 exercise for getting a view of where countries
11 broadly were in the -- in the early stages, and
12 was utilized again, if I recall correctly --
13 although I don't think I mentioned this in my
14 report -- in the immediate aftermath of the
15 creation of the Special Recommendations on the
16 Financing of Terrorism, again, for the same
17 reason, to get a very quick snapshot of where the
18 membership was in terms of implementation. But it
19 is a process in which you're marking your own
20 homework.

21 And so in both occasions in which it has been
22 utilized, it has been supplemented and replaced,
23 in effect, by the mutual evaluation processes
24 which the paper seeks to describe.

25 Q Thank you. And you mentioned in your report that
26 there's been -- we're in the fourth round of
27 evaluations now, and I understand that Canada has
28 participated in each of those rounds of review. I
29 was wondering if you could talk us through
30 Canada's performance in each round of review and
31 what the different focus of the reviews was?

32 A Right. Well, Canada, as an original member, has
33 never failed to participate in the review process.
34 And, you know, membership requirements don't
35 really provide a lot of latitude.

36 The first two rounds happened in relatively
37 quick succession, facilitated, (a) by the fact
38 that the membership, especially in the first
39 round, was still quite [indiscernible - break in
40 recording], and secondly, because there wasn't a
41 detailed common methodology. In the first round
42 of evaluations I did, I think three of them, in a
43 Moneyval context, there was a very considerable
44 degree of latitude given to the assessment teams.
45 The commonality was that the teams consisted, in
46 an FATF context, of individuals drawn from law
47 enforcement, legal and regulatory backgrounds.

William Gilmore (for the Commission)

Examination by Ms. Latimer, Counsel for the Commission

1 There was an onsite visit dimension in each round.
2 Although certainly for Moneyval, it tended to be a
3 roundabout of working a week rather than two weeks
4 or more, of which such visits take up at present.

5 The first Canadian report was done very early
6 on. The report itself, as with all of them at
7 that time, was treated as a confidential document
8 and was consequently not made public. It was
9 agreed, however, that a summary of each -- a brief
10 summary of each report in that early phase would
11 be included in the annual report of the FATF. And
12 the first Canadian report is so summarized in the
13 1992/93 annual report of the FATF, in just a few
14 paragraphs. Under two pages, pages 10 and 11. I
15 have a little note here.

16 And the basic thrust of that summary was very
17 positive, and Canada was held to be substantially
18 in compliance with the FATF's recommendations.
19 And particular positive stress was placed on a
20 couple of issues where Canada had performed, it
21 was thought, especially well, on legal issues,
22 criminalization of money laundering, the
23 introduction of appropriate confiscation or
24 forfeiture legislation. International
25 cooperation. With the exception of what was then
26 a very embryonic system for international
27 cooperation in the freezing, seizing and eventual
28 confiscation of criminal proceeds at the request
29 of another member. And it was also commended for
30 the introduction of basic preventative measures,
31 especially in relation to deposit-taking
32 institutions. And finally, it was commended for
33 its willingness to keep the measures that it had
34 taken under active review.

35 So this was not a system at the time in which
36 there were any formal ratings or anything of that
37 kind. But the summary is -- was of an extremely
38 positive nature. The same can be said
39 [indiscernible - break in recording] second
40 Canadian report, and that is summarized in a few
41 additional paragraphs, a little bit longer, but
42 not much, in the 1997/1998 report.

43 I should point out at this time that although
44 that was after the stocktaking review, which we
45 discussed at an earlier stage today, the
46 evaluation was not on the amended recommendations,
47 but on the recommendations of 1990. So that's one

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1 point. And the reason for that was that the
2 second evaluation round had started for some
3 countries before the standards were amended in
4 1996. And the decision was taken that the second
5 round should evaluate all countries against the
6 same baseline. That is no longer the case at the
7 current stage, in the fourth round, but in those
8 days, in the 1990s, that was a significant
9 concern.

10 And again, the summary is very positive about
11 Canada. Generally, it talks about the AML system
12 as a whole in Canada being substantially in
13 compliance with almost all of the 1990 FATF
14 recommendations. Close quote. Paragraph 42 of
15 that annual report, probably at page 12 or
16 thereabouts.

17 So, a very distinct similarity in overall
18 qualification of the Canadian performance. And
19 there was particular praise for the measures that
20 Canada had taken in two of the areas which it had
21 been praised for in the first round report,
22 namely, the scope and implementation with the
23 penal legislation and international cooperation.
24 Perhaps because it was a slightly extended summary
25 compared to the earlier one, there -- some of the
26 problems and insufficiencies which were found by
27 the evaluation team also start to come into focus
28 a little bit. For example, there was some
29 critical language used in relation to the
30 suspicious transaction reporting regime as it
31 existed at that time. The scope of coverage of
32 non-bank financial institutions. The customer due
33 diligence provisions as they existed in relation
34 to legal persons and beneficial owners. And of
35 course the beneficial owner issue is one which has
36 continued to attract attention subsequently.

37 But I think it has to be said that the first
38 two reports, the two reports of the 1990s, from
39 what is known about them by virtue of the public
40 domain information was, overall, very positive
41 indeed.

42 MS. LATIMER: I'll just interject here, Mr.
43 Commissioner, just for the benefit of the record,
44 that those summaries that Mr. Gilmore has
45 referenced are to be found at Exhibit 4,
46 Appendixes J and K. I won't ask that those be
47 pulled up now.

William Gilmore (for the Commission)

Examination by Ms. Latimer, Counsel for the Commission

1 Q And, Professor Gilmore, I apologize for
2 interrupting. I think you were just about to tell
3 us about the third mutual evaluation, which is at
4 Exhibit 4, Appendix L, for the record.

5 A Well, this is a completely different animal for a
6 variety of reasons. Firstly, it is based on an
7 assessment of compliance with the package of
8 recommendations agreed to in 2003, so the revised
9 -- heavily revised FATF recommendations of that
10 year, plus the nine special recommendations on the
11 financing of terrorism. So, differently
12 articulated standards and standards which have
13 extended into an entirely new area.

14 In addition, and unlike the first two rounds,
15 the FATF utilized a detailed common methodology
16 which assessment teams had to follow. And so --
17 and the hope in producing a detailed common
18 methodology was to -- the hope was that the
19 resulting country-specific product would be more
20 standardized, and therefore more comparable as
21 between one and another, and that some of the
22 latitude which evaluation teams had previously had
23 would be constrained, and this, it was believed,
24 was all for the good.

25 The next feature is partially because of the
26 nature and structure and detail of that common
27 methodology. The third round reports, not just of
28 Canada, but of the vast majority of FATF
29 countries, and those in the regional bodies,
30 including Moneyval, are extremely long. In the
31 case of the Canadian report, which I read again
32 last week, 311 pages, and so they're very
33 detailed, and again, go recommendation by
34 recommendation, or a group of recommendation by
35 group of recommendations, and are teased out.

36 Now, in the innovation -- and it was an
37 innovation which was controversial. It's an
38 innovation which I personally did not warm to, but
39 those with greater wisdom decided, that if you
40 were going to go to all of this trouble, rather
41 than having broad conclusions, the evaluation
42 teams should be required to rate the level of
43 country compliance on a recommendation by
44 recommendation basis for the first time, and
45 essentially four different possibilities were
46 included, ranging from highly -- from compliant to
47 non-compliant, to intermediate possibilities.

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1 And one of the reasons that some of us were
2 hesitant to be enthusiastic about this was that
3 there was a possibility, which turned out to be a
4 reality, that countries would become, in plenary
5 meetings in particular, focused on the ratings
6 rather than on the discussion of how the country
7 had got itself into such a good or such a poor
8 position and how it was going to take the agenda
9 forward. But the plenary meetings are, in my
10 experience, heavily influenced now, both directly
11 and implicitly, by the issue of the ratings which
12 had been afforded to individual recommendations
13 for the country in question.

14 So those were the kinds of changes. In terms
15 of the outcome, I suppose that I would say that
16 the outcome was slightly more mixed than in the
17 earlier summaries of the earlier reports. The
18 traditional areas of strength which have been
19 noted in those summaries continued into the third
20 round. The issue of criminal justice, the issues
21 of international cooperation, were -- continued to
22 be areas of strength where no negative ratings of
23 any kind were given to Canada. All were largely
24 compliant -- or compliant in those two areas.

25 And that was no mean feat, because the
26 Canadian evaluation also took into account the
27 requirements of the terrorist-specific special
28 recommendations, which many countries in different
29 parts of the world really struggled, and they
30 struggled with the amount of terrorism
31 legislation, they struggled with the honing of an
32 appropriate and compliant criminal offence on
33 terrorist financing. They had a range of criminal
34 justice difficulties. And in the Canadian report,
35 those difficulties, it was concluded, had been
36 positively overcome and positive ratings were
37 afforded to Canada in those areas. Again, penal
38 criminal offence-type issues and international
39 cooperation issues. And that I found was very
40 striking.

41 Where the mixed picture comes in is primarily
42 in relation to the views of the assessors'
43 measures of prevention and related matters. And
44 this is an area where -- which is very
45 complicated, where there have been a number of
46 substantive changes in 2003 in the basic money
47 laundering context, and which took up 22 of the 49

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1 recommendations in the FATF package.

2 Now, here if you look at it through the prism
3 of the ratings, of those 22, nine were --
4 attracted a compliant or largely compliant rate,
5 and -- that's nine out of 22, and the remaining 13
6 were -- attracted less favourable conclusions, and
7 in effect, negative ratings of either partially
8 compliant or non-compliant.

9 Now, I guess within the area in which the
10 Canadian performance was deemed to be suboptimal,
11 one was in one of these areas of special
12 importance in an FATF context, namely, the old
13 recommendation 5, which is on customer due
14 diligence. And there were two of -- the FATF used
15 to have a formal contact with core and key
16 recommendations. There were six core
17 recommendations of which customer due diligence
18 was one, and 10 key recommendations. Now, the
19 concept of key recommendations has now vanished
20 completely, so it's purely an issue of historical
21 interest. But within the key recommendations,
22 area 2, supervision and the FIU -- the old
23 recommendations 23 and 26, both attracted a
24 negative outcome.

25 Now, I suppose overall, I think somewhere in
26 the report I say that some 19 of the 49
27 recommendations which were subject to review, at
28 least at that time, fell into this unfortunate or
29 suboptimal category, which is a pretty high
30 minority percentage. And there are -- I was not
31 at the FATF meeting where this report was
32 discussed, so I have no personal knowledge of the
33 nature of that discussion. But it is -- it is
34 clear -- two things are clear from the report as
35 published.

36 Firstly, that Canada had taken a range of
37 measures which -- some of which had been enacted
38 or promulgated, but which had not entered into
39 force. Under the methodology, the -- as it
40 existed at that time -- the report is written on
41 the basis of the state of play in the country at
42 the time of the conclusion of the onsite visit,
43 plus one month. So that if something had been
44 enacted and was just about to come into force,
45 that the evaluators could take cognisance of that.
46 But you could not take cognisance of changes which
47 would be -- which would enter into force

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1 thereafter.

2 And in the final appendix, I think it is, of
3 the Canadian report, there is a listing -- I
4 assume at the behest of the Canadian authorities -
5 - of the range of the recommendations which were -
6 - would have been impacted by these measures which
7 hadn't entered into force.

8 In addition -- and I think this is in the
9 penultimate appendix of the report, which is the
10 response of the Canadian authorities to the
11 individual parts of the report, Canada actually
12 formally placed on record its objection to four of
13 the negative ratings, including the negative
14 rating under R-26 in the FIU. And that kind of
15 formal objection, if you like, to the ratings is
16 not unprecedented, but it's not overly common, and
17 one can draw whatever conclusion one wishes from
18 that.

19 But on the issues which -- on the matters
20 which hadn't entered into force, the methodology
21 was clear. The rules were the same for everyone.
22 So -- which is the other side of that coin. But
23 my guess is that the Canadian authorities would
24 probably have argued at the time, and sort of
25 impressionistically, I gathered that they weren't
26 overly happy. And those are indications of both
27 the potential unhappiness and some of -- at least
28 of the reasons which would underpin such a stance.
29 But the long and the short of it is that there
30 were areas of strength in the Canadian third round
31 report, but some mixed messages as well, primarily
32 in those non-law enforcement and non-legal and
33 international cooperation areas.

34 Q Okay, and you describe in your report, at
35 paragraph 20, that we're currently in the fourth
36 cycle, or the fourth cycle is underway --

37 A Mm-hmm.

38 Q -- and before we get to that, I understand that
39 there were significant changes to the process that
40 were agreed to before this round got underway, and
41 those are set out in the methodology for assessing
42 technical compliance with the FATF recommendations
43 and the effectiveness of anti-money laundering
44 counter terrorist financing systems report; is
45 that correct?

46 A Yeah. There is -- the basics of the approach have
47 remained constant in the sense that there's a

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1 common methodology. It's an entirely new common
2 methodology, but it utilizes that approach. The
3 teams are multi-disciplinary teams, as they have
4 always been. And ratings are applied. However, I
5 suppose the major change is that there are
6 technical -- there are, in effect, within the body
7 of the one report, two reports. One is on
8 technical compliance with the requirements of each
9 individual FATF recommendation, and the second and
10 broader part of the report is confined to an
11 assessment of, in effect, the effectiveness of the
12 implementation of the FATF standards. And the --
13 I guess the expectation was that the greatest
14 level of resource and the greatest level of
15 interest would be devoted to the effectiveness
16 assessment rather than technical compliance.
17 Partially on the grounds that although there had
18 been many technical changes to the recommendations
19 over the years, the central thread of many of them
20 had been around for a long time. And that there
21 was an expectation, I think, that countries would
22 have a better -- a good story to tell on technical
23 compliance, and that they would be less familiar
24 and have greater difficulty in articulating a
25 convincing narrative on the issue of effectiveness
26 of implementation.

27 Now, effectiveness hadn't been entirely
28 irrelevant in the previous round. The essential
29 concern was with technical compliance. But under
30 the methodology of the third round, so including
31 the 2008 Canadian report, the evaluators could
32 take account of indications of effectiveness of
33 implementation, and that could have a positive,
34 neutral or a negative effect on the ratings.

35 Now, in reality, for most countries, where
36 effectiveness issues were flagged up in the third
37 round reports, they tended to have -- to put
38 downward pressure on the ratings. And so there
39 was again an expectation that if you remove
40 effectiveness from the technical compliance part
41 of the fourth round, (a) you get a technical
42 compliance picture which is undisturbed by
43 extraneous features of that kind, but that
44 secondly, you will have -- and this was an
45 unintended consequence perhaps of the changing
46 methodology, but by removing the effectiveness
47 component, you'd almost immediately, for many

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1 countries, place upward pressure on the rating, so
2 that the -- for country X, the expectation would
3 be that their technical compliance ratings would,
4 across the piece, possibly go up compared to the
5 third round, because effectiveness concerns had
6 been removed.

7 So you now have two separate and distinct
8 central elements of the FATF country evaluations,
9 technical stuff which is more traditional, but
10 with the amendments that I just mentioned, and
11 then a focus intended to be the primary focus on
12 elements of effectiveness of implementation of the
13 package of standards in question.

14 Q And I understand that for effectiveness, there's
15 sort of 11 immediate outcomes that the assessors
16 are looking at?

17 A Mm-hmm.

18 Q And I was wondering if you could sort of walk us
19 through those immediate outcomes and what's at
20 play for each of them?

21 A For each of them. All right. Well, there's a
22 certain commonality -- do you mind if I remind
23 myself of -- I have a piece of paper here --

24 Q Right.

25 A -- and the piece of paper that I've pulled out is
26 from the FATF methodology where there are -- which
27 sets out 11 immediate outcomes, so-called
28 immediate outcomes, or IOs, which are each said to
29 articulate a key component of an effectively
30 functioning system. And so the task for the
31 evaluators is, in effect, to say to what extent
32 are these key components as reflected in the
33 immediate outcomes. Are these key components
34 functioning in an effective manner?

35 And each of the immediate outcomes has the
36 same structure. Firstly, it sets out what the
37 FATF considers to be characteristics of an
38 effective system in the particular subject area of
39 the immediate outcome. The one I have in front of
40 me is immediate outcome 7 on money laundering
41 offences and activities.

42 Then set out whether there are -- is a note
43 to assessors about the cross-cutting issue of
44 spending. That is the relationship of this --
45 their consideration of this particular immediate
46 outcome with others within the methodology. I
47 don't think it need concern us at this stage.

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1 What is then set out are a series of core
2 issues to be considered in determining if the
3 outcome is being achieved, but a series of core
4 issues. And in the case of immediate outcome 7,
5 there are five of them. And the evaluation team
6 must consider each of the core issues in the
7 different parts of the methodologies. Coverage of
8 the core issues is mandatory.

9 The methodology then sets out examples of
10 information that could support the conclusions to
11 be reached on the core issues, so that's examples
12 of information, and examples of specific factors
13 that are relevant to or could support the
14 conclusion on core issues. And those are not
15 intended to be either mandatory or exhaustive, but
16 are illustrations of the range of materials and
17 issues and the like which may prove to be relevant
18 in a particular jurisdiction. Or material in that
19 jurisdiction.

20 So, the same structure of approach of core
21 issues and a non-mandatory, non-exhaustive series
22 of indicators which the evaluation team should
23 look to in reaching conclusions on those core
24 issues. The same structure is followed
25 throughout. And there are 11 of these immediate
26 outcomes, or IOs, as they're known in the trade.

27 And the other thing to note here is that
28 there are also ratings which have to be applied by
29 the evaluation team and agreed to by the plenary.
30 Hence, much of the discussion in Paris and in
31 Strasbourg tends to revolve around ratings,
32 especially if those ratings are not overly
33 positive. And, again, as with the [indiscernible
34 - break in recording] of compliance, there are
35 four separate categories of ratings available to
36 the assessment team. High level of effectiveness,
37 substantial -- HE and SE for substantial, and then
38 -- and those are both above the line. Those are
39 regarded as positive. High level of effectiveness
40 is much sought after and not that often given in
41 FATF or FSRB practice. But then there are the
42 kind of below the line ratings of moderate levels
43 of effectiveness, and the not sought after low
44 levels of effectiveness. So, four different
45 options to be considered by the evaluators.

46 Sometimes -- I mean, my own view is that
47 [indiscernible - break in recording] perhaps

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1 should have supplied the evaluators was a broader
2 or more finely tuned range of options if they were
3 going to keep the rating, with clearer
4 distinctions in terms of the descriptors for those
5 particular ratings. But those are ones that they
6 decided to incorporate and to -- and to utilize.

7 And the 11 IOs, or immediate outcomes, are -
8 - in effect, focus on a small number of clusters
9 of related recommendations. So, the -- and they
10 are -- if you wish me to enumerate them -- there
11 is immediate outcome, which is a very important
12 immediate outcome in the strategic sense --
13 immediate outcome 1, which looks at risk, money
14 laundering risk, policy and coordination. IO-2 is
15 on international cooperation. IO-3 is on
16 supervision. IO-4 is a very broad -- engages with
17 a very broad range of FATF standards because it
18 deals with preventative measures.

19 There is immediate outcome 5 on legal persons
20 and arrangements, which only really takes onboard,
21 in a focus sense, two of the recommendations.
22 There is immediate outcome on financial
23 intelligence, another -- IO-7, on money laundering
24 investigation and prosecution. One on
25 confiscation, which is IO-8. Two in the terrorist
26 finance area, IO-9, on terrorist finance
27 investigations and prosecutions, and one on
28 preventive measures and financial sanctions, and
29 finally, one on proliferation financial sanctions,
30 which is IO-11, which is treated a little bit
31 differently from the rest. And the one way in
32 which it's treated differently from the rest is
33 that the effectiveness methodology faces, in IO-1,
34 risk, understanding of money laundering and
35 terrorist finance risk, and efforts to mitigate
36 such risks and to coordinate appropriately when
37 doing so, at the very centre of the process, in
38 the same way that recommendation 1 was intended to
39 signal the same thing.

40 Now, in the methodology for IO-1, it is made
41 specific and abundantly clear that issues which
42 arise in the context of IO-1 can cascade out into
43 the understanding and assessment of other
44 immediate outcomes, where relevant, with the
45 exceptions of proliferation in IO-11. So this
46 issue that a matter which arises in an IO-1
47 context, perhaps a negative issue which arises in

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1 an IO-1 context, is hermetically sealed in that
2 immediate outcome is not the case, save in respect
3 of proliferation finance. And that is something
4 which is understandable because of the relatively
5 recent nature of proliferation financing, and a
6 very particularized nature.

7 It has been used before as a strategy in
8 difficult -- in one or two difficult areas to, in
9 a sense, provide member states with a temporary
10 degree of latitude in that particular round, but
11 it's proliferation financing which is the
12 beneficiary of that limitation on cascading, and
13 it alone.

14 MS. LATIMER: Thank you. Mr. Commissioner, I just
15 wanted to note for the record that this
16 methodology report that has been discussed is
17 already in the record, and it's at Exhibit 4, and
18 it's found at Appendix F. And I thought this
19 might be a convenient time for a short break.

20 THE COMMISSIONER: All right, thank you. We will then
21 take a 15-minute break.

22
23 (WITNESS STOOD DOWN)

24
25 THE REGISTRAR: The hearing is adjourned for a 15-
26 minute recess until 12:51 p.m. Please mute
27 yourself and turn off the video. Thank you.

28
29 (PROCEEDINGS ADJOURNED)
30 (PROCEEDINGS RECONVENED)

31
32 THE REGISTRAR: Thank you for waiting. The hearing is
33 now resumed.

34
35 WILLIAM GILMORE, a witness,
36 recalled.

37
38 THE COMMISSIONER: Thank you. Yes, Ms. Latimer.

39 MS. LATIMER: Thank you.

40
41 EXAMINATION IN CHIEF BY MS. LATIMER, continuing:

42
43 Q Professor Gilmore, you mentioned that one
44 requirement of the mutual evaluation process or
45 report is that assessors need to provide
46 recommendations on how the anti-money laundering
47 and counter terrorists financing system can be

William Gilmore (for the Commission)

Examination by Ms. Latimer, Counsel for the Commission

1 improved, and can you explain what happens with
2 those reports and recommendations after the mutual
3 evaluation report has been approved by the FATF?
4 A Other than publications, well, the expectation
5 would be that in a purely internal FATF process,
6 these would be picked up in the five-year review,
7 which is a new innovation for the current round,
8 and relates to the reconsideration five years or
9 approximately after the finalization of a
10 country's mutual evaluation report, where another
11 look is taken at effectiveness issues, with a
12 particular focus on those in which suboptimal
13 ratings were awarded and where there is an
14 opportunity for a re-rating to take place, if
15 appropriate. And one would assume that the
16 recommendations would be taken cognisance of in
17 the context of that five-year review if they
18 relate to effectiveness. If they relate to
19 technical compliance, there is a separate process
20 which enables countries to seek re-ratings of --
21 in the technical compliance sphere, with an
22 expectation that that process will take place
23 approximately three years after the mutual
24 evaluation report.

25 So if a recommendation had a high technical
26 compliance component, it would be picked up, one
27 assumes, in that separate technical compliance
28 stream. Both of these go to the issue which I
29 mentioned earlier when we were discussing the
30 third round report about the length of the cycles
31 of evaluation and how a country in the FATF
32 context could previously be left with negative and
33 perhaps reputationally damaging ratings on the
34 public record for periods of many years. And it
35 was decided by the FATF that they would introduce
36 these innovations in the current round in order to
37 provide a mechanism to address concerns of that
38 kind.

39 The other use of -- I cannot think off the
40 top of my head at the moment of other particular
41 circumstances in which those prioritized
42 recommendations would be utilized internationally.
43 The hope would be that they would be utilized with
44 some focus by the jurisdiction to which they were
45 directed. I'm not sure if I'm answering your
46 question in a way that you have found helpful, but
47 --

William Gilmore (for the Commission)

Examination by Ms. Latimer, Counsel for the Commission

1 Q I think you have. Thank you. I'm turning now to
2 the topic of the regional bodies. And you note in
3 your report that there are a global network of
4 regional bodies. This starts at page 18 of your
5 report. And I'm wondering if you can just outline
6 for us how many regional bodies exist and what the
7 purpose of these bodies is?

8 A Well, there are now eight or nine of them in
9 different regions of the world, with the exception
10 of North America, because Mexico, the United
11 States and Canada are all FATF members. And this
12 is part -- this is the outcome of the long-
13 standing FATF push for what you might call global
14 mobilization in the acceptance of and the
15 implementation of the FATF standards. And it was
16 very much done on a regional basis.

17 The first region to come into focus was the
18 Caribbean region, and the Caribbean Financial
19 Action Task Force was created very early on, and
20 that is a reflection of I think the concern that
21 there was, amongst many FATF member countries,
22 that the international -- the small international
23 financial centres, or the financial centres in
24 small jurisdictions in the Caribbean -- which are
25 not necessarily small centres in a financial sense
26 -- were a source of concern very early on. And I
27 think it's fair to say, remain a source of
28 concern. And the Caribbean countries responded to
29 that concern by creating the Caribbean Financial
30 Action Task Force. I think the ministerial
31 meeting in Jamaica, which approved it, was in
32 1992.

33 I think Moneyval, the body that I for many
34 years was associated with and which we discussed
35 at some level very early on in the course of
36 today's exchanges, was the second such body to be
37 created, though there it was placed into a pre-
38 existing institutional structure, that of the
39 Council of Europe. Then I think came the Asia
40 Pacific group. The FATF was, again, from fairly
41 early days, anxious to spread its message and its
42 influence into Asia, partially through membership.
43 For example, Singapore and Japan, but -- and
44 followed by others since. But also through a
45 process of persuading Asian and Pacific countries
46 of the desirability of establishing their own
47 regional body. And it must be said that I think

William Gilmore (for the Commission)

Examination by Ms. Latimer, Counsel for the Commission

1 that the Asia Pacific group has been comparatively
2 well-regarded in terms of its activities and
3 competencies in the period since.

4 And then the spread took place into other
5 regions into, first of all, South America, and
6 then that became a Latin American initiative.
7 Initially a number of the jurisdictions in Central
8 America of Hispanic heritage had become members of
9 the Caribbean Financial Action Task Force, but
10 perhaps felt more comfortable in a preponderantly
11 Spanish-speaking and Spanish law influenced
12 environment. Not forgetting Brazil, of course
13 being more Portuguese.

14 And there have also been, perhaps less well-
15 known, initiatives in Eurasia, which is the
16 smallest of the groups, where both Russia and
17 China are both FATF members, are also members.
18 Different regions of Africa, starting off with
19 East Africa, which was the first -- Eastern and
20 Southern Africa -- is the first such group on that
21 continent. And then there is a Middle Eastern
22 group. The FATF has a limited membership at the
23 moment from that region.

24 There is an institutional member, the Gulf
25 Cooperation Council, so that there is a mechanism
26 for feeding regional realities and concerns into
27 the system. And Saudi Arabia is seeking to
28 position itself for full FATF membership
29 eventually, but that has not, for whatever reason,
30 taken place quite as expeditiously as perhaps they
31 would have hoped or imagined. My understanding is
32 that they were lined up for possible future
33 membership at the same time as Israel, and Israel
34 became a member of the FATF in 2018, and so far as
35 I'm aware, Saudi Arabia has not yet completed that
36 process.

37 So there is broad global coverage of the FATF
38 standards through the mechanism of these regional
39 groups. And they have two things in common,
40 though there are many differences in terms of
41 structure and form and the like. The two common
42 elements are that they have -- all of their
43 members have agreed to implement the FATF
44 recommendations as they are from time to time and
45 have agreed to the mutual evaluation of the
46 implementation of those recommendations by their
47 members. And those mutual evaluations are

William Gilmore (for the Commission)

Examination by Ms. Latimer, Counsel for the Commission

1 conducted by the regional bodies themselves, in
2 the main.

3 Q Could I ask you -- you note in your report that
4 Canada, for example, is a full member of the FATF
5 and also a full member of the Asia Pacific group,
6 and a cooperating and supporting nation in the
7 Caribbean FATF group and it has observer status in
8 another group. And I'm just wondering why a
9 jurisdiction would choose to participate in both
10 the FATF and any number of these regional bodies.
11 Is that sort of an ambassador role, or what
12 explains that?

13 A In the case of the Asia Pacific group, my
14 understanding is that Canada is a full member.
15 I've never had discussions with Canadian
16 Government officials about its choices in this
17 regard. Such membership is -- such cross-
18 membership is encouraged, but not required. And
19 if you are, as Canada is, as much a Pacific nation
20 as it is an Atlantic nation, then one can imagine
21 that both issues of practical importance in terms
22 of flows of trade and people and finance might
23 make a permanent presence in such a body
24 desirable. The expectation of regional -- of
25 other regional powers, countries which have a
26 significant Pacific dimension and presence will be
27 seen to have involvement in regional issues and
28 pull their weight in regional affairs may also be
29 a consideration.

30 I can't speak for Canada, but in the Moneyval
31 context, we had two countries. Russia, which was
32 a Moneyval member and originally had very, very
33 negative mutual evaluations, and it addressed the
34 underlying issues really quite extraordinarily
35 well, wished to be, as they would have seen, is at
36 the top table in the FATF, but elected to remain
37 full Moneyval members even when they obtained FATF
38 membership. And my assumption is that the FATF
39 would have been only too happy to see Russia as a
40 member of both groups.

41 Similarly, Israel, which, for political
42 reasons, is perhaps unable to participate in the
43 Middle Eastern group in the normal way, has,
44 through special arrangement, been a full
45 participant in Moneyval for -- for some 20 years,
46 I would have thought. And it, too, wished for its
47 own internal reasons to aspire to be a member,

William Gilmore (for the Commission)

Examination by Ms. Latimer, Counsel for the Commission

1 become an FATF member, but elected also to retain
2 its full membership links with -- with the
3 Moneyval committee.

4 So, Canada's decision to participate in the
5 Asia Pacific group and to have a position of
6 influence rather than membership in the Caribbean
7 Financial Action Task Force, which is in a region
8 where Canada has long had political and economic
9 interest, is not a surprise to me, but the exact
10 reasoning behind it is unknown.

11 Q I guess my question is, when countries participate
12 in a number of groups like this, are they -- and
13 given that the groups are all applying the same
14 standards and doing similar assessments, are those
15 countries subjected to more assessments or, you
16 know, does just one group deal with the mutual
17 evaluation for that country?

18 A Well, luckily they don't have to be subject to
19 parallel assessments. There will be a lead
20 assessor, and that lead assessor, in my
21 experience, or a lead assessment body, and that
22 lead assessment body, in my experience, is always
23 the FATF where there's an FATF member involved.
24 But the dimension of membership, of multiple
25 membership, is often accommodated to an extent in
26 the composition of the evaluation team which is
27 put together to do that FATF evaluation.

28 So, for example, Moneyval evaluators, as a
29 matter of course in the past, have participated in
30 the FATF Russia program.

31 Now, in addition to the regular cyclical
32 reviews, new members are subject to a special FATF
33 evaluation for membership confirmation purposes.
34 So that's where the multiplicity arises, but not
35 as a consequence of ongoing joint membership, or
36 multiple membership.

37 I think Russia is also a member of -- Russia
38 must be a member of at least two groups in
39 addition to the FATF, which would be the Eurasian
40 group and Moneyval. And China, I think began to
41 have multiple memberships. I assume, without
42 looking at the list, but perhaps New Zealand and
43 Australia, major players in the Asia Pacific
44 context, one or both may well be APG members also.
45 So it's standard, but not required.

46 Q Can you describe a little bit about the
47 relationship between Moneyval and FATF and whether

William Gilmore (for the Commission)

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1 this is unique in some way?
2 A Well, I think it's perhaps uniquely close, and
3 that has been manifested over the years in
4 different ways. For example, though the exact
5 details are unlikely to come to mind, in the first
6 two rounds of Moneyval evaluations, there was a
7 Moneyval requirement that the evaluation team
8 include a minimum of "x" evaluators from FATF
9 member countries. And this is a kind of "hug'em
10 close" strategy, in part, but also a realization
11 that in 1997, the FATF had been going in one form
12 or another for a number of years, had many
13 European countries, had countries which were
14 members of the European Union, which many of the
15 central and eastern European members of Moneyval
16 aspire and a number of them have also since become
17 a EU member state. But there was I think a
18 strategic decision taken by the plenary that the
19 closer the relationship, the fewer the problems,
20 at one level. Because what, in the early days,
21 one wanted to see was if you were going to go
22 through the labour-intensive process of conducting
23 these mutual evaluations, which all attract some
24 level of political or reputational risk, then the
25 worst of all possible worlds would be to have an
26 evaluation conducted by, say, Moneyval, to which
27 the FATF would not give full faith and credit.
28 And the greater the level of FATF involvement in
29 those early rounds of negotiations, the less
30 likely it was that these kinds of difficult issues
31 would arise in practice.

32 In addition, under the current Moneyval
33 statute, the FATF Presidency is entitled to
34 nominate two FATF members to be full voting
35 members of the FATF plenary. Although their
36 evaluations and like matters continue to be run by
37 the FATF. So, at the moment, it's Germany and
38 Italy. Before Germany, it was France and Italy.
39 And there have been others in the past and will be
40 others in the future. And, again, it helps to
41 ensure commonality -- a degree of commonality of
42 view and approach between the two bodies. And
43 some of that commonality of approach is now
44 further -- if not guaranteed -- further promoted
45 by having a range of mirror image procedural
46 arrangements in terms of how they approach the
47 mutual evaluation process and the involvement in

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1 each others' quality and assurance control
2 strategies.

3 Q And by that, do you mean -- do you mean sharing
4 the reports, for example, before they're finalized
5 with each other?

6 A In part, yes, but the -- there is a kind of
7 quality consistency thread throughout so that, at
8 the moment, in a Moneyval context, most of the
9 members of evaluation teams impressionistically
10 come from Moneyval member countries, occasionally
11 from the FATF countries which have been appointed
12 temporary membership by the FATF Presidency. And
13 so there would be French evaluators, quite often.
14 I seem to recall Italian evaluators. Also, most
15 of the scientific experts, in my day, were drawn
16 from FATF rather than Moneyval member countries.

17 So, at the time I stood down in December of
18 2017, of the then -- of the then five scientific
19 experts to the Moneyval committee, I think all of
20 them were FATF nationals. Three were government
21 officials, but in their -- their home governments,
22 but operating as scientific experts in a personal
23 capacity. And then there was me. And I'm not
24 sure whether I -- I assume I was [indiscernible -
25 break in recording] rather than because of it,
26 because I have no governmental connection with the
27 United Kingdom authorities, and in that sense, was
28 the exception that proved the rule. And those
29 scientific experts did, with frequency, become
30 involved in the mutual evaluation process.

31 Q At page 23 of your report, you highlight something
32 that you've touched on already, which was that
33 sort of the development of this AML and counter
34 terrorist financing system has not been without
35 controversy. And you've spoken a little bit
36 already about the name and shame -- naming and
37 shaming of non-members in the '90s and 2000s. I'm
38 wondering if you can tell us a little bit more
39 about the other controversy that you allude to
40 here which is a lack of enthusiasm for the
41 progressive extension of preventive obligations to
42 wider ranges of businesses and professions. Can
43 you maybe explain that with some specific
44 examples?

45 A Well, I would say that that's a view formed
46 primarily impressionistically through -- rather
47 than through systematic study. So it is the

William Gilmore (for the Commission)

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1 impression that I have gained through my
2 involvement in this area over the years. And it's
3 hardly surprising, given the -- both the intrusive
4 nature of obligations imposed upon the -- upon
5 private sector participants which are, in terms of
6 their scale, broadly unprecedented, or were at the
7 time, and they're also very costly, costly in
8 terms of the compliance function, and so on and so
9 forth.

10 In the early days, the banks were not --
11 certainly in the European context -- were not
12 overly thrilled to be faced with an unprecedented
13 set of requirements, the optics of which they
14 found awkward. And each progressive broadening of
15 the -- of the scope of these recommendations has
16 seemed to come with a degree of domestic pushback:
17 Why us? Why now?

18 I suppose that the best documented area is
19 the -- and this is not so much pushback as
20 fundamental legal difficulties arisen and a good
21 deal of controversy on the extension of a range of
22 AML obligations in the FATF standards and
23 elsewhere to certain activities carried out by
24 legal professionals. And that has been not only a
25 significant difficulty, as I understand it, in a
26 Canadian context, but has been controversial in
27 many other settings, and in some areas, continues
28 to be so. But that is not just we don't want to
29 be involved, but engages a range of legal and, in
30 Canada, constitutional issues concerning legal
31 professional privilege and like matters. Some of
32 which was anticipated, it must be said. And in
33 some jurisdictions, constitutional and legal
34 challenges have either failed to materialize or
35 have not been entirely, or even partially in some
36 instances, successful.

37 It's interesting in a way that the European
38 Union was one of the main actors in bringing
39 designated non-financial businesses and
40 professions into coverage under the money
41 laundering directives in Europe, starting in 2001,
42 even before the FATF had done so, and that there
43 had been -- there were challenges in the European
44 Court of Justice -- and certainly the ones in the
45 early days that I'm familiar with were
46 unsuccessful challenges on broadly human rights
47 grounds, but again, revolving around legal

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1 professional privileged type concerns, but a
2 number of countries in addition to Canada have had
3 difficulties and concerns in that specific area.

4 I think, again impressionistically, it was a
5 surprise to some to see the inclusion of certain
6 other categories of non-financial businesses, in
7 2003, when this was brought in. But I wasn't part
8 of that -- the process of discussion on
9 negotiation of the amending FATF standards at the
10 time. But it was being pushed for, not only by
11 the EU, but by the G-7, of course includes Canada.
12 I think the Okanawa Summit in 2000, you know,
13 pushed this agenda forward, as well as it did the
14 following year.

15 But it's one thing to wish an outcome, but
16 there are unintended consequences in some of these
17 -- in some of these areas. But that's the one
18 which has had the most attention in terms of the
19 creation of difficulty and associated pushbacks
20 for relevant professional associations and bodies.
21 Of complex, multi-layered, no doubt, forms of
22 concern, but a fundamental one is the legal
23 concern about the professional [indiscernible]
24 when it comes to the legal profession.

25 Q The last point I wanted to ask you about on these
26 criticisms is you cite the Levi and Reuter and
27 Halliday article about whether AML can be
28 effective without better data. We're going to be
29 hearing from Professors Levi and Reuter later this
30 week, so I won't ask you to summarize in detail
31 their arguments. But I guess my question is, in
32 light of these sort of three main criticisms that
33 you've identified in your report, whether these
34 raise any questions in your mind about the
35 legitimacy or accuracy or reliability of these
36 mutual evaluation reports or what we can take from
37 them, how should we approach them?

38 A Well, we're going to have, as you said, Professor
39 Levi and his colleague next week, and there's no
40 one better to speak to his concerns than him. But
41 it's reflective, I think, of concerns that they
42 have of a stream of questioning in academic
43 circles. Especially on the issue of the
44 assessment of effectiveness and the use of
45 data -- the availability of data, let alone the
46 use of data -- in that context. And I am not a
47 criminologist and I am not in a position to

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1 independently assess the scientific arguments
2 which are reflected in the article in question,
3 and indeed, in subsequent and indeed previous
4 articles by the same authors and others.

5 And that's not the only criticism. There are
6 criticisms placed on evaluation teams, the absence
7 of expert cadre of evaluators -- albeit that
8 everyone now has to have some level of training --
9 the different backgrounds which the evaluation
10 teams will bring to bear, and like matters. One
11 could also go to issues surrounding the role of
12 the plenary bodies in the ultimate determination
13 of ratings in cases where the change, even a minor
14 change in one rating on effectiveness, can have a
15 profound impact on the subsequent treatment of
16 that jurisdiction in follow-up and related kinds
17 of terms.

18 And again, impressionistically, a case could
19 be made but probably couldn't be proved, that on
20 occasion, voting patterns in these bodies on some
21 of those particularly problematic issues may not
22 have been entirely influenced by technical
23 considerations. The sort of Eurovision Song
24 Contest group. But, so there is a space for non-
25 technical considerations to come into play in any
26 such body. I'm not saying it happens all the
27 time. I'm not saying that it happens
28 systematically. I'm certainly not saying I could
29 prove it. But one is sometimes left with a
30 feeling that broadening the considerations beyond
31 the technical may be the only way of fully
32 understanding the decision which has just been
33 made.

34 All of that said, my own view is, yeah, sure,
35 I would say -- and I think I say in the report, I
36 would treat these evaluations with a certain
37 degree of caution, because the process -- whoever
38 you talk to -- no one is going to say that the
39 process is perfect. However, the fact that -- it
40 seems to me -- that the international community
41 continues to promote and undertake this kind of
42 evaluation -- not just in the money laundering
43 area, but more broadly -- it has become
44 popularized, or very [indiscernible] I think
45 indicates that the primary recipients at the
46 international level of these exercises continue to
47 regard the product, (a) as perhaps imperfect, but

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1 (b) as a credible snapshot of where the country in
2 question is positioned at that particular moment
3 in time.

4 And I think that level of credibility is, in
5 a sense, reinforced by what have been a whole
6 series of initiatives to try and ensure some
7 overall level of quality and consistency in the
8 individual reports, both within a grouping like
9 the FATF, or Moneyval, or the Asia Pacific group,
10 and between them. I'm not saying that the quality
11 and consistency processes have picked up, or could
12 pick up all of the difficulties which can present,
13 but they do reduce, it seems to me, the
14 possibility of having complete outliers in terms
15 of the -- of the final -- of the final product.

16 So I'd say my own advice would be -- and
17 maybe I'd have left before 2017 if I'd been saying
18 this too enthusiastically in Strasbourg -- is,
19 yes, these reports are likely to have a broad
20 level of credibility, but they're not perfect, and
21 so treat them with caution.

22 MS. LATIMER: Thank you so much, and thank you for your
23 time today. I know it's considerably later in the
24 evening where you are than where we are. And, Mr.
25 Commissioner, I note the time.

26 THE COMMISSIONER: Yes, thank you, Ms. Latimer. I
27 think you were going to indicate to us how much
28 longer you anticipated being tomorrow with
29 Professor Gilmore.

30 MS. LATIMER: I have a difficult time making accurate
31 time estimates, but I think I will be maybe an
32 hour more.

33
34 (WITNESS STOOD DOWN)

35
36 THE COMMISSIONER: All right, thank you. We will then
37 adjourn to tomorrow morning, at 9:30.

38
39 (PROCEEDINGS ADJOURNED TO JUNE 4, 2020, AT 9:30
40 A.M.)
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