

Accountability Asset Recovery: A Leadership & Sustainability Initiative 5th Paper Presentation in the Series

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During the post-1925 era, institutional, evolutionary and financial economics have been predominant within the natural and constructed environment. For instance, from 1st to 22nd July 1944, experts representing forty-four nations convened at Bretton Woods, New Hampshire for the United Nations Monetary and Financial Conference. Among its work there, the Conference drew up a plan for what became known as the International Monetary Fund (IMF). 74 years henceforth speaking at the 8th Kissinger Lecture Series at the US Library of Congress on 4th December 2018, the IMF managing director broached the idea for institutional recognition of evolutionary phenomena in financial economics.

Encouraged by the adoption of UN Resolution 72/277, “Towards a Global Pact for the Environment” on 10th May 2018 and in alignment with UN SDG #17 which was adopted by all UN member states in 2015, this invited paper explores the viability of Accountability Asset Recovery: A Leadership and Sustainability Initiative in seeking to facilitate institutional change, mindful of the gap that heretofore frustrated the promises enshrined in international conventions.

Keywords: Institutional Change, Public-Private Partnership, Rule of Law, Sustainable Development Goals

INTRODUCTION

After nearly a decade of intellectual entrepreneurship, the author founded Alpha FTS Research & Development in the Social Sciences & Humanities in 2016 in the Kingdom of Morocco. Its mission is to bring a leadership and sustainability initiative into development and practice within the framework of public-private partnerships.

Institutional economics, evolutionary economics and financial economics cannot be sustained beyond the frontier of competence (Heifetz, 2018) without a successful sustainable development agenda. Yet, the practicalities of how to fund such efforts has allowed pragmatists to maintain a level of strategic ignorance (Augustine, 2011) relative to viable options for institutional change. The Purpose or “raison d’être” of economic activity institutions, however, fell into anonymity. Obscured by political power play and industry capture (Devan, 2012) (Lagarde, 2017) which in turn facilitated the narrowing of the definition of stakeholder. Due to the real world consequences of practicing this strategic ignorance the multilateral institutions identified a phenomenon of destabilizing systemic loss (Maturana, 2008) within the financial economic system. This systemic loss demonstrated through instability experienced by the

financial system and the endemic hazards posed to earth itself prove that awaiting an answer to magically appear is not a viable option. A successful, sustainable development agenda requires partnerships between organizations, governments, the private sector and civil society (Murphy, 1997), and represent rights enshrined institutionally at the multilateral organization level, more specifically the United Nations system including the multilateral financial system. United Nations Sustainable Development Goal number 17 codifies the importance of these partnerships and recognizes that revitalization of partnerships is a critical ingredient in the realization of a successful sustainable development agenda.

BACKGROUND

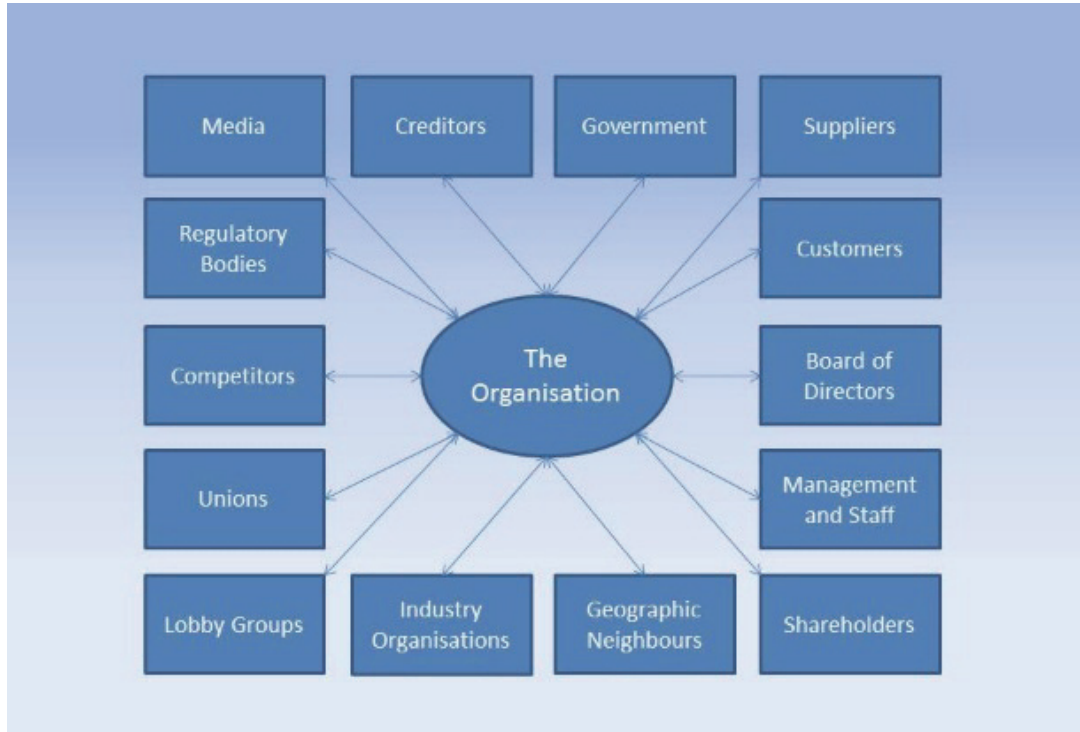
“Public-private partnerships (PPPs) refer to arrangements where the private sector supplies infrastructure assets and infrastructure-based services that traditionally have been provided by the government” (Hemming, 2006, p.1). Such partnerships can take the form of mandates, agreements and contracts within categories of practice such as:

- Infrastructure
- Financial System
- Energy System
- Farming and Agriculture System
- Prison System
- Security
- Defence System
- Healthcare System
- Education System

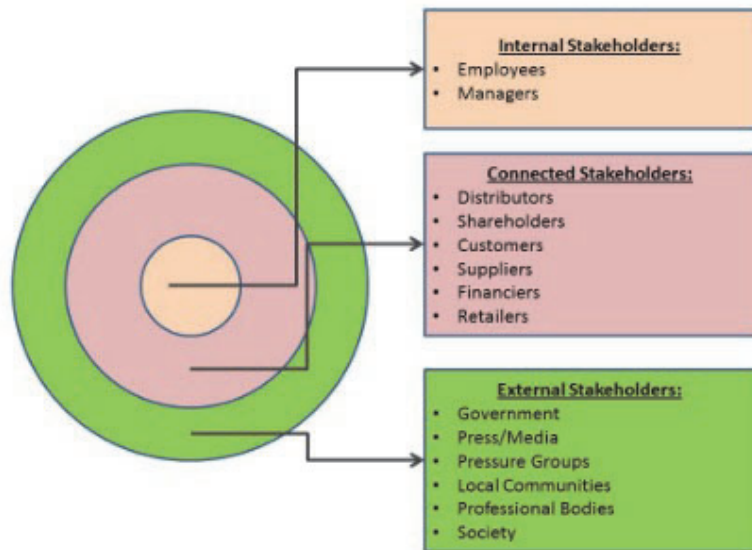
As a social science, economics is not a natural law or a universal principal, an observation that encourages the notion that economic activities and economic evolutionary outcomes can be recalibrated and that the subfield of institutional economics is positioned as the potential beneficiary of such a systemic recalibration. In her “Updating Bretton Woods” letter to the next generation, IMF Managing Director and Chair, Christine Lagarde calls for a renewed commitment to global economic cooperation. The IMF chief believes that institutions, citizens and private enterprises have a responsibility to bring about an “Age of Ingenuity”, and that we need to have the courage to build it (Lagarde, 2019). Prior to this bold recalibrating communication, government, including multilateral had been viewed among stakeholders as external. However, this may not be the most accurate summation, as government, through fully executed project agreements, is in fact an internal stakeholder.

Figures 1 and 2 of this Paper appear as figures 4 and 5 in the author’s original 2017 Dissertation, *Accountability Asset Recovery: A Leadership and Sustainability Initiative* and ground the practice by defining actors and their relationships to the system and one another in public-private partnerships.

**FIGURE 1
LEADERSHIP-STAKEHOLDER CONNECTIONS**



**FIGURE 2
MAPPING OF INTERNAL STAKEHOLDERS, CONNECTED STAKEHOLDERS AND EXTERNAL STAKEHOLDERS**

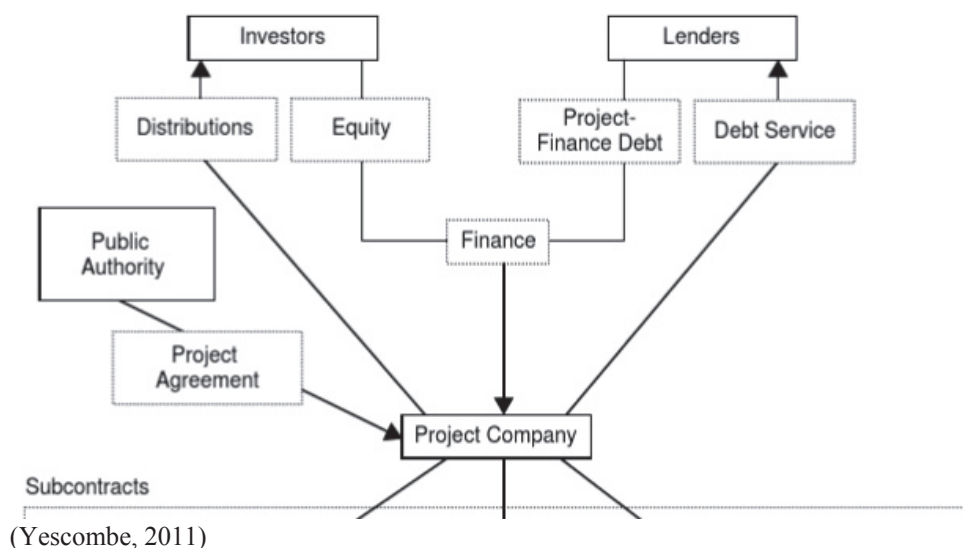


(Professional Academy, 2016)

The PFI model (Yescombe, 2011) utilized to structure project finance investment (PFI), where the project partners include government partners and private business partners, is particularly pertinent in the

context of EU competition law. In chapter nine of EU Competition Law 5th edition on cartels and oligopoly (2014), the authors, Jones and Sufrin outline the central issues that directly affect the relationship between governments and their partners, and the terms that govern public-private partnership agreements.

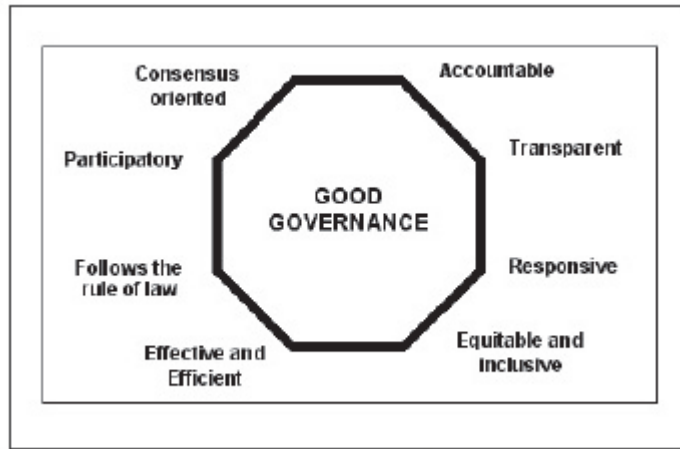
FIGURE 3
PFI – MODEL PUBLIC-PRIVATE PARTNERSHIP PROGRAMME – PROJECT FINANCE



Activity above the line has been positioned by practitioners as an inverted triangle. Subcontracts are below the line. The Project Company (the “Organisation” from Figures 1 and 2), receives inputs from Finance and Public Authority, (through the Project Agreement), as Connected Stakeholders, while Government and Regulators are External Stakeholders. Finance receives inputs from Investors and Lenders via their own outlet, while Equity and Project Finance Debt, Investors and Lenders receive inputs from the Project Company through Debt Service and Distributions.

A most compelling excerpt in light of the eight major characteristics of good governance appears in Figure: 4, item number eight, Follows the Rule of Law, “Tacit collusion is most likely to occur on oligopolistic markets; on which there are only a few suppliers” (Jones, A. and Sufrin, B., 2014, p 659). By their nature, public-private partnerships function as monopolies on oligopolistic markets. They are highly dependent upon political will to secure stable, protected mandates (Deal, 2013) and government immunity against prosecution (Yescombe, 2011), for their behaviour. Yet, such protected monopolistic practice was vigorously questioned as *Industry Capture* by the World Bank and International Finance Corporation Vice President of financial-sector and private-sector development network, Janamitra Devan in 2012 in Catalonia (Devan, 2012).

**FIGURE 4
FEATURES OF GOOD GOVERNANCE**

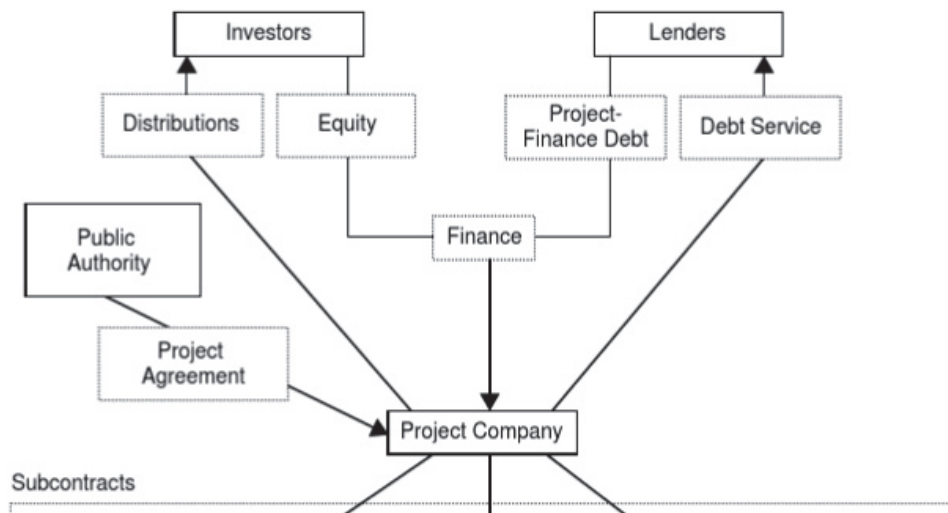


(Kioesheng, 2014)

Good governance has eight major characteristics: 1.) Participatory, 2.) Consensus oriented, 3.) Accountable, 4.) Transparent, 5.) Responsive, 6.) Equitable and inclusive, 7.) Effective and efficient and 8.) Follows the rule of law

Explicit collusion, which includes “the concluding of naked agreements to fix prices, restrict output, share markets or rig bids” is recognized as *hard-core cartel activity*. However, tacit collusion by way of insinuation, understanding, inferences or more broadly practiced, within the stratification of politics, elites, lobbies, institutions for collaboration and other non-state actors and even leaders, by way of suggestion, represents a greater threat (Jones, A. and Sufrin, B., 2014, p 659 & 660).

Indeed, “The US criminal enforcement programme, have criminalised cartel activity” (Jones, A. and Sufrin, B., 2014, p 668). Further, in the US during the 1960’s there was significant support for the view that unreasonable market power should be condemned and that there should be power to dissolve firms found to possess it (Jones, A. and Sufrin, B. 2014 p 674) (Task Force on Antitrust Policy, 1968).



In reviewing the PFI model, we are reminded that everyone above the line is engaging in tacit collusion, except for those involved in the project agreement, which is a fully executed contract between authorities and their private sector partners. In other words, the fully executed Agreement represents

evidence and irrefutable proof of explicit collusion. The existence of explicit collusion legitimizes the position that such tacit collusion is actually a conspiracy in practice.

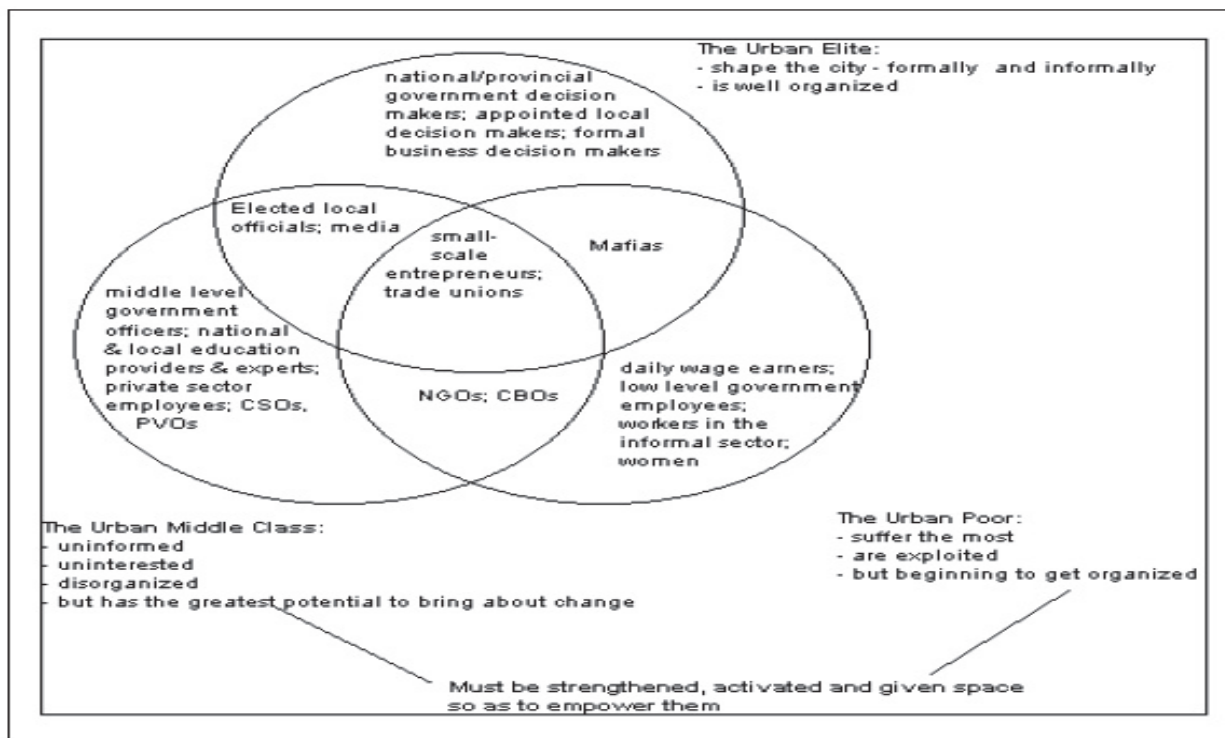
The practice of monopolistic activity on an oligopolistic society has been reduced to a game, and existing protections provide cover to prevent the creation of new, more appropriate public-private partnerships. This despite the fact that a need for revitalization within the PPP domain is specifically highlighted under United Nations SDG #17 (UNGA, 2015). Today's politics and the rise of populism, act as a diversion (Heifetz, 2017), providing cover for certain practitioners within the political economy. This is a visible symptom of a protectionist racket. IMF chief, Christine Lagarde has identified the phenomenon as macro-critical and reports that the IMF executive board has formally affirmed that the proposal for the Enhanced Fund Engagement, mandating new tools for interaction with the United Nations, The World Bank, and the Central Banks and in country authorities, is warranted (Lagarde, 2017).

Further, she reports that corruption is a major concern of the next generation, second only to those that threaten the very existence of our planet; she says that corruption is (rightfully) seen as unjust (Lagarde, 2019). Corruption is increasingly threatening economies both domestic and international (Anderson, 2009-2010). Thus, this paper not only analyses answers to the question of whether public-private partnerships can facilitate accountability driven asset recovery; it also tests the hypothesis that existing legislation and legal statute can streamline accountability asset recovery into an executive function.

In the effort to test such hypotheses, it would not be unreasonable for research to prominently consider the United Nations Convention against Corruption, (UN CAC), since the vast majority of UN member states are parties to that convention.

The UN CAC is the only legally binding universal anti-corruption instrument. Its far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to this global problem. Much of the text of the UN CAC was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of the Convention against Corruption, held between 21 January 2002 and 1 October 2003 (UNODC, 2005).

FIGURE 5



(Kioe-Sheng, 2014)

The influence that business decision makers have on the whole of the system is evidenced by their presence in the top circle along with government decision makers and those holding appointments such as Ambassadors, US Attorneys, DA's, Trustees, Receivers and Judges. Small and Medium Sized Enterprises (SMEs) are often squeezed by them, facilitated through their elected officials, control over the media, and mafia or cartels also recognized by US Attorney General Eric Holder (OAG, 2013) "as within the ranks of bankers".

THE MULTILATERAL [PROJECT MANAGEMENT OFFICE]

Seventy-five years ago, delegates from more than 40 countries gathered at Bretton Woods in New Hampshire to agree on new rules for the global economy. Most came from countries that were still engulfed in the flames of World War II. Introducing change to something as ossified as the 75-year-old Bretton Woods institution may require much more than creating an "age of ingenuity" as Lagarde suggests. It may very well require a level of courage rarely exercised in the face of issues in the financial industry. Yet, with the international adoption and pervasive domestic ratification of the UN CAC, combined with the monopolistic and oligopolistic character of many aspects of the financial industry institution, change would not only be viable and feasible, but, would also be preferable to the status quo.

As research and development on this topic has progressed, the question emerged, "why not create change with a multilateral project management office (PMO)? In order to effectively position the multilateral PMO within an organization, decision makers must fathom how certain institutions are simply not present, and how the creation of a new civil society organization bridges that gap. Pertinently, the role of the multilateral PMO is oriented for the development and performance of technical competency already presumed of the appointed receiver, yet abstracted from the terms of the mandating authority of their post-appointment activity (UNODC, 2009).

Yet, as UN CAC implementation is being driven forward, evidence from cases that involve the recovery of qualified assets proves the need for a multilateral PMO. Such a PMO would allow signatories to be managed as portfolios, and the capacity to synchronize, replicate and share consensus data - distributed ledger technology, - would address the signatory noncompliance issue of the UN CAC. Through the PMO, receivership practitioners would be professionally trained and apply "block chain" technology, creating a centralized repository for qualified recovered assets.

CONCLUSION

As the economic value the UN CAC and corresponding international legal provisions identify for harvest have become increasingly difficult to deny, this presentation paper series began to attract invitations from the elite economics community. At this point, institutional recognition has accumulated a consensus that implementation of the multilateral PMO solution will contribute to related goals, particularly UN SDG #17.

As more research and development results and outcomes are reported, creation of a multilateral PMO attains credibility as a viable first step to fulfilling the promise of the United Nations Convention Against Corruption (UNCAC, 2003), the United Nations Office of Drugs and Crime 13th United Nations Congress on Crime Prevention and Criminal Justice Doha Declaration Global Programme on "integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation" (UNODC, 2015). It will make these promises that can actually be kept by all stakeholders, institutions, governments, corporations, business, civil society organizations and individual citizens throughout the world.

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APPENDIX A

Definitions

Alpha FTS Top-Down PPM PMO working title: Office of the Receiver General

Alpha FTS – Technical Expert, Consultant, Think Tank: Financial Technical Service (FTS), a concept relating to Administrative Mechanism / Practice / Procedure / Process

Top Down – the Terms within the United Nations Treaties, International Cooperation Agreements, Acts which provide the specific granular specifications of the actions relevant to the Portfolio, Program, Project Management as Professional Development Training and Practice

P – Portfolio; the Signatories, in-country signing authorities of the relevant international convention are the Attorneys General

PM – Program Management specific to the receivership component of the relevant international convention

PMO – Project Management Office, also located in the cloud

PPP – Public-Private Partnerships are the arrangement in which the private sector supplies infrastructure, assets and services traditionally provided by Governments

Receiver – the appointed practitioner, redefined by Alpha FTS, “receivership is not releasership”

SDGs – United Nations Sustainable Development Goals 1-17 and 169 Targets

APPENDIX B

Arguments in support of viability, feasibility and timing

Issues in Financial Industry

“We have seen cases where civil society organizations [CSOs] were extremely active proposing solutions, giving ideas and where they were listened to. Cases where eventually they ended up being sort of captured by organizations that were so devious and insidious and smart about enrolling it into their own purposes.” Christine Lagarde, Managing Director and Chair, IMF

http://www.imf.org/external/POS_Meetings/SeminarDetails.aspx?SeminarId=275

United Nations A/CONF.222/L.6

Thirteenth United Nations Congress on Crime Prevention and Criminal Justice:

Items 3, 4, 5 and 6 of the provisional agenda*

Comprehensive and balanced approaches to prevent and adequately respond to new and emerging forms of transnational crime;

<https://undocs.org/A/CONF.222/L.6>

“The greatest internal threat to US national security is the national debt.”

Dan Coats, US Intelligence Chief, testifying before the US Congress, February 2018.

Institutional Responses

United Nations General Assembly A/58/422 October 31, 2003

58/4. United Nations Convention against Corruption

<http://www.un-documents.net/a58r4.htm>

UNODC and IMF Model-Legislation on Money-Laundering and Financing of Terrorism December 2005

[https://www.unodc.org/documents/money-](https://www.unodc.org/documents/money-laundering/2005%20UNODC%20and%20IMF%20Model%20Legislation.pdf)

[laundering/2005%20UNODC%20and%20IMF%20Model%20Legislation.pdf](https://www.unodc.org/documents/money-laundering/2005%20UNODC%20and%20IMF%20Model%20Legislation.pdf)

United Nations Office on Drugs and Crime – Commonwealth Secretariat – IMF April 2009
Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime (for common law legal systems)
https://www.unodc.org/documents/money-laundering/Model_Provisions_2009_Final.pdf

Thirteenth United Nations Congress on Crime Prevention and Criminal Justice Doha, 12-19 April 2015
https://www.unodc.org/documents/congress/Documentation/ACONF222_L6_e_V1502120.pdf

UNODC Doha Declaration Global Programme: links between security, justice, the rule of law and sustainable development
<https://www.unodc.org/dohadeclaration/>

The multilateral project management office

“Institutions that are just not there”
Dr. Ngozi Okonjo-Iweala, former Finance Minister of Nigeria
Video IMF 15 October 2017 Seminar
http://www.imf.org/external/POS_Meetings/SeminarDetails.aspx?SeminarId=275

“have solicited the Executive Board to approve and authorize the IMF to look into new tool(s), different ways of dealing with the problem and different ways of enlisting the support of in-country authorities with whom the IMF work”. Christine Lagarde, Managing Director and Chair, IMF
Video IMF 15 October 2017 Seminar
http://www.imf.org/external/POS_Meetings/SeminarDetails.aspx?SeminarId=275

Timely topic: the IMF’s comprehensive renewing of how IMF should engage more effectively with IMF member countries amid the growing awareness that corruption is not just a moral problem but also an economic problem.
Video IMF 15 October 2017 Seminar:
http://www.imf.org/external/POS_Meetings/SeminarDetails.aspx?SeminarId=275

Accountability Asset Recovery: A Leadership and Sustainability Initiative Presentation Paper Series, A Practical CONCEPT NOTE for Harnessing Disruptive Forces to Evolve Best Practices to Next Practices and Qualified Asset Recovery Multilateral PMO Establishment Funding Sustainable Development Goals (available from the author upon request)