Imperfect Socialisers: International Institutions in Multilateral Counter-Terrorist Cooperation

Carlotta M. Minnella
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Thesis submitted in partial fulfilment of the requirements for the degree of DPhil in International Relations in the Department of Politics and International Relations at the University of Oxford

Trinity Term 2013

Word Count: 98,439 (excluding bibliography)

Abstract

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This thesis examines the effects of cooperation within multilateral counter-terrorist fora on the process of preference formation of a selected group of Western countries: the United States, the United Kingdom and Italy. The analysis focuses on the global counter-terrorist regime, a set of complex and multifaceted institutional arrangements, which were developed in the aftermath of the September 11, 2001, attacks in order to harmonise state counter-terrorist responses worldwide.

The study looks at three sets of formal international institutions within the regime: the United Nations, the Financial Action Task Force (FATF) and the European Union. It also selects a sample of three issue areas in multilateral counter-terrorist cooperation: counter-radicalisation policies, the inclusion of human rights safeguards within the main counter-terrorist sanctions provisions, and counter-terrorist financing standards.

The thesis identifies as the visible symptom of institutional effects the progressive convergence of policy outputs at member state level, and proceeds with an exploration of the processes of regime creation, evolution, reform, and participation on the part of the three country case studies.

The analysis reveals that the instances of pro-institution behaviour displayed by state actors are occasioned by image-related group-pressures, triggered by considerations of the maximisation of status markers and social praise, and the related avoidance of shame and social devaluation. The thesis labels this process social influence. The study further outlines the specific conditions under which interaction within a group can activate the social influence phenomenon and identifies the main triggers of state actors' particular sensitivity to image and shame.

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ACKNOWLEDGEMENTS

This research would not have been possible without the help and support of many institutions and individuals. I would like to thank the Scatcherd European Scholarship Fund and the Department of Politics and International Relations within the University of Oxford, the International Security Program at the Belfer Center for Science and International Affairs of the Harvard Kennedy School of Government, the START Program for the Study of Terrorism and Responses to Terrorism at the University of Maryland, the U.S. Department of Homeland Security, and the Academic Council on the United Nations System for their incredibly generous financial support throughout the course of this project.

Many scholars working within the field have provided me not only with inspiration but also with guidance during my studies. In particular, I would like to thank Dr. Steven Miller and Dr. Sean Lynn-Jones at the Belfer Center's International Security Program, as well as Ms. Susan Lynch for her organisation and support. I am also grateful to Prof. Ngaire Woods, my College Advisor, as well as to Professors Sibylle Scheipers, Neil MacFarlane and Duncan Snidal for their feedback at earlier stages of this work.

I would like to thank all those who agreed to be interviewed for this project, and the individuals who facilitated this interaction at the highest levels. Some of them have been personally acknowledged within this thesis, but I am equally indebted to all those who elected to remain anonymous.

I would not have completed this study without the support of my friends, both those I have made in the course of my research and those I met before starting my journey in Oxford, particularly Ilaria Ierep and Simona Benedetti – my two dearest friends – Robin Markwica and Honor Brabazon – two of my closest friends in Oxford – Nicola

Horsburgh, Emanuela Paoletti, Bianca Antonia Anechitei, Sr. Blandine Démiana Nasr, Susannah Cooke, Sandeep Sangupta, and Naomi Matthews.

My most special thanks go to Edith Pieper, Micaela McCandless and Pinta for having given me a home away from home, to little Marta for having helped me remember that there is always a reason to smile, and to my newly acquired 'family,' Alfonso, Annarita, Francesco and little Alessandro, who encouraged me to finish my 'homework for grown-ups' so that we could play videogames.

Most of all, I am indebted to my supervisor, Professor Rosemary Foot, who has been for me not only an amazing intellectual mentor but also a friend. It was an honour to work with and learn from her. Lastly, this journey could not have been possible without the love and support of my parents, Antonio and Tina, who have been there for me every step of the way.

ABBREVIATIONS

ACPO	Association of Chief Police Officers
AEDPA	Anti-Terrorism and Effective Death Penalty Act
AML	Anti-Money Laundering
APEC	Asia-Pacific Economic Cooperation
APG	Asia-Pacific Region
ARA	Assets Recovery Agency
ARS	Alternative Remittance Systems
ASEAN- ARF	Association of Southeast Asian Nations-ASEAN Regional Forum
ASEANAPOL	Inter-Asian Police
ASEM	Asia-Europe Meeting
ATCSA	Anti-Terrorism, Crime and Security Act
AU	African Union
BCBS	Basel Committee on Banking Supervision
BMENA	Broader Middle-East and North Africa
BoI	Bank of Italy
BSA	Bank Secrecy Act
CDD	Customer Due Diligence
CFI	Court of First Instance
CFATF	Caribbean Financial Action Task Force
CFSP	Common Foreign and Security Policy
CIA	Central Intelligence Agency
CIRT	Committee for the International Repression of Terrorism
CIS	Commonwealth of Independent States
COE	Council of Europe
COIN	Counterinsurgency
Consob	Commissione Nazionale per le Società e la Borsa
CONTEST	UK Counter-Terrorism Strategy
COTER	Working Party on Terrorism
CRC	Community Relations Commission
CSF	Comitato di Sicurezza Finanziaria
CTAG	Counter- Terrorism Action Group
CTC	Counter-Terrorism Committee
CTED	Counter-Terrorism Executive Directorate
CTF	Counter-Terrorist Financing
CTITF	Counter-Terrorism Implementation Task Force
CVE	Countering Violent Extremism
DAD	Democracy Assistance Dialogue (Initiative)
DEA	Drug Enforcement Administration
DCLG	Departments of Communities and Local Government
DIA	Direzione Investigativa Antimafia
DNA	Direzione Nazionale Antimafia
DNFBP	Designated Non-Financial Businesses and Professions
DOD	Department of Defence
DOS	Department of State
EAG	Eurasian Group on Combating Money Laundering and the Financing of Terrorism
EB	Economic and Business Affairs

EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECB	European Central Bank
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EEC	European Economic Community
EPA	Emergency Provisions Act
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EU	European Union
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation
FinCEN	Financial Crimes Enforcement Network
FSA	Financial Services Authority
FSRB	FATF-style Regional Body
FCO	Foreign and Commonwealth Office
FIU	Financial Intelligence Unit
FTATC	Foreign Terrorist Tracking Center
G-7/G-8	Group of Seven/Group of Eight
GAFISUD	Financial Action Task Force of South America Against Money Laundering
GIABA	Intergovernmental Action Group against Money-Laundering in West Africa
GPML	Global Programme Against Money Laundering
GdF	Guardia di Finanza
HMG	Her Majesty's Government
HMPS	Her Majesty's Prison Service
IAI	Istituto Affari Internazionali, Rome
IGO	Intergovernmental Organization
IO	International Organization
ICAO	International Civil Aviation Organization
ICRG	International Cooperation Review Group
ICSR	International Centre for the Study of Radicalisation and Political Violence, King's College, London
IEEPA	International Emergency Economic Powers Act
ILEA	International Law Enforcement Academies
IMF	International Monetary Fund
IMO	International Maritime Organization
INL	International Narcotics and Law Enforcement Affairs
INTERPOL	International Criminal Police Organization
IRA	Irish Republican Army
IRS	Internal Revenue Service
ISPS	International Ship and Port Facility Security (Code)
JCLEC	Jakarta Centre for Law Enforcement Cooperation
KYC	Know Your Customer
LAS	League of Arab States
LinCT	Leadership in Counter-Terrorism Seminar
MENAFATF	Middle East and North Africa Financial Action Task Force
MERCOSUR	(Mercado Común del Sur) Common Market of the South
MEF	Ministero dell'Economia e delle Finanze
MFA	Ministry of Foreign Affairs
ML	Money Laundering

MOD	Ministry of Defence
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NBFIs	Non-Bank Financial Institutions
NCCTI	Non-Cooperation Countries and Territories Initiative
NGO	Non-Governmental Organization
Noraid	Northern Aid Committee
NPWJ	No Peace Without Justice, NGO
NRW	North Rhine-Westphalia
NSC	National Security Council
NYPD	New York Police Department
NYU	New York University
OAS	Organization of American States
OAU	Organization of African Unity
OECD	Organization for Economic Cooperation and Development
OFAC	Office of Foreign Assets Control
OIC	Organization of Islamic Cooperation
OLA	Office of Legal Affairs
OPDAT	Overseas Prosecutorial Development, Assistance, and Training
OSCE	Organization for Security and Co-operation in Europe
P5	Five permanent members of the UN Security Council
PDD	Presidential Decision Directive
PET	Preventing Extremism Together (Initiative)
PIA	Preliminary Implementation Assessment
PIRA	Provisional IRA
POCA	Proceeds of Crime Act
PR	Public Relations
PSI	Proliferation Security Initiative
PTA	Prevention of Terrorism Act
RICU	Research, Information and Communication Unit
RUSI	Royal United Services Institute
ROSC	Report on the Observance of Standards and Codes
SAARC	South Asian Association for Regional Cooperation
SAFTI	Secure and Facilitated International Travel Initiative
SAR	Suspicious Activity Report
SDGT	Specially Designated Global Terrorist
SEC	Security and Exchange Commission
SOCA	Serious Organised Crime Agency
SPA	Special Powers Act
SR	Special Recommendation (FATF)
TAN	Transnational Advocacy Networks
TEGE	Tax Exempt and Government Entities Operating Division
TFAG	Terrorist Finance Action Group
TFFC	Terrorist Financing and Financial Crimes
TFI	Terrorism and Financial Intelligence
TFWG	Terrorist Finance Working Group
TREVI	Terrorism, Radicalism, Extremism and International Violence Group
TWEA	Trading with the Enemy Act
TWG	Terrorism Working Group

UIF	Unità d'Informazione Finanziaria
UNDCP	UN International Drug Control Programme
UNGA	United Nations General Assembly
UNCCT	United Nations Counter-Terrorism Centre
UNGCTS	United Nations Global Counter-Terrorism Strategy
UNHCR	United Nations High Commission for Refugees
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
USDOJ	U.S. Department of Justice
USUN	U.S. Mission to the United Nations
UVF	Ulster Volunteer Force

Chapter One

Introduction

> *Part of the difficulty in understanding multilateralism's diplomatic underpinnings, or foundational assumptions, is that multilateralism is what constructivist theorists call a taken-for-granted norm…In other words, aspects of the multilateral norm have become so deeply internalized that we no longer appreciate their causative and constitutive effects* (John Mearsheimer, 1994).[1]

> *We believe that at the end of the day whatever success military and police operations may have, the long struggle against this long term difficulty [terrorism] will be in the dull, boring, serious work of international diplomacy [and] institutional cooperation, particularly in the supra-national organizations like the European Union and the United Nations* (George A. Lopez, Thomas E. McNamara, 2008).[2]

This thesis explores the effects of multilateral cooperation in formal international institutions on states' decision-making in the field of counter-terrorism. It focuses on the attempts of three Western democracies – the United States, the United Kingdom and Italy – to respond to terrorism in the aftermath of the September 11 attacks through participation in selected international regulatory frameworks of the global counter-terrorism regime.[3]

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[1]Quoted in James P. Muldoon, Jr., JoAnn Fagot Aviel, Richard Reitano, Earl Sullivan, eds., *The New Dynamics of Multilateralism. Diplomacy, International Organizations, and Global Governance* (Philadelphia: Westview Press 2011), p. 5.

[2]Presentation of the book *Uniting Against Terror. Cooperative Non-Military Responses to the Global Terrorist Threat*, David Cortright and George A. Lopez, (eds.), (Cambridge: MIT Press 2007), January 29, 2008, Woodrow Wilson Center, Washington, D.C.

[3]Regulation is defined as 'the organization and control of economic, political, and social activities by means of making, implementing, monitoring, and enforcing of rules.' In Walter Mattli, Ngaire Woods, 'In Whose benefit? Explaining Regulatory Change in Global Politics', Walter Mattli, Ngaire Woods (eds.), *The Politics of Global Regulation*, (Princeton: Princeton University Press 2009), p. 1. This investigation thus responds to a consolidated trend in global politics: the migration of 'the regulatory process' from the traditional areas of trade, finance and the environment, to previously unchartered territories such as global human rights and security governance. For work that discusses this through the framework of global governance rather than international regulation, see for example, Thomas G. Weiss, *Global Governance and the UN: an Unfinished Journey*, (Bloomington: Indiana University Press 2010); David Held, 'Parallel

In a broader theoretical sense, this study examines an under-explored field of global regulation: the frontier area where international standard setting and rule enforcement meet domestic security. It treats 9/11 as a tale of two stories: the familiar account of a U.S experience, and a U.S.-driven response, and the lesser-known narrative of a 'global phenomenon'. This latter narrative is one that, as Steven Miller notes, has shown the 'instinct' of many 'leading governments to build and rely on multilateral mechanisms for coping with transnational threats.'[6] Since the attacks, an elaborate system of rules, regulations and institutional arrangements have come into being, shaping the structure of multilateral counter-terrorist cooperation.[7] Surprisingly, however, relatively little scholarly attention has been devoted thus far to an exploration of how these multilateral processes work to drive state behaviour in the high profile field of homeland security.

With this purpose in mind, this thesis rests on two premises and three closely interrelated questions: first, that such a complex system of cooperation has affected the policy output of the implementing states in a way that has not previously been adequately explained; second, that since 9/11 traces of such an effect can be found in an aggregate trend towards convergence of counter-terrorist instruments at the level of norms, policy statements, legislation, institutional structures, and agents' practices across a number of

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worlds: the governance of global risks in finance, security and the environment**',** in Craig Calhoun, Georgi Derluguian, (eds.) *Business as Usual: the Roots of the Global Financial Meltdown*, (New York: New York University Press 2011); David Held, Thomas Hale (eds.), *Handbook of Transnational Governance: New Institutions and Innovations*, (Cambridge: Polity Press 2011); Daniel W. Drezner, *All Politics is Global. Explaining International Regulatory Regimes*, (Princeton: Princeton University Press 2007); Emil J. Kirchner, James Sperling (eds), *National Security Cultures. Patterns of Global Governance*, (London: Routledge 2011).

[6]Steven E. Miller, 'The War on Terror and International Order: Strategic Choices and Global Governance', in Alan S. Alexandroff, Andrew S. Cooper (eds.), *Rising States, Rising Institutions: Challenges for Global Governance*, (Baltimore: Brookings Institutions Press 2010), p. 267.

[7]The array of norms, rules and arrangements developed to counter international terrorism in the aftermath of the 9/11 attacks conforms to Mark Webber's definition of security governance as the 'coordinated management and regulation of issues by multiple and separate authorities, the interventions of both public and private actors (depending upon the issue), formal and informal arrangements, in turn structured by discourse and norms, and purposefully directed toward particular policy outcomes,' in Max Webber, Stuart Croft, Jolyon Howort, Terry Terriff, Elke Krahmann, 'The governance of European Security,' *Review of International Studies*, vol. 30, 2004, pp. 3-26.

sub-policy sectors. From these observations follow this thesis's guiding questions: why do we detect a convergence in counter-terrorism behaviour? Have multilateral organizations played a role in promoting such a process and what are the mechanisms through which this process operates?

This study thus considers policy convergence as a 'particularly fruitful' empirical indicator of possible institutional effects on member states' behaviour and provides a framework to help understand these phenomena.[8] It links insights developed by current scholarly contributions on multilateral cooperation, counter-terrorism policy-making and social psychology and explores how membership of selected international institutions and cooperation among national security elites affects counter-terrorism policy instruments at member-state level. The examination combines macro and micro-level analytical perspectives in International Relations theory into an eclectic approach, which accounts for aggregate policy convergent trends and unit-level variation in the policy output of member states.

The main contention is that as a subset of security policies, counter-terrorism policies, like traditional defence policies, have ideational sources. Such a starting point places this work within constructivist theorising, while providing enough theoretical flexibility to benefit in its heuristic aims from the incorporation of non-ideational based accounts. This perspective accepts that cooperation among national security elites within key intergovernmental institutions (IGOs) can engender a change in security practices that will affect a country's policy preferences in the counter-terrorism arena.[9] The thesis

[8]Liliana Botcheva and Lisa Martin refer to similar premises in their study of the effects of international institutions on member states' behaviour. They acknowledge, crucially, that 'studies of institutional effects should concentrate directly on patterns of member state behavior.' In their words, 'one particularly fruitful way to do this is to ask whether state behavior…tends to converge or diverge as result of institutional action,' Liliana Botcheva, Lisa M. Martin, 'Institutional Effects on State Behavior: Convergence and Divergence,' *International Studies Quarterly*, vol. 45, n. 1, March 2001, pp. 4-5.

[9]In this thesis the terms international 'institutions' and international 'organizations' are used interchangeably. There exist, however, subtle differences between the two. For an overview of the main definitional and conceptual issues related to the use of these terms in IR see for example, Beth A.

describes the mechanism through which this process of preference change occurs as 'diffused social influence', 'imperfect' socialisation resulting from conformity-inducing group pressures on the action of states worried by status markers and status devaluation. It also advances the claim that in order to accurately map this process of preference homogenisation and pro-institution behaviour social and interest driven motivations *can*, and in fact *do*, coexist.

In order to illustrate these propositions, a sample is selected comprising both key issue-areas in multilateral counter-terrorism cooperation – namely counter-radicalisation, human rights protection and counter-terrorist financing – and country cases that present convergent policy trends in the face of divergent departing conditions at the levels of norms, laws, institutional structures, elites' practices, and most importantly regime participation.[10] These choices will be justified later in this introductory chapter. The main dependent variable of the study is the counter-terrorism policies observed in this group of Western countries. The analysis traces policy development, diffusion and implementation of the selected instruments in the country cases, and gauges the competing influence of international and domestic factors in leading to the current outcome. In so doing, it sheds light on the scope and limits of IGO agency in the foreign and security policy field.

As a result, this thesis tells the story of counter-terrorism policy-making in the post-9/11 environment from three distinct yet interrelated perspectives: at the multilateral level, focusing on the measures originating within the United Nations, the European Union and the G-7/G-8 via the Financial Action Task Force (FATF); at member-state

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Simmons, Lisa L. Martin, 'International Organizations and Institutions', in Walter Carlsnaes, Thomas Risse, Beth A. Simmons (eds.), *Handbook of International Relations*, (London: SAGE 2002), pp. 192-205. Similarly, I refer to the concept of socialisation of states in international institutions as a proxy for government and security elite socialisation. See for example, Alastair Iain Johnston, *Social States*, *China in International Institutions, 1980-2000*, (Princeton: Princeton University Press 2007).

[10] I contend that processes of convergence affect state behaviour at different levels, namely influencing verbal and public responses; policy statements and primary legislation; secondary legislation, structures and practices. For a comprehensive analysis please refer to Chapter Two.

level, looking at the counter-terrorism responses of three countries – the United States, the United Kingdom and Italy; and at a median level of enquiry, concentrating on the feedback relationships between the state and multilateral unit levels of analysis.

1.1. Significance of this study

Exploring such trends matters for both practice and theory. From a policy perspective, this study permits comparison of national and international approaches to the countering of terrorism, identifying scope conditions for effective dissemination and implementation of national and multilateral counter-terrorism instruments at member-state level, while ultimately testing the effectiveness of national and multilateral efforts in promoting specific foreign and security policy agendas.

From a broader theoretical perspective, this work contributes to an understanding of the influence of international organizations on state behaviour. Challenging well-known critiques of institutions as epiphenomenal, this study proceeds along the path set by scholars of international organizations and expands, in particular, the constructivist research agenda on institutional effects.[11] It builds on contributions that examine norm promotion and diffusion of beliefs and standards of appropriate behaviour on the part of international organizations, and unpacks the process of preference formation at member state level, achieving greater depth of understanding of these phenomena.

[11]John J. Mearsheimer, 'The False Promise of International Institutions,' *International Security*, vol. 19, n. 3, pp. 5-49. Among the most well-known constructivist contributions to the understanding of institutional effects on state behaviour see, for example, Jeffrey T. Checkel, 'Norms, Institutions, and National Identity in Contemporary Europe,' *International Studies Quarterly*, vol. 43, n. 1, 1999, pp. 83-114; Martha Finnemore, 'International Organizations as Teachers of Norms: the United Nations Educational, Scientific, and Cultural Organization and Science Policy', *International Organization*, vol. 47, 1993, pp. 565-597; Martha Finnemore, 'Norms, Culture, and World Politics: Insights from Sociology's Institutionalism,' *International Organization*, vol. 50, n. 2, 1996, pp. 325-347; Martha Finnemore, Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization*, vol. 52, n. 4, 1998, pp. 887-918; Jeffrey W. Legro, 'Which Norms Matter? Revisiting the Failure of Internationalism,' *International Organization*, vol. 51, n. 1, 1997, pp. 31-63.

In particular, this study seeks to add further analytical perspective to three crucial and closely interrelated debates in International Relations literature, while equally speaking to empirical analyses on counter-terrorism policy-making. First, it challenges research on state compliance with international norms that underscores the role of material factors, such as utility maximisation and cost avoidance, and points to reputational mechanisms as triggers of states' acquiescence with institutional rules (for example, Keohane, 1984; Martin, 1998; Brooks and Wohlforth, 2008). Carving out a space for social factors to be considered as important explanatory variables in the examination of why states cooperate and comply, this thesis looks at the non-material influence of group dynamics on state actors' propensity to participate in international regimes: this work labels this process 'diffused social influence'.

Second, in its analysis of state actors' concern for the effects of shame avoidance and status maximisation, this study looks beyond the unsatisfactory outcome of social sanctioning practices documented in the literature under the labels of 'on paper' or 'mock' compliance, and instead details the social and emotional dynamics that lead states to cooperate in the first place.[12] To this end, the thesis conceptualises social influence as a *diffused* socialisation mechanism, whereby formal institutions act not as pedagogic environments with clearly finite boundaries – as in Alexandra Gheciu's analysis of NATO as a norm entrepreneur – but rather as catalysts in a process of induction that occurs both at the formal level of international organizational settings and at the informal one of transnational networks and non-governmental organizations. Formal institutional

[12]For studies that tend to highlight the superficial nature of the effects of social sanctions and naming and shaming practices see for example, Andrew Walter, *Governing Finance: East Asia's Adoption of International Standards*, (Ithaca: Cornell University Press 2008); Emilie M. Hafner-Burton, 'Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem', *International Organization*, vol. 62, n. 4, October 2008, pp. 689-716; Pierre Rosanvallon, *Counter-Democracy. Politics in an Age of Distrust*, (Cambridge: Cambridge University Press, 2008); Pascal Vennesson, 'War under transnational surveillance: framing ambiguity and the politics of shame', *Review of International Studies*, vol. 40, 2014, pp. 25–51.

venues, such as the UN counter-terrorism bodies and the FATF, provide the space where the need for countries to take a position on certain normative issues is generated, via a combination of intra-group dynamics and exposure to transnational pressures. The attention is therefore refocused on international institutions per se, challenging scholarship that considers IGOs as intellectually passé in a new global (security) governance environment dominated by transnational (advocacy) networks (e.g. Keck and Sikkink, 1998; Slaughter, 2005).

Third, by adopting the interdisciplinary perspective of the 'psychological stream' of IR literature contributions, which explores the relationship between psychological variables and decision-making, this project proposes to address the challenge of adding clarity to pragmatic theoretical positions that wish to reconcile rationalism and reflectivism in International Relations. Specifically, this analysis recognises the unease displayed by several key contributors when having to account for instances in which self-interest, costs and factors that are not 'purely instrumentally rational' concur in explaining an actor's propensity to cooperate, comply, reject alignment with the reference group, or alter one's behaviour.[13] Recent scholarship by Pascal Vennesson, for example, has renewed this plea for an analytical enterprise that does not shy away from what he calls the 'ambivalent outcome[s]', those for which Ernst Haas's idea of a 'realist-constructivist' framework of analysis could provide useful insights.[14] In line with this argument, this thesis puts forth a theorisation of the social influence concept that allows it to move beyond what Cristina Bicchieri has labeled a 'longstanding tradition' in the study of norms of cooperation in the social sciences: the fact of 'contrasting instrumental rationality and social norms as alternative ways of explaining action' [;] a typical form of 'post hoc, ergo propter hoc fallacy', whereby 'the mere presence of a social norm'

[13]Joshua W. Busby, *Moral Movements and Foreign Policy*, (Cambridge: Cambridge University Press, 2010), p. 105.
[14] Vennesson, 'War under transnational surveillance', p. 25.

justifies scholars in their inferring that '[such norm] is there to accomplish some social [rather than material] function.'[15] According to this study's perspective, such a starting point could instead be a very fruitful way to unpack the mechanisms of institutional influence, especially in the relatively unchartered territory of multilateral institutional cooperation in counter-terrorism, where competing logics of action – material and non-material – exist side by side.

Earlier work downplayed these potential contributions to our understanding of policy-making. It criticised multilateral counter-terrorism efforts as either 'chaotic' or simply as 'mood music'.[16] These views have tended to dominate the scholarly debate on multilateral action in the field of counter-terrorism in earlier periods, contributing to avoidance of this field of enquiry. Conversely, the more recent surge in the scope of multilateral counter-terrorism initiatives after 9/11 has attracted an increasing degree of scholarly attention. Contributions on the topic, albeit limited in number, have agreed in recognising that there is much heuristic value to be gained by exploring why and how countries coordinate their policies in this sensitive and key security field.

Among these analyses, Patryk Pawlack has explored transatlantic cooperation between U.S. and EU security elites in a specific field, the Passengers' Name Agreement, underlining the role of networks alongside that of traditional fora.[17] Hendrik Hegemann has devised a typology of IGO agency that provides an overview of the fields in which global venues act in counter-terrorism.[18] Barak Mendelsohn's work has theorised multilateral counter-terrorism cooperation as the product of the entrepreneurial activity of

[15]Cristina Bicchieri, 'Norms of Cooperation', *Ethics*, vol. 100, July 1990, p. 838.
[16]Martha Crenshaw, *Terrorism and International Cooperation, (*New York: Institute for East-West Security Studies 1989); Paul Pillar, *Terrorism and U.S. Foreign Policy,* (Washington: Brookings Institution Press 2001).
[17]Patryk Pawlak, 'Network politics in transatlantic homeland security cooperation: A European dimension', EUI PhD Thesis 2009.
[18]Hendrik Hegemann, 'Governing the Fight Against Terrorism: Comprehensive Counter-Terrorism Cooperation and the Contested Agency of International Organizations', Paper Presented at the Annual Meeting of the International Studies Association, Montreal 2011.

a leading hegemonic country, the United States, whose actions and preferences are rooted in shared normative-based understandings and rules, rather than on mere considerations of power.[19] Peter Romaniuk and Anna Beyer have shed some light on states' preference or lack thereof for multilateral forms of cooperation.[20] Romaniuk's work, in particular, has recognised the need to focus on the convergence of policy outputs at member state level as the visible indicator of international cooperation.[21] This insight is extremely important, given that it runs counter to mainstream analyses of counter-terrorism policy-making, which tend to predict diverging outputs even under similar threat conditions, referring to the 'dysfunctional' impact of cultural traits on policy production.[22]

1.2. Analytical Framework

In the next chapter the thesis embraces the premise that amidst the extreme diversity of measures and objectives pursued by each state, a *de facto* convergence of policy choices is observable at the ground level of practice. An inventory of implementation records suggests a rapprochement between the United States and key EU member states in the fields of capacity building, human rights protection and the tackling of root-causes. Several policy documents have, for example, underscored the idea of

[19]Barak Mendelsohn, *Combating Jihadism. American Hegemony and Interstate Cooperation in the War on Terrorism*, (Chicago: University of Chicago Press 2009).
[20]Peter Romaniuk, *Multilateral Counterterrorism. The Global Politics of Cooperation and Contestation*, (New York: Routledge 2010); 'Institutions as Swords and Shields. Multilateral Counter-Terrorism since 9/11', *Review of International Studies* 36, vol. 3, pp. 591-613; 'How Northern Norms Affect the South. Adopting, Adapting, and Resisting the Global War on Terror in South and Southeast Asia', In R. Reuveny and W. R. Thompson (eds.), *Coping with Terrorism. Origins, Escalation, Counterstrategies, and Responses*, (Albany: SUNY Press 2010), pp. 315-347; Anna Cornelia Beyer, *Counterterrorism and International Power Relations. The EU, ASEAN and Hegemonic Global Governance*, (London/New York: Tauris 2010).
[21]Peter Romaniuk, 'Global and Local Wars on Terror: Policy Convergence and Counter-Terrorism in South and SouthEast Asia', PhD dissertation, Brown University, May 2006.
[22]On this point see, for example, Colin S. Gray, *Modern Strategy*, (Oxford: Oxford University Press 1999) and, more recently, Frank Foley, *Counterterrorism in Britain and France. Institutions, Norms and the Shadow of the Past*, (Cambridge: Cambridge University Press 2013).

adopting a preventive stance with respect to terrorism, promoted initiatives to address the issues of violent radicalisation and recruitment, and stressed the link between the protection of human rights and effective counter-terrorism initiatives. Since 2007, even the U.S. Department of State – once the spokesman for the Bush administration's War on Terror – has joined the chorus of voices calling for a 'holistic' counterterrorism approach, focused on the promotion of personal freedom, good governance and economic development.

This finding of convergence of policy choices is important because it contradicts influential existing predictions, which forecast diverging policy outcomes based on contrasting security identities, following in the footsteps of Peter Katzenstein's 2001 analysis of German, U.S. and Japanese responses to 9/11.[23] In investigating this process, this contribution moves one step further with respect to extant contributions in the counter-terrorism field, and this in two different respects. First, it explores the effects and development of this trend within what are traditionally regime setting, rather than novice, countries. This choice and its important analytical consequences will be justified later in this chapter. Second, it favours a constructivist approach, which considers behaviour as norm-driven and argues that a full understanding of state preferences requires an analysis of the social processes by which norms evolve and state identities are constituted. From this perspective, this analysis considers socialisation-based explanations of policy convergence as unique vantage points from which to launch an enquiry into the origins of security preference formation and convergence of outputs across units.[24] Policy-convergent behaviour in the counter-terrorism policy-making arena is seen as the result

[23]Peter J. Katzenstein, 'Same War: Different Views: Germany, Japan and Counterterrorism', *International Organization*, vol. 57, no. 4, Fall 2003.
[24]As remarked by Peter J. Katzenstein, Robert O. Keohane, Stephen D. Krasner, '*International Organization* and the Study of World Politics', in Peter J. Katzenstein, Robert O. Keohane, Stephen D. Krasner (eds.), *Exploration and Contestation in the Study of World Politics*, (Cambridge: the MIT Press 1999), pp. 40-41.

of partial 'endogenous change in the normative characteristics and identity of the actors involved'.[25] As mentioned above, however, rather than dismissing the underlying logic of consequences of mainstream realist, neorealist and liberal institutionalist explanations – with their emphasis on exogenous interest-driven constraints on state action – this particular stance retains realists' appreciation for the strategic usefulness of certain norms.[26]

In line with this particular theoretical posture, a system of social interaction loosely structured along the lines of Alastair Iain Johnston's notion of a 'tight feedback relationship' is modeled, wherein the historically-rooted characteristics of both the 'social environment' (international fora) and the 'individual agent' (member states) combine, interact and evolve to produce the outcomes currently visible on the ground. Following Johnston, it is equally assumed that varying degrees of socialisation (role playing, social influence and full internalisation) can be observed empirically. In order to fully appreciate the mechanism by which such interaction develops, both the multilateral unit levels of analysis – i.e. the social or learning environments where the interaction takes place – and the member state level of enquiry are investigated, alternately gauging the explanatory value of ideational, domestic and interest-based explanations in selected sub-policy issue areas.

The conclusion this investigation reaches points to the fact that multilateral cooperation in the area of counter-terrorism affects the output of states mostly at the level of values, norms and expectations, engendering convergent effects in the conceptual framing of both the policies and state discourse. This phenomenon derives *both* from material and non-material logics of action, as the combined effect of image-driven considerations ascribable to social influence *and* strategic calculation typical of rational

[25] Johnston, *Social States*, p. xiv.
[26] Johnston, *Social States*, p. 15.

actor behaviour. In this process, these same multilateral institutions retain agency – considered here as both an ability to act and an ability to influence behaviour – via second-order effects, bypassing the decision-making power of regime-setting actors within the institution and indirectly influencing the diffusion of norms, policy and practices as catalysts of a process of socialisation within a multi-venue and multi-actor social environment. This phenomenon of imperfect diffused socialisation, illustrated in detail in the theory chapter of this thesis, is exemplified by the agenda-setting and norm-receiving role enjoyed by the United States, which over the course of a few years shaped the post-9/11 multilateral counter-terrorism response via the adoption of UNSC Resolutions 1373(2001) and 1267(1999). The U.S. resisted, but could not, however, control – and ultimately had to adapt to and implement – the changes that were made to that regime by non-P5 countries and multilateral bodies. These changes, *inter alia*, brought human rights safeguards back into the UN Security Council's (UNSC) counter-terrorism equation.[27]

1.3. A closer look at the independent variable: multilateral counter-terrorist cooperation

The first analytical layer of this thesis, multilateral cooperation in counter-terrorism, has given rise in the post-9/11 environment to a complex and multifaceted global regime where different levels of institutional and state action occur.[28] The system

[27]In interviews, the normative influence of IGOs emerged as a background factor that was not explicitly acknowledged by practitioners belonging to regime-setting countries, but was recognised by members of smaller or *ad hoc* coalitions.

[28]To this end, Romaniuk has compared multilateral counter-terrorism to Raustiala and Victor's idea of a 'regime complex', i.e. an array of partially overlapping and nonhierarchical institutions governing a particular issue area. See Peter Romaniuk, *Multilateral Counter-Terrorism*, p. 10 and Kal Raustiala and David Victor, 'The Regime Complex for Plant Genetic Resources', *International Organization*, vol. 58, n. 2, 2004, p. 279.

has been defined as the practice of coordinating action among three or more states, by means of institutions or via *ad hoc* arrangements, where the stated objective is to counter terrorism.[29] Multilateral action in this issue area performs both internal and external security governance functions, combining policies of assurance, prevention, protection and compellence.[30] This complexity of tasks mirrors the architecture of post-9/11 multilateral counter-terrorism cooperation, a multilevel regime where patterns and intensity of cooperation vary across sectors and fora.

According to Romaniuk, there exist five levels of multilateral counter-terrorist cooperation: global, regional and sub-regional, affinity-based, limited-membership, and *ad hoc*/informal groups.[31] These are represented in Table 1. The first category, global cooperation, the main focus of this thesis, refers to the counter-terrorist measures advanced within the UN-wide system, which comprises the UN Security Council, Secretariat and General Assembly, several UN specialised agencies, as well as *ad hoc* bodies such as the UN Counter-Terrorism Committee (CTC) and the Counter-Terrorism Implementation Task Force (CTITF).

The second category, regional and sub-regional cooperation – while limited in its geographical scope – has functioned as a transmission belt for global counter-terrorism

[29]This definition combines Keohane's and Romaniuk's. See Peter Romaniuk, *Multilateral Counterterrorism*, and Robert Keohane, 'Multilateralism: An Angenda for Research', *International Journal*, vol. 45, n. 4, 1990, pp. 731-764.

[30]James Sperling and Emil Kirchner created a four-category typology of security governance functions, comprising assurance, prevention, protection and compellence. The first category, assurance, identifies post-conflict reconstruction and stabilisation efforts. The second category, prevention, focuses on the prevention of conflict via the creation of domestic, regional and international institutions devoted to the mitigation of anarchy and the provision of order. Common policies of prevention include non-proliferation, arms control and technical assistance to promote economic and political reform. Protection refers to internal and multilateral efforts to defend society from external threats, including terrorism, while compellence describes conflict resolution via military intervention. This approach has the merit of including internal security governance functions in the typology, but it oversimplifies it in its attempt to provide a streamlined structure to frame the analysis. Counter-terrorism policies characteristically fall into all four categories, comprising military-led initiatives, regulatory, legal–judicial responses, and appeasing options. See Neil Livingstone, 'Proactive responses to terrorism: reprisals, pre-emption and retribution', in C. W. Kegley, ed., *International terrorism: characteristics, causes, controls*, (New York: St Martin's Press, 1990), pp. 219–227. James Sperling, Emil Kirchner, *National Security Cultures*.

[31] Peter Romaniuk, *Multilateral Counter-Terrorism*, chapters 1-4.

action for several years, often preceding or complementing the main UN approaches while maximising local expertise and attention to specific sensitivities.[32] It is in this capacity that this type of institutional arrangements is taken into consideration in this study. For instance, regional multilateral counter-terrorism cooperation within the European Union has similarly inspired the development of the post-9/11 UN regime, while providing its member states with an EU-based comprehensive framework to fight international terrorism and with a legal platform for the incorporation of international counter-terrorist provisions into domestic legislative frameworks.

Affinity-based groups, the third level of multilateral counter-terrorism cooperation, generally tie coordinated action in counter-terrorism to specific and often highly politicised issues. The most well-known historical example, the Non-Aligned Movement (NAM), has championed over the course of the Cold War the notion of focusing on 'root causes' which has now become embedded in the global counter-terrorism discourse. A fourth category, limited-membership groups, includes venues such as NATO, the G-7/G-8 and the FATF. These have provided states with more flexible cooperative arrangements to advance operational-level tasks, while often adopting a broad counter-terrorism agenda geared towards military and non-military capacity-building assistance and coordination. Lastly, cooperation within informal and *ad hoc* networks and groupings occurs mostly in the fields of law enforcement and intelligence, terrorist financing, counter-radicalisation and maritime security, where multilateral institutional agreements coexist with a complex array of more or less institutionalised arrangements, which provide venues where policies and practices are coordinated, produced, diffused, and implemented at member state level. A case in point is the Leadership in Counter-Terrorism Seminar (LinCT) conducted annually between

[32] Peter Romaniuk, *Multilateral Counter-Terrorism,* p. 110-122.

representatives of the United States, the United Kingdom, Australia, Canada, and New Zealand's principal law enforcement agencies: its limited membership base, highly specific focus and informal structure have made this high-level workshop one of the favourite venues where counter-terrorism practitioners exchange notes on counter-radicalisation practices worldwide.[33]

Table 1. Multilateral Counter-Terrorism Cooperation: an Overview[34]

TIME PERIOD / **FORUM TYPE**	1870-1918	1919-1944	1945-2000	2001 –
GLOBAL		League of Nations' **CIRT**, 1934-1937 (11 countries – mandate to draft preliminary convention)	**12 Anti-Terrorist Conventions** (1961-1999) **6th Committee of the UNGA** (1970s-1980s) **UNSC** (Res. 731, 748, 883, 1267, 1990s) **UNGA**(1990s) IMO, ICAO, UNODC	**UNSC** (Res. 1373, 1390, 1456, 1535, 1566, 1624) **13th Anti-Terrorism Convention (Suppression of Nuclear Terrorism),** 2005 **UNGCTS**, 2006

[33]The Leadership in Counter Terrorism Program (LinCT), which brings Law Enforcement and Counter Terrorism Leaders together with academia across three continents, is hosted annually at the Harvard Kennedy School of Government. Interview with Eric B. Rosenbach, former Executive Director for Research, Belfer Center for Science and International Affairs, Harvard Kennedy School of Government, currently Deputy Assistant Secretary of Defence for Cyber Policy, Cambridge, MA, September 19, 2009.
[34]Adapted and integrated from Peter Romaniuk, *Multilateral Counter-Terrorism*.

REGIONAL/SUB-REGIONAL			**OAS,** 1971 **EEC (TREVI)** **CIS**, 1999 **SAARC**, 1987 **OAU,** 1999 **COE**, 1977	**EU** (2001 –, plan of Action, Strategy, Counter-Radicalisation Strategy, etc.) **MERCOSUR**, 2001 **OSCE**, 2001 – **OAS**, 2002 **AU**, 2004 **COE**, 2006 **ASEAN-ARF**, 2007 **APEC,** post 9/11
AFFINITY BASED	**Anti Anarchist Conference**, Rome 1898 (21 countries) **St. Petersburg Anti-Anarchist Protocol**, 1904 (10 countries)		**LAS**, 1998 **NAM**, post-9/11 **OIC**, 1999	
LIMITED-MEMBERSHIP			**G7/G8** **NATO** **FATF**, 1989	**G7/G8 (CTAG)** **FATF** **NATO** **ISPS** **PSI** **CSI**
AD-HOC/INFORMAL	√		√	**ASEANAPOL** **NYPD** **UK/US Agreement** **Club of**

				Berne **JCLEC** **NATO** **Special Committee** **LinCT**

1.3.1. Variable selection: which *loci* of cooperation?

A thorough understanding of the dynamics underlying institutional effects on states' policy-making in the counter-terrorism field requires that the complex interactions between the different levels of cooperation detailed above be taken into consideration, in order to account for the actual modes through which states engage and determine their policies and measures. In practice, this warrants that a selection be operated at the level of the independent variable whose effects on state behaviour this thesis proposes to map. Which institutional settings should be examined when studying the effects of cooperation on the behaviour of participant actors?

Given the complexity of the regime outlined above and the inevitable requirements related to operationalising the variable, of which more will be said in the methodological section of this chapter, a choice was made to privilege formal institutions with a global vocation. Following Abbott and Snidal's definition, formal institutions are intended here as international organizations that allow for the 'centralization of collective activities through a concrete and stable organizational structure and a supportive administrative apparatus.'[35] The iteration of institutional engagement on the part of states within these formalised settings permits a comparative investigation of the nature of the effects that such a repeated interaction engenders, as well as of the motivational drivers –

[35]Kenneth W. Abbott, Duncan Snidal, 'Why States Act Through Formal International Organizations', *Journal of Conflict Resolution*, vol. 42, n. 1, February 1998, p. 4.

accounted for in different ways by IR literature – that guide state behaviour. In line with the diffused conceptualisation of the socialisation process this thesis proposes, the formal structure of the organizational environment selected for the purpose of this study does not entail, however, that the focus of the analysis be confined exclusively to these institutional actors: rather, these venues are seen as catalysts in a social process that extends to states as well as non-state actors, non-governmental organizations and networks, all mediated by institutional links. The second requirement, the global vocation of the measures promoted by the institution, entails that diverse types of state actors, with relatively different stakes in the various policy issue areas examined, be equally exposed to the international instruments analysed. This choice equally has significant theoretical implications, which will be addressed shortly.

At the ground level of practice, while the United Nations and its counter-terrorism bodies are an obvious choice as the main umbrella organization under which the counter-terrorism regime is structured, an equally interesting option due to its policy focus – the primary area of action of the counter-terrorism regime – its global reach and its incorporation within the United Nations' counter-terrorism system is the Financial Action Task Force. An issue of the G-7/G-8, and thus technically a limited-membership group within the global counter-terrorism regime, this body has in effect managed to become the reference institution for the regulation of counter-terrorist financing action worldwide. In particular, ever since the creation of the UN counter-terrorism regime under the umbrella of the Security Council in September 2001, the United States has utilised FATF to globalise counter-terrorism financing standards and promote effective implementation at member state level.

After the Counter-Terrorism Committee lost momentum following the end of Jeremy Greenstock's chairmanship in 2003, the Task Force became the venue of choice

for both standard setting and enforcement efforts in the counter-terrorism financing field. This is not to deny the significance of the UN counter-terrorism financing effort under Security Council leadership: the system of country reports by nation capitals and Foreign Ministries' Permanent Representatives – established under the Counter-Terrorism Committee's supervision and of which more will be said in the next section of this chapter – introduced significant innovations and was met with an overwhelmingly good response on the part of member states, which were eager to submit their reports to New York. In practice, however, ever since the Task Force incorporated the UN counter-terrorism financing provisions in December 2001, national implementation of UN counter-terrorism financing standards has passed through the FATF's compliance-inducing mechanism. For these reasons, it is contended here that the Task Force is the institution of reference when analysing domestic alignment with multilateral counter-terrorism financing norms.

A corollary consideration needs to be added concerning the role of the European Union. While the thesis does not explicitly focus on this institution, global counter-terrorist provisions are *de facto* implemented in two of the selected country case studies via the filter of European institutions, while European Union member states employ their position within the Union – namely the rotating Presidency of the Council of the European Union – and make use of its political leverage to raise specifically EU concerns – such as human rights safeguards – in UN venues, affecting the policies of non-EU members. It is in this dual light that it is therefore indispensable to factor this organization into the analysis and that the EU will be included in the narration, while it is also worth noting that many of the group-driven effects detailed in the thesis also apply, at a regional scale, to EU fora.[36]

[36] To this end, Javier Argomaniz has noted how the Office of the Counter-Terrorism Coordinator within the

The following sections provide an overview of multilateral counter-terrorist cooperation in these three bodies.

1.3.1.1. The United Nations and counter-terrorism

Neither the UN nor the EU or the G-7/G-8 came to the counter-terrorism policy area in 2001 in the absence of powerful antecedents. Global counter-terrorist cooperation in fact dates back to the 1930s, when the League of Nations mandated the Committee for the International Repression of Terrorism (CIRT) to draft a global counter-terrorism convention.[37] Signed by twenty-four states but ratified only by one, India, the convention failed to enter into force. After a hiatus of more than thirty years, the issue reappeared on the post-WWII international agenda in the late 1960s, with the United Nations as its global stage. Early counter-terrorist negotiations in this forum typically followed a double pattern, which characterised multilateral counter-terrorist cooperation for the remainder of the Cold War. Members of the Western and Eastern blocs would attempt to agree on a global convention, failing to reach a consensus on whether to include in the text the issue of the root causes of terrorism – thus practically recognising the legitimacy of struggles for national liberation – as well as a definition of the term terrorism itself. The stalemate within the UN Security Council would then migrate to the General Assembly, where countries would either refuse to put it on the agenda or defer to the

EU has set up a 'naming and shaming' unit to embarrass members into compliance. This 'name and shame' approach, involving the 'nurturing of peer pressure' through the use of implementation reports, is considered by the Counter-Terrorist Coordinator office as reasonably effective, despite the fact that it carries only symbolic, rather than material, costs: 'you would be quite surprised to know that we usually have a rush of people coming forward just before the implementation table is about to be done. So that shows that they do take that seriously to a certain extent'. Quoted in Javier Argomaniz, 'The "Achilles' Heel"? The Challenge of Implementation in EU Counter-Terrorism', Paper prepared for the ISA Annual Convention, New Orleans, February 17-20, 2010, p. 21.

[37] Peter Romaniuk, *Multilateral Counter-Terrorism*, pp. 20-29.

Sixth Committee.[38]

Effective cooperation would still be achieved, but on an *ad hoc* basis, spilling over from issue-area to issue-area thanks to the functional expertise of UN specialised agencies. In this way, thirteen Conventions were adopted before 2001, addressing topics as diverse as the unlawful seizure of aircrafts and the financing of terrorism, while the issue of a global convention still remains outstanding at the moment of writing. These patterns of behaviour have affected counter-terrorism cooperation in the post-9/11 environment. Member states' lack of agreement has translated into a demonstrated preference for a piecemeal approach and multiple forms of cooperation, triggering episodes of 'forum shopping' on the part of less powerful states and giving ammunition to Martha Crenshaw's early description of this international field as a 'redundant' and 'chaotic' array of initiatives.

The September 11 attacks altered this scenario, triggering a 'period of extraordinary politics' that allowed the Council to take action in areas and ways that were previously considered taboo. Counter-terrorism cooperation therefore grew in scope and quality, and so did its impact on member states' policies. On September 28, 2001, spearheaded by the United States, Council members passed Resolution 1373, establishing the Counter-Terrorism Committee, comprising all members of the Security Council and obliging states to take a number of measures to prevent terrorist activities, enhance cooperation among countries, and adhere to the thirteen UN international counter-terrorism instruments. To assist the Committee's work, in 2004 the Council

[38]In the hope of finding a common position or in expectation that no consensus would be found. A case in point is the Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism, sponsored by the United States in response to the attacks against the Israeli team at the Munich Olympics. The U.S. draft was not even put to the vote, while a more moderate Western European draft drew vetoes from China, Russia and the non-aligned members of the Council. Then Secretary-General Kurt Waldheim forced the issue on the Assembly's agenda, where the original wording was amended to preserve the legitimacy of national liberation movements. The debate then continued in the Sixth Committee. The broader divisions of the Cold War thus profoundly curtailed UN counter-terrorism efforts.

passed Resolution 1535, establishing the Counter-terrorism Executive Directorate (CTED) to monitor implementation of Resolution 1373, and facilitate the provision of technical assistance to member states. Resolution 1373 brought to the attention of the international community the organization's role as a potential international lawmaker, particularly in the field of counter-terrorist financing.[39] The relative success of the 1373 regime thus contributed to challenging the perceptions of UN unreliability and lack of significance in the counter-terrorism field that had affected the organization's reputation during the Cold War and its immediate aftermath.[40] In this respect, Resolution 1373 contributed to the framing of the response to terrorism as an international effort, promoting at state level the idea of 'cooperative security' when addressing counter-terrorism issues and stressing the principle of multilateralism as a 'constitutive', rather than a merely procedural, norm in this area. It also drew particular attention to the fight against terrorist financing, enhancing the provisions of the related UN Convention of 1999 and preferentially channelling states' efforts toward this global problem.[41]

The 1373 framework is complemented by the equally significant 1267 regime, the second pillar of the UN counter-terrorism approach. Based on Resolution 1267 of 15 October 1999, introducing sanctions against the Taliban and the members of Al Qaeda, the regime was modified and strengthened in particular by Resolution 1526 (2004),

[39]Alexander Marschik, 'The Security Council's Role: Problems and Prospects in the Fight Against Terrorism', in Nesi, ed., *International Cooperation in Counter-terrorism. The United Nations and Regional Organizations in the Fight Against Terrorism*, chapter 5, p. 77.

[40]The decision of the UNSC to act as a lawmaker was deemed, however, as very controversial. States objected to this new role on grounds of principle. Karin von Hippel, 'Improving the International Response to the Transnational Terrorist Threat', in Boulden, Weiss, (eds.), *Terrorism and the UN. Before and After September 11*, p. 113.

[41]In stating that multilateralism is a 'constitutive' principle, rather than a merely procedural one, I want to underline that UN action to counter terrorism has framed the response as cooperative and international, radically modifying, as it will be shown in the following chapters, states' approaches to the threat. Evidence of this can be found in the way the Italian Ministry of Foreign Affairs frames and describes its counter-terrorism response. See Giulio Terzi,'La cooperazione multilaterale contro il terrorismo ed il ruolo dell'Italia', *Affari Esteri*, anno 39, no. 156, pp. 816-825. On countering terrorist financing see, T. J. Biersteker, Sue E. Eckert, (eds.), *Countering the Financing of Terrorism*, (London and New York: Routledge 2007). For a detailed analysis of counter-terrorist financing action within the UN, including references to the negotiations of the 1999 counter-terrorist financing convention, see Chapter 5 of this thesis.

which created the Monitoring Team to oversee implementation of the sanctions. In 2006, Resolution 1730 established a Focal Point process where those added to the *Consolidated List* of individuals and entities linked with Al Qaeda and the Taliban could directly address de-listing requests. With respect to this thesis's analytical goals, the significance of the 1267 framework cannot be underestimated and it will be the object of a detailed study in Chapter Four. First of all, the regime has had a direct impact on member states' and regional organizations' sanctions practices: cases in point are the European Union's terrorist lists and the related assets freezing measures adopted by several EU member states. Secondly, the complex process of reform of 1267 provisions has crucially altered the original set up of counter-terrorist sanctions within the UN Security Council, affecting both the body's and P5 members' ability to sustain it in its original form without significant modifications to the redress mechanism of its listing and delisting procedures. Having attracted significant attention from governments and non-governmental organizations concerned about the human rights implications of the system, which seemed to ensure at its inception little transparency and due process, the 1267 framework has been the target of a campaign directed towards its reform that clearly illustrates the institutional effects on state behaviour in the counter-terrorism field.

Along with Council action, notable progress on the front of global counter-terrorist cooperation has been made in the General Assembly, thanks to the efforts of the then Secretary General Kofi Annan, which resulted in the adoption of the Global Counter-Terrorism Strategy and Annexed Action Plan. These instruments were approved by consensus by the General Assembly on September 8, 2006.[42] The Strategy emphasises key 'operational elements of dissuasion, denial, deterrence [and] development of State

[42]United Nations General Assembly, UN Global Counter-Terrorism Strategy, available at: http://www.un.org/terrorism/strategy-counter-terrorism.html.

capacity', and highlights 'the central role of human rights in every substantive section, in addition to a section on human rights per se'.[43] Title I of the Strategy, its most innovative set of clauses to date, is devoted to addressing the measures conducive to the spread of terrorism. Title IV brings completion to the human rights surge within UN counter-terrorism bodies, clearly establishing a link between the effectiveness of any effort against terrorism and its level of compliance with well-established principles of human rights protection.

Title I is particularly significant by virtue of the inclusion of the 'fight against root causes' theme within the scope of the General Assembly's action, in itself an unprecedented achievement that overcomes the years of impasse and debates within the General Assembly mentioned above.[44] Even more significant is the speed with which this change has been brought about both within the United Nations and at member state level. Writing only three years before the Assembly's vote on the Strategy, in 2003, UN expert Rami Mani had remarked that the organization did not intend to address the 'underlying causes and motivations of the September 11 attacks' in its counter-terrorism response and was not likely to change its position in the future. Today, the U.S. State and Homeland Security Departments, the U.K. Home and Foreign Commonwealth Offices, the Italian Interior and Foreign Ministries, as well as several regional organizations, including the EU, to mention but a few, are undertaking programmes to promote social cohesion within and without their countries' borders in line with the requirements of this UN document. In its Third Chapter, the thesis claims that the homogenisation of

[43]In 2004, the High-level Panel on Threats, Challenges and Change recommended in its report that the Secretary General promote a comprehensive global strategy against terrorism, that would strengthen the ability of responsible states to counter terrorism and promote the rule of law. In Madrid, in March 2005, on the one-year anniversary of the train bombings, Annan set out the elements of such a strategy. In the 2005 World Summit Outcome, states welcomed those elements and agreed to develop them further. Kofi Annan, 'Uniting against terrorism: recommendations for a global counter-terrorism strategy', Report of the Secretary General, 27 April 2006, available at: http://www.un.org/unitingagainstterrorism/sg-terrorism-2may06.pdf.

[44]Rami Mani, 'The Root Causes of Terrorism and Conflict Prevention', in Boulden, Weiss, (eds.), *Terrorism and the UN*, chapter 10, pp. 218- 241.

previously diverging counter-terrorism postures with respect to the root causes issue can be accounted for by the partial socialisation mechanism triggered by cooperation within multilateral counter-terrorist bodies.[45]

1.3.1.2. The European Union and counter-terrorism

At the regional level the only influence comparable to that of the United Nations in the realm of the fight against terrorism is represented by the European Union. As specified above, EU legislation is the preferential vehicle through which UN counter-terrorist provisions reach member states' domestic legislative frameworks in Europe and member states' preferences in the counter-terrorist area are advanced at UN level.

The EU has been promoting a cooperative security framework to address terrorism ever since the 1970s, when the European Council established an intergovernmental cooperation programme between member states in the area of internal security and police affairs. The Terrorism, Radicalism, Extremism and International Violence (TREVI) Group, created in 1976, improved intra-community cooperation on intelligence and police services, and developed measures to prevent terrorist acts.[46] EU responses after 9/11, more than by the adoption of a novel programme to counter a new threat, have been characterised by an enhancement of the old TREVI framework, centred on police and intelligence cooperation and law enforcement, under the umbrella of UN legislation. As a result, the EU counter-terrorism approach was developed devoting particular attention to the provisions of the (then) Third Pillar, dealing with cooperation

[45]For the UK see, Home Secretary Jacqui Smith's Keynote Address, ICSR Inaugural Conference, London, January 2008, available at: http://icsr.info/info/ICSRConference/Remarks%20Transcripts%20Video. For the U.S. Department of State, the source is a high level conference on terrorism (London 2008). Proceedings are confidential.
[46]David Spence, (ed.), *The European Union and Terrorism*, (London: John Harper Publishing 2007).

in criminal and civilian justice matters, asylum, visa, and immigration.[47] After 9/11, the European Council adopted a Plan of Action on Terrorism, later bolstered by some major initiatives such as the European Arrest Warrant and the 'Framework Decisions on Combating Terrorism and on Joint Investigation Teams', as well as by bilateral agreements with the United States on extradition and mutual legal assistance.[48]

The broader EU framework for combating terrorism is firmly embedded into the larger global counter-terrorism regime presided over by the United Nations. As specified by the 2004 Plan of Action, for example, the EU approach has two cornerstones: a cooperative notion of security, epitomised by increased cooperation both with UN counter-terrorism bodies and among member states; and a more generic support for the role of the United Nations in the fight against terrorism.[49] The EU shares the focus of the UN on capacity building, in particular by implementing the financial provisions of Resolution 1373 and the sanctions introduced by the 1267 Committee within the framework of its distinctive Justice and Home Affairs Pillar. Significantly, the Union has devoted attention to the 'factors that favour support for terrorism' ever since its 2004 Action Plan, when the General Assembly was still far from solving the 'root causes controversy' among its members.[50] Tackling the issues of radicalisation and root causes became one of the cornerstones of the 2005 EU Counter-terrorism Strategy, in a typical

[47]Patrizia de Cesari, 'The European Union', in Nesi, (ed.), *International Cooperation in Counter-terrorism*, chapter 17, pp. 207-229.
[48]Karin von Hippel, 'Improving the International Response to the Transnational Terrorist Threat', in Boulden, Weiss, (eds.), *Terrorism and the UN. Before and After September 11*, pp. 102-120. See also, Karin von Hippel, (ed.), *Europe Confronts Terrorism*, (London: Palgrave Macmillan 2005).
[49] This emphasis on cooperative security has been stressed, *inter alia*, by the May 2005 Hague Programme on Freedom, Justice and Security.
[50]EU Action Plan on Combating Terrorism, 26 June 2004, available at: http://www.libertysecurity.org/article64.html.

instantiation of the feedback effects between multilateral and unit levels of analysis that this thesis proposes to map.[51]

1.3.1.3. The G-7/G-8 and counter-terrorism

Along with the definition of broader strategic aims, counter-terrorist activity on the part of the Group of Seven/Eight has mostly been geared towards supplementing UN action in the area of capacity building assistance. To this end, at the 2003 Evian Summit G-8 members established, within the remit of the Rome-Lyon initiative on counter-terrorism and anti-crime cooperation, the Counter-Terrorism Action Group (CTAG), a body tasked with improving coordination among donors and prioritising the mechanisms of resource allocation. Despite suffering from several structural shortcomings, the CTAG has facilitated overall strategic thinking about capacity building assistance, offering the 'best available opportunity' for members to coordinate their efforts.[52] Among the initiatives supported over the years were, for example, the implementation of the International Civil Aviation Organization (ICAO)'s travel document security standards and practices, initially developed by the G-8 itself as part of the U.S.-driven Secure and Facilitated International Travel Initiative (SAFTI). In addition, CTAG has worked closely with the Asia-Pacific Economic Cooperation forum's (APEC) Counter-Terrorism Task Force on the enhancement of port and maritime security gaps in the region, and has been equally instrumental in coordinating counter-terrorist assistance to countries in Asia, the Western Balkans, and South America.[53]

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[51]For a detailed analysis of this process please refer to Chapter Three. EU Council Secretariat, 'The European Union and the Fight Against Terrorism. Fact sheet', Brussels, 14 May 2007, available at: http://www.consilium.europa.eu/uedocs/cmsUpload/FactsheetfightagainstterrorismENrev1.pdf.
[52]The Center on Global Counterterrorism Cooperation, *The G-8's Counter-Terrorism Action Group: A Stock-Tacking and the Need for Reform*, November 2009, p. 5.
[53]*The G-8's Counter-Terrorism Action Group*, p. 5.

These merits notwithstanding, the most significant contribution to multilateral counter-terrorist efforts on the part of the G-7/G-8 is represented by the global norm-setting role gradually taken over by the FATF, which justifies this study's decision to include the institutional effects produced by this specific body into the analysis. An independent entity to which the G-8 provides overall political guidance, the FATF was created by G-7 members in 1989 to regulate international financial markets in an attempt to stem the flow of resources alimenting narcotics trafficking and organised crime. It developed its first set of anti-money laundering recommendations in 1992 and included counter-terrorist financing among its provisions in November 2001, shortly after the 9/11 attacks. FATF's recommendations are the cornerstone of the counter-terrorism financing regime since their incorporation into the UN system with Security Council Resolution 1617 (2005). They are widely acknowledged as the state-of-the-art counter-terrorist financing legislation and largely followed even by non-member countries. Their institutional effects on states' counter-terrorist behaviour and the mechanisms through which these operate will be illustrated at length in Chapter Five of the thesis.

1.4. Research Design

The previous sections of this Introductory Chapter have established the need to further the IR research agenda on the effects of institutions on state security behaviour. To this end, they have surveyed existing instances of multilateral cooperation in counter-terrorism as an interesting and under-explored field of social enquiry, setting the stage for a detailed investigation of the three main policy issue areas in the global counter-terrorism regime that are the main focus of this thesis. The following paragraphs address methodological issues of selection, measurement, falsification, and operationalisation of

variables within specific case study analysis, in order to put forward an empirically and theoretically viable research agenda for this project.

1.4.1. Research Methods

A high degree of caution needs to be adopted when devising a methodological strategy to assess the value of ideational explanations of counter-terrorism outcomes post 9/11, especially where institutional effects on policy outputs need to be measured. Checkel, Horowitz and Johnston have remarked that the measurement of ideational variables poses significant challenges to social scientists, agreeing nonetheless that this is an intellectual quest worth embarking on in order to move beyond explanations that consider preferences as simply exogenously determined.[61] Counter-terrorism policy-making, far from being a simple deviant case in outcome-based IR literature, is one where an ideational case can be made in traditional realpolitik territory. As such, it is rather a hard case to put to the test constructivist explanations concerning normative influences and degrees of state socialisation in international institutions.

Given the nature of the independent variable, this study favours qualitative explanations and privileges a small-N in-depth comparison of three case studies (the United States, the United Kingdom and Italy) in three policy issue areas (counter-radicalisation, human rights protection and counter-terrorist financing). A systematic and fine-grained tracing of processes of each country's participation in the creation and

[61]Jeffrey T. Checkel, 'Why Comply? Social Learning and European Identity Change', *International Organization*, vol. 55, no. 3, Summer 2001, pp. 553-588; Rawi Abdelal, Yoshiko M. Herrera, Alastair Iain Johnston, Terry Martin, 'Treating Identity as a Variable. Measuring the Content, Intensity and Contestation of Identity', paper prepared for presentation at APSA, August 30 – September 2, 2001, San Francisco, August 17, 2001; Michael Horowitz, 'Research Report on the Use of Identity Concepts in International Relations', Harvard Identity Project, July 2002; Rawi Abdelal, Yoshiko M. Herrera, Alastair Iain Johnston, Rose McDermott, 'Identity as a Variable', *Perspectives on Politics*, vol. 4, no. 4, December 2006, pp. 695-711.

reform process of these counter-terrorism policy strands is conducted following in the footsteps of Katzenstein's analysis of Germany's and Japan's counter-terrorism postures. A normative-oriented analysis is employed to identify classes of outcomes and the mechanisms lying behind them. Counterfactual analysis is also introduced as a supplemental measurement tool to help trace the empirical implications of alternative hypotheses.

On this point, however, it is acknowledged that studies of IGO effects on state behaviour are frequently criticised for their choice of small-N research designs and excessive reliance on counterfactual arguments. In order to control for these problems, what follows does not attribute too much 'testing' power to 'thought experiments', but rather, as suggested by Young and Levy, balances counterfactual analysis with 'natural experiments' – in-depth comparisons across cases. Such a level of detail, which permits to trace institutional normative and policy influences all the way down to state security practitioners, could not have been achieved meaningfully had the sample been too large, sacrificing the depth of understanding of the explanation.[62]

As specified in the opening paragraph, this thesis aims at understanding convergence of outcomes in the human rights, counter-radicalisation and capacity building fields, considering such convergence as the empirical symptom of a potential institutional effect. Whilst the first two policy sub-sections imply that the fate of norms

[62]In the course of data collection, my focus on three levels of analysis (multilateral, median and domestic), linked by feed-back relationships, has allowed me to trace the empirical implications of preference formation for the states and the IGOs involved based on actual information on the evolution of the different events. This thesis therefore tries to offer a theoretical snapshot of counter-terrorism policy-making that is as close to what really occurs at the level of practice as possible. Inevitably, parsimony is partially sacrificed in order to achieve depth over breadth in the explanation of these phenomena. Additionally, the framework addresses the conditions under which institutional effects manifest themselves by pinpointing the limits of the institutional explanation – which will be detailed in Chapter Two of the thesis, and controls for endogeneity within international institutions, assuming that causal arrows flow both ways, from the institution to the state and vice versa. On the need to balance thought experiments with natural experiments in order to try to ferret out the causal effects of institutions see, Oran R. Young, *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms*, (Cambridge, MA: MIT Press 1999). On the critiques to constructivist contributions on institutional effects see for example, Beth A. Simmons, Lisa L. Martin, 'International Organizations and Institutions', p. 200.

such as human rights and multilateralism be traced in the policy-making of states as regards counter-terrorism, capacity-building comprises too wide a variety of actions to allow for a viable empirical analysis. Therefore, one policy response among the several possible ones was singled out: that of counter-terrorist financing. This specific policy sub-field is extremely interesting not only to map convergence of policy outputs, but also to gauge the influence of the human rights and multilateral norms within its ranks. Recognising the strategic imperative of cutting the lifeblood of terrorism, UNSC Resolutions 1373 and 1267 focus predominantly on counter-terrorist financing by requesting that states enhance their monitoring and law enforcement capabilities, and freeze the assets of alleged terrorists. As a result, state efforts in the multilateral counter-terrorist regime have been largely channelled towards the implementation of these provisions, while their domestic legislation has been modified, to various degrees, in order to comply with the two regimes. These observations help to make the case that this policy sub-field is indeed useful ground for dissecting the effects of cooperation on state behaviour. As noted before, the two regimes have also been the targets of heated criticism concerning the human rights implications of their provisions, triggering a campaign for reform that allows for investigation of the mechanisms leading originally policy-setting or simply reluctant – but not necessarily novice – regime members to agree to the changes in policy and align their behaviour with the organization. Additionally, from a regulatory standpoint, both regimes have incorporated and elevated at UN level the provisions of the Financial Action Task Force, which in practice diffuse UN counter-terrorist financing instruments via a comprehensive and highly technically developed regulatory framework that reaches far beyond its membership base.

Given these premises, the operationalisation of the independent variable – cooperation – is achieved in the empirical sections of this study in three closely

interrelated stages: first, by identifying the types of policies and practices that would result if states were to comply with the selected international instruments and the norms that they promote, in the chosen sub-fields. Assuming that different levels of compliance will be visible in practice, state behaviour is expected to oscillate between rhetorical conformity (e.g. the adoption of the 'root causes' or pro-human rights rhetoric in official documents and speeches), promotion of domestic and international legislative change, and actual behavioural consistency with the selected norms or practices (e.g. the emergence of the theme of the fight against root causes at practitioners' level).

In a second stage, the motivational drivers underlying state action are taken into consideration in order to determine the *typology* of institutional effects displayed (i.e. is the process of policy alignment under examination the result of socialisation? If one answers in the affirmative, which type of learning mechanism is at play? Role playing? Social influence? Internalisation?). In this phase, the study aims to determine, firstly, why the state actor did not align itself with the policy/norm before the policy change initiated by the institution. This question warrants an analysis into said actor's participation into the regime-setting process, in the context of its overall approach, domestic and international, to the issue area examined over a carefully selected period of time.

Secondly, one would need to determine why the actor agreed to the policy change and decided to align itself to the pro-institution behaviour at one specific moment in time. For example, assuming that a given country X rejected a policy change or refused to align itself to a given pro-institution behaviour for a certain number of years, but then shifted its position and converged towards the course of action promoted by the institution, why did the change described occur? How did it originate? Thirdly, the mechanisms through which the alignment to pro-institution behaviour occurred would

have to be carefully considered and evaluated in the context of the type of behavioural conformity analysed in stage one, in order to determine which logic underwrites the observed behaviour: that is, did the country align its policy because every other group member was converging toward the institutional standpoint? (This would suggest evidence of mimicking or role-playing institutional effects). Did it align for fear of being publicly shamed? Did it estimate that public shaming would undermine its ability to cooperate in the future (a symptom of reputational effects) or was such shaming unacceptable because fundamentally it was in contrast with its perception of its own identity? (evidence of institutional social influence effects). Was the pro-institution behaviour automatic and motivated by a feeling of oughtness? (evidence of internalisation). Is the country aligning merely because the course of action suggested by the institution is the most rational thing to do given the circumstances and the two happen to coincide (strategic calculation) or an historically consolidated and deeply-rooted pattern of behaviour? (domestic/cultural level explanation).

Once an answer to these questions is provided, counterfactual analysis can be employed, lastly, in order to further assess the validity of the international institutional explanation by pitting it against alternative theoretical approaches. If the changes of the type observed are detectable in the absence of international influence, competing theoretical perspectives retain explanatory leverage and are potentially more useful in understanding the phenomena analysed.

In sum, then, this three-layered approach permits to unpack the drivers of state behaviour. Combined with a careful selection of the country cases and of the time interval examined in relation to the issue areas chosen for the purpose of this study, this methodological perspective provides useful heuristic tools to help answer this thesis's central question.

1.4.2. Case Studies

Comparison across cases is necessary in order to allow for a certain degree of generalisability of research findings. Given the design requirements, a strong case can be made for looking at the United States, the United Kingdom and Italy while exploring the ideational sources of counter-terrorism policies across the three policy issue areas detailed above. This choice has been made because it allows for an adequate degree of variation along some key indicators, thus representing a real test of institutional cooperation.

The first area of variation is the evolution of preferences over time from divergence (D) at time t_0 with respect to the pro-institution behaviour to convergence/alignment (C) at time t_1. The second level considered is the country's relative power and agenda-setting position within both the institution and the policy issue area. In this respect, an actor could be classified as either a regime setter or a participant and its position could vary within the same institution depending on the issue at hand (i.e. a country could be a regime setter in the area of counter-radicalisation but a mere participant in the field of counter-terrorist financing). The combination of these criteria with respect to the issue areas selected for the analysis is summarised in Table 2.

Table 2. Country cases and issue areas

Policy Issue Area	Country preferences at t_0		
	U.S.	UK	ITALY
Counter-Radicalisation	D	C (agenda setter)	D

Human Rights Reform	D	D	C
Counter-Terrorist Financing	C (agenda setter)	D	D

While not fully acting as a regime setter in the area of the human rights reform of the counter-terrorism sanctions regime, it should however be noted that Italy has played a proactive agenda-setting role in this field during its presidency of the G-8 and prior to the regime reform adopted by the UN Security Council in 2009. The country's participation in this process is analysed in detail in Chapter Four of this thesis. This case selection additionally permits one to control for the effects of the power variable on policy alignment, since the agenda setter participates in the regime and exerts its influence on its members.

The third criterion relates to elements that can be described as 'contingency', namely the specific threat conditions on the ground and their perception by the actor. For instance, homegrown terrorism has been a concern for the United Kingdom since 2003, but has come on the radar screen of U.S. homeland security authorities only after 2009. If therefore the counter-radicalisation policies that are supposed to respond to this phenomenon are introduced at global regime level in 2006 and the two countries equally implement them, the significance of such policy alignment would vary according to the specific threat situation on the ground in each country. The fourth aspect accounts for historical and institutional legacies, including domestic cultural and identity factors, which can shape a country's behaviour on a particular problem. For example, a given policy could be part of the counter-terrorism toolkit of a country over a long period of time. If the policy is introduced at international level by an institution, the historical

legacy could explain policy alignment in that specific country and would need to be factored into analysis before reaching a conclusion on institutional effects.

While the empirical salience of the issue areas selected was detailed in the previous section of this Chapter, some considerations need to be made concerning their theoretical value. Among the vast array of initiatives covered by the large umbrella of multilateral counter-terrorist cooperation, counter-radicalisation, human rights safeguards and counter-terrorist financing are all relatively new phenomena, which emerged not only after the 9/11 attacks but also after the complex foundations of the global counter-terrorist regime were put into place. All three underwent a process of evolution and reform over roughly a decade, between 1999 and 2011, putting the three countries selected – alternatively norm-setters or participants in the three policy strands – in the position of having to choose whether to align their old preferences with the new ones promoted by the institution or stick to their original courses of action. For this reason it is believed here that it is indeed justifiable to examine the participation of non-novice states, with firmly set original preferences, in these learning environments. This thesis advances the claim that this theoretical enterprise is perhaps more significant, though harder from a methodological point of view, than trying to detect institutional effects in novices, as IR literature on socialisation processes, namely Johnston's analysis of anticipatory socialisation phenomena, normally does.

A closer look at the countries that are the focus of this study shows how they conform to the criteria enumerated above. The United States, a hard case, originally adopted a unique military stance with respect to terrorism, while at the same time acting as a norm-challenger in the international arena, with respect to both human rights and multilateralism. Compared to several European states that experienced terrorism during the 1970s and the 1980s, the U.S. did not possess a strong institutional memory of a

terrorist threat on its territory before the 9/11 attacks. It also developed, at least initially, a radically different understanding of the nature of the threat that informed its responses. Moreover, the country is placed in a unique position among the five permanent members of the UN Security Council and is presumed to be able to significantly influence middle-sized powers both within international fora and on a bilateral basis.[63]

The United Kingdom, in contrast to the United States, possessed a unique and long-term experience of the terrorist threat at the time of the 9/11 attacks, as well as a deeply rooted institutional memory of the responses available. The UK is a permanent member of the UNSC as well as a member of the European Union but its distinctive relationship with the United States singles it out in Europe as an interesting case to test the influence of multilateral versus bilateral channels of cooperation.

Italy is not necessarily a typical case in the ideational literature, which has tended so far to prefer to focus on countries such as Germany or Japan. It is, however, a 'telling case', according to Timothy McKeown's definition, in so far as the particular circumstances surrounding this case can help 'make previously obscure theoretical relationships sufficiently apparent'.[64] Italy's path within international institutions is similar to Germany's and Japan's, given its specific pre-WWII political circumstances. The country has had a significant experience of a terrorist threat on its soil during the 1970s and 1980s, developing as a consequence a deep-rooted institutional memory concerning this phenomenon and very refined response mechanisms. The country is not a permanent member of the Security Council, but sat on the Council for a two-year term, between 2007 and 2008, at a time of crucial developments and reform in the counter-

[63]Wyn Rees, *Transatlantic Counter-terrorism Cooperation. The New Imperative*, (London and New York: Routledge 2006), chapter 3, 'Contrasting threat perceptions', pp. 60-69.
[64]Timothy McKeown, 'Case Studies and the Limits of the Quantitative Worldview', in Henry E. Brady, David Collier, eds., *Rethinking Social Enquiry. Diverse Tools, Shared Standards*, (Lanham, Boulder, New York, Toronto, Oxford: Rowman and Littlefield 2004), p. 153.

terrorist regime.[65] Italy is equally a middle-sized power within the European Union, with a sufficient degree of decision-making influence but no overt regime setting ambitions.

Many forms of terrorism have troubled Italy over the past four decades, ranging from nationalist-separatist violence in the South Tyrol area to right-wing terrorism and to left-wing Marxist and anarchist terrorism.[66] Jihadism first appeared in the country in the 1990s in the form of Italian-based North African networks, but their levels of activism never reached those displayed in other Western European countries in the early and mid-2000s. Unlike Spain and the United Kingdom, Italy has not experienced jihadist terrorist violence on its soil. The absence of significant homegrown radicalisation networks and the presence of an immigrant population that originates largely from Eastern and Central Europe have therefore led Italian authorities to prioritise traditional and historically rooted forms of engagement as opposed to 'new' types of anti-terrorist action, such as counter-radicalisation policies.[67]

These characteristics are particularly interesting from a heuristic perspective when gauging the motivational drivers behind the alignment of the country's counter-terrorism provisions with international standards. In the absence of a pressing threat or a successful attack, instances of pro-institution behaviour on the part of Italian counter-terrorist officials can signal concern for group-induced pressures to conform rather than strategic security calculation. This in turn would suggest a specific sensitivity of Italian decision-makers to the opinion that the multilateral institution has of the country's

[65]A country with similar institutional memory and international decision-making power, Spain, sat on the Council between 2003 and 2004, taking over the direction of the CTC from Britain. At that time, however, debates on the reform and evolution of the UN counter-terrorism mechanism were still at an embryonic stage.

[66]See Erica Chenoweth, 'The Inadvertent Effects of Democracy on Terrorist Group Proliferation', PhD Thesis, (University of Colorado 2007).

[67]To date, only one suicide attack was attempted in the country, carried out in Milan by Mohammed Game, a Libyan national, on 12 October 2009. The proportion of second-generation immigrants that have embraced (or are likely to embrace) radical ideas is, according to Vidino, statistically insignificant. Lorenzo Vidino, 'Il jihadismo autoctono in Italia: nascita, sviluppo e dinamiche di radicalizzazione', *Studi ISPI* and European Foundation for Democracy, May 2014.

compliance or lack thereof with international counter-terrorist standards, giving ammunition to the social influence hypothesis that this thesis advances. Additionally, the possibility of accessing primary source material in Italian, both in writing and in interviews, further justifies the selection of this country as a particularly valuable case study for the purpose of this analysis.

1.4.3. Sources

As regards the availability of sources, data collection on threat perceptions, responses and negotiating positions has been conducted via an examination of open-source material from 1980 to 2009. To this end, the reduced availability of primary sources – since archival material was not available and most of the proceedings of the institutions examined are informal and classified – was counterbalanced by resorting to speeches, published policy documents and secondary source material. In particular, more than 100,000 documents, official and unofficial, were examined via the *Lexis Nexis* and *Factiva* databases, in addition to published and unpublished scholarly accounts and analyses. Extensive semi-structured interviews with security elites from relevant governments and UN and EU agencies were also included in the analysis. To this end, joint research fellowships at the Belfer Center for Science and International Affairs at Harvard University and at the START Program for the Study of Terrorism and Responses to Terrorism of the University of Maryland, sponsored by the U.S. Department of Homeland Security, gave me a unique opportunity to come into contact with some of the most significant policy-makers in the multilateral and domestic counter-terrorism field, placing me at the heart of the most relevant theoretical and policy debates.

Subjects were sampled according to selection criteria that ensured both access to key government players and diversification of the sources and perspectives according to respective positions within government bureaucracies, as well as in relation to the processes analysed (e.g. heads of delegation, main representatives on a given international body at the time a specific issue was negotiated etc.). Thus, while probability sampling was not useful and ultimately not a viable course of action due to the inherent difficulty in having access to the relevant players and the extreme sensitivity of the subject matter, the pool of interviewees offers a comprehensive sample comprising both decision-makers and practitioners.[68] This allows testing for institutional effects of multilateral cooperation on state behaviour at various levels of government decision-making and has permitted uncovering of never-before-disclosed evidence, for example, on the role played by key P5 and non-P5 member states in the development of the UN counter-terrorism framework. These findings have helped shed new light on the competitive modes and mechanisms by which member states and international institutions transmit power, diffuse norms, and influence allies when cooperating in multilateral settings.

[68]In line with these considerations see Oisín Tansey, 'Process Tracing and Elite Interviewing: A Case for Non-probability Sampling', *PS: Political Science and Politics*, vol. 40, n. 4, October 2007. To date I have conducted more than sixty interviews with key domestic and multilateral counter-terrorism experts in three countries and two international institutions. Several high and middle-ranking officials have kindly agreed to speak with me under conditions of anonymity. A full list of the names that could not be cited in this thesis for attribution will be provided on confidential basis to the examiners. Among the ones who accepted to be identified figure, to name but a few, former Italian Prime and Interior Minister Giuliano Amato; Former UN Security Council President Diego Arria Salicetti; the Head of the UN 1267 Monitoring Team, Richard Barrett; former Cabinet Heads (e.g. Sir David Omand and Sir Richard Mottram of the United Kingdom); Ministerial Department Heads (e.g. Juliette Kayyem, of the U.S. Homeland Security Department); Magistrates (e.g. Armando Spataro, the State Prosecutor who led the Milan Court's Investigation on the CIA rendition of imam Abu Omar); Heads of Police Forces' Counter-Terrorism Departments (e.g. Peter J. Clarke of the London Metropolitan Police); counter-terrorism experts (e.g. Peter Neumann and Lorenzo Vidino); academics (e.g. Peter Katzenstein, Alistair Johnston and Peter Romaniuk), as well as Ambassadors, Heads of National Missions to the UN and the EU, Consuls, Chief Negotiators and numerous middle-ranking diplomats and counter-terrorism officials whose name cannot be mentioned here, but whose actions were crucial in the development of the multilateral frameworks this thesis examines, as well as in their implementation at member-state level. In 2007, I was also fortunate enough to work in the Counter-Terrorism Department of the Italian Foreign Ministry, under former Foreign Minister Giulio Terzi, where I witnessed firsthand the process of negotiation and implementation of the UN and EU counter-terrorism regimes in a member state.

The nature of the subject matter also prevented the recording of the interviews. For this reason, it was not useful and methodologically rigorous to use content or discourse analysis of the transcripts since the sessions could not be taped. Instead, extensive note taking was conducted both during and after the sessions. Information was crossed-checked referring to multiple sources and diversified interview questions, while relevant actors were contacted multiple times via different media to confirm their narrative of events.

1.4.4. Structure of the thesis

The thesis is divided into three parts, totalling six chapters.

The first part (Chapters One and Two) introduces the argument and details the theoretical framework. It explores institutional effects on state domestic security behaviour by looking at policy convergence as a particularly useful outcome indicator of state socialisation in international institutions. This chapter, in particular, has established the theoretical importance of extending the analysis of institutional effects on state behaviour to homeland security. It has provided an overview of multilateral counter-terrorism cooperation and of the state of scholarly research in this field, and detailed the research strategy that will be adopted to try to ferret out the effects of institutions in this specific issue area. Chapter Two surveys extant contributions to the analysis of IGO effects on behaviour. It relies on explanations of convergence as an indicator of cooperation and socialisation processes, and examines the theoretical framework and the limits to its institutional explanation while advancing the claim that the combined effect of image-driven group pressures mediated by a diffused institutional environment and strategic calculation drives the homogenisation processes examined in the thesis.

The second part of the thesis assesses the explanatory leverage of the theoretical framework in three relevant case studies, organised by selected policy strands in counter-terrorism. Chapter Three focuses on counter-radicalisation, gauging the development of this policy strand at UN, EU and member state level, and tracing the feedback relationships between those two levels of enquiry. It shows that IGO agency in this normative-laden field can be explained in terms of social influence, or at a median level of socialisation, where states are concerned for their image, along with cost-benefit calculation of the most sensible course of action. These findings are replicated in Chapters Four and Five.

Chapter Four looks at human rights within multilateral counter-terrorism cooperation, reaching a conclusion similar to the one offered in Chapter Three, but also highlighting forms and mechanisms of residual IGO normative agency vis-à-vis traditionally policy-setting states. Chapter Five examines the explanatory leverage of the framework when applied to capacity-building measures, namely counter-terrorism financing, focusing in particular on the naming and shaming conformity-inducing effect of FATF's socialisation practices. The last and concluding part assesses the explanatory value of the framework, suggesting further avenues to open up the enquiry both vertically and longitudinally, for example by extending the analysis to networks of security experts and bilateral and *ad hoc* cooperation settings, as alternative environments where practices are diffused and harmonised.

Chapter Two

Institutional Effects on State Behaviour in the Multilateral Counter-Terrorist Regime

> *Mearsheimer, in his extensive challenge to institutionalism, […] argued that the empirical evidence showing that institutions changed patterns of state behavior was weak, especially in the area of security affairs. While we might dispute the extreme conclusions drawn by Mearsheimer, we take seriously his challenge to provide stronger empirical evidence* (Lisa Martin, Beth Simmons)[69]

> *Our misdeeds are easily forgotten when they are known only to ourselves* (François de La Rochefoucauld)[70]

How much institutions can change state behaviour is a question that has been at the centre of heated debates among IR scholars for the past five decades. As early as 1958, Ernst Haas described the European Coal and Steel Community as an organization with the distinct 'power to redirect the loyalties and expectations of political actors', a learning environment where the goals of national officials could be altered and redefined.[71] For the great part of the 1960s and 1970s, these powerful insights were lost under the influence of mainstream realist scholarship, with its distinct tendency to assume fixed preferences and downplay the constitutive effect of institutions on their formation.[72]

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[69]Lisa L. Martin, Beth A. Simmons, 'Theories and Empirical Studies of International Institutions,' *International Organization*, vol. 52, n. 4, Autumn 1998, p. 739.

[70]François de La Rochefoucauld, *Réflexions ou sentences et maximes morales*, translated by Leonard Tancock, (London: Penguin Books 1959), maxim n. 196.

[71]Ernst B. Haas, *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957*, (Stanford: Stanford University Press 1958), p. 255. To this end, Martin and Simmons remarked that 'the best of the early work…looked at the interplay between formal IOs, rules and norms, domestic politics and governmental decision-making – themes we would recognize today as being near the cutting edge of international institutional research,' in Beth A. Simmons, Lisa L. Martin, 'International Organizations and Institutions', in Walter Carlsnaes, Thomas Risse, Beth A. Simmons (eds.), *Handbook of International Relations*, (London: SAGE 2002), p. 193.

[72]Lisa L. Martin, Beth A. Simmons, 'Theories and Empirical Studies of International Institutions'; see also, Jeffrey W. Legro, Andrew Moravcsik, 'Is anybody Still a Realist', *International Security*, vol. 24, n. 2 (Fall

Spilling over into rational functionalist territory, realism's restrictive assumptions on states as unified rational actors with exogenously defined preferences affected the analytical traction of institutionalist schools of thought. These focused mainly on how to overcome problems of collective action, transaction costs and information deficits that impede cooperation, without unpacking states' preferences at the domestic level prior to the exercise of cooperative behaviour.[73] It is only thanks to the social constructivist scholarship of the 1990s that analyses of institutional effects have come full circle: assumptions of exogenous preference formation were relaxed and linked with hypotheses of international institutions as learning environments, where social interactions among actors occur.

Informed by these approaches, this chapter develops a framework for understanding institutional influence in a specific area of security affairs. This framework will be utilised in order to conduct the analysis of institutional effects on states' counter-terrorism behaviour in the empirical section of this thesis. The chapter uses counter-terrorism policy-making as a laboratory, and convergence of policy outputs at member state level as both a visible symptom of international cooperation in counter-terrorism and an empirical indicator of socialisation within international institutions.[74] In an

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1999), pp. 5–55; Michael Smith, *Realist Thought from Weber to Kissinger*, (Baton Rouge: Louisiana State University Press 1987); Alastair Iain Johnston, 'Socialization in International Relations Theory', in *Social States: China in International Institutions, 1980-2000*, (Princeton: Princeton University Press 2008), chapter 1, pp. 1-44.

[73]Robert O. Keohane, *After Hegemony. Cooperation and Discord in the World Political Economy*, (Princeton: Princeton University Press 1984); Alastair Iain Johnston, 'Socialization in International Relations Theory', in *Social States.*

[74]Following Mearsheimer and, partially, Keohane, I define international institutions as sets of rules (formal and informal) that 'stipulate the ways in which states should cooperate and compete with each other.' According to this definition, institutions prescribe acceptable forms of state behaviour and proscribe unacceptable courses of action. In John J. Mearsheimer, 'The False Promise of International Institutions,' *International Security*, vol. 19, n. 3, pp. 8-9 and Robert O. Keohane, 'Neoliberal Institutionalism: A Perspective on World Politics,' in Robert O. Keohane (ed.), *International Institutions and State Power: Essays in International Relations Theory*, (Boulder: Westview 1989), p. 3. Also following Mearsheimer, I consider the term 'multilateral' as 'virtually synonymous with institutions. To quote John Ruggie, "the term 'multilateral' … depicts a *generic institutional form* in international relations…which coordinates relations among three or more states.'" In John Mearsheimer, 'The False Promise of International Institutions,' p. 8. On this last point see also, James A. Caporaso, 'International Relations Theory and

attempt to add an empirical brick to the edifice of IGO socialisation theory, what follows first reviews and critiques extant analyses of institutional effects on state behaviour, highlighting their main strengths and weaknesses. It then draws on Johnston's and Checkel's multi-level socialisation frameworks in order to propose an explanation of policy-convergent outcomes in the counter-terrorist fields explored. Such an account underscores the conformity-inducing effects of image-driven group pressures on state preferences as instances of a partial – or imperfect – socialisation process. The framework labels this process diffused social influence. At the heart of this model, formal international institutions act as catalysts of the image-driven and conformity-inducing mechanism within a multi-venue and multi-actor social environment, whose domain includes state, non-state actors and informal transnational networks. In its last section, pitting this framework against alternative explanations of pro-institution behaviour, the chapter advances the claim that traditional conceptualisations of institutional social effects also need to be complemented with the heuristic tools provided by interest-driven analytical frameworks in order to map the reality of state behaviour as accurately as possible.[75]

Multilateralism: The Search for Foundation,' in John G. Ruggie (ed.), *Multilateralism matters. The Theory and Praxis of an Institutional Form*, (New York: Columbia University Press 1993), pp. 51-90. As specified in the previous chapter, the thesis looks at *formal organizations* as social environments. A reflection on the institutional effects of informal arrangements and the applicability of the framework to such fora will be included in the concluding chapter of the thesis.

[75]Henceforth, this thesis will alternatively refer to the terms policy 'outputs' and 'outcomes' as synonyms. This choice is not an uncontroversial one. After lengthy exchanges with Peter Romaniuk, Sean Lynn-Jones and Norrin Ripsman, it is acknowledged that policy 'outcomes' are often understood by the literature to be the material and concrete effects resulting from the implementation of a given measure (e.g. in the case of counter-radicalisation policies in counter-terrorism, a possible outcome could refer to the number of cooperative projects jointly sponsored by the government and Muslim civil society organizations). In this line, see for example Colin J. Bennett, 'What is Policy Convergence and What Causes It?', *British Journal of Political Science*, vol. 21, 1991, pp. 215-233. These concerns notwithstanding, this study follows in the footsteps of other distinguished scholars of institutional effects that refer to policy 'outcomes' when describing policy instruments, or the 'outcome' of the decision-making process. On this point see Martin, Simmons, 'International Organizations and Institutions', in Carlsnaes, Risse, Simmons (eds.), *Handbook of International Relations*.

2.1. Institutions and state behaviour in International Relations theory

In institutional literature, outcome-oriented theories of state behaviour are often thought to carry the greatest explanatory leverage compared to other theoretical contributions that do not subscribe to the rational actor assumption.[76] Robert Keohane labelled the former 'rationalistic approaches,' and compared them to the 'reflective' study of international institutions developed by constructivist scholars at the beginning of the 1990s. According to Keohane, rationalistic research concentrates predominantly on specific institutions and formal international organizations and assumes scarcity, competition and rationality on the part of the actors. On the opposite side of this analytical spectrum, reflective approaches relax assumptions on utility-maximisation and stress the 'impact of human subjectivity and the embeddedness of contemporary international institutions in pre-existing practices'.[77]

2.1.1. Rationalist approaches to the study of institutional effects

The primary aim of rationalist investigations, as exemplified by earlier studies of IGOs in IR theory, is to understand why institutions exist and what leads utility-maximising states – theorised as unitary actors with fixed exogenous preferences and beliefs – to cooperate under conditions of anarchy.

Realists and neo-realists provide an answer to this question by highlighting considerations of interests and prevailing power relations as the principal sources of

[76]See for example, Michael E. Brown, Cote R. Owen Jr., Sean M. Lynn-Jones, and Steven E. Miller, (eds.), *Rational Choice and Security Studies* (Cambridge, Mass.: MIT Press 2000). For a recent take on security institutions and rational actor assumptions see Vaydianatha Gundlupet's award-winning dissertation, 'Big sticks and contested carrots: a power-centric theory of international security institutions', University of Chicago, Department of Political Science, 2008.
[77]Robert O. Keohane, 'International Institutions: Two Approaches', *International Studies Quarterly*, vol. 32, n. 4, 1988, p. 379.

states' rule-consistent behaviour. This focus on the interlinkages between power and interests represents the strength of realist institutional theorising, offering useful insights on the relationship between a state's position in the international system and the construction and role of international institutions. In the first contributions of this kind, Morgenthau, Carr and Hoffmann described international institutions as essentially epiphenomenal (a term later adopted by Mearsheimer) to state power and interests, 'amiable' yet 'fragile civilizer[s]' whose effectiveness is subjected to and limited by the balance of power and super-power restraint.[78] Similarly stressing the role of power and relative distribution of capabilities, Krasner underscored the role of strong states in setting up international trading agreements in his analysis of international regimes, paving the way for scholars of hegemonic stability interested in linking institutional survival and power differences among actors.[79]

Despite the significant criticism this approach attracted for its inability to explain the endurance of international institutions after power transitions, part of its insights are still of appeal today when applied to the field of international security.[80] Gundlupet for example has argued that building security institutions is the most effective way for powerful states to regulate the behaviour of weaker states and shape the international environment to their liking.[81] The cases of UNSC Resolutions 1373 (2001) and 1267 (1999) and of the related UN counter-terrorism regimes are prime examples of such a process in the counter-terrorist sphere. In 2009, looking at those very frameworks,

[78]Stanley Hoffmann, 'The Role of International Organization: Limits and Possibilities', *International Organization*, vol. 10, n. 3, August 1956, p. 372; Edward H. Carr, *The Twenty Years' Crisis, 1919-1939*, (New York: Harper and Row 1939); Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, (New York: Knopf 1948).
[79]Stephen D. Krasner, *International Regimes*, (Ithaca: Cornell University Press 1983); Stephen D. Krasner, 'Global Communication and National Power: Life on the Pareto Frontier,' *World Politics*, vol. 43, 1991, pp. 336-356.
[80]On critiques to hegemonic stability theory (HST) see Keohane, *After Hegemony*; Duncan Snidal, 'The Limits of Hegemonic Stability Theory,' *International Organization*, vol. 39, n. 4, 1985, pp. 579-614; Volker Rittberger, *International regimes in East-West Politics*, (London and New York: Pinter Publishers 1990); Joseph Nye, *The Future of Power*, (New York: Public Affairs 2011).
[81]Gundlupet, 'Big sticks and contested carrots: a power-centric theory of international security institutions'.

Mendelsohn developed the concept of 'hegemonial management' to describe the role of great powers in setting the agenda of international counter-terrorist institutions, 'articulat[ing] a program to pursue it and facilitat[ing] its execution.'[82]

Both these realist approaches have the merit of fleshing out what, according to Moe, has been a common yet underexplored intuition of institutionalist literature: the fact that the power of actors matters in building the institutions itself.[83] Not unlike the liberal institutional or rationalist functional contributions with which they had to contend, however, these analyses tend to remain silent, but for few isolated examples, as to whether IGOs have independent effects on state behaviour, influencing either the decision-making process or the policy output of their member states.[84] This is also true of the debate that pitted institutionalists against neo-realists in the middle of the 1980s, insofar as their research agenda, consumed by the absolute versus relative gains controversy, was guided by attempts to explain international cooperation as a response to typical collective action problems in an international system dominated by anarchy.[85] Keohane's investigation thus clarifies how institutions help focus states' expectations on a cooperative solution, lowering transactions costs and providing a degree of

[82]Barak Mendelsohn, *Combating Jihadism. American Hegemony and Interstate Cooperation in the War on Terrorism*, (Chicago: University of Chicago Press 2009), p. 2.
[83] Terry M. Moe, 'Power and Political Institutions,' *Perspectives on Politics*, vol. 3, n. 2, pp. 215-233.
[84] On this point, see for example some early contributions which recognised that international institutions can influence state behaviour by acting through domestic political channels: B. E. Matecki, 'Establishment of the International Finance Corporation: A Case Study', *International Organization*, vol. 10, n. 2, 1956, pp. 261-275; A. Glenn Mowers, *International cooperation for social justice: Global and regional protection of economic/social rights*, (Westport, Conn: Greenwood Press 1985); Whitney Perkins, 'Sanctions for Political Change—The Indonesian Case', *International Organization*, vol. 12, 1958, pp. 26-42. Another body of earlier work tended to investigate the effectiveness of international institutions in achieving their statutory goals, as exemplified by Hoffmann's 1956 article in which he derives his argument for IGOs' epiphenomenal character from their lack of effectiveness in achieving their objectives.
[85] On the relative gains front see, for example, Joseph Grieco, 'Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism', *International Organization*, vol. 42, n. 3, 1988, pp. 485-507; John Mearsheimer, 'The False Promise of International Institutions;' Lloyd Gruber, *Ruling the World: Power Politics and the Rise of Supranational Institutions*, (Princeton: Princeton University Press 2000). On the opposite side see, Keohane, 'Neoliberal Institutionalism: A Perspective on World Politics;' Robert Powell, 'Absolute and Relative Gains in International Relations Theory,' *American Political Science Review*, vol. 85, n. 4, 1991, pp. 1303-1320; Duncan Snidal. 'Relative Gains and the Patterns of International Cooperation,' *American Political Science Review*, vol. 85, 1991, pp. 701-726.

transparency that reduces the appeal of reneging on commitments.[86] It does not clarify, however, what happens to policy-making once the decision to cooperate has been made and the strategic conditions that give rise to cooperative arrangements have led states to opt for a given solution among multiple Pareto-optimal equilibria.

It was left to others to attempt to further specify the conditions of states' cooperative behaviour.[87] As useful as those studies have proved to be in advancing the institutionalist research agenda, however, they generally suffer from two major drawbacks. The first one relates to their narrow empirical scope, often limited to traditional issue-areas such as the economy, the environment, and the 'external' dimension of security (e.g. non-proliferation regimes; US-NATO-Germany power relations in Europe, to mention a few).[88] Their second and most significant shortcoming is inherent in the original framing of their research design, which adopts a state-centric approach where states are considered unitary actors and rational utility maximisers with fixed preferences. In so doing, studies of institutions have lost the empirical accuracy of some earlier contributions that for example incorporated non-state actors and multiple

[86] Keohane, *After Hegemony.*

[87] Some noteworthy studies have detailed, for example, the conditions under which cooperative arrangements are adopted; different types of collective action problems resolved; outcomes altered by notions of bounded rationality; and regime formation underlined by constellations of interests that are rigorously defined *ex ante*. See, for example, Lisa L. Martin, *Coercive Cooperation: Explaining Multilateral Economic Sanctions*, (Princeton: Princeton University Press 1992); Robert Keohane, *After Hegemony;* Arthur Stein, 'Coordination and Collaboration: Regimes in an Anarchic World,' in Stephen D. Krasner, *International Regimes*; J.S. Duffield, 'International Regimes and Alliance Behaviour: Explaining NATO Conventional Forces Level', *International Organization*, vol. 46, 1992, pp. 819-855; Ronald B. Mitchell, *International Oil Pollution at Sea: Environmental Policy and Treaty Compliance*, (Cambridge, MA: MIT Press 1994); Barbara Koremenos, Charles Lipson, Duncan Snidal, 'Rational International Institutions,' *International Organization*, vol. 55, n. 4, 2002, special issue; Celeste A. Wallender, *Mortal Friends, Best Enemies: German-Russian Cooperation After the Cold War*, (Ithaca: Cornell University Press 1999); Martin Rist, Volker Rittberger, 'Regime Theory and International Environmental Management,' in Andrew Hurrell and Benedict Kingsbury (eds.), *The International Politics of the Environment*, (Oxford: Clarendon Press 1992), pp. 85-109.

[88] The introductory chapter has already established in detail the need to extend the institutional research agenda to the homeland security field, which, so far, has been relatively neglected in the literature. Significantly enough, Gundlupet's analysis, whose worth was recognised by the American Political Science Association in 2009, is vocal in pleading that security should be considered as an 'independent sphere' in the analysis of international institutions. His case selection, however, reveals once again a bias against homeland security as an issue-area. See Vaydianatha Gundlupet, 'Big sticks and contested carrots: a power-centric theory of international security institutions', Paper prepared for the 47th Annual Convention of the International Studies Association, San Diego, CA., March 22-25, 2006.

levels of investigation into analysis.[89] As Martin and Sikkink note:

> 'In allowing their agenda to be defined by […] the realist challenge, institutionalists have generally neglected the role of domestic politics. States have been treated as rational unitary actors and assigned preferences and beliefs. This framework has been productive in allowing us to outline the broad ways in which institutions can change patterns of behavior. But in privileging the state as an actor, we have neglected the ways in which other actors in international politics might use institutions (a central insight of earlier studies of trans-governmental organization) and the ways in which the nature or interests of the state itself are potentially changed by the actions of institutions (an implication of the early neo-functionalist literature).'[90]

Answering her own plea for a greater degree of specification, Martin abandons the unitary actor assumption and brings domestic politics into the picture to explain policy outputs in a rare attempt to capture a significant typology of institutional effects: convergence of outcomes.[91] This, as noted in the Introduction, is a fruitful empirical indicator of the influence of IGOs on state behaviour.

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[89]Robert O. Keohane, Joseph s. Nye, *Power and Interdependence: World Politics in Transition*, (Boston: Little Brown 1977); W. Streeck, P. C. Schmitter, 'From National Corporatism to Transnational Pluralism: Organized Interests in the Single European Market', *Politics and Society*, vol. 19, n. 2, 1991, pp. 133-164.
[90]Lisa L. Martin, Beth A. Simmons, 'Theories and Empirical Studies of International Institutions,' p. 746.
[91]In particular, Martin and Botcheva link the creation of institutional standards and norms of behaviour to the presence of organized interest groups at sub-state level. Those groups support the institutional agenda and therefore contribute to making convergence of policies possible. Effective international regimes are likely to emerge only where they have deep roots in the functional demands of groups in domestic and transnational society. See Liliana Botcheva, Lisa M. Martin, 'Institutional Effects on State Behaviour: Convergence and Divergence,' *International Studies Quarterly*, vol. 45, n. 1, March 2001, pp. 1-26. It should also be noted that Keohane himself relaxes the rational actor hypothesis by putting forward notions of 'bounded rationality', according to which individuals, states and governments 'satisfice rather than maximize', Robert Keohane, *After Hegemony*, p. 239. Relevant to the domestic politics idea is also Helen

Moravcsik carries Martin's insights even further and deepens the critique to international institutionalism by underlining the need to explore the origin of state (foreign) policy preference formation as the complex result of the interaction of multiple factors, such as interest groups, strategic cultures, historical memories, economic transitions, and national values. In his view, states do not automatically maximise fixed, homogeneous conceptions of security, sovereignty, or wealth, for example, as realists and institutionalists tend to assume. Instead, they pursue particular interpretations and combinations of those concepts preferred by powerful domestic groups… '[They] seek to realize [their] distinctive preferences under varying constraints imposed by the preferences of other states.'[92] Institutions play a role in this process by fostering compliance with international norms: they do not alter the external incentives facing a unitary state, but the 'domestic incentives facing societal groups and politicians, thereby shifting the domestic coalitions that define state preferences.'[93]

For the purpose of this study, Moravcsik's analysis of preferences in international regimes has great heuristic appeal, as it permits partial filling of the gap between realist and institutionalist outcome-oriented theories of state behaviour and the norm-driven approaches favoured by constructivists. While he invites us to devote greater attention to preferences, however, this author remains 'agnostic', in Johnston's words, as to where

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Milner's work on cooperation. See for example, Helen Milner, Edward Mansfield, B. Peter Rosendorff, 'Why Democracies Cooperate More: Electoral Control and International Trade Agreements,' *International Organization*, Summer 2002, vol. 56, n. 3, pp. 477-513.

[92] Andrew Moravcsik 'Taking Preferences Seriously,' *American Political Science Review,* vol. 90, n° 1, March 1996, p. 520. See also, Andrew Moravcsik 'Is Something Rotten in the State of Denmark? Constructivism and European Integration,' *Journal of European Public Policy*, vol. 6, n° 4, 1999, pp. 669-681; and Andrew Moravcsik 'Explaining International Human Rights Regimes: Liberal Theory and Western Europe,' *European Journal of International Relations*, vol. 1, n° 2, 1995, pp. 157-189; Andrew Moravcsik, John Ikenberry, 'Liberal Theory and the Politics of Security in Northeast Asia,' Paper Prepared for the Ford Foundation Project on Non-Traditional Security, Seoul, South Korea, 30 January 2004, available at http://www.princeton.edu/~amoravcs/library/seoul.doc.

[93] Moravcsik 'Explaining International Human Rights Regimes,' p. 158.

they 'come from'.[94] Reflective approaches to the study of international institutions and state behaviour, with their emphasis on the origin of social identities, move one step further in answering Moravcsik's plea to take state preference formation seriously.

2.1.2. Reflective approaches to the study of institutional effects

The idea that international institutions can affect state behaviour by acting as learning environments where new facts can be generated, values reassessed, and actors' preferences modified is not a novel one in IR institutional scholarship. Ernst Haas's work on the early stages of European integration pointed in this direction, as did Peter Haas's analysis of epistemic communities and decision-making procedures in environmental regimes.[95] The bulk of extant literature on institutional effects is, however, located primarily in the constructivist camp. Those approaches generally highlight the independent role of ideational factors on international and domestic policy outcomes.[96] They stress the constitutive role that norms and principled ideas have on the identity formation of actors, reshaping interests, self-understandings and behaviour on the international and domestic scene.[97] These writings portray states as social entities whose identities are shaped in powerful ways by the domestic and international environments in which they are embedded. Constructivist scholars have produced well-documented empirical studies showing how norms influence policy change in areas as diverse as

[94]Johnston, 'Socialization in International Relations Theory', in *Social States: China in International Institutions, 1980-2000*, p. 15.
[95]Ernst B. Haas, *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957*; Peter M. Haas, 'Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control,' *International Organization*, vol. 43, n. 3, 1989, pp. 377-405.
[96]Thomas Risse, Stephen C. Ropp, Kathryn Sikkink, *The Power of Human Rights. International Norms and Domestic Change*, (Cambridge: Cambridge University Press 1999).
[97]The definition of the concept of norm adopted in this study follows Martha Finnemore and Kathryn Sikkink's contribution, according to which norms are 'standard[s] of appropriate behavior for actors with a given identity'. See Martha Finnemore, Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization*, vol. 52, n. 4, p. 892.

foreign aid, opposition to slavery, piracy, women trafficking, science policy, development, racism, and the laws of war.[98] Katzenstein has crucially extended this research agenda to the field of national security, analysing the constitutive power of social and cultural factors in framing state security policies.[99]

Constructivist approaches also engage in explanations of the actual mechanisms leading to state compliance and norm transmission. Of particular interest to the understanding of institutional effects are analyses that distinguish, for example, between 'inconsequential' (Meyer, Boli and Thomas) or 'mimetic' (Krasner) types of commitment and more structural forms of compliance. According to these accounts, the former behavioural categories stem primarily from rhetorical adherence to socially accepted norms or scripts, while the latter are brought about by a profound long-term impact on the identity of state and non-state actors. These insights prove particularly useful when attempting to dissect the motivational drivers of actors' pro-institution choices.

Equally valuable are studies that find that international organizations can play a crucial role in the dispersion of beliefs and models of behaviour. In particular, Schmitz and Sikkink's idea of a 'norm-cascade process' is designed to illustrate the various stages of a norm life cycle and explain, for example, increasing global acceptance of human rights norms.[100] According to this framework, international institutions contribute to

[98]Michael Barnett, Martha Finnemore, *Rules for the World. International Organizations in Global Politics*, (Ithaca: Cornell University Press 1999); Michael N. Barnett, Martha Finnemore, 'The politics, power, and pathologies of international organizations,' *International Organization,* vol. 53, 1999, pp. 699–732; Martha Finnemore, *National Interests in International Society,* (Ithaca: Cornell University Press 1996); Martha Finnemore, 'International organizations as teachers of norms: the United Nations educational, scientific, and cultural organization and science policy,' *International Organization,* v. 47, 1993, pp. 565–597; Ethan A. Nadelmann, 'Global Prohibition Regimes: The Evolution of Norms in International Society,' *International Organization*, vol. 44, n. 4, Autumn, 1990, pp. 479-526; Daniel C. Thomas, *The Helsinki Effect. International Norms, Human Rights, and the Demise of Communism*, (Princeton: Princeton University Press 2001).

[99]Peter J. Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics,* (New York: Columbia University Press 1996).

[100]Support for a particular norm forms slowly in a two-step process: it grows until it reaches a certain threshold, or 'tipping point', after which its adoption by other members of the community occurs more rapidly and leads to a 'cascading effect.' Hans Peter Schmitz, Kathryn Sikkink, 'International Human Rights,' in *Handbook of International Relations*, London, SAGE Publications, 2002, pp. 526-537.

norm cascades by 'pressuring targeted actors to adopt new policies and laws, to ratify treaties, and by monitoring compliance with international standards.'[101] In this way, IGOs can act as agents of social construction, by teaching states new models of behaviour, using their legitimacy and perceived impartiality to promote dialogue among members, and pressuring violators to conform.[102]

Later bodies of work on norm transmission have helped clarify the relationship between domestic political structures and institutional normative diffusion.[103] To this end, Sikkink and Finnemore have underscored the role of 'norm entrepreneurs' – dissatisfied agents within a certain national or supranational structure – who dislike existing norms or practices and often band together to change them.[104] Khagram, Riker, Keck, and Sikkink, have pointed to the norm-promoting role of 'transnational advocacy networks' (TAN), which mobilise and achieve influence beyond their command of traditional power resources, promoting information exchange, coordinating tactics, or generating outright joint mobilisation.

In their analysis, these groups' transformative force in world politics is channelled through international institutions via characteristic 'boomerang effects', the process by which domestic NGOs bypass their state and directly search out 'international allies to try to bring pressure on their states from outside.'[105] This thesis finds evidence of such patterns of institutional influence in the partial socialisation processes that affect state

[101]Margaret E. Keck, Kathryn Sikkink, 'Transnational advocacy networks in international regional politics,' UNESCO Working Paper, 1999, p. 90.
[102]Martha Finnemore, 'International organizations as teachers of norms: the United Nations educational, scientific, and cultural organization and science policy,' *International Organization,* vol. 47, 1993, pp. 565–97; Michael N. Barnett, Martha Finnemore, 'The politics, power, and pathologies of international organizations,' *International Organization,* vol. 53, 1999, pp. 699–732; Emanuel Adler, 'Seeds of peaceful change: the OSCE security community–building model', in Emmanuel Adler, Michael Barnett (eds.), *Security Communities*, pp. 119–159, (New York: Cambridge University Press 1998).
[103]Jeffrey T. Checkel, 'Norms, Institutions and National Identity in Contemporary Europe', *International Studies Quarterly*, vol. 43, n.1, 1999, pp. 83-114.
[104]Martha Finnemore, Kathryn Sikkink, 'The Constructivist Research Program in International Relations and Comparative Politics,' *Annual Review of Political Science*, vol. 4, 2001, pp. 391-416.
[105]On the original concept of 'boomerang effect' see, Margaret E. Keck, Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*, (Ithaca: Cornell University Press 1998), p. 12.

preference formation in the issue areas examined. In contrast to the traditional model, however, in these specific instances this pattern of influence occurs as a secondary-order effect in three different stages. In the first phase, original agenda-setting actors serve as the initiators of 'diffusion-by-promotion' strategies that are meant to further their international counter-terrorist agenda by globalising it. Once adopted at institutional level, the policies undergo a process of 'expropriation' at the expense of their original entrepreneurs – the agenda-setting states – and 'reappropriation' on the part of the institution, which lobbies for changes to the original content of the provisions. Such joint processes of expropriation and reappropriation take place at the level of institutional bodies and *ad hoc* groupings of non-agenda setting actors. To this end, Jochen Prantl's extensive analysis of informal groupings has pointed out how within the United Nations these coalitions practically increase the number of participants in UNSC policy-making, enlarging the 'ownership' of this body's decisions beyond P5 members, and linking it with the General Assembly's agenda.[106] In the last stage of this process, the institutional environment exerts pressure on the initial regime-setting states to conform, triggering the social influence mechanism at the basis of the actors' behavioural alignment. The empirical cases detailed in Chapters Three, Four and Five of this thesis illustrate these dynamics in detail.

Reflective approaches are similarly useful in that they bring to light feedback effects and complex social interactions between the domestic and international levels of enquiry. Despite acknowledging the possibility that these 'feedback loop[s]' between levels of interaction exist, however, the causal arrows mapped by these works generally tend to flow top down, thus neglecting an important level of analysis.[107] When their

[106]Jochen Prantl, *The UN Security Council and Informal Groups of States: Complementing or Competing for Governance*?, (Oxford: Oxford University Press 2006), p. 89.
[107]Gerry Simpson, 'The Ethics of the New Liberalism,' in Christian Reus-Smit, Duncan Snidal (eds.), *The Oxford Handbook of International Relations*, (Oxford: Oxford University Press 2008), p. 257.

direction is reversed, as in the case of Lumsdaine's study on the foreign assistance policies of OECD countries, for example, such analyses expose their flank to critiques of endogeneity and of poorly constructed research designs, marred by excessive reliance on counterfactuals.[108]

All in all, contributions belonging to the non-rationalist camp have certainly gone a long way in deepening IR theory's understanding of how state preferences are formed in the context of international cooperation. They suffer, not unlike their interest-driven counterparts, however, from a certain limitation in their empirical scope and in the depth of their analyses. That is, they mostly neglect to trace institutional effects on policy-making all the way down to the intra-state level of enquiry, and vice versa, which would help to sketch a more helpful portrayal of state decision-making in a context where norms can affect practice, practical concerns can drive behaviour, and state action occurs within a complex web of overlapping institutional layers. What is needed, then, is a conceptual framework that can tie the insights of rationalist and reflective institutional scholarship together via a systematic comparative enterprise. One way of doing this, the thesis argues, is by going back to constructivism's treatment of international institutions as social environments, *loci* of learning where national officials are exposed to (new) norms, ideas and practices. This enterprise is the subject of the remaining sections of this chapter.

2.2. Institutional effects in counter-terrorism: a framework for analysis

As detailed in the Introduction, this enquiry was spurred by a theoretical-empirical puzzle. Mainstream analyses of counter-terrorist policy-making generally

[108]Ruggie's edited volume on multilateralism also pays attention to feedback effects. See, John G. Ruggie (ed.), *Multilateralism matters. The Theory and Praxis of an Institutional Form*.

ignore the practical evidence of aggregate convergent trends in the output of member states participating in the multilateral counter-terrorism regime. They underscore within-case persistence in patterns of behaviour and explain resistance to policy variation across time by referring to either the 'dysfunctional' impact of cultural traits on policy production or the cost-benefit analysis of state actors. Consequently, they largely dismiss the homogenising influence of international cooperation in the counter-terrorism issue area, neglecting to factor international effects into their analyses of policy-making processes.

Constructivist institutional socialisation literature posits instead that cooperation within international institutions has a conformity-inducing effect on the participant actors, making their policies more similar over time. From this perspective, convergence – intended here as a dynamic process of 'becoming more alike' – is the visible symptom of a *potential* institutional effect, although the type of behavioural influence resulting from the process of cooperation is by no means predetermined.[109]To paraphrase Alexander Wendt, 'change in the behavior of the participants in a social interaction' – in this case cooperation within multilateral counter-terrorism bodies– can have 'a lot to do' with institutional effects, but it can as well certainly result from 'exogenous constraints on the individual and the group', as postulated by outcome-oriented approaches.[110]

With that in mind, what follows advances the claim that, in fact, both types of constraint on state action play a distinctive role. The framework that more accurately captures both dynamics is one where: institutions are conceptualised as diffused

[109]Of course there is one additional hypothesis that should be taken into consideration, i.e. that IGOs have *no effect* on the counter-terrorist behaviour of member states (null hypothesis).
[109]More specifically, convergence is a process whereby a given state's policy goals, content, instruments, outcomes, and styles move from 'different positions toward some common point.' See Alex Inkeles, *One World Emerging? Convergence and Divergence in Industrial Societies*, (Boulder: Westview Press 1998), pp. 13-14.
[110]Alexander Wendt, 'Collective identity formation and the international state', in *American Political Science Review*, vol. 88, n. 2, 1994, p. 384.

environments where social construction, that is socialisation, takes place; the outcome of this process of incorporation of newcomers into given 'organised patterns of interaction' is not a full internal modification of behaviour (internalisation) but group-induced conformity for fear of social sanction or in search of social praise (social influence); the presence of effects induced by social rationality does not a priori exclude the ontological possibility that material rationality plays a concomitant role in driving (pro-institution) behaviour.[111] As this position might be controversial from a doctrinal point of view, a section of the chapter will be devoted to gauging its significance in the larger context of IR theory development.

Coming back to the practical elaboration of the framework, such contention entails that constructivist analyses of socialisation of states within international institutions, in particular Johnston's and Checkel's multi-level socialisation models, be recast, adapted and expanded to better *understand* reality.[112] The empirical case studies will then offer an illustration – more a plausibility probe than a test given the size of the sample – of this 'imperfect' and diffused institutional socialisation hypothesis.[113]

2.2.1. Socialisation in International Relations theory

Socialisation can be defined as the 'process of inducing actors into the norms and rules of a given community.'[114] In its most generic and extensive sense, new norms and

[111]Sheldon Stryker and Anne Statham define socialisation as 'the generic term used to refer to the processes by which the newcomer […] becomes incorporated into organized patterns of interaction,' in Sheldon Stryker, Anne Statham, 'Symbolic Interaction and Role Theory', in Gardner Lindzey, Elliot Aronson, *Handbook of Social Psychology. Volume I. Theory and Method*, (New York: Random House 1985), p. 325.
[112] Johnston, *Social States. China in International Institutions, 1980-2000*, pp. 26-27.
[113]For a perspective that supports this approach to case study analysis see Stefano Recchia, 'Limited Liability Multilateralism: How the Generals Can Drive U.S. Intervention Policy Toward IOs', Paper Presented at the ISA Annual Convention, San Francisco, CA, April 2013.
[114]Jeffrey T. Checkel, 'International Institutions and Socialization in Europe: Introduction and Framework', *International Organization*, vol. 59, Fall 2005, p. 804. Definitions of socialisation vary in IR literature.

practices are internalised as a result of the socialisation process, giving rise to 'sustained compliance', which leads agents to follow the logic of appropriateness over the logic of consequences. Rule-consistent behaviour subscribes to logic of appropriateness when agents behave suitably by either learning a role, thus 'acquiring the knowledge that enables them to act in accordance with' prevalent social expectations, or by replacing structural or material incentives and instrumental calculations with the 'taken-for-grantedness' of the community or institutional norm. According to the level of depth of the commitment, Checkel calls those instances Type 1 and Type 2 internalisation or socialisation, respectively.[115]

Constructivist scholarship has done the most to investigate socialisation as a process in International Relations theory, producing refined frameworks, such as Risse, Ropp and Sikkink's five-stage norm cycle model, recently updated to take into consideration different levels of behavioural conformity. Outcome-oriented theories of state behaviour, on the contrary, have mostly neglected socialisation as an institutional effect. When they acknowledged the phenomenon, they under-theorised or under-specified it. Neo-realists for example have conceived socialisation as a 'process of selection and competition, whereby states are compelled to emulate the self-help balancing behaviour of the most successful actors in the system', coming to share, over time, their behavioural traits without internalising norms and rules.[116] According English School theorists, international society is a 'highly social setting capable of socializing

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Bearce and Bondanella, for example, define it as a 'process by which actors acquire different identities, leading to new interests through regular and sustained interactions within broader social contexts and structures'. David H. Bearce, Stacy Bondanella, 'Intergovernmental Organizations, Socialization and Member States Interest Convergence', *International Organization*, vol. 61, Fall 2007, p 706.

[115]Checkel, 'International Institutions and Socialization in Europe', p. 804.

[116]Checkel, 'International Institutions and Socialization in Europe', p. 806; Kenneth N. Waltz, *Theory of International Politics*, (New York: McGraw Hill 1979), pp. 127-129.

states' to its underlying principles and institutions. The mechanisms guiding this socialisation process, however, are not explained by this theoretical approach.[117]

A case in point in the English School tradition is Mendelsohn's analysis of the rise and consolidation of the multilateral counter-terrorist regime in the aftermath of 9/11. One of the few contributions on this specific subject matter, Mendelsohn's has the merit of putting multilateral counter-terrorist institutions at centre stage, highlighting the role of the United States as a regime setter. Mendelsohn however ascribes regime participants' norm-compliant behaviour – which, he agrees, is making members' policies increasingly *similar* – to their willingness to defend the fundamental institutions of international society, undermined by the structural threat of Islamic terrorism. Resistance to implementation results from members' refusal to compromise fundamental society institutions – such as sovereignty – by engaging in actions promoted by the hegemon in its own interest (namely, the 2003 intervention in Iraq). This approach therefore does not recognise IGOs – specifically multilateral counter-terrorist bodies – as sites of socialisation, rejecting the idea that they can exercise independent agency as a by-product of their socialising effects.[118]

2.2.2. Institutional social effects

Johnston's analysis of China's participation in international institutions offers to date the most systematic conceptualisation of international organizations as promoters of state socialisation. His study begins with a simple yet powerful premise, i.e. that 'actors

[117] According to this theoretical tradition, institutions are 'a cluster of social rules, conventions, usages, and practices…a set of conventional assumptions held prevalently among society-members…[that] provide a framework for what is the done thing and what is not in the appropriate circumstances'. Institutions are as broad as the balance of power, and the practice of diplomacy. See Hidemi Suganami, 'The Structure of Institutionalism: An Anatomy of British Mainstream International Relations,' *International Relations*, vol. 7, n. 5, p. 2365.

[118] Mendelsohn, *Combating Jihadism*.

who enter into a social interaction rarely emerge the same…[A]ctors' behavior that previous to social interaction tended to diverge may converge as a result of this social interaction.'[119] According to this model, there are at least three things that one needs to know in order to test for the presence and effects of socialisation in the international environment: first, 'the characteristics of the social environment in which agents are interacting' at a given time t, together with '[…] the norms and associated behaviours that actors in the environment are supposed to adopt and, ideally, internalize'; second, 'the characteristics of individual agents involved in the social environment'; third, the ways in which 'these agents…interact with the social environment at time t+1', and 'the policy processes through which newly socialized agents act upon the broader social environment'.[120] In other words, for Johnston the 'net effect of socialization [is] a function of the characteristics of the environment interacting with the characteristics of the agent in an ongoing tight feedback relationship'.[121]

Another key point of Johnston's model is his intuition that socialisation is not an all-or-nothing process, where agents are socialised – and their policies converge – by virtue of an 'endogenous change in the[ir] normative characteristics and identities'.[122] Rather, he considers socialisation as a three-level continuum, characterised by increasing degrees of depth, or authenticity of commitment. Policy convergence can result from the 'mimicking' of modal procedures, norms and languages, a 'microprocess whereby a novice initially copies the behavioral norms of the group in order to navigate through an uncertain environment'. It also results from 'social influence', which elicits complying behaviour in actors worried by status markers and status devaluation; and from actual

[119] Johnston, *Social States*, p. xiii.
[120] Johnston, *Social States,* pp. 26-27.
[121] Johnston, *Social States*, p. 27.
[122] Johnston, *Social States*, p. xiv.

'social persuasion' – or 'normative suasion', in Checkel's words– through which norms, values and procedures are internalised.[123]

This specification of socialisation as a complex and multi-level process is very useful but essentially tailored to the scope of Johnston's own enquiry, which focuses on a novice state, China, taking its first steps in the international institutional environment. Of his three mechanisms, in actuality only influence and persuasion apply to states that are non-novices, a characteristic shared by the majority of members of international institutions.[124] To this end, Checkel has introduced the concept of 'role-playing' in order to identify these initial shifts from logic of consequences to logic of appropriateness; or, in traditional constructivist speech, from logic of consequences to Type 1 socialisation, where no process of reflective internalisation has yet occurred.[125] He defines role playing as 'an agent's passive, non-calculative acceptance of new roles' within organizations, which provide actors with 'simplifying shortcuts, cues, and buffers that can lead to the enactment of particular role conceptions.'[126] In his account, 'organizational and group environments trigger roles in which a degree of "automaticity" governs individual behaviour, [leading] [a]gents [to] adopt certain roles because they are appropriate in [a] particular setting.'[127] Role-playing is more likely to occur when the nature of the interaction among agents is intense, prolonged and sustained.[128]

The crucial distinction between the two approaches lies in the definition of state motivational drivers. Checkel underscores the non-calculative nature of the choice, while

[123]Johnston, *Social States*, pp. 23-26.
[124]Johnston's attention to novices is not uncommon in institutional socialisation literature. Gheciu's analysis of NATO's identity-building role in the former Communist states of Europe is another prime example of a study where institutions are functional in socialising newcomers. See, Alexandra Gheciu, *NATO in the 'New Europe': International Socialization and the Politics of State Crafting After the End of the Cold War,* (Stanford University Press 2006).
[125]Roles are 'what actors in positions do, as constrained by normative expectations.' See Stryker, Statham, 'Symbolic Interaction and Role Theory,' p. 333.
[126] Checkel, 'International Institutions and Socialization in Europe', p. 810.
[127] *Ibid.*
[128] Checkel, 'International Institutions and Socialization in Europe', p. 811.

Johnston recognises that mimicking is a survival device, triggered by a novice's need to find its feet in a new situation or experience by 'trying out' new roles. This understanding of the concept is closer to its conceptualisation in the sociological and socio-psychological literature that has developed this notion initially, where role-playing is referred to as the process whereby 'actors play roles in order to anticipate their own and others' projected patterns of action'.[129] Actors modify, sustain and redirect their own behaviour towards institutional or pro-group preferences, using 'previous experience, familiarity with comparable others' and what 'symbolic cues' are available to make sense of their surroundings in a given situation.[130]

Although these mimetic processes are one way in which agents learn while interacting in institutional environments, they are but one stage of the larger mechanism through which induction into the patterns of interaction of such environments takes place. Putting aside the end state of this process, full internalisation – which has been theorised at large by the literature – what emerges from the analysis of cooperation within multilateral counter-terrorist fora is an emphasis on the effects that others' expectations have on the regime participant's behaviour; a mechanism that can lead states to *come to occupy* the position attached to such expectations: social influence.

2.2.3. Cooperation through image: the 'diffused social influence' model

In sociology and social psychology, the notion of social influence is a conceptual proxy for the behavioural effects generated by social pressures derived from group

[129] Stryker, Statham, 'Symbolic Interaction and Role Theory', p. 324.
[130] *Ibid.*

interaction.[131] Bertram Raven for example defines it as the 'change in [an actor's] cognition, attitude, or behavior, which has its origin in another [actor] or group.'[132]

In IR theory, this concept has a more limited scope and is employed to account for forms of anticipatory socialisation, rather than full internalisation. The most thorough examination of the phenomenon is still Johnston's. Drawing from his extensive analysis, as well as from sociological and socio-psychological understandings of the concept, social influence is defined here as the process of alignment of an actor's behaviour with the pro-group or pro-institution position that results from two interrelated mechanisms: the maximisation of the psychological payoffs deriving from social acceptance and praise, and the avoidance of social devaluation through preservation of an actor's own (self)-image. Johnston illustrates this concept using the ideas of backpatting derived from status re-affirmation and opprobrium originating in social shaming. In the multilateral counter-terrorist regime, the social influence phenomenon operates at two distinct but closely interrelated levels: at the micro-level of intra-group dynamics, where actors interact within a finite institutional environment; and the macro-level of inter-group

[131]It should also be noted here that this investigation follows in the path of many an illustrious precedent when tapping into sociological and socio-psychological studies of how emotions affect decision-making. Johnston's contribution for example draws extensively on sociological and socio-psychological analyses of the concepts of mimicking, social influence and social persuasion. Before him, authors as diverse as Irving L. Janis, Paul t'Hart, Yuen Foong Khong, Robert Jervis, and Deborah Larson have all explored the relationship between psychological variables and decision-making in governments, providing justifications as to the methodological acceptability, the limits and the heuristic value, for International Relations research, of resorting to interdisciplinary approaches that draw parallels between the behaviour of individuals in social settings and the behaviour of states in international interactions. This enquiry therefore stands on the shoulders of these giants in considering such an interdisciplinary approach as not only useful but also desirable. As the primary purpose of this thesis is to explain the institutional effects of cooperation, however, this chapter does not dwell in detail on the literature on the behavioural effects of non-material variables such as prestige, status, honour, credibility, standing, and esteem, to mention but a few. This could indeed be the topic of another enquiry. This contribution acknowledges, however, that there are differences, at times significant, in the ways these variables and their effects are understood in the literature. The chapter focuses instead on the concepts of image and reputation as important components of the social influence phenomenon that the thesis detects in international counter-terrorist settings. Those contributions belonging to this 'psychological stream' in IR theory that have actually informed this analysis are therefore included in the footnotes, when appropriate, or in the bibliography; the works listed, however, are by no means an exhaustive account of the innumerable studies that belong to this rich analytical field of enquiry.

[132]In this definition, social influence is almost synonymous with internalisation. Bertram H. Raven, 'Social Influence and Power. Abstract', University of California, Los Angeles, 4 December 1964.

dynamics, where actors are exposed to the conformity-inducing pressures of a broader social domain.

Before proceeding further with the analysis, it is useful to provide a definition of the concepts of image and self-image, as they figure recurrently in what follows. A later section of this chapter will also provide a detailed investigation of the differences existing between the concepts of image and reputation. According to the Oxford English Dictionary, image is 'the general impression that a person, organization, or product presents to the public.' The term can carry both positive and negative connotations, based on 'rating[s] of the person [or of the actor] for how they perform in respect of some characteristic, negative or positive.'[133] Consequently, self-image describes 'the idea one has of one's [own] abilities, appearance, and personality,' a notion that has a lot to do with actors' perceptions of their own identity and the way they are regarded by outsiders.[134] For example, if honesty is the actor's characteristic that is called into question by the group, image and self-image refer to the actor's desire to "'be seen to […], be regarded as" […] honest', rather than the actor's actual desire to truly possess that personality trait.[135] Image as a concept cannot be divorced from its outward projection.

2.2.3.1. Micro-level mechanisms of social influence: intra-group dynamics

Two broad features are key to the activation of the mechanism of social influence within a given group: its heterogeneous character and the driving motivational 'pull' of a state's conception of its own image. Assuming that actors belonging to a given group 'do

[133] 'Image', in *The Oxford English Dictionary*, online edition, available at http://oxforddictionaries.com.
[134] 'Self-image', in *The Oxford English Dictionary*, online edition.
[135] Jon Elster, *Alchemies of the Mind. Rationality and the Emotions*, (Cambridge: Cambridge University Press 1998), p. 160.

not share the same world' but carry different norms, goals, behaviours, and interests – a possibility that sociologists, social psychologists and IR theorists equally posit – potential disagreements may arise. Majorities within groups might try to solve the disagreement – 'turn diversity into unity' – by propelling the outlying actor toward the obligations and tendencies emanating from the group itself.[136] Social influence as a phenomenon stems from this relationship between conflict within the group and search for its resolution, for order, for consensus. In this view, there is a strong connection between influence and negotiation, and it is precisely during negotiations that the process becomes most apparent.[137]

Certain conditions need to be present for the process of intra-group induced behavioural influence to occur. There has to be a discrepancy between the positions of the agents involved, whereby a given actor is progressively isolated from what it deems its *natural group of reference*, the club of countries to which it should belong. The boundaries of the group an actor is concerned with are intersubjectively defined, and vary according to the issue area. For instance, in the reform of the UN counter-terrorism sanctions regime the United States considered Western P5 members and non-P5 European countries, rather than rising powers Russia and China, as its reference group.

In addition to obvious inherent qualities, this disagreement has to have 'symbolic' value. It is here that an actor's (self-)image comes into play. Serge Moscovici describes this mechanism as follows: 'the external conflict with others' that the actor experiences within the group has to undergo a process of 'turning into an internal conflict with oneself.' This conflict is 'more intensive and difficult to overcome' because it stems from a state of tension, or dissonance, between the perception that others have of the actor's

[136]Serge Moscovici, 'Social Influence and Conformity', in Gardner Lindzey, Elliot Aronson, *Handbook of Social Psychology. Volume II*, p. 352.
[137]Moscovici, 'Social Influence and Conformity', p. 357

characteristics and the actor's own perception of what these characteristics should be.[138] In other words, a disconnect between the actor's identity, the image of this identity the actor projects to the outside world (both through action and discourse, and as perceived by the other members of the group), as well as the image the actor thinks it should project, based on the actor's conception of its own identity (self-image). It is in this respect that an actor may be subject to rhetorical entrapment, whereby previous actions and verbal commitments can be used by members of the group to pressure targets into alignment or compliance.[139]

In order to affect the state and stimulate a reaction, the nature of the issue generating the disagreement has to relate to ideational or even ontological categories – that is, touch on the internalised positional designations (identity) that the state has of its own self, of what its essence, its defining characteristics, even its standing in the world are thought to be. Certain fields of state action such as human rights, good governance, development aid, responsible participation in initiatives promoted and accepted at large by the community of peers – such as non proliferation or anti-money laundering – along with climate, environmental, and civilian protection in war, to name a few, are likely to possess this unique characteristic of being able to touch upon states' identities, stir their emotions and impact the rationality of their decision-making processes.[140] 'Burning

[138] Moscovici, 'Social Influence and Conformity', p. 363.
[139]Frank Schimmelfennig, 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union', *International Organization*, vol. 55, n. 1, Winter 2001, pp. 47–80.
[140]In line with this position, Mercer speaks, for example, of emotional beliefs, such as justice and credibility, to describe similar cognitive/emotional processes. See Ian Mercer, 'Emotional Beliefs', *International Organization*, vol. 64, n. 1, January 2010, pp. 1-31. Other studies underscore the particular normative/emotive nature of certain issue areas that are the subject of analysis in IR literature. See for example, Mlada Bukovansky, Ian Clark, Robyn Eckersley, *Special Responsibilities: Global Problems and American Power*, (Cambridge: Cambridge University Press 2012); Sarah Sewall details how this process of disconnect works in U.S. appreciation of its own implementation standards with respect to the civilian protection norm in international humanitarian law (IHL). See Sewall, 'The Civilian in American Warfare: Normative Pathways and Institutional Imperatives', Thesis submitted in partial fulfilment of the requirements for the degree of DPhil in International Relations at the Department of Politics and International Relations, University of Oxford, October 2010. A relatively new batch of contributions is also exploring the meaning and implications of 'hypocrisy' in the definition of states' foreign policy decisions. For instance, Mlada Bukovansky, 'Institutionalized Hypocrisy and the Politics of Agricultural Trade', in

feeling[s] of shame', embarrassment and discomfiture can result from the public acknowledgement of a lack of correspondence between the perception of the behaviour displayed by the actor in the group and the actor's own self-image.[141] Failure to conform to group expectations is met with sanctions, whose nature – naming, shaming, disgust, contempt, ostracisation into a renegade position or deviant category – is non-material, but carries nonetheless real-life consequences, initiating the external-internal conflict dynamics outlined above. To this end, Jon Elster notes that in social interactions the material aspect of the sanction affects the sanctioner more than it does the target. This latter may for example suffer a financial loss as a result of the violation of a social norm, but will more significantly interpret the sanction as the 'vehicle of […] emotions of contempt or disgust [on the part of the group] and suffer shame as a result.'[142] In his analysis of the psychology of military incompetence, Norman Dixon has similarly pointed out how 'fear of shame can [for example] undermine rational self-interest.'[143]

Formal and informal mechanisms for the expression of policy preferences within certain multilateral venues – including counter-terrorist bodies – can equally elicit non-

Rawi Abdelal, Mark Blyth, Craig Parsons (eds.), *Constructing the International Economy*, (Ithaca: Cornell University Press 2010). For general contributions on the effects of emotions on decision-making see Neta C. Crawford, 'The Passion of World Politics: Propositions on Emotion and Emotional Relationships', *International Security*, vol. 24, n. 4, 2000, pp. 115-156; Ronald De Sousa, *The Rationality of Emotion* (Cambridge: MIT Press, 1987); Richard Ned Lebow, 'Reason, Emotion and Cooperation', *International Politics*, vol. 42, 2005, pp. 283-313. For another seminal analysis of the relationship between emotions and rationality see G. Brennan, P. Pettit, *The Economy of Esteem*, (New York: Oxford University Press 2004) and the more recent contribution by Mercer, Jonathan Mercer, 'Emotion and Strategy in the Korean War,' *International Organization*, vol. 67, n. 2, 2013, pp. 221-252.

[141]In Elster's description, shame belongs to 'a bundle of "self-conscious emotions": embarrassment, shame, guilt, pride, and pridefulness [… E]mbarrassment is caused by the mere exposure to others, without any evaluative component.' The four other types of emotions presuppose 'negative or positive evaluations by oneself or others.' See Jon Elster, 'Social Emotions in Historical Context. Shame and Guilt,' in *Alchemies of the Mind*, p. 149.

[142]This applies neatly to the case of the anti-money laundering-counter-terrorist financing regime. Elster, 'Social Emotions in Historical Context,' p. 146.

[143] Norman Dixon, *The Psychology of Military Incompetence*, (Pimlico: New Ed Edition 1994), quoted in Elster, *Alchemies of the Mind*, p. 148. Johnston notes that social influence precisely occurs when cost-benefit calculations (along with full internalisation and attachment to the model displayed in the absence of points of reference) cannot explain pro-group behaviour.

material behavioural responses in actors interacting within a group.[144] Social psychologists label these intra-group dynamics the specific 'effect of the commitment', i.e. the fact that speaking or taking a stand before a group – and the related feelings of apprehension, nervousness or outright fear of rejection that often accompany these actions – can have non-rational conformity-inducing effects on the behaviour of the participants in a social interaction.[145] Within counter-terrorist bodies, for example, the often informal and classified nature of the proceedings – where no record of the meetings is kept to facilitate open discussion – the pressure towards consensus and the silence procedure – which relies on tacit acceptance on the part of the members –, as well as customary rules regarding the sponsorship of draft resolutions on the part of certain P5 members (specifically the United States), can all increase the reluctance of actors to openly voice their disagreement with the majority position. The mechanism is illustrated in Chapter Four of the thesis, where a detailed account is provided of the negotiations for the reform of the UNSC 1267 counter-terrorist sanctions regime. The effect is a powerful tool in the hands of agenda-setting countries, which exercise pressure on smaller-sized members to conform. It displays its full transformative potential, however, when applied to regime-setting participants, who by virtue of the combined traction of these mechanisms can end up becoming 'victims' of the rules of the game that they themselves established.

[144]According to Moscovici, unanimity in voting has three effects: attraction towards the majority, pressure towards uniformity and compliance with the majority. Voting procedures within NATO's North Atlantic Council (NAC) are another prime example of this phenomenon. The body outright acknowledges that 'Consensus decision-making means that there is no voting at NATO.' See 'Consensus decision-making at NATO', available at http://www.nato.int/cps/en/natolive/topics_49178.htm.
[145] Moscovici, 'Social Influence and Conformity', p. 355.

2.2.3.2. Macro-level mechanisms of social influence: institutional space as a diffused social domain

Specific characteristics of the broader institutional environment where group interaction takes place equally contribute to the activation of the social influence phenomenon. The first set of attributes is the diffused nature of the social interaction, which this thesis characterises as a multi-venue and multi-actor process. According to this perspective, the formal fora that are the object of this analysis act not as isolated units, but as parts of a broader social domain where state actors interface simultaneously with national capitals, non-state actors (such as courts and NGOs), and with (informal) transnational networks through a process of multiple feedback effects. IGOs provide a space where issues can be framed, coalitions built, and where criticism of an actor's position can be articulated and communicated to the target. They also provide a stage where the target's position can be put under the magnifying glass of international scrutiny, offering both positive (status reaffirming) and negative (opprobrium generating) incentives to initiate convergence-inducing practices.

For this reason, this thesis considers the process of social induction within counter-terrorist fora as the result of a diffused (and partial) socialisation mechanism. Moving one step further with respect to Johnston's analysis of the phenomenon, this work therefore adopts the label of 'diffused social influence' when referring to this mechanism, in order to account for the specific porous nature of the boundaries of the social environment of reference, where formal and informal fora, as well as state and non-state actors, interact. The process is illustrated in the empirical chapters of this thesis. These offer three in-depth descriptions of institutional effects generated by the social influence phenomenon where formal organizational arrangements act as triggers of

group-induced pressures in varying orders of strength. Chapters Three and Four provide examples of more diffused, multi-venue and multi-actor processes of social interaction, in which UN counter-terrorism bodies such as the Counter-Terrorism Implementation Task Force, the 1267 Committee, the General Assembly, and the Security Council play the role of catalysts within a broader social domain; Chapter Five shows how similar processes can operate within the more contained teaching and *habitus*-building environment of the Financial Action Task Force.[146]

The second set of attributes that are identified as necessary to the activation of the social influence phenomenon address the issue of determining *when* the possibility of being placed in the deviant category triggers the image concern that results in pro-group/institution behaviour. According to Johnston, this can occur when the backpatting benefits and opprobrium costs change the actor's cost-benefit analysis at a given equilibrium point: this corresponds to a value at which the size of the audience reaches a certain *critical mass*. The non-material costs incurred by the actor increase with each additional participant in the reference (or opposing) group, leading to an accumulation of praise or shame markers that makes defection costlier and pro-group behaviour increasingly attractive.[147] The effect produced is a *net* one, in line with sociological analyses of change that rely on the tyranny of small decisions: a small change in the value of the variable (in this case the size of the audience) produces large effects on the end state.[148]

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[146]Citing Pierre Bourdieu, Alexandra Gheciu's defines a *habitus* as a particular framework of shared systems of meanings that govern a given 'field', or social sub-system. '[H]*abitus* is inculcated in individuals through ongoing educational processes through which pedagogic authorities disseminate certain sets of meanings, presenting them as the objective truth, while at the same time excluding other ideas as unthinkable.' Alexandra Gheciu, 'NATO's Socialization Practices in the Post-Cold War Period,' in Alexandra Gheciu, *NATO in the 'New Europe': The Politics of International Socialization After the Cold War*, (Palo Alto, CA: Stanford University Press 2005), p. 85.

[147] Johnston, *Social States*, p. 91-92.

[148]An introduction to this phenomenon can be found in Joan Ferrante, *Sociology: A Global Perspective,* (Belmont, CA: Wadsworth Publishing 2007), p. 460. See also Andrew Kydd, 'Reputation and cooperation: Guzman on international law', *International Theory*, vol. 1, n. 2, July 2009, p. 303. *'La tyrannie des petites*

A gradual increase in the size of the audience can trigger the change in the set of equilibria when a third and fourth condition are factored into the equation. One is a special set of characteristics of the group of agents that act as norm entrepreneurs: their aptitude and resourcefulness in framing an issue, in turning it into a problem and in publicising it. These are similar to the skills displayed by the network of transnational advocates described in Keck and Sikkink's work and highlighted as crucial to regime participation and the effectiveness of social sanctioning practices by both Busby and Vennesson.[149] The other is a certain 'stickiness' to the content of the issue itself, which makes it susceptible of exercising that characteristic 'pull' on a state's perception of its own identity (status, standing etc.) which is a crucial element of the micro-level mechanism of social influence described in the previous section of this chapter.

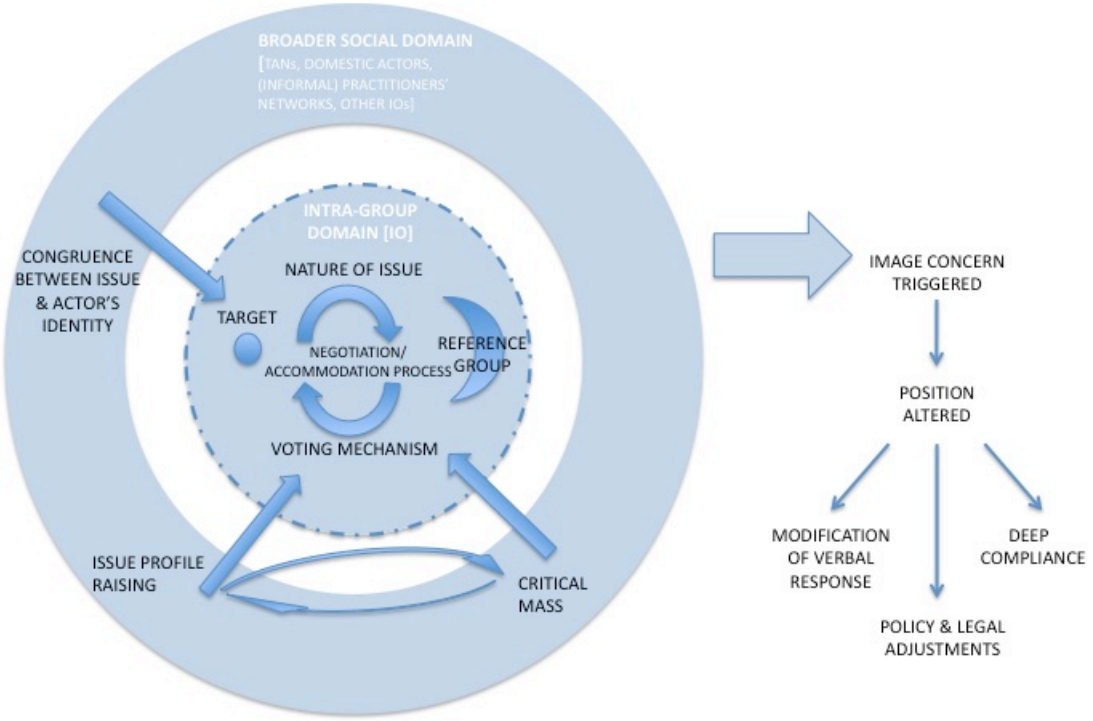
In sum, according to this specific perspective, social influence displays its effects through an internalisation of the image-related costs to the state, triggered by a process of group pressure crucially mediated by a diffused social environment. As such, the phenomenon is an instantiation of a particular form of cost-benefit analysis, one that is sustained by a form of social rationality, motivated by non-material but purely psychological and emotional goals and rewards. These considerations, which allow scholars to place social influence in the non-rationalist socialisation camp, albeit at an anticipatory stage, are indeed crucial to advancing the understanding of how this phenomenon induces cooperative behaviour. Additionally, this analysis has proposed a framework to understand how a specific set of attributes of the social environment where the interaction takes place contributes to the activation of the social influence

décisions', according to an apt French translation of Schelling's work, the seminal analysis of the roots of this phenomenon. See Thomas C. Schelling, *Micromotives and Macrobehavior*, (London: W. W. Norton and Company 1978), and Jeffrey Travers, Stanley Milgram, 'An Experimental Study of the Small World Problem', *Sociometry*, vol. 32, n. 4, December 1969, pp. 425–443. Economists refer to the special entrepreneurship of certain small groups as agents of change as the 80/20, or Pareto Principle.

[149]Vennesson, 'War under transnational surveillance'; Busby, *Moral Movements.*

phenomenon: the label of diffused social influence has been adopted in order to capture more accurately the close interrelation of this process of induction with the broad social domain of the interaction. A visual representation of this diffused anticipatory socialisation mechanism is shown in Figure 1.

Figure 1. The diffused social influence model



In the following sections, the chapter proposes to clarify some outstanding issues concerning the diffused social influence model. Beginning by addressing the contributions of alternative explanations of the homogenising effects of group-induced costs, the analysis will gauge the comparative advantage of its argument's specific focus on image versus well-established explanations of cooperation in international institutions. In particular, it will look at institutionalist literature on state compliance with

international agreements, which underscore the importance of reputation (rather than image) as the main constraint on state action.[150] After having clarified the conceptual differences between the concepts of image and reputation, the chapter will deal with the outcomes of the socialisation process, thus going back to the claims about output convergence that spurred this enquiry in the first place. The analysis will subsequently address issues of aggregation and non-reputation based alternative explanations of behavioural conformity, and will conclude with a reflection on the implications that its argument has for International Relations theory in general.

2.2.3.3. Image, reputation and conformity

Both image and reputation are concepts employed to illustrate how a state is regarded outside its borders. While image is the general impression that an actor presents to others, reputation is alternatively described as either a set of beliefs about types of actor's behaviour or the way in which a 'given behaviour will influence others' expectations of how the state will act in the future.'[151] The first definition belongs to Michael Tomz, who has developed a theory of cooperation through reputation to explain investors' responses to state sovereign debt in the past three centuries. The second was advanced by Robert Jervis to account for the effects of perceptions on nuclear deterrence. Both underscore the material costs attached to state non-compliance, which lead utility-maximising governments to override their 'myopic self-interest' and comply with the

[150]Wohlforth for example singles out reputation as institutionalism's main constraint on 'American primacy.' See Wohlforth, 'Institutionalism and the Constraint of Reputation', in Stephen G. Brooks, William C. Wohlforth, *World Out of Balance. International Relations and the Challenge of American Primacy,* (Princeton, N.J.: Princeton University Press 2008), pp. 148-170.
[151]Michael Tomz, *Reputation and International Cooperation: Sovereign Debt across Three Centuries*, (Princeton, N. J.: Princeton University Press 2007); Robert Jervis, 'Deterrence and Perception', in Steven Miller (ed.), *Strategy and Nuclear Deterrence*, (Princeton, N. J.: Princeton University Press 1984), p. 63.

rules of international regimes.[152] The serious price states pay when reneging on their commitments or displaying bad faith about them is a decline in their reputation as reliable co-operators, with the clear implication of jeopardising their own chances of sustaining future cooperation in areas where institutional interaction might instead be instrumental to the attainment of one's goals. In an instance of self-binding, as Martin labels it, states – and in particular the U.S. – might therefore decide to forgo immediate material payments in order to maintain a general positive reputation as reliable co-operators, in order to be able to reap the benefits of cooperation in the future. For these reasons, reputation is seen as an important tool in the hands of the weak, which can leverage it within international venues in order to constrain the actions of the powerful.[153]

Rather than suggesting a psychological or emotional reward, the concept of reputation hints at a story of interest-driven cost-benefit calculations behind the rationale for state action. In this respect, the concept is indeed significant as it permits to account for many instances of pro-institution behaviour where material considerations prevail. Rationalist scholarship recognises, however, that the argument also has its weaknesses. In two different contributions, authors such as Wolhforth, Downs and Jones highlight, for example, the idea that the institutionalist argument on a general reputation is not compelling, as it does not take into account the practical existence of multiple reputations across issue areas that can account for different compliance rates. Wohlforth notes how it therefore becomes 'irrational for a state to readjust its view of [another] state's cooperativeness across all treaties just in response to a single defection from a particular treaty.' He illustrates this logic considering the case of the United States, whose

[152]Keohane, *After Hegemony*, p. 99.
[153]John G. Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*, (Princeton: Princeton University Press 2001). Institutionalists identify 'credible threats of retaliatory action' as the other compliance-inducing mechanism of international institutions. These threats are seen as costly and hard to sustain. See Kehoane, *After Hegemony* and Wohlforth, 'Institutionalism and the Constraint of Reputation,' p. 155.

'compliance rate' is much better vis-à-vis the WTO than it is vis-à-vis the United Nations.[154] Other governments will however have very little reasons to believe that the U.S. will not be likely to honour its WTO commitments because of an observed lack of compliance within certain UN fora. To this end, Wohlforth adds that is a well-known fact to external observers that states place different values on different institutions, because these serve different purposes. Multiple compliance rates across issue areas are equally processed non-linearly by government bureaucracies, increasing the likelihood that information about instances of institutional non-compliance be discarded or ignored, rather than fed into the general impression that an actor has of the another state's overall disposition to cooperate. As a result, the constraining effect of reputation on state action within international institutions, although still present, is less determinant in guiding behaviour.

Many studies of the compliance-inducing effects of international cooperation pick up on this idea that there exist multiple reputations for a state and that these should be factored into analysis when trying to understand why countries participate in international regimes or respect international law. Apart from varied levels of insightfulness, these contributions all have in common an attempt to unpack the nature of a state's reputation, dividing the concept into different categories. Thus, state behaviour can be explained referring to its 'compliance reputation' as opposed to its 'reputation for honesty' (Guzman); 'reputation for compliance' is the one that matters when analysing behaviour vis-à-vis international law, while 'reputation as a good global citizen', although acknowledged, is seen as non relevant in this respect (Guzman, Helfer); within a state, politicians are concerned with 'behavioural reputation', while 'bargaining reputation' is the one at work when analysing conflict (Tang); state can develop a 'reputation for

[154] Wohlforth, 'Institutionalism and the Constraint of Reputation', pp. 159-160.

resolve' (Morgenthau, Mercer, Milliken), a 'reputation as good standing by nation states with respect to moral and legal obligations' (the somewhat convoluted expression is Schultz's, but the concept is also seen in Tomz, Foot, Wälde), or even a 'reputation as brand *image* for public diplomacy' (the definition belongs again to Schultz, but the emphasis is mine).[155]

The list could go on, but what is worth noting here is the underlying malaise that this proliferation of attributes reveals. These approaches do not simply conflate several different facets of the same notion, but in certain instances also ascribe to reputation, and consequently try to explain using purely rational utility-maximising categories, sets of beliefs that describe not so much others' expectations about the reliability of prospective partners, but expectations about the projected identity of these partners. That is, they confound image with reputation.[156] While the boundaries between the two concepts are blurred in practice and only a careful and thorough analysis of the empirical evidence can hope to shed light on the nature of the phenomenon observed – psychological reward or material payoff – when witnessing group-induced compliant behaviour, scholars of cooperation through reputation would do well not to ignore the possibility.

Widening their analytical perspective accordingly could in fact help allay the

[155]Andrew T. Guzman, *How International Law Works: A Rational Choice Theory*, (Oxford: Oxford University Press 2008); Laurence R. Helfer, 'Exiting Treaties', *Virginia Law Review*, vol. 91, pp. 1579-1648; Shiping Tang, 'Reputation, Cult of Reputation, and International Conflict', *Security Studies*, vol. 14, n. 1, 2005, pp. 31-58; Hans J. Morgenthau, *Politics Among Nations: the Struggle for Power and Peace*, (New York: Alfred A. Knopf 1959); Jonathan Mercer, *Reputation and International Politics* (Ithaca and London: Cornell University Press, 1996), Jennifer Milliken, 'Metaphors of Prestige and Reputation in American Foreign Policy and American Realism', in Francis Beer and Robert Hariman, (eds.), *Post-Realism: The Rhetorical Turn in International Relations* (East Lansing: Michigan State University Press 1996), pp. 217-238; Tomz, *Reputation and International Cooperation*; Rosemary Foot, 'Human Rights and Counterterrorism in Global Governance: Reputation and Resistance,' *Global Governance*, vol. 11, n. 3, 2005, p. 291-310;Thomas W. Wälde, 'Law, Contract and Reputation in International Business: What Works?', *Business Law International*, n. 2, 2002, pp. 190-210; Lancelot F. Schultz, 'International Standing, International Reputation and Australian Foreign Policy', submitted in fulfilment of the requirements for the Degree of Doctor of Philosophy, Deakin University, December 2010.

[156]Thus, Busby tellingly writes of a 'form of reputational concern [that] is not purely instrumentally rational'; quoting former French Foreign Minister Hubert Védrine's account of France's rationale for supporting the International Criminal Court, he significantly relates that 'If the French had not signed up to support the ICC "it wouldn't have had any political impact. It would have had a psychological impact and impact on image."' Quoted in Busby, *Moral Movements*, e-book edition, loc. 2547 and 834.

uneasiness these authors sometimes display when having to explain the motivational drivers of actors' pro-institution behaviour vis-à-vis fundamental principles, norms, values, and overriding legal standards of *jus cogens*. In these instances, actors might certainly align their behaviour with the institution when named and shamed for fear of jeopardising their reputation as future reliable cooperators. They might also align, however, because their international image with respect to these issues is *non-negotiable* and should not be tarnished, as it is part of the idea these actors have of who they are, of their identity, of their standing and positioning in the international system etc. (self-image). States have indeed several reputations, but appear to be sensitive to one international image.[157]

Thomas Wälde comes close to detecting social influence when he writes that '[a]ccession (i.e. signature and formal ratification) to treaties has a formal legal meaning,' but can also have 'a less direct signalling and symbolic effect.' 'By accepting a bilateral or multilateral investment treaty,' for example, 'the government of a country [can] signal[…] its acceptance of rules and procedures, which are normally accepted by the community of Western market economies.' In his view, '[this] means the re-emergence of the classical concept of "civilised nations" with the acceptance of a treaty as equivalent to membership in that select club. A government signifies that its domestic political process has accepted the formal legal implications, and that it wishes to be held

[157]The case of Mexico's behaviour in the reform process of the 1373 and 1267 regimes can illustrate this concept. As it will be mentioned several times in Chapter Four of the thesis, Mexico was one of the leaders of the coalition of like-minded states that lobbied for the pro-human rights reform of the UN counter-terrorist regime at Security Council level. Mexico's domestic rates of compliance with human rights standards are however low and authorities are often described as dismissive of the issue in general. It suffices to look at Human Rights Watch's reports on the country year after year. Within international counter-terrorist fora, however, Mexican representatives are among the most vocal in championing pro-human rights reforms and among the most active in canvassing support for putting the issue on the agenda of the Security Council. In interviews, when asked to explain the reasons of their particular position, given the obvious disconnect with the country's domestic human rights compliance record, Mexican representatives appeared puzzled and could only state that 'this is what we do…it is an issue that is very important to us…as an international actor.' Interviewee A, Permanent Mission of Mexico to the United Nations, interview with author, April 7, 2010.

accountable to such treaty obligations.' He goes on to add that 'not only does such acceptance bestow a number of legal privileges to foreign investors, at the cost of government sovereignty', but it can also express 'a formal decision to accept a rule and value system characteristic of developed market economies. The host state signals to investors – and to the global markets – that it is at least its intention to behave as developed market economies do or are expected to do.' [158]

Similar considerations can be applied, *mutatis mutandis* and with due caution, to the counter-terrorist financing regime. The fact that material benefits are associated with pro-group (or treaty compliant) behaviour, as Wälde equally recognises – thus slightly toning down his argument – does not however preclude the possibility that social influence can be one of the mechanisms driving the action.[159] There is evidence of this coexistence of motivational drivers in the pro-institution behaviour of the countries whose participation in selected strands of the global counter-terrorist regime this thesis examines. Johnston discounts this possibility in his account of social influence, considering that psychological payoffs cannot exist in the presence of material side payments. It has to be 'either or'. This thesis instead detects signs of joint social and material rationality. Before addressing what this means for this study's positioning within the traditional strands of IR literature, the analysis will briefly turn to two outstanding issues concerning the operationalisation of the social influence phenomenon: its visible instantiation and its level of analysis.

[158] Wälde 'Law, Contract and Reputation in International Business', pp. 196-197.
[159] In typical institutionalist fashion, Wälde identifies the benefit to the state as the enhancement of its reputation as a 'reasonable host state for foreign investment and trade'. Wälde 'Law, Contract and Reputation in International Business', pp. 197.

2.2.3.4. Outcome of social influence

Two broad types of behavioural modalities can be associated with social influence: normalisation and conformity. Normalisation is a 'gradual change in the behaviour or opinion' on an actor's part in order to 'go along with the change in behaviour and opinion' of the members of the reference group.[160] Its aim is the attenuation of the disagreement between the actor and the group while the outcome of the process is the establishment of a compromise position. It is a step on the path towards alignment. Conformity is the changing of behaviour on the part of the actor as a result of the symbolic pressures exerted by the reference group. The change does not reflect an internal modification, a 'conversion' to the position of the pro-group majority on the part of the actor, and does not lead to internalisation of a given norm or principle as does social persuasion. As such, behavioural conformity resulting from social influence does not signal the presence of a new (internalised) norm: there is no unhesitant acceptance or spontaneous conformity on the part of the actors who share it. The process rather results in a sort of acquiescence with the pro-institution position (compliance) that has a character of fictitiousness to it: it would last as long as does the power of the group to reward or punish, name and shame the diverging behaviour, if it were not for the lock-in effect of the institutional environment.

At ground level, three types of outputs signal the presence of social influence effects as a result of group-inducing converging pressures. They are listed here in ascending order of strength of the institutional effect. The first and most common is the modification of verbal and public responses on the part of the actor, often reflected in changes in the actor's discourse, which gradually converges toward (i.e. becomes more

[160] Moscovici, 'Social Influence and Conformity', p. 373.

similar to) the pro-institution position (hereinafter referred to as tier one effects).[161] Chapters Three and Four of the thesis illustrate this process. Analyses of state compliance with international agreements underline how at this level of pro-group behaviour states display only superficial compliance with the institutional instrument. Andrew Walter describes these as instances of 'formal' as opposed to 'substantive' compliance. 'Mock compliance' or 'on paper' compliance, an occurrence that is generally highlighted by realist scholars as a key counter-argument to claims of institutional relevance, would belong to this group.[162]

The second tier includes policy and legal adjustments adopted by state actors to align with the institutional position: for instance, the adoption of broad strategy documents, white papers and primary legislation. This group of outputs corresponds to a deeper level of compliance with the institutional instrument, although it provides only partial evidence of whether a particular norm or rule is actually implemented in practice. Traces of these decision-making outcomes are found again in Chapter Three of the thesis, where an analysis of alignment with the counter-radicalisation strand in the counter-terrorist regime is conducted.

To the third and final tier belong instead deeper enforcement results, such as the

[161]There are similarities between this type of outputs and what Risse, Ropp and Sikkink identify as the 'commitment' stage in their revisited spiral model of human rights change. Thomas Risse, Stephen C. Ropp, Kathryn Sikkink, (eds.), *The Persistent Power of Human Rights. From Commitment to Compliance*, (Cambridge: Cambridge University Press 2013).

[162]According to Walter, compliance occurs 'when actor behaviour is consistent with accepted standards'. Convergence is the process by which 'previously different actors, groups or organisms become more alike'. Implementation occurs 'when states adopt international standards in domestic legislation'. Walter also distinguishes between 'mock' or formal compliance (the opposite of deep cooperation) and substantive compliance, which occur, respectively, when actors' behaviour is or is not consistent with the adopted standard.' Walter, 'A Theory of Compliance with International Standards', in Walter, *Governing Finance.* On 'deep cooperation' see, George W. Downs, David M. Rocke, Peter N. Barsoom, 'Is the good news about compliance good news about cooperation?'. It is important to remark how these three terms are in no way synonymous, since convergent effects can occur along all the indicators of compliance. That is, states' discourses and/or laws and/or policies and/or practices can converge. Each of these levels corresponds to instances of formal or substantive compliance and, in turn, signals different levels of strength of the social influence effect. This interpretation of the relationship between these indicators rejects the ordinal approach to the measurement of convergence employed, for instance, by Romaniuk, Martin and Simmons.

adoption of secondary legislation, regulations, structural changes, and modifications in the practices of the agents, which are generally thought to correspond to actual implementation of, or substantive compliance with, a given institutional rule. The institution-induced influence of the counter-terrorist financing regime occasions such types of outputs, displaying the stronger social influence effects of the three cases examined by this thesis.

Before proceeding to the next section of the chapter, it is worthwhile considering a possible objection to the social influence explanation that would derive from what is outlined above. Given the prevalence of tier one effects in state pro-institution behaviour, is the social influence phenomenon basically inconsequential? Realists would indeed see in this finding a sign that states make the least possible amount of effort to be seen as conforming, and that hence they attach little significance to the group-generated potential damage to their international image that triggers social influence in the first place. Some institutionalist scholars have gone so far as to argue that, in practice, full substantive compliance with international agreements is not expected.

Browns, Rocke and Borsoom contend, for example, that the widespread instances of 'compliance with minimal enforcements result[…] from the fact that most treaties require states to make only modest departures from what they would have done in the absence of an agreement.'[163] Christopher Elders extends this observation to U.S. expectations of other actors' behaviour in the international legal order, acknowledging how even the United States expects only generalised (formal) compliance with most agreements it had a hand in establishing.[164] While rationalists are certainly correct in

[163]George W. Downs, David M. Rocke, Peter N. Barsoom, 'Is the good news about compliance good news about cooperation?', p. 380.

[164]Of course the corollary problem with this interpretation is how to establish which violations of international rules are tolerable and which are not. Christopher Elders, 'Agreeing to Disagree: Applying the Liberal Tradition of Tolerance to U.S. Foreign Policy,' Belfer Center for Science and International Affairs, International Security Seminar, May 20, 2010. Referring to the value of such findings Romaniuk noted

pointing out that talk can sometimes be cheap, these positions do not provide answers to the fundamental question of why rational states would go through at times painful negotiations to reach international agreements – or bother with signalling a difference in position issuing reservations and understandings – if these were meant to have little to no consequences in the first place. As shown above, if one does not want to go as far as recognising that a symbolic value can be attached to participation in a specific cooperative endeavour as social influence contends, verbal acceptance of an institutional provision or agreement can, and in practice has, very material and tangible consequences on state action by virtue of that lock-in effect that rationalist scholars have well documented. In addition, ideational contributions have illustrated how verbal acceptance or change in discourse are both steps that precede full behavioural alignment and signs of commitment and recognition of the prescriptive status of a given norm or position on the part of the actor. This means, in essence, that verbal responses, rather than being merely cheap, can and do signal actors' acceptance of certain norms, for example human rights, 'as valid and binding for themselves.'[165]

2.2.3.5. Whose image?

This study uses the state as the primary unit of analysis. This choice is recognised by many as the convention in the field, but needs nevertheless to be acknowledged given

how it would be really interesting if research found that states score high on 'norms and values' and 'policy statements,' but then score low on 'technical standards' and agents' practices when implementing the provisions of the counter-terrorist regime. That finding – that states are happy to converge around the rhetoric but not the substance of counter-terrorism norms and rules – is not permitted by the conventional ordinal approach to measuring convergence. But it happens a lot in practice. Peter Romaniuk, interview with author, New York, May 20, 2011. This study finds not only that international institutions score higher on norms, values and statements when it comes to policy-setting states, but also that those same states prefer to cooperate in unofficial venues when dealing with measures and practices.

[165] Risse, Ropp and Sikkink, *The Persistent Power of Human Rights*, p. 9.

that the thesis claims to be explaining decision-making.[166] As Johnston notes 'states do not mimic, are not influenced by backpatting and opprobrium, are not "persuaded,"' and are ultimately not socialised.[167] State officials are. Using the state as a unit of analysis means that state actors are considered proxies for individuals and domestic agencies in the process of socialisation. More precisely, states are proxies for top-level decision makers, who are assumed to be sensitive to the state's own international image. In different contexts, Finnemore, Sikkink and Johnston have similarly posited that leaders and publics tend to 'isomorphise criticism and praise' of the state with that of national groups and individuals, thus making it possible to map countries' reactions to group pressures.[168]

At the empirical level there is no alternative to studying the actions, reactions and decisions of policy-makers when attempting to trace as accurately as possible a portrait of states' participation in international regimes. This is the reason why this study, while referring to the state, makes several forays into the sub-state unit level of enquiry, comparing actions and reactions across different domestic agencies and implementation levels. Conventions aside, it should also be pointed out that whether the image belongs to the state or to the government can make a difference in the analysis of why a country decides to change its course of action and align with the pro-institution behaviour. Different government coalitions in fact can respond to different normative solicitations and react to the stimuli of different reference groups. If however a certain consistency of positions is found beyond the shorter time horizons of political action, it is safer to

[166]Beth A. Simmons, 'Money and Law: Why Comply with the Public International Law on Money?,' *Yale Journal of International Law*, vol. 25, n. 2, summer 2000; Oona A. Hathaway, 'Do human rights treaties make a difference?', *Yale Law Journal*, vol. 111, 2002, pp. 1935–2042; Oona A.. Hathaway, 'Between power and principle: an integrated theory of international law', *University of Chicago Law Review*, vol. 72, 2005, pp. 469–536; Jack Goldsmith, Eric Posner, *The Limits of International Law,* (New York: Oxford University Press 2005); Tomz, *Reputation and International Cooperation*.
[167]Johnston, *Social States*, p. 95.
[168]Finnemore, Sikkink, 'International Norms Dynamics and Political Change'.

assume that such a position provides a closer approximation of how the state would have behaved had it not been a theoretical abstraction. The picture is of course further complicated by the multiplicity of agents that act at the sub-state unit level of analysis (domestic institutions, non-governmental entrepreneurs, public opinion, national and institutional cultures) so that only a careful unpacking of state motivational drivers with reference to a specific action can help clarify what variables can be employed to understand a given behaviour.

2.2.4. Multiple pathways to behavioural conformity

The literature review presented at the beginning of this chapter has illustrated how different theoretical positions in International Relations theory explain state policy-convergent behavioural outcomes in the presence of institutional cooperation. The thesis does not dismiss the value of these explanations but rather suggests that certain instances of pro-institution behaviour can be better understood taking equally into account anticipatory socialisation processes of the type illustrated above.

A look at meta-theoretical debates in the discipline reveals how these tend to accuse realist and institutionalist scholars of retreating to what Keohane described as a fall-back position, whereby assumptions on exogenous preference variation delimit the range of possibilities of, *inter alia*, institutional action. Rationalist scholars are therefore often exhorted to explain preferences rather than just assume them since, as Moravcsik writes, practice 'speaks louder than theory.'[169] This observation is one of this study's theoretical starting points, but it is also the opinion of this thesis that the criticism generally levelled at rationalist perspectives for not taking preference theorisation

[169]Andrew Moravcsik, 'The New Liberalism,' in Christian Reus-Smit, Duncan Snidal (eds.), *The Oxford Handbook of International Relations*, (Oxford: Oxford University Press 2008), p. 250.

seriously enough in relation to attempts at mapping empirical reality should be directed at reflexive approaches as well. This is because the adoption of perspectives that endogenise the variation of state preferences excludes the idea that exogenously driven motives could equally coexist. Wendt for instance criticises positions that treat ideas as merely intervening variables that explain some proportion of behaviour beyond the effects of power, interest and the like, and shows that ideational variables can drive behaviour.[170] Finnemore, Sikkink and other distinguished constructivist scholars adopt the same perspective when making claims about the transformative power of ideas. This is most apparent in Johnston, who is very vocal in contending that anticipatory socialisation processes manifest themselves in the absence of material rationality. In other words, states cannot maximise image-related psychological payoffs and at the same time rationally make a cost-benefit calculation about a given situation.[171] Yet – not unlike this chapter – Johnston resorts to bodies of literature that explain human nature and draw parallels with the behaviour and the complexity of motives that drive the action of human beings when attempting to explain state behaviour.

These positions are understandable if one's aim is to show causation rather than correlation – as analyses concerned with theory-building ideally should do– achieve parsimony in the explanation and reduce the 'background noise' of multiple explanatory variables. But what if they contradict reality? The rationale for this affirmation is empirical and stems from an observation of state behaviour in the instances of social interaction examined in this thesis, where alongside the internalisation of image-related (and hence social) costs, pro-institution behaviour appears to be equally concerned with material costs. To use a metaphor that belongs to the realm of linguistics rather than IR,

[170]Alexander Wendt, *Social Theory of International Politics*, (Cambridge: Cambridge University Press 1999).
[171]Alistair Iain Johnston, interview with author, April 24, 2012.

what if reality is a house with many rooms?[172] Is it legitimate to attempt to sketch as faithful, accurate and authentic a rendition of it as possible? Would such a study simply represent a 'thick description' of a phenomenon that adds nothing to our theoretical understanding?[173] Or would a forceful insistence on methodological purity, as Friedrich Kratochwil notes, be 'a problematic regulative idea'?[174] Such concerns can certainly belong to the old 'dog-chasing-tail problem' in IR research, but they are nonetheless crucial and need to be fully acknowledged here for the sake of methodological rigour. By positioning itself within the camp of Katzenstein and Sil's analytical eclectic perspectives, in fact, this thesis recognises both that these approaches are good starting points to treat theories as toolkits to understand practice, but also that such contentions are far from unproblematic, not least because of the fundamental reasons outlined above.[175]

These concerns are not new in the discipline. As early as the 1950s, for example, Peter and Ernst Haas introduced the notion of 'pragmatic constructivism' to account for instances when logic of appropriateness and of consequences could concomitantly explain behaviour. They 'assume[d] that agency is constrained by the actors' enmeshment in the networks, formed by institutions and by habit, not by structural forces […]. While actors are assumed to change on the basis of their perceived interests, they remain constrained not only by institutions and habit but also by strategic interactions and calculations regarding other actors and by their own symbolic needs. Actors match ends and means by following an instrumental logic of "whatever works best." This is not to

[172]Ruth Wajnryb, *Away with words: a frolic through the landscape of language*, (Sidney: Harper Collins 2005), p. 108.
[173] Sean Lynn-Jones, interview with author, March 13, 2012.
[174]Friedrich Kratochwil, 'Ten points to ponder about pragmatism: some critical reflections on knowledge generation in the social sciences', in Harry Bauer and Elisabetta Brighi (eds.), *Pragmatism in international relations* (New York: Routledge), p. 13.
[175]Peter Katzenstein, Rudra Sil, *Beyond paradigms: analytic eclecticism in world politics*, (New York: Palgrave).

say that the logic of appropriateness is never used,' but that, in practice, *both types of logic matter*.[176]

More recently, Bukovansky has explicitly integrated realism and constructivism in her analysis of legitimacy and power politics; Charlotte Epstein has unpacked the rationalist-constructivist divide fracturing the literature along opposing figures of agency – the rational actor and the constructivist 'self' –, while John Kaag and Sarah Kreps have outlined pragmatism's contributions to bridging the rationalist-constructivist divide following in the footsteps of other contributions that have invoked the concept in the literature, such as Gould and Onuf, Hellmann, Bauer and Brighi, Jackson, and Friedrichs and Kratochwil.[177] These perspectives invite IR scholars to abandon the 'search for an epistemological purity […] and orient [them]sel[ves] firmly towards the study of practices and problematic situations.'[178] In their view, 'pragmatism offers a reasonable basis upon which eclectic scholarship can meaningfully utilize elements of diverse research traditions while engaging substantive issues of policy and practice without becoming trapped in unending and unresolvable debates over epistemic commitments and analytic principles.'[179]

This thesis responds to this call for less doctrinaire and more pragmatic analytical approaches and it is from this perspective that it considers admissible to claim that

[176]Haas, *The Uniting of Europe*, p. xxvi (emphasis added). Recently, Vennesson has embraced a realist-constructivist framework to account for the effectiveness of naming and shaming techniques in the Palestinian-Israeli conflict. See Vennesson, 'War under transnational surveillance'.
[177]Mlada Bukovansky, *Legitimacy and Power Politics: the American and French Revolutions in International political Culture,* (Princeton: Princeton University Press 2002); Charlotte Epstein, 'Theorizing Agency in Hobbes's Wake: The Rational Actor, the Self, or the Speaking Subject?', *International Organization*, vol. 67, n. 2, pp. 287-316; John Kaag and Sarah Kreps, Pragmatism's contributions to international relations, Cambridge Review of International Affairs, vol. 25, n. 2, June 2012, pp. 191-208; Harry Gould, Nicolas Onuf, 'Pragmatism, legal realism, and constructivism' in Bauer and Brighi (eds.), *Pragmatism in international relations*, pp. 26-44; Gunther Hellmann, 'Beliefs as rules for action: pragmatism as a theory of thought and action', *International Studies Review*, vol. 11, 2009, pp. 638–662; Patrick Thaddeus Jackson, 'Situated creativity, or, the cash value of a pragmatist wager for IR', *International Studies Review*, vol. 11, n. 3, 2009, pp. 656–659; Bauer and Brighi (eds.), *Pragmatism in international relations*; Jörg Friedrichs, Friedrich Kratochwil, 'On acting and knowing', *International Organization*, vol. 63, n. 4, 2009, pp. 701–731.
[178]Bauer and Brighi (eds.), *Pragmatism in international relations*, p. 2.
[179]Katzenstein, Sil, *Beyond paradigms*, pp. 416-418.

detection of instances of both social and material rationality can provide an acceptable and fruitful explanation of the empirical phenomena it explores; and that the two forms of rationality are not mutually exclusive.[180]

2.3. Conclusion

This chapter has laid the foundations of a framework for the study of international institutional influence on state pro-group behaviour in the global counter-terrorist regime. It has reviewed rationalist and reflective explanations of international cooperation and has advanced the claim that a specific form of image-driven, diffused anticipatory socialisation, social influence, can account for the instances of convergent behaviour displayed by the country case studies in the issue areas selected for the purpose of this thesis.

The narration has outlined the characteristics of the diffused social influence process, clarifying its two-level mechanism as the interplay of intra and inter-group dynamics, and illustrating its outcomes and empirical indicators. Motivated by a practice-driven approach, the chapter has also posited that the insights of material rationality should not be lost to the analysis, but has contended that an approach that does not discount either social or material costs and rewards is better suited to an exploration of issues that are not exclusively bracketed by either rationalist or norm-driven explanations of behaviour. This choice places the analysis in agreement with pragmatic methodological and epistemological views of research in International Relations. In the following chapters, the thesis will proceed with an empirical illustration of the theoretical processes that this chapter has described.

[180]The study is not prepared to adopt, however, a specific label– be it hard constructivism, soft rationalism or pragmatic constructivism –, since its small-N number of cases, whose rationale was detailed at length in the Introduction, does not allow for such sweeping generalisations.

Chapter Three

Counter-Radicalisation Policies in the Multilateral Counter-Terrorist Regime

Smart Power Approach to Counter-Terrorism (Hillary R. Clinton)

> *We need to take a smart and strategic approach that recognizes that violent extremism is bound up with nearly all of today's other complex global problems. It can take root in zones of crisis and poverty, flourish under repression and in the absence of the rule of law, spark hatreds among communities that have lived side by side for generations, and exploit conflict within and between states* (Hillary R. Clinton).[181]

The purpose of this chapter is to offer an initial plausibility probe of how the framework outlined in the preceding section of this thesis applies to states' engagement in a specific policy strand of the multilateral counter-terrorist regime: counter-radicalisation policies. Academic studies of terrorism have been focusing their attention on explorations of the pathways into and out of political and religious radicalisation for a long time and, as such, analyses of the radicalisation and counter-radicalisation phenomena are not novel features of theoretical investigations of governmental responses to terrorism.[182] In the

[181]Remarks by Secretary of State Hillary Rodham Clinton, 'Smart Power Approach to Counterterrorism', John Jay School of Criminal Justice, New York, 9 September 2011, http://www.state.gov/secretary/rm/2011/09/172034.htm.

[182]There is much controversy surrounding the definition of radicalisation and the appropriate lexicon to be used to describe the policies devised to counter it. Over the years, countries and international institutions have referred to terms such as 'root causes', 'terrorism-conducive conditions', 'radicalisation', 'violent extremism', 'counter-radicalisation' and 'de-radicalisation' to describe both the problem and the solution. Those terms are considered more or less politically correct, but their meaning varies according to specific local conditions. Peter Neumann, referring to UK Cabinet discussions on this topic, recalls that a government minister manifested her objections to the term radicalisation pointing to the fact that, 'in the 60s', she herself was considered a 'radical'. Peter Neumann, interview with author, 11 November 2009. Lord Carlile of Berriew's critique of the 2008 version of PREVENT – of which more will be said in one of the following sections of this chapter – testifies to governments' general uneasiness with this concept. For the purpose of this analysis and unless differently specified, however, the above-mentioned terms will be considered as synonymous.

aftermath of 9/11, however, the pace and innovation involved in the incorporation of these practices into the national security policies of several EU and UN member states appears unprecedented.[183] In 2007, for instance, one of Italy's highest-ranking diplomats labelled counter-radicalisation policies the 'new frontier' in the fight against international terrorism.[184] In June 2008, a UK Foreign Office official admitted that 'this area [was] only seven months old within the FCO' – and yet, under the label of PREVENT, it constituted the centrepiece of the UK Counter-Terrorism Strategy (CONTEST). At the time, a former Security Minister for Northern Ireland similarly agreed that this 'research-based approach' represented a significant 'innovation with respect to [the fight against] the IRA', and a 'rapid change' whose 'pace [was] unprecedented', both for the Foreign Office and the security services. This change, according to him, 'fit… the British tradition of prevention, prosecution, and investigation', in contrast to the then U.S. notion of a 'War on Terror'.[185]

After the Obama administration took office in January 2009, several commentators remarked that the United States had finally jumped on the counter-radicalisation wagon, and that the administration was looking very closely, *inter alia*, at the initiatives promoted by the UK PREVENT Strategy.[186] Yet, only a few years earlier, counter-radicalisation was a political taboo for UN member states. The 'root-causes controversy' pitting Western countries against champions of the Palestinian cause had brought to a deadlock negotiations on the comprehensive anti-terrorism convention within the Sixth Committee of the General Assembly. The new 1373 regime of

[183]See for example, Michel Wieviorka, *The Making of Terrorism*, (Chicago: The University of Chicago Press 2004), Chapter 1; Martha Crenshaw, (ed.), *Terrorism in Context*, (University Park: The Pennsylvania State University Press 1995).
[184] Giulio Terzi, 'La cooperazione multilaterale contro il terrorismo ed il ruolo dell'Italia', *Affari Esteri*, anno 39, 2007, n. 156, pp. 816-825.
[185]From the proceedings of the 'Conference on Counter-Terrorism and Intelligence,' ITI, (UK and U.S. bilateral cooperation); London, Royal College of Defence Studies, June 2008; Under Strict Chatham House Rule; Name of participants is confidential.
[186]Matthew Levitt, Michael Jacobson, 'Terrorist Threat and U.S. Response: A Changing Landscape', *Policy Focus* n. 86, September 2008.

September 2001 promoted by the United States at Security Council level made no mention of terrorism-conducive conditions; neither could references to this concept be found in strategic planning documents at domestic level.[187]

All this changed after 2005, when the European Union and the UN adopted counter-terrorism strategies that devoted significant attention to violent extremism. These instruments appeared roughly at the same time the UK published a new version of CONTEST, which greatly broadened the scope of measures available to fight newly developed instances of homegrown terrorism, such as the ones that had hit Madrid in 2004, and were to hit London in 2007. The new jargon introduced by the Strategies was quickly incorporated into ministerial speeches, and counter-radicalisation became the central term used in discussion of global counter-terrorism. After some resistance, in August 2011 the White House adopted its own version of a counter-radicalisation strategy, aimed at preventing violent extremism – the so-called CVE policies – by 'empowering local partners' across the United States.[188]

The relatively short time interval that separated the introduction of counter-radicalisation policies at international regime level and the apparent alignment in the policy outputs of the country case studies at domestic level, suggests that this issue area is likely to be important to an analysis of the motivational drivers of state pro-institution behaviour. In the previous chapter, the thesis has advanced the claim that institutional effects within the selected strands of the counter-terrorism regime manifest themselves via a diffused anticipatory socialisation process. This process identifies the image-related pressures that are generated in the context of the interaction within the institution and a broader social domain comprising of state and non-state actors, as well as transnational

[187]Rami Mani, 'The Root Causes of Terrorism and Conflict Prevention', in Boulden, Weiss, (eds.), *Terrorism and the UN*, chapter 10, pp. 218- 241.
[188]The White House, 'Empowering Local Partners to Prevent Extremism in the United States', Washington, D.C., August 2011.

(activists') networks, as the source of the social influence phenomenon. According to this explanation, states modify their behaviour and conform, in different respects, to the position promoted by the institution for fear of social costs or in search of social rewards. Informed by a practice-driven approach, the theoretical framework further posits that actors' maximisation of a psychological payoff does not necessarily preclude the possibility of the concomitant presence of instances of material considerations.

This chapter begins by providing an overview of counter-radicalisation as a new policy strand in counter-terrorist action, highlighting the normative drivers of these initiatives and their implications for traditional counter-terrorism. In order to illustrate the feedback relationship between international and domestic levels of enquiry, the chapter proceeds with an analysis of counter-radicalisation initiatives within the multilateral counter-terrorist regime. It then moves on to an exploration of each individual agent's participation in counter-radicalisation efforts, carefully tracing the origins and development of this policy strand at the domestic level in the context of international commitments and past legacies. The last section assesses the institutional effects of participation in multilateral counter-radicalisation frameworks for the selected case studies, identifying diffused anticipatory socialisation effects across cases.

3.1. 'Soft' counter-terrorism

In 2006, Michael Jacobson remarked how the U.S. and British authorities were increasingly adopting 'certain similar approaches in combating terrorism'.[189] In his view, the most significant policy shift had been determined by a generalised move of law enforcement agencies towards the prevention of the attacks. He noted that '[a]uthorities

[189]Michael Jacobson, *The West at War. U.S. and European Counter-Terrorism Efforts Post-September 11*, (The Washington Institute for Near East Policy 2006), p. xv.

and prosecutors [were] now primarily responsible for preventing terrorist attacks, not merely bringing perpetrators to justice after the fact […]. Before September 11, authorities were willing to watch terrorist suspects for lengthy periods rather than apprehending them immediately, in an effort to determine the exact details of a given plot. Now […] authorities realize that they can no longer afford to take that chance.'[190] David Omand, former Permanent Secretary in the UK Cabinet Office, labelled this overall shift a new 'strategic outlook', driven by the imperative to intervene *ex-ante* and thereby avert or reduce the risk to the population.[191]

Nowhere has this shift to a preventive stance been more remarkable than in the adoption of the so-called counter-radicalisation policies. They answer a call for holistic, inclusive approaches to counter-terrorism, comprising both security-related preventive measures and less traditional attempts to address what the UN Global Counter-Terrorism Strategy described as the 'underlying conditions conducive to the spread of terrorism'.[192] According to the Strategy, these include poverty, unresolved conflicts, the dehumanisation of the victims of terrorism, lack of rule of law, human rights violations, ethnic, national and religious discrimination, political exclusion, as well as socio-economic marginalisation and lack of good governance. All in all, these themes mark a significant departure from conventional counter-terrorism approaches based on reactive law-enforcement mechanisms and military repression of the threat.

In the aftermath of the London attacks of 2007, it appeared that 'international counterterrorism cooperation had been least successful where' it mattered 'most', and that urgent action was needed in order to fully appraise, understand and counter this

[190]Jacobson, *The West at War*, p. xvi.
[191]David Omand, interview with author, London, May 19, 2009.
[192]UN Global Counter-Terrorism Strategy, available at: http://www.un.org/terrorism/strategy-counter-terrorism.html.

phenomenon and prevent the 'next generation of terrorists' from emerging.[193] On this point, Lorenzo Vidino writes that, 'over the last few years, many governments have started thinking about more nuanced, comprehensive, and long-term counterterrorism policies, understanding that simply trying to dismantle terrorist networks is like playing a never-ending game of ''whack-a-mole,'' unless steps are also taken to prevent the radicalization of scores of potential new militants'.[194] In line with Christopher Boucek, Vidino speaks of a 'soft approach to counter-terrorism', which targets the conditions that lead to violent extremism.[195] He applies this paradigm to the initiatives promoted by several European and Muslim countries, from the Netherlands to Indonesia. Jim Winkates embraces a similar perspective when he writes of the 'soft power contributions' to the U.S. Counter-Terrorism Strategy, recognising how the mix of policy documents that constitute Washington's response to terrorism is comprised of a very wide range of political, economic, military, and cultural initiatives. Following Joseph Nye, during Secretary of State Hillary Clinton's term of office, the State Department began to employ the label 'smart counter-terrorism' to describe the DOS's new approach to counter-terrorism, in order to emphasise that the new course of the Obama administration combined hard as well as soft counter-terrorist measures.[196]

An interesting sign of the increasing importance that this perspective has acquired in the definition of global counter-terrorism strategies is the attention devoted by policy-makers to the development of a 'scientific' understanding of these phenomena. The academic community has been mobilised on both sides of the Atlantic in order to investigate the root causes of terrorism. Johnston, in his research on institutional

[193]Rik Coolsaet, 'Jihadi Terrorism: Where Do We Stand?,' Second IPRI Conference on International Terrorism, 13 February 2006. Available at www.irri-kiib.be/speechnotes/06/060213-jihad.terr/coolsaet.htm.
[194]Lorenzo Vidino, 'Europe's New Security Dilemma', *The Washington Quarterly*, vol. 32, n. 4, p. 61.
[195]Vidino, 'Europe's New Security Dilemma', p. 61; Christopher Boucek, 'Saudi Arabia's "Soft" Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare', *Carnegie Paper*, September 2008.
[196]Remarks by Secretary of State Hillary Rodham Clinton.

socialisation, considers the frequency with which a given epistemic community produces research and analysis on issues relevant to a country's involvement in a particular policy area as a symptom of institutional effects.[197] In interviews, this phenomenon is often described as the adoption of a research-based approach, a term this account employs in the following sections of this Chapter.

The number of seminars, workshops and publications, sponsored by Foreign, Interior Ministries and law enforcement agencies alike, has indeed increased exponentially since late 2006. One such exercise was organised in 2007, for example, under the auspices of the Italian Foreign Ministry in order to explore the causes of 'youth radicalization in the Mediterranean' region. Sponsored jointly by the UN General Assembly and the Council of the European Union, the conference reflects the official understanding of Western governmental bureaucracies as regards the issues of radicalisation and counter-radicalisation in the aftermath of the adoption of two of the key global instruments dealing with terrorism conducive-conditions. The proceedings of the meeting, in particular, identify five thematic areas that are generally targeted by CVE policies: education, employment, prisons, the role of the media and the Internet, as well as the role and the treatment of women. The complex variety of these issues, combined with the inclusion within the remit of these initiatives of themes related to human rights, poverty, development, good governance, as well as the rule of law, attributes a specific ideational character to this policy strand, which is reflected specifically in the text of the UNGA Global Strategy. This document, in particular, has modified the original setting of the UN counter-terrorist regime, both at structural and substantive level, putting states in the condition of having to reaffirm their commitment to the organization's role as the centre of global counter-terrorist efforts. In order to discern to what extent the institution

[197]Johnston, *Social States*, p. 64.

is responsible for domestic instances of alignment with the policies, the next section of the Chapter proceeds with an analysis of the incorporation of the root causes theme at the international regime level.

3.2. Countering radicalisation in the global counter-terrorist regime

George Kennan once remarked that the United Nations is like a stage: the lights 'go on and off', and the audience is never allowed to see what happens before and after, behind the scenes, when the curtains are closed.[198] This is particularly true in the case of counter-terrorism in which, as noted elsewhere in this thesis, voting is done by consensus and committee meetings are not recorded. Yet it is precisely what happens before and after that can help shed light on international institutional effects. With this purpose in mind, the following paragraphs explore the genesis, development and implementation of the two main multilateral counter-radicalisation frameworks within the global counter-terrorist regime: the UN Global Counter-Terrorism Strategy, adopted unanimously by the General Assembly on 8 September 2006, and the EU Strategy for Combating Radicalisation and Recruitment, adopted by the Council of the European Union in December 2005.

From a methodological perspective, two considerations should be introduced at this point. The first one is that implementation of the UN Strategy is not mandatory, as the document was adopted under the auspices of the General Assembly and does not possess the same legal strength as UN Security Council provisions adopted under Chapter VII of the UN Charter. In the absence of a firm legal commitment and visible material

[198]Quoted in Hanne Hagtvedt Vik, 'Peace with Rights: US Leadership and Resistance in International Human Rights', International Security Seminar, Belfer Center for Science and International Affairs, Harvard University, 31 March 2011.

sanctions, if member states, therefore, decide to comply and implement the Strategy's provisions, this can be assumed as an indication of the potential presence of non-material inducements. The following sections of this Chapter will try to establish the nature of such non-material factors.

The second consideration relates to the inclusion of the European Union's provisions into this account. As detailed in the introductory Chapter of this thesis, while the focus of the analysis is formal organizations with a global vocation, the EU needs to be taken into account in given instances, as its policies are the filter through which UN provisions are implemented at member state level. In this specific case, the timeframe of policy adoption at domestic and international levels suggests instances of policy export from one regime setting actor – the United Kingdom – to the European Union, as well as pro-institution commitment on the part of EU representatives vis-à-vis the content and structural reform of the UN counter-terrorist regime within the General Assembly. It is therefore imperative to factor the EU into the analysis in order to understand whether states align with the institution or with the regime-setting actor.

3.2.1. Counter-radicalisation policies at the UN: the Global Strategy

Title I of the UN Strategy is entirely devoted to addressing the so-called 'conditions conducive to the spread of terrorism'. It is the product of a long and painful exercise in compromise between different members of the General Assembly. Despite its significance as the first document to comprehensively address the issue of terrorism since the failure of a similar endeavour by the League of Nations in 1934, its impact and

reception have been far from uncontroversial.[199] The inclusion of the 'fight against root causes' theme within the scope of the General Assembly's Strategy was itself an unprecedented achievement for the UN system at large. As remarked before in this thesis, given its record, it seemed highly unlikely that the UN would ever address the 'underlying causes and motivations of the September 11 attacks' in its counter-terrorism response. Representatives of key Security Council Permanent Members who witnessed the process of adoption during the General Assembly's annual September session, admitted that they thought 'that the Strategy would never pass', and were 'highly surprised' when it did. One of the document's greatest supporters and chief negotiators on behalf the UN General Secretariat described the negotiations that led to its adoption as a 'quixotic exercise', one with only a 'five to ten percent' chance of success.[200]

The levels of compliance and implementation achieved within member states vary greatly, despite the coordinating efforts of the Counter-Terrorism Implementation Task Force (CTITF) set up to harmonise the whole UN counter-terrorism system in line with the provisions of the Strategy.[201] A former U.S. official at the UN aptly summarised P5 attitudes towards Title I, in 2006, remarking that permanent Council members had to 'accept that the Strategy had been adopted', and had to 'go along with it, somehow'.[202] *Prima facie*, the number of activities listed in the CTITF's inventory of states' CVE programmes seems impressive, spanning from initiatives that promote engagement and cooperation with civil society, rehabilitation within prisons, education, the tackling of economic and social inequalities, capacity-building in third countries, as well as

[199]The Stanley Foundation, 'Implementation of the UN Global Counterterrorism Strategy, 42nd Conference on the United Nations of the Next Decade', Conference Report, August 2007, available at http://www.stanleyfoundation.org/resources.cfm?id=255.
[200]The official also described his situation during the negotiations for the adoption of the Strategy as that of a 'Don Quixote fighting against windmills'. Interviewee B, Senior UN Official, General Secretariat, interviews with author, May 3 and 12, 2011; Interviewee C, Former U.S. Foreign Service official at the Office of the Coordinator for Counter-Terrorism and at the U.S. Permanent Mission to the United Nations in New York, interview with author, October 5, 2009.
[201] Mani, 'The Root Causes of Terrorism and Conflict Prevention'.
[202]Interviewee C, interview with author.

cooperation within the framework of the Alliance for Civilisations and Intercultural Dialogue Initiative.[203] When the document was adopted, in 2006, M. J. Peterson noted optimistically that 'norms and cooperation' were now, more than ever, 'the business of the General Assembly', and that the Strategy was as much the product of the Assembly's efforts in reaching an agreement as it was the result of the promoting and agenda-setting role of the Secretary-General.[204] Kofi Annan's 2006 report, 'Uniting Against Terrorism: Recommendations for a Global Counter-Terrorism Strategy', had played a key role in ensuring that the Strategy would be more than 'simply a list of laudable goals or an observation of the obvious'. Rather, the document emphasised key 'operational elements of dissuasion, denial, deterrence [and] development of State capacity', and highlighted 'the central role of human rights in every substantive section, in addition to a section on human rights per se'.[205]

The intrinsic value of the document is undeniable in terms of setting forth a comprehensive global framework for terrorism prevention and in changing the discourse associated with it.[206] A closer review of member states' action to implement the Strategy, however, shows the adoption of a patchwork of *ad hoc* initiatives and inclusion of the new thematic lexicon promoted by the Strategy within national counter-terrorism initiatives. Particularly significant are the comments provided during interviews with P5

[203]United Nations Counter-Terrorism Implementation Task Force, 'First report of the Working Group on Radicalisation and Extremism that lead to Terrorism: Inventory State of Programmes, UN Counter-Terrorism Implementation Task Force', available at http://www.un.org/terrorism/pdfs/Report%20of%20the%20Working%20Group%20-%20Workgroup%202.pdf.

[204]M. J. Peterson, 'Using the General Assembly', in Boulden, Weiss, (eds.), *Terrorism and the UN*, pp. 171-197.

[205]In 2004, the High-Level Panel on Threats, Challenges and Change recommended in its report that the Secretary-General promote a comprehensive global strategy against terrorism, which would strengthen the ability of responsible states to counter terrorism and promote the rule of law. In Madrid, in March 2005, on the first anniversary of the train bombings, Annan set out the elements of such a strategy. In the 2005 World Summit Outcome, states welcomed those elements, and agreed to develop them further. Kofi Annan, 'Uniting against terrorism: recommendations for a global counter-terrorism strategy,' Report of the Secretary General, 27 April 2006, available at: http://www.un.org/unitingagainstterrorism/sg-terrorism-2may06.pdf.

[206]The senior official within the UN Secretariat is particularly vocal about this point. See Interviewee B, interviews with author.

and non-P5 senior officials regarding their countries' efforts to implement a document that is hailed, in official settings, as the new frontier in the fight against international terrorism. Responses highlight how the Strategy has contributed to a change in the narrative, but 'in practice' does not 'matter at all' in shaping domestic counter-terrorism policy agendas, or that it only mattered in reigning in the Security Council and contributing to returning leadership in UN counter-terrorism action to the General Assembly and the Secretariat.[207]

When asked to list the actions adopted in implementation of this document, the representative of a former non-P5 country, who sat on the Council between 2006 and 2008, was able to mention only a conference organised under the auspices of his country's Foreign Affairs Ministry, whose 'conclusive remarks could barely be adopted' due to the opposition of other permanent members of the Council.[208] A senior scholar taking part in an official review of the Strategy, which commenced in 2008 under the auspices of the International Peace Institute, has remarked how the document is a 'long wish-list', and that if all its points were actually 'dealt with, that would be equal to world peace'. According to him, the document was politically significant, but had little value at the ground level of practice.[209]

[207]This opinion is shared by officials within the U.S. and Italian Permanent Missions to the UN. Interviewee D, Former Senior Official in the U.S. Permanent Mission to the UN, interview with author, October 2, 2009; Interviewee E, Senior Italian Official at the Italian Mission to the UN, interview with author, November 2, 2009.
[208]Interviewee F, Senior Representative of a non-P5 UNSC member, interview with author, May 6, 2009.
[209]Peter Neumann, Expert on Counter-Radicalisation, Member of the International Peace Institute Review Board for the UN Global Strategy, interview with author, November 11, 2009. Reference to the proceedings of the panels can be found at http://www.ipacademy.org/events/panel-discussions/details/138-implementing-the-un-global-counterterrorism-strategy-in-south-asia.html.

3.2.2. Counter-radicalisation policies in Europe: the EU Strategy

In a similar fashion, a review operated by the EU Counter-Terrorism Coordinator in 2007 stressed how the Council and the Commission had made some progress concerning the implementation of the EU's own Counter-Radicalisation Strategy, but that the overall process had been 'uneven', and several areas had been dealt with only via information exchanges of very limited scope.[210]

Although the broader EU framework for combating terrorism has been formally subordinated to the larger UN counter-terrorism umbrella since 2004, the EU Counter-Radicalisation Strategy predates by more than a year the adoption of the Global Assembly's document. The EU shares the general focus of the UN on capacity-building, but has devoted attention to 'factors that favour support for terrorism' ever since its 2004 Action Plan, at which point the General Assembly was still far from solving the root causes controversy among its members.[211] The Union was a key supporter of the adoption of the Global Strategy in 2006, and has consistently declared to be actively involved in the implementation of its provisions.[212]

Member states agreed to devise the Strategy and the related classified Action Plan (doc. 14781/1/05 and doc. 14782/05) at the European Council of 16-17 December 2004. The resulting document built on the work done after the 25 March 2004 Council's Declaration on Combating Terrorism, including the Commission Communication on Terrorist Recruitment. It belonged to the 'Prevention' strand of the overall EU Counter-Terrorism Strategy, and re-affirmed and detailed the key points addressed in the Revised

[210]Council of the European Union, 'The EU Strategy for Combating Radicalisation and Recruitment – Implementation Report', Brussels, 23 November 2007.
[211]*EU Action Plan on Combating Terrorism*, 26 June 2004, available at: http://www.libertysecurity.org/article64.html.
[212]Council of the European Union, 'Counter-terrorism measures taken by the European Union in implementation of the United Nations Global Counter-Terrorism Strategy. Matrix', September 4, 2008, obtained via the Centre for Global Counter-Terrorism Cooperation, New York.

EU Action Plan on Terrorism of June 2005. It was, characteristically, an expression of the cross-pillarisation of counter-terrorism competencies within the Union. Contributions came both from the Working Party on Terrorism (COTER), which deals with issues related to external matters, threat assessment, policy recommendations and implementation of UN provisions, and also from the Terrorism Working Group (TWG), dealing with law-enforcement matters under the Justice and Home Affairs pillar. The final document built on the inputs of both the Luxembourgish and, especially, the UK presidencies.[213] The Action Plan was updated subsequently during both the German presidency in the first half of 2007 and the Czech presidency in 2009.

Answering the call for a more general and comprehensive response to the threat of terrorism, the Council invited member states to 'disrupt the activities of the networks and individuals who draw people into terrorism; ensure that voices of mainstream opinion prevail over those of extremism; and promote yet more vigorously security, justice, democracy and opportunity for all', while ensuring respect for fundamental rights and individual freedoms.[214]

In particular, the Strategy invited states to engage in community policing and effective monitoring of the Internet. It called on states to limit the activities of agents of radicalisation by intervening in the education and prison systems, and by putting in place appropriate legal frameworks to prevent individuals from inciting and legitimising violence.[215] This point is particularly significant given that incitement had been the object of a specific UNSC Resolution adopted during the 2005 World Summit under UK leadership. The EU document further underscored the importance of empowering moderate voices by engaging Muslim communities and organizations, *inter alia* by

[213]Council of the European Union, 'Working structure of the Council in terrorism matters – option paper', Brussels, 25 May 2004.
[214]Council of the European Union, 'Strategy for Combating Radicalisation and Recruitment', Brussels, 24 November 2005, par. 6.
[215]Council of the European Union, 'Strategy for Combating Radicalisation and Recruitment', par. 9.

boosting the availability of mainstream literature, seeking to encourage the training of European imams, and enhancing language training for foreign imams already in Europe.[216]

In order to counter terrorist propaganda and its appeal to potential audiences in Europe, member states agreed to develop a 'non-emotive lexicon for discussing the issues' in a non-divisive manner, 'in order to avoid linking Islam to terrorism.'[217] Stressing the link between security, justice, democracy and development, the Council called on member states to work towards the elimination of the structural factors at the root of radicalisation, discrimination, inequality and injustice within and without the Union. With respect to relations with third countries, this objective was to involve attempts to promote good governance, human rights and democracy, and 'education and economic prosperity.'[218]

Rik Coolsaet considers the 'prevent' pillar of the EU counter-terrorism strategy to be 'the specific EU dimension', and the Union's unique contribution.[219] Member states' representatives, especially within UN counter-terrorism fora, have repeatedly stated that the prevention of terrorism and the tackling of the issues of radicalisation and recruitment are the key features of any counter-terrorism strategy that is to be effective in the long term, as well as compatible with the founding values of both the Union and the UN Charter. The prevention of radicalisation and recruitment was the first feature of the speech delivered by the EU Counter-Terrorism Coordinator at the General Assembly in September 2008, which was at that time reviewing implementation of the UN Global Counter-Terrorism Strategy; and the issue also figured prominently in several other

[216]Council of the European Union, 'Strategy for Combating Radicalisation and Recruitment', par. 11.
[217]Council of the European Union, 'Strategy for Combating Radicalisation and Recruitment', par 7-14.
[218]Council of the European Union, 'Strategy for Combating Radicalisation and Recruitment', par 13.
[219]Rik Coolsaet, 'Radicalisation and Europe's counter-terrorism strategy', available at: http://www.dedefensa.org/articleradicalisation_and_europe_s_counterterrorism_strategy_par_le_professeur_rik_coolsaet_30_01_2006.html.

contributions made in the Assembly and other UN venues at the time, including that by the Ambassadors of Denmark, Austria, Finland, and Slovenia.[220]

As in the case of the UN instrument, at first sight the panoply of measures adopted by the European Union and its member states in implementation of the 2005 Strategy appears impressive. Nevertheless, in 2008, the Change Institute produced for the Commission a study of best practices across the 27 member states, listing all actions taken and their relative impact, which showed that three years after the EU Strategy came into force, only Denmark, the Netherlands and the United Kingdom had adopted comprehensive counter-radicalisation approaches.[221]

To this end, Vidino has remarked that 'since the determination of the budget and the definition of the concept of radicalization and of the individuals affected by it is left to each individual government, actions vary widely in intensity and nature'. The choice of both the target of the policies and the government's religious interlocutors within civil society is left to 'individual political personalities setting different agendas. Philosophical

[220]Speech by the European Counter-Terrorism Coordinator, Gilles de Kerchove, to the United Nations General Assembly on the occasion of the Review of the UN Global Counter-Terrorism Strategy, New York, 4-5 September 2008, available at: http://consilium.europa.eu/uedocs/cmsUpload/speechGANYengldef.pdf; Statement by H.E. Ambassador Carsten Staur at the General Assembly meeting to review the United Nations Global Counter-Terrorism Strategy, New York, 4 September 2008, available at: www.missionfnnewyork.um.dk/en/menu/statements/GlobalCounterTerrorismStrategy.htm; Informal Consultations of the Plenary of the General Assembly on a Counter-Terrorism Strategy; Statement by Minister Alexander Marschik, Deputy Permanent Representative of Austria to the United Nations, on behalf of the European Union. Summary: EU Presidency Statement - Informals on a Counter-Terrorism Strategy, New York, 11 May 2006, available at: http://www.europa-eu-un.org/articles/en/article_5959_en.htm; Statement on behalf of the European Union by H.E. Mr. Erkki Tuomioja, Minister for Foreign Affairs of Finland, at the 61st session of the General Assembly, United Nations, Launch of the United Nations Global Counter-Terrorism Strategy, New York, available at: http://www.europa-eu-un.org/articles/en/article_6271_en.htm; 19 March 2008, New York-EU Presidency Statement by H.E Ambassador Sanja Štiglic, Permanent Representative of Slovenia to the United Nations, on behalf of the European Union; United Nations Security Council: Threats to international peace and security caused by terrorist acts, available at:http://newyork.predstavnistvo.si/fileadmin/user_upload/dkp_13_mny/docs/EU_Presidency_Statements/CTED_EU__statement_COVERPAGE_17.3.pdf; United Nations, 62nd Session of the General Assembly, Informal Meeting of the Plenary on the Implementation of the United Nations Global Counter-terrorism Strategy, 'EU Interim Statement on Progress of Implementation'.

[221]The Change Institute, 'Best practices in cooperation initiatives between authorities and civil society with a view to the prevention of and response to violent radicalisation', July 2008, available at: http://ec.europa.eu/justice_home/fsj/terrorism/prevention/docs/ecvr_best_practice_core_report_en.pdf.

and ethical considerations vary from country to country, and there is no clear central direction'. As an example, he notes how even actions that received worldwide resonance, such as the innovative comic strips featuring the adventures of the schoolboy hero Andi against 'hate preachers' – which officials in the German State of North Rhine-Westphalia (NRW) created and distributed in a bid to counter the radicalisation of young German Muslims in 2008 – were the product of the 'individual initiative and spontaneous creativity of two experts' within the state's Interior Ministry, rather than a result of a systematic and organic exercise to 'address the issue of the diffusion of a counter-narrative at federal level, and conceptualise prevention and de-radicalisation'.[222]

These remarks suggest that, where some level of compliance has been achieved at member state level, its significance varies from country to country as regards the role that the selected international institutional bodies and instruments played in bringing it about. In other words, faced with this new policy strand, which was supposed to alter the way in which governments approached and conceptualised counter-terrorism, countries have, overall, responded in a similar manner, and thus their policies have become 'more similar'. If one examines, however, the reasons why each one of these member states has supposedly complied with the international framework, the picture becomes more complex. An in-depth analysis of countries' efforts, such as the one that will be conducted in the next sections of this Chapter, shows that patterns of implementation generally vary along two axes: first, with respect to the actual measures, along the indicators that were detailed in Chapter Two (verbal responses, policy adjustments and deeper enforcement levels); and, second, with respect to the *reasons why* countries

[222]Lorenzo Vidino, interview with author, October 8, 2009; Reuters, 'Comic Strip Heroes Take on Al Qaeda', 25 March 2008, available at http://www.reuters.com/article/idUSL1880969420080325. Always as regards Germany, Peter Neumann, Head of the ICSR at King's College, remarked how this learning process is only just starting. In October 2009, for example, the various states intelligence agencies held a joint conference, where the idea of systematising the country's approach to counter-radicalisation activity was discussed for the first time. As remarked by Neumann, 'it was 2009!'; Neumann, interview with author.

engaged in counter-radicalisation policies at the different levels, either because of the need to align with the institution, with a regime setter, or following purely material, rather than social, considerations.

In order to clarify these dynamics, the next section of the chapter shifts the analytical focus to the state unit-level of enquiry and explores the initial development of the counter-radicalisation efforts in the three country case studies selected for the purpose of this analysis. As mentioned while providing a justification of case selection for this thesis, the countries are non-novices in the global counter-terrorist regime. The particular timing of the inclusion of counter-radicalisation provisions within the setting of the EU and, in particular, of the UN, allows us to examine their process of adaptation to this new set of provisions. Furthermore, the regime setter has been included in the sample in order to verify whether the source of the alignment originates with the institution or the state actor.

3.3. The United Kingdom

The United Kingdom possesses a unique and long-term experience of terrorist threats, as well as a deeply rooted institutional memory of the responses available. Its action against the 'root causes of terrorism' could therefore be considered emblematic of effective and comprehensive implementation of the UN and EU Strategies by a member state. London's 2003 Counter-Terrorism Strategy (CONTEST) placed great emphasis on the prevention component of the fight against terrorism. According to Coolsaet, the UK played a crucial role in the effective streamlining of the *ad hoc* measures adopted by the

Union prior to 2005 into a single all-European framework.[223] The UK's systematic approach to counter-terrorism, with its four main policy strands –'Prevent, Pursue, Protect and Prepare' – resembles the four main priority areas supported by the Union's comprehensive Strategy (Prevent, Protect, Pursue, Respond). According to a former UK Cabinet Secretary, 'this is no coincidence', given that the country pressured European institutions and partners in order to align the continent's counter-terrorism responses with the UK framework. [224]

CONTEST action in the realm of prevention stresses the necessity of 'supporting reform at home and abroad to tackle social disadvantages, inequality and discrimination that contributes to radicalisation; deterring people who assist or encourage terrorism and changing the environment in which the extremists can operate; as well as challenging the ideologies that extremists use to justify violence by helping people who wish to dispute these ideas to do so.'[225] CONTEST was revised and updated in March 2009, underscoring more closely the importance of the PREVENT strand, but giving less prominence to the idea that social disadvantages drive radicalisation and terrorism.[226] In 2011, PREVENT itself was re-focused following Lord Carlile of Berriew's review, which criticised in particular PREVENT's previous exclusive attention to Muslim communities, the blurring of conceptual boundaries between counter-terrorist action and integration work – now the realm of two separate government departments – and the

[223]Rik Coolsaet, 'Radicalisation and Europe's counter-terrorism strategy', available at: http://www.dedefensa.org/articleradicalisation_and_europe_s_counterterrorism_strategy_par_le_professeur_rik_coolsaet_30_01_2006.html.

[224] This view is generally shared by all the interviewees who dealt with UK counter-terrorism cooperation at EU level. See, for example, Interviewee G, Senior UK FCO Official at both the UK Mission to the UN and the EU, interview with author, December 15, 2009. See also, David Omand, interview with author.

[225]UK, Strategy for Countering International Terrorism, available at: http://www.fco.gov.uk/en/fco-in-action/counter-terrorism/counter-terrorism/.

[226]Home Office, 'Counter-terrorism Strategy', http://security.homeoffice.gov.uk/counter-terrorism-strategy/about-the-strategy1/four-ps/. According to a senior UK official, this version of CONTEST is, if compared to the early definition of the Prevent Strategy reflected in the July 2006 White Paper, more comprehensive and sophisticated. David Omand, interview with author.

choice of the religious interlocutors who interfaced with the mainstream Muslim population.[227]

In interviews, PREVENT is described as 'a whole-of-government effort with multiple agencies operating'. Key agencies include the Home Office, the Departments of Communities and Local Government (DCLG), Children, Schools and Families, Innovation, Universities, and Skills, the Justice Ministry, the Foreign and Commonwealth Office, the law enforcement community, including the Association of Chief Police Officers (ACPO), the local police forces and the Intelligence Agencies, which contributed importantly on the causes of radicalisation.[228]

Ever since its adoption, the UK government has been involved in a wide range of initiatives to implement PREVENT. To name just a few: in June 2006, the government announced the creation of the Commission on Integration and Cohesion, to investigate how local areas themselves can play a role in forging cohesive and resilient communities.[229] In the same year the first national training event was held for HM Prison Service (HMPS) imams. Following the London 2005 bombings, various government ministers (including the Prime Minister and the Home Secretary), engaged in outreach initiatives with selected representatives of the Muslim community. Home Office ministers, for example, visited nine towns and cities with large Muslim populations, in order to consult Muslim residents about how the government could work with communities to prevent extremism. Seven community-led working groups were set up under the banner of the 'Preventing Extremism Together' (PET) Initiative. On 3 June 2008, the UK government launched a new strategy that offered guidance to local

[227]On this point, see Lorenzo Vidino, *The New Muslim Brotherhood in the West*, (New York: Columbia University Press 2010). On PREVENT 2011 see: http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/?view=Standard&pubID=891218

[228]'The Language of Counter-Terrorism, Study by the Harvard Kennedy School', A Report for the Foreign and Commonwealth Office, by Candace J. Chin, Jim Armstrong, Uri Leventer, April 2008.

[229] UK Home Office, CONTEST Report, July 2006, p. 11.

authorities working to stop the spread of violent extremist ideology, and earmarked £150 million for this effort.[230] The strategy emphasised the need for local authorities to take the lead in ensuring that local partnerships were clearly tasked with driving forward the delivery of a jointly agreed programme of action.[231] In October 2008, the UK government's Department for Children, Schools and Families released a pamphlet advising teachers on how to spot and help vulnerable pupils aged 5 to 11 in schools across the country.[232]

The Foreign and Commonwealth Office, meanwhile, has created the Strategic Programme Fund for Countering Terrorism and Radicalisation. The FCO has actively worked with a wide variety of partners across and outside the Government in order to support CONTEST, at home and overseas, and was allocated an additional £80 million, for the years 2008 to 2011, to help it tackle extremism.[233] In partnership with the Home Office, for example, the Foreign Office has promoted a series of visits of British Muslims to relevant countries. In August 2007, a visit by a delegation of British Muslims to Sudan was organized to help raise the profile of the Darfur issue and in order also to refute the claim that the issue marked a 'dividing line between Islam and the West'.[234] The FCO has also supported the Radical Middle Way, a Muslim grassroots initiative aimed at promoting a mainstream understanding of Islam, and it has funded a variety of projects in priority countries, such as the Morocco Women's Empowerment and the New Family Code project.[235] In a call by the EU Commission to member states on how to improve implementation of the 'prevention' strand of the EU Counter-Terrorism Strategy, the UK

[230] UK Home Office, CONTEST Report, pp. 9-18.
[231]The Change Institute, 'Best practices in cooperation initiatives between authorities and civil society with a view to the prevention of and response to violent radicalisation', July 2008, available at: http://ec.europa.eu/justice_home/fsj/terrorism/prevention/docs/ecvr_best_practice_core_report_en.pdf.
[232]Challenge, Liberty and Security, 'U.K. Tries to Thwart Al-Qaeda Recruitment in Schools', 30 October 2008.
[233]Foreign and Commonwealth Office, 'Terrorism, Weapons Proliferation and Its Causes', available at: http://www.fco.gov.uk/en/departmental-report/part1/counter-terrorism.
[234] UK Home Office, CONTEST Report, July 2006, p. 16.
[235] Foreign and Commonwealth Office, 'Terrorism, Weapons Proliferation and Its Causes'.

has volunteered to share its views on how to counter terrorist propaganda, and took the lead in implementing these initiatives for the Union.[236]

3.3.1. The genesis of PREVENT

The senior civil servant responsible for the adoption of CONTEST, Sir David Omand, has underlined how the genesis of the document stemmed from a careful brainstorming exercise conducted at Cabinet level after 9/11.[237] The conceptual underpinning of this exercise, according to the counter-radicalisation expert Peter Neumann, was the recognition that in the government's counter-terrorism effort 'there had to be an element' concerned with the tackling of root causes.[238] PREVENT became one of the leading strands of CONTEST after the 7/7 attacks, when it naturally attracted more attention, since it had become 'obvious' that the UK should have looked more closely at its own population in the search for a solution to home-grown terrorism. A new vigour informed the policy after Gordon Brown moved into Downing Street, in June 2007.[239] According to Omand's successor, Sir Richard Mottram, there was a 'research-based approach' at the foundation of PREVENT. This approach, which has been described as 'so innovative' by Sir John Wheeler, former Minister of State for Northern Ireland, was the brainchild principally of a group of high-level civil servants, including Omand and Mottram, who had served at the MOD and had picked up the strategic and research-oriented approach of that body. In a multidisciplinary effort, several country models were explored, both formally and informally, with a predilection for the examples of France and Spain, in order to better understand the drivers of radicalisation both

[236] Council of the European Union, 'Implementation of the EU Counter-Terrorism Strategy - Priorities for further action', Brussels, 19 May 2008.
[237] Sir David Omand, interview with author.
[238] Peter Neumann, interview with author.
[239] Peter Neumann, interview with author.

generically and in the particular context of the UK, and in order to assess and compare the impact on radicalisation of different 'models of integration' (the French model as compared to the late British one, for example). Strands such as PREVENT seem to have been the principle products of this formal and informal exercise.

Few lessons learned were applied from the British counter-insurgency strategy (COIN) and the Northern Ireland model.[240] Neumann notes that 'there was little as a counter-radicalisation programme that was done in Northern Ireland…There was the intelligence work done as of the late 1970s with messaging etc., but that would not qualify as counter-radicalisation…There were the community outreach initiatives by the Army, such as playing football, wearing a soft cap and so on': but these, in his view, never quite replaced the overall strategy of trying to achieve a 'political settlement of the conflict'.[241] Between 1969 and 1972, British government policy reform for Northern Ireland had indeed included the setting up of a Community Relations Commission (CRC), of a Ministry of Community Relations, as well as the adoption of legislation prohibiting incitement to religious hatred.[242] While those initiatives look conceptually very similar to counter-radicalisation measures, interviews have revealed that the creators of PREVENT took, in line with what Neumann states, no explicit notice of these previous approaches.

The overall CONTEST Strategy, however, built in many lessons from Operation Banner, the British Armed Forces campaign in Northern Ireland, also given that some of its key creators, such as Omand, had been at the Northern Ireland desk in the MOD in the early 1970s. Among the main lessons learned that figure in their accounts are: the vital role of intelligence; the need to emphasise the rule of law, criminalise the fight, and not to

[240]Richard Mottram, interview with author, London, 19 May 2009.
[241]Peter Neumann, interview with author.
[242]Michael Cunningham, *British Government Policy in Northern Ireland*, 1969-2000, (Manchester: Manchester University Press 2001), pp. 5-6.

mistreat terrorist suspects; and the need to frame the strategic aim of CONTEST in terms of maintaining normality, thus signalling a difference, from the onset, with the then U.S. notion of a 'war on terror'. Operation Banner also brought to the forefront the imperative of taking into account the attitude of the local population. These concerns remain alive today in the contexts of policing Muslim neighbourhoods and establishing good working relationships between local police forces and interlocutors in the Muslim civil society.[243] The theme of winning the hearts and minds, which is often singled out as a crucial feature of the British approach to counterinsurgency, does not seem, however, to have played a role, at least not in its traditional form.[244]

Ministerial institutions and the police and security forces have adjusted rapidly to the new policy strand, setting up new offices in charge of dealing with Muslim communities and PR within very short timeframes.[245] This is especially true of the Metropolitan Police, which, according to Peter Clarke, has enhanced the community-focused approach that was already part of its operational heritage. Research-based structures, such as the Research, Information and Communication Unit (RICU), or the Counter-Terrorism Research Group in the Foreign and Commonwealth Office, testify to the research-based effort at the heart of PREVENT, and to its multidisciplinary nature. In this respect, Neumann notes that RICU is 'very highly admired' internationally, and it 'embraces foreign delegations', with a sense of 'wanting to share' the UK experience

[243]David Omand, interview with author. Peter J. Clarke, Former Head of Counter-Terrorism, London Metropolitan Police, interview with author, London, 3 June 2009. Peter Clarke, 'Learning From Experience - Counter Terrorism in the UK since 9/11', 24 April 2007, http://cms.met.police.uk/news/major_operational_announcements/terrorism/dac_peter_clark_s_speech_on_counter_terrorism

[244]Sibylle Scheipers, 'Detention in the "war on terror": legal norms, strategic cultures and the transatlantic security community'. John Wright, Head of Prevent for the ACPO, shares this opinion. 'Conversations with John Wright', Harvard Kennedy School of Government, November 18, 2009.

[245]A former Minister of State for Northern Ireland has remarked how this change has come about in the FCO in the space of only one month; see 'ITI Conference proceedings', London 2008.

'about counter-radicalisation'.[246] This Unit has significantly contributed to exporting the UK counter-radicalisation model worldwide, especially to the United States.

3.4. Italy

Italy has had a significant experience of a terrorist threat on its soil, and has developed a deep-rooted institutional memory of fighting terrorism during the past three decades. In the post-war period, the country was confronted with different, yet often concurrent, waves of terrorist violence, ranging from nationalist South Tyrolean groups resisting post-war territorial settlements in the North-East, to extreme right and left-wing terrorist organizations competing for political influence between the 1960s and the 1980s.[247] More recently, the country has been faced with the proliferation of a number of Islamic terrorist cells – broadly linked with Al Qaeda – mostly engaged in terrorism recruiting and financing, money laundering, support of illegal immigration, identity documents forgery and logistic support for terrorism.[248]

Counter-radicalisation initiatives were introduced in the country in a very preliminary form in 2003, by a joint effort of the Interior and Foreign ministries. In particular, Italy was at the time the main sponsor, at EU level, of the Declaration on Intercultural Dialogue, which was adopted that same year by the EU Council during the

[246] Neumann, interview with author.
[247] Erica Chenoweth, 'The Inadvertent Effects of Democracy on Terrorist Group Proliferation', PhD Thesis, (University of Colorado 2007).
[248] Armando Spataro, 'Dati sulle sentenze di condanna pronunciate in Italia successivamente all'11 Settembre 2001 per reati di terrorismo internazionale e per reati collegati al terrorismo internazionale', Gennaio 2009, unpublished manuscript. As mentioned in the introductory chapter of this thesis, Spataro significally notes, however, how the majority of the Italian immigrant population originates from Eastern and Central Europe, thus making concerns for the integration of Islamic communities in Italy at around the time the Strategy was adopted at UN level less pressing. This is interesting because this means that all the instances of satisficing behaviour displayed by Foreign and Interior Ministry authorities were not advanced in the purpose of fighting a real threat to the country, but in view of justifying the country's behaviour before the international institution. This suggests a specific sensitivity of these officials to the opinion that the institution had of their (lack of) compliance.

semester of the Italian Presidency. This initiative is credited, in the narrative of Italian Interior Ministry's officials, as proof of the early attention devoted to the conditions conducive to the spread of terrorism in the country. Contrary to these premises, however, this policy strand is not well developed, and, unlike the UK PREVENT, it is not part of a comprehensive strategy.

In 2007, the Ministry of the Interior supported the creation of a counselling body, the Council for Italian Islam (*Consulta per l'Islam italiano*), to promote dialogue and cooperation between representatives of the government and of the local Muslim communities. Similarly, the Ministry of Youth Policies supported the creation of a Youth Council for Religious and Cultural Pluralism (*Consulta per il Pluralismo Religioso e Culturale*), with counselling and advising powers vis-à-vis governmental institutions.[249] In February 2010, however, under the leadership of the Northern League Interior Minister Roberto Maroni, the former body was replaced by the controversial Committee for Italian Islam (*Comitato per l'Islam italiano*), which is considered unrepresentative of the Muslim communities in the country and has very limited powers.[250]

[249]Ministero dell'Interno, 'La Consulta per l'Islam italiano', available at http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/religioni/legislazione_691.html. See also, Ministero per Le Politiche Giovanili, 'Consulta per il Pluralismo Religioso e Culturale', available at http://www.pogas.it/politiche-giovanili/consulta-giovanile-per-il-pluralismo-culturale-e-interreligioso/consulta giovanile-per-il-pluralismo-culturale-e-religioso.html.

[250] The creation of the Council for Italian Islam was initially sponsored by Minister Giuseppe Pisanu, Interior Minister of the Berlusconi III government. Ministero dell'Interno, 'La Consulta per l'Islam italiano', http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/religioni/legislazione_691.html. See also, Ministero per Le Politiche Giovanili, 'Consulta per il Pluralismo Religioso e Culturale', available at http://www.pogas.it/politiche-giovanili/consulta-giovanile-per-il-pluralismo-culturale-e- interreligioso/consultagiovanile-per-il-pluralismo-culturale-e-religioso.html. Armando Spataro, Deputy Chief Prosecutor, Head of Counter-Terrorism Department, Court of Justice, Milan, interview with author, 23 April 2009; Michele Lepri Gallerano, Prefect, former Deputy Head of the Department for Civil Liberties and Immigration, Ministry of the Interior, Rome, interview with author, 16 April 2009; Interviewee H, Senior Official, Ministry of the Interior, Rome, interview with author, 21 April 2009; Interviewee I, Senior Counter-terrorism Officer, Department for Public Security, Rome, interview with author, 21 April 2009; Prof. Marco Lombardi, Catholic University of Milan, member of the National Security Observatory of the Italian MOD, interview with author, 22 April 2009. On the new *Comitato* see Karima Moual, 'Perde pezzi il Comitato per L'Islam di Maroni', *Il Sole 24 Ore*, April 27, 2010. Critics consider this body unrepresentative of the Italian Muslim communities.

In line with efforts made by other UN member states, Italy has been active on a number of fronts in implementation of the multiple components of the UN and EU Counter-Radicalisation Strategies. For instance, Italy has provided venues wherein the mechanisms underlying the phenomena of violent radicalisation and recruitment to terrorism can be analysed and debated between representatives of international institutions and of the academic world. In July 2007, the Ministry of Foreign Affairs organised a conference on Youth Radicalisation in the Mediterranean Region, gathering experts from the Italian and German Foreign Affairs ministries, the United Nations Counter-Terrorism Committee and several leading academic institutions.[251] Along with China, Italy was also a co-host of the 2007 ASEM interfaith dialogue held at Nanjing.[252] According to the first report of the Working Group on Radicalisation and Extremism of the UN Counter-terrorism Implementation Task Force, in 2008 the Italian Central Directorate of Prevention Police launched the '*Tabligh Eddawa*' project in partnership with the European Group of Six, relating to the sharing and analysis of information on the movement of so-called 'itinerant preachers'.[253]

The country has also been involved in prevention-oriented activities, promoted under the aegis of the Democracy Assistance Dialogue (DAD) Initiative for the Broader Middle-East and North Africa (BMENA), an offshoot of the G-8-led 'Post Sana'a Process'. DAD aims at fostering productive dialogue between civil society and governments of the BMENA Region, integrating the participation of non-governmental actors, political leaders, media representatives and civil society, and developing specific

[251] IAI, 'Brainstorming Session on Youth Radicalisation in the Mediterranean'.
[252]Council of the European Union, 'The EU Strategy for Combating Radicalisation and Recruitment – Implementation report', par. 31.
[253]UN Counter-terrorism Implementation Task Force, 'First report of the Working Group on Radicalisation and Extremism that lead to Terrorism: Inventory State of Programmes UN Counter-terrorism Implementation Task Force', available at http://www.un.org/terrorism/pdfs/Report%20of%20the%20Working%20Group%20%20Workgroup%202.pdf., p. 19.

initiatives on issues relating to political reform, democracy and human rights. The Programme is now being implemented by the governments of Italy, Morocco, Turkey and Yemen, in partnership with several NGOs, such as the Italian branch of the Indonesian 'No Peace without Justice' organization.[254]

To an extent, implementation has brought about structural changes within government ministries, prioritising the role of different government agencies and initiating a process of dialogue between local security elites and selected civil society groups. Given its representative role within COTER, the Foreign Ministry is playing a role in facilitating coordination between agencies, as shown by the inclusion of all counter-terrorism-related activities under the umbrella of the former Directorate for Political and Multilateral Affairs' Bureau III, which is responsible for cooperation with the UN, G-8 countries, COTER and the OSCE.[255]

3.5. The United States

According to a 2006 report of the Milan based Joint Research Centre on Transnational Crime (Transcrime), 'the extent of the actual approach to radicalization in the United States is determined by the American Constitution. The First Amendment emphasises freedom of speech. Unlike in a number of European countries, persons voicing racist comments cannot be dealt with. The support of Jihad either in writing or in speech is difficult to tackle directly.'[256]

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[254]NPWJ (Italy), 'The Democracy Assistance Dialogue', available at http://www.npwj.net/2007/05/30/mena_democracy_program.

[255]Ministero degli Affari Esteri, 'La cooperazione internazionale come chiave di volta della lotta al terrorismo', http://www.esteri.it/MAE/IT/Politica_Estera/Temi_Globali/Lotta_Terrorismo/.

[256] Transcrime, 'First Inventory of Policy on Counter-terrorism: Germany, France, Italy, Spain, the United Kingdom and the United States', 2006, available at http://transcrime.cs.unitn.it/tc/fso/Altre%20pubblicazioni/first%20inventory%20of%20policy%20on%20counterterrorism%20-%20italian%20contribution%20to%20ncbt.pdf.

U.S. national responses to deter, prevent, defend, and counter future terrorist threats have been codified in multiple national strategies, all of them embracing a wide range of political, economic, military and cultural measures.[257] According to a senior counter-terrorism expert, the U.S. conceptualisation of prevention initially differed greatly from other countries' models, 'since all the action again terrorism would fall within the conceptual framework of terrorism prevention, even war'.[258] In the past eight years, however, U.S. counter-terrorism efforts have overall shifted, albeit gradually, from purely kinetic operations and tactical counter-terrorism to comprehensive approaches, which target specifically the conditions leading to violent extremism, both abroad and at home.

As noted before, the U.S. Department of State has embraced the concept of a 'holistic' approach to counter-terrorism, referring to goals compatible with the content of the UN Strategy. According to a senior DOS official, this shift, which led to the adoption of a conceptual framework that links, for example, good governance and economic development to effective counter-terrorism, occurred after 2005, and was initiated in the Office of the Coordinator for Counter-Terrorism.[259] In interviews, however, such a move is not explicitly associated with the need to implement the UN Strategy. Rather, the well-established tradition of U.S. Public Diplomacy seems to have acted as the catalyst for the majority of U.S. soft counter-terrorism efforts. In 2006, the Office for the Support of Public Diplomacy was established within the DOD, promoting policies in line with the external dimensions of the UK PREVENT.[260] In 2007, the State Department adopted the

[257]Winkates, 'Soft Power Contributions'. See for example, National Security Strategy of the United States of America, September 2002; U.S. National Strategy for Combating Terrorism, 2003; U.S. National Security Strategy, 2006.
[258] Peter Neumann, interview with author.
[259] Interviewee J, Former Deputy Secretary of State, U.S. State Department, interview with author, December 8, 2009.
[260]ITI 2008; Policy Coordinating Committee, *U.S. National Strategy for Public Diplomacy and Strategic Communications*, http://www.state.gov/documents/organization/87427.pdf.

U.S. National Strategy for Public Diplomacy and Strategic Communications, as well as set up the related support offices, having looked closely, in particular, at the experience of the UK RICU.[261] Close cooperation between transatlantic partners, from policy agencies to law enforcement institutions, consolidated this trend in the course of 2008.[262] In February 2009, the FBI finally adhered to the counter-radicalisation discourse, when Director Mueller highlighted the Bureau's increased focus on immigrant outreach in a speech at the Council on Foreign Relations. In so doing, he characteristically signalled that concerns for home-grown terrorism, which, for a long time, had not been believed to constitute a significant element of the threat confronting the country, were now set to draw an increasing level of attention.[263]

In a global report on the implementation of the UN Strategy, produced in 2008, the United States was listed as a country that was actively involved on multiple fronts. It was enhancing the collaboration between states and local communities to counter violent extremism, by empowering, mobilising and amplifying the voices of community-influencers and opinion-leaders in different parts of the U.S., thereby producing a counter-narrative. It was developing special prison programmes aimed at prevention and rehabilitation, using education as a means to counter violent extremist ideology within

[261]'The language of Counter-terrorism. Study by the Harvard Kennedy School'. For instance, the State Department's Office of the Coordinator for Counterterrorism has developed various counter-radicalisation programs, such as the Ambassadors Fund for Counterterrorism, now in its fourth year. According to a State Department official, the Fund supports projects that enhance the ability of law enforcement personnel to deter international terrorist acts, by applying carefully selected tools of soft power and supporting U.S. government efforts to counter violent extremist ideology and recruitment. Interviewee K, Senior State Department Official, Office of the Coordinator for Counter-Terrorism, interviews with author, October 6, 2009, and June 15, 2010.

[262]ITI 2008. See also, for example, 'HSPI Hosts a panel discussion on: "Words Matter: The Role of Lexicon in Counter-Terrorism Communications Strategy", featuring Jonathan Allen, head of RICU, and Daniel Sutherland, Officer for Civil Rights and Civil Liberties at the US Department of Homeland Security,' available at http://www.gwumc.edu/hspi/old/lexiconsummary.htm. Meetings between law enforcement agencies and the DOS on this subject were held in Washington beginning in November 2009.

[263]Alex Kingsbury, 'FBI to focus on immigration outreach', *U.S. News*, 24 February 2009. See also, Robert Mueller, 'The changing landscape of terror', http://www.fbi.gov/inside/archive/inside022709.htm. Several incidents of home-grown terrorism have affected the US in the past couple of years. For a comprehensive list see for example, Council on Foreign Relations, 'Threat of Islamic Home-grown Terrorism,' September 30, 2011, available at http://www.cfr.org/terrorism/threat-homegrown-islamist-terrorism/p11509.

the country, as well as preventing violent extremism in third countries. The United States also reported the existence of a training program for police forces in special areas related to the religious and cultural traits of the country's main communities.[264] Yet, according to Timothy Crawford, the Bush administration was at the time also actively involved in opposing the institutionalisation of the UN's Counter-Terrorism Implementation Task Force, whose mandate had come up for a bi-annual review in 2008, and in ensuring that contributions to its budget would be voluntary, thus allowing donors to determine what part of the Strategy's portfolio would get more or less focus.[265]

While many member states had 'made it a point to emphasize the importance of resourcing the institutionalization of the CTITF in a serious way, […] the US did not support such enhancements, as its public statements made clear.' U.S. representatives were said to be appreciative of the 'efforts of the Secretariat to set up the Counter-Terrorism Implementation Task Force,' but they called 'on those Member States that [were] in a position to do so to respond to the call of the Task Force for contributions."[266] According to Crawford, the U.S. would not endorse the calls for the work of the CTITF to be redirected towards 'providing comprehensive reporting on over-all UN counter-terrorism efforts to the General Assembly', preferring instead that the Task Force remain 'focused on identifying concrete ways in which parts of the system could contribute to the global campaign […] and support [counter-terrorism] efforts within their mandates.'[267] Such nebulous language was well in line with Washington's initial silence on the Strategy, even within UN fora.

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[264]United Nations Counter-Terrorism Implementation Task Force, 'First report of the Working Group on Radicalisation and Extremism that lead to Terrorism: Inventory State of Programmes - UN Counter-terrorism Implementation Task Force,' available at http://www.un.org/terrorism/pdfs/Report%20of%20the%20Working%20Group%20-%20Workgroup%202.pdf., p. 20.

[265]Timothy Crawford, 'Obama's War on Terror', 2010, unpublished paper.

[266] United Nations General Assembly, *verbatim record*, 120th Plenary Meeting, New York, 5 September 2008, A/62/PV.120, p. 8.

[267]Crawford, 'Obama's War on Terror,' p. 20.

The Obama administration has taken a different position from its predecessor's, both with respect to the Strategy and its framework, and with respect to CVE as a broad policy area. In the early days of the administration, the Strategy was mentioned in Alternate Representative DiCarlo's comments in an open session of the Security Council as one of the 'interlocking, complementary tools to respond to terrorism and the spread of WMD'.[268] The administration also proved willing to support Secretary General Ban Ki-Moon's move to institutionalise the CTITF during the 64th session of the General Assembly.[269] In November 2009, U.S. Deputy Permanent Representative Wolff declared in open session of the Security Council that the U.S. welcomed efforts to develop a more holistic UN counter-terrorism approach, which was more integrated with the wider UN efforts to promote international peace and security, and involved 'working not just with the Security Council, but the General Assembly and other relevant UN bodies.' This increased attention to the issue of violent extremism culminated, in August 2011, in the adoption of a U.S. counter-radicalisation strategy, as well as in the DOS's professed move to a 'smart power approach' to counter-terrorism, as detailed by Secretary Clinton's statement on the occasion of the tenth anniversary of September 11.

What lessons concerning institutional effects can therefore be drawn from these countries' paths to the adoption of counter-radicalisation measures?

[268]Remarks by Ambassador Rosemary A. DiCarlo, U.S. Alternate Representative for Special Political Affairs, during Security Council Consultations on the 1267, 1373 and 1540 Committees, May 26, 2009.
[269]Crawford writes that 'in late November 2009, a draft resolution giving SG Ban the green-light to "finalize" his CTITF institutionalization plan "without delay" was circulated by four sponsors; by the end of December that number had increased to 52, and had moved swiftly through the Fifth (administration and budget) committee. The GA passed it (A/RES/64/235), without debate and by consensus, on December 24, 2009.' Crawford, 'Obama's War on Terror', p. 21. In March 2009, U.S. counter-terrorism Ambassador Daniel Benjamin spoke again on the need for a 'more holistic, coordinated' approach to the UN counter-terrorism work and stated that the U.S. was looking forward to working with the Secretariat at the CTITF. 'U.S. Government Efforts to Counter Violent Extremism', Statement by Daniel Benjamin, Coordinator, Office of the Coordinator for Counterterrorism, to the Senate Armed Services Committee, 16 March 2010.

3.6. Explaining alignment at member state level

An overview of the cases presented above shows that these states' engagement with soft counter-terrorism initiatives resulted from a dual process. On the one hand, states resorted to locally driven measures, characterised by the resilience of previously established patterns of behaviour, domestic institutional frameworks and, in certain instances, cultural legacies. They also faced the need to devise an adequate response to the characteristics of the emerging threat of home-grown terrorism, in line, for example, with Ernst and Peter Haas' instrumental logic of 'whatever works best' to deal with a given situation. Similar threats elicited similar responses, according to a classical neorealist paradigm, leading state policies to become more similar over time.[270] On the other hand, the normative and conceptual underpinnings of these types of policies – which stress, as shown above, integration, good governance and respect for human rights – enhanced by the legitimacy of the international forum that promoted them at the international level (specifically the UN General Assembly) – led countries first to go along with the reform and participate in the consensual voting exercise that gave birth to the Global Counter-Terrorism Strategy, and second, to espouse the narrative in their foreign policy statements.

Support for interest-driven explanations emerges from interviews, where policy-makers refer to brainstorming exercises, research-based approaches, consultation of the academic community, and the analysis of other countries' models and threat conditions in order to develop an appropriate response. Cases in point are those of the United Kingdom and the United States. The first one, as shown above, acted as a regime setter within Europe and spearheaded the adoption of anti-incitement provisions at UN level, in the

[270] Stephen M. Walt, *Origins of Alliances*, (Cornell University Press: Ithaca 1999).

form of Resolution 1624 of 2005. This effort was initially not welcomed by the other P5 members and, in particular, by Washington, which did not share London's concerns with the homegrown terrorist threat and objected to the provisions touching on matters of constitutional principles. The United States came onboard at the end of the summer of 2005, allowing the Security Council to vote on a watered down draft of London's original resolution, which could not be adopted under Chapter VII of the Charter.[271] The anti-incitement provisions were later incorporated into the clauses of the Global Strategy.

The U.S. joined the counter-radicalisation wagon later than its Western counterparts, when threat conditions on the ground changed and the British model, in particular, started to look very appealing.[272] International cooperation proved crucial at this stage, but the pedagogic environments these governments turned to in order to learn standards, practices and measures were not multilateral counter-terrorism committees, but rather smaller, often informal and *ad hoc* gatherings where counter-terrorism practitioners could freely exchange notes. Police forces, in particular, spearheaded several such informal cooperative endeavours, with the New York, Los Angeles and London Metropolitan Police, for example, informally liaising with other law enforcement agencies and even international organizations around the world.[273] The UK and the U.S. therefore engaged in soft counter-terrorism initiatives quite separately from the need to comply with multilateral implementation requirements.

Evidence from the interviews and from the contested process of adoption of the Global Strategy within the Assembly, however, also suggests the presence of institutional

[271]Interviewee L, Former Official at the UK Permanent Mission to the United Nations, New York, interview with author, December 16, 2009.
[272]Significantly, before 2008 U.S. interviewees generally tended to 'dismiss' home-grown terrorism as a typically European problem, which did not apply to American Muslim communities.
[273] Tony Fuller, National Coordinator for Pursue, London Metropolitan Police, interview with author, June 19, 2009; Interviewee M, U.S. Law Enforcement Official involved with counter-terrorism, New York, May 20, 2011; Interviewee N, Leaders in Counter-Terrorism seminar series co-coordinator, interview with author, Cambridge, MA, March 20, 2012.

effects. Going back to the meeting records of September 2006, it emerges clearly from the public statements made by members during the plenary sessions of the Assembly that on the eve of the vote, on September 7, the outcome of the negotiations had not yet been decided. The statement made by the representative of Egypt is to this point exemplary. Referring to debates on the future role of the United Nations and its involvement in conflict prevention, the Egyptian Ambassador stated that members should 'clearly deal with attempts to mix the global initiative against terrorism and the peaceful settlement of disputes and ending situations of occupation.' That also entailed, he added, standing 'firm before attempts to create a role for sanctions committees in dealing with terrorism at home when we have not yet agreed on a comprehensive convention or strategy to combat terrorism.' Egypt did not see at the time any 'reason to confuse the preventive role of the United Nations with terrorism, as they [were] absolutely different from one another.'[274]

Yet, that was precisely what the adoption of the Strategy meant. The consensual acceptance of the document, the following day, reflected not so much unanimity on the text and its purpose, but rather the extraordinary mediating effort conducted by the Secretariat and the General Assembly's President, Jan Eliasson of Sweden. As members' representatives remarked, there had been no real consensus, as negotiations had not been conducted directly among member states. Rather, delegations were pressured into agreeing because they 'wished to join the consensus' under the Presidency, which had been one of 'integrity that ha[d] reaped great positive rewards for the work of the General Assembly in general.' Dissenting members therefore 'did not call for a vote' despite their conviction that the text was seriously flawed, but joined the consensus in order to stress their 'adherence to the struggle against terrorism through […] international action.'[275]

[274] United Nations General Assembly, *verbatim* record, 98th plenary meeting, New York, September 7, 2006, A/60/PV.98, p. 12.
[275] United Nations General Assembly, *verbatim* record, 99th plenary meeting, New York, September 8, 2006, A/60/PV.99, p. 5.

Interestingly, countries that were normally on opposite sides during debates on the comprehensive convention within the Sixth Committee found themselves in agreement in opposing the document, and in the same position of having to go along with the vote.

While the representatives of the actors that are the object of this study remained silent, they did not oppose the document, as it would have 'looked bad' if they had, in the words of one of their officials.[276] The case of the United States is, in this respect, quite telling, since the U.S. representative John Bolton had quite actively opposed Jan Eliasson's leadership within the Assembly on a number of issues, not least the reform of the Human Rights Commission. Labelling him, in quite colourful fashion, the 'Swede extraordinaire', Bolton had resisted attempts at diluting the authority of the Council in favour of the revitalisation of the General Assembly.[277] In the words of one scholar, Bolton's appointment to the UN had been the Bush's administration's way of signalling how much it 'valued' the multilateral body.[278] Yet despite later claims that the document did not matter – and Bolton significantly makes no mention of the issue in his memoirs – the United States (and the United Kingdom, according to the same official) could not oppose it, since the overwhelming majority of the Assembly's members went along with it on grounds that related more to the normative value of the vote – reaffirming the principles of multilateralism and the general commitment to the Assembly – than to the actual acceptance of the text of the reform. There was no clear material sanction attached to the adoption of a dissenting position while very significant material costs could derive from the acceptance of the Strategy – namely a shift in the balance of counter-terrorist

[276]Interviewee I, interview with author; this opinion is shared by Interviewee O, Senior Official, Italian Foreign Ministry, interview with author, October 14, 2009.
[277]John Bolton, *Surrender is not an Option. Defending America at the United Nations and Beyond*,' (New York: Threshold Editions 2007), e-book version, loc. 3917.
[278] The comment belongs to Richard Rosecrance.

action within the United Nations from the Security Council to the General Assembly.[279] It is plausible to assume that countries were concerned about how it would have looked – that is, what impact the decision to ask for a vote and oppose consensus would have had on their image – had they adopted a position so vocally and publicly opposed to the norm (in this case, multilateralism).

To this end, Wohlforth's objections concerning the soft constraints of reputation on U.S. action within international institutions help further support this pro-image claim. In fact, to paraphrase his analysis, had the United States (and the United Kingdom) developed a bad reputation by voting against the Strategy – that is, had they responded to the possibility of a material sanction rather than a social one – there is no reason and no evidence to believe that their partners would have stopped cooperating with them on other fronts or ceased to engage with the two countries within other bilateral and multilateral counter-terrorist fora, especially if they were in receipt of capacity building assistance. The conditions under which the Strategy was adopted therefore mirror closely the voting circumstances in which Johnston has detected social influence effects on Chinese behaviour. They also align with the conditions that were outlined in Chapter Two as factors conducive to the activation of the social influence phenomenon: in particular, the presence of a disagreement with the position of the majority within the group; the ideational nature of the issue at stake; and the particular mechanisms through which the position of the country is communicated to the group (the silent procedure). Italian officials equally recognise how they 'had to go along' with the reform under these specific circumstances.[280]

[279] As a measure of the substantial consequences of the adoption of the Strategy, it suffices to note that in 2011, through contributions from Saudi Arabia, the UN established a Counter-Terrorism Centre. While the body is meant to foster coordination, the Centre was launched under the aegis of the Secretariat and further contributed to the hijacking of the counter-terrorism cooperation process from the realm of P5 members – the UNSC – to the majority of the UN constituency.
[280] Interviewee I, interview with author; Interviewee N, interview with author.

Countries could certainly ignore the Strategy once it had been adopted and, as shown in the analysis of the establishment and evolution of these actors' counter-radicalisation policies, for the most part they did; up to a certain point. While there is no evidence of empirical effects in the behaviour of the United Kingdom apart from participation in the regime reforming vote, UK officials, along with their U.S. and Italian counterparts, displayed in interviews a characteristic need to justify their implementation records, pointing to how 'it is not true that we do not implement' the Strategy, it suffices to look at how 'comprehensive and advanced CONTEST is.'[281] Unable to say the same, given the difference in circumstances, U.S. officials enumerated all the domestic implementation efforts listed in the section this chapter devoted to the analysis of U.S. CVE activity. Italian officials proceeded to do the same referring to their earlier interest for intercultural and interreligious dialogue, stating that the only difference with the other countries was that they did not 'boast about it [….] or put in on the website [referring to the case of CONTEST], but this does not mean that we do' nothing about it.[282]

To further substantiate this point the case of Italy is particularly illustrative, as the country referred to the Strategy as the new frontier in the fight against terrorism in official documents, such as the proceedings of the conference it sponsored on behalf of the United Nations – a conference that, by admission of its officials, the country sponsored to show its commitment to this new front of terrorist action.[283] A similar message is conveyed in an articled authored by the then head of the Directorate for Multilateral Affairs, responsible for multilateral counter-terrorist cooperation and later elected Minister of Foreign Affairs under the Mario Monti government.[284] Yet, at intra-state level, the instances of implementation enumerated by officials are mostly cases of

[281] Interviewee L, interview with author.
[282] Interviewee K, interview with author; Lepri Gallerano, interview with author.
[283] Interviewee F, interview with author.
[284] Terzi, 'La cooperazione multilaterale contro il terrorismo'.

satisficing, even though counter-radicalisation initiatives were indeed accelerated in the aftermath of the Strategy's adoption. The Italian Interior Ministry, for example, claims to be active on the fronts of social and religious integration and indeed ticks the corresponding boxes on both EU and UN matrixes when asked to report on its actions in implementation of these organizations' counter-radicalisation instruments. In reality, however, it relies on the locally based Territorial Councils for Immigration, which have been created in 1998 and were independently set up to coordinate activities of the Ministry with the initiatives promoted at grass-root level by civil society organizations.[285]

The evolution of the U.S. State Department position vis-à-vis the UN Strategy is equally telling in that the shift to the 'smart' approach to counter-terrorism makes sense in the context of the changed threat environment in the country. Still, after a silence of three years, the Obama administration went on the record three times in the space of a few months to pay lip service to the Strategy.[286] The adoption of pro-institutional verbal responses suggests an intention to signal a shift from the pro-Council position of the Bush administration to the more universally accepted multilateral posture promoted by the UN Assembly and the Secretariat, even if this did not translate, as mentioned above, in unconditional support for the institutionalisation of the CTITF. This is still an indication, however, of a certain degree of sensitivity on the part of the country's officials to their image of commitment to multilateral engagement in counter-terrorism. Risse, Ropp and Sikkink consider the need to pay lip service to a norm as the sign of an intermediary stage

[285] Interviewee P, Senior Official, Italian Interior Ministry, telephone interview with author, May 6, 2009.
[286]See for example, Remarks for Ambassador Rosemary A. DiCarlo, U.S. Alternate Representative for Special Political Affairs, during Security Council Consultations On 1267, 1373 and 1540 Committees Rosemary A. DiCarlo United States Ambassador and Alternate Representative for Special Political Affairs, http://usun.state.gov/briefing/statements/2009/may/126468.htm; Remarks by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, At New York University's Centre for Global Affairs and Centre on International Cooperation, 'A New Course in the World, a New Approach at the UN'; Susan E. Rice, United States Permanent Representative to the United Nations, New York, NY, August 12, 2009, http://usun.state.gov/briefing/statements/2009/august/127953.htm; Informal meeting of the General Assembly Plenary on the Implementation of the UN Global Counter-terrorism Strategy, Statement by the UK High Representative, 3 December 2007, http://ukun.fco.gov.uk/en/newsroom/?view=News&id=2132102.

of acceptance of the norm itself on the part of a given actor. Significantly, they label this phase as 'commitment,' which does not equal compliance, but suggests a change in the perspective of the actor. In this light, Neumann's remark that countries to whom radicalisation – domestic or international – was not a top concern at the time the Strategy was adopted were 'forced to look into it' in the aftermath of the September 8, 2006 vote, takes on new depths of meaning.[287] The UN Global Strategy might not have 'mattered at all' in the adoption of these countries counter-radicalisation frameworks, but either immediately or, as in the case of the United States, a few years after its adoption, these countries perceived nonetheless the need to vocally justify an apparent lack of interest in this document or adopt the narrative promoted by its provisions. As admitted by a senior EU official, this dynamic of verbal acceptance, need to defend and justify the implementation record and, in practice, satisfice in order to 'look good' when filling the boxes of UN compliance matrixes also applies to the European Union, adding an additional layer to the scope of image-related pro-group effects triggered by social influence phenomena.[288]

3.7. Conclusion

This chapter has provided an illustration of how the conformity-inducing effects triggered by the social influence phenomenon can affect countries' pro-institution behaviour. The policy strand selected for the purpose of this study, counter-radicalisation, was singled out for its innovative character, ideational value, practical implications, unique multidisciplinary nature, and for the characteristic pattern of its inclusion within the scope of the global counter-terrorist regime. An analysis of the genesis and evolution

[287] Peter Neumann, interview with author.
[288] Interviewee Q, Senior Official, Council of the European Union, interview with author, January 22, 2010.

of both the international and the domestic development of counter-radicalisation instruments has shown the extent of institutional influence.

In particular, the chapter has outlined how image-related group pressures can account for the country case studies' acceptance of reform to the structure of the counter-terrorist regime. The absence of evident material side-payments and the presence of significant long-term material costs associated with the entry into force of the Strategy – specifically for countries for which counter-radicalisation was not, at the time, a policy priority – allows one to rule out purely rationalist explanations based solely on utility maximisation or the benefit of institutional cooperation. The document was largely seen as detrimental to existing multilateral counter-terrorist efforts, as coordinated and directed by the Security Council and the P5 members under UNSC Resolutions 1373 and 1267. The language of Title I provisions, relating to the root causes controversy within the Sixth Committee of the General Assembly, did not satisfy the demands of those member states that for decades had pressed for a public recognition of the issue within the framework of the negotiations for a global counter-terrorism convention. Nor was it in the interest of the United Kingdom, the regime-setting country, to globally mandate watered down standards with which its domestic counter-radicalisation strategy would have had to comply, *ex post*. In the absence of evidence supporting the issue-linkage and cross-issue persuasion hypotheses as advanced by institutionalist scholars, and given the abundance of evidence that shows countries did not believe, as a social persuasion explanation would require, that adopting the Strategy was 'the right thing to do', the empirical findings suggest that the diffused social influence model offers a more compelling and complete explanation of regime participation on the part of the three country case studies examined in this thesis.

Specifically, the process outlined in this chapter conforms to several of the

conditions identified as conducive to the activation of the social influence mechanism, both at intra and inter-group levels. (1) A disagreement existed between these countries and the majority of members of the General Assembly; (2) the nature of the issue at stake was ideational, touching on fundamental views relating to both the respective roles of the Assembly and the Security Council in driving UN action in counter-terrorism and the responsibility of these states in the global promotion of the rule of law, human rights, good governance, and economic development; (3) the actors' stance, if maintained, would have put them in a distinct minority position and outside what these countries considered their natural group of reference (i.e. the group of responsible members of the international society of states, committed to, at least rhetorically, the norm of multilateral cooperation as represented by the UN General Assembly); (4) the institutional environment had indirect sanctioning power with respect to the dissenting members, in particular exercising pressure via the consensus voting mechanism, which discouraged dissenting positions by putting diverging countries in the spotlight. The sanction was therefore social, mediated by an institutional space centred on the General Assembly but in which several actors and venues, both state and non-state, participated in a diffused process with multiple feedback paths. Once the regime was modified and the Strategy adopted, the environment's pressure led these countries' authorities to vocally justify lack of compliance with Title I provisions, even in the absence of a specific threat situation on the ground or in the presence of a sophisticated domestic counter-radicalisation framework.

The outcome of the process – instances of verbal alignment with the pro-institution position – and the coexistence of social effects with utility maximisation motives in explaining actors' practical enforcement of the policies at the domestic level signal that in this specific context the strength of the effect is limited to the first tier

identified in the analytical description of the social influence phenomenon: discursive acceptance of the institutional provision. This seems to be the case when the social domain of the interaction is more diffused: rather than acting as an isolated pedagogic environment, formal institutions mediate the process of interaction and social sanctioning.

The next chapter provides a further example of how considerations related to image and group dynamics can lead even agenda-setting states to change their position vis-à-vis the regime that they contributed to establishing. The case of the incorporation of human rights safeguards within the setting of the UN counter-terrorism sanctions regime will provide the empirical background to this second analysis of institutional effects on state behaviour in the counter-terrorism field.

Chapter Four

Human Rights in the Counter-Terrorist Sanctions Regime

> *The UK is actively considering a wide range of options for the upcoming 1267 Review, from doing nothing and allowing last year's changes from UNSCR 1822 to fully come into effect, to studying the proposal for an independent review body. A challenge for the UK and the U.S., FCO officials told us, is to convince other EU Member States and the broader public of the effectiveness of sanctions. HMG plans to let their request for a blanket humanitarian exemption in the 1267 Committee sit quietly for the time being, hoping no rift develops between the U.S. and UK on one side, and France on the other.*[289]

> *[The] challenge [for the U.S.], however, will be to balance our shared goals against a UK - and broader EU - concern over cost-benefit analyses of whether sanctions are effectively working, and the increasingly aggressive UK and European courts which question the legality of proceedings and sufficiency of evidence presented.*[290]

This chapter provides a further empirical illustration of how multilateral cooperation in formal international institutions affects states' decision-making in the field of counter-terrorism. The analysis focuses on the reform of the counter-terrorism sanctions regime established pursuant to UNSC Resolution 1267 (1999) and targeted against individuals and entities associated with Al Qaeda and the Taliban. It traces the regime's evolution as well as the reactions, decisions and implementation patterns of UN, EU and selected member states' stakeholders in the process of reform of the regime's listing and delisting procedures. The chapter concentrates on one specific issue area: the inclusion of human rights safeguards within the original framework of Resolution 1267. According to some scholars, this gradual incorporation shows that a certain level of embeddedness of human

[289]'UK Studying Range of Options for 1267 Sanctions Review; Under Logistical and Legal Pressure', U.S. Embassy Cable, London, February 20, 2009, ref. 09LONDON452.
[290]'UK Studying Range of Options for 1267 Sanctions Review'.

rights norms, namely guarantees of fair trial and effective remedy, exist within the setting of the UN.[291] In the case of the 1267 regime, this resilience plays characteristically against the peculiar combination of 'leadership and resistance' that has defined Western P5 members' human rights behaviour vis-à-vis counter-terrorist action over the course of the past decade.[292]

This problematic attitude of UN institutions and member states' foreign ministries towards human rights safeguards within the framework of the 1267 regime is treated here as a touchstone of both the ambivalence with which the issue has been addressed at Council level and the residual power of IGO bodies to occasion change in the capacity-building orientated Chapter VII resolutions. In this respect, the chapter illustrates the central finding of the thesis, which is that in the institutional environments selected for the purpose of this study, institutional effects on state behaviour can manifest themselves via diffused social influence, i.e. partial socialisation to the norms and principles promoted by the multilateral institution due to concerns for the preservation and maximisation of status markers and social praise.[293] When social influence is at play, states do not seek an instrumental maximisation of a reputational gain, but try to minimise the psychological cost associated with a possible loss of image with respect to their chosen reference group. In the specific case of the reform of the 1267 regime, this is the club of 'Western' democratic countries.

In line with the practice-driven approach outlined in Chapter Two, the analysis further shows that in the process leading states to partake in the regime-reforming efforts, instances of social rationality occur alongside interest-driven action. This finding softens

[291]Rosemary Foot, 'The United Nations, Counter-Terrorism and Human Rights: Institutional Adaptation and Embedded Ideas', *Human Rights Quarterly*, vol. 29, no. 2, 2007, pp. 489-514.
[292]Michael Ignatieff, (ed.), *American Exceptionalism and Human Rights*, (Princeton: Princeton University Press 2006), p. 1; Sewall, 'The Civilian in American Warfare: Normative Pathways and Institutional Imperatives'.
[293]Johnston, interview with author, April 24, 2012.

both hard rational choice explanations, with their emphasis on cost-benefit analysis, and constructivist approaches postulating that in order to speak of socialisation full internalisation should occur. Referring to Keck and Sikkink's analysis, the chapter also employs the idea of 'boomerang effect' in order to describe the mechanisms through which IGOs retain agency in the multilateral counter-terrorist field: interest-driven policies originally devised at member-state level are exported globally via the interface of international institutions, which act as 'facilitators'. Playing the game of naming and shaming, IGO bodies, non-P5 member states and non-governmental institutions prompt norm-compliant reforms of the policies, *de facto* hijacking the policy-making process away from its original sponsors. In the case of the UN 1267 sanctions regime, this combined effort had the effect of bringing the 'unwanted' human rights safeguards back into the UN counter-terrorism equation.

In order to illustrate this process, the chapter begins by reviewing the structure of the UN counter-terrorism sanctions regime. Then the chapter examines the regime's development and reform, highlighting the contribution of key actors within and without the Security Council system, and the role of the United States in particular as the original regime-setting country. The last section reviews this process from an analytical perspective, clarifying the role played by diffused anticipatory socialisation processes, past legacies and rational choice-driven behaviour.

4.1 Targeted sanctions in counter-terrorism: the 1267 regime

The financial assets of governments and particular individuals were targeted by the Security Council seven times in the course of the 1990s: twice in the former Yugoslavia,

and once in Iraq, Libya, Haiti, Angola, and Afghanistan.[294] Three times over the course of the same decade, the Council specifically imposed sanctions on states and groups accused of aiding or abetting terrorism. In response to the downing of Pan Am flight 103 and UTA flight 772, in March 1992 UNSC Resolution 748 imposed a series of measures to 'limit the movement, use and refurbishing of Libyan aircraft and airfields, and to reduce Libyan diplomatic staffs posted abroad.'[295] In 1996, the Council placed sanctions on the government of Sudan after its failure to extradite suspects in the attempted assassination of Egyptian President Hosni Mubarak.[296] In 1999, Resolution 1267 issued a third set of counter-terrorism sanctions against the Taliban regime in Afghanistan.

Unlike its predecessors, Resolution 1267 of 15 October 1999 passed unanimously and included several novel features.[297] It focused on denying the provision of sanctuary and training for Osama bin Laden and its terrorist associates following the bombing of the U.S. embassies in Nairobi and Dar es Salaam in August 1998. The sanctions applied initially only to the Afghan territory controlled by the Taliban regime, but their nature and scope were progressively expanded via successor resolutions that included individual assets freezes and arms embargoes. These resolutions mandated Security Council members to create appropriate administrative bodies to monitor compliance in all UN member states. After more than a decade of cosmetic adjustments and few substantial reforms, the '1267 regime' – as the Taliban and Al Qaeda sanctions mechanism has come to be known – represents to date the state of the art in terms of Security Council measures

[294] Edward C. Luck, *UN Security Council. Practice and Promise*, (London and New York: Routledge 2006), p. 98.
[295] Luck, *UN Security Council*, p. 97.
[296] 'U.N. Backs Air Embargo on Sudan', *The Washington Post*, 18 August 1996.
[297] Five developing countries abstained during the vote on the Libyan resolution: Cape Verde, China, India, Morocco, and Zimbabwe; China and the Russian Federation abstained on the two resolutions on Sudan. While the vote on draft resolution S/1999/1054 (later Resolution 1267) was unanimous, the representatives of Malaysia and Bahrain expressed reservations on the humanitarian impact of the sanctions on the population of Afghanistan. Bahrain also suggested several amendments that were incorporated in the draft before the vote. United Nations Security Council, *verbatim* record, 4051st Meeting, 15 October 1999, New York.

targeting individuals.[298] The fierce diplomatic struggle that has accompanied the process of reform – centred on the justiciability of its measures – offers an invaluable snapshot of the dynamics of multilateral counter-terrorist cooperation and its effects on state behaviour.

4.1.1 Creating the sanctions regime

Resolution 1267 does not target states and their representatives but subjects to time-bound sanctions individuals not necessarily associated with state actors.[299] Formally sponsored by Canada, the Netherlands, the Russian Federation, Slovenia, the United Kingdom and the United States and adopted under Chapter VII of the UN Charter, the document imposed an air embargo on the Taliban and froze 'funds and other financial resources' owned or controlled by the Taliban in order 'that the Taliban turn over Usama bin Laden'.[300] The resolution also commanded states to establish a Committee to monitor the implementation of the sanctions (known as the 1267 Committee) and to undertake periodic impact assessments of the sanctions on the population. In December 2000, facing the Taliban's continued refusal to comply with Resolution 1267 and hand over bin Laden, the Council expanded the scope of the sanctions with Resolution 1333: bin Laden himself and any individual or entities associated with him were subject to an asset freeze, a travel ban and an arms embargo, while a special committee of the Security Council comprised of all Council members was mandated with the administration of the sanctions. In particular, the Committee was required to establish and maintain an 'updated list' – later known as the 'Consolidated List' – 'based on information provided

[298]Interviewee R, Former Human Rights Officer, OSCE, interview with author, June 18, 2012.
[299]These are also known as 'smart sanctions'. See Uri Friedman, 'Smart Sanctions: A Short History', *Foreign Policy*, May/June 2012.
[300] S.C. Res. 1267, U.N. Doc. *S/RES/1267,* October 15, 1999.

by States and regional organizations, of individuals and entities designated as being associated with Usama bin Laden'.[301] Citing humanitarian, procedural and legal concerns, Malaysia and China abstained from the vote.[302]

In typical piecemeal fashion, the 1267 regime was amended several times in the course of the following decade. The first set of reforms, passed between July 2001 and January 2002, introduced humanitarian aid exemptions and answered the concern voiced by some Council members that the only likely outcome of the sanctions would be the deterioration of the appalling humanitarian situation in Afghanistan. Such criticism mirrored similar critiques levelled at other of the Council's sanctions mechanisms in the course of the 1990s.[303] Siding with their Malaysian and Chinese counterparts, British diplomats in New York had allegedly worked to oppose the new round of measures introduced by Resolution 1333, only to ultimately succumb to the combined pressure of the United States and Russia, the regime's key sponsors.[304] The Malaysian representative, in particular, had complained that Council members had not complied with the provisions of Resolution 1267, in that the 'joint impact assessment [required by Resolution 1267] was made by the two most interested members of the Council.' In his words, 'this joint impact assessment [did] not satisfy, procedurally or substantively, the specific requirement of resolution 1267 for the simple reason that it was submitted to the sanctions committee just before the submission of [the] draft [1333] resolution and therefore [could not], in all seriousness, be described as a periodic report to the Committee. Neither was it an "objective" or "impartial" assessment, given the fact that it was jointly submitted by the two most interested members of the Council, who [were]

[301]S.C. Res. 1333, U.N. Doc. *S/RES/1333*, December 19, 2000.
[302]United Nations Security Council, *verbatim* record, 4251st Meeting, 19 December 2000, New York.
[303]David Cortright, George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s*, (Lynne Rienner Publishers 2000).
[304]Ewen McAskill, 'Britain fought to block UN sanctions against Taliban,' *The Guardian*, Friday 22 December 2000.

most directly involved in the entire exercise and [had] the most vested interest in the subject.'[305]

In response to these critiques, in July 2001 the Council requested that the Secretary General establish a mechanism to monitor implementation of the sanctions and report any violation. The mechanism would consist of a Monitoring Group of five experts based in New York and a support team stationed on the Afghan-Pakistani border.[306] This combination of wider criticism and reactive countermeasures by P5 Council members would become a trademark in the evolution of the 1267 regime's controversial listing and delisting procedures. In January 2002, Resolutions 1388 and 1390 amended the sanctions in order to reflect the new political situation in Afghanistan. By request of the Special Representative of the Secretary-General for Afghanistan, Mr. Lakdhar Brahimi, flight restrictions were lifted in order to facilitate the travel of Afghan Hajj pilgrims, while the reach of the financial and military measures against Taliban and Al Qaeda associates became global. In line with the requirements of the other powerful Council's counter-terrorism instrument, Resolution 1373 (2001), member states were also asked to submit a report on the implementation of the measures within 90 days.

As the geographical scope of the sanctions widened, so did the scrutiny to which the international community subjected their most critical tool: the Consolidated List. Resolution 1267 et seq. required states to freeze assets and exclude listed entities and individuals from their territories. According to the 1267 Committee Guidelines, adopted in November 2002, listing began with individual or joint submissions by member states for consideration by the Committee. States were 'strongly encouraged', but not required, to 'seek additional information on an individual from the target's state[s] of residence and/or nationality' and were asked to include the basis for designation only 'to the extent

[305] United Nations Security Council, *verbatim* record, 4251st Meeting, p. 4.
[306] S.C. Res. 1363, U.N. Doc. *S/RES/1363* (July 30, 2001).

possible.'[307] As the sanctions were intended to be preventive in nature, domestic criminal charges or convictions were not a prerequisite for listing: evidence of association with the Taliban, Osama bin Laden and Al Qaeda was deemed a sufficient condition to submit an entry to the List. In 2005, the Council finally gave in to member states' pressures and defined association as the participation in 'the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of' the Taliban, Al Qaeda and its leader.[308]

Individuals or entities could also be listed if evidence suggested that they supplied, sold, transferred material, recruited or supported in any way the Taliban and Al Qaeda. Because designations would often be based on sensitive information, states were reluctant to share the intelligence at the basis of their listings, even with other Committee members. Initially, statements of case were not circulated among affected member states unless they sat on the Security Council. In practice, evidence presented to the 1267 Committee could vary widely both in length and quality. A Watson Institute report cites, 'at one end of the continuum, a joint submission from two Member States recommending the listing of three individuals, [which] allegedly included a general background on the organization with which they were affiliated, followed by six detailed paragraphs on each individual, with specific information relating to actions they ha[d] allegedly taken….At

[307]Security Council Committee pursuant to Resolutions 1267(1999) and 1989(2011) concerning Al-Qaida and Associated Individuals and Entities, 'Guidelines of the Committee for the Conduct of its Work', adopted on 7 November 2002, as amended on 10 April 2003, 21 December 2005, 29 November 2006, 12 February 2007, 9 December 2008, 22 July 2010, 26 January 2011, and 30 November 2011, pp. 1-2.

[308]'Guidelines of the Committee for the Conduct of its Work'; S.C. Res. 1617(2005), U.N. Doc. *S/RES/1617* (July 29, 2005); 'Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities', years 2000-2006, U.N. Doc. *S/2000/1254*, *S/2002/101*, *S/2002/1423*, *S/2004/281*, *S/2004/1039*, *S/2006/22*. Committee members on country visits often reported that member states' officials would complain about the lack of clear guidelines concerning listing and delisting.

the other end of the spectrum was a statement of case that purportedly included 74 names, with only a single, general paragraph of justification.'[309]

Once a name was proposed for addition to the List, Committee members had forty-eight hours to object or to place a 'technical hold', requesting additional time and information. Like all Security Council Committees, the 1267 body operated by consensus, under a 'no-objection' rule. As outlined in Chapter Two of this thesis, this decision-making procedure acted as a double-edged sword in the case of P5 members. Designed both to facilitate the adoption of proposals that garnered strong support and in order to discourage dissent – which needs to be voiced openly by 'breaking the silence'– this procedure put the United States, the United Kingdom and Russia, in particular, in the position of being named and shamed if they opposed human rights-driven reforms to the 1267 sanctions mechanism.[310] States wanting to propose a name for designation could accelerate the approval process by prenotifying affected states and close allies. The United States, for example, would typically contact interested parties five days before proposing a listing to the Committee.[311] If consensus could not be reached, Committee members could undertake further consultations or defer the matter to the Security Council.

In practice, it is unclear what percentage of listing requests went unheeded, since Committee proceedings are classified and member states tend to favour consultations in informal sessions rather than in formal ones. In 2004, for example, informal meetings

[309]Watson Institute Targeted Sanctions Project, *Strengthening Targeted Sanctions Through Fair and Clear Procedures*, vol. 6, 2006, p. 26, available at http://watsoninstitute.org/pub/Strengthening_ TargetedSanctions.pdf.

[310]As an example of the impact and consequences of 'breaking the silence' see, 'France, Belgium Break NATO's Silence Procedure on Iraq Issue,' Beijing Times, 11 February 2003.

[311]'The Financial War on Terrorism: New Money Trails Present Fresh Challenges: Hearing Before the Senate Comm. On Finance', 8 October 2002, Statement by James Gurule, Undersecretary of the Treasury; Eric Rosand, 'The Security Council's Efforts to Monitor the Implementation of Al Qaeda/Taliban Sanctions', in *American Journal of International Law*, vol. 98 (2004), pp. 745-763.

outnumbered formal sessions in a proportion of twelve to one.[312] Far from being simply a procedural matter, this secretive *modus operandi* of the 1267 Committee soon attracted the critiques of the wider UN community. Member states who had submitted entries to the List or whose nationals figured among the designated individuals asked to be admitted to the sessions in New York; committee experts on country visits were increasingly met with requests for increased transparency; and fewer and fewer member states submitted implementation reports.[313] This trend was particularly disturbing, especially if compared to the success rate that the 1373 Committee was enjoying at the time: under the leadership of UK Ambassador Jeremy Greenstock and its team almost all member states had submitted a report to the Committee by the end of its first mandate year.[314]

According to the Committee's yearly reports to the Security Council, member states became aware of these issues as early as 2002. In December of that year, the Council voted unanimously to allow individual states to administer exemptions to the financial sanctions, freeing up funds that listed individuals could use on humanitarian grounds.[315] In an effort to become more transparent and user-friendly, the Committee established a web site providing relevant information regarding its activities. It also relied increasingly on the contribution of the Monitoring Group of experts, whose mandate was renewed every twelve months. The experts reported periodically on state compliance with

[312]During the reporting period, the Committee held three formal and 36 informal meetings at the expert level. The Committee continued its practice of holding primarily informal meetings.
[313]For instance, the representatives of Indonesia, Italy, Liechtenstein, Maldives and Switzerland were invited to address the Committee on 15 December 2003. Some Committee members, however, 'emphasized that the invitation should not set a precedent for the future work of the Al-Qaida and Taliban Committee or other sanctions committees…[but] found the dialogue with Member States [that were] non members of the Committee to be useful for further improvement of the work of the Committee and the Monitoring Group.' In 2003, only 49% of member states submitted a report to the Monitoring Group, a 17% decline with respect to 2002. United Nations Security Council, *verbatim* record, 4982nd Meeting, 14 January 2004, New York.
[314]Interviewee S, Former Head of Mission, P5 member's Permanent Mission to the UN, interview with author, July 20, 2009.
[315] United Nations Security Council, *verbatim* record, 4678th Meeting, 20 December 2002, New York; S.C. Res. 1452, U.N. Doc. *S/RES/1452* (Dec. 20, 2002).

the sanctions and on the overall effectiveness of the regime, and provided assistance with implementation to individual countries with capacity needs. In 2004, Resolution 1526 institutionalised their role by creating an eight-member New York-based Analytical Support and Sanctions Monitoring Team (hereinafter the Monitoring Team), appointed by the Secretary-General and established for a period of 18 months under the direction of the Committee. Its main goal was to help revitalise the Committee itself, creating 'a new, more demanding conceptual and substantive framework' for its actions.[316]

Starting in 2003, in fact, backing for the Al Qaeda sanctions had started to wane in some countries. According to some UN diplomats, the widespread enthusiasm that had accompanied the measures after the 9/11 attacks was starting to dwindle 'in part because of opposition to the U.S.-led war in Iraq.' Michael Chandler, the former British Army officer who headed the Monitoring Group from 2001 to 2004, later admitted that '[o]nce we got into the middle of 2003, we found that people were not so supportive anymore, [and that] [t]oo many countries, for a variety of reasons, really didn't implement the sanctions properly.' Victor D. Comras, the former State Department official who served as the Group's financial expert until 2004, acknowledged that 'many countries had lost faith in the blacklist and that as a result, the number of new names had dwindled in recent years.'[317]

Listing, review and especially delisting procedures were also coming under increasing attack in the press, to the point that the Committee, who saw its role in purely administrative terms – with no executive or judicial power – lamented that the media had 'on occasion…reported on [its] work…in conjunction with issues well beyond or not

[316]United Nations Security Council, 'Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities', 31 December 2004, UN Doc. *S/2004/1039*, par. 3.
[317]Both are quoted in Craig Whitlock, 'Terrorism Financing Blacklists At Risk; Global System Faces Multiple Challenges', *The Washington Post*, November 2, 2008.

related to [its] mandate.'[318] In an attempt to assuage critics, in July 2005 the Council unanimously adopted resolution 1617, in order to 'provide more clarity regarding the measures and their implementation'. In particular, the resolution extended the mandate of the Monitoring Team for an additional 17 months, expanded its scope, and finally provided states with an explanation of the term 'associated with', which was to serve as the basic guideline for submission of entries to the List. The Committee also stepped up its dialogue with member states, Third Parties and other Council counter-terrorism bodies (Resolution 1373's Counter-Terrorism Committee, in particular).

As the lack of due process in the Council's sanctions regime was providing more and more 'fodder for criticism', in September 2005 member states 'call[ed] upon the Security Council with the support of the Secretary-General to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions.'[319] Pursuant to this mandate, on 27 September 2005 the UN Office of Legal Affairs (OLA) commissioned a study of the legal implications of the 1267 sanctions regime's listing and delisting procedures. The study attempted to provide an answer to one central question: was 'the UN Security Council, by virtue of applicable rules of international law, in particular the United Nations Charter, obliged to ensure that rights of due process…[were] made available to

[318]Establishing the legal nature of the UN Al-Qaeda sanctions is very problematic and crucial with a view to determining whether the Council acted *ultra vires* with respect to its Chapter VII powers. While the 1267 Committee tends to see the sanctions as administrative decisions, legal experts, *in primis* the former UN Special Rapporteur for Human Rights in Counter-Terrorism, Martin Scheinin, consider them quasi-judicial decisions. From this point of view, designation for listing is equivalent to a 'criminal charge'; in the absence of a judicial mechanism for redress, delisting becomes a 'political process affected by diplomatic representation'. See Lisa Ginsborg, 'Procedural Standards in the Office of the 1267 Delisting Ombudsperson', Paper Presented at the Seminar on 'New Forms of International Regulation and Adjudication', The Human Rights Working Group, European University Institute, Badia Fiesolana, June 18, 2012. United Nations Security Council, 'Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities', 8 April 2004, UN Doc. *S/2004/281*, par. 61.

[319]Zalmay Mamozy Khalilzad, U.S. Ambassador to the United Nations, 'UN/1267 Sanctions: Council Adopts Resolution 1822 Setting Out Strategic Vision For 1267 Regime', USUN New York, 18 July 2008, DOS Ref. 08STATE69956, 08USUNNEWYORK421, par. 4; World Summit Outcome Document, General Assembly Resolution 60/1, par. 109, 16 September 2005.

individuals and entities directly targeted with sanctions under Chapter VII of the UN Charter?'[320] The UN Office of the Legal Counsel answered in the affirmative.[321] What follows offers an account of how the UN and its member states attempted to tackle this issue.

4.2. Reforming the sanctions regime

In this section, the chapter traces the steps taken by Council members to grapple with a controversy that has become symptomatic of a complex relationship between dominant powers, norms and international institutions. Chapter Two of this thesis identified this issue as the problematic coexistence of interest-driven behaviour, as predicted by rationalist approaches that stress the utility-maximising effects of ideas, and norm-driven action that falls short of complete behavioural change and full internalisation as postulated by constructivist analyses. That the oughtness of the due process norm was put into question, resisted, and then allowed back into the UN sanctions framework within certain restrictive parameters shows not only its resilience, but also the power of group image pressures on the behaviour of the members of the Council.

In order to illustrate this process, I adopt a chrono-thematic approach, which clusters the narrative of the reform process around three distinct periods: issue emergence (2001-2004), coalition building (2005-2006) and institutional reform (2007-2009). This is useful both to highlight how agency plays out within the international institution at various stages of a norm life-cycle, as well as to show how complex motivational

[320] Baldo Fassbender, 'Targeted Sanctions and Due Process. The responsibility of the UN Security Council to ensure that fair and clear procedures are made available to individuals and entities targeted with sanctions under Chapter VII of the UN Charter', Study commissioned by the United Nations Office of Legal Affairs, 20 March 2006, p. 3.
[321] Fassbender, 'Targeted Sanctions and Due Process'.

mechanisms of state action coexist in the face of seemingly taken-for-granted normative expectations.[322]

4.2.1. Issue emergence (2001-2004)

The 1267 Committee authorised its first publicised delisting in 2004. On 23 December, Shadi Mohamed Mustafa Abdalla, a Jordanian national of Palestinian origin, was delisted while imprisoned in Germany after a conviction on charges of belonging to the extremist group al-Tawhid, an Al-Qaeda affiliate. Abdalla, formerly one of bin Laden's bodyguards, had admitted his role in the plots against two Jewish restaurants in Dusseldorf and a Jewish community centre in Berlin, and was due to appear as a prosecution witness in the trials of two Moroccans accused of aiding the September 11 hijackers.[323] Before Abdalla's removal from the Consolidated List, Committee members had approved amendments mostly with a view to improving the identifying information of targeted individuals, exhorting states to provide additional details. In 2003, for example, 'nine names were deleted from the list', since 'they had been identified as duplications of the names of other listed individuals.'[324] At the time of Abdalla's delisting, procedures for the removal of entries from the Consolidated List were as haphazard as the mechanisms that led to designation. As early as 2001, the BBC Kabul correspondent had remarked that '[t]he list include[d] [Taliban] ministers, governors and diplomats,' but that 'several of them ha[d] been given a wrong job title, one [was] dead,

[322]This approach to the analysis of the due process reform draws from IR literature on agenda setting in Transnational Advocacy Networks. See, for example, R. Charli Carpenter, 'Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks', *International Studies Quarterly*, vol. 51, issue 1, March 2007, pp. 99-120.
[323] Richard Heister, 'Islamist Linked to Al-Qa'ida Jailed for Plotting Terror Attacks, *AFP*, 26 November 2003.
[324]United Nations Security Council, 'Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities', 8 April 2004, par. 14, p. 4.

and another imprisoned.'[325] Eric Rosand, then a member of the U.S. delegation in New York, noted that during the Committee's 'initial period of work, the creation of the list was based largely on political trust'. One Security Council diplomat reiterated this point, pointing out that '[at the time] there was enormous goodwill and a willingness to take on trust any name that the US submitted.'[326] Delisting was based entirely on political and diplomatic negotiations among states, since minimal standards for submission and removal would be introduced only in 2002.[327]

Mostly at the initiative of the United States, the Committee added more than 200 entries to the List by November 2001, including the names of three Somali-born Swedish citizens allegedly associated with the international financing network Al Barakaat. Three days after their UN designation, the three were listed under European regulations, and Swedish financial institutions froze their assets. Amidst significant public outcry – as one of the listed individuals was running for public office in Sweden – the three turned to Swedish authorities, claiming they had no knowledge of Al Barakaat alleged links to terrorism, that they had not been notified of their listing (since as per Resolution 1267 et seq. the Committee was not required to notify designated individuals) and that they lacked any legal means of redress. The Swedish government took up the issue with the Council and the United States. After intense bilateral negotiations, the U.S. agreed to support the request for delisting. On this point Jimmy Gurule, the then U.S. Under-Secretary of the Treasury for Enforcement, admitted that Washington had agreed to remove the individuals after they pledged, in writing, to having 'severed and

[325]'New UN sanctions against Taliban assets', BBC World Service, 30 January 2011.
[326]Quoted in Rosand, 'The Security Council's Efforts to Monitor the Implementation of Al Qaeda/Taliban Sanctions', p. 749.
[327]Rosand, 'The Security Council's Efforts to Monitor the Implementation of Al Qaeda/Taliban Sanctions', p. 748.

disassociated themselves in every conceivable way from the Al Barakaat-related businesses.'[328]

Between the time of this high profile incident and Abdalla's 'routine' delisting, it became apparent that the flaws in the listing and delisting procedures needed to be addressed, especially since an increasing number of states started reporting to the 1267 Committee that lawsuits against the sanctions were being filed before domestic courts. Rosand summed up these flaws, which he termed 'imperfections', as the lack of a 'formal appeal and review mechanism and transparent evidentiary requirements for inclusion on or removal from the list.'[329] The adoption of the Committee guidelines in November 2002, however, did not fully clarify the matter of the Committee's sanctions procedures. The listing and delisting mechanisms continued to suffer from serious shortcomings, and member states became reluctant to propose names for what the press was now calling the 'terrorism blacklist'. The Monitoring Group was well aware of the problem and in its second report for 2003 highlighted that practical obstacles to implementation and political matters related to questionable listings topped member states' list of concerns, while human rights and due process came only in third place.

Affected by the lawsuits, EU member states started to champion pro-actively the issue of the justiciability of the sanctions before the Council and the Committee in the course of 2003. They were joined initially by the representatives of Switzerland, Brazil and the Philippines, while P5 members remained silent. In July, for example, the Italian Ambassador at the UN, Marcello Spatafora, expressed the EU's conviction that 'every effort [should] be made to promote due process in the proceedings of the Committee.' The Union called for '[s]anctions [to] be implemented on the basis of transparent technical criteria[,] in order to create maximum legal certainty in the matter.' The

[328] Quoted in Jayamaha Dilshika, 'U.S. Requests Removals off U.N. List,' *AP Online*, August 22, 2002.
[329] Rosand, 'The Security Council's Efforts to Monitor the Implementation of Al Qaeda/Taliban Sanctions', p. 750.

German Permanent Representative, Gunther Pleuger, echoed Spatafora's statement, suggesting that 'some core elements of due process [should] be applied by the Security Council […].For example […] the possibility that a targeted individual might bring his case to the Committee for consideration.'[330] In November, Germany joined Sweden and the EU in co-sponsoring a seminar on 'Terrorism and Targeted Sanctions', where the Swedish delegation presented a nonpaper that criticised the Committee for 'failing to accept the basic premise that those whom it stigmatizes as terrorists ought to be entitled to impartial or judicial scrutiny.'[331] Recalling the conclusions of this seminar before a public session of the Council in January 2004, the Irish Permanent Representative referred to the concrete proposals that were put forward by the sixty experts present and asked that legal basis be established for the sanctions' restrictions. These should 'contain clear criteria and definitions for the listings as well as for their scope.' Individuals entered into the consolidated sanctions list should also 'be informed about the listing as well as its reasons and consequences [and have] the right […] [to] be heard.'[332]

These positions went much farther than what the Council was prepared to concede at the time. At the beginning of 2004, briefing the members on his last country visit to Europe, the newly elected Committee Chairman, the Chilean High Representative Heraldo Muñoz, referred to the due process violations only in passing, noting that EU member states had voiced very 'serious reservations regarding such topics, and urging Council experts to take these concerns into account in preparing future resolutions'.[333] In the second half of 2003, Chile had indeed begun consultations with the United States and Russia on the draft of a new Resolution, 1526. In line with the preferences expressed by

[330] All quoted in United Nations Security Council, *verbatim* record, 4798th Meeting, 29 July 2003, New York, pp. 14, 21.
[331] The workshop took place on November 24, 2003. 'Swedish Nonpaper', quoted in Rosand, 'The Security Council's Efforts to Monitor the Implementation of Al Qaeda/Taliban Sanctions', p. 752.
[332] United Nations Security Council, *verbatim* record, 4892nd Meeting, 14 January 2004, New York, p. 23.
[333] United Nations Security Council, *verbatim* record, 4892nd Meeting, p. 4.

U.S. negotiators, the Resolution's wide-ranging text, approved at the beginning of 2004, included several provisions to track non-financial assets and strengthen the Committee's implementation measures thanks to the institutionalisation and revamping of the Monitoring Group. No mention was made of the need to establish fair and transparent procedures in the listing and delisting of the designated individuals. In February, however, partly giving in to European concerns, the Committee secretariat began to work on a list of domestic contact points, labelled 'focal points,' to automatically inform the competent government officials of 'amendments to the list immediately following their approval'.[334] The list became operative at the end of 2004 and partially contributed to easing the legal situation of the designated individuals, who now at least knew which government administration they should petition in order to bring their claim before the Security Council.

The Committee was increasingly aware, however, that these cosmetic improvements would not solve the persistent problems with the 1267 regime's procedures. Pressure was mounting in European member states in the months leading to the ruling of the Court of First Instance on the Kadi case – expected at the beginning of 2005 – while the consensus that the Council's counter-terrorism action had generally enjoyed in the 'time of extraordinary politics' that followed 9/11 was eroding. In March 2004, Council members assembled for an unusually charged two-day session to discuss the renewal of the mandate of the Counter-Terrorism Committee (CTC). Twenty-one non-Council members asked to be admitted to the proceedings and used their participation to voice their uneasiness with the Council's hijacking of the counter-terrorism issue from the General Assembly, thus beginning to pave the way for the

[334]United Nations Security Council, 'Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities', U.N. doc. *S/2004/1039*, par. 7, p. 3.

adoption of the Assembly's own counter-terrorism strategy.[335] In its first report after the adoption of Resolution 1526, the newly established Monitoring Team also showed signs that the group of experts had realised that the regime's effectiveness depended on the provision of an adequate redress mechanism for the listed individuals. The Team's coordinator, Richard Barrett, began to suggest, for example, that the Committee carefully reconsider the procedure by which a name may be removed from the List, 'whether by a listing State, or as a result of appeal by the individual or entity concerned.'[336] This point, if taken into consideration at the time, would have finally addressed the issue of those appeals of individuals or entities that had 'difficulty in [petitioning the Council] through their governments'.[337]

In fact, by the end of 2004, three out of the four de-listings approved by the Committee had been at the insistence of Sweden, in the notorious incident that had involved its Somali-born nationals. The fourth, Abdalla's, came in December as part of a reduction in the sentence accorded by the German Federal Crime Office under the state witness rule. At this point, Barrett did not go as far as recommending an automatic delisting mechanism, independent of the Council, but voiced clearly that the due process issue was closely related to the overall credibility of the List. The Committee, however, did not heed his recommendations and, in its own list of recommendations to the Security Council issued at the end of 2004, just restated that the body should 'continue to address concerns regarding the transparency of its work and the human rights implications of the sanctions measures.'[338] In a list that contained eighteen points, due process concerns came

[335]United Nations Security Council, *verbatim* record, 48921st Meeting, 4 March 2004, New York, pp. 2-3.
[336]United Nations Security Council, 'First report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities', 25 August 2004, U.N. Doc. *S/2004/679*, par. 41, p. 11.
[337]United Nations Security Council, 'First report of the Analytical Support and Sanctions Monitoring Team', par 42, p. 11.
[338]United Nations Security Council, 'First report of the Analytical Support and Sanctions Monitoring Team,' par. 42, p. 11.

in seventeenth place, just before a friendly reminder that country visits by Committee members should continue.[339]

This apparent lack of attention on the part of the 1267 Committee is all the more surprising, given that by 2004 due process concerns in counter-terrorism – while not yet dominating the Council's agenda of reforms – had been attracting an increasing level of attention in the UN system at large for at least two years. Rosemary Foot has noted how the Council's recognition of the central role that human rights had to play in the larger global fight against terrorism was a matter of slow realisation and combined pressure by NGOs, UN human rights bodies and middle-sized powers. Secretary General Kofi Annan, for example, had joined in the ranks of those that stressed the need to balance security concerns with human rights imperatives in early 2002, after having initially shared Greenstock's objections that human rights were beyond the limits of the CTC mandate. The UN High Commissioners for Human Rights, Mary Robinson, and her successor, Sergio Vieira de Mello, had started linking an effective response against international terrorism with measures that upheld human rights and the rule of law in their briefings to the Council between September 2001 and September 2002.[340] These concerns were finally incorporated in Resolution 1456 of 2003, which stated that domestic provisions adopted in implementation of Resolution 1373 had to ensure the 'respect for human rights, refugee and international humanitarian law'. In itself only a small reference added at the bottom of the sixth paragraph of Resolution 1456, this mention of human rights in counter-terrorism came as 'somewhat of a miracle' and

[339]United Nations Security Council, 'Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities,' U.N. doc. *S/2004/1039*, par. 27, p. 8.
[340]Foot, 'The United Nations, Counter-terrorism and Human Rights: Institutional Adaptation and Embedded Ideas'. For NGOs' contribution see for example, 'Hear No Evil, See No Evil', *Human Rights Watch Briefing Paper*, 10 August 2004.

contributed to the establishment of a pattern of reform that would spill over onto the 1267 regime.[341]

A grouping of like-minded smaller powers – in this case guided by Mexico – would spearhead the adoption of the reform, raising the issue before the Council in formal and informal meetings.[342] The country's representatives at UN headquarters would then lobby similarly minded smaller-sized powers to shift the balance in favour of the incorporation of the given norm-driven safeguards within the Council's future resolutions, stressing the inherent link with the effectiveness of the counter-terrorist measures.[343] After this initial recognition, the human rights argument would pass its 'tipping point' within the UN 1373 regime, enjoying the benefits of a 'cascade-like' effect, and becoming a regular feature of subsequent 1373-related Council's resolutions.[344] In the case of the sanctions mechanism, however, the route to reform was going to be less straightforward.

In May 2004, the 1267 Committee Chairman, Muñoz, appeared before an enlarged session of the Council to give the first of a series of three 120-day oral assessments on the activity of the Committee and the Monitoring Team, as required by Resolution 1526. In mid-March, Council members had finally agreed to a revitalisation of the mandate of the CTC, now assisted in its work by an executive directorate (CTED), but could not yet come to terms with the fact that the 1267 provisions were failing to win

[341] Interviewee T, Human Rights Expert, New York, interview with author, 2 December 2009.
[342] In the case of Resolution 1456, Mexico's lobbying succeeded after winning over European member states in 2003. The group was then joined by Brazil, Chile, Costa Rica, Croatia, the Czech Republic, Ecuador, Liechtenstein, New Zealand, Nigeria, Norway, and Switzerland, and several other governments indicated that they would co-sponsor the resolution just before the vote. A similar attempt, made in early 2002 at the UN Commission for Human Rights, had instead failed. Interviewee T, interview with author; Interviewee U, UN Human Rights Expert, New York, interview with author, 3 December 2009.
[343] Eric Rosand, Alistair Millar, Jason Ipe, *The UN Security Council's Counter-terrorism Program. What Lies Ahead?*, Report of the International Peace Academy, October 2007, p. 5.
[344] Rosand, Millar, Ipe, *The UN Security Council's Counter-terrorism Program. What Lies Ahead?*, p. 16.

the support of the larger community of UN member states.[345] The months between January and May 2004 had seen a 30 percent increase in the report submission rate, but sixty-eight countries – significantly including Iraq, Sudan, Libya and, curiously, Costa Rica – had still failed to report to the Committee. Addressing the causes of non-reporting – mostly a combination of lack of financial, technical and administrative resources – thus became the main priority of the 1267 Committee during the remainder of the year 2004.[346]

References to due process concerns in de-listing procedures were omitted from the text of Muñoz's address, but the conceptual link between human rights and counter-terrorism, which had become a constant feature of the 1373 regime resolutions, was included in the closing paragraph where the Chilean representative quoted Annan's 2002 speech before the Council.[347] He recalled that the 'United Nations ha[d] an indispensable role in ensuring that the vigour with which States pursue various counter-terrorism efforts does not infringe on human rights, the rule of law and related tenets of democratic governance.'[348] It was left once again to the European Union to voice due process concerns directly, assisted by the Costa Rican representative, Maria Elena Chassoul, who reminded Council members that 'in order to facilitate judicial and police cooperation, it [was] essential that there be sufficient substantiated evidence and open judicial investigations concerning each and every person who appears on the list', and going

[345]United Nations Security Council, *verbatim* record, 4936th Meeting, 26 March 2004, New York; United Nations Security Council, Draft Resolution, 26 March 2004, U.N. Doc. *S/2004/238*.
[346]United Nations Security Council, 'Letter dated 27 April 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities addressed to the President of the Security Council,' 3 May 2004, U.N. Doc. *S/2004/349*.
[347]Statement by the Secretary-General of the United Nations, Kofi Annan, in United Nations Security Council, *verbatim* record, 4618th Meeting, 4 October 2002, New York, p. 3.
[348] United Nations Security Council, *verbatim* record, 4976th Meeting, 25 May 2004, New York, p. 7.

further to note that the 'Inter-American Commission on Human Rights' had been seized of the matter.[349]

This was the first time the issue of the justiciability of the 1267 regime was put on the record in such detail in Council proceedings. Between January and May 2004, 1267 Committee members had met twelve times informally and twice formally. No public record exists of these meetings, but it is probably not too off-the-mark to assume that the lack of guarantees in the delisting procedures had been discussed in relation to concerns about the identification of the designated individuals. This is even more likely given the shift in the human rights discourse in counter-terrorism that had occurred at Council level in only five months. 'Human rights' and 'due process' were mentioned only six times during the January Council meeting, four times in connection with a European country and once by the representatives of the Philippines and Brazil respectively. In May, Council members mentioned both terms twenty-three times, including the noteworthy reference in the speech of the 1267 Committee Chair. This increase can be considered symptomatic of a conceptual change, which was manifesting itself at the rhetorical level and mirrored closely the developments brought about by the human rights reform of the 1373 regime. For the time being, however, the key regime participants – the United States, Russia and China – remained silent on the matter.

This combined trend of leaps forward in the 1373 camp and timid progress in the 1267 regime continued steadily for the remainder of the year 2004. On the 1373 front, non-P5 members used the summer months to pressure the Council to strengthen the human rights guarantees introduced by Resolution 1456 (2003) and reinforced by Resolution 1535 (2004), which created the CTED, the CTC's new right-hand body. Beginning in July, EU member states started lobbying the Council publicly to finalise the

[349] United Nations Security Council, *verbatim* record, 4976th Meeting, p. 24.

appointment of the human rights expert in the Counter-Terrorism Executive Directorate.[350] They also asked the CTC to coordinate more closely with the UN Human Rights Commission in Geneva.[351] In September, delivering his second 120-day assessment before the Council, Muñoz touched upon the key human rights issue of the 1267 regime only incidentally, as advised by the first report of Barrett's Monitoring Team.[352] By that time, the conceptual link between the overall quality of the List, the Committee's work in the area of delisting and exceptions, and states' willingness to implement the sanctions had been made, leading to a characteristic overlapping of motivational incentives to action on the part of member states. An investigation of this combination of utility-driven and norm-driven state behaviour underlying both 'the principle of effectiveness and respect for the rule of law' – as the French representative Michel Duclos aptly put it – will be the focus of the analytical section of this chapter.[353]

True to the pattern that had emerged over the course of the year, it was left again to the same European actors to ask the Council for more. European countries kept raising the issue of the delisting guarantees with the Committee Chair during his country visits to the continent, while their demands became more vocal during the Council's dedicated session in mid December. The clock of reform was ticking in Europe as the Court of First Instance was expected to pass judgment on several cases related to the Consolidated List in the early months of 2005.[354] Additional pressure was also coming from the UN Secretariat, in the form of the conclusions of the report of the 'High-level Panel on Threats, Challenges and Change'. Annan's brainchild on the future of the United Nations

[350] United Nations Security Council, *verbatim* record, 5006th Meeting, 19 July 2004, New York.
[351] Security Council Counter-Terrorism Committee, 'Protecting Human Rights While Countering Terrorism', 17 October 2011, available at http://www.un.org/en/sc/ctc/rights.html.
[352] United Nations Security Council, *verbatim* record, 5031st Meeting, 13 September 2004, New York, p. 4.
[353] United Nations Security Council, *verbatim* record, 5031st Meeting, p. 15.
[354] In particular see Statement by Mr. Gunter Pleuger, Permanent Representative of Germany to the United Nations, in United Nations Security Council, *verbatim* record, 5104th Meeting, 17 December 2004, New York.

had examined the impact of key UN legal principles on the counter-terrorism sanctions regime and found them wanting. Panel members had thus advised the Council to establish 'procedures to review the cases of those claiming to have been incorrectly placed or retained on [the] lists.'[355]

Thus, four and a half years after the Council's unanimous vote on Resolution 1267, a relative consensus had formed in the UN system at large that due process guarantees should be added to the Consolidated List's mechanism, lest the targeted sanctions lose all credibility. It would take an additional two years, however, for the due process issue to become a regular feature of the Council's negotiations on the 1267 regime and for member states to reach an agreement on its first meaningful reform. This came in the form of Resolution 1730 (2006), which established a focal point within the Secretariat where individual delisting requests could finally be addressed.[356]

4.2.2. Broadening coalitions of support (2005-2006)

According to the information on litigation provided by member states to the Monitoring Team, in December 2004 thirteen cases challenging the implementation of the UN anti-terrorism sanctions were pending before domestic and regional courts worldwide. In the European Union, applicants Abdirisak Aden, Abdulaziz Ali, Ahmed Yusuf, Omar Mohamed Othman, Chafiq Ayadi, Faraj Hassan and Yassin Abdullah Kadi, along with the Al Barakaat International Foundation, argued that the Council and the Commission had exceeded their powers in issuing the regulations enforcing the UN sanctions, violated the EU Treaties' principles of proportionality, subsidiarity and of

[355]'A More Secure World, Our Shared Responsibility', Report of the Secretary-General's High Level Panel on Threats, Challenges and Change, available at http://www.un.org/secureworld/, paragraphs 152 and 182, UN. Doc. *A/59/565*.
[356]United Nations Security Council, Resolution 1730 (2006), 19 December 2006, UN. Doc. *S/RES/1730 (2006)*.

peaceful enjoyment of property, family and private life, as well as disregarded the applicants' fundamental rights to a fair and equitable hearing, effective remedy and judicial control. In Italy, Nasreddin Ahmed Idris and its company sued the government and the Economy and Finance Ministry claiming that their inclusion on the Consolidated List had violated the European Union Treaty, the European Convention on Human Rights and the Italian Constitution's guarantees of a right to property and freedom of economic initiative. In Pakistan, the Al-Rashid Trust filed a petition with the High Court of the Southern Province of Sindh asking that the evidence in support of the listing be disclosed. In Turkey, Kadi, Nasreddin and his Holding challenged the government claiming that they had been designated incorrectly, for political reasons and in violation of their human rights. In the United States, two charities – the Benevolence International Foundation and the Global Relief Foundation – and two money remittance firms, Aaran Money Wire Service and Global Service International, claimed that their listing by the U.S. Government violated their rights to due process, freedom of speech, association and religion.[357] By the end of 2005, all of these challenges had been rejected or dismissed by courts of first instance, but some were still pending before courts of appeal.[358]

The European Court of Justice (ECJ), in particular, was now expected to pass judgment on the Kadi/Al Barakaat case after the Saudi businessman had appealed the dismissal of his delisting claim by the EU Court of First Instance (CFI) in September 2005. The CFI had found that Regulation 881/2002 –implementing the Consolidated List in Europe– fell outside the scope of the Court's power of judicial review, which could be

[357]United Nations Security Council, 'Letter dated 14 February 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities addressed to the President of the Security Council', 15 February 2005, 'Second report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities', U.N. Doc. *S/2005/83*.

[358]Georg von Kalckreuth, 'Summary of Litigation Related to Terrorism Designations', in Thomas Biersteker, Sue Eckert, 'Addressing Challenges to Targeted Sanctions. An update of the "Watson report"', The Watson Institute, October 2009. pp. 46-47.

derogated for reasons of international peace and security. According to the CFI, therefore, the EU had competence to order the freezing of Kadi's funds and had not violated his fundamental rights.[359] Similarly, Kadi's petition to the U.S. Office of Foreign Assets Control (OFAC) for reconsideration of his placement on the Specially Designated Global Terrorist (SDGT) list had been denied in March 2004. His claim had also been dismissed by the Istanbul Criminal Court of Peace in 2001, and in appeal by the 10th Division of the Turkish Council of State in 2002. In December 2005, however, Swiss authorities, operating outside the EU framework, accepted Kadi's delisting request. A few months later, in a landmark decision that put the first nail in the coffin of the 1267 regime's original structure, the Turkish Council of State annulled the decree adopted by the Cabinet to implement the freezing of assets in the country, finding it unconstitutional.[360] It is around this time that UN Security Council and 1267 Committee members began monitoring the Kadi issue closely, sensing the disruptive impact that an ECJ ruling in favour of the plaintiff could have on state compliance with the Consolidated List worldwide. The U.S. State and Treasury Departments, in particular, took greater interest in the pending lawsuits, after having initially treated them as internal matters. By 2007, meetings concerning the fate of the Saudi businessman's claim would take place at the Under-Secretary Level, while U.S. diplomats' analyses of the outcome of the litigation forecast 'trouble ahead' for the 1267 regime.[361]

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[359]'The Kadi Case: Court Decisions on Due Process for Terrorist Listing Differ in EU, U.S.: Timeline of Kadi Litigation', Charity and Security Network, April 3, 2012, available at: http://www.charityandsecurity.org/litigation/Kadi_Timeline.

[360] Mustafa T. Karayigit, 'The Kadi Case: The Turkish Side of the Implementation Saga of Security Council Resolutions,' *European Public Law*, vol. 17, n. 4, 2001; Jared Genser, Kate Barth, 'When Due Process Concerns Become Dangerous: The Security Council's 1267 Regime and the Need for Reform', *Boston College International and Comparative Law Review*, vol. 33, issue 1, 2010.

[361]'EU Terrorism Finance Listings: Trouble Ahead', U.S. Embassy Cable, Permanent Representation of the United States to the European Union, 13 January 2009; 'Terrorism Discussion with MFA', U.S. Embassy Cable, Embassy Ankara, 22 March 2005; 'Terrorism Finance: Turkish MFA Downplays Impact of Pro-Al-Qadi Court Ruling', U.S. Embassy Cable, Embassy Ankara, 29 August 2006; 'Terrorism Finance: Turkish Government Appeals Al-Qadi Decision', U.S. Embassy Cable, Embassy Ankara, 6 September 2006; 'Terrorism Finance: Court Rejects Government Attempt to Withdraw Al-Qadi Appeal', U.S. Embassy

Thus the Kadi case became the symbol of the human rights controversy surrounding the UN terrorist list, precisely at a time when the human rights cause was gaining traction in the UN counter-terrorism system and the predominance of the Security Council in UN counter-terrorism action was coming under attack. In the fall of 2004, Costa Rica had started lobbying the Council to set up a central counter-terrorism office under the authority of the Secretary-General, which would assume the main responsibility for the fight against terrorism within the UN framework and return the leadership in counter-terrorist action to the General Assembly. Seconded by the Swiss representative, the proposal was promptly labelled as 'thought-provoking' by the then president of the Council, ambassador Thomson of Great Britain; nevertheless, it was never entirely dismissed, occasionally resurfacing in the debates concerning both the predominant role that the Security Council had enjoyed thus far in setting the counter-terrorist agenda, and the outstanding conflict between Council resolutions and international human rights law.[362]

The year 2005 began on a positive note on both counts. The Secretary-General's recommendation for a '"pan-United Nations" strategy on terrorism' – issued on the one-year anniversary of the Madrid bombings – met the approval of several Council members, including the two European P5s, while the slow but ongoing operationalisation of CTED saw the inclusion of a human rights expert among the main advisers of the executive director. An expert from the Office of the High Commissioner for Human Rights was also present at the High-Level Seminar organised jointly by Paraguay and the CTC to analyse how national legislation on terrorism could be brought into conformity

Cable, Embassy Ankara, 16 October 2006; 'Turkish Finance Minister on Al-Qaeda, Terrorism Finance and Counterfeit Iraqi Cigarettes', U.S. Embassy Cable, Embassy Ankara, 30 October 2006; 'Terrorism Finance: U/S Levey Meetings in Ankara', U.S. Embassy Cable, Embassy Ankara, 16 January 2007.

[362] United Nations Security Council, *verbatim* record, 5059th Meeting, 19 October 2004, New York; United Nations Security Council, *verbatim* record, 5059th Meeting, Resumption 1, 19 October 2004, New York, p. 21.

with the provisions of Resolution 1373 as well as with international humanitarian law. Likewise, the due process issue dominated the reform agenda of the 1267 regime, either explicitly or in association with attempts to improve the identification mechanisms of the Consolidated List.

In March, drafts of a new 1267-related resolution – to be adopted by the end of July – started circulating among Council members. Three positions emerged on the procedural issue: a minimalist stance, championed by the United States; a medium-level proposal, which was supported by the 1267 Committee Chair and called for an improvement of the rules regulating listing, delisting and notification of statements of cases; and a maximalist option, sponsored by Denmark, Liechtenstein and Switzerland, which advocated the creation of a full-fledged review mechanism independent of the Security Council. The U.S. draft, presented by Nicholas Rostow in the July 2005 session of the Council, stressed the need to increase the 'dialogue between States and the Committee to strengthen Member States' implementation of the sanctions measures, [and called] on States to implement the Financial Action Task Force's 40 recommendations and nine special recommendations on terrorist financing.'[363] These suggestions were incorporated in article 7 and in the Annex to Resolution 1617 (2005), adopted unanimously by the Council on July 29. The Danish proposal went unheeded, but was not forgotten. It would resurface during the 2009 debates that led to the first major overhaul of the 1267 regime in the wake of the ultimately adverse Kadi ruling by the ECJ: the creation of the Office of the Ombudsperson to oversee delisting requests by designated individuals.

Resolution 1617 did clarify the notion of 'association with' Al Qaeda and the Taliban, called on states to provide a statement of case when proposing names to the

[363] United Nations Security Council, *verbatim* record, 5229th Meeting, 20 July 2005, New York.

Consolidated List and requested states to inform listed individuals and entities of the measures imposed on them. It did not quell, however, outstanding concerns that even in this improved form the listing and delisting procedures would not survive the scrutiny of domestic and regional courts. Barrett had been very explicit on this point in his Third Report to the 1267 Committee. The Monitoring Team had advocated amendments to the 1267 Committee procedural guidelines that would not impinge on the Council's authority for de-listing, but would show member states' due diligence and good faith in dealing with petitions from listed individuals. The Team asked, for example, that the Committee reach a decision within a defined period from the receipt of a petition, or that states be required to automatically forward requests for delisting to the 1267 Committee, independent of national policies or sympathies.[364]

As Resolution 1617 did not provide any solution that could withstand an adverse ruling by the ECJ, pro-reform member states closed ranks in the fall and intensified their pressure on the Council to increase the procedural transparency of the listing mechanism. Facing a parliamentary enquiry before the Swiss Federal Council on the legality of the 1267 measures, Switzerland joined forces with Germany and Sweden to promote the drafting and implementation of more 'satisfactory provisions' for listing and delisting. Liechtenstein made a request to the Committee that the list of countries having made notifications regarding humanitarian exemptions be made accessible to all member states, so as to be able to share best practices and improve national implementation standards. When the Committee denied the request, the country's representative to the UN, ambassador Wenaweser, protested in an unusually vocal fashion in support of Liechtenstein's position. Other non-P5 members followed suit, in what was to become a particularly charged joint session of the Security Council, the last of the year 2005. Even

[364]United Nations Security Council, 'Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities', U.N. doc. *S/2005/572*, September 2005.

the Pakistani representative sided with the pro-reform front. The human rights issue was mentioned 63 times in the course of the meeting, by as many as eleven delegations, clearly signalling that the coalition in support of the reform had broadened significantly, and that key stakeholders would need to concede more if they were to finally allay the concerns of non-P5 members and of the larger UN community alike.[365]

On the Secretariat, Human Rights Commission and General Assembly fronts, in fact, the human rights offensive had continued undeterred, picking up steam particularly toward the end of 2005. In March, the General Assembly issued the third in a series of resolutions asking Annan to submit a report on human rights protection in counter-terrorism to the Human Rights Commission, on the occasion of the Assembly's September Plenary Meeting. In July, the High Commissioner in Geneva appointed a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: the Finnish law professor Martin Scheinin, who would become a key figure in exposing the faults of the 1267 regime. In September, the World Summit Outcome document called once again upon the Security Council, with the support of the Secretary-General, to 'ensure that fair and clear procedures exist for placing individuals and entities on sanctions list and removing them, as well as for granting humanitarian exemptions.' Pursuant to that mandate, which had received the unanimous approval of the UN General Assembly's members after lengthy and difficult negotiations, Annan commissioned the Office of Legal Affairs of the Secretariat to begin an interdepartmental process to develop reform proposals and guidelines on the matter. In the meantime, however, he noted that in contrast to the flurry of activity on multiple UN fronts, the 1267 Committee had so far only managed to approve a partial revision of its Guidelines.

[365] United Nations Security Council, *verbatim* record, 5293rd Meeting and Corr. 1, New York, 26 October 2005.

Discussions of listing and de-listing dominated the Council's counter-terrorism agenda as well during the following year. Germany, Sweden and Switzerland took once again the lead in pressing the Council for significant improvements. In March, the Swedish Mission hosted a luncheon at the UN to mark the unveiling of the Watson Institute's report on the 'Strengthening of Targeted Sanctions through Clear and Fair Procedures'. Commissioned by the governments of the three European countries, the study contributed to stirring up the waters at Council-level, underscoring the politicised – or 'hegemonic,' in one scholar's words – nature of the mechanisms for designation.[366] The report's findings became a catalyst around which the different pro-reform positions on the 1267 reform coalesced within the UN-wide system. European countries, in particular Sweden, Switzerland, Germany, Austria, Liechtenstein, and Greece, sided with the authors and the United Nations High Commission for Refugees (UNHCR) in advocating more radical redress mechanisms, ranging from the appointment of a UN administrative focal-point to handle all delisting and exemptions requests to a full-fledged review mechanism independent of the Council. Voicing the only dissenting opinion, the Russian representative claimed that any such option would undermine the political authority of the Security Council, delegating too much power to national courts. Significantly, the remaining P5 members expressed no immediate views on the content of the Watson recommendations. It was left to the U.S. Mission at the UN to take the pulse of both the larger UN constituency and the reform's key stakeholders in subsequent bilateral meetings. According to records of the U.S. Permanent Mission at the UN (hereinafter USUN records), Washington found the report's recommendations too extreme, believing that an eminently political process such as that of UN sanctions

[366]Jörg Friedrichs, 'Defining the International Public Enemy: the Political Struggle behind the Legal Debate on International Terrorism', *Leiden Journal of International Law*, vol. 19, n.1, 2006, pp. 69-91.

designation should not be subject to legal overview.[367]

Despite U.S. Ambassador John Bolton's best efforts at giving as little resonance as possible to the report's findings, negotiations resumed within the 1267 Committee on the requested further revisions of the listing and delisting guidelines. By May, discussions were still ongoing but a consensus had been reached on the primacy of the due process issue, which was taken up at great length by the Chair of the 1267 Committee and, finally, by all member states. Representatives of Germany, Sweden and Switzerland had been called to address the Committee in mid-May, while the pressure of the pro-reform front gradually increased over the summer months. By June, after the Secretary-General had appealed to the sanctions committee to review its practices, the Security Council finally released a statement on its members' commitment to reform the List. U.S. representatives had the upper hand in what the Committee Chair labelled a 'complex negotiation process', proposing a package of recommendations that favoured the minimalist focal point option, which was ultimately incorporated in Resolution 1730 of December 19. Shortly afterwards, several reform recommendations advanced in the Watson report were adopted in Resolution 1735. In particular, the document set 'minimal standards for statements of case, created a provision for the public release of information, and established a procedure to improve deficiencies in notification, [providing] [t]argets […] with a redacted statement of case indicating the basis for listing.'[368] The Resolution also extended 'the No Objections Procedure timeframe from 48 hours to 5 working days […], allowing more time in capitals for a serious review of the case.'[369] When Council members assembled for the final open discussion of the year on counter-terrorism, on December 20, only Cuba, Iran and Syria failed to refer to the justiciability issue and

[367] John Bolton, 'March 30 Rollout of Watson Institute Paper on Strengthening Targeted Sanctions', USUN New York, 4 April 2006, 07USUNNEWYORK928.
[368]Thomas J. Biersteker, Sue E. Eckert, 'Addressing Challenges to Targeted Sanctions. An update of the "Watson report"', The Watson Institute for International Studies, October 2009, p. 12-14.
[369] *Ibid.*, p. 14.

related human rights safeguards as one of the key concerns of Council action against terrorism.[370]

Representatives of the United States, Russia and China had finally accepted the pro-reform, human rights compliant narrative of the more active European members, albeit with caution. Passing its tipping point within the 1267 regime reform process, the human rights issue had become a 'moral imperative', in the words of the new Committee Chair, Ambassador Mayoral of Argentina, albeit an imperative whose safekeeping closely depended on the effectiveness of the overall sanctions mechanism. As a result, while the coalition supporting the pro-reform front had indeed broadened to the point of including the Council's major stakeholders, the option ultimately favoured was a 'modest and weak attempt' at providing a functioning redress mechanism for the listed individuals. Negotiations on more comprehensive institutional changes would occupy the Committee's deliberations for another two years.[371]

4.2.3. Reforming the institutional structure (2007-2009)[372]

The focal point became operational in March 2007 and contributed to the improvement of the overall accessibility of the Committee Secretariat for the listed individuals.[373] It did not, however, have the authority to handle delisting requests, or provide further information and notify designees, as the authors of the Watson report had suggested. In the course of 2007, doubts concerning its effectiveness thus became the new constant feature of the criticism levelled against the UN Consolidated List. An

[370] United Nations Security Council, *verbatim* record, 5600th Meeting, New York, 19 December 2006.
[371] United Nations Security Council, *verbatim* record, 5599th Meeting, New York, 19 December 2006.
[372] It should be noted that after 2006 there are no open records available for the periodical reports of the Council's counter-terrorism bodies' Chairs. What follows draws from semi-structured interviews with key stakeholders, U.S. embassy cables, Monitoring Team reports, policy documents and press releases.
[373] For a review of Focal Point statistics and performance see the updated Watson Report, in Biersteker, Eckert, 'Addressing Challenges to Targeted Sanctions', p. 13.

October 2007 Report of the International Peace Academy suggested that little could be expected of the new mechanism, since the ultimate decision to delist still rested with the key 1267 Committee members. The Monitoring Team appeared to be fully aware of the issue, and Barrett recognised in his reports to the Council that despite the reform the regime was carrying on 'with limited support', while the challenges before domestic courts continued.[374] USUN records from this time show that the P5's main concern was, in particular, the impact that an unfavourable ruling by the ECJ in the Kadi case could have on the implementation of the sanctions in European Union member states, especially since some prominent European listees, such as Nasreddin, had profited from the window of opportunity offered by Resolution 1730 to secure removal from the List in November 2007.[375] The ECJ ruling, expected for the end of 2008, thus dictated the tone of negotiations within the 1267 Committee, featuring all too familiar patterns.

On one side, U.S. representatives – fully aware of the impossibility of influencing the Kadi ruling – lobbied UN and European officials to agree on a least common denominator for reform that would safeguard the effectiveness of the sanctions and render them foolproof enough in their human rights standards to withstand an adverse judgement by the ECJ. On the other side, countries that had championed the regime reform since its very early stages closed ranks to press for a more comprehensive overhaul of the existing procedures, in particular asking for an external review mechanism modelled after the World Bank inspection panels that would ensure fairness through independence. In May 2008, Denmark, Germany, Liechtenstein, the Netherlands,

[374]United Nations Security Council, 'Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities', U.N. doc. *S/2007/132*, 8 March 2007; *S/2007/677*, 20 November 2007; *S/2008/324*, 14 May 2008.

[375]On Nasreddin and his connections to Al Qaeda via the Milan based 'via Quaranta' Mosque see Lorenzo Vidino, *Al Qaeda in Europe: The New Battleground of International Jihad*, (New York: Prometheus Books 2005). On his removal from the Consolidated List see: 'Security Council Removes One Individual, 12 Entities from Consolidated List', Press Release, 15 November 2007, available at: http://www.un.org/News/Press/docs//2007/sc9172.doc.htm; Jonathan Winer, 'In Stunning Move, UN and U.S. Delist Nasreddin and His Companies from Sanctions', available at the counter-terrorism blog website, http://counterterrorismblog.org/2007/11/in_stunning_move_un_delists_na.php.

Switzerland, and Sweden came together to form the group of 'like-minded states' and advanced the external review mechanism proposal in anticipation of the Council's June vote on a new resolution extending the mandate of the Monitoring Team.[376] Resolution 1822 (2008) as usual received consensual approval, but attracted the lone criticism of the Costa Rican representative for failing to send a 'stronger message […] with regard to the need to improve the current procedures.'[377] This somewhat restrained statement hid a standoff with the U.S. mission at the UN, which had fiercely opposed Costa Rica's requests to 'amend operative paragraph 28 [of Resolution 1822] to suggest that the Committee's procedures for listing [were] not in fact fair and clear,' thus providing 'further fodder for the criticism about the lack of "due process" in the Council's sanctions regimes, while taking the focus away from the significant improvements to the Committee's procedures.'[378] Resolution 1822 did contain new requirements that had the potential to drastically improve the 1267 sanctions procedures. It requested, in particular, that all states conduct a review of all the names on the Consolidated List – including those of allegedly deceased individuals – within two years and then on a three-year basis, and that narrative summaries for all the listings be made accessible on the Committee's website.

The review started in late 2008 after lengthy negotiations on the establishment of common standards, but turned out to be a 'serious, thorough and laborious process' for which considerable effort [was] expended by the committee members, staff, member states, and national governments.'[379] By October 2009 the process had been initiated for 422 of the 488 names, while the removal of eight individuals and four entities from the Consolidated List could directly be associated with improvements introduced by

[376] Belgium and Costa Rica associated with the group in 2009.
[377] United Nations Security Council, *verbatim* record, 5928th Meeting, New York, 30 June 2008.
[378] 'Un/1267 Sanctions: Council Adopts Resolution 1822 Setting Out Strategic Vision For 1267 Regime', USUN New York, 18 July 2008.
[379] Updated Watson report, p. 16.

Resolution 1822. In October 2008, however, the Kadi ruling came as a reminder that the sanctions mechanism still did not satisfy the right to an effective remedy according to domestic judicial standards. The ECJ declared both Common Position 2002/402/CFSP and Council Regulation (EC) No. 881/2002 – which implemented the UN sanctions framework at EU level – in noncompliance with the Union's basic human rights and due process requirements. Shortly before the ruling, the human rights *rapporteur* for counter-terrorism called for a new and more aggressive reform to the regime in line with the suggestions of the group of like-minded states, asking for the introduction of a review body composed of independent experts that were to be part of the Security Council's decision-making procedure. An even more radical option entailed the abolition of both the 1267 Committee and the list of Al-Qaida/Taliban terrorists, to be followed by a transfer of jurisdiction to the Counter-Terrorism Committee on the basis of Resolution 1373 (2001). According to this proposal, the burden of decision in the listing and delisting cases would shift to member states' internal judicial systems, thus avoiding legal obstacles for effective remedy, while the United Nations would provide expertise in identifying potential listees.[380]

In the fall of 2008, negotiations on a more drastic reform of the 1267 regime thus resumed once more, going hand in hand with what was to be perceived in New York as a paradigmatic shift in the position of the U.S. administration on the topic. In the course of an event sponsored by Liechtenstein at NYU in November, a representative of the U.S. Office of Foreign Assets Control finally publicly acknowledged international concerns

[380]Press Conference by Special Rapporteur on Human Rights and Countering Terrorism, Department of Public Information, the United Nations, 22 October 2008. See also, Center on Global Counter-Terrorism Cooperation, 'UN Terrorist Designations and Sanctions: a Fair Process and Effective Regime?', Remarks by Eric Rosand, 5 June 2008, available at: http://www.globalct.org/images/content/pdf/Remarks/er_1267_csis.pdf. Council of Europe, Committee of Legal Advisers on Public International Law, 'Update on EU Sanctions', September 2009, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/public_international_law/un_sanctions/EU%20update%20UN%20Sanctions%20sept%202009%20E.pdf.

about the lack of transparency and due process associated with the 1267 list, while stating that sufficient mechanisms for review were available domestically.[381] According to a senior UN human rights expert, U.S. attitudes as regards the UN sanctions list had evolved from the lack of interest on the subject that had characterised the first eight years following 9/11 to the more proactive stance that would mark the first months of the Obama administration.[382] The U.S. State Department in particular came to realise that in order to salvage the sanctions tool the country would need to change its perspective on how it viewed and used it. This implied it partially accepted the need to agree with the more radical pro-reform front that had formed within the Security Council.

The months that separated the Kadi ruling from the adoption of the first structural reform of the 1267 regime, voted on in December 2009, were therefore animated by the usual struggle between the supporters of a truly independent review mechanism, as suggested by Scheinin and the coalition of like-minded countries, and a more moderate option that would preserve the primacy and the decision-making autonomy of the Security Council. The solution that was ultimately favoured – the establishment of an Office of the Ombudsperson to assist the 1267 Committee in evaluating requests for the delisting – was clearly a compromise.[383] According to a table of options for reform that Biersteker and Eckert circulated at the time, the Ombudsperson idea received a good score in terms of the overall potential trade-off between human rights and effectiveness. Compared to a full-fledged judicial review system consisting of a new subsidiary body created by the Security Council and with delegated authority, however, the option lacked

[381]Interviewee U, interview with author.
[382]Adam J. Szubin, 'Terrorist Designation Process in the United States', Conference on Countering Terrorism Through International and Domestic Sanctions Listing: A Rule of Law Perspective, Opening Remarks, Session 1, American University, September 15, 2008, records available at: http://media.wcl.american.edu/Mediasite/Viewer/?peid=b52f1952-c9da-475f-a132-06e875d346bf.
[383] United Nations, Department of Public Information, 'Security Council Amends Al Qaeda/Taliban Sanctions Regime, Authorizes Appointment of Ombudsperson to Handle De-Listing Issues', 17 December 2009, available at: http://www.un.org/News/Press/docs/2009/sc9825.doc.htm.

both investigative and executive powers, and could not alone grant relief.[384] The Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights similarly released a report calling for the introduction of a genuinely 'independent judicial or quasi-judicial complaint mechanism, a clear listing and de-listing process, and strict time-limits for listing decisions.'[385] Like-minded states aligned themselves with those positions while P5 members, in particular the United States, were still reluctant to excessively dilute the authority of the Council. It is not surprising, therefore, that on the eve of the vote Council members were unsure as to the outcome.

During the fall of 2009, rumours circulated at UN headquarters that the calls for heightened transparency would not lead to a significant reform.[386]At the beginning of December 2009, Mexico, the country that had championed the pro-human rights shift in the 1373 regime, sat again on the Security Council and organized an off-the-record 'Arria formula briefing' to discuss the 2009 Eminent Jurists Panel Report. Not only was the turnout unprecedentedly high for this type of event – which normally does not attract many officials – but 'up to 12 members made statements, and the meeting lasted for more than two hours, signalling an increased level of attention' for the issue on the part of the larger community of UN member states.[387] Hailed as a significant step forward by members of the 1267 regime, such as Barrett, Resolution 1904 was then adopted unanimously by the Council on December 17, showing both apparent widespread consensus among Council members and the agenda setting influence of some of its smaller-sized powers. The draft of the resolution was submitted by Austria, Burkina Faso, Croatia, France, Japan, Mexico, Turkey, the United Kingdom, and the United

[384] Updated Watson report, p. 29.
[385]'Assessing Damage, Urging Action. Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights', p. 121, available at: http://icj.org/IMG/EJP-report.pdf.
[386]Interviewee A, Permanent Mission of Mexico to the United Nations, interview with author.
[387]Interviewee T, interview with author; Interviewee U, interview with author.

States, and drafted by the United States.[388] On the day of its adoption the U.S. Ambassador to the UN, Susan Rice, noted how this marked a real and unprecedented success for all members of the Council, which had cooperated to solve a 'very complex and difficult issue' and had reinvigorated the 1267 sanctions regime. During the Council's meeting the United States was praised by the Austrian representative and 1267 Committee Chair, Mayr-Harting, for its leadership in the sponsorship of the document.

In the following section of the chapter, while analysing the motivations underlying the participation in the reform process on the part of the actors involved, I will contend that U.S. sponsorship of Resolution 1904, rather than being an indication of a more proactive commitment on the part of the country to the due process guarantees in the 1267 regime, is the visual sign of the cumulative effect of group-induced image-related pressures, i.e. the phenomenon that in Chapter Two I labelled 'social influence', and cost-benefit calculations related to utility maximisation.

4.3. Analytical implications of the reform process

The 1267 sanctions regime has proven to be a relatively malleable tool in the hands of P5 Council members, showing a degree of institutional adaptability and potential for change, as the preceding section of this Chapter has demonstrated. Despite its numerous and ongoing shortcomings, what began as a vaguely drafted resolution at the end of the 1990s evolved into one of the most sophisticated and procedurally advanced sanctions mechanism in the UN system, with codified operational routines, a highly professional staff and active involvement on the part of member states. For analytical purposes, the case of the reform process of the 1267 sanctions regime is also

[388]United Nations, Security Council, 6247th meeting, 17 December 2009.

important theoretically, as it allows us to shed light on state preference formation patterns within international institutions. In particular, the presence of human rights related issues at the core of the negotiation process permits us to unpack the notion of social influence as originally theorised by Johnston and Checkel, and analyse in-depth the dynamic relations between concerns for image and/or reputation, i.e. concerns for principled action and/or cost-benefit calculation behind state action. Looking specifically at the negotiating behaviour of the United States, United Kingdom, and Italy in the context of the reform process, I posit that the two motivational drivers to action are indivisible and part of a repeated pattern in the interaction between these states and the international institution. The social influence concept as defined in Chapter Two, i.e. pro-norm behaviour elicited by fear of shaming or in search of approval, applies to these cases insofar as it is capable of capturing the dynamics of backpatting and opprobrium inherent in the social interaction within the institution, whereby actors are concerned about the benefits that are incurred from being seen as a co-operator or an active pro-social member of the group – in this case the pro-reform camp – and the related social cost of possible denial of 'the actor's identity as one deserving of backpatting,' linked to the stigma of opposing inherently good human-rights related reforms. The institution as social environment acts as a magnifying glass: there is still opportunity for free riding but the scrutiny each player is subject to is 'more intense' and in a sense proportional to its relative power status within the institution.

U.S. involvement in the reform process is, to this end, emblematic. Resolution 1390, which gave the 1267 sanctions regime its current form, was in fact the brainchild of the United States, or, as remarked by a senior human rights expert, an extension of presidential Executive Order 13224 of September 23, 2001, which introduced domestic

sanctions against terrorists and their supporters in the aftermath of 9/11.[389] In the country, the designation and asset freezing procedure is seen as a predominantly administrative process, and the standard of evidence is different than what is required in criminal proceedings as it can include classified information reviewable by a judge *ex parte* and *in camera*. An interagency group, the Terrorism Finance Policy Coordination Committee, decides on how to proceed in terrorism cases and submits designations to the Office of Foreign Asset Control (OFAC), which keeps an administrative record of the classified and unclassified evidence. The procedure offers domestic guarantees and a redress mechanism for the designated individuals. 'Before designation the administrative record is reviewed by lawyers at OFAC and the U.S. Department of Justice (USDOJ) to ensure legal sufficiency, […] a public statement is made giving the reason for designation and […] a statement of the case is presented to the 1267 Committee and G7 members.' Due process in designations is also maintained by the Administrative Procedures Act, which 'allows for an administrative and judicial appeal process.' Listees can apply to OFAC for de-listing, 'which leads to an administrative review'.[390] If OFAC denies de-listing, the designation can be challenged through a judicial review in a U.S. Federal District Court. These two characteristics – administrative nature of the sanctions and domestic redress mechanism – were grafted into the 1267 regime, which was, not unlike Resolution 1373 with its capacity-building focus, an attempt made by the Bush administration to exploit the window of opportunity offered by the 9/11 attacks to harmonise counter-terrorism legislation and action worldwide under the cover of a legally-binding Chapter VII resolution.

[389]Interviewee T, interview with author. For a detailed analysis of the broader U.S. approach to financial sanctions, in whose context Executive Order 13224 was adopted, see Chapter Five of this thesis. Executive Order 13224 of September 23, 2001, 'Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'.
[390]'Treasure Officials Meet With Belgian and EU Officials On Terrorism Finance', Embassy Brussels, 30 March 2006, REF. 06BRUSSELS1022.

The narrative of the human rights orientated reform process that both regimes have undergone since 2001 shows several similarities and one major, but significant, difference. As Greenstock admitted, human rights were excluded in the first drafts, as P5 members perceived that such concerns should not be addressed by the Council and would find more appropriate *loci* of discussion in other UN subsidiary bodies. Both resolutions were essentially seen as effectiveness-orientated tools whose success was to be measured by the level of compliance elicited across member states' capitals. For instance, countries proved eager to boast about the number of submissions they had made to the UN list, but were much less boastful in detailing the number of individuals they de-listed or the procedures adopted to review their cases.

Human rights-compliant guarantees were introduced in 1373-related resolutions starting in 2003, thanks to the entrepreneurial role of the Mexican representative in New York, but widespread recognition of the necessity to tackle the issue in the 1267 camp came only as late as 2006, albeit following a similar pattern: Policy entrepreneurship rested with P5 members and in particular the United States and the United Kingdom. International institutions, such as the UN, acted as 'policy export facilitators', contributing to the diffusion of the regime or related practice exported by the policy-setting countries. Once the policy became the 'property' of the international body, however, it started living a life of its own, becoming subject to the normative agency of smaller-sized powers, non-state actors, and UN bodies, which introduced change, defied resistance to reform, institutionalised the practice and the safeguards against normative violation (of due process guarantees in this case), and 'sold' the whole process thanks to a voting system, that of consensus, that by exercising pressure toward conformity made it inherently difficult for reluctant or simply uninterested states to speak up and defect. Chapter Two described this specific non-material conformity-inducing characteristic of

the institutional environment as the 'effect of the commitment.' Defection would have elicited opprobrium and the consequent denial of one's identity as a human rights abiding country (the boomerang effect).

The reform of the 1373 regime was a win-win situation, as the inclusion of human rights compliant references greatly enhanced the legitimacy of the regime in the eyes of the larger UN constituency while practically leaving its structure unaltered, and thus only marginally affecting the regime's effectiveness;[391] on the contrary, a modification of 1267 procedures was far from an optimal outcome for a country like the United States, as USUN and Council meeting records show. As customary in all 1267 related resolutions, Washington sponsored each draft but was not necessarily behind the reform initiation process, unless this was, as in the case of resolution 1617 (2005), oriented towards effectiveness. Rostow's statement before the Council during the July session that saw the adoption of Resolution 1617 summarises quite clearly the position of the country up to that point: domestic guarantees were in place that allowed designated individuals access to appropriate administrative procedures and a judicial redress mechanism; Council members should not, therefore, permit that 'sound, lawful counter-terrorism measures' be undermined 'with specious arguments about their collateral impact', i.e. the infringement upon the rights of those added to the Consolidated List that a coalition of like-minded states in its embryonic stage was trying to safeguard.[392] U.S. negotiators maintained this position until the eve of the 2009 vote on Resolution 1904, but gradually began to adopt a cautious pro-reform stance in their public statements after the release of the Watson report in the spring of 2006, culminating in their first public acknowledgment of the

[391]A human rights expert, Edward Flynn, was added to the CTED and a *rapporteur*, Scheinin, appointed in 2005, but the basic tenets of the resolution did not change. Up to 2007, in particular, Preliminary Implementation Assessment (PIAs) matrixes did not require inspectors to verify the human-rights compliance of the countries visited. In 2009, the human rights expert had to be invited by the host government in order to be able to join the country visits team.
[392]5229th Meeting, 20 July 2005.

justiciability issue before an open session of the Security Council the following December.

At the time, Washington was acting on two fronts, trying to shift the opinion of the report's authors to the minimalist reform option camp on the one hand, and giving in publicly to the pressures mounting within the Council, the Assembly and the Secretariat on the other hand. The U.S. Mission at the UN, guided by Bolton, was also trying to contain the reputational damage that such a public release of the Watson report's findings had inflicted on the 1267 regime, suggesting that 'upcoming events that could potentially surface the issue of due process' – including the publication of the more moderate Fassbender report commissioned by the OLA – should henceforth occur with 'minimal fanfare' and without an official UN release, so as not to give the impression of having the organization's 'imprimatur'.[393] Council members should on the contrary address the public knowledge gap surrounding the existence of appropriate domestic redress mechanisms within member states. The U.S. DOS was thus managing the due process issue as it would have a public relations crisis.

Analysis of U.S.-EU discussions on the matter within the U.S.-EU Terrorist Financing Troika further help reinforce this point. In 2007, U.S. negotiators increasingly approached EU officials to gauge the possible impact that a likely adverse ruling by the ECJ in the Kadi case would have had on the implementation of the sanctions on the other side of the Atlantic, as it was perceived that loss of full European participation in the regime would have negatively affected the sanctions worldwide. Later on, the signature and entry into force of the Lisbon Treaty, which strengthened the political authority of the European Parliament, added one extra piece to the mosaic of possible sources of European aversion to the sanctions regime. To assuage the Court and provide evidence

[393] Bolton, 'March 30 Rollout of Watson Institute Paper'.

that U.S. designation procedures adequately protected individual rights, the U.S. and the EU jointly released a statement in June 2007 on 'Fair and Clear Procedures in Targeted Sanctions to Combat Terrorist Financing'. Washington also promoted U.S.-EU terrorist financing practitioner workshops in order to 'educate […] a cadre of experts on [U.S.] procedural protections,' so as to demonstrate 'attention to protecting designees' procedural rights,' and 'sway designation-wary states.' Shortly before the adoption of Resolution 1904, the U.S. Mission in Brussels suggested that U.S. and EU terrorist financing experts draft an updated public outreach statement and make it a practice to 'incorporate certain standard phrases extracted from such statement into [their] designation notification demarches.'[394] Similar attempts at clarifying the procedural fairness of U.S. designations and of its related support of the status quo in the UN 1267 regime were conducted on a bilateral basis in several European capitals, as shown by U.S. State Department records.[395]

These same records give weight to the perception, widespread at UN headquarters on the eve of the 2009 adoption of Resolution 1904, that the positive outcome of the vote was not pre-determined. During the spring and summer of 2009 U.S. negotiators in Brussels and New York fought against the proposal of an independent review mechanism, as advanced by the group of like-minded states, the human rights *rapporteur* and the Watson Institute, which released an updated version of its famous 2006 report in May 2009. The upcoming July-December Swedish Presidency of the European Union, one of the founding members of the like-minded states coalition, gave U.S. officials sufficient reason to expect that the issue would have been pressed forward for the duration of 2009. Publicly, DOS representatives at the UN were 'voicing enthusiasm in taking on a new role in the 1267 Committee as "coordinator[s] of the *transparency and*

[394] 'EU Terrorism Sanctions: Trouble Continues,' USEU Brussels, 29 April 2009, Ref. A. Brussels 41.
[395] 'EU Terrorism Sanctions: Trouble Continues'.

media outreach working group"'.[396] *In camera*, U.S. officials worried about EU insistent proposals for a more radical overhauling of the regime. While debates were still ongoing in the EU's foreign affairs terrorism working group (COTER), U.S. diplomats voiced concern that public conferences on the continent routinely featured 'European officials who question[ed] the legitimacy of the UN process,' referring *inter alia* to the checks and balances mechanisms that some smaller EU member states had advocated for the UN in San Francisco in 1945. The U.S. Deputy Chief of Mission in Brussels, Christopher Murray, suggested to Washington that the U.S. should champion a concerted 'public diplomacy campaign by the UN', in order to 'influence the public and the courts to better understand [the] improvements to UN sanctions procedures' brought about by Resolution 1822 (2008). This point should also be raised, he said, that summer during the G-8 Lyon-Rome meetings, where Foggy Bottom officials were expecting to receive the support of at least the British and French delegations, traditionally the guardians of 'UNSC prerogatives in EU venues.'[397]

The UK position, in particular, had been consistent to that point with U.S. expectations. British representatives had shared U.S. preoccupations with preserving the authority of the Council in the 1373 regime, and had cautiously adhered to the pro-human rights discourse in the 1267 Committee meetings only when put on the spot as spokespersons for the European Union, during London's 2005 presidential stint at the EU Council. In 2007, HMG had sided more closely with the United States after a rift had opened with France and Russia on a FCO request for a blanket exemption to humanitarian exceptions, which the Council had previously granted to Washington in 2003. Similarly pressured by the supporters of the independent review mechanism option,

[396]Ambassador Rosemary A. DiCarlo, U.S. Alternate Representative for Special Political Affairs, during Security Council Consultations on 1267, 1373 and 1540 Committees Rosemary A. DiCarlo United States Ambassador and Alternate Representative for Special Political Affairs, 26 May 2009, http://usun.state.gov/briefing/statements/2009/may/126468.htm.
[397]'EU Terrorism Sanctions: Trouble Continues'.

FCO officials spent the spring and summer of 2009 conducting a 'cost-benefit' evaluation of the effectiveness of the sanctions mechanism, as reformed by Resolution 1822, versus both its capacity to withstand an adverse court ruling in a new Kadi case pending before the European Court of First Instance and the practical feasibility of creating an independent review mechanism within the Council.[398]

In the end, there is reason to believe that London acted as a mediator between the minimalist and the maximalist positions, pitching the Ombudsperson solution to the United States and allowing Washington to claim ownership of the draft as at the time the 'U.S. had a bad reputation' as regards the due process issue.[399] In November, the U.S. Deputy Head of Mission to the UN, Ambassador Alejandro Wolff, thus announced that the Council would begin negotiations on a new resolution to back-up the 1267 mechanism, noting that Washington believed that there was 'room to improve the way in which the 1267 Committee decide[d] to list individuals and how it consider[ed] requests from those seeking to be removed from the list.' Consequently, the new resolution was going to 'take additional steps to ensure that the process for listing and delisting individuals [was] as fair and transparent as possible.'[400] During the Arria formula briefing that preceded the December vote, Ambassador Benjamin, the newly appointed head of counter-terrorism for the State Department, further stressed the point that the United Stated wanted to reform the 1267 procedures and had taken the lead in drafting the new resolution.[401]

Stepping back for a moment from the narrative of events and going back to the Chapter's – and the thesis's –claims about the conformity-inducing effects of image-

[398] 'UK Studying Range of Options for 1267 Sanctions Review'.
[399] Interviewee R, interview with author.
[400] Statement by Ambassador Alejandro Wolff, U.S. Deputy Permanent Representative, in the Security Council, on the 1267, 1373 and 1540 Committee Briefings, November 13, 2009.
[401] Incidentally, officials at the Under-Secretary level, such as Ambassador Benjamin, would not normally attend informal Arria formula briefings. Diego Arria Salicetti, interview with author, 26 March 2010.

related group pressures originating within multilateral institutional environments, one needs to probe whether the evidence is compelling enough to detect such instances of social rationality at play in the contexts examined. The main puzzle, then, is why the United States (and the United Kingdom, as well as Italy) joined the pro-reform camp and devoted efforts to be seen as pro-active in sponsoring the reform and asserting compliance with the due process standards. Key to understanding the complex nature of institutional influence is the issue of whether one would have detected the same outcome in the absence of interaction with the organization and the related peer-pressure mechanisms. Would the United States have agreed to a reform that imposed material costs, limited the regime's effectiveness and the U.S. freedom of action in designating entries to the list in the absence of the psychological pressure exercised by the institutional environment?

There is no evidence that the country pushed for or accepted pro-human rights changes to the 1267 regime (and, similarly, to the 1373 mechanism and the overall 'balance of power' in counter-terrorism between the Assembly and the Council) in the absence of external pressures. It is clear from U.S. statements, both public and private, that the country did not take any initiative at reform initiation unless otherwise solicited by the larger UN constituency of member states and international NGOs. It is not that U.S. representatives did not believe the claim to be intrinsically good –which would justify a diagnosis of normative social persuasion – but that they were convinced that the criticism did not apply given that redress mechanisms were in place domestically, as shown above, and that in their view the strictly non-judicial nature of the sanctions did not justify such adverse reactions. In May 2009, Deputy Permanent Representative DiCarlo thus reminded the Council that its members 'must remember that while the decision to impose [1267] sanctions [was] taken very seriously, […] it [was] not a

judicial process,' but rather, in Timothy Crawford's words, 'an inherently political one, to which the norms and procedures of judicial processes d[id] not apply.'[402] The language of Resolution 1904 and of Rice's statement after the vote, which significantly does not mention due process, reinforces this point.

These findings fit very well with what scholars of U.S. exceptionalism describe as the country's ambivalent attitude towards human rights in general, and international legal human rights standards in particular.[403] Assumed as inherent in American values, constituent parts of America's innermost conception of its own identity, human rights are nonetheless an aspect of official behaviour and as such subject to what Sarah Sewall describes as an underlying 'utilitarianism streak', often used to justify inconsistent action.[404] As to the nature of this inconsistent behaviour – all too clearly witnessed in the case of the 1267 reform process – it resonates well with Sewall's additional claim about the divorce between clear normative expectations and the nebulous nature of norm compliance that surrounds a norm life cycle. U.S. representatives, as well as 1267 Committee and Monitoring Team members, were fully aware that extending due process guarantees was the 'right thing to do'. However, the oughtness of the norm did not translate into action as these officials perceived their human rights abiding country to be in compliance with the principle, even though concretely they were not.

These assertions hold in the cases of the other two countries that are the focus of this thesis's analysis, the United Kingdom and Italy. In a sense, their capitulation before the pro-reform camp is an inverse function of their relative power status within the Council, which more or less sheltered them from the moral spotlight that like-minded

[402] Statement by Ambassador Rosemary A. DiCarlo; Timothy W. Crawford, 'Obama's War on Terrorism at the UN: Ideology, Executive Power, and the Limits to Change', unpublished manuscript, May 2010.
[403] See for example, Michael Ignatieff, (ed.), *American Exceptionalism and Human Rights*, (Princeton: Princeton University Press 2005).
[404] Sarah Sewall, 'The Civilian in American Warfare: Normative Pathways and Institutional Imperatives', DPhil Thesis, Oxford University, October 2010, p. 116.

states and the NGO community put on the United States. Thus, Britain would have probably not acted independently had it not been for the exogenous pressure of European member states, which increased exponentially when the country assumed the Presidency of the Union, while Italy's proactive stance in favour of a truly independent review mechanism, of which further will be said shortly, does not seem to find other justification than a concern for image in the year of its G-8 Presidency, after the country's all but lethargic participation in the Council's deliberations during its two-year stint. In further support of this point, it is interesting to note how one of the chief Italian negotiators on the 1267 Committee at the UN has admitted that the country had a general 'belief' that the issue was important – to the point of appointing a magistrate and not a diplomat to replace the official once his tenure was over. However, such a general belief had not translated into concrete – or automatic – action during Italy's two years on the Council, as the social persuasion phenomenon would postulate. 'Instructions from Rome' on the reform issue had instead come 'rarely, if at all.' As a consequence, the official participated in the 1267 Committee debates adopting the (pro-human rights reform) position that he 'thought was expected of his country.'[405]

Further evidence in support of the social influence claim is found in U.S., UK and Italian acceptance of the pro-norm reforms within both the 1373 regime and the Global Counter-Terrorism Strategy, which irremediably diluted the Council's authority in counter-terrorism matters. These instances of pro-group behaviour cannot be explained with considerations for the cost-benefit maximisation of any other utility but that of the countries' projection of their own perceived identities onto the international stage, that is, their image. UK officials involved with counter-terrorism policy-making, for example, are very careful to identify human rights as the guiding principle of the country's current

[405]Interviewee F, Former Official at the Italian Permanent Mission of Italy to the UN, interview with author.

anti-terrorist legislation, often hurrying to point out the significant differences with the provisions adopted during the 'Troubles' involving Northern Ireland.[406]

Another characteristic of the social environment where the interaction took place helps to swing the analytical balance in favour of social influence. Analysing voting records within the Assembly, Johnston found that for a novice often subject to naming and shaming, such as China, abstention is a far more appealing and face-saving option that an outright negative vote, especially when an overwhelming majority of Assembly members support a given motion. Voting in the case of the reform processes analysed in this chapter happened under very similar circumstances, following the pattern described in Chapter Two as the 'effect of the commitment'. The informal nature of most proceedings, the pressure towards consensual acceptance of the provisions and the silent voting procedure all contributed to discouraging members from expressing their disagreement with the group.

Unlike the case of China, however, the countries under examination in this thesis are not novices, but established members of the liberal democratic community of states, for whom human rights and – more clearly in the case of Italy – multilateralism, were defining principles of their foreign policy and national identity.[407] In the process that led to the reform of the 1267 regime, the tenets of these countries' identity were jeopardised by the combined weight of several factors: international public opinion; effective

[406] David Omand, interview with author; Richard Mottram, interview with author.

[407] It should be noted however that in 2009, following Obama's new overtures to multilateralism, U.S. officials were increasingly going on the record stating that 'American credibility also lie[d] in their willingness to be team players.' Thus around the time of the reform of the 1267 regime, the pendulum of U.S. foreign policy had swung again towards international fora, following the pattern of inconsistency and complexity underscored by Luck with reference to American Foreign Policy in general, and by Boulden and Weiss with respect to international counter-terrorist efforts in particular. On the first quote see Colum Lynch, 'U.S. Faces Doubts About Leadership on Human Rights,' *The Washington Post*, 22 September 2009. On Italy and multilateralism in the definition of foreign policy priorities see Paolo Rosa, 'The Accommodationist State. Strategic Culture and Foreign Policy in Italy', forthcoming. On the 'symbolic' value of treaty signing for the UK see Hanne Hagtvedt, 'Peace with Rights. U.S. Leadership and Resistance in International Human Rights,' Brown Bag Seminar, Belfer Center for Science and International Affairs, Cambridge, MA, March 31, 2011.

coalition building on the part of smaller-sized powers; a voting system that did not favour dissent; and the exposure that any issue related to counter-terrorism and human rights received, both under the Bush administration and, later, after the transition to the supposedly more pro-UN Obama White House. In this respect, the timing of the pro-reform efforts are telling, in that in the months leading up to the General Assembly's plenary in the fall of 2009, the Obama administration's 'new course in the world [and] new approach at the UN' had come under the intense scrutiny of U.S. media and human rights experts, which accused the President of having undermined U.S. leadership in human rights issues with its lack of energetic action on the Sudanese, Sri Lankan and Palestinian fronts.[408] As such, rather than driving the process of reform acceptance, these domestic political factors raised the bar against which U.S. performance was judged, trapping the Obama administration in its pro-multilateral rhetoric, and thus amplifying the effects of the social influence mechanism. In addition, the United States had, as an OSCE expert has remarked, a 'bad reputation' on the human rights issue within the 1267 sanctions regime, while sections of the State Department, in particular the ones dealing with human rights, were particularly sensitive to the critiques of the NGO and General Assembly communities in New York.[409]

In this light, the need for the DOS to educate foreign officials to the due process guarantees in place in the United States, contain bad press and subscribe to a general pro-due process narrative in public statements becomes more understandable. U.S. officials in fact could have simply pushed for a compromise solution or objected to the independent

[408]'Remarks by Ambassador Rice, U.S. Permanent Representative to U.N., at New York University's Center for Global Affairs, "A New Course in the World, a New Approach at the UN"', *Targeted News Service*, 12 August 2009.
[409]Lynch, 'U.S. Faces Doubts About Leadership on Human Rights'; Hon. Frank R. Wolff, 'Extensions of Remarks – Administration Once Again Sidelines Human Rights', *Congressional Record*, 111th Congress, first session, 23 September 2009; Interviewee R, Human Rights Expert at the OSCE, interview with author. For some insights on the relationship between the U.S. DOS and the UNGA and NGO community, as perceived by the Bush administration, see Bolton, *Surrender is not an Option,* e-book version, loc. 4261.

review option *in camera*, had they not had to take on the public ownership of the process to respect tradition and save face. Interviews with key actors also support this point. In particular, this claim finds additional confirmation in the fact that domestic officials across the three cases displayed evident discomfiture at having to account for a type of behaviour that was at odds with their understanding of their own identity as human rights abiding countries. In the case of the United States, this process of identification with human rights is probably less problematic than it is commonly believed, if even a sceptic of multilateral norms, such as Bolton, has been careful enough to refer to himself in the words of a *New York Times* article as the representative of an 'administration whose record was stained by Abu Ghraib' and the ambassador of the 'United States, with its long and proud human rights tradition.'[410]

In the human rights *rapporteur*'s words, with respect to the issue of the due process guarantees the U.S. had a 'domestic constitutional system that worked, but it was very sensitive if it was criticised' by other countries, in particular 'Western and Northern' European ones.[411] To this end, a U.S. diplomat in Brussels recalls with some annoyance how the sixth European Parliament 'opened with the rejection of the terrorism financing tracking system, which was significant, to put it mildly,' as it dealt a blow to U.S. negotiating efforts to save the sanctions regime as it was.[412] U.S. (and UK) representatives were only too aware that in the UN Security Council, as noted by another official, 'although there is not a judge in the room, there is a judge on your shoulder.'[413]

Evidentiary support also comes from Italy's approach to the reform issue. While the country is not recognised as having played any propositional role as regards the call

[410]Bolton, *Surrender is not an Option,* e-book, loc. 4241.
[411]Martin Scheinin, *Rapporteur* for Human Rights in Counter-Terrorism, interview with author, 27 June 2012.
[412] Interviewee V, Former Official in the U.S. Permanent Mission to the EU, interview with author, April 23, 2012.
[413] Interviewee L, UK Permanent Mission to the UN, interview with author.

for reform of the system, it did act more forcefully in the months leading to the June 2009 G-8 summit, when it circulated among G-8 members a draft proposal for the establishment of an independent judicial review mechanism.[414] This belated interest in the justiciability issue can only be associated with the international exposure that the country was receiving at the time on the occasion of the G-8 summit in l'Aquila. In the Nasreddin and Nada cases – two of the main legal challenges that brought the 1267 regime to the attention of the Italian courts and of the opposition parties in the Parliament – exchanges between the Italian MFA and the U.S. Embassy in Rome show that Ministry officials were concerned about the public relations backlash that would follow should the country oppose a de-listing, as recommended by the public prosecution. In 2007, Italian officials, worried about the blame, thus asked U.S. colleagues in the capital to oppose the delisting on their behalf, as it would be counterproductive for Italy, from an image perspective, to do so on its own.[415]

In the explanation of institutional effects, however, there is one last hypothesis to consider that does not conform to social influence claims. That is, that the actors initiated or agreed to the changes because the effectiveness of the regime was at stake. In Johnston's analysis, this position would completely exclude claims of social influence, giving support to analyses that look at 'reputational benefits for immediate exchange relationships acquired from cooperation' – in other words, giving leverage to rationalist explanations that would see in the pro-reform behaviour the 'most useful thing to do' to achieve a specific goal.[416] The case of the reform process of the 1267 regime offers evidentiary support for this hypothesis as well, particularly in some of the USUN records

[414]Security Council, *verbatim* record, 5928th meeting, 30 June 2008; Fausto Zuccarelli, Anti Mafia Division, Ministry of Justice, Rome, interview with author, April 19, 2009; Armando Spataro, Deputy Chief Prosecutor for Counter-Terrorism, Court of Justice, Milan, interview with author, April 22, 2009.
[415] 'Italy Requests Information on 1267 Terror Finance Delisting Cases', US Embassy Rome, 28 December 2007, Ref. 07ROME2515.
[416] Johnston, *Social States*, p. 112.

that comment on the matter. For example, Rice's cable to the State Department in the months leading to the 17 December 2009 vote gives leverage to an interpretation that would see the U.S. bowing its head to the ECJ in order to save the regime, albeit accepting a slight reduction in its effectiveness. Sections of the ambassador's analysis are worth quoting in their entirety:

> 'Would this package of proposed enhancements satisfy international courts, especially in Europe? Would it stop the slow erosion of this tool's perceived legitimacy? The answers are unknown. These measures, however, combined with a redoubling of U.S. efforts to scrub the 1267 List of inappropriate entries, would go far toward restoring confidence in the regime and heading off more radical and dangerous proposals. Although the lack of independent review will remain a concern for many, these enhancements are forward-leaning enough to impress many critics and courts, even if they do not satisfy all.
>
> But salvaging this tool will require something of a paradigm shift in how the United States views and uses it. New safeguards will probably make it harder to designate and/or retain on the list some individuals whom the United States believes are linked to al-Qaeda. This will be particularly true in cases where we lack recent and convincing declassified information to justify a designation. The 1267 List will likely be pared down from the five hundred or so names now on the List. Instead of viewing this consolidation as a failure to designate terrorists, the United States should welcome the emergence of a smaller -- but much more credible and better

implemented -- List. The preservation of the tool, and the global consensus it represents, is far more important than the designation of a handful of marginal figures whom we can always still target through our domestic sanctioning authorities.

If we fail to accept this shift, then the 1267 sanctions regime will remain mired in critical debate, fail to evolve in pace with the threat and gradually atrophy as states shy away from using and defending a discredited regime. If we successfully adjust, however, the al-Qaeda/Taliban sanctions regime can endure for yet another decade and the United States can renew and fortify its commitment to using the United Nations and other multilateral tools to respond to terrorism.'[417]

This statement gives weight to rationalist analyses that postulate the strategic usefulness of certain norms. The end goal for action is neither the country's image nor its reputation as a reliable co-operator, but rather the rational gain that can be achieved through the pro-cooperative behaviour. Johnston's claim that there is no social influence if states are pursuing a utility-maximising goal related to reputational concerns, however, is problematic, because it does not adequately account for the dynamics at play in these cases, nor for the partial – but nonetheless present – effects that the image-related pressures triggered by the institutional environment have on state preference formation. Concerns for image act as a soft condition, in that states' motivational triggers straddle the rationalist/constructivist divide, giving support to this thesis's original claim that the character of the constraint on their agency is affected both by the social rationality

[417]'Saving the Al-Qaeda/Taliban Sanctions Regime,' USUN New York, September 4, 2009, Ref. 09USUNNEWYORK818.

triggered by interaction within the institution and the material rationality regarding other actors and a state's own needs.[418]

4.4 Conclusion

This chapter has examined the reform process that led to the inclusion of human rights and procedural safeguards within the UN counter-terrorism framework. Highlighting the role of key stakeholders in the process, the analysis has showed that the institutional environment acted as a fundamental tool in triggering a change in countries' pro-reform preferences.

Focusing in particular on the case of the United States, the regime setter, the chapter has outlined how image-related group pressures, originating in the diffused institutional environment and mediated by the formal multilateral venue, can account for the country's acceptance of a structural reform to the listing and delisting procedures of the 1267 sanctions regime. The chapter detailed this process, underscoring the role of coalition formation, nature of the issue and peer-pressure dynamics on key actors in the Security Council. Rationalist perspectives highlighting the benefits of institutional cooperation can shed some light on the drivers of U.S. action in the months leading up to the vote on Resolution 1904; as such, the chapter recognised the value of practice-driven approaches that do not bracket reality into exclusively rationalist or non-rationalist terms. The analysis, however, has further illustrated how these accounts cannot offer a compelling enough explanation of the *timing* of the reform, which can be better understood in the context of the diffused social influence process. The patterns of reform

[418] Legitimacy is seen as a soft condition in William C. Wohlforth's *World Out of Balance: International Relations Theory and the Challenge of American Primacy,* (Princeton: Princeton University Press 2008).

participation in the two additional country cases examined, the United Kingdom and Italy, further support this position.

According to this analytical perspective, the combined effect of the nature of the issue, its framing and publicising, coalition building, international scrutiny, and image-related concerns mediated by a broad social domain centred on the Security Council and the 1267 Committee pressured U.S. representatives to accept a reform that presented significant long-term material costs: namely a further dilution of the authority of the Security Council in counter-terrorism matters and a watering down of a sanctions mechanism previously perceived as effective. In line with the diffused social influence model introduced by this thesis, the outcome of this process of anticipatory socialisation is a combination of discursive acceptance of the reform and selective domestic implementation at administrative level (tier one and two effects).

Specifically, the process outlined in the chapter conforms to several of the conditions identified as susceptible of triggering the social influence mechanism, both at intra and inter-group levels: (1) a disagreement existed between the United States and non-P5 members of the Security Council on the necessity and extent of the reform; (2) the issue at stake was ideational, touching on fundamental views relating to human rights protection, due process and the role of the Security Council in driving UN action in counter-terrorism; (3) the actor's stance, if stuck to, would therefore have put it in a distinct minority position, outside what this country considered its natural and intersubjectively defined group of reference (Western human rights abiding countries). This was especially evident after the 2008 Kadi ruling by the ECJ, whose main effect was to accelerate the creation of a critical mass of pro-reform countries (including longstanding U.S. allies in the Council, such as the United Kingdom and France). The difference with the 2006 acceptance of the Focal Point mechanism is particularly striking,

as in this latter case the instrumental argument carries more leverage in the absence of such a critical mass. Furthermore, (4) voting patterns related to 1267 Resolutions favored consensus and required customary U.S. sponsorship of the draft document, while (5) the institutional environment had direct and indirect social sanctioning power with respect to the dissenting members, both by stalling implementation at domestic level and by exercising pressure, in particular, via a concerted multi-actor and multi-venue naming and shaming effort.

The chapter therefore has provided a further illustration of how the diffused nature of the social domain of the interaction, mediated by formal institutions, can occasion socially induced pro-group behaviour in a context where utilitarian and domestic pressures cannot offer a complete explanation of an actor's decision to participate in the reform process. Significantly, evidence of the presence of these effects in the behaviour of the regime-setting state adds analytical power to the thesis's understanding of the preference formation mechanism for state action as a result of the influence of international institutions. In the following chapter, the thesis shows how similar considerations can be applied to the case of states' participation in the counter-terrorist financing regime.

Chapter Five

Building Capacities:

The Counter-Terrorism Financing Regime

> *It is important to note a critical international trend as a result of our engagement on this issue […] the international community has now begun to view the world as [the U.S.] Treasury and others in the U.S. Government have always seen it. Dirty money and tainted financial flows not only corrupt the financial system but also threaten the lives of innocents and the economic and political stability of the world. Whether it is financing raised and moved to fuel terrorism or financial networks created to facilitate the proliferation of weapons of mass destruction, the global mission is clear: to disrupt and deter criminal activity that threatens our national security […]. This is now the axiom of the international community, and it is so because the U.S. government has helped reshape the way the international community thinks about these issues.*[419]
>
> *For legitimate financial institutions, there are no benefits to the risk of facilitating illicit transactions that could bring high regulatory and reputational costs if uncovered.*[420]
>
> *The 'crown jewel of soft law.'*[421]

Chapter Four chronicled the effects of institutional socialisation on the human rights oriented reform of the 1267 sanctions regime. It detailed the process of resistance, coalition building and image-related concerns that led to an alignment of Security Council members' behaviour to the pro human rights preferences promoted by the General Assembly, the Secretariat and the broader constituency of UN member states, but

[419]Juan C. Zarate, Testimony of Juan Carlos Zarate, Assistant Secretary for Terrorist Financing and Financial Crimes, U.S. Department of the Treasury, Before the House Financial Services Subcommittees on Domestic and International Monetary Policy, Trade and Technology, and Oversight and Investigations, Washington, D.C., September 30, 2004, available at: http://www.treasury.gov/press-center/press-releases/Pages/js1971.aspx.
[420]Juan C. Zarate, 'Harnessing the Financial Furies: Smart Financial Power and National Security', *The Washington Quarterly*, vol. 32, n. 4, p. 44.
[421]Referring to FATF's *40 Plus 9 Recommendations*. Guy Stessens, *Money Laundering: A New International Law Enforcement Model*, (Cambridge: Cambridge University Press 2000), p. 15.

generally resisted by P5 members. The chapter found that two mechanisms enabled the reform process: fear of status devaluation vis-à-vis pro normative group pressures triggered by a diffused social domain and cost benefit analysis related to the best course of action.

This chapter illustrates how these dynamics are similarly at play in the capacity building realm of counter-terrorist financing (CTF). A complex international regime gravitating around UN instruments, UN counter-terrorism bodies and ad hoc global and regional non-governmental institutions, counter-terrorism financing offers a useful lens through which state preference formation mechanisms can be dissected in a context where international interaction is paramount to the success of the regime. The heuristic value of this case is then twofold: first, given the stakes, i.e. access to the elite status of reliable financial partner, states have material and non-material interests in cooperating and complying with international counter-terrorist financing norms. Second, despite the stakes, i.e. risk of market ostracism, countries have manifested throughout the decade a resistance to implementation that prompts an analytical enquiry into the causes of policy divergence and, when it ultimately occurs, policy alignment. The abundance of evidence on policy homogenisation that this chapter discusses in its next section is then a fruitful soil in which to both test the claims that this thesis makes on the importance of image on state preference formation in multilateral settings and provide further support for this argument.

In line with this goal, the chapter begins with an overview of the counter-terrorism financing regime, describing its origins, structure and development, and underscoring the links between its main institutions and the UN counter-terrorism bodies. In the later sections, the chapter turns again to the selected sample of Western countries to trace the evolution of their domestic counter-terrorist financing regimes in the context

of multilateral cooperation on this issue. In order to raise the bar when testing institutional effects, the sample refers to the same group of countries that are not novices in the field of counter-terrorist financing, and includes the agenda setter in its midst, in this case the United States. This permits verification of whether adaptation to global counter-terrorist financing norms occurs as a result of the institutional effect engendered by social interaction or whether it takes place as a result of an alignment to the preferred position of the most powerful country in the reference group.

5.1. Following the money: the international counter-terrorist financing regime

Raustiala's notion of a regime complex offers a useful approximation of the structure of the global counter-terrorist financing regime: an 'array of partially over-lapping and non-hierarchical institutions governing a particular issue-area'.[422] Four were already in place prior to 9/11: UNSC Resolution 1267 of 1999 and the related Al Qaeda and Taliban targeted sanctions bodies; the General Assembly's Convention on the Financing of Terrorism, adopted in December 1999; the Financial Action Task Force (hereinafter the FATF), an offshoot of the 1989 G-7 summit; and the Egmont Group of Financial Intelligence Units (FIUs), informally established in 1995 to promote cooperation, information exchange and training of financial sector regulators.

Similar to the overall evolution of the broader counter-terrorism regime, the development of multilateral counter-terrorist financing tools followed the reactive policy-making frenzy ignited by 9/11. U.S.-sponsored UNSC Resolution 1373 of September 2001 – along with the updates to the 1267 sanctions regime detailed in the previous chapter of this thesis – set out the cornerstones of the U.S. Treasury's view of global anti-

[422]Kal Raustiala, David G. Victor, 'The Regime Complex for Plant Genetic Resources', *International Organization*, vol. 55, 2004, p. 279.

terrorist action. Centred on the 'harnessing of [those] financial furies' that supplied Al Qaeda with a vital injection of funds, the US concocted a recipe for 'smart financial power' that combined targeted sanctions and an expansion of the FATF's traditional anti-money laundering (AML) best practices under the quasi-legislative umbrella of Chapter VII UN Security Council Resolutions.[423] As noted elsewhere in this thesis, 1373 provisions, in particular, mandated countries to prevent and suppress the financing of terrorist acts, criminalise the wilful provision of funds for the purpose of terrorism, and freeze assets belonging to terrorist individuals and organizations. These clauses were further detailed in Resolution 1390 (2002), the instrument that, as shown in Chapter Four, consolidated and institutionalised the 1267 regime. Governments were also called to ratify the 1999 Convention on the Suppression of Terrorist Financing, the first UN instrument to provide a definition of terrorism and a roadmap for the criminalisation of these supporting activities that had not been addressed by previous UN counter-terrorist conventions.

While Resolution 1373 occupies a central place in the overall structure of UN counter-terrorist action, with member states' largely compliant behaviour displayed by unusually high reporting rates during the CTC's first year of activity, the upward harmonisation process that has characterised UN member states' CTF policies over the past decade has been driven more by the FATF-inspired regulations than by UN provisions.[424] Established by the G-7 economic summit in Paris in 1989, the Financial Action Task Force was originally responsible for the study and containment of money

[423]Zarate, 'Harnessing the Financial Furies'.

[424]Ian Roberge describes the FATF as an 'unusual international organization, [which] was founded on a request of the G7 to address' ML issues, 'follow[ing] in the footsteps of the Vienna Convention of 1988, [with] a temporary mandate, […] housed within the OECD', but without any official relationship with it, with 33 members but 'seeking compliance from the entire international community'. He does recognise, however, that the body is at the 'nexus of the regimes against money laundering and terrorist financing' as an expression of 'multilevel governance'. See Ian Roberge, 'The Internationalization of Public Policy and the Fight Against Terrorist Financing', Paper Presented at the Annual Convention of the International Studies Association, Montreal, Canada, March 2004, p. 3.

laundering activities. Its *Forty Recommendations* (40 Rs) were issued in 1990, amended in 1996 and 2003, and designed to prevent the 'proceeds of crime to be utilized in future criminal activities', potentially jeopardising the financial stability and macroeconomic performance of a country.[425] They are currently acknowledged as the state-of-the-art 'international standards in this area.'[426] Modelled after the *40 Rs*, the 'Eight Special Recommendations against Terrorism Financing' (SRs) were adopted during the FATF's Washington, D.C., plenary meeting in October 2001 (with a Ninth added in 2005), and endorsed by the International Monetary Fund (IMF), the World Bank and the UN shortly afterwards. They mandate members, in order, to ratify and implement UN counter-terrorism financing instruments (SR I); criminalise the financing of terrorism and associated money laundering (SR II); freeze and confiscate terrorist assets (SR III); report suspicious transactions related to terrorism (SR IV); promote international cooperation on the matter by inciting members to offer capacity-building assistance to third countries, ensuring denial of safe haven and facilitating the extradition of charged individuals (SR V); monitor alternative remittance systems (SR VI); wire transfers (SR VII); the financial activities of not-for-profit organizations (SR VIII); and cash couriers (SR IX).[427]

The FATF's elaborate compliance verification system relies on joint contributions by UN institutions, the International Monetary Fund (IMF), the World Bank, regional FATF-style bodies (FSRBs), as well as single member states. As of 2010, the body counts 34 jurisdictions and two regional organizations, namely the European Commission and the Gulf Cooperation Council, among its members,

[425]U.S. Department of State, *International Narcotics Control Strategy Report*, 'Multilateral Activities,' March 2005, available at: http://www.state.gov/j/inl/rls/nrcrpt/2005/vol2/html/42386.htm.
[426] U.S. Department of State, *International Narcotics Control Strategy Report*.
[427]The *Forty plus Nine Recommendations* were further reviewed and updated in February 2013. See FATF/OECD, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations*. *February 2012,* Paris, February 2013. For a detailed list of FATF's *Forty plus Nine Recommendations* please refer to http://www.fatf-gafi.org/topics/fatfrecommendations/documents/the40recommendationspublishedoctober2004.html.

representing the world's major financial centres.[428] According to the U.S. Department of State, the FATF has achieved a remarkable level of success in its 24 years of activity, with 180 jurisdictions around the world having committed to implementing the body's recommendations through the Task Force's global network of FSRBs and state members.[429] The organization's reach effectively extends to more than 100 countries worldwide through local membership in the eight FATF-style regional bodies, covering Europe (MONEYVAL), Eurasia (EAG), the Asia-Pacific Region (APG), the Caribbean (CFATF), Eastern and Southern-Africa (ESAAMLG), West Africa (GIABA), South America (GAFISUD), and the Middle East and North Africa (MENAFATF).[430]

In addition to its global reach, the FATF AML/CTF framework is solidly embedded within the UN counter-terrorism system. Article 7 of UNSC Resolution 1617 (2005) 'strongly urges all Member States to implement' the FATF's *40 plus 9 Recommendations*, as does the 'Plan of Action' of UNGA Resolution 60/288 of 2005.[431] Supervision of the implementation of the FATF's standards falls within the remit of the

[428]FATF's current state members are: Argentina; Australia; Austria; Belgium; Brazil; Canada; China; Denmark; Finland; France; Germany; Greece; Hong Kong, China; Iceland; India; Ireland; Italy; Japan; the Republic of Korea; Luxembourg; Mexico; Kingdom of the Netherlands; New Zeland; Norway; Portugal; Russian Federation; Singapore; South Africa; Spain; Sweden; Switzerland; Turkey; United Kingdom; United States. For a list of FATF Associate Members and Observers please refer to: 'FATF Members and Observers,' available at: http://www.fatf-gafi.org/pages/aboutus/membersandobservers/#d.en.3147.

[429]For a list showing the status of countries on FATF's global network of jurisdictions monitored by FATF's International Cooperation Review Group please refer to: FATF, 'Countries', available at: http://www.fatf-gafi.org/countries/. For additional data on FATF's success rate, see Kathryn Gardner, 'Terrorism Defanged: The Financial Action Task Force and International Efforts to Capture Terrorist Finances', in David Cortright, George A. Lopez, (eds.), *Uniting Against Terror: Cooperative Nonmilitary Responses to the Global Terrorist Threat*, (Cambridge, MA: The MIT Press), September 2007, p. 158.

[430]The eight FSRBs are: the Eurasian Group (EAG), the Asia/Pacific Group on combating money laundering (APG), the Caribbean Financial Action Task Force (CFATF), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism of the Council of Europe (MONEYVAL), the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), the Financial Action Task Force on Money-Laundering in South America (GAFISUD), the Intergovernmental Action Group against Money-Laundering in West Africa (GIABA), and the Middle East and North Africa Financial Action Task Force (MENAFATF). The Offshore Group of Banking Supervisors (OGBS), tasked with promoting international standards of banking supervision and the fight against money laundering and terrorism financing across offshore finance centres, has functions that are similar to those of FATF's. For more details see, for example, the Eurasian Group, 'FATF-style regional bodies', available at: http://www.eurasiangroup.org/fsrb.php.

[431]UNSC Resolution 1617 (2005), 'Threats to international peace and security caused by terrorist acts', article 7, S/RES/1617 (2005).

United Nations Office on Drugs and Crime's (UNODC) Law Enforcement, Organized Crime and Anti-Money Laundering Unit (GPML), while the UNODC itself, along with the 1267 Committee, has observer status with the organization.[432] Implementation of the FATF's provisions is similarly part of the mandate of the 'Working Group on Tackling Financing of Terrorism', established by the Secretary-General under the authority of the CTITF and the auspices of the UN Global Counter-Terrorism Strategy.[433] Section II, paragraph 10 of the Strategy repeats the language of article VII of Resolution 1617, complete with a call to member states to offer capacity-building assistance to third countries, and to the major global financial and policing institutions, such as the International Criminal Police Organization (INTERPOL), to coordinate and assist states in their implementation efforts. Through the CTITF, ensuring compliance with the FATF's standards is equally the purview of the United Nations Counter-Terrorism Centre (UNCCT), the recently established international counter-terrorism coordination hub that operates under the UN Secretary-General and the UN Department of Political Affairs.[434] While there is no explicit reference to the FATF in the text of UNSC Resolutions 1373 and 1267, their content, in effect, mirrors the *9 SRs*. FATF representatives are regularly consulted by CTC and CTED members and are occasionally invited to brief the committees. The Task Force also participates in CTED country visits, and is generally thought to 'cooperate[…] well with the CTC and [the] CTED'. In 2008, for example, the

[432]On UNODC's Law Enforcement, Organized Crime and Anti-Money Laundering Unit (GPML), see United Nations Office on Drugs and Crime, 'GPML Mandate', available at: https://www.unodc.org/documents/money-laundering/GPML-Mandate.pdf.
[433]Counter-Terrorism Implementation Task Force, 'Working Group on Tackling Financing of Terrorism. Overview', available at: http://www.un.org/en/terrorism/ctitf/wg_financing.shtml.
[434]The UNCCT was established in 2011 through a voluntary contribution of the government of Saudi Arabia. UNGA Resolution 66/10 encouraged member states to cooperate with the centre. The Centre engages with 30 CTITF entities according to the following strategic priorities: develop national and regional counter-terrorism strategies; support integrated capacity-building assistance (I-ACT); counter the financing of terrorism; counter the appeal of terrorism; protect human rights while countering terrorism and the rights of the victims of terrorism; protect vulnerable target; manage borders; and monitor the internet. For a detailed overview see: CTITF, 'UN Counter-Terrorism Centre (UNCCT)', available at: http://www.un.org/en/terrorism/ctitf/uncct/index.shtml.

organization produced an international best practices paper on asset freezes in line with UNSC Resolution 1267, and issued guidance papers on several UN instruments, such as UNSC Resolution 1540 (2004). In the same year, the FATF also 'expanded its mandate to include proliferation financing' and began 'studying the issue with the 1540 committee'.[435]

Most key actors of the international counter-terrorist financing regime enjoy observer status with the FATF and participate actively in the organization's monitoring and implementation efforts. The IMF and the World Bank, for example, have devised finely tuned assessment tools through which they provide technical assistance in the financial sector via donor-supported trust funds for AML/CTF purposes, and exercise surveillance over members' economic systems.[436] Implementation of the FATF's regulations sits at the heart of the Fund's AML/CTF program, while the World Bank's AML/CTF Risk Assessment Tools (NRAs) measure vulnerabilities on the basis of compliance with the *Forty plus Nine Recommendations*.[437] The Egmont Group of Financial Intelligence Units, another non-member observer, actively refers to FATF's recommendations in its standards of action, while its members are considering the opportunity of including 'a [direct] link to FATF' and the FSRBs in the revised version of the Group's Charter.[438] Similarly, the list of the Task Force's non-member observers

[435]Susan Rice, 'Financial Action Task Force President Briefs CTC', USUN New York, 29 October 2009, Ref. #09USUNNEWYORK963.

[436]Beginning in 2003, the IMF and the World Bank undertook a twelve-month pilot programme to evaluate compliance with the FATF *40 + 9 Recommendations* in 33 jurisdictions. In February 2004, at the 2004 G-7 meeting in Boca Raton, finance ministers requested the IMF to make the assessments a normal component of the economic surveillance reports. In March 2004, the IMF and World Bank reviewed the pilot programme and included AML/CFT evaluations as part of their normal country surveillance. See Martin A. Weiss, 'Terrorist Financing: the 9/11 Commission Recommendation', CSR Report for Congress, February 25, 2005, p. 5.

[437]See, for example, IMF, Legal Department, 'Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)—Report on the Review of the Effectiveness of the Program', May 2011; see also FATF-GAFI, 'The World Bank Risk Assessment Methodology', available at: http://www.fatf-gafi.org/media/fatf/documents/reports/Risk_Assessment_World_Bank.pdf.

[438]'Co-Chairs Statement, 21st Plenary of the Egmont Group Financial Intelligence Units,' South-Africa, July 1-5, 2013; on the Group's cooperation with the FATF see also, 'Enhancing the synergy between the FATF and the Egmont Group,' Address by Mr. Vladimir Nechaev, FATF President, 21st Plenary of the

reads as a faithful portrait of the broader constellation of actors involved in AML/CTF, ranging from the Basel Committee on Banking Supervision (BCBS) to the likes of the European Central Bank (ECB), Europol, Eurojust, Interpol, the OECD, and the OSCE.[439] At the regional level, noteworthy is also FATF's close interaction with European institutions. In addition to the aforementioned member status of the Commission and observer status enjoyed by several European agencies, FATF's regulations are at the heart of the Union's Third Anti-Money Laundering Directive (2005/60/EC), the instrument that extends the scope of the EU's general AML policy to CTF. The 2005 Council of Europe's 'Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism' also builds on the Task Force's standards, showing how far-reaching the system created around the 'foremost international body active in the fight against […] terrorist financing' has become in its two decades of activity.[440]

FATF's success is a function of its socialisation practices put in the service of a particular pedagogic project. As a financial security institution, the Task Force has developed over the years an elaborate model of standard setting, norm projection and rule enforcement that has enabled a heterogeneous audience of state and non-state actors to converge around the body's particular set of AML/CTF recommendations. These are promoted and largely accepted as the 'code of good conduct' for all those who aspire to the status of legitimate player in the international market economy. As such, a specific focus on reputational issues as a motivational driver to implementation has characterized FATF's socialisation efforts. Building on these premises, the next section of the chapter

Egmont Group of FIUs, Sun City, South Africa, 3 July 2013, available at: http://www.egmontgroup.org/news-and-events/news/2013/07/05/co-chairs-statement-21st-egmont-plenary-2013.

[439]For a comprehensive list of FATF's non-member observers see FATF, 'FATF Members and Observers'.

[440]Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, Official Journal L 309 , 25/11/2005 P. 0015 – 0036.

describes the institution's *modus operandi* as part of a deliberate attempt at *habitus*-building in the area of counter-terrorism financing, before focusing on the outcome of FATF's pedagogic efforts on state CTF action.

5.2. FATF's socialisation practices

In Chapter Two, the concept of *habitus*-building was introduced in order to account for the pedagogic activity of specific multilateral institutions, both formal and informal, capable of educating actors through structured and reiterated forms of interaction.[441] In the CTF regime, *habitus*-building takes the form of attempts at 'durable training' of state security actors and relevant financial elites through instances of teaching, persuasion and the deliberate exercise of collective status-orientated group pressure.[442] According to its Charter, for example, the Egmont Group of FIUs aims at fostering 'a collegial environment […], a forum of goodwill where colleagues meet, become acquainted and openly and eagerly assist one another' during meetings and workshops, which provide venues where members 'share experiences and ideas, offer advice, and learn from the[ir respective] successes and mistakes.'[443]

In the FATF 'model', as described by Kathryn Gardner, participants are joined in 'elaborate mechanisms of accountability among states and other actors' via a tripartite structure, comprising of (1) a Standard Process revolving around the *Forty plus Nine Recommendations* and their norm-setting purposes; (2) a compliance verification system, explicitly centred on the principle of 'naming and shaming'; and (3) a selective process of membership enlargement that bestows a sort of 'high quality stamp' on the level of

[441]Gheciu, 'NATO's Socialization Practices in the Post-Cold War Period,' in Gheciu, *NATO in the 'New Europe'*, p. 85.
[442]For example through workshops, seminars and capacity-building programmes run by law enforcers. *Ibid.*
[443]'About the Egmont Group', available at: http://www.fiumauritius.org/pdf/Egmontdoc.pdf.

transparency and reliability of a given financial system.[444]

The *Forty plus Nine Recommendations* constitute the first pillar of this highly developed system of standard-setting and rule enforcement that acts as the driver of a remarkably effective top-down process of policy harmonisation in the counter-terrorism financing field. In practice, following the AML sub-model, the FATF has established a methodology for assessing compliance with its recommendations that focuses both on monitoring mechanisms and the development of best practices, for instance in the area of assets freezes and alternative remittance systems. Relying on *Interpretative Notes*, *International Best Practices* and *Typology Exercises*, through which the Task Force's members role-play possible money-laundering and terrorist-financing scenarios, the body has attempted over the years to reduce the 'purposefully imprecise' nature of its non-legally binding norms, expanding their accuracy and developing conditions for applicability and preferred patterns of behaviour among its state members.[445] In another instance of harmonisation-inducing practices, Task Force experts have provided countries with AML/CTF 'model laws' for both civil and common-law systems. In this manner, not unlike other international organizations that subscribe to similar educational goals, FATF's experts have fostered a dominant view of the correct modes of actors' interactions in the financial system that has acquired a status of oughtness in the eyes of the broader financial community.

The second convergence-inducing mechanism utilized by the FATF model relies on its self-reporting and mutual review systems. As a condition of membership, the 34 countries and two institutions take part in self-reporting exercises and mutual evaluation processes that are meant to assess their implementation levels with respect to the 49

[444] Kathryn L. Gardner, 'Terrorism Defanged: The Financial Action Task Force and International Efforts to Capture Terrorist Finances', in David Cortright, George A. Lopez (eds.), Uniting Against Terror: Cooperative Nonmilitary Responses to the Global Terrorist Threat, (Cambridge, MA: the MIT Press 2007), p. 161.
[445] Gardner, 'Terrorism Defanged', p. 165.

recommendations, suggest avenues for improvement via capacity-building assistance, and sanction those that comply poorly or do not comply entirely.[446] Self-assessment reports are submitted annually and are subject to evaluation by peer governments. This collegiate assessment process, which enhances the role of the reference group of FATF's members –who act as implementation watchdogs –, finds its consecration in the body's peer-review system of Mutual Evaluation Reports. During this exercise, each member is evaluated by a group of three or four experts of other FATF's members in the course of a country visit. A report for 'the eyes of the member country only' is then issued and the country's performance rated on a four-point scale, ranging from 'compliant' and 'largely compliant', to 'partially compliant', or entirely 'non-compliant'. The Task Force has recently reviewed its assessment methodology in preparation for the fourth round of Mutual Evaluations, which is scheduled to begin in 2014. FATF's experts have introduced a two-step process that first maps the legal and institutional frameworks of a country and the powers and procedures of its competent authorities with respect to the body's recommendations, and then measures the outcomes and results achieved on the ground by these legal and institutional frameworks.

As crucially noted by Gardner, the main component of the self-reporting and mutual evaluation systems is 'graduated peer pressure on noncomplying members.'[447] Non-compliance triggers a four-step sanctioning sequence, which subjects countries to increasing degrees of 'shaming'. In the first place, a country is required to deliver a report to the FATF's plenary meeting on its noncompliant status; if the FATF's President deems that further measures are required, she can send a letter and/or a high level mission to the country for further assessment; should those measures be ineffective, the Task Force can issue a statement 'requiring financial institutions to pay particular attention' to a

[446]FATF's sanctions characteristically carry both social and material costs.
[447]Gardner, 'Terrorism Defanged', p. 168.

country's financial transactions, as well as to its businesses and individuals.[448] This step can significantly restrict a country's access to international financial markets, thus raising the overall material costs of state divergent behaviour. As a last step, membership status can be revoked.

While FATF has been engaged in an active policy of global norm export and network building via the FSRBs, which enjoy associate member status, accession to full FATF membership carries particular club benefits for countries across the globe. The body's two-pronged membership policy considers as its fundamental admission criterion the strategic importance of a financial jurisdiction, assessed using indicators such as the size of the gross domestic product and banking sector, the latter's level of openness and relative influence on financial markets, regional prominence, level of commitment to international AML/CTF efforts, as well as a country's overall interconnectedness with and exposure to international multilateral fora. 'Technical' requirements include a political commitment, in writing, to effectively implement FATF's recommendations, subject oneself to the Mutual Evaluation Process and maintain satisfactory levels of compliance. Members must obtain 'at a minimum ratings of L[argely] C[ompliant] or C[ompliant] for a large majority of [FATF's] Recommendations, and for the remainder, should demonstrate substantial progress toward full implementation', providing a clear commitment at Ministerial level.[449]

Unsurprisingly, full membership of the FATF is a much-coveted status, even for countries for which accession entails a complex process of accommodation between international norms of market liberalisation and local identity (re)-affirming standards, as was the case with the many Southeast Asian states that negotiated their accession during

[448] Gardner, 'Terrorism Defanged', p. 167.
[449] 'FATF Membership Policy', available at: http://www.fatf-gafi.org/pages/aboutus/membersandobservers/fatfmembershippolicy.html.

the first half of the past decade.[450] For the purpose of this thesis's analytical interests, FATF's characteristic ability to impose costs on divergent behaviour carries high significance, as image-related concerns – the purview of institutional social influence – coexist with straightforward instrumental calculations that are subsumed under the somewhat inaccurate label of 'reputational effects'. For instance, for almost a decade FATF's notorious 'black list' of non-compliant non-members – the shorthand version of what was, pre-2008, the Task Force's Non-Cooperation Countries and Territories Initiative (NCCTI) – has named and shamed non-member jurisdictions with serious financial sector deficiencies in the fields of AML and CTF, subjecting them to increasing controls or active countermeasures.[451] While listing comes with social stigma, non-listing and de-listing bear social approval. A case in point is Indonesia, which slowly worked its way out of the Task Force's non-cooperative countries list after the Bali attacks of 2002, only to be designated again by the FATF's International Cooperation Review Group (ICRG, established in 2009 to replace and upgrade the NCCTI) in February 2012. While initial listing was accompanied by strong criticism regarding the *bona fide* of the country's commitment to the global counter-terrorist campaign, increased convergence with FATF's standards elicited international backpatting, which reached well beyond the financial sector to praise the country's improved democratic accountability and political good will.[452] The 2012 listing stirred once again fears of social stigma, with the media employing unusually 'emotive' language to describe the country's sense of betrayal, the feeling of having been poorly 'reward[ed] for all the efforts that ha[d] been made under

[450]A case in point is India. For a detailed analysis of its path to membership in FATF see Peter Romaniuk, 'Controlling the Movement of Money: Policy Convergence and Terrorist Financing', in Peter Romaniuk, 'Global and Local Wars on Terror: Policy Convergence and Counter-Terrorism in South and South-East Asia', Doctoral Dissertation, Brown University 2006, pp. 114-194.
[451] Since 2000, a total of 17 countries have been regarded as uncooperative in the fights against ML and have been designated on the FATF 'blacklist'. Iran and North Korea are the only two jurisdictions to have ever been targeted with countermeasures. The NCCT Initiative was replaced in 2008 with the International Cooperation Review Group, whose assessment standards and listing procedures are deemed more accurate.
[452]Peter Romaniuk, 'Controlling the Movement of Money'.

the [AML/CTF] regime' established after the Bali attacks.[453] When member countries are at the receiving end of the FATF's carrots and sticks policy the language employed is equally suggestive. In 2009, an American diplomat in Vienna described the Austrian government as having been 'stung by FATF's criticism', as a result of which the country's highest financial authorities had finally committed to fully implement the Task Force's Action Plan.[454]

The organization's specific focus on reputational costs, however, has direct bearing on the institution's socialising effect, which falls short of full internalisation. Breaking down the dynamics of interaction between FATF and state actors, it can be argued that the Task Force indeed acted as a socialising agent by disseminating sets of meanings, i.e. enabling 'targets to make sense of the world, defin[ing] subjects and objects that populate the world, and identify[ing] presumably normal relations vis-à-vis those objects and subjects'.[455] The organization also had specific authority to teach its norms to countries that were less advanced in their path-convergent trajectory, both directly via various instances of consultation, and indirectly through the FSRBs and bilateral negotiations between members and non-member countries.[456] FAFT representatives, for instance, sought to educate various state actors about the correct ideas and norms that regulated exchanges among advanced liberal economies, employing these narratives as frameworks for promoting the body's prescriptive recommendations, 'sold'

[453]See, for example, Colin Bloodworth, 'Indonesia Back on "Blacklist" – But Is it Fair?', *Money Matters*, 2012.
[454]AMEmbassy Vienna, 'Stung by Critique, Austria Now Working on FATF Action Plan', ref. 09VIENNA847; in a similar case of the FATF's carrot and stick approach, in 2009 the United Kingdom was rewarded for the significant progress made in addressing deficiencies identified in the 2007 Mutual Evaluation Report and was consequently removed from the regular follow-up process and promoted to a self-reporting system on a biennial basis.
[455]As per Gheciu's description of NATO as a socialising agent, see Alexandra Gheciu, 'NATO's Socialization Practices,' p. 85.
[456]Interestingly, it appears that a characteristic shortage of personnel (FATF counts about 20 permanent members on its staff. Immediately after 9/11 it had a staff of five and a budget of 810,000 USD) did not enable the organization to hold workshops for country experts, despite having been solicited to this purpose by several member states, namely the United States.

not as arbitrary ideas but as the only acceptable course of action for those jurisdictions that wished to be counted as members in good standing in the international community of liberal market economies.[457]

While the emphasis on the Task Force's pedagogic project chimes well with some of the mainstream IR literature accounts of institutional socialisation discussed in Chapter Two of this thesis, the extensive usage of both social and material costs to elicit compliance raises issues for a straightforward interpretation of FAFT's institutional effects as full-fledged internalisation (social persuasion). Looking at NATO, and somewhat misreading Johnston, Gheciu correctly refers to these socialisation practices as a form of strategic 'manipulation' by the international forum, paired with a lack of commitment on the part of the organization itself to the promotion of distinct local ownership of the collective norm endorsed by the international institution.[458] In this view, rather than a 'civilizing' entity, committed to the creation of a new web of meanings, the multilateral forum is an export facility, whose goal is the securing of behavioural compliance motivated by pure material concerns, rather than the ideological conversion to a new worldview in the targeted audience. In practice, social rationality (i.e., attaining the status of exemplary member of the international financial community) and instrumental rationality (preserving one's economy) coexist, while convergent behaviour is a by-product of their combined effect. In an interesting description of its involvement in the global AML/CTF regime, for example, the government of New Zealand accurately summarises the various costs and benefits, both rational and non-rational, associated with

[457]In the words of a U.S. Treasury official – especially when it comes to emerging global markets – it is crucial to establish one's international identity as a country that is 'respectful of international global standards.' Interviewee W, Former Official in the Office of Terrorism and Financial Intelligence (TFI), United States Department of the Treasury, interview with author, September 21, 2012.

[458]I claim that Gheciu misreads Johnston's interpretation of social influence as she appears to pick up only on the instrumental component of this concept, whereas Johnston carefully distinguishes between image-driven action, which is motivated by non-material concerns, and action driven by a logic of consequences and issue-linkage.

the country's participation in the FATF's AML/CTF framework:

> 'Internationally, compliance with FATF standards maintains a country's reputation as a nation that is fully committed to efforts to combat money laundering, terrorist financing and corruption. Compliance with FATF recommendations is viewed as a measure of the robustness of a country's AML/CFT measures.
>
> The implications of not meeting FATF standards may eventually include:
>
> - increased costs of borrowing overseas for both the government and private sector, as overseas lenders perceive the non-compliant country as a greater financial risk[;]
> - difficulties for companies from the non-compliant country in doing business overseas, in the form of increased costs or lost business opportunities[;]
> - difficulties in trade negotiations at a government-to-government level, as foreign governments may be reluctant to extend trading privileges to non-compliant countries[;]
> - impacts on relations with international organisations, such as the World Bank, the International Monetary Fund, and the United Nations [;]
> - perceptions that the non-compliant country is a soft touch for money launderers and terrorism financers.
>
> The New Zealand government believes that the national interest requires that New Zealand complies with FATF recommendations.'[459]

[459]New Zealand, Ministry of Justice, 'Global anti-money laundering and countering financing of terrorism initiatives', available at: http://www.justice.govt.nz/policy/criminal-justice/aml-cft/global-anti-money-laundering-and-countering-financing-of-terrorism-initiatives.

Characteristically, while there clearly is no ground to support claims of social persuasion in this account of New Zealand's motivational drivers, image, reputation and strategic calculation all weigh into the definition of Auckland's perception of its national interest. In the following sections, the Chapter will highlight how similar dynamics are at play in the United States, the United Kingdom and Italy, three non-novice FATF participants with different stakes in the CTF regime.

5.3. Setting global CTF standards: the United States

The United States possesses the most complex and developed CTF regime in the world. The framework mirrors the dual regulatory and smart sanction approach of its two legislative roots: the country's vast AML system – one of the most advanced worldwide – and the 1977 International Emergency Economic Powers Act (IEEPA), which, in times of emergency, grants the President designation and assets-freezing powers over individuals and entities considered as 'unusual or extraordinary' foreign threats to the country.[460] U.S. authorities have actively promoted the globalisation of the country's AML and CTF frameworks in two distinct waves: beginning in 1986, as the war on drugs and crime was gaining momentum; and after the September 11 attacks, in the context of a global campaign to drain Al Qaeda's financial resources. In both instances, the Financial Action Task Force and its *Recommendations* were selected as the privileged multilateral vehicle of U.S. global regulatory efforts. This section of the chapter analyses the country's engagement in the global AML/CTF regime, by underscoring its role as both standard-setter and *primus inter pares* participant in one of the most developed programmes of

[460] Once an order is issued under the IEEPA, the President has ten days to notify the OFAC, which informs the banks; they will then hold all blocked assets in interest-bearing accounts that cannot be debited. The IEEPA is itself an offshoot of the 1917 'Trading with the Enemy Act' (TWEA), giving the President the power to prevent individuals located in the U.S. to conduct transactions with a declared enemy.

global financial governance in the world.

5.3.1. Domestic Regime Overview

U.S. AML provisions predate UN, EU and FATF efforts. Their foundations date back to the 1960s, when the U.S. Treasury became active in advocating a firm stance against ML, increasingly highlighting concerns about the link between illegal activities, narcotics trafficking and the role of offshore bank accounts. Prior to September 11, the focus of this system was markedly anti-criminal, with about 60 to 80 percent of federal ML cases generated by offenses involving narcotics proceeds and organized, white-collar and foreign crimes.[461] In the course of the 1970s, the Bank Secrecy Act (BSA 1970) imposed stricter reporting and record-keeping obligations on financial institutions, while the Money Laundering Control Act established ML as a criminal offence in 1986.

AML regulations were further strengthened in the course of the 1990s. The Money Laundering Suppression Act of 1994 extended the scope of reporting obligations to 'suspicious activities' and currency transactions, while the 1998 Money Laundering and Financial Crimes Act promoted synergies between law enforcement agencies, the financial sector and international financial regulators. Additionally, the Act 'uniquely' mandated the Treasury and Justice Departments to produce five reports, which resulted in the yearly publication of the U.S. National Anti-Money Laundering Strategy between 1999 and 2005, the first ones of this kind. These efforts notwithstanding, serious lacunae persisted in the areas of client and beneficial ownership identification, two key points that would later become sources of contention with FATF authorities.

U.S. AML laws began to incorporate specific CTF provisions in 1996, when the

[461] Martin S. Navias, 'Finance Warfare as a Response to International Terrorism', in Lawrence Freedman (ed.), *Superterrorism. Policy Responses*, (Oxford: Blackwell Publishing 2002), p. 65.

Anti-Terrorism and Effective Death Penalty Act (AEDPA) extended the list of ML predicate offenses to terrorism.[462] The legislation, however, fell short of establishing specific counter-terrorist financing measures, a point that both the 9/11 Commission Report and the 9/11 Commission Staff Monograph on Terrorist Financing did not fail to pick up on in their indictment of Washington's pre-9/11 counter-terrorism efforts. The picture painted by the Kean/Hamilton experts was in fact one of 'disaggregated data collection, mistaken understandings regarding information sharing, conflicted organizational cultures, and interrupted attention spans' that had prevented the executive and legislative branches alike from focusing on the CTF issue adequately.[463] In particular, beginning in 1995, the Clinton administration started to make frequent use of its sanctioning authority under the IEEPA, but failed to achieve effective legislative progress and contain the numerous interagency turf wars involving Treasury, the FBI, the CIA, and the NSC. These bureaucratic battles over CTF impeded much needed coordination, in spite of some high profile attacks that hit the country in 1993, 1996, 1998, and 2000.[464]

Significant developments came after the systemic shock triggered by 9/11. At the

[462]The AEDPA was preceded by the 1990 Anti-Terrorism Act, which made the provision of funding, material support and financial services to terrorist organizations illegal. In 1995, the White House began pushing for federal criminal laws that would make it easier to act against terrorists' fund-raisers. The 1996 Anti-Terrorism Act also allowed civil suits against any foreign state, state agency or entity that aided in the commission of a terrorist act. The Act was supported by a series of AML statutes that made 'conducting financial transactions to further or to conceal criminal acts illegal.' For a detailed analysis of the evolution of the CTF framework and of domestic U.S. AML legislation see Anne L. Clunan, 'U.S. and International Responses to Terrorist Financing', in Jeanne K. Giraldo, Harold A. Trikunas (eds.), *Terrorism Financing and State Responses: A Comparative Perspective*, (Stanford, CA: Stanford University Press 2007), Chapter 15.

[463] Quoted in Clunan, 'U.S. and International Responses to Terrorist Financing', p. 278.

[464]Two anecdotal examples of the difficulties faced by Clinton and his aides: in 1999, Treasury lobbied for controls on foreign banks with U.S. accounts and proposed to impose know-your-customer requirements on U.S. banks. The move was met by a 'firestorm of controversy' and resistance from the banking industry that led to the initiative's failure and, paradoxically, to Congress's reconsidering whether to weaken the existing AML provisions then in place. In March 2000, NSC Counter-Terrorism Security Group (CSG)'s Director Richard Clarke, following a recommendation of the independent Bremer Commission on Terrorism, created the Foreign Terrorist Tracking Center (FTATC) within the Treasury Department. The CIA and Treasury, however, could not agree on which agency should commit the resources for its creation and the Centre never saw the light of day. The FTATC was then hastily staffed three days after the 9/11 attacks. See Clunan, 'U.S. and International Responses to Terrorist Financing' and Laura K. Donohue, 'Anti-Terrorist Finance in the United Kingdom and the United States', *Michigan Journal of International Law*, vol. 27, n. 303, 2005-2006.

end of October 2001, Congress passed the 'Uniting and Strengthening America by Providing Appropriate Tools to Restrict, Intercept and Obstruct Terrorism Act' (Patriot Act 2001), which led to a dramatic statutory overhaul of U.S. AML/CTF measures.[465] Title III of the USA Patriot Act criminalises the material provision of support to a terrorist organization. In particular, U.S. domestic financial institutions are mandated with more specific record-keeping obligations than in the past under the Act's Suspicious Activity Reports (SARs) filing requirement, including the collection of information on all cash transactions above 10,000 USD, the beneficial ownership of accounts and the creation of specific AML/CTF programmes.[466]

The country's financial and regulatory institutions, along with offices within the Treasury, State, and Justice Departments, share primary responsibility for the administration of both domestic and multilateral AML/CTF provisions.[467] Within Treasury, in particular, the Office of Terrorism and Financial Intelligence (TFI), established in April 2004, has been given extensive powers to 'marshal[…] the [….] Department's policy, enforcement, regulatory, and intelligence functions' in the AML/CTF field, along with the Office of Terrorist Financing and Financial Crimes (TFFC), which represents the country in the FATF.[468] Another bureau with CTF

[465]The Act marked a 180-degree turn in the administration's policy with respect to the position adopted pre-9/11: the know-your-customer and wire transfer requirements that had been killed by the financial industry in 2000, for example, went into effect with the Patriot Act 2001. See Donohue, 'Anti-Terrorist Finance in the United Kingdom and the United States', p. 370.

[466]Uniting and Strengthening America by Providing Appropriate Tools to Restrict, Intercept and Obstruct Terrorism Act (Patriot Act 2001), 107th Congress Public Law 56; see also Martin A. Weiss, 'Terrorist Financing: U.S. Agency Efforts and Inter-Agency Coordination,' CSR Report for Congress, August 3, 2005. The Intelligence Reform and Terrorism Prevention Act (P.L.108-458) added technical corrections to Title III of the USA PATRIOT Act and required the Treasury Department, *inter alia*, to develop a national money laundering strategy and boost the authority of the Financial Crimes Enforcement Network and the U.S. Government's financial intelligence unit.

[467]After 9/11, a new wave of CTF bureaucratic battles broke out between State, Treasury, the DHS, and the DOJ. See Clunan and Donohue.

[468]The TFFC is joined in the FATF by officials from the State Department's Office of Terrorism Finance and Economic Sanctions Policy. A former Treasury official notes how the U.S. Treasury's TFI was the first of its kind within a finance ministry worldwide. In 2004, with the Patriot Act, the United States was the first country to set up an intelligence unit within a Treasury department. 'At the time no other country had that […]. But now many finance ministries have adapted it worldwide,' Interviewee W, interview with

responsibilities under the TFI is the Office of Foreign Assets Control (OFAC), which administers international and domestic economic and trade sanctions, including listings under both the IEEPA and UNSC Resolution 1267 (1999).[469]

Washington plays a pivotal role in the architecture of the multilateral CTF regime: the Financial Crimes Enforcement Network (FinCEN) – Treasury's main data-collection and analysis bureau– is one of the founding members of the Egmont Group of FIUs, sits on all its five working groups, traditionally chairs the Committee in the person of its Deputy Director, and maintains the Groups Secure Web communication system. The country is a member of the Basel Committee on Banking Supervision, while several of its financial institutions participate in the Wolfsberg Group's development of preventative AML/CTF measures. The U.S. is also a member of the APG and has observer status in the Council of Europe's MONEYVAL, as well as in numerous other FSRBs, such as the Eurasian Group on Money Laundering, and its South American, Eastern and South African equivalents.[470]

5.3.2. Setting the stage: building the international AML regime (1989-1996)

The first country to define ML as a crime in its own right, the U.S. has been equally successful in globalising its AML framework and recasting it, post 9/11, as a global counter-terrorism financing regime. With the offensive against the world drug

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author.

[469] Within State, the Counter-Terrorism Finance and Designation Unit, a division of the Office of the Coordinator for Counter-Terrorism (S/CT), shares responsibilities with the Bureau of Economic and Business Affairs (EB) for the implementation of asset freezes, the delivery of technical assistance to foreign governments and the designation of foreign terrorist organizations and individuals under Presidential Executive Order 13224. State's S/CT and the Bureau of International Narcotics and Law Enforcement Affairs (INL) co-chair the interagency Terrorist Finance Working Group (TFWG), which is in charge of coordinating government efforts along with experts seconded from the Justice Department's money laundering prosecution unit and interagency law enforcement and regulatory members.

[470] The United States has observer status in the African Development Bank, the Asia Development Bank, the European Bank for Reconstruction and Development (EBRD), the IMF, Interpol, and the World Bank.

trade ongoing, Congress began drumming up support for its AML policies in the late 1980s with the passing of a piece of legislation known as the 'Kerry Amendment'.[471] The provision authorised Treasury to negotiate with foreign countries in order to 'export' the BSA reporting requirements – including having foreign banks record cash deposits totalling more than US$10,000 – and allow U.S. authorities access to information on suspicious transactions in the event of narcotics-related investigations. The President could sanction non-compliant financial institutions by denying them access to the U.S. banking system.[472] Bilateral agreements were signed with Venezuela, Peru, Colombia, and Panama, but 'drafting compromises', Treasury's opposition, and the joint fear of retaliation and foreign capital outflows largely killed the initiative's effectiveness domestically.[473]

Internationally, however, the provision's regulatory intent did not lose traction thanks to U.S. negotiators, who increased pressure on the country's closest financial partners and won over the United Kingdom, France, Australia, as well as most OECD countries, to the pro-regulatory camp. As Simmons notes, 'with Europe's eventual support,' the creation of the Financial Action Task Force was announced by the Finance Ministers assembled for the G-7 meeting in the Parisian business district of *La Défense* on July 16, 1989.[474] Under the heading of 'Drug Issues', the economic leaders of the

[471]Section 4702 of the Omnibus Drug Bill (1988), codified at 31 U.S.C. ss. 5311 (1988). See James R. Richards, *Transnational Criminal Organization, Cybercrime, and Money Laundering. A Handbook for Law Enforcement Officials, Auditors, and Financial Investigators*, (Boca Raton, FL: CRC Press LLC 2000), p. 142. Kerry famously stated that financial crime was the 'new communism, the new monolithic threat' of the 1980s. He made cross-border crime control one of his 'signature issues' during the 1980s-1990s. See Peter Andreas, Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations*, (Oxford: Oxford University Press 2006), p. v.

[472]See Beth A. Simmons, 'The International Politics of Harmonization: The Case of Capital Market Regulation', *International Organization*, vol. 55, n. 3, Summer 2001, p. 607; Denisse V. Rudich, 'Performing the Twelve Labors: The G 8's Role in the Fight Against Money Laundering,' *G 8 Governance*, n. 12, May 2005.

[473] Richards, *Transnational Criminal Organization, Cybercrime, and Money Laundering*, p. 142.

[474]In addition to the summit participants, eight additional states were invited to take part in this initiative: Australia, Austria, Belgium, Luxembourg, the Netherlands, Spain, Sweden, and Switzerland. President George H. Bush and DOS Secretary James Baker, accompanied by the Secretary of the Treasury Nicholas F. Brady and by Sherpa Richard T. McCormack, led the U.S. delegation.

seven most industrialised nations agreed to '[c]onvene a financial action task force from Summit participants and other countries interested in these problems.' The new body would be mandated with assessing 'the results of cooperation already undertaken in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering.'[475] France would have the honour of calling the first meeting of the new task force, finalising FATF's first expert report by April 1990. The delegations accepted the invitation of President George H. Bush and State Secretary James Baker to meet the following year in Houston for the next economic summit, thus recognising U.S. leadership in the newly born regime.

In the ensuing months, '[m]ore than one hundred and thirty experts from various ministries, law enforcement authorities, and bank supervisory and regulatory agencies met and worked together,' producing FATF's first report and the annexed *40 Recommendations* on February 6, 1990.[476] The *40 Rs* were endorsed at ministerial level the following May, and submitted to the Houston G-7 summit in July. On that occasion, the task force's mandate was extended for another year, and renewed again in 1991 for an additional five terms. In November, the Council of Europe adopted a new Convention on Anti-Money Laundering and the Search, Seizure and Confiscation of Proceeds of Crime, and invited the United States, Canada, Australia, and Eastern European countries to join. Following the issuing of the task force's forty-point blueprint, FATF membership spread very quickly: eight further OECD countries came onboard in 1991, as well as Hong Kong and the Gulf Cooperation Council.[477] In August 1992, it was announced that the first round of compliance evaluations would be completed by 1995, while the twelve member

[475]G-7 Summit, 'Economic Declaration', Paris, July 14-16 1989, available at: http://www.g8.utoronto.ca/summit/1989paris/communique/index.html.
[476] FATF, 'Financial Action Task Force on Money Laundering: Report of 6 February, 1990', Paris, 1990, p. 4. See also, Willian C. Gilmore, *Dirty Money. The evolution of international measures to counter money laundering and the financing of terrorism*, (Strasbourg: Council of Europe Publishing 2011), p. 90.
[477]The eight OECD countries were: Denmark, Finland, Greece, Ireland, New Zealand, Norway, Portugal, and Turkey.

states of the European Community were required to align their legislation by January 1993. At the body's first mid-term review, in 1993-1994, it was agreed that the task force's lifespan should be extended to 1998-1999.[478] U.S. officials had been 'prominent both at the forefront of these developments and behind the scenes in task force meeting and negotiations.'[479]

Flanked by London, Washington progressively increased pressure on uncooperative jurisdictions, such as India and Pakistan, while EC members focused on tidying up their own backyards.[480] In 1994, the General Accounting Office reported to the House Foreign Affairs Committee that AML efforts were 'not globally instituted and cooperatively enforced' by several countries. Even longstanding U.S. partners, such as Germany, were denying 'U.S. requests to freeze bank accounts containing drug proceeds'.[481] Government agencies stepped up their efforts accordingly. The Board Staff of the Federal Reserve, for example, increased its contribution to the FATF's mission of 'educating countries […] in anti-money laundering and fraud prevention efforts'.[482] FinCEN Director Stanley Morris announced in March 1995 that Ronald K. Noble, the Treasury's Under Secretary for Enforcement, was to be elected to the Presidency of the Task Force the following June. This appointment was meant to signal that, although the nation was fighting an uphill battle against financial crimes, the U.S. position as a 'leader in this effort ha[d] never been more prominent and respected, not only within [its]

[478] Gilmore, *Dirty Money*.
[479] *Policing the Globe*, p. 149.
[480]Many EC member states, such as Germany and Spain, missed the January 1993 deadline. In the UK and Luxembourg heated debates developed concerning the impact of the new money laundering laws and what provisions the laws under consideration should contain. See 'Record Number of Nations Battle Laundering, U.S. Says', *Money Laundering Alert International*, vol. 4, n. 8, 1 May 1993; 'Spain Enacts Laundering Law to Meet Terms of UN Pact', *Money Laundering Alert International*, vol. 4, n. 5, 1 February 1993; 'Practical Problems Emerge with New Money-Laundering Law', *The Financial Times*, 17 October 1994.
[481]'International Effort Plagued by Inconsistencies, Says GAO', *Money Laundering Alert International*, vol. 5, n. 4.
[482] 'Statement by Edward W. Kelley, Jr., Member, Board of Governors of the Federal Reserve System. (to House Committee on Banking and Financial Services, February 28, 1996)', *Federal Reserve Bulletin*, Vol. 82, No. 4, 1 April 1996.

borders, but throughout the world.'[483]

In October 1995, President Clinton reiterated these views from the floor of the UN General Assembly, when he launched an even stauncher offensive against organized crime and money laundering. Before the leaders assembled for the UN's 50th anniversary, Clinton answered GA President Freitas do Amaral's call to '"decide the [future] destiny of the United Nations" and to consider "what [was] to be done?"' by calling neither for the reform of SC membership nor for a solution to world poverty, but for an international crime control programme aligned with U.S. regulatory standards.[484] In line with U.S. domestic legislative developments, such a programme would need to address the interconnectedness between groups that traffic in 'terror, organized crime, drug smuggling,' and the spread of WMDs. Thus the connection between AML and CTF efforts had received the presidential seal in a multilateral setting.[485]

Clinton also warned that should member states refuse to align themselves with the U.S. agenda, the administration would 'consider appropriate sanctions.'[486] Only a day before his UN speech, the President had signed Presidential Decision Directive (PDD) 42, labelling the U.S. war on crime a national security issue and instructing all federal agencies to intensify their efforts to fight this negative by-product of globalisation.[487] Receiving bipartisan support at home, U.S. initiatives tied compliance to specific

[483]'Stanley E. Morris answers about government's dedication to ending money laundering', *The Washington Times*, 14 March 1995.
[484]Introductory Remarks by Freitas do Amaral (Portugal) at the UN General Assembly 50th Session, October 22, 1195, UN Doc. A/50/PV. 35 1.
[485] Remarks by William J. Clinton, President of the United States of America, at the United Nations General Assembly 50th Session in Commemoration of the 50th Anniversary of the United Nations, October 22, 1995, UN. Doc. A/50/PV.35 4-5.
[486]Remarks by William J. Clinton. See also, Allegra M. McLeod, 'Exporting U.S. Criminal Justice: Crime, Development, and Empire After the Cold War,' PhD Dissertation, Stanford University, September 2008, Introduction; The White House, Office of the Press Secretary, 'Press Briefing by Robert Gelbard, Assistant Secretary of State for International Narcotics Matters; Richard Newcombe, Assistant Secretary of the Treasury, Office of Foreign Assets Control; George War, Acting Assistant Secretary of State for International Organizations; and Richard Clarke, Senior Director, Global and Multinational Affairs, NSC', The Warwick Hotel, New York, 22 October 1995.
[487] PDD 42, i.e. 'Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers', was one of the sanctioning tools signed under the IEEPA.

financial incentives and explicitly relied on a policy of 'export' of U.S. criminal justice practices and priorities via police officers, prosecutors, development aid workers, and the recently established International Law Enforcement Academies (ILEA).[488]

Treasury duly followed suit within the FATF and began to advocate an update to the *40 Recommendations* in line with the White House's new policy guidelines. The administration was urging members to broaden the range of offenses for AML prosecutions, focusing on shell corporations, promoting special efforts to fight high-tech laundering attempts, and expanding the range of ML-related predicate offenses.[489] With the 1990 FATF report, a conscious decision had been made 'not to amend the Recommendations before the completion of the first round of mutual evaluations,' so that members could all be assessed against the same standards. Until the end of the first round of peer reviews, in 1995, members had therefore adopted 'interpretative notes' to the original recommendations, without changing their scope and substance. Instead, a substantial stocktaking exercise was conducted under U.S. chairmanship during FATF's seventh round (FATF-VII, 1995-1996), leading to a significant update to the original *40 Rs*, which were unveiled in June 1996.[490] Addressing the body's 26 members just a week before the new recommendations were adopted, the Deputy Treasury Secretary Lawrence Summers voiced the Clinton administration's priorities on the outcome of the review process. He reminded members that the new provisions 'should take into account

[488]The first ILEA became operational in Budapest in 1995, with funds from the U.S. State Department. Additional schools were opened in Thailand, Botswana, El Salvador, Peru, and New Mexico. The ILEA's Budapest curriculum consisted in an eight-week course offering instruction, *inter alia*, in counter-terrorism, corruption, money laundering, narcotics, counterfeit investigations, organized crime, community policing, human rights, and nuclear smuggling. The ILEA Programme clashed with the activities of the Justice Department's Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT) over the provision of technical assistance to overseas partners. Since 1991, OPDAT's mission had been, in fact, to train foreign justice sectors in the fight against transnational organized crime. During her term in office, Condoleezza Rice facilitated the opening of ILEA in Latin America. See McLeod, 'Exporting U.S. Criminal Justice', chapter 1.

[489]'US, allies urge greater effort to fight money-laundering', *Agence France-Presse*, 28 June 1996.

[490]A questionnaire was sent to all members on nine points on matters of substance that necessitated either the changing of the Recommendations or the introduction of new ones. See FATF, *Annual Report 1995-1996*, 28 June 1996, available at: http://www.fatf-gafi.org/media/fatf/documents/reports/1995%201996%20ENG.pdf.

technology innovations and the need to expand activities beyond the laundering of illicit drug money.' Summers also restated the administration's position that 'concerted action to increase vigilance against money laundering [was] a foreign policy priority for the United States, given that '[t]here will never be enough policemen in the all [*sic*.] world...to track down all the transactions of money laundering.' What countries needed, in his opinion, was 'a culture of compliance.'[491]

Washington devoted the following four years to fostering the development of this culture of compliance abroad, while having to focus at the same time on its domestic AML framework in response to the critiques that the Task Force's experts made in the first Mutual Evaluation Report for the United States. The country's AML efforts were overall rated as 'generally commendable' but U.S. authorities were 'taken to task' for some longstanding lapses in their controls, whereas London's AML framework was praised as 'model legislation'.[492] Overall, the peer-review mechanism spotted 'over fifty' issues in the country's implementation of FATF's AML provisions.[493] To name just a few, U.S. non-bank financial institutions (NBFIs) were not uniformly subject to the full range of anti-money laundering requirements, 'particularly the new SAR system'; the number of foreign crime predicate offenses to which the U.S. laundering laws applied was insufficient, due to the 'reluctance of U.S. enforcement agencies to use optimally suspicious activity reports to instigate investigations'; and government agencies did not provide enough feedback to 'financial institutions on [the] suspicious activity reports

[491]'Summers Urges "Widening" Of Anti-Money Laundering Efforts', *Dow Jones News Service*, 25 June 1996; Department of the Treasury, 'Financial Action Task Force Plenary Session, Lawrence H. Summers, Deputy Secretary, United States Treasury, 25 June 1996', *FDCH Regulatory Intelligence Database*, 25 June 1996.
[492]'FATF: U.S. Should Regulate Insurance, Securities Sector ASAP', *Money Laundering Alert International*, vol. 8, n. 11, 1 August 1997; Richard Thomas, 'Clarke Urges Action Against Dirty Money', *The Guardian*, 27 September 1996.
[493]Nicholas Ryder, *Money Laundering: an endless cycle?: a comparative analysis of the anti-money laundering policies in the United States of America, the United Kingdom, Australia and Canada,* Abingdon: Routledge 2012), p. 44.

filed'.[494]

The less than perfect marks on the report card of the global AML regime's fiercest advocate were not devoid of consequences. Critiques, both domestic and foreign, began to pour over the country's performance in a game that it had itself initiated, accusing Washington of thwarting the effectiveness of the new *40 Rs* with its lack 'of will[ingness] to crack down on money launderers for economic and political reasons'. Detractors went so far as to claim that the United States was the 'main (economic) beneficiary from illicit cash flows,' given its tendency to 'put economic and political concerns before law enforcement,' and its dependency on an erroneous 'perception of [its own] stability and probity in finance.'[495] The backlash over the outcome of the peer-review exercise did not stop at the financial sector, but spilled over into the political arena. Debates arose over FATF's reform and effectiveness, the impact of the *40 Rs* on the U.S. banking system's ability to attract clients – should the confidentiality clause be forsaken and investors' confidence in the U.S. bond market be shaken. Diplomatic frictions developed with Mexico, Russia and Israel, the uncooperative countries that FATF's President Noble had dubbed the 'G-3 of money launders'. These clashes were made more complex by the existing political and economic ties between the countries. The debates created deep fissures, often putting representatives of different domestic regulatory agencies in opposite factions.[496]

On the multilateral front, the U.S. was beginning to have a taste of its own medicine once it did not graduate with flying colours from the Task Force's peer review mechanism. The impetus Washington had provided had given momentum to the AML regime at its inception but, as Andreas and Nadelmann point out, by the mid-1990s the

[494]'FATF: U.S. Should Regulate Insurance'.
[495]Peter Zirnite, 'U.S.-Finance: Anti-Money Laundering Efforts Weak Critics Say', *Inter Press Service*, 28 June 1996.
[496]Peter Zirnite, 'U.S.-Finance.'

system built around the Task Force and its guidelines had, in line with institutionalist and constructivists predictions, very much taken on 'a life of its own'.[497] Not unlike other U.S.-driven international initiatives anchored in multilateral bodies, the regulatory genie had escaped from its lamp. Shortly after President Clinton's speech at the UN, the United States had opposed a global UN convention against ML, as it would later oppose all non-UNSC led efforts in CTF or counter-terrorism more generally. This, to the point of even losing interest in the activities of its pet project, the CTC, once the system had been 'contaminated' with human rights concerns, a process that was detailed in Chapter Four of this thesis.[498]

To the DOS, FATF was at that point a smaller, more malleable and cost-effective enterprise, where political and economic bargaining could take place on an ideal launch platform for the export of U.S. criminal justice legislation. In the six years since they had been adopted, the guidelines had, however, metamorphosed into a *corpus* of provisions that were 'far more ambitious' than had been originally intended. What followed was a slow and progressive erosion of the regime setter's ability to direct the organization's development, while being subject, nonetheless, to the regime's equalising and amplifying influences at the very moment the *40 Rs* started taking on the characteristics of 'soft law'.[499] To this end, it is interesting to note how this process does not fully reconcile with Abbott and Snidal's analysis of the baseline rationale for the creation of different types of legalised arrangements, and in particular soft obligations. In the case of the FATF, it would almost appear as if Washington had welcomed the flexibility of the provisions as a

[497]Andreas, Nadelmann, *Policing the Globe*, p. 52.
[498]Clunan confirms this view when she argues about the lack of U.S. leadership in the global CTF regime post 9/11. This lack of interest would sound surprising unless one read it in the context of the relative loss of control over the AML/CTF regime on the part of the United States. See Clunan, 'U.S. and International Responses to Terrorist Financing.' This interpretation is equally supported by senior UK officials' views on the process. Interviewee S, interview with author; Interviewee G, interview with author (both formerly at the UK Mission at the UN).
[499]Andreas, Nadelmann, *Policing the Globe*, p. 52; Michael Hodges, John Kirton, Joseph P. Daniels (eds.), *The G8's Role in the New Millennium*, (Aldershot: Ashgate 1999), p.5. Refer to section 5 of this Chapter for an analysis of the application of the concept of 'soft law' to FATF's regulations.

means to export its criminal justice legislation, but not their inherent and independent 'power' to induce conforming effects beyond what had been expected of and intended for them. Evidence of this somewhat contradictory stance on the part of the regime setter – a push for legalisation to elicit compliance and a resistance to the norms taking on independent homogeneity-inducing power – is found in the U.S. (and the UK) negotiating positions vis-à-vis the reform of the recommendations, especially with respect to the 2012 amendments. It is the opinion of other delegations – especially from civil law jurisdictions – that the results-driven perspective championed by the United States and Britain, and adopted by the FATF, masked behind a call for flexibility a certain lack of rigour and comprehensiveness in their legislative frameworks. This is not to say that the two jurisdictions don't achieve their regulatory goals, but that they do so by privileging the end over the means.[500]

Certainly, the stigma of being blacklisted would inflict a much more immediate stain on a country's image *and* reputation than the milder remarks jurisdictions such as Washington and London could ever receive. Nevertheless, even largely compliant countries, as shown in section Two of this chapter, have been 'stung' by the criticism, by virtue of the expectations that the financial community had for them and that they had for themselves.[501] As with the human rights reform of the 1267 regime, U.S. AML actions came to be scrutinised under a magnifying glass because of the dominant U.S. position in the international financial system – that same position that had enabled Washington to initiate regime-building efforts in the first place. From then on, one could discern the signs of a trend that would continue well into the next decade. The U.S. would support

[500]Kenneth W. Abbott, Duncan Snidal, 'Hard and Soft Law in International Governance', *International Organization*, vol. 54, 2000, pp. 421-456; Interviewee X, Senior Official, Italian Finance Ministry, interview with author, September 6, 2013.

[501]In the course of 1998, for example, fingers were being pointed at Canada for its reputation as 'crime's favourite cash cleaner'. See Peter Kuitenbrouwer, 'Banks and police each blame the other for Canada's continuing reputation as crime's favorite cash cleaner', *The Financial Post*, 22 August 1998.

CTF regime-setting efforts, albeit with an attention span that would 'wax and wane' after each terrorist attack. In the meantime, the regime itself would grow, consolidate and gain momentum enough to display some policy-altering effects on the regime-setter's behaviour, by virtue of its unique power to embarrass members into compliance.

5.3.3. Building the international CTF regime (1996-2001)

Beginning in June 1996, a series of large-scale terrorist attacks hit the United States both at home and abroad. In June, a complex that housed U.S. Air Force Personnel was targeted by a truck bomb in the Saudi Arabian city of Khobar, killing nineteen U.S. servicemen and 498 civilians of multiple nationalities. In August 1998, truck bombings were launched against the U.S. embassies in Dar es Salaam and Nairobi, killing 223 people and wounding 4,025. Two years later, in October 2000, a suicide attack was directed against the U.S.S. destroyer Cole, at harbour in the Yemeni port of Aden, killing seventeen sailors and injuring thirty-nine. The Clinton administration stepped up its intelligence collection efforts and responded with surgical strikes. On the financial front, the attention shifted to the provision of funds to terrorist organizations and the connection with ML techniques. Clinton had made the link explicit in his 1995 speech and U.S. national security stakeholders had tried to respond to his call for coordinated action, albeit clumsily, as shown by the critiques of the 9/11 commissioners illustrated before.

The asset-freezing powers granted by the IEEPA, whose full deployment in the late 1990s marked the heydays of the smart sanctions era, were paired with a renewed impetus on the multilateral front. The U.S. was behind France's sponsorship of the 1999 UN CTF Convention, supporting the Quai d'Orsay in its move to delay the negotiations of the Comprehensive Convention on the agenda of the General Assembly's *Ad Hoc*

Committee on Terrorism, in order to give precedence to an instrument that would finally address fund-raising for terrorist purposes.[502] In the course of the negotiations, which began officially in December 1998 and lasted until the following December – when the treaty was adopted by the Assembly's Plenary and opened for signature – the U.S. backed France's more rigorous stance on a series of substantial matters, such as the definition of the scope of the 'wrongful act' to be criminalised and client identification.[503] Negotiators equally tapped into FATF's resources and expertise, whose potential had already been recognised in 1998 by the G-7/8 finance ministers bent on fighting international tax evasion. AML and CTF experts from the major industrialised nations met in London in December 1998 to brainstorm on ways to fight terrorist funding and proposed amendments to the draft of the CTF Convention. Justice ministers also met to discuss the matter on December 15, reflecting the group's – whose membership had now expanded to include Russia – involvement with the issue.

The Ministerial meetings held during the G-8's Sixth Summit Series (1998-2001) endorsed FATF's initiative to build a global AML network via FSRBs to support the regulatory efforts of less developed countries, whose lack of compliance was one of

[502]France asked that the negotiations on the CTF Convention be given priority over every other instrument. According to a package deal adopted by the Terrorism *Ad Hoc* Committee of the General Assembly in 1996, however, precedence should have been given, in order, to the Bombings Convention, the Nuclear Convention and the Comprehensive Convention. France's request delayed negotiations over the thorny issue of adopting a universal definition of terrorism at the basis of the Comprehensive Convention. The move was favoured by Washington, but naturally met the opposition of India, the main sponsor of the Comprehensive Convention, and of its non-aligned partners. See Carlos Fernando Díaz-Panigua, 'Negotiating Terrorism: The Negotiation Dynamics of Four UN Counter-Terrorism Treaties 1997 2005', vol. 2, Dissertation submitted to the Graduate Faculty in Political Science in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York, 2008.

[503]The United States was in favour of criminalising not just the origin of the funds but also their 'destination'. Its position did not hold, but it was later taken up again, this time successfully, during negotiations for the FATF's *Special Recommendations* against Terrorism Financing in September/October 2001. Both the United States and France called for a stricter definition of client identification requirements on anonymous accounts than the text adopted in the FATF's 1996 provisions. An alternative, softer draft, more in line with FATF's existing requirements, was proposed by Australia. Negotiators settled on a compromise solution. The U.S. implemented the CTF Convention with the Implementation Act of 2002, hastily introduced in the House of Representatives in November 2001, after the 9/11 attacks. On the Terrorism Financing Convention see Carlos Fernando Díaz-Panigua, 'Negotiating Terrorism'. On the implementation of the CTF Convention in the United States see 'H.R. 3275 (107*th*): Suppression of the Financing of Terrorism Convention Implementation Act of 2002. Pub. L. 107-197', available at: http://www.govtrack.us/congress/bills/107/hr3275.

Washington's most pressing and longstanding concerns. Jurisdictions as diverse as Guatemala, Antigua, Hungary, Luxembourg, Austria, and Russia, which was struggling in the midst of a financial meltdown, caught the regulators' eye, prompting more rigorous enforcement on the part of the international AML watchdogs. At the Birmingham Summit, in 1998, ministers agreed to establish financial intelligence units in their respective jurisdictions and promote their global diffusion. At the Köln Summit, in 1999, they committed to deepening cooperation on law enforcement and AML, and welcomed the new FATF's strategy to 'name and shame' uncooperative countries, *de facto* granting global AML enforcement privileges to the Task Force and its feared List of non-compliant international financial pariahs.[504] By the Genoa Summit of July 2001, the last of the pre-9/11 era, significant progress had been achieved on the international AML front. Four jurisdictions were removed from the NCCTs and regulators began considering provisions regarding international wire transfer originator identification and beneficial ownership information, as suggested by the Summit's Rome Report.[505] The stage was set for the transformation of the AML regime into a CTF framework.

Rudich notes that after the September 11 attacks ML 'emerged as both foe and ally', a target and a tool, in the U.S.-led war on terrorism.[506] The regime built around the Task Force's recommendations underwent a significant normalisation process, collapsing anti-money laundering, antiterrorist finance, and anti-organised crime efforts into one

[504]Nicholas Bayne, *Hanging in There: The G7 and G8 Summits in Maturity and Renewal*, (Ashgate: Aldershot 2000). The NCCT initiative received its formal *imprimatur* in June 2000, when it was reviewed in the Fukuoka Report on 'Actions Against Abuse of the Global Financial System', a technical document issued just before the 2000 G-8 Okinawa Summit. On that occasion, U.S. Treasury Secretary Summers noted that the country had improved its internal legislation by 'following on the heels of the FATF [Fukuyama] report, [and by] announcing the issuance of coordinated bank advisories to [U.S.] domestic financial institutions and call[ing] on these institutions to apply enhanced scrutiny to transactions involving the 15 jurisdictions that have not been cooperative in the international fight against money laundering'. Summers, quoted in Department of the Treasury, Statement by the Treasury Secretary Lawrence Summers at the G-7 Press Conference', *FDCH Regulatory Intelligence Database,* 8 July 2000.
[505]Rome Report, 2001 G-8 meeting, 'Fighting the Abuses of the Global Financial System'. See Rudich, 'Performing the Twelve Labors', p. 13.
[506] *Ibid.*

regulatory stream.[507] As in 1989, the U.S exercised leadership in alignment with the United Kingdom to recast the AML regime in the direction it wanted, although its position was somewhat murkier than it had been twelve years before. With the change in administration, Paul O' Neill succeeded Summers at the head of the Treasury Department, taking over at a moment when, by admission of current Under-Secretary Cohen, the process of re-orientation of the Department's efforts toward CTF had not really yet 'taken hold.'[508] Summers had attempted to instil new life into the process of internationalisation of U.S. AML efforts and had supported NCS counter-terrorism czar Richard Clarke's decision to create a Foreign Terrorist Tracking Centre within the Treasury Department. Congress released the Centre's funding in October 2000, but then the initiative was temporarily put on hold with the change in the administration. The Centre was resurrected by NSC advisor Condoleezza Rice in early 2001, and finally killed by O'Neill before the 9/11 attacks, only to resurface again in a hastily staffed form on September 14, 2001.[509]

The previous August, Secretary O'Neill had announced that the administration had plans to ease the country's regulatory push, and rely instead on bilateral cooperation and sanctions.[510] The move had not been a welcome one in the multilateral AML/CTF community, so that 9/11 paradoxically brought European allies renewed hopes that Washington would once again come to appreciate the FAFT's work, now that the U.S.

[507]Several critics however argue that it is debatable whether fighting terrorism financing with AML methods yields effective results. See, for example, Simmons, 'The International Politics of Harmonization', p. 380.
[508]CSIS, 'Transcript of the Discussion with David S. Cohen, Undersecretary for Terrorism and Financial Intelligence, Department of the Treasury on The Treasury's Role in National Security', Washington, D.C., May 10, 2012.
[509]Taken over by OFAC shortly after 9/11, the bureau was then relocated to the CIA, where it never became fully operational. See Clunan, 'U.S. and International Responses to Terrorist Financing'.
[510]The Republican administration was allegedly under the sway of a group of small bankers and conservatives. O'Neill was even reported as saying that he 'was starting to question the wisdom of spending $700m annually to combat money laundering' only two months before President Bush signed the Patriot Act into force, on October 26, 2001. Christopher Swann, 'Minds concentrated on the problem – Money Laundering', *The Financial Times*, 30 November 2001.

government was on the brink of a financial war on terror.[511] Backing for the administration's *volte face* came from Britain's Chancellor Gordon Brown, who announced on September 26 that the U.K. would follow America's lead and go down the smart sanctions path, beginning to freeze assets of suspected terrorist groups.[512] In the U.S., OFAC had just blocked all U.S.-based assets of Bin-Laden and his associates, as well as those of eleven organizations and three charities allegedly linked with terrorists.[513] The government had enlisted the support of the G-8 finance ministers and, in an attempt to leave no stone unturned, was exploring the benefit of the multilateral option, with parallel plans to involve the United Nations and the FATF.

On the first front, it was left to Britain to propose a sweeping UN instrument with quasi-legal effects – UNSC Resolution 1373, the cornerstone of the UN counter-terrorism regime and the first and last unopposed attempt at legislating made by the Security Council. On the second front, O Neill's Treasury Department jumped onboard an idea first floated by French Finance Minister Laurent Fabius, and began to look at the FATF with different eyes. The regime built around the Task Force now seemed 'uniquely placed' to internationalise the administration's two-pronged approach to the issue of terrorist financing – regulatory measures as the standard, sanctions as the teeth– and curb fund-raising for terrorist groups. Treasury was envisioning an expansion of the body's remit to bring the provisions of funds for the purpose of terrorism under the umbrella of the *40 Recommendations*, finally addressing the issue of the destination of the activities

[511]At that time, Reuters noted that France had worked closely with the Clinton administration on broadening efforts against ML and tax havens, but that 'the push [had] ran into trouble when Republican President George W. Bush and Treasury Secretary Paul O'Neill took over.' O'Neill, in particular, had challenged 'separate efforts by the Organization for Economic Cooperation and Development to crack down on tax havens.' European leaders, especially France's Prime Minister Lionel Jospin and Finance Minister Laurent Fabius, were far from pleased. See Brian Love, 'G7 to flesh out terror cash plan', *Reuters News*, 5 October 2001.

[512]Britain's move against terrorist assets was shortly followed by France's and by the European Union's. Joe Ortiz, 'U.S. faces tough battle to freeze "terror funds"', *Reuters News*, 25 September 2001.

[513]The three charities were the Wafa Humanitarian Organization, Al Rashid Trust and Makhtab Al-Khidamat/Al Kifah. They were not listed as tax-exempt entities in the United States.

sanctioned by the UN CTF Convention. It was a belated victory for U.S. negotiators, who back in 1999 had lost the argument in the General Assembly's 6th Committee to the less rigorous camp led by Australia.

Treasury's Undersecretary for Enforcement, Jimmy Gurule, unveiled before the Senate Banking Committee the administration's plans for enlisting the World Bank and the IMF in the anti-terrorism financing campaign. Specifically 'the U.S. and the G7 [would] ask that the FATF's 40 major anti-money laundering recommendations be incorporated into [these] institutions' work with developing nations and that the World Bank and IMF set up a way to monitor countries' compliance with anti-money laundering,' thus establishing a comprehensive system to assess the status and performance of a country's AML regime.[514] Working in tandem with the U.S. administration, Brown called for an emergency meeting of the FATF at the end of October, while the finance ministers of the most industrialised countries, led by O'Neill, unveiled an Action Plan to Combat Terrorist Financing that relied heavily on FATF's soon-to-be expanded mandate.[515]

The special session convened in Washington, D.C., on October 29-30. A week beforehand, Gurule met with the Task Force's authorities to ensure that the proposals, presented by the United Kingdom, would satisfy U.S. preferences and include means to deal with the *hawala* system.[516] As Donohue notes, the standards tabled by the United States and issued as the new *Eight Special Recommendations* by the Task Force were

[514]'Treasury seeking curbs on terror fundraising abroad', *Reuters News*, 26 September 2001.
[515]Charlotte Denny, 'G7 approves plan to choke terror funds', *The Guardian*, 26 September 2001; The Associated Press, Finance Ministers Statement,' *Associated Press Newswires*, 6 October 2001; 'Full text of G-7 Action Plan to combat terrorist financing', *Kyodo News*, 7 October 2001.
[516]According to Zarate, hawalas are: '"non-traditional" value transfer system[s], which do[…] not rely on the physical movement of money in order to transfer value across borders between trusted hawaladars (or brokers). Instead, transactions are conducted between trusted networks or brokers in a manner that allows the fluid delivery of cash or valued goods to remote parts of the world, which are often not yet accessed by the banking system.' These systems are normally used for the remittance of immigrant wages. See 'Treasury Official Testifies on Terrorist Financing, Financial Crimes, Before House Sub-Committee on Oversight and Investigations', *US Fed News*, 14 February 2005; 'Treasury's Gurule-FATF meet to look at "hawala"', *Reuters News*, 22 October 2001.

very much aligned with the strategy outlined in the Patriot Act, which had just passed in the House of Representatives and was on its way to the Senate: 'strengthening the regulatory regime, more closely supervising Alternative Remittance Systems (ARS) and charities, as well as cash couriers, and improving international cooperation and information-sharing.'[517] These four points read as the Decalogue of the administration's CTF strategy for the ensuing seven years.

5.3.4. Participation in the global counter-terrorist financing regime

Combining a policy of internal oversight, investigations, private sector outreach, international cooperation, some internal soul-searching, and occasional public displays of *mea culpa*, U.S. authorities directed their post-9/11 efforts in four main directions: campaigning to strengthen the eight provisions adopted in October 2001; exercising pressure on non-cooperative jurisdictions to align with the Task Force's standards; beefing up global enforcement capabilities by lobbying for enhanced coordination between the FATF and the main international financial institutions; and improving their implementation record at home as well as defending it abroad.

Treasury made use of the bi-annual meetings of G-8 finance ministers to engage with its counterparts. On its agenda was the expansion of the regulatory oversight to previously unregulated or unsatisfactorily regulated sectors, such as charities, *hawalas*, cash couriers, ML through Internet financing services and e-money, as well as WMD proliferation, which was added to the list of CTF priorities in 2006.[518] Along with cash couriers, charities and ARS were one of the primary sources of concern for U.S. officials

[517] Donohue, 'Anti-Terrorist Finance in the United Kingdom and the United States', p. 386.
[518] In 2006, President Bush placed a budget request to give priority to funding Treasury's initiatives against the proliferation of weapons of mass destruction along with the Department's ongoing efforts to detect and disrupt terrorist financing.

involved with the negotiations of the *8 SRs* immediately after the September 11 attacks. These two issues remained at the top of Washington's agenda even after the recommendations were adopted, as more and more intelligence reports poured in pointing toward these two methods of moving money as Al Qaeda's new way of responding to an increasingly inhospitable environment for its financial transactions.

A sensitive issue, the regulatory push toward charities and alternative remittance systems was complicated by the fact that members of the FATF could not agree 'even on what a charity' was, and tended to think their own regulatory systems were best. 'Britain believe[d] its Charity Commission superior to anything in America, where charities [were] overseen chiefly for tax purposes, [while a]n American official boast[ed] to *The Economist* that the U.S. were ''light years ahead of the rest of the G7''.[519] Specifically, U.S. officials advanced a different view of which organizations charities could support, primarily with reference to their position toward the political branch of Hamas and Hezbollah, which were regarded by Washington – but not yet by Britain and some of its European partners – as terrorist organizations.

In October 2001, when FATF's CTF recommendations were first published, the body accepted that 'jurisdictions may be restricted in their ability to regulate religious activity.'[520] The U.S. contributed to changing that attitude, but at a price. After a long brainstorming exercise that began in January 2002, the body issued international best practices to combat the abuse of non-profit organizations the following October, one month before the U.S. Treasury released its voluntary 'Anti-Terrorist Financing Guidelines for Charities'.[521] When an updated version of the recommendations came out

[519] 'The Iceberg Beneath the Charity', *The Economist*, March 13, 2003.
[520] *Ibid.*
[521] U.S. Department of Treasury, 'Anti-Terrorist Financing Guidelines: Voluntary Best Practices for US-based Charities', November 2002. The guidelines were revised in December 2005 and September 2006. At the federal level, oversight and transparency of the charitable sector is a primary concern of the Tax Exempt and Government Entities Operating Division (TEGE) of the Internal Revenue Service (IRS).

in July 2003, Treasury still pushed to tighten 'the noose further'.[522] FATF's experts duly complied and through the Working Group on Terrorism Financing compiled a list of case studies on how to regulate the non-profit sector and faith-based groups, 'to improve member countries' understanding of their charitable sectors and to identify existing strengths and weaknesses'. A report was issued in February 2004 that called on members to re-examine their regulations. The document, 'stopped short of naming states where protection accorded to religious organizations [could] hamper the detection or investigation of financial crime', but it was well-known that 'the United States and France [were] among countries where the constitutional separation of church and state limit[ed] control over places of worship and religious groups.'[523] An *addendum* to the *SR* dealing with charities was finally adopted in February 2006, in the form of an *Interpretative Note* to *Special Recommendation VIII*; charities and ARS, however, remained a contentious item on the U.S.'s and FATF's respective agendas long after that date.[524]

Cash couriers became the subject of FATF's Ninth, and last, Special CTF Recommendation, adopted in October 2004. Here, U.S. negotiators encountered fewer difficulties in promoting their position, but more in applying enforcement pressure to help ensure compliance. The issue was discussed at length at the G-8 meeting of finance ministers in April 2004, and was included in the framework of the June 2004 U.S.-EU Dromoland Summit Declaration on Combating Terrorism. Treasury devoted serious efforts in the course of the following two years to enforcing cash declaration regulations for travellers, namely making it one of the top priorities in a series of roundtables and workshops organized with its EU counterparts. In June 2005, in particular, Washington

[522] '2005 International Narcotics Control Strategy Report', *US Fed News*, 4 March 2005.
[523]Laurence Frost, 'Global task force urges governments to tighten controls on religious charities', *The Associated Press*, 28 February 2004.
[524]FATF, *Combating the Abuse of Non-Profit Organizations: International Best Practices*, October 2002; FATF, *Interpretative Note to Special Recommendation VIII: Non-Profit Organizations*, February 2006.

published a list of 'red flag indicators to aid border control authorities in detecting cash couriers', and committed to providing training 'on using the list through bilateral and multilateral workshops.'[525]

On the enforcement side, Treasury, State and Justice worked 'hand in glove' with U.S. diplomatic missions overseas to drill into host governments 'the importance of FATF criteria.'[526] U.S. officials discussed the AML/CTF standards with foreign finance ministries and central banks in the Middle East, North Africa, Central Asia, and Eastern Europe. In June 2002, FATF defined its sanctioning process for uncooperative countries and the United States stepped up its pressure on jurisdictions on the Task Force's black list. Russia, Israel, Lebanon, Saudi Arabia, Yemen, Bahrain, numerous Central American and Caribbean countries, as well as the Ukraine and Iran, to name but a few, came under the Departments' radar, where promises of inducements for joining the Special Recommendations' elite club of followers were accompanied with threats of domestic and international sanctions.[527] Treasury's staff even enlisted the private sector in its international enforcement campaign, establishing a 'Buddy Bank' initiative in which U.S. banks mentored other institutions to foster a 'culture of compliance'.[528]

Another key scheme involved the IMF and the World Bank. Post 9/11, Treasury drew up plans to tap their expertise and resources to assess countries' levels of compliance, prompting the two institutions to supplement their own operational assessments with FATF's AML/CTF standards. In particular, the IMF was requested to add AML/CTF to its list of conditionalities. The respective Boards of Governors, along

[525]'U.S.-EU Declaration on Fighting Terrorism', *US Fed News*, 26 June 2004; 'U.S.-EU Cooperation on Counter-Terrorism', 17 February 2005.
[526]'Assistant Secretary for Economic and Business Affairs Speaks on State Department Role in Combating Financing of Terrorism', *US Fed News*, 4 April 2006.
[527]According to the 2005 Narcotics Report, only three countries remained on the FATF's blacklist by 2005, down from an original 23 countries in 2000. Guatemala, Egypt and Ukraine were removed in 2004; Indonesia, the Philippines, and the Cook Islands were removed in 2005.
[528]'Testimony of Juan Carlos Zarate, Assistant Secretary Terrorist Financing and Financial Crimes, U.S. Department of the Treasury, Before the House Financial Services Committee Subcommittee on Oversight and Investigations,' *US Fed News*, 16 February 2005.

with some member governments, were not pleased with the proposal, feeling that it was outside the body's remit, pushing them to operate in issue-areas better handled by law enforcement agencies. The IMF board had agreed in April 2001 that it would monitor compliance with AML standards only if there were macroeconomic implications for the countries involved, and now resisted another expansion of its duties to CTF. The Governors felt that the Fund's contribution could 'complement' FATF's undertakings, but that this body should remain 'in the lead in setting standards in [the AML/CTF] area.'[529]

The institutions' governing bodies mulled over the issue for close to nine months, and finally agreed to set up a conditional twelve-month Pilot Program to 'use the 48 recommendations […] as standards for assessing an individual country's progress […]. Some assessments would be done by the FATF and similar organizations, while others would be done by staff from IMF or the World Bank.' Executive board members, solicited by the U.S. representative, requested that the FATF suspend its blacklisting procedures for the following twelve months, while formally endorsing the programme. The directors also preferred that 'reports on observance associated with FATF-led assessments not be designated (Reports on the Observance of Standards and Codes, ROSCs) unless the FATF undertook a blanket commitment not to undertake any further country assessments without the consent of the country, and acknowledge that it would accept the results of any Fund/Bank-led assessments.'[530] This time interval was meant to give the two institutions leeway to adapt their legislative frameworks, but to some 'unidentified Board members' it felt as if a death sentence was hanging over the future of the FATF. According to Eduardo Aninat, IMF deputy managing director, the blacklist

[529]AFP, 'IMF prepared to help fight terror financing but will not be law enforcers', 16 November 2001; 'Communiqué of the International Monetary and Financial Committee of the Board of Governors of the International Monetary Fund', *M2 Presswire*, 19 November 2001.
[530]Jonathan Nicholson, 'IMF plan would freeze global money launder list', *Reuters News*, 8 August 2002.

would be 'superseded' for 'a universal, co-operative approach.' Seeing some merits in this reasoning, Patrick Moulette, executive secretary of the FATF, retorted, however, that the blacklist effort had been 'extremely productive [, prompting] countries to pass legislation to rectify their deficiencies.'[531]

In its October 2002 Plenary, the Task Force acquiesced to the IMF/Bank proposal and formally endorsed the methodology developed by the two financial bodies. About a month later, however, the Governors took a step back, announcing that they would undertake FATF's ROSCs using the common assessment methodology they had developed, but leaving the most powerful compliance-inducing tool created by the Paris-based body, the Mutual Evaluation Reports, to its rightful owner. When in March 2004 the Pilot Program ended, 41 countries had been evaluated, including 33 assessments conducted by Bank and Fund experts. The Bank and Fund announced that each planned to carry out ten money laundering and terrorist financing assessments per year as part of their joint Financial Sector Assessment Program (FSAP), which would take on a supporting role with respect to the FATF.[532] The Task Force, however, would retain its position of global standard setter, while the NCCT list would continue to be published and reviewed until 2008, when it was replaced by a more finely-tuned instrument, always under the Task Force's direction.

Unexpectedly, one of the first countries the Fund put in the spotlight in its new capacity as an AML standards enforcer was the United States. In December 2001, the U.S. was found to be non-compliant with eleven of the forty recommendations and asked what it was doing to correct the situation. Piqued, Washington replied that it 'saw no

[531] Edward Alden, Alan Beattie, 'Dirty money task force to cap blacklist', *Financial Times*, 25 September 2002.
[532] 'World Bank, IMF enhance efforts at combating money laundering, terrorist financing; Review of 12-month pilot program shows signs of success but more needs to be done', *M2 Presswire*, 1 April 2004; IMF, 'The IMF and the Fight Against Money Laundering and the Financing of Terrorism: Factsheet', March 31, 2013.

need for additional regulation of insurance companies,' as it had recently 'taken steps to strengthen the rules and further measures [were] under consideration' anyway.[533] The criticism was not moot given the form– its timing was most unfortunate, coinciding with both Treasury's and State's attempts to marshal global support for their AML/CTF campaign – and the substance. Unsatisfactory regulation of the non-banking financial sector was the main critique levelled at the country in the second Mutual Evaluation Report, back in 1996. Five years later the issue was still outstanding, and it would remain thus well into 2003, even after FinCEN finally announced a proposal to amend the Bank Secrecy Act so as to require insurance companies to report suspicious transactions to the Department of the Treasury.[534] The Department reacted with a PR campaign and, in a show of transparency, decided in January 2002 to publish on its website the 300-page self-assessment questionnaire that FATF had asked countries to compile before the end of the summer. The decision was quite controversial, as some FATF members were planning to keep the results of the self-reporting exercise confidential.

To that date, U.S. authorities had enjoyed a fairly smooth ride in their AML/CTF globalising efforts. The window of opportunity opened by the 9/11 attacks had allowed them to cash in on an unexpected bonanza of political capital, equalled only by the level of good faith and helpfulness displayed by third countries vis-à-vis Washington's terrorist problem, especially in UN fora.[535]The debates and occasional small defeats illustrated above, surrounding the regulation of charities, ARSs and the scope of the IMF/World Bank involvement in the FATF's own turf, had perhaps been a mere pebble in the Treasury's shoes, but had showed Washington that the Task Force was not as malleable an organism as it was originally intended. Certainly FATF's criticism of U.S.

[533]'IMF questions US money laundering controls', *Private Banker International*, 7 December 2001.
[534]FinCEN, 'Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations--Requirement That Insurance Companies Report Suspicious Transactions', *Federal Register*, 17 October 2002.
[535]U.S. and UK diplomats recall with amazement that even Syria voted in favour of UNSC 1373.

performance was somewhat restrained, to the point that the Task Force was at times accused of double standards when dealing with the U.S./UK duo. The critiques, coming in waves were, however, nonetheless real and their reverberations significantly embarrassing, especially since they arrived from multiple sources: the Mutual Evaluation Report teams, the IMF and countries ranging from Guatemala all the way to the better performing Germany, in fact, in turn pointed their fingers at the regime-setter's shortcomings in the framework that it had itself created.

On the way to the reform of the *Eight SRs* in June 2003, for example, Berlin's remarks were particularly unwelcome, especially since they had been levelled by one of the most upright members of the international financial community and the current FATF Chair, in two of the most respected newspapers in the world. From the pages of *The Wall Street Journal* and of the *Financial Times*, German officials uncharacteristically noted that one of the countries with the biggest compliance problems was the United States, which failed 'to meet several key [FATF] criteria and could [shortly] be found in noncompliance with some of the standards,' once the Task Force initiated its third round of Mutual Evaluation Assessments in 2005. For instance, 'German prosecutors accused the commercial codes in several U.S. states [of] prevent[ing] investigators from obtaining information about the owners of shell corporations set up for the sole purpose of hiding commercial transactions.' Delaware, for example, was a well-known and 'ideal location for P.O. Box companies, and a great place for businesses that have something to hide.' Moreover, the United States had failed to 'adequately monitor nonbanking financial institutions, such as cash-checking companies or cut-rate money-transfer organizations,' signalling that the old problem with NBFIs had still not been solved.[536]Additionally, referring to the ongoing debate on the nature of the amendments to FATF's provisions –

[536]David Crawford, 'U.S. is Faulted on Monitoring Fund Transfers – German Officials Say Law Hinder Those Investigating Terror, Money Laundering', *The Wall Street Journal Europe*, 18 June 2003.

whether flexible or detailed – the German head of the body and one of the country's top regulators, Jochen Sanio, declared that the 'shotgun approach' favoured by the Anglo-Saxon camp was no longer 'good enough.' What FATF's members really needed to do was 'to hit the bull's-eye,' adding that the Task Force 'urge[d] everyone to make the right preparations, to work night and day if needed, and to come forward with proposals.'[537]

Daniel Glazer, head of the U.S. delegation to FATF, intervened on this point by reminding the Task Force that 'many of the necessary changes to the FATF's 40 core recommendations on money laundering were already part of the new Patriot Act to tighten internal security'. He also rejected the criticism that the U.S. was 'hindering efforts to limit the flow of terrorist funds through [underground] banks,' stating that the U.S. 'system [was] fully compliant with FATF terrorism recommendations.' What German officials had singled out as a lack of compliance was, instead, the result of 'genuine differences of approach' between the U.S. and other FATF members. Washington 'preferred to regulate such enterprises – which include[d] travel agents and export/import companies – "with a soft touch" via a registration system. Germany and other European countries believe[d] a rigorous licensing system [to be] more effective in blocking terrorist funds. FATF guidelines [in fact] allow[ed] for both systems.'[538] Echoing the language often employed by less economically endowed countries, U.S. officials complained that the allegations and the critiques were, in the words of the then Delaware Assistant Secretary of State, 'unfair.'[539]

Several factors might therefore be at the root of the ambiguity displayed by the U.S. government in its dealing with the Task Force after September 11: FATF's shaming effect – which put even a country like the United States in the position of having to

[537]Thomas Atkins, 'Interview- German Official wants world dirty cash talks', *Reuters*, 27 September 2001.
[538] Hugh Williamson, 'Tighter rules agreed on money laundering', *The Financial Times*, 20 June 2003.
[539]Hugh Williamson, 'US, UK "hindering moves" on underground banks – Control of Terrorist Funds', *The Financial Times*, 18 June 2003.

justify itself; the body's growing independence; and the U.S. slow realisation of how the two, combined, interfered with the country's preferences while at the same time being a vehicle for the diffusion of the U.S. CTF agenda. Otherwise it would be hard to explain why Treasury first tried to contain the FATF by shifting its responsibilities to the IMF/Bank duo, and then opposed a new attempt at negotiating a comprehensive AML treaty at the United Nations in 2005, a move that would have had the consequence of diluting the standard-setting power of the Task Force.[540]

A similar result was brought about by the realisation that the body and its regulations had taken on, to repeat Andreas and Nadelmann's words mentioned earlier, a life of their own. For instance, beginning in 2002, the Task Force had started engaging in independent outreach initiatives with non-members, the industry and the public, allowing these new stakeholders to have a say in the process of reform of the *Special Recommendations*, by arranging a forum and by publishing a consultation document.[541] As mentioned earlier, the U.S.'s preferred course of action was, however, to oppose more stringent regulations. In the two years of 'hard-fought' negotiations that led to a comprehensive revision of FATF's recommendations in the summer of 2003, Treasury had particularly pressed on the other members its preference 'to stick with the simple registration of underground banking organisations – such as travel agents and import/export companies – rather than moving to include them in more detailed supervision regulations.' The Department was also adamant that regulations concerning charities remain 'voluntary', in line with U.S. domestic legislation. These positions had brought the U.S. on a 'collision course' with Germany – the country that held the Presidency – and with other European jurisdictions.[542]

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[540] Darren Schuettler, 'Bid for money laundering treaty fails at U.N. meet', *Reuters News*, 25 April 2005.
[541] Dan Kubiske, 'Targeting dirty money; War on terrorism boosts efforts against laundered cash', *The Washington Times*, 12 August 2002.
[542] Williamson, 'Tighter rules agreed on money laundering'.

'The mood' of the AML/CTF community, paradoxically thanks to U.S. regime-setting efforts, had however changed and was in alignment with the FATF and its push for increasingly regular and detailed supervision. As a consequence, it was the United States that lost the negotiating match at the FATF's Berlin Conference of June 2003, in which members adopted the new, improved, standards. In the words of the then FATF's President, in Berlin '[the U.S.] ha[d] accepted that its old view that freezing bank accounts was the main way to halt terrorist finances [wasn't] enough [and that] the freezing of funds has had only very limited impact' [on terrorism financing]. Washington therefore began to 'revise its view on terror financing', caving in to the pro-regulatory camp of member countries which, along with the FATF, called for an increased level of detail in the reform of the standards.[543] In practice, this led to the introduction of a very large number of statutory amendments and structural changes in the U.S. AML/CTF framework, as the 2006 Mutual Evaluation Report recognised. While defending his country's performance from the criticism, Glaser had after all admitted that, the new Patriot Act notwithstanding, new measures would be needed in order to comply.

In particular, Washington had to extend its money-laundering regulations to other financial institutions – such as insurance companies – and to non-finance sectors, such as lawyers, accountants, casinos, and real estate agents. These sectors now faced the burden of greater customer due diligence processes, closer examination of their accounting and business records, and a mandate to report suspicious activities. This point was a particularly sore one, given that the American Bankers' Association had for a long time opposed the move to introduce an obligation that already existed in Europe under the provisions of the Second AML Directive, but that conflicted with U.S. bar restrictions on

[543] Williamson, 'US, UK "hindering moves" on underground banks'.

breaching client privilege.[544] In 2004, FinCen followed suit at the operational level, and issued new rules to prescribe minimum standards for insurance companies pursuant to the provisions of the recently approved amendments to the Bank Secrecy Act, introduced by the Intelligence Reform and Terrorism Act of 2004. Washington had to align even on the charities and non-commercial banks fronts, since at the Berlin meeting members had adopted a set of best practices to tighten controls on underground banks, including the *hawala* system. Accordingly, Treasury launched an extensive process of review and comments by public and private sector stakeholders and released a new set of best practice guidelines for U.S.-based charities in 2005. These explicitly adopted the FATF's risk-based approach.

Despite these significant adjustments, the 'naming, shaming and complaining' cycle recommenced with the third mutual evaluation round, which began for Washington in late 2005. The report, issued in 2006, found that the U.S. had overall implemented an 'effective' AML/CTF financing system, but that several issues were still outstanding. Overall, U.S. controls over terrorism financing remained a 'concern' for the report's authors, for several reasons. In particular, compliance with the requirements to Know Your Customer (KYC) and Customer Due Diligence (CDD) was low, to the point that the U.S. was rated only partially compliant with Recommendation Five. State laws in fact generally prevented 'the disclosure of "adequate, accurate, and timely information" about beneficial ownership of legal entities to certain law enforcement agencies.' Additionally, the report found that there was no 'federal law requiring investment advisor or life insurance companies to conduct due diligence on customers [; and t]here [was] no federal requirement for regulated financial institutions to end their business relationships with

[544] 'Task force tells US attorneys to report laundering', *Legal Week*, 7 August 2003.

private entities who […] failed to complete the KYC/CDD process.'[545] Compliance monitoring of non-federally regulated sectors was also ineffective.

The country was given until July 2008 to address these issues. The most pressing concern was to remedy the lack of full compliance with the Fifth Recommendation on customer due diligence. Other countries with a similar score of 'partially compliant', namely the UK and Italy, had been put by the FATF on the follow-up procedure as a consequence of the lacunae of their legislation on beneficial ownership. U.S. authorities were aware of the issue and had unsuccessfully attempted to solve it after 2000. With the deadline looming and recognising the sense of urgency and lack of time, the Senate Permanent Subcommittee on Investigations finally introduced a proposal to bring the United States into compliance in May 2008. The Levin Bill, named after the Michigan Senator that sponsored it along with Senator Coleman and then Senator Obama, however, crumbled in front of the joint opposition of state authorities and business groups, so that the stain on the country's AML/CTF scorecard remained.

This detailed account of U.S. regime-setting action in the AML/CTF field shows that, not unlike the process of norm-building in the counter-terrorism regime at large, the United States was indeed at the source of the multilateral efforts that led to the creation of the FATF, its standards and its procedures. The narration reveals, however, how starting from undisputed leadership, the regime-setting country has been demoted to a position of mere distinctiveness, of 'first among equals' with respect to the community of members. This type of transition is partially accounted for in the literature by contributions that highlight, for example, the lock-in effect of financial institutions on the hegemon's behaviour. While the alignment displayed in several instances by Washington could be

[545]'Fortent Experts: FATF Issues Report Assessing U.S. Efforts to Curb Money Laundering and Terror Financing', *PR Newswire (U.S.)*, 6 September 2006; Financial Action Task Force, *Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism. The United States of America*, 23 June 2006.

understood referring to straightforward calculations of costs, benefits and repercussions on the country's financial interests, the need for U.S. officials to justify U.S. performance, list its accomplishments, and initiate domestic processes to adapt to provisions that were, at the domestic level, problematic, is an indication that the regime setter itself is not immune from the image-related pressures triggered by the institution. In the words of a senior official in the Clinton administration, the United States could not credibly pressure other countries to strengthen their AML/CTF provisions if 'it had an hypocrisy problem' at home. Therefore Treasury had to work hard to 'fill the holes' in its own framework.[546]

To this end, what are the specific attributes of the FATF and of its set of principles that permit to add this extra layer of depth in the understanding of the U.S. trajectory within the AML/CTF regime? The first is FATF's specific compliance-inducing mechanism, detailed at length in section two of this chapter, where it was shown how, albeit at different degrees of intensity, the naming and shaming effect of public scorecards, peer-reviews, reports, and special follow up procedures – from which not even the most virtuous countries, such as the UK, are immune – operates to embarrass members into compliance. The past two rounds of evaluations provide evidence of this effect, to the point that U.S. Treasury officials have admitted to be working to an agenda that is basically dictated by the areas of reform indicated in the evaluation reports. In view of the 2007 results and the forthcoming review, for example, in 2013 in the Office of Financial Intelligence it 'is all about beneficial ownership.'[547] The second

[546] Interviewee Y, Former Senior Treasury Official in the Clinton Administration, interview with author, September 11, 2013.

[547] Interviewee W, interview with author. Beneficial ownership has remained a painful thorn in the side of the Treasury Department, which is now working with the other G-8 countries to develop a new standard and is brainstorming on a comprehensive reform of the Bank Secrecy Act in preparation for FATF's forth round of peer-review evaluations. 'Levin-Coleman-Obama introduce bill to stop misuse of U.S. companies', *Congressional Documents and Publications*, 1 May 2008; Vanessa Houlder, George Parker, 'Cameron under pressure to push for G8 tax transparency deal', *The Financial Times*, June 16, 2013.

characteristic is inherent in the rise in status of FATF's recommendations as the gospel of international financial regulation, the measure of the health and probity of a system. This was described in Chapter Two as the 'ideational nature' of the issue, the quality that establishes a link with the actor's image and that, combined with the social sanction issued by the group or the institution, can induce a change in behaviour. To quote again the Clinton administration official, countries 'were afraid' of 'being singled out' by the FATF because 'people didn't feel *good* about being singled [out]'.

A sense of the trajectory of the United States within the AML/CTF regime is further provided by the interest other members of the FATF have displayed in Washington's performance, and the related significant perception, shared by some Western delegations, that the Task Force and the norms it sets are the result of the efforts of the community of FATF members, rather than the product of the regulating ambitions of the most powerful country among them. The first consideration is in line with the country's position of leadership and its regime-building efforts, which put its performance in the spotlight, and replicates the phenomenon observed in the case of the human rights reform of the 1267 regime. Several accusations of double standards in the way the institution deals with its special member, for example, have been levelled against the FATF. If Germany was the most prominent virtuous country to go on the record about U.S. (and UK) shortcomings, a number of European jurisdictions do it regularly behind closed doors, while members at the receiving end of FATF's 'material sticks' policy are very outspoken in highlighting U.S. (and UK) deficiencies.[548] In the aftermath of the 2007 evaluation, when Washington was not put on the follow-up process despite its partial compliance with the Fifth Recommendation, Guyana's President closed the annual meeting of the Caribbean Indigenous Banks Association stating that '[w]hile the US State

[548]It has not gone unnoticed that the United States 'too has to improve its provisions with respect to Recommendation Five […] just like [us].' Interviewee X, interview with author.

Department's annual International Narcotics Control Strategy Reports continue to identify a number of Caribbean countries' as jurisdictions where money-laundering thrives, 'you don't see the US on the blacklist […]. That's where the financial transactions have their origin and the payment starts.'[549] To a degree, this finding is somewhat inversely proportional to the U.S. relative power status in the international system.

The second observation is a clear indication that non regime-setting members perceive that they are aligning with the institution, and not with an alleged leader. Interestingly, the U.S. is recognised as a country that matters within the FATF's system not because it sets the agenda, but because of its relative financial weight and the size of its delegation.[550] The differences in approaches as regards the level of detail of the regulations, in particular, put the U.S. in a separate camp and often on a collision course with civil law jurisdictions. It is also interesting to note that, *mutatis mutandis*, these considerations hold true in the case of U.S.'s closest and at times better-performing ally in its AML/CTF norm-building efforts: the United Kingdom.

5.4. Outshining the regime-setter: the United Kingdom

London's path within the AML/CTF regime echoes its overall post-9/11 involvement in the broader counter-terrorism regime. It also closely mirrors Washington's own trajectory from principal supporter to the regime setter – drawing global norms through an *ad hoc* international body – to 'special' participant member in a setting that reflects the 'transfer of [domestic] money laundering regimes to

[549] 'US guilty of double standard in fighting money-laundering: Guyana', *Agence France Presse*, 13 November 2007.
[550] Interviewee X, interview with author.

counterterrorist finance'.[551] Despite its supporting role, the United Kingdom has displayed at times a higher degree of conformity with FATF's standards and a special sensitivity to its performance in the AML/CTF evaluation rounds, to the point of occasionally exceeding the *40 Plus Nine Recommendations*' basic requirements. The country has, however, similarly found itself at the receiving end of the Task Force's image-driven group pressure mechanism, as the next sections of this chapter illustrate.

5.4.1. Domestic regime overview

The United Kingdom's aggressive AML/CTF stance pre-dates the joint U.S.-UK globalising regulatory efforts of the late 1980s and early 2000s. Like the United States, two legislative streams gradually merged into the country's counter-terrorism financing legislation: AML provisions linked to anti-drug trafficking statutes and asset forfeiture, and counter-terrorism financing provisions originally tailored to stem the flow of cash to Northern Irish paramilitary organizations.[552]

Money laundering was established as a criminal offence in 1986 by the Drug Trafficking Offences Act, which introduced requirements for assets freezing and suspicious transactions reporting, and largely reflected HMG's growing concern for the City of London's exposure to financial risks.[553] In 1993, in a new bid to prevent UK

[551]Donohue, 'Anti-Terrorist Finance in the United Kingdom and the United States', p. 309.
[552]In particular, *Sinn Fein*, the IRA, *Cumann na mBan*, *Fianna na htireann*, *Saor tire*, and the Ulster Volunteer Force (UVF). UK responses were specifically tailored to counter IRA illicit funding methods. Among the most common sources of financial support for the organization were bank robberies, tax fraud, extortion, smuggling operations, drug trafficking, as well as kidnappings. Paramilitaries also resorted to semi-legal activities in their fundraising efforts, such as the running of drinking clubs and black taxis businesses. Alleged charitable organizations, namely the Northern Aid Committee (Noraid), operated extensively in the United States and were other sources of important financial and logistic support for the PIRA.
[553]In 1985, Leon Brittain, the Home Secretary, answered a plea of the House of Commons' Home Affairs Committee to step up the fight against the flow of illicit substances in the UK, in order to avert a drug crisis 'on par with that of the United States'. See Donohue, 'Anti-Terrorist Finance in the United Kingdom and the United States', p. 332. According to conservative estimates published by HM Treasury, in 2007 the

businesses from being used for ML purposes, Westminster introduced the first set of Money Laundering Regulations, a body of risk-based secondary legislation which revisited the drug trafficking issue and expanded courts' and prosecution' powers to confiscate and limit property rights. In 2002, all ML offenses were unified under a single statute by Part VII of the Proceeds of Crime Act, 'one of the world's most powerful legal tools against' ML, according to HM Treasury.[554] In 2002 and 2007, respectively, new ML Regulations further broadened the body of preventive measures, by expanding the categories of businesses covered by the provisions, as well as by introducing standards to improve customer due diligence, in line with FATF's upgraded requirements.

On the CTF front, Westminster relied during the insurgency involving Northern Ireland on an annual and semi-annual re-issuing of a set of two counter-terrorism sunset provisions: the 1973 Northern Ireland (Emergency Provisions) Act (1973 EPA) and the 1974 Prevention of Terrorism (Temporary Provisions) Act (1974 PTA). An extension of the 1922-1943 Special Powers Acts (SPAs), the 1973 EPA in particular provided the British government with significantly broad powers to interfere with property in Northern Ireland, and included special financial provisions against banned organizations, such as the forfeiture of assets of individuals convicted of membership in a proscribed entity and the criminalisation of the collection of funds for terrorist purposes.

From 1989 onwards, the content of the emergency counter-terrorism statutes began to overlap with domestic AML legislation, as the PTA and the EPA increasingly drew inspiration from the draconian measures of the late 1980s' anti-drug provisions.[555]

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level of laundered money in the UK reached £10 billion. Independent bodies put that figure at around 48 to 57 billion. See HM Treasury, *The Financial Challenge to Crime and Terrorism*, London 2007; Ryder, *Money Laundering: an endless cycle?*, p. 74.

[554] *Ibid.*, p. 86.

[555] Such measures would prove problematic when brought before the European Court of Human Rights. For instance, the 1989 PTA amended the 1988 Criminal Justice Act to create weaker standards of proof, adopting a civil standard to determine whether a person had benefitted from drug proceeds and her possession should be confiscated. Such change meant in practice that the ECHR criterion requiring presumption of innocence would no longer apply, since it introduced a 'balance of probabilities' clause,

The merger of CTF and AML laws was fully achieved at the end of the 1990s. With the end of political violence in sight, London began to contemplate the normalisation of its counter-terrorism framework following the recommendations of the report on terrorism legislation issued by Lord Lloyd at the end of 1996. When the issue of this process of legislative soul-searching – the Terrorism Act – entered into force in 2000, it represented both the first permanent counter-terrorist law in the United Kingdom and the main legislative bridge between the country's AML and counter-terrorism legislation.[556]

The seeds of the renewed legislative offensive triggered by the September 11 attacks in the United States were therefore planted into unusually fertile legislative soil. The 2001 Anti-Terrorism, Crime and Security Act (ATCSA) strengthened the already extensive provisions of the Terrorism Act 2000 and enhanced the authorities' confiscation and asset seizing powers. Accelerating a process already in motion before 9/11, new legislation was also introduced to address the problem of the recovery of criminal assets: the 2002 Proceeds of Crime Act (POCA) extended extra-ordinary state powers hitherto applied only to terrorist and drug-related offences to mainstream criminal activities and created a new non-ministerial department, the Assets Recovery Agency (ARA), to administer the new regime.

5.4.2. Participation in the global counter-terrorist financing regime

The UK has generally adopted a proactive stance towards the development of AML/CTF provisions in UN and EU venues, supporting and at times acting as a proxy for the United States in its regime-setting efforts. London was at the forefront of the

which replaced the 'beyond any reasonable doubt' evidentiary requirement. For a comprehensive analysis of the human rights shortcomings of the emergency and permanent counter-terrorist legislation in the UK see Francesca Galli, 'British, French and Italian measures to deal with terrorism: a comparative study', PhD Thesis, Cambridge University 2009.

[556]Financial Investigations (Northern Ireland) Order 2001.

negotiations on Resolution 1373 (2001), while its delegation at the UN took the lead in setting up the Counter-Terrorism Committee and ran it during its most successful mandate to date.[557] As shown in Chapter Four, HM government was equally instrumental in bringing the United States onboard during the 2009 reform of the 1267 regime, *de facto* drafting the instrument that managed to broker a compromise between the Security Council's pro-reform and pro-*status quo* camps.[558] As evidenced when analysing U.S. involvement in the AML/CTF regime, the United Kingdom also actively partook in the regime-building efforts within the G-7/8, leading to the creation of the FATF and to the incorporation of CTF provisions among its standards after the September 11 attacks. At EU level, the UK delegation proactively engaged in the process of adoption of the ML Directives through which FATF's *Recommendations* have been integrated into the domestic legislative frameworks of the Union's member states since 1991.[559]

Given the solid foundations of its AML/CTF framework, the United Kingdom began its FATF's membership on an upward trend, receiving a 'complimentary' report from the Task Force's experts in their first survey of the country's AML provisions in the summer of 1992.[560] By 1993, the country's multi-year efforts in stemming the flow of financial support for domestic terrorism had paid off, and Britain had developed a '"clean" reputation' among its peers, with UK regulatory authorities generally considered 'tougher' than other FATF member countries. In this initial stage, HM government's reputation for cleanness appeared to play against the country's own financial interests,

[557]Interviewee S, interview with author; Interviewee G, interview with author (both formerly at the UK Permanent Mission to the UN, New York).
[558]Following the same pattern of involvement in norm-setting efforts within the global counter-terrorism regime in general, London's input was equally crucial in spearheading the adoption of the EU Counter-Terrorism and Counter-Radicalisation Strategies, as well as in raising awareness on the issue of incitement to terrorism in UN fora, leading to the adoption of UNSC Resolution 1624 (2005). See Interviewees S and G, and Maggie Farley, 'U.N. May Address Terrorist Incitement', *LA Times*, 30 August 2005.
[559]'Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering', *Official Journal L 166*, 28/06/1991, pp. 77 – 83.
[560]'Economic Secretary Welcomes Positive Assessment of UK's Anti-Money Laundering Strategy,' Government Press Releases, 8 July 1992.

with widespread fear in the City of London that the UK's global regime-setting efforts on the AML front would lead to a flight of business toward the laxer financial systems of continental and Eastern Europe.[561] HM Treasury in particular had provided the footprint for the First EU Money Laundering Directive, which was 'based on UK legislation' and targeted credit and financial institutions across European member states. In the months leading up to the Directive's entry into force in April 1994 – the deadline for European member states to align their legislation – UK authorities appeared to local financial pundits as 'torn' between 'playing the "goody goody"' – in line with EU provisions – and safeguarding the interests of the City's financial hub – even if that meant sacrificing Britain's spotless implementation record. Consolidating its regime-setting and pro-norm stance, right when commentators were starting to compare EU member states' AML performance and separating countries into good students and 'laggards', London chose to follow 'in the letter and in the spirit' the new EU legislation, implementing it with some of the strictest provisions in Europe via the first set of what would be known as its state-of-the art ML Regulations.[562]

In line with this position, Britain took over the Presidency of the FATF in 1994, a sign that its above par AML efforts were recognised by its peers.[563] Great expectations were attached to the UK Presidency: by the end of the year, the Task Force was scheduled to complete the first round of peer evaluations for twenty-four jurisdictions.

[561]Comments attributed to Sue Thornhill, Assistant Director of the British Bankers Association and John Gwyer, fraud specialist for Coopers and Lybrand. Quoted in 'City At Risk from Clean-Up', *The Independent*, 27 November 1993. This choice of language interestingly echoes the emotive lexicon employed to describe countries' reactions to the assessment of their performance on the FATF's report card.

[562] *Ibid.*

[563]The FATF has a rotating presidency. Member countries volunteer for the post and sound out the agreement of other members, who then approve the candidacy during one of the twice-yearly plenary sessions. In recent years, the election of a member who has received the previous agreement of the other member countries has become a quasi automatic process; during the first decade of the Task Force's existence, however, there have been several instances in which countries have been dissuaded from proceeding with their candidacy or their candidacy has been rejected outright. For these reasons, being elected to the presidency of the FATF was (and it still is) considered a prestigious recognition of a member's efforts in the implementation of the body's AML/CTF standards. Interviewee X, interview with author.

FATF's pedagogic project was extended to non-member regions and AML seminars were organized in the Caribbean islands and the Arab Emirates. In conjunction with the United States, Britain began a long-term campaign to put pressure on Commonwealth countries to align and tighten the noose on tax havens, while also aiming its efforts at tidying up its own domestic market. In January 1994, for example, Scotland Yard joined forces with the FBI to set up a joint task force to fight white-collar crime in British dependent territories and HM Treasury reprimanded Gibraltar for not implementing the EU First AML Directive. After several scandals, the Serious Fraud Office underwent a process of significant reform that gave it a brand 'new image' and paved the way for a series of high profile convictions in the AML field.[564] Under UK leadership, the idea of imposing economic sanctions on non-compliant countries began to be floated and gathered the support of policy-makers and law enforcers alike. Britain therefore reached its second round of evaluations continuing on the positive trend set at the beginning of the 1990s: its AML regime was labelled 'an impressive one' by Task Force experts, as the then Chancellor of the Exchequer, Kenneth Clarke, proudly acknowledged, and even the Crown Dependencies regulatory system came out of a process of informal evaluation with a relatively clean bill of health.[565]

By the end of the 1990s, the country had therefore developed a specific view of its own position in the world economy that was also closely related to its outstanding performance in the implementation of the Task Force's indicators. That is, Britain had developed a certain idea of its own abilities and status within the AML regime (self-

[564]'HM Treasury – Chancellor Says Worldwide Fight Against Money Laundering Continues', *COI's Hermes – Government Press Releases*, 20 April 1994; Jill Treanor, 'Global cooperation crucial in fight against fraud', *Reuters News*, 8 November 1995; 'HM Treasury – Clarke Calls for Firm Action Against the Launderers', *COI's Hermes – Government Press Releases*, 5 October 1995; 'Dented Image Brought to Book,' *The Times*, 9 April 1996; Angus McCrone, 'Clarke warns of boom in criminal money laundering', *The Evening Standard*, 26 September 1996; Jill Treanor, 'Global cooperation crucial in fight against fraud', *Reuters News*, 8 November 1995.

[565]Richard Thomas, 'Clarke Urges Action against Dirty Money', *The Guardian*, 27 September 1996; 'Standards Recognised', *The Financial Times*, 18 December 1996.

image). Clarke outlined the core elements of this composite idea of British economic standing in a speech he gave in the City of London in the spring of 1997. In some key passages he told his audience that:

> 'Britain was not content simply to be a bystander […] Britain has had 150 years or more of being a leading player on the world economic stage. Our Empire has gone, but it has left us with a genuinely worldwide spread of economic interests and an economy which faces outward. We have brought, and continue to bring a distinctive British approach. A belief that it is best to harness the power of markets for good […]. A belief in pragmatism. A bias against big Government, but also a belief that markets need to be underpinned by good economic policies and effective rules and legal systems […]. In recent years we have been working very closely with other countries to increase our efforts to tackle the threat posed by money laundering. The UK has played a pivotal role in setting international standards in combatting money laundering. Countries from every part of the world look to London for guidance on best practice in training, investigation and law enforcement. The Financial Action Task Force, an international body established under the auspices of the OECD to set standards and monitor progress in this area recently recognised the UK's preeminence in this area and encouraged other countries to follow our example.'[566]

Based on this perception, it is possible to identify a specifically reactive posture adopted by UK authorities with respect to any criticism, albeit minimal, levelled against

[566]'HM Treasury – Britain Best Placed to Benefit from Global Opportunity', *COI's Hermes – Government Press Releases*, 4 March 1997.

the country's generally superior implementation of the Task Force's standards. The language employed to describe reactions on the part of the 'accused' is also characteristic of that emotive lexicon seen in other instances when a country's underperformance was brought to light. In the summer of 1997, for example, the City of London was 'up in arms' over claims by U.S. law enforcement officials that the City's financial institutions were ignoring money-laundering transactions.[567] One year later, accusations of involvement with laundering and organised crime against seven City law firms 'sen[t] sparks flying.'[568] After an annual report by the FATF suggesting some fine-tuning of UK AML legislation, British authorities hastened to introduce a package of 'refinements' in order to 'make the [country's] AML system even more impressive.'[569]

The Achilles' heels of London's implementation record were its enforcement capabilities and the problematic compliance rates of the Crown Dependencies and Overseas Territories, coupled with the City's unique attractiveness as a ML hub, where funds could be made whiter than white. In 1997, media outlets began to look at the figures and highlight how, compared to its overseas regime-setting partner, the 1993 package of AML provisions had led to only three prosecutions and convictions. By comparison, in 1996 U.S. authorities had accused 2,000 people of money laundering, a six hundred percent increase with respect to 1991. Such differences called into question the effectiveness of the 'much-admired UK legislation,' which was proving to be poor

[567]'City rejects fraud accusation', *Accountancy*, 13 May 1997.
[568]'City Lawyer - City accusations send sparks flying,' *The Lawyer*, 1 December 1998. In the same vein see also comments made by Marcus Killick, chairman of the Gibraltar Financial Services Commission, on Gibraltar's shaming campaign in the media: 'Gibraltar has defended its reputation as a serious international financial services centre against a backdrop of British broadsheet and tabloid journalism stuck in 'a 1970s-style mindset of offshore centres and suitcases stuffed with cash'. See 'Gibraltar defends itself against slurs,' *International Investment*, 11 August 2003. In 2003, Cayman Islands' involvement in the Parmalat crash pushed the press to wonder whether the offshore haven had 'sinned' or had been 'sinned against' by the global AML/CTF regime. See 'Sinner or sinned against?,' *Portfolio International*, 1 March 2004.
[569]Michael Gillard, 'Tougher rules on money laundering proposed,' *The Observer*, 3 August 1997.

deterrent material.[570] In the meanwhile, offshore centres and tax havens were coming under the increased scrutiny of the FATF, the OECD, the EU, and the United States.

A report issued in November 1998 at the request of the new Labour government highlighted the deficiencies of the offshore regulatory environment and called for significant change.[571] Guernsey, in particular, did not fulfil to the letter the OECD's new standards on 'Harmful Tax Competition' centres, adopted in 1998, but fared better with respect to the FATF, which bestowed some 'praise' upon it with regard to its contribution to the drive to improve its AML legislation.[572] U.S. drug enforcement agencies equally began to put pressure on Britain to force AML and anti-tax evasion laws on its offshore tax havens, namely Jersey and the Isle of Man. Additionally, the U.S. Treasury issued an advisory to U.S. banks singling out the Cayman Islands as a cause for concern.[573] In the summer of 2000, the Islands made the cut on the FATF's first list of non-cooperative entities and braced themselves for the body's counter-measures.[574]

These issues retained their crucial importance on the agenda of Britain's AML priorities even after the September 11 attacks. The then Chancellor Gordon Brown in fact announced the government's intention to rewrite the Proceeds of Crime Bill in order to renew the offensive against offshore centres and include measures aimed at targeting the financiers of terrorism, in particular provisions to facilitate the tracking, freezing and confiscation of terrorist assets.[575] In preparation for the FATF's D.C. meeting of October 2001 – when the Special Recommendations were adopted under UK sponsorship – HM

[570]'Money laundering - a tough business to clean up - Task forces, laws, but few convictions,' *The Independent*, 4 February 1998.
[571]'The Edwards Review - Guernsey Financial Services Commission', *Mondaq Business Briefing*, 1 January 2000; 'The Rapidly Changing Regulatory Offshore Environments Following The Edwards Report', *Mondaq Business Briefing*, 1 February 2000.
[572] 'Focus On Guernsey – Ozannes', *Mondaq Business Briefing*, 1 August 2000; 'News - Tax havens get the shakes over 'anti' report,' *International Money Marketing*, 1 May 2000.
[573] David Ward, 'Britain Reins In Its Offshore Tax Havens', *Independent Business Weekly*, 28 April 1998.
[574]'No removals from money laundering blacklist despite extra progress', *Investment Advisor*, 6 March 2001.
[575]Jane Merriman and Clelia Oziel, 'UK bank watchdog may fine-tune anti-laundering rules', *Reuters*, 15 October 2001.

Treasury began to consider measures to fine-tune, once again, its domestic regulatory legislation, for example by increasing the police's freezing and confiscation powers.[576] In December, after having exhorted other countries to fully implement the UN CTF provisions, London set the example and designated 25 entities for listing under the 1267 regime.[577]

The UK government's efforts paid off and in 2001 the country's performance was once again judged as 'remarkable', mostly owing to the strong foundations of its policy framework.[578] Crown Dependencies equally aligned, stating outright how they had worked hard to preserve their standing as members of the 'first division of financial centres,' a result to which they attached great value. To confirm their commitment, the Isle of Man, Jersey and Guernsey 'joined forces to make a statement of overriding principles for a customer due diligence framework,' that was meant to mark 'a new level of co-ordination […] on this issue and encompass[…] the recommendations of the Financial Action Task Force.'[579] In line with these efforts, Jersey bowed to the OECD and reached an agreement on its tax haven status in November 2002, while six among the leading UK banks, namely Abbey National, Barclays, HBOS, HSBC, Lloyds TSB, and the Royal Bank of Scotland Group, issued joint statements of principles for fighting crime and volunteered to take new proactive steps to carry out customer due diligence.[580] The Cayman Islands equally followed suit and rose in standing.[581]

Yet, by the end of 2002, HM government began considering further amendments to the 2001 ML Regulations, in order to improve customer identification standards and

[576]James Doran, 'Brown pledges new offensive on assets - War on terror - Daily Briefing - Terror in America', *The Times*, 26 September 2001; Andrew Parker, 'Britain wants UN convention ratified', *The Financial Times*, 29 October 2001.
[577]'Britain adds names to terrorism funding blacklist,' *Reuters*, 23 November 2001.
[578]'Treasury- IMF Report on UK Economic Performance', *COI's Hermes – Government Press Releases*, 11 December 2001.
[579] 'Bridging the regulation gap', *Investment Advisor*, 18 March 2002.
[580] 'Ironing out those washday wrinkles', *The Financial Times*, 18 November 2002.
[581] Felicity Clarke, 'Sink or swim', *Legal Week*, 28 November 2002.

extend due diligence to bureaux de change and informal remitters such as hawalas. This latter issue was also the object of discussion within the FATF, where negotiations for a ninth special recommendation as well as a comprehensive update of the 40 original standards had been underway for the past two years.[582] U.S. Treasury representative Glaser had recognised that the process had been 'difficult at times', underlining the specific differences in approaches and sensitivities between the United States, the United Kingdom, and several European countries. In particular London had also been the target of the German president of the Task Force's outspoken criticism and had decided to lobby jointly with Washington for the adoption of flexible principles versus more detailed provisions, thus also responding with a cultural argument to the critiques that accused them of entertaining supposedly lax standards.[583] HM Treasury expected to implement the new measures via the EU's Third AML/CTF Directive, whose draft was equally under discussion in Brussels at the time.

Before the third round of evaluations, which began in December of 2006, British financial services regulations underwent a new overhaul, aimed at addressing some outstanding deficiencies as well as responding to the concerns of AML and financial experts, who were increasingly worried by the excessive costs they were incurring while complying with the framework implemented by the UK Financial Services Authority. At the beginning of 2006, in a speech before the Royal United Services Institute (RUSI), Brown unveiled a series of new measures that were meant to upgrade the system and highlight its specific risk-sensitive approach. These included: a joint review with the Home Office of how best to root-out terrorist abuse of the charitable sector and protect

[582] It was the opinion of some observers, however, that the 'pendulum had swung too far,' and that in its excess of zeal, UK AML/CTF legislation had become too harsh. See Anthony Akiwumi, 'Reporting Obligations & Tipping Off - Has The Pendulum Swung Too Far?', *Mondaq Business Briefing*, 25 October 2002. On amendments to the 2001 legislation see, 'International fight against terrorist financing UK progress report', *M2 Presswire*, 12 April 2002.
[583] Williamson, 'Tighter rules agreed on money laundering'.

donor confidence; new proposals to strengthen safeguards on money services businesses and global remittance flows; new guidance to help firms target their efforts to detect terrorist financing; the creation of a new dedicated forum bringing together government and the financial services sector to identify threats. Lastly, HMG planned to strengthen the Treasury's asset-freezing operation through 'greater joint-working with other departments as part of an assessment of the case for a new, freestanding asset-freezing agency.'[584] The media quickly dubbed this would-be body a 'modern-day Bletchley Park.'[585] In January 2007, the country further introduced due diligence checks on politically exposed persons in implementation of the EU Third Directive.

These measures were as usual significant and HMG's efforts were praised by the Task Force in the wake of the averted terrorist plot of the summer of 2006. For the second time in little more than a decade, the UK was also scheduled to take over the Presidency of the body beginning in June 2007, a sure sign of its standing in the community of FATF members. London had plans to use its stint at the head of the Task Force to finally push for a change in the body's overall approach, from a focus on the 'technicalities of implementation', as HM Treasury dubbed them, to a more substantive evaluation of effectiveness on the ground.[586]

In June 2007, just before Brown's chosen representative, Sir James Sassoon, was scheduled to begin at his new post in Paris, the Third Mutual Evaluation Report for the UK was released. A few substantial areas were singled out as in need of improvement and the sensationalist press commented on the outcome of the review noting how this result was 'doubly galling for the Government,' given that 'not only ha[d] it claimed

[584]'Chancellor Gordon Brown's New Anti-Terror Measures: Impact on Financial Sector,' *PR Newswire Europe*, 30 October 2006.
[585]'Chancellor strengthens measures to combat terrorist financing', *M2 Presswire*, 13 February 2006; Patrick Wintour, Ashley Seager, 'Modern-day Bletchley Park to tackle terror finance networks,' *The Guardian*, 11 February 2006.
[586] Williamson, 'Tighter rules agreed on money laundering'.

[that] Britain [was] at the forefront of preventing contamination of the banking system', but particularly due to the fact that 'the UK ha[d] just taken over the presidency of the task force.'[587] The timing was indeed unfortunate.

FATF's experts pointed their fingers at the Financial Services Authority's poor enforcement rate with respect to the size of the UK financial sector and highlighted how the FSA's supervisory system, while comprehensive for the larger firms, required enhancements when it came to dealing with small firms. More critically, the country was placed on the regular follow-up process due to its partial compliance with Recommendation 5 on customer due diligence, since certain requirements, such as beneficial ownership, were not laid out in either law or regulation.[588] After more than a decade of easy riding, Britain therefore had its first real taste of FATF's naming, shaming and conformity-inducing mechanism, while HM Treasury hastened to defend its usually outstanding record by pointing out that, overall, the report had represented an endorsement of the UK financial services legislation and that the outstanding deficiencies, of which the country's officials were indeed already aware, would have been addressed shortly once the Third EU Directive had entered into force.

In the meanwhile, the country – which had, up to that point, sung in tune with the Task Force, one of theirs and the U.S.'s pet projects – began to question *in camera* its decision-making procedures, excessive independence in standard setting and poor transparency levels. An area of key concern was, for example, the EU uncritical acceptance of the body's recommendations, transformed in the Union's legislation via the AML Directives and thus forced upon the member states. In a move that a few years earlier would have been considered extremely unlikely by international observers,

[587] Dan Atkinson, 'Anti-Laundering Drive Criticised', *The Mail on Sunday*, 19 August 2007.
[588] FATF, 'Mutual evaluation of United Kingdom of Great Britain and Northern Ireland', 13 June 2007; FATF, 'Mutual Evaluation of the United Kingdom - Follow-Up Report,' 16 October 2009.

members of Parliament began to look at the criticism leveled against the Task Force's standards and its particular *modus operandi* by poorly conforming jurisdictions, outside the club of well performing countries to which the United Kingdom had always belonged. Interestingly, informal consultations were also initiated on the possibility of negotiating a constitution for the FATF that would spell out in detail its procedures, mechanisms and scope of action.[589]

This criticism notwithstanding, UK authorities took steps to ensure that the country would be removed from the special follow-up process as soon as possible, in order not to 'send[…] out a negative message about [the] current commitment to the prevention and control of money laundering and the financing of terrorism.'[590] The promotion, however, was granted only two years later, in 2009, when London's compliance levels with respect to the Fifth Recommendation on CDD was finally deemed satisfactory enough ('compliant') and it was decided that HMG should report on further improvements in its AML/CFT system on a biennial basis.

Like the United States, Britain is preparing for the peer evaluation round of 2014. In its typically thorough fashion, it proposes to spearhead a EU-wide regulatory move towards a new 'golden system' for beneficial owner identification.[591] In these regime-setting ambitions, there is much in common between the U.S. and the UK, especially with respect to their respective trajectories within the AML/CTF regime, from leaders to distinguished participant members. London, however, has often outshone its more powerful counterpart and obtained consistently higher ratings, until the last round of controls, in 2007, when it received the same score but was penalised more. Given the

[589] More interestingly, the idea was abandoned because it was thought to be unlikely that such a treaty would have reached the 2/3 majority required to be approved by the U.S. Congress. See, House of Lords, European Union Committee, 'Examination of Witnesses (Questions 325 - 339),' 1 April 2009.
[590]HMG, 'The Government Reply to the Nineteenth Report from the House of Lords European Union Committee Session 2008-09 HL Paper 132. Money Laundering and the Financing of Terrorism', p. 3.
[591]Vanessa Houlder, George Parker, 'Cameron under pressure to push for G8 tax transparency deal', *The Financial Times*, June 16, 2013.

UK's historical legacy with respect to AML/CTF efforts and the comprehensiveness of its AML/CTF framework coming into the regime, the UK has consistently displayed a characteristic need to be seen as the best student in the class, offering the model legislation, by going above and beyond the requirements of the FATF, at times against the interests of its own main financial centre.

This behavioural pattern of excess of zeal, reactivity and justifications is symptomatic of a specific sensitivity of the country to its international image of outstanding regulator, consolidated and defended over more than three decades of involvement with AML/CTF efforts. In this respect, certain of the observations advanced for the United States are equally valid in the case of the United Kingdom, in that its carefully cultivated reputation for probity, an end in itself, has led the country to be put in the moral spotlight by both good and less virtuous jurisdictions.[592] Similarly, FATF's founding members do not attribute a specific regime-setting weight to the country, recognising instead that, albeit the second most prominent member of the Anglo-Saxon camp within the institution, London has no specific weight beyond the size of its delegation. Its norm-setting ambitions, on the contrary, are resisted and not shared by the larger community of FATF members, signaling once more that regime participants align not with the country but with the institution and that institutional mechanisms have independent conformity-inducing effects.[593]

In light of London's carefully cultivated image of virtuosity, it is interesting to note how the same type of sanction –placement on the follow-up process – was imposed on an another of the FATF's founding members whose standing in the financial markets was not synonymous with a healthy system, but rather with government instability and

[592]According to Guyana's President, 'a lot of "hot money" was [equally] circulating in London from tax-evasion originating in the United Kingdom,' in 'US guilty of double standard.' At around the same time a French MP noted how the FATF has never said anything about Britain and its dependent territories, even though these were the financial centres much favoured by criminal organizations.
[593] Interviewee X, interview with author.

organized crime: Italy.

5.5. Aligning with the international institution: Italy

Italy represents somewhat of a contradiction within the global AML/CTF regime: the country combines a problematic historical record, ridden with the endemic presence of organized criminal groups, corruption and chronic political instability, and one of the most sophisticated regulatory systems in the world. FATF's experts recognised this dichotomy in their 2007 assessment of the Italian AML/CTF structure, acknowledging that comprehensive sectoral coverage– at times going even 'beyond the standard' – coexisted with a long history of 'high rates of criminality, organized violence and penetration of political and economic life' by criminal groups.[594]

This joint presence of systemic deficiencies and refined law enforcement capabilities, in combination with a strong multilateral orientation of its foreign and security elites that extends to counter-terrorist policy-making, contributes to explaining the specific sensitivity and alertness displayed by Italian officials vis-à-vis FATF's assessments of the country's performance. While such reactivity borders on full internalisation of FATF's AML/CTF standards on the part of Italian policy-makers, the specific sensitivity to issues of standing, ranking and ultimately international image that it conveys, beyond consideration for purely reputational costs, accords with the conformity-inducing effects occasioned by the anticipatory socialisation processes described by the social influence phenomenon.

[594]FATF, *Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism. Italy*, 26 February 2006, p. 7, 2.

5.5.1. Domestic regime overview

Italy's AML/CTF system was set up at the beginning of the 1990s within the broader institutional and legal frameworks developed to combat mafia-type organizations and domestic forms of terrorism. Historically, the regulation of financial services targeted the criminal penetration of legitimate sectors of the country's economy. As with the broader domestic counter-terrorist framework, there is much overlap between anti-organized crime/AML provisions and counter-terrorist financing measures. The two systems mirror each other, owing to the fact that, originally, anti-mafia strategies were modeled after the counter-terrorist provisions of the 1970s and 1980s, while current anti-terrorist efforts look at the anti-organized crime measures of the late 1980s and early 1990s.

Italian authorities first introduced the offence of money laundering in 1978, modifying article *648bis* of the Penal Code. The legislation was updated in March 1990 and in 1993 to take into account the first round of FATF's evaluations. The offense extends to the proceeds from any crime committed intentionally and is complemented by provisions that punish possession, acquisition and use of such proceeds for economic or financial purposes. The criminalisation of terrorist financing was instead a response to international pressures in the aftermath of the September 11 attacks. The offence was established in December 2001, by *Act n. 438*, and included in article *270bis* of the Penal Code.[595] In line with UN and EU provisions, *Act n. 438* was then modified by Parliament in 2005 to account for the offences of enlisting and training for terrorist purposes. In 2007, a legislative decree intervened to significantly alter the AML/CTF framework, specifically in order to remedy the discrepancies highlighted at length in Italy's 2006

[595]D.L. 18-10-2001, n. 374, 'Disposizioni urgenti per contrastare il terrorismo internazionale', Pubblicato nella Gazz. Uff. 19 ottobre 2001, n. 244, e convertito in legge, con modificazioni, dall'art. 1, L. 15 dicembre 2001, n. 438, *Gazzetta Ufficiale*, n. 293, 18 dicembre 2001.

Mutual Evaluation Report, with respect to both FATF's standards and the Third EU AML Directive.[596]

On the preventive front, overall political and strategic guidelines in the AML/CTF fields are set by the Finance and Economy Ministry (*Ministero dell'Economia e delle Finanze*, MEF), in coordination with the Foreign Ministry and the Central Bank (Bank of Italy, BoI). The Italian MEF is responsible for overall legislative drafting, policy-making and representation of Italy in the FATF and other relevant international institutions of the global AML/CTF regime. The MEF issues administrative sanctions for all AML/CTF violations, and coordinates with the Foreign and Justice Ministries, as well as with the Financial Police (*Guardia di Finanza*, GdF), to designate individuals and entities for listing under the UN 1267 regime. Finance Ministry's representatives chair the Financial Security Committee (*Comitato di Sicurezza Finanziaria*, CSF), the leading authority in the fight against terrorist financing, which includes representatives from all relevant ministerial and law enforcement agencies.[597] This body, in particular, is responsible for the freezing of assets of terrorist individuals and entities listed under UN and EU provisions.

As of 2007, the Financial Intelligence Unit (*Unità d'Informazione Finanziaria*, UIF) replaces and enhances the Italian Currency Bureau, an agency established in 1997 as an independent offshoot of the Central Bank to coordinate the collection, analysis and dissemination of suspicious transaction reports via a pioneering computerised system for data storage. Both the BoI and the UIF are responsible for the issuing of the 'Operating

[596]D.Lgs. 21 novembre 2007, n. 231 – 'Attuazione della direttiva 2005/60/CE concernente la prevenzione dell'utilizzo del sistema finanziario a scopo di riciclaggio dei proventi di attività criminose e di finanziamento del terrorismo nonché della direttiva 2006/70/CE che ne reca misure di esecuzione e successive modificazioni e integrazioni', available at http://www.bancaditalia.it/UIF/prev-ricic/sara/norm-sara/norm-naz/dlgs-2007-231.pdf.

[597]Namely, the MEF, the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Ministry of Justice, the BoI, the UIC (until 2007), Consob, the GdF, Carabinieri, the Direzione Nazionale Antimafia (DNA), and the Anti-Mafia Investigative Directorate (DIA).

Instructions for Identifying Suspicious Transactions,' (known as the *Decalogo*, or 'Decalogue') – a list of detailed operational guidelines and priorities aimed at developing healthy and homogenous financial behavioural patterns in the industry. On the punitive front, Italy's strong law enforcement agencies cooperate closely with national prosecution offices specialising in organized criminal matters, the Interior Ministry and the Financial Police to sustain a sophisticated system of investigation and confiscation of assets. These capabilities are recognised by the FATF as the distinctive comparative advantage of the Italian AML/CTF system.[598]

5.5.2. Participation in the global counter-terrorist financing regime

One of the founding members of the FATF, Italy has been an active regime participant, considering AML and CTF efforts one of its national priorities. As mentioned above, the position of the country in the group of FATF's founding members has always been a rather odd one, owing to the specific combination of points of particular strength and crucial structural weaknesses. Unlike the United Kingdom or even the United States, Italy did not begin its path within the FATF on an upward trend, but came to the regime, albeit as a full-fledged G-7 country and 'true believer', with a legacy of multiple deficiencies and the perception of having something to prove.[599] Its pattern of participation in the FATF-led AML/CTF efforts has been characterised, therefore, by a distinctive combination of reactivity, laggardness and pro-activity, as if the country were

[598]FATF, *Mutual Evaluation Report*, 2006; Marcello Condemi - Francesco De Pasquale, 'Lineamenti della Disciplina Internazionale di Prevenzione e Contrasto del Riciclaggio e del Finanziamento del Terrorismo', *Quaderni di Ricerca Giuridica n. 60*, Banca d'Italia Eurosistema, Febbraio 2008.

[599]This perception emerges clearly from conversations with Italian financial officials. Interviewee X, interview with author; Interviewee Z, Senior Official, Italian Central Bank, interview with author, August 2, 2013. In 1982, for example, the Basle Committee's banking code of conduct was drawn up to deal with the fallout of the Banco Ambrosiano scandal, one of Italy's major commercial banks. See Micheal Prest, 'Regulation: A vice as well as a virtue,' *The Financial Times*, 29 November 1997.

a student with excellent potential and an inconsistent performance, hampered by occasional laziness and some constitutional deficiencies.

To this end, FATF's first evaluation, in June 1993, is quite telling in that the Task Force's experts acknowledged the 'monumental' problems Italian authorities faced in their struggle against organised crime, praised their attempts at reform, describing the system as a fundamentally sound one, but significantly avoided both making 'a judgement on whether [it was] working' and mentioning the systemic crisis that was shaking the foundation of the country's political system in the early 1990s.[600] Italian officials responded to the critiques by raising the profile of their involvement in the global AML regime: in the 1993-1994 round, Italy took over the chairmanship of FATF's working group on legal issues, hosted the G-7 economic summit in Naples in July of 1994, and volunteered to host the UN Conference on Organized Transnational Crime in the autumn.[601] The following year, the MEF ran for FATF Presidency, obtaining the chairmanship of the eighth round, which began on July 1, 1996 immediately after the end of the U.S. tenure, and before such a privilege was accorded to the UK. That same year, Italy contributed three-quarters of the budget of a new UN programme 'to raise consciousness about the problem' of ML and organized crime.[602] The initiative, administered jointly by the Vienna-based UN International Drug Control Programme (UNDCP) and the Crime Prevention and Criminal Justice Division, was to have an Italian director, the then executive head of the UNDCP.

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[600]'Countermeasures Fail To Keep Up With New Money Laundering Methods--OECD task force evaluates anti-money laundering regulations of eight members', *Thomson's International Banking Regulator*, 12 July 1993; 'Annual report Puts Eight Countries Under Microscope', *Money Laundering Alert International*, 1 August 1993.

[601]'Financial action task force on money laundering: annual report 1993-1994', *Financial Market Trends*, 1 June 1994; 'Naples summit communiqué: working together for sustained growth. (Group of Seven 1994 Economic Summit and G-7 Plus One Political Meeting, Naples, Italy, July 8-10, 1994) (Transcript)', *US Department of State Dispatch*, 1 July 1994.

[602] 'Fear of Crime Wealth Brings Effort to New Corners of World', *Money Laundering Alert*, 1 October 1996.

Italy thus came to the second round of mutual evaluations, in June 1997, in a relatively better shape than it had been four years earlier. Still, stains remained on the country's international reputation, beginning with its unfortunate placement as the lowest ranking Western country on the 1996 Corruption Perception Index.[603] Even worse, estimates for that year singled out Italy, along with Russia and Columbia, as one of the main financial channels for the diffusion of a large proportion of the illegal money derived from organized crime.[604] FATF's technocrats praised the efforts made by Italian authorities to address the lacunae highlighted by the first report, not least the lack of coordination between agencies that had led to the creation – albeit, in typical fashion, at the very last moment – of the UIC in 1997. They also spotted several weaknesses, however, such as the lack of supervision of non-bank financial institutions and the non-extension of identification requirements to individuals and companies operating in vulnerable sectors. Aware of these problems, Italian policy-makers had tried to remedy both situations on the eve of the evaluation: the report noted in fact that provisions had been adopted, but it was too soon once again to judge their effectiveness.[605]

Officials in the Central Bank and the Finance Ministry understood the need for reform. In his annual address on the state of the economy, the then BoI Governor, Antonio Fazio, pointed to the weaknesses of the system while praising law enforcers for an increase in the rate of assets seizures, reports and convictions. He invited the legislators to follow suit and intervene to address the fault lines identified by the FATF.[606] The perception of specialists in the field was that the Italian system was not perfect, but that it was at others jurisdictions in Europe at which the Task Force had to

[603]Robert S. Leiken, 'Controlling the global corruption epidemic', *Foreign Policy*, 1 December 1996.
[604]'Fighting money laundering', *Business Line (The Hindu)*, 31 August 1997.
[605]Cesare Bulgheroni, 'Prevention And Defense Of Money Laundering Cases In Italy', *Mondaq Business Briefing*, 28 August 2003.
[606]'Antimafia – Fazio, Contro Riciclaggio Più Tutela a Segnalazioni', *ANSA*, 25 February 1997.

point its fingers.[607] Italian financial institutions had made 'great progress' with respect to the evaluation received in 1993, noted the Justice Minister, Giovanni Maria Flick, in the summer of 1998. Most importantly, following the *40 Rs*, the system had undergone a significant process of evolution in its conceptual underpinnings, abandoning the purely punitive perspective of its early years, inherited from the anti-mafia framework, for a risk-based legislative approach focused on prevention. However, the framework needed to be reviewed and systematic reforms had to be carried out at all levels.[608]

The pattern of inconsistency in the quality of regime participation continued unabated in the following years, even after 9/11. The country for example hosted the conference that gave birth to the Palermo Convention on organized crime in December 2000, but lagged seriously behind in its ratification and in the ratification of the OECD Anti-Bribery Convention. The Palermo instrument was finally ratified by Parliament in 2006, interestingly at a time when UN CTC experts were due to visit the country and draw up Italy's Preliminary Implementation Assessment of UNSC Resolution 1373.[609] Still, in 2002, the Italian Finance Minister, Giulio Tremonti, led a new offensive against bank secrecy – on which the Palermo Convention was meant to impose limits – calling for stricter measures to be adopted on the occasion of the comprehensive review of the *40 plus 9 Recommendations*.[610]

In the autumn of 2001, the Italian government gave its full support to the United State's multilateral counter-terrorist efforts and tried to implement as swiftly as possible the provisions of Resolution 1373. *Act n. 438* was therefore approved by Parliament in December 2001 to criminalise terrorism and its financing, and to create the Financial

[607] Enzo d'Antona, 'Cosi' lavano i soldi della mafia', *Il Mondo*, 12 July 1997.
[608] 'Riciclaggio – Flick, Riorganizzare Normativa', *AGI*, 10 July 1998.
[609] Giovanni Maria Armone 'La convenzione di Palermo sul crimine organizzato transnazionale e la resposabilità degli enti: spunti di riflessione,' *La responsabilità amministrativa delle società e degli enti*, Settembre 2013.
[610] 'Sinner or sinned against?'

Security Committee. The offense of terrorism was not properly defined, however, so that in 2005 legislators had to intervene again and align it with the provisions of the newly adopted UNSC Resolution 1624 (2005) on incitement. Additionally, the government failed to renew the CSF mandate beyond 2003.[611] In November, the Italian MFA submitted 25 entries to the 1267 Consolidated List, including the names of Youssef Nada and Mohamud Hussein Abdulkadir, a beneficiary of the notorious Al Barakaat Foundation. MFA officials boasted afterwards, on the Ministry's website, that Italy, along with the United States and the United Kingdom, was one of the countries that had submitted the highest number of names for listing. The previous October, however, after having committed to reviewing 'economic fundamentals and ensure that no stone goes unturned in […] efforts to wage a successful global campaign against the financing of terrorism' during a summit of G-7 Finance Ministers, the government pushed a bill through Parliament to curb the powers and the reach of cross-border financial crime investigations.[612] Two weeks before, Italy had equally agreed, along with fourteen other European Union leaders, to back Washington on the creation of an EU-wide search and arrest warrant, stepping up police and law enforcement cooperation.

Italy's record entering its third round of evaluations in April 2005 was, therefore, mixed at best. Parliament had not met the June 15, 2003 deadline to transpose the Second EU AML Directive (2001/97/EC), adopted in 2001, and in February of that year, the government was sent pre-court warnings by the European Commission. The accumulated delay meant that by the time the Third Directive (2005/60/EC) entered into force in 2005 to incorporate the 2003 amendments to the *40 plus 9 Rs*, Italy was still adopting the provisions of the 2001 instrument. In addition, the country had been the target of some finger-pointing on the part of the international press, after a high profile article in the

[611]'Terrorismo – DS, Perché il governo non ha attuato misure 2001', *AGI*, 11 July 2005.
[612]Brian Love, 'Cracks in terror cash campaign before G7 meeting', *Reuters*, 4 October 2001.

Financial Times had accused Italian authorities of turning a blind eye to terrorist financiers. Of the 190 individuals associated with Al Qaeda and the Taliban listed in a UN report, 85 appeared to live in Italy.[613]

Unsurprisingly, the outcome of the evaluation round was not fully positive, and the country was placed on the yearly follow-up process. Its AML/CTF framework was found non compliant in fourteen instances, including with respect to all recommendations relating to Designated Non-Financial Businesses and Professions (DNFBP), and in relation to Special Counter-Terrorist Recommendation VII. The identification threshold of €12,500 (instead of €10,000), in fact, did not allow money transfer operators to comply. In eleven instances, the country's framework was only partially compliant with FATF's requirements, specifically with regards to Recommendation 5 on customer due diligence. The system was found in full compliance with only twelve recommendations, and largely compliant with eleven.[614]

How is one to make sense, then, of Italy's trajectory within the AML/CTF regime? FATF's norm-setting influence is undeniable. Despite the cultural and historical legacies, the AML/CTF frameworks developed in the aftermath of Italy's accession to the body and resulted from the implementation of its provisions. FATF's *40 plus 9 Rs* are also recognised as the standard of reference in official documents and discourse, both directly and via the intermediation of EU AML/CTF legislation, which explicitly implements them. Whereas the alignment is not perfect, as shown above, it goes beyond a mere commitment, and reaches the level of real enforcement, through secondary legislation and industry regulations.

The schizophrenic patterns of implementation and participation can be attributed to political institutional problems, deeply rooted and structural, as acknowledged by

[613]'L'ONU – in Italia 85 infiltrati del terrorismo', *Il Giornale*, 16 November 2003.
[614]FATF, *Mutual Evaluation Report. Italy*, 2007.

sector specialists.[615] Such problems, exacerbated by the well-known presence of organised crime, and the particular inclination of national governmental elites to look at multilateral fora in the definition of the country's broader foreign and security policy priorities, give plausibility to the hypothesis that officials within ministries attach greater significance to the outcome of the evaluation process per se than to its material consequences.[616] That is, AML/CTF elites appear particularly sensitive to the image-related social costs of the naming and shaming procedure, and only in a second instance consider the material costs of partial compliance. They have to obtain good scores because they have to 'be placed on the white list,' they have to belong to the 'list of the civilised countries of the world'. They have to do well because the assessments are 'published, and countries make comparisons and look at each other and how they do.' They have to align because that is what 'all virtuous countries in the world do.'[617]

This is why the MEF admits to be working already to anticipate the entry into force of the Fourth EU AML Directive, for which negotiations began in February 2013 to align with the 2012 reform of FATF's provisions. The 2012 reforms were carried out under the second Italian Presidency of the body, between July 2012 and June 2013. In the MEF there is the perception that the Italian delegation gave a strong impetus to the process of reform, particularly by pressing the 'Anglo-Saxon camp', with its 'huge

[615]Compliance with SR VII, achieved in 2012, was for example attributed to the Mario Monti's government change of course, which had intervened to remedy an embarrassing situation, outstanding since 2007. Interviewee Z, interview with author.

[616]Paolo Rosa for example describes Italy's strategic culture as accommodationist. According to him, a country with an accommodationist culture 'considers interstate relations as mainly cooperative in nature; It refuses to regard military force as a legitimate instrument of foreign policy. In behavioural terms, an accommodationist strategic culture manifests a strong preference for negotiations, compromises and the use of international institutions in order to resolve the conflicts.' See Rosa, 'The Accommodationist State. Strategic Culture and Foreign Policy in Italy', forthcoming. See also, Luigi Goglia, Renato Moro, *Guerra e pace nell'Italia del novecento. Politica estera, cultura politica e correnti dell'opinione pubblica*, (Bologna: Il Mulino 2006); Senato della Repubblica Italiana, *La situazione internazionale dopo gli attentati terroristici negli USA: atti e discussioni del Parlamento italiano: aggiornato fino al 7 novembre 2001*, 2001; Senato della Repubblica Italiana, 'La situazione internazionale dopo gli attentati terroristici negli U.S.A.', *Atti e Discussioni del Parlamento italiano*, *I quaderni delle informazioni parlamentari,* n. 10, Roma 2001.

[617] Interviewee X, interview with author.

number of delegates', to prioritise legislative comprehensiveness over enforcement flexibility. This time Italy is 'working hard' – an official has admitted – in order 'to be ready', so as not to repeat the debacle of 2006, when the country was 'unlucky to be one of the first ones to be evaluated' and was caught 'unprepared'.[618]

The timing of the legislative adjustments that followed the inclusion in the follow-up procedure is also telling. The first batch of bills was rushed through Parliament in the space of four months after the report was published, while the comprehensive overhaul of the system, brought about by legislative decree 231, was approved shortly thereafter, in November 2007. Italy was promoted to the bi-annual self-reporting mechanism two years later, in 2009. For a legislative body whose delays in transposing EU law are such that they have prompted legislators to draft stricter provisions to avoid them, the speed with which the decree was converted into law by Parliament was, in a sense, proportional to the embarrassment.[619] Additionally, the particular sensitivity to the issue displayed by policy-makers appears bipartisan and hence, going back to issues of aggregation addressed in Chapter Two, could be referred to the country as a whole and not just a specific bureaucratic organization or political party. Over the years, in fact, opposing government coalitions have overall been shown to attribute great significance to the results of the evaluation procedures. They have also equally attempted to raise the profile of the country's involvement in the AML/CTF regime through a series of initiatives, albeit discontinuous – for example volunteering law enforcement personnel for capacity-building assistance and evaluation rounds, and supporting the Finance Ministry in its candidacies to the FATF Presidency. These actions entail a considerable amount of 'preparatory and logistic work' and are, in the words of a MEF official, 'political as well

[618]Interviewee X, interview with author.
[619]N. L., 'Le nuove norme sulla partecipazione dell'Italia all'Unione europea: la legge 24 dicembre 2012, n. 234,' *Osservatorio Sulle Fonti*, http://www.osservatoriosullefonti.it/fonti-dellunione-europea-e internazionali/le-nuove-norme-sulla-partecipazione-dellitalia-allunione-europea-la-legge-24-dicembre-2012-n-234.

as policy decisions.'[620]

5.6. Conclusion

This chapter has provided a detailed analysis of three non-novice countries' participation in the global AML/CTF regime. It has outlined their regime-setting efforts, implementation patterns in the context of their organizational and historical legacies, as well as the reactions to the institution's specific conformity-inducing techniques, involving peer pressure, social sanctions through graduated public naming and shaming, and traditional reputational or material incentives. The chapter has posited that the case of the AML/CTF regime, recognised by the literature as a typical reference for studies of cooperation driven by concerns about reputation, is also fruitful ground where conformity-inducing effects of image-related group pressures on states can be investigated.

To this end, this account has first provided an overview of the specific socialising processes of the institution selected for this study, the Financial Action Task Force, highlighting in particular its growing independence and the process of status acquisition of FATF's recommendations in the context of the international financial community. This is in line with several contributions that attribute the characteristics of 'soft law' to FATF's standards, underscoring how its regulatory rules have evolved in the perception of states from cumbersome and costly provisions to the 'gospel' of international financial regulation.[621] This specific ideational nature of FATF's recommendations has emerged unexpectedly through the process of top-down coercive and competitive re-regulation

[620]Interviewee X, interview with author.
[621]Stessens, *Money Laundering: A New International Law Enforcement Model*; Bruce Zagaris, Sheila M. Castilla, 'Constructing an International Financial Enforcement Sub-regime: The Implementation of Anti-Money Laundering Policy', *Brooklyn Journal of International Law*, vol. 872, n. 19, 1993. Andreas and Nadelmann refer to FATF's messianic language in *Policing the Globe*.

described by Kapstein and Simmons with reference to the early stages of the global financial regulatory regimes.[622] Institutionalist literature accounts for the process of hegemonic-driven regime creation and post-hegemonic regime survival, admitting that institutional agency beyond the regime setter can be exercised through instrumental reputational effects. These are identified as the main modalities through which the FATF displayed its influence at its inception.

In its more mature stage, however, intra-group and inter-group interactions show the presence of the conditions that Chapter Two identified as key to the activation of the social influence phenomenon and susceptible of exercising that characteristic 'pull' on a country's conception of its own identity: (1) the particular value of FATF's standards – enhanced by the expertise of its members; (2) intra-group dynamics triggered by public embarrassment and followed by a predisposition of members to compare notes and scores with respect to a specific group of reference (the group of 'virtuous countries', of 'civilised nations'); (3) intra-group disagreements on fundamental normative positions (flexibility versus detail of the standards).

The outcome of the anticipatory socialisation process can be identified in consistent patterns of justification of lack of behavioural conformity, full-fledged behavioural alignment with the Task Force's standards, both at public and private sector levels, and frequent instances of emotional reactivity to criticism or reward. To this end, the lexicon employed by officials and commentators alike is a characteristic symptom of reaction to the prospect of status devaluation on the part of a targeted country: feelings of 'anger', 'embarrassment', 'hypocrisy', of not being 'good'; perceptions of 'unfair' treatment, of 'having to be part' of a specific group, a specific 'list'; the use of ideationally charged words such as 'virtuous', 'civilised', 'pariah', 'conscience', and

[622] Simmons, 'The International Politics of Harmonization;' Ethan B. Kapstein, 'Architects of Stability? International Cooperation Among Financial Supervisors,' *BIS Working Papers*, n. 199, February 2006.

'pride'.[623]

The three country cases examined outline three different dynamics of regime participation and institutional influence. The case of the United States shows how the regime-setting country is equally subject to the group-induced conformity mechanisms, triggered by public embarrassment, enhanced by the relative power position of the country in the system, and followed by justificatory discourse and behavioural alignment (even in cases in which the cost-benefit calculation hypothesis does not hold, i.e. the 'interesting cases of cooperation' according to Johnston). This observation replicates behavioural patterns adopted by the country in the context of other policy issue areas in the counter-terrorism regime, manifesting institutional effects that are in contradiction with Simmons' early analyses of purely hegemonic management. The case of the United Kingdom mirrors that of the United States, with the addition of a specific historically motivated sensitivity to national image in the context of international financial regulation. The last case examined, Italy, outlines the participation trajectory of a small-sized regime member with a negative reputational legacy that influences and heightens its sensitivity to the issue. This last case also shows how members perceive to be conforming with the institution rather than with the regime setter, justifying the contention made in the course of the narration that the regime setter has been demoted to a rank of first among equals in the institutional environment.

It should be specified, however, that such an analysis does not deny that considerations for the material costs associated with poor performance also come into play as drivers of countries' conforming behaviour. Along with these traditional reputational incentives – documented at length by the literature – this chapter has,

[623]In line with these considerations, Clunan for example notes how it is now 'very sexy for a state to create a financial intelligence unit'. Quoted in Center for Contemporary Conflict, 'Terrorism Financing and State Responses in Comparative Perspective.' Conference Report, Monterey, CA, November 4-5, 2004, available at http://www.nps.edu/ccc/conferences/recent/nov04TerrorismFinance_rpt.pdf.

however, brought to light symptoms that are indicative of the anticipatory socialisation processes described by the social influence phenomenon and that, as precursors of a country's full induction into an institutional environment, should not be discounted. In particular, the case of the FATF offers a clear illustration of how the process of interaction between formal multilateral fora and a broader social domain, where multiple types of venues and actors – including non-members – interact in the presence of the conditions listed above, can occasion instances of substantive and deep compliance (tier three effects). As such, the case offers a useful counter-argument to approaches that dismiss the value, both in theory and practice, of the social sanctioning effects of multilateral institutions, considering them merely symbolic and inconsequential.

Chapter Six

Conclusion

This thesis has sought to illustrate the effects of participation in the multilateral counter-terrorist regime on the definition and alteration of the behavioural preferences of a selected group of Western countries: the United States, the United Kingdom and Italy. Rejecting analyses that underplay the value, both theoretical and empirical, of cooperation within multilateral venues aimed at fighting terrorism in the aftermath of the September 11 attacks, this contribution has sought to carve out a space for social variables, such as shame and mutual endorsement, to be factored into the analysis. In particular, the thesis has advanced four sets of conceptually significant claims.

The first set of claims relates to the theoretical understanding of the phenomenon and identifies in the process of gradual convergence of member states' narratives, policies and practices a symptom of the effects of institutional interaction that contradicts extant observations of persistently diverging behaviour. The second set of claims singles out analytical perspectives that unpack state preference formation as the most fruitful ground from which to launch an investigation of state motivational drivers. The third set of claims relates to the particular practice-driven epistemological position adopted by this thesis, which suggests that a closer approximation of reality can be achieved if analytical perspectives move beyond a narrow conceptualisation of state motivational drivers as either following social or material utility-maximising goals. The fourth set of claims – and the thesis's crucial contribution – points to the anticipatory socialisation phenomenon, identified by the literature as social influence, to account for the instances of pro-institution action displayed by the country case studies in selected areas of

cooperation. In particular, the thesis recasts extant contributions to partial socialisation in international institutions to propose a new approach in order to account for the pro-group behaviour of the selected member states: the diffused social influence model. This model advances a two-stage framework of state interaction within international fora, linking formal multilateral venues to a broader multi-actor and multi-venue social domain, in order to account for behavioural modifications in the targeted state. The thesis then applies the model to three cases of cooperation within the multilateral counter-terrorist regime: the domestic incorporation of soft counter-terrorism measures following the adoption of the United Nations Global Counter-Terrorism Strategy in 2006; the human rights reform of the 1267 UN counter-terrorism sanctions regime; the domestic policy adjustments to FATF's counter-terrorism financing recommendations. The analysis finds that in all three cases the diffused social influence mechanism induces varied levels of state compliance that could not be accounted for unless image-related concerns were taken into account.

6.1. This study's foundations

The thesis advances these propositions after a careful and methodical examination of the country case studies' participation in selected instances of the global counter-terrorist regime. It looks at processes of reform that have intervened to alter the original normative institutional setting, putting the non-novice countries selected for the purposes of this analysis in the position of having to re-commit and re-engage in cooperative behaviour. Against the backdrop of what scholars have identified as a 'regime complex,' with multiple overlapping layers of cooperation driven by necessity and a strong agenda-setting role exercised by the United States, the thesis has focused on formal international

institutions. Specifically, these have been conceptualised as part of a broader social domain, comprising of formal and informal venues and state and non-state actors. It is in this diffused social space that the iterated interaction between the targeted actor and the reference group takes place, mediated by the formal institutional environment, which acts as a catalyst of the process of social reward and sanctioning.

At the formal institutional level, the overview of multilateral counter-terrorist cooperation, both before and in the aftermath of the 9/11 watershed, has suggested that three types of fora are useful grounds in which to gauge institutional propensity for pedagogic action and *habitus*-building. These venues are the ones that are characterised by a global vocation and sustained reiteration of the interaction, which occurs within clearly structured institutional patterns. To this end, the United Nations counter-terrorism regime, revolving around UNSC Resolutions 1373, 1267 and the Global Counter-Terrorism Strategy, is a significant terrain from which an analysis of state engagement patterns can be conducted. Along with the UN, the thesis has looked at the Financial Action Task Force as the central institution of the global counter-terrorist financing regime, in view of its distinct socialising propensities and modalities. The thesis has further considered the input of the European Union as a mediator in the implementation processes of global counter-terrorist norms on the part of EU member states. This case was added to the analysis in order to provide as faithful an exploration as possible of the actual dynamics of state and institutional interactions at the empirical level.

The picture that the thesis has painted offers an exhaustive snapshot of the most significant areas of multilateral cooperation in counter-terrorism, addressing the root causes, human rights and financing phenomena. The snapshot provided is a complex one, in which multiple layers of interaction coexist: top-down, from the institution to the state actor; bottom-up, from the state unit-level of analysis to the institution and to other

member states; and horizontally, between the formal institutional environment and the broader multi-actor and multi-venue social domain that partakes in the activation of the process of anticipatory socialisation of the targeted state. Guided by this recognition of the multifaceted nature of the empirical reality explored, the thesis has reviewed extant theoretical explanations of multilateral cooperation and institutional effects and has proposed to account for the phenomena observed in the issue areas examined through a revision of the concept of social influence.

6.2. Diffused social influence as an explanation of pro-group behaviour

Drawing from the socialisation literature in IR Theory – in particular Johnston's and Checkel's contributions – as well as from sociological and socio-psychological analyses of individual behaviour and interaction within groups, this study has defined diffused social influence as the pro-group behaviour displayed by an actor as a result of image-related pressures originating within the group, for fear of shaming or in search of praise. As such, social influence has been described as an anticipatory socialisation phenomenon, in which the transition to logic of appropriateness from logic of consequences has not yet taken place. This consideration characterises social influence as an instantiation of social rather than explicitly material rationality, in which the actors involved aim at the maximisation of a psychological payoff related to the recognition, or the preservation, of the actors' international image based on its self-image.

6.2.1. Key concepts

Two concepts are therefore crucial to an understanding of this phenomenon: image and self-image. In Chapter Two the thesis defined image as the general impression that a person, organization, or product presents to the public. This concept was then linked with that of self-image, described as the idea one has of one's own abilities, appearance, and personality, a concept closely related to an actor's conception of its own defining characteristics, or identity.

6.2.2. A two-stage attribution mechanism

The thesis has then proceeded to identify the conditions for the activation of the social influence phenomenon, by modelling a two-stage anticipatory socialisation mechanism. At the intra-group level, the thesis posited that social environments can trigger image-related conformity-inducing behaviour when several or all of the following conditions apply: (1) a disagreement exists between members of the group; (2) the nature of the issue at stake is ideational and/or ontological, that is, a country's position with respect to this specific issue can touch on a state's conception of its own image in a given setting; (3) the actor's stance, if maintained, puts it in a distinct minority position and outside what the actor deems as its natural, and intersubjectively defined, group of reference; (4) the nature of the formal and informal mechanisms through which interaction takes place and preferences are expressed within the group discourages dissent by forcing members who wish to oppose the majority position to do so very publicly (as in the case of consensus voting); or forces them to conform to established

group expectations (as in the case of the customary sponsorship of draft UNSC counter-terrorist resolutions on the part of the United States).

At the inter-group level, the thesis modelled the institutional space of interaction as a *diffused social domain*, where formal fora such as UN counter-terrorism bodies and the FATF did not act as insulated units, but as parts of a broader social environment where state actors interfaced simultaneously, both bilaterally and multilaterally, with national capitals, non-state actors, and with (informal) transnational networks, through a process of multiple feedback effects. The formal venue therefore provides a space where issues can be framed, multi-venue and multi-actor coalitions built, and where criticism of the actor's position can be articulated and communicated both to the target and the public. It also provides a stage where the target's position on a particular issue can be publicly scrutinised, negotiated and accommodated, offering both positive (status reaffirming) and negative (opprobrium generating) incentives to initiate convergence-inducing practices.

In this diffused social environment, the activation of anticipatory forms of social induction occurs when the backpatting benefits and opprobrium costs change the actor's cost-benefit analysis at a given equilibrium point: this corresponds to a value at which the size of the audience reaches a certain critical mass. The non-material costs of non-alignment incurred by the actor increase with each additional participant in the reference (or opposing) group, leading to an accumulation of praise or shame markers that makes defection costlier and pro-group behaviour increasingly attractive. The formation of this critical mass, within diffused processes of transnational, multi-venue and multi-actor coalition building, is therefore crucial to explaining pro-group change in the target's behaviour. Instrumental to the creation of a critical mass are the special framing skills of the group of agents that act as norm entrepreneurs/critics. The success of their social

sanctioning techniques, however, ultimately depends on the nature of the issue itself, which needs to exercise that characteristic 'pull' on a state's perception of its own identity in order to activate the image concern.

6.2.3. Outcomes

The visible effects of this process of diffused, anticipatory social induction are found in a change of behaviour on the part of the targeted actor, which leads to an alignment with the preferred course of action selected by the group. The alignment can take the form of verbal and public responses at the level of discourse and narrative (tier one effects), of policy and legal adjustments (tier two effects), and of more substantive changes in the institutional structure and practices within the sub-state unit-level of analysis (tier three effects). The first type of effects is more recurrent, but the empirical cases show evidence of all three in different contexts. In particular, the findings suggest that the strength and the level of depth of the effect are related to the socialising properties of the formal venue. In cases where the pedagogic and *habitus*-building roles of the international forum are institutionalised, as in the case of the FATF, there is less need for reliance on the broad social domain to trigger the process of anticipatory socialisation. In comparison to the Task Force, UN bodies, including specific counter-terrorism venues, present more loosely structured forms of interaction where *habitus*-building is not a priority; the multi-level nature of the social environment and the top-down, bottom-up and horizontal processes of interaction, negotiation and accommodation that lead to the creation of a critical mass thus depend crucially on the diffused character of the social domain.

6.3. Findings

The thesis has illustrated the plausibility of the diffused social influence model by analysing the participation of three selected country case studies within the context of the key strands of the counter-terrorist regime.

6.3.1. Counter-radicalisation in counter-terrorism

Chapter Three has reviewed states' acceptance and implementation of the counter-radicalisation provisions within the General Assembly's Global Counter-Terrorism Strategy, highlighting how image-pressure mechanisms interacted with historical legacies and material calculations to determine states' preferred courses of action. Within this case, the United Kingdom has acted as a regime setter at EU level, while independent action on the part of institutional bodies, namely the UN Secretary-General and the General Assembly, has institutionalised the regime at the multilateral level. The manifestation of the social influence phenomenon has occurred at the agreement acceptance stage for all three countries, giving rise to instances of verbal responses. In the case of Italy, the alignment with the institution has reached deeper levels, occasioning some policy adjustments (tier two effects). In the case of the United States, some alignment has been displayed in the conceptual reformulation of the country's counter-terrorist approach after the transition to the Obama administration (tier one effects).

The case presented in Chapter Three conforms to several of the conditions identified by this thesis as susceptible of triggering the diffused social influence phenomenon. The divergence between the targeted countries and the majority of states within the UN General Assembly would have put these actors in a distinctive minority

position had they opposed the vote. The disagreement with the institution touched on fundamental views relating to the respective roles of the Assembly and the Security Council in driving UN action in counter-terrorism, while the root causes issue itself has been at the source of heated controversies within the United Nations for several decades. Its ambiguous formulation within the structure of the Global Strategy – with the convoluted expression 'conditions conducive to the spread of terrorism' – and the numerous references to issues of good governance, economic development and integration that characterise the policy charged it with strong ideational value and consequences. The preferred mechanism for the adoption of the agreement at the international level – consensus – allowed the institutional environment to exercise indirect sanctioning power with respect to the dissenting members, and discouraged diverging positions by putting recalcitrant countries in the spotlight. The sanction was therefore social, mediated by an institutional space centred on the General Assembly but in which several actors and venues, both state and non-state, participated in a diffused process with multiple feedback paths. Once the regime was modified and the Strategy adopted, the environment's pressure led these countries' authorities to vocally justify lack of compliance with the Strategy's counter-radicalisation provisions, even in the absence of a specific threat situation on the ground or in the presence of sophisticated domestic counter-radicalisation frameworks. Additionally, evidence gathered from this case allows one to rule out alternative arguments that postulate both entirely material and entirely norm-driven explanations. In particular, the absence of evident material side-payments and the presence of significant long-term material costs associated with the entry into force of the multilateral instrument permits one to dismiss explanations based on state's pursuit of purely material interests. The concern for the effectiveness of the counter-terrorist regime at Security Council level shows that the behaviour of the targeted actors

was not motivated by the potential gains of further cooperation (in counter-terrorism or on a linked issue). Furthermore, the resistance to regime reform and agreement acceptance allows one to infer that behavioural alignment was not occasioned by conversion to the worthiness of the cause.

6.3.2. The human rights reform of the 1267 counter-terrorist sanctions regime

Chapter Four shifted the focus to the pro-human rights reform of the 1267 sanctions regime, achieved after ten years of intense negotiations at Security Council level thanks to the efforts of a growing coalition of like-minded members. These states came together to raise the issue within the Council, built an increasingly large coalition of countries in favour of the pro-reform option, and were largely responsible for the intra-institutional dynamics that led initially reluctant regime members to align with the pro-reform camp. Italy has been considered a special type of agenda setter in the thesis's design by virtue of its efforts at circulating reform proposals in the months preceding the vote at Council level, in December 2009. This agenda-setting effort, however, has been interpreted in the context of its previous tepid demonstrations of interest in the topic and put in relation to the motivational trigger represented by the country's 2009 Presidency of the G-8. The case of the United Kingdom has been outlined as that of a reluctant mediator between the largely pro-reform position of European member states and the *status quo* position of the United States. The path of the U.S. towards pro-group behaviour has been illustrated as a combination of strong image-related drivers relating to the country's perception of its identity and place in the Council, and the rational evaluation of the necessity to save a regime that was considered instrumental to the attainment of U.S. national security goals. Interest-driven explanations (in the cases of

the United Kingdom and the United States) and norm-driven explanations (in the case of Italy), however, cannot account for the timing of the reform, whose acceptance in 2009 can be understood through the lenses of the diffused social influence mechanism.

The case has displayed several of the model's process-activating conditions: the existence of a disagreement inside the group, which relates to an issue with clear ideational and ontological value for the countries involved; the building of a mass of critics within the Security Council and the larger community of UN member states, with a distinctive power to lever social sanctions by instances of public naming and shaming amplified by the community of transnational activists; the specific procedural patterns that discourage and publicise dissent in the expression of preferences, while putting Western and P5 members in the moral spotlight. The types of outcome displayed are a combination of discursive acceptance of the reform, reframing of the policy at domestic level (tier one effects) and selective domestic implementation at administrative level (tier two effects). The diffused nature of the social domain of the interaction, mediated by the formal institution(s) has proven crucial in the activation of the social sanctioning mechanism leading to pro-group behaviour.

6.3.3. The implementation of counter-terrorist financing provisions

Chapter Five, the last empirical case study of the thesis, has focused on the counter-terrorist financing efforts of an organization that is firmly embedded within the UN counter-terrorist system: the Financial Action Task Force. This body has been introduced as a particularly interesting case, owing to its original creation as the preferred vehicle of U.S. global financial regulatory efforts, both at the end of the 1980s and in the aftermath of 9/11, in order to achieve the legislative uniformity required by the UNSC

counter-terrorist resolutions. The FATF has also been presented as a particularly fruitful object of enquiry by virtue of its specific conformity-inducing mechanisms, firmly centred on peer pressure, mutual evaluations, public comparisons amongst members, and recurrent naming and shaming, as well as black listing, as instances of socialisation processes carried out in the context of a highly specialised organization.

The chapter has traced the process of emancipation of this specific institutional arrangement from the regime-setting states via an exploration of the regime participation trajectories of the three country case studies. The analysis has shown that, while the body and its famous set of provisions, the Recommendations, have acquired independence from the regime setter and the international status of soft law, the regime setter has been increasingly subject to the image-related pressures triggered by the Task Force's compliance-inducing mechanisms. This has resulted in the alignment of the regime setter's own legislation and practices with those of the Task Force, even in cases in which this was counter-productive at the domestic level. In the context of this sub-regime within the broader scope of multilateral counter-terrorism cooperation, the cases of the United Kingdom and Italy have illustrated, respectively, how a combination of specific historical and cultural circumstances can contribute to an exacerbation of the image-related phenomena making these countries' officials particularly receptive to being embarrassed into compliance.

Of the three issue areas examined, the case of the counter-terrorist financing regime not only conforms to all the conditions that, in a given social environment, are susceptible of triggering the social influence phenomenon, but it also offers evidence of social influence effects beyond verbal responses. State harmonisation occurs – and it is evaluated (and named, and shamed) – at the levels of policy and legal adjustments (tier two effects), as well as with respect to changes in domestic structures and agents'

practices (tier three effects). While the diffused nature of the social environment is still an important pre-requisite for the activation of the anticipatory socialisation mechanism, the specific pedagogic and *habitus*-building character of the formal forum facilitates and reinforces the effect of institutional influence. A summary of the findings for the three issue areas and the three country cases is shown in Table 3.

Table 3. Diffused social influence and institutional social effects in multilateral counter-terrorism

Policy Issue Area	Type of effects		
	U.S.	UK	ITALY
Counter-Radicalisation	Tier 1	Tier 1	Tiers 1-2
Human Rights Reform	Tiers 1-2	Tiers 1-2	Tiers 1-2
Counter-Terrorist Financing	Tiers 1-2-3	Tiers 1-2-3	Tiers 1-2-3

Tier 1 effects: verbal and public responses; Tier 2: legal and policy adjustments;
Tier 3: change in domestic practices and structures.

6.4. Implications for International Relations

The analysis of the institutional effects of participation in the multilateral counter-terrorist regime presented in this thesis has significant implications for IR theory. In particular, this study offers several insights that can shed further light on the role of international institutions in influencing both state behaviour and the current system of global (security) governance.

6.4.1. Formal institutions (still) matter

One of the key findings of this thesis is that international institutions are still fertile ground where fruitful research can be conducted into the drivers of state preferences. Rather than being old features in a new and disaggregated world order, where horizontal and vertical networks of state and non-state actors influence behaviour, they are firmly embedded in the multi-layered system of global (security) governance and play a fundamental role in triggering processes of norm diffusion, acceptance and compliance. Their effects on state action cannot be appreciated, however, by looking at these fora in isolation. An important contribution of this thesis lies in suggesting that the institutional space of social construction theorised by scholars of socialisation should be understood as a diffused social environment. The mechanisms of attribution in the analysis of states' induction into a given international regime occur through multiple processes of negotiation and accommodation that involve both the formal forum and a broader social domain inhabited by transnational networks, domestic actors and other IGOs. The process is initiated via the intra-group dynamics of the formal institutional environment, mediated by their more or less institutionalised patterns of interaction, and projected onto the international stage via processes of inter-group coalition building. When the conditions illustrated in this thesis are present, this multi-level, multi-venue and multi-actor interaction, centred on the formal forum, can activate image-related concerns and embarrass (or entice) countries into compliance/alignment. Formal institutions are therefore still crucial actors in the definition of global policy (security) agendas.

Additionally, going back to the set of questions that spurred and guided this thesis's enquiry, namely whether and under what circumstances multilateral institutional environments could be considered responsible for the increasing convergence of actors' discourses, policies and practices in the counter-terrorism field, evidence from the cases

points to real-life effects with real-life consequences. Despite the prevalence of tier one outcomes, in fact, the thesis shows that via diffused social influence changes can occur in the domestic frameworks of the targeted actors, occasioning a change of preferences at intra-state level. Contrary to rationalist belief, institutional effects originating in mechanisms of social sanction and social praise are not inconsequential, but useful tools to help clarify the complex relationship between states and institutions as agents of the state, or as actors endowed with independent agency.

Moreover, they can be effective means of enforcement of international agreements, presenting an alternative perspective with respect to studies that focus on the processes of social sanctioning (via naming, shaming, stigmatising etc.) but tend to reach pessimistic conclusions as to their effectiveness and utility. The specific global regime chosen for the purpose of this study, counter-terrorism, gives even more weight to these observations, by virtue of the importance of this issue area after the 9/11 attacks. From a further theoretical perspective, these findings provide further supports for conceptual enquiries that try to understand and map the process of norm diffusion and of socialisation at different levels of state activity, from the acceptance of regime participation at the international level to effective domestic implementation of a given international instrument. This has important practical implication, as it can help researchers answer crucial questions such as what works and why in eliciting state compliance in a specific international (security) field.

6.4.2. A pragmatic approach to the study of state behaviour

Referring to practice-driven approaches in International Relations theory, the thesis has further posited that the diffused social influence phenomenon can and in reality does coexist with instances of material rationality, in which states can seek both the

maximisation of a non-material payoff and the gain derived from cost-benefit calculations over multiple courses of action. This claim was advanced in full awareness that such contention is seen as problematic by a segment of the literature that strives for parsimony in its explanation of state interactions in the international system. These objections notwithstanding, the perspective put forward here is that there is much to be gained heuristically from an understanding of the cooperation phenomenon that does not exclude *a priori* the possibility of the complexity of states' motivational drivers: such a pragmatic approach can in fact help to clarify the complex motivational drivers that guide state responses to both social and material variables.

6.4.3. Institutions and power

The presence of regime setting countries in the sample of cases selected for the analysis is significant in two closely related respects: it has heuristic value because it makes the testing exercise more complex, giving more leverage to instances of institutional influence; and crucially it permits clarification of whether states' behaviour becomes more similar to, i.e. aligns with, the institution, rather than with the regime-setter's policy as diffused by the institution. The thesis has pointed to instances in which institutional agenda setting occurred as a second order effect, via boomerang-type dynamics. At an initial stage, the international body acted as the agent of the principal for the diffusion of policies and practices. Via the interaction with the broader social domain and its multi-actor coalitions, the institution then appropriated the policy-setting process and modified the original characteristics of the regime, imposing the acceptance of the reform on the original regime setter. This observation has bearing on the role of the power variable and its sources. The inclusion of the United States in the sample and the

detection of group-induced behavioural conformity effects on the regime setter signal the presence of constraints on U.S. power that go beyond the reputational cost-benefit mechanisms outlined in institutionalist literature. They similarly weaken rationalist critiques of the constraining power of legitimacy as a limit to states' (and in particular to the United States') freedom of action. Countries' sensitivity to image and institutions' ability to trigger image-related concerns through processes of diffused social influence thus add a new layer of enquiry that has the potential to mend the fracture between rationalist notions of reputation and the constructivist notion of legitimacy, provided that the complexity of rationales at the basis of state action not be dismissed from the analysis.

Additionally, these perspectives allow the analysis to move beyond explorations of single socialisation processes, leaving sufficient analytical scope to account for the re-induction – or resocialisation – of non-novice regime(-setting) participants into social environments of which they were already members. This finding highlights how regime participation can be seen as a continuous dialectical process of negotiation and renegotiation of an actor's position and motives for cooperation, rather than an exogenously defined preference. Lastly, this thesis's focus on multiple institutional environments permits one to clarify the mechanisms of institutional competition for agenda setting space and influence, both within the United Nations and between UN fora and non-UN bodies. At UN level, the thesis's wider theoretical implications touch on the crucial relationship between the Security Council, the General Assembly and the Secretariat. Within the UN counter-terrorist regime there are signs of an increasingly strong trend towards the transfer of authority from the Security Council to the General Assembly and the Secretariat, in particular via the institutionalisation of the Counter-Terrorism Implementation Task Force. These are symptoms of a process whose wider

policy implications are extremely significant both for the United Nations and for its member states.

6.5. Future research

The multifaceted implications of the thesis make this enquiry a very fertile soil in which the seeds of future research endeavours can be planted. Looking beyond the specific scope of the thesis, this study feeds into analyses that attempt to assess the role of emotions such as shame, pride, stigma, and humiliation on state rational and non-rational behaviour; the determinant of hypocrisy on actors' compliance with international agreements; and the power of norms to alter the preference of actors both at the state and sub-state unit-level of analysis. Taking into consideration the thesis's primary object of analysis –institutional influence – and its main finding – image-driven effects triggered by a diffused social environment centred on the formal forum of cooperation – this study's explanatory scope can be further expanded by extending the analysis both vertically and longitudinally, within and without the counter-terrorist regime. The multi-layered nature of multilateral counter-terrorist efforts prompts an enquiry beyond the formal settings that were the object of this study, to gauge whether the conformity-inducing effects triggered by image-related concerns apply in the absence of formal institutional venues and under what conditions. Preliminary research into the case of the Leaders in Counter-Terrorism Training Programme (LinCT), a highly selective series of workshops to coordinate counter-terrorist action at the level of law-enforcement practitioners in the United States, the United Kingdom, Australia, Canada, and New Zealand, offers promising initial data that would also help to shed further light on the

relationships between formal institutions and informal networks in influencing state behaviour. [624]

Longitudinally, other issue areas could present the characteristics that Chapter Two identified as possible triggers of the social influence phenomenon. Environmental, climate, non-proliferation, and refugee regimes, given their specific combination of values and national security issues, would represent fruitful testing grounds to further the analytical traction of the argument this thesis advances and increase its scope for generalisability. A similar analytical goal could be achieved by extending the analysis to other country cases, both within and without the group of Western states, carefully balancing the concerns for depth and breadth of the argument, as the analysis carried out in the thesis has attempted to do.

[624] Michael Ferrence, U.S. FBI, Head of Training for Counter-Terrorism, Washington, D.C., interview with author, April 16, 2012; Pirie, Keith, LinCT Coordinator, International Academy Bramshill, interview with author, May 17, 2012.

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Interviewee F, Senior Official, Formerly at the Italian Permanent Mission to the UN, New York, Interviewed on May 6, 2009.

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Interviewee H, Official in the Cabinet of the Minister, Italian Interior Ministry, Interviewed in Rome, April 21, 2009.

Interviewee I, Counter-Terrorist Official, Italian Ministry of the Interior, Interviewed in Rome, April 21, 2009.

Interviewee J, Former Under Secretary of State, U.S. State Department, Interviewed in Cambridge, MA, December 8, 2009.

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Interviewee N, LinCT Organiser, Interviewed in Cambridge, MA, March 20, 2012.

Interviewee O, Senior Official, Italian Ministry of Foreign Affairs, Telephone Interview, October 14, 2009.

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Interviewee T, Human Rights Expert, Interviewed in New York, December 2, 2009.

Interviewee U, UN Human Rights Expert, Interviewed in New York, December 3, 2009.

Interviewee V, Senior Official, Formerly at the U.S. Mission to the European Union, Brussels, Telephone Interview, April 23, 2012.

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Interviewee CC, British Intelligence Services, Interviewed in London, June 23, 2009.

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