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Autocatalytic Regime Theory and UNSC Spawned Cooperative Counterterrorism

Nawi Ukabiala*

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I. INTRODUCTION

At first blush, domestic counterterrorism and security experts might scoff at the prospect of robust and effective action by the United Nations (UN) as a central component of an effective counterterrorism strategy. Indeed, in the context of addressing emerging threats to international peace and security, critics have periodically cast the UN Security Council (UNSC) as a little tin god when swift and responsive action is stymied by political impasse, suffocated by layers of bureaucracy, or impeded by vague and incomplete resolutions.¹ Given the nonexistence of a leviathan to provide for order and enforcement in the international relations context, a classic realist may be particularly skeptical of the efficacy of any international organization (IO) based cooperative approach to a matter at the core of domestic security policy such as counterterrorism. Yet, such a rationale is unduly agnostic, antiquated, and disengaged from counterterrorism developments that have been occurring for over two decades. Furthermore, a despondent rejection of cooperative approaches to counterterrorism contributes to schismatic phenomena and is doomed by an imperceptive failure to recognize the global nature of the challenge. International legal mechanisms have been characterized by increasing relevance and efficacy, and there are strong theoretical justifications for relying on them.

Few would argue that the UNSC has been apotheosized to the status of an international leviathan with omnipotent authority to bring stability to an anarchic international order. Yet, in reality the UNSC has long been encroaching upon the sovereign rights of its creators in order to protect them from one another, as well as perceived threats to international peace and security. Exhibit one—the sweeping UN global counterterrorism strategy equipped with binding obligations, sanctions, and immense legal apparatus.² This article focuses on the Al-Qaida

¹ See, e.g., Thomas M. Franck, *Inspections and Their Enforcement: A Modest Proposal*, 96 AM. J. INT'L L. 899, 899 (2002) (describing UN resolutions in response to crises in Kosovo and Iraq as “paper tigers, incapable of deterring violations”); Saira Mohamed, *Taking Stock of the Responsibility to Protect*, 48 STAN. J. INT'L L. 319, 321–25 (2012) (chronicling failures of UNSC responses to atrocities in Kosovo, Rwanda, Bosnia, and Somalia).

² The UNSC global counter-terrorism strategy currently consist of four components including; “condemnation of discrete terrorist acts, imposition of sanctions, the creation of universally binding counter-terrorism measures and capacity-building for counter-terrorism at the national level.” COUNTER-TERRORISM STRATEGIES IN A FRAGMENTED INTERNATIONAL LEGAL ORDER: MEETING THE CHALLENGES 13 (Larissa van den Herik &

asset-freezing aspect of that strategy. Despite the inability to divine a credo of consistent and effective UNSC intervention to maintain international peace and security, at least one prominent scholar familiar with its mythos has characterized the UNSC as the “*deus ex machina* of the international legal system.”³ Thus, it should hardly be a surprise that the “God” in the international legal machine would be one of the first actors to address the emergence of global terrorism and advance “the sole vehicle for truly global action against the twin threats of Al- Qaida and the Taliban.”⁴ Though it has subsequently been forged into a critical response to the modern, archetypical conception of terrorism—the 9/11 attacks—the rigorous sanctions regime created by UNSC Resolution 1267 actually predates those attacks.⁵ Post 9/11, the 1267 sanctions regime, which has become central to UNSC international peace and security policy, has surprised numerous security experts for entailing, perhaps, a more robust and comprehensive approach than a unilateral United States (US) effort could have entailed. On the other hand, courts, commentators, scholars, and human rights advocates have been critical of the lack of due process and transparency attendant to the regime, which has evolved, in large part, to respond to such criticisms.⁶

Less attention has been given to mapping the macrocosmic landscape of the counter financing of terror regime (1267 CFT Regime) generated by Resolution 1267. Notably, the resolution generated a polycentric regime by captivating and co-opting transnational actors, States, jurists, scholars, and NGOs. It then infused these actors, such as the Financial Action Task Force (FATF) and the International Criminal Police Organization (INTERPOL), with

Nico Schrijver eds. 2013) [hereinafter COUNTER-TERRORISM STRATEGIES]. UNSC Resolution 1373 established the Counter-Terrorism Committee (CTC), which coexists with the 1267 Committee. *Id.* Together they constitute the “two principal pillars of the Security Council counter-terrorism campaign.” *Id.* In 2004, the UNSC established a nonproliferation committee in Resolution 1540. *Id.* The Counter-Terrorism Implementation Task Force (CTITF) was established by the Secretary-General in 2005 to coordinate the numerous post 9/11 counterterrorism directives. See *Counter-Terrorism Implementation Task Force (CTITF)*, UNITED NATIONS, <http://www.un.org/en/terrorism/ctitf/index.shtml> (last visited May 6, 2015).

³ See José E. Alvarez, *Review Essay: Between Law and Power*, 99 AM. J. INT’L L. 926, 926, 932 (2005).

⁴ U.N. S.C. Rep. of the Analytical Support and Sanctions Monitoring Team Appointed Pursuant to Security Council Resolutions 1617 (2005) and 1735 (2006) Concerning Al-Qaida and the Taliban and Associated Individuals and Entities, ¶ 2, U.N. Doc. S/2007/677 (Nov. 29, 2007).

⁵ S.C. Res. 1267, U.N. Doc. S/Res/1267 (Oct. 15, 1999).

⁶ See generally Dominic Hoerauf, *The United Nations Al-Qaida Sanctions Regime After UN Resolution 1989: Due Process Still Overdue?*, 26 TEMP. INT’L & COMP. L.J. 213 (2012).

immense normative power. Interactions between these elemental actors have resulted in accelerated global dissemination of the CFT legal norms and the evolution of those norms—an autocatalytic evolutionary phenomenon.⁷ This evolution has included substantive and structural permutations as well as increased transparency and the implementation of due process safeguards. Through the autocatalytic process the 1267 CFT Regime has developed into a formidable regulatory and enforcement system characterized by extensive incorporation of its dictates into domestic laws. The process has impelled cooperation among all relevant actors leading to capacity building, transfer of technical expertise, training, and information sharing. Finally, research supports the hypothesis that the 1267 CFT Regime has enhanced success in constraining terrorist targets. The 1267 CFT experience provides the initial case study for autocatalytic regime theory—a novel conception of certain cooperative enterprises in international relations. The case study provides a crucial platform for understanding the implications and potential of autocatalytic regimes.

This project conceives the 1267 CFT Regime as an exercise in polycentric global governance, refined through global administrative law (GAL). Part I traces the 1267 CFT Regime back to its genesis and describes the current listing and delisting procedures. It further discusses how the regime has evolved to incorporate GAL concordant mechanisms and address criticisms by various commentators and international actors, including the Court of Justice of the European Union in its landmark *Kadi* decision. Part I also discusses persistent criticisms that continue to be lodged against the regime. Part II of the article presents a descriptive conceptual framework, autocatalytic regime theory, for understanding the functioning of the 1267 CFT Regime. It discusses how self-reinforcing and evolutionary interactions between elemental actors within the 1267 CFT Regime have resulted in accelerated global dissemination of legal norms. It then evaluates the praxis of various elemental actors revealing a formidable regulatory framework characterized by high levels of cooperation and implementation.

II. THE 1267 CFT REGIME

A. *Inception and Evolution*

In 1999, the UNSC passed Resolution 1267 in direct response to the 1998 bombing of US embassies in Nairobi, Kenya, and Dar es

⁷ For a definition of autocatalysis and an explanation of the reference herein, see *infra* at section II.E.1.

Salaam, Tanzania by Al Qaida.⁸ Resolution 1267 established the Sanctions Committee (1267 Committee), consisting of all members of the UNSC, to administer the “targeted sanctions” at the heart of the regime.⁹ All states were called upon to impose an air embargo on the Taliban and to freeze “funds and other financial resources . . . owned or controlled directly or indirectly by the Taliban,” as designated by the Committee.¹⁰ The Resolution authorized the 1267 Committee to seek information regarding implementation and required States to “cooperate fully . . . in supplying such information.”¹¹ Further, the resolution authorized the Committee to “designate the aircraft and funds or other financial resources” relevant to implementation.¹² The list designating the individuals and entities subject to the targeted sanctions became known as the “Consolidated List.”¹³ In Resolution 1333, the UNSC expanded the targeted sanctions to include Usama bin Laden and his associates and established a “Committee of Experts” tasked with assisting the 1267 Committee and monitoring the implementation of 1267 measures.¹⁴

In addition to the ascension of the “use of force” paradigm, responses to the 9/11 attacks included the invigoration of the 1267 regime.¹⁵ On January 28, 2002 the UNSC passed Resolution 1390,

⁸ S.C. Res. 1267, U.N. Doc. S/Res/1267 (Oct. 15, 1999). Resolution 1267 and its successor resolutions are universally legally binding instruments adopted under Chapter VII of the UN Charter. *Id.* at preamble; see THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 457 (Bruno Simma ed., 2d ed. 2002).

⁹ See S.C. Res. 1267, ¶ 6, U.N. Doc. S/Res/1267 (Oct. 15, 1999).

¹⁰ *Id.* ¶ 4.

¹¹ *Id.* ¶ 9.

¹² *Id.* ¶ 6.

¹³ Resolutions 1988 and 1989 split the 1267 Committee into a Taliban Sanctions Committee and an Al-Qaida Sanctions Committee with similar mandates. See S.C. Res. 1988, ¶ 30, U.N. Doc. S/RES/1988 (June 17, 2011) (Taliban); S.C. Res. ¶ 6 1267, U.N. Doc. S/Res/1267 (Oct. 15, 1999) (Al-Qaida). This article only examines the CFT aspects of the Al-Qaida Sanctions Committee. However, for convenience it continues to refer to the Al Qaida Sanctions Committee as the 1267 Committee and the Al-Qaida List as the Consolidated List.

¹⁴ S.C. Res. 1333, ¶ 8(c), 15(a) U.N. Doc. S/RES/1333 (Dec. 19, 2000). The name and configuration of this body has evolved over the course of subsequent resolutions, but its mandate has essentially remained the same. See S.C. Res. 1363, ¶ 2, U.N. Doc. S/RES/1363 (July 30, 2001) (“Committee of Experts”); S.C. Res. 1390, ¶¶ 7, 9–10, U.N. Doc. S/RES/1390 (Jan. 28, 2002) (“Monitoring Group”); S.C. Res. 1526, ¶¶ 6–7, U.N. Doc. S/RES/1526 (Jan. 30, 2004) (“Analytical Support and Sanctions Monitoring Team”).

¹⁵ On September 28, 2011, the UNSC adopted Resolution 1373, a groundbreaking resolution with immense normative implications for fundamental rules of international law. See José E. Alvarez, *Contemporary International Law: An ‘Empire of Law’ or the ‘Law of Empire’?*, 24 AM. U. INT’L L. REV. 811, 817 (2009) (citing S.C. Res. 1373, preamble, U.N. Doc. S/RES/1373 (Sept. 28, 2001) (explaining how resolution 1373

which expanded the 1267 sanctions to include Usama bin Laden all “members of the Al-Qaida organization” and “and other individuals, groups, undertakings and entities associated with them.”¹⁶ Subsequent UNSC resolutions further modified and refined the 1267 regime. Resolution 1566, passed immediately after the Beslan school attacks of September 2004, sought to circumvent the difficulties associated with reaching a consensus-based definition of terrorism by defining it in part, by reference to “criminal acts . . . which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism”¹⁷ In June 2005, the UNSC adopted Resolution 1617 imposing new reporting requirements on member States.¹⁸ Furthermore, it defined the critical phrase “associated with” Usama bin Laden or Al-Qaida as:

- participating 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;
- supplying, selling or transferring arms and related materiel to;
- recruiting for; or
- otherwise supporting acts or activities of;

Al-Qaida, Usama bin Laden or the Taliban, or any cell, affiliate, splinter group or derivative thereof[.]¹⁹

The delisting procedure, incepted in Resolution 1730, established the Focal Point within the Secretariat to receive delisting requests from individual petitioners and administer the procedure.²⁰ Three days after the adoption of Resolution 1730, the UNSC passed Resolution 1735 requiring States to issue more detailed statements of the case when

modified the rules governing use of force by, *inter alia*: (1) characterizing large scale terrorists attacks as “armed attacks” under Art. 51 of the UN Charter; (2) justifying military force against a State for harboring terrorists and; (3) permitting the continued use of military force even when the threat of continued attack is clandestine and unpredictable)). The preamble of the resolution resembles global counterterrorism legislation and the text of the resolution invokes virtually every conceivable counterterrorism tool. *See generally*, S.C. Res. 1373, preamble, U.N. Doc. S/RES/1373 (Sept. 28, 2001). While the resolution requires measures similar to those mandated by Resolution 1267, it is not the subject of this article because it does not contain the strict implementation requirements featured by Resolution 1267 and its progeny.

¹⁶ S.C. Res. 1390, ¶ 2, U.N. Doc. S/RES/1390 (Jan. 28, 2002). Resolution 1390 also transformed the air embargo into a total travel ban. *Id.* ¶ 2(b).

¹⁷ S.C. Res. 1566, ¶ 3, U.N. Doc. S/RES/1566 (Oct. 8, 2004).

¹⁸ S.C. Res. 1617, ¶ 10, U.N. Doc. S/RES/1617 (July 29, 2005).

¹⁹ *Id.* ¶ 2.

²⁰ S.C. Res. 1730, ¶ 1, U.N. Doc. S/RES/1730 (Dec. 19, 2006).

proposing designations.²¹ Additionally, Resolution 1735 took measures to improve the transparency of the notification procedure by requesting that States “identify those parts of the statement of case which may be publicly released for the purposes of notifying the [listee], and those parts which may be released upon request to interested States.”²² Furthermore, Resolution 1735 required the UN Secretariat to provide a timely notification of designation to the Permanent Mission of the country where the listee was believed to be, and called on States to ensure the listee was notified.²³ Such timely notification was to include “a copy of the publicly releasable portion of the statement of case,” a description of the effects of a designation, and the delisting procedures.²⁴ In 2008, the UNSC adopted Resolution 1822, requiring the 1267 Committee to publish on its website narrative summaries of the reasons for adding a name to the Consolidated List.²⁵ The notification requirements in resolution 1735 were reiterated and refined to include “a copy of the publicly releasable portion of the statement of case, any information on reasons for listing available on the Committee’s website, a description of the effects of designation,” the delisting procedure, and a list of available exemptions.²⁶ Finally, Resolution 1822 directed the 1267 Committee to conduct an annual review of all listees to ensure the integrity of the Consolidated List.²⁷

B. *The Current Listing and Delisting Procedures*

In December 2009, the UNSC issued Resolution 1904 which contained a unique institutional improvement designed, in part, as a response to criticisms regarding the lack of due process and transparency lodged by States, NGOs,²⁸ and the Court of Justice of the European Union (CJEU) in its scathing *Kadi I* decision.²⁹ Resolution 1904 made a significant effort to address these criticisms

²¹ S.C. Res. 1735, ¶ 5, U.N. Doc. S/RES/1735 (Dec. 22, 2006).

²² *Id.* ¶ 6.

²³ *Id.* ¶¶ 10–11.

²⁴ *Id.* ¶ 11.

²⁵ S.C. Res. 1822, ¶ 13, U.N. Doc. S/RES/1822 (June 30, 2008).

²⁶ *Id.* ¶ 17.

²⁷ *Id.* ¶ 26.

²⁸ See SUE E. ECKERT & THOMAS J. BIERSTEKER, WATSON INSTITUTE FOR INTERNATIONAL STUDIES, ADDRESSING CHALLENGES TO TARGETED SANCTIONS: AN UPDATE OF THE “WATSON REPORT” 21–22 (2009) [hereinafter 2009 WATSON REPORT], available at http://www.watsoninstitute.org/pub/2009_10_targeted_sanctions.pdf.

²⁹ See COUNTER-TERRORISM STRATEGIES, *supra* note 2, at 47. See also *Kadi v. Council*, 2008 E.C.R. I-06351 [hereinafter *Kadi I*]. At the time of *Kadi I*, the CJEU was still known as the European Court of Justice. For the sake of consistency, this article refers to the court as the CJEU throughout.

by establishing the Office of the Ombudsperson (OP).³⁰ In June 2010 the UN Secretary General appointed as the first OP, Kimberly Prost, a former Canadian federal prosecutor, and former judge at the International Tribunal for the Former Yugoslavia.³¹

Twenty months after Resolution 1904, Resolutions 1988 and 1989 split the 1267 Committee into a Taliban Sanctions Committee and an Al-Qaida Sanctions Committee with similar mandates.³² With resolution 1989, which further reformed delisting procedures and strengthened the Office of the OP, we have the present iteration of the listing and delisting procedures of the Al-Qaida Sanctions Committee.³³ Member States remain the only parties with the authority to submit designations for inclusion on the Consolidated List and are called on to include as much relevant information as possible with the submission.³⁴ The submission must include a detailed statement of case, which is “releasable, upon request, except for the parts a Member State identifies as being confidential . . . and may be used to develop the narrative summary of reasons for listing”³⁵ The submission is then circulated to the members of the 1267 Committee who must verify that names proposed for listing merit inclusion.³⁶ The determination is made according to a “reasonable basis” standard.³⁷ Submissions must be approved “by consensus” and are so deemed if no objection is raised by a Member State within five working days.³⁸ If the Committee is unable to reach consensus a Committee Member may refer the submission to the UNSC.³⁹ New designations are accompanied by a narrative summarizing the reasons for the listing decision on the Committee’s website.⁴⁰ Within three days, notification of designation must be made to the “Permanent Mission of the country or countries where the individual entity is believed to be located and, in the case of individuals, the country of which the person is a national (to the extent this information is

³⁰ S.C. Res. 1904, ¶¶ 20–21, U.N. Doc. S/RES/1904 (Dec. 17, 2009).

³¹ Press Release, Security Council, Press Conference to Present Ombudsperson of Security Council’s 1267 Committee (July 15, 2010), http://www.un.org/press/en/2010/100715_1267.doc.htm.

³² S.C. Res. 1988, ¶ 2, U.N. Doc. S/RES/1988 (June 17, 2011) (Taliban); S.C. Res. 1989, U.N. Doc. S/RES/1989 ¶ 1 (June 17, 2011) (Al-Qaida).

³³ S.C. Res. 1989, U.N. Doc. S/RES/1989 (June 17, 2011).

³⁴ S.C. Res. 1904, ¶¶ 8, 13, U.N. Doc. S/RES/1904 (Dec. 17, 2009).

³⁵ *Id.* ¶ 11.

³⁶ *Id.* ¶ 17.

³⁷ HOERAUF, *supra* note 6, at 218.

³⁸ U.N. S.C., Al-Qaida Sanctions Committee, Guidelines of the Committee for the Conduct of Its Work, ¶ 4(a)–(b) (Apr. 15, 2013) [hereinafter 1267 COMMITTEE GUIDELINES].

³⁹ *Id.* at ¶ 4(a).

⁴⁰ HOERAUF, *supra* note 6, at 218.

known).”⁴¹ Upon listing, Resolution 1989 authorizes the OP to send a notification directly to the known address of an individual once the relevant states have been informed.⁴² In an attempt to enable the listee to effectively confront the accuser, a State making a submission is “*strongly encourage[d]*” to approve the disclosure of its identity.⁴³

Once a delisting request is filed, a “speedy disposition” requirement ensures no matter is left pending for more than six months unless the Committee determines extraordinary circumstances warrant additional time.⁴⁴ Resolution 1989 effectively shifts the burden of proof to an objecting State by requiring it to provide reasons for objecting to delisting.⁴⁵ The OP has two months to gather relevant information from the Sanctions Committee, the relevant States, the relevant UN bodies, and the Monitoring Team.⁴⁶ After the information-gathering period, the OP must “facilitate a two-month period of engagement, which may include dialogue with the petitioner.”⁴⁷ Thus, the dialogue phase, in practice, provides an opportunity for the listee to present her case to a neutral decision maker. Subsequent to the dialogue period, the OP submits to the Sanctions Committee a Comprehensive Report summarizing the relevant information.⁴⁸ On the basis of this report, the Committee decides whether to approve the delisting request.⁴⁹ Resolution 1989 largely transforms the OP into the de facto decision maker because the delisting recommendation contained in the Comprehensive Report can only be overturned by a unanimous decision of the 1267 Committee or by referral to the UNSC.⁵⁰ Thus far, the OP’s decision has never been overturned.⁵¹ The Committee generally

⁴¹ S.C. Res. 1904, ¶ 18, U.N. Doc. S/RES/1904 (Dec. 17, 2009).

⁴² S.C. Res. 1989, Annex II ¶ 16(b), U.N. Doc. S/RES/1989 (June 17, 2011).

⁴³ *Id.* ¶ 14 (emphasis in original). Under Resolution 2083 the disclosure is presumptive and occurs unless the designating State objects. S.C. Res. 2083, ¶ 12, U.N. Doc. S/RES/2083 (Dec. 17, 2012). As noted by the ombudsperson no designating State has objected to disclosure of their identity since the passage of Resolution 1904. See *Report of the Office of the Ombudsperson Pursuant to Security Council Resolution 1989 (2011)*, ¶ 48, U.N. Doc. S/2012/49 (Jan. 20, 2012) [hereinafter OP REPORT]. See also *Report of the Office of the Ombudsperson Pursuant to Security Council Resolution 2083 (2012)*, ¶ 54, U.N. Doc. S/2014/73 (Jan. 31, 2014).

⁴⁴ S.C. Res. 1904, ¶ 41, U.N. Doc. S/RES/1904 (Dec. 17, 2009). Such additional time cannot exceed three months. See 1267 COMMITTEE GUIDELINES, *supra* note 38, at ¶ 4(j) & (k).

⁴⁵ See S.C. Res. 1989, ¶ 33, U.N. Doc. S/RES/1989 (June 17, 2011).

⁴⁶ S.C. Res. 1904, Annex II ¶ 2, U.N. Doc. S/RES/1904 (Dec. 17, 2009).

⁴⁷ *Id.* Annex II ¶ 5.

⁴⁸ *Id.* Annex II ¶ 7.

⁴⁹ *Id.* Annex II ¶¶ 8–10.

⁵⁰ S.C. Res. 1989, ¶ 23, U.N. Doc. S/RES/1989 (June 17, 2011).

⁵¹ Since the creation of the Office of the OP in Resolution 1989, 44 individuals and 24 entities have been delisted, and the Ombudsperson’s recommendation has prevailed in

meets in closed sessions but updates to the Consolidated List are promptly made available on the Committee's web site.⁵²

C. *Global Administrative Law, Kadi II, and Continued Criticisms of the Sanctions Regime*

1. The GAL Project

The global administrative law (GAL) project is premised on the notion that the growing exercise of transnational regulatory power has created accountability, legitimacy, and transparency deficits as international bureaucrats not subject to the democratic safeguards present in the domestic context, increasingly govern individual behavior.⁵³ These actions, which are not primarily legislative or adjudicative in character, can be seen as administrative and regulatory functions.⁵⁴ Thus, the globalization of regulation necessitates the development of mechanisms and principles that ensure global administrative bodies "meet adequate standards of transparency, participation, reasoned decision, and legality, and . . . provid[e] effective review of the rules and decisions they make."⁵⁵ These GAL principles may be developed through a "top down" approach by which international organizations and international tribunals adhere to administrative law principles.⁵⁶ Alternatively, GAL principles may be developed through a "bottom up" approach by which domestic courts and institutions apply administrative law principles to the actions of transnational regulators and/or domestic officials directly participate in the regime.⁵⁷

2. The Kadi Cases

The CJEU's decisions in the *Kadi* cases,⁵⁸ and a series of decisions from other national and supranational bodies,⁵⁹ demonstrate the bottom

every case. *Office of the Ombudsperson of the Security Council's 1267 Committee, Status of Cases*, UNITED NATIONS, <http://www.un.org/en/sc/ombudsperson/status.shtml> (last visited Jan. 9, 2015).

⁵² HOERAUF, *supra* note 6, at 218.

⁵³ Benedict Kingsbury et. al., *The Emergence of Global Administrative Law*, 68 LAW & CONTEMP. PROBS. 15, 16–17 (2005).

⁵⁴ *Id.* at 17.

⁵⁵ *Id.*

⁵⁶ *Id.* at 34–36.

⁵⁷ *Id.* at 31–34, 36–37.

⁵⁸ *Kadi I*, 2008 E.C.R. I-6351; Joined Cases C-584/10 P, C-593/10 P & C-595/10 P, *Commission v. Kadi*, 2013 E.C.R. ¶ 119 [hereinafter *Kadi II*].

⁵⁹ *Nada v. Switzerland*, [2012] Eur. Ct. H.R. 1691, ¶ 212 (2012) (holding Swiss implementation of 1267 sanctions violated the applicant's rights under Articles 8 and 13

up employment of GAL principles. In *Kadi I*, a Saudi citizen challenged an EU asset-freezing regulation implemented pursuant to the 1267 regime.⁶⁰ In 2008, the CJEU annulled the relevant EU regulation finding that (1) EU courts were responsible for reviewing the lawfulness of all EU acts, including those implementing UNSC resolutions,⁶¹ and (2) the regulations infringed on Kadi's fundamental rights including the right to property, the right of defense, and the right of judicial review.⁶² The CJEU was highly critical of the UNSC listing and delisting procedures for denying the listed person an opportunity to: assert his or her rights; be represented in the delisting procedure; and access the reasons and evidence underlying listing and delisting decisions.⁶³ Thereafter, the EU Council sought to comply by providing Kadi with the UNSC narrative summary of reasons why he had been listed and allowing him to respond.⁶⁴ The EU decided to maintain the implementation of the regulation against Kadi and he initiated a second challenge in EU courts alleging the summary was too vague to protect his right of defense and right to judicial review.⁶⁵

In June 2013, the CJEU upheld Kadi's second challenge.⁶⁶ Reaffirming its holding in *Kadi I*, the court maintained that EU regulations implementing UNSC resolutions do not enjoy immunity from judicial review in EU courts.⁶⁷ Furthermore, the court held that the Charter of Fundamental Rights of the European Union's guarantees of the rights to defense and judicial protection required that EU authorities disclose the relevant evidence in their possession to the individual and ensure the individual is able to effectively respond *before* implementing the EU regulation.⁶⁸ Then EU authorities must "examine, carefully and

of the ECHR); *Treasury v. Ahmed*, [2010] UKSC 2 (appeal taken from Eng.) (refusing to give effect to domestic executive measures implementing 1267 sanctions due to the lack of an effective remedy); U.N. Human Rights Comm., *Sayadi v. Belgium*, Commc'n No. 1472/2006, U.N. Doc. CCPR/C/94/D/1472/2006 (2008) (U.N. Human Rights Committee ruling finding that the travel ban and listing unduly infringed upon the complainant's freedom of movement under Article 12 of the ICCPR and his reputation under Article 17 of the ICCPR).

⁶⁰ *Kadi I*, 2008 E.C.R. I-6351.

⁶¹ *Id.* ¶¶ 326–27.

⁶² *Id.* ¶¶ 326–27, 345–350, 369–371.

⁶³ *Id.* ¶ 323–24.

⁶⁴ Commission Regulation (EC) 1190/2008, 2008 O.J. (L 322) 25.

⁶⁵ *Kadi II*, 2013 E.C.R. I-0000, Joined Cases C-584/10 P, C-593/10 P, & C-595/10 P, (CJEU July 18, 2013).

⁶⁶ *Id.*

⁶⁷ *Id.* at ¶ 66. Kadi was delisted by the 1267 Committee in 2012. The CJEU has a mootness doctrine but decided not to invoke it. See Case C-314/96, *Djabali v. Caisse d'Allocations Familiales de l'Essonne*, 1998 E.C.R. I-1149, ¶ 23.

⁶⁸ *Kadi II*, ¶¶ 111–113.

impartially” whether the reasons for listing were well founded in the light of the individual’s response and any exculpatory evidence presented.⁶⁹ Additionally, the CJEU established a standard of judicial review requiring EU courts to review challenges to listing designations to determine whether the decision rests upon a “sufficiently solid factual basis.”⁷⁰ Such review was held to require evidence verifying the reasons advanced in the narrative summary.⁷¹ In the absence of such evidence the court annulled the EU regulation as applied to Kadi.⁷² With regard to confidential evidence, the CJEU held that the failure of EU authorities to obtain and disclose the evidence underlying the decision generally would not prejudice the applicant.⁷³ However, the court also noted that where overriding considerations of security precluded the disclosure of certain information, it was for the court to “strike an appropriate balance between” the rights of the accused and the security of the EU, and then assess the extent to which nondisclosure affected the probative value of the evidence.⁷⁴ Notably, despite the innovation of the Office of the OP, which predated the decision, the CJEU held that UNSC procedures still did not necessarily guarantee effective judicial protection.⁷⁵

3. Continued Criticisms

Presently, the 1267 regime has evolved such that a listee seeking delisting is entitled to enhanced procedural safeguards. These include the right to be heard by the OP, who serves as an impartial, *de facto* decision maker, and the right to a reasoned public decision. These innovations have been heralded for having a “substantial positive impact on the procedural due process and fairness” of the listing and delisting procedures.⁷⁶ In addition to enhancing transparency and legitimacy, 1267 modifications have enhanced State cooperation, since “[t]he consequences of a failure to [cooperate by providing requested information to the OP] will have a more direct impact on the decision to be taken in each case.”⁷⁷ This in turn enhances the quality of the consolidated list and the CFT mission. Thus, the evolution of the 1267

⁶⁹ *Id.* ¶ 114.

⁷⁰ *Id.* ¶ 119.

⁷¹ *Id.*

⁷² *Id.* ¶ 163.

⁷³ *Id.* ¶¶ 123, 127.

⁷⁴ *Id.* ¶¶ 125–29.

⁷⁵ *Id.* ¶ 133.

⁷⁶ HOERAUF, *supra* note 6, at 227.

⁷⁷ *Id.* at 228.

listing and delisting procedures must be understood as a significant improvement from the perspective of GAL theorists.

Nonetheless, the procedural innovations were insufficient to satisfy the CJEU in *Kadi II*, and commentators have continued to criticize the UNSC procedure for persistent shortcomings in terms of transparency and due process.⁷⁸ A 2012 report (2012 Watson Report) from the Watson Institute for International Studies at Brown University (Watson Institute) articulates some of these concerns.⁷⁹ This report highlights perceived deficiencies in the transparency of the delisting procedure noting that a State can still prevent the OP from disclosing its identity to a petitioner.⁸⁰ Further, the OP cannot update petitioners and relevant States while the Comprehensive Report is under consideration by the Committee or if the delisting procedure takes place independent of the OP mechanism.⁸¹ These deficiencies, reportedly “unnecessarily impair[] the transparency of [the] process, detracting from credibility and fairness.”⁸² The report further notes the lack of reasoning behind Committee delisting decisions.⁸³ Other scholars and commentators have similarly articulated concerns about the lack of transparency in the delisting process. For example, criticisms abide concerning the lack of detail in the information accompanying member State’s submissions.⁸⁴ Resolution 1989 requires States to accompany submissions with “as much relevant information as possible” but does not mandate that States declassify and submit intelligence information.⁸⁵ Further, compounding persisting transparency concerns is the fact that

⁷⁸ *Id.* at 229–31.

⁷⁹ SUE E. ECKERT AND THOMAS J. BIERSTEKER, WATSON INSTITUTE FOR INTERNATIONAL STUDIES, DUE PROCESS, AND TARGETED SANCTIONS: AN UPDATE OF THE “WATSON REPORT” 21–22 (2012), available at http://www.watsoninstitute.org/pub/Watson%20Report%20Update%2012_12.pdf [hereinafter 2012 WATSON REPORT] (noting the renewable nature of the OP mandate which intimates impermanence, the inability of the OP to respond to mistaken designations, the inability of the OP to assist petitioners in seeking exemptions including travel exemptions to meet with the OP, and the periodic failure of States to timely respond to OP requests for information).

⁸⁰ *Id.* at 21. This has not yet been an issue. See OP REPORT, *supra* note 43.

⁸¹ 2012 WATSON REPORT, *supra* note 79, at 21.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See Vanessa Baehr-Jones, Note, *Mission Impossible: How Intelligence Evidence Rules Can Save UN Terrorist Sanctions*, 2 HARV. NAT’L SEC. J. 447, 453 (2011) (stating that, in practice, designation is often based on “heavily redacted information with vague details”); 2012 WATSON REPORT, *supra* note 79, at 22 (“One of the most significant challenges faced by the Ombudsperson is access to classified or confidential information.”).

⁸⁵ S.C. Res. 1989, ¶ 15, U.N. Doc. S/RES/1989 (July 1, 2011).

the 1267 Committee still meets in closed sessions unless they decide otherwise.⁸⁶

More fundamentally the OP recommendations are not technically binding on the 1267 Committee (or the UNSC), which can still review delisting decisions as *judex in causa sua*.⁸⁷ Other due process criticisms relating to the lack of specificity in the procedural aspects of the delisting process have noted the lack of a formal standard of review or allocation of the burden of proof.⁸⁸ Finally, it is possible that there is no measure of GAL concordant mechanisms and principles that could be implemented to satisfy some prominent jurists who have contended that the 1267 regime is fundamentally flawed from a theoretical perspective. For example, Professor José Alvarez has contended that through resolutions like 1267 the council has entered an undesirable “legislative” phase by which hegemonic international law is used to circumvent the “‘vehicle par excellence of community interest,’ namely the multilateral treaty.”⁸⁹ Future UN counterterrorism efforts should acknowledge the shortcomings and critiques that the 1267 regime has faced and seek to address them at the outset.⁹⁰

D. Effectiveness

In 2006, former Russian defense minister Sergei Ivanov stated, “I know of no instances in world practice and previous experience in which sanctions have achieved their aim and proved effective.”⁹¹ To be fair, Mr. Ivanov’s statement was made in contemplation of sanctions against a State, specifically Iran. However, if Mr. Ivanov’s rather indiscriminate conclusion regarding the efficacy of sanctions was accurate, we would expect the CFT regime to be largely enervated by low levels of implementation, cooperation, and compliance.⁹²

⁸⁶ HOERAUF, *supra* note 6, at 218 (citing U.N. S.C. Comm. on Al-Qaida Sanctions, Guidelines of the Committee for the Conduct of Its Work, ¶ 3(b) (Nov. 30, 2011)).

⁸⁷ *Id.* at 214.

⁸⁸ *Id.* at 218.

⁸⁹ José E. Alvarez, *Hegemonic International Law Revisited*, 97 AM. J. INT’L L. 873, 875–76 (2003) (citation omitted).

⁹⁰ GLOBAL CENTER ON COOPERATIVE SECURITY, INTERNATIONAL PROCESS ON GLOBAL COUNTER-TERRORISM COOPERATION: A COMPILATION OF KEY DOCUMENTS 11 (2008), available at http://globalcenter.org/wp-content/uploads/2008/09/international_process.pdf [hereinafter INTERNATIONAL PROCESS].

⁹¹ Steven Lee Myers, *Russia says it opposes UN sanctions on Iran*, N.Y. TIMES, Aug. 26, 2006, at A1.

⁹² *But see* Counter-Terrorism Committee Executive Directorate, Global Survey of the Implementation of Security Council Resolution 1373 (2001), at 73, U.N. Doc. S/2011/463 (Sept. 1, 2011) (noting extensive implementation, increased solidarity, intensified dialogue among Member States, and the value of asset freezing as a

Notwithstanding, the inherent difficulty in measuring the effectiveness of UNSC resolutions, there is sufficient data to confute the conclusion that the CFT sanctions have not had a material impact. A few attempts have been made to engage in the unwieldy exercise of measuring the effectiveness of the 1267 CFT mandate. This article will not seek to duplicate those efforts or engage in a comprehensive analysis of the 1267 CFT Regime's effects on the actual financing of terrorism. Such an exercise would invariably be undermined not only by the difficulty of defining effectiveness in the abstract, but also in measuring it in practice, given that critical information remains classified.⁹³ For example, there is no public data precisely demonstrating the amount of Al-Qaida's liquid assets affected by 1267 implementation. A comprehensive attempt to measure effectiveness would be hindered by uncertainty as to the tangible financial effect asset-freezes have had and uncertainty as to the causal implications of those unknown effects.

However, an intuitive indication of effectiveness lies in Resolution 1267's success in generating meaningful international cooperative action. Indeed, the 1267 Committee has made it a priority to reach out to a variety of functional bodies in order to obtain political and technical support for effective member-state implementation.⁹⁴ Resolution 1267 generated a proliferation of reinforcing CFT initiatives and several preexisting efforts have been reframed to address the threats posed by modern terrorism. This polycentric network is characterized by the deep engagement of relevant actors whose interactions feed the autocatalytic evolutionary phenomenon spawned by Resolution 1267.

counterterrorism tool). Between 2001 and 2011, the number of State parties to the 1999 International Convention for the Suppression of the Financing of Terrorism increased from 50 to 173. *Id.* at 6. In many jurisdictions 1267 CFT measures enjoy a preeminent status in the domestic legal hierarchy. For example, payment of ransom is not illegal in the United Kingdom. FOREIGN AFFAIRS COMMITTEE, PIRACY OFF THE COAST OF SOMALIA, 2010–12, H.C. 1318, at 57, ¶ 113 (U.K.). Nonetheless, the British Government has stated that the “payment of a ransom to a United Nations designated terrorist group or individual” is illegal because it “would contravene the al-Qaeda and Taliban sanctions regime established by UN Security Resolution 1267 (1999).” *Id.* (internal quotation marks omitted).

⁹³ See FIN. ACTION TASK FORCE, MONEY LAUNDERING & TERRORIST FINANCING RISK ASSESSMENT STRATEGIES 42 (2008), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20Risk%20Assessment%20Strategies.pdf>.

⁹⁴ INTERNATIONAL PROCESS, *supra* note 90, at 53–56.

E. Autocatalytic Regime Theory: Polycentrism and Autocatalysis within the 1267 CFT Regime

1. Autocatalytic Regime Theory

The 1267 CFT Regime provides the basis for conceiving a novel theoretical framework for understanding certain forms of international cooperative action called autocatalytic regime theory. Autocatalysis is a chemical or biological phenomenon in which molecules “generate a product that itself becomes the [catalyst] for the reaction which generates the next generation product.”⁹⁵ A catalyst allows an otherwise prohibitively energetically unfavorable reaction to occur readily. For example, UNSC+FATF=CFT is a reaction where two molecules, UNSC & FATF combine to produce CFT. Without a catalyst, this reaction may never occur. This reaction is considered autocatalytic if the product “CFT” itself acted as the catalyst for the production of more CFT.⁹⁶ Autocatalytic reactions can also be evolutionary.⁹⁷ In legal philosophy, the phrase has been used to describe self-reinforcing interactions.⁹⁸ This article similarly uses the term to refer to a series of self-reinforcing interactions but stresses the evolutionary component. When the UNSC incepted the CFT rules in Resolution 1267, those rules became the catalyst for a series of autocatalytic reactions between relevant players. These reactions have reinforced the underlying legal rules and caused their dissemination and evolution.

The conception of autocatalytic regime theory is similar to Robert Keohane’s regime complex in that it is marked by the “existence of several legal agreements that are created and maintained in distinct fora

⁹⁵ Andrea M. Matwyshyn, *Material Vulnerabilities: Data Privacy, Corporate Information Security, and Securities Regulation*, 3 BERKELEY BUS. L.J. 129, 136 n. 14 (2005). See also Wim Hordijk et al, *Autocatalytic Sets and the Origin of Life*, 12 ENTROPY 1733, 1736 (2010).

⁹⁶ See generally HORDIJK ET AL., *supra* note 95 at 1733–1742.

⁹⁷ The biological examples of true autocatalysis, such as in the RNA world hypothesis, are quite complicated, and there are only a few true examples. In the RNA world hypothesis, autocatalysis is considered the foundational mechanism for complex evolution. *Id.* at 1734.

⁹⁸ See e.g., Santiago Villalpando, *On the International Court of Justice and the Determination of Rules of Law*, 26(2) LEIDEN J. INT’L L. 243, 248 (2013) (describing the interaction between the International Law Commission and the International Court of Justice as an “autocatalytic process in which the crystallization of *opinio juris* may occur by the mutual reaffirmation of the existence of a norm, without any external practice.”); MATWYSHYN, *supra* note 95, at 184 (proposing a corporate information security “legal regime [that] will generate an autocatalytic set that commences the process of legal emergence of norms, behaviors, and structures that enable continued economic growth”).

with participation of different sets of actors.”⁹⁹ In a complex regime, the “rules in the elemental regimes functionally overlap, yet there is no agreed upon hierarchy for resolving conflict between rules.”¹⁰⁰ An autocatalytic regime is similar, but distinct from a regime complex because the underlying legal rules, in this case the binding 1267 CFT mandate, maintain primacy in the elemental regimes extant in distinct fora. Thus, an autocatalytic regime does not suffer from the indeterminacy that characterizes most regime complexes. There is a prime actor, in this case the UNSC, with the power to modify the rules. The participants in the regime may be part of separate regimes or regime complexes but each participant shares an overlapping interest in the underlying legal rules. Therefore, each actor, or regime, becomes an elemental actor within a distinct, indivisible, quasi-hierarchical regime. The regime is polycentric in that many elemental actors form an autocatalytic set. That is, they engage in a series of autocatalytic interactions catalyzed by the underlying legal rules. Ordinary autocatalysis occurs each time an elemental actor adopts the underlying legal rules. Autocatalytic evolution occurs when interactions between the elemental actors generate an advantageous trait such as enhanced cooperation, coordination, implementation, compliance, enforcement, capacity building, training, information sharing, due process, and/or revision of the underlying legal rules.

“Autocatalytic sets usually involve creation of critical feedback loops.”¹⁰¹ In biology, a feedback loop is a phenomenon in which informational signals about the past or the present influence the same phenomenon in the present or future. The feedback loops allow for efficient assessment of the prime actor, elemental actors, and States by one another or by external IOs, transnational actors, NGOs, and even individuals. In autocatalytic regime theory, information can be channeled through process-based feedback loops to accelerate the incidence of norm dissemination and the speed of norm and regime evolution. In the context of global counterterrorism policy, effective feedback loops can be characterized by three elements: (1) monitoring;¹⁰² (2) assessment;¹⁰³ and (3) support/coercion.¹⁰⁴ Feedback

⁹⁹ Kal Raustiala & David G. Victor, *The Regime Complex for Plant Genetic Resources*, 58 INT’L ORG. 277, 279 (2004).

¹⁰⁰ *Id.* at 277–279 (describing a regime complex as “a collective of partially overlapping and nonhierarchical regimes” that vary in extent and purpose.).

¹⁰¹ MATWYSHYN, *supra* note 95, at 185. This article borrows from Matwysyn’s conception of feedback loops in a proposed corporate information security framework.

¹⁰² Monitoring includes self-reporting.

¹⁰³ Identification of critical deficiencies is key to assessment.

¹⁰⁴ The answer to whether to apply support or coercion to resolve a critical deficiency is determined in the assessment process.

loops can have instrumental effects including the: (1) movement towards counterterrorism through “due process”; (2) increased transparency, accountability, and legitimacy;¹⁰⁵ and (3) cooperative phenomena such as the scaffolding of institutional learning of best practices which will be transferred to elemental actors over time. For example, judicial processes within the EU have served as an important feedback loop causing the evolution of the 1267 CFT Regime.

The anticipation of probable feedback loops is also essential to a well-designed autocatalytic regime. As discussed *infra* at section II.C.2, *Kadi I* contained the monitoring, assessment, and coercion of the prime actor, the UNSC, in a single judicial opinion. Anticipation of this occurrence may have led to an initial set of legal rules that would have generated feedback less detrimental to UNSC credibility and legitimacy. In any event, *Kadi I* played an instrumental role in catalyzing evolution in the UNSC listing and delisting procedure, which enhanced due process safeguards. One may be inclined to interpret this interaction between the UNSC and CJEU as confrontational. However, it can be alternatively understood as an evolutionary autocatalytic interaction. The debate was never about 1267 CFT or no 1267 CFT. Rather the debate was about 1267 CFT or 1267 CFT with more process. The evolution to 1267 CFT with more process enhanced the 1267 CFT Regime by enhancing the rigor associated with the listing and delisting processes. This in turn has enhanced the quality of the consolidated list. Simultaneously, the evolution to 1267 CFT with more process affords the regime a greater degree of legitimacy enhancing the prospect of cooperation and implementation.

Thus, an autocatalytic regime is characterized by: (1) a supreme set of internationally binding legal rules; (2) a prime actor—a centralized authority with the power to formally modify the legal rules; (3) a polycentric landscape populated with distinct elemental actors sharing an overlapping interest in the legal rules; (4) autocatalytic and evolutionary interactions among the elemental actors and the prime actor; and (5) feedback loops to allow for accelerated norm dissemination and evolution. In advancing the 1267 CFT mandate, this framework has proven favorable to achieving a robust, dynamic, and effective, cooperative response to an evolving global problem. This section proceeds to evaluate the praxis of the elemental actors in the 1267 CFT Regime. An appraisal of their activities reveals valuable information regarding various measures of effectiveness including

¹⁰⁵ Transparency is generally conceived as public accessibility and reasoned public decisions. However, increased information sharing between relevant actors can also be considered a qualified increase in transparency.

implementation, compliance, enforcement, and constraining of terrorist activity. The exercise also reveals the autocatalytic reactions that characterize the regime and the type of feedback loops most effective in generating accelerated evolution.

2. Transnational Actors

At the forefront of cooperative CFT efforts is the FATF founded by the G7 in 1989 to promote, monitor, and harmonize anti-money laundering initiatives worldwide.¹⁰⁶ FATF membership, which consisted of sixteen countries at its inception, has expanded to thirty-six members, including two regional organizations.¹⁰⁷ Additionally, over twenty-five organizations, including the UN, the World Bank, and the International Monetary Fund (IMF) participate as “observers.”¹⁰⁸ In 2001, after the 9/11 attacks and the issuance of UNSC Resolution 1373,¹⁰⁹ the FATF expanded its mandate to include “the fight against terrorist financing.”¹¹⁰ The most recognizable work of the organization, a series of standards known as the FATF Recommendations, have led to the FATF being recognized as “the global standard setter on anti-money laundering and counter terrorist financing issues by the United Nations, the International Monetary Fund and the World Bank.”¹¹¹ Over 180 countries have endorsed the FATF Recommendations. The first CFT recommendation called for the implementation of UNSC CFT resolutions, including Resolution

¹⁰⁶ *History of the FATF*, FIN. ACTION TASK FORCE, <http://www.fatf-gafi.org/pages/aboutus/historyofthefatf/> [hereinafter HISTORY OF THE FATF] (last visited June 2, 2014). This article will only focus on the FATF’s role in reinforcing and developing the CFT mandate. For an extensive discussion of the FATF’s international anti-money laundering and counter-financing of terrorism (AML/CFT) regime based on soft regulation and how it has shaped compliance with the FATF international standards, see Navin Beekarry, *The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law*, 31 NW. J. INT’L L. & BUS. 137, 181–82 (2011).

¹⁰⁷ HISTORY OF THE FATF, *supra* note 106. See also *FATF Members and Observers*, FIN. ACTION TASK FORCE, <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/> (last visited June 2, 2015).

¹⁰⁸ *Id.* Relevant UN bodies include the UN 1267 Committee, the UNCTC, and UNODC. Other observers include, regional development banks, INTERPOL, the World Customs Organization, and international “umbrella organizations” affiliated with the regulation of financial services. For a full list, see *id.*

¹⁰⁹ S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

¹¹⁰ HISTORY OF THE FATF, *supra* note 106.

¹¹¹ Paul Vlaanderen, President of the Fin. Action Task Force, Briefing to the United Nations Security Council Committee, (Oct. 26, 2009), available at <https://www.fic.gov.za/DownloadContent/NEWS/PRESSRELEASE/FATF%20Briefing%20to%20the%20United%20Nations%20Security%20Council%20Committee.pdf>.

1267.¹¹² Characteristically of autocatalysis, the UNSC subsequently called on all member states to implement the FATF Recommendations in Resolution 1617.¹¹³ Thus, the FATF Recommendations have gone from soft law instruments to universally binding standards backed by the full weight of Article 25 of the UN Charter.¹¹⁴ This series of interactions forms the paradigmatic example of autocatalysis within the 1267 CFT Regime. 1267 CFT catalyzed the generation of FATF CFT, which in turn catalyzed the evolution of 1267 CFT.

The FATF methodology encourages not only implementation of the standards but also the adoption of domestic legislation that facilitates comprehensive international CFT cooperation.¹¹⁵ In practice, the FATF employs separate procedures to assess compliance levels in members and non-member States both of which serve as paradigmatic, process-based feedback loops. Member State compliance is evaluated pursuant to the “Mutual Evaluations” process.¹¹⁶ The process is designed to identify deficiencies through monitoring and assessment.¹¹⁷ The State being evaluated completes a series of self-assessments and is subsequently visited by an “assessment team” that may be comprised of

¹¹² FIN. ACTION TASK FORCE, FATF IX SPECIAL RECOMMENDATIONS 2 (Oct. 2001), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf>.

¹¹³ S.C. Res. 1617, ¶ 7, U.N. Doc. S/RES/1617 (July 29, 2005). This endorsement gave the FATF Recommendations primacy over CFT recommendations promulgated by the Basel Committee, the International Association of Insurance Supervisors, the International Organization of Security Commissions, and the World Customs Organization. Kenneth S. Blazejewski, *The FATF and Its Institutional Partners: Improving the Effectiveness and Accountability of Transgovernmental Networks*, 22 TEMP. INT'L & COMP. L.J. 1, 41 (2008).

¹¹⁴ Article 25 states “[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.” U.N. CHARTER art. 25. “This provision has been interpreted to mean that ‘decisions’ taken under Chapter VII, which are not recommendations, are considered legally binding on all member states.” Jared Genser & Kate Barth, *When Due Process Concerns Become Dangerous: The Security Council's 1267 Regime and the Need for Reform*, 33 B.C. INT'L & COMP. L. REV. 1, 8 (2010).

¹¹⁵ FIN. ACTION TASK FORCE, METHODOLOGY FOR ASSESSING TECHNICAL COMPLIANCE WITH THE FATF RECOMMENDATIONS AND THE EFFECTIVENESS OF AML/CFT SYSTEMS 11 (2013), available at <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>. Notably, cooperation extends beyond supplying information, to actually seizing assets and evidence, even when the activities under investigation would not constitute a criminal violation of domestic law. *Id.* at 84.

¹¹⁶ See FIN. ACTION TASK FORCE, PROCEDURES FOR THE FATF FOURTH ROUND OF AML/CFT MUTUAL EVALUATIONS 3–4 (2013), available at <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF-4th-Round-Procedures.pdf>.

¹¹⁷ *Id.* at 4–15.

experts from the FATF, and/or World Bank and IMF officials.¹¹⁸ Subsequently, the FATF publishes a Mutual Evaluation Report containing an identification of priority issues, ratings, and recommendations.¹¹⁹ The follow-up process is designed to “apply sufficient peer pressure and accountability” through a series of increasingly intrusive measures.¹²⁰ The FATF is currently conducting its fourth round of mutual assessments. In its current iteration, the process includes a technical compliance component to evaluate the implementation of necessary legal measures and an effectiveness component to assess whether the measures are working.¹²¹

The FATF launched the Non-Cooperative Countries and Territories (NCCT) Initiative in 1999 to evaluate compliance in non-members States.¹²² The NCCT initiative set up four regional bodies, known as FATF-style regional bodies (FSRBs) to review implementation in both member and non-member States, identify deficiencies, and mobilize international pressure.¹²³ Persistence of critical deficiencies would result in a spot on the dreaded “NCCT” blacklist.¹²⁴ Blacklisting could result in a number of coercive measures including a call for FATF members to warn companies and financial institutions to avoid the NCCTs, sanctions, or countermeasures by FATF member states.¹²⁵ “All of the 23 jurisdictions that had been identified as NCCTs in 2000 and 2001, made significant progress, and the last country was removed from the list in October 2006.”¹²⁶ The FATF discontinued the NCCT program after the World Bank and IMF joined the chorus of protests from developing countries regarding the lack of transparency, due process, and inclusiveness in the process.¹²⁷ The International Co-operation Review Group (ICRG), established in 2007 to succeed the

¹¹⁸ *Id.* at 4–6.

¹¹⁹ *Id.* at 11.

¹²⁰ *Id.* at 19.

¹²¹ *Id.* at 3.

¹²² Jared Wessel, *The Financial Action Task Force: A Study in Balancing Sovereignty with Equality in Global Administrative Law*, 13 WIDENER L. REV. 169, 174 (2006).

¹²³ *Id.* at 175–76. The four initial FSRBs included the Americas, Asia/Pacific, Europe, and Africa/Middle East. *Id.* at 175.

¹²⁴ BEEKARRY, *supra* note 106, at 181–82 (describing NCCT listing as a “name and shame procedure”).

¹²⁵ *Id.*

¹²⁶ *High-Risk and Non-Cooperative Jurisdictions*, FIN. ACTION TASK FORCE, <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/more/moreabouttheinternationalco-operationreviewgroupicrg.html> (last visited June 2, 2015) [hereinafter HIGH-RISK JURISDICTIONS].

¹²⁷ Rainer Hülse, *Even Clubs Can't Do Without Legitimacy: Why the Anti-Money Laundering Blacklist Was Suspended*, 2 REG. & GOVERNANCE 459, 463 (2008).

NCCT initiative, initiated a global review procedure in 2009 in response to an appeal from the G20.¹²⁸ The ICRG is essentially a resurrection of the NCCT process with some variations. After assessment, high-risk cooperative jurisdictions are identified and called upon to expeditiously implement an FATF action plan.¹²⁹ The coercion by blacklisting persists in the form of a Public Statement listing high-risk uncooperative jurisdictions.¹³⁰ There are currently twenty-three high-risk cooperative jurisdictions¹³¹ and thirteen high-risk uncooperative jurisdictions with Iran and DPRK remaining subject to countermeasures.¹³²

The FATF has secured immense financial support from the IMF, World Bank, US, and EU, and in turn provides financial support to newly established regional FSRBs.¹³³ Presently, the number of FSRBs has expanded to eight and they operate with delegated FATF authority to carry out its mandate.¹³⁴ The infusion of the FATF with the 1267 CFT mandate and the consecutive generation and infusion of the eight FSRB's are saliently illustrative of the generation of a polycentric landscape characterized by autocatalysis. This phenomenon extends to prominent treaty regimes such as the United Nations Convention Against Transnational and Organized Crime (2000) and the United Nations Convention Against Corruption (2003), which have incorporated the FATF standards in whole or in part.¹³⁵

While they are formal IOs and not transnational actors, at this juncture, it is appropriate to note the involvement of the World Bank and IMF in the autocatalytic phenomenon because of their interactions

¹²⁸ *High-Risk Jurisdictions*, *supra* note 126.

¹²⁹ FIN. ACTION TASK FORCE, HIGH-RISK AND NON-COOPERATIVE JURISDICTIONS—IMPROVING GLOBAL AML/CFT COMPLIANCE: ON-GOING PROCESS 1 (2012), *available at* http://www.fatf-gafi.org/media/fatf/documents/FATF%20-%20Improving%20global%20AML%20CFT%20compliance%20_%20an%20ongoing%20process%20%2022%20June%202012.pdf [hereinafter ICRG ONGOING PROCESS].

¹³⁰ *See* FIN. ACTION TASK FORCE PUBLIC STATEMENT, HIGH-RISK AND NON-COOPERATIVE JURISDICTIONS (2013), *available at* <http://www.fatf-gafi.org/media/fatf/documents/statements/18-October-2013.pdf> [hereinafter HIGH-RISK AND NON-COOPERATIVE].

¹³¹ ICRG ONGOING PROCESS, *supra* note 129.

¹³² HIGH-RISK AND NON-COOPERATIVE, *supra* note 130.

¹³³ Ben Hayes, *Counter-Terrorism, "Policy Laundering," and the FATF: Legalizing Surveillance, Regulating Civil Society*, 14 INT'L J. NOT-FOR-PROFIT L. 5, 26–27 (2012).

¹³⁴ *See* BEEKARRY, *supra* note 106, at 144 n.46. The eight FSRBs include The Eurasian Group, Asia/Pacific Group, The Caribbean Financial Action Task Force, the Council of Europe group known as MONEYVAL, The Eastern and Southern Africa Anti-Money Laundering Group, The Financial Action Task Force on Money Laundering in South America, Intergovernmental Action Group against Money-Laundering in West Africa, and The Middle East and North Africa Financial Action Task Force. *Id.*

¹³⁵ K. ALEXANDER ET AL., GLOBAL GOVERNANCE OF FINANCIAL SYSTEMS 151–52 (2006).

with the FATF. The World Bank and IMF, two of the most influential IOs, have now expressly adopted the FATF Recommendations as part of their financial sector assessment and adjustment programs, making compliance with the 1267 asset-freezing measures a condition for loan eligibility.¹³⁶ Virtually all bilateral aid development agencies and multilateral development banks have joined the autocatalytic process and followed the lead of the World Bank and IMF in this regard.¹³⁷ A 2007 Treasury Department report indicates by “2005, the IMF and World Bank had conducted more than 50 assessments of member countries’ compliance with the standards of the FATF and had provided technical assistance on related projects in more than 125 countries.”¹³⁸ Like FATF assessments, these reviews serve as a feedback loops. Notably, they fulfill the “support” function of feedback loops by generating World Bank and IMF technical assistance directed at the establishment of “laws and regulations, capacity building for financial sector supervisory and regulatory authorities, the establishment of Financial Intelligence Units, training programs in the public and private sectors, and support for . . . [FSRBs] to conduct their own compliance assessments.”¹³⁹

While the FATF has no formal statutory, constitutional, or treaty enforcement power, its “realpolitik” influence as a regulatory and policy body is undeniable. The threat of blacklisting and sanctions in the form of countermeasures has been instrumental in enhancing compliance with FATF standards and, consequently with 1267 CFT measures.¹⁴⁰ The power of the market intuitively helps enforce the system. Blacklisting provides a powerful market disincentive that will diminish a State’s ability to procure funding and attract investment. The system has been described as highly effective with jurisdictions generally preferring compliance “with a gun to their head” to the alternative of “death by blacklisting.”¹⁴¹ Over the years, the FATF has

¹³⁶ HAYES, *supra* note 133, at 26. The World Bank and IMF have worked closely with the FATF in the development of the methodology for compliance and the FATF mutual evaluation system. Press Release, G7, Combating the Financing of Terrorism: First Year Report (Sept. 27, 2002), available at <http://www.g8.utoronto.ca/finance/fm092702pr1.htm>.

¹³⁷ HAYES, *supra* note 133, at 26.

¹³⁸ U.S. TREASURY DEP’T, NATIONAL MONEY LAUNDERING STRATEGY 12 (2007), available at <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/nmls.pdf>.

¹³⁹ HAYES, *supra* note 133, at 26.

¹⁴⁰ BEEKARRY, *supra* note 106, at 143.

¹⁴¹ *Id.* at 182.

made some progress in employing processes designed to address gaps in its accountability, transparency, and legitimacy.¹⁴²

Each time an organization adopts the FATF Recommendations, they simultaneously adopt Resolution 1267. Thus, incorporation of the FATF Recommendations into the agenda of other prominent, informal, global finance regulatory organizations has also been critical in the dissemination of 1267 CFT norms through autocatalysis. Such organizations include the International Organization of Securities Commissions (IOSCO), the Basel Committee on Banking Supervision (Basel Committee), the International Association of Insurance Supervisors (IAIS), and, the Egmont Group of Financial Intelligence Units (The Egmont Group).¹⁴³

In 1995, the financial intelligence units of numerous States met in Brussels “to encourage and assist in the exchange of financial intelligence between countries.”¹⁴⁴ The result was the Egmont Group, an informal, thirteen-member organization whose membership has ballooned to 139 FIUS. In 2004, the Egmont Group redefined its core functions to include CFT.¹⁴⁵ The heads of each of the FIUs essentially serve as the organizations board of directors and meet annually at the plenary session.¹⁴⁶ While the FATF is the leading legal and regulatory body in the area of terrorist financing, the Egmont Group can properly be considered the most relevant transnational operational and enforcement body.¹⁴⁷ It serves as a centralized forum for FIUs to cooperate in terms of the exchange of information, operational support, training and technical assistance, personnel exchanges, and operational and strategic collaboration.¹⁴⁸ The Egmont Group, which also employs process-based feedback loops, assesses the effectiveness of its FIU members based on “the quality of their analytical work” and their “ability to develop information in support of investigations and

¹⁴² *Id.* at 189 (“[T]he [FATF’s] legitimacy deficit, perhaps more relevant in the beginning stages of its creation, has gradually been addressed, albeit in a limited manner, providing the FATF process with a perception of greater inclusiveness and transparency.”).

¹⁴³ INTERNATIONAL MONETARY FUND, FINANCIAL INTELLIGENCE UNITS: AN OVERVIEW 22 (2004), available at <http://www.imf.org/external/pubs/ft/fiu/fiu.pdf>.

¹⁴⁴ *Id.* at 2–3.

¹⁴⁵ MARK PIETH ET. AL., COUNTERING TERRORIST FINANCING: THE PRACTITIONER’S POINT OF VIEW 49 (2009).

¹⁴⁶ THE EGMONT GROUP OF FIN. INTELLIGENCE UNITS CHARTER ¶ 5.1(a), available at <http://www.egmontgroup.org/library/egmont-documents> [hereinafter EGMONT CHARTER].

¹⁴⁷ *Id.* at preamble.

¹⁴⁸ *Id.*

prosecutions.”¹⁴⁹ A deficient assessment can presumably form the basis for organizational pressure, training, and/or support to enhance the FIUs capacity.¹⁵⁰

In now familiar autocatalytic fashion, FATF Recommendation 29 obliges States to establish a FIU to serve as the national center for the receipt, analysis, and dissemination of suspicious transaction reports and other information relevant to terrorist financing.¹⁵¹ The interpretive note for Recommendation 29 encourages States to join the Egmont Group once it has created a FIU.¹⁵² In turn, the Egmont Group Charter affirms that FATF Recommendations affect all FIU’s, effectively incorporating the 1267 CFT measures into its operational and enforcement mandate.¹⁵³ The 2011–12 annual report reflected that of the 111 reporting FIUs: 50% reported that they had regulatory powers to issue CFT rules or regulations; 54% had been mandated supervisory or compliance monitoring powers; 57% had the power to freeze or suspend transactions; 54% had the ability to request additional information from reporting entities; and 25% had law enforcement powers.¹⁵⁴

In 2007, Switzerland, Costa Rica, Japan, Slovakia, and Turkey launched the International Process on Global Counter-Terrorism Cooperation (IPGCT) to assess the “overall UN contributions to the [post 9/11] fight against terrorism” and identify ways to better position national institutions to implement UN counterterrorism policy.¹⁵⁵ The “process” evinces the potential for well-designed feedback loops to impel the movement towards counterterrorism through “due process.” It involved several workshops organized throughout 2008 to provide an informal forum for discussion among: UN civil servants; functional, regional, and sub-regional organizations; and civil society.¹⁵⁶ The summary from the third workshop in May 2008 stressed the need for 1267 listing and delisting procedures to “uphold the rule of law and

¹⁴⁹ THE EGMONT GROUP OF FIN. INTELLIGENCE UNITS, EGMONT GROUP ANNUAL REPORT 2011–12 iii, available at <http://www.egmontgroup.org/library/annual-reports> [hereinafter EGMONT ANNUAL REPORT].

¹⁵⁰ *Id.* at 20.

¹⁵¹ FIN. ACTION TASK FORCE, INT’L STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION: THE FATF RECOMMENDATIONS 24 (2012), available at http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

¹⁵² *Id.* at 96.

¹⁵³ EGMONT CHARTER, *supra* note 146, at 4.

¹⁵⁴ EGMONT ANNUAL REPORT, *supra* note 149, at 12.

¹⁵⁵ INTERNATIONAL PROCESS, *supra* note 90, at i.

¹⁵⁶ *Id.*

human rights.”¹⁵⁷ In 2008, Switzerland presented the results of the process to the UN with twenty-nine specific recommendations,¹⁵⁸ many of which were enacted by the UN and member States.¹⁵⁹ The recommendations “also laid the [foundation] for the Global Counterterrorism Forum [(GCTF)], which was established in 2011.”¹⁶⁰ The GCTF is another informal multilateral platform positioned to fill the capacity-building objective of the G8’s recently disbanded, Counterterrorism Action Group.¹⁶¹ The GCTF has already demonstrated its potential for accelerated norm dissemination through autocatalysis. In May 2012, one of the GCTF’s working groups issued a series of criminal justice recommendations, one of which calls for the criminalization of terrorist financing in accordance with the FATF CFT recommendations.¹⁶²

3. Formal IOs

The 1267 CFT regime has also infused formal IOs with normative power to pursue greater implementation, enforcement and coordination of CFT measures. Like the World Bank and the IMF, the World Customs Organization (WCO), which also has observer status at the FATF, has become an important actor in the 1267 CFT Regime’s autocatalytic process. Since Resolution 1373, the UNSC and WCO have had an ongoing dialogue with the UNSC calling on the WCO to assist and train member states for the purpose of improving their ability to prevent illegal movement of monetary instruments.¹⁶³ During 2012 and 2013, the WCO participated in three CFT missions organized by

¹⁵⁷ *Id.* at 113.

¹⁵⁸ Jessica Dacey, *Swiss Team Up in Counterterrorism Offensive*, SWISSINFO (Oct. 3, 2011, 1:34 PM), <http://www.swissinfo.ch/eng/swiss-team-up-in-counterterrorism-offensive/31265624>.

¹⁵⁹ *Improving Global Counterterrorism Cooperation*, GLOBAL CTR. ON COOP. SEC., <http://www.globalcenter.org/topics/improving-global-ct-cooperation/> [hereinafter CGCC IMPROVING COOPERATION] (last visited May 28, 2015).

¹⁶⁰ *Id.*

¹⁶¹ Alistair Millar, *The G8’s Counterterrorism Action Group: Leaving Takes Leadership*, G8 MAG., June 2013, at 222.

¹⁶² See GLOBAL COUNTERTERRORISM FORUM, THE RABAT MEMORANDUM ON GOOD PRACTICES FOR EFFECTIVE COUNTERTERRORISM PRACTICE IN THE CRIMINAL JUSTICE SECTOR 13–14, (2012), available at <https://www.thegctf.org/documents/10162/159873/Rabat+Memorandum-English.pdf>.

¹⁶³ Mr. Hassan Baage Senior Legal Officer, Counter-Terrorism Committee Executive Directorate (CTED), Statement at World Customs Forum: The WCO in the 21st Century-Inventing our Future 4 (Mar. 27, 2008), available at <http://www.wcoomd.org/~media/WCO/Public/Global/PDF/Events/2008/World%20Customs%20Forum/Panel%20IICTCCTED.ashx?db=web>.

the UN Counter-Terrorism Executive Directorate.¹⁶⁴ Additionally, the WCO's Customs Enforcement Network (CEN) now serves as a database and encrypted communication tool facilitating the exchange of intelligence necessary to administer CFT seizures.¹⁶⁵ In 2009, the WCO and INTERPOL jointly held the Second International Conference on Illicit Cash Couriers, to coordinate "global efforts to combat illicit cash trafficking perpetrated by terrorist and criminal organizations."¹⁶⁶

In Resolution 1617, the UNSC, for the first time, expressly directed Member States and the 1267 Committee to collaborate with INTERPOL in administering the 1267 targeted sanctions.¹⁶⁷ Since then, INTERPOL has developed into another elemental actor in the 1267 network contributing to increased cooperation and reinforcement of the CFT mandate.¹⁶⁸ In conjunction with the 1267 Committees, INTERPOL introduced in 2005 the INTERPOL–UNSC Special Notice, a notification regarding designees on the Consolidated List.¹⁶⁹ Once an individual entity is added to the Consolidated List Special Notices are circulated to all INTERPOL member countries. The Special Notices enhance the enforcement of 1267 sanctions by:

- 1) "Alert[ing] law enforcement authorities worldwide to individuals and entities that are subjects of U.N. sanctions including an asset freeze, arms embargo, and/or travel ban; 2) Enhanc[ing] the information available concerning sanctioned individuals and entities, the quality of U.N. sanctions lists, and the narrative summaries that describe the grounds for the sanctions; 3) Provid[ing] direction on action to be

¹⁶⁴ *Council 2013 Rules of Origin Single Window*, WCO NEWS 18 (Oct. 2013), available at <http://www.wcoomd.org/en/media/wco-news-magazine/~media/8E86989134B34169BBC8DA4FF464824F.pdf>.

¹⁶⁵ *Customs Enforcement Network (CEN)*, WORLD CUSTOMS ORGANIZATION, <http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/cen-suite/cen.aspx> (last visited June 2, 2015).

¹⁶⁶ *Second International Conference on Illicit Cash Couriers*, WORLD CUSTOMS ORGANIZATION, <http://www.wcoomd.org/en/media/newsroom/2009/april/second-international-conference-on-illicit-cash-couriers.aspx> (last visited June 2, 2015).

¹⁶⁷ S.C. Res. 1617, preamble & ¶¶ 8–9, U.N. Doc. S/RES/1617 (July 29, 2005).

¹⁶⁸ S.C. Res. 1699, preamble, U.N. Doc. S/RES/1699 (Aug. 8, 2006) (stressing that enhanced cooperation between the UN and INTERPOL would enhance CFT enforcement). In 2009, INTERPOL's General Assembly approved a cooperation arrangement between INTERPOL and the sanctions committees. See INTERPOL, AG-2009-RES-15 (Oct. 11–15, 2009).

¹⁶⁹ Yaron Gottlieb, *Article 3 of Interpol's Constitution: Balancing International Police Cooperation with the Prohibition on Engaging in Political, Military, Religious, or Racial Activities*, 23 FLA. J. INT'L L. 135, 180 (2011).

taken to implement the sanctions in accordance with national legislation.”¹⁷⁰

In addition to contributing to 1267 enforcement by disseminating the notice through the INTERPOL system, the Special Notice system can enhance the quality of information on listed individuals and thereby enhance the quality of the Consolidated List. This is another example of the 1267 CFT rules generating an autocatalytic interaction between two actors which leads to enhanced 1267 CFT implementation and enforcement. If INTERPOL “[R]ed [N]otices bestow a ‘superior legitimacy’ on [a] foreign arrest warrant[],”¹⁷¹ Special Notices are imbued with superlative status as they are backed by the weight of a binding international obligation. “More than 700 Special Notices have been issued since [their] creation.”¹⁷²

4. NGOs

Numerous NGOs have made meaningful contributions to the evolution of the 1267 CFT Regime including the Center on Global Counterterrorism Cooperation (CGCC), established in 2004 to advocate for more relevant and effective UN counterterrorism programs.¹⁷³ It has been heavily involved in pursuing implementation of FATF CFT recommendations, and in capacity building efforts in different regions, particularly sub-Saharan Africa.¹⁷⁴ The CGCC, which served as the secretariat for the previously discussed IPGCT,¹⁷⁵ has played a role in raising awareness of terrorist abuse of the nonprofit sector.¹⁷⁶ It issued a report on this topic subsequent to a multiyear project led by the UN that involved more than 50 states and 80 nonprofit organizations.¹⁷⁷ The

¹⁷⁰ *Id.* at 180 n. 222.

¹⁷¹ See U.S. Dep’t of Justice, U.S. Attorneys’ Manual § 9-15.635 (2011).

¹⁷² *Special Notices*, INTERPOL, www.interpol.int/INTERPOL-expertise/Notices/Special-Notices (last visited May, 28, 2015).

¹⁷³ *History of the Forum*, THE FOURTH FREEDOM FORUM (2014), <http://www.fourthfreedom.org/about/our-history/>. See also CGCC IMPROVING COOPERATION, *supra* note 159.

¹⁷⁴ GLOBAL CENTER ON COOPERATIVE SECURITY, WORKSHOP ON BUILDING CAPACITY IN THE AREA OF COUNTERTERRORISM IN WEST AFRICA IN THE FRAMEWORK OF THE UN GLOBAL COUNTERTERRORISM STRATEGY: SUMMARY AND RECOMMENDATIONS, (2010), available at, http://www.globalct.org/wp-content/uploads/2010/02/10Feb16-17_Summary_Recommendations.pdf.

¹⁷⁵ CGCC IMPROVING COOPERATION, *supra* note 159.

¹⁷⁶ See generally Center on Global Counterterrorism Cooperation, *To Protect and Prevent: Outcomes of a Global Dialogue to Counter Terrorist Abuse of the Nonprofit Sector* (2013), available at http://www.globalct.org/wp-content/uploads/2013/06/CGCC_Prevent-Protect-Report_pgs.pdf.

¹⁷⁷ *Id.* at 2.

report advocates for accountability and legitimacy within 1267 implementation systems by recommending increased dialogue with banks and financial institutions and maintaining there can be “no one-size-fits-all approach to regulating the nonprofit sector.”¹⁷⁸ The CGCC’s efforts in this regard demonstrate how NGOs can serve as feedback loops generating more normatively desirable CFT measures by applying pressure for relevant actors to balance due process and human rights against law enforcement needs.

A 2009 report by the Watson Institute, prepared by Sue Eckert and Thomas J. Biesteker, demonstrates this point even more saliently.¹⁷⁹ The 2009 Watson Report successfully called for the UNSC to establish the Office of the OP in response to *Kadi I*.¹⁸⁰ The Targeted Sanctions Consortium (TSC), a joint effort of the Watson Institute and the Graduate Institute of Geneva, released an empirical study assessing the effectiveness of UN targeted sanctions in August 2012 (2012 TSC Report).¹⁸¹ The 2012 TSC Report builds upon the framework advanced by Francesco Giumelli for evaluating effectiveness of UNSC sanctions based on the achievement of three discrete purposes—coercing, constraining, or signaling.¹⁸² Constraining is achieved when sanctions succeed in denying or delaying a target’s “access to essential resources needed to engage in a proscribed activity . . . or in raising costs.”¹⁸³ Upon analyzing 56 cases from 16 different sanctions regimes administered over the past 20 years, including the 1267 regime, the study concludes targeted sanctions have been effective in achieving the “constraining” purpose 31% of the time.¹⁸⁴ The empirical data borne out in the study suggest that particularly high levels of effectiveness have been achieved in constraining Al-Qaida and Taliban targets.¹⁸⁵ The TSC and its contributors demonstrate how NGOs, academic institutes,

¹⁷⁸ *Id.* at 17.

¹⁷⁹ 2009 WATSON REPORT, *supra* note 28.

¹⁸⁰ *Id.* at 27–28.

¹⁸¹ DESIGNING UNITED NATIONS TARGETED SANCTIONS: INITIAL FINDINGS OF THE TARGETED SANCTIONS CONSORTIUM (TSC), EVALUATING IMPACTS AND EFFECTIVENESS OF UN TARGETED SANCTIONS, THE GRADUATE INSTITUTE PROGRAMME FOR THE STUDY OF INTERNATIONAL GOVERNANCE. (Aug. 2012), *available at* http://graduateinstitute.ch/files/live/sites/iheid/files/sites/internationalgovernance/shared/PSIG_images/Sanctions/Designing%20UN%20Targeted%20Sanctions.pdf.

¹⁸² *Id.* at 9 n.5 (citing FRANCESCO GIUMELLI, COERCING, CONSTRAINING, AND SIGNALIZING: EXPLAINING AND UNDERSTANDING INTERNATIONAL SANCTIONS AFTER THE COLD WAR (Colchester, UK: ECHR Press, 2011)).

¹⁸³ *Id.* at 9–10.

¹⁸⁴ *Id.* at 14.

¹⁸⁵ *Id.* at 16.

and even individual academics can become important elemental actors in the autocatalytic evolutionary process.

III. CONCLUSION

As demonstrated by the 1267 CFT Regime, the emergence of the autocatalytic regime is a phenomenon with far-reaching implications for global politics. Its capacity for generating institutionalist cooperation and for accelerating the global dissemination of intrusive legal norms is remarkable in the context of counterterrorism—a high-political and deeply contentious matter at the core of domestic security policy. The autocatalytic regime may provide a basis for understanding other phenomena in international relations and for envisaging other regulatory frameworks for resolving global collective action problems. In addressing dynamic and multifaceted problems, singular regimes, such as treaty regimes, are hampered by their staticism and deficiency in providing a platform for interdisciplinary cooperation.

Regime complexes, on the other hand, are characterized by dysfunctionality and indeterminacy. Meanwhile, the polycentric nature of the autocatalytic regime provides for cooperation by various international players with expertise in distinct disciplines based on an overlapping interest. Feedback loops afford the autocatalytic regime dynamism—the capacity for flexible adaptation through evolutionary processes. The primacy of the underlying legal rules means they will enjoy immense normative power thereby accelerating cooperative processes and dissemination. It also means the application of the autocatalytic regime is limited to scenarios in which an international authority enjoys the predominant authority to imbue the underlying legal rules with primacy in every relevant forum extant in a polycentric landscape. As demonstrated by the 1267 CFT Regime, the autocatalytic regime's capacity for accelerated and protean dissemination of legal norms also magnifies the concerns associated with the exercise of transnational regulatory power. These concerns enhance the importance of GAL concordant mechanisms and perceptively designed feedback loops to address problematic gaps as they emerge.

