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## **Global Networks against Crime: Using the Financial Action Taskforce as a Model?**

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What are best practices and models of cooperation against transnational organized crime? For 25 years, the Financial Action Taskforce (FATF) provides an important example of how states can collaborate to counter money laundering. Anti-money laundering policies are used against criminals and terrorists, and seem to be a prime example of effective coordination among states. As a result, the FATF and its anti-money laundering efforts have often been conceived as a prototype of global governance and of global governance networks<sup>1</sup>. A main characteristic of the FATF network is the large number of different actors that are coordinated, including states, international organizations and non-governmental actors.

This article examines whether the success of the FATF can be replicated in other areas of global crime governance. This is not a primarily theoretical question, but linked to political debates

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<sup>1</sup> Jason C. Sharman, *The Money Laundry. Regulating Criminal Finance in the Global Economy* (Ithaca: Cornell University Press, 2011); Christine Jojarth, *Crime, War and Global Trafficking. Designing International Cooperation* (Cambridge: Cambridge University Press, 2009); Dieter Kerwer and Rainer Hülse, "How International Organizations Rule the World: The Case of the Financial Action Task Force on Money Laundering," *Journal of International Organization Studies* 2, no. 1 (2011): 50-67; Wolfgang H. Reinicke, *Global Public Policy. Governing without Government?* (Washington: Brookings Institution, 1998); Anne-Marie Slaughter, *A New World Order* (Princeton and Oxford: Princeton University Press, 2004).

that might use the FATF as a model institution for other areas of global crime governance. For instance, the United States mentioned the FATF in the 2011 White Paper on Cybersecurity as an important example on how to establish cooperation in matters of cybercrime and cybersecurity.<sup>2</sup> While lessons are drawn on the FATF, there is little research on which lessons this network is actually able to teach.

Presenting the FATF network and its development, this article argues that the transferability of the FATF is limited. It is not an ideal model for future global governance efforts, as its success is highly dependent on its specific background and its specific capabilities. For instance, similar network initiatives are likely to be perceived more critically today by other states, which will make it difficult to gain the momentum the FATF has had. Also, commitment to the FATF exists for different reasons and is not only related to finding criminals. Future global policy networks are unlikely to create a similar amount of benefits to members, and weaker commitment to them can be expected. At worst, focusing on the FATF might mislead states and other actors (including researchers) to expecting too much from global policy networks.

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<sup>2</sup> Robert K. Knake *Internet Governance in an Age of Cybersecurity* (New York: Council on Foreign Relations, 2010), 18-19.; President of the United States *International Strategy for Cyberspace. Prosperity, Security and Openness in a Networked World* (Washington: White House, 2011), 20. In September 2014, a Joint Taskforce on Cybercrime was set up by cybersecurity centers from the United States, Canada, Europe and other states. The model seems to share some characteristics with the FATF initiation (e.g. the United States as initiator, the temporary mandate and the selective membership), but details of its operation are widely unknown so far; “Expert International Cybercrime Taskforce is launched to tackle online crime”, National Crime Agency, London (<http://nationalcrimeagency.gov.uk/news/news-listings/435-expert-international-cybercrime-taskforce-is-launched-to-tackle-online-crime>, accessed 7 November 2014).

To show this in detail, this article traces the transformation of the anti-money laundering agenda from a foreign policy of the United States to a global discourse and an almost universal weapon against crime.<sup>3</sup> The first section presents the role of global policy networks and how they can be established. I outline two major difficulties of establishing global networks – initiation problems and commitment problems. The second section shows how and why the FATF was initiated, emphasizing the crucial role of the United States. The third section elaborates on the instruments used to ensure commitment, in particular how monitoring and oversight has been socialized in the FATF. The fourth section presents reasons related to incentives and commitment that are obstacles to replicating the FATF. The conclusions summarize the weak points of the FATF network in terms of transferability, outline some ways to overcome these and present further questions for research.

The article is related to the existing research on the FATF, which has multiplied over the last years, yet often does not elaborate on limits of the FATF in terms of policy lessons. By addressing the question of whether and how the FATF is replicable in other contexts of global crime governance, the article carries out a secondary analysis of the available research and sources, and supplements the existent literature from a more policy-oriented perspective. The

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<sup>3</sup> Jason C. Sharman, "Power, Discourse and Policy Diffusion: Anti-Money Laundering in Developing States" *International Studies Quarterly* 52, no. 3 (2008): 635-656.; Ian Roberge, "Bringing the United States Back In: A Response to Rainer Hülse's 'Creating Demand for Global Governance ...'", *Global Society* 23, no. 2 (2009): 177-181.; Daniel Drezner, *All Politics is Global* (Princeton: Princeton University Press, 2007); Eleni Tsingou, "Global Financial Governance and the Developing Anti-Money Laundering Regime: What lessons for the International Political Economy," *International Politics* 47, no. 6 (2010): 617-637; Ines Oliveira "Catch me if you can: Or how Policy Networks help tackle the Crime-Terror Nexus." *Global Crime* 15 no. 3-4 (2014): 219-240.

analysis has important implications, as future models of global governance networks might fail if they are modelled as a copy of the FATF, but are actually based on different preconditions.

## **Global Networks and Global Crime Governance**

International cooperation was for many decades primarily treaty-based interaction of states with defined commitments and benefits.<sup>4</sup> Since the end of the Cold War, however, also informal ways of cooperation or ‘soft law’ have grown continuously, ultimately giving rise to many forms of interaction among governmental and non-governmental actors.<sup>5</sup> ‘Informal’ here does not refer to non-official channels, or a ‘hidden’ membership, but to the fact that an increasing number of arrangements in world politics are less bureaucratic and rely on non-binding agreements. Informalization thus implies increased flexibility of structures and a more flexible decision-making process.

The global governance of crime reflects this informalization process. A global public policy network consisting of international organizations, states and non-state actors,<sup>6</sup> is a concept followed in the Kimberley Process. The process brought together governmental and non-governmental regulations to govern sections of the diamond trade that had been

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<sup>4</sup> Kenneth Abbot and Duncan Snidal “International Regulation without international government. Improving IO Performance through Orchestration” *Review of International Organizations* 2010 (5): 315-344, 316.

<sup>5</sup> E.g Wolfgang H. Reinicke and Francis Deng, *Critical Choices. The United Nations, Networks and the Future of Global Governance* (Ottawa and others: International Development Research Centre, 2000).; Slaughter, *A New World Order*; Klaus Dingwerth and Philipp Pattberg, "Global Governance as a Perspective on World Politics," *Global Governance* 12 (2006): 185-203.

<sup>6</sup> Reinicke and Deng *Critical Choices*; Reinicke *Global Public Policy*.

unregulated before.<sup>7</sup> Global networks of state actors that facilitate exchange about common policy problems<sup>8</sup> have also become an established element of global crime governance, ranging from police cooperation to activities of the G7/8 against crime.<sup>9</sup> Global crime governance today is transnational governance, relying on non-state actors and their orchestration.<sup>10</sup> The FATF is one of the most prominent examples of these efforts to counter crime.

While these different forms of policy networks vary in the degree of involvement of state and non-state actors, the tasks fulfilled, and the legal forms they take, they nonetheless all expose a new, networked way in how states tackle crime.<sup>11</sup> Basically, governments can use these networks in two ways: They can try to stipulate change among network members, or they can try to use the power of the network as a whole to govern a specific issue area. To make efficient use of networks, actors ideally combine these strategies and set up a network in which they have a strong influence on other network members, while the whole network has a strong influence on the whole issue area. This turns networking into a multilevel activity, and requires an ‘entrepreneurial’ approach to world politics: States cannot just refer to existing international forums or use long established means of cooperation. They need to cause wide-ranging change,

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<sup>7</sup> Virginia Haufler, “The Kimberley Process Certification Scheme: An Innovation in Global Governance and Conflict Prevention,” *Journal of Business Ethics* 89, no. 4 (2009): 403-416.; Haufler, Virginia, “The Kimberley Process, Club Goods, and Public Enforcement of a Private Regime,” in Matthew Potoski and Aseem Prakash (eds.) *Voluntary Programs. A Club Theory Perspective*, (Cambridge: The MIT Press, 2009), 89-105.

<sup>8</sup> Slaughter *A new World Order*.

<sup>9</sup> Amadine Scherrer *The G8 and Transnational Organized Crime* (Ashgate: Edward Elgar, 2010).; Peter Andreas and Ethan Nadelmann, *Policing the Globe. Criminalization and Crime Control in International Relations* (Oxford and others: Oxford University Press 2006)

<sup>10</sup> Author.

<sup>11</sup>Miles Kahler *Networked Politics. Agency, Power and Structure* (Ithaca: Cornell University Press, 2009).

supported by other actors. But how can such networks been built and become a tool in countering crime?

### *Institutional Entrepreneurship and Global Networking*

Researchers of organization studies have labelled the activity to bring networked, incremental change as ‘institutional entrepreneurship’. By focusing on the power of networked actors and collaboration, this strand of research bridged rationalist and constructivist arguments to provide a comprehensive explanation of institutional change. Institutional entrepreneurship refers to the broad ‘activities of actors who have an interest in particular institutional arrangements and who leverage resources to create new institutions or to transform existing ones’.<sup>12</sup> These actors aim at changing their environment by rearranging institutional arrangements, thus changing basic rules of the game.<sup>13</sup> Power is an important element of institutional entrepreneurship, but the actors involved are usually not part of a structure that visibly shows coercion – at least in the first place. The power of institutional entrepreneurs is

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<sup>12</sup> Steven Maguire, Cynthia Hardy and Thomas Lawrence, "Institutional Entrepreneurship in Emerging Fields: HIV/AIDS treatment advocacy in Canada", *Academy of Management Journal*, 47 (2004), 657-679, 657.

<sup>13</sup> Bernard Leca and Philippe Naccache, "A Critical Realist Approach To Institutional Entrepreneurship", *Organization* 13, no. 5 (2006): 627-651; Julie Battilana, Bernard Leca and Eva Boxenbaum, *Agency and Institutions: A Review of Institutional Entrepreneurship* (Cambridge: Harvard Business School, 2008); Raghu Garud, Cynthia Hardy and Steve Maguire, "Institutional Entrepreneurship as Embedded Agency: An Introduction to the Special Issue", *Organization Studies* 28, no.7 (2007), 957-969; Cynthia Hardy and Steve Maguire, "Institutional Entrepreneurship", in Royston Greenwood, Christine Oliver, Kerstin Sahlin and Roy Suddaby, (eds) *The Sage Handbook of Organizational Institutionalism* (Thousand Oaks: Sage, 2008), 198-217.

derived from their relative position to others, and they draw on different dimensions of power in the network.<sup>14</sup>

Networking is a crucial tool for institutional entrepreneurs: It emphasizes the relational aspect in bringing change, and the ties among its members can be used to collaborate as well as to execute power. Institutional entrepreneurs thus use different means to establish policies that conform to their own ideas: explicit norms may stand alongside technical analyses, educational trainings used to facilitate new administrative procedures. In particular the structural position in a network is important for institutional entrepreneurs: Central positions allow extensive and diverse incoming information, while they enable easy communication of ideas and goals within the network.<sup>15</sup> This enables a monitoring of activities within and outside the network, while it also benefits the central actor. Power in a network can be used to secure good and central positions, to allow information exchange or the spread of norms. Institutional entrepreneurs can gain support through financial transfers to other network members, they can lobby for formal network regulations that support their position, or they can become central actors due to knowledge asymmetries. The most decisive factor of institutional entrepreneurship in a network is not the application of new instruments, but the continuous influence within a shared environment shaped by frequent interactions and common aims.

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<sup>14</sup> Thomas B. Lawrence, "Power, Institutions and Organizations", in Royston Greenwood, Christine Oliver, Kerstin Sahlin and Roy Suddaby (eds.) *The Sage Handbook of Organizational Institutionalism* (Thousand Okas: Sage, 2008), 170-197, 174.; Jens Beckert "Agency, Entrepreneurs, and Institutional Change. The Role of Strategic Choice and Institutionalized Practices in Organizations", *Organization Studies* 20, no. 5 (1999), 777-799, 792.

<sup>15</sup> Emilie M. Hafner-Burton, Miles Kahler and Alexander H. Montgomery "Network Analysis for International Relations," *International Organization* 63, no. 3 (2009): 559-592.; Deborah Avant and Oliver Westerwinter, *The New Power Politics: Networks, Governance and Global Security*. (Manuscript, December 2012).

Successful institutional entrepreneurship results in wide-ranging political change, changed global agendas or cross-national policy diffusion.<sup>16</sup> This diffusion is not restricted to policies only, but may include organizational changes or seemingly technical issues. Governance networks can use knowledge and persuade others, they can offer financial support if others align to their policy goals, or they can establish legal or cultural standards to which others comply. Institutional entrepreneurship therefore profits from the informalization of world politics, given that formal rules often allow specific rights to weaker parties, while informalization benefits those who have occupied a high social position in a stratified social system - a position that institutional entrepreneurs usually strive for to facilitate change.

Global governance of crime, today and in history, is the outcome of institutional entrepreneurship in different versions: When the British had been a major power until the 19<sup>th</sup> century, they initiated global prohibition regimes, in particular those related to slavery and maritime piracy. In particular in the 20<sup>th</sup> century, the United States took the position as an institutional entrepreneur and ‘exporter’ of many international regulations against crime, for example related to corruption, narcotic drugs, terrorism or human trafficking.<sup>17</sup> The difference between historical and current outcomes of institutional entrepreneurship, however, is their

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<sup>16</sup> Beth A. Simmons, Frank Dobbin and Geoffrey Garrett, eds. *The Global Diffusion of Markets and Democracy* (Cambridge: Cambridge University Press, 2008).; Sharman, "Power, Discourse and Policy Diffusion"; Covadonga Meseguer and Fabrizio Gilardi "What is new in the study of policy diffusion?" *Review of International Political Economy* 16, no. 3 (2009): 527-543.

<sup>17</sup> Ethan A. Nadelmann, "The Role of the United States in the International Enforcement of Criminal Law," *Harvard International Law Journal* 31, no. 1 (1990): 37-76; Cornelius Friesendorf, *US Foreign Policy and the War on Drugs. Displacing the cocaine and heroine industry* (London, New York: Routledge, 2007).

Peter Andreas and Ethan Nadelmann, *Policing the Globe.*; Author.



design: While the interstate treaty has been the most important tool in early activities against crime, the current attempts to counter crime show a networked structure, and are not necessarily based on hard law. This is not to say that hard and soft law, diplomacy, power and treaties would exclude each other. Rather, the more formal instruments of treaties that reflected global power in early global crime control have given way to more informal arrangements, like global networks, in which power is nonetheless still present and used.

### *Problems related to Global Networking*

While institutional entrepreneurs can draw on networks in a flexible way, this form of cooperation is not without specific costs. A main reason for formalized cooperation with binding contracts are commitment problems, making sure that all parties fulfill the agreement. In contrast, networks apply soft law and are more flexible with regard to membership, but this also lowers the costs of defection. While the flexibility of networks seems to be an advantage, it also needs incentives and other measures that ensure the commitment of network members. At the same time, networks might only play out their advantages over time as they do not have the fixed benefits and gains that other, formal treaties have. Initiators of networks need to invest in them early and constantly, to make sure the networking pays off to them and other members in the long run.

Initiating and designing policy networks therefore needs to consider a) initiation problems and b) commitment problems. Both are not independent from each other, and in particular the initiator of networks needs to tackle both of them. But while initiation problems mainly relate to early stages of the network's existence, commitment problems are continuous problem that might even increase as the number of network members and activities grow. A

design that considers these commitment problems and, ideally, diffuses responsibility to all members, is therefore necessary, as a network initiator is unlikely to be able monitoring commitment alone constantly.

As the FATF is usually considered to be a success in global standard setting and resulting policy change, and even discussed as a model for new initiatives, this article analyzes how such network problems have been solved to counter money laundering. Money laundering is usually conceived as a ‘support crime’, enabling other, more severe forms of criminal activity, and represents the process by which the criminal origin of money is hidden by converting it to an income that seems to be generated by licit activity. Laundering money thus enables criminals to effectively use the gains derived from illegal activities like drug trafficking, maritime piracy, weapons trafficking or the financing of terrorism.<sup>18</sup> Chasing this money is important to find and destroy criminal businesses, and detecting this money also diminishes the economic revenue of illicit activities and makes them less attractive.<sup>19</sup> The United States first identified money laundering as an international area of concern, but also witnessed substantial resistance from other states. The global anti-money laundering agenda provides an important example of how an entrepreneurial approach to world politics helped overcoming obstacles. At the same time, as any entrepreneurial activity, the success of the FATF model is not necessarily replicable.

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<sup>18</sup> e.g. K. L. Gardner, "Fighting terrorism the FATF way," *Global Governance* 13, no. 3 (2007), 325-345.

<sup>19</sup> Michael Levi, "Money Laundering and its Regulation," *The Annals of the American Academy of Political and Social Science* 582, no. 1 (2002): 181-194; Peter Reuter and Edwin M. Truman, *Chasing Dirty Money. The Fight Against Money Laundering* (Washington: Institute for International Economics, 2004); Tsingou, "Global Financial Governance"

## **Incentives to Initiate the FATF Network**

The initiation of global regulations against money laundering had been a process of many years, has been initiated stepwise and in different forums. The United States had strong incentives to regulate money laundering internationally, creating a level playing field for banks, but also guaranteeing that other states pursued a policy that corresponded to the American approach of countering crime. The domestic history of global anti-money laundering started with the American Bank Secrecy Act of 1970, establishing customer identification measures for all accounts in the United States.<sup>20</sup> In 1986, the Money Laundering Control Act criminalized money laundering, foremost with the aim to prosecute drug trafficking. A remaining problem, however, was the growing amount of international financial transactions. Even if the United States would enforce its own laws rigorously, transactions from other countries could not be controlled effectively. Moreover, the banking sector complained massively about a growing burden of paper work and diminishing banking privacy at times when financial markets were becoming globalized and increasingly competitive.<sup>21</sup>

### *Domestic Incentives for the FATF*

One part of the 1986 legislation was therefore requirement that the Chairman of the Federal Reserve Bank had to consult with other central banks about the problem of money laundering and the general responsibility of banks. After initial reluctance on the part of other banking

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<sup>20</sup> Michael Levi, "Pecunia non Olet: Cleansing the Money Launderers from the Temple," *Crime, Law and Social Change*, 16: 3 (1991), 217-302: 249.

<sup>21</sup> Wyrsh, "Treasury Regulation", 530.

chairmen, the Basel Committee on Banking Supervision finally issued a statement in 1988 that mentioned the importance of knowing the customer in order to avoid suspicious transactions and to cooperate with law enforcement.<sup>22</sup> The statement was drafted by the representatives of the United States in the committee<sup>23</sup> and it became one piece in the mosaic of an evolving international order against money laundering. Subsequent activities of the United States and other countries have referred to it frequently.

The American government's intent to foster international cooperation against money laundering was also reflected in the 1988 Omnibus Drug Act and the so-called 'Kerry Amendment'. This amendment added a section that called for increased cooperation, international surveillance of large currency transactions and sanctions toward no-cooperative countries.<sup>24</sup> The intention was to ensure adequate records on large transactions of US Dollars worldwide, and the disclosure of this information to American law enforcement.<sup>25</sup> In 1989, the aims of the amendment were supplemented by a report to a Subcommittee of the Senate Committee on Foreign Relations. Arguing that fighting money laundering would be the key to

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<sup>22</sup> Reuter and Truman, *Chasing Dirty Money*, 80.

<sup>23</sup> "Report to the Chairman, Subcommittee on Terrorism, Narcotics and International Operations, Committee on Foreign Relations, U.S. Senate: Money Laundering. The U.S. Government Is Responding to the Problem," General Accounting Office, Washington, 1991, 61.

<sup>24</sup> "Report to the Chairman", General Accounting Office, 16; Gerard Wyrsh, "Treasury Regulation of International Wire Transfer and Money Laundering: A Case for a Permanent Moratorium," *Denver Journal of International Law and Policy* 20, no. 3 (1991-1992): 515-535, 528)

<sup>25</sup> Bruce Zagaris, "Dollar Diplomacy: International Enforcement of Money Movement and Related Matters - A United States Perspective," *George Washington Journal of International Law and Economics* 22 (1988): 465-552, 476.

fighting drug trafficking, the need for increased cooperation was stated frequently, while international negotiations and restrictions on global banking secrecy were demanded.<sup>26</sup>

Already in 1988, the United States issued a first statement at the G7 summit in Toronto referring to the need to ‘curb money laundering’. Participants of the summit declared their support for

‘the initiative of the Government of the United States for a special task force to be convened to propose methods of improving cooperation in all areas including national, bilateral, and multilateral efforts in the fight against narcotics’.<sup>27</sup>

#### *Other Incentives to Initiate the FATF*

The incentives that led the United States to push anti-money laundering policies via the G7 were not primarily linked to domestic reasons, but to a lack of international alternatives. Traditional instruments as bilateral law enforcement cooperation or developing mutual legal assistance treaties had proven to be ineffective: Foreign governments were generally reluctant to grant assistance to drug-related law enforcement cooperation when the death penalty was included in the American 1988 Omnibus Drug Act. Also, even cooperative countries referred to the needs of their own banking sectors and the need for privacy, and foreign courts partly dismissed assistance that American law enforcement was seeking from the respective

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<sup>26</sup> “Drugs, Law Enforcement and Foreign Policy,” Subcommittee on Terrorism Narcotics and International Operations, Washington, 1989, 12, 120.

<sup>27</sup> Political Declaration: Securing Democracy. Toronto Summit, 20 June 1988, Toronto (G7), <http://www.g8.utoronto.ca/summit/1988toronto/political.html> (accessed 05 July 2014).

governments.<sup>28</sup> Bilateral cooperation was further undermined when Congress resisted to enter some of the mutual legal assistance treaties, for example with the Bahamas or Mexico, because it seemed politically problematic.<sup>29</sup> Finally, mutual legal assistance treaties had also inherent weaknesses: They would not necessarily affect banking practice, so that the United States could only trust the agreements, but could not influence foreign banking laws and practices in detail. It was also problematic to establish effective sanctioning mechanisms along such treaties.<sup>30</sup>

Taken together, the growing number of international financial transactions made it ineffective for the United States to rely only on a domestic approach of money laundering control. Yet, bilateral treaties provided no way of assuring that foreign banking procedures would be aligned with American regulations.<sup>31</sup> These reasons contributed to the growing efforts of the United States to counter money laundering on a multilateral base.

Being the central network formed to fight money laundering, the inception of the FATF in 1989 was formally proposed by the French who held the presidency of the G7 at that time. The issue of money laundering had mainly been prepared by the Americans and involved visits of foreign delegations to Washington.<sup>32</sup> Today, 34 countries and 2 regional organizations are member of the FATF. The first American delegation to the FATF consisted of members of the Treasury, Justice, and State Departments as well as the Federal Reserve. Their objective was

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<sup>28</sup> Nadelmann, "Unlaundering Dirty Money".

<sup>29</sup> Zagaris, "Dollar Diplomacy", 478-503.

<sup>30</sup> "Report to the Chairman", General Accounting Office, 56.

<sup>31</sup> "Report to the Chairman", General Accounting Office, 57-8.

<sup>32</sup> Thierry Godefroy and Pierre Lascoumes, eds., *Le Capitalisme Clandestin. L'Illusoire Régulation des Places Offshore* (Paris: Editions La Découverte, 2004).

to encourage the criminalization of money laundering and increase the possibilities for cross-national law enforcement, as well as fostering broad international cooperation against money laundering.<sup>33</sup>

With regard to the initiation problem of international networks, the FATF shows that the United States had no domestic alternative to an international regulation of money laundering. Also, given the sovereignty of countries in overseeing their banks, even treaties on money laundering regulation, changed banking practice and law enforcement cooperation would have been futile. There was, however, a clear sense of where most money related to drug offences (the initial focus of the FATF) was generated – in Western countries where drugs are foremost consumed – and where the money would be laundered – in offshore banking centers. Incentives for cooperation were thus high, while the tools for cooperation were restricted.

### **Incentives to Commit to the FATF Network**

The creation of the FATF led to the emergence of money laundering as a prominent international policy problem. Commitment of states was nonetheless necessary to counter this crime. However, over the course of time, it was not only the United States who took over monitoring tasks, but reviews and sanctions became a multilateral responsibility and has also been delegated to non-state actors.

#### *Incentives for governmental commitment to the FATF*

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<sup>33</sup> “Report to the Chairman”, General Accounting Office, 59.

With regard to internal monitoring, the structure of the FATF allows expert exchange and discussion forums on the most effective methods to counter money laundering.<sup>34</sup> Publications and studies of the FATF make it an important source of knowledge on money laundering.<sup>35</sup> Meetings are usually attended by financial regulators, law enforcement representatives, and civil servants from national Treasury or Justice Departments.<sup>36</sup> The activities are based on the so-called 40 recommendations, initially published in 1990, later revised and supplemented by counter-terrorist financing and other crimes. FATF recommendations represent a soft form of governance and are formally non-binding. Being reworked and refined over time, they cover four main areas related to prevent and prosecute money laundering: they are concerned with the legal system and targeted at criminalizing money laundering nationally; and they list measures to be taken by financial institutions and the related non-financial sector.

Commitment to the recommendations is ensured by a review process: FATF members are required to submit self-assessments, and they are regularly peer reviewed by other members and the secretariat. In the case of non-compliance, measures include reporting on deficiencies in FATF meetings, official letters or missions sent to the country. Instruments also involve the binding request to banks to pay special attention to all financial transactions to or from the

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<sup>34</sup> Sharman, *The Money Laundry*; Jason C. Sharman, "Power, Discourse and Policy Diffusion: Anti-Money Laundering in Developing States," *International Studies Quarterly* 52, no. 3 (2011): 635-656.; Tsingou, "Global Financial Governance".

<sup>35</sup> Kerwer and Hülse, "How International Organizations Rule the World".

<sup>36</sup> Michael Levi and William Gilmore, "Terrorist Finance, Money Laundering and the Rise and Rise of Mutual Evaluation: A New Paradigm for Crime Control?" in Marc Pieth, ed. *Financing Terrorism* (Dordrecht: Springer, 2002), 87-114: 95.



specific countries.<sup>37</sup> The internal discussions and review procedures also ensure that monitoring and oversight is socialized. All states and related transgovernmental bodies are responsible for developing and policing standards.

The network also subjects non-members to its review procedures: From the late 1990s until 2006, these countries have been monitored through an assessment in the framework of the non-cooperative countries and territories (NCCT) process. A first report was issued in 2000 and included a list of countries that seemed to be non-compliant to the recommendations. These and other subsequently listed countries were neither members of the FATF nor did they sign up for the recommendations. Instead, the NCCT process was a ‘naming and shaming’ approach towards non-members, supplemented by counter-measures and sanctions.<sup>38</sup> The process was heavily criticized because it implied that a club of countries assesses non-member compliance to its own rules.<sup>39</sup> As a consequence, future reviews have been partially transferred to multilateral institutions like the International Monetary Fund or the World Bank.<sup>40</sup> The FATF established the International Cooperation Review Group that further conducted assessments of countries, but on a different basis and with modified rating categories. In recent ratings, in particular Iran and North Korea are targeted as having important deficiencies in their banking system.<sup>41</sup>

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<sup>37</sup> Tsingou, "Global Financial Governance".

<sup>38</sup> "Report on non-cooperative countries and territories", FATF, Paris, 2000: 7-9.

<sup>39</sup> Levi and Gilmore, "Terrorist Finance," 103-4.

<sup>40</sup> Gardner, "Fighting terrorism," 339-40; Reuter and Truman, *Chasing Dirty Money*, 167-8.

<sup>41</sup> "Public Statement - 25 February 2011", FATF, Paris, 2011 [http://www.fatf-gafi.org/document/11/0,3746,en\\_32250379\\_32236992\\_47221771\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/11/0,3746,en_32250379_32236992_47221771_1_1_1_1,00.html) (accessed

1 March 2011); "Improving Global AML/CFT Compliance: update on-going process," FATF, Paris, 2011,

Monitoring of commitment is also supported through the creation of regional networks that fight money laundering. These FATF-style regional bodies (FSRBs) have been established in all regions worldwide since 1990. The Caribbean regional body provides one example for socialized anti-money laundering efforts and the influence of the United States, as the country and the FATF supported the Caribbean Financial Action Taskforce (CFATF) from the start.<sup>42</sup> Two years before the official creation in 1992, a meeting in Aruba gave rise to the organization, and its 19 recommendations modeled after the FATF.<sup>43</sup> As the General Accounting Office reported on this event:

‘[...] the United States is cooperating with several countries in a Caribbean region anti-money-laundering initiative. Participants at a June 1990 conference agreed to propose that their governments adopt the 40 Financial Action Task Force recommendations, supplemented with 21 draft recommendations (tailored to the region) developed at the conference’.<sup>44</sup>

The CFATF was thus based on an external initiative, and given the multiple attempts to cooperate with Caribbean countries in the 1980s against money laundering, the United States had a strong interest in the formation of such a group and the acknowledgement of common

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[http://www.fatf-gafi.org/document/49/0,3746,en\\_32250379\\_32236992\\_47221809\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/49/0,3746,en_32250379_32236992_47221809_1_1_1_1,00.html) (accessed March 2011). Iran and North Korea are two of the very few countries that are not member to any part of the FATF network.

<sup>42</sup> Canada, Netherlands, France, and the United Kingdom, see CFATF (1995) Annual Report 1994-1995, [https://www.cfatf-gafic.org/index.php?option=com\\_docman&Itemid=416&lang=en](https://www.cfatf-gafic.org/index.php?option=com_docman&Itemid=416&lang=en) (accessed 4 August 2014), 5.

<sup>43</sup> James R. Richards, *Transnational Criminal Organizations, Cybercrime and Money Laundering. A Handbook for Law Enforcement Officers, Auditors and Financial Investigators* (Boca Raton: CRC Press, 1999), 233-7.

<sup>44</sup> “Report to the Chairman”, General Accounting Office, 62.

standards. As donor countries, FATF members provided funding for the secretariat and its operations. For many years, the smallest amount given by a supporting country still exceeded the membership contribution, still the organization had difficulties in raising their membership fees.<sup>45</sup> The initial founders of the FATF facilitated global activity by investing resources and technical knowledge.

### *Incentives for non-governmental commitment to the FATF*

While these membership processes relate to state members only, a large part of monitoring the financial system is carried out on the subnational level, by non-state actors as banks and the financial professions. Related legislation or institutions have been introduced in nearly all states worldwide as customers have to fill out forms and banks must submit suspicious transaction records. The link to financial institutions as addressees of FATF recommendations turns the FATF network to an important example of how international institutions as orchestrator use intermediaries to target criminals and terrorists.<sup>46</sup> At the same time, this organizational principle turned anti-money laundering into an issue area with a high degree of public-private interaction and to a prime example of transnational governance.<sup>47</sup>

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<sup>45</sup> CFATF (2002) Annual Report 2001-2002, [https://www.cfatf-gafic.org/index.php?option=com\\_docman&Itemid=416&lang=en](https://www.cfatf-gafic.org/index.php?option=com_docman&Itemid=416&lang=en) (accessed 4 August 2014), 49.

CFATF (2007) Annual Report 2006-2007, [https://www.cfatf-gafic.org/index.php?option=com\\_docman&Itemid=416&lang=en](https://www.cfatf-gafic.org/index.php?option=com_docman&Itemid=416&lang=en) (accessed 4 August 2014), 24.

<sup>46</sup> Kenneth Abott, Philipp Genschel, Duncan Snidal and Bernhard Zangl “Orchestration: Global Governance through Intermediaries” (Working Paper, 2012, <http://dx.doi.org/10.2139/ssrn.2125452>, accessed November 7, 2014), 2-3.

<sup>47</sup> Karin Svedberg Helgesson and Ulrika Mörth, eds. *Securitization, Accountability and Risk Management. Transforming the Public Security Domain* (London: Routledge, 2012).

To commit banks to implement national regulations (which are based on FATF recommendations), and to record and investigate suspicious transactions, banks are monitored by financial intelligence units. The establishment of these organizations was initially only a by-product of anti-money laundering efforts, but since 2003 FATF recommendations refer to the operation of these units as element of national anti-money laundering efforts. This reference was mainly due to activities of the Egmont group, a worldwide organization of 139 financial intelligence units, formed in Brussels in 1995 and based on an American and Belgian initiative.<sup>48</sup> The Egmont group established the definition of Financial Intelligence Units, best practices and other standards relating to them. The Egmont group represents an institution for exchange and monitoring, adding a further, important layer of transgovernmental contacts to the FATF network and its work.

The FATF has a multilayered network structure that diffuses responsibility to ensure commitment across levels and members: First, the FATF and its members form a core of the network of 34 countries with equal membership rights<sup>49</sup>, and in which the United States clearly took a lead. Second, there exists a network of FATF regional bodies found worldwide, and their respective member countries. FATF countries are partly member to these regional organizations and finance important activities. Third, there exists an additional layer of

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<sup>48</sup> International Monetary Fund and World Bank, *Financial Intelligence Units: An Overview* (Washington: World Bank, 2004), 19; William C. Gilmore *Dirty Money. The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, 3rd edition (Strasbourg: Council of Europe Publishing, 2008); “About us”, Egmont Group, Brussels 2014, <http://www.egmontgroup.org/about> (accessed 7 November 2014).

<sup>49</sup> European Union and Gulf Cooperation Council are non-country members of the FATF.

observers and associates, including countries, international organizations and other actors concerned with money laundering. These participate in FATF events and disseminate anti-money laundering policies in their own activities. Within around 20 years, the initial FATF grew to a network of regional bodies, international organizations, transgovernmental networks, and includes almost all countries worldwide. The list of members, associates and observers ranges from Afghanistan to Zimbabwe, from Europol to the World Bank, from the International Organization of the Securities Commission to the Egmont Network of Financial Intelligence Units. All in all, the United States successfully managed to create and shape a global network that nowadays serves as a prototype of networked governance.

The central position of the United States leads to the ability of effectively communicating foreign policy goals related to money laundering. In 1991, the General Accounting Office concluded that ‘There has been some progress on the international front in recent years’ and ‘International negotiations are leading to significant agreements’.<sup>50</sup> The United States supported the start of and early agenda setting of the global network. The design of the FATF network, its exchange and multilayered monitoring ensured that the political goals were spread widely and that actors were committed to them.

### **Limits of Transferability**

The FATF network could overcome initiation and commitment problems in a unique way. With regard to the initiation of the FATF, the United States invested political and financial resources as well as expertise to start global, and later regional, networks that tackled money laundering.

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<sup>50</sup> “Report to the Chairman”, General Accounting Office, 2, 5.

This was the outcome of domestic politics that demanded international activity, while all usual instruments had been unsuitable to reach this political goal. It is rare, however, that these conditions for the initiation of a network are met. Domestic preferences for internationalization are not always as pronounced as in the case of money laundering, where decades of domestic regulation were ineffective due to the internationalization of financial markets. Moreover, not always are countries willing to finance new institutions with an unclear outcome as this was the case of the FATF.

The talk about money laundering, and the successive introduction of worldwide rules and regulations related to the FATF network also opened up possibilities that reach beyond criminal finance. As the FATF regulations established a dense net of control about customer data and transfers, they also became an instrument for executing financial sanctions more effectively, irrespective of whether these are linked to money laundering or based on other reasons. As such, anti-money laundering regulations are instruments that, once introduced, can be used for very different purposes, from tracing tax avoidance to sanctioning countries. This added value of the FATF makes continuous political support of central FATF members likely. Global policy networks that cannot provide this added value are less likely to exist as long and expand that successfully.

An even more complex task is ensuring commitment while not overburdening the initiator of the network. The FATF network – perhaps because it had been so innovative at the time it was established, has effectively a structure that is based on intermediaries, different levels of surveillance and crosses the public-private divide. The network introduced formal regulations that corresponded to American laws, established a forum for expert exchange and used financial transfers to build up different regional networks. Members and non-members

needed to comply, otherwise being threatened by financial sanctions. The process involves a multitude of actors, serves different regulatory aims and includes soft law, naming-and-shaming strategies and transnational regulation.

Despite being referred to as a prime example of global governance networks<sup>51</sup>, anti-money laundering regulations are dependent on a specific context in which they were invented and on which they can draw. Other policy areas related to crime (and beyond) are more likely to expose different characteristics and configurations. For instance, the FATF network was initiated by a minority of powerful states, not by a diverse group of states, by international organizations or non-state actors. It had a clear focus on developing expertise and is not primarily a negotiation forum, yet these technical regulations are developed with a backing of those states that are the most important financial markets. Regulations in these markets are difficult to be ignored and any sanctions taken will influence other economies strongly. This is not a given in other areas of global crime governance, where the financial sector cannot be used as intermediary for governing criminals. The continuous expansion of the FATF shows that tracing money now becomes a ‘catch-all solution’ to many crimes – whether it is effective might be debatable<sup>52</sup>, but alternatives are in short supply, too.

Though successful in the FATF case, a weak point for other networks might be the reliance on soft law. While technically non-binding, the recommendations are based on a clear agreement among FATF member states. The FATF did not start as a soft law initiative for a diverse set of countries, but as an agreement among some states to enforce these soft rules –

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<sup>51</sup> Slaughter, *A New World Order*; Reinecke, *Global Public Policy*.

<sup>52</sup> Michael Levi “Combating the Financing of Terrorism: A History and Assessment of the Control of ‘Threat Finance’” *British Journal of Criminology* 2010, 50 (4), 650-669.

eventually also among other states. The asymmetry created by the initial FATF network, helped establishing the rules, be them formally binding or non-binding. A soft law initiative that starts from a broader membership base could be less effective, as it needs to bridge across more diverse member interests. Common rules and the commitment to enforcement is harder to achieve in such cases. Most importantly, the naming-and-shaming strategy of the FATF has been successful in causing policy change in non-member countries. However, given the FATF recommendations include sanctioning power, naming-and-shaming by the FATF has always been more than just a discourse. Countries that had been listed on the blacklist were well aware that this listing is a first, diplomatic step and that other steps like sanctioning might follow. Given that the FATF can cut-off a national financial market from others, any reaction to naming-and-shaming is not independent from the ‘harder’ tools that FATF could apply. Other cases of naming and shaming might be less effective if no backing by other instruments exists.

Finally, despite the fact that FATF regulations influenced policy making world-wide, the effectiveness and the legitimacy of these regulations is still not undisputed. The inclusion of banks and other financial professions has led to a transnational regulatory regime, leaving implementation to non-state actors. These are not always well-equipped to take over policing tasks, and who is ultimately responsible for failures is unclear. Moreover, the acknowledgement of FATF regulations worldwide is not necessarily a signal of legitimacy, and many countries, including the United States and FATF members, might follow rules on paper but not in practice. These difficulties, however, are not unique to the FATF, but remain persistent problems of global governance in all issue areas.

## **Conclusions: The FATF and Policy Learning**



The analysis of the FATF shows that research and practice benefits from taking into account the conditions that accompany specific networks. The FATF has an impressive track record of expertise and policy-development, rarely achieved by other global governance networks. As the article showed, it is a particularly prominent example of how state and non-state actors can network globally and across different levels. Yet, from a policy-oriented perspective this success does not imply that the FATF would provide the best example for future global networks.

**TABLE 1 about here**

Table 1 lists the central challenges for FATF networking and the way they have been tackled. The initiation of the FATF was not only supported by a powerful group of countries, but the gains that were to be achieved – like security of financial markets and countering crime – were particularly attractive to those countries where most drug- and crime related money was entering the financial system. A lack of alternatives helped the FATF to gain momentum. The multilevel structure of the FATF, linked to monitoring and effective sanctioning further allowed ensuring commitment to the network and its rules. The combined presence of these conditions for initiation and commitment is rare, which puts limits on the transferability of the FATF to other areas of global governance.

The FATF nonetheless provides an important case for policy learning, when paying attention to these background conditions. With regard to initiation, global networks seem to need a dedicated political supporter from the beginning. Initial political support is necessary

for all forms of international cooperation, yet given that the network structure is more flexible, this support will be needed for a longer period of time. Moreover, policy preferences must be focused, so that commitment of the initiator and all those joining the network can be monitored easily. The network must allow for effective sharing of the burden at some point, so that monitoring is not carried out only by the initiating actor. This is particularly important with regard to dissent in the network, as the less coherent policy interests of members are, the more likely is defection and non-commitment. As a result, even ambitious initiatives against crime might become irrelevant over time.

While this article focused on the FATF as a prominent case of global networking, future research could evaluate the limits of other global policy networks from a perspective of lesson-drawing and policy learning. For this purpose, successful examples of global networking are not necessarily better suited than less successful ones – including the question what ‘success’ ultimately means. Moreover, it is also important to have a closer perspective at the ‘life cycle’ of networks and a comparison of different examples, as conditions, structures and results change over time. The Kimberley Process, for instance, was initially a prime example for global policy networks. In recent years it lost legitimacy and support among those non-governmental activists that initially pressured for its existence. The Kimberley Process thus did not reward its initiators.<sup>53</sup> Moreover, the process could also not ensure commitment of all participants: Venezuela has been a known defector of the scheme, and was never confronted with harsh sanctions as FATF defectors would be. This is also due to the fact that some sanctioning tools of the FATF – in particular restricting access to global financial markets – are not available to other global policy networks.

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<sup>53</sup> Virginia Haufler, “The Kimberley Process Certification Scheme”; Author

Most prominently expressed in the idea that ‘it takes a network to destroy a network’,<sup>54</sup> new forms of cooperation have been discussed in global crime governance for a while. The growth of networks like the FATF seem to lend support to such an approach. As this article shows, however, there are limits of lesson-drawing from existent global policy networks. These limits exist with regard to policies, but also with regard to scholarly knowledge on the success and failure of networks. They include networks related to global crime governance and those in other areas of global governance. Future research should compare and examine networks and their development more closely to fill this gap.

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<sup>54</sup> John Arquilla and David Ronfeld “The Advent of Netwar (Revisited).” In: Arquilla, John & Ronfeld, David (Eds.) *Networks and Netwars: The Future of Terror, Crime and Militancy* (Washington: RAND 2001), 1-25: 15.

**Table 1: Challenges of global networking and FATF conditions**

<b>Challenge</b>	<b>Conditions for global networking</b>	<b>Specific conditions FATF</b>
<i>Initiation</i>	Institutional entrepreneurship	United States
	Resources (financial, technical, political)	United States and G7 resources
	Supporters	G7 countries
	Weak alternatives	No effective alternative international cooperation
<i>Commitment</i>	Common aim	Counter crime and terrorism, security of financial markets
	Common gains	Use of monitoring also for other policy purposes, delegation of monitoring costs mainly to banks and financial professions
	Adequate structure	Multiple levels of oversight and activity (global to subnational)
	Strong monitoring mechanisms	Reports, peer reviews, naming-and-shaming, surveillance of financial transactions
	Strong sanctioning mechanisms	Declining access to global financial markets