The Law of the List

UN counterterrorism sanctions and the politics of global security law

Sullivan, G.

Publication date
2017

Document Version
Other version

License
Other

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
2. Global Listing Technologies and the Politics of Counterterrorism Expertise*

Global counterterrorism emerged as a distinct policy domain after the 9/11 attacks in 2001. New Security Council measures and institutions were introduced, existing laws and security practices were reorganised and both were brought into relation within a novel semantic field directed towards countering the dangers of transnational terrorism. Although global security law is now considered a mainstream phenomenon, little has been written about how these new legal relations were forged or the kinds of practices and techniques that enabled such profound political shifts to unfold. How was something that had long been the subject of heated conflict by states and international organisations (‘terrorism’) not only rendered knowable, but rapidly turned into an object of legal intervention on a global scale?

This chapter addresses this question by analysing UN security listing as a novel form of global security law and governance. It focuses on the crucial assemblage work performed by the UN1267 Analytical Support and Sanctions Monitoring Team - a small group of technical experts responsible for advising the UN1267 Sanctions Committee and keeping the list effectively calibrated. There are no existing empirical studies of the UN Al-Qaida Monitoring Team. The little material that does exist, as detailed below, is drawn almost entirely from their own published reports and suggests that they are unduly constrained by Security Council politics and disconnected from the evolving Al Qaida threat picture. This chapter challenges this narrative by ‘following the list’ to two different sites where the team are negotiating seemingly mundane problems of list implementation. First, we examine ‘consultation meetings’ between the UN team and national intelligence agencies. Second, we analyse a collaborative governance project between the team and the global aviation industry to enhance enforcement of the list travel ban. I argue that the work of these global listing experts is far more wide ranging, legally productive and politically significant than existing material suggests. But these effects go unnoticed because they are considered as technical background work and enabled through the simple ordering technology of a list.

The chapter builds on currents of academic literature introduced in the last chapter – such as scholarship on governance practices and global sociolegal research. My aim is to open up novel ways of approaching global security law by reframing the Al-Qaida list as a global governance technology and inscription device. This analytical move allows more dynamic conceptions of power and agency to be used in the study of global security governance and helps us understand how critical the work of listing expertise is in this domain. Drawing from diverse strands of governmentality scholarship, Science and Technology (STS) studies and postnational legal theory I highlight how this list (as artefact) and its expertise (as knowledge practice) are entangled in ways that render the uncertain threats of global terrorism calculable and amenable to pre-emptive legal intervention.

Lists have long been deployed as technologies of power and administrative rule. According to Cornelia Vismann, for example, the imperial registries developed in thirteenth century Europe

---


1 Including S/RES/1267 (1999), S/RES/1333 (2000), S/RES/1373 (2001), which set up the UN Counter-Terrorism Committee (CTC), and S/RES/1390 (2002), as discussed in the Introduction and later throughout this chapter.


were more than nifty administrative techniques designed to economize on reading and writing; they were nothing less than the media technology for a state as a permanent entity’. 4 Registration lists also played a crucial role delineating ‘healthy’ and ‘diseased’ elements of the population in Nazi Germany, enabling the deportation of the latter to death camps as part of the Third Reich’s ‘Final Solution’. 5 Listing is an operational form of writing that often prefigures new forms of political organisation, regimes of administrative violence and ways of seeing and acting upon the world. So it is unsurprising that we find this simple ordering technique at the core of the Security Council’s ambitious global ‘anti-terrorism campaign’ performing crucial assemblage work. 6

When the list is analytically reframed as a technology or device, the question of listing expertise becomes especially important. If global security law is a project of knowing and countering ‘global terrorism’ before it materialises, then mapping its assemblage requires close analysis of the expert-object relations it puts into effect. 7 But the relation between global law, expertise and governance remains markedly understudied. Existing scholarship provides powerful normative critiques of international law’s deferral to ‘the politics of expertise’. 8 But it is insufficiently attentive to how techniques and practices of expertise actually assemble global relations and tends to be empirically disinterested in understanding the specific sites where such global legal ordering is taking place.

Studying the list as a technology advances this discussion by opening up a broader set of research questions than those usually pursued by counterterrorism and international legal scholars: How does this list, and the expert knowledge its administration demands, link ‘calculations of rule at one place with action at another’ to allow ‘government at a distance’? 9 What kinds of calculative practices and techniques do listing experts produce under the mandate of effective monitoring and implementation? How do problems of the list enrol different actors into security networks? How does listing enable the uncertainties of ‘global terrorism’ to be rendered knowable and amenable to pre-emptive intervention by the Security Council? In sum, how are knowledge practices, technical artefacts and forms of expertise materially assembled together to constitute and condition global security law?

This chapter addresses these questions by analysing the Monitoring Team’s listing expertise as a local production site of global law, using the analytical framework of assemblage and methodology of multi-sited ethnography introduced in the previous chapter. 10 My main

---

4 Cornelia Vismann, Files: Law and Media Technology (Stanford University Press, 2008) 81-82.
9 Miller and Rose (n 3) 9.
10 Bruno Latour, Reassembling the Social: An Introduction to Actor-Network Theory (Oxford University Press, 2005). Here Latour calls for sociological analysis of ‘local sites that manufacture global structures’ and speaks of the need to ‘re-describe them as some disheveled array of connections through which vehicles (carrying types of documents, inscriptions, and materials) are travelling via some sort of conduit’ (176 - 177). See also Sally Engle Merry, ‘New Legal Realism and the Ethnography of Transnational Law’ (2006) 31(4) Law & Social Inquiry 975. Merry argues that global sociolegal research must be grounded in ‘ethnographic analysis of global sites of legal production’ (980).
argument is that the list formats and conditions this domain of law in discrete yet crucially important ways. Analysing the technicalities of listing practice is integral to the core concern of this book - that is, to understand how this form of global security law and exceptional governance is created, sustained and stretched. As I demonstrate below, the Al-Qa’ida list is much more than mere legal instrument or means to an end. It is a performative technology or ‘actant’ that helps constitute the very problem of ‘global terrorism’ it seeks to target.

To develop these arguments, the chapter is divided into four sections. The first section critically engages with the relevant academic literature, frames global security listing as a technology of governance and inscription and elaborates on some of the advantages of this analytical approach. The second section examines the origins of the Al-Qa’ida sanctions regime in detail, building on the introductory discussion presented in previous chapter. My main focus is on tracing the radical repurposing of the regime after 9/11 and providing an overview of its changing relationship with various forms of UN counterterrorism expertise.

The chapter then provides detailed site-specific analyses of the Monitoring Team’s global listing practices. The third section focuses on ‘consultation meetings’ that bring security and intelligence officials from around the world together with the Monitoring Team to try and build a comprehensive Al-Qa’ida threat picture. The initiative is publicly justified as a means of keeping the list calibrated and up-to-date. But its aims are far more ambitious and its effects are more far-reaching. These meetings bring security experts and the technology of the list together to construct a global optic for seeing global terrorism. The list is not an inert object here but an active agent that performs important assemblage work. It helps to bypass the problem of defining terrorism, render disparate localised threats commensurable, enrol diverse actors into new pre-emptive security networks and quantify potential future threats into something governable in the present. For Ulrich Beck, expertise is confounded in the ‘world risk society’ when faced with incalculable and catastrophic threat of terrorism. Yet here the Al-Qa’ida list and its expertise work together to form what I call a Global Optic or ‘centre of calculation’, precisely aimed at seeing and governing the uncertain threats of global terrorism before they materialise. Security expertise doesn’t retreat in the face of uncertainty. It governs through it. I argue that understanding how global security law is made expansively ‘global’ demands analysis of these techniques and knowledge practices.

The fourth section further develops these claims by analysing current efforts to make the UN Al-Qa’ida list interoperable with Interpol biometric databases and Advanced Passenger Information (API) data managed by the global airline industry (IATA). This initiative is part of a broader attempt to re-orientate this body of global security law from its post-9/11 focus on Al-Qa’ida toward the new threat of ISIL and ‘foreign terrorist fighters’. This project tends to be overlooked by outsiders for turning on seemingly mundane questions of reformatting and data management. Yet I argue that it is precisely through such technical problems - and the forms of commensurability and interoperability they generate - that the scope, potential and power of this global list is being stretched and transformed in practice. The politics of formatting, in other words, is crucially important. Expertise is neither merely ‘implementing’ the list here nor operating ancillary to the international law and politics of the Council. It is forging new forms of global legal ordering and exceptional governance in its own right.

---


The List as a Technology

In the previous chapter we observed how most literature on UN Al-Qaida sanctions is overwhelmingly positivist in focus. Legal scholars tend to posit an international normative pyramid - with the Security Council P5 at the top (as primary agents), regional bodies and national states in the middle (as implementing intermediaries) and sanctioned parties located on the bottom - as the implicit framework of analysis.\textsuperscript{15} Sanctions scholars tends to use theoretical models of ‘senders’ (principal authors) and ‘receivers’ (targets) to assess whether these measures achieve their intended political objectives.\textsuperscript{16} Both approaches conceptualise power as a unidirectional application of force moving from point of origin to point of destination. If the list features at all in this material, it is relegated to the status of legal tool akin to a statutory instrument or executive order, inertly placed in the background.

As Nico Krisch points out, thinking about global authority as ‘solid’ in this way is problematic because it obscures the more ‘liquid’ forms of authority shaping global regulatory space. Global indicators, for example, produce powerful effects even though they ‘do not operate through formal legal tools’ or conform with conventional accounts of how international decision-making is done.\textsuperscript{17} By creating commensurable relations between heterogeneous elements and simplifying complex phenomena through quantification, such technologies create ‘novel epistemic objects of regulation, domination, experimentation and critique’ - they do much more than present ‘taken-for-granted facts’.\textsuperscript{18} But these effects go unnoticed if we assume international authority rests in the hands of states and IOs and that governance technologies (like indicators or lists) are merely conduits for their power.

The Al-Qaida list is much more than the intergovernmental deliberations of the Security Council and Chapter VII UN Charter resolutions that provide the formal legal source of its authority. It is also a highly mobile and diffuse global norm and novel legal format that exceeds the ‘shackles’ of formal international law from which it was created.\textsuperscript{19} Yet to grasp the more generative dimensions of this regime we have to actually examine what the list and its expertise does using analytical tactics fit for the task of global sociolegal enquiry.

To that end, this chapter analyses the Al-Qaida list as a technology of government and inscription. My key point of departure from the positivists is that legal technologies (such as lists) are not neutral instruments or inert regulatory tools, but creative processes that do important things in the world. Technologies emerge ‘to overcome the political and epistemological limits of existing knowledge’ and, in so doing, they remain intimately entangled within the knowledge objects that come into being through their use.\textsuperscript{20} The microbe, for example, is not simply discovered by the microscope but in important ways is

\textsuperscript{15} Whilst global constitutionalists might complicate this model - by arguing for the primacy of jus cogens norms and the placement of rights-bearing individuals at the top and not the bottom of the pyramid – they nonetheless remain wedded to structures of normative hierarchy in international law. See, for example, Erika de Wet and Jure Vidmar (eds.) \emph{Hierarchy in International Law: the place of human rights} (Oxford University Press, 2012).

\textsuperscript{16} Francesco Giumelli, \emph{Coercing, Constraining and Signalling: Explaining UN and EU Sanctions after the Cold War} (ECPR Press, 2011).

\textsuperscript{17} Nico Krisch, ‘The Structure of Postnational Authority’, (2015) Available at SSRN 2564579, 7.

\textsuperscript{18} Richard Rottenburg and Sally Engle Merry, ‘A World of Indicators: The Making of Governmental Knowledge Through Quantification’ in Richard Rottenburg, Sally Engle Merry, Sung-Joon Park and Johanna Mugler (eds.) \emph{The World of Indicators: The Making of Governmental Knowledge Through Quantification} (Cambridge University Press, 2015) 5.

\textsuperscript{19} Joost Pauwelyn, Ramses A Wessel and Jan Wouters, ‘When structures become shackles: stagnation and dynamics in international lawmaking’, 2014 25(3) \emph{European Journal of International Law} 733.

constituted by it. 21 Statistics are not just an effect of the modern state but a means by which the state and the population it governs has come to be created.22 Economics ‘performs shapes and formats the economy rather than observing how it functions’.23 Similarly, objects of political rule and legal governance are effects of the particular techniques and knowledge practices that calculate, classify, regulate and/or target them. As David Kennedy puts it, in global governance ‘the identification of the problem and the selection of tools arise together’- that is, they are co-constitutive in practice.24 My point here is not to claim that acts of terrorist violence do not exist outside the law - they obviously do. But that showing how ‘global terrorism’ is made actionable through the technology of the list allows us to better understand how this domain of security law is being assembled and made powerful.

This approach to security listing builds on a rich tradition of sociolegal and ethnographic research reappraising the instrumentality of legal instruments25 - work that ‘brings the technical into view not as an effect or a by-product, a tool of more important agents and forces, but as the protagonist of its own account’.26 It also aims to contribute to current debates on the power of quantification technologies and epistemic practices in global governance.27 To speak of government and inscription together means bringing two key strands of academic literature into relation - ‘governmentality’ scholarship of Michel Foucault and those who have developed his work and Science and Technology Studies (STS) scholarship on ‘inscription’ devices by Bruno Latour and others.28

24 Kennedy (n 8) 96.
For Foucault, modern politics is grounded in a particular rationality of ‘governmentality’ - that is to say, an ‘ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics, that allow the exercise of [a] very specific albeit complex form of power’, aimed at diffusing modes of economic administration into political practice.\textsuperscript{29} Government is not merely made possible through norms and sovereign relations, but is enabled through heterogeneous practices and ‘apparatuses’ - that is, the ‘actual instruments that form and accumulate knowledge, the observational methods, the recording techniques, the investigative research procedures, the verification mechanisms’ that are ‘formed, organized and put into circulation’.\textsuperscript{30} Put differently, ‘government is ... a function of technology’,\textsuperscript{31} because ‘it is through technologies that political rationalities and the programs of government they articulate become capable of deployment’.\textsuperscript{32}

Understanding problems of global governance in technological terms requires sovereignty and law to be analytically repositioned. Because ‘with government it is a question not of imposing law on men but ... of employing tactics ... [- or] using laws themselves as tactics - to arrange things in such a way that, through a certain number of means, such and such ends may be achieved’.\textsuperscript{33} Studying governmental technologies also prompts a shift in where we look to see power unfolding. For Foucault, governmental power must be analysed at the points where ‘it is in immediate relationship with ... its object, its target, its field of application’ because it is there that new ‘methods of subjugation’ and ‘tactics of domination’ are formed before being ‘invested or annexed by global phenomena’\textsuperscript{34}

The ability of macro-actors to ‘dominate on a large scale’\textsuperscript{35} or effect ‘action at a distance’\textsuperscript{36} according to Bruno Latour, is only possible through what he terms devices of ‘inscription’ – that is ‘item[s] of apparatus or particular configuration of such items which can transform a material substance into a figure or diagram which is directly usable’.\textsuperscript{37} In his study of the interrelation between visualisation and cognition, for example, Latour presents us a puzzle:

Why do important figures in the history of scientific innovation always ‘work on two-dimensional inscriptions instead of the sky, the air, health, or the brain? What can they do with the first, that you cannot do with the second?’\textsuperscript{38} The answer lies in the fact that inscription technologies provide advantage to those who use them and create asymmetries with those who do not. Inscriptions are characteristicly mobile, immutable, flat,

\textsuperscript{29} Michel Foucault, ‘Governmentality’ in Graham Burchell and Peter Miller (eds.) The Foucault Effect: Studies in Governmentality (University of Chicago Press, 1981) 102.

\textsuperscript{30} Michel Foucault, Society Must be Defended: Lectures at the Collège de France, 1975-1976 (Picador, 2003) 33.

\textsuperscript{31} Michel Foucault, ‘Space, Knowledge and Power’ in Paul Rabinow (ed.) The Foucault Reader (Pantheon, 1984) 256.

\textsuperscript{32} Miller and Rose (n 3) 8; Pat O’Malley, ‘Risk, Power and Crime Prevention’, (1992) 21(3) Economy and Society 252.

\textsuperscript{33} Foucault (n 29) 95.

\textsuperscript{34} Foucault (n 30) 31.


\textsuperscript{36} Latour (n 13) 223.


\textsuperscript{38} Latour (n 35) 18.
reproducible, multi-scalar, readily recombinable and geometrically measurable.\textsuperscript{39} By allowing heterogeneous items to be rendered ‘optically consistent’, commensurability can be established: ‘Reals of reality that seem far apart … are inches apart, once flattened out on the same surface’.\textsuperscript{40}

In another example Latour examines eighteenth century French navigation in the East Pacific and asks: ‘How is it possible to act on events, places and people that are unfamiliar and a long way away?’ The answer, he suggests, is by ‘somehow bringing home these events, places and people’ to ‘centres of calculation’ through the use of inscription techniques - that (a) render them mobile … (b) keep them stable …, and (c) are combinable so that whatever stuff they are made of, they can be cumulated, aggregated, or shuffled like a pack of cards’.\textsuperscript{41} In this way economies of equivalence, ‘cycles of accumulation’ and commensurable relations can emerge that enable ‘a point to become a centre by acting at a distance on many other points’.\textsuperscript{42} Centres of calculation are thus sites ‘where information is being created, collected, assembled, transcribed, transported to, simplified and juxtaposed in a single location … where everything that is relevant can be seen’.\textsuperscript{43}

These scientific innovation examples may seem tangential to the more urgent problems of global terrorism law and security governance. But there is something very valuable in these analyses for the purposes of our present enquiry. For Latour, the scale of an actor and their ability to govern is not given \textit{a priori}. Rather it is contingent upon the technologies of inscription at their disposal at any given moment and ‘varies with the[ir] ability to produce, capture, sum up and interpret information about other places and times’.\textsuperscript{44} This approach opens ‘a new topographical relationship’ between macro and micro with potentially far-reaching implications for the ways that processes of global ordering are framed:

The ‘macro’ no longer describes a wider or larger site in which the micro would be embedded … but another equally local, equally micro place, which is \textit{connected} to many others through some medium transporting specific types of traces. No place can be said to be bigger than any other place, but some can be said to benefit from far safer connections with many \textit{more} places than others.\textsuperscript{45}

The broader analytical advantages of the assemblage frame were discussed in the previous chapter. So here I briefly highlight three features of the ‘list as technology’ approach that resonate with that frame and provide greater purchase on the particular problems explored in this chapter. First, bringing Foucault and Latour together this way helps us to think about law in material, rather than simply normative, terms. Governance technologies and inscription devices draw empirical attention to the practices and sites enabling global legal processes to unfold. Instead of asking ‘what is law’ within relatively bounded contexts like courts, this approach enables us to ask: ‘How is global security law’ produced within complex and shifting transnational environments?\textsuperscript{46} Second, framing the list as a technology provides a useful conceptual lens for reappraising the understudied nexus between global law and

\textsuperscript{39} Ibid, 18 - 20
\textsuperscript{40} Ibid, 25
\textsuperscript{41} Latour (n 13) 222 - 223.
\textsuperscript{42} Ibid, 219, 222
\textsuperscript{44} Latour (n 35) 26.
\textsuperscript{45} Latour (n 10) 176. Here Latour largely restates an argument made much earlier with Michael Callon. See: Michel Callon and Bruno Latour, ‘Unscrewing the Big Leviathan: how actors macro-structure reality and how sociologists help them to do so’ in Aaron V. Cicourel and Karin Knorr-Cetina (eds.) \textit{Advances in Social Theory and Methodology: toward an integration of micro and macro-sociologies} (Routledge, 1981) 277.
expertise. As noted above, there is little research shedding empirical light on the ways expertise assembles and sustains global legal relations. This chapter shows how expert knowledge practices and the technical artefacts sustaining them are centrally important to the production of global security law and thus need to be made visible and subjected to critical scrutiny.

Finally, analysing the Al-Qaida list as a technology helps ‘flatten the landscape’ of global security law, enabling more granular analysis of problems of scale. The key insight of Latour’s work here is that ‘global’ actors are not necessarily ‘bigger’ than any other, but are made more powerful by their relative connectedness and the inscription technologies they use. Instead of assuming a priori the supranational power of this regime by reference to its legal foundations (Chapter VII of the UN Charter, UN Security Council Resolution) or its position in the international normative hierarchy, this approach helps problematise the ‘global’ in global security law by reframing it as an emergent process of ordering. As discussed in the last chapter, global security law is produced through ordering practices emanating ‘from local sites that manufacture global structures’. This approach opens an important space for empirically investigating how listing works as a ‘structure-making site’ and understanding how small shifts in knowledge practices can provide important sources of legal change within large international organisations that generate powerful global effects.

The Technics of Global Counterterrorism and the Politics of Rendering Technical

‘Terrorism’ has long defied international attempts to transform it into a stable and knowable object. Despite the increasing array of global security laws, there is still no international

47 See, however, the insightful sociological analyses of Bryant Garth and Yves Dezalay: Yves Dezalay and Bryant G. Garth, Dealing in virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order (University of Chicago Press, 1998); Yves Dezalay and Bryant G. Garth, The Internationalization of Palace Wars: lawyers, economists, and the contest to transform Latin American states (University of Chicago Press, 2002). See also Monika Ambrus, Karin Arts, Ellen Hey and Helena Raulus (eds.), The Role of Experts in International and European Decision-Making Processes: Advisors, Decision Makers or Irrelevant Actors? (Cambridge University Press, 2014) - which notes (at 1): ‘there is only scant analysis of how experts relate to decision-making processes at the international and European levels’. 48 Scholars like Koskenniemi and Kennedy offer powerful normative critiques of international law’s reliance on expertise in an era of fragmentation, but little detailed empirical analysis. For Koskenniemi, international law fragments and ‘defers to the politics of expertise’ as it is made technical through the creation of functionally differentiated regimes for the management of global problems. This instrumentalises international law in a realist and technical idiom, thereby blunting its normative potential as a ‘placeholder for the vocabularies of justice and goodness’. It is also depoliticises by reframing ‘problems of politics as problems of expert knowledge’, thus ‘obscuring’ the contingent nature of the choices made [and] the fact that at issue is structural bias and not the application of some neutral … reason’ – see: Koskenniemi (n 8) 340, 361, 35, 68. For Kennedy expertise is problematic because it works from the ‘background’ behind the spaces where politics is usually thought to take place. As it comes to provide ‘the frame for political debates and decisions’, the foreground becomes ‘a mere spectacle’ or residual effect of more opaque background expert practices. Expertise is also problematic because underneath its representation of objective neutrality it works to shrink ‘the range of the politically contestable’. See David Kennedy, ‘Challenging expert rule: the politics of global governance’ (2005) 27 Sydney Law Review 5, 11 - 12; David Kennedy, ‘The forgotten politics of international governance’, (2001) European Human Rights Law Review 117, 120. Yet as Fleur Johns points out, Kennedy’s work ‘speaks at too great a remove from the rather dense, self-referential practices of international legal technique’ – Johns (n 25) 18. For a more recent, detailed and successful effort to empirically map expertise in global law, see: Kennedy (n 8).

49 ‘When background work has been most successful, it is very difficult to see’ - see: Kennedy (n 8) 116.

50 Latour (n 10) 182.


52 Latour (n 10). For Latour: ‘If you cut some underlying structure from its local application, nothing happens ... if you cut a structure-making sie from its connections, it simply stops being able to structure anything’ (176).

agreement on what constitutes ‘terrorism’. The problem has been an incessant source of international conflict between states for almost 80 years. More than 60 proposed definitions were put forward for agreement between 1936 and 1981 without success.\(^{54}\) An ad hoc committee convened by the UN General Assembly in 1972 to draft a convention on international terrorism was divided and failed to agree on the core issues to be prohibited. Another committee was convened in 1996 to again try and build an international convention on terrorism and resolve the vexing definitional issue. Yet despite twenty years of debate, this committee has failed to reach agreement on what ‘terrorism’ is and is not. A plethora of international conventions prohibiting particular aspects of ‘terrorism’ all bypass this definitional issue by adopting an act-specific focus. The Security Council has previously adopted resolutions in response to specific acts of terrorism.\(^{55}\) But due to ‘cold war deadlock’ in the Council they preferred to defer this issue to the General Assembly.\(^{56}\)

Three elements underpin this unruliness. Until recently terrorism was framed in both law and politics as something that unfolded within a local or regional, rather than global, terrain of conflict.\(^{57}\) There are also deep and persistent disagreements on the appropriate status to be accorded to ‘state terrorism’ or violence by state-sponsored forces. Finally, there is no consensus on whether the use of violence by national liberation and self-determination movements should be considered as terrorism or lawful resistance. As Schmitt argued, the distinctions between friends and enemies that animate politics ultimately remain arbitrary.\(^{58}\) The problem with trying to reach agreement on what terrorism is, according to Koskenniemi, is that ‘everybody participates … with two concerns in mind: to agree on nothing that might prejudice the future interests of my country, but to try as hard as possible to attain a definition that will strike at every conceivable future adversary’.\(^{59}\) When the definitional debate transpires in this way, ‘the result can only be inconclusive’.\(^{60}\)

Yet as detailed in this chapter, these conflicts on the nature of ‘terrorism’ that characterised late twentieth century world politics have now been effectively eclipsed by the technology of the Al-Qaida list. Most scholars point towards changing Security Council dynamics or the emergence of transnational security threats by non-state actors to explain the proliferation of global security governance after the Cold War. But it is the legal technologies and expert practices translating threats into new forms of pre-emptive security intervention that must be examined if we are to account for the astonishing rise of global security law.

In the context of the Al-Qaida listing regime, ‘law defers to the politics of expertise’ because UN sanctions are administered by committees of diplomats from Security Council states ‘who have neither the interest, time or resources to do the job properly’.\(^{61}\) The UN1267 Sanctions Committee is composed of mid-level P5 diplomats of First Secretary or Counsellor level who generally have no prior experience of working on counterterrorism issues domestically, let alone on a global scale. As such, it has ‘tended to become unnecessarily consumed in negotiating process-orientated papers and focusing on the political rather than technical

\(^{55}\) Sanctions were adopted against Libya in 1992, for example, following the bombing of Pan Am flight 103 over Lockerbie, Scotland (S/RES/731).  
\(^{58}\) Carl Schmitt, Political Theology: Four chapters on the concept of sovereignty (University of Chicago Press, 1985).  
\(^{59}\) Koskenniemi (n 8) 340.  
\(^{60}\) ibid  
\(^{61}\) ibid, 340, 86
aspects’ of the issue.\textsuperscript{62} Because these diplomats regularly move onto other assignments in different areas, there is a high turnover of staff within the Committee and a lack of accumulated organisational knowledge. Therefore, as with other functionally-differentiated regimes seeking to manage global problems, the Al-Qaida list is crucially dependent upon the technical knowledge-work and ongoing administration of experts. As one former US sanctions official and independent UN monitor put it:

While the UN Security Council is well placed to design and impose sanctions, and can draw on necessary expertise for this purpose, it is not well placed to verse and monitor actual implementation and enforcement of the sanctions. That function must be assigned to an independent group, which, in turn, can make its findings known to the Security Council.\textsuperscript{63}

When the scope of the 1267 regime was first extended to include Bin Laden and Al-Qaida in 2000, the Security Council called for an expert committee to be set up to advise how the arms embargo and closing down of terrorist training camps could best be monitored. In July 2001, following a recommendation made by this Committee of Experts on Afghanistan, the Council called for a new Monitoring Group to be created consisting of five independent experts based in New York. The group was initially tasked with monitoring implementation of measures that were, at that time, limited to the Taliban-controlled areas of Afghanistan. But when the regime was radically modified following 9/11 to target potential terrorist threats worldwide, the mandate of the Monitoring Group was dramatically altered to suit. Now they had to monitor a unique set of sanctions targeting ‘an amorphous, highly mobile, and expanding global terrorist network with no fixed address’.\textsuperscript{64}

Independent expert teams had long been valued within the UN system for their ability to criticise and/or legitimise the acts and omissions of states in ways that diplomats and UN Secretariat staff could not. Because Security Council politics were consensus-based, it was difficult for them ‘to identify non-performers (‘name and shame’) or even agree on a set of standards against which to measure performance’.\textsuperscript{65} The UN1267 Monitoring Group took this non-compliance aspect of their mandate very seriously. They issued six robust reports that identified non-compliance by states and criticised the ineffectiveness of the regime before they were disbanded in 2004 for politically overstepping their mark.

Rather than rely on formal government reports made through diplomatic channels, the group made country visits (some of which were unannounced) to assess the actual extent of sanctions implementation. Because of the sensitive nature of information in this domain, the group relied on ‘private contact with counter-terrorism investigators and researchers, former intelligence officers, … experts in universities and … the private sector … [and] former government colleagues’ to undertake their enquiries.\textsuperscript{66} Numerous states were identified for acting in ways that undermined the sanctions effort. Russia and China were criticised for allowing the flow of arms to the Taliban. Saudi Arabia was singled out for allowing suspected terrorist financiers to continue operating in their territory. Italy, Liechtenstein and Switzerland were criticised for allowing targeted individuals to travel and operate businesses in their countries. Their reports found that the Al-Qaida travel ban and arms embargo were mostly symbolic in nature and that the asset freeze was poorly and partially implemented. Unless ‘a much tougher and more comprehensive resolution’ was introduced, the group concluded, ‘little or no progress will be achieved’.\textsuperscript{67} Because they used unorthodox methods,
asserted an unusually high degree of political independence and made frank assessments of non-compliance by states, the Group was heavily criticised for exceeding the scope of its mandate. After publicly stating that it had ‘never had information presented ... which would indicate ... a direct link’ between Saddam Hussein and Al-Qaida - in direct contrast to the arguments being made at that time to justify the Iraq war - the US finally withdrew their political support and let the group’s time-limited mandate expire.

It was from this high political drama that the UN1267 Analytical Support and Sanctions Monitoring Team (hereafter, the ‘Monitoring Team’) was born. From the outset the Security Council strictly curtailed the independence of the new team – which consisted of eight counterterrorism experts, with administrative support provided from the Security Council Affairs Division (SCAD) of the UN Secretariat. It was expressly required ‘to operate under the direction of the Committee’ and ‘submit a comprehensive programme of work to the Committee for its approval and review’. All proposed travel was to be disclosed and discussed with the Committee and relevant states in advance. Draft reports were to be presented to relevant states for review prior to publication and their comments were to be taken into account before circulation to the Committee for final approval. The previous Monitoring Group had been granted relative autonomy so they could effectively perform their ‘naming and shaming’ functions. But this freedom was withdrawn from the Monitoring Team, with non-compliance and implementation assessment tasks effectively brought back under direct Sanctions Committee control.

These changes - and the shift from Monitoring Group to Monitoring Team - have been variously criticised in the academic literature on this issue for diminishing the independence of Monitoring Team’s expertise; reducing their ability to cultivate and rely on closed material and thus provide frank assessments of the mismatch between list and threat; subjecting their work to excessive political scrutiny and findings to overt political calculations and undermining the UN’s capacity to hold recalcitrant countries accountable, thus eroding their newly asserted Chapter VII authority in this domain. Whilst these critiques are undoubtedly correct in pointing out the Command and Control conditions in which the expert Monitoring Team was formed, I suggest that they either miss (or misconstrue) what is arguably the most important effect of this process. Rather than issuing high-profile public reports and criticising states for their intransigence within an intergovernmental domain, the Monitoring Team came to develop a focus on technical issues and deficiencies of process perceived as less politically contentious.

The technical and procedural ‘turn’ of UN counterterrorism expertise is crucially important to the global assemblage of the Al-Qaida listing regime for two reasons. First, it enables the expert knowledge work of the Monitoring Team to unfold as something unseen and inconsequential, composed of relatively mundane technical processes or ‘little security nothings’. The literature frames the shift from Monitoring Group to Monitoring Team

---

68 Rosand (n 56).
69 Ibid
71 Ibid
72 Ibid
73 Comras (n 63) 126.
74 See principally: Rosand (n 56); Comras (n 63); Barak Mendelsohn, ‘Threat Analysis and the UN’s 1267 Sanctions Committee’, (2015) 27(4) Terrorism and Political Violence 609; Barak Mendelsohn, Combating Jihadism: American Hegemony and Interstate Cooperation in the War on Terrorism (University of Chicago Press, 2009).
negatively - as a diminutive retreat of expertise from its compliance function as an intergovernmental appendage in a forum of UN high politics to the politically safe and relatively marginal terrain of internal processes and technicalities. But I argue that this shift also needs to be grasped positively in terms of what it produces or enables - namely, banal processes of ‘associating, assembling and dispersing security practices’ that operate at a more granular level, underneath the radar of legal and political visibility. The power of security expertise in this domain has been reorganised, not diminished, by retreating from the more confrontational ‘solid authority’ of Security Council intergovernmental politics. It now develops with ‘greater liquidity’ across a diverse array of capillary points where it more effectively ‘invests itself in institutions, becomes embodied in techniques, and equips itself with instruments’. As analyses of the Security Council’s parallel creation (the Counter-Terrorism Committee) have shown, the movement towards such mundane sites and the increasing use of informal security governance techniques are far from inconsequential and, therefore, need to be analytically reappraised. Because it is from there that new global security practices and powers are created and concretely put into circulation.

The redefinition of global security problems in technical terms also allows counterterrorism experts to exert greater control over them and bolster their authority. The greater the focus on technical questions of list administration, the more pre-empting global terrorism comes to rely on relevant security expertise. As Foucault and many others have noted, ‘problematisation’ and ‘rendering technical’ are co-constitutive processes. On the one hand, this produces depoliticising effects as complex political problems are reposed in technical terms. ‘Questions that are rendered technical’, writes Tania Murray Li, ‘are simultaneously rendered nonpolitical’. Yet, on the other hand, it opens up new terrains where ‘politics of redefinition’ unfold - that is, ‘the strategic definition of a situation or problem by reference to a technical idiom so as to open the door for applying the expertise related to that idiom, together with the attendant structural bias’. For Koskenniemi the process of rendering technical is the main driving force behind the fragmentation of international law. With specialisation, ‘legal vocabularies of rules and principles, precedents or institutions’ increasingly have little purchase. Instead, ‘relevant calculations always seem to require technical expertise’ couched in ‘technical vocabularies of ad hoc accommodation, coordination and optimal effect’. Yet there is no empirical research on how the politics of expertise is shaping global security law. As Kennedy notes, ‘we need better maps of expertise’ but ‘mapping the knowledge of experts is complex and technical work’.

The following section of this chapter takes this mapping project seriously by analysing two specific sites where global security listing expertise is currently unfolding in response to seemingly mundane problems of list implementation. These sites and problems concern

Committee’s Consolidated list [and] the need to ... strengthen contacts with ... international and regional law enforcement bodies - Comras (n 63) 129. By ‘unseen’ I do not mean ‘concealed’ or ‘secret’ - even though much of the Monitoring Team’s expert work is opaque. Rather, following Annelise Riles, I mean that it enabled counterrorism expertise to exist ‘on the surface, in plain view, and yet precisely for this reason [remain] unseen’. Annelise Riles, cited in Nigel Thrift, ‘Movement-space: the changing domain of thinking resulting from the development of new kinds of spatial awareness’ (2004) 33(4) Economy and Society 582, at 585.

Huysmans ibid, 379.
Krisch (n 14) 15.
Koskenniemi (n 8) 67.
Ibid, 340, 359
Ibid 2005 (n 48) 14.
technical projects being developed by the Monitoring Team that have received no academic attention and are only marginally discussed in the team’s public reports to the Council. Yet I argue that both highlight crucial elements of the politics of security expertise and suggest novel ways of understanding how global security law and governance is made expansive, powerful and durable. Foregrounding the technology of the list allows us to see how the Council governs complex global problems through knowledge production activities as much as through Chapter VII resolutions and the global legislative programs they put into play.

**Threat Emergence and the Global Optic**

My first ethnographic site of enquiry involves a series of regional meetings undertaken between the Al-Qaida Monitoring Team and national security and intelligence officials. In 2006, as part of their mandate to ensure the effective implementation of this list, the Monitoring Team were granted additional powers to, ‘consult with Member States’ intelligence and security services, including through regional fora, in order to facilitate the sharing of information and to strengthen enforcement of the measures’.\(^{84}\) These consultation meetings actually began shortly after the Monitoring Team’s formation in 2004\(^{85}\) and have continued each year, every four months, since that time.\(^{86}\) Other than occasional updates in the Monitoring Team’s biannual reports to the Security Council, nothing has been written to date about either their purpose or results.

The Security Council comprises of states with the most powerful and best-resourced intelligence services in the world. What added value could a small team of UN counterterrorism experts possibly bring that is not already available to their own national security services? The use of intelligence within the Security Council, moreover, has long been controversial. Doesn’t intelligence-sharing facilitated by experts with delegated authority from the Council take the UN back into such politically contested territory? And how might bringing national intelligence officials together serve to ‘strengthen enforcement’ of global sanctions, when asset freezes are ordinarily enforced by banks and Treasury departments and travel bans enforced by border guards? What other purposes and effects could these meetings serve or enable?

The following paragraphs explore three interrelated aims that these consultation meetings seek to address, in my analysis - first, constructing a ‘global optic’ for seeing global terrorism, second, enabling uncertain future threats to be countered before they emerge, and third, enlisting security actors into new pre-emptive governance networks with potential for intelligence exchange. Each of these aims are concerned with producing and stabilising global terrorism as an object of political and legal intervention through the Al-Qaida list. They reveal, in other words, how the list works as a performative technology to constitute and condition the very problem of global terrorism that it nominally seeks to target.

This analysis supports my argument that the Al-Qaida list is not an inert object but an active agent that undertakes crucially important global legal assemblage work. It quantifies and orders an otherwise diffuse threat, it bypasses the definitional problems (‘what is terrorism?’) and self-determination debates that constrained counterterrorism throughout much of the twentieth century and it aligns diverse actors in ways that enable them to ‘see the threat in the same way’.\(^{87}\) As I have argued throughout this book, understanding global security law

---


\(^{85}\) Interview with former member of the 1267 Monitoring Team, New York, November 2012 (Interview A’).

\(^{86}\) Interview with current member of the 1267 Monitoring Team, New York, June 2014, (‘Interview B’). This chapter is primarily based on this one particular lengthy and detailed discussion.

\(^{87}\) Interview A.
works means grappling with its conditions of possibility. Empirically analysing how the list and listing expertise are entangled and co-produced through problems of list administration shows us these conditions as they emerge and are put into global circulation.

(i) **Building a Global Optic through the Technology of the List**

The first and primary objective of these meetings, according to one former member of the Monitoring Team, is to build a new ‘global perspective’ for seeing and countering ‘global terrorism’. Because officials from national states are primarily concerned with issues of national security, the transnational threats posed by global terrorist networks often fall outside the scope of their analysis:

... The analysis that [Member States] have domestically is really based on a domestic assessment and may not see lots of other things in the world. And they will see everything through the optic of that, that country - you know, ... the security services, law enforcement agencies are considering national security. So Member State A will assess its security in isolation to a certain extent from Member States B, C, D and E ... They [may say] ... ‘Our national security is affected by member state B, because people may come from there to commit attacks’.... But that's still seeing it from that optic of Member State A.\(^88\)

But because the Al-Qaida list pre-emptively targets the uncertain threats of ‘global terrorism’ rather than reacts to localised ‘terrorist acts’, it requires a ‘global’ analytical perspective or optic that exceeds the sum of the discrete individual parts that compose it:

What we do is say: ‘This is how Members State A sees it; this is how Member State B sees it; this is how Member State A sees Members State B and Member State B sees Members State A’. Now you are seeing everything on a broad and analytical objective approach, rather than on the very subjective approach [that] the member state might have. And that’s because that’s their job. And that’s our job. And that’s where we bring considerable added value.\(^89\)

Constructing a new lens to see the problem of global terrorism is not merely an effect of expert know-how. It is crucially an ability and governance effect that the technology of the Al-Qaida list enables. First, it is the everyday task of list administration that brings the disparate actors together with UN counterterrorism experts and gives them the reason to try to work together in the first place. As one team member explained in interview, the list ‘gives you the mandate to collect information ... You need to be on the list to devote travel time, hotel costs and the time of the officials of the other country to justify working on this intensively’.\(^90\) In this sense, and as discussed in more detail later in this chapter - the list works as a translation device, helping to align a broad range of different security actors into a common pre-emptive security project.

The format of the list also allows for the emergence of a new kind of ‘optical consistency’ in relation to problem of global terrorism, as Latour describes it.\(^91\) As discussed at the chapter’s outset, defining ‘terrorism’ and making it an object of international prohibition was the source of protracted political debate for much of the twentieth century. But the Al-Qaida list bypasses this definitional problem and pushes the epistemological question of terrorism to one side by providing a legal technology for knowing and countering global terrorism (listing) without ever having the need to define it. As one Monitoring Team member put it:

\(^{88}\) *Ibid*  
\(^{89}\) *Ibid*  
\(^{90}\) *Ibid*  
\(^{91}\) Latour (n 35) 7.
The 1267 regime covers specific individuals and groups who are considered terrorist by their actions, but not because they conform to a definition. And that lack of definition is very important, of course. Insofar as the General Assembly is prepared to allow the Security Council to take over the issue of counterterrorism, they do so on the basis that the definition issue remains with the General Assembly and the six committees ... lets be clear about that.92

Global security law is often criticised on the grounds that it fails define its object, but this criticism overlooks two crucially important points. As suggested above, the failure to define terrorism is a fundamental condition of possibility for global security law and not a source of lack. Leaving the definitional problem open is a political prerequisite for Security Council action in this domain. Moreover, for the counterterrorism experts interviewed for this research project the vexing definitional issue of ‘what is terrorism?’ is beside the point. Because these sanctions operationalise ‘global terrorism’ as a technical problem of effective list administration and security practice that demands ongoing expert calibration. In the contemporary global legal landscape, in other words, terrorism is something that is listed rather than defined. Or more accurately, it is a security problem rendered visible and actionable through the legal technology of the list. As one Monitoring Team member explained, Security Council efforts to counter terrorism by listing arose from their practical inability to take any other forms of tangible intervention against Al-Qaeda after 9/11:

Al-Qaida was this threat that no one could easily quantify. It was thought to be this big active threat that might launch attacks on the same scale as 9/11. And the only international tool that the Security Council could grasp was really the sanctions regime. You know, there is nothing else they could do. Make statements about the horrors of terrorism? ... But [that] doesn’t actually do much more than offer political support, does it? [The Security Council] is not operational, obviously. And they couldn’t authorise force, because who are you going to fight? So really the sanctions regime was the only option.93

The list’s capacity to quantify ‘global terrorism’ and produce it as a specific object of intervention provides the key to explaining its remarkable uptake and success as a security governance technology. As scholars like Jack Goody have shown, the power of the list as an inscription device lies precisely in its ability to decontextualize and order hitherto discrete and diversely distributed pieces of information within newly simplified and ‘overgeneralised’ semantic fields where it can then be made ‘subject to possible rearrangement’.94 Lists are thus simple but powerful technologies because they contain significant ‘generative possibilities’.95 As with governance technologies such as indicators, lists produce commensurable relations between remote things that were not equivalent before.96 With the Al-Qaida list this constitutive power is firstly grounded in the exceptionally broad criteria for list inclusion, namely:

(a) 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;  

(b) Supplying, selling or transferring arms and related material to;  

(c) Recruiting for; or otherwise supporting acts or activities of Al-Qaida or any cell, affiliate, splinter group or derivative thereof;97

---

92 Interview A.  
93 Ibid  
95 Ibid  
96 Goody notes that lists can be used ‘to develop a generalised system of equivalences even in the absence of a generalised medium of exchange’: Ibid, 88  
97 S/RES/2161 (2014), para.2
In 2012, these criteria were stretched even further to include ‘association with’ anyone already on the Al-Qa'ida list - effectively making the targeting threshold one of being ‘associated with anyone associated with’ Al-Qa'ida or any cell, affiliate, splinter group or derivative.98 The rationale for this radical extension of the list’s targeting standard, according to one Monitoring Team member, was ‘the changing nature of the threat’: 

If you need to show that apart from the general declaration of Boko Haram, that Boko Haram is closely associated with Ayman al-Zawahiri in Pakistan or Afghanistan, you’ve got a very tall order on your hands. So the changing nature of the threat that diversifies Al-Qa'ida made it necessary to say ‘Not every buddy of Zawahiri is only Al-Qa'ida’. There are also people who have never met Zawahiri, never will meet Zawahiri and who will never talk to Zawahiri, who nevertheless sign on to Al-Qa'ida as a branch, franchise, idea, ideology or whatever you want to call it and therefore constitute a threat to international peace and security.99

Because of its breadth and scope, the list provides a legal mechanism for rather disparate individuals and groups around the world to be collated, connected together and targeted in new ways. Diverse forms of political Islam are conflated together - from Palestine, Somalia, Russia, the Philippines, Tunisia, China and Nigeria - as equivalent nodes of the same global terrorist network even though they may have no actual association outside of the list. ISIL and Al-Nusrah Front, for example, are both listed as commensurable affiliates or splinter groups of Al-Qa'ida, even though they are actively in armed conflict with each other for control of Syria and Iraq.100 As one Monitoring Team member explained, ‘What is on the list is not necessarily ... an academic definition of Al-Qa'ida’. It is rather ‘what a varying composition of Security Council memberships since 1999 have perceived as the main threats’. According to this expert, one of the key functions of the list is that it ‘clarifies for the expert team what Al-Qa'ida is’.101

When ‘association with’ Al-Qa'ida is reduced to a legal common denominator so low the actual connections between different list entries becomes increasingly thin and difficult to sustain outside of the particular economy of the list. As one former Team member explained, with the dissipation of the ‘Al-Qa'ida central’ threat and its replacement with much more localised episodes of political violence, what gets listed for being ‘associated with’ Al-Qa'ida has increasingly become an unending question of ideological affinity:

Al-Qa'ida is no longer the sort of threat that it was - if it ever was, but it's certainly no longer. It's regional bits that maybe share something with Al-Qa'ida in an overarching philosophy. But in practice, in their activities, it's something completely different.

So you say we've done our job. This worked. Al-Qa'ida is beaten. It's no longer the threat that it was. But we still have these little remnants around the place, which have some sort of

---

98 S/RES/2083 (2012)
99 Interview B.
101 Interview B.
association and now represent a different sort of threat which requires national or local action. To stop it becoming a further threat, to international peace and security.

So as this one [i.e., the Al-Qaeda regime] comes down, these ones [i.e., more regionally focused regimes] can come up. That’s really the model. Because otherwise, you know, when are you going to stop? When can you say Al-Qaeda is defeated? It’s not. You can’t defeat an idea. [So] when can you say therefore it’s no longer a threat to international peace and security?  

Just as ‘the act of measurement can produce … the supposedly pre-existing phenomena being measured’, here the list works as an inscription device to create and sustain the very object of ‘global terrorism’ that it purportedly represents and seeks to target. Effective list calibration firstly requires UN listing expertise to extract ‘global’ threat information from a diverse array of bilaterally filtered localised intelligence material:

Let’s [take] the United States as an example … If we provide a report on what’s happening in Algeria or Yemen or something, that will be very different from the reports they’re getting from the field. Because when they deal with the Algerian services or the Algerian Government all that analysis is, and their presentation is, coloured by bilateral issues - there’s a hundred and one bilateral issues which come into that. When we talk to Algeria or Yemen or whatever, it’s just about this - the international dimensions of the local threat.

Once the ‘global’ dimension of local threat information has been identified and extracted by UN counterterrorism experts, it is invariably listed - either by updating existing list entries with additional derogatory information or indirectly generating possibilities for new list entries via Member State nomination. Listing expertise thus helps enable a diverse array of localised threat traces to be identified, stripped of their specificity and re-scaled without modification of their internal properties. Security services of national states, for example, still retain their ability to disrupt the lives of terrorist suspects in their jurisdictions using whatever national tools are at their disposal. If there are or have been domestic judicial proceedings against terrorism suspects these are left undisturbed because the list is ‘preventative in nature and … not reliant upon criminal standards set out under national law’. Similarly, as one Team Member explained, ‘if someone gets off our list, no Member State is required to cease any of the measures they have put in place – eg, watching [them], restricting their movements inside the country – just because they got off the sanctions list. The domestic threat is different from what the Security Council thinks’. What counts here is the ‘global threat information - that is, potential association with Al-Qaeda or any cell, affiliate, splinter

---

102 Interview A. In 2012 the Monitoring Team noted that the threat posed by ‘Al-Qaeda central’ had declined following the death of bin Laden and drone warfare in Pakistan and Afghanistan. Whilst other groups – like Boko Haram or the Islamic Movement of Uzbekistan - professed nominal support for ‘global terrorism’, the Team noted that they ‘focus primarily on local or regional targets’. And whilst individuals or small cells ‘may keep the idea of Al-Qaida alive’, the Al-Qaida ‘sanctions regime is not well suited to deal with that threat’. Accordingly, the team recommended ‘revising the narrative’ of the Al-Qaeda regime and pare the global regime down by adopting a more regional, risk-based approach. However, this suggestion was firmly rejected by the Sanctions Committee and the Monitoring Team tacitly rebuked. In response, the Committee ‘emphasize[d] its mandate as a global sanctions regime aimed at countering the threat posed by Al-Qaeda and associated individuals and entities’ and that ‘the Monitoring Team’s mandate is global … [and] should focus on all areas where the threat exists and where the Committee might consider focusing future designations’. See, respectively: UN Doc. S/2012/729, paras. 3 – 29; and UN Doc. S/2012/730, paras. 4 - 5.

103 Merry and Coutin (n 27) 1. On the performativity of calculative practices see: Porter (n 22); Callon (n 23); Desrosières (n 19); Nikolas Rose, Powers of Freedom: Reframing Political Thought (Cambridge University Press, 1999); Wendy N. Espeland and Mitchell L. Stevens, ‘Commensuration as a social process’, (1998) 24 Annual Review of Sociology 313; Geoffrey Bowker and Susan Leigh Star, Sorting Things Out: Classification and its Consequences (MIT Press, 1999).

104 On producing terrorism as an object of governance through the technology of the list, see also: de Goede and Sullivan (n 11).

105 Interview A.

106 Interview B.
group or derivative thereof or anyone deemed ‘associated with’ them in turn - and how, once extracted, this material can be aggregated, interconnected and arranged alongside existing list entries in an optically consistent and standardised format.

Whilst the Monitoring Team do not formally recommend the listing of individuals (a process that still ultimately takes place via Member State nomination in the Sanctions Committee), the consultations meetings they convene nonetheless perform an essential and invaluable function in enacting the listing procedure (by bringing security and intelligence actors together to identify and share information about those to be targeted and those who already are). The process of moving diverse local threat traces onto a visually ordered global list also an editing process of ‘uncertainty absorption’\(^\text{107}\) that works by removing the contingencies of how listing produces knowledge of global terrorism in the first place. Speculative intelligence or allegations are rescaled and reformatted into a more stable knowledge form that appears to carry a higher degree of objectivity, authority and certainty.

To give but one concrete example: one of my clients had been tried and acquitted in court of the charge of membership in an international terrorist organisation. He was then placed on the Al-Qaida list as an individual who ‘has belonged to a terrorist organization ... that has been involved in criminal activity on behalf of the Salafist Group for Call and Combat, listed as the Organization of al-Qaida in the Islamic Maghreb (QE.T.14.01), and other Al-Qaida-related

\(^{107}\) ‘Uncertainty absorption’ is a process that ‘takes place when inferences are drawn from a body of evidence, and the inferences instead of the evidence itself, are then communicated’: James G. March and Herbert A. Simon Organizations (Wiley, 1958) 165, cited in Espeland and Stevens (n 27) 421 - 422. Latour describes the process as the cascading effect of ‘ever simplified inscriptions that allow[s] harder facts to be produced at greater cost’ - Latour (n 35) 16.
The legal proceedings that had tested and refuted this allegation (albeit to the criminal standards of the court rather than the speculative standards of the list) had simply been edited out of his list entry. The point I am making is that reformatting diverse entries together in an optically consistent list absorbs uncertainty by presenting speculative inferences or allegations as more factually solid forms of evidence, discarding potentially exculpatory material in the process.\(^{109}\)

For the Security Council to counter global terrorism it must first come to know it. Yet knowledge is not a sudden revelation of truth or an effect of the wisdom of experts. It is created through knowledge practices and the ‘whole cycle of accumulations’ involved in gathering traces from dispersed sites and bringing them back to ‘centres of calculation’ where they can be ‘cumulated, aggregated, or shuffled’.\(^{110}\) As Latour points out, it is such processes that enable a centre to become ‘familiar with things, peoples and events which are distant’ and so able to act as a centre on many distant places at the same time.\(^{111}\) And it is this asymmetry that must be accounted for if we are to empirically understand the construction of ‘the global’. Knowledge, in other words, is not so much discovered as produced. And power is made powerful through techniques of visual mastery and scale production that catalyse shifts ‘in what counts as centre and what counts as periphery’.\(^{112}\)

I argue that this is precisely what these consultation meetings, UN listing expertise and the format of the list are co-producing. They create a ‘structure making site’ for identifying, calculating and stabilising ‘global terrorism’ as a novel field of intervention by the Security Council, whilst avoiding the critical twentieth-century problem of having to actually define what terrorism is.\(^{113}\) The Al-Qaeda list is the inscription technology that makes this governance move possible - by transforming complex, diffuse and localised threats into a simplified, optically consistent and commensurable set of individual list entries that can be readily manipulated by the Council and implemented with worldwide effect. Framing the list as a global optic and studying the inscription practices of listing expertise shows us how, empirically and materially, global security law is enabled to govern the global present.

(ii) **Equilibrium of Possibilities: Countering Potential Threats Before they Emerge**

Rendering global terrorism amenable to intervention is not only a question of extracting, decontextualizing and spatially reordering heterogeneous elements through a list. It is also a temporal problem: how can radically uncertain potential threats be made knowable and countered before they materialise? The second aim of these consultation meetings explored below engages with this temporal problem of pre-emption: How can the ‘horizon of possible futures [be] arrayed in such a way as to govern, to decide, or to act in the present’?\(^ {114}\) How can the Monitoring Team experts, in collaboration with national security actors, best work together through these meetings to pre-empt the threats posed by ‘global terrorism’?

The listing regime is equipped with a number of features that enable it to intervene early and tame uncertain futures. Sanction Committee Guidelines expressly state that the list is intended to be ‘preventative in nature’ – which means that individuals and groups are targeted not because of what they have done but rather because of what they might

---

108 Excerpt from client’s Narrative Summary of Reasons for Listing, issued by the UN 1267 Sanctions Committee. This summary was taken out of the public domain after his delisting.

109 On the problems of exculpatory material there, see: UN Doc. A/67/396 (26 September 2012), paras. 26 and 45.

110 Latour (n 13) 222 – 223.

111 *Ibid*, 220

112 *Ibid*, 226

113 Latour (n 10) 176.

potentially do at some point in the future. As one team member put it: ‘Our Security Council list ... is only [about] what is in the future, not what was in the past’. Designation is not based upon evidence of wrongdoing but on secret material that purportedly allows inferences to be drawn suggesting that the target is either ‘associated with’ Al-Qaida or affiliated groups or someone deemed ‘associated with’ them in turn.

Yet whilst this targeting criteria significantly broadens the scope of the net that can be cast and the range of people who can be designated, the list’s potential for pre-emptive intervention can only be realised if states have the political will and legal capacity to implement and use the list. ‘The sanctions regime’, as one former team member explained, ‘is of course an obligation on Member States, not on the people under sanction - an obvious point but [one that’s] worth making’. And many states where global terrorism is deemed most threatening by the Council lack the requisite experience of using intelligence-based administrative asset-freezing measures as pre-emptive security technologies. As one team member put it: ‘This is not an issue of people having, or lacking, a political commitment to apply the sanctions. But ... an issue of member states not understanding what they should do to apply the sanctions, ... lacking the capacity to do so and also, not really understanding why they should bother’. The key problem to overcome, according to one Committee member, is the misapprehension by states about the differences between pre-emptive and criminal justice based techniques for countering terrorism:

I’ve just been involved in discussions with West African states about implementation. Last year, I was in discussions in Dar El Salaam with East African states. And my colleague ... was just recently in Tunis to discuss with the North African states. Their implementation problems stem from a fundamental misunderstanding about what sanctions are versus what anti-money laundering asset restraining measures are. And it’s that basic misunderstanding that we need to overcome to make the sanctions regime more effective.

If ‘effective implementation’ is about remedying these ‘fundamental misunderstandings’, then the Monitoring Team’s technical work at these consultation meetings is aimed at fostering conditions conducive for pre-emptive security to develop. The emergence of new security mechanisms, as Foucault reminds us, does not simply arise by replacing earlier forms with new ones but rather by changing the ‘dominant characteristic, or more exactly, the system of correlation between juridico-legal mechanisms, disciplinary mechanisms and mechanisms of security’. How then do these meetings between national counterterrorism officials and UN listing experts allow new ‘systems of correlation’ to be drawn for potential global threats to be countered before they emerge? I want to explore this problem by analysing a diagram provided by one Team expert when asked what purpose these list consultation meetings served:

Interviewee: I once made a very nice graph on how you become an Al-Qaida terrorist and what the possibilities of the state are and the risks of the state to counter it. Have you got a pen? ... It’s basically a pyramid with revolving circles and inverted possibilities of states (so it needs to be in a box).

Down here, at the base, you have lots of people who are semi-radicalized (as far as terrorism is concerned) and ... very big issues (like the Palestinian conflict). If you solve the Palestinian conflict, you cut off half of the people.

---

115 UN1267 Sanctions Committee, ‘Guidelines for the Committee for the Conduct of its Work’ (15 April 2013).
116 Interview B.
117 Interview A.
118 Ibid
119 Interview with former member of the UN1267 Sanctions Committee, New York, June 2014 (‘Interview C’).
Up here [at the top], you’ve got your Al-Qaeda terrorist. And he goes through trainings, and madrasas, and radicalisation and joins different groups before he becomes an Al-Qaeda terrorist. Up here, you have absolutely everything in your statecraft at your disposal. However, you’re only reaching that particular individual. If you fail, you’ve got a terror attack.

So the decreasing possibilities of states to have a large-scale effect is the problem. Because ... at the time when the guy is already a terrorist you need to be one hundred percent successful. One attack is enough and things are going to politically change in your country. Here [at the top] you have all these instruments, but you have massive risk. Here [at the bottom] you have massive issues with political problems, but with potentially massive impact.

So what we are doing is we’re cutting the threat here, in the middle. Where you (i) have an equilibrium of possibilities of what you can do and political difficulties connected with this and (ii) you’re already achieving a much more selective group of individuals than you would down here [at the bottom], because most of them are never going to go here [at the top]. Most of these [in the middle] are going to end up here [at the top], eventually.
GS: So [the aim is] to target that middle area?

Interviewee: This is what the meetings are doing. Not the Security Council. The Security Council is part of the instrumentarium up here [at the top]. What these meetings and [our] analytical capability is doing is to raise the recognition of threat - and the possibility of countering it and of the information that is necessary to counter it - at this middle level. Where you don’t wait until the guy is at your airport and you need to prevent him from entering your country because he wants to blow up your building. But [where] already, much further ahead, you are aware of what the potential threat is.

GS: So it’s [about] seeing threats as they emerge .... and becoming more dynamic in identifying them?

Interviewee: Yes.\textsuperscript{121}

What are we to make of this model of the ‘equilibrium of possibilities’ and the explanation provided by its author? What can it tell us about how UN expertise modulates and enacts political rationalities of pre-emption and makes the threats of global terrorism knowable and legally targetable — that is, the relation between expertise and global security law? If it is a map, what kind of topography or threat environment does it help us navigate? Rather than look behind the diagram to elucidate some hidden explanation I want to start from the surface of the drawing by highlighting two of its most salient features.

The first notable thing about this model is its simplicity. It sees radically uncertain future threats posed by transnational terrorism in terms of a simple geometric form shaped by a very basic and relatively stable set of variables and forces. The pyramid is radically reductionist. Yet that is the source of its power.\textsuperscript{122} It works by stripping back and discarding the complexities of political violence and recasting unknowable futures as stable epistemic objects with an identifiable trajectory. We are told that most people at the middle of this pyramid will move to the apex eventually. In this model individuals are inexorably pulled from political grievance towards terrorist violence. Yet it remains unclear how listing experts could conceivably operate with such certainty when their knowledge-practices are grounded in the speculative inference of intelligence material.\textsuperscript{123} We are also told that the pyramid ‘needs to be in a box’ but are never actually told why. The ‘box’ works here as a border for framing the target population of the list. It distinguishes ‘semi-radicalised’ Muslim populations (who are politically concerned about issues ‘like the Palestinian conflict’ yet harbour potential Al-Qaeda terrorists) from other populations (who are not).

This diagram of listing expertise in action is an analogue of the ‘staircase to terrorism’ threat pyramid widely deployed as an analytical model for countering terrorist radicalisation, as depicted in Figure 5 below. According to Fathali Moghaddam, the US psychologist who popularised the ‘staircase’ approach, terrorism is best conceptualised as a multi-storey building. The ground floor represents broader populations where perceptions of justice and injustice are important and top floor represents the ultimate terrorist act. The middle floors are the domains where potential terrorists ‘become disengaged from morality as it defined by governmental authorities (and often by the majority in society) and morally engaged in the way[s] .... constructed by the terrorist organization’. The middle floors are a tipping point,

\textsuperscript{121} Interview B.
\textsuperscript{122} The power of inscriptions lies in their simplicity and capacity to make diverse phenomena commensurable. See: Latour (n 13 and 35); Timothy Mitchell, Rule of Experts: Egypt, Techno-Politics, Modernity (University of California Press, 2002).
\textsuperscript{123} See Chapter 4 for a more detailed discussion of the use of intelligence-as-evidence in the listing assemblage.
where potential terrorists begin to see ‘terrorism as a justified strategy’. The movement from disaffected individual to terrorist (or radicalisation process) is shown as a narrowing staircase. As an individual moves up, ‘they see fewer and fewer choices, until the only possible outcome is the destruction of others, or oneself, or both’.

Figure 5: The ‘Staircase to Terrorism’ model used by the Belgian government’s Community Policing Preventing Radicalisation and Terrorism initiative.

Such counter radicalisation models stretch notions of terrorist risk and threat and thus broaden the field of anticipatory governance. Placing those considered ‘risky’ and ‘at risk of becoming risky’ together on a common terrorist trajectory, for example, extends the operative notion of threat that justifies security action. As Charlotte Heath-Kelly notes in her study of the UK government’s PREVENT strategy, ‘the at-risk subject of radicalisation is vulnerable to developing a propensity of dangerousness – meaning that they are always already rendered as dangerous’. By fusing a ‘relationship of equivalence between particular indicators of social dislocation and the potential for violence’, De Goede and Simon argue that such models work to reframe individual events otherwise considered unproblematic as something ‘potentially worthy of pre-emptive intervention’.

That counter-radicalisation models inform global security listing practices demonstrates the mobility of anticipatory governance techniques across fields. Such movement is unsurprising given the extremely broad scope of the targeting criteria of this listing regime. The individual potentially ‘at risk of becoming risky’ and the individual potentially ‘associated with someone associated with’ Al-Qaida are similarly expansive and elastic categories.

---

125 Ibid, 161
126 For analysis of this ‘staircase model’ as threat representation in counter-radicalisation policy, see: Marieke de Goede and Stephanie Simon, ‘Governing future radicals in Europe’, (2013) 45(2) Antipode 315, 321 - 323. This picture of the model is taken from that article.
128 De Goede and Simon (n 124) 322 - 323.
But this convergence draws into stark relief just how far removed we are from conventional understandings of what it is thought that the Security Council is authorised to do counter threats to international peace and security. This is a crucial point that runs against the grain of how UN sanctions are usually discussed and studied. As detailed earlier in the introductory chapter, Chapter VII of the UN Charter grants the Council exceptional powers solely ‘to take measures deemed indispensable to countering a specific concrete situation that is posing a threat to international peace and security’. Legal scholars tend to take the view that Chapter VII action requires threats to have a degree of particularity and concreteness before the Council can move to counter them. The Monitoring Team’s powers are delegated and formally cannot exceed those of the delegating authority (the Security Council). Yet as this diagram shows, with the Al-Qaida sanctions regime, global listing expertise is aimed at apprehending and averting uncertain potential dangers well in advance of any concrete manifestation of threat – where ‘already, much further ahead, you are aware of the potential threat is’. Here counterterrorism expertise is not only ‘effectively implementing’ the list, nor merely ‘recasting problems of politics as problems of expert knowledge’, but significantly stretching the scope of what the Council can govern and target through the list in practice.

The second key feature of this diagram and explanation is the way that listing is aimed at cutting the threat of global terrorism ‘in the middle’ and establishing an ‘equilibrium of possibilities’. What might this equilibrium mean and how can the uncertainties of a threat generally thought to be globally diffuse ever possibly be governed in an equilibrium state? To address such questions it is helpful to briefly revisit the work of Michel Foucault. From the second half of the eighteenth century onwards, Foucault observed the emergence of a new technology of power that was not disciplinary but rather something he termed ‘biopolitical’. Whilst disciplinary power ‘concentrates, focuses and encloses’ the bodies of individuals to exert control over them and produce ‘individualizing effects’, biopolitics is directed at the population as a political problem and:

... introduce[s] mechanisms that are very different from the functions of disciplinary mechanisms ... Their purpose is not to modify ... a given individual insofar as he is an individual but essentially, to intervene at the level at which these general phenomena are determined .... Most important of all, regulatory mechanisms must be established to establish an equilibrium, maintain an average, establish a sort of homeostasis, and compensate for variations within this general population and its aleatory field. In a word, security mechanisms have to be installed around the random element inherent in a population of a living beings so as to ... achieve overall states of equilibration or regularity ... [and] protect the security of the whole from internal dangers.

Though they are distinct forms of power and reliant upon different instruments, discipline and biopolitics ‘are not mutually exclusive and can be articulated with each other’. Indeed, one way they are linked and mutually reinforced is through the increasing circulation of mobile norms ‘that can be applied to both a body one wishes to discipline and a population one wishes to regularise’. For Foucault, norms ‘emerge out of the very nature of that which is governed’ in contrast to legal rules which ‘are external to that which is being governed’.

129 UN Doc. A/65/258 (6 August 2010) 11.
130 Interview B.
131 Koskenniemi (n 8) 338.
132 Foucault (n 30) 246. It is beyond the scope of this chapter to analyse Foucault’s thinking on biopolitics and security in detail. My analysis here is limited to introducing this material for the purposes of thinking through specific problems presented by the empirical material at hand.
133 Ibid, 250
134 Ibid, 253
With the emergence of security, norms work through ‘the plotting of differential curves of normality’ and ‘differential risks’ rather than by trying ‘to get people, movements and actions to conform’ to the normal as with disciplinary modes of power. The key point I want to make here is that with the expansion of biopolitics ‘law operates more and more as a norm’ or ‘an interplay of differential normalities’ that works to ‘break subjects and objects into elemental degrees of risk’, sift good from bad and generate some kind of overall homeostasis through the increasing use of security mechanisms.

When this Monitoring Team member explains the rationale for these expert meetings in terms of establishing ‘an equilibrium of possibilities’ we can see this mobile norm and the interplay of differential normalities being put into circulation. The main story is that this regime targets specific individuals as threats to international peace and security under Chapter VII of the UN Charter. But I argue there are also governmental rationalities and techniques conditioning this regime and authorising new forms of security expertise that are pushing the envelope of what global listing can secure in practice. In this sense, listing works as a hybrid legal form - part Chapter VII sovereign measure and part biopolitical normal. It creates a broad field of intervention stretching from the apex of the pyramid where the Council’s formal instrumentarium is situated to the informal middle area or ‘heterogeneous transactional zone’ where global listing expertise intervenes and performs its work.

Highlighting this hybridity is neither to suggest that sovereignty (or UN Chapter VII power) is somehow on the wane and being eclipsed by global biopolitics or to claim that this fusion is unique to the global security domain. As Nikolas Rose and Marianna Valverde observe, legal mechanisms have long ‘played a key role in the authorization of disciplinary and bio-political authority’ and thus laws and norms have long been mutually interdependent. Others have analysed collective security reform efforts to demonstrate that UN ‘sovereignty itself has become infused with a biopolitical program’ of what is termed ‘global governmentality’. But this hybridity underscores the importance of technical expertise in global security law and has important consequences for how the regime is sustained, legitimised and contested.

The main justification for targeted sanctions, for example, is that they offer a more precise and calibrated form of governance. Yet the explanation provided here renders this ‘smart sanction’ rationale problematic by showing how global listing also aims at modulating a much broader population and potential threat environment. Legal challenges in this area understandably highlight the Council’s formal UN Charter powers against the fundamental rights of targeted individuals. But the listing process outlined here works through new forms of security expertise disaggregating individuals into ‘measurable risk factors’ that are then targeted at a far more generic level for the purposes of ‘maintaining an average’. This isn’t so much an exercise in targeted governance as a novel program of biopolitical management.

(iii) Enlistment: Connecting Networks to Networks and Assembling Global Security

---

136 Foucault (n 120) 63, 61, 57.
137 Michel Foucault, The History of Sexuality Vol. 1, (Pantheon, 1978) 144.
138 Foucault (n 120) 63.
139 Amoore (n 114) 65.
140 My use of the term ‘mobile norm’ here is taken from Louise Amoore - Amoore Ibid 17- 18.
141 Rose and Valverde (n 135) 549.
142 Ibid, 550
144 Mariana Valverde and Michael Mopas, ‘Insecurity and the dream of targeted governance’ in Larner and Walters (n 27) 240.
145 Foucault (n 30) 246.
The third and final aim of these consultation meetings analysed in this chapter is that of *enrolment or enlistment*. That is, the assemblage of a diverse array of security actors into new pre-emptive global security networks built around the administration of this list, the construction of a ‘global optic’ and the potential for intelligence exchange. As one Monitoring Team expert explained, it is the creation of new multilateral intelligence exchange networks that is perhaps the most important effect of these meetings:

> We are the only team in the entire UN Council sanctions structure [that] have a mandate to convene Intelligence Service conferences. We just had one in Vienna last week where twelve ... heads of Intelligence Services from very diverse countries came to talk about the threat of Al-Qaida in Africa ... That’s something that [just] doesn’t happen ... [where] you have twelve different intelligence services sharing information with the team, but also with each other, and connecting networks with each other ... 

Multilateral [sharing] is very unique to the ‘five eyes’ community – so Britain, Canada, Australia, UK and US. Other than that, multilateral intelligence sharing inside the EU is already a big problem. [But] if you talk about multilateral intelligence sharing between a European country, an African country and a central Asian country, it’s just not happening except for us.  

The idea of UN experts forging new forms of multilateral intelligence sharing is contentious. When US Secretary of State Colin Powell made his infamous public presentation before the Security Council in 2003 seeking for authorisation of military force against Iraq he claimed that each statement he made was ‘backed up by ... solid sources. These are not assertions. What we are giving you are facts and conclusions based on solid intelligence’. Yet ultimately his claims that Iraq possessed Weapons of Mass Destruction were found to be unsubstantiated. Consequently, the use of intelligence by the Security Council has long been fraught with political controversy. In his study on this issue Simon Chesterman acknowledged that whilst UN programs on counter proliferation and counterterrorism increasingly required intelligence material, ‘international organisations are ... [still] forced to draw upon national agencies’. As a result, inside the UN there ‘is not multilateral intelligence per se, but applications of national intelligence to serve national interests that happen to correspond to international security’. Yet multilateral intelligence sharing is precisely what these UN expert meetings appear to be stimulating as part of building an optic for seeing ‘global terrorism’. Whilst this development might be novel in the context of the UN Security Council, it is consistent with broader post 9-11/ shifts to better ‘connect the dots’ and transform intelligence gathering into more of an adaptive learning process to better understand transnational threat complexities.

UN counterterrorism expertise is the crucial conduit for these meetings to take place and networks to emerge because of its perceived objectivity and political neutrality. As the same Monitoring Team member put it, ‘we have not met a state that does not talk to us ... If you

---

146 Interview B.  
149 ibid, 69 - 70. See also: Simon Chesterman, ‘Does the UN Have intelligence?’ (2006) 48(3) *Survival* 149.  
151 See, for example: Gregory F. Treverton, *Intelligence for an Age of Terror* (Cambridge University Press, 2009). Treverton, Director of the RAND Corporation’s Center for Global Risk and Security, argues that intelligence analysis needs to transform into more fluid forms of ‘organizational sensemaking’ if it is to generate effective products in relation to global terrorism.
think about the world, certain member states don’t talk to each other. We bring analytical expertise with us’ which allows the team to, ‘have a much better spread in [state X] than any other Member State save the Americans’. It is the purportedly ‘apolitical’ nature of their expertise that enables the team to gain a deeper rapport with, and ‘better spread’ amongst, intelligence services strategically important in the fight against global terrorism. According to one member the key is that ‘we don’t have a political role. We are this neutral convening factor that allows them to come. It’s not a conference of Russia or America, it’s not a NATO ally conference ... [We provide] a very neutral territory to convene’.

For this listing expert ‘politics’ is something contained in the intergovernmental forum of the Security Council and so the ‘technical’ and the ‘political’ are delineated as very different domains. But when we understand the list as a technology of governance and inscription the analytical focus and terrain of politics is broadened. Reframed this way, the ‘political’ precisely lies in the ability of listing expertise to provide ‘a neutral territory to convene’. Because it enables a network to be established for localised threat traces to be collected, rescaled, taken back to a central point (the Security Council core) and linked to pre-emptive security intervention at many other sites. It is security expertise driven by problems of list administration that allows for ‘government at a distance’ to take place. In this way, the ability of counterterrorism experts to convene and connect networks with networks through the mediating device of the list is one of the most powerful political processes of all.

The fact that perceived expert neutrality ‘allows them to come’, as this Monitoring Team member put it, points to another important element of listing expertise in this context - which has little to do with the ‘objectivity’ of their expert knowledge and more to do with institutional power that authorises it. That these listing experts carry the delegated authority of the United Nations is also crucial in this setting. One US Embassy Cable, for example, recounts confidential discussions held between the Team’s former co-ordinator (Richard Barrett, ex-head of MI6 counterterrorism) and USUN officials concerning a meeting the team convened ‘with heads of intelligence and security services from Algeria, Libya, Morocco, Pakistan, Saudi Arabia, UAE and Yemen on January 23-24 [2008] in Vienna’:

Barrett further emphasized that these officials viewed the 1267 Committee and the Monitoring Team as a neutral interlocutor that could facilitate U.S. and EU assistance to them under multilateral cover. Many of these officials believe it is easier for their governments to be seen cooperating with the UN than to be accused of responding to the bilateral demands of the U.S. or other western countries.

Here it is the fact that the team’s expertise is housed within the UN that is the critically important factor at play, for reasons that have little to do with expert ability to syncretise global analysis. The neutrality of the team’s expertise is only important insofar as it can provide ‘multilateral cover’ for national security actors to gain greater operational access to US and EU intelligence. ‘These officials’, the Cable continues ‘want to be treated as equals by their U.S. and EU counterparts’. They ‘see the UN as an actor that could convince the U.S. and Europe to agree to greater operational cooperation with them’. These meetings are

---

152 Interview B.
153 Ibid
154 See, for example: Bruce Braun and Sarah J. Whatmore, ‘The Stuff of Politics: An Introduction’ in Bruce Braun and Sarah J. Whatmore (eds.), Political Matter: Technoscience, Democracy and Public Life (University of Minnesota Press, 2010).
155 Miller and Rose (n 3) 9; Latour (n 10) 176.
156 US Embassy Cable 08USUNNEWYORK313 (dated 7 April 2008), para. 7.
157 Ibid
158 Ibid
thus valued for their potential to bypass established cold-war intelligence ties and create new transnational security and intelligence exchange networks:

In a separate conversation with USUN, Barrett described the type of assistance sought, which includes: cooperation on intelligence sharing, including on intelligence that supports listing requests; technical help with intercepts; and more action from EU countries in response to the threat posed by persons located in Europe -- including those under asylum -- who incite terrorism in the region, but whose freedom of speech is nonetheless protected. \(^{159}\)

According to Kim Lane Scheppele the rapid uptake of global security law by states in the post-9/11 period can be explained precisely by such political motivations. That is, national executive security actors have pushed the implementation of new Security Council measures because they have 'a strong interest in gaining the power that [these] new legal regime[s] gives them relative to the other players in their own domestic space.' \(^{160}\) This thesis is important, but I want to qualify it in two ways that help us make sense of the empirical material under analysis. First, the dynamics of global exception are not just a question of formally extending security powers through the promulgation of broad legal measures. That is the first legal step - a necessary, but in itself insufficient, condition to account for global security law. Expert practices and networks stimulated by the resolution of seemingly mundane technical problems enabled by these laws also provide the driving force for new vectors for global securitisation.

There is also an implicit assumption that an expansion of draconian domestic security powers flows unproblematically from the creation of new UN global security regimes and the convergence of shared executive interests they enable. But when the exception is analysed as a process of legal assemblage rather than as a 'state' of emergency its contingency, heterogeneity and failure can more readily be drawn into view.

During an interview with one former Monitoring Team member, for example, I asked about their 'creative work linking together the security and intelligence services in North Africa and the Middle East with the aim of bringing them in closer proximity to the P5 states'. In response, I was told this rationale was 'Bullshit ... that was not what we were doing. That’s what we said we were doing to justify to the Council the expenditure of the whole thing'. \(^{161}\) According to this expert, a central figure organising the first meetings, their original aim was:

... to bring the countries together to be able to give the reviews to the Security Council on intelligence, because the intelligence was not reaching the Council ... That is why I have suggested this idea and talked to all intelligence services through my national contacts to make it happen ... I wanted to make the list ... more vibrant. I wanted to make the list reflect the real threat. \(^{162}\)

But this process failed, according to this expert, because the views of regional intelligence services ‘were being censored before [they] reached the Council’. On further probing I was told this was due to the Council’s reluctance to act outside established bilateral relations:

It was basically the P5. The other member states, not the P5, they would bring the experts on counterterrorism to the table. And they would want to make a deal. The P5 always wanted to have the deal done outside the Council. On bilateral ties ... ‘It’s a matter of superpower

\(^{159}\) Ibid
\(^{160}\) Scheppele (n 6) 5.
\(^{161}\) Interview with former member of the UN 1267 Monitoring Team, 2013 ('Interview D').
\(^{162}\) Ibid
Leaked US Embassy Cables corroborate the view that this attempt to build an optic for seeing ‘global terrorism’ has been plagued with problems, because the P5 states have failed to take the operational concerns of North African, Middle Eastern and South Asian intelligence services seriously. In one Cable - entitled, ‘UN/1267 Sanctions: Arab and Pakistani Security Officials Complain Security Council Slow to Sanction Al-Qaeda’ - the former Monitoring Team coordinator updates the Sanctions Committee and US officials on a 2008 ‘consultation meeting’ that took place in Vienna: ‘These [intelligence] officials are frustrated that their requests to recommend specific individuals affiliated with al-Qaeda or the Taliban for sanctions by the Security Council are frequently put on hold, either temporarily or for long periods of time’. 164 The Cable tells of how 12 Libyan list nominations and 32 Moroccan list nominations had been placed on hold by the US, UK, France, Russia and Belgium for up to 4 years and goes on to warn the Sanctions Committee that this inaction ‘will discourage [these states] from proposing additional subjects for sanctions in the future’. 165

So the three key Monitoring Team experts interviewed about these consultation meetings provided somewhat divergent views on their purposes, merits and effects. For some, the meetings constitute successful experiments in building a new optic for seeing ‘global terrorism’ and building new networks of intelligence exchange. For others, the meetings have been a resounding failure and simply reasserted established superpower relations.

Irrespective of the substance of these meetings and whether new intelligence flows are being created or established bilateral ties reaffirmed, I argue that the power of this experiment lies in its ongoing capacity for enrolment or, more accurately, enlistment. The problems of the list, and the opportunities for intelligence and analytical exchange that its effective implementation affords, serves to arrange a diverse array of security actors into new pre-emptive global security networks. To explore this point is to unpack the capacity of UN security expertise ‘to connect networks with networks’ suggested by one of the listing experts interviewed above. As one former member explained, implicitly distinguishing the politics of the Monitoring Team from the Monitoring Group:

The Sanctions regime, of course, is an obligation on Member States, not on the people who are under sanction – an obvious point but one that worth making. So this is [about] getting Member States to really see the threat in the same way, co-ordinate their activities and pull together to ensure that the chain had no weak links ... [its] a question really of explaining that Member State’s obligations weren’t just obligations they had to conform with but also that there were reason behind that - [that] these were the reasons why it was important to have a global regime ... The Monitoring Team of eight experts really took that job on. 166

Getting people to ‘see the threat in the same way’ means enrolling diverse actors to see terrorism through the ‘global optic’ of the list and to govern it pre-emptively. In this process, the power of expertise does not lie in ‘naming and shaming’ states or enforcing implementation but ‘[forging] a shared understanding and shared approach’ that enables states ‘more importantly, to feel that they were part of … the international effort’. 167

163 Ibid
164 US Embassy Cable (n 156).
165 Ibid
166 Interview A.
167 Ibid
This wasn’t just some group of ... five permanent members, just ordering the world to do things which the world might not think were particularly useful ... But saying to the states, you know, ‘What is the threat as you see it? What could the international community be doing to help you?’ ... So we went around to a lot of those countries talking about what they thought, and what the Security Council thought and trying to mix that operational aspect with the political aspects. And then, beyond that grouping the countries together so that they would have a joint view – which is obviously much more powerful when expressed to the Security Council than if they have got independent and slightly conflicting views.168

The Team’s expertise and the ‘consultation meetings’ they have convened have thus been crucially important means of establishing new economies of equivalence in this domain:

It was important to [say to] states, ‘Ok. What are you doing on counterterrorism; what are you doing about the Al-Qaida threat? How do you assess that threat and how does this international activity support what you’re doing and fit in with what you’re doing?’ And that allowed Member States to adapt their counterterrorism measures, if you like, in a sort of coherent way globally. And it also allowed us to tell the Security Council, you know, where this regime might work but [also] where it might not work and so where they’d like to sort of maybe amend it a little bit. Whether the people who are subject to sanctions were appropriate, according to some of the key Member States who knew them better than some of the members of the Security Council. And so we built up a relationship with mainly, you know, Middle Eastern, North African and South Asian countries.169

It is by convincing national security actors of the benefits of pre-emptive targeting through listing - and showing them what this list can do - that UN listing experts build institutional rapport, stimulate a ‘shared feeling’ and enlist broader political and operational support. One of the main benefits highlighted during country visits, according to one former Committee member, is how the list can act as an intelligence generator and be used as a source of ‘leverage’:

Once an individual or entity is placed on the sanctions list ... [it] will yield its own additional flow of information or intelligence ... There will be suspicious transaction reports ... [and] chatter on the wires that wasn’t there before. And the hope is that ... [they] will seek to distance themselves from their previous involvement by coming to cooperate with law enforcement in order to demonstrate that they have severed the relevant ties ... So the critical thing bout the Al-Qaida sanctions regime ... [is] the follow up to a listing – what ... benefit[s] both the Council and the relevant Member State from that listing.170

Such co-operation can also be a valuable way of generating potential informants from amongst the broad pool of perceived ‘material supporters at the periphery’.171 Targeting people on the periphery is useful because it will often ‘create the leverage [for them] to say: ‘Get me off this list. I will help you with information. I know about the tiers that are more difficult for you to trace’.172 The idea of counterterrorism officials using listing techniques for generating informants amongst targeted communities has long been the source of speculation, but has rarely been acknowledged. Litigation currently afoot in the US, for example, alleges that the FBI placed people on the US No-Fly list as a means of trying either to coerce them into becoming informants in their local communities or punish them for

168 Ibid
169 Ibid
170 Interview C.
171 Ibid. This argument is examined in more detail in the next chapter when discussing the Monitoring Team’s reasons for supporting list accountability reforms.
172 Ibid
refusing to do so. So it is unsurprising that similar motives might motivate other security actors to use the Al-Qaida list to target peripheral persons of interest in their territories and be a means of ‘persuading them that there is a strategic benefit to them of making better use of the list’.174

Even listing individuals from the periphery, where security officials may have very little information to infer association with Al-Qaida, can serve to either generate intelligence and/or help transform speculative security material into more solid forms of evidence. According to one expert the critical step is to list individuals first and then ‘get that listed person right into making their contrary claims’. Through this process ‘their contrary claims can be followed up, can be discredited, and can actually form further grounds for the listing’. According to this interviewee, this is one ‘positive way in which you can move a closed information situation into an open information situation’.175 Thus listing can be used in conditions of uncertainty to absorb some of the uncertainties involved with listing.

Finally, listing can also help by providing a powerful means of stigmatising those that it targets: ‘In Africa we have discovered that there is a genuine fear of being put on a sanctions list. Not because assets will get frozen or travel will be denied but because of social and familial stigma. We think that that could be used significantly more in a context like with Boko Haram … to [help] tip the balance towards the good guys’.176

A key impetus for this enlistment process is the perceived impotence of the Security Council to enforce its own decisions in spite of the supreme nature of its Chapter VII powers:

UN Security Council Resolutions are binding decisions under Chapter 7. When they are done under Chapter 7, it’s no option. However, there are de facto options. How many states might have violated the Security Councils [sanctions] in the past … [and] what is the punishment? What is the punishment for North Korea or someone helping North Korea … [or] someone helping Iran from the UN Security Council’s perspective? You’ve got the punishment by … stakeholders who have their own, much harsher, sanction regimes against violators. But the UN Security Council has no mechanism to enforce its decisions. It is an intergovernmental organization. That means, theoretically, that everyone is of the same weight … If you violate [sanctions, the] … maximum of what happens to you is you get bad press for few days and then no one cares afterwards. 177

Another former member of the Team framed this problem in similar terms as a part of a dilemma of the Security Council to try and reinforce its authority under the UN Charter:

Some permanent members would say, ‘Well, you know, damn it. This is what we want to do and that’s what we’re going to do … [and] Member States have to comply because they signed the Charter and they’ve signed up to be members of the UN so, end of story’. But clearly … what are you going to do if someone doesn’t implement your sanctions? What options have you got? You’re not going to impose secondary sanctions on them - very, very unlikely and even if you did who would comply with that? It would be sort of an abuse of power almost … You’re not going to go to war over it … You’re just going to make political statements saying, ‘Well we think you should comply’. But … if nothing changes as a result, [then] you’ve lost it [ie, your authority] haven’t you?178

173 For details see: Ramzi Kassem and Baher Azmy, ‘Spying or No Flying’ Al Jazeera (7 May 2014). Available at: http://bit.ly/1hxQWZJ. For background on the ACLU’s litigation on this issue, see: http://bit.ly/1BsbHuA.
174 Interview C.
175 Ibid
176 Ibid
177 Interview B.
178 Interview A.
It is enlistment that provides the answer to this strategic problem, enabling global security laws to exert greater control over the problems of global terrorism they seek to counter. It allows the Monitoring Team to achieve through technical means what had eluded the more confrontational efforts of earlier Monitoring Group. It provides a conduit for translating direct legal commands into more indirect mechanisms of rule – creating a ‘shared feeling’ that enables disparate security officials to feel that ‘obligations weren’t just obligations’.

The effects of global listing expertise thus bear certain similarities with the ‘soft power’ initiatives used by bodies such as the UN Counter Terrorism Committee (CTC). In her study of the CTC Isobel Roele observes how seemingly innocuous and technical practices such as ‘implementation assessments’, ‘guiding principles’ and UN workshops for ‘enhancing dialogue’ embed asymmetrical power relations between core and periphery and discipline recalcitrant states into participating in the Security Council’s counterterrorism agenda. For Roele such effects can be adequately explained through the framework of disciplinary power: ‘Global counter-terrorism is only as strong … as its weakest link. Consequently, the normalization of all states is vital to the success of the counter-terrorism project’.  

Similarly, for Kim Lane Scheppele the rapid uptake of global security law can be explained through the ways it combines both disciplinary and renewed imperial logics of control. For Scheppele, in global security law as with colonial empires, ‘the center gets from the periphery what the center needs [ie, ‘terrorists’]. In exchange, the peripheral states, and especially their leaders, get powerful protection and approval from the center’.  Here global security law is presented an effect of the interests of the actors involved and their respective ‘strategies of legitimisation’ - ‘leaders in the periphery use their backing from the center to enhance their local power while leaders at the core use the control they exercise over the periphery to shore up their power at the core’.

Both of these approaches offer valuable insights into how this emergent field of law is unfolding. Yet I argue that understanding the uptake and spread of global security law also requires close analysis of the specific governance technologies and forms of security expertise that are being forged and put into circulation. The ‘consultation meetings’ examined in this chapter do enable novel relations between periphery and core and renew imperial relations. But as Geoffrey Bowker and Susan Leigh Star remind us, ‘the material culture of … empire is not found in pomp and circumstance, nor even in the first instance at the point of a gun, but rather at the point of a list’. It is the technology of the list and its expertise that does much of the ‘hard work’ to enrol the different actors and sustain the knowledge-practices that cohere this form of law. Global security law is not only a body of imperial decrees. It is also a ‘legal complex’ of quasi-legal interventions, expert techniques, dispersed forms of authority and pre-emptive security practices produced through novel knowledge objects – or, as argued in this book, a global legal assemblage.

---

179 Roele (n 79).
180 Ibid, 50
181 Scheppele 2013 (n 2) 250.
182 Ibid, 249, 251.
185 Rose and Valverde use the idea of the ‘legal complex’ to refer ‘to the assemblage of legal practices, legal institutions, statutes, legal codes, authorities, discourses, texts, norms and forms of judgement’ - (n 135) 542. For Valverde, the advantage of legal complexes is that they can be empirically investigated – Valverde 2003 (n 25) 10.
Interoperability and the Politics of Formatting

In the previous section we examined how counterterrorism works, through the technology of the list, to create a new optic for seeing ‘global terrorism’. By closely examining how listing expertise works we observed how seemingly innocuous technical problems of list administration assemble this domain of global security law and stretch what it is capable of doing in practice. In this section I examine another specific site and mundane technical problem that the Monitoring Team are addressing as part of their mandate for effectively implementing the list: the problem of formatting. That is, rendering the information aggregated through the Al-Qaida list interoperable with data standards and methods of information processing and analysis. The list is currently being reformatted into a variety of different information packages to extend its reach and improve its application. In this section I examine the Monitoring Team’s implementation efforts in relation to two interrelated formats – (i) Biometric information and (ii) Advanced Passenger Information (API) and Passenger Name Record (PNR) data - drawing out its political and legal effects. According to the experts involved, reformating is a technically complex but relatively minor issue far removed from the more pressing political concerns of the Security Council. As one team member described it: ‘This is basically the list, with the information on the list, in a different format. So the substantive information is the same’. In this formulation, the list is an inert object or instrument first applied in context A and then simply reapplied in context B.

However, as I show in this section, technical reformatting is a creative, jurisgenerative and profoundly political governance move. Reformating the list performs what is called in actor-network theory a ‘translation’. It doesn’t simply move the list from context A to context B - it changes the list in accordance with the new criteria, ordering practices and spatio-temporal dynamics that condition the different formats. Translation, in other words, is a productive process or ‘form of modification’. I argue that examining list reformating is critically important because it shows us how global security law is embedded and stretched through listing practice. It generates new global security governance terrain but is obscured through functional expertise as mere technical background work. As with our earlier discussion of the ‘global optic’, the Al-Qaida list emerges from this analysis of reformating as a crucial actant in the global security domain. It exerts agency in its own right, performs important legal assemblage work, builds new ensembles of relations and helps to produce global terrorism as an expansive object of political and legal intervention.

(i) Reformating the List and Building the ‘Third Hurdle’

Most discussion about the Al-Qaida list focuses on its coercive asset-freezing powers. But the asset-freeze is only one component of the sanctions. Those listed are also subjected to an arms embargo and a global travel ban. The travel ban - which requires states to ‘prevent the entry into or the transit through their territories’ of all individuals on the Al-Qaida list – has been poorly enforced for many years. The Security Council tried to close the gaps in 2004 by ensuring that amendments to the list were automatically sent ‘to all States, regional and subregional organizations for inclusion, to the extent possible, of listed names in their respective electronic databases and relevant border enforcement and entry/exit tracking systems’. Yet this call largely went unnoticed and - as the Monitoring team candidly acknowledged in their fourth public report - ‘Listed persons continue to travel, despite the
mandatory language of the travel ban, whether via the use of stolen, lost or fraudulent travel
documents or through the inattention/disregard of the sanction by Member States'.

In 2005 the Security Council (through the Monitoring Team) began two initiatives to
ameliorate this situation. In collaboration with the International Police Organization
(INTERPOL), they launched the Interpol – United Nations Security Council Special Notice
system for locating and preventing the movement of listed persons. Special notices exist in
two versions. The public version is available on the Interpol website. Its original format, as
shown below, was ‘in essence, a kind of ‘wanted’ poster’, containing photographs, aliases,
physical descriptors and known travel documents associated with each Al-Qaida list entry. Its
appearance has since been modified to mimic the ‘Narrative Summary of Reasons for Listing’
maintained by the Sanctions Committee. The restricted version is only available to Interpol
license holders – including most national police and border agencies around the world but
also, anomalously, the SCAD administrators supporting the Monitoring Team inside the UN
Secretariat. The closed version ‘adds value’ by containing additional ‘law enforcement-
confidential information, such as fingerprints and details of relevant national investigations
and operations under way’. By 2013 Interpol Special Notices had been created for almost
all Al-Qaida list entries, with 20 percent including photo identifiers.

![Interpol-United Nations Special Notice](http://bit.ly/2e8Vhvf)

**Figure 6:** Interpol-United Nations Special Notice (Public Version), 2006. Reproduced

---

191 *Ibid.*, para. 92
193 Interview B.
194 S/2006/154 (n 190) para. 93.
In 2005, Monitoring Team counterterrorism experts also met with officials from the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA). ICAO is the UN agency responsible for setting global aviation standards and IATA is the trade association representing the global airline industry. These meetings identified ‘several areas of convergence’. As discussed in more detail below, these convergences soon translated into co-operative working projects in relation to both travel documentation standards and passenger screening practices.\(^{196}\) To that end, the Monitoring Team have been working intensively with ICAO and IATA since 2013 with a view to delivering practical results on improved aviation industry implementation of the ban by 2016.\(^{197}\)

For listing experts, these initiatives with Interpol and ICAO/IATA are driven by two primary aims - interoperability and pre-emption. Both technical processes aim at ‘enhancing’ the implementation of the Al-Qaida list by rendering it interoperable - with the biometric platforms increasingly used by border security agencies and the API/PNR datasets used in the aviation industry. The problem, as one ICAO official explained, is that the Al-Qaida list currently exists in a format that renders it effectively unusable in the global transport environment: ‘Although it’s available online through the website, it’s not known in any system that automatically checks against it’.\(^{198}\) To resolve this issue the Monitoring Team are reformating the list in ways that police, border agencies, the financial sector and the airline industry are already familiar working with. Chapter VII UN Charter measure or not, making global security law go global requires technical interoperability. As one team member put it: ‘If [the list] is not interoperable, you simply cannot implement it. Because [what] we are looking at is global implementation’.\(^{199}\)

These technical initiatives are also directed at transforming the pre-emptive bordering capabilities of the travel ban. The aim is to make the ban better able to intervene in the middle zone of the ‘equilibrium of possibilities’ shown earlier in Figure 4 – where ‘you don’t wait until the guy is at your airport and you need to prevent him from entering your country ... but [where] already, much further ahead, you are aware of what the potential threat is’.\(^{200}\) The travel ban has historically been concerned with preventing listed individuals from entering into or transiting through a particular territory.\(^{201}\) In their 2006 report the Monitoring Team raised the question of whether the formal prohibition on transit might also be read as imposing additional obligations on states ‘to prevent the departure of listed persons from their territories’. At that time, the team concluded that ‘the resolution may not prohibit all “departures from” a territory, because the Council could easily have said so’ if that is what they intended.\(^{202}\) Yet beyond the formality of state obligations, using the list to target ‘much further ahead’ in time has been the prime rationale for the Monitoring Team’s technical collaborations with Interpol, ICAO and IATA. The aim has been to re-orientate the focus of the ban from entry and transit towards pre-screening and ‘exit control’. As one ICAO expert put it, the travel ban is ‘no longer about stopping people at borders. It’s about stopping people before they even think about crossing borders and that’s a little bit

\(^{196}\) S/2006/154 (n 190) para. 97.
\(^{197}\) Interview B.
\(^{198}\) Interview with ICAO official, Montreal (via Skype), March 2014 (‘Interview E’). The availability of the list in .xml format is specifically designed to facilitate interoperability with the banking and financial industries.
\(^{199}\) Interview B.
\(^{200}\) Ibid
\(^{201}\) I say ‘historically’ because the situation has shifted dramatically following the introduction of S/RES/2178 (2014) against ‘foreign terrorist fighters. The significance of the Resolution 2178 and its relation to these technical reform processes is explored later in this chapter and in the conclusion of this book.
\(^{202}\) S/2006/154 (n 190) para. 85.
different’. One Monitoring Team member described this process as part of the task of building, what he termed, a new ‘third hurdle’:

First of all, you have to get an identity document and/or a visa to travel. Hurdle one. That was addressed years ago - partially with the Interpol databases but [also] with strengthening our relationship with the foreign ... and interior ministries. Hurdle one ... can be overcome by the individual if he simply forges his identity.

The second hurdle usually was the arrival at the border and the entry in the country. Now you have countries without borders. You have border controls that may not be as strict. You may have a legal problem that the police guy cannot access directly Interpol data [so] ... it also has [its] problems. And that was the last hurdle. If the guy could get a visa and a passport and if he could get across the border, then he was in.

But we want to have now a third hurdle. Which means: in the electronic process of getting your means to travel - your airline ticket and your boarding on the airplane – you have a third hurdle. A third possibility ... where your identity is checked against the United Nations Security Council list.

The more hurdles you erect for listed individuals, the more difficult it is for them to subvert the travel ban.

When framed this way as a question of implementation the process seems reasonably straightforward. The Security Council creates global law over here and it is then the task of technical expertise to try and ensure that body of law is properly applied over there. But when this project of ‘the third hurdle’ is ‘disaggregated and examined more closely the global law making/global law implementing distinction becomes much more difficult to sustain. If the list is a governing technology and form of productive power as argued in this chapter, then these interoperability projects do much more than simply implement. They transform the list and help to forge new governance possibilities that alter, at a quite fundamental level, what this form of global law is, what it can do and how it performs its security work.

(ii) Translation, Scale and the List as a Hybrid Norm

Interoperability is more than a technical move that broadens the implementation of the list through convergence of context A into context B. It is also a process that makes security listing much more dynamic and heterogeneous. As Annemarie Mol has said, ‘objects come into being ... with the practices in which they are manipulated. And since the object of manipulation tends to differ from one practice to another, reality multiplies’. Making the Al-Qaida list interoperable similarly does more than enhance its application. It also performs a ‘translation’ that serves to render security listing multiple. Biometric and API/PNR interoperability effectively create other kinds of Al-Qaida lists with different spatiotemporal dynamics and governance effects as the one maintained on the Sanctions Committee website and incorporated, via implementing regulations, in the legal orders of Member States.

The technical process of PNR interoperability starts by unbundling targeted individuals on the Al-Qaida list into a more diverse array of associated PNR-compatible data packets. One member of the Monitoring Team, differentiating the list interoperability process required in
the financial and aviation industries, explained this disaggregation process as follows:

The PNR packaging is different from the XML packaging so the data is in different format because ICAO assumes rightfully that you are one individual, one name, one passport ... However on our list we have multiple names, multiple aka’s, multiple passports from different countries. So we need to package the data in a way that you have a headline, maybe a number and then underneath that number, individual identities. This aka is connected to this birth date is connected to this passport number is connected to this address. This aka is connected to only this address. This aka is connected to this passport.\footnote{Interview B.}

The rationale for slicing individual targets up into sets of sub-individual identifiers in this way is that of faster and more efficient global circulation. It is anticipated that the travel banning process can accelerate as a result - by reducing the risk of ‘false positives’ and better synchronising the list with the transactional speed of the global aviation marketplace:

With the banking industry ... we’re talking a billions of transactions a day. So everything has to be machines ... [and] in a data format, that they can feed into their software programs ... Otherwise, the entire financial system grinds to a halt. Same thing will need to be for air travel. Where you cannot grind to a halt international air travel because you have ten thousand matching, or partially matching hits. So you need to make sure that you provide data in a form that is usable with the information that is necessary so that airlines can check and reduce the amount of partial or false leads that they have in order to ensure that air travel is no longer interrupted by this.\footnote{Ibid}

The technical aim is therefore to reformat the Al-Qaida list into 'individual packages that mesh with the way that the airline industry sells tickets'.\footnote{Ibid} Once ‘the data transfer is engineered – between us, the Security Council, IATA and ICAO – we will then also have a list checking when the data of the individual passengers is created whether these individuals are on the United Nations Security Council list’.\footnote{Ibid} This new list, however, is not simply a one-to-one copy of the list on the Sanctions Committee’s website. Splitting individuals (with ‘one name, one passport’) into different information packages changes the targets on the list into a much more mobile and dynamic set of associated data elements. Once disaggregated and rendered PNR interoperable, these packages can then circulate with all passenger data collected from the three main Global Distribution Systems (GDS) used by air carriers and ‘pushed’ toward databases operated by national agencies for PNR travel data risk analysis.\footnote{Ibid} Meshing listed individuals into data packages formatted to global aviation industry standards significantly alters the spatial and temporal scope of the list implementation process, enabling circulation at a greater velocity and over far more extensive terrain.

Translating the list into travel data is part of a much broader shift from state-centred border control towards new bordering capabilities and dynamics that are simultaneously both subnational and globally scaled. When the travel ban is mediated through travel data ‘national borders and bordering capabilities’ are ‘uncoupled’.\footnote{Ibid} Once uncoupled, the ban is no longer reliant on national states for its enforcement - which, as I have shown, is the one of the key rationales for the Monitoring Team’s engagement on this issue. The list can then be

\footnote{For an overview of the data workflow process envisaged by the 2011 EU PNR proposal, see: Rocco Bellanova and Denis Duez, ‘A different view on the ‘making’ of European security: The EU Passenger Name Record System as a socio-technical assemblage’, (2012) 17(2) European Foreign Affairs Review 109, 115.}
enacted at subnational local sites (when someone tries to buy an airline ticket) that are interconnected via global electronic networks and databases. So again we can see the technology of the list deeply imbricated in the production of ‘the global’ by enacting a relatively novel, accelerated and dynamic form of transnational legal ordering.\(^{213}\) This isn’t a form of ‘global law beyond the state’\(^{214}\) as Gunther Teubner might describe it because national security agencies remain closely involved in the travel data assessment and electronic bordering process. Yet it is more than something ‘constituted largely out of a competition among national approaches’ as sociolegal scholars like Yves Dezalay and Bryant Garth might suggest.\(^{215}\) It is a multi-scalar legal process enacted through a ‘list-plus-algorithm’ format that creates new forms of global authority and ‘alignments of people, places and things - or fragmented approximations of the same - on the global plane’.\(^{216}\) Reformating doesn’t just better implement the list. It translates it into something else.

This process also works to create new security mechanisms. Making the list interoperable with travel data dramatically broadens its field of application and alters what it is capable of doing as a pre-emptive security technology. In the scenario outlined by the UN listing expert above, it is envisaged that making the list interoperable with travel data merely enables another list to be created to check ‘when the data of the individual passengers is created whether these individuals are on the United Nations Security Council list’.\(^{217}\) Here the list still works in what Foucault calls a disciplinary mode to identify known listed individuals and interdict their travel. But travel data is not only collected and used by states to identify known threats and individuals. It is also analysed using different algorithmic data mining techniques and social network analytics to identify unknown threats, unusual patterns and persons who might potentially be of interest.\(^{218}\)

When an Al-Qaida list entry is disaggregated into multiple data packages that variably associate different names, passports, dates of birth, akas and addresses then these elements can also be used algorithmically to help draw inferences and possible links to the travel records, names and addresses, credit card details of new, and as yet unknown, individuals. People who may have lived in the same town, have a similar name to one of the akas, be of the same religion and/or age range, used a credit card with an address proximate to the address of someone listed might now be identified as someone of interest at the border or someone to prevent from travelling. When the list works in this way it is not only performing the disciplinary function of banning travel for known individuals, but it is also working as a security mechanism for identifying unknown individuals who might pose a potential threat. Just as with the ‘equilibrium of possibilities’ discussed earlier we once more see the list working as a hybrid legal form - part sovereign ban and part biopolitical norm - and broadening its field of intervention.

Using travel records to implement the list and ban the travel of targeted individuals can only adequately work, however, if the passenger data of all travellers can be collected and


\(^{215}\) Sassen 2009 (n 212) 593, discussing Dezalay and Garth, 1998 (n. 47).


\(^{217}\) Interview B.

\(^{218}\) As the ICAO/IATA Guidelines on API state: ‘while advance information of a passenger’s biographic data is useful, the added value of advanced passenger information in its broadest context comes from the ability to access carrier’s information for analysis and research on arriving passengers’ – WCO/IATA/ICAO, Guidelines on Advanced Passenger Information (API), March 2003, para. 1.7. Available at: http://bit.ly/29zixx1. For an excellent analysis of the use of PNR to identify unknown terrorists, see Amoore (n 114).
analysed. The use of travel data for security purposes has been a hugely controversial issue. Yet following the Monitoring Team’s technical work on these matters, in September 2014 the Security Council adopted a new Chapter VII measure: Resolution 2178. This resolution compels states to require airlines to provide them with API data precisely for detecting attempted travel of individuals on the Al-Qaida list and encourages states to ‘employ evidence-based traveller risk assessment and screening procedures including collection and analysis of travel data’ to ‘prevent the movement of terrorists’ – that is, PNR data analytics. Furthermore, in 2013 - following a direct recommendation from the Monitoring Team - the Sanctions Committee determined that ‘not being subject to the Al-Qaida sanctions regime travel ban is a requirement for individuals seeking entry into the national territories of Member States’ and set out to formally notify all states to change their national guidelines accordingly. Whilst the Monitoring Team’s efforts on biometrics have so far focused on gathering biometric material on listed individuals, reformating the list via the Special Notice system and encouraging greater use of Interpol databases at the border, they have already acknowledged that:

Although biometric data are an effective tool for checking the identity of a listed individual, many countries have not yet introduced this technology. Consequently, the use of a combination of false, forged and stolen documents by listed individuals to conceal their identity and/or profile presents a hurdle to the application of sanctions.

So effective list implementation is already becoming tied (technically and discursively) to greater use of biometrics technologies at the border. Or as the Monitoring Team have put it, ‘the potential disruptive capability of the travel ban ... depends also on adequate implementation through border control mechanisms’. It is arguably only a matter of time before the Security Council uses its Chapter VII authority to compel states to use biometric systems for effectively implementing the list or preventing the movement of potential terrorists. When they do, it won’t simply be a decree of global sovereign power deciding upon the exception. But rather something enabled, at a very granular level, by the reformating initiatives currently being developed by UN security listing experts and extended by a plethora of guidelines, technical standards and security laws. As one Monitoring Team member described their longer-term strategic thinking on this issue:

The technical development [ie, for biometric facial recognition] is not yet global. But what is exceptional today is global in ten years. And this is the UN (nothing happens in six months) and this is the UN then dealing with ICAO (an equally big organisation) ... What is more or less

---

219 In 2006, for example, the ECJ held that the EU-US PNR sharing agreement violated fundamental rights. A new agreement was agreed and put in place in 2012. In 2013 the European Parliament’s Civil Liberties Committee (LIBE) rejected the European Commission’s EU PNR proposal on human rights grounds. But a provisional deal was reached between the EU Parliament and Council of Ministers in December 2015 and the EU PNR Directive finally came into effect on 21 April 2016. The global aviation industry has long opposed the increased cost burden associated with capturing, formatting and transmitting travel data for border control and security purposes on the grounds that ‘passenger data is a border security requirement. States should not charge airlines (or passengers) in a bid to subsidize their own development costs’. Industry costs for restructuring how PNR data is collected, stored or exchanged have been estimated to be in excess of US$2 billion. See, respectively: Joined Cases C-317/04 and C-318/04, European Parliament v Council [2006] ECR I 4721; European Parliament News, EU Passenger Name Record (PNR) Directive: An Overview (1 June 2016). Available at: http://bit.ly/29jjszm. IATA Passenger Data Exchange: The Basics. Available at: http://bit.ly/1BOGGoB.


221 UN Doc. S.2013/467 (2 August 2013) para. 58.

222 UN Doc. S.2014/41 (23 January 2014) para. 40. The problem with PNR and API data, according to experts interviewed for this research is that it remains inherently unreliable. In contrast to biometrics, data entry errors by airline staff can result in incorrect information being used as the basis for security decisions.

223 The reference here is to Schmitt’s definition of the sovereign as ‘he who decides upon the exception’ (n 58).
exceptional now - India, UAE, Thailand, Indonesia, America, Europe, face recognition by entry - will be the norm by the time that we get there.224

In each of the examples outlined above - API/PNR data exchange, changing entry conditions for all travellers and the use of biometric identifiers - we see individual restrictive measures against 233 listed individuals being practically extended in ways that enable new security mechanisms to be applied to the global population of 3.6 billion airline passengers.225 We can also observe some of the interplay between the more mundane technical work of listing expertise and the ‘solid authority’ of the Security Council’s Chapter VII powers. Each example helps to show how relatively minor technical shifts concerning problems of list administration can help generate global securitisation effects. Here listing expertise can be seen as something quasi-legal and jurisgenerative: it both stretches what existing global security laws can secure in practice and creates the material foundations for new global security laws to be formally adopted. As one Monitoring Team member described it:

I think ... where we can be useful is actually advancing an agenda - for example, ... [with] biometrics. Who is actually going to go and talk to airlines to understand what they do on it? Who is going to go to talk to Interpol to figure out how they can transmit biometrics? Who is going to say, ‘Here is the list. Here is how biometrics can work and here is how it can’t? ... It's a bit techy and a bit dull on one level. But it is actually incredibly important in advancing the actual efficacy of a regime.226

Critical security scholars tend to represent security listing as a relatively simple technology quite distinct from the more dynamic and processual security techniques grounded in algorithmic data mining processes. According to Louise Amoore, ‘so overwhelming is the pursuit of the as yet unknown future risk’ in technologies such as biometric and PNR profiling ‘that the sounding alert of the watch list - a disciplinary form of security risk management … - is rarely heard’.227 Because listing is said to use ‘fixed disciplinary criteria’ it is positioned as markedly distinct from algorithmic techniques that deploy ‘possibilistic logics’ to ‘infer possible futures on the basis of underlying fragmented elements of data’.228 Yet the examples analysed above show a more interdependent and hybridised relation between fixed and dynamic security mechanisms. In my analysis listing technology (and the need to effectively implement it against targeted individuals) also functions as an important catalyst for more wide-ranging and ‘possibilistic’ forms of pre-emptive security governance to develop. This suggests that dynamics of mobility and fixity, and discipline and biopower are not mutually exclusive but rather co-present in assemblages of global security law.229 Precisely how they interrelate in a given domain is an empirical question that requires practice orientated and site-specific analysis.

(iii) Standards, Audits, Inadmissible Passengers and the Politics of Redefinition

Building a third hurdle for travellers is not only a question of reformatting and technical interoperability. It is a project that necessarily engages with, and requires modification of, international standards, best practices and regulatory guidelines. Historically, ICAO and IATA

---

224 Interview B.
226 Interview with former member of the 1267 Monitoring Team, New York (via Skype), June 2014 (‘Interview F).
227 Amoore (n 114) 89 - 90.
228 Ibid, 61
229 According to Saskia Sassen: ‘the spatiality/temporality of globalization itself contains dynamics of mobility and fixity. While mobility and fixity may easily be classified as two mutually types of dynamics … they are not necessarily so … [and] under some conditions one presupposes the other’ – Sassen 2006, (n 212) 383. On the co-presence of discipline and biopower in security mechanisms, see: Foucault (n 120) 8.
have primarily been concerned with transport, rather than border and security functions. When the Monitoring Team first sought to work with IATA to have airlines check passengers against the Al-Qaida list, for example, they were rebuffed on the grounds that ‘airlines [did] not see it as their responsibility to go further than checking that a passenger has a valid travel document’. In addition, aviation standards on passenger facilitation have been geared towards efficiently boarding and disembarkation from point of departure. What happened once passengers left the airplane and headed for immigration arrivals has largely been something that the airlines have left for national border security agencies to handle.

However, one anomalous area where the concerns of aviation and border security intersect is in the category of ‘inadmissible persons’ - defined by the Convention on International Civil Aviation (hereafter, the ‘Chicago Convention’) as ‘a person who is or will be refused admission to a State by its authorities’. Airlines are bound to adhere to the immigration laws of the states that afford them landing rights and are legally responsible for passengers up until the point they reach the arrivals terminal of the receiving state. If a passenger is found to be inadmissible by immigration authorities, then it is the airline’s responsibility to either take them back to the country the flight departed from or to another country that accepts them. If the airline acted negligently or failed to apply due diligence in assessing the relevant travel documentation or entry requirements of the receiving state, they can be subjected to fines. In 2010, 80 per cent of airlines worldwide each paid fines of on average US$286,000 for carrying inadmissible passengers, most of whom were asylum seekers turned back by border officials at entry. Historically, inadmissible passengers have fallen into one of three categories: either individuals who are (i) without proper travel documentation for entry and transit; (ii) carrying fraudulent documents or undocumented; or (iii) others who fail to meet entry (for example, because of lack the requisite funds or for security reasons). Although this legal framework only imposes obligations on airlines to check that their passengers meet the entry requirements of the states they are travelling towards, this checking process actually takes place before departure – when passengers either buy their tickets (and create PNR data) or check in (and create API data). As such, the category of ‘inadmissible passenger’ provides a valuable opportunity to bring the border forward in time and use travel data analytics to create a form of exit control enabled by states but enforced through everyday commercial aviation transactions.

One of the key tasks that the Monitoring Team are currently engaged in involves extending the definition of ‘inadmissible persons’ to specifically include individuals designated on UN sanctions lists. As one Monitoring Team member explained:

With the term ‘Inadmissible Passengers’ ICAO has created a legal case where the state now has the right to say, ‘This guy - because his passport is no longer valid, he doesn’t have the visa, in some countries because he doesn’t have the necessary vaccinations - is not getting into my country’. But the ‘Inadmissible Passenger’ case addresses only the point of entry in the country ... We thought there is an opening here – where we now have the technical capabilities of the airlines [and] we have states already demanding such [travel] data from the airlines. We might as well just tell the airlines: ‘Look - there are a thousand UN sanctioned individuals ... These one thousand individuals: don’t even bother trying to transport them

232 Chicago Convention Ibid Article 13
233 Chicago Convention Ibid Chapter 3, Section K, Standard 3.43
234 Chicago Convention Ibid Chapter 5, Standard 5.11
because by law they will be have to be transported back and you will be fined’ ... And that’s why we are working with ICAO on changing the rules.  

The impetus for changing the rules on international air travel is therefore twofold. First, there is the critical temporal problem. As it stands, the rules of global aviation carriage impose duties on airlines in relation to conditions of entry, as outlined above. If they are to enhance the implementation of the list and build a third hurdle, then airlines must be able to intervene before passengers depart – that is, either at, or before, the time of exit. Doing so on the basis of travel data, however, presents all kinds of novel liability risks. So the second rationale for changing global standards is to provide the legal cover for mitigating liability risks that airlines will increasingly face as they become more actively involved in pre-emptive security and border policing processes:

Data protection, false matches. You don’t want innocent people not being able to travel. It’s litigation potential for airlines. That’s why at the end of the day there needs to be some ICAO regulation which demands that airlines do that. Because then the airlines can say: ‘I’m sorry, I’m not doing this because I don’t like you. I’m doing this because the Annex to the Chicago Convention, the highest legal document on air travel, tells me to do it’. That’s why it’s crucial.  

Yet global regulatory change in the aviation domain is not something that readily falls within the Security Council’s jurisdiction to counter threats to international peace and security. Changing the definition of ‘inadmissible passengers’ to include listed individuals requires amendments to the Annexes of the Chicago Convention, which set global aviation standards and recommended practices (SARPs). And only the ICAO Council (or executive branch of 36 Member States) can amend these standards on a two-thirds majority vote during a meeting expressly called for that purpose.  

Given the degree of ICAO multilateral deliberation involved, one team member interviewed described this initiative as ‘very much a political issue’. But what is markedly political here is not so much the bureaucratic wrangling but rather what Koskenniemi calls ‘the politics of redefinition’ - that is, ‘the strategic definition of a situation or a problem by reference to a technical idiom so as to open the door for applying the expertise related to that idiom together with the attendant structural bias’. The travel ban is a constituent element of a sanction adopted by the Security Council under its Chapter VII mandate to counter threats to international peace and security. Redefining targeted individuals as ‘inadmissible passengers’ provokes a legal-discursive shift from the vocabularies of public international law and collective security to that of global aviation standards and recommended best practices for airlines. Redefinition of this sort generates ‘shifts in the production of types of outcomes within international institutions’. But what is novel, according to Koskenniemi, is how such changes are now ‘described in the neutral language of expertise’, thus ‘obscur[ing] the contingent nature of the choices made, the fact that at issue is structural bias and not the application of some neutral ... security reason’.

238 Interview B.  
239 Ibid  
240 Chicago Convention (n 231) Article 90.  
241 Interview B. For an overview of the procedures involved in creating and/or amending SARPs, see: ICAO, Making an ICAO Standard. Available at: [http://bit.ly/1pmY2sl](http://bit.ly/1pmY2sl).  
242 Koskenniemi (n 8) 67.  
243 Ibid, 68  
244 Ibid. As a result, for Koskenniemi, ‘political conflict will often take the form of a conflict of jurisdictions’ (335). On this point, see also: Mariana Valverde, Chronotopes of Law: Jurisdiction, Scale and Governance (Routledge, 2015). According to Valverde, ‘by deciding the ‘who governs’ question, the game of jurisdiction simultaneously but implicitly determines how something is to be governed’ (84).
A hypothetical example from the not-too-distant future helps to show some of what might be at stake. The technical project of constructing a third hurdle examined in this chapter is part of a broader initiative to pre-emptively counter the threat of ‘foreign terrorist fighters’ (FTFs). Recent Security Council resolutions impose obligations on all states to prevent the movement of suspected FTFs and anyone else about whom they have ‘credible information that provides reasonable grounds to believe’ may be ‘associated with’ Al-Qaida. As people are stopped from travelling according to such far-reaching speculative criteria, legal challenges will be initiated for violating the fundamental right to freedom of movement, legal scholars will write articles about these cases and there will be broader public debate about the appropriate balance between liberty and security in times of crisis. Yet what might have been framed as a normative clash between collective security and human rights can now readily be reframed as a foreseeable consequence of global aviation standards applicable to all airline passengers as part of the very condition of their carriage. Technical reframing takes this juridical and political conflict toward a very different and specialised institutional space with its own functional interests, distinct expert vocabularies, structural biases and set of patterned institutional practices. What would otherwise have been the main normative frame is thus rendered contingent and weakened, presented as merely one approach amongst many for potentially resolving this problem. It is in these ways, according to Koskenniemi, that international law becomes increasingly fragmented and marginalised, ‘pushed aside by a mosaic of particular rules and institutions, each following its embedded preferences.’

However, what is even more striking about the politics of redefining inadmissible passengers is what it shows us about the relation between listing expertise and global security law. Here we can observe counterterrorism experts with a mandate to effectively implement the list openly pushing forward an international legal change agenda to pursue their strategic aims under technical cover. Just as corporate lawyers engage in regulatory reform to transform the legal system in ways that strategically advance the best interests of their corporate clients, here the Monitoring Team (a) have a clear objective (enhanced list implementation); (b) have identified the key risks and obstacles impeding the realisation of that objective, and (c) are actively engaged in a long-term law reform process directed at overcoming those challenges by changing the rules of the game. If global law is defined through its practice - as ‘a group of people pursuing projects in a common professional language’ or ‘what legal professionals say and do in the course ... of governing, or seeking to govern, globally’ - then this specific example of listing expertise reformatting the list highlights a process of global security law making in motion.

As with the other expert initiatives analysed in this chapter, we are well beyond the point where technical expertise simply implements the list whilst global security law is properly made elsewhere, in the formal deliberations and resolutions of the Security Council. Yet for the experts whom I interviewed it was precisely this displacement - i.e., that global law making was something happening elsewhere - and the process of disavowal that allowed them to work on this issue as a technical, rather than a legal, problem. Formally speaking, they might be right. ICAO rules and standards are technically ‘soft law’. They can be disapproved by a majority of states; states retain the right to formally notify ICAO of differences between their national practices and international standards, and SARPs don’t have the legal force of

245 Koskenniemi (n 8).
246 Ibid, 67.
247 Ibid, 339.
249 Johns (n 25) 12
250 Chicago Convention (n 231) Article 90.
the Chicago Convention, which is subject to the international law of treaties. That is, they are not strictly a source of ‘solid authority’ in Krisch’s terms. But if no ‘filing of differences’ are submitted within 60 days of amendments being made by the ICAO Council, these standards do have binding effect on all Member States worldwide. As Kirchner points out, ‘although they do not yet cross the threshold from inter- to supra-national law, these international standards go far beyond the average power enjoyed by the executive body of an international organization’.

But what makes these ICAO standards so powerful a form of global security law is the way they can leverage technologies of audit and the power of the market to coerce states and airlines into compliance and compel them to more extensively securitize their practices. After the 9/11 attacks the ICAO Council adopted the Aviation Security Plan of Action (AVSEC). AVSEC enacted ‘a comprehensive programme of regular, mandatory, systematic and harmonized audits to be carried out by ICAO in all Contracting States’ and launched a new oversight process - the ICAO Universal Security Audit Programme (USAP). In 2007 the ICAO Council determined that USAP should be specifically extended to include the security-related provisions of Annex 9, where the standards on inadmissible passengers and API/PNR data handling are contained. When ICAO auditors identify deficiencies, states must submit a corrective plan within 60 days setting out what steps they will take to rectify the problems. Whilst information about non-compliance is not openly disclosed for security purposes, it is shared securely with ICAO members and subjected to ‘a limited level of transparency’.

As listing experts are acutely aware, this new auditing process can be used and modified to produce very powerful effects. It opens up new vectors for creating and enforcing global security law outside of the Security Council in ways that enrol different actors (public-private) at different governance scales more fully into the global listing assemblage:

My argument always is: ... let’s not fight the fight of making the world a better place. We, as the Committee or the expert team cannot ensure that Chad - or any other African country, or any other country in the world - has stringent border controls on its land ports. However, airports in Chad ... [and] airports in America are vetted security wise exactly the same by ICAO. So on air travel, we have already an agreed minimum standard. If we can implement and influence the minimum standard that ICAO gives for security by these changes in the regulations, then we can address everyone globally. Because, if you’re not up to ICAO standards, ICAO simply sends out a warning to airlines. And no one flies to your airport. And they do an audit of your airport every five years. And if there is something lacking there again [there’s] not only a warning to all member states ... There’s also a warning to all airlines. And then 99 per cent of airlines will not feel comfortable to fly to [that] airport.

The strength of this pre-emptive bordering capability therefore lies not only in the technology of the audit and its disciplining effects. But how this audit process intersects with and harnesses the power of the market to incentivise change and penalise recalcitrance:

---

252 Krisch (n 17).
253 Chicago Convention (n 231) Article 38.
256 ICAO Resolution A36-20, A36-WP/336 and Plenary Action Sheet No. 3.
257 Interview B.
So you have, like with FATF, an *outside motivator* for states to do this. Because with FATF, it costs a lot of money [*i.e., for non-compliance*]. And with ICAO as the auditor of security standards, it would cost also a lot of money - because airlines would no longer fly there and because reputation is damaged to [both] your airport [and] to your country ... With these technical instruments one can incentivize and coerce. And increase the motivation ... These motivating factors are very, very crucial in implementation. If you don’t have them, then it [ie, *implementing the travel ban*] is still a choice.  

It would therefore be a mistake to read this shift toward technical standardisation as move from the ‘hard’ to the ‘soft’. As global governance scholars have argued, the effects of soft law mechanisms like indicators and best practices are often ‘unlikely to be weaker than they would be in a coercive frame’.  

Auditing is a technology of governance that enables a practice of ‘control of control’. Its products ‘enforced self-regulation’ and thus works to ‘shape the beliefs and conduct of others in desired directions by acting on their will, their circumstances or their environment’ without unduly ‘encroaching on their ‘freedom’’. When list and audit are used in combination with the threat of financial damage they therefore stand to become a very powerful governmental ensemble indeed. This ‘soft’ and technical arrangement ‘may well be more effective in ‘disciplining’ and ‘normalizing’ states than more visible, confrontational exercises of authority’ that once marked the non-compliance debates of Security Council high politics.

*What’s in a List? Inscription, Translation and Pre-emptive Security Governance*  

When the Monitoring Team were created out of the demise of the Monitoring Group, confrontational techniques of ‘naming and shaming’ states to enforce sanctions fell by the wayside. Global listing expertise thereafter adopted an overtly technical focus and concentrated on list administration issues perceived as being less politically contentious. Most literature frames this ‘technical turn’ as something that led UN counterterrorism expertise to be weakened. Yet in this Chapter I have reread this shift and the technicalities of listing expertise that ensued as something profoundly political and legally productive. Doing so required departing from instrumentalist sanctions scholarship and reframing the list as a novel governance technology and important protagonist that assembles this legal domain. This allowed us to take listing expertise out from the shadows cast by the Security Council’s solid authority and revalorise it as a crucially important conduit that creates and extends this form of global security law in practice.

The first site examined how the list and listing expertise are entangled through the project of seeking to know and counter the problem of ‘global terrorism’. We examined how the administration of the list enables a ‘global optic’ to be built and also works to constitute and condition the very object it seeks to target. The ‘consultation meetings’ between UN listing experts and security officials of national states were studied ethnographically as ‘structure-making’ sites that produce the *global* through the technology of the list. By using the ‘equilibrium of possibilities’ diagram as a heuristic device, listing was reappraised as a vector of counter-radicalisation directed towards a far broader threat population than the 257 individuals it targets.  

My analysis shows the list to be both a more hybrid form of law and norm than usually suggested and a powerful device for enrolling a diverse array of actors into

---

258 *Ibid*

259 Krisch [n 17] 15.


263 Krisch [n 17] 15, citing Roele’s work on the CTC (n 79).

264 Correct as of 6 July 2016.
new pre-emptive global security networks. The list is therefore much more than mere instrument and the expertise that administers is anything but insignificant. Showing precisely how - through detailed sociolegal empirical analysis - is crucial if we are to grasp what is novel and powerful about this form of global legal ordering.

The second site of listing expertise examined in this chapter unpacked the seemingly mundane process of list reformatting and interoperability. This is technical work of the kind that ordinarily goes underneath the radar of global governance and legal scholarship. Yet when upon close analysis - without a priori conceptions of global scale, how threats to international security may be legitimately countered or what ‘law’ properly is or ought to be - such processes can be seen as both politically significant and legally productive. According to the common sense view, list reformatting involves taking information from context A and putting into context B - ‘the substantive information is the same’. But my analysis shows that reformatting is a generative process of translation that produces other modes of security listing with quite different spatiotemporal dynamics and governance effects. Rendering the list interoperable with travel data, for example, dramatically broadens it field of intervention. It decouples the travel ban from territorial state borders and enables it to circulate electronically as a deterterritorialised bordering capability. This process expands and stretches what the travel ban can do and enables new security mechanisms to be introduced - not only for individuals on the list but also potentially for the global travelling population as a whole. Transforming listed individuals into ‘inadmissible passengers’ is presented as a relatively minor technical tweak. But building a ‘third hurdle’ is much more than just enhanced list implementation. It is an ambitious and far-reaching global reform project that harnesses technologies of standard setting, auditing and the powers of the market to produce novel coercive effects.

The previous chapter introduced the framework of assemblage, but this chapter has shown some of what it can do when deployed as an analytical tool. Most scholarship on Al-Qaida sanctions takes hierarchical scales of governance for granted - with the global at the top, the regional in the middle and the national and local down below. This chapter has unsettled this assumption by analysing how localised expert practices are mediated through the governing technology of the list in ways that produce large-scale effects and forms of global ordering. That is, by studying ‘the global’ in global security law as an emergent property assembled in different sites connected through listing practices. This has meant adopting a mobile and multi-sited methodology, following the list as an ethnographic object to consultation meetings in North Africa and technical discussions taking place inside ICAO. As Michel Callon and Bruno Latour point out: ‘There are of course macro-actors and micro-actors, but the difference between them is brought about by power relations and the constructions of networks that will elude analysis if we presume a priori that macro-actors are bigger than or superior to micro-actors.’

I have argued in this Chapter that listing technology is a ‘crucial container of practice’ that forges connections and formats relations in particular ways that make global security law powerful and durable. Showing how listing expertise creates a ‘centre of calculation’, however, is not the same as claiming that the Security Council is an all-powerful agent of global control. Because centres are always multiple and contingent upon the ability of powerful actors ‘to successfully enrol and mobilise persons, procedures and artefacts in the

265 Interview B.
267 Callon and Latour (n 45) 280.
268 Bueger 2014 (n 27) 397.
pursuit of its goals’. Studying the list as an assemblage helps to reveal the strengths, but also the weaknesses, of global security law. For as Latour notes, ‘If you cut some underlying structure from its local application, nothing happens … (But) if you cut a structure-making site from its connections, it simply stops being able to structure anything’.270

The relation between counterterrorism expertise and global listing analysed throughout this chapter is something that has been insufficiently studied to date. Whilst scholars like Kennedy and Koskenniemi offer powerful normative critiques of law’s increasing deferral to expertise there remains very little sociolegal empirical research on how expertise actually works to enact and sustain global legal relations. Whilst this chapter has highlighted some of the powerful effects of the Monitoring Team’s everyday technical work, this isn’t easily reducible to a narrative of technocrats seeking to rule the world. As Nikolas Rose and Peter Miller argue, ‘government is a congenitally failing operation: the sublime image of a perfect regulatory machine is internal to the mind of the programmers. The world of programmes is heterogeneous and … complexifies the real, so solutions for one programme tend to be the problems for another’.271

The Monitoring Team are, of course, only one of many bodies assembling this legal domain. The following two chapters continue to explore this theme by examining how divergent forms and figures of expertise are enrolled through problems of the list. And as we will see, these experts also enact novel knowledge practices and forge connections that extend this body of global security law in important ways and do the hard work of holding it stable. Listing expertise is not something that the Monitoring Team retains some monopoly over. Because government is always ‘intrinsically linked to the problems around which it circulates’, listing expertise is as multiple as the tensions and conflicts of the list itself.272

269 Rose and Miller (n 262) 183, 185.
270 Latour (n 10) 176.
271 Ibid, 190
272 Rose and Miller (n 262) 181.