

This article was downloaded by:[Hülse, Rainer]
[Hülse, Rainer]

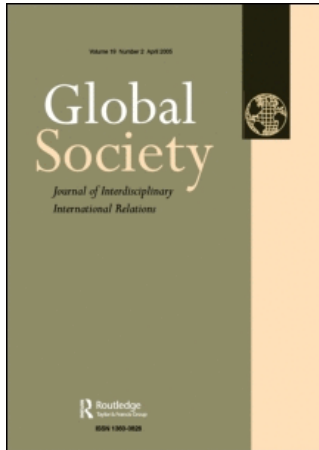
On: 29 May 2007

Access Details: [subscription number 779059605]

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954

Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Global Society

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title-content=t713423373>

Creating Demand for Global Governance: The Making of a Global Money-laundering Problem

To cite this Article: Hülse, Rainer , 'Creating Demand for Global Governance: The Making of a Global Money-laundering Problem ', *Global Society*, 21:2, 155 - 178

To link to this article: DOI: 10.1080/13600820701201731

URL: <http://dx.doi.org/10.1080/13600820701201731>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article maybe used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

© Taylor and Francis 2007

Creating Demand for Global Governance: The Making of a Global Money-laundering Problem*

RAINER HÜLSSE

In most studies on global governance, problems are treated as exogenous factors. Even constructivist global governance approaches normally concentrate on persuasion about global norms and rules, but take the existence of global problems as given. This ignores the fact that it may be necessary to persuade rule addressees of the existence of a problem in the first place. States comply with global rules voluntarily only if they agree that there is a problem. Hence international rule makers have to “problematise” the issue they attempt to regulate, i.e. to construct the issue as a global problem that requires global rules in order to be solved. This article inquires into the why and how of “problematism” by international regulators. To this end it reconstructs how the Financial Action Task Force (FATF) has turned the issue of money-laundering, which was not considered a problem until the late 1980s, into a global problem requiring a global solution.

Introduction

Students of global governance investigate the structures of governance beyond the state.¹ They are interested in how global governance works, especially how rules are set, how compliance with them is achieved and whether a specific set of global rules is effective.² However, the global governance literature is rather silent regarding the social problems to which global rules react. The existence of global problems—and in consequence the demand for global governance—is normally taken as a given. Rather than inquiring into the construction of problems, students of global governance examine the attempts at problem solving, and even most constructivist accounts of global governance are merely problem-solving approaches.

* The empirical part of this article is based on research for a larger project on “Globalisation and the Future of the Nation-state” (Sonderforschungsbereich 536, Deutsche Forschungsgemeinschaft), in which the author was involved. The author would like to thank Phillip Genschel, Edgar Grande, two anonymous reviewers and especially Dieter Kerwer for comments on earlier versions of this text.

1. David Held and Anthony McGrew, “Introduction”, in David Held and Anthony McGrew (eds.), *Governing Globalization: Power, Authority and Global Governance* (Cambridge: Polity Press, 2002), p. 5.

2. For examples of the global governance approach see the edited volume by Held and McGrew, *op. cit.*; for a critical discussion see Martin Hewson and Timothy J. Sinclair (eds.), *Approaches to Global Governance Theory* (Albany, NY: State University of New York Press, 1999).

This article proposes a radical constructivist approach to global governance, and, more specifically, to compliance. It claims that securing voluntary compliance with global rules not only requires persuasion about the rules themselves but also about the problem the rules attempt to solve. Problem persuasion, or “ontological persuasion” as it will be called, is a precondition for rule persuasion or normative persuasion (if there is no pre-existing consensus about the problem). Social problems are not simply out there waiting for politicians to come and solve them. Empirical phenomena exist, but they become meaningful only through us, through our meaning making. Issues are turned into problems through processes of social construction. Consequently, the demand for global governance is not given, but has to be created. With loose reference to the Copenhagen theory of securitisation,³ the process by which an empirical phenomenon is constructed as a political problem is seen as “problematism”.⁴

Take money-laundering, the empirical issue we are dealing with in this article. For a long time criminals had employed all sorts of techniques to clean their “dirty money”. The method preferred in the 1920s, for example, was to mix dirty money with the legal cash earned with laundries—supposedly the origin of the money-laundering metaphor.⁵ While most of what the Mafia did to make money was already considered illegal back then, the laundering of money was not regarded as a problem at the time. It was only in the 1980s that the United States began to consider money-laundering as a problem and eventually declared it a crime. This indicates that the “problem” we are dealing with in this article is not a natural given. Money-laundering is an empirical phenomenon that was “problematized” relatively recently.

Who are the makers of political problems? This article claims that the same actors that create rules are also the creators of problems. In the case of global rules, then, international organisations may be expected to be involved in “problematism”. And indeed, even a brief look at the activities of international organisations shows that they put considerable effort into producing problems by creating, defining and persuading others of the very problems which they then offer to solve. This indicates that the bracketing of problem construction misses out much of the empirical reality of global governance. Why would an international policy maker feel the need to persuade others of the existence of a global problem calling for international regulation if the problem was obvious anyway? Apparently, international policy makers not only make global policies but global problems as well.

The goal of this paper is twofold. On the one hand it wants to show *why* and under what conditions international regulators engage in “problematism”. On the other hand it wants to understand *how* international rule makers create demand for international regulation through “problematism”. To this end

3. See, in particular, Ole Wæver *et al.*, *Identity, Migration and the New Security Agenda in Europe* (London: Pinter, 1993); Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder, CO: Lynne Rienner, 1998).

4. It is important to note, however, that the Copenhagen School’s distinction between “securitisation” and “securitising move” is not adopted here. The latter term describes the presentation of something as an existential threat; however, only if the audience accepts this move can it be called “securitisation”; see Buzan, Wæver and de Wilde, *op. cit.*, p. 25. As audience acceptance is not analysed, here any attempt to create a political problem is called “problematism”, regardless of its success.

5. R.T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy* (Ithaca, NY: Cornell University Press, 2002), p. 137.

the “problematism” efforts of one such international regulator, the Financial Action Task Force (FATF), are analysed. FATF has constructed money-laundering as a problem that necessitates internationally co-ordinated countermeasures. In sum, why and how do international rule makers act as “problematismers”?

To answer this question, in the next section a theoretical argument about why international rule makers under certain conditions engage in “problematism” is developed. The subsequent section introduces the issue of money-laundering, outlines the international attempts to come to grips with it and demonstrates how the international regulatory body, FATF, goes about creating the problem and demand for regulation. Lastly, after a summation of the main points, some tentative conclusions are drawn, with reflections on the possibilities for further research.

Why International Regulators Engage in “Problematism”

This paper wants to direct the attention of global governance scholars to the importance of “problematism”. Why should “problematism” be important? In part because it is an activity of international regulators which can often be observed empirically. If students of global governance are interested in what the actors of global governance are doing, the “problematism” activities should come into their focus quite automatically (why it nevertheless failed to do so will be discussed below). The other and more important reason for why the neglect of “problematism” is a serious failure is theoretical. The compliance debate remains incomplete as long as it does not reflect the role of “problematism” in securing voluntary compliance. Constructivists have convincingly argued that persuasion is one mechanism by which compliance can be secured. However, they have focused on normative persuasion and have largely ignored ontological persuasion. The claim is that (successful) ontological persuasion—or “problematism”—is a precondition for (successful) normative persuasion. A rule addressee is very unlikely to accept rules as legitimate and consequently comply with them voluntarily, if she does not agree that there is a problem to which these rules respond. Hence, international regulators engage in “problematism”, because they will only succeed in persuading others of their rules if they have managed to persuade them of the existence of the problem these rules attempt to solve.

To develop this argument, the principal mechanisms with which compliance can be secured are briefly described. Second, the mechanism for securing compliance emphasised by constructivist scholars—persuasion—is discussed through the argument that the widespread exogenisation of problems indicates a rather thinly understood constructivism. Third, the literature on International Relations (IR) and policy analysis that does consider the making of problems is highlighted. Finally, the main theoretical argument is put forward, namely that “problematism” is a precondition for securing compliance through persuasion.

Three Means for Securing Compliance

For the most part, students of global governance display a functionalist view of the world, where politics is basically about finding solutions to social problems. While in earlier times states took care of this task, globalisation makes it ever more difficult for states to solve their problems on their own. Therefore, they

co-operate with each other and agree on common rules. Whether or not the problems will actually be solved depends not only on the quality of the rule making but also on compliance with the rules. But why do states comply with international rules? There are easy answers to this question in some cases: states that have participated in the rule making may normally be expected to comply because it serves their interests, as otherwise they would not have set up the rules. But even states that have not been involved in the rule-making process may find that compliance is in their own interest and therefore comply. However, things get more complicated—and interesting—if states have not only been excluded from the rule-making process but are also reluctant to comply. How can international regulators make unwilling states follow the rules?

The compliance literature normally distinguishes between three different mechanisms. International regulators force states to comply provided they have the military or economic means. Policy makers can thus coerce unwilling states into compliance by using—or threatening to use—military force or economic sanctions. Second, international regulators may set material incentives for compliance. Again provided they have the means for doing so, international policy makers can try to influence a non-complying country's cost/benefit calculation by giving material incentives for compliance. In consequence, unwilling states would see compliance to be in their material self-interest. Finally, the regulators can secure compliance by persuading the unwilling state that playing by the rules is "the right thing to do". Here, processes of persuasion result in the formerly unwilling state perceiving the norms and rules as legitimate, and hence seeing compliance with the rules as the appropriate behaviour.⁶

How important is "problematization" for each of these mechanisms? The first two mechanisms can do without prior "problematization" of the issue at stake. If an unwilling country follows the rules because it is forced or paid to do so, it is irrelevant whether or not it agrees that there is a policy problem to which the rules respond. Even if the unwilling country disagrees about the empirical phenomenon being a policy problem, it will still comply. This is different if a state complies because it has been persuaded that the rules are legitimate. In this case, accepting the existence of a problem which calls for an international solution is a prerequisite for being persuaded of the norms' legitimacy and hence for compliance.

That said, it is hardly surprising that "problematization" is not much of a topic among rationalist students of international regulation who emphasise the importance of coercion and material incentives for compliance. However, one would certainly expect constructivists, who have pushed the persuasion argument, to deal with problem construction. But have they?

Unproblematic Problems: Thin Constructivism

One would expect the persuasion strand of the compliance literature to have something to say about the construction of problems. So a closer look at the

6. See Ian Hurd, "Legitimacy and Authority in International Politics", *International Organization*, Vol. 53, No. 2 (1999), pp. 379–408; Jeffrey T. Checkel, "Why Comply? Social Learning and European Identity Change", *International Organization*, Vol. 55, No. 3 (2001), pp. 553–588; Jens Steffek, "The Legitimation of International Governance: A Discourse Approach", *European Journal of International Relations*, Vol. 9, No. 2 (2003), pp. 249–275.

constructivist scholarship which has put the “compliance by persuasion” argument on the agenda is in order. But they have not dealt much with “problematization”. However, it is important to note that only a particular kind of constructivism in IR has contributed to this debate, variously called thin, moderate, middle-ground or positivist constructivism. The term “constructivism” is used in this section in its thin version. What a thicker, radical constructivism could contribute to the debate will be demonstrated later in this paper.

Constructivists have tried hard to persuade rationalists that compliance may result not only from force or incentives but also from persuasion. In the latter case compliance is actually voluntary, based on the belief that the rules are legitimate. Hence, in order to achieve compliance with its rules, an international rule maker has to teach or convince (through argument) unwilling countries that in fact the rules are an appropriate standard of behaviour.⁷ The goal is to make the rule addressees believe “that compliance is morally right”.⁸ Note that here persuasion is about rules and norms, whereas it seems to be a background assumption that either rule maker and rule addressee agree on the problem or that this does not matter. Apparently, only normative persuasion is found to matter for securing compliance, but not ontological persuasion.

This is particularly striking as some of the scholars who disregard persuasion in the context of compliance emphasise it in the context of rule setting. Thomas Risse, for example, divides global governance into rule setting and compliance.⁹ He argues that especially during agenda setting (which for him is part of rule setting), persuasion is important and specifies that here persuasion is about framing: “Frames are persuasive, because they shed new light on old questions, because they resonate with people’s previous beliefs, or because they identify a new problem of international governance.”¹⁰ Apparently, the persuasion that there is a problem—“problematization”—is considered important for rule setting. When it comes to compliance, however, ontological persuasion is no longer mentioned. Instead, in order to achieve compliance, “one can engage actors . . . in an arguing process to persuade them of the normative appropriateness of international rules and of the need to accept them as behavioral standards”.¹¹ Here, in order to secure compliance it suffices to persuade the rule addressees of the norms and rules. Why does Risse make such a sharp distinction? One possible explanation could be that he has a governance arrangement in mind, where the rule makers are the same as the rule takers. That he speaks of “voluntary defection”¹² points in this direction, as defection presupposes that originally there has been compliance. In a case where all rule addressees have participated in

7. For teaching and socialisation, respectively, see Checkel, *op. cit.*, and Frank Schimmelfennig, “International Socialization in the New Europe: Rational Action in an Institutional Environment”, *European Journal of International Relations*, Vol. 6, No. 1 (2000), pp. 109–139; for securing compliance by principled debate along the lines of Jürgen Habermas’ theory of communicative action, see Thomas Risse, “‘Let’s Argue!’: Communicative Action in World Politics”, *International Organization*, Vol. 54, No. 1 (2000), pp. 1–39.

8. John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge: Cambridge University Press, 2000), p. 553.

9. Risse, *op. cit.*, p. 20.

10. Thomas Risse, “Global Governance and Communicative Action”, *Government and Opposition*, Vol. 39, No. 2 (2004), p. 302.

11. *Ibid.*, p. 306.

12. *Ibid.*

the rule setting—with the possibility for ontological persuasion—one can, indeed, assume that when it comes to compliance there is already agreement about the problem. However, and this is crucial for this argument, the interest lies in cases where a regulator is trying to secure the compliance of countries that have not participated in the rule-setting process. In such instances, one can hardly assume a shared view of the problem. Thus persuading the rule addresses of the problem will have to be part of securing compliance.

To sum up, the constructivist strand of the compliance literature tends to—in its own jargon—“exogenise” problems, be it that it exogenises them only for the compliance phase or, what is more often the case, for the entire policy process.¹³ Problems appear to be external to the “world of our making”.¹⁴ Obviously, a constructivism thus understood is very thin. It does not take the core claim of constructivist social theory about the “social construction of reality”¹⁵ or the “construction of social reality”¹⁶ very seriously. Instead of asking how the world in which we act has been constructed, how it became intelligible to us, it takes large parts of the world to be unproblematic, as simply being there. The social construction of reality here covers very limited terrain. When actors in international politics try to persuade each other about a certain rule or norm, they are thereby constructing a consensus about how to behave. Only these behavioural standards are the result of social constructions. But the problems to which the standards respond are understood as “facts” upon which to act. Clearly, a constructivism where only rules and norms are a matter of persuasion sets narrow limits to what parts of social reality may be constructed—it is “normativistic”.¹⁷

Why is it that moderate constructivists are negligent of the relation between problem construction and compliance? Moderate constructivists assume a lot more as given than their ontological assumptions would lead us to expect.¹⁸ Broadly speaking, this is a consequence of their desire to explain. In order to do so, one has to exogenise some factors, as otherwise it would be impossible to provide causal explanations. Regarding the compliance literature in particular, the neglect of processes of “problematization” may also have to do with the theoretical debate in which moderate constructivists are involved. In taking policy problems as given, middle-ground constructivists do exactly the same as rationalist students of international regimes and global governance. For regime theorists in particular, problems are simply out there, they are objective facts with which states have to cope. Take, for example, Oran Young, one of the most prominent protagonists of regime theory, who claims that “regimes are almost invariably responses to specific problems”.¹⁹ Or, consider the Tübingen approach of relating the likeliness of regime formation to the structure of the problem, which assumes

13. See Matthias Leonhard Maier, “Politikfelder und Politikimplementationen. Sammelrezension. Ideen und Policies”, *Politische Vierteljahresschrift*, Vol. 42, No. 3 (2001), p. 531.

14. Nicholas Onuf, *A World of Our Making: Rules and Rule in Social Theory and International Relations* (Columbia: University of South Carolina Press, 1989).

15. Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Garden City: Doubleday, 1966).

16. John R. Searle, *The Construction of Social Reality* (New York: Free Press, 1995).

17. Frank Nullmeier, “Interpretative Ansätze in der Politikwissenschaft”, in Arthur Benz and Wolfgang Seibel (eds.), *Theorieentwicklung in der Politikwissenschaft* (Baden-Baden: Nomos, 1997), p. 113.

18. See Rainer Hülsse, *Metaphern der EU-Erweiterung als Konstruktionen europäischer Identität* (Baden-Baden: Nomos, 2003), pp. 14–15.

19. Oran R. Young, *Governance in World Affairs* (Ithaca, NY: Cornell University Press, 1999), p. 6.

that there are objective problems whose structures can be grasped by the scientific observer.²⁰ And note in just how many articles on international regulation the first chapter is entitled “the nature of the problem”.²¹ Indeed, these are rationalist accounts of international regimes where the exogenisation of problems is consistent with its ontology. However, the exogenisation of problems is inconsistent with a constructivist ontology. But if constructivists want to compete with rational approaches, it is an inconsistency they can hardly avoid. It is the price to pay for playing the middle ground. That this price may be too high, as it misses out an important part of the compliance story, will be demonstrated in the following sections.

“Problematization” of Problems: Thick Constructivism

There is more to IR constructivism than the thin variant prominent in the compliance debate. The social construction of structures, actors and problems is precisely what thick—also labelled radical or post-positivist—constructivists are researching.²² With respect to the construction of *problems*, the work of Jutta Weldes, who has reconstructed the making of “The Cuban Problem”²³ as well as the “cultural production of crises”,²⁴ stands out. And in security studies an entire theory has developed around the idea that security problems are not simply out there. The Copenhagen School argues that security threats result from successful “securitising moves”, that is, from the construction of an empirical phenomenon as a security issue.²⁵ Hence, it is certainly not the case that IR constructivism in general takes problems as given. However, those that do problematise problems have largely refrained from getting involved in the rather technical debates on international regulation. Rule compliance is definitely not among radical constructivists’ favourite topics. This is a pity, as thick constructivism has something to offer to the compliance debate. And this article hopes to show what the “value added” of a radical constructivist take on international regulation might be.

While radical constructivism is the main source of inspiration for inquiring into problem construction in this article, it is by no means the only IR approach that problematises problems. There are at least four other approaches. First, there is

20. See Volker Rittberger and Michael Zürn, “Regime Theory: Findings from the Study of East-West Regimes”, *Cooperation and Conflict*, Vol. 36, No. 4 (1991), pp. 165–183.

21. See, for example, Beth A. Simmons, “International Efforts against Money Laundering”, in Dinah Shelton (ed.), *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System* (Oxford: Oxford University Press, 2000), pp. 244–263; Phil Williams, “Crime, Illicit Markets, and Money Laundering”, in P.J. Simmons and Chantal de Jonge Oudrat (eds.), *Managing Global Issues: Lessons Learned* (Washington, DC: Brookings Institution Press, 2001), pp. 106–150.

22. Here, one could cite a list of authors, many of whom would consider themselves to be post-structuralists rather than constructivists. See, for example, Jennifer Milliken, *The Social Construction of the Korean War: Conflict and its Possibilities* (Manchester: Manchester University Press, 2001); Iver B. Neumann, *Uses of the Other: “The East” in European Identity Formation* (Minneapolis: University of Minnesota Press, 1999).

23. Jutta Weldes and Diana Saco, “Making State Action Possible: The United States and the Discursive Construction of ‘The Cuban Problem’, 1960–1994”, *Millennium: Journal of International Studies*, Vol. 25, No. 2 (1996), pp. 361–395.

24. Jutta Weldes, “The Cultural Production of Crises: U.S. Identity and Missiles in Cuba”, in Jutta Weldes et al. (eds.), *Cultures of Insecurity: States, Communities, and the Production of Danger* (Minneapolis: University of Minnesota Press, 1999), pp. 35–62.

25. Buzan, Wæver and de Wilde, *op. cit.*

the communicative action approach already mentioned above. Proponents of “arguing” reflect on the argumentative processes through which actors establish a shared understanding of the situation. On the one hand, this makes for an “endogenisation” of problems, as it asks how actors agree on problem definitions. On the other hand, as shown above, the communicative action approach “exogenises” problems when it comes to compliance. Second, neo-Gramscians criticise the mainstream not least for offering only problem-solving theories which take the world as a given.²⁶ However, their focus is on the power structures which have produced the world problems and not on the creation of the problems itself.²⁷ Third, representatives of the English School have wondered about the “endless debates that take place in the international arena as statesmen try to reach agreement about the *nature of the problems* that they are confronting”.²⁸ However, this presupposes the existence of real problems. For the English School, actors do not create problems but only agree on a certain understanding of a problem. Fourth and most important for our purposes, “problem” has been a main theme in the epistemic community literature. There, it has been argued that knowledge-based experts may be able to frame an issue for debate and influence the policies taken.²⁹ Peter Haas, in his introductory article for the *International Organization* special issue on epistemic communities, specifies that his focus is on the role that epistemic communities “play in articulating the cause-and-effect relationships of complex problems”.³⁰ Note that the existence of “complex problems” is taken as a given, with experts being able to identify the causal mechanisms behind these problems. The “epicom” approach deals with problems which have been recognised as such, but not yet been fully understood. To understand them better and eventually formulate policies about them, we rely on the knowledge of epistemic communities. This is quite different from a thick constructivist approach which asks how an issue is being constituted as a problem in the first place. In contrast, the “epicom” as well as the other approaches touched upon here do not so much theorise the making of political problems but the interpretation of given problems. Certainly, there is a constitutive moment to this as well, as the interpretation accounts for a certain way of seeing things. However, a thick constructivist approach would claim that, first, the construction of problems is about enabling them to be seen at all and only thereafter about a certain way of envisioning them.

Research on global governance draws not only on IR but also on policy analysis. There, the creation of problems is at centre stage—or so one would think. For policy analysts the definition of a policy problem is the first and therefore crucial step in the policy-making process. It is only after the policy makers have defined the problem and put it on the political agenda that they can begin

26. Robert W. Cox, “Social Forces, States and World Orders”, *Millennium: Journal of International Studies*, Vol. 10, No. 2 (1981), pp. 126–155.

27. For example, Stephen Gill, *American Hegemony and the Trilateral Commission* (Cambridge: Cambridge University Press, 1990).

28. Richard Little, “The English School’s Contribution to the Study of International Relations”, *European Journal of International Relations*, Vol. 6, No. 3 (2000), p. 409; emphasis added.

29. Peter M. Haas, “Introduction: Epistemic Communities and International Policy Coordination”, *International Organization*, Vol. 46, No. 1 (1992), pp. 1–35; Emanuel Adler and Peter M. Haas, “Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program”, *International Organization*, Vol. 46, No. 1 (1992), pp. 367–390.

30. Haas, *op. cit.*, p. 2.

formulating ideas about how to solve it. Yet most empirical policy analyses do not begin with a reconstruction of the problem definition, but rather with the next step, agenda setting.³¹ As is the case with many of their colleagues in IR, policy analysts assume a problem to be given, thus excluding from their studies what radical constructivists consider the most interesting part of policy making.

However, there are exceptions as well. Still rather thinly constructivist, but taking into account that problems are not always self-evident, is the advocacy coalition approach.³² Likewise, frame approaches tackle the question of how policy makers categorise and define social problems, but they presuppose the existence of problems.³³ Authors at the margins of policy analysis deploy a thicker constructivism. Barbara Nelson's reconstruction of how child abuse has been made an issue is a good example for policy analysis that really endogenises problems,³⁴ and so is Carol Bacchi's "What's the problem-approach" and its application to women's inequality.³⁵ Markus Jachtenfuchs³⁶ and Martin Hajer, both of whom have conceptualised policy making "as the creation of policy-problems",³⁷ are half-way between policy analysis and IR. These exceptions notwithstanding, it is hardly an exaggeration that the mainstream of policy analysis conceptualises policy problems as an exogenous factor. Policy making is understood to be about solving problems, not about making them.³⁸

Why There Can Be No Normative Persuasion without "Problematisation"

John Braithwaite and Peter Drahos write with respect to global warming that "Issue definition is the first form of persuasion delivered by dialogic webs that is a prerequisite for a global regime. Before there can be a global-warming regime, global warming needs to be defined as a problem that requires action by the key actors in the world system."³⁹ Apparently, persuasion about what reality looks like and where the problems are—problem persuasion or

31. Even the research that does investigate the problem definition phase of the policy cycle does not fully satisfy more radical policy analysts. Carol Lee Bacchi criticises such work for still falling short of endogenising the problem as the existence of objective problems is assumed. Definitions may vary somewhat, but the problem nevertheless remains the same. Radical approaches, like her own, emphasise that problems are created before they can be defined; see Carol Lee Bacchi, *Women, Policy and Politics: The Construction of Policy Problems* (London: Sage, 1999), p. 20.

32. See Paul Sabatier, "An Advocacy Coalition Framework of Policy Change and the Role of Policy-oriented Learning Therein", *Policy Sciences*, Vol. 21 (1988), pp. 129–168; Paul Sabatier and Hank Jenkins-Smith (eds.), *Policy Change and Learning: An Advocacy Coalition Approach* (Boulder, CO: Westview Press, 1993).

33. See, for example, J.R. Gusfield, *The Culture of Public Problems: Drinking—Driving and the Symbolic Order* (Chicago: University of Chicago Press, 1981).

34. Barbara Nelson, *Making an Issue of Child Abuse: Political Agenda Setting for Social Problems* (Chicago: University of Chicago Press, 1984).

35. Bacchi, *op. cit.*

36. Markus Jachtenfuchs, *International Policy-making as a Learning Process? The European Union and the Greenhouse Effect* (Aldershot: Avebury, 1996).

37. Marteen A. Hajer, *The Politics of Environmental Discourse: Ecological Modernization and the Policy Process* (Oxford: Oxford University Press, 1995), p. 15.

38. Herbert Gottweis, "Post-positivistische Zugänge in der Policy-Forschung", in Matthias Leonhard Maier *et al.* (eds.), *Politik als Lernprozess? Wissenszentrierte Ansätze in der Politikanalyse* (Opladen: Leske + Budrich, 2003), p. 133.

39. Braithwaite and Drahos, *op. cit.*, p. 553.

“problematisation”—precedes persuasion about norms and rules—rule persuasion. This is exactly the claim of this article. This section serves to substantiate this claim. Why is “problematisation”—constructing an issue as a problem—a precondition for rule persuasion and hence for voluntary compliance? This entails first a general, then a more specific answer.

The general answer is the straightforward one of convincing someone that one’s rules and norms can only work if the other shares—to a certain extent at least—one’s own perception of the situation. The other will comply with one’s rules voluntarily only if she agrees that there is a problem to which these rules respond. How could the other come to understand that compliance with these rules is “the right thing to do”, if she does not understand the reason why these rules have been set up in the first place? Hence, in order to make rule addressees follow its rules, a policy maker first of all has to persuade them that there is a problem. An issue has to be constituted as a general problem, affecting rule maker and rule taker alike—it has to be “problematised”.

The specific answer to the question as to why “problematisation” is a necessary requirement for rule persuasion links up to a particular concept of legitimacy that is employed widely in the compliance debate. According to constructivists, compliance may be an effect of processes of persuasion. States follow rules even if they have not been involved in the rule making, if they believe this to be “the right thing to do”. But what is it that makes rules legitimate? To answer this question, many students of international regulation⁴⁰ refer to a concept of legitimacy introduced by Fritz Scharpf concerning the distinction between input and output legitimacy.⁴¹

Input legitimacy describes the traditional understanding that rules are conceived as legitimate because the rule making has followed roughly democratic procedures, if not through representation of all those affected by the rules, at least through some sort of inclusion in the rule-making process. Participation is the key point here. Legitimacy is a function of the input to the political process, hence the term input legitimacy. However, many international rules, including the anti-money laundering standards, are characterised precisely by a severe lack of input legitimacy. They are exclusive rules set up by a small group of states but intended for global application. The making of this kind of rule follows the “club model”⁴² of international organisation. Club organisations are good at making tough rules, as the few members have a common interest in tackling a certain problem. But due to the club’s exclusivity it will hardly be seen as a legitimate policy-making body by those states that do not belong to the club. With a majority of states having been excluded from the rule-making process, the rules lack input legitimacy. How can they still be accepted as legitimate by the excluded states?

This is where Scharpf’s idea of output legitimacy comes in. Exclusive rules can be legitimate if they are conceived as actually solving the problem they are meant to solve, that is, if the rules are effective. In this case, legitimacy stems not from the

40. See, for example, Robert O. Keohane and Joseph S. Nye Jr, “The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy”, in Robert O. Keohane (ed.), *Power and Governance in a Partially Globalized World* (London: Routledge, 2002), pp. 219–244.

41. Fritz W. Scharpf, *Governing in Europe. Effective and Democratic?* (Oxford: Oxford University Press, 1999).

42. Keohane and Nye, *op. cit.*

input side but from the rules' output. Despite having been excluded from the rule-making process, someone may perceive compliance with the rules to be "the right thing to do", if she is convinced that these rules are capable of solving her policy problems. Effectiveness provides output legitimacy.

But how do you know whether rules are effective? For rationalist students of compliance this is a matter of measuring. Scientific analysts can find out how effective a given set of rules is. In fact, there is much debate about how best to measure effectiveness and there is a lot of empirical work on the effectiveness of specific sets of rules.⁴³ The problem with this approach to effectiveness, however, is that it misunderstands for what effectiveness is important. For compliance, it does not matter whether or not political (or other) scientists judge rules as effective, at least not directly. It matters only if the rule addressees perceive the rules as solving their problems, as they would then see them as (output) legitimate. Legitimacy is something attributed to an institution or to rules by the rule addressees; it is a social construction.⁴⁴ This is why effectiveness and legitimacy can be debated—and possibly become objects of persuasion. The international regulator tries to persuade rule addresses that its rules are effective.

How can a rule maker persuade rule takers of its rules' effectiveness? Ideally, she refers to data. By pointing to scientific studies that show that a given set of rules is effective, the regulator makes a claim as to the rules' objective problem solving. Rule takers are likely, though not certain, to be impressed. Hence, it is not argued that scientific measures of effectiveness are irrelevant altogether, but that they become relevant only if rule addressees process the data. "Objective" measures of effectiveness matter only indirectly. However, the actual difficulty lies elsewhere. More often than not, there are no data to prove effectiveness. In fact, such data frequently cannot exist, as for the rules to become effective it is necessary that compliance has already been achieved. Usually, effectiveness is the result of compliance, and hence it can neither be measured prior to compliance nor can it logically motivate compliance.

Accordingly, it will be a difficult task for an international regulator to claim output legitimacy prior to compliance. What is left is persuasive guesses about the future. The international regulator will try to persuade rule takers that its rules are capable of solving the rule takers' problems, under the condition that they comply. Persuasion will be about possible future outcomes. If the regulator succeeds, the rule takers will judge those rules legitimate and hence compliance as the appropriate behaviour. It is easy to see why "problematisation" is a precondition for rule persuasion here. Rule persuasion is about convincing rule addressees that the given rules are able to solve something that rule makers and rule takers alike experience to be a problem. If the regulators have not managed to persuade the addressees of there being a problem, it will be impossible for them to argue for their rules' output legitimacy. Their rules would perhaps solve a

43. See, for example, the discussion on the effectiveness of environmental regimes in the edited volumes by Peter M. Haas, Robert O. Keohane and Marc A. Levy (eds.), *Institutions for the Earth: Sources of Effective International Environmental Protection* (Cambridge, MA: MIT Press, 1993), and Oran R. Young (ed.), *The Effectiveness of International Environmental Regimes: The Causal Connections and Behavioral Mechanisms* (Cambridge, MA: MIT Press, 1999).

44. Michael Barnett and Martha Finnemore, "The Power of Liberal International Organizations", in Michael Barnett and Raymond Duvall (eds.), *Power in Global Governance* (Cambridge: Cambridge University Press, 2005), p. 169; Hurd, *op. cit.*, p. 381.

problem, but not necessarily the addressee's problem. This is why the distinction between two components of persuasion—ontological persuasion (“problematization”) and normative persuasion—does indeed make sense.⁴⁵ It is impossible to persuade someone of the legitimacy of exclusive rules without having persuaded him or her of there being a problem in need of regulation beforehand.

This last section has explored—from a theoretical perspective—the reasons why international policy makers might have for acting as “problematizers”. We have shown that securing compliance by way of persuasion necessarily includes persuasion about the issue being a problem. Hence, an analysis of processes of persuasion remains incomplete if it does not take account of “problematization”. Understanding how “problematization” works in practice is the goal of the next section.

How “Problematization” Works: The Case of Money-laundering

Understanding the reasons behind international regulators' “problematization” activities is one thing, knowing how they are going about it is another. How does “problematization” actually work? This is an empirical question and we therefore turn to an empirical case to find out—the case of money-laundering.

Money-laundering is an old practice with a “classical” period during the 1920s, when Al Capone used laundrettes to wash his money.⁴⁶ However, money-laundering was not considered a crime until quite recently. Only in 1986, in the context of the “war on drugs”, did the United States become the first country in the world to criminalise money-laundering. It then pressed its G7 partners to join the fight against money-laundering and together, in 1989, they founded the Financial Action Task Force (FATF). Only a year after its foundation FATF published 40 Recommendations against money-laundering, which in a revised version and supplemented by the Nine Special Recommendations on Terrorist Financing still serve as *the* international anti-money-laundering rules.⁴⁷ FATF is the key international regulator in this field. Though nominally only a temporary task force, in fact it fulfils the criteria of an intergovernmental organisation. It is also a somewhat exclusive organisation; until the late 1990s membership was restricted basically to OECD countries. Since then a few additional members

45. Of course, this distinction is an analytical and therefore an artificial one. In actual discourse, the two will often appear together. Normative persuasion, for example, also re-constructs the problem to which the rules respond, because arguing the effectiveness of rules entails the (re-)construction of the problem itself. If an international regulator claims that a specific rule is capable of solving the problem shared by regulator and rule addressee, it automatically reproduces the problem.

46. For a brief history of money-laundering see Naylor, *op. cit.*, pp. 134–137; for the following description of global governance in the realm of money-laundering see, in particular, Eric Helleiner, “State Power and the Regulation of Illicit Activity in Global Finance”, in Richard H. Freeman and Peter Andreas (eds.), *The Illicit Global Economy and State Power* (Lanham: Rowman & Littlefield, 1999), pp. 53–90; Beth A. Simmons, “International Efforts against Money-laundering”, *op. cit.*; Beth A. Simmons, “The International Politics of Harmonization: The Case of Capital Market Regulation”, *International Organization*, Vol. 55, No. 3 (2001), pp. 589–620; Wolfgang H. Reinicke, *Global Public Policy: Governing without Government* (Washington, DC: Brookings Institutions Press, 1998), pp. 156–172; Phil Williams and Gregory Baudin-O'Hayon, “Global Governance, Transnational Organized Crime and Money Laundering”, in David Held and Anthony Mc Grew (eds.), *Governing Globalization: Power, Authority and Global Governance* (Cambridge: Cambridge University Press, 2002), pp. 127–144.

47. The first and principal of FATF's recommendations is that states ought to criminalise money-laundering. Another important Recommendation is the fourth, which prescribes that banking secrecy laws should not inhibit the implementation of the 40 Recommendations.

have been accepted, and the organisation now counts 31 member states. Its members have to translate the Recommendations into national law; if they fail to do so, then FATF may apply sanctions.⁴⁸ FATF also promotes its 40 Recommendations as a model for anti-money-laundering legislation beyond the confines of its own members. It wants its rules to become global rules, not just rules that are followed in the FATF world.

In order to secure compliance of non-members FATF relies on a mixture of coercion and persuasion. Until the late 1990s persuasion was the dominant mode of securing compliance, but FATF then changed its strategy and took a tougher stance. In 2000 it published a blacklist of countries that did not comply with FATF's rules.⁴⁹ This blacklist has arguably been quite successful. Most of the blacklisted countries have since taken anti-money-laundering measures and as a consequence have been removed from the list. However, the blacklist raised considerable controversy, especially since the IMF and the World Bank were against a coercive approach. As a consequence, the practice of blacklisting has been suspended, no new countries have been added to the list since 2002. FATF has backed down from securing compliance by coercion. While FATF has never entirely given up its efforts to persuade unwilling countries that its Recommendations are legitimate, even during its coercive period between 2000 and 2002, after 2002 persuasion once again became FATF's principal strategy. Hence the money-laundering case, except for a brief intermediate phase, exemplifies the kind of situation our theoretical argument aims at, namely that there is a rule maker who wants to secure *voluntary* compliance with its rules by actors who have not participated in the making of those rules.

This article inquires into the mechanisms of "problematism". As argued above, "problematism" is a precondition for successful persuasion and since persuasion is a key means by which FATF is trying to secure compliance with its rules, one would expect this to be a good case to observe "problematism" empirically.

What is FATF doing to "problematise" money-laundering, that is, to construct it as a global problem that requires a global solution? The answer in brief—FATF talks, it talks the problem into existence. For this talk to be possible, FATF has set up institutions where talk can take place. Most importantly, FATF talks through its publicly available Annual Reports (the main source of information in this study). FATF communicates its constructions of reality in the meetings of the various regional anti-money-laundering organisations, all of which have been established as a result of FATF's initiative and most of which depend heavily on FATF's financial and technical support. Similarly, allowing other international organisations to attend FATF meetings, a practice institutionalised by granting these countries observer status, gives FATF the possibility for ontological persuasion. Moreover, FATF's organisation of seminars and conferences for "teaching" (anti-)money-laundering to non-member countries and also to non-state actors such as banks may be interpreted as the creation of institutions

48. These range from issuing a warning letter to the expulsion from the organisation. However, performance of FATF members proved to be fairly good and FATF hardly ever needed to threaten the use of sanctions.

49. For an excellent account of FATF's blacklisting see J.C. Sharman, "The Global Anti-money Laundering Regime and Developing Countries: Damned if they Do, Damned if they Don't?", Paper presented at the Annual Meeting of the International Studies Association, San Diego, California, 22–25 March 2006.

which enable FATF to “problematise” money-laundering. All of these institutions provide forums in which “problematism” can take place.

“Problematism” is thus a discursive strategy. In order to understand exactly how “problematism” works, one has to analyse discourse rather than the institutional frame.⁵⁰ The next task is to understand exactly how money-laundering has been discursively constructed by analysing FATF’s contributions to the money-laundering discourse. This is, of course, a relatively narrow focus, as many other actors participate in this discourse as well as other international organisations including the IMF, the World Bank, the BIS or the European Union, private actors especially from the banking industry and last, but not least, states. However, considering that our interest is with how international regulators can secure voluntary compliance with their rules, the focus on FATF, *the* international regulator in this field, makes perfect sense.

In order to understand the discursive mechanisms behind “problematism”, FATF’s Annual Reports as well as other publications on its website have been analysed.⁵¹ Against this background different discursive moves have been identified, which together account for FATF’s “problematism” of money-laundering. FATF constructs money-laundering as a global phenomenon, turns the phenomenon into a problem and into an international problem necessitating an international solution. Although they will be presented in a logical order, there is no implication that there is a strict chronology to how FATF “problematism” money-laundering. The distinction between three discursive moves is analytical and hence artificial. In “reality”, rather than taking one discursive step after another, often money-laundering will be constructed simultaneously as a global phenomenon and as a problem that requires international regulation. But in order to understand better the components of discursive “problematism” the analytical distinction is nonetheless helpful.

Creating Globalness

FATF’s first discursive “problematism” move is to construct money-laundering as a phenomenon to be encountered anywhere around the globe. Though FATF is an exclusive body originally set up to co-ordinate anti-money-laundering measures of its members, it stated very early that it is aware of the “world-wide nature of the problem”⁵² and warned that it would be illusionary to believe that money-laundering happens only in FATF countries: “No country is immune from the risk of being penetrated by money-launderers.”⁵³ This discursive move makes sure that money-laundering is not (mis-)understood as something that happens only in FATF countries and never outside FATF. By pointing to the omnipresence of money-laundering, FATF constructed money-laundering as a global phenomenon; it created globalness.

But how can the mere declaration of money-laundering being a worldwide phenomenon have an impact? Will the rest of the world accept such a definition

50. Again, there is a parallel to securitisation theory, which analyses security by analysing discourse; see Buzan, Wæver and de Wilde, *op. cit.*, p. 25.

51. For the website see <http://www.fatf-gafi.org> (accessed 18 September 2006).

52. FATF Annual Report 1993–1994, p. 19; hereinafter, in the footnotes, FATF Annual Reports are quoted as AR.

53. AR 1991–1992, p. 29.

of the situation? Although it is not possible within the framework of this study to determine whether the others will actually accept that definition, there is good reason to assume that FATF's construction will not go unheard. FATF is the principal actor in the institutional framework of anti-money-laundering and it is mandated by the richest countries of the world. As FATF is the only international organisation dealing exclusively with money-laundering, the rest of the world cannot ignore what FATF is saying about money-laundering. Furthermore, FATF draws on expert knowledge and can thus present its construction of money-laundering as an objective description based on expertise.⁵⁴ All this makes it extremely difficult for other countries to put FATF's view in doubt. FATF dominates both the institutional framework of anti-money-laundering and also—as a consequence—the discourse of anti-money-laundering. FATF, more than any other actor, is the discourse's authoritative voice. Hence it has a good chance to assert its construction of reality on the others. FATF's way of seeing money-laundering certainly can be and actually is challenged, but it nonetheless is the most powerful construction of the world of money-laundering and to a large extent it shapes how we perceive the phenomenon.

We can safely assume that FATF's construction of money-laundering being a global phenomenon instead of only a Western one becomes more compelling if FATF provides explanations for why this is the case. Indeed, we can find justifications by FATF for why it considers money-laundering a worldwide practice. One is that "as money laundering is a necessary consequence of almost all profit generating crime, it can occur practically anywhere in the world".⁵⁵ In other words, money-laundering may happen everywhere, because crime is everywhere. The ubiquity of crime results in the ubiquity of money-laundering. Another argument bears a similar logic. "As all countries linked to the international financial system are at least potentially capable of being infiltrated by illicit funds, money laundering is of course not a problem restricted to FATF members."⁵⁶ Here, the globalness of money-laundering is constructed to be a consequence of the globalisation of the financial system. Money, dirty and clean, is finance, and the globalisation of finance enables both sorts of money to flow rapidly and extensively.

To substantiate its point about the worldwide nature of money-laundering, FATF singles out specific types of countries and regions outside FATF and claims that they are targeted by money-launderers. Offshore states, in particular, are said to be affected. "Because of their status as lightly regulated offshore havens with sophisticated financial sectors and favourable tax regimes, some jurisdictions have attracted unwelcome flows of illegal money."⁵⁷ However, this may be a rather weak argument, as no one will be surprised that they are not only tax havens but also money-laundering havens. For FATF to persuade non-members of the globalness of money-laundering, it has to establish money-laundering as something that also occurs—or can occur in principle—in less likely places. And FATF does this. For example, it states that countries in Central and Eastern Europe "present an increasingly attractive target for money launderers as they

54. Jonathan M. Winer, *Illicit Finance and Global Conflict*, Fafo-Report 380 (2002), Fafo Institute for Applied Sciences, p. 44; available: <http://www.fafo.no/pub/rapp/380/380.pdf> (accessed 18 September 2006).

55. FATF/OECD Policy Brief (1999), p. 2; available: <http://www.fatf-gafi.org/dataoecd/32/26/34047538.pdf> (accessed 18 September 2006).

56. AR 1995–1996, p. 10.

57. AR 1991–1992, Annex, p. 31.

liberalise their economic and financial systems”,⁵⁸ an assumption FATF finds confirmed some years later when it reports that “with regard to the situation outside the FATF membership, the most notable trend was the increase of money laundering stemming from the former Soviet Union and Eastern Bloc”.⁵⁹ But FATF constructs money-laundering to be even more extensive, claiming that it is on the rise in Asia and South America.⁶⁰ Even Africa, not exactly a major financial centre, is constructed to be far from safe. “A third group of countries includes those where there is as yet no money laundering problem, but where the local systems are insufficiently developed so that they might be targeted by money launderers driven out of other jurisdictions. Many African countries fall into this category.”⁶¹

In sum, we can note that FATF constructs money-laundering as a phenomenon that is encountered worldwide. Assuming that the rest of the world agrees with this construction of reality, this is not to say that the rest takes money-laundering to be problematic. In fact, there are many phenomena that occur globally, but which we do not consider to be problems—such as sunshine or football. However, in order to get non-members to secure voluntary compliance with its rules, FATF needs to persuade unwilling countries that money-laundering is not only a worldwide phenomenon but also that it poses a serious threat. It has to “problematise” money-laundering.

Creating the Problem

The second discursive move is to turn the phenomenon into a problem: money-laundering not only exists but is also problematic! But how exactly does the creation of a money-laundering problem—the central component of “problematization”—work? For analytical purposes, we can distinguish three rhetorical techniques, all of which contribute to turning the money-laundering phenomenon into a problem: declamation, objectivation, explanation.

Declamation. A simple claim by FATF, for example, that money-laundering is global makes for a powerful construction of money-laundering, as FATF occupies a dominant discourse position. This holds true not only for FATF stating that money-laundering is a ubiquitous phenomenon but also for its saying that money-laundering is a problem. Indeed, FATF’s Annual Reports constantly frame money-laundering as a problem. Rarely do we find the term “money-laundering” standing alone; most of the times it is linked directly to the term “problem”. The Annual Reports normally do not refer simply to “money-laundering” but to the “money-laundering problem”⁶² or even more briefly to “the problem”.⁶³ The constant combination of “money-laundering” and “problem” in FATF’s Annual Reports is already an important contribution towards establishing the view that money-laundering is a problem. Thanks to its dominant discourse position, FATF does not always need to justify its claims, as the others are not necessarily capable of distinguishing FATF’s truth claims

58. AR 1992–1993, p. 21.

59. AR 1995–1996, p. 10.

60. AR 1993–1994, p. 19; AR 1996–1997, p. 7.

61. AR 1991–1992, Annex, p. 31.

62. AR 1993–1996, p. 6.

63. AR 1991–1992, p. 31.

from truth. The mere statement in this case may contribute to constituting money-laundering as a problem.⁶⁴

*Objectivation.*⁶⁵ A second technique with which FATF has turned money-laundering into a problem is its use of “awareness-raising” rhetoric, through which the problem is objectified. The Annual Reports of the first half of the 1990s are replete with it. For example, FATF argued that it wanted “to promote awareness of the laundering problem”,⁶⁶ and declared that there is “the need to raise awareness of the problems of money laundering”.⁶⁷ FATF, in fact, understood “raising awareness of the nature and the scope of the problem”⁶⁸ to be the initial stage of getting non-members to adopt the 40 Recommendations. This not only supports the assertion that ontological persuasion precedes normative persuasion but also indicates that FATF knew that it had to engage in “problematization”—FATF was a reflexive “problematizer”.

More important here, the awareness rhetoric makes for an objectivation of the money-laundering problem.⁶⁹ Arguing that one can be aware of something implies that the something does indeed exist. It is an objective fact of which one can either be aware or not. Consequently, if FATF declares that it is “raising awareness of the money-laundering problem”⁷⁰ it constitutes money-laundering as an objective problem. The problem does exist, regardless of whether or not states are aware of it. Hence FATF does not and cannot debate with others as to whether or not money-laundering constitutes a problem; FATF can only raise awareness of it, opening others’ eyes and helping them see the world as it “really” is. This shows how the use of a certain vocabulary is by no means innocent, but constructs reality in a certain way—in this case it objectifies the problem of money-laundering.

By employing awareness rhetoric, “problematization” continued even after the original goal had been achieved. In the mid-1990s the Annual Reports no longer formulated the goal of raising awareness of the problem, but instead concluded that the goal had now been accomplished. “In the international community as a whole, there is now a global awareness of the threat posed by money laundering.”⁷¹ Two years later it confirmed that “the results achieved in terms of global awareness of the money laundering phenomenon and the need to combat it, are undoubtedly satisfactory”.⁷² By declaring its awareness-raising mission as accomplished, FATF continues to objectify the problem of money-laundering. It insinuates that what was once regarded as a problem only in the OECD world is now understood to be a problem far beyond that world. It is the entire world that has become aware of the money-laundering problem. By representing the

64. Similar to my understanding of how declamation matters for the social construction of problems, securitisation theory argues that speech acts are central to the process of “securitising”; see Buzan, Wæver and de Wilde, *op. cit.*, p. 26.

65. This term, of course, is borrowed from Peter Berger and Thomas Luckmann, who have brilliantly described the role of “objectivation” for the social construction of reality; see Berger and Luckmann, *op. cit.*

66. AR 1993–1994, p. 6.

67. AR 1991–1992, p. 31.

68. AR 1991–1992, p. 31.

69. Here, we are dealing only with the way in which FATF’s language use constitutes objectivity. This is not to deny that other practices are important in this respect, too. FATF’s inclusion of experts is one such practice.

70. AR 1992–1993, p. 22.

71. AR 1994–1995, p. 24.

72. AR 1996–1997, p. 22

perception that money-laundering constitutes a problem as consensual, FATF objectifies these perceptions. If money-laundering is no longer something only FATF-members worry about, but the entire world is concerned with, there must be something to it.

FATF's trick, if you like, is to pass off its own construction of money-laundering as everyone's. With a reality taking shape, where general agreement is assumed about money-laundering constituting a severe threat to the world, it becomes extremely difficult to communicate an alternative view. If a country were to stand up to challenge the view that money-laundering is a threat, it would now no longer argue only against FATF but also against the entire world. Doubting that money-laundering is a problem would mean questioning the perceptions of everyone else. In brief, by reporting that the whole world considers money-laundering a severe problem, FATF makes it virtually impossible to articulate a deviant point of view, or in fact even to think about seeing things differently. The alleged consensus turns into a self-fulfilling prophecy.

Just to be very clear here, the point is not whether it is true that all countries already shared FATF's problem perception in 1995, since Beth Simmons, for example, does not see much of such an awareness in East Asia even in 2001⁷³ and FATF itself recently found it necessary—once again—to “raise AML/CFT awareness in various regions of the world”.⁷⁴ Instead, the argument is that FATF saying this to be the case at the time sufficed to construct at least the idea of a global consensus about the problem and hence created the need and legitimacy for doing something about it.

Explanation. The better justified the claim about money-laundering's globalness, the more it is convincing. The same, of course, holds true for FATF's claim that money-laundering is a problem. Indeed, the Annual Reports provide several explanations for why money-laundering is problematic and even threatening, some of which are general explanations while others are tailor-made for specific regions or types of countries.

To begin with the general explanation, originally FATF, following the US motivation for tackling money-laundering in the mid-1980s, justified the “problematization” only on the grounds that, supposedly, money-laundering is part of the problem of drug-related crime.⁷⁵ Consequently, only the proceeds of drugs sales were considered dirty money. During the 1990s the “problematization” was expanded. Money-laundering was “problematized” no longer solely with reference to the drugs trade but also to any kind of crime-involved money-laundering.⁷⁶ By the end of the 1990s measures against money-laundering were considered to be crucial for fighting transnational organised crime—a major security obsession in the 1990s.⁷⁷ In this context, the consequences of organised crime were described

73. Simmons, “The International Politics of Harmonization”, *op. cit.*, p. 608.

74. AR 2003–2004, p. 19.

75. AR 1989–1990, pp. 3–4.

76. AR 1995–1996, p. 7.

77. See Michael Woodiwiss, “Transnational Organized Crime: The Strange Career of an American Concept”, in Margaret Beare (ed.), *Critical Reflections on Transnational Organized Crime, Money Laundering and Corruption* (Toronto: University of Toronto Press, 2003), pp. 3–34. The construction of “transnational organized crime” as a major security threat after 1990 is itself a highly interesting subject. For a Foucauldian approach to this see Adam Edwards and Peter Gill, “The Politics of ‘Transnational Organized Crime’: Discourse, Reflexivity and the Narration of ‘Threat’”, *British Journal of Politics and International Relations*, Vol. 4, No. 2 (2002), pp. 245–270.

quite drastically. "The economic and political influence of criminal organisations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society."⁷⁸ This constructed money-laundering as a threat to democracy. But this was not enough; financial stability was found to be in danger as well. "Money-laundering is a threat to the good functioning of a financial system."⁷⁹ Moreover, the "problematism"—in fact "securitisation"—came to a head shortly after 11 September 2001, when a new construction of money-laundering took shape.⁸⁰ Now, dirty money was no longer only money resulting from criminal activity in the past but was to include money to be used for terrorist activities in the future.⁸¹ Money-laundering was constructed potentially as facilitating terrorism.⁸² This move of applying the powerful signifier "terrorism" to money-laundering can be expected to be particularly effective in establishing money-laundering as a problem—to deny that money-laundering is a policy problem now comes close to denying that terrorism is a problem.

Summing up this point, FATF makes money-laundering a problem by firmly linking it to other, arguably better established political problems, such as crime and terrorism. The "problematism" of money-laundering is justified on the grounds that it is something of a meta-crime behind organised crime and terrorism. This brief history of the changing explanations for why there is a money-laundering *problem* sustains our central claim that, rather than being objective facts, policy problems are the result of social constructions. Until the 1980s money-laundering was but an empirical phenomenon no one really cared about; since then—on the grounds of changing explanations—it has been turned into a problem, a crime and even a major security threat.

Besides these general arguments about why money-laundering is a problem for the entire world, FATF has also developed arguments as to why some countries should be particularly concerned. Repeatedly, FATF has dealt with the topic of offshore states. The difficulty for FATF was to find an explanation as to why money-laundering poses a problem for states which obviously profit from money-laundering. In fact, FATF at first concedes that "motivations for this [anti-money-laundering] reluctance are generally easy to understand".⁸³ But then FATF argues that this motivation is based on a short-term calculation. If reluctant countries were to employ a longer time frame they would see that "a money laundering operation, once detected, can put at risk the whole financial system in these countries or territories, through the loss of credibility and confidence".⁸⁴ Because, from FATF's point of view, every country has an interest in having a "clean reputation",⁸⁵ it should be in everyone's interest to take

78. FATF/OECD Policy Brief, *op. cit.*, p. 3.

79. *Ibid.*

80. Thomas Biersteker, "Targeting Terrorist Finance: The New Challenges of Financial Market Globalization", in Ken Booth and Tim Dunne (eds.), *Worlds in Collision: Terror and the Future of Global Order* (Basingstoke: Palgrave Macmillan, 2002), pp. 74–82; Armand Kersten, "Financing of Terrorism—A Predicate Offense to Money Laundering?", in Mark Pieth (ed.), *Financing Terrorism* (Dordrecht: Kluwer, 2002), pp. 49–56; Jonathan M. Winer and Trifin J. Roule, "Fighting Terrorist Finance", *Survival*, Vol. 44, No. 3 (2002), pp. 87–104.

81. Williams and Baudin-O'Hayon, *op. cit.*, p. 138.

82. AR 2001–2002, p. 1.

83. AR 1990–1991, p. 16.

84. AR 1990–1991, p. 16.

85. AR 1991–1992, p. 17.

anti-money-laundering measures. As a bad reputation may indeed be expected to harm the economic interests of offshore states, at least in the long run, pointing to the link between money-laundering and reputation contributes to the “problematization” of money-laundering.

The reputational argument, however, also gives an insight into the way power is playing out in discourse. It is only through FATF’s definition of money-laundering being a crime that money-laundering operations may become a credibility threat for states in the first place. If FATF had not put money-laundering on the list of global evils, financial systems could not become accomplices of criminal action. It is due to FATF’s power of definition that some states’ financial systems may lose credibility and, resulting from that, its customers may lose their confidence. It is FATF’s “problematization” of money-laundering that assigns reputation. Money-laundering in itself does not make for a bad reputation, only FATF constructing money-laundering as a global problem does that.

Not only financial havens but also developing countries are the addressees of a related argument used by FATF to explain why money-laundering is a problem. FATF admits that developing countries “cannot afford to be too selective about the sources of capital they attract”.⁸⁶ At the same time, it warns that low standards will attract organised crime, damaging the country’s reputation and finally causing a “damping effect on foreign direct investment”.⁸⁷ As foreign direct investment is seen to be a crucial factor for development, money-laundering is constructed here as a threat not only to a country’s financial sector but to its economic development as a whole. FATF explains money-laundering to be—for the developing world—mainly an economic problem.

To sum up this last point, FATF justified its “problematization” of money-laundering by arguing that it is a danger for the world as a whole as it enables crime and terrorism, and that it is detrimental even for those countries that seem to profit from it as it harms their long-term economic interests. FATF thus constructed anti-money-laundering as a matter of utmost national interest worldwide.

Creating Demand for International Regulation

FATF, as has been argued thus far, has constructed money-laundering as a problematic global phenomenon. This, however, does not yet answer the question about how best to cope with that problem. The term global has been used to indicate that the phenomenon may be observed not only in one place but anywhere around the world. However, if FATF wants to persuade the rest of the world to adopt its anti-money-laundering rules, it will not be enough to have persuaded other countries that they all face the same problem. Drink driving, for example, can also be encountered in most places of the world and it is probably considered a problem almost everywhere. Nevertheless, solutions are sought at the national level. Every country employs the measures it finds appropriate with relatively little co-ordination between countries. So, despite the problem being basically the same worldwide, solutions are quite diverse. Hence, if the rest of the world were to perceive money-laundering as a problem similar to drink driving, FATF

86. FATF/OECD Policy Brief (1999), *op. cit.*, p. 3.

87. *Ibid.*

would most likely fail to persuade them that only global rules are able to solve the problem. In such a case unilateral action would suffice.

FATF therefore has to construct money-laundering as a global problem of a particular kind, namely as one which not only occurs everywhere but whose occurrence is—in part at least—the result of there being countries, borders, and differences between both sides of the border. It has to construct money-laundering as a problem whose globalness is partly an effect of the structure of the international system. One could call such problems international global problems. For these international global problems to be solved, national, unilateral action will not do and therefore a multilateral approach is needed. In order to get others to comply with its rules, FATF has to construct money-laundering as a problem that can be solved only with international countermeasures. FATF, to put it differently, has to create demand for international regulation. And this, as will be shown next, is exactly what FATF has been doing.

The first Annual Report from 1990 was already remarking that “Money launderers conduct their activities at an international level, thus exploiting differences between national jurisdictions and the existence of international boundaries.”⁸⁸ This constitutes the problem of money-laundering as an international problem, for it depends—in part at least—on the existence of states and the differences between them. In a similar vein, the subsequent Annual Report finds that “money laundering channels, at least those on a broad scale, generally involve international operations. This enables money launderers to use differences in national laws, regulations and enforcement practices.”⁸⁹ This is why the problem of money-laundering cannot be solved by a single state alone. Tough standards in country A might rule out money-laundering in that country, but would not abolish money-laundering altogether. Money-launderers would simply shift their activities to country B. Or, as FATF writes, “Money laundering is an international menace. It must be tackled internationally. Action to eradicate the problem in a single country is likely to lead to its rapid re-emergence in another, probably nearby country.”⁹⁰ This creates the need for international co-operation.

But how many countries are needed to solve the problem? FATF is very clear about this point since it declares that for the problem to be resolved the world cannot afford loopholes and therefore all countries have to follow the rules. According to this construction, the solution of the global money-laundering problem requires not only international co-operation but also international co-operation on a global scale. For example, FATF argues that “the more widespread the action against money-laundering, the more effective it will be”,⁹¹ that “a global strategy is needed if the fight against money laundering is to succeed”⁹² and warns “that the counter-measures necessary to combat money laundering must be universally applied”.⁹³ After the financing of terrorism had been defined as part of the money-laundering problem in the aftermath of 11 September, FATF once again emphasised the necessity for global countermeasures. “The fight

88. AR 1989–1990, p. 25.

89. AR 1990–1991, p. 12.

90. AR 1991–1992, Annex, p. 31.

91. AR 1992–1993, p. 24; see also AR 1989–1990, p. 28.

92. AR 1991–1992, Annex, p. 31.

93. AR 1997–1998, p. 34.

against terrorist financing requires the united effort of countries around the world, including both FATF and non-FATF members.”⁹⁴ To sum up this point, FATF constructs money-laundering as an international global problem that can be solved only through international cooperation on a global scale. FATF creates the demand for global rules. This is the last step in the process of “problematism”, a process described here as involving three steps, namely establishing something as a global phenomenon, turning the phenomenon into a problem and constructing the demand for an international solution to the problem.

Conclusion

“Any concern with global governance”, Michael Barnett and Raymond Duvall write, “must consider what issues are of concern and which issues are not.”⁹⁵ Accordingly, this article has inquired into how the issue of money-laundering has been made a global concern. It thus wanted to place problems, or, more exactly, the making of policy problems, onto the research agenda of global governance, where they have received little attention thus far. Students of global governance have contributed to a better understanding of the new structures of governance beyond the state, but they have a functionalist bias that leads them to take policy problems as a given and to examine only what is done to solve problems. Moderate constructivists should be applauded for having drawn our attention to the importance of persuasion for securing compliance, but could be criticised for mostly ignoring the fact that persuasion is also about problems, not just about norms and rules. This article has tried to show that ontological persuasion, that is persuasion that there is a problem and about what it looks like, is just as important for securing compliance as normative persuasion, that is, persuasion that the suggested norms and rules are legitimate.

To promote a problems approach as a first step there has been a theoretical discussion as to why an international regulator A, who wants a country B to comply with its rules voluntarily, might resort to ontological persuasion, that is persuading B of there being a problem and of seeing the problem the same way as A sees it. The key reason identified is that B will not comply with A’s rules voluntarily if B does not acknowledge the problem that the rules are intended to solve. If there is no consensus about the problem, A has therefore to engage in “problematism” because a shared understanding of the problem by A and B is a precondition for B voluntarily complying with A’s rules. In order to strengthen the point that a problem approach deserves to be put on the research agenda, as a second step an empirical process of “problematism” by an international regulator has been reconstructed. Money-laundering was not considered a problem until the mid-1980s, although it has long existed as a practice of criminals to hide the illegal origin of their earnings. With the criminalisation of money-laundering by the United States in 1986, “problematism” of money-laundering began. This article has demonstrated how FATF, the international regulator, “problematized” money-laundering by employing three distinct discursive moves. It constructed money-laundering as a globally occurring phenomenon, turned the phenomenon

94. AR 2001–2002, p. 6.

95. Michael Barnett and Raymond Duvall, “Power in International Politics”, *International Organization*, Vol. 59, No. 1 (2005), pp. 39–75.

into a political problem and lastly shaped it as a problem that requires a global solution. Obviously, turning the phenomenon into a problem is the central move. How FATF made money-laundering a problem through a combination of three rhetorical techniques, namely the declamation that money-laundering is a problem, the objectivation of this construction and finally the explanation as to why it is a problem, has been described.

Sceptics might respond that “problematism” is only of limited importance. After all, it is norms and rules that matter, not the problems. Problems may be the starting point, but ultimately politics is about who sets what kinds of rules. This is a valid point, but it can be held that only an analysis such as that proposed here can give a satisfactory answer to the question as to who sets what kinds of rules. The main point is that the construction of the policy problem has crucial implications not only for the way in which we think but also for how we act. “Problematism” entails political consequences. It decides on whether or not an empirical fact becomes the object of politics in the first place since politics deals only with those empirical matters that are declared problems. It decides on whose problem it is—a problem only in the West or one around the world?—and it decides on the level at which this problem is being tackled politically. Will a national solution suffice or do we need an international approach? Therefore, to say that the construction of problems is irrelevant for understanding politics underestimates how much has already been decided before the “actual” political process starts. The way FATF constructs the problem delimits the further course of action. It enables a global governance approach, makes international regulation appear necessary and makes national go-it-alones virtually impossible. Having constructed money-laundering as a problem that requires international regulation has, in this sense, been a precondition for FATF to globalise its rules.

This article seeks to initiate a debate on the significance of problem construction. It is argued that there is a theoretical reason to assume that international regulators must engage in “problematism” and that there is empirical evidence to demonstrate that international regulators are indeed acting as “problematists”. The argument and evidence may, of course, be challenged. However, the hope is that future research will fill the blanks in this article—two striking aspects of which have not been dealt with in this paper. First, there is the theoretical question as to what makes “problematism” successful in connection with the empirical question of whether or not the “problematism” of money-laundering has succeeded. The argument is that to find out whether “problematism” has succeeded one would have to look at the addressees. Do they accept FATF’s construction? Do they now consider money-laundering to be a global problem in need of a global solution? As this article has focused only on the producers of problems, not on the recipients, the question remains. Here, further empirical research is needed.

The second aspect that calls for more empirical research is that which comes after “problematism”. In the framework of this study, “problematism” was conceptualised as a necessary first step that an international regulator has to take if it wants to persuade others to comply voluntarily with its rules. However, “problematism” or ontological persuasion is a necessary, but not a sufficient, condition for compliance. “Problematism” alone, even if successful, that is accepted by the rule addressees, will not make them follow the rules. The

rule maker will also have to persuade rule addressees that its rules are an effective and legitimate solution to what has earlier been constructed as a problem. After “problematization”, the regulator has to engage in normative persuasion. Voluntary compliance can be achieved only if both ontological and normative persuasion are successful. This article, therefore, is only a beginning. To gain a better understanding of international anti-money-laundering regulation one would have to study FATF’s efforts at normative persuasion in addition to the analysis of the success of “problematization”.