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Ending Corporate Anonymity: Beneficial Ownership, Sanctions Evasion, and What the United Nations Should Do About It

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ENDING CORPORATE ANONYMITY: BENEFICIAL OWNERSHIP, SANCTIONS EVASION, AND WHAT THE UNITED NATIONS SHOULD DO ABOUT IT

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I. INTRODUCTION

In October of 2013, Texas-based plumber Mark Oberholtzer traded in his 2005 Ford F-250 pickup truck for a newer model at the Ford dealership down the road. It had served him well as a workhorse for his business, Mark-1 Plumbing. As he would later find out, the Ford dealership sold his old pickup at auction a month later and it was subsequently exported to Turkey. A little over a year thereafter, a group affiliated with the Islamic State of Iraq and Syria ("ISIS") posted a photo to Twitter from Syria showing a large truck-mounted gun in action. Emblazoned on the side of the truck was a simple graphic that read *Mark-1 Plumbing* and listed Mr. Oberholtzer's phone number. ISIS had his truck.[1]

Five years after Mr. Oberholtzer's saga began, North Korean dictator Kim Jong-Un met with United States Secretary of State Mike Pompeo in October of 2018.[2] The meeting itself was historic, so the fact that Mr. Kim arrived in a Rolls Royce Phantom received relatively little attention.[3] The same month, two armored Mercedes limousines, each worth in excess of $500,000 U.S. dollars, were delivered to Mr. Kim's regime.[4] The vehicles appeared on state-run television shortly thereafter.[5]

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1. Jared Morgan, *How a Texas Plumber's Truck Wound Up in ISIS' Hands*, PUB. RADIO INT'L (December 15, 2015, 3:15 PM), https://www.pri.org/stories/2015-12-15/how-texas-plumbers-truck-wound-isis-hands.

2. LUCAS KUO & JASON ARTERBURN, C4ADS, LUX & LOADED: EXPOSING NORTH KOREA'S STRATEGIC PROCUREMENT NETWORKS 6 (2019).

3. Simon Denyer, *Pompeo, Kim Jong Un agree to hold 2nd summit with Trump as soon as possible*, WASH. POST (Oct. 7, 2018), https://www.washingtonpost.com/world/pompeo-meets-kim-jong-un-in-north-korea-for-talks-on-denuclearization/2018/10/07/d9832280-c997-11e8-9c0f-2ffaf6d422aa_story.html; Joshua Berlinger, *Kim Jong Un Appears to Have a New Rolls-Royce*, CNN (October 9, 2018, 4:45 AM), https://www.cnn.com/2018/10/09/asia/kim-jong-un-rolls-royce-intl/index.html.

4. KUO & ARTERBRUN, *supra* note 2, at 3, 36.

5. Tyler Rogoway and Joseph Trevithick, *What Sanctions? Kim Jong Un Gets Another New Limo, This Time An S600 Mercedes-Maybach*, DRIVE, (Feb. 9, 2019),

Both vehicle shipments—Mr. Oberholtzer's truck and the Mercedes limousines—were in flagrant violation of United Nations ("U.N.") sanctions on ISIS and the North Korean state, respectively. There is little reason to think these shipments were isolated incidents; indeed, there is ample evidence to suggest that state actors and individuals around the world who are the targets of sanctions regimes—U.N. implemented or otherwise—have devised sophisticated tools and networks to evade those sanctions with little to no consequence. One of these tools is beneficial ownership.

In a joint March 2019 report, the Inter-American Development Bank ("IDB") and the Organization for Economic Co-operation and Development ("OECD") described beneficial ownership as follows:

> Beneficial owners are . . . natural persons who ultimately own or control a legal entity or arrangement, such as a company, a trust, a foundation, etc. . . . When an individual is the sole shareholder of a company and controls it directly, that individual is the [beneficial owner] of the company. However, there may be more layers involved in the ownership structure, perhaps a chain of entities between a legal vehicle and its [beneficial owner].[6]

The report goes on to illustrate with a simple example; imagine an individual owns 100 percent of a limited liability company ("LLC"), which in turn owns 100 percent of a joint stock company. In this scenario, while the joint stock company's legal owner of record is the LLC, its beneficial owner is the individual. [7] This is because the LLC, while enjoying the benefits of legal personhood, is not a natural person. Beneficial ownership is a side effect of this common practice, in modern legal systems, of affording legal personality to corporate entities.[8] Why is this distinction important? The IDB-OECD report explains:

> Anonymity enables many illegal activities to take place hidden from law enforcement authorities, such as tax evasion, corruption, money laundering, and financing of terrorism . . . . Imagine an individual, John Smith, who wants to evade taxation in his country A. If Smith owns several properties in country A, and holds bank accounts and investments there, all in his own name, it would be very easy for country A's authorities to detect that Smith is not paying taxes. The authorities would be aware of all his assets (for example, through systematic crosschecks with the agency responsible for the

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https://www.thedrive.com/the-war-zone/26423/what-sanctions-kim-jong-un-gets-another-new-limo-this-time-an-s600-mercedes-maybach.

6. Secretariat Glob. F. on Transparency & Exch. Info. for Tax Purposes & Inter-Am. Dev. Bank, *A Beneficial Ownership Implementation Toolkit*, at 3 (March 2019) [hereinafter *IDB-OECD Toolkit*].

7. *Id.* at 4.

8. *Id.* at 8.

> registration of real estate), that they have not been declared, and that the related taxes on wealth and income have not been paid. But if Smith wants to obscure his income or property ownership, he can easily create corporate structures across various jurisdictions to make it much more difficult to identify his ownership. The longer the chain of entities between a legal vehicle (in our example, Company A and its [beneficial owner], John Smith), and the more jurisdictions the entities span, the harder it is to identify the [beneficial owner], given the need to determine who controls each of the layers.[9]

In the vast majority of jurisdictions around the world, there is a generous array of corporate forms available to persons and companies looking to do business.[10] These entities come with varying degrees of regulation regarding how much information about the businesses' principal owners must be disclosed at the time of registration and how much of that information is subsequently available to the public.[11] There is little policy harmonization around the world on this matter.[12]

Dictators and despots have long taken advantage of this unintended identity shield to evade sanctions which target them.[13] A few years after Mr. Oberholtzer's truck appeared in Syria, the International Consortium of Investigative Journalists broke the largest story on international money laundering and corruption in history.[14] More than 11.5 million documents leaked to the group showed widespread money laundering and tax evasion by public officials all over the world, enabled and obfuscated by a complex network of more than 214,000 corporate entities in 200 countries.[15] The papers centered on a little known law firm called Mossack Fonseca and would come to be known as the Panama Papers.[16] As the investigation revealed, all sorts of actors—from terrorist financing cartels to the rich and powerful seeking to hide their wealth from tax authorities—make use of beneficial

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9. *Id.* at 4–5.

10. EMILE VAN DER DOES DE WILLEBOIS , EMILY M. HALTER, ROBERT A. HARRISON, JI WON PARK & J.C. SHERMAN, THE PUPPET MASTERS: HOW THE CORRUPT USE LEGAL STRUCTURES TO HIDE STOLEN ASSETS AND WHAT TO DO ABOUT IT 219 (2011).

11. *Id.* at 33–69.

12. *Id.* at 155.

13. *Id.* at 171–212.

14. *The Panama Papers: Exposing the Rogue Offshore Finance Industry*, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (ICIJ), https://www.icij.org/investigations/panama-papers (last visited Dec. 19, 2019).

15. *Id.*

16. *Explore the Panama Papers Key Figures*, INT'L CONSORTIUM INVESTIGATIVE JOURNALISTS (ICIJ) (Jan. 31, 2017), https://www.icij.org/investigations/panama-papers/explore-panama-papers-key-figures/.

ownership to avoid the scrutiny of the world's regulators and investigators.[17] As a part of the increasing focus on anti-money laundering ("AML") efforts in the last two decades, regulators are waking up to this reality.[18] The common international question of the day, then, is what can be done about it.

This problem has been discussed widely in international organizations over the last decade. In 2011, the World Bank and the United Nations Office on Drugs and Crime ("UNODC"), through their Stolen Asset Recovery Initiative ("StAR"), jointly authored what can be considered to be the foundational baseline in the international discussion surrounding beneficial ownership regulation.[19] In 2014, the Financial Action Task Force ("FATF"), organized under the OECD, released a comprehensive report on beneficial ownership and modified two of its principal recommendations to reflect its findings.[20] In 2017, the European Commission tackled this issue as a part of its Fourth Anti-Money Laundering Directive ("4AMLD"); a Fifth ("5AMLD") edition came into effect in July 2018, and a Sixth ("6AMLD") edition will launch in December of 2020.[21]

But what more can be done? Aside from its participation in the 2011 StAR publication through UNODC, the U.N. has mostly taken a back seat to national governments' initiatives and other international organizations' efforts to tackle this troubling issue. This paper argues that the U.N. should pursue three narrow and specific methods of approaching this issue. First, UNODC should create model legislation reflecting the modern consensus on how to regulate beneficial ownership and reiterate its support of the FATF recommendations on the subject. Second, the United Nations Commission on International Trade Law ("UNCITRAL") should strengthen its Legislative Guide on Key Principles of Business Registry to reflect the stronger, modern consensus. Third, the United Nations Security Council ("U.N.S.C.") could exercise its legislative powers to require member states, as a matter of international peace and security under Chapter VII, to bring their beneficial ownership disclosure and registry policies into compliance with this modern consensus, though they are unlikely to do so for institutional reasons.

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17. *See The Panama Papers: Exposing the Rogue Offshore Finance Industry*, *supra* note 14.

18. *See IDB-OECD Toolkit*, *supra* note 6, at 4–7.

19. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 10, at 12.

20. *See* Fin. Action Task Force ["FATF"], *Guidance on Transparency and Beneficial Ownership* (2014) [hereinafter FATF, *Guidance on Transparency and Beneficial Ownership*] ; *see also* Fin. Action Task Force ["FATF"], *The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* 91–97 (October 2020) [hereinafter FATF, *The FATF Recommendations*].

21. *See generally* Matt Taylor, *The Five Main Impacts of 5AMLD Regulation for Financial Institutions*, CONSULTANCY.UK (June 27, 2017), https://www.consultancy.uk/news/13624/the-five-main-impacts-of-5amld-regulation-for-financial-institutions; PETER BURRELL & MICHAEL THORNE, THE FIFTH EU MONEY LAUNDERING DIRECTIVE: WHAT DOES THIS MEAN FOR THE "RISK BASED APPROACH" TO DUE DILIGENCE? 1–2 (2019).

Beneficial ownership is a cornerstone in the global underworld's efforts to hide money. Tackling it appropriately is an important endeavor—one well suited to the powers and capabilities of the U.N.

II. THE MODERN REGULATORY CONSENSUS ON BENEFICIAL OWNERSHIP

The focus on AML policy at the international level began in earnest in the 1990s. In 1990, FATF released its first set of recommendations in the realm of money laundering.[22] In 1997, UNODC formally established the Global Programme against Money Laundering ("GPML") pursuant to the authority granted to it under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The following year, UNODC expanded the focus of GPML beyond just the drug trade and applied it to all serious crime.[23] In parallel, the U.N.S.C. passed Resolution 1267, setting up the first iteration of targeted sanctions in the regime that continues to be imposed to this day by the ISIL (Da'esh) & Al-Qaida Sanctions Committee.[24]

In 2001, in the wake of the September 11th terrorist attacks on the United States, FATF expanded its focus to terrorism financing.[25] FATF published nine additional recommendations specifically targeting the issue and completed its first comprehensive revision of its initial recommendations by 2003 (together with the original recommendations, occasionally referred to as the FATF 40+9).[26]

In 2011, UNODC and the World Bank jointly published *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, an authoritative 288-page report on the use of corporate entities and beneficial ownership for illicit purposes around the world.[27] That text has provided the foundation for AML regulation since then. Building on that work, FATF published a detailed report on the mechanics of its two recommendations that pertain to beneficial ownership regulation—

22. *History of FATF*, FIN. ACTION TASK FORCE ["FATF"], https://www.fatf-gafi.org/about/historyofthefatf (last visited Dec. 19, 2019).

23. *GPML Mandate*, UNITED NATIONS OFF. ON DRUGS & CRIME (UNODC), https://www.unodc.org/documents/money-laundering/GPML-Mandate.pdf (last visited Dec. 19, 2019).

24. S.C. Res. 1267 (Oct. 15, 1999); Security Council Committee Pursuant to Resolutions 1267 (1999) 1989 (2011) and 2253 (2015) Concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities, UNITED NATIONS SEC. COUNCIL, https://www.un.org/securitycouncil/sanctions/1267 (last visited Dec. 20, 2019). For the purposes of this paper, the Islamic State of Iraq and the Levant ("ISIL") and the Islamic State of Iraq and Syria ("ISIS") are referenced as the same entity.

25. *See* FATF, *The FATF Recommendations*, *supra* note 20, at 7.

26. *Id.*

27. VAN DER DOES DE WILLEBOIS et al., *supra* note 10.

Recommendations 24 and 25—in 2014.[28] Later that year, G20 leaders agreed to implement high-level principles heavily derived from the FATF report.[29]

The 2014 FATF review represents the best solutions policymakers have to offer on this subject at the moment. In it, FATF lists several steps regulators ought to take to minimize the ability of beneficial owners to hide behind a web of legal persons. First, FATF says regulators need a comprehensive list of all types of legal personalities distinct from natural persons that are available in their jurisdiction, and the processes for creating them.[30] Second, jurisdictional authorities should create a registry of these legal personalities and require such entities to record and maintain basic information about themselves, including shareholder information.[31] Third, FATF posits that regulators need some mechanism by which to determine beneficial ownership of the authorized structures.[32] FATF suggests that the most transparent way to do this is to create a centralized register of all corporate structures, hold beneficial ownership information about all of them, and require periodic updates of that information as part of the renewal processes for such vehicles.[33] Alternatively, having the structures collect and maintain that information themselves or separately collecting this information from tax authorities, stock exchanges, or other sources may also be possible. FATF encourages combining these approaches as necessary.[34]

FATF also highlights a few finer points that make the structure of this policy more effective. First, and perhaps most obviously, companies should be required by law to cooperate with authorities by designating either a natural person or a financial institution to act on their behalf in disclosing company information to investigative bodies.[35] Second, FATF recommends extremely strong prohibitions and regulations of bearer shares and nominee shareholders or directors, respectively.[36] Bearer shares are shares in a corporate vehicle that entitle the holder of the documents at any given time to the full entitlements and protections of ordinary shareholders; use of bearer shares is therefore a common tactic to conceal the identity of the bearing shareholder, because bearer share companies rarely keep records of their

28. FATF, *Guidance on Transparency and Beneficial Ownership*, *supra* note 20, at 10.

29. G20, *G20 High-Level Principles on Beneficial Ownership Transparency* (2014), http://www.g20.utoronto.ca/2014/g20_high-level_principles_beneficial_ownership_transparency.pdf.

30. FATF, *Guidance on Transparency and Beneficial Ownership*, *supra* note 20, at 12.

31. *Id.* at 13.

32. *Id.* at 19–27. 44.

33. *Id.*

34. *Id.* at 19.

35. *Id.* at 44.

36. *Id.*

shareholders' identities.[37] Similarly, nominee shareholders and directors are shareholders and directors, respectively, that have been nominated to appear on official documentation on behalf of the actual shareholder or director. FATF recommends an outright ban on bearer shares and suggests requiring nominee shareholders to disclose the identity of the natural person who nominated them.[38] Lastly, FATF recommends recording the information of the natural person that is effectively the control person of the entity, regardless of organizational structure.[39] FATF extends this same framework to the regulation of other, more jurisdictionally specific structures, such as trusts, Limited Liability Companies, foundations, and other entities.[40]

It is interesting to note what FATF does *not* say. First, FATF generally phrases its recommendations as pertaining to country-level regulation.[41] Indeed, in most countries, companies are regulated at the national level.[42] In several noteworthy jurisdictions, however, this regulation happens at a more local level. In the United States, for example, corporate charters are granted at the state level.[43] FATF's regulatory suggestions are mostly portable to this more local level of regulatory control. A few of its recommendations, though, are predicated on a more universal level power and access to information that might require company regulators to cooperate closely with federal authorities. This raises issues in jurisdictions like the United States where company registers are primarily housed at a lower level of governance.[44]

Second, FATF's recommendations make no mention of transactional due diligence measures. The Task Force's report does not go into the details of what appropriate due diligence looks like when doing business with companies of unknown origin, presumably because this realm of business policy is already well regulated worldwide. The European Union ("EU"), the U.N., and the United States each require corporations doing business internationally to take varying degrees of precautions to avoid doing business with corporations of dubious ownership.[45] These regulations, like the For-

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37. MAIRA MARTINI & MAGGIE MURPHY, TRANSPARENCY INTERNATIONAL, G20 LEADERS OR LAGGARDS? REVIEWING G20 PROMISES ON ENDING ANONYMOUS COMPANIES 52 (2018)

38. *Id.* at 17.

39. *Id.* at 8–9, 14–16.

40. *Id.* at 45–46.

41. *Id.* at 20.

42. *Id*. at 13.

43. *See id*.

44. *Cf. id.* (expanding upon some state-specific regulatory problems).

45. *See generally Due Diligence Explained*, EUR. COMM'N, https://ec.europa.eu/growth/sectors/raw-materials/due-diligence-ready/explained_en (last visited Apr. 4, 2020); *UN Sanctions List: What You Need To Know*, COMPLY ADVANTAGE, https://complyadvantage.com/knowledgebase/what-are-sanctions/un-sanctions-list-united-nations-security-council-

eign Corrupt Practices Act ("FCPA") and the Know Your Customer ("KYC") requirements in the United States for example, generally require companies to undertake as far as reasonably possible to determine the beneficial owner of companies with whom they transact.[46] Still, it should be noted that national authorities around the world could do more to require their corporate entities to look into the parties with whom they transact.[47] That, however, steps outside the narrow scope of beneficial ownership regulation.

The 2018 Transparency International report on the subject neatly summarizes the modern consensus:

> Governments should establish a central register of beneficial ownership information and make it publicly available in open data format.
> Governments should resource and establish mechanisms to ensure that at least some verification of beneficial ownership information takes place, such as cross-checking the data against other government and tax databases, or conducting random inspections.
> Financial institutions or [other at-risk professional institutions] should not be allowed to proceed with transactions if the beneficial owner of their customer cannot be identified.
> Governments should undertake national money laundering risk assessments on a regular basis. These should include an analysis of the risks posed by domestic and foreign legal entities and arrangements.
> Key stakeholders, including obliged entities and civil society organisations should be consulted. The results of the assessment should be published online.
> Governments should consider prohibiting nominee shareholders. If they are allowed, they should be required to disclose their status upon the registration of the company and registered as nominees. Nominees should be licensed and subject to strict anti-money laundering obligations.
> Governments should require the registration of both domestic and foreign trusts operating in their country. Information on all parties to the trust (trustee, settlor and beneficiaries), and the real individuals behind them should be recorded."[48]

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consolidated-list/ (last visited Apr. 4, 2020); AMY S. MATSUO, OFAC FRAMEWORK FOR SANCTIONS COMPLIANCE PROGRAMS (2019).

46. The Foreign Corrupt Practices Act 15 U.S.C. § 78dd-1 (1977); Dan Ryan, *FinCEN: Know Your Customer Requirements*, HARV. L. SCHOOL F. ON CORP. GOV. (Feb. 7, 2016), https://corpgov.law.harvard.edu/2016/02/07/fincen-know-your-customer-requirements/.

47. *See generally* VAN DER DOES DE WILLEBOIS et al., *supra* note 10 (describing at considerable length the issues posed by transacting with counterparties around the world whose ownership is unknown).

48. MARTINI & MURPHY, *supra* note 37, at 15.

There remains much work to be done to achieve this level of compliance and monitoring globally.

III. THE CURRENT STATE OF PLAY

Progress on the issue has been slow, but steady, in the last five years. Much of the action has come through international organizations. In 2015, the year after G20 leaders agreed to adopt FATF's basic recommendations, Transparency International found that fifteen out of the twenty countries had weak or average frameworks for beneficial ownership.[49] Only one, the United Kingdom, had a publicly accessible registry of beneficial ownership information for all companies.[50] Three years later, eleven countries still had weak or average beneficial ownership frameworks, but six countries had implemented registries of beneficial ownership information.[51]

The EU has made the most significant strides on this issue. 4AMLD mandated a central registry of beneficial ownership information for all EU countries and 5AMLD is poised to require further investigation of transactions and bank transfers presenting even *one* of a handful of suspicious characteristics.[52] Indeed, in Transparency International's 2018 report, four out of the six countries with central registries were EU nations that had recently come into compliance with 4AMLD.[53] The United Kingdom was also one of the nations with a registry, but its central registry predated 4AMLD by a considerable amount of time.[54]

The United States is trailing on this issue despite being a major influencer and purveyor of international sanctions regimes. The U.S. currently lags behind FATF requirements, as companies incorporated within its jurisdictions face a varying degree of regulatory burdens from their respective state-level authorities.[55] While the United States does require financial institutions to collect beneficial ownership information for individuals who open financial accounts on behalf of their legal entities, there is very little federal or state regulation requiring disclosure of beneficial ownership information at present.[56] A bill to fix this problem has passed the U.S. House of Repre-

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49. *Id.* at 10; *see also* G20, *supra* note 29.

50. MARTINI & MURPHY, *supra* note 37, at 12.

51. *Id.* at 11–12.

52. Taylor, *supra* note 21; Directive (EU) 2018/843, of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU, para. 10, 2018 O.J. (L 156).

53. *See* MARTINI & MURPHY, *supra* note 37, at 12.

54. *Id.*

55. *Id.* at 13.

56. *Id. See also* G-20 ANTI-CORRUPTION WORKING GROUP, GUIDE TO BENEFICIAL OWNERSHIP INFORMATION: LEGAL ENTITIES AND LEGAL ARRANGEMENTS, STOLEN ASSET

sentatives and awaits debate in the Senate; if enacted, it would create a central registry operated by the U.S. Department of Treasury and the Financial Crimes Enforcement Network (FinCEN).[57] U.S. businesses would be required to confirm that there has been no change in beneficial ownership once a year to Treasury and FinCEN.[58]

There is some reason to be hopeful that this problem can be extinguished altogether in the coming years. In October 2014, FATF found twenty-four countries had strategic deficiencies in their beneficial ownership frameworks.[59] It further identified four of these nations as being slow to make progress and recommended active risk-management countermeasures against another two.[60] As of October 2020 (after a slight uptick in deficiencies that can be linked to the COVID-19 pandemic), eighteen countries remain on the list.[61] None are subject to increased monitoring, though FATF continues to recommend countermeasures against two nations.[62]

Still, even just eighteen countries with lackluster beneficial ownership monitoring is a massive security risk. Mossack Fonseca, the law firm at the center of the Panama Papers scandal, single-handedly created more than 200,000 legal entities in 200 countries.[63] Even assuming that Mossack Fonseca was one of the larger players in the practice of creating shell companies for shady characters to hide behind, eighteen countries with underperforming standards could still mean tens of thousands of potential sanctions violations, terrorist financing plots, terrorist-repurposed pickup trucks, and despot-absconded limousines likely amounting to billions of dollars in dirty money.[64]

The U.N., for its part, has mostly ceded regulatory ground on this issue to other international organizations. The Conference of States Parties to the United Nations Convention Against Corruption held a thorough review of

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RECOVERY INITIATIVE, 5 (Oct. 2016), https://star.worldbank.org/sites/star/files/g20_bo_country_guide_united_states.pdf.

57. *See* CARL A. FORNARIS, MARINA OLMAN-PAL & ANTHONY HERNANDEZ, U.S. HOUSE PASSES BILL THAT WOULD REQUIRE DISCLOSURE OF BENEFICIAL OWNERS OF U.S. CORPORATIONS AND LIMITED LIABILITY COMPANIES 2 (2019), https://www.gtlaw.com/en/insights/2019/10/us-house-passes-bill-that-would-require-disclosure-of-beneficial-owners-of-us-corporations-and-llcs.

58. *See id.*

59. *Previous FATF Lists*, KNOWYOURCOUNTRY, https://www.knowyourcountry.com/copy-of-fatf-aml-deficiency-list (last visited Oct. 29, 2020).

60. *Id.*

61. *FATF AML List*, KNOWYOURCOUNTRY.https://www.knowyourcountry.com/fatf-aml-deficiency-list (last visited Oct. 29, 2020).

62. *Id.*

63. *See The Panama Papers: Exposing the Rogue Offshore Finance Industry*, *supra* note 14.

64. *Cf. id.* (detailing the extent of Mossack Fonseca's misdeeds and providing some basis for further estimation).

beneficial ownership when it met in Vienna in 2018.[65] It looked into how the takeaways from UNODC and the World Bank's *Puppet Masters* report had been implemented and outlined a few areas of interest to experts and regulators in light of the Panama Papers disclosures.[66] Aside from that comprehensive discussion, there has been little movement at the policy level at the U.N..[67] As a major implementer of international normative sanctions, it is time for that to change.

IV. What a Comprehensive United Nations Campaign May Entail

As the sponsoring organization for many of the world's most complex sanctions regimes, the U.N. has a vested interest in ensuring that the targets of its sanctions have as few financial safe havens around the world as possible.[68] It is also uniquely positioned to push universal compliance with FATF guidelines across the finish line. It has several avenues available to it to drive regulatory reform on this subject.

A. *Exercising the Full Potential of UNODC*

First, the U.N. should exercise some of the actual and symbolic measures available to it through UNODC to move the needle on this issue. Specifically, the U.N. should make use of UNODC's model legislation and law enforcement training programs to further the modern consensus on beneficial ownership.[69] UNODC should also explicitly reaffirm its support for FATF's *40+9* recommendations.

UNODC's last package of AML model legislation came out in 2009.[70] Its proffered measures on combatting terrorism are even older, dating back to 2005.[71] While beneficial ownership regulation is present as a concept in both packages, it is treated more as an afterthought in both documents; nei-

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65. *See* U.N. Secretariat, *Follow-up to the St. Petersburg Statement: Report of the International Expert Group Meeting on Beneficial Ownership Transparency*, U.N. Doc. CAC /COSP/IRG/2018/7 (Apr. 5, 2018).

66. *Id.* ¶ ¶ 38, 71-85.

67. *Cf.* S.C. Res. 1617 (July 29, 2005); G.A. Res. 60/288 (Aug. 9, 2006) (representing the only official resolutions passed by any United Nations body on the topic).

68. *See generally Sanctions*, U.N. Sec. Council, https://www.un.org/securitycouncil /sanctions/information (last visited June 8, 2020).

69. *Model Laws and Treaties*, U.N. Off. on Drugs & Crime, https://www.unodc.org /unodc/en/legal-tools/model-treaties-and-laws.html (last visited Apr. 4, 2020).

70. U.N. Off. on Drugs & Crime, Commonwealth Secretariat & Int'l Monetary Fund, Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime (For Common Law Legal Systems) (2009).

71. U.N. Off. on Drugs & Crime & Int'l Monetary Fund, Model Legislation on Money Laundering and Financing of Terrorism (2005).

ther document directly addresses the role of beneficial ownership regulation in combatting money laundering or counter-terrorism efforts.[72] The consensus on regulating this feature of legal personality afforded to corporate structures has shifted significantly in the last decade, and UNODC ought to revisit its model legislation package to account for this fact. A new, specialized packaged dealing specifically with beneficial ownership legislation may be warranted.[73] Given its active role in the model legislation space, UNODC is uniquely poised to draft language to accommodate the varying levels (state or federal) at which corporate entity registration takes place. UNODC ought to make use of this drafting capability to further the discussion on what model statutes can look like for countries that are currently lagging behind.

UNODC's law enforcement training activities also pose an incredible opportunity in this field. Not only should UNODC take an active role in training investigators to spot indicators of suspicious financial activity (as it already does[74]), but it should also train regulators to look for suspicious *filing* characteristics at the time of entity registration. There are several red flags that can be observed from filing information alone, including: incorporation and conduct of business in one of the few remaining jurisdictions with no beneficial ownership disclosure requirements, existence of nominee directors or shareholders in jurisdictions that still permit them, spotty online presence and contact information, and indications of primary place of business in a jurisdiction other than the one where registration is filed.[75] UNODC ought to be working with regulators around the world, particularly in the remaining high risk jurisdictions, to implement monitoring programs that flag suspicious filings as they occur, rather than perpetually playing catch-up by waiting for those entities to engage in suspicious behavior before investigating them properly.

Lastly, UNODC should explicitly reaffirm its support for FATF's recommendations. The U.N. as a whole has generally thrown its weight behind the FATF recommendations; U.N.S.C. Resolution 1617 and U.N. General Assembly resolution 60/288 jointly stress the importance of FATF *40+9* implementation.[76] No body of the U.N. has reaffirmed its support of FATF's recommendations since 2006, although the recommendations have been reviewed and revised numerous times since then.[77] The FATF provisions re-

72. *Id.*; U.N. OFF. ON DRUGS & CRIME et al., *supra* note 70.

73. *See IDB-OECD Toolkit, supra* note 6, at 6.

74. *See, e.g., Cops to Receive Training on Trade-Based Money Laundering,* LOOP NEWS (Nov. 18, 2019), https://www.looptt.com/content/cops-receive-training-trade-based-money-laundering.

75. Emily Primeaux, *Hiding in Plain Sight: How Criminals Use Anonymous Shell Companies,* FRAUD CONF. NEWS (June 17, 2018), https://www.fraudconferencenews.com /home/2018/6/17/breaking-the-shell.

76. *See* S.C. Res. 1617, *supra* note 67, ¶ 7; G.A. Res. 60/288, *supra* note 67, ¶ 10..

77. FATF, *The FATF Recommendations*, *supra* note 20 (last updated in October 2020).

lating to beneficial ownership were reviewed in 2014.[78] Reiterating the importance of the FATF principles may do some good in pushing laggard member states towards compliance.

B. *Presenting a United Front through UNCITRAL*

It is important that the U.N. show consistency throughout the organization in the seriousness with which it treats this issue. UNCITRAL's mission is primarily to comment on issues of international trade law.[79] The U.N. is not the primary regulator of international trade law as it relates to transactions between states; it has ceded that regulatory territory to the World Trade Organization ("WTO").[80] Instead, UNCITRAL is the leading body overseeing the rules for international dispute resolution.[81] International transactional contracts that feature alternative dispute resolution methods frequently specify UNCITRAL's rules of arbitration as the governing law.[82]

As a part of its governance of these rules, UNCITRAL maintains a series of documents about related topics of law for use by parties entering into international transactions as well as regulators looking to smooth international trade issues.[83] One of these documents is the UNCITRAL Legislative Guide on Key Principles of a Business Registry. [84] The current edition was published in 2019.[85] The document is 138-pages long. Beneficial ownership is referenced in two paragraphs.[86] Even in those two paragraphs, the issue is treated as more of a jurisdictional legal quirk rather than a serious AML policy issue.[87]

First and foremost, UNCITRAL should revisit this document as soon as possible. While the document is clearly intended to complement the documents most central to UNCITRAL's mission, it does the U.N. a disservice for UNCITRAL's formulation of national business registries to neglect adequately addressing a central tenet thereof. Given that the U.N. already ought

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78. *See* FATF*, Guidance on Transparency and Beneficial Ownership, supra* note 20.

79. *About UNCITRAL*, U.N. COMM'N ON INT'L TRADE L., https://uncitral.un.org/en/about (last visited Apr. 4, 2020).

80. *Frequently Asked Questions – Mandate and History*, U.N. COMM'N ON INT'L TRADE L., https://uncitral.un.org/en/about/faq/mandate_composition/history (last visited Sept. 22, 2020).

81. *See id.*

82. *UNCITRAL Arbitration Rules,* U.N. COMM'N ON INT'L TRADE L., https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration (last visited Sept. 22, 2020).

83. *Texts and Status,* U.N. COMM'N ON INT'L TRADE L., https://uncitral.un.org/en/texts/ (last visited Sept. 22, 2020).

84. U.N. COMM'N ON INT'L TRADE L., UNCITRAL LEGISLATIVE GUIDE ON KEY PRINCIPLES OF A BUSINESS REGISTRY (2019).

85. *Id.*

86. *Id.* at 52, 77.

87. *See id.*

to be more actively invested in this issue, it is particularly counterproductive for its own ancillary documents to gloss over the subject.

Additionally, it may be worth composing another document through the same division that authored the document on business registries, the Working Group on Micro, Small, and Medium-sized Enterprises, solely focused on beneficial ownership.[88] If full FATF *40+9* compliance is achieved worldwide, the regulatory burden on small business certainly will not be negligible.[89] Helping such businesses adjust to a global regulatory environment is a worthy goal for UNCITRAL, particularly when no other regulator has yet stepped in to fill this void. Country level compliance in principle will be of little use if private actors find the policy extraordinarily difficult to comply with.[90]

C. *Deploying U.N.S.C. Legislative Powers*

In the wake of the September 11th terrorist attacks, the U.N.S.C. exercised legislative powers that were more expansive than any means the Security Council had utilized before.[91] Likely because of the sheer shock and magnitude of the events, nobody seriously questioned the exercise of such power as it related to Resolution 1373 in the immediate aftermath of the attacks.[92] In the months and years that followed, the U.N.S.C. was receptive to the quiet criticism that its course of action was rather unrepresentative; though binding on all member states, only U.N.S.C. members at the time of the attacks had any insight to the development and passage of Resolution 1373.[93] The U.N.S.C. exercised its Chapter VII authorities in a legislative fashion again in 2004 in Resolution 1540.[94] Resolution 1540 concerned itself both with counterterrorism and nuclear and chemical non-proliferation measures.[95] Sensitive to the lingering concerns about the power exercised in resolution 1373, U.N.S.C. made sure to hold many, open deliberation ses-

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88. *See generally id.* (the UNCITRAL legislative guide calls the business registries the Working Group on Micro, Small, and Medium-sized Enterprises)

89. *Cf.* VAN DER DOES DE WILLEBOIS et. al, *supra* note 10, at 8 (". . . a service provider can undertake only so much due diligence").

90. *Id.*

91. *See* S.C. Res. 1373, ¶ 6 (Sept. 28, 2001) (creating the first ever Counterterrorism Committee).

92. *Id.*

93. IAN JOHNSTONE, THE POWER OF DELIBERATION 96–98 (2011) (Some scholars disagree with Professor Johnstone's formulation of deliberative legitimacy, but the United Nations has shown little signs of vastly expanding the use of its Chapter VII legislative powers, suggesting that future legislation would follow his conception of the process as delivering legitimacy in its own right). *Compare* Jose E. Alvarez, *Hegemonic International Law Revisited*, 97 AM. J. INT'L L. 873, 875, 887 (2003) *with* Stefan Talmon, *The Security Council as World Legislature,* 99 AM. J. INT'L L. 175, 187 (2005).

94. *See* S.C. Res. 1540 (Apr. 28, 2004); *See generally* U.N. Charter arts. 48–51.

95. S.C. Res. 1540 (Apr. 28, 2004)

sions with member states outside of its own membership to ensure broad international support and acceptability of 1540's provisions.[96]

The legitimacy granted by this deliberate, open process—what Professor Ian Johnstone of Tufts University calls "deliberative legitimacy"—seems to indirectly reinforce U.N.S.C.'s ability to legislate, so long as it seeks the input of non-member states in doing so.[97] Given beneficial ownership policies' far-reaching impact, particularly in the realm of terrorism financing and smuggling operations, and the general international consensus on how to address the issue, it may be a prime candidate for the next deployment of U.N.S.C.'s legislative powers.

Legislating on this subject would likely be narrow and conform closely to principles for which there is broad-based support. A narrow resolution mandating FATF *40+9* compliance by a fixed date a few years from now might be a fair start.[98]

The U.N.S.C. could, of course, go further than this. The U.N.S.C. could play a big role, if it so chooses, in advancing the consensus view on beneficial ownership to include and require publicly accessible registries. No one has yet suggested a truly *global* beneficial ownership database of all entities registered in all U.N. member states; just as member states currently feed intelligence about suspected terror affiliates to the Counter-Terrorism Committee, so too they could provide information about suspect corporate entities—or even *all* legal entities registered in their jurisdiction—to their colleagues around the world. Though this idea may face significantly more pushback on sovereignty grounds, that may be the next step in this fight.[99] It is certainly not lost on the Security Council that corporate entities can play a big part in the financing of terrorist groups; there are currently eighty-nine entities listed with known connections to ISIS, Al-Qaida, or both.[100]

The most natural pushback to this course of action would be to question whether beneficial ownership policy is *really* on the same playing field as other, more traditional counterterrorism and non-proliferation initiatives. This is a fair question. Given the powerful ability of beneficial ownership regulation to take down terrorism financing (and other criminal enterprises), there is a rather strong argument to be made that this sort of legislative reso-

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96. *See* JOHNSTONE, *supra* note 93, at 99–101.

97. *See id.* at 97–99.

98. Importantly, such a resolution would *not* require conforming to any other OECD directives, or even any other FATF guidelines. The U.N.S.C. would be perfectly within its rights to mandate compliance with the FATF's recommendations on beneficial ownership without endorsing, *writ large*, the FATF's positions on any other topic.

99. *ISIL (Da'esh) & Al-Qaida Sanctions List*, UNITED NATIONS SEC. COUNCIL, https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list (last visited Oct. 8, 2020).

100. *See* S.C. Res. 1267 ¶ 4(b) (Oct. 15, 1999); S.C. Res. 1730 (Dec. 19, 2006); S.C. Res. 1904 (Dec. 17, 2009).

lution is a pure, natural extension of U.N.S.C precedent set in resolutions 1373 and 1540; if counterterrorism measures are fair game for U.N.S.C's legislative powers, and these measures meaningfully tackle terrorism around the world, then mandating FATF compliance is perhaps a natural derivative of the original, accepted use of U.N.S.C's legislative powers.

Another opposition to such a use of U.N.S.C legislative powers could be an institutional concern. Until now, U.N.S.C legislative powers have been deployed *directly* against threats to international peace and security: nuclear and chemical weapon use, targeting non-state actors, restricting travel and freezing assets of known combatants, etc.[101] It might be fair to say that implementing FATF compliance through U.N.S.C's legislative powers would be the first *indirect* use of these powers. Insufficient beneficial ownership records are not themselves a threat to peace and security; it is bad actors' exploitation of such policy that makes them dangerous. Moving to address indirect threats to international peace and security, conservative institutionalists might say, is a step too far, lest we wantonly create a super-legislature of nearly unlimited power.[102] This is perhaps the most valid concern and criticism of this use of U.N.S.C's legislative powers.

Professor Stefan Talmon, a noted scholar of public international law, wrote the following while discussing the limitations on the Security Council's Chapter VII authority in 2005:

> ". . .the Council cannot regulate financial transactions in general but only transactions that may be linked to a threat to the peace; that is, to terrorist acts, the proliferation of weapons of mass destruction, and possibly transnational organized crime, the illegal arms trade, and drug trafficking."[103]

I share Professor Talmon's view on this matter. I do not believe that the regulation of day-to-day financial transactions is the unfettered domain of the U.N.S.C. I do, however, offer the following supplementary axiom to Professor Talmon's formulation: Any policy proposal with the clear, intended effect of taming a widely recognized threat to international peace and security is properly within the realm of U.N.S.C.'s legislative powers. Chapter VII grants U.N.S.C the power to define for itself matters pertaining to international peace and security.[104] Where the U.N.S.C properly generates Professor Johnstone's "deliberative legitimacy" for its proposed course of action by ensuring broad-based, international support, its actions are legitimate.[105]

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101. *See supra* notes 91, 95, and 100.

102. *See* Talmon, *supra* note 93, at 182–86.

103. *Id.* at 183.

104. U.N. Charter art. 39.

105. *See* JOHNSTONE, *supra* note 93, at 97–99.

This principle is clearly satisfied in the case of mandatory beneficial ownership reform. FATF recommendations enjoy broad international support; there are in fact just eighteen countries out of the nearly 200 in the international community that are currently lagging behind appropriate compliance.[106] The Security Council itself previously urged FATF compliance in 2005. Additionally, the permanent members—the biggest hurdle to any Security Council proposal—are all reasonably supportive of the FATF guidelines.[107] If not for the concern of Security Council overreach, a resolution mandating FATF compliance in by some fixed date a few years in the future ought not to face a lot of resistance.

It should be noted, however, that the ongoing worry of institutional overreach at the U.N. is no trifling matter. Practically no discussion at the U.N.S.C. concludes without at least some discussion of the national sovereignty effects of the proposals at hand.[108] This concern, at a broad level, is well-founded; at any given time, only fifteen nations hold voting power at the Security Council.[109] While most resolutions are less expansive and far-reaching than Resolutions 1373 and 1540, the "deliberative legitimacy" process instituted for the latter is usually absent as well.[110] This pseudo-random group of fifteen nations has binding authority, therefore, over the entire 193-nation community.[111] There is no guarantee that the tolerance for minor incursions on national sovereignty of those fifteen countries is in any way representative of the whole membership. While this concern is perhaps overwrought, it should not be dismissed outright.[112] The U.N. itself is sensitive to this criticism, and from a realist perspective, the looming, omnipresent nature of this concern is likely to doom the use of U.N.S.C. legislative powers for beneficial ownership reform.[113] Beneficial ownership regulation

106. *See supra* note 61.

107. *Cf. supra* note 55 *and FATF Members and Observers*, FIN. ACTION TASK FORCE (FATF), https://www.fatf-gafi.org/about/membersandobservers (last visited June 8, 2020) (All P5 members are members of FATF and in compliance with its minimum requirements, indicating at least a bare minimum understanding and support of the policy regime's benefits).

108. *See, e.g.,* Press Release, Security Council, Speakers in Security Council urge Balance between UN Role in State Sovereignty, Human Rights Protection, But Differ over Interpretation of Charter Principles, U.N. Press Release SC/12241 (Feb. 15, 2016).

109. U.N. Charter art. 23.

110. *See* JOHNSTONE, *supra* note 93, at 97–99.

111. U.N. Charter art. 25.

112. *See generally* Rose Worden, *The Importance of Sovereignty and Security at the UN*, IMPAKTER (Apr. 21, 2017), https://impakter.com/importance-sovereignty-security-un/ (addressing some of the nuances of sovereignty as a rhetorical device and going concern at the U.N.).

113. *Cf.* Kofi Annan, *Two Concepts of Sovereignty*, ECONOMIST (Sept. 16, 1999), https://www.economist.com/international/1999/09/16/two-concepts-of-sovereignty (Secretary-General Kofi Annan discussing sovereignty in detail from an institutional perspective a little over a year and a half into his first term, noting the importance of balancing enforcement and deterrent powers at the institutional level).

simply is not the kind of thing the U.N.S.C. engages in as a standalone issue. It is not maintenance of international peace and security in the classical sense; it is not the kind of high stakes standoff the in which the Council is well-versed in dealing, nor is it the kind of direct intervention in armed hostilities it finds itself coordinating once every twenty-five years.[114] It is hard to imagine the Security Council—no matter the legal rationale for or efficacy of the resolution in question—sticking its neck out for something like this. It is also unlikely that the Security Council could implement such a system for its own sanctions without a formal resolution. While the resolutions establishing the terrorism financing committee do delegate to it the authority to coordinate with member states and promulgate processes reasonably designed to effectuate the sanctions, the committee probably could not implement legally binding rules pertaining to *all* entities within member states.[115] Such an effort would likely fall outside the terrorism financing committee's powers and, without formal authorization in the form of a resolution, may constitute the sort of overly broad regulation that Professor Talmon contemplated as outside of the Council's narrow purview over financial transactions.

Mandating a public, international registry of all entities registered in all member states along with their beneficial owners is also unlikely to have the broad international support necessary to secure its passage through the Security Council. For one, there will undoubtedly be several nations uncomfortable with the national sovereignty implications of being forced to turn over that list.[116] Even if they are required to collect that information, they might say it is none of the U.N.'s business who is doing business in their respective countries so long as each government is prepared to guarantee its legitimacy.

Several nations may also be uncomfortable about what such a registry would reveal about their own business dealings. There is reason to believe that many governments operate complicated webs of international shell companies for a variety reasons (protecting state secrets, technology transfers, intelligence gathering efforts, etc).[117] It is unlikely that those same

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114. *See generally* United Nations Department of Peacekeeping Operations & Department of Field Support, *United Nations Peacekeeping Operations: Principles and Guidelines* (Jan. 2010), https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf; Ronald Hatto, *From Peacekeeping to Peacebuilding: The Evolution of the Role of the United Nations in Peace Operations*, 95 INT'L REV. RED CROSS 495 (2013).

115. *See* Talmon, *supra* note 93, at 183, 188.

116. *See* Press Release, Security Council, Speakers in Security Council Urge Balance between UN Role in State Sovereignty, Human Rights Protection, But Differ over Interpretation of Charter Principles, U.N. Press Release SC/12241 (Feb. 15, 2016), for a recent example of the sovereignty issue arising in the Security Council.

117. *See The CEO Who Loved Me*, ECONOMIST (Feb. 22, 2020), https://www.economist.com/business/2020/02/22/spies-often-use-businesses-as-cover; Jodi Vittori, *How Anonymous Shell Companies Finance Insurgents, Criminals, and Dictators,*

powers would vote for the public release of all corporate beneficial ownership data when doing so would make it very difficult for their own entities to go about their business.

V. What if Beneficial Ownership is Best Left to Other Organizations?

The most formidable counterargument to U.N. involvement in this area is likely not any serious argument that beneficial ownership policy is *not* exploited by bad actors, but rather that the U.N. is not the appropriate vehicle through which to do something about it. If the U.N.S.C ought not to impose its legislative powers on this issue (for reasons outlined above), and the U.N.'s endorsement of FATF principles in 2005 and 2006 is theoretically sufficient to carryover to its current iteration, then perhaps there is nothing left to do.[118]

The answer to this line of thinking is an immensely practical one; the U.N., as the premier international organization for the cooperation of states on matters of peace, security, and policy, is uniquely positioned to address *most* policy harmonization efforts around the world. This issue is no different. While FATF, the EU, the World Bank, and others have played their part in developing the policy response to this problem, and quite admirably so, the U.N. is still the organization best suited to make the final push toward universal compliance at the international level. At the organizational level, it is uniquely situated to influence and incentivize laggard states to catch up on this issue.

There is much work to be done in advancing the policy consensus, as well. The FATF's principles are quite effective at curbing a significant amount of money laundering and terrorism financing activity. At the very least, FATF implementation make such schemes much easier for authorities to detect, shut down, and prosecute.[119] FATF's *40+9* recommendations, however, do have areas for improvement. For one thing, FATF compliance does not require beneficial ownership information to be made public.[120] While it does make it easier for sophisticated companies to learn who their counterparties in business transactions really are, it might still be difficult for small business to acquire that information without a fully-searchable, public database. Outside of the EU, where it was required under 4AMLD, only a handful of countries have implemented such a database.[121]

Council on Foreign Rels. (Sept. 7, 2017), https://www.cfr.org/report/how-anonymous-shell-companies-finance-insurgents-criminals-and-dictators.

118. S.C. Res. 1617 (July 29, 2005); G.A. Res. 60/288, (Aug. 9, 2006).

119. *See* WILLEBOIS et. al., *supra* note 10, at 102–107.

120. *See* FATF, *The FATF Recommendations, supra* note 20, at 91–97 (noting, however, that the procedures for collecting and holding beneficial ownership information should be made public).

121. *See* MARTINI & MURPHY, supra note 37, at 12.

VI. CONCLUSION

In July of 2019, the Center for Advanced Defense Studies (C4ADS) published a comprehensive, investigative report into North Korea's supply chain for luxury vehicles outlawed by U.N.S.C resolution 1718.[122] C4ADS found eighty-two previously unreported shipments of 803 luxury vehicles, including the two armored Mercedes limousines Kim Jong-Un was later pictured in, between 2015 and 2017 alone.[123] At least twenty-four corporate entities, mostly based in China and Russia, participated in the process of covertly moving the cars to North Korea as guarantors, consignors, or consignees.[124] Hugh Griffiths, Senior Researcher and Head of Countering Illicit Trafficking-Mechanism Assessment Program at the Stockholm International Peace Research Institute and coordinator for the U.N. panel convened to monitor North Korean sanctions compliance, summed up the significance of the problem succinctly:

> "If you can smuggle luxury limos into North Korea, which is done by shipping container, that means you can smuggle in smaller components– dual-use items for ballistic and nuclear programs."[125]

Deficient beneficial ownership protections around the world are not just the esoteric consequence of complicated legal systems; they present a significant threat to international peace and security as a vehicle for terrorism financing, sanctions evasion, and other forms of criminal activity.

The insidiousness of loose beneficial ownership laws around the world is not in the cover afforded to any one company—it is the networks of companies set up specifically to obfuscate their true ownership, intent, and operation that represent the paradigmatic threat. That phenomenon is present in full force in the North Korean example;[126] it is on full display in the Panama Papers scandal;[127] it is likely a part of the explanation of how an American plumber's pickup truck ends up in Syria with heavy machine guns mounted on the back, pointed at American-backed forces.

The progress thus far on this issue—driven mostly by international organizations with voluntary participation—has been noteworthy. UNODC and the World Bank jointly brought beneficial ownership exploitation to the forefront of the international consciousness nearly a decade ago.[128] The FATF has established a workable baseline for country-level regulation.[129]

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122. *See generally* KUO & ARTERBRUN, *supra* note 2 .

123. *Id.* at 23, 33.

124. *Id.* at 25–29.

125. *Id.* at 7.

126. *See generally id.*

127. *See generally The Panama Papers: Exposing the Rogue Offshore Finance Industry*, *supra* note 14.

128. *See* WILLEBOIS et al., *supra* note 10.

129. *See* FATF, *The FATF Recommendations, supra* note 20.

The EU has been the driving force behind pushing a centralized registry system—the first such effort at a regional level—through 4AMLD and 5AMLD implementation.[130] Now is the time for the U.N. to take a stand on this issue in a binding fashion.

Deficient beneficial ownership laws are a threat to the maintenance of *all* of the U.N. sanctions regimes. It is therefore appropriate for the U.N. to step into this arena. It is, in my view, a reasonable extension of U.N.S.C.'s legislative powers from a legal perspective—thus far applied narrowly to counterterrorism efforts—to combat the exploitation of this facet of corporation law around the world. The U.N. has a pivotal and widely accepted role to play in maintaining international peace and security. All member states agree to that mandate as laid out in Chapter VII of the U.N. Charter.[131] This policy matter's direct link to the maintenance thereof makes it a prime candidate for the further deployment of the U.N.S.C. legislative powers, provided the appropriate level of "deliberative legitimacy" of Professor Johnstone's estimation can be achieved.[132] The U.N.'s reticence and/or inability to act in such a matter is understandable, given the nature of the institution's concern for appearing to encroach too far on national sovereignty and, of course, the veto powers in the U.N.S.C.

The policy consensus that I have taken for granted also has room for improvement. The U.N. should be a part of pushing the envelope on that front as well. Nothing in this legal rationale for U.N.S.C. action is to say that the U.N. should not continue its analytical and academic support of the policy discourse on this matter. UNODC and UNCITRAL are well-positioned to continue their work in this manner. There may be other bodies within the U.N. structure that also have methods and tools at their disposal that may be of use in the pursuit of full FATF compliance and tightening of beneficial ownership regulation worldwide.

The work in this field is ongoing. Policy advancements in this area have a direct effect on peace and security in the international community. Their benefits are tangible. In the past decade, policymakers have awoken to the threat posed by weak regulations of this variety and their own ability to make them stronger. I am hopeful that stricter regulation of beneficial ownership will render exploitation and sanctions evasion will be much more difficult in the next one.

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130. *See* Taylor *supra* note 21.

131. U.N. Charter arts. 48–51.

132. JOHNSTONE, *supra* note 93, at 96–98.