

# The other War on Terror revealed: global governmentality and the Financial Action Task Force's campaign against terrorist financing

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**Abstract.** Despite initial fanfare surrounding its launch in the White House Rose Garden, the War on Terrorist Finances (WOTF) has thus far languished as a sideshow, in the shadows of military campaigns against terrorism in Afghanistan and Iraq. This neglect is unfortunate, for the WOTF reflects the other multilateral cooperative dimension of the US-led 'war on terror', quite contrary to conventional sweeping accusations of American unilateralism. Yet the existing academic literature has been confined mostly to niche specialist journals dedicated to technical, legalistic and financial regulatory aspects of the WOTF. Using the Financial Action Task Force (FATF) as a case study, this article seeks to steer discussions on the WOTF onto a broader theoretical IR perspective. Building upon emerging academic works that extend Foucauldian ideas of governmentality to the global level, we examine the interwoven overlapping national, regional and global regulatory practices emerging against terrorist financing, and the implications for notions of government, regulation and sovereignty.

## Introduction

On 24 September 2001, President George W. Bush announced what he termed 'a major thrust of our war on terrorism'.<sup>1</sup> Executive Order 13224 on Terrorist Financing was to be pursued with equal vigour and publicity as the military initiatives, which at that time had not yet publicly commenced. To emphasise its importance, the President insisted on unveiling the initiative in the Rose Garden himself, rather than delegating it to an Under-Secretary or worse still, a written statement.<sup>2</sup> Yet events since then, notably the headline-grabbing military campaigns against Afghanistan and Iraq, have overshadowed this other less visible but equally important aspect of the war on terror. Indeed, the financial battle too has been laden

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<sup>1</sup> George W. Bush, 'President freezes terrorist assets'. Remarks by the President, Secretary of Treasury O'Neill and Secretary of State Powell on Executive Order on Terrorist Financing (EO 13224), The Rose Garden, 20 September 2001. Available at (<http://www.whitehouse.gov/news/releases/2001/09/20010924-4.html>); accessed 20 October 2006.

<sup>2</sup> An observation made in Bob Woodward's *Bush at War* (New York: W. W Norton, 2002), p. 4.

with 'war' terminology: the US Treasury touted its new Foreign Terrorist Asset Tracking Centre as 'a new proactive, preventative strategy for waging financial war'.<sup>3</sup> This article addresses one aspect of this 'War on Terrorist Financing' (WOTF): the role of the Financial Action Task Force (FATF) in shaping the global Anti-Money-Laundering (AML) and Anti-Terrorist Financing (ATF) regimes.

After providing an overview of the existing literature on FATF's origins and role within the global counter-terrorist structure, we move to assess the extent to which a theoretical approach based on the notion of global governmentality, might be appropriate for interrogating the practices and mechanisms of the FATF. European Public Policy literature in particular has recently incorporated governmentality in analysing the benchmarking strategies used in an EU setting with the Open Method of Coordination (OMC).<sup>4</sup> While cognisant of the differences in context and circumstances, we seek to explore the possibilities of extending this theoretical model to establishing how exactly the FATF 'governs' and the mechanisms involved. The overarching question that concerns us is therefore: how might we conceive of the FATF as a manifestation of governmentality? The interlinking of the FATF with other initiatives at regional and global levels will also be evaluated, such as the UN's Counter-Terrorism Committee (CTC), and 1267 Sanctions Committee. While the existing literature rightly suggests that adapting the global anti-money laundering regime to combat terrorist financing at the FATF might prove ineffective and problematic,<sup>5</sup> we suggest that the governmentality approach may allow a fuller and deeper theoretical understanding of how the FATF is reshaping international relations and combating terrorism in ways that have largely gone unnoticed thus far. What follows is not intended as an exhaustive discussion of governmentality, its associated technologies and rationalities. Rather, our more modest goal is a preliminary sketch of the possible benefits of deploying governmentality as a theoretical framework to analysing the FATF, and to identify future possibilities for research.

### **The FATF and the global campaign against terrorist financing**

President Bush had initially been at pains to stress that his 'war' on terror would be like no other; it would involve not just military tools but financial, intelligence, police and diplomatic measures too. More than six years later, the time is ripe for an in-depth evaluation of the war on terrorist finances (WOTF). According to

<sup>3</sup> A statement made by the Treasury Under Secretary for Enforcement Jimmy Gurule, in 'Treasury's Gurule on Strategy to Fight Money Laundering', *US Department of State: International Information Programs*, 22 October 2001.

<sup>4</sup> See Jens Henrik Haahr, 'Open Coordination as Advanced Liberal Government', in *Journal of European Public Policy*, 11:2 (2004), pp. 209–30; and Roger Dale, 'Forms of Governance, Governmentality and the EU's Open Method of Cooperation', in Wendy Larner and William Walters (eds), *Global Governmentality: Governing International Spaces* (London: Routledge, 2004), pp. 174–94.

<sup>5</sup> See for instance Eleni Tsingou, 'Global Governance and Transnational Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime', CSGR Working Paper No 161/05, May 2005, University of Warwick, UK. Bruce Zagaris, 'The Merging of the Anti-Money Laundering and Counter-Terrorism Financial Enforcement Regimes after September 11, 2001', *Berkeley Journal of International Law*, 22 (2004).

Daniel Benjamin, the financial front has been 'the most successful part' of the war on terror.<sup>6</sup> Yet these relatively mundane regulatory dimensions have received much less attention than 'hot' wars in Afghanistan and Iraq, where ongoing difficulties suggest that military force alone is woefully inadequate in controlling globalised terrorism. Likewise domestically, President Bush's leeway for unilateral measures has also come under pressure, with Democrats ascendant in Congress. Certain aspects of Executive Order 13224 which allowed unilateral blacklisting of groups and individuals suspected of terrorist financing, have also since been ruled unconstitutional.<sup>7</sup> As a result, multi-level cooperative and regulatory measures such as those entailed in curtailing terrorist financing might offer a suitable complement to the military means adopted so far. When former US Defence Secretary Donald Rumsfeld once spoke of the mission determining the coalition, this was usually taken to refer to cooperation among states in military security, political, and defence issues. However, the aftermath of 9/11 has witnessed 'the creation not only of international military and political coalitions but of a global financial coalition as well'.<sup>8</sup> This was seen notably in the activities of the Financial Action Task Force (FATF).

The FATF was established by the then-G7 summit in Paris in 1989 to tackle criminal money-laundering, particularly in the drug trade. Its original responsibilities were to examine money laundering techniques, review actions taken nationally and internationally, and set out remedial measures with a view to establishing international standards. Members include not just states but also regional bodies like the EU Commission and the Gulf Cooperation Council.<sup>9</sup> So far, there have been two rounds of mutual evaluations of members to monitor implementation and effectiveness. Initially 40 recommendations were agreed, such as criminalisation of money-laundering, measures financial institutions should take, institutional reforms and international cooperation. After 9/11, its mandate was extended to terrorist financing as the money trail behind the atrocities highlighted the vulnerabilities of the international banking system. By October 2004, nine recommendations were added making the '40+9 recommendations' internationally accepted best practices. These anti-terrorist financing (ATF) recommendations included implementing UN instruments, criminalising terrorist financing, or reporting suspicious transactions. While the FATF had been concerned with terrorist financing before 9/11, the attacks gave the impetus to move significantly in that direction. Yet the term 'task force' implies that it is finite and not a permanent 'organisation'. Composed of like-minded states and organisations, the FATF's funding as well as aims are limited, and evolving: its parameters are reviewed every five years. Given the overlapping jurisdictions and complexity of terrorist financing, the policy community that makes up the FATF

<sup>6</sup> Cited in Anne L. Clunan, 'The Fight Against Terrorist Financing', *Political Science Quarterly*, 121:4 (2006). For a similar view, see John B. Taylor, *Global Financial Warriors: The Untold Story of International Finance in the Post-9/11 World* (New York: W. W. Norton, 2007).

<sup>7</sup> See *The Guardian*, 'Judge Strikes Down Bush on Terror Groups', available at: <http://www.guardian.co.uk/us/latest/story/0,,6246666,00.html>, accessed 29 November 2006.

<sup>8</sup> Martin Navias, 'Finance Warfare and International Terrorism', in *The Political Quarterly*, 73:1 (2002), p. 76.

<sup>9</sup> The current membership includes: Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; European Commission; Finland; France; Germany; Greece; Gulf Co-operation Council (Bahrain; Kuwait; Oman; Qatar; Saudi Arabia; United Arab Emirates); Ireland; Italy; Japan; Luxembourg; Mexico; Kingdom of the Netherlands; New Zealand; Norway; Portugal; Russian Federation; Singapore; South Africa; Spain; Sweden; Switzerland; Turkey; United Kingdom; United States.

involves a whole range of actors. These can involve the World Bank, national financial regulatory authorities, Finance Ministries and Treasuries, to Homeland Security, counter-terrorist experts, the banking sector, to specialist regional organisations like the Asia-Pacific group on money laundering.

While Washington moved after 9/11 to identify and freeze terrorist funds, it recognised that a more sustained and globally coordinated campaign was needed to address systemic vulnerabilities.<sup>10</sup> The adaptation of the FATF to terrorist financing seemed the logical international outgrowth of domestic American regulatory initiatives such as the Patriot Act that required US financial institutions to implement anti-money laundering regimes to curb terrorist financing. To a degree, the FATF's evolution and relatively flexible nature reflected the Bush Administration's preference for less bureaucratic measures over rigid treaty-based formalised agreements. Adapting the FATF to combat terrorist financing can also be seen as an attempt to utilise pre-existing capacity within the international financial regulatory framework, as part of the 'post-September 11 international trend of merging AML and ATF regimes'.<sup>11</sup> It simply built upon legislative and regulatory instruments already in place. As such, in IR terminology, it constitutes a positivist problem-solving approach, tweaking the existing system to overcome new challenges. In this sense, one could argue that powerful states like America continue to set the agenda. Indeed, critics contend that FATF represents an attempt by Washington to establish international standards broadly in line with its own domestic AML/ATF regime and to pressure other states into retention of Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs) that would be accessible to US law enforcement.<sup>12</sup> As Navias notes:

Resentments have arisen over Washington's attempt to set the pace in the finance war . . . Even more fundamentally, the general principles of counterterrorist campaigning which are embodied in the various FATF recommendations and UN resolutions and conventions are not all uncontroversial<sup>13</sup>

However others have noted a multilateral turn; Bruce Zagaris cites the 'the recent change at the FATF to allow for a comment period open to all persons . . . (which) have shown promise of an AML/CTFE regime increasingly interested in working with all nations.'<sup>14</sup>

### **The war on terrorist financing and FATF in the literature**

Compared to the copious amounts of papers spawned by military campaigns against Iraq or Afghanistan, the literature on efforts against terrorist financing is only recently developing. These tend to be clustered in journals of International Law or international finance, narrowly focused on specialist concerns, mostly legal or

<sup>10</sup> Navias, 'Finance Warfare', p. 59.

<sup>11</sup> Bruce Zagaris, 'Anti-Money Laundering', p. 137.

<sup>12</sup> See Peter Shields, 'When the "Information Revolution" and the US Security State Collide', in *New Media and Society*, 7:4 (2005), pp. 483–512, for discussion of data mining techniques used by law enforcement in relation to financial crime.

<sup>13</sup> Navias, 'Finance Warfare', p. 77.

<sup>14</sup> Zagaris, 'Anti-Money Laundering', p. 156.

financial regulatory aspects.<sup>15</sup> As a result there is an empirical and descriptive bias in the existing literature. While a number of articles have addressed the issue from an IR perspective, these have been confined to individual countries such as Australia, Japan or America's anti-terrorist financing (ATF) activities.<sup>16</sup> The focus thus far is somewhat unreflective and is either purely descriptive or proscriptive, highlighting existing loopholes and lacunae from country-specific points of view. For example, the relative American leniency towards Saudi Arabia's Islamic charities is often criticised.<sup>17</sup> Bruce Zagaris has also provided a detailed description of American counter-terrorist financing (CTF) measures and their legal evolution, and the role of international organisations such as the UN who have been crucial in merging existing anti-money laundering measures into a new CTF regime.<sup>18</sup> Eric Rosand similarly details the Security Council's operating mechanisms and its flaws in the context of resolutions 1267 and 1373.<sup>19</sup> Another timely edited collection of essays on terrorist financing by Thomas Biersteker and Sue Eckert in 2007 further demonstrates the increasing levels of interest in this overlooked aspect of the war on terror.<sup>20</sup> Whilst the contributors provide a comprehensive detailed description of terrorist funding methods/sources and the state of global international regulatory initiatives, they do not engage in depth with the theoretical questions of global governmentality that we are interested in here. While these scholarly pieces are all worthy contributions to the literature, however, it does suggest that a broader study aimed at understanding the wider global and theoretical implications of the WOTF for International Relations (IR) remains to be undertaken. In particular our objective is to identify and examine how overlapping national, regional and global regulatory frameworks affect traditional self-contained formalised conceptions of government and regulation. The Financial Action Task Force (FATF) has emerged as a lynchpin of the WOTF and supplies a worthwhile case study to explore these effects.

Anne Clunan's recent article in *Political Science Quarterly* attempts to address these questions in the WOTF more generally. She argues that the problem of terrorist financing is best envisaged as a collective action problem where states need to be convinced that 'free-riding' is not an option. As a result of framing the question in

<sup>15</sup> On legal aspects, see Victoria B. Bjorkland, Jennifer I. Reynoso and Abbey Hazlett, 'Terrorism and Money Laundering: Illegal Purposes and Activities', in *Pace Law Review*, 25 (2005), pp. 233–301; and Ilias Bantekas, 'The International Law of Terrorist Financing', in *The American Journal of International Law*, 97:2 (2003), pp. 315–33. On the financial side, the *Journal of Financial Crime* has several articles regarding the Financial War on Terrorism and the impact of the War on Terrorism on financial markets. On even more specific concerns like money-laundering, see Shahin Wassim, 'Monetary Implications of FATF Regulation of Secret Bank Accounts to Combat Money Laundering', *Journal of Money Laundering Control*, 9:2 (2006), pp. 214–31.

<sup>16</sup> See, for example, reports of the Council on Foreign Relations Independent Task Force on Terrorist Financing, available at ([http://www.cfr.org/issue/464/terrorist\\_financing.html](http://www.cfr.org/issue/464/terrorist_financing.html)), 20 October 2006; and Mark Basile 'Going to the Source' 2004, pp. 169–85. Koji Kishima, 'Japan's Efforts in the Global Fight against Money Laundering and Terrorist Financing', *Journal of Money Laundering Control*, 7:3 (2004), pp. 261–4.

<sup>17</sup> Council on Foreign Relations, *Update on the Global Campaign against Terrorist Financing* (2004) passim.

<sup>18</sup> Zagaris, 'Anti-Money Laundering', pp. 124–5.

<sup>19</sup> Eric Rosand, 'The Security Council's Efforts to Monitor the Implementation of Al Qaeda/Taliban sanctions', *American Journal of International Law*, 98:4 (2004); 'Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight Against Terrorism', *American Journal of International Law*, 97:2 (2003).

<sup>20</sup> Thomas Biersteker and Sue Eckert (eds), *Countering the Financing of Global Terrorism* (London: Routledge, 2007).

such terms and situating the solution in regime theory, essentially a 'hegemon' such as the US with necessary political will is required to enforce compliance. However she notes:

While there has been substantial and important movement through informal international bodies such as the Financial Action Task Force and the Egmont Group, the United States has been unwilling to underwrite a formal global counter-terrorist-financing regime<sup>21</sup>

Indeed, domestically Clunan suggests American counter-terrorist efforts are riven by bureaucratic battles and lack of integration. Internationally, Washington seems to prefer 'bilateral and regional organisations to monitor and encourage compliance rather than building a global multilateral regime focusing on technical assistance to build capacity to implement and enforce laws against terrorist financing'. America's over-reliance on designations and freezing of terrorist assets are also ineffectual because funds simply move into alternative financial systems.<sup>22</sup> Within the US, there is a fundamental debate over which strategy is most appropriate: designating and freezing funds, or improving regulation and global standards. A similar tension characterises the global fight against terrorist financing. The US appears to prefer high-profile designations and freezing of terrorist assets, over the Europeans' broader interest in a 'global multilateral approach to anti-money-laundering/counter-terrorist financing standard setting and technical assistance to implement such standards'.<sup>23</sup> Washington has favoured bilateral and regional information sharing and targeted technical assistance for the narrow purpose of targeting Islamist groups and countries rather than terrorism more generally. Thus, Clunan suggests that US efforts are not truly 'global': 'a truly global counter-terrorist financing regime could change the operating environment of terrorists, forcing them into criminal activities that are easier to trace and prosecute than is pre-criminal terrorist financing'.<sup>24</sup> Freezing funds, and designating suspects without due process has also attracted criticism of human rights violations and alienated the US. One bright note that is relevant to us emerges though. As Clunan suggests, Washington may be slowly beginning to realise that greater international regulation and intelligence sharing should now bolster its previous over-reliance on a state-centric paradigm that emphasised state responsibility to squeeze terrorist financing.<sup>25</sup>

Lacking a common global approach and hegemon willing to enforce rules, Clunan concludes that based on collective action theory, it is unlikely that the public good of a more robust global financial system will emerge. While there is much merit to this argument, a pure rationalist approach is likely to lead to an underestimation of the importance of informal or semi-formal arrangements that may help bring about compliance, not least due to possible reputation costs but also through a combination of hard and soft power. One of the key insights of the Governmentality approach to be outlined below is that it decentres the state both as an actor and as the hierarchical form of power it presumes to be most effective, and instead explores multiple sites and trajectories where power is exercised, which may or may not involve a hegemonic state.

<sup>21</sup> Anne L. Clunan, 'The Fight against Terrorist Financing', *Political Science Quarterly*, 121:4 (2006), p. 595.

<sup>22</sup> Clunan, 'The Fight', pp. 580, 591.

<sup>23</sup> Ibid., p. 581.

<sup>24</sup> Ibid., p. 596.

<sup>25</sup> Ibid., p. 594.



Another common theme in the literature is the inability of FATF to address informal remittance networks. Specifically the 'Hawala' system involves little or no paperwork or regulatory control, relying on personal contacts between individual 'Hawaladars' where only the aggregate outstanding balances against each other are kept. The lack of a paper trail has made this system suspect.<sup>26</sup> One early 'victory' was closing down the al-Barakaat organisation, which provided Islamic banking services in over 40 countries, including Somalia which had no formal banking system.<sup>27</sup> However as Maryam Razavy notes:

The shutdown of al-Barakaat, however, had critical consequences, resulting in the interruption of vital funds to stricken Somalia. Not only have citizens of nations such as Somalia been economically harmed by the shutdown of remittance services, but also there has been an unenthusiastic reaction from those communities whose members rely upon and favour this particular method of banking . . . the West's resolve to abolish the . . . practice of hawala is simply an act of Western ignorance.<sup>28</sup>

The problems are then two-fold: on the one hand are legitimate concerns regarding the under-regulated nature of the system.<sup>29</sup> On the other, respecting cultural sensitivities and, perhaps, more importantly the economic realities of a lack of alternative banking systems. Other issues involve legal and quasi-legal charities and foundations which sometimes unknowingly raise and move funds to Islamic fighters around the world. Navias points to a deeper practical problem in adapting existing anti-money-laundering mechanisms to counter-terrorist financing. These were originally not geared for politically motivated terrorist financing whose sources (such as the Bin Laden family inheritance or charities) can often be (quasi)legitimate as opposed to illicit criminal funds. Objectives, motivation and even methods are also sometimes different. Both Navias and Zagaris question the wisdom of adapting AML measures to CTF.<sup>30</sup> Clunan further suggests many terrorist transactions are pre-crime: they are perfectly legal until linked to support for a criminal act.<sup>31</sup> Practically speaking, Zagaris notes the difficulties of implementation given the complexity and pace arising from the vast changes made with the merging of the AML and CTFE regimes.<sup>32</sup> Based on these practical pragmatic concerns highlighted so far in the literature, it would appear the WOTF is floundering because it lacks the following: a common approach, a willing hegemon, and appropriate regulatory tools.

### Global governmentality and the WOTF: the way forward?

What has been significant from the earlier survey of existing literature is the absence of what one might term a second-order analysis of the WOTF that draws out some of the key theoretical implications of what appears to be quite a radical restructuring

<sup>26</sup> See Basile, 'Going to the Source', 2004, pp. 175–6.

<sup>27</sup> See Zagaris, 'Anti-Money Laundering', 2004, pp. 123.

<sup>28</sup> Maryam Razavy, 'Hawala: An Underground Haven for Terrorists or Social Phenomenon?', in *Crime, Law & Social Change*, 44 (2005), pp. 277–8.

<sup>29</sup> *Ibid.*, pp. 190–1.

<sup>30</sup> Navias, 'Finance Warfare and International Terrorism', *The Political Quarterly*, 73:1 (Aug 2002), p. 57; Zagaris, 'Anti-Money Laundering', p. 156.

<sup>31</sup> Clunan, 'The Fight', p. 570.

<sup>32</sup> Zagaris, 'Anti-Money Laundering', p. 145.

of international financial relations at multiple levels. This is going on from High Street retail banking upwards to the UN, in order to overcome the challenges presented by networked threats such as Al Qaeda.

We suggest here that a ‘governmentality’ approach confers a number of advantages over existing perspectives – it allows the analyst to shift away from ‘what’ to ‘how’ questions. In other words, instead of asking *what* is the WOTF and giving a description of the methods and institutions put in place and assessing their measurable effectiveness, we ask *how* does the FATF regulate the complex globalised web of international financial networks; how do the processes, mechanisms and conditions work; and how are political rationalities implicated at various levels of analysis? The governmentality approach reorients the focus away from a single sovereign ‘centre’ node/source/hegemon, and instead explores more complex forms of governance that operate beyond, above and below conventional assumptions of sovereign authority. This is not to say that the state is unimportant or that sovereignty is diminished. Rather it seeks to decouple processes of government, broadly defined as the ‘conduct of conduct’, from the constraints and strictures of a hitherto territorialised and hierarchical nation-state. This is important, especially when we deploy governmentality as an approach to understanding how an international body like the FATF attempts to shape, guide and change the practices of its members and even non-members, in certain ways. In order to put more substance onto this framework, we now discuss firstly the evolution of governmentality from its Foucauldian origins to its recent adoption in a number of IR-relevant cognate fields; then we suggest how the governmentality approach helps bolster our understanding of *how* the FATF actually ‘governs’ by analysing two of its key initiatives.

### Governmentality

The concept of ‘governmental rationality’ or ‘governmentality’, was first introduced by Michel Foucault at the *Collège de France* in 1978/1979. Foucault was interested in government as an activity or practice, and in ways of discovering how it might be carried out. Foucault, who shared similar views with 18th century Physiocrats, felt that government is a ‘question not of imposing laws on men, but of disposing things: that is to say employing tactics rather than laws, to arrange things in such a way that, through a certain number of means, such and such ends may be achieved’.<sup>33</sup> Government should thus not be confined to formalistic or legalistic practices. The object and activity of government are not natural things but have to be invented and learned.<sup>34</sup> A ‘rationality of government’ thus referred to a ‘way or system of thinking about the nature of the practice of government, capable of making some form of that activity thinkable and practicable both to its practitioners and to those upon whom it was practised’.<sup>35</sup> Foucault emphasised a new way of thinking about multifarious practices of government that can manifest in various forms, ‘rather than the transcendent singularity of Machiavelli’s prince’.<sup>36</sup> Colin Gordon situates

<sup>33</sup> Michel Foucault, ‘Governmentality’, in Graham Burchell, Colin Gordon and P. Miller (eds), *The Foucault Effect: Studies in Governmentality* (Chicago, IL: University of Chicago Press, 1991), p. 95.

<sup>34</sup> *Ibid.*, Preface, p. x.

<sup>35</sup> *Ibid.*, Gordon, p. 3.

<sup>36</sup> Foucault, ‘Governmentality’, in *The Foucault Effect*, p. 89–91.



'governmentality' within Foucault's oeuvre as a response to the Marxist critique of his 'microphysics of power' in *Discipline and Punish*. Foucault had argued that much of modern life could only be understood by the 'techniques of power' monitoring, shaping and controlling individual behaviour in institutions such as the school, factory and prison. The Marxist critique held, among other things, that this 'microphysics of power' failed to address the relationship between society and the state. Foucault's governmentality responded to this criticism by fundamentally altering how the state should be considered by political theory.

State theory attempts to deduce the modern activities of government from essential properties and propensities of the state, in particular its supposed propensity to grow and to swallow up or colonize everything outside itself. Foucault holds that the state has no such inherent propensities; more generally, the state has no essence. The nature of the institution of the state is a function of changes in the practices of government, rather than the converse. Political theory, attends too much to institutions, and too little to practices.<sup>37</sup>

Rather than the state being the sole institutional source of political authority and innovation, analysts should address how the broader interaction of processes and practices of governance work in ordering people and things in certain ways. Foucault departs from the concerns of most classical political philosophy with legitimate foundations of sovereignty and what was the 'best government'. Instead, governmentality was more interested in the 'how' questions, about 'how to govern' and the means in which power is actually exercised.<sup>38</sup> It favours a view of power that is fragmented and dispersed.<sup>39</sup> This decentred, less institutionalised notion of governmental power is perhaps the key Foucauldian insight adopted by a range of literatures as a starting point. The 'Foucault Effect' simply means 'making visible . . . the different ways in which an activity or art called government has been made thinkable and practicable'.<sup>40</sup> Foucault himself stressed examining how 'forms of rationality inscribe themselves in practices, and what role they play within them . . . practices don't exist without a certain regime of rationality.'<sup>41</sup>

Furthermore, it is only recently that Foucault's previous focus on governmentality 'inside' nation-states has been transcended by scholars such as Nancy Fraser, Wendy Larner and William Walters, seeking to extend the level of analysis beyond the state to the transnational and global. 'Questions regarding the constitution and governance of spaces beyond the state have not been pursued as fully as they might'.<sup>42</sup> With regards to the war on terror, a Foucauldian account of governmentality and 'dispositif' has in 2007 already been employed to explore precautionary risk and risk analysis.<sup>43</sup> It is precisely within this developing field that this article contributes to exploring the potential of governmentality concepts for thinking about international affairs. Just as Foucault suggests 16th century doctrines of *raison d'état* signalled the emergence of a distinctive form of autonomous rationality no longer subordinate to

<sup>37</sup> *The Foucault Effect*, Gordon, p. 4.

<sup>38</sup> *Ibid.*, p. 7.

<sup>39</sup> Wendy Larner and William Walters, 'Introduction', in Larner and Walters (eds), *Global Governmentality: Governing International Spaces* (London: Routledge, 2004), p. 4.

<sup>40</sup> See Preface, in *The Foucault Effect*, p. ix.

<sup>41</sup> Michel Foucault, 'Questions of Method', *ibid.*, p. 79.

<sup>42</sup> Larner and Walters, 'Introduction', p. 2. Also Nancy Fraser, 'From Discipline to Flexibilisation? Reading Foucault in the Shadow of Globalisation', *Constellations*, 10:2 (2003), pp. 160–71.

<sup>43</sup> Claudia Aradau and Rens van Munster, 'Governing Terrorism through Risk: Taking Precautions, (un)Knowing the Future', *European Journal of International Relations*, 13:1 (2007), pp. 89–115.

divine will but immanent within the state itself, the 21st century reflects its own rationality where the notion of government no longer derives solely from the territorially-bounded state.

Two areas where the governmentality approach has been adopted are criminology and European public policy. For different reasons, the problems and puzzles addressed by this perspective have been found useful in these fields. For criminologists, their traditional state-centric orientation was challenged by the growth of private security firms, and the privatisation of security hitherto viewed as a public function fulfilled by the state. As Valverde and Mopas note, 'the study of "policing" in the 1990s had proceeded in quite a radical manner: as the study of the provision of security or the maintenance and governance of order, rather than the study of one state institution'.<sup>44</sup> Instead, researchers adopt an agnostic attitude 'from which governance relations could be documented without presupposing the pre-given containers of political science ("the state"; "civil society"; "the family")'.<sup>45</sup> However, they warn against falling 'into the fire of generalisations about globalisation' having successfully fled the 'frying pan of statism'.<sup>46</sup> To decentre the state is not to suggest that state lines and sovereignty are irrelevant, but rather that the overlapping boundary lines between states and jurisdictions and indeed, disciplines, should be mapped empirically rather than assumed to be separate.

What is perhaps more relevant to us are developments in the study of European Public Policy, where the governmentality approach has been utilised as an explanation of the European Union's Open Method of Coordination (OMC) initiated under the Lisbon Agenda. The OMC is an alternative to the pre-existing formalistic Community method which 'creates uniform rules that member states must adopt, provides sanctions if they fail to do so, and allows challenges for non-compliance to be brought to court'.<sup>47</sup> Instead the OMC method advocates the following practices, outlined by the Portuguese Presidency:

- Establishing, where appropriate, quantitative and qualitative indicators and benchmarks . . . tailored to the needs of different member states and sectors as a means of comparing best practice.
- Translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences.
- Periodic monitoring, evaluation and peer review as mutual learning processes.

*European Presidency 2000, paragraph 37*

A Foucauldian account of the governmentality of OMC would need to consider what Mitchell Dean termed the 'techné of government', asking 'by what means, mechanisms, procedures, instruments, tactics, techniques, technologies and vocabularies is authority constituted and rule accomplished?'<sup>48</sup> Some of these mechanisms and procedures identified from the above table would involve benchmarking, establishing

<sup>44</sup> Valverde and Mopas, 'Insecurity and the Dream of Targeted Governance', in Larner and Walters (eds), *Global Governmentality*, p. 234.

<sup>45</sup> Valverde and Mopas, 'Insecurity', p. 234.

<sup>46</sup> *Ibid.*, p. 236.

<sup>47</sup> Roger Dale, 'Forms of Governance', in Larner and Walters (eds), *Global Governmentality*, p. 175.

<sup>48</sup> William Walters, 'Political Rationality of European Integration', in *Global Governmentality*, p. 160. See Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (London: Sage, 1999), p. 30.

best practices, periodic monitoring, evaluation, and learning processes. The OMC was adopted because it offered a new approach to dealing with an area of European governance, the idea of a 'social Europe' that was deemed politically sensitive, where national interests were strong, where no Treaty mandate for European-level action existed, and there was divergence between member states' welfare models. The OMC also demonstrated that Europe is able to act effectively, using alternatives to the existing more formalistic 'Community method'.<sup>49</sup> Jens Henrik Haahr had previously discussed OMC through the lens of 'governmentality, highlighting three elements:<sup>50</sup> technologies of agency, technologies of citizenship, and technologies of performance. Roger Dale suggests that the technologies of performance in particular is interesting for it presents community-wide data that makes member-states visible and deliberately comparable, presenting a 'narrative of self-improvement'. The EU is thus seen as an institution that can legitimately grade member states' performances according to a range of indicators, while members are involved in competitive self-improvement. It is about mundane 'banal' activities of regional construction, rather than 'heroic' acts.<sup>51</sup> The OMC assumes and reinforces a supranational rather than intergovernmental mode of European governance.<sup>52</sup> 'From the viewpoint of an analytics of government the question to ask about the OMC is not primarily its measurable effects/outcomes/effectiveness but its broader significance as mechanisms of government.'<sup>53</sup> The main concern here regards how international regimes affect behaviour of states in the absence of a global 'leviathan' to enforce rules and regulations. The OMC can be seen as 'an alternative method of supranational governance to be brought about through such means as benchmarking, peer review and so on . . . it provides an outstanding opportunity (that has not, surprisingly been widely taken up) to investigate governmentality at a supranational level.'<sup>54</sup>

We suggest here that similarly, the FATF too can be seen as yet another alternative method of governance providing an excellent case study to examine governmentality at the global level. While this sounds potentially plausible, there are some caveats. While the OMC can use coercive tools (that is, sanctions) if necessary to force members to adopt reforms, the FATF has no such powers. Similarly EU members' reasons to cooperate with OMC may be different from states complying with FATF's regulations. These include core national interests at stake in joining the EU for material purposes, and being part of the 'European' project, ideational impulses which the FATF lacks.<sup>55</sup> Furthermore, one common criticism levelled at governmentality research is that it often emphasises describing political processes while neglecting context, conditions, contradictions, and especially actors and agency.<sup>56</sup> In fact, the 'identification of agency enables us to understand more clearly the status and operation of the technologies'.<sup>57</sup> Which agents were associated with

<sup>49</sup> Dale, 'Forms of Governance', p. 175.

<sup>50</sup> Jens Henrik Haahr, 'Open Co-ordination as Advanced Liberal Government', in *Journal of European Public Policy*, 11:2 (2004), pp. 209–30.

<sup>51</sup> Dale, 'Forms of Governance', p. 183.

<sup>52</sup> *Ibid.*, p. 181.

<sup>53</sup> Haahr, 'Open Co-ordination', p. 227.

<sup>54</sup> Dale, 'Forms of Governance', p. 174.

<sup>55</sup> We are grateful to an anonymous reviewer for this point.

<sup>56</sup> See D. Kerr, 'Beheading the King, Enthroning the Market', *Science and Society*, 63:2 (1999), pp. 173–203.

<sup>57</sup> Dale, 'Forms of Governance', p. 185.

which technologies of power, and how did they use them? Dale criticises Haahr's account of the OMC for unearthing features of the technologies of governmentality involved, but neglecting dominant political rationalities and how these shape the technologies of power as well as tensions within the OMC.

Mindful of these criticisms, we seek here to extend analysis of EU-level OMC mechanisms previously examined through a governmentality perspective, to understanding similar multi-level practices evident in the FATF. The FATF similarly reflects notions of governmentality and bringing about compliance. Where the OMC was introduced in areas where it was not possible to govern through formalistic legislation and law, similarly the FATF has no formal legal authority to govern terrorist financing. So far, the FATF has been conceived as a Realist problem-solving institution viewed in terms of the practical effectiveness of the measures in attaining set goals, rather than their significance as examples of new technologies and practices of *governmentality*.<sup>58</sup> The approach suggested here would build on existing literature, developing a theoretical framework into which FATF procedures can be examined in a more coherent fashion.

To operationalise the 'governmentality' approach outlined above, and mindful of the criticisms raised so far of similar research, we will examine:

1. Questions of mechanisms and technologies of government: How has the FATF actually 'governed' the financing of terrorism? What were the practices and rationalities involved in posing terrorist financing as a problem? How did the FATF affect the behaviour of states in the absence of a 'Leviathan' to enforce rules and regulations?
2. Questions of agency: What are the multi-level overlapping strategies unearthed when analysts decentre the state as the locus of examining shifting patterns in the regulation of terrorist financing? How do the various policy communities involved push the agenda? How have IGOs and states themselves helped to expand the FATF's work?

### **Reassessing the FATF: NCCT and terrorist financing methodologies**

As suggested earlier, criticisms of the governmentality approach to OMC revolved around the neglect of questions of agency and the 'lack of articulation of how mechanisms of governmentality work, how they bring about their effect, and in what circumstances'.<sup>59</sup> Conscious of these criticisms, we have selected two FATF initiatives to establish how the mechanisms of governmentality work and the agency involved. The first is the Non-Cooperative Countries or Territories (NCCT) initiative, which employed benchmarking mechanisms, and sought to raise standards. The other relates to how FATF promotes learning in the development of Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) methodology. Taken together, these two initiatives reveal that high degrees of cooperation, adherence and governance, even surprisingly by states outside of FATF auspices, appear to be

<sup>58</sup> For discussion the difference in emphasis between governance and governmentality, see Dale, 'Forms of Governance', pp. 177–84.

<sup>59</sup> *Ibid.*, p. 191.

occurring at multiple levels with little notice or at least formal documentation in the IR literature.

**Mechanisms: benchmarking and best practices in the non-cooperative countries or territories (NCCT) initiative**

Benchmarking can be distinguished in different ways: performance benchmarking involves quantitative comparisons of input and/or output measures; process benchmarking refers to the efficiency and quality standards of processes and activities, and strategic benchmarking compares driving forces behind organisations.<sup>60</sup> These can be applied to enhance performance or assess adherence to policies. Performance benchmarks (or good practice) may thus be used to proscribe limits within which states operate, and benchmarks can also be used as policy tools to align policies supranationally.<sup>61</sup> In this light, the FATF's '40+9' recommendations, which are best-practice benchmarks for AML/ATF legislation, are used both to align international policies and assess adherence. While not legally binding, Johnson and Lim suggest that 'the FATF's process of mutual evaluation among member countries gives increased credibility to its anti-money laundering mechanism . . . mutual evaluation forces members to become more proactive in their AML enforcement'.<sup>62</sup> It also appears to have an empirically observable impact on FATF countries, improving their regulations and banking systems.<sup>63</sup> Previously, AML measures varied due to lack of international evaluation by an organisation like the FATF applying uniform standards and criteria based on a checklist of best practices. While non-FATF members' bank mechanisms remain ineffective, however, as an indicator of its widespread acceptance, Shehu estimated that 'about 130 jurisdictions representing 85 per cent of the world population, and about 90–95 per cent of global economic output, have made at least a political commitment to implementing' FATF recommendations.<sup>64</sup> While 'commitment' alone does not necessarily translate into full-blown policy implementation, states often move in that direction.

In 1998, the FATF began the Non-Cooperative Countries or Territories (NCCT) initiative to 'secure the adoption by all financial centres of international standards to prevent, detect, and punish money-laundering, and thereby effectively co-operate internationally in the global fight against money laundering'.<sup>65</sup> A total of 47 jurisdictions have been reviewed, of which 23 were blacklisted (15 in 2000 and 8 in 2001). Many were outside the FATF membership. To be removed from the blacklist, they had to take specific steps such as increased due diligence, customer identification and reporting suspicious transactions, and amendments to legal instruments. If not, the FATF considered counter-measures. Lacking universal authority or formal legal mandates to compel compliance, Johnson suggests that the NCCT initiative operated

<sup>60</sup> Ibid., p. 187.

<sup>61</sup> Ibid., p. 188.

<sup>62</sup> Jackie Johnson and Y. C. Lim, 'Money-Laundering: Has the FATF Made a Difference?', *Journal of Financial Crime*, 10:1 (2002), p. 9.

<sup>63</sup> Johnson and Lim, 'Money-Laundering'.

<sup>64</sup> An estimate suggested by Abdullahi Y. Shehu, 'International Initiatives against Money-Laundering and Corruption: An Overview', *Journal of Financial Crime*, 12:3 (2005), p. 233.

<sup>65</sup> FATF, *Annual Review of NCCT 2005–2006*, 23 June 2006, p. 2.

on a different informal basis. As these countries performance did not meet the benchmark indicators required, the NCCT 'questioned the legitimacy (of these countries) to operate as financial centres in the global financial system'.<sup>66</sup> The FATF observed that 'most NCCTs began immediately improving their AML systems after being listed. Generally, countries recognised that adopting current AML standards was important for the protection and soundness of their own financial systems'.<sup>67</sup> Also there were 'reputation costs' of being highlighted under FATF recommendation 21 that 'Financial Institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from which countries do not or insufficiently apply these Recommendations'.<sup>68</sup> However, Navias observes that 'the NCCT has sometimes strained relationships between FATF and regional organisations', partly because the political/ideological element complicates agreement on what counts as terrorist financing.<sup>69</sup> Johnson thinks a more fundamental concern for offenders is 'blacklisting questions the legitimacy of the country or jurisdiction identified and its right to conduct financial business in the global environment'. This implies nothing strictly about formal legality. Rather it relates to whether activities in question are in sync with the goals and benchmarks set by those in a position to confer legitimacy, such as the FATF.<sup>70</sup> In short, the activities causing concern fall foul of certain accepted practices. Legitimacy in this case simply means a 'generalised perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs and definitions'.<sup>71</sup> A crucial assumption is that organisations 'actively seek to align the values implied by their activities with the values of the larger social system in which they operate'.<sup>72</sup> Otherwise they jeopardise their organisational legitimacy.

Where countries previously derived legitimacy from their own clients, advisers or domestic regulations, the FATF now usurped that role by taking on a 'legitimacy conferring entity' role on its own accord. This was because of its own increasing legitimacy as more states and organisations sought alignment with its goals and best practices. Power has to be seen as legitimate in the first place before it is able to exercise authority.<sup>73</sup> Social norms evolve; and where financial services in the past were provided without much scrutiny about clients' legal or illegal needs, this was now deemed unacceptable 'bad' practice.

In assessing the impact of FATF recommendations on non-members outside its remit, highlighting the importance of benchmarking set by a conferring entity like the FATF offers potentially illuminating insights. It demonstrates how global governance can affect the behaviour of states in the absence of a global leviathan to enforce formal rules and regulations. Indeed, here FATF processes diverge from the OMC method discussed previously which presumed at least an overarching cultural framework of European identity. Instead, blacklisted countries were required to

<sup>66</sup> Jackie Johnson, 'Repairing Legitimacy after Blacklisting by the Financial Action Task Force', *Journal of Money Laundering Control*, 7:1 (2003), p. 40.

<sup>67</sup> FATF, *Annual Review of NCCT 2005–2006*, p. 2.

<sup>68</sup> *Ibid.*, p. 3.

<sup>69</sup> Navias, 'Finance Warfare', p. 64.

<sup>70</sup> Johnson, 'Repairing Legitimacy', p. 38.

<sup>71</sup> M. C. Suchman, 'Managing Legitimacy: Strategies and Institutional Approaches', *Academy of Management Review*, 20:3 (1995), pp. 571–610.

<sup>72</sup> Johnson, 'Repairing Legitimacy', p. 38.

<sup>73</sup> *Ibid.*, p. 40.



achieve 'moral legitimacy' and do the right thing 'not within a cultural or societal framework of their own choosing but a structural framework as defined by the FATF'.<sup>74</sup> The cost of non-compliance could be considerable, especially in cases where financial services are a major component of the economy. Punishment for non-compliance was almost privatised; enforcement was as much the duty of financial institutions as it was of the customary law enforcement agencies. Indeed only in three cases (Myanmar, Ukraine, and Nauru) were additional counter-measures necessary to bring about compliance. Even these do not involve actual sanctions. Rather the FATF will recommend a number of measures that 'should be gradual, proportionate and flexible regarding their means . . . toward a common objective'.<sup>75</sup> Options include more stringent requirements for client identification, enhanced relevant reporting mechanisms (that is, transactions involving NCCTs are more likely to be suspicious), taking into account that a bank is from an NCCT when processing requests for opening subsidiaries, branches or representative offices, and warnings that transactions with an NCCT run the risk of money-laundering.

Overall, sanctions are a secondary part of the process, with the focus being more on benchmarking, peer evaluation and voluntary compliance. Indeed, as a Foucauldian perspective of governmentality would suggest, the goal of governance here was not to legislate or pass formal laws, rather it was about shaping the 'conduct of conduct' and guiding behaviour in certain directions. The aim and operation of the scheme in this aspect is broadly comparable with that of the OMC in EU governance. Compliance is encouraged by establishing best practice benchmark indicators to aspire to, rather than formal sanctions. More material effects such as the withdrawal or refusal of business are largely at the discretion of private financial institutions, but crucially not the FATF itself. As such the NCCT initiative is more of an informal mode of governance than a formal sanction regime. As of 13th October 2006, there are no NCCTs, although it should be noted that the FATF have not reviewed any jurisdictions since 2001. Of the 23 'black sheep' identified in 2000, none remain. While there were varying speeds of responses and implementation, in general most states moved in some manner towards compliance despite having no formal or legal requirement to do so. Their capacity to cooperate at the international level has also improved.

Johnson concludes that 'global organisations with enough support can have a serious impact on activities of targeted countries, in this case money laundering . . . with the backing that the FATF enjoys . . . blacklisted countries have little choice'.<sup>76</sup> Shehu observes that although 'the 40+9 recommendations of the FATF have no binding or universal applicability, they have proved to be a useful framework for the fight against money laundering across otherwise diverse jurisdictions'.<sup>77</sup> The FATF cannot legally or effectively enforce compliance in sovereign jurisdictions; it is nonetheless able to undertake comparative evaluations of member countries to assess their levels of compliance with its benchmark indicators. More startlingly, this self-appointed mandate even extends to evaluating states who are non-members. Again in this sense, it is roughly similar to the OMC method, which employs EU-wide data to make comparative comparisons of states. Somewhat like the EU,

<sup>74</sup> Ibid., p. 41.

<sup>75</sup> FATF, *Annual Review 2005–2006*, p. 4.

<sup>76</sup> Johnson, 'Repairing Legitimacy', p. 48.

<sup>77</sup> Shehu, 'International Initiatives', p. 234.

the FATF is increasingly seen as an entity that can legitimately grade states' performances according to a range of indicators, while its members are engaged in competitive self-improvement. The war on terrorist financing is about these routinised mundane 'banal' activities of global governmentality focused on constructing benchmarks and best practices, rather than dramatic 'heroic' acts of counter-terrorism such as raids or military strikes.

### **Mechanisms: promoting learning and disseminating knowledge through the Methods and Trends Project Team (MTPT)**

Another mechanism of governmentality employed by the FATF is that of 'learning' and disseminating knowledge. The notion of 'learning' is often restricted to the cognitive domain, to achieve particular ends of rational problem-solving.<sup>78</sup> An alternative view is that learning can be 'mimetic', 'normative', and 'coercive'. Mimetic means responding to uncertainty by copying what is identified as successful practice. Normative learning is brought about by professional socialisation experiences and membership of networks, where the learned norms provide guidance on how to act in new situations. Coercive learning occurs in response to external constraints or pressures such as may be required by state regulation. The difference is that these three types of learning are about finding means of legitimation, rather than promoting efficiency or problem-solving. It would appear that based on the preceding discussion, legitimation rather than simply problem-solving *per se*, was another reason for non-compliant states to learn FATF best practices. Yet Clunan is generally sceptical of learning processes in redefining security to include terrorist financing. This occurs only sporadically and is unlikely to be sustained without high-level attention and political will, especially where states are unwilling to engage on an issue that is not seen as their problem.<sup>79</sup> Implementation of FATF recommendations furthermore has been patchy especially in lower- and middle-income countries and for the more domestically intrusive and costly recommendations. Often, it has only been the domestic experience of terrorism, after 'Al Qaeda fouled its own nest' that sparked real action in states like Saudi Arabia. Even then, the concern seemed more with capturing and eliminating terrorist financiers than implementing the FATF regime.<sup>80</sup>

Nonetheless, how has the FATF promoted learning processes to overcome such hurdles? Although its '40+9' Framework now sets the industry gold standard, the FATF has continuously developed its methodology to improve the effectiveness of standards internationally and keep abreast with emerging trends in AML/ATF methods. The FATF initiatives have been described as 'by far, the most comprehensive multidimensional and multi-sectoral approach in the global efforts to combat money laundering'.<sup>81</sup> Its Methods and Trends Project Team (MTPT) began work in 2004 to develop an inventory of known ML/TF methods and techniques in order to allow countermeasures to be specifically designed to tackle existing approaches to

<sup>78</sup> Much of the following discussion on learning is based on Dale, 'Forms of Governance', p. 190.

<sup>79</sup> Clunan, 'The Fight', p. 573.

<sup>80</sup> Ibid., p. 581.

<sup>81</sup> Shehu, 'International Initiatives', p. 233.

ML/TF. The main goal of the MTPT is to disseminate knowledge and promote learning among policymakers, law enforcement and financial institutions. 'They [ML/TF indicators] are a necessary tool for financial institutions, other financial intermediaries and gatekeepers who are on the frontline in confronting activities that may or may not be suspicious . . . For law enforcement and other investigative authorities . . . viewed along with other information may help . . . to detect specific types of criminal offences or may otherwise help in orienting a particular ML/TF investigation.'<sup>82</sup> As such, the FATF is concerned with constructing and disseminating knowledge-based technologies of governance. By providing forums for the dissemination of these techniques, and for experts in different countries to cooperate and share information the FATF is actively engaged in an activist form of global policymaking, facilitating cooperation and learning processes at the supra-state, regional, inter-state, and sub-state levels. The problem of terrorist financing was 'being redefined . . . as falling within a new paradigm of nonstate-sponsored actors', away from the previous focus on states.<sup>83</sup> As such the MPTP represents a recognition that the rationalities of AML and ATF differ and require a refinement and adaptation of the existing technologies. States had to learn to keep up with these new developments and the implications.

There is significant overlap with global-level UN initiatives aimed at standardisation and learning, with varying success. The Monitoring Group established by the UN 1267 Committee, despite its flaws, has highlighted Al Qaeda's extensive use of informal banking systems, front companies and charities and its shift of financial activities to areas like the Middle-East and Africa which lack the capacity and resolve to regulate terrorist financing.<sup>84</sup> Both states and IGOs have themselves played key roles in expanding the FATF's work. It is here that one can begin uncovering the multi-level processes and overlapping strategies behind the FATF, as it seeks to disseminate knowledge and promote learning as a mechanism of governance. After 9/11, FATF typology experts aimed to provide financial institutions a means 'to detect transactions potentially related to terrorists and terrorist groups'. The UN too does much standards-setting such as the 1999 Convention for Suppression of Financing of Terrorism which standardised certain terms and measures.

The UN has been running Global Programs against Money-Laundering (GPML) which provide mainly technical assistance to states seeking to comply with its regulatory instruments. The UN Office on Drugs and Crime has also drafted model laws for countries seeking legislative assistance. After 9/11, its scope was extended to the financing of terrorism and in 2003 it completed model counter-terrorist financing (CTF) legislation for common law countries.<sup>85</sup> To that end, UN Security Council Resolution 1617 in 2005 'strongly urges all member states to implement the comprehensive international standards' contained in FATF recommendations. This was seen as a major step towards global implementation, highlighting the global level in which learning and standards-setting is being discussed.

UN Security Council Resolution 1373 passed under Chapter VII authority, required states, among other things, to immediately freeze financial assets of persons related to terrorist acts or their preparation. A Counter-Terrorism Committee (CTC)

<sup>82</sup> FATF, *Money Laundering and Terrorist Financing Typologies 2004–2005*, 10 June 2005, p. 88.

<sup>83</sup> Clunan, 'The Fight', p. 577.

<sup>84</sup> Rosand, 'The Security Council's Efforts', p. 755.

<sup>85</sup> Shehu, 'International Initiatives', p. 228.

was tasked to receive reports from states on their implementation and increase members' counter-terrorism capacities. Rosand suggests CTC is the main engine behind global efforts enhancing states' counter-terrorist capacity, supported by a Chapter VII mandate, and it will promote learning by states to develop minimum standards and capacity-building.<sup>86</sup> Washington, though, devotes more attention to the narrower purview of the 1267 Committee (set up by Resolution 1267 to monitor sanctions and maintain an active designated terrorist list specifically targeting Taliban/Al Qaeda assets). The CTC does not maintain a designated terrorist list, and is more neutral. Again, one can discern two broad approaches at the UN level: a narrowly-targeted sanctions approach and a broader global capacity-building one. The CTC seems to garner more support as it comes across as non-threatening, focused on capacity-building rather than judging states, while the 1267 Committee appears more confrontational.<sup>87</sup> While tension between the 'learning' and more confrontational 'designation' approaches remains unresolved and is a significant hurdle to more effective coordinated counter-terrorist activity, the overlap between the UN and FATF initiatives in areas of concern, methods and even personnel does reflect the complex multilevel nature of the emerging global AML/ATF regime.

### **Multi-level agency: global, regional to national**

As previously mentioned, when discussing global governmentality, one should not restrict the analysis simply to the mechanisms of governmentality to the detriment of questions of agency. Within the FATF, one can uncover multiple levels of agency from global to regional to corporate. Indeed, Zagaris suggests that 'the efforts of IGOs such as the UN, the EU and the FATF have been largely responsible for the international acceptance of the AML/CTFE regime'.<sup>88</sup> They have played a key role through conventions, resolutions, recommendations setting standards and evaluation mechanisms, building the framework necessary for cooperation. Globally, the UN CTC has recognised that international, regional and sub-regional organisations play important roles and has actively engaged with these bodies as they provide a local or regional form for interchange, action, assistance and encouragement to share best practices regionally.<sup>89</sup> The FATF too coordinates activities with a range of regional and international bodies. Both the G8 and EU agreed that the FATF take the lead in combating terrorist financing. At an extraordinary summit in October 2001, EU leaders agreed to fast-track more stringent measures against terrorist financing. EU countries were encouraged to implement new decisions on freezing terrorist assets but also adopt new anti-money laundering initiatives and support global efforts. This is important because member states like the UK had anti-money laundering legislation grounded in the fight against drug cartels rather than terror networks. Zagaris suggests that 'because European nations dominate the FATF and many other international organisations, their policies play a critical role in the design and

<sup>86</sup> Rosand, 'The Security Council's Efforts', p. 746.

<sup>87</sup> Ibid., p. 758, 761.

<sup>88</sup> Zagaris, 'Anti-Money Laundering', p. 137.

<sup>89</sup> Eric Rosand, 'Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight Against Terrorism', *American Journal of International Law*, 97:2 (2003), p. 336.

implementation of the AML/CTFE regime'.<sup>90</sup> Inevitably, related questions have also been raised about power relationships underpinning the new AML/CTFE regime, such as lack of transparency, exclusion from decision-making processes of the very countries that are targets of blacklisting, and usurping of policymaking from democratically elected governments.<sup>91</sup> These important issues however remain outside our purview at present, and we will return to these at a later time.

FATF also has partnerships with international organisations, especially the IMF and World Bank, to provide technical aid to countries seeking compliance with FATF recommendations. The ultimate goal is a global network of organisations against terrorist financing. FATF, the World Bank, and IMF coordinate their evaluation activities closely, and have jointly created a new methodology to assess states' compliance. IMF assessments of Italy and Denmark were discussed and adopted by the FATF Plenary in June 2006. FATF also works towards harmonising training packages for assessors from FATF/FRSB/IMF/UN so they have the same common standards to evaluate.

At regional levels, 'working more closely, with the various FATF-style regional bodies (FSRBs), the Egmont group and other international partners is likely to prove a valuable source of information as well as providing a key forum for dialogue on emerging trends'.<sup>92</sup> Zagaris suggests that regional organisations are important because organisations with universal membership can face difficulties customising or implementing practices for the particular needs of regions with different cultures, and institutional legal systems.<sup>93</sup> For instance, by working with the Caribbean FATF which created its own list of 19 Recommendations to mirror those of the FATE, these recommendations were modified and tailored for unique needs of the region.

There are now nine FSRBs in the FATF network, comprising more than 140 states which are not members of FATF. The geographical coverage includes: Asia-Pacific, Caribbean, Europe, Eurasia, Eastern and Southern Africa, West Africa, South America, Middle East and North Africa. The use of FSRBs demonstrates how multi-level regulatory measures can cascade from inter-governmental to regional actors, to 'leverage global efforts and ensure effective implementation of FATF recommendation in all regions of the world'.<sup>94</sup> FSRBs work to interpret, promote and implement FATF standards in their regions. 'The activities of these FSRBs clearly show that the FATF has become a strong international motivation' against the problem of money-laundering and terrorist financing,<sup>95</sup> through outreach activities such as joint plenary sessions and typologies exercises. Additionally, FATF grants access to FRSB delegates at Plenary meetings, 'thereby increasing ownership of FATF strategies to fight money laundering and terrorist financing by these non-FATF member countries'.<sup>96</sup>

The Asia-Pacific Group (APG) on Money-Laundering for instance works to 'facilitate the adoption of universal standards, as set out by the FATF, and how the

<sup>90</sup> Zagaris, 'Anti-Money Laundering', p. 143.

<sup>91</sup> Ibid., p. 145.

<sup>92</sup> FATF, *Money Laundering and Terrorist Financing*, p. 92.

<sup>93</sup> Zagaris, 'Anti-Money Laundering', p. 142.

<sup>94</sup> FATF, *Annual Report 2005–2006*, p. 4.

<sup>95</sup> Shehu, 'International Initiatives', p. 234.

<sup>96</sup> FATF, *Annual Report 2005–2006*, p. 5.

recommendations can be effectively implemented'.<sup>97</sup> A joint FATF/APG Project Group has been established to explore relationships between corruption, money laundering and terrorist financing. This Group has now expanded to include global-level organisations like the UN, OECD, and World Bank who provide considerable information and expertise. Apart from acting as a forum on terrorist financing in the Pacific, it also conducts FATF-style evaluations, mostly of states which are not FATF members. A similar regional body is the Inter-governmental Action Group against Money-Laundering in West Africa. On the other hand, the Egmont Group represents a slightly different form of agency at work in the FATF. It is composed of over 100 national Financial Intelligence Units (FIU) working to improve cooperation and exchange of financial intelligence. National FIUs were originally established for collection and analysis of financial crime, a key FATF recommendation. Emerging from FATF-inspired legislation, this group was itself granted observer status by the FATF in 2002. As Clunan notes, it has emerged as a 'useful informal vehicle to improve information sharing, analysis and training to combat money laundering'.<sup>98</sup> At regulatory levels below the state, the FATF has held consultations with representatives of financial institutions, and the banking sector to discuss implementation of the recommendations and adopting new corporate standards for private businesses.

### Conclusions and further research

The frontline soldiers of this 'other War on Terror' are found in the everyday 'routine' mundane activities at one's local high street bank, corner shop or remittance office, not just in the dramatic mountains or deserts of Iraq or Afghanistan. Eric Rosand observed that the UN CTC was having an impact on the fight against terrorism, 'but not in ways that grab headlines or are readily noticeable'.<sup>99</sup> As it works incrementally to strengthen the global counter-terrorist infrastructure, the same can be said of the FATF. Some provisional conclusions can be drawn. The FATF is not going to regulate global finance like a global financial Leviathan,<sup>100</sup> nor is it a legally sanctioned watchdog with power to impose and enforce universal regulations with clearly measurable effects. Rather it is best conceived, as argued here, as a Foucauldian governmental body that seeks to shape the 'conduct of conduct'. It 'governs' through the dissemination of knowledge-based technologies of government in the form of best practices, promoting learning and accepted benchmarks. It represents rationalities and processes similar to those found in emerging notions of 'global governmentality', particularly the OMC method adopted in European Public Policy. Second, although the ability of the FATF to drain the swamp of terrorist funds is admittedly limited, this does not mean the FATF itself is insignificant. Instead, by establishing global AML/ATF best practice and benchmark indicators the FATF engages in a whole lot of governance at multiple overlapping levels, affecting state learning, without a global Leviathan to compel compliance. As

<sup>97</sup> Shehu, 'International Initiatives', p. 235.

<sup>98</sup> Clunan, 'The Fight', p. 577.

<sup>99</sup> Rosand, 'Security Council Resolution 1373', p. 337.

<sup>100</sup> Clunan seems to suggest this in 'The Fight'.



such, it operates as a facilitator to the global AML/ATF regime which sorts international financial centres, institutions and customers into those that require further surveillance and those who are good citizens of the global financial community. It complements the UN CTC, which seeks to build the capacity of states to learn and comply with these FATF benchmarks. Through the NCCT initiative and cultivation of regional FSRBs, its influence even extends to non-FATF members. As a result, most, if not all, financial transactions now come under the gaze of the '40+9' regime. This then allows policymakers to concentrate on 'black holes' such as the Islamic 'hawala' informal banking system. Some liken the challenge of combating terrorist financing to finding a needle in a haystack. The FATF attempts to put some shape on the haystack, by rendering visible suspicious transactions against the light shone upon them by its Recommendations.

This article has, by way of preliminary examination, suggested global governmentality as a perspective for understanding the FATF. This shifts the analyst's attention away from states and institutionalised forms of government, towards more informal multi-level practices and mechanisms of governance such as benchmarking and learning. At the same time, we highlighted the point that questions of agency cannot be neglected for states and IGOs can still shape the mechanisms of governance adopted. While we have narrowed our focus to the mechanisms and agency of governmentality in this article, further empirical work is clearly needed in detailed case studies precisely measuring correlative effects on domestic AML/ATF policy and Private Financial Institutions. Internal tensions and contradictions within the FATF such as disputes over defining terrorism and money-laundering, Washington's desire to set the pace, and divergent expectations from the Europeans, all remain to be explored from the governmentality perspective of agency, power and resistance. Power-relationships underpinning the FATF procedures in particular were unearthed in the article but need further detailed consideration. The multi-level links between the FATF and the Egmont Group and FRSBs also require considerable empirical scrutiny, including the amount of actual intelligence sharing, standards-setting and effectiveness. Exploring similarities to other less-noticed informal/semi-formal multilateral schemes such as the Proliferation Security Initiative (PSI) and how they operate would also appear to be a promising and potentially complementary avenue of future governmentality research on this 'other war on terror'.