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PERFORMANCE REVIEW

Performance review is an updated version of the kinds of assessment-and-correction combinations Foucault discussed in *Discipline and Punish*. It is a way of managing multi-scalar activity without seeming to micro-manage how individuals perform their obligations. It is another emanation of the results-orientation characteristic of the New Public Management. The UN system's adoption results-based management makes for, in theory, 'decision-making closer to the point of delivery, simplifying rules, policies and procedures and decentralizing authority to enhance the effectiveness of efforts'.¹ Secretary-General António Guterres intensified his predecessor, Kofi Annan's efforts in this respect, and he was elected in 2016 on a platform of 'shifting the management paradigm in the United Nations'. His aim was 'to ensure a fully results-oriented Organization'.²

Results-based management or RBM, as it is known in UN discourse, is an effect of the New Public Management. Four of the seven-point definition enumerated by Christopher Hood and cited in Chapter I, are pertinent to the UN's use of performance review: the delegation of responsibility to managers with a wide discretion; review according to explicit standards; resource-allocation by results; and a 'less is more' ethos.³ In practice, this chapter suggests, performance review based on these principles persistently meanders away from results and towards actions. As the words performance and its inescapable corollary 'delivery' imply, results often constitute actions and vice versa. The completed delivery or performance, in short, implies the ongoing action of delivering or performing in its result.

¹ UN Doc. A/72/492 (2017), para. 4

² UN Doc. A/71/6 (Part one) (2016)

³ Hood, 'A public management for all seasons', 4-5. See Chapter I, at section I

In a cooperative venture, however, scattered responsibility-holders need a firm steer if a coordinated and coherent result is to be achieved. The project of articulating security infrastructure *a fortiori* requires such coordination; not only must individual components' actions be optimized, they must also be mutually compatible, as the example of e-passports in the last chapter illustrates. Achieving this means making sure that best practices are actually being applied. Under these conditions, performance review looks less oriented to results than actions. As we shall see, the UN subjects both its own agencies and member states in receipt of capacity-building assistance to performance reviews of *compliance* as well as *results*. As Guterres put it, 'greater transparency and accountability' should be provided not by 'ex ante control', but by 'ex post facto compliance, matched by accountability for results'.⁴

The ubiquity of performance review – like strategic planning discussed in chapter 3 – is another aspect of the managerial isomorphism that lends a sense of overall coherence to the UN's Global Counter-Terrorism Strategy (GCTS). In particular, it gives the impression that performance review processes at the global level pass the baton to national review processes, to agency review processes, and finally to workplace performance review. In practice, the apparent continuity of review is no guarantee of uniform security infrastructure. Even in the most robust performance review processes, like those of the Financial Action Task Force (FATF), discussed in the second part of the chapter, tend to beget more managerial governance rather than more compliant financial regulation.

Performance review is self-perpetuating. Its recursive nature goes beyond the fact that each review yields a *de facto* demand for a follow-up review. It also involves the idea that review subjects will inevitably fail to demonstrate a clean bill of health because improvement is always conceptually possible – especially when the goalposts of best practice keep shifting. Imperfection, on this view, is 'an enabling precondition', for the UN's counter-terrorism strategy 'rather than an obstacle to be overcome or managed, or a limitation to be accommodated'. Global un-governance, Desai and Lang explain, accommodates both the ideal of attainment and the recognition of its impossibility as an immanent feature of itself.

Performance review exhibits this logic. A finding of inadequate performance is not parsed as a failure for the system, but as proof of its continued and redoubled necessity. If failure looks different in an un-governance context, so does success. One the patterns that emerges in this chapter is that performance review tends to remake its subjects in its own image. Rather than crafting lean, mean counter-terror machines, the process makes its subjects into effective managers – just the sort of subjects, of course, to favour performance review. Recursivity, then, is more than repetition; it marks the displacement of an end with the means of attaining it. This substitution is another mark of the dissonance between the project of articulation and the microphysical control needed to effect 'combinatory individuality', on the one hand, and the ability of managerial governance – with its horror of micromanagement and commitment to decentralization – to deliver it.

⁴ UN Doc. A/72/492 (2017), para. 6

The chapter is in two parts, which correspond to a distinction made by Foucault between correction by gratification and correction by punishment.⁵ Correction is meant to optimize the ‘combinatory individuality’ that constitutes Foucault’s mechanics of power. As such, it constitutes a technology of articulation. UN agencies tend to correct by gratification, especially where nation-states are concerned. Sovereign self-satisfaction rather than the threat to enforcement action drives compliance at a much lower cost. The UN also corrects its own agencies, including those involved in the counter-terrorism Coordination Compact, by gratification using the promise of funding and its continuation. Correction by punishment operates differently. More costly both in financial and political terms, it is sparingly used and reserved for cases of demonstrable incorrigibility. The second part of the chapter examines the FATF’s treatment of non-compliant jurisdictions as an example of what happens when correction-through-gratification fails and gives way to a more punitive approach.

I. Gratification

Results-based management is most cost-efficient when it makes its targets into agents of their own discipline. Making performance review a matter of gratification is a good way of doing so. Just as workplace appraisal processes are linked to promotion, so forms of performance review of nation-states and of UN agencies and programmes are linked to a notion of status based on responsibility and performance. Dedication to professional, organizational, and country development drives this pursuit of progress.

Results-based management has a long history of use in the UN Development Programme. It explains that

RBM is a management strategy by which all actors, contributing directly or indirectly to achieving a set of results, ensure that their processes, products and services contribute to the achievement of desired results (outputs, outcomes and higher level goals or impact). The actors in turn use information and evidence on actual results to inform decision making on the design, resourcing and delivery of programmes and activities as well as for accountability and reporting.⁶

On this understanding, performance review becomes a technology for articulating cooperative effort. Individual activity is not evaluated in its own right, but for its contribution to the desired results. Since participants in the articulated security project are all working towards the same goal, there is a *prima facie* correlation between the interests of the individual components and the collaborative enterprise. In theory, then, compliance with performance review processes is win-win. Like Foucault’s disciplinary institutions,

⁵ Foucault, *Discipline and Punish*, 180

⁶ UNDP, *Results-Based Management Handbook* (2011), 2

results-based management ‘does not link forces together in order to reduce them; it seeks to bind them together in such a way as to multiply and use them’.⁷ At the same time, results-oriented performance review makes every individual component of a composite effort comparable, bringing a competitive edge to self-improvement.

This section considers two examples of performance review based on gratification: one targeted at nation-states and the other at UN entities which, in the all-of-UN approach to counter-terrorism described in this book, are integral components of the articulated effort. Country development provides the context for both examples. As Chapter 2 explained, the UN’s well-intended insistence that development is an indispensable instrument of security is an impetus behind its project of articulating security infra-structure. The approach depends on *all* states playing a part in countering threats without boundaries and implies, as we saw, correlative responsibilities for less developed states to improve their capacities and for more developed states to help them.⁸ In line with this logic, development is central to the UN’s counter-terrorism strategy. The third of its four pillars concerns ‘measures to build states’ capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard’.⁹

The first sub-section examines the performance review of nation-states. It shows that the UN’s use of development to counter superpower unilateralism is a double-edged sword, imposing an ‘ideology of catching up’, to use Balakrishnan Rajagopal’s phrase, on less developed states.¹⁰ The second subsection considers the performance review of entities within the Coordination Compact, the group of UN entities and partners who support the delivery of the GCTS. The capacity-building projects and programmes these entities offer to nation-states are funded for results, a circumstance that gives donors immense control over how programmes are designed and which ones are able to run.

a) Country Development

All UN member states are subject to implementation assessments as part of the UN’s GCTS. The Security Council’s Counter-Terrorism Executive Directorate (CTED) is responsible for conducting these assessments, a task it initially performed only in relation to relevant Security Council resolutions, but since 2017 has performed for the benefit of the whole framework. Its implementation assessments are an indispensable aid to UN entities involved in providing capacity-building measures under the third pillar of the GCTS.

The Directorate’s main task is to produce ‘neutral, expert assessment of the implementation of resolutions 1373 (2001), 1624 (2005) and 2178 (2014) and other relevant resolutions’. The assessments provide ‘analysis and recommendations’ that ‘are an invaluable

⁷ Foucault, *Discipline and Punish*, 170

⁸ See Chapter 2, at section 3

⁹ UN Doc. A/Res/60/288 (2006)

¹⁰ Balakrishnan Rajagopal, ‘Counter-Hegemonic International Law: Rethinking human rights and development as a third world strategy’ 27(5) *Third World Quarterly* (2006) 767-783, 776

aid to Member States in identifying and addressing gaps in implementation and capacity'.¹¹ As well as addressing member states directly, they also address the raft of actors engaged in building the capacity of countries which are willing but unable to optimize their performance on their own. Notwithstanding the tensions already noted between Security Council entities and the rest of the UN, CTED assessments have been brought into the GCTS fold. In seeking to constructively align the work of the CTED with the rest of the Coordination Compact entities, Secretary-General Guterres instructed UN agencies, 'funds and programmes, Member States, donors and recipients to use expert assessments and recommendations of the [CTED] as they design technical assistance and capacity-building efforts'.¹²

CTED assessments have changed enormously over time. When the Counter-Terrorism Committee (CTC) was first established in 2001, it did not enjoy the support of a professional Executive Directorate, and its mode of assessment was limited to receiving reports from UN member states. Resolution 1373 instructed states 'to report to the Committee ... on the steps they have taken to implement this resolution'.¹³ Self-reporting is a weak form of monitoring, and the Committee found that eliciting sufficiently detailed reports from states – and in some cases eliciting any report at all – was like pulling teeth.¹⁴ Even so, the sub-committee had its work cut out. Comprising 15 Security Council representatives and enjoying only limited administrative support from the Security Council Affairs Division in the Secretariat, it soon became apparent that the CTC could not process the reports it received, and that assistance was needed.

The CTED was established as a special political mission of the Security Council to pick up the slack.¹⁵ Composed of experts and administrators, it is one-of-a-kind in Council structures. As Chapter 3 indicated, the Council's expanding output of counter-terrorism resolutions has increased the CTED's workload. Its profile has grown in tandem and so has the Directorate's ability to attract resources and funding. Its Executive Director, for instance, is an Assistant Secretary-General. This expansion in prestige, know-how, and resources has enabled more sophisticated assessments. Country assessment no longer depends on self-reporting alone. The Executive Directorate also conducts country visits, dialogues, and consultations, and draws on open-source data to compile its assessments.

The architecture of assessment has changed, too. The CTED not only looks at the performance of individual states, but at the overall picture of implementation. In so doing, the Directorate could place the assessed individual as a component of a collective endeavour. As such, overall implementation assessments are a crucial articulation device

¹¹ UN Doc. S/2018/435 (2018), para. 5

¹² UN Doc. A/72/284 (2018), para. 74

¹³ UN Doc. S/Res/1373 (2001) para. 6

¹⁴ See for example, UN Doc. S/PRST/2004/26, which notes that 'The Security Council notes that, as of 30 June 2004, 71 States had not met the deadline for submission of their respective reports ... It calls on them urgently to do so, in order to maintain the universality of response which resolution 1373 (2001) requires'.

¹⁵ UN Doc. S/Res/1535 (2004)

aimed at managing and organizing a multiplicity of individuals. Accordingly, the Directorate developed Detailed Implementation Surveys for individual states, Overview of Implementation Assessments, and the Global Implementation Survey for assessing overall implementation.¹⁶

The increase in the CTED's resourcing and profile also made it possible to conduct assessments on a rolling basis. Instead one-off accounts of what has been done to counter terrorism in a particular country, states' reports have become part of an iterative cycle of follow-up reports and country-dialogues.¹⁷ The open-ended process is driven both by the results-based concern that assessment should lead to improvements in performance, and by the steadily increasing diet of obligations, best practices, and other norms generated by the modular expansion of counter-terrorism and the proliferation of micro-prescriptions described in the previous chapter.

Although the CTED assesses all UN member states, the burden of correction falls more heavily on less developed states. When a state is unable to implement recommendations for improvement under its own steam, the directorate conducts a needs-assessment. In dialogue with the individual state, the Directorate identifies priority needs, and helps the assessed state to locate appropriate assistance.¹⁸ Although the CTED is not a capacity-building provider itself, it performs a 'switchboard' role, matchmaking donors and recipients of technical and financial assistance.¹⁹ Its role of 'facilitating the delivery of technical assistance to states' has, like its assessment role, changed with over the years. At first country assessments were presumed confidential, but this is giving way to a model whereby states can opt-out of the sharing of their assessments with capacity-building providers.

GCTS Coordination Compact entities use the 'expert assessments and recommendations of the [CTED] as they design technical assistance and capacity-building efforts'.²⁰ CTED assessments flag up priority actions as well as setting out the gaps in implementation. These findings are not directed at establishing nation-state priorities – they also dictate the priorities of Coordination Compact entities, which must target their scant resources on 'the implementation of projects that address priority technical assistance needs identified by the Directorate and endorsed by the targeted Member States'.²¹

¹⁶ See generally, Roele, 'Disciplinary Power in the UN CTC'

¹⁷ Individual state reports are confidential and not publicly available. The CTED often publicizes its visits on the 'News' pages of the CTC website (<http://www.un.org/sc/ctc/news>).

¹⁸ This process is set out in CTC policy guidance. CTC, 'Operational Conclusions Regarding Policy Guidance for Technical Assistance' (December 2005), UN Doc. A/AC.40/2005/PG.I (2005); and the CTED *Technical Assistance Implementation Plan* (2006), annexed to letter of 27 February 2006 from the head of the CTED, Javier Rupérez to Ellen Løj, the chair of the CTC. The document does not have an official UN symbol.

¹⁹ See the CTC's Operational Conclusions Regarding Policy Guidance for Technical Assistance' (December 2005), UN Doc. A/AC.40/2005/PG.I (2005). The same role is envisaged for the 1540 Committee. Resolution 1810 (2008) urges it to improve its technical assistance activities 'including by engaging actively in matching offers and requests for assistance' UN Doc. S/Res/1810 (2008), para. 11(c)

²⁰ UN Doc. A/72/284 (2018), para. 74

²¹ UN Doc. S/72/435 (2018), para. 16(b)

The UN's harnessing of development for security represents, as Chapter 2 describes, a logic of anathema, whereby the UN pitched its response to threats without boundaries in opposition to the USA-led War on Terror. This meant not only condemning unilateral military and economic coercion, but also eschewing multilateral coercive enforcement under Chapter VII of the UN Charter. Even the Security Council followed this line, emphasizing that the implementation of obligations in resolutions like 1373 and 1540 would be supported rather than coerced.²² The UN's logic posits an opposition between coercion and development, but the opposition only holds to the extent that nation-states are assumed to be ready and willing to wholeheartedly participate in security cooperation. The rest of this section troubles this *prima facie* difference. Coercion can be productive as well as repressive and can work through gratification as well as repression.

Foucault showed how disciplinary power trades on equality at the same time as exploiting inequality. What permits one to act on others is difference: 'juridical and traditional differences of status or privilege; economic differences in the appropriation of wealth and goods, differing positions within the processes of production, linguistic or cultural differences, differences in know-how and competence'.²³ Processes of assessment in the GCTS are geared to identifying differences in the form of deficiencies. Remediating these deficiencies does not have the effect of effacing difference. Instead, it reinstates difference because deficiency is measured according to an optimal model of governance that was developed with states in the Global North in mind.

Bill Cooke explains that this way of thinking is intrinsic to development management, which is a first-world discourse applied to subjects who are in need of modernization.²⁴ Few of the best practices in the compendia examined in the previous chapter originate directly from states in the Global North; most come from neutral specialized agencies like the International Civil Aviation Authority. But difference is written into the universality of neutral expertise and technical knowledge, just as it is in juridical forms of law.²⁵ Uma Kothari puts it like this

“Experts” embody the unequal relationship between the “First” and “Third” Worlds, and between donors and aid recipients ... This production of the “professional” development expert, identified as such not solely because of the extent and form of their knowledge but often because of who they are and where they come from, legitimises and authorises their interventions by

²² See for example UN Doc. S/Res/1540 (2004), 'some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions'.

²³ Michel Foucault, 'The Subject and Power' in *Power: Essential World of Foucault 1954-1984*, Vol. 3, (James D. Faubion ed.) (Penguin, 2002), 344

²⁴ Bill Cooke, 'The Managing of the 'Third' World' 11(5) *Organization* (2004) 603-629

²⁵ Ruth Buchanan and Sundhya Pahuja, 'Collaboration, Cosmopolitanism and Complicity' 71(2) *Nordic Journal of International Law* (2002) 297-324; Sundhya Pahuja, 'Postcolonial International Law' 46(2) *Harvard International Law Journal* (2005) 459-469

valorising their particular technical skills and reinforcing classifications of difference between, for example, the “developed” and “developing” worlds’.²⁶

Improvement, in other words, is not neutral, and making states in the Global South more like states in the Global North does not level the playing field. Instead, it ensnares states identified as underdeveloped in ‘the ideology of catching-up’.²⁷

The UN system recognizes that development assistance is not always innocent. It assumes that bilateral relationships are apt for abuse without an institutional context to provide oversight. The assumption gives rise to a duty to present an institutional alternative though, as the next section makes clear, such efforts are still paid for by third party donors. From this angle, the UN’s project of articulating security appears to be entangled with the domestic counter-terrorism policies of donor states – many of them leading lights in the War on Terror. Responding to the way the War on Terror prompted scholars outside the Third World to notice imperialism, Antony Anghie urged those scholars not to be dazzled by the bright lights of military intervention, but to understand that ‘imperialism is experienced in the Third World... in a much more everyday way’.²⁸ Development is a ‘humble modality’ of security and colonialism.

Scholars writing in the Third World Approaches to International Law tradition have been writing about the way inclusion can be ‘a medium for the creation and perpetuation of racialized hierarchies’ for decades.²⁹ Sundhya Pahuja demonstrates that international law’s universality has been intrinsic to the development agenda.³⁰ Outside the discipline, Rita Abrahamsen shows how development techniques were leveraged in the War on Terror. ‘For the British government’, she says, ‘the “war on terrorism” and the “war on poverty” are the two sides of the same coin’.³¹ Abrahamsen employs Foucault’s productive power analytics to think about international development, and she is not alone. Mark Duffield’s canonical exposition of the connections between development and security in the context of civil war, insurgency and unstable societies identified the ‘biopolitics of unending war’.³² His work is echoed in the perspectives taken by many others who use Foucault’s analytics of power to think about the change. Similar insights have been made about peacekeeping

²⁶ Uma Kothari, ‘Authority and Expertise: The Professionalization of International Development and the Ordering of Dissent’ 37(3) *Antipode* (2005) 425-446, 425

²⁷ Rajagopal, ‘Counter-Hegemonic International Law’, 776

²⁸ Antony Anghie, ‘The Evolution of International Law: Colonial and Postcolonial Realities’ 27(5) *Third World Quarterly* (2006) 739-753, 750

²⁹ Makau Mutua and Anthony Anghie, ‘What is Twail?’ 94 *Proceedings of the Annual Meeting (American Society of International Law)* (2000) 31-40

³⁰ Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth, and the Politics of Universality* (Cambridge University Press, 2011)

³¹ Rita Abrahamsen, ‘A Breeding Ground for Terrorists? Africa & Britain’s ‘War on Terrorism’ 31(102) *Review of African Political Economy* (2004) 677-684, 681

³² Mark Duffield, *Development, Security and Unending War* (Polity, 2007)

missions,³³ and about the more recent practice of peacebuilding.³⁴ The use of performance review through country assessments in the GCTS is only the latest in a long line of colonial forms.

As another example of what Rose Parfitt identifies as ‘the process through which new subjects of international law are brought into being and later disciplined by more ‘successful’ members of the so-called international community’,³⁵ capacity-building processes exacerbate existing inequalities. They do so, moreover, in a managerial mode as Orford has shown.³⁶ The ‘managerialist logic’ of capacity-building makes it into a tool for organizing individual components into a composite effort, rather than for realising the sovereign rights of nation-states or their citizens.³⁷ The problem is not so much that sovereignty is conditional, as Mark Duffield put it,³⁸ but that sovereignty is relative. As Sara Kendall observes, the deterritorialized nature of the War on Terror rendered state sovereignty contingent.³⁹ The reverse-logic of UN’s articulated security project says that *because* nation-states are sovereign *therefore* they must participate. The effect of its application is not existential – it is relativizing.

Where the War on Terror bellowed the USA’s exceptionalism and thus began from an assumption of inequality, the UN affirms all states’ sovereign equality (the first principle of the UN Charter), thereby establishing a baseline for comparison. This way of thinking is characteristic of disciplinary power. Formal equality, explained Foucault, throws *de facto* disparity into relief:

In a system of discipline, the child is more individualized than the adult, the patient more than the healthy man, the madman and the delinquent more than the normal and the non-delinquent. In each case, it is towards the first of these pairs that all the individualizing mechanisms are turned in our civilization.⁴⁰

In the UN’s articulated security project, the developing state is individualized more than the developed one.

³³ Laura Zanotti, *Governing Disorder* (Pennsylvania University Press, 2011)

³⁴ Michael Merlingen and Rasa Ostrauskaite, ‘Power/Knowledge in International Peacebuilding: The Case of the EU Police Mission in Bosnia’ 30(3) *Alternatives* (2005) 297-323

³⁵ Rose Parfitt, *The Process of International Legal Reproduction* (Cambridge University Press, 2019), 12

³⁶ Orford, *International Authority*, 4

³⁷ David Lewis, ‘Neogovernmentalism and the Reorganization of Public Action’ in Sadhvi Dar and Bill Cooke (eds), *The New Development Management* (Zed Books, 2008), 41

³⁸ Duffield, ‘Social Reconstruction and the Radicalization of Development’, p. 1066

³⁹ Sara Kendall, ‘Cartographies of the Present: ‘Contingent Sovereignty’ and Territorial Integrity’ 47 *Netherlands Yearbook of International Law* (2016) 83-105

⁴⁰ Foucault, *Discipline and Punish*, 193

Responsibility is at the heart of development and it fuels correction-by-gratification.⁴¹ The starting point is that responsibility is owed by every state. The 2004 report, *A More Secure World* which laid the foundations of the project of articulating security, asserted that sovereignty ‘clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community’.⁴² The statement renews the UN’s vows of multilateralism in the face of War on Terror unilateralism. It also reasserts the need to leaven raw power with principle. In order to illustrate this, the report’s introductory statement features a quotation by President Harry Truman, who reminded his nation that ‘no matter how great our strength...we must deny ourselves the licence to do always as we please’.⁴³ Responsible sovereignty for the USA means forbearance from excess. For sovereign states who fall short of rather than exceed expectations, responsible sovereignty means playing catch-up.

Cooperation between responsible sovereigns (as opposed to self-interested ones) is a realization of sovereign potential not a restriction on sovereign freedom. Abram and Antonia Chayes gave a canonical account of this sovereignty of mutual responsibility. It is ‘the vindication of the state’s existence as a member of the international system’. They asserted that ‘the only way most states can realize and express their sovereignty is through participation in the various regimes that regulate and order the international system’.⁴⁴ Later on, Anne-Marie Slaughter endorsed the idea, seeing participation as the shouldering of cooperative burdens. Sovereignty is

The capacity to participate in the international and transgovernmental regimes, networks, and institutions that are now necessary to allow governments to accomplish through cooperation with one another what they could once only hope to accomplish acting alone within a defined territory.⁴⁵

The practical effect of this is not to deprive states of their agency, but to channel that agency into collective rather than selfish projects. The simultaneous assertion of the individual in the collective is the bedrock of the UN’s articulated security project. The compositional scheme depends on optimizing individual units and, in line with the decentralization of managerial organization, ensuring that those units can manage themselves. Thus, the GCTS asserts ‘the principal responsibility of Member States to implement’ the relevant norms,⁴⁶ and successive Security Council resolutions reaffirm the Charter principle of territorial integrity and political independence in order to assert that

⁴¹ On responsible sovereignty, see generally: Tanja Aalberts and Wouter Werner, ‘Sovereignty beyond Borders: Sovereignty, Self-Defense, and the Disciplining of States’ in Rebecca Adler-Nissen and Thomas Gammeltoft-Hansen (eds), *Sovereignty Games. Palgrave Studies in Governance, Security, and Development* (Palgrave Macmillan, 2008); Aalberts, *Constructing Sovereignty*; Aalberts, ‘Rethinking the Principle of (Sovereign) Equality’

⁴² UN, *A More Secure World*, paras 29-31

⁴³ *Ibid.*, 4

⁴⁴ Chayes and Chayes, *The New Sovereignty*, 27

⁴⁵ Anne-Marie Slaughter, ‘Sovereignty and Power in a Networked World Order’, 40(2) *Stanford Journal of International Law* (2004) 283-327, 285

⁴⁶ UN Doc. A/Res/72/284, para. 59

Member States have the primary responsibility in countering terrorism.⁴⁷ These assertions of the juridical principle of subsidiarity do not reserve states' autonomy, they insist on states' participation in cooperative solutions to shared problems.

It would be misleading, however, to suggest that responsible sovereigns become hapless hostages to external forces, or that they become 'docile' under a disciplinary regime, as in Foucault's contexts.⁴⁸ Developing states are no less capable than developed ones of playing the capacity-building system. For a start, it is wrong to assume that they 'necessarily have any distinct opposition to the global hegemony of neoliberalism and governance' espoused by donors.⁴⁹ Moreover, as Hameiri and Jones' study shows, targets of 'state transformation' programmes are well able to use them for their own ends.⁵⁰ In order to maximize the ability to use funds, resources, and support for domestic purposes, recipient states have pressed for a principled approach to capacity-building assistance. Initiatives including South-South cooperation,⁵¹ the recognition that there is no 'one-size fits all' to development solutions are two examples of this,⁵² and the principle of national ownership.

In a juridico-political register, national ownership is an assertion of autonomy, but in the managerial context of development and capacity-building, it demands responsible sovereignty. The principle had been building momentum since the end of the Cold War when it was enshrined in the Paris Declaration on Aid Effectiveness in 2005.⁵³ In that document, ownership is understood as the exercise of leadership. Donors agree to 'respect partner country leadership and help strengthen their capacity to exercise it'.⁵⁴ Leadership is to be achieved through the responsible management of development assistance. At Accra in 2008, developing countries undertook to 'determine and implement their development policies to achieve their own economic, social and environmental goals'.⁵⁵ National ownership is a portal for results-based management. As such, it is an example of a phenomenon observed by Vasuki Nesiah: '[m]any of the strategies that were advanced in contesting global governance in the name of local ownership have become assimilated into the very governance armature they sought to challenge'.⁵⁶

That national ownership begets management is written into the Paris Declaration on Aid Effectiveness. It exhorts developing states to translate their aspirations into 'prioritised

⁴⁷ See for example UN Doc/ S/Res/2482 (2019)

⁴⁸ Foucault, *Discipline and Punish*, 138

⁴⁹ Graham Harrison, 'Post-Conditionality Politics and Administrative Reform: Reflections on the Cases of Uganda and Tanzania' 32(4) *Development and Change* (2001) 657-679, 670

⁵⁰ Hameiri and Jones, *Governing Borderless Threats*, Chapter 4

⁵¹ A High Level UN conference at Nairobi established principles for South-South cooperation in 2009. UN Doc. A/RES/64/222 (2009)

⁵² See e.g. UN Doc. A/Res/33/134 (19 December 1978); UN Doc. A/Res/68/230 (20 December 2013); UN Doc. A/Res/69/313 (27 July 2015)

⁵³ Ngairé Woods, 'The Shifting Politics of Foreign Aid' 81(2) *International Affairs* (2005) 393-409, 394

⁵⁴ OECD, *The Paris Declaration on Aid Effectiveness* (OECD, 2005), para. 15

⁵⁵ OECD, *The Accra Agenda for Action* (OECD, 2008), para. 12

⁵⁶ Vasuki Nesiah, 'Local Ownership of Global Governance' 14(4) *Journal of International Criminal Justice* (2016) 985-1009, 1003

results-oriented operational programmes'.⁵⁷ The Accra Agenda recognizes that their leadership capacities cannot be assumed, and that '[w]ithout robust capacity – strong institutions, systems, and local expertise – developing countries cannot fully own and manage their development processes'.⁵⁸ Taking ownership of capacity-building processes means instituting processes of strategic planning and performance review, rather than submitting to them. When sovereignty is viewed as the exercise of responsibility rather than the assertion of will, the acquisition of management and leadership skills are tied to a developing state's realization of its sovereignty.

Results-based management is driven by stick as well as carrot. Donors may withhold or withdraw capacity-building assistance in the absence of robust managerial processes; ineffectual leadership suggests that donor money could be better spent elsewhere. Abrahamsen explains that 'development aid as a principle of international solidarity gives way to an obligation on the part of the developing country to manage its own underdevelopment wisely. Only then will development assistance be forthcoming'.⁵⁹ In effect, even in a world of 'post-conditional' development, where donors can no longer dictate, assistance 'is both more interventionist and less starkly coercive' than it was before.⁶⁰ This is especially the case where capacity-building is a solution to a shared problem, as in the case of security discourses, a point to which we return below.

The Global Counter-Terrorism Strategy affirms national ownership. In a review of 2018, states reiterated the importance of placing 'national perspectives at the centre of...capacity-building in order to strengthen national ownership'.⁶¹ The principle is even affirmed by the UN Security Council, which has emphasized 'the significant need to build and strengthen capacities of Member States, upon their request and with a view to supporting national ownership to more effectively counter terrorism'.⁶² Resolution 2354 (2017) stresses that counter-terrorism capacity-building should 'take into account national perspectives...with a view to strengthening national ownership'.⁶³ In practice, this is achieved through the adoption of national counter-terrorism strategies and action plans to which are attached processes of performance review and budgeting which target domestic agencies. To be a responsible leader is to join the chorus of call-and-response strategic planning discussed in the previous chapter.⁶⁴

⁵⁷ OECD, *The Paris Declaration*, para. 14. An appendix lists a number of indicators. The indicator for national ownership measures the 'Number of countries with national development strategies...that have clear strategic priorities linked to a medium-term expenditure framework and reflected in annual budgets'.

⁵⁸ OECD, *The Accra Agenda*, para. 14

⁵⁹ Rita Abrahamsen, 'The Power of Partnerships in Global Governance' 25(8) *Third World Quarterly* (2006) 1453-1467, 1460-1

⁶⁰ Graham Harrison, *The World Bank and Africa: The Construction of Governance States* (Routledge, 2004), 71

⁶¹ UN Doc. A/Res/72/284 (2018), para. 75

⁶² UN Doc. S/Res/2462 (2019)

⁶³ UN Doc. S/Res/2354 (2017), op. para. 1(c)

⁶⁴ Chapter 3, section 3.1.1.

National ownership is meant to ensure that countries are invested in their capacity to act as effective components that can be articulated into a global cooperative endeavour. National and local leaders are conscripted as decentralized managers. On the one hand, this taps into their situated knowledge and credibility, catalysing the trickle-down (and trickle-up) of best practices and prescriptions into the domestic sphere. On the other hand, it also recruits central governments and their agencies as satellites in a relay of management governance.

Whether or not capacity-building programmes do in fact succeed in inculcating compatible policies and interoperable infrastructure in developing countries, they do succeed in changing the structural and organizational landscape in which these objectives are pursued. The results of these programmes might be ‘tailor-made’, but their delivery mechanisms are isomorphic.⁶⁵ The interoperability of managerial governance is what creates the sense of integral frameworks and networked effort. The price of participation in capacity-building programmes – participation which cannot be shirked in the cooperative, comprehensive and continuous projects of articulating security – is, to recall Nesiah’s image, assimilation into the armature of managerial governance.

b) Project Funding

Nothing focuses a managerial mind faster than a tight budget. The search for ‘value for money’ and the intensification of performance review go hand-in-hand. This section looks at the disciplining of capacity-building through programme planning and accounting. It takes a step backwards from the in-country management delivery of programmes and examines the stages of formulation and tendering. These processes narrow the range of available capacity-building initiatives available to recipient countries. Grounds for selection are not substantive in the sense that donors only fund programmes that further their immediate interests or reflect their political ideologies. Instead, the selection is narrowed according to the managerial credentials of a programme; those that offer measurable results are gratified with funding. This is not to suggest that managerial governance is not ideological or that it is free from colonial implications - as Arturo Escobar said, ‘the underside of globalization ... is none other than global coloniality’.⁶⁶ Instead, the point is to underscore a difference identified in the previous section between transforming the immediate target of a capacity-building project (installing new passport readers at a point of entry, say, or establishing a financial investigation unit in a police force, or getting banks to ‘know their customer’ before opening an account) and installing the managerial armature that is meant to deliver the transformation.

Our focus remains with the UN’s counter-terrorism strategy, which envisages a role for the organization as a platform for coordinating capacity-building assistance. As we have seen, the third pillar of the GCTS concerns ‘measures to build states’ capacity to prevent and combat

⁶⁵ See Chapter 3, at section 1(a)

⁶⁶ Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press, 2012), xxxii

terrorism and to strengthen the role of the United Nations system in that regard'.⁶⁷ It is worth emphasizing that this pillar foregrounds the UN as part of the armature of capacity-building. At one level, this is a response to the universally acknowledged asymmetry between donors and recipients of assistance. *A More Secure World* recognized that 'Because United Nations-facilitated assistance is limited to technical support, States seeking operational support for counter-terrorism activities have no alternative but to seek bilateral assistance'.⁶⁸ UN involvement is meant to rebalance the relationship. At another level, the emphasis on UN involvement is also, as Chapter 2 argued, part of a case the UN is making for its indispensability as an 'unparalleled convening power'. This sub-section is primarily concerned with the UN's efforts to bear out the second of these concerns.

The UN's funding model has changed over the years. Its Charter provides that the expenses of the organization shall be borne by its member states.⁶⁹ Its regular budget, to which all members are obliged to contribute, on pain of losing their vote in the General Assembly, funds fewer and fewer of the organization's activities,⁷⁰ and is mostly used to discharge standing administrative costs. During the 1960s, the UN established a separate peacekeeping budget, which is justified according to the principle that the financing of peacekeeping is a collective responsibility.⁷¹ A plethora of other funds and programmes run on voluntary contributions, including the UN Development Programme (est. 1965), the UN Environment Programme (est. 1972), and UN Women (est. 2010). These contributions can be earmarked or unallocated, and in most cases the former far outweigh the latter.

Donors generally see the UN as a dinosaur of an organization, which needs to be much more stream-lined and agile if it is to be a worthwhile investment of taxpayers' money. From the UN's perspective, non-committal funding makes long-term planning very difficult, and precisely allocated funding makes for a patchy distribution of resources across the organization, meaning that donor priorities are funded at the expense of other activities. The UN has responded to this challenge by telegraphing its strategic planning initiatives and commitment to results-based management. High-profile multi-year initiatives like the Millennium Development Goals and the Sustainable Development Goals are strategies for ensuring continuity over spans of time, rather than moving year-to-year cap-in-hand.⁷²

Continual performance review is a major part of any initiative funded by voluntary contributions. As we shall see, more recent developments have foregrounded performance review for its aesthetic qualities, too. A responsive approach to performance review – reshaping a programme, abandoning ineffective projects, avoiding duplication - is intended to

⁶⁷ UN Doc. A/Res/60/288 (2006)

⁶⁸ UN, *A More Secure World*, para. 154

⁶⁹ UN Charter, Article 17(2)

⁷⁰ *Ibid.*, Article 19

⁷¹ UN Doc. A/Res/1874 (S-IV) (27 June 1963); A/Res/3101 (XXVIII) 11 December 1973; A/Res/55/235 (30 January 2001)

⁷² On the precarity of UN finances, see Jeffrey Laurenti, 'Financing' in Thomas Weiss and Sam Daws (eds) *The Oxford Handbook on the UN System*, 2nd ed. (Oxford University Press, 2018) 250-282

combat the impression that the UN is unwieldy and outmoded. These concerns suggest another explanation for the modular organization of the GCTS framework: they are a way of containing failure and under-performance, and of generating high-profile ‘quick-wins’ when a programme goes well.

Modular programming is also donor-friendly. States and other donors have more control over the use of their contributions when they fund particular programmes or projects, or when they contribute to an earmarked fund like the UN Trust Fund for Counter-Terrorism, which was established in 2009. In 2019, only 4% of GCTS funds came from the regular UN budget – the rest was drawn from its dedicated trust fund.⁷³ Aside from its coincidence with donors’ strategic priorities, the fund’s relative success in attracting contributions is also down to the organization of the GCTS into regional and thematic modules, discussed in the previous chapter. Smaller modules of activity are also easier to hold to account because there can be a more direct correlation between input and output when the latter takes the form of Specific, Measurable, Achievable, Relevant and Timely objectives. Although the disciplinary effects of such performance review are felt in the first instance on UN agencies, they have long-term and diffuse effects on the projects that are funded and the regions that are prioritized.

The UN structures its offer of capacity-building support to mirror the modular organization of thematic work packages.⁷⁴ The modular organization not only reflects an organizational aesthetic, it is also promotes the allocation of funding. Secretary-General Guterres emphasizes that the organization needs ‘a stronger ability to mobilize resources and coordinate fundraising efforts at a time when donors have reduced their contributions owing to competing needs’.⁷⁵ In response to this, the UN has arranged its capacity-building offering after the manner of a Department Store, creating a one-stop-shop of programmes and projects. The funding strategy is reflected in the compilation of a glossy brochure setting out the GCTS’ Multi-Year Appeal for 2018-20, coordinated by the Office of Counter-Terrorism, the body with responsibility for the Strategy. The brochure showcases a curated selection of 60 costed assistance projects designed and selected on the basis of the CTED assessments, and arranged according to regional and thematic priority.⁷⁶ The projects encapsulate the ‘All of UN’ approach of the GCTS and are delivered by multiple Coordination Compact entities, including the UN Office on Drugs and Crime, the UN Development Programme, and UN Women.

Instead of asking for money for a broad thematic purpose, the brochure contains programmes already developed with particular nations or regions. It is the means by which the UN makes its pitch to donors for funding. In 2018 the UN sought US\$193,784,888 for

⁷³ Detailed information about the funding of the GCTS is available on the Office for Counter-Terrorism website: <http://www.un.org/counterterrorism/funding-and-donors>. The landing page features a wall-of-fame style roll-call of major donors.

⁷⁴ See Chapter 3, at section 2

⁷⁵ UN Doc. A/71/858 (2017), para. 61

⁷⁶ UN Office on Counter-Terrorism, *Consolidated Multi-Year Appeal 2019-20* (UN, 2018), 5

its fully-costed programmes, which span all regions and all four pillars of the Counter-Terrorism Strategy. US\$3.4m was requested to fund a prevention of violent extremism project in Tunisia; US\$14.8m to support the implementation of the regional strategy for stabilization in Cameroon; US\$11.3m for building the capacity of member states globally to prevent, detect and investigate terrorist offences and related travel by using advance passenger information and passenger name record data; and US\$18m to implement the Office's Foreign Terrorist Fighters Plan. There are smaller projects, too. For instance, \$500,000 is requested for a project on AI-enabled counter-terrorism. The brochure offers something for every budget.

The Trust Fund for Counter-Terrorism is at the centre of the Multi-Year Appeal. The brochure features a roll-of-honour of the highest contributors (distinguishing funds received against funds pledged), nudging other states to contribute by showing off how its funds have risen in the last couple of years.⁷⁷ The biggest contributor is Saudi Arabia at US\$110m, part of which funds the UN Office itself. Since Guterres' reforms, contributions have risen substantially. In 2018, Qatar pledged US\$75m, while the Netherlands donated the goTravel software worth US\$11.5m for collecting, analysing, and sharing passenger information which the UN makes available to any member state.⁷⁸ The generalized practice of making donations public and of lauding the biggest donors serves the double purpose of letting large donors demonstrate their commitment to a particular cause and simultaneously shaming states which are not listed.

The department store approach to funding is a response to the UN's precarious finances. Secretary-General Guterres explained that '[w]ith a mandate to provide capacity-building to Member States across the world, it is a challenge [for the UN] to meet the expectations and growing demands with very limited regular budget resources'.⁷⁹ As I have suggested, donors prefer to fund specific initiatives, rather than to see their contributions disappear into the black hole of UN organizational costs. The funding of the UN Office on Drugs and Crime, a major capacity-building provider for the GCTS, is a case in point. In 2017, assessed contributions came in at US\$30.6m; voluntary non-specified contributions at US\$4m; and voluntary specified contributions at US\$342m.⁸⁰ Modular work-packages are both cause and effect of this last and largest category of earmarked contributions.

The UN also signals its commitment to performance review through its massive internal architecture of audit and oversight. The organization's Joint Inspection Unit continually reviews its programmes, funds, initiatives, and agencies according to the logic of results-

⁷⁷ UN Multi-Year Appeal (2019-20), 7-10

⁷⁸ The donation is the basis of the UN's Programme on Countering Terrorist Travel, which was launched in May 2019. The location of the programme in the UN's website is worth noticing. It is housed neither on the Office of Counter-Terrorism site, nor on the Security Council's CTC site, but has its own site: www.un.org/cctravel

⁷⁹ UN Doc. A/72/840 (2018), para. 82

⁸⁰ Data available from UN Chief Executive's Board for Coordination website, <http://www.unsceb.org/>. To find the UNODC data, follow 'UN System Statistics', then 'UN System Financial Statistics', and then 'Revenue Type by Agency'. The UNODC publishes a breakdown by donor on its website, with data from its annual reports.

based management. It was instrumental in ensuring its adoption during the early 2000s,⁸¹ and continues to advocate for its intensification, producing a new ‘high impact model’ for RBM in 2017. A central objective of this revamped benchmarking framework is to ‘mainstream[] results philosophy and principles into already existing organizational management strategies’.⁸² The existence of the system-wide review architecture is significant in its own right as an indicator of efficiency and probity, and its aim is to propagate these same review processes throughout the UN system. As audit theorist Michael Power remarks, audits have a tendency to go meta and audit-the-audit, rather than to dig down into the murky complexity of the ultimate object of audit.⁸³ The consequence is that results-based management serves as a dissemination tool for results-based management, rather than as a stimulant for achieving the desired results.

We can read the GCTS’s performance results framework in this light. It was created in 2017 to measure progress in implementing its 5-year programme (2016-20). The following year, it created a Programme Review Board to conduct periodic assessments of its progress.⁸⁴ The UN’s approach to monitoring and evaluation has become increasingly capillary, as it attempts to respond to donor imperatives of value-for-money. Apart from ensuring that money is well-spent *ab initio*, results-based management offers the opportunity for continual review. In response to criticisms by the UN’s Joint Inspection Unit, the Office has extended its monitoring and evaluation activities to specific projects within the programme.⁸⁵ Accordingly, the Review Board has been charged with reviewing ‘project performance against quarterly and annual targets and provide guidance on project implementation matters’.⁸⁶ The Secretary-General has affirmed this need for project-level management. UN agencies must show how ‘such interventions achieve measurable impact and deliver results in the countries where they are delivered’.⁸⁷

The need to show that international funding has been well-spent intensified after 2008 in response to the global financial crisis and the austerity cuts to public services in OECD countries. This has made counter-terrorism programming a ‘lucrative’ area, as James Cockayne puts it,⁸⁸ a rare example of an area of spending ring-fenced from severe cuts. The sense that initiatives can gain funding if they refit themselves as relevant to counter-terrorism has been a significant impetus behind the ‘swarming’ of initiatives described in Chapter 3.

Competition for funding in the global sphere is fierce. Spending on international organizations has fared badly since the financial crash, a situation exacerbated by the

⁸¹ To this end, it published a series of reports, which are summarised in UN Doc. JIU/REP/2004/5 (2004)

⁸² UN Doc. JIU/Note/2017/1 (2017)

⁸³ Michael Power, *The Audit Explosion* (Demos, 1996), 15

⁸⁴ See generally, the UNCCT’s Annual Report 2018, 107-110

⁸⁵ UN Office of Internal Oversight Services, *Report 2018/121: Audit of the United Nations Counter-Terrorism Centre* (December 2018), esp. paras 43-45

⁸⁶ UNCCT’s Annual Report 2018, 110

⁸⁷ UN Doc. A/72/840 (2018), para. 71

⁸⁸ Cockayne, ‘Challenges in United Nations Counter-Terrorism Coordination’, 672

entrenchment of national populism in late capitalist economies. States in the Global North have put even more pressure on international organizations to move with the times and demonstrate results. The UK's review of multilateral aid in 2016 put it like this:

The multilateral system must ... evolve much further and faster to stay relevant in our changing world. Otherwise it will not retain the support of shareholders, including the UK. Organizations must lead by example and challenge themselves to demonstrate results, to embrace transparency and target resources where they will achieve the greatest impact.⁸⁹

In 2018, the US President complained that 'the United States is the world's largest giver in the world, by far, of foreign aid. But few give anything to us'. For this reason, he told the General Assembly, his administration is 'working to shift more of our funding from assessed contributions to voluntary so that we can target American resources to the programs with the best record of success'.⁹⁰ The policy represents the flip-side of his predecessor's National Security Strategy. The Obama administration also sought to 'modernize the infrastructure for international cooperation', albeit it by 'paying our bills' rather than withholding funds.⁹¹ Central to both visions of security is the idea that capacity-building is an investment.

Self-interested giving is incompatible with traditional development assistance. Donors are not permitted to make funding decisions based on their national interest, thus subordinating the needs and preferences of recipient states. In attempting to capitalize on sovereign self-interest in articulating counter-terrorism architecture, however, the UN has muddied the waters between donor-interest and recipient-interest. By insisting on the shared nature of the challenge posed by threats without boundaries, the UN enables donors like the US and the UK to allocate funding according to their own security priorities while presenting themselves as acting for the benefit of the entire international community.

When it comes to economic and social development, there are safeguards to prevent the collapse of collective projects into individual ones. OECD countries pledge to commit a certain percentage of their GDP to Official Development Assistance every year. This 'gold standard' of development assistance must have the economic development and welfare of the recipient state as its main objective. One result is that military aid and anti-terrorism activities are excluded because they are presumed to be self-interested.⁹² However, as several scholars have shown, counter-terrorism activities can be reclassified as ODA if it can

⁸⁹ UK DFID, *Raising the standard: the Multilateral Development Review 2016* (December 2016), 9

⁹⁰ UN Doc. A/73/PV.6 (2018)

⁹¹ Barack Obama, *National Security Strategy of the United States of America* (White House, 2010), 46.

⁹² OECD Development Assistance Committee, *Converged Statistical Reporting Directives for the Creditor Reporting System and the Annual DAC Questionnaire* (2018), OECD Doc. DCD/DAC/STAT(2018)9/FINAL, paras 123-126

be shown that they are primarily for economic and social purposes.⁹³ The articulated security project is especially prone to blur the boundaries between security and development because, as Chapter 2 suggested, it is built on the premise that the two UN pillars are interdependent. The effect on development spending as a whole is that counter-terrorism relevant programmes take precedence over other sorts of assistance.

Counter-terrorism programmes are a magnet for self-interested development funding. States in the Global North routinely include external capacity-building activities in their counter-terrorism strategies,⁹⁴ rationalizing the inclusion on the basis of an independent world. ‘Terrorists know no boundaries and what they do overseas manifests itself in the UK’, as the UK Strategy puts it.⁹⁵ The counter-terrorism strategies of the UK, the US, and Australia all invoke the language of results-based management. Value-for-money is one of the four guiding principles of the UK’s strategy for example.⁹⁶ For its part, Australia justifies spending through ‘various reporting mechanisms, internal reviews and external checks and balances’,⁹⁷ and the US promises to ‘ensure that we are making measurable progress toward our strategic objectives’.⁹⁸ The idea that security-spending is self-interested is supported by the largely US-focused literature of cost-benefit analysis on the use of foreign aid in the national counter-terrorism strategy.⁹⁹

The UN inhabits a competitive marketplace when it comes to counter-terrorism capacity-building, only some of which initiatives align with its Strategy. Donor states have their own priorities, of course, and often run their own counter-terrorism programmes, many of which dwarf the UN’s offering. In 2017, the budget for just one of the USA’s several counter-terrorism assistance programmes, the Counter-Terrorism Partnerships Fund, was US\$1.8bn.¹⁰⁰ Donor states are also members of a host of other inter-governmental organizations which have their own counter-terrorism plans and priorities. The EU, for example, takes the view that ‘cooperation with and the provision of assistance to priority third countries’ is a means of increasing the security of Europeans.¹⁰¹ It funds a host of

⁹³ See e.g. Kwesi Aning, ‘Security, the War on Terror, and Official Development Assistance’ 3(1) *Critical Studies on Terrorism* (2010) 7-26, and Alice Hills, ‘Trojan Horses? USAID, Counter-Terrorism and Africa’s Police’ 27(4) *Third World Quarterly* (2006) 629-643

⁹⁴ US Government, National Strategy for Counterterrorism of the USA (October 2018), 24; Council of Australian Governments, Australia’s Counter-Terrorism Strategy: Strengthening our Resilience (2015), 12-13; EU, ‘Council Conclusions on EU External Action on Counter-terrorism’ (19 June 2017)

⁹⁵ UK Government, CONTEST: The UK’s Strategy for Countering Terrorism (June 2018), para. 20

⁹⁶ *Ibid.* para. 96

⁹⁷ Council of Australian Governments, Australia’s Counter-Terrorism Strategy: Strengthening our Resilience (2015), 22

⁹⁸ USA Government, National Strategy for Counterterrorism of the USA (October 2018), 11

⁹⁹ Jean-Paul Azam and Alexandra Delacroix, ‘Aid and the Delegated Fight Against Terrorism’ 10(2) *Review of Development Economics* (2006) 330-344; Jean-Paul Azam and Véronique Thelen, ‘Foreign Aid vs. Military Intervention’ 54(2) *Journal of Conflict Resolution* (2010) 237-261; Subhayu Bandyopadhyay, Todd Sandler and Javed Younas ‘Foreign Aid as Counterterrorism Policy’ 63(3) *Oxford Economic Papers* (2011) 423-447; Andrew Boutton, ‘US Foreign Aid, Interstate Rivalry, and Incentives for Counterterrorism Cooperation’ 51(6) *Journal of Peace Research* (2014) 741-754; Andrew Boutton, ‘Of Terrorism and Revenue: Why Foreign Aid Exacerbates Terrorism in Personalist Regimes’ 36(4) *Conflict Management and Peace Science* (2016) 359-384

¹⁰⁰ The Trump Administration cut its funding to US\$40 in 2018.

¹⁰¹ EU Counter Terrorism Strategy (2005), para. 5

activities – including contributing US\$10m to the UN Counter-Terrorism Trust Fund.¹⁰² The OECD also funds and provides capacity-building assistance for counter-terrorism purposes through its Transnational Threats Department.¹⁰³

The Global Counterterrorism Forum (GCTF) is a particularly important body when it comes to funding capacity-building. The elite body of 29 states plus the European Union includes states from every continent, but favours those from the Global North.¹⁰⁴ Its terms of reference explain that

Developing a close and mutually reinforcing relationship with the United Nations system and existing regional and sub-regional bodies will be a priority for the GCTF. The GCTF... will seek to support and promote global efforts to implement the UN Global Counter-Terrorism Strategy in a balanced manner and the UN counterterrorism framework more broadly....The GCTF will seek to promote the development and support the implementation of regional and sub-regional counterterrorism strategies.¹⁰⁵

For its part, the Forum has been recognized by the UN Security Council.¹⁰⁶ As well as producing 'best practices' guides of the sort we met in Chapter 3, it also coordinates and mobilises counter-terrorism capacity-building, providing its members with a platform from which to launch their capacity-building efforts.¹⁰⁷ Its present focus is on Africa. It targets capacity-building assistance to two regions, East Africa, where the group al-Shabaab poses a particular threat, and West Africa, which grew out of an initial initiative in the Sahel region. In doing so, it gives a global platform to regional interests.

Its involvement in the EU's development of a strategic plan for a Centre of Excellence for Preventing and Countering Violent Extremism in East Africa is one example.¹⁰⁸ The convergence of projects and initiatives across formal and informal bodies and regional and global players serves to underscore the swarm-like quality of managerial counter-terrorism, discussed in Chapter 3. The Centre of Excellence was established by regional governments acting through the Intergovernmental Authority on Development, but it will be operationalized within the terms set by the EU. It is one of a number of projects on violent extremism funded and delivered by the EU, including the flagship Global Forum initiative,

¹⁰² Donors are listed in the Secretary-General's annual report on CT Strategy Implementation, UN Doc. A/72/840 (2018), Annex V

¹⁰³ See for example, its three-day training course aimed at further strengthening the capacity of Uzbekistan to counter terrorist financing co-organized with the UNODC in November 2019.

¹⁰⁴ De Londras, 'The Transnational Counter-Terrorism Order', 39

¹⁰⁵ GCTF, *Terms of Reference* (as amended 4 August 2017).

¹⁰⁶ UN Doc. S/PRST/2013/1 (15 January 2013); UN Doc. S/Res/2133 (2014)

¹⁰⁷ GCTF, *Terms of Reference*, I(B)(4) 'While aiming to complement and reinforce any relevant existing regional mechanisms and activities, regional Working Groups will, inter alia, seek to a) identify the counterterrorism challenges and capacity gaps/needs in a particular region; b) consider and develop innovative, coherent, and concrete activities that would address identified capacity gaps/needs; and c) mobilize the necessary political will, financial resources, and expertise to implement those activities'.

¹⁰⁸ Here is the website of the Centre of Excellence: <https://cve.igad.int/new/>

Hedayah, a Centre of Excellence on countering violent extremism, which was initiated by the GCTF in 2011 and is headquartered in Abu Dhabi.¹⁰⁹ Amongst other things, the Centre runs training programmes, holds workshops, produces resources, supports national action plans.

The EU funds activities for the purpose of countering violent extremism with a particular focus on civil society, media and research to the tune of €5m.¹¹⁰ The budget demands detailed guidelines of programme design and evaluation,¹¹¹ bringing into play an EU version of results-based management which cycles through stages of programming – identification of needs – formulation of components – project implementation – audit and evaluation. There is no end-point to these cycles; improvement is always possible.

The identification stage, for instance, requires programmes to develop a ‘theory of change’ - a hypothesis about why and how the programme will tackle the threats it identifies.¹¹² The formulation stage breaks this down into specific activities, which enables the theory of change to be ‘visualised through a... results framework, including progress, compliance and performance indicators’.¹¹³ The evaluation stage assesses the programme’s success against these indicators.¹¹⁴ Evaluation is not the end of the story. It is meant to yield ‘lessons learned’ for future programming activities. At a more specific level, it is an opportunity to decide what, if any, follow-up is warranted for the programme; should it be continued, scaled-up, or whether a follow-on programme is needed to build on its achievements?¹¹⁵ This is gratification through funding. The evaluative success of a programme means more money for more programming, distributed to those who have proved their responsible leadership and astute management.

This section on correction by gratification has shown how the UN’s results-based management approach to capacity-building programming has the effect of perpetuating the ‘armature’ of managerial governance. Programmes aimed at, say, harnessing civil society for the purposes of anti-radicalization do not tend to yield identikit approaches across nation-states, but they do have the effect of disseminating the technologies of managerial governance as a condition of funding and a badge of responsibility.

2. Punishment

¹⁰⁹ Here is Hedayah’s website: <http://www.hedayahcenter.org>

¹¹⁰ As set out in the European Commission’s brochure *STRIVE for Development Strengthening Resilience to Violent Extremism* (2019), 45-46. Available at: https://ec.europa.eu/europeaid/sites/devco/files/strive_brochure_for_web.pdf

¹¹¹ European Commission, *Operational Guidelines on the preparation and implementation of EU financed actions specific to countering terrorism and violent extremism in third countries* (2015). Available at: https://ec.europa.eu/europeaid/sites/devco/files/eu_ct_cve_guidelines.pdf

¹¹² European Commission, *Operational Guidelines*, 32

¹¹³ European Commission, *Operational Guidelines*, 35, see also pp. 43-5

¹¹⁴ European Commission, *Operational Guidelines*, 51

¹¹⁵ European Commission, *Operational Guidelines*, 53

Discipline becomes punitive when techniques of gratification fail to compel cooperation. Foucault explained that '[a]t the heart of all disciplinary systems functions a small penal mechanism'.¹¹⁶ Resort to punitive measures – even relatively 'petty mechanisms' – raises the costs of discipline. Discipline is good value for money because 'politically, by its discretion, its low exteriorization, its relative invisibility', it arouses little resistance.¹¹⁷ The same idea was expressed by Chayes and Chayes in their championing of managerial governance: when 'the principal source of noncompliance is not wilful disobedience but the lack of capability or clarity or priority, then coercive enforcement is as misguided as it is costly'.¹¹⁸

As well as being a way of measuring progress and identifying gaps and deficiencies, performance review processes also operate as an indicator of engagement. Taking performance review seriously is a proxy for the exercise of responsibility – failure to implement the recommendations of an assessor, for example, indicates a non-cooperative attitude. In effect, what triggers the move from gratification to punishment as the engine of correction is recalcitrance rather than non-compliance.

Results-based management, as the previous section suggested, starts from the presumption that management helps individuals to realize their potential. That a state's failing to engage with performance review processes might be grounds for punitive correction is the flipside of the assumption of what Slaughter calls 'no-fault non-compliance'.¹¹⁹ It suggests that states can also be at fault for their non-compliance. This made explicit in the doctrine of 'unable or unwilling' states.¹²⁰ It is not so much the failure to optimize that is the problem, but the failure to engage with the managerial process. This way of thinking occurs in both across the UN family and its GCTS partners. In the UN system, the Security Council often acts as a penal mechanism in this respect.¹²¹

This section will focus on a managerial organization rather than one with juridico-political pretensions: the Financial Action Task Force (FATF), which addresses money laundering and terrorist financing.¹²² My purpose is to show that the move from gratification to punishment can occur *within* managerial governance, rather than representing a move from a managerial to a juridico-political register. Although the Task Force's counter-measures can appear like

¹¹⁶ Foucault, *Discipline and Punish*, 177

¹¹⁷ *Ibid.*, 218

¹¹⁸ Chayes and Chayes, *The New Sovereignty*, 22

¹¹⁹ Kal Raustiala, and Anne-Marie Slaughter, 'International Law, International Relations and Compliance' in Walter Carlsnaes, Thomas Risse and Beth Simmons (eds), *The Handbook of International Relations* (Sage, 2002) 538-558, 543

¹²⁰ Ntina Tzouvala, 'TWAAIL and the 'Unwilling or Unable' Doctrine: Continuities and Ruptures' 109 *AJIL Unbound* (2016) 266-270; Olivier Corten, 'The 'Unwilling or Unable' Test: Has It Been, and Could It Be, Accepted?' 29(3) *Leiden Journal of International Law* (2016) 777-799

¹²¹ Isobel Roele, 'From illiberal to incorrigible: A new strategy for humanitarian enforcement action in Syria' 15 *Baltic Yearbook of International Law* (2015) 104-133

¹²² On the FATF more generally, see the FATF symposium in the 2010 edition of the *Journal of the Professional Lawyer*; Kathryn L. Gardner, 'Fighting Terrorism the FATF Way' 13(3) *Global Governance* (2007) 325-345; Guy Stessens, 'The FATF 'Black List' of Non-Cooperative Countries or Territories' 14(1) *Leiden Journal of International Law* (2001) 199-207; Roele, 'Side-lining Subsidiarity', 204-214

sabre-toothed enforcement measures, we shall see that the effect of their application is not to enforce obligations related to financial regulation, but to insist upon participation within the structures of managerial governance.

The FATF was established as a temporary measure by the G7 in 1989, and its mandate was made open-ended in April 2019.¹²³ Widely criticized for its club-like composition and structure, the Task Force has also raised scholarly eyebrows for a punitive process often referred to as known as ‘blacklisting’, but which will be referred to here as ‘call for action’ listing. States which do not cooperate with the FATF evaluation process are named, shamed, and subject to counter-measures or enhanced due diligence measures. This has led some legal scholars to unfavourably compare the ‘call for action’ process to formal juridical sanctions, and others to affirm the process as a flexible, informal tool for enforcing juridical obligations.¹²⁴

The FATF is a mainstay of UN counter-terrorism efforts, especially those centred on the Security Council. Its 40 Recommendations on anti-money laundering and countering terrorist financing are a feature of the Counter-Terrorism Committee’s directory of best practices for Resolution 1373.¹²⁵ Together with their Interpretive Notes, the Recommendations are known as ‘the FATF Standards’.¹²⁶ As the name suggests, the Recommendations are not juridically binding, taking the form ‘Countries should...’. The FATF Standards are difficult to read as a juridical instrument from an orthodox doctrinal point of view.

Nevertheless, lawyers often read the Standards as a form of ‘soft’ law.¹²⁷ Nico Krisch has characterized the FATF as an ‘informal actor’ in international law, emphasizing its rarefied composition of 37 states, most of which are OECD countries, and two intergovernmental organizations, one of which is the EU.¹²⁸ Exclusive membership notwithstanding, FATF Standards are addressed to states throughout the world through nine regional ‘FATF-Style

¹²³ FATF, Mandate: Approved by the Ministers and Representatives of the Financial Action Task Force (12 April 2019)

¹²⁴ Valsamis Mitsilegas and Niovi Vavoula, ‘The Evolving EU Anti-Money Laundering Regime: Challenges for Fundamental Rights and the Rule of Law’ 23(2) *Maastricht Journal of European and Comparative Law* (2016) 261-293. But cf. Mark T. Nance, ‘Naming and Shaming in Financial Regulation: Explaining Variation in the Financial Action Task Force on Money Laundering’ in Richard Friman, *The Politics of Leverage in International Relations* (Palgrave, 2015). Naming-and-shaming is used especially widely in human rights enforcement, but not always successfully. Emilie M. Hafner-Burton, ‘Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem’ 62(4) *International Organization* (2008) 689-716

¹²⁵ On the Directory see further, Chapter 3, at section 3. FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (2012, updated June 2019)

¹²⁶ *Ibid.*, 7

¹²⁷ See e.g. Leonardo Borlini and Francesco Montanaro, ‘The Evolution of the EU Law against Criminal Finance: The Hardening of FATF Standard within the EU’ 48(4) *Georgetown Journal of International Law* (2017) 1009-1062

¹²⁸ The FATF Secretariat is located in the OECD, though the two organizations are formally separate. Its current members are Argentina; Australia; Austria; Belgium; Brazil; Canada; China; Denmark; European Commission; Finland; France; Germany; Greece; Gulf Co-operation Council; Hong Kong; Iceland; India; Ireland; Israel; Italy; Japan; Republic of Korea; Luxembourg; Malaysia; Mexico; Netherlands; New Zealand; Norway; Portugal; Russian Federation; Saudi Arabia; Singapore; South Africa; Spain; Sweden; Switzerland; Turkey; United Kingdom; and United States

Bodies', which allow FATF participation to expand and contract. This 'accordion' approach preserves an exclusive group of elite decision-makers, while reaping the benefits of more inclusive participation.¹²⁹ As Krisch puts it, from a juridical point of view, this arrangement 'falls far short of [giving non-members] an effective voice in FATF decision making'.¹³⁰

But the FATF is not a proto-juridical body, and its recommendations are not best understood as mutant juridical norms. Instead, the FATF Standards and the voluminous accompaniment of technical micro-prescriptions they generate operate in a similar way to the International Civil Aviation Authority standards which we examined in Chapter 3. In the context of the GCTS, then, the FATF Standards give substance to the thematic module on countering terrorist financing. As well as being formally identified as a best practice provider, the FATF's Standards are frequently endorsed by the UN Security Council as a means of implementing its counter-terrorism resolutions.¹³¹ Mutual invocation of each other's documents gives rise to the call-and-response association described earlier.¹³² For its part, the FATF also makes reference to Security Council resolutions. The interpretative notes for Recommendations 6 and 7, for instance, explain that these provisions 'require[] each country to implement targeted financial sanctions to comply with the United Nations Security Council resolutions' related to terrorist financing and proliferation, respectively.¹³³

The FATF runs an intensive process of performance review to promote the implementation of its Standards.¹³⁴ Rolling cycles of 'mutual evaluations' are supplemented by a corrective follow-up programme in cases where evaluations reveal deficiencies. Mutual Evaluation Reports review the effectiveness of measures states have taken, as well as their technical compliance with the FATF Standards. States receive a rating for each Recommendation: compliant, largely compliant, partially compliant, and non-compliant. Too many low scores put a state in an 'enhanced follow-up' process. Failure to engage with this follow-up process triggers increased monitoring for countries with 'strategic deficiencies', and even 'call for action' listings, which ask all states to impose 'enhanced due-diligence measures' or more extensive countermeasures.¹³⁵ At the time of writing, two states are on the 'call for action' list: the Democratic People's Republic of Korea and Iran. For a state to be removed from enhanced performance review, it must 'substantially address all the components of its action plan'.

Action plans imbricate individual entities into the FATF's strategic framework. They signal that the country is responsible because they express and perform the corrective process. The adoption and implementation of the action plan is corrective in its own right and not

¹²⁹ Ayelet Berman, 'Accordion Governance' 13(3) *Vienna Journal on International Constitutional Law* (2019) 203–236

¹³⁰ Krisch, 'The Decay of Consent', 22-24

¹³¹ UN Doc. S/Res/2161 (2014), for example, urges member states to implement the FATF's 40+9 Recommendations and interpretive notes.

¹³² Chapter 3, section 1(a)

¹³³ FATF, *International Standards*, 37 and 45

¹³⁴ See also, Chapter 3, Section 3

¹³⁵ FATF, *International Standards*, Recommendation 19

just a woolly commitment to take unspecified action, as they can appear from a juridical point of view. FATF action plans detail what must be achieved before the state can graduate from ‘call for action’ listing. This process is not a tick-box exercise. Iran, for example, has been subject to enhanced due-diligence warnings since October 2007.¹³⁶ In 2016, the Task Force welcomed ‘Iran’s adoption of, and high-level political commitment to, an Action Plan to address its strategic AML/CFT [anti-money laundering and countering the financing of terrorism] deficiencies, and its decision to seek technical assistance in the implementation of the Action Plan’.¹³⁷ When Iran failed to demonstrate implementation progress, the FATF imposed countermeasures in 2019. These require other states to increase supervisory examination for branches and subsidiaries of financial institutions based in Iran; introduce enhanced relevant reporting mechanisms for financial transactions; and require increased external audit requirements for financial groups located in Iran. The measures will be suspended on condition that it implement a specific action in its Plan: ratification of the UN Conventions on Transnational Organized Crime and Terrorist Financing. Thereafter, Iran will remain on the ‘call for action’ list until it ‘implements the measures required to address the deficiencies identified with respect to countering terrorism-financing in the Action Plan’.¹³⁸

The FATF process is phased, and includes less dramatic iterations of correction-by-punishment. As well as the ‘call for action’ list, there is also a so-called grey-list of countries ‘subject to increased monitoring’ due to ‘strategic deficiencies’. States end up on this list if their Mutual Evaluation Report contains too many low scores. The list is by no means limited to the usual suspects of international non-compliance, or to countries from the Global South which might be expected to struggle to meet the FATF’s exacting standards. Western European states like Austria, which allows individuals to open bank accounts anonymously, can also be vulnerable to listing. Austria scored very poorly in its 2016 Mutual Evaluation, and two-years later had failed to graduate from the ‘enhanced follow-up’ process which terminates on the grey-list.¹³⁹ The USA is also in enhanced-follow-up, having failed to regulate businesses like casinos.¹⁴⁰

States on the grey-list must commit to action plans that address deficiencies identified in the mutual evaluation report, and are removed only when the plan has been implemented. Grey-list jurisdictions are engaged but deficient. The FATF explains that

Jurisdictions under increased monitoring are actively working with the FATF to address strategic deficiencies in their regimes to counter money

¹³⁶ FATF, *Statement on Iran* (11 October 2007). FATF Statements are published on the Task Force’s website (www.fatf-gafi.org). There is no official document symbol.

¹³⁷ FATF, *Public Statement* (24 June 2016)

¹³⁸ FATF, *Public Statement* (21 February 2020)

¹³⁹ FATF, *Anti-money laundering and counter-terrorist financing measures - Austria, 2nd Enhanced Follow-up Report & Technical Compliance Re-Rating* (November 2018)

¹⁴⁰ FATF, *Anti-money laundering and counter-terrorist financing measures – United States, 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating* (March 2020)

laundering, terrorist financing, and proliferation financing. When the FATF places a jurisdiction under increased monitoring, it means the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring.¹⁴¹

FATF evaluations exist in a continuous present of improvement, as past deficiency and future progress meet each other in both institutional and individual review. As well as evaluating states' past performance, mutual evaluations are also a way of updating the FATF Standards. Performance review is a learning process. As each round of performance review is completed, the FATF Recommendations are revised, and a new round of evaluation begins. The third revision in 2012 sparked a fourth round of evaluations. Revisions, of course, also respond to other factors. The second revision in 2002 was a direct response to the terrorist attacks of 9/11. Revision is intended to 'address new and emerging threats'.¹⁴² Terrorism is particularly wont to evolve: 'The nature and scale of terrorist financing continues to evolve rapidly', agreed FATF states in a recent update to the Task Force's mandate.¹⁴³ The effect is to create continual, recursive cycle of learning and correction.

At the same time, the FATF's mutual evaluations form concentric cycles, whereby performance review intensifies through mutual evaluation, enhanced follow-up, increased monitoring, and calls for action depending on an individual jurisdiction's cooperation. At the same time, each of these forms of performance review also revolves in a cycle of review, correction, and follow-up.

Although it is hard-edged, the FATF approach remains within the realm of managerial governance. As an alternative to economic sanctions or military measures taken by the UN Security Council or by states acting unilaterally, there are good reasons for scholars to valorize such 'soft' mechanisms of compliance.¹⁴⁴ At the same time, the particularity of managerial penalties is obscured by placing them on a spectrum with juridical ones, drawing attention away from the mode of penalty and focusing on its effect. The mode of managerial penalty reflects a desire to make each individual a manager of herself. It stands to (this manner of) reason that those who do not cooperate should face an intensified version of management, rather than be 'outcast' from the cooperative enterprise.¹⁴⁵

From this perspective, the most pertinent feature of the FATF 'call for action' process is not the quasi-judicial 'counter-measures' that may be taken against a non-cooperative jurisdiction, or the soft sanction of 'naming and shaming'. What is significant, rather, is the redoubled performance review through which a state's presence on a list is managed. Results-based management is prone to tangents. As the last section suggested, rather than

¹⁴¹ FATF, *Public Statement* (21 February 2020).

¹⁴² FATF, *International Standards*, 7

¹⁴³ FATF, *Mandate*, paras 7-8

¹⁴⁴ Heupel, 'Combining Hierarchical and Soft Modes of Governance', 9

¹⁴⁵ Oona Hathaway and Scott Shapiro, 'Outcasting: Enforcement in Domestic and International Law' 121(2) *Yale Law Journal* (2011) 252-349

enforcing the obligation, it enforces managerial performance. What sets a state subject to a 'call for action' apart from the grey-list state is their failure to engage, not the level of their deficiency.

Foucault observed a similar tendency in the humanized penal systems of *Discipline and Punish*. 'The ideal point of penalty today', he commented, 'would be an indefinite discipline':

an interrogation without end, an investigation that would be extended without limit to a meticulous and ever more analytical observation, a judgement that would at the same time be the constitution of a file that was never closed, the calculated leniency of a penalty that would be interlaced with the ruthless curiosity of an examination, a procedure that would be at the same time the permanent measure of a gap in relation to an inaccessible norm and the asymptotic movement that strives to meet in infinity.¹⁴⁶

The 'calculated leniency' of FATF countermeasures is offset by the constant, concentric, and recursive cycles of performance review. It is the redoubled insistence on the performance of an action plan – the insistence that a state demonstrate itself a responsible manager of its own process of compliance. Non-compliant states have not merely failed to comply with their obligations; they have failed to engage with the managerial process, and have proved themselves to be irresponsible in doing so.

Conclusion

This chapter has examined three examples of performance review, each one run according to a logic of results-based management. Continual performance review is the price individual components pay for retaining their sovereign freedom. The effect of performance review is to perpetuate and disseminate managerial technologies of strategic planning, modularization, micro-prescription, and performance review. Foucault's analytics of power are often criticized for being over-determining and under-estimating the ability of the targets of strategies of governance and control to resist them. This chapter and its predecessor do little to take the sting from the criticism; the UN's projects for articulating security have not been unmasked as highways to homogeneity among the UN membership. What has appeared instead is the spread of the managerial technologies which are meant to deliver the coordinated and coherent cooperation. The UN's attempt to articulate security infrastructure and policy might not be effective in achieving its aims, but it does have an effect: the spread of managerial governance.

¹⁴⁶ Foucault, *Discipline and Punish*, 227