



The Changes in Terrorism Financing Regulations within the Financial Industry

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Title:	The Changes in Countering Terrorism Financing Regulations within the Financial Industry
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<p>Abstract:</p> <p>Financial institutions play an important role as gatekeeper and controller to prevent terrorism financing due to their unique abilities and functions. A strong financial regulatory system ensures that the financial institutions are protected and can exercise their role to the fullest in countering terrorism financing. This thesis looks into historical changes of CFT regulations, studies the reasons behind the changes and discusses whether those changes were effective and sufficient.</p> <p>Methodology: This thesis employs qualitative empirical research methodology. The main data includes the Bank Secretary Act of the United States, several UN Resolutions on CFT, and the FATF Recommendations. Through content analysis, the data are grouped into three chronological categories representing the main focuses of the regulations during those time periods. Then the data are analyzed through the lenses of discourse analysis to discuss whether the changes were effective.</p> <p>Results: The regulations in the earlier period lacked the focus on CFT due to assumptions on the similarities between anti-money laundering and terrorism financing. This had left many opportunities for terrorist groups to obtain their funds through the formal financial institutions. The regulations in the middle period amended for the earlier mistakes by provided more defined CFT guidelines and extended the scope of terrorism financing activities for monitoring. The recent regulations keep the financial system up to date with modern terrorism financing methods. While there were shortcomings in the early regulations, the policymakers did well in controlling the situations by quick and effective regulatory revisions. However, the issues of transnational soft law compliance and future predictions should be addressed for more well-covered and effective future amendments.</p> <p>Limitations: The main data used in this study does not fully reflect the changes in CFT regulations of all nations worldwide. In addition, some contextual meaning might be lost or overlooked during analysis due to specific selection of data. Lastly, the analysis and discussion might not fully reflect the policymakers' thoughts and intentions due partly to the author's assumptions in interpretation of the regulations.</p>	

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1. INTRODUCTION

Terrorism is the subject everyone concerns about, starting with the dreadful attack on September 11, 2001 in the United States and continuing with more recent attacks worldwide. However, “terrorism” is not a new concept. The foundation for modern terrorism was laid out in the French Revolution in 1793-1794, when terrorism was used to promote a better system. A few centuries and decades after that saw the evolving of terrorism: from state terrorism to non-state terrorism, from simple violent acts to those of well-organized and theatrical, from small state terrorist groups to large international terrorist groups. Similar to normal organizations, terrorists groups need funds to finance their planning and operations. In the modern time where large terrorist groups have wide variety of resources and means to fund money, detecting and preventing terrorism financing becomes essential in aiding the termination of potential terrorist attacks. The banking industry, the target and the tool, plays an active role in assisting the governments in detecting and preventing terrorism financing. Changes in terrorism financing methods require changes from the government and intelligence agencies in their regulations to detect and prevent terrorist activities. This research paper looks into the changes of countering terrorism financing regulations over time to understand the reasons behind the changes as well as discusses whether the changes were sufficient and efficient.

1.1 Research aim

Financial institutions play an important role in the battle against terrorism financing due to their monitoring ability and intelligence that could provide governments with useful information in tracking and breaking up terrorist activities. A strong financial regulatory system guarantees that the financial institutions are protected, and gives them detailed guidelines and tools to detect and prevent terrorism financing. Evolution in terrorist groups’ funding methods requires effective and immediate responses from the regulatory system. In order to understand how the policymakers can improve future revisions and amendments to counter terrorism financing regulations, it is important to look at the shortcomings and successes of the regulations in the past.

1.2 Research questions

The evolving of terrorism financing methods means that the financial industry needs to constantly keep track of the financial movements occur at the financial institutions to decrease their vulnerability to terrorist organizations. Moreover, terrorism financing does not happen only in one or two countries, but rather involves the financial movements in many countries, even in those that are not at high risk for terrorist activities. In order to make effective regulations to prevent global financing of terrorism, it is important to understand the past regulations.

Therefore, this research paper

- (1) Looks at the regulatory framework for countering terrorism financing from 1990s until present time. This research specifically looks at the Bank Secretary Act from the United States, the UN Resolutions and the FATF Recommendations. The paper then studies whether there has been changes made in those documents and at what point of time. Then the paper moves on to
- (2) Analyze the changes in the regulatory framework. In this part, the paper discusses the shortcomings and successes of the changes in the regulatory framework. The paper concludes with possible insights for the future.

2. AN OVERVIEW OF TERRORISM AND TERRORISM FINANCING

1.1 Terrorism

Terrorism began as early as human's willingness to use violence to affect politics but the origin of the world itself comes from the "regime de la terreur" from the French Revolution, where its leader Maximilien Robespierre used terrorism to justify the survival of the New French Republic (Giddens, 2006). This sentiment laid the foundation for the current use of terrorism as the mean to push for a better system. Since then, terrorism has changed its shape and size, as well as its reasons and methods. The 1960s marked the spread of terrorism as non-state into an alarming international issue when terrorist groups started to use hijack as one of their main terrorist methods (POGO). Several decades after that saw terrorism evolved from small violent acts to well-planned large-scale acts that triggered horror among people worldwide. In the 21st century, with the unforgettable September 11 attack in 2001, religion became the main reason for terrorism. Since then, many large terrorist groups such as the Al-Qaeda and the ISIS became the prominent threats to the international governments.

1.2 Money Laundering and Terrorism Financing

1.2.1 Money Laundering

Money laundering (ML) refers to "the process by which proceeds from criminal activities are disguised to conceal their illicit origin." (IMF). For example, criminals who get their money from illegal acts do not use them as it is since it would catch the authority's attention, so they usually cover those with activities that looks legal and normal to avert the attention from the authority. In other words, the sources of money in money laundering comes from illegal and criminal activities, and was converted to look normal to enter a formal financial system. Power (2004) confined money laundering to criminal activities because, he argued, without criminal activities, there are no need to legitimate the process of acquiring money, and thus no need for money laundering to exist.

1.2.2 Terrorism Financing

Terrorism financing (TF), as the name suggests, refers to the act of providing or collecting money to support any terrorist groups or activities. Terrorism financing activities can be divided into two categories (9/11 Report). The first activity refers to the “financing of terrorist operating cells” such as the hijackers or the bombers in the attacks. The second funding activity refers to the funding for the space and time needed for planning, training and committing the attacks. However, terrorism financing does not place importance on the source of money, as the funds can be gathered through both legal and illegal sources.

Terrorist groups are also separated into different groups due to their basis financing strategies. Vittori (2011) showed that there are seven categories:

Terrorist Groups	Characteristics
State Sponsor	<ul style="list-style-type: none"> - Receives supports from the state that seeks political or ideological objectives. - Provided with false documentations and passports to allow free movements between states or countries. - Requirements of support receipts (worthy of the state’s support).
State Sponsoring	Provide facilities for a state sponsor to receive support.
Shell States	Takes control of the geographical area and exploit it for their needs.
Franchise	Receive most of support from one main source, but the resources are varied and diverse, allows independence.
Bundled Support	<ul style="list-style-type: none"> - Receive numerous tangible and non-tangible resources from various supporters instead of relying on one or few main sponsors. - Only receive resources as long as they satisfy their supporters.
Transnational Corporation	<ul style="list-style-type: none"> - Acts on global scale without any specific national identification. - Highly sophisticated and complex resources. - High level of autonomy.
Lone Wolf	- Not essentially involved in organized activities.

	<ul style="list-style-type: none"> - Individuals or small groups, act according to their own radical belief. - Self-contained, limited capabilities, cheap but significant causes
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Table 1. Terrorist Groups and Their Characteristics

1.2.3 Nature and Characteristics of Terrorism Financing

Tofangsaz (2015) argued that understanding the nature and characteristics of terrorist funding is important to identify the funding flows for terrorist activities. The Financial Action Task Force (FATF) mentioned in their report in 2008 that terrorist groups' financial needs can be divided into two categories: (1) operational resources, used for executing terrorist attacks; and (2) broad organizational resources, used to create, maintain and develop their infrastructures. Vittori (2011) divided the nature of terrorist funds into three categories, including money and financial instruments, tangible, and intangible.

Money and other financial instruments are the most important to any terrorist groups since they need them for all the stages of planning and conducting their terrorist activities (Byman, 2001). Tangible resources refer to those physical means and tools terrorist groups need for their maintenance and planning (Vittori, 2011). For example, those can be the manpower, food and other life's necessities, technology, and weapons. Finally, intangible resources includes operational space to plan and conduct attacks, operational security to ensure well-hidden locations, intelligence to help them plan their attacks in detailed, publicity to recruit followers and sympathizers; and leadership, command and control to keep their groups and operations going according to plan (Cargin et al, 2004).

In order to understand the theory of terrorism financing, six criteria need to be met: quantity, legitimacy, security, reliability, control and simplicity (Freeman, 2012). There are no preferable sources for terrorist groups as each of them has disadvantages and advantages when measured against those mentioned characteristics. In other words, they usually use different methods for financial gain to fit with the six characteristics above: quantity for the activities that gain the

most amount of money (Freeman, 2012), legitimacy means their ideology has to be legitimate or they would lose supporters (Wheeler, 2008), security means methods that are predictable and stable, reliability refers to the reliable sources (Freeman, 2012), control is needed to make sure that the operations would be successful and simplicity refers to the need to keep their activities simple and as effortless as possible.

1.2.4 Sources of Terrorism Financing

After the terrorist attack in 9/11/2001, recent literature focused quite heavily on Al Qaeda and Islamic terrorist groups. Many literatures such as those by Schneider (2004), Napoleoni (2005) and Comras (2007) discussed quite in detailed the financial states of the Al-Qaeda, where they managed to collect money from different activities from different countries in their international network. Their funds are mostly generated from sympathetic (both politically and religiously) supporters as well as illegal activities.

1.2.4a Legal Sources

Not all of the money financed by terrorist groups comes from illegal activities. Yepes (2008) as well as the FATF noticed, many sources of terrorism financing comes from perfectly legal and legitimate activities by charities, firms as well as professionals. Previous literatures reviewed that there are five main ways terrorist groups (in this case, the Al Qaeda) can get their money in a legal way: state sponsors (Yepes, 2008), private donors (Kohlmann, 2006), ethnic and religious communities (Comras, 2007), charities and NPOs (Raphaeli, 2003; Croissant and Barlow, 2007), and legal business (Napoleoni, 2005; Millard, 2006).

Donations, charities, and NPOs are common channels most terrorist groups use to get their money from private donors (Vittori, 2011). Donations directly from private donors can vary from small to huge sums as obligations towards their religions. Charities, on the other hand, can be abused in different way by terrorist groups. The 2008 Report by the FATF pointed out that terrorist groups could either divert part of the money collected through charities to their terrorist funds, or take over a whole charity organization and use them to collect funds from unknowing

sympathetic donors. Non-profit and non-governmental organizations sometimes provide terrorist groups with resources they need to conceal their identities and their hideouts in order to proceed with their plans (FATF, 2008).

Another legal source for terrorist funding are through legal investments in businesses. They can either set up a local business and use the income for their activities, or invest in different bonds, trades, companies and industries worldwide (Koh, 2006). For instance, the terrorist group Al Qaeda was discovered to have their funds coming from different investments in various businesses in Europe and Middle East (Jacquard, 2002).

1.2.4b Illegal Sources

Illegal activities account for a large amount of terrorist funding. The prominent source of money undoubtedly comes from drug trafficking (Makarenko, 2003a). Many researchers (Yepes, 2008; Peters, 2009) noticed a strong link between drug trafficking and financing of terrorist groups. It is one of the most common illegal activities that terrorist groups use to get their money. Another popular illegal activities among terrorist groups are oil smuggling (Johnson, 2001), which can earn them a significant profits that later were put into laundering or arms trade. Last but not least, arms and diamonds trafficking is also an important source of finance for terrorist groups (Levi and Gilmore, 2002). According to Schneider et al (2011), “illicit arms trade demonstrates how easy it is to obtain false documentation accompanying arms shipments, especially end-user certificates.” The inconsistency between the required documentations and lax custom control in many states provided an environment for terrorist to trade arms without criminal activities.

1.2.4c Informal Money Transfer System

Underground banking and its abuses by criminals has been an international concern in the 1990s. The informal money transfer system, also known as Hawala, has always been the subject of vulnerability to criminals. According to the IMF, up to 100 billion dollars were transferred in the underground banking using money as well as valuable goods, in which almost 2 million USD was linked to criminal activities (Thompson, 2007). Scholars such as Williams (2007) and El-

Quorchi (2003) looked at the operations and risks of such system and presented evidences which show that money gained from illegal activities has been moved through the Hawala networks. Bunt (2007), who studied the nature of this Hawala system, argued that this system is another way for terrorists to transfer funds for their criminal activities due to lack of license and government control. In addition, it is difficult to trace back flows of criminal money since there are almost no paper trail as all the transfers are done with a code and there are no obligations to keep record of users' identifications or transactions. Moreover, since the Hawala system not only receive cashes, but also other valuable goods such as diamond and gold, this makes it easier for terrorists to use diamonds and gold to trade for money to other locations of their group' bases.

While there have been recommendations and push for the regulation of Hawala system banking, scholars found that it might be difficult due to opposite perspectives on the system. One perspective, of course, viewed Hawala as an underground banking, a threat to the fight against money laundering and terrorism financing, and thus should be subject to the same regulations as standard financial institutions (Bunt, 2007). On the other hand, since the original purpose of the Hawala banking is for low-income workers and immigrants who do not have trust in formal banks, there would be problems in regulating the system. For instance, Razacy (2005) and Perkel (2004) argued that pushing for Hawala regulation would end up pushing the system further underground, thus making it more complicated to control or regulate it.

1.2.5 Moving and Storing of Terrorist Funds

According to Williams (2005), terrorists and their supporters make great adaptation to find opportunities for moving and storing their funds. The FATF also mentioned in their report that there are three main methods terrorist groups use to move their funds: financial system, physical movement and international trade system.

1.2.5a Financial System

Terrorist groups make use of both the formal and informal financial system in moving their funds. Formal financial system is used due to the services and products that allow terrorist

groups to transfers their funds with speed and ease, within and under jurisdictions (Runder, 2010). For example, the National Commission on Terrorist Attacks upon the United States, also known as the 9/11 Commission, in their 9/11 Report in 2004, pointed out that bank transfer was one of the main tools used by the Al Qaeda in planning and executing the attack. Formal financial system can also cover and conceal the transactions and funds by terrorist groups.

In addition to the formal financial system, informal financial system, such as Hawala or currency exchange, is also a popular tool among criminals, especially terrorist groups. Due to the nature and risks of the system, which were discussed above, terrorist groups can move their funds, either in form of money or valuable goods from one place to another with convenience and little if no trail. This method is also popular since it is fast and reliable to transfer money, especially in the Middle East, where lies most of terrorist groups' headquarters, due to lack of regulation and strict control.

1.2.5b Physical Move

Funds for terrorist activities can also be moved by physical means. One method often used is cash smuggling, which refers to the carrying of cash in person, from one place to another. This method, as Kiser (2005) suggested, is convenient and anonymous, and the cash could also be deposited in any financial system. However, there is also a disadvantage that this method gives limitation to the amount of money that could be smuggled. The second method is smuggling of valuable goods, such as gold, precious stones or antiques. This method allows terrorists with easy concealment and conversion into cash later on (Koh, 2006).

1.2.5c International Trade System

This trade system allows terrorist groups to transfer goods with legal trade as a cover. Using this system, terrorist groups can move huge sums of their funds across the border with legitimate-looking documentations on shipping and trading (Passas, 2007). There are also possibility that terrorist organizations use this method for financing activities by collect money from the difference between selling and buying (2007).

1.2.4 Money Laundering vs. Terrorism Financing

Since similar methods and techniques are used for both activities, the Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) strategies are often made to address the risks for both issues. However, money laundering and terrorism financing are distinctive and different from each other. Terrorism financing is broader and uses more methods than just simply money laundering. First and foremost, money laundering is used to generate profits while terrorism financing is promoted as living up to an ideology. Second, the source of the fund for money laundering roots from the organizations itself, while terrorism financing get it sources from different activities and places (FATF, 2008). Moreover, while transactions in money laundering usually take place through formal financial system, terrorism financing mostly occurs through informal financial system (Patrick, 2003). Another difference between money laundering and terrorism financing is that money laundering links are easier to detect due to unusual deposits while terrorism financing can involve transfer between unrelated parties, thus making it more difficult to detect the networks (Mohamed, 2013).

A next difference is the amount of money involved in each type of crime. Money laundering usually involves large amounts while terrorism financing involves small amount to avoid detection. In addition, the money in money laundering usually circulates and eventually comes back to the starter, while money in terrorism financing goes in a straight line from the sources to the terrorist groups. Finally, the transactions in money laundering could involve different definable shares and financial professions, while terrorism financing does not have a “workable financial profile of a professional terrorist” (US 9/11 Commission, 2004).

Arguments on whether the measures used against money laundering can also prevent terrorism financing not only based on the different natures of money laundering and terrorism financing, but also on the two inaccurate assumptions that (1) terrorism involvement in criminal activities (Napoleoni, 2003) and (2) terrorism involvement in money laundering (FATF, 2001).

The first assumption that emphasizes the involvement of terrorism in criminal activities as the main source of terrorist financing can be considered correct from a logical perspective and to a

certain extent (Tofangsaz, 2015). However, there are a few problems with this assumption. Conte (2010) argued that terrorism is motivated by ideology rather than material gains, thus the assumption that terrorism is a crime for money is not correct. Their involvement in crime is rather a mean for them to get money for achieving their final goal. In addition, terrorist groups also get their funds from both legal and illegal resources, differentiates them from regular criminal organizations. Conte (2010) also argued that terrorist groups measure their actions up to the standards of their ideology. Bantekas (2003) also brought in the international law perspective, argued that including terrorism in criminal organizations, even though there are evidence of terrorists involved in criminal activities, “has the potential to divide parties to a treaty and make it unworkable”.

The second assumption focuses on the tools and methods that terrorist groups use to fund their activity: money laundering. The analogy that terrorist groups use money laundering and reversed money laundering to conceal the origin and destination of the funds they obtain implies that anti-money laundering would also detect and prevent terrorism financing (FATF, 2001). However, Stessens (2000) pointed out that the first problem with the second assumption is that anti-money laundering measures are not “one size fits all” and there are also elements addressed in those measures that may not necessarily involved terrorism financing at all. Moreover, the main purpose of terrorist groups is to get the money they obtained to the frontline for usage, therefore it is not certain that terrorist groups would need to always go through the complication of money laundering. Also, since terrorism financing can also come from legal sources, grouping terrorism financing together with money laundering and use the existing anti-money laundering measures to prevent terrorism financing can only prevent part of the financing, not all of the financing as the two assumptions concluded.

1.3 The Banking Industry

Finance, the essential tool to achieve any goals, is always the targets and tools for crime, corruption and terrorism. Given the sources and movements of the terrorism funding, the financial industry, in this case financial institutions, face the responsibility to not make themselves a target for terrorist groups, as well as act as the gatekeeper in the fight against

terrorism financing (Hardouin, 2009). After the 9/11 Report showed how easy it is for the members of the Al Qaeda group to fund their attacks simply through bank transfers (9/11 Commission), governments and the financial industry worldwide saw the need to revise their previous policies to counter terrorism financing.

1.3.1 Banking Industry's Vulnerability to Terrorism Financing

According to the recent report from the FATF on emerging terrorism financing risks; the banking sector is the most reliable and efficient way to transfer terrorism funds across borders. Evidence has shown that terrorist groups have used the formal banking industry to transfer money proceeded from their criminal activities or used bank accounts of non-governmental organizations to move obtained funds to the terrorist groups. The global environment of the financial industry makes it easy and efficient to move their funds to the desired destination without raising any suspicions from the banks or authorities. Report from the 9/11 Commission, several reports from the FATF and many researchers have found that the transfers of terrorist funds often come in small amount and can be difficult to detect. Take the September 11 attack as an example, it was discovered after the attack that the money used for planning and carrying out the attack was under the perfectly legitimate cover: foreign students receiving support money from their families, with complete and formal documentation on identifications and other documentations required by the banks (9/11 Report). Moreover, as the 2015 Report from FATF on Emerging Terrorism Financing Risks, even with AML/CFT measures applied to financial institutions, there are risks that the terrorist groups can still complete their transactions and obtain their money from a secondary debit card associated with accounts from sympathetic supporters.

In the recent years with the development of technology, banks offer new payment services and products, giving terrorist groups new ways to abuse those new technologies for their criminal intentions. Virtual currency, prepaid cards and internet-based payment services are the three products that the FATF warned for risks of terrorism funding. Prepaid card, for instance, is vulnerable to terrorism financing due to its similar functions to bank-issued cards. According to FATF, the cards could be loaded with money, and then carried off as normal cards, arrived at the

destination desired by terrorist groups, where the money are withdrawn from multiple ATMs. This makes it particular difficult to trace the money after the cards are carried across border. Even though it is unclear to what degree internet-based payment services are being used for terrorism financing, those activities has already occurred with small value transactions via online payment system such as PayPal. In addition, the increasing usages and investments in cryptocurrency has also posed risks of management and monitoring for the governments.

1.3.2 The Role of Banking Industry in Fighting Terrorism Financing

After September 11 and worldwide terrorist attacks, committees and regulations were created to prevent terrorist attacks, and terrorism funding prevention was on the top agenda (9/11 Report). Banks started to take action to protect themselves from being targeted by terrorist groups, and in a long run prevent terrorism funding. The most valuable role of the bank is to detect any suspicious transactions and report the related documentations to the government. However, it is more difficult in practice. As mentioned above, terrorist funds coming through formal financial system are usually in small amount, sometimes with legitimate cover, and can be transferred between unrelated parties, making it difficult for notice them from all the other legitimate transactions. However, the government should also shares with the banks necessary information to help them in detecting and collecting accurate information to better prevent funds movement for terrorism purposes.

The first main role of the banks is to track any suspicious financial transfer or movements (9/11 Report). Previous researches on terrorism financing had found that before the 9/11 attack, financing through bank transfers was not considered a key elements in terrorism financing, but all changed when evidences showed how simple terrorist groups moved their funds using bank transfer and ATMs. After that, regulations start to require banks to report suspicious financial tracking of accounts requested by the government within as little amount of time as possible, in turn allows the government to get information anytime they need to investigate for possible terrorist threats in planning.

The second main role of the banks is to keep record of their customers, especially including true identity and verification of their identification as well as other essential information useful for identifying (9/11 Report). This role is important as provide the government with reliability to help them trace the people involved in the suspicious transactions. There is, of course, always the risk that terrorists groups use fake identification and documents when opening bank accounts, so training for staffs to recognize those fake documentations is also important.

The third role of the banks is to freeze terrorist funds and assets as soon as possible when requested by the governments or other enforcement organizations. This role is essential in that it discontinue the funds intended for terrorist purposes to be transferred to its destinations. As a result, this also give the governments the identifications of the parties involved in the transactions, and help them to prevent the planning of terrorist activities and arresting of terrorist groups members.

3. METHODOLOGY AND DECARMATION

3.1 Methodology

Since this thesis looks into the changes in regulations over time, it employs empirical qualitative research methodology. The data collected come from primary and secondary sources obtained through the governments' and other enforcement groups' archives. The research are designed as such that the data are first organized chronologically and then examined for similarities between the main contextual meanings and focuses of the regulations. The data, in this case major regulations, are then summarized and grouped into categories according to the similarities in main focus, which represents the changes from the previous group on the timeline. After that, the data are analyzed accordingly for each group, looking at the reasons behind the changes and whether the changes were sufficient and efficient.

3.1.1 Data Collection

The data used for analyzing in this thesis are mainly the Bank Secretary Act (1970), the FATF Recommendations (1999), and various UN Resolutions that focuses on terrorism financing between 1990s and 2000. The Bank Secretary Act was chosen as one of the main studied documents since the massive and “changing point” terrorist attack happened in the United States. By looking at the original and revisions to the Act, it would help to understand better why and how the changes had been made. On the other hand. The FATF Recommendations and various UN Resolutions were chosen because of their impact scale. While the UN Resolutions left some room for debate on whether they have legal bindings, the Resolutions and the FATF Recommendations are considered soft law that has effects on the members and other nations’ regulations. Thus, looking at the changes in these documents would allow one to understand and predict the actions of many nations. In addition to these documents, the author also looks at other research works and articles done on the same topic to look for references to actual regulations from some nations around the world to compare whether there are differences or additions to the UN Resolutions or FATF Recommendations.

The documents are divided into three timeline that the author considers to have important changes and impacts on countering terrorism financing:

(1) Period before 9/11/2001

This first timeline examines the original documents. It is necessary to look at this period since it presents the situations and conditions of the regulatory framework on terrorism financing before the major attack. Moreover, it is interesting to understand how policymakers thought of terrorism financing in the earlier period and in turn why it had create the opportunities for terrorist group to orchestra such a massive attack later in 2001.

(2) Period between 2001 - 2013

This period shows the reactions from the governments and other significant organizations through the changes and revisions made to the original documents. The additions and revisions to the original text shows what aspects policymakers had overlooked in the previous time period.

(3) Period from 2013 – Present

This period looks at the latest updates to the documents. By looking at this period, it helps to understand whether the reactions in the previous period was enough, and why some of those reactions were successful or failed.

In addition to looking at each time period specifically, the author also tries to notice whether there are any patterns between the changes made, and whether these patterns are advantage or disadvantage to the changes in overall.

3.1.2 Data Analysis

3.1.2a Classical Content Analysis

Classical content analysis is the qualitative method that had been used the longest by researchers (Titscher 2000) and is seen as one of the “major coding traditions” (Ryan and Bernard 2000). Even though this method only became widely used from the first half of the twentieth century with the development of mass communication (Titscher 2000), people had been using this method unknowingly in their daily life from earlier time such as interpreting the Bible. Content analysis could be applied in either quantitative or qualitative research since it can be used to provide the frequency of a text or theme in a document. The content analysis method used in this paper would be qualitative content analysis, which focuses on the content or the contextual meaning of the text (Tesch 1990). Weber (1990) described qualitative content analysis as not only counting the frequency of words and texts, but also classifying groups of words into categories that represent the same meanings, whether explicit or inferred.

Within qualitative content analysis, there are more approaches but the three widely used one are conventional, direct and summative approach (Hsieh and Shannon 2005). The conventional approach starts with reading all the research materials to get an impression and understanding of the whole context (Tesch 1990). After that, the researchers move on to note down the texts according to codes, then organize the codes that are related into categories and subcategories. Direct content approach, on the other hand, is used to validate or extend an existed theory by

starting to code the texts according to predetermined codes (Hsieh and Shannon 2005). The third approach, summative approach, is used “for the purpose of understanding the use of contextual meaning of texts or content” (2005). This approach is often referred to as manifest content analysis (Potter & Levine-Donnerstein 1999), where it goes further by interpreting the content instead of just stopping at the word counts.

While qualitative content analysis gives the overall understanding of concepts through the coding of keywords and presents the historical value as well as states of thoughts of the original writers, it limits researchers at the picture value of the text. In other words, qualitative content analysis does not allow researchers to understand the “why” behind the contents. This is where another widely used data analysis approach continues.

3.1.2b Discourse Analysis

While there are some overlapping definitions for a defined concept, discourse in linguistic refers to “extended samples of either spoken or written language” (Fairclough 1992). Discourse analysis, thus, focuses on text and examines the uses of language in the discoursed selected for study and research (UOP 2010). The discourse, in this case, is often viewed as socially constructed which reflected the version of the world from the writers’ view (Gill 2000). Fairclough (1992) mentioned in his book that there are quite many traditions of discourse analysis, including non-critical as well as critical discourse analysis, which are widely used in social theory and analysis. However, critical discourse analysis (CDA) is more applicable in this research since this method of analysis investigates the changes in language in relation to the changes in social and cultural changes.

There are many types of CDA, applicable to different types and subjects of analysis. In analysis of policies, there were also quite many different CDA traditions such as poststructuralist tradition of Michel Foucault or the metaphor tradition of Chilton and Ilyin (Senem 2013). This research, however, will use Discourse-Historical Approach (DHA). The notions of DHA in studying identities through EU foreign policies can be applicable in this case since this also studies regulatory framework and policy from the US and the UN. According to Senem (2013), DHA

uses *triangulation* principle, which discusses interdisciplinary and multi-methodical work based on both empirical data and background information. Additionally, DHA also “incorporates *intertextuality* into the analysis” (Hansen 2006). DHA sheds light on how the social changes, displayed through policies and processes, are justified and naturalized.

3.1.2c Applied Analysis Approach

In this research paper, conventional content analysis was applied at the first step of data analysis when reading through the studied documents. In this process, the author looked for code words from the documents. After that, the author uses a summative approach to continue with content analysis. In this phrase, the author looks at other alternative terms or texts that often appears in place or together with the keywords in the first phrase. These two phrases provides a clearer understanding of the usage of texts in the documents and their underlying meaning. This process also reconfirm the assignations of documents in three categories that were divided according to chronological order. In addition to content analysis, the author would also try to analyze the data through the lenses of discourse analysis, in order to understand the subject discussed through the original writers’ viewpoints. Moreover, using discourse analysis would also shows a better picture of the society and the social changes at the different timeline. By applying the combined analysis approaches, this paper hopes to look deeper into the social situations at the time of the regulations through the original writers’ minds, to understand why the changes were made.

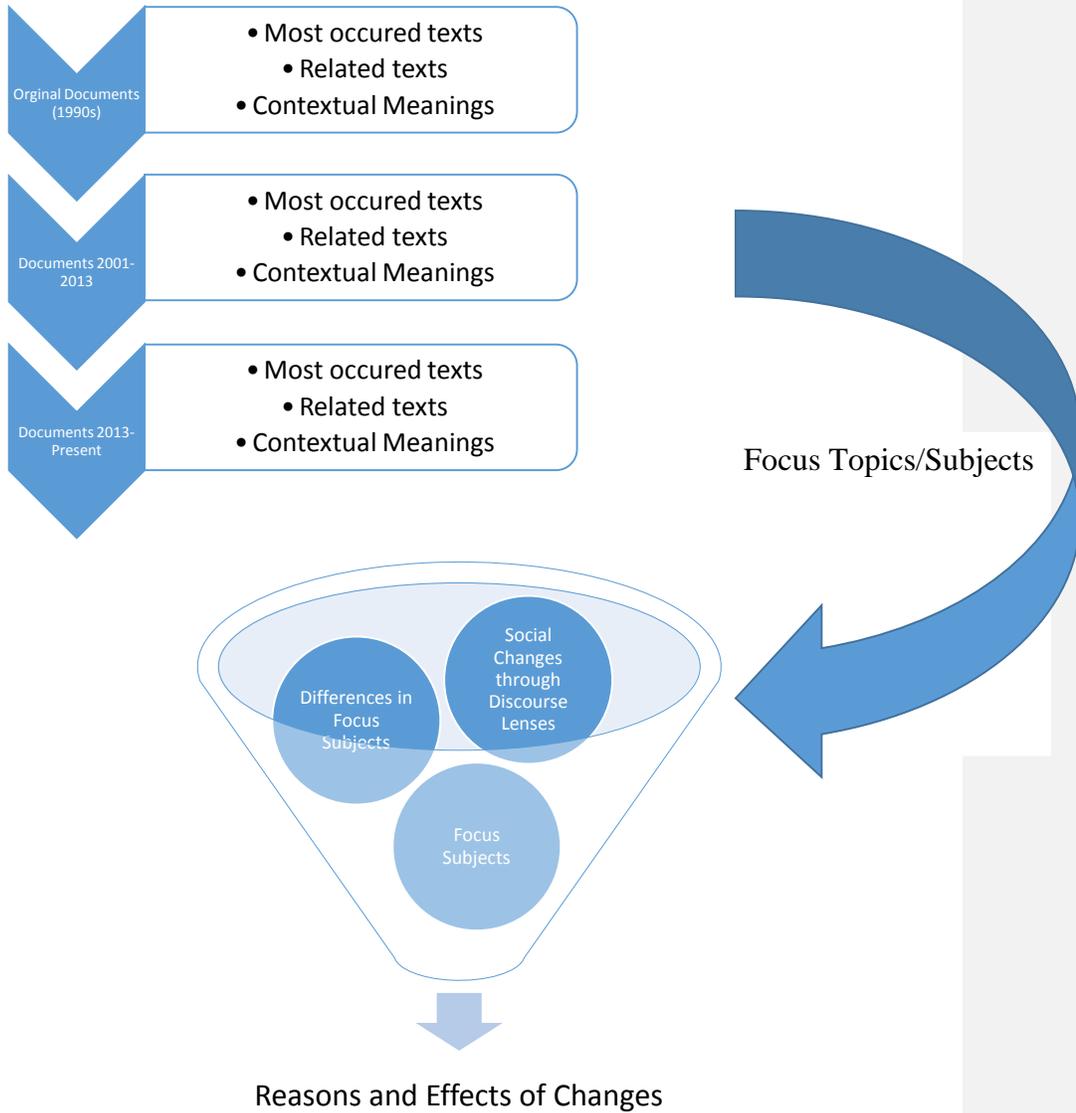


Figure 1. Analysis Process

3.2 Demarcation

This research only aims to study the changes in regulatory framework for countering terrorism financing from the period of 1990s until present. The documents selected for study does not fully represents the procedures and actions that are taken by nations worldwide in countering terrorism financing. Moreover, the study only concerns with the changes made within and for the financial industry, therefore, this paper would not discuss changes regarding terrorist prosecutions or human rights issues relating to terrorism financing.

Regarding methodology, this papers apply qualitative research methods which are content analysis and discourse analysis. Using content analysis, there is a possibility that during the coding, a few context of the texts might be overlooked. Moreover, the while contextual meaning of the documents might not be fully understood or analyzed due to restricted selection which only focuses on terrorism financing. For example, the author only selected the UN Resolutions that focuses on terrorism financing. Thus, the analysis might be incomplete since there might be lacking on its relations to other UN Resolutions. In addition, the analysis based on content analysis might be reduced since it does not provide insights of the text. As for discourse analysis, there is the possibility that the contextual meaning of the whole documents are not entirely understood through the viewpoints of the original writers but partly based on the interpretations of the author.

4. MAJOR REGULATIONS TIMELINE

4.1 Pre – September 11, 2001

Even though there were numerous accounts of terrorism activities from mid-19th century, there had not been any specific regulations designed for preventing terrorism financing. The 1999 UN International Convention for the Suppression of the Financing of Terrorism was the first one that focused on terrorism funding as a separate subject from money laundering. The final document adopted by the General Assembly after the Convention clarified the definition of terrorism

(Gilmore 72). It also sets the two major ways that states can trigger the criminalization of collection or provision of funds. The first condition includes acts that are prohibited in pre-existing counter-terrorism measures, “ranges from the unlawful seizure of aircraft to terrorist bombing” (72). The second condition refers to acts that are prohibited in a “freestanding mini-definition of terrorism, which is subjected to specific “military carve-out” limitations” (72). Moreover, the Convention also provided provisions to assist in global co-operations in investigating and prosecuting of acts that are considered terrorism funding. However, the provisions from the Convention did not provide any definite requirements to criminalize the laundering of illegal funds used for terrorism funding.

In the documents during this time period, anti-money laundering and counter terrorism financing are always grouped together and often interchangeable. This shows that policymakers during this time period viewed these two concepts as similar and that there were no need to separate them. Moreover, “illegal” or “criminal” were mostly used to describe activities related to the funding of terrorism financing. These indicates that terrorist groups were not much different from any other crime organizations and their methods in obtaining fund is the same. This misconception could be based on the fact that terrorist attacks in the 1970s-1990s were on a national scale and committed by individuals or criminal groups.

In addition to the Resolutions and Recommendations, the BSA at the time also only required banks to monitor and report transactions and customers engaged in suspicious acts or might stem from criminal activities. The keywords used to describe transactions related to terrorism financing were exactly as those used in the Resolutions and Recommendations. The parameters set in these regulations were very well-defined, yet limited at the same time. Moreover, in the BSA, as well as other financial regulations prior to the 2001 attack, there were very limited mention on validation of customers’ identification. In other words, an area so obvious and useful to identifying criminal and suspicious transactions were overlooked. The much restricted conditions, together with lacks of the most basic identification procedure, left much rooms in the formal financial institutions for terrorist groups to take advantage.

4.2 Post – September 11, 2001

The year 2001 saw a tragedy that took around 3,000 lives and injured several thousand others. The attack also marked the changes in terrorism financing regulations worldwide.

Counter-terrorism activities and funding only became a priority after the terrorist attack that took place on September 11, 2001 in the United States. Following the attack, investigations and reports came back pointing out the differences between terrorism financing and money laundering. While some terrorist groups obtained their funds through various unlawful methods, many others financed theirs using perfectly legal means such as “community solicitation and fundraising appeals” (Gilmore 119). Reports also defined a common feature of successful terrorist groups as “having a financial infrastructure that allows them to obtain and use the funds effectively” (9/11 Report).

As a result of these investigations and reports, the Bank Secrecy Act was amended with the enactment of the Patriot Act. The US Patriot Act set the first step in strengthening the financial regulatory system by requiring banks to collect and verify documents of individual identifications from customers when they open bank accounts. Moreover, the amendments also require international financial institutions to obtain and maintain a list of terrorism financing suspects from governmental agencies for future ratification and verification. Starting from 2003, banks were also required to submit regular reports of suspicious transactions to the governments. In addition, the Patriot Act also extended the definition of financial institutions to include business entities that are vulnerable to money laundering and terrorism financing.

In addition, the Security Council and the Counter-Terrorism Committee were established and several provisions were added to existing counter-terrorism financing measures. For example, the Resolution 1373 in 2001 called on States to suppress terrorism financing, freeze all terrorist assets and prohibit States, organizations or individuals from providing funding to terrorist groups. Similar revisions were made to Resolution 1390, Resolution 1267 and Resolution 1452 to broaden the spans of terrorist activities assets and funds to enable the suppression and freezing of terrorist assets as well as identification of terrorist suspects.

In the EU, the FATF was called upon immediately after the attack to issue recommendations to act as guidance for financial institutions regarding countering terrorism financing. The first eight recommendations on terrorism financing were added in 2001. Those recommendations provided the framework on developing a full process from identifying suspicious financial activities, its origins as well as the course of actions to address those activities. First and foremost, the FATF Recommendations urged nations to implement the 1999 UN International Convention for the Suppression of the Financing of Terrorism and the UN Security Council Resolution 1373. The first eight FATF Recommendations, similar to the Patriot Act and UN Resolutions, also called nations and financial institutions to immediately freeze terrorist funds and assets, reporting suspicious transactions.

In addition, the Recommendations also encouraged financial institutions and nations to assist each other in the procedures of countering terrorism financing. These Recommendations also stressed on the registrations and monitoring of alternative remittance, wire transfers and NPOs. The ninth Recommendations were added on 2004 for the prevention of physical transportation of cash across borders. By February 2012, the set of Recommendations from FATF to financial institutions, including 40 Recommendations and IX Special Recommendations, were adopted and updated regularly to include measures against pre-existing loopholes and new methods used by terrorist groups.

During this period of time, one can see many new terms being added into revisions and amendments. “Customers’ identification”, “NPOs”, “wire transfer”, “alternative remittance”, and “freezing assets” appeared the most in all the updates of the previous regulations. The new revisions also only focused on those areas, which were mentioned in the reports on the methods and plan executions of terrorist groups in the 9/11 attack. “International co-operation” also became one of the important focus, after the attack has shifted from the local to global scale.

This period from 2001 until around 2013 saw many changes to the earlier versions of terrorism financing regulations. Additions were added regularly, responding to the feedback from private sectors as well as the financial industry and other governments. Starting from this period of time,

the FATF Recommendations started to have more influences on many countries' amendments in their own regulations regarding terrorism financing. In addition, the FATF also started to impose mutual evaluation of compliance in various countries with their Recommendations and receive feedback from related institutions and organizations on their main focuses in countering terrorism financing.

4.3 2013 – Present

From 2013 forward, many financial industries and service providers worldwide started offering more online services, expanding the areas of transactions and thus making monitoring and controlling transactions more difficult. In addition, online banking and transactions, while simplifying the banking procedures for customers, also create easier opportunities for terrorist groups to obtain their funds from confused users. Moreover, crypto-currency also posed a considered amount of risks for preventing cyber terrorism financing.

Expectedly, major additions extended the groups to fall under monitoring, focusing more on NPOs and crypto currency providers. For instance, 2016 revisions to the FATF Recommendations clarified the subsets of NPOs that needed supervisions. There were also revisions on tax crimes, data protection and privacy, as well as other financial intelligence units. For example, the FATF added revisions in 2017 on the requirements of sharing information about suspicious transactions among financial institutions. The current year, 2018, saw the amendments that ensure the compatibility between the earlier provisions and data security and privacy. Amendments were also made to include managing risks of terrorism financing in virtual currency and virtual currency providers.

5. DISCUSSION

Regulations are not a fixed set of rules within a fixed set of parameter, unchanging over time since they are responses from the governments to fix what had happened and prevent similar

problems from happening again. When analyzing regulations and their changes, there are two basic questions that needed to be asked:

1. Why regulations need to change?
2. How to change the regulations for better?

To answer the first question, one needs to look at the changes in society, the effectiveness of regulations and the responses from the involved parties. Then, based on the answers from those previous aspects, one can see the areas which needed better revisions, in addition to forecasting the changes in near future, to make effective amendments.

5.1 The Shortcomings of Terrorism Financing Recommendations and Regulations

As mentioned earlier, even though terrorist activities according to the modern definition had taken place since the mid-19th century, the UN and many governments did not have a set of defined regulations to prevent terrorism financing. One of the main reasons for this could be that most of the terrorist activities that took place during that were regional and on a small scale. Moreover, most of the arrested or accused penetrators were from small, national criminal groups. During that time, those groups obtained their money through illegal means such as money laundering and drug trafficking. Thus, the regulations at the point focused on monitoring and detecting criminal activities. In addition, the objects of terrorist activities back then were for purposes relating to political agenda or terrestrial authority, making the detecting and profiling of participants simpler. As such, policymakers at the time relied heavily on the assumptions they had of terrorist activities from earlier till that point in time to set the parameter of their monitored groups. The tragedy of 9/11/2001 “awakened” governments and authoritative enforcements from their simple thoughts on terrorism financing by pointing out how lacking their previous regulations were.

Right after the tragedy of terrorist attacks in the beginning of the 21st century, the first reaction from the government is to require the banks to report suspicious financial transfers, based on the evidence that the funding for the terrorist act was mainly done through bank transfer; and based

on the assumption that terrorists used money laundering to move their funds and thus preventing money laundering would also prevent terrorism financing. However, as many researches and reports pointed out, the anti-money laundering regulation does not necessarily prevent terrorism financing. As the 9/11 Report and later researches showed, banks have the expertise to spot money laundering, but not terrorism financing. The assumptions that AML measures can be used for CFT as well put the international trade system at risk and abuse of terrorist groups. For example, since the earlier BSA sections focused more on AML, transactions to problematic international financial institutions were not monitored or reported for terrorism financing since those institutions were defined as “sources for AML” (Gurulé 2008). As a result, many states were not willing to take action against foreign institutions and states for involving in suspected terrorist activities.

The Bank Secrecy Act (BSA) was one of the examples of AML regulation also used to detect terrorism financing. This Act requires banks to fill a Suspicious Account Report (SAR) on any account transactions that they deem suspicious and could be linked to criminal activities. While this Act aids banks in detecting unusual activities from the record of their customers, and was efficient in reducing the use of money laundering through formal financial system, it is not necessarily efficient in preventing terrorism financing due to lack of intelligence needed to detect TF (9/11 Report). One of the key elements that banks use from this act is the “know your customers” concept that allows banks to spot any unusual transactions out of character of the clients’ backgrounds and transaction history. In other words, this requires financial profiling, which does not exist for terrorism financing at the time.

The FBI as well as the New York Clearinghouse, a private consortium of the largest money-center banks at the time, tried to look for patterns to create a profile for terrorism financing (9/11 Report). The attempt was not successful. First, the methods they used to transfer the funds for terrorist operating purpose were different all the time. Studying one case or two cases does not give clear hints as to how the next case would occur, especially when terrorist groups have many resources available. In addition, profiling for regular terrorism fundraising does not prove easy. Many of terrorism funds appeared as normal as could be to banks. In 2002, the Financial Crime Enforcement Network (FinCEN) conducted an analysis on possible terrorism financing patterns.

According to the report, from the SAR reports filled by banks, only a small amounts involved in terrorism fundraising, which involved money laundering from countries that has high risk of terrorism. This notion, however, does not aid banks fully in detecting terrorism financing. This only let banks take extra cautions when dealing with customers from those nations. If the banks apply this notion together with the BSA, it would not only be ineffective, but can also waste resources and cause bad will for the banks towards customers.

Not only regulations regarding terrorism financing, but the financial industry's regulatory system was very weak at this point as well. This had made the financial institutions vulnerable to terrorist groups. Regulations regarding personal identifications and verification, while should clearly be of utmost importance, were lacking extremely in the financial regulatory systems around the world, especially so in the US. Moreover, the monitoring procedures for financial institutions, especially banks, were very modest and banks only take actions when required by the government when serious issues happen.

In addition to the weak initial regulatory framework, the relevance of the UN and compliance of the FATF Recommendations were also frail. This could partly be due to the nature of the Resolutions and Recommendations that they do not have legal binding. However, this had led to some loopholes regarding freezing of assets and consolidated terror list. For example, there were several leaders of several terrorist groups that were not on the list, thus making the freezing of assets difficult due to lacks of reasonable ground (Gurulé 2008).

5.2 The Successes of Terrorism Financing Recommendations and Regulations

The first success from changes in terrorism financing is that it set up a more defined financial regulatory guideline regarding terrorism financing. For instance, USA Patriot Act and FATF Recommendations set the minimum requirements for identification documents of the banking customers, reports of suspicious transactions and procedures of freezing illegal assets. This guideline is a significant change since it emphasizes the financial institutions' role as a

gatekeepers to the financial and trade system. This guideline reduces the number of suspicious individuals from having access to the formal financial system.

In addition, terrorism financing started to have their own separate regulations, focusing more on educating financial institutions' employee on the procedures of monitoring and detection of activities related to terrorism financing. Moreover, the separate regulations also extend the control and monitor coverage, thus eliminate risks of terrorist groups taking advantage of the formal financial system. This speedy and detailed initial responses from the enforcements and governments built up a stronger protection barrier for the official financial institutions.

The second success the changes brought were that it encouraged nations to work together on the fight against terrorism, since the crime had become transnational instead of state-sponsored. The cooperation between the governments, the UN and international financial institutions had assisted in freezing approximately 85 million US dollars in illegal funds and assets, and thus detecting businesses engaging in terrorism financing worldwide (Gurulé 2008). Moreover, with the new additions to the FATF Recommendations in 2017, the United States, Canada and many European nations had revised their regulations to include the sharing of intelligence between international government and financial institutions. As a result, this enabled the quick and fully covered detection and prevention of terrorist planning and financing.

In addition, the time period from 2001 until around 2013 saw many changes to the earlier versions of terrorism financing regulations. Additions were added regularly to response to the feedback from private sectors as well as the financial industry and other governments. Starting from this period of time, the FATF recommendations started to have more influences on many countries' amendments in their own regulations regarding terrorism financing. In addition, the FATF also started to impose mutual evaluation of compliance in various countries. For instance, the FATF had set up a program, in which nations that fell below the compliance standards were monitored until their countering terrorism financing regulations complied with those of the FATF Recommendations. Moreover, the FATF also updates their Recommendations through feedback from involved institutions and organizations on their main focuses in countering terrorism financing.

5.3 Insights for the future

While there were many shortcomings in the regulations regarding countering terrorism financing, there had been major development and effectiveness in getting the financial industry more involved in the actions and reduce the risks that financial institutions were used by terrorist groups to obtain their funds. In addition to discussing about the shortcomings and successes of the changes, the paper will also give points to some useful considerations for the future.

When looking at the revisions and amendments made to the previous Act, Recommendations and Resolutions, it became really clear that they are immediate responses to what had happened. On one hand, it is certainly well that the agencies and government had made great efforts in remediating the situations and try to cover the areas that were lacking before to prevent similar unfortunate events from happening in the near future. On the other hand, the revisions were just a response. When an attack happened and reports came back on how the attacked were organized, the revisions were added to stop future terrorist actions from the same route. However, the revisions did not go further to cover what possible routes might be used in the future. Even though there are researches done by many agencies and even the FATF itself, the topic remained confined in those that had been in their focus. This could limit the range of comments and contributions they would receive from their members.

In addition, the UN should have more relevance and impact on other nations with their Resolutions. International trade system is quite easy to be abused by terrorist groups due to different interpretation of terrorist as well as different level of compliance on the international soft law. Based on the studies on relevance of UN Resolutions, there are still many nations that fail to comply with those Resolutions. While it is clear the transnational soft law is a complicated, UN should have stricter monitoring of compliance on its member states and nations vulnerable to terrorist groups.

Regulations, especially regulations concerning transnational criminal acts, were ineffective and needed constant changes for many reasons. The changes in society is hard to predict, and thus making policy outcome predictions as difficult. As Professor Manski (2013) suggested in his

book about policy analysis in the uncertain society, policy makers do not cope well with uncertainty and thus often make policy decisions based on certitudes. One of the certitudes mentioned in his book is the equation of “assumptions + data = conclusions”. Through looking at the changes and revisions, this equation is very relevant. In the first timeline, it is quite obvious that the assumptions were heavier than the data, and thus affecting the crafting of regulations during that period. In the second period, however, the data outweighed the assumptions, thus resulting in many changes. From this, the last insight for the future would be that in the uncertain world, it would be best to analyze and make policy decisions based on either equal amount of both, or more on data, to maximize the effectiveness.

6. CONCLUSION

The US Bank Secretary Act, the UN Resolutions and the FATF Recommendations are useful material to study the changes in regulatory framework on countering terrorism financing since they represent the responses from government and agencies on the terrorist attacks and its funding activities. The initial versions of these documents were lacking due to misconceptions and inaccurate assumptions about terrorist groups and their range of activities, which in turn left much room for the planning of the 9/11 attack. However, the immediate responses after the attack were effective in remediating the situations and set the new guidelines for the financial institutions to prevent and detect terrorism financing. However, with the advances of technology and the constant changing nature of today society, international governments should comply more with the Resolutions and Recommendations from the FATF and UN; as well as become more active by working together for a more well-covered reports for more effective revisions in the future.

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