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Introduction

In June 2016, the Dutch Financial Intelligence Unit (FIU) announced that it would start sharing names of potential jihadists with the security and intelligence departments of the four Dutch big banks. This allows banks to monitor their transactions databases for abnormal and suspicious transactions with a new level of detail, for example, to detect transactions involving 'foreign fighters' suspected of participation in the Syria conflict. The families of potential suspects can also come under banking suspicion. This new level of cooperation was explained by the Dutch FIU as a way of making counter-terrorism financing efforts more effective, because: "often, this concerns small amounts via money transfers or bank transactions, that do not necessarily stand out. With a list of names, banks have something concrete in hand to search for."[2] "Such a list of names is a new way of tackling terrorism financing more effectively," added the head of security of the Dutch Banking Association. The lists are compiled by the Dutch police, but it is not known what criteria apply for inclusion on such a list, let alone how wrongful listing could be contested. The

[1] Parts of this chapter are previously published in M de Goede, *Speculative Security: The Politics of Pursuing Terrorist Monies* (Minneapolis: University of Minnesota Press, 2012). Reprinted with kind permission of University of Minnesota Press. Many thanks to the editors of this Handbook for their encouragement and valuable editorial guidance. Financial support is acknowledged from the European Research Council (ERC), CoG-682317.

[2] Quoted in: NOS news, 'Banken krijgen Namen van Vermoedelijke Jihadisten ('Banks receive Names of Possible Jihadists'), 8 June 2016, http://nos.nl/artikel/2109869-banken-krijgen-namen-van-vermoedelijke-jihadisten.html [last accessed October 16, 2016, my translation].

Dutch Data Protection Authority however did not see reason for concern, as long as it does not turn into a 'fishing expedition.'[3]

This Dutch development signifies a significant new step in the cooperation between banks, police, and intelligence services in the name of countering terrorism financing. Since September 11 2001 (9/11), the pursuit of suspect and terrorist monies – broadly known as Counter-Terrorism Financing (CTF) – has emerged as a key policy concern. Financial transactions are analysed, mined, reported and circulated in order to flag suspicious transactions and to identify terrorist activity in preparation. It has become widely accepted that financial transactions "yield valuable intelligence … [with] particular value for detection of terrorist activity and players involved."[4] A recent statement of the Financial Action Task Force (FATF), puts it as follows: "financial intelligence can reveal the structure of terrorist groups, the activities of individual terrorists, and their logistics and facilitation networks. Financing is important for all terrorists - from large terrorist organisations which control territory to small terrorist cells"[5] A key assumption is the idea that financial data are especially valuable, because 'money trails don't lie.' As David Aufhauser, former chairman of the National Security Council policy coordinating committee on terrorist financing, put it: "financial information is reliable, particularly because it was never intended to be found."[6] These developments may amount to a novel type of 'financial warfare,' where private actors such as banks, money transfer business and wire transfer services, are harnessed in the service of security and countering terrorism.[7]

As other chapters in this Handbook discuss, CTF has produced a complex landscape of regulation – fostering new transnational cooperation through the networks of Financial Intelligence Units (FIUs), significantly shaking up banking compliance practices, and widening the scope for police and prosecutors to intervene in potential plots and networks. In this

[3] Quoted in NOS news, 'Banks receive Names' (n.2).

[4] European Commission, *A European Terrorist Finance Tracking System* (Brussels, November 27 2013), 5.

[5] FATF (Financial Action Task Force), *Consolidated FATF Strategy on Combatting Terrorist Financing* (February 19 2016), 1, http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Terrorist-Financing-Strategy.pdf [last accessed October 16, 2016]. For consideration of terrorist networks, see ch.39 (LePreucht) in this collection.

[6] D Aufhauser, 'Terrorist Financing: Foxes Run to Ground,' (2003) 6(4) *Journal of Money Laundering Control* 301-305.

[7] JC Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare* (New York: Public Affairs, 2013). For discussion of MSBs, see ch.50 (DeVille) in this collection.

chapter, I argue that this regulatory 'assemblage' does not amount to a fully integrated or harmonious regulatory regime. There are numerous tensions, discussions and contradictions at work in the ways in which international regulation and practices play out in this domain. A key tension concerns the role and authority of banks and financial institutions themselves: as discussed in this chapter, banks have acquired substantial discretionary power to develop their own risk assessments and judgements concerning the transactions they deem suspicious. Questions have been raised about the fairness and effectiveness of authorizing or 'deputising' private sector institutions to make security decisions.[8] Studies note that measures of success in regulatory compliance are poorly defined and that investments may be disproportionate to cost.[9] Other tensions in this regulatory domain revolve around the privacy of financial clients, the unduly stringent regulation of the non-profit sector, and the recent trend of 'derisking,' whereby entire client groups become expelled from the financial sector.[10]

In this broader context, the decision of the Dutch FIU to share the names of possible suspect individuals with banks is a significant new development. It offers banks concrete guidance concerning who and what to look for, and a potential to visualize wider suspect financial networks. However, this arrangement does not address a number of important questions, concerning the privacy of banking clients, but also concerning the nature of suspicion in this context, and the judicial protection for named individuals.[11] The arrangement allows police access to banking information before persons-of-interest formally become 'suspects.' Persons-of-interest are not notified that their bank records are under examination. It is intended to circumvent the juridical process through which police can request access to suspects' private data. This targeting of possible future suspects (rather

[8] G Favarel-Garrigues, T Godefroy and P Lascoumes, 'Sentinels in the Banking Industry: Private Actors and the Fight against Money Laundering in France,' (2008) 48(1) *British Journal of Criminology* 1-19.
[9] Deloitte, *Final Study on the Application of the Anti-Money Laundering Directive* (European Commission, 2009) http://ec.europa.eu/internal_market/company/docs/financial-crime/20110124_study_amld_en.pdf [last accessed October 17, 2016]; M Levi, 'Combating the Financing of Terrorism,' (2010) 50(4) *British Journal of Criminology* 650-696; T Keatinge, *Uncharitable Behaviour* (London: Demos, 2014).
[10] T Keatinge, *Uncharitable Behaviour* (London: Demos, 2014).
[11] See also for example: M de Goede and G Sullivan, 'The Politics of Security Lists,' (2016) 34(1) *Environment and Planning D: Society & Space* 67-88.

than actual present suspects) fits into a wider 'politics of preemption,' that seeks to identify and disrupt the potential future threats.[12]

The purpose of this chapter is to give an overview of the regulatory assemblage and main tensions relating to CTF in the post-9/11 era. The chapter starts with a discussion of the security logics of CTF after 2001. Although there are important regulatory precursors prior to 9/11, I will argue that CTF efforts in the most recent fifteen years distinguish themselves through a number of elements that set them apart from the longer tradition of anti-money laundering (AML). Second, the chapter gives an overview of the complex regulatory landscape of CTF in the transatlantic context. I argue that this is best understood as a regulatory assemblage where (policy) goals are not always clearly aligned, and where a number of important tensions and contradictions are at play. The third section of the chapter develops a more specific focus on banking practice, as a key but often overlooked site where CTF is given shape and meaning.

CTF After 9/11

Before 9/11, few policy turns looked less likely than an embrace of substantial new financial regulation by the US government. Only months before the 9/11 attacks, Phil Gramm, chairman of the Senate Banking Committee, "boasted that [he] killed the Clinton administration's anti-money laundering legislation."[13] However, immediately after 9/11, then-Treasury Secretary Paul O'Neill became a strong supporter of the multilateral anti-money laundering forum Financial Action Task Force (FATF), and lobbied for the extension of its mandate to include terrorism financing. As O'Neill argued before the FATF Extraordinary Plenary Meeting in October 2001:

[12] See for example: C Aradau and R van Munster, *Politics of Catastrophe: Genealogies of the Unknown* (London: Routledge, 2011); L Amoore, *The Politics of Possibility* (Durham: Duke University Press, 2013); M de Goede and S Randalls, 'Preemption, Precaution: Arts and Technologies of the Governable Future,' (2009) 27(5) *Environment and Planning D: Society and Space* 859-878. In this collection, see ch.43 (Cooper) discussing IVTSs.

[13] WF Wechsler, 'Follow the Money,' (2001) *Foreign Affairs*, July/August, 40; *The Economist*, (2001) 'Through the Wringer,' April 12, 10.

> FATF is uniquely positioned to take up the challenge of terrorist financing. Our goal must be nothing less than the disruption and elimination of the financial frameworks that support terrorism and its abhorrent acts.[14]

How did this U-turn come about? How was it possible that, as Ibrahim Warde put it, "those very people who were intent on dismantling the anti-money laundering legislative apparatus found themselves hastily and vigorously expanding it" after 9/11?[15]

This section unpacks the security logic underpinning post-9/11 CTF. The purpose here is not to suggest that the field of CTF is fully coherent and logical; indeed, the next sections will elaborate on its gaps and fault lines. However, there are a number of elements that render post-9/11 CTF unique and quite different from the tradition of AML as it had developed since the 1970s.[16] These elements add up to a particular logic of security, or what Foucault calls a 'dispositif,' understood as "a thoroughly heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions - in short, the said as much as the unsaid"[17] There is not enough space in this chapter to sketch all elements of the 'heterogeneous' CTF ensemble. This section unpacks two core elements of the CTF dispositif, in an attempt to explain its significance and centrality within the broader context of preemptive security politics after 9/11.[18]

First, the pursuit of terrorism financing as a crime is best understood as closely related to the politics of preemption. This represents a break with earlier money laundering regulation: if undermining crime and amassing evidence were the objectives of pre-9/11 money laundering policy, predicting possible terrorist attacks by studying 'clean' money trails became the objective after 9/11.[19] In his address to the nation on 9/11, President Bush

[14] P O'Neill, 'Remarks by Paul H. O'Neill United States Secretary of the Treasury before the Extraordinary Plenary Meeting of the Financial Action Task Force,' (29 October 2001), https://www.treasury.gov/press-center/press-releases/Pages/po735.aspx [last accessed December 9, 2016].
[15] I Warde, *The Price of Fear: Al-Qaeda and the Truth Behind the Financial War on Terror* (London: IB Taurus, 2007), 14.
[16] C King and C Walker, 'Counter Terrorism Financing: A Redundant Fragmentation?,' (2015) *New Journal of European Criminal Law*, 6 (3) 372-395. For discussion of AML developments, see Bergstrom/Gordon/Chaikin in this collection.
[17] M Foucault, 'Confessions of the Flesh,' in C Gordon (ed) *Power/Knowledge: Selected Interviews and Other Writings* (New York: Pantheon Books, 1972).
[18] See for example: MV Rasmussen*, The Risk Society at War* (Cambridge: Cambridge University Press, 2006).
[19] L Malkin and Y Elizur, 'Terrorism's Money Trail,' (2002) 19(1) *World Policy Journal* 64.

announced that no distinction will be made between "the terrorists who committed these acts and those who harbor them."[20] A few days later, Deputy Defence Secretary Paul Wolfowitz elaborated in a Pentagon briefing and said: "I think one has to say it's not just simply a matter of capturing people and holding them accountable, but removing the sanctuaries, removing the support systems, ending states who sponsor terrorism."[21] These comments have been widely cited for the way in which they foreshadowed the bombing of Afghanistan and the 'preemptive strike' on Iraq. Much less noted is how they entail an articulation of terrorist facilitation and terrorist financing as key, mundane, sites to be secured. This security logic seeks to govern transactions thought to be "pre-crime" – or, transactions that are "perfectly legal" but that are conceptualised to hold specific potential to support terrorism in a future.[22] For example, under the Executive Order 13324 of September 24 2001, on Terrorist Financing, it became possible to pursue terrorist financiers *as terrorists*.

In addition, terrorism finance prosecutions are central to the US Department of Justice's explicit policy of 'anticipatory prosecution,' which seeks to arrest, detain and prosecute potential suspects at the earliest possible stage – when plots and attacks may not even have reached a preparatory stage. Pursuing terrorist monies broadens the scope and moment of security intervention, because it can work to enable preemptive security action and what legal scholar Robert Chesney calls "anticipatory prosecution."[23] The idea here is that pursuing terrorist finance enables preemptive security intervention on the basis of undefined suspicion, irregular risk profiles and suspect networks. Indeed, as one US Department of Justice official has tellingly phrased this problematic:

> In the game of prevention…it is not enough to expect law enforcement [to] uncover the bomber before he detonates the bomb. The goal of pursuing terrorism financing

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[20] GW Bush, 'Statement by the President in His Address to the Nation,' (September 11 2001), https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010911-16.html [last accessed October 17, 2016].

[21] As documented by PBS NEWSHOUR, *How Wide a War* (September 26 2001) http://www.pbs.org/newshour/bb/terrorism-july-dec01-wide_war/ [last accessed October 17, 2016].

[22] AL Clunan, 'US and International Responses to Terrorist Financing,' in JK Giraldo and HA Trinkunas (eds) *Terrorism Financing and State Responses* (Stanford: Stanford University Press, 2007), 261.

[23] RM Chesney, 'Beyond Conspiracy? Anticipatory Prosecution and the Challenge of Unaffiliated Terrorism,' (2007) 80 *Southern California Law Review* 425-502.

as a crime is to widen the universe of possible criminal defendants so that we can prosecute before the terrorist act occurs.[24]

Precisely in relation to charges of fundraising and other terrorism support prosecutions, we find controversial cases where defendants are only very tenuously linked to "the anticipated harmful act."[25]

It is no coincidence then that the phrasings of the UK Treasury and the US Department of Justice here are virtually indistinguishable from the ways in which the preemptive strike on Iraq was articulated and legitimated. As the 2002 *US National Security Strategy* (in)famously put it: "The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack."[26] Claudia Aradau and Rens van Munster show that the logic of preemption is deployed in the war on terror in face of risks that are thought to be at once uncertain or unknowable *and* catastrophic to the extent that they require immediate action.[27] In other words, preemption depends upon the cultural imagination of catastrophic futures to be avoided at all costs. This imagination, in the words of François Ewald, takes seriously "doubtful hypotheses and simple suspicions…far-fetched forecasts … [and] predictions by prophets."[28] Here, preemption exceeds the logic of statistical risk and probabilistic intervention, and self-consciously deploys cultural imagination and association in order to render the future actionable. Pursuing terrorism financing and facilitation, thus, can be understood as the deployment of a politics of preemption in the spaces of everyday life. This is what Louise Amoore and I have elsewhere

[24] J Breinholt, quoted in M Chediak, 'Following the Money: Tracking Down al Qaeda's Fund Raisers in Europe,' (January 25 2005) *PBS Frontline*, http://www.pbs.org/wgbh/pages/frontline/shows/front/special/finance.html [last accessed October 17, 2016].

[25] RM Chesney, 'Beyond Conspiracy? Anticipatory Prosecution and the Challenge of Unaffiliated Terrorism,' (2007) 80 *Southern California Law Review* 425-502, 484.

[26] White House, *The National Security Strategy of the United States of America* (Washington, September 2002), 15; see also GW Bush, 'President Bush Delivers Graduation Speech at West Point,' (New York, June 1 2002) United States Military Academy, West Point, https://georgewbush-whitehouse.archives.gov/news/releases/2002/06/20020601-3.html [last accessed October 17, 2016].

[27] C Aradau and R van Munster, 'Governing Terrorism through Risk: Taking Precautions, (Un)knowing the Future', (2007) 13(1) *European Journal of International Relations* 89-115; C Aradau and R van Munster, *The Politics of Catastrophe: Genealogies of the Unknown* (London: Routledge, 2011).

[28] F Ewald, 'The Return of Descartes' Malicious Demon: An Outline of a Philosophy of Precaution', in T Baker and J Simon (eds) *Embracing Risk: The Changing Culture of Insurance and Responsibility* (Chicago: University of Chicago Press, 2002), 288.

called 'banal preemption.'[29] Although the logic of preemption in the context of foreign policy and the war in Iraq has attracted substantial critical analysis in recent years,[30] banal preemption has received less attention. However, questions concerning the accountability and transparency of preemptive security decisions based on financial data, are urgent need of analysis.

Secondly, what distinguishes CTF in the post-9/11 context is its focus on small amounts, and regular financial transactions and wire transfers. Suspicion no longer centres on large cash transactions (as within an AML logic): increasingly, small, mundane financial transactions that are not in themselves criminal are drawn into surveillant practices. Legitimate, quotidian, money flows are inscribed with the ability to indicate terrorist intent, if approached with the right datamining tools.[31] As one of FATF's reports on Terrorism Financing notes: "In many situations, the raising, moving and using of funds for terrorism can be…almost indistinguishable from the financial activity associated with everyday life."[32] Recent FATF efforts to disrupt the money flows of foreign fighters similarly focus on the mundane transactions of funding and "self-funding" and on routine ATM withdrawals in specific locations. In the wake of the 2015 Paris attacks, FATF for example recommends an attentiveness to self-funding through "salaries or welfare payments." [33] Such suspicion and criminalisation of the transactions and spaces of everyday life is not entirely new. However, the extent to which unexceptional financial transactions have become drawn into post-9/11 security practice is remarkable. In this sense, CTF governs mundane money flows and the transactions of everyday life in new ways.

In sum, after 9/11, monitoring and mining financial transactions became inscribed with the potential to identify and disrupt terrorist activity in preparation. Terrorism

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[29] L Amoore and M de Goede, 'Transactions After 9/11: the Banal Face of the Preemptive Strike,' (2008) 33(2) *Transactions of the Institute of British Geographers*173-185.
[30] See for example: M Bothe, 'Terrorism and the Legality of Preemptive Force,' (2003) 14(2) *European Journal of International Law* 227-240; W Werner, 'Responding to the Undesired: State Responsibility, Risk Management and Precaution,' (2005) XXXVI *Netherlands Yearbook of International Law* 57-82; O Kessler and W Werner, 'Extrajudicial Killing as Risk Management,' (2008) 39(2-3) *Security Dialogue* 289-308.
[31] For further discussion, see ch.50 (DeVille) in this collection.
[32] FATF (Financial Action Task Force), *Terrorist Financing* (Paris, February 29 2008), 21.
[33] FATF (Financial Action Task Force), *Consolidated FATF Strategy on Combatting Terrorist Financing* (February 19 2016), 3-4, http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Terrorist-Financing-Strategy.pdf [last accessed October 17, 2016].

financing is acknowledged to be a "low probability event" with a "particularly fragile connection to statistical technology."[34] However, this acknowledgement functions as a continuous spur to action, alertness and flexibility in suspicious transactions monitoring. As Pat O'Malley shows, uncertainty is never just a threat to be subdued or eradicated, but simultaneously fosters entrepreneurial creativity and transformative power: "Uncertainty…is to be the fluid art of the possible."[35] This turn to financial datamining has to be understood in the wider context of the post-9/11 politics of preemption, that seeks to detect and disrupt terrorism at the earliest possible stage. Questions of effectiveness and privacy are insufficiently addressed within this compelling but problematic logic of mundane preemption.

CTF Regulation as Complex Assemblage

This section examines the transnational institutional innovations produced in the name of fighting terrorism financing. I argue that the pursuit of terrorist monies amounts not strictly to a regime of global governance, but is better understood as an assemblage, in which mundane transactions, donations and affiliations are securitised in novel ways. In this context, Colin King and Clive Walker speak of a "fragmented" policy order.[36] Similarly, an assemblage is understood as "heterogeneous…political formation," that is mobile, emergent and dispersed – but that nevertheless excises considerable power in the name of its strategic functionality.[37] An assemblage exercises power at multiple sites and through diverse elements, that work in conjunction but may also encounter friction.[38] The agency of assemblages, according to Jane Bennett, is the "distinctive efficacy of a working whole" made up of "technological, cultural and atmospheric elements."[39]

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[34] PD Bougen, 'Catastrophe Risk,' (2003) 32(2) *Economy and Society* 258.
[35] P O'Malley, *Risk, Uncertainty and Government* (London: Cavendish Press/Glasshouse Press 2004), 4-5.
[36] King and Walker, 'Counter Terrorism Financing: A Redundant Fragmentation?', (n.16).
[37] J Allen, 'Powerful assemblages?' (2011) 43(2) *Area* 154; S Sassen, 'Mortgage Capital and Its Particularities: A New Frontier for Global Finance,' (2008) 62(1) *Journal of International Affairs* 187-212; J Allen and C Allan, 'Beyond the Territorial Fix: Regional Assemblages, Politics and Power,' (2007) 41(9) *Regional Studies* 1161-1175; B Anderson and C McFarlane, 'Assemblage and Geography,' (2011) 43(2) *Area* 124-227.
[38] WE Connolly, 'The Complexity of Sovereignty,' in J Edkins, V Pin-Fat and MJ Shapiro (eds) *Sovereign Lives: Power in Global Politics* (London: Routledge, 2004), 35.
[39] J Bennett, 'The Agency of Assemblages and the North American Blackout,' (2005) 17(3) *Public Culture* 447.

Understanding the complex and fragmented landscape of CTF regulation in terms of an *assemblage* has three advantages. First, the assemblage distinguishes itself from the social structure or regulatory regime, both of which suggest a much greater degree of coherence, direction and purposeful effectiveness.[40] Conceptually, the term helps explain how the interplay of a heterogeneity of elements, including, for example "regulatory decisions, laws, administrative measures…[and] moral and philanthropic propositions," enables a certain strategic functionality and outcome.[41] This interplay may at times lead to relatively stable formations and "well-ordered coherent wholes."[42] However, such stability and order can never be assumed or taken for granted, but needs to be itself explained. Studying the assemblage does not just focus on the coherence and autonomy of governing machines, but is attentive to their internal gaps, tensions and contradictions. The assemblage recognises friction and unpredictability, and its consequences are conceived as an "unstable cascade" rather than a certain outcome.[43] Such attention to gaps and contradictions is essential for understanding the *politics* of the pursuit of terrorist monies – if politics are to be understood as the contestation over the constitution of the social order and the circumscription of the domain of the political.[44]

Second, the notion of the assemblage focuses analytical attention on *practices* beyond policy agendas and the so-called 'law on the books.' Because an assemblage is thought to be unstable, mobile and emergent, its effects are formed in practice. Objectives as set out in policy or regulation may be seized or reoriented in practice. Despite the relatively stable security logics underpinning the CTF assemblage discussed in the previous section, we need to remain attentive to the complex and sometimes contradictory effects produced in practice. The next section will start unpacking some of these complexities in relation to the challenges of banking compliance.

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[40] Bennett (n.39) 462.

[41] M Foucault, quoted in G Agamben, *What is an Apparatus? And Other Essays* (Sanford (CA): Stanford University Press, 2009), 2.

[42] C Bueger, 'Thinking Assemblages Methodologically,' in M. Acuto and S Curtis (eds) *Reassembling International Theory: Assemblage Thinking and International Relations* (New York: Palgrave Macmillan, 2013), 62.

[43] J Bennett, 'The Agency of Assemblages and the North American Blackout' (2005) 17(3) *Public Culture* 457; see also J Bennett, *The Enchantment of Modern Life: Attachments, Crossings, and Ethics* (Princeton: Princeton University Press, 2001), 99-101.

[44] J Edkins, *Poststructuralism and International Relations: Bringing the Political Back In* (London: Lynne Rienner, 1999), 2-6.

Third, an assemblage approach theorises power not so much in terms of effectiveness, but in term of *reach*.[45] It steers away from notions of clear hierarchies and levels, in order to foster an understanding of how, in Allen's words "actors … make their leverage and presence felt through certain practices of proximity and reach."[46] This understanding steers analysis away from conventional questions of US hegemony within CTF (though those remain important), but seeks to grasp more precisely how particular agencies, networks and alliances come to exercise power trans-jurisdictionally. As Allen explains, this shifts focus away from the "shape and size of an actor's *capabilities*" toward an analysis of the work involved "to hold authority in place despite being stretched globally or the kind of relationships that enable domination to be exercised … at a distance."[47]

To map the contours of what I call the 'finance-security assemblage,' this section discusses some of the principal CTF policy initiatives in the wake of 9/11. It is important, first, to recognise that pursuing terrorism financing has important pre-9/11 roots. Most importantly, the 1999 UN Convention for the Suppression of the Financing of Terrorism obliges member states to criminalise the act of 'terrorist financing' defined in a broad sense.[48] Notable about the Convention is that it offers a definition of what constitutes terrorism – which had been extremely contentious at the United Nations for decades.[49] Indeed, the Convention has been called a veritable "paradigm shift" that redefines the concept of terrorism *beyond* violent acts, and that enables a novel proactive attitude to the problem of terrorism.[50] The Convention broadens the scope of criminalisation beyond the perpetration of violent acts, severs the relation between financing and violence, and enables the expansion of policing powers with regard to terror suspects by making it possible to track and interfere with the otherwise lawful and indeed mundane activities of distributing

[45] J Allen, 'Topological Twists: Power's Shifting Geographies,' (2011) 1(3) *Dialogues in Human Geography* 282-298; see also J Allen 'Powerful assemblages?' (2011) 43(2) *Area* 124-127; and J Allen and C Allan, 'Beyond the Territorial Fix: Regional Assemblages, Politics and Power,' (2007) 41(9) *Regional Studies* 1161-1175.
[46] Allen (n.45) 290.
[47] Allen (n.45), 292, emphasis added.
[48] International Convention for the Suppression of the Financing of Terrorism, Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999. Also King and Walker, 'Counter Terrorism Financing: A Redundant Fragmentation?', (n.16) 377-379.
[49] M Serrano, 'Pulling the Plug: The Political Economy of Terrorism,' in J Boulden & TG Weiss (eds) *Terrorism and the UN. Before and After September 11* (Bloomington and Indianapolis: Indiana University Press, 2004).
[50] M Lehto, *Indirect Responsibility for Terrorist Acts: Redefinition of the Concept of Terrorism Beyond Violent Acts* (Leiden: Martinus Nijhoff Publishers, 2010).

or collecting funds, information and material. The 1999 Convention, while being a radical shift toward proactive approaches to fighting terrorism, was relatively inconsequential before 9/11 as only four states had ratified it. After 9/11, however, the number of signatories rapidly increased and the Convention entered into force in April 2002.[51]

Less than two weeks after 9/11, important steps were taken by the Bush administration with Executive Order 13224, which expanded government powers to freeze assets, designated 29 individuals and entities as "specially designated global terrorists," and more generally fortified the paradigm shift toward the preemptive pursuit of terrorism suspects. The high-profile public launch of this Order presented the pursuit of terrorist monies as the new frontline in contemporary warfare.[52] The USA PATRIOT Act, which followed on October 26 2001, devoted an entire section (Title III) to financial provisions and introduced powerful new measures and competences, with what has been called "breathtaking" applicability, in this domain.[53] Juridically, the Patriot Act provisions enabled preemptive intervention by severing the link between criminal conviction and asset freezing or forfeiture, by distancing suspicion from acts of violence, by reversing the burden of proof, and through a more general strengthening of the executive versus the judiciary. These changes in the US legal landscape were accompanied by a number of high-profile raids on faith-based Muslim charities and remittance networks in the wake of 9/11, including for example the Minneapolis offices of the al-Barakat remittance network and the offices of Global Relief Foundation and Benevolence International Foundation.[54] "Active disruption"

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[51] Ibid., 341.

[52] White House, *President Freezes Terrorists' Assets*, Remarks by the President, Secretary of the Treasury O'Neill and Secretary of State Powell on Executive Order, (Washington: September 24 2001), http://avalon.law.yale.edu/sept11/president_026.asp [last accessed December 14, 2016]; LK Donohue, 'Anti-Terrorist Finance in the United Kingdom and the United States,' (2006) 27(4) *Michigan Journal of International Law* 378.

[53] SE Eckert, 'The US Regulatory Approach to Terrorist Financing,' in TJ. Biersteker and SE Eckert (eds) *Countering the Financing of Terrorism* (London: Routledge, 2007), 216; CP Banks, 'Protecting (or Destroying) Freedom Through Law : the USA PATRIOT Act's Constitutional Implications Law,' in DB Cohen and JW Wells (eds) *American National Security and Civil Liberties in an Era of Terrorism* (New York: Palgrave Macmillan, 2004), 44. For further discussion of the US Patriot Act, see ch.41 (Gurule) in this collection.

[54] The raids on Al-Barakat, Global Relief Foundation, Benevolence International and al Haramain are documented (inter alia) in J Roth, D Greenburg and S Wille, *Monograph on Terrorist Financing* (Washington: National Commission on Terrorist Attacks upon the United States, 2004); also J Howell and J Lind, *Counter-Terrorism, Aid and Civil Society: Before and After the War on Terror* (London, Palgrave, 2009); M de Goede, *Speculative Security: the Politics of Pursuing Terrorist Monies* (Minneapolis: University of Minnesota Press, 2012), chapter 5; Warde, *The Price of Fear* (n.15). On al Barakat see M de Goede, 'Hawala Discourses and the

instead of investigation and monitoring became the stance toward 'suspect' financial networks and charities.[55] Critical reports by the American Civil Liberties Union and Charity & Security Network establish that the raids have led to a 'chilling' of faith-based Muslim donations and political involvement.[56]

On September 28 2001, the UN Security Council adopted Resolution 1373 which calls upon member states to "prevent and suppress the financing of terrorism" and to freeze "without delay" the assets and resources of those who "commit, attempt to commit or facilitate" the commission of terrorist acts.[57] A notable feature of this resolution (and the affiliated Resolution 1377) is its requirement that states report progress of implementation to the UN Counter-Terrorism Committee (CTC) and the invitation that states seek technical assistance with the implementation process.[58] The CTC is tasked with developing common standards and best practices in the (juridical) domain of criminalising the financing of terrorism. The UN furthermore plays a crucial role in the global blacklisting process, through its 1267 Sanctions Committee that was established under UNSCR 1267 in 1999 to monitor sanctions against al Qa'ida and the Taliban, and that substantially gained importance after 9/11.[59] At least US$ 91,4 million was frozen worldwide between 2001 and 2007 under auspices of the Sanctions Committee, of which a substantial proportion remains legally contested.[60] The listing regime was further expanded in 2014 with Resolution 2178, seeking

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War on Terrorist Finance,' (2003) 21 (5) *Environment and Planning D: Society and Space* 513-532.

[55] Roth, Greenburg and Wille, *Monograph on Terrorist Financing* (2004), 87 (n.54).

[56] Charity & Security Network, *U.S. Muslim Charities and the War on Terror: A Decade in Review* (Washington: Charity & Security Network, 2011), http://www.charityandsecurity.org/sites/default/files/USMuslimCharitiesAndTheWarOnTerror.pdf [last accessed October 17, 2016].

[57] UN Security Council, *Security Council Unanimously Adopts Wide-Ranging Anti-Terrorism Resolution 1373* (2001), September 28 2001, http://www.un.org/press/en/2001/sc7158.doc.htm [last accessed October 17, 2016].

[58] TJ Biersteker, 'Counter-Terrorism Measures Undertaken Under UN Security Council Auspices,' in AJK Bailes and I Frommelt (eds) *Business and Security: Public-Private Relationships in a New Security Environment* (Oxford: Oxford University Press, 2004).

[59] Resolution 1267 was affirmed and expanded with Resolutions 1333 (2000), 1373 (2001), 1988 (2011) and 1989 (2011). For a good analysis of the transnational targeted sanctions 'assemblage,' see G Sullivan 'Transnational Legal Assemblages and Global Security Law: Topologies and Temporalities of the List,' (2014) 5(1) *Transnational Legal Theory* 81-127.

[60] The Sanctions Committee notes that this is an estimation, as not all countries are willing to disclose the amounts frozen, nor the names of the entities the frozen funds belong to. See: United Nations 1267 Monitoring Group, *Letter dated 7 March 2007*, 19-20.

to target the Islamic State (IS) and those recruiting, facilitating and financially supporting the IS.[61]

An extraordinary plenary meeting of the FATF took place in Washington in late October 2001 during which US Treasury Secretary Paul O'Neill pressed for the adoption of special recommendations on terrorist financing to supplement the existing FATF Forty Recommendations on money laundering.[62] At the meeting, agreement was reached on what became known as the Eight Special Recommendations on Terrorist Financing, that called, amongst other things, for the criminalisation of terrorist financing, the reporting of suspicious transactions relating to terrorism, and the increased monitoring and regulation of alternative remittance networks, wire transfers and non-profit organisations.[63] The expansion of FATF's mandate in the wake of 9/11 to include terrorism financing amounted to a watershed in terms of FATF's international influence and importance, and imbued the organisation with a new "moral authority" vis-à-vis member and non-member states[64] The Special Recommendations on terrorism financing have since been fully absorbed into the FATF Forty Recommendations and form a key part of its evaluation work. FATF's governing powers have increased substantially, with countries attaching much value to receiving good 'score cards' in FATF evaluations.[65] At the same time however, FATF has come under criticism for the ways in which its Recommendations unduly focus on the Non-Profit sector and circumscribe the space of operation for Non-Profit Organisations.[66]

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[61] UN Security Council, *Security Council Unanimously Adopts Resolution Condemning Violent Extremism, Underscoring Need to Prevent Travel, Support for Foreign Terrorist Fighters* (September 24 2014), http://www.un.org/press/en/2014/sc11580.doc.htm [last accessed October 17, 2016].
[62] See P O'Neill, 'Remarks by Paul H. O'Neill United States Secretary of the Treasury before the Extraordinary Plenary Meeting of the Financial Action Task Force,' (29 October 2001), https://www.treasury.gov/press-center/press-releases/Pages/po735.aspx [last accessed December 9, 2016].
[63] WC Gilmore, *Dirty Money: the Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism* (Strasbourg: Council of Europe Publishing, 2004).
[64] M Rice-Oxley, 'Why Terror Financing is so Tough to Track Down,' (March 8 2006) *Christian Science Monitor*, http://www.csmonitor.com/2006/0308/p04s01-woeu.html [last accessed October 17, 2016].
[65] YK Heng and K McDonagh, 'The Other War on Terror Revealed: Global Governmentality and the Financial Action Task Force Campaign against Terrorist Financing,' (2007) 34(3) *Review of International Studies* 553-573.
[66] C Walker, 'Terrorism Financing and the Policing of Charities: Who Pays the Price,' in C. King and C. Walker (eds) *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (London: Routledge, 2014); Howell and Lind, *Counter-Terrorism, Aid and Civil Society*

From these developments it may appear that the war on terrorism financing, as a global phenomenon, is US-led. Still, it would be too easy to conclude that the US prefers "high-profile designations", while the Europeans favour a "global, multilateral" regulatory approach.[67] Pursuing terrorism financing is neither a specifically American agenda, nor one confined to the timeframe of the war on terror. The European Union (EU) prioritises pursuing suspect monies as the less violent way of fighting terrorism. A number of European countries, as well as the European Union (EU) itself, were keen supporters, rather than reluctant followers, of the broadening of the FATF mandate and, more generally, of far-reaching security action in the financial domain.[68] For the UK, in particular, fighting terrorism financing was much less of a policy 'U-turn' than for the US. In its battle with the Irish Republican Army (IRA), the British state had enacted far-reaching Terrorism Acts in the 1970s and 1980s that enabled it to seize, detain and destroy property and target the financial flows to proscribed organisations in Northern Ireland.[69] Currently, the UK is a keen supporter of global freezing measures, taking a leading role in promoting this practice within the European Union.

The early EU Framework Decision on Combating Terrorism of June 2002 offered a wide definition of what terrorism constitutes, and renders punishable supplying material resources and funding the activities of a terrorist group.[70] These European measures are taken, again, to enable security intervention into everyday spaces that have become suspected to be 'terrorist.' Subsequently, the EU has adopted two Money Laundering Directives, with the explicit purpose of bringing terrorism financing and FATF's special

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(n.54); B Hayes, *Counter-terrorism, 'Policy Laundering' and the FATF: Legalising Surveillance, Regulating Civil Society* (Transnational Institute/Statewatch, 2012).

[67] AL Clunan, 'U.S. and International Responses to Terrorist Financing,' (2005) IV (I) *Strategic Insights* 268; also YK Heng and K McDonagh, 'The Other War on Terror Revealed: Global Governmentality and the Financial Action Task Force Campaign against Terrorist Financing,' (2007) 347(3) *Review of International Studies* 558.

[68] See for example WC Gilmore, *Dirty Money: the Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism* (Strasbourg: Council of Europe Publishing, 2004), 123.

[69] LK Donohue, 'Anti-Terrorist Finance in the United Kingdom and the United States,' (2006) 27(4) *Michigan Journal of International Law* 327-343; also King and Walker, 'Counter Terrorism Financing: A Redundant Fragmentation?,' (2015) 374 (n.16).

[70] Council Framework Decision of 13 June 2002 on Combating Terrorism (2002/475/JHA); see further M de Goede, 'The Politics of Preemption and the War on Terror in Europe,' (2008) 14(1) *European Journal of International Relations* 161-185.

recommendations into EU Community law.[71] In the wake of the Paris and Brussels attacks of 2015/2016, the EU's commitment to the pursuit of suspect monies has further strengthened. In February 2016, the European Commission released a new Action Plan on Combating Terrorism Financing, including a strengthened cooperation between Financial Intelligence Units (FIUs). At the time of the adoption of the Action Plan, EU Vice-President Frans Timmermans said: "We have to cut off the resources that terrorists use to carry out their heinous crimes. By detecting and disrupting the financing of terrorist networks, we can reduce their ability to travel, to buy weapons and explosives, to plot attacks and to spread hate and fear online."[72] Intelligence cooperation in the EU has historically been slow to materialise, however, the EU-FIU network housed at police agency Europol has the potential to become a European-wide intelligence hub.[73]

Taken together, the institutional innovations discussed in this section amount to a complex assemblage of transnational governing rather than a coherent regulatory regime. As we have seen, for Bennett an assemblage is a mobile, multidirectional whole that produces partly unpredictable outcomes. In the finance-security assemblage, some political authorities and regulatory bodies have worked in conjunction to constitute 'terrorist financing' as an urgent international political problem. New measures by the US, UN, FATF and the EU demonstrate substantial multilateral cooperation in this domain. At the same time, many disagreements and contradictions remain: the tension between 'following' and 'freezing' the money is one of these, as is the increase of *informal* financial flows when the formal financial system becomes (too) tightly regulated and suspect customers are expelled. Policy contestations take place over the regulation of the Non-Profit sector, and its chilling effect

[71] Known as the Third and Fourth EU Money Laundering Directives, adopted in 2005 and 2015 respectively. For a critical discussion, see V Mitsilegas and B Gilmore, 'The EU Legislative Framework against Money Laundering and Terrorist Finance: a Critical Analysis in Light of Evolving Global Standards,' (2007) *International & Comparative Law Quarterly* 56 (1), 119-141; M Wesseling, 'Evaluation of EU Measures to Combat Terrorist Financing,' Report to European Parliament (2014), http://www.europarl.europa.eu/RegData/etudes/note/join/2014/509978/IPOL-LIBE_NT(2014)509978_EN.pdf [last accessed December 15, 2016]. For further consideration of the EU response, see ch.33 (Bures) in this collection.

[72] European Commission Press Release, 'Commission presents Action Plan to strengthen the fight against terrorist financing' (February 2, 2016) http://europa.eu/rapid/press-release_IP-16-202_en.htm [last accessed October 17, 2016].

[73] See also, MKD Cross, 'A European Transgovernmental Intelligence Network and the Role of IntCen,' (2013) 14(3) *Perspectives on European Politics and Society* 388-402; C Kaunert, S Léonard and P Pawlak (eds), *European Homeland Security: a European Strategy in the Making?* (London: Routledge, 2012).

on charitable giving. Most importantly perhaps, considerable questions are raised over the effectiveness of this regulatory assemblage. The effectiveness of following-the-money in terms of seizing monies or convicting terrorists remains limited and difficult to measure; its broad policy goals are not easily reduced to measurable indicators. [74]

At the same time however, new elements are grafted onto this regulatory assemblage: most notably, the problem of 'foreign fighters' gives renewed vigour and direction to the finance-security assemblage. Despite continuing questions concerning the effectiveness of this regulatory complex, then, its moral authority is unquestioned and its agenda is routinely reaffirmed in the wake of attacks. This agenda serves as a vehicle for the *reach* of the organisations that propose it, including the US Treasury, FATF and the EU.[75]

Banks in the Frontline

As discussed in the previous section, one of the advantages of understanding the regulatory landscape of CTF as an assemblage, is that it focuses attention on *practice*. As Tania Murray Li has put it, "Assemblage flags agency, the hard work required to draw heterogeneous elements together, forge connections between them and sustain these connections in the face of tension."[76] This section hones in on banking compliance as an important site where law and policy agendas are given practical meaning and where security decisions – for example, freezing assets – are ultimately taken. My argument steers away from understanding banks as relatively passive sites of implementation of CTF, towards understanding them as active, but reluctant, participants in shaping the finance-security assemblage. Specifically, the risk-based approach to suspicious transactions reporting disperses authority and (partly) shifts responsibility for security decisions and designations of

[74] Deloitte, *Final Study on the Application of the Anti-Money Laundering Directive*, European Commission, DG Internal Market (2011); M Levi, 'Combating the Financing of Terrorism,' (2010) 50(4) *British Journal of Criminology* 650-696; M Wesseling, *Evaluation of EU Measures to Combat Terrorist Financing* (Brussels: European Union, 2014).
[75] See also M De Goede, 'Banks in the Frontline: Assembling Time/Space in Financial Earfare,' in B Christophers, A Leyshon and G Mann (eds) *Money and Finance after the Crisis* (London: Wiley, 2017).
[76] TM Li, 'Practices of Assemblage and Community Forest Management,' (2007) 36(2) *Economy & Society* 264.

ab/normality to the private sector. Within banking practice, CTF requirements become grafted onto prior commercial agendas and incentives.[77]

In order to understand how banks and other financial institutions become positioned as security actors, it is important to examine in some detail the 'risk-based' approach to suspicious transactions reporting that has been rolled out across the global regulatory landscape in the wake of 2001.[78] This type of self-regulation is in line with other areas of banking regulation, for example, on capital adequacy.[79] Applied to the sphere of suspicious transactions reporting, the risk-based approach substantially strengthens reporting requirements. However, it simultaneously offers substantial freedom to regulated institutions as to *how* to implement regulation. Put differently, although banks have seen their obligations to identify and report suspect transactions increase considerably in recent years, they have also acquired more authority and discretion to determine what precisely they consider to be suspicious. The rationale behind this approach is to 'minimise' the burden of regulation, and to direct monitoring resources toward shifting notions of 'high-risk' banking domains.[80]

The risk-based approach is thought to ensure that financial institutions remain as *flexible, cunning and unpredictable* as the terrorists themselves. According to the UK Treasury's white paper on the *Financial Challenge to Crime and Terrorism*, "the response to crime and terrorism needs to be as supple as the criminals and terrorists themselves. A prescriptive 'tick-box' approach would miss its target.[81] This logic involves a turn to 'subjective' reporting. When, how and why a transaction can be supposed to be connected to money laundering or terrorist financing has become a matter for reporting institutions to decide. The determination and definition of unusual transaction patterns and suspect client

[77] A Amicelle and E Jacobsen, 'The Cross-Colonization of Finance and Security through Lists: Banking Policing in the UK and India,' (2016) 34(1) *Environment and Planning D: Society and Space* 89-106.
[78] On the risk-based regime in Capital adequacy standards see for example A Tickell, 'Dangerous Derivatives: Controlling and Creating Risks in International Money,' (2000) 31 *Geoforum* 87-99; MR King and TJ Sinclair, 'Private Actors and Public Policy: A Requiem for the New Basle Capital Accord,' (2003) 24(3) *International Political Science Review* 345-362.
[79] See for example: E Tsingou, 'Club Governance and the Making of Global Financial Rules,' (2015) 22(2) *Review of International Political Economy* 225-256.
[80] FATF (Financial Action Task Force), *Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing* (Paris, June 2007), 2. For further discussion, see ch.15 (van Duyne et al) in this collection.
[81] UK Treasury, *The Financial Challenge to Crime and Terrorism* (London: February, 2007), 13.

groups rests largely with financial institutions themselves. The risk-based approach thus transfers considerable authority to financial service providers to determine the abnormal, the risky and the suspicious. Generally welcomed as "a useful principle in ensuring that the institutions and professions concerned are not unnecessarily overburdened with [reporting] obligations,"[82] this approach simultaneously enables far-reaching (security) decision-making by mid-level financial bureaucrats.

Before examining more precisely what is considered to be suspicious in contemporary banking practice, it is important to draw out two consequences of the risk-based approach. First, under the risk-based approach, banks become engaged in a quest with *compliance* – and not necessarily the prevention of terrorism – as their objective. Indeed, the regulator accepts that it is not possible to preemptively detect *all* instances of money laundering or terrorist financing.[83] Accordingly, regulators expect financial institutions to be able to demonstrate that they have taken "*adequate*" measures to implement "an appropriate and effective control structure to manage identifiable money laundering and terrorist financing risks."[84] The measures oblige the banking sector to develop good internal compliance policies and trainings, to filter for lists of names suspect individuals, and to report suspicious transactions. But key is that neither FATF nor national regulators are willing to spell out in detail what types of transactions are to be considered as suspicious, nor are they keen to give assurances on adequacy of internal measures. In this manner, the regulator encourages banks and other financial institutions to remain dynamic and attentive to shifting notions of risk in this domain.

Secondly, under the risk-based approach, reporting on the basis of *subjectivity* and *suspicion* is not a side-effect, but the central objective. We have already examined the regulator's calls to suppleness and flexibility that accompany the risk-based approach. This point was made quite explicit during the public enquiry into money laundering and the financing of terrorism held by the UK House of Lords in the beginning of 2009. The House of Lords set out to examine the effectiveness, proportionality and human rights effects of current UK money laundering law, including the effects of the EU's Third Directive. In trying

[82] V Mitsilegas and B Gilmore, 'The EU Legislative Framework against Money Laundering and Terrorist Finance: a Critical Analysis in Light of Evolving Global Standards,' (2007) 56(1) *International & Comparative Law Quarterly* 127.
[83] FATF (Financial Action Task Force), *Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing* (Paris, June 2007), 3.
[84] FATF, *Guidance*, emphasis added, 3 (n. 83)

to understand the nature of the reporting regime, the following exchange took place between members of the House and two representatives of the private sector:

> Lord Dear: Are you telling me that you can report on that gut feeling, that suspicion? appropriate and effective control structure to manage identifiable money laundering and terrorist financing risks. [British Banking Association]: Absolutely; you are required to, that is what the law requires.
> Lord Dear: You can do that?
> Ms Scutt: We have to. The law requires that if you suspect you must report.
> Ms Banks [Institute of Chartered Accountants]: Many of the reports of our members…will be based on the fact that clients are acting in a way which is inconsistent with usual business practice under the expectation of making a profit.
> Lord Dear: You smell a rat and you report it?
> Ms Banks: Yes.[85]

What is made clear in this remarkable exchange is the explicit appeal to suspicion and suppleness that is built into the juridical framework of the reporting regime. It authorises private sector employees to report suspicions to government agencies on the basis of 'gut feelings' and 'smelling a rat.' Below, we will examine in more detail not just how the 'rats' are defined in contemporary banking practice, but also what the turn to subjectivity and suspicion in reporting practice mean for the role of banks as security actors.

Inside Banking Practice

This final section briefly delves into actual banking practice and ffinancial datamining to examine how decisions concerning risk and suspicion are made. It is through the algorithmic patterning and prediction of customer behaviour that banks put into practice the new imperatives of suppleness and fluidity of the risk-based approach. This involves a substantial modelling of 'normal' and expected account use of financial clients.[86] Such patterning intends not just to record how the customer has behaved but seeks to anticipate how the customer *will behave*. Financial institutions may develop their own in-house models for transactions mining but increasingly also rely on software packages developed by external vendors such

[85] House of Lords, *Money Laundering and the Financing of Terrorism, Volume II,* 28.
[86] AI Canhoto and J Backhouse, 'Profiling under Conditions of Ambiguity – an Application in the Financial Services Industry,' (2007) 14 *Journal of Retailing and Consumer Services* 408; K Ball, A Canhoto, E Daniel, S Dibb, M Meadows and K Spiller, *The Private Security State?: Surveillance, Consumer Data and the War on Terror* (Copenhagen: CBS press, 2015).

as Fiserv, Oracle (formerly Mantas), LexisNexis and Worldcheck (part of Thompson Reuters), which have the capacity to analyse large data-volumes in real time.

What elements may go into the automated but mobile determination of normality and suspicion as offered by these models? Although compliance practice is continually changing, it is possible to distil a number of axes along which financial datamining operates. These include: first, a deployment of public and private terrorist watch lists; second, a focus on particular but shifting geographical areas and territories; third and perhaps most importantly, an appeal to economic logic and rationality. Taken together, these elements entail a move from establishing (aberrant) terrorist account profiles, toward a substantial, continuous and mobile modelling of financial normality.

First along the axes of financial suspicion are transactions connected to named, listed individuals and associates of those individuals. Checking against named lists is not straightforward. Not only are transnationally operating banks required to check against more than 200 national and international lists – including for example the US, UK, UN and EU lists. But also banks are also required to check against privately compiled 'Politically Exposed Persons' (PEP) lists.[87] Taken together, public and private watchlists include millions of names and organizations, and are updated daily.[88] Name similarities, transcription problems and the fluidity of lists mean that sophisticated software is required to execute list-checking, and this software frequently offers a risk-based list of possible hits. List checking at least partially operates as a mobile norm whereby a binary hit/no hit system has been replaced with a risk-based scoring system.

A second element going into software-based suspicious transactions mining is the notion of risky locales and territories, including but not limited to countries with a 'reputation' for being tax havens and countries 'supporting' terrorism. For example, the FATF report of 2008 on terrorist financing emphasises the risks of business with "safe havens, failed states and state sponsors," who may "provide support for terrorist organisations," and names "Somalia, Iraq and the Pakistan-Afghanistan border" as risky geographies.[89] The more recent FATF report on ISIL financing shifts geographical focus toward the Syria-Iraq-Turkey border regions. This report entails a complex geographical

[87] BCBS (Basel Committee on Banking Supervision), *Customer Due Diligence for Banks* (Basel, October 2001) http://www.fsa.go.jp/inter/bis/f-20011004-2c.pdf [last accessed October 17, 2016].
[88] M De Goede and G Sullivan, 'The Politics of Security Lists,' (2016) 34(1) *Environment and Planning D: Society and Space* 67-88.
[89] FATF (Financial Action Task Force), *Terrorist Financing* (Paris, February 29 2008), 19.

imagination, whereby notions of suspicion are not reducible to non-compliant territories. What is significant about the focus on such dispersed risky territories is that it is accompanied by a diminished importance of the FATF non-cooperating countries list (NCCT-list).[90] The demise of the NCCT list, coupled with the simultaneous increase of risk-based geographical suspicious transactions mining, suggests a move away from the overt and relatively transparent FATF procedures, toward a more flexible, obscure and unaccountable process. Put simply, the deployment of geography as marker of suspicion *inside* the models enables a suppler and shifting notion of risky territories – so that financial clients find it difficult to know which geographical destinations incur heightened scrutiny.

Third, are transactions that, in the words of one interviewee at the British Banking Association, "do not seem to have an economic sense."[91] As the Basel Committee on Banking Supervision's guidance on Customer Due Diligence for banks also stipulates: "Certain types of transactions should alert banks to the possibility that the customer is conducting unusual or suspicious activities. They may include transactions that *do not appear to make economic or commercial sense*."[92] Indeed, the requirement that transactions make economic sense is written into the legal framework of the risk-based approach. Article 20 of the EU's Third Money Laundering Directive – which harmonises money laundering regulation across the member states – requires scrutiny of "all unusual patterns of transactions" which have "no apparent economic…purpose."[93] These normative and juridical appeals to economic sense or logic enable boundary-producing work in the markets, whereby that which is considered to be economically illogical or irrational comes to be considered as suspicious.

The prescription of economic logic or sense is operationalised in at least two, interrelated, ways. First, expected account use is determined on the basis of past behaviour of the account holder and the type of account. Banks have to develop a "thorough

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[90] R Hülsse and D Kerwer, 'Global Standards in Action: Insights from Anti-Money Laundering Regulation,' (2007) 14(5) *Organization* 633.
[91] Interview with a representative of the British Banking Organisation, London, January 2006.
[92] BCBS (n.87), 13.
[93] DIRECTIVE 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (October 26, 2005) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF, Article 20, 27, emphasis added [last accessed December 14, 2016]

understanding of who all their customers are, and what they're doing."[94] These measures are related but not reducible to new and more stringent account opening and client identification procedures for new accounts. Stringent customer vetting is an important part of the post-9/11 regulatory landscape, and may affect banking access in various countries.[95] Second, the emphasis in compliance is increasingly on *continuous monitoring* more than on account opening procedures. One strategy is to profile clients' account use over time, so that deviations from established business may be flagged. Increasingly, banks record in detail the business, profession and account purpose of their clientele. The standard against which economic logic or sense is assessed varies according to client group, time, place, individual account history, 'lifestyle' and any number of undisclosed or yet-to-be-formulated factors. What is at work here is a mobile norm instead of a relatively fixed and predictable standard.[96] This is presented as an advantage by companies and regulators: the mobility of criteria is seen to ensure that models remain alert to changing criminal schemes and adapt to evolving account use of client groups. Such risk-based logics have led to extensive modelling of normal account use, divided into ever smaller units to account for variations between professional groups, seasonal fluctuations or lifestyle variance.

Finally, it is important to note that these logics of risk and uncertainty in CTF have more recently led to banking decisions to close the accounts of particular clients and client groups altogether,[97] most notably money service businesses (MSBs) remitting monies to contested territories in for example Somalia or the Palestinian Territories. For example, in 2013, British bank Barclays closed the accounts of eighty MSBs remitting money to Somalia.[98] There were no allegations of fraud or misuse of the accounts. On the contrary: the companies were considered "model customers of Barclays."[99] However, Barclays decided to exit these relationship because of a "perceived higher level of risk" in the small-scale MSBs sector.[100] The account closures can be understood as *preemptive* because they

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[94] M Buchanan, *Dirty Money, Part 3: Terrorism* (2006) (BBC News, January 2009), http://news.bbc.co.uk/1/hi/programmes/documentary_archive/4610276.stm [last accessed October 17, 2016].
[95] See for example, T Hall, SAFE, *Banking the Unbanked: A Snapshot* (London, November 2005), 43; H Bester, L de Koker and R Hawthorne, *Access to Financial Services in South Africa* (Genesis Analytics, April 2004).
[96] L Amoore, *The Politics of Possibility* (Durham: Duke University Press, 2013).
[97] In this collection, see ch.13 (Ramachandran et al).
[98] See further Cooper this volume.
[99] Dahabshiil Transfer Services Ltd v Barclays Bank Plc [2013] EWHC 3379, para.36.
[100] Dahabshiil v Barclays, para.20.

were not motivated by past misuse, but to avoid potential future abuse. According to Barclays, the legitimacy of transfers from these accounts to Somalia and Eritrea could not be fully assessed. This became pressing in a context in which anti-terrorism financing requirements oblige banks to report transactions and freeze monies associated with the Somali terrorist network al-Shabaab. In an environment where, as Barclays put it, it is not possible to "spot criminal activity with the degree of confidence required,"[101] but where public association with terrorism financing could do very serious damage to a company's reputation and be grounds for hefty OFAC fines, banks apparently deem it better to pre-emptively exit these risky sectors altogether.

Derisking presents a break with the (claims to) sophisticated data-led modes of risk modelling and client monitoring discussed above and suggest that, in some sectors, banks decide that the business case does not outweigh the cost of compliance. According to Tom Keatinge, derisking decisions are based on the "unquantifiable risk" of terrorism financing fines, and potential "worst-case scenarios."[102] Derisking shows the extent to which CTF is impacting banking practices, and has negative effects on financial access for particular client groups. An international debate on derisking was commenced by FATF in 2014, which stated that "De-risking should never be an excuse for a bank to avoid implementing a risk-based approach, in line with the FATF standards."[103] However, the responsibility for maintaining banking access when CTF meets the post-2009 financial crisis remains unclear, and banks, governments and FATF are so far pointing to each other to address the issue.

Conclusions

This chapter has unpacked the security logics underlying post-9/11 CTF. CTF distinguishes itself from the tradition of AML in three respects. First, its commitments are largely preemptive, seeking to identify and disrupt potential future terrorist attacks, rather than amassing evidence and confiscating proceeds after the crime. Second, it entails a new focus

[101] Barclays statement in response to Change.org decision, available at: https://www.change.org/p/number10gov-stop-moving-the-goal-posts-and-take-every-step-you-can-to-ensure-remittances-flow-through-safer-channels-to-somalia/responses/9222 [last accessed October 17, 2016].
[102] T Keatinge, *Uncharitable Behaviour* (London: Demos, 2014), 50-51.
[103] FATF (Financial Action Task Force), *FATF clarifies risk-based approach: case-by-case, not wholesale de-risking* (Paris, October 23 2014), http://www.fatf-gafi.org/documents/news/rba-and-de-risking.html [last accessed October 17, 2016].

on small amounts and mundane transactions. Third, its risk-based approach authorizes private financial institutions to enact autonomous security decisions to a novel degree.

The chapter has suggested that CTF constitutes a complex transnational regulatory landscape. This landscape is less like a clear and coherent international regime, and more like an emergent, mobile assemblage. The malleability of this assemblage is illustrated by the fact that, in recent years, the 'foreign fighters problem' of identifying and disrupting travel to Syrian conflict zones has been grafted onto its agenda. Many tensions and contractions remain within this assemblage. Even though suspicious transactions reports have increased substantially in most countries in recent years, typically only 1-5% are thought to be associated with terrorism financing. The effectiveness and proportionality of CTF compliance practices remain questioned, and the profile of the terrorist bank accounts remains elusive. In addition, the societal critique of CTF has grown in recent years, as it disproportionally targets Muslim groups and migrant remittance channels. Despite these critiques, CTF remains a firm policy commitment of many states, and authorities' expectations of the value of financial intelligence in counter-terrorism are only increasing. Within this broader and contested landscape, the decision of Dutch police to share suspect name lists with financial institutions to preemptively visualize their networks and transactions is a remarkable new step, that illustrates again how CTF is at the forefront of the post-9/11 politics of preemption.