REVAMPING INTERNATIONAL SECURITIES LAWS TO BREAK THE
FINANCIAL INFRASTRUCTURE OF GLOBAL TERRORISM

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I. INTRODUCTION

On September 11th, 2001, the word terrorism took on a whole new meaning. The terrorist plot that took down the World Trade Center and a part of the Pentagon was well-coordinated and highly complex. Not only did the attacks take years of planning, but they also required substantial financing. Plane tickets, lodging and flying lessons for seven pilots could total hundreds of thousands of dollars. In addition, the terrorists maintained training camps and facilities in Afghanistan. Tracking the movements of the supporting funds was necessary not only for the investigation of these attacks, but also to assist authorities in preventing future attacks.

Soon after the terrorist attacks, the U.S. government released reports regarding the insurers of the World Trade Center and the airliners used in the attacks. Shares of the insurers had been short sold, and the activity was linked to an account under Osama Bin Laden's name. Shares of the airlines were also short-sold. Fluctuations in world oil prices and gold markets further evidenced suspicious activity. It was theorized that Bin Laden short sold shares of companies which stood to suffer major losses from the actions which occurred on September 11th. As the suspected mastermind of the attacks, Bin Laden had a great deal to gain by manipulating stocks. When all of the

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1 See Glenn Kessler, Terrorists' Funding Targeted: Tracing Flow Has Been Hard in Past, WASH. POST, Sept. 15, 2001, at D1; see also James Risen, Sept. 11 Hijackers Said to Fake Data on Bank Accounts, N.Y. TIMES, July 10, 2002, at A1 (noting that the FBI believes the terrorist hijackers had access to a total of U.S. $500,000 to $600,000).


3 See id.


5 See Terror Sells Short, COLUMBUS DISPATCH, Sept. 14, 2001, at 10A. A short sale occurs when the investor borrows a security from a broker and sells it with the understanding that it must later be bought and returned to the broker. Short selling is a technique used by investors who hope to profit from a falling stock price. See Investor Words, at www.investorwords.com (last visited Jan. 30, 2003).


8 See id.
unusual trading patterns were discovered, it was natural to suspect the terrorists.9

The International Organization of Securities Commissions, a transnational regulatory agency, has been trying for years to encourage its members to adopt its resolutions to standardize securities laws and promote information sharing.10 While financial institutions around the globe have been cooperating with the investigators of the September 11th attacks,11 they could be more proactive in plugging the leaks of the world financial system. Furthermore, the increased use of MOUs, or Memoranda of Understanding, may expedite the exchange of information between the world's markets and countries.12

Many countries have enacted legislation covering both general terrorism fundraising and securities regulations. However, they lack regulations which specifically address the use of securities for terrorism fundraising. When the United Nations drafted the International Convention for the Suppression of the Financing of Terrorism, they noted there was no international legal instrument in place that expressly addressed such terrorist financing.13 States must develop a means to target the movement of terrorist funds "without impeding in any way the freedom of legitimate capital movements," and increase the availability of information regarding those movements.14 In order to safeguard against the use of investments to finance terrorism, the global economic community must call for a higher standard of securities laws and more cooperative assistance between nations.15

The financing of the September 11th attacks was not accomplished via conventional methods, such as drug trafficking or state sponsorship.16 The

9 See id.
10 See infra notes 60-89 and accompanying text.
12 See infra notes 172-83 and accompanying text.
14 Id.
15 See A.A. Sommer, Jr., IOSCO: Its Mission and Achievement, 17 NW. J. INT’L L. & BUS. 15, 27 (1996) (noting that “closer international cooperation in the regulation and supervision of financial institutions and markets is essential to the continued safeguarding of the financial system and to prevent erosion of necessary prudential standards”).
attacks brought to light the sophistication of modern terrorists, who may finance their violent agenda through securities trading. Events such as September 11th affect not just one nation, but the entire globe. Markets around the world fell in the aftermath of the attacks. The fight against terrorism and the need to reduce terrorism fundraising are therefore not just domestic concerns, but a global ones.

This Note will examine the evolution of terrorism financing, the efforts of international bodies to standardize securities law, the current legislation of various countries, and the heightened need for revising domestic securities regulations. This Note will further discuss how countries can impose securities regulations to assist in the war on terrorism. Through greater involvement of financial institutions, better understanding of the global economic structure, adoption of resolutions introduced by international bodies, agreement through Memoranda of Understanding, and proper enforcement of existing laws, terrorism funding via investments will be significantly curtailed. It is only through global cooperation that the terrorists' contemporary form of financing can be thwarted.

II. BACKGROUND

A. Terrorism Fundraising

The U.S. Department of State has recognized that although the number of international terrorist events has decreased over the past ten years, the number of victims has increased. To remain viable, terrorists must receive significant financial support for their violent activities. Organized terrorism requires infrastructure, especially a financial infrastructure. Depending on their objectives, a group may need funds for anything from weapons or false passports to training camps or death benefits.

17 See Attack Shuts Down U.S. Markets and Causes Global Decline, WALL ST. J., Sept. 12, 2001, at B1 (noting that British stocks fell 5.7%, French stocks fell 7.4%, German stocks fell 8.5%, and Japan’s Nikkei index fell below 10,000 for the first time since 1984).
According to Stephen Kroll, formerly of the U.S. Department of Treasury’s Financial Crimes Enforcement Network, there are six means by which a terrorist group might finance its activities. The first method is via pure criminal activity. Second, terrorist groups may form strategic alliances with organized criminal groups, such as narcotics traffickers. The third means of funding is through state sponsorship. Fourth, organizations may get money through external fundraising which is specifically for violent ends, or fifth, from general fundraising. The sixth means of fundraising, which this Note will focus on, is investments.

Stephen Kroll observed that not all terrorist organizations have the sophistication to partake in commercial ventures such as investing. Jonathon Winer, the former Deputy Assistant Undersecretary of State, recognized that “intentional market manipulation would be a new subtlety of the terrorists, which we have not experienced and for which we have not planned.” Senator Carl Levin has stated, however, that “Osama Bin Laden has boasted that his modern new recruits know the ‘cracks’ in ‘Western financial systems’ like they know the ‘lines in their hands.’” Though not all terrorist organizations have the ability to manipulate markets for fundraising, those that do may be the most dangerous because they have the ability to raise the most capital.

In the past, when terrorist organizations were more closely linked to government sponsorship, states used sanctions against the sponsoring government to target terrorists. These sanctions, however, only worked to undermine a national economy. Today’s terrorist threats come from groups

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*Terrorism*.

21 *See id.* at 578.
22 *Id.*
23 *Id.*
24 *Id.* Terrors are often state or sub-state actors, receiving funds directly or indirectly from countries.
25 *Id.* at 579. Money for general fundraising is not collected on the premise of attacks, but contributions may be for any number of reasons.
26 *Id.*
27 *Id.*
31 *Id.* at 310 (discussing the adverse effect on the economies of the country imposing the
with fewer government ties and greater independent resources.\textsuperscript{32} Since terrorist funding has been increasingly privatized, sanctions are less effective in weakening these independent organizations.\textsuperscript{33} Governments must look to more targeted approaches, including tighter security over investors in capital markets.

As the then U.S. Secretary of the Treasury Paul O’Neill noted, when discussing the obstacles involved in tracking the suspected short selling by Bin Laden, “you’ve got to go through ten veils before you get to the real source.”\textsuperscript{34} Most of the money that has been traced to the September 11th attacks was brought into the United States legally.\textsuperscript{35} In the months immediately following the attacks, international bodies as well as individual nations took the initial steps to strengthen anti-terrorist funding legislation.\textsuperscript{36}

\textbf{B. International Bodies & Treaties}

\textit{1. United Nations}

The United Nations has been working to stop terrorism throughout its existence.\textsuperscript{37} In 1994, the member states uniformly condemned any acts of terrorism perpetrated by any party.\textsuperscript{38} Resolution 49/60 included the Declaration on Measures to Eliminate Terrorism, which called on members to review and revise their terrorism laws in order to create a comprehensive framework for defeating terrorism.\textsuperscript{39} Enacted in 1996, Resolution 51/210 focused more narrowly on the financing of terrorism. This Resolution called for members

\begin{itemize}
\item \textsuperscript{33} See Einisman, \textit{supra} note 30, at 319.
\item \textsuperscript{34} \textit{Terrorists May Have Attacked Financial Markets, Too, supra} note 7.
\item \textsuperscript{37} See U.N. CHARTER, art. 51, para. 1 (noting the “authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security”).
\item \textsuperscript{38} See G.A. Resolution 49/60, \textit{supra} note 16, § I.
\item \textsuperscript{39} See id. § II(7).
\end{itemize}
to take steps through domestic efforts to stop the funding of terrorist organizations. Resolution 51/210 encompassed terrorist funding through all avenues, including charitable contributions, drug dealing, racketeering, and the movement of capital funds. In 1997, the General Assembly emphasized the need for members to adopt Resolution 51/210. In 1999, the General Assembly returned to the matter with a more focused statement in the International Convention for the Suppression of the Financing of Terrorism.

The International Convention for the Suppression of the Financing of Terrorism defines the perpetrator of terrorist financing to be a person who "provides or collects funds with the intention... or in the knowledge that they are to be used" for an act intending to cause death or serious bodily harm to a civilian when the purpose of such act is to intimidate a population or compel a government or international body. It also suggests that anyone who serves as an accomplice, organizes or directs others to commit, or contributes to the commission of such a financial action may also be an offender.

Article 18 of the International Convention for the Suppression of the Financing of Terrorism further details how members of the global economic community may standardize their commercial laws. All states must adapt their domestic legislation to prevent the potential financing of terrorism. The Convention assigns financial institutions a key role in assisting states, since the terrorist financing travels through channels which they control. These institutions must use the most efficient means by which to properly identify account holders, including those customers in whose interests accounts are opened. Article 18 suggests that special attention be paid to unusual or

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41 Id.
44 See International Convention for the Suppression of the Financing of Terrorism, supra note 13, at art. 2 § 1.
45 See id. at art. 2 § 2
46 See id. at art. 18.
47 See id. at art. 18 § 1.
48 See id. at art. 18 § 1(b).
49 See id.
suspicious transactions. These include transactions that have a complex or unusual pattern, or seem to have no economic or lawful purpose. Furthermore, accounts should not be opened if the beneficiaries are unidentifiable. Financial institutions must make a concerted effort to identify the true account owners. If a legal entity holds title to the account, the financial institution must verify its proof of incorporation from a public register or from the customer.

Finally, the International Convention for the Suppression of the Financing of Terrorism suggests that financial institutions be able to report suspicious activities of customers without fear of civil or criminal liability. Where good faith can be demonstrated, this customer confidentiality may be violated without legal consequences. Information which might be shared includes account names, dates of suspicious transactions, and other general client account information.

On September 28, 2001, the UN Security Council announced a new anti-terrorism resolution. The 2001 Anti-Terrorism Resolution focuses primarily on the financing of terrorist activities, including a prohibition against making financial assets available to those who will or might use them for terrorist ends. The need to share information is also highlighted. The Resolution was unprecedented in that it called on all member states to implement the Resolution and report within ninety days on their progress. This Resolution, passed in light of the September 11th attack, reaffirms the United Nations' mandates as expressed in previous anti-terrorism resolutions and requires all states to respond to terrorism.

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50 See id.
51 See id. at art. 18 § 1(b).
52 See id. at art. 18 § 1(b)(i).
53 See id. at art. 18 § 1(b)(ii).
54 See id. at art. 18 § 1(b)(iii).
56 Id. § 5.
57 Id. § 4.
58 Id. § 6.
59 See id.
2. International Organization of Securities Commissions

The International Organization of Securities Commissions (IOSCO), like the United Nations, has the potential to influence international securities regulations, but it lacks binding regulatory authority.\textsuperscript{60} IOSCO was formed in 1974 to provide advice to countries in the Western Hemisphere with emerging markets.\textsuperscript{61} In 1983, IOSCO was opened to all states.\textsuperscript{62} Membership is open to a country's securities commission or government regulatory body, or, if there is no regulatory body, to a self-regulated body such as a stock exchange.\textsuperscript{63} At their 14th annual convention IOSCO developed a report with recommendations to bring them closer to their goal of becoming a transnational regulatory agency.\textsuperscript{64}

IOSCO has certainly been gaining more influence in the development of international financial markets.\textsuperscript{65} The Core Principles of the organization symbolize what are considered to be the primary concerns and goals of global securities regulations.\textsuperscript{66} These principles are used not only by securities authorities in individual countries, but also by the International Monetary Fund and World Bank to oversee the markets of emerging nations.\textsuperscript{67} IOSCO has also published several Resolutions detailing how to alleviate the concerns and reach the goals of the signatory states and their capital markets.\textsuperscript{68}

\textsuperscript{61} See Sommer, supra note 15, at 15.
\textsuperscript{62} See Bloomenthal & Wolff, supra note 60, at 27-262.
\textsuperscript{64} See Sommer, supra note 15, at 23.
\textsuperscript{65} See id.
\textsuperscript{66} See The SEC Speaks in 2001: International Affairs, 1235 PLI/CORP 977, 989 (2001). The core principles for the member nations are: to cooperate to promote high standards of regulation to maintain sound markets; to exchange information in order to promote the development of domestic markets; to unite efforts to establish standards and surveillance of international securities transactions; and to provide mutual assistance to promote the integrity of the markets. See IOSCO—General Information, supra note 63.
\textsuperscript{67} See IOSCO—General Information, supra note 63.
IOSCO adopted the Resolution on Principles for Record Keeping, Collection of Information, Enforcement Powers and Mutual Cooperation\textsuperscript{69} in 1988 to improve the enforcement of securities and futures laws.\textsuperscript{70} This Resolution was a reaction to inadequate record keeping, which was often due to securities agencies' lack of directives or enforcement power.\textsuperscript{71} The Resolution provides for a more comprehensive recording system which would make the monitoring and enforcement of securities transactions more efficient.\textsuperscript{72} It achieved this end by calling for information on funds and assets transferred, contemporaneous records of securities and futures transactions, and accessibility of information on all account owners.\textsuperscript{73} For the first time IOSCO members codified the need to weaken domestic secrecy laws.\textsuperscript{74} Weakening secrecy laws would provide authorities with access to greater information and bring members into greater compliance with other resolutions.\textsuperscript{75}

In 1992, IOSCO introduced its Resolution on Money Laundering under the guidance of the Financial Action Task Force (FATF).\textsuperscript{76} IOSCO suggested that members revise "the extent to which customer identifying information is


\textsuperscript{70} See Michael D. Mann & Kimberly M. Versace, Internationalization of Securities Crimes: Current Developments, 1141 PLI/CorP 337, 341 (1999).

\textsuperscript{71} See id.

\textsuperscript{72} See id. at 342.

\textsuperscript{73} See Resolution for Record Keeping, supra note 69.

\textsuperscript{74} See Mann & Versace, supra note 70. A secrecy law prohibits a banker who, in a professional capacity, has acquired information about the identity, assets, liabilities, transactions, or accounts of a customer, from revealing such information to another person. See Duncan Osbort et al., Asset Protection Planning with the Offshore Trust, AM. L. INST.—AM. BAR ASS’N CONTINUING LEGAL EDUC., 1733, 1775 (Nov. 18-22, 2002).

\textsuperscript{75} See, e.g., Resolution for Record Keeping, supra note 69 (an example of a past resolution emphasizing the property documentation and sharing of account information).

gathered and recorded by financial institutions...." They also reiterated the need to maintain adequate records and the need to report any suspicious transactions. Once again, IOSCO emphasized the need to share information, this time in the interest of combating money laundering.

In 1994, IOSCO initiated a survey by which each member could evaluate itself. This survey was meant to determine how compliant members were with the IOSCO principles and resolutions. In an effort to expedite mutual assistance between members, the 1994 Resolution first called on each member to designate an authority who would be able to process any requests for information. Second, the 1994 Resolution asked for each member to review its domestic legislation and report how effectively the nation's laws addressed the issues brought forth by IOSCO. Of the eighty-nine regular members of IOSCO, only twelve have not yet provided a report. The 1994 Resolution was one of the most significant steps in IOSCO's efforts to expedite the process of international cooperation. It highlighted such issues as international cooperation, account secrecy laws, and money laundering. It provided the members with a comprehensive understanding of the effectiveness of their current securities laws were, as well as providing guidance for drafting stricter laws.

In October of 2001, IOSCO created a special Project Team in response to the events of September 11th. The Organization noted three areas on which it should focus in the aftermath of the terrorist attacks and the speculations surrounding market activity. One priority concerned the need to expand efforts to share information, because "to investigate financial crime fully, information sharing must be expanded to encompass securities regulations

77 Resolution on Money Laundering, supra note 76, § 1.
78 See id. § 2–3.
79 See id. § 7.
81 Id. § 1.
82 Id. § 2.
83 See id.
84 See Sommer, supra note 15, at 27.
86 See id.
from all jurisdictions." A second highlighted area was client identification. The Project Team was also slated to "explore the components of a robust identification regime, taking into account practical implications for the industry."

Despite these initiatives, IOSCO still lacks influence in the international securities community. Out of IOSCO's ninety-eight regular, affiliate, and associate members, only eight have signed the Resolution for Record Keeping. Moreover, IOSCO does not include any representatives who are actually elected officials of member states. Thus, when an IOSCO representative returns to her country, she lacks the authority to implement the suggestions of IOSCO. Any of the Resolutions signed by IOSCO members are mere acknowledgments of the work of the organization; they are not normally introduced to the respective governments to be signed into law.

3. G-20

Another major international organization, the G-20, has also been working to meet the goal of standardizing laws to impede terrorist financing. The G-20, which includes nineteen countries, the European Union, the International Monetary Fund and the World Bank, promotes discussion and reviews policy issues among industrialized countries and emerging markets in an effort to promote international financial stability. The organization held its third meeting in November 2001 and adopted an Action Plan to deny terrorists the opportunity to exploit world financial systems.

In its Action Plan, the G-20 committed to several specific steps. First, they pledged to adopt the United Nations' 2001 Anti-Terrorism Resolution and International Convention for the Suppression of the Financing of Terrorism.

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87 Id.
88 See id.
89 Id.
92 See id. at 391.
95 See Action Plan, supra note 93.
96 Id.
Furthermore, the members agreed to work with FATF, the World Bank, the International Monetary Fund, and other international bodies to implement international standards to hinder terrorist abuses. Finally, each member agreed to create a “financial intelligence unit” to collect and analyze information related to terrorism and financing. The G-20 agreed to vest the kind of authority in these units that police and financial institutions generally lacked. The information would be shared through international financial policing operations. In general, this meeting brought the members of the G-20 in line with the anti-terrorism resolutions of the United Nations.

The meeting of the G-20 is noteworthy for a couple of reasons. First, it included nations such as Saudi Arabia and Indonesia, which had previously been considered stragglers in the area of financial regulations. The meeting, however, failed to produce a definition as to what should be included in a financial intelligence unit or a deadline by which G-20 members must complete their implementation of the Action Plan. Although it did not address securities specifically, the G-20 meeting was significant because it showed renewed commitment to the guidance of international organizations, such as the United Nations, in drafting terrorism financing legislation.

C. Individual National Approaches

1. The United Kingdom

The United Kingdom has a long history of terrorism within its borders. For example, the Irish Republican Army, seeking to release Northern Ireland from the governance of Great Britain, is believed to be responsible for over 1,000 bombings resulting in at least 500 deaths. In an effort to mitigate terrorism, the British Parliament has passed a series of legislation over the years.

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97 Id.
98 Id.
99 Id.
101 See id.
102 See Patton, supra note 19, at 139.
Like many other nations, the United Kingdom introduced new anti-terrorism legislation after witnessing the devastation caused by the events of September 11th.\textsuperscript{105} The Anti-Terrorism, Crime and Security Bill was introduced into law in December 2001.\textsuperscript{106} Two of the primary goals of the legislation were to cut off terrorist funding and ensure that governments would be able to collect and share information to counter terrorist threats.\textsuperscript{107}

This Bill, in conjunction with the Terrorism Bill of 2000, places grave penalties on an individual who "receives money or other property and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism."\textsuperscript{108} For example, a financial institution convicted of receiving such monies may be subject to a forfeiture order, or its officer(s) may be subject to a forfeiture order or imprisonment up to 14 years.\textsuperscript{109}

Moreover, the Bill emphasizes the need for financial institutions to report known or suspicious terrorist funds upon "reasonable grounds."\textsuperscript{110} The Bill places an affirmative duty on individuals who learn of suspicious behavior in the course of their employment to report such conduct to authorities.\textsuperscript{111} The bill also requires financial institutions to provide ninety days worth of account history to the authorities on request.\textsuperscript{112}

The new Bill also addresses previous concerns regarding the speed of freezing assets.\textsuperscript{113} In the past, an account owner could move assets before the government was able to freeze them, thereby negating the purpose of the investigation.\textsuperscript{114} The Bill now allows the authorities to freeze assets at the beginning of an investigation, rather than wait until the suspect is about to be charged.\textsuperscript{115} The Bill also allows the United Kingdom to take faster and more

\textsuperscript{106} See Anti-Terrorism, Crime and Security Bill, 2001, c. 24 (Eng.).
\textsuperscript{107} See House of Commons--Explanatory Notes, supra note 105.
\textsuperscript{108} See Terrorist Bill of 2000, c. 11, pt. III, § 15(2) (Eng.).
\textsuperscript{109} See id. §§ 22(a), 23.
\textsuperscript{110} Id. at sched. 2, pt. II, § 2(5). The definition of "Reasonable grounds" is left to the determination of the High court. Id.
\textsuperscript{111} Id. at sched. 2, pt. III, § 5(2)(7).
\textsuperscript{112} Id.
\textsuperscript{113} See House of Commons--Explanatory Notes, supra note 105, at para. 8.
\textsuperscript{114} See infra note 239 and accompanying text.
\textsuperscript{115} See Anti-Terrorism, Crime and Security Bill, 2001, c. 24, pt. 1, § 1(2) (Eng.).
precise action toward freezing the assets of overseas residents. Such a course of action is permissible when the government reasonably believes an action threatening the U.K. economy, or the life or property of U.K. nationals or residents, has taken place or is likely to take place.\(^{117}\)

Finally, the Anti-Terrorism Crime and Security Bill opens up channels of communication and information.\(^{118}\) It clarifies and extends several existing laws regarding the disclosure of information to authorities, granting access to certain types of confidential material when needed to combat terrorism.\(^{119}\)

2. **The United States**

The Securities and Exchange Commission (SEC) is the global leader in securities regulations, maintaining strong control of the United States' domestic markets, and imposing its enforcement overseas. In 1981, the then-Chairman of the SEC suggested the creation of an international regulatory authority for the global securities industry.\(^{120}\) Prior to that time, the SEC, extending its jurisdiction to extraterritorial affairs, had been addressing most of the global concerns.\(^{121}\) Harmonized securities laws would allow for markets to integrate, which in turn would create more cross-border transactions and a stronger global economy. The SEC suggested that rather than instituting such standardized securities laws across the board, there should initially be a minimum level met by individual nations.\(^{122}\) Such an introduction would reduce the extent of the SEC's involvement in international concerns and lessen its need to find creative means to gain information under the jurisdiction of other governments.\(^{123}\) Urging other nations to meet a minimum level of securities regulation is a prime example of the SEC's role as the global leader in securities regulation.

\(^{116}\) Id. at pt. II.

\(^{117}\) Id. at pt. II, § 4(2).

\(^{118}\) See House of Commons—Explanatory Notes, supra note 105, at para. 3.

\(^{119}\) Id. at para. 10.


\(^{121}\) See id. at 27-342 (explaining the previous role of the United States in global securities regulations).

\(^{122}\) See id. (noting further that a transnational organization should be similar to the European Community in that it would establish a minimum, rather than uniform, standard).

\(^{123}\) Id.
The SEC's efforts to promote international financial stability and high regulatory standards, both at home and abroad, must be complemented by cooperative enforcement of the world's securities laws. The example set by the SEC in its use of MOUs has prompted other nations to adopt similar agreements, thereby encouraging cooperative enforcement. The Commission has been able to bring forth significant enforcement actions based on information gathered from foreign authorities under such arrangements. In fact, IOSCO adopted elements of the SEC model when it developed its 1997 Principles for MOUs. The power of the SEC has been viewed as a benchmark in the international securities community, and other countries have followed the information-sharing example set by the SEC.

The United States has also developed legislation aimed at undermining the funding of terrorism. In October of 2000, Congress approved funding for the Foreign Terrorist Asset Tracking Center. Unfortunately, the efforts to establish the Center were not implemented until after the attacks of September 11th. The Center is an inter-agency team focused on disrupting terrorist fundraising by identifying foreign terrorist groups, assessing their funding sources and methods, and providing information to law enforcement officials. The Center is to be incorporated into the existing Office of Foreign Assets Control.

Enacted in October of 2001, the U.S.A. PATRIOT Act is another example of targeted legislation enacted in reaction to the events of September 11th. Some provisions of the Act will terminate automatically in 2005, revealing the sense of caution Congress had in passing major legislation in such haste.

125 See id. MOUs are Memoranda of Understanding; see infra notes 172-87 and accompanying text.
126 Id.
127 See id. at 995.
129 See Karen DeYoung, Past Efforts to Stop Money Flow Ineffective; Coordination of U.S. Approach May Be Key, WASH. POST, Sept. 25, 2001, at A8.
133 See Jess Bravin, Leahy Warns Justice Department on New Powers, WALL ST. J., Sept. 11,
Title III of the U.S.A. PATRIOT Act provides specific details on the role of financial institutions in fighting terrorism. Financial institutions are protected from civil liability when they reveal information about suspicious transactions. Thus, banks and securities firms can escape liability for violating client confidentiality or being linked themselves to the suspicious funds.

The U.S.A. PATRIOT Act also significantly expands the power of the government in dealing with suspected terrorists financing. In order to avoid the transfer of suspicious funds during the course of an investigation, assets may be frozen earlier in the process. More importantly, the government is given long-arm jurisdiction over property for forfeiture procedures. Thus, if a terrorist moves the proceeds of his American investments to a money market account in the Bahamas, the U.S. government may still access it.

With the U.S.A. PATRIOT Act, Congress also expanded existing money-laundering provisions. Since the passage of Title III of the U.S.A. PATRIOT Act, the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 provisions have been extended to securities firms. These provisions call for special measures including record keeping and reporting requirements, for specific financial transactions. The Act allows the Secretary of Treasury to determine precisely what these measures might be. The new legislation also calls for cooperation between financial institutions, law enforcement, and regulatory authorities.

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2002, at A4. The U.S.A. Patriot Act was signed into law October 26, 2001, less than seven weeks after the September 11th attacks. See U.S.A. PATRIOT, supra note 132.


135 Id. at tit. III, § 351. This provision follows the suggestion of the United Nations in Article 18 § 1(b)(iii) of the International Convention. Id.

136 Id. § 317(2)(3).

137 Id. § 311.

138 See Money Laundering: Anti-Terrorism Legislation Enacted Containing Money-Laundering Provisions, 33 SEC. REG. & L. REP. 1532 (2001). Money laundering is the practice of concealing the illegitimate origin or purpose of funds and layering financial transactions to hinder the tracing of these funds. Id.

139 See 31 U.S.C. § 5318; see also 31 CFR § 103.19 (providing greater detail on the obligations of financial institutions, brokers and dealers).


141 Id.

142 Id. at tit. III, § 314.
3. Islamic Countries

The Organisation of the Islamic Conference (OIC)\textsuperscript{143} has already addressed issues of international terrorism on a general level.\textsuperscript{144} At their 1999 meeting, the Organisation recognized the need to fight terrorism, to stop heinous crimes and uphold the principles of their religious tenets.\textsuperscript{145} At this meeting, convened primarily to address international terrorism,\textsuperscript{146} the Convention created a Resolution to address terrorism fund-raising within Islamic nations.

The Resolution begins with some basic prohibitions and definitions. In Article 2, the Resolution states that “all forms of international crimes, including illegal trafficking in narcotics and human beings, money laundering, aimed at financing terrorist objectives, shall be considered terrorist crimes.”\textsuperscript{147} Article 3 recognizes that the member states are not to “participate in any form in . . . financing . . . terrorist acts whether directly or indirectly.”\textsuperscript{148} The member states must also prohibit activities which allow terrorism financing within their borders.\textsuperscript{149}

Division II addresses the “areas of Islamic cooperation for preventing and combating terrorist crimes.”\textsuperscript{150} Article 4 states that “contracting states shall undertake to promote exchange of information among them as such regarding: activities and crimes committed by terrorist groups . . . [and their] means and sources that provide finance[s]. . . .”\textsuperscript{151} It also states that member countries should share information that may “contribute to confiscating any . . . funds spent or meant to be spent to commit a terrorist crime.”\textsuperscript{152} This part of the Resolution exemplifies Islamic nations’ commitment to information sharing, at least amongst themselves.

The Resolution stresses combating only those groups that it specifically recognizes as terrorist groups.\textsuperscript{153} Article 2 delineates the standards by which

\textsuperscript{143} See generally Murphy, supra note 32. The OIC is an association of fifty-seven states that seeks to promote Muslim solidarity in economic, political and social issues. Id.
\textsuperscript{144} See id.
\textsuperscript{146} See id.
\textsuperscript{147} Id. at pt. I, art. 2(d).
\textsuperscript{148} Id. at art. 3(1).
\textsuperscript{149} Id. at art. 3(A)(1).
\textsuperscript{150} Id. at div. II.
\textsuperscript{151} Id. at art. 4(1)(a).
\textsuperscript{152} Id. at art. 4(4)(b).
\textsuperscript{153} See id. at p. I.
a terrorist group may be identified. The entire scope of the article focuses on separating terrorists crimes from other types of acts. It states, for example, that “peoples’ struggles ... against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.” This taxonomy of terrorist organizations, however, has led to conflict in the sharing of information and assistance in enforcing securities regulations. In one instance, when the United States requested that Lebanon freeze some assets of the Hezbollah organization, Lebanon refused. The Lebanese authorities distinguished between liberation groups and terrorist groups.

Today, Islamic countries are no longer trying to separate their economies from the world, but are striving to reap the benefits of the global economy. For example, the United Arab Emirates have called for increased transparency in their financial reports to comport with the most stringent international accounting standards. Increasing transparency brings the economies of the Islamic states into greater harmony with the international economic community. However, with such an increased effort to open Middle Eastern economies, there has been minimal focus on ensuring market integrity through securities regulations.

Islamic law plays a major role in modern-day business throughout Islamic nations, and its influence continues to grow as religious fundamentalism grows. The preeminent financial institutions in Islamic nations are referred to as Islamic banks, and they may influence the development of world financial markets. Islamic banks have been working in accordance with the Shari’a

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154 See id. at art. 2 (creating a distinction between political crimes, such as aggression against a head of government, and terrorism crimes, with motives to terrorize or harm people).
155 Id. § (a).
156 See Howard Schneider, Lebanon Won’t Freeze Hezbollah Assets; Prime Minister Cites “Arab and Islamic Solidarity” in Rejecting U.S. Request, WASH. POST, Nov. 9, 2001, at A21. Whereas the United States perceives Hezbollah to be a terrorist group, causing terror in Northern Israel, Lebanon views them as a national resistance movement, ending the Israeli occupation of Southern Lebanon. Id.
157 Id.
159 See id. at 843.
160 See id.
161 See generally Stovall, supra note 158.
162 See Jean-Francois Seznec, Ethics, Islamic Banking and The Global Financial Market, 23-
to develop securities through such avenues as Islamic investment banks, and to tap into the huge capital available in the Islamic countries.\textsuperscript{163}

As Western common law states seek to develop MOUs with Islamic nations, they must keep in mind that Islamic states distinguish between civil and commercial law.\textsuperscript{164} This distinction provides Islamic nations with a framework capable of reconciling Shari’\textquotesingle a principles with Western commercial practices otherwise invalid under Islamic law.\textsuperscript{165} The MOUs between Islamic and Western states may be focused on commercial law, independent of the restrictions of the Shari’\textquotesingle a, thus providing greater ease of information sharing.

\textbf{D. Money Laundering}

When examining the efforts to combat the financing of terrorism, authorities have commented on the need to extend money laundering legislation to the securities industry.\textsuperscript{166} Until September 11th, there was a much greater effort to standardize money-laundering laws for the banking industry.\textsuperscript{167} A study by the U.S. General Accounting Office revealed that few securities firms have even basic anti-money laundering provisions in place.\textsuperscript{168} There is now an increased concern that due to the lack of regulations, the securities industry is becoming an avenue to launder money.\textsuperscript{169}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{163} See Ariel Berschadsky, \textit{Innovative Financial Securities in the Middle East: Surmounting the Ban on Interest in Islamic Law}, 9 U. MIAMI BUS. L. REV. 107, 111 (2001). Boutique Islamic banks also exist in the U.S., providing a variety of investing instruments. See Seznec, \textit{supra} note 162, at 160.
\item \textsuperscript{164} Shaaban, \textit{supra} note 162, at 160.
\item \textsuperscript{165} Id.
\item \textsuperscript{166} See Antonio Fins, \textit{Ashcroft Focuses on Terrorists’ Cash; Global Crackdown on Flow of Secret Finances is Urged}, SUN-SENTINEL, Sept. 28, 2001, at D1 (noting that the “government should apply anti-money laundering rules to the insurance and securities industries”).
\item \textsuperscript{167} See Cloherty & Brenner, \textit{supra} note 76, § III.
\item \textsuperscript{168} See \textit{GAO Study}, \textit{supra} note 29. The research for this study was conducted before September 11th and it was released just after the terrorist attacks. The study has been used by Congress and the SEC to formulate legislation. See id.
\item \textsuperscript{169} Id.
\end{itemize}
\end{footnotesize}
The FATF, until September 11th an international body focused solely on money laundering, has now decided to expand its efforts to combat terrorists' use of global financial resources. Some of the steps the FATF suggested to its members at its October, 2001 plenary meeting included adoption of relevant UN Resolutions, more stringent customer identification in wire transfers, reporting of suspicious transactions and a wider range of enforcement assistance to investigate terrorism.

E. Memoranda of Understanding

Prompted by the efforts of the United States, more nations are now seeking to expand cooperative efforts through the use of documents known as Memoranda of Understanding (MOUs). In 1989, IOSCO first highlighted the efficacy of MOUs in its Resolution on Cooperation. This Resolution asks members to “consider the negotiation of bilateral and/or multilateral understandings which will enable countries to provide mutual cooperation and assistance” to reduce terrorist abuse of financial systems. IOSCO also suggests that its members adopt these MOUs to provide assistance to requesting states “without regard to whether the matter under investigation would be a violation of the law of the requested authority.” IOSCO further suggests that each member state introduce legislation to facilitate the implementation of assistance understandings, or MOUs.

MOUs are relatively amorphous documents which incorporate many different provisions, depending on the countries involved and their relationship. They are not consistent in their language, scope or description of the assistance to be provided by the signing parties. The United States has even

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171 Id.

172 See Bloomenthal & Wolff, supra note 120, at 27-341.


174 See id. at § A.

175 See id.

176 See id. at § B.


178 See id.
signed MOUs with countries that are clearly incapable of providing the full assistance requested in the document, but that have the good faith intention to obtain the requested information.179

In 1991, IOSCO introduced ten basic principles to serve as guidelines in the drafting of MOUs.180 Some of the principles include: confidentiality, requesting authorities who receive information must maintain it in confidentiality; public policy exemptions, whereby a requested country may refuse to share information if it would be against public policy; and cost-sharing.181 These clear principles have served as a major impetus in the creation of new agreements. By 1995, over 200 MOUs had been adopted around the world;182 by 2001, over 270 MOUs had been adopted.183

In May 2002, IOSCO provided a form multilateral MOU available to all of its members.184 Signatories would be able to apply the broad provisions of this agreement to exchange information with any other signatory.185 It even provides a form for drafting information requests.186 By October 2002, 500 IOSCO members had signed MOUs with other members.187 The proliferation of MOUs facilitates the sharing of information, and information sharing is one of the vital means of tracking terrorist funding and reducing abuses of financial systems.

179 See id.
181 Id.
182 See Sommer, supra note 15, at 28.
185 See id.
186 See id.
III. ANALYSIS

A. Terrorism Fundraising

"Intelligent terrorism," although a relatively recent phenomenon, is perhaps the most devastating form of terrorism. While terrorist groups have existed for centuries, seeking to implement their agendas through civil unrest and violence, there has been an exponential growth in terror-related deaths in recent years. Political, ethnic or religious fervor alone is no longer enough to support the efforts of an international terrorist movement. Today, the gravity of terrorist acts is correlated to the funds received by the groups. The more money a group has, the more complex and deadly its attacks may be. Armed not only with traditional weapons, but also significant wealth, the destructive potential of terrorists poses an infinitely greater threat to international security.

Given the prevalence of "intelligent terrorism" today, governments can no longer afford to view terrorists as gangs of unsophisticated activists. Some of the prominent terrorist organizations today possess the know-how to exploit securities trading, thereby transforming innocuous legal transactions into a means for funding terrorist activities. Consequently, governments must mold legislation accordingly. The type of legislation governments should seek to implement is discussed infra. Passage of new legislation, however, is just one small step in breaking the financial infrastructure of terrorism.

B. Providing Guidance for Effecting Changes: International Bodies & Treaties

Organizations such as the United Nations and IOSCO offer the best forums for discussions regarding the standardization of securities laws. As the

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188 For the purposes of this Note, "intelligent terrorism" is characterized by attacks, executed through global cooperation, requiring massive funding and years of planning.
190 See International Convention for the Suppression of the Financing of Terrorism, supra note 13, at pmbl.
191 See Kranish, supra note 28.
frequency and speed of cross-border transactions increase, there must be a meeting place for nations to pool their power, intellectual resources, experience, and information in the interest of securities regulation and enforcement. Though neither organization can force its members to adopt its resolutions, they both provide an excellent means to faster discussion on the standardization of securities laws, or at least in creating a bare minimum standard.

The U.N. International Convention for the Suppression of the Financing of Terrorism is also a step towards standardizing measures for terrorist financing. One of the most important topics that it highlights is information sharing. Securities regulators must be able to easily recognize what information they may get from one another and how they might access such information. The key to this effort is the establishment and maintenance of open channels of communications within and between all nations for the expedient exchange of necessary information. Sharing information will be crucial to properly tracking terrorist funds.

The International Convention for the Suppression of the Financing of Terrorism call for standardizing regulations of financial institutions is another move towards improving securities laws. The International Convention for the Suppression of the Financing of Terrorism suggests allowing financial institutions to report suspicious activities without fear of civil or criminal liability. If all countries were to adopt this provision, then a broker-dealer in London would might not hesitate to report a suspicious transaction which she called into New York to be executed. She need not worry about how the legal ramifications of her act in the United States versus in the United Kingdom. Many major financial institutions are truly global enterprises, and if they are sure that a law will not change between country X and country Y, they are more apt to report suspicious transactions in and between both countries. Not only will this promote the disclosure of suspicious transactions in an effort to stop terrorist funding, but it will increase capital flow between countries.

195 International Convention for the Suppression of the Financing of Terrorism, supra note 13, art. 18 § 3(a).
196 See Financial Aspects of Terrorism, supra note 20, at 580.
197 See International Convention for the Suppression of the Financing of Terrorism, supra note 13, art. 18 § 1(b)(iii).
Likewise, the adoption of IOSCO regulations, especially those regarding information sharing and financial institutions, would certainly facilitate the fight against terrorism. The suggestions of IOSCO are especially valuable to nations seeking to implement securities legislations because they are created by securities regulators with very specific knowledge about the industry. IOSCO’s suggestions on information sharing are much more specific than those of the United Nations. The Multilateral Memorandum of Understanding is a document which details exactly what obligations a signatory has towards other IOSCO members. The explicit definitions and terms on the agreement allows an otherwise uncertain nation to take deliberate moves in entering an MOU.

The IOSCO requirements for financial institutions are also more specific than the International Convention for the Suppression of the Financing of Terrorism. For example, in the Resolution of Money Laundering, IOSCO specifically advises members to consider the appropriate means by which securities firms should handle cash transactions and prevent criminals from acquiring control of securities firms. If IOSCO members would take the initiative to sign the Resolutions of IOSCO and thereafter introduce such Resolutions into their own domestic securities legislation, individual nations could more effectively assist in the global fight against terrorism.

Likewise, the adoption of IOSCO resolutions would certainly facilitate the fight against terrorism, because it would allow for harmonized regulations at a high standard. Knowledge is power, so each member must “strive to ensure that it or another authority in its jurisdiction has the necessary authority to obtain information . . . .” Not only must each member of IOSCO be able to access the necessary information, but it must also be willing to share the information with other countries. Any impediments to the goal of accessing and sharing information should be removed.

One concern which the United Nations and IOSCO have not adequately emphasized to individual nations is the need for “know-your-customer” (KYC) laws. Strong KYC laws would require a securities firm to collect certain

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198 See Multilateral Memorandum of Understanding, supra note 184.
199 See Resolution on Money Laundering, supra note 76.
200 See Resolution for Record Keeping, supra note 69, § C.
201 See Mann & Versace, supra note 69, at 341.
202 See Resolution for Record Keeping, supra note 73, § D (“Each IOSCO member should assess the legislative framework in its own jurisdiction . . . to identify and remove any impediments to such cooperation.”).
203 See, e.g., Know Your Customer, InvestorWords.com, at http://www.investorwords.com/
information when opening an account, including: the client's name; the individual in the interest of whom the account is being opened, if not the client; a client identification number with proof (e.g., a Social Security card in the United States); the client's date of birth; the client's address; and in some circumstances, the source of the money to be invested and where the proceeds may be expected to go. Collecting such information immediately allows the firm to recognize with whom they are doing business and check the information against public terrorist lists. The U.N. International Convention for the Suppression of the Financing of Terrorism suggests that financial institutions "utilize the most efficient measures available for the identification" of customers.\footnote{International Convention for the Suppression of the Financing of Terrorism, supra note 13, art. 18 § 1(b).} IOSCO regulations do not provide any bare minimum information which should be gathered by financial institutions; they merely suggest that countries should consider client identification.\footnote{See Resolution on Money Laundering, supra note 76.} If the United Nations and IOSCO were to at least address the issue of customer identification by requiring a minimum amount of client information, the interest in stronger KYC laws may come to the legislative foreground.

The International Convention for the Suppression of the Financing of Terrorism and IOSCO Resolutions provide a source of inspiration for the international community. The efforts of the United Nations in developing anti-terrorism legislation are practical and specific, and should be embraced by more states. Though they may lack binding authority, the United Nations and IOSCO are valuable resources in the regulatory scheme of international securities.

The United Nations and IOSCO have affirmed the need to facilitate information sharing, standardize financial institutions' requirements and enhance KYC laws in their efforts to promote standardized securities laws. Both organizations have amply promoted the issue of information sharing and financial institutions to their members. However, greater focus must be placed on the enforcement of KYC laws.

C. Effecting Change at a National Level

Until recently, the United Nations and IOSCO have been more proactive than most individual nations in drafting both securities and terrorism
Many nations have some degree of legislation on the financing of terrorism and all nations with securities markets impose some form of market regulations.\textsuperscript{206} However, most states have yet to draft legislation connecting securities and the funding of terrorism. Perhaps international institutions can provide better ideas for countries that have not yet addressed or are reconsidering issues regarding the financing of terrorism through securities. Furthermore, meetings by groups of individual nations, such as the G-20, also help motivate countries to adopt better securities regulations. Therefore, it is in the best interest of all nations to revise and enforce their securities regulations to defeat terrorist funding; accessing the expertise of international bodies and collaborating with other nations may be the most productive approach.

1. \textit{United Kingdom}

The United Kingdom is an example of a nation which has recently revised its securities regulations to help fight terrorism financing. The Anti-Terrorism, Crime and Security Bill fills in several gaps that previously existed in U.K. law.\textsuperscript{207} Part II, which addresses the power of the government to freeze assets, is particularly important.\textsuperscript{208} The phrasing of the passage provides authorities with a great deal of latitude in placing freeze orders. They may act sooner in requesting a freeze, rather than waiting for a suspect to be charged.\textsuperscript{209} This broad power must be exercised with great caution, to avoid freezing the assets of legitimate investors. Since the government need not wait until there is a charge to freeze assets, there is a possibility of freezing legitimate assets and therefore disrupting potentially great amounts of money from flowing through global markets. Nevertheless, the ability of the government to freeze assets earlier in an investigation, when used carefully, not only reduces the chances of assets being transferred and destroying evidence, but also may prevent those funds from being used in a future terrorist act.

Though the Anti-Terrorism, Crime and Security Bill improves the government’s freezing powers, it lacks standards for KYC laws. Sound KYC laws could help identify suspicious individuals. Nowhere in the text of the Bill is there a mention of information financial institutions should collect before

\textsuperscript{206} See Sommer, \textit{supra} note 15, at 17 (noting in the discussion of IOSCO membership that nations will have either government regulation of the market, or a self-regulatory agency, such as a stock exchange); \textit{see also} Bloomenthal & Wolff, \textit{supra} note 120, at 27-338.

\textsuperscript{207} See Anti-Terrorism, Crime and Security Bill, 2001, c. 24 (Eng.).

\textsuperscript{208} \textit{Id.}

\textsuperscript{209} See \textit{supra} note 109 and accompanying text.
opening an account. The United Kingdom should specifically require its broker-dealers to collect the name, birth date, address, and identity number of the account owner, at a minimum. If such basic information is not collected, a fine should be imposed on the broker-dealer. Requiring certain information would make tracking assets considerably efficient.

Enforcement of basic KYC laws, such as having a financial institution verify the name of the account owner, could stop terrorist fundraising at an early stage. If a terrorist such as Osama Bin Laden were required to provide identification when opening an account, he would be dissuaded from opening a brokerage account and using it to raise money for terrorist causes. Though Bin Laden may not be able to open a brokerage account in which to invest his terrorist money, not all terrorists are as well known. Governments have begun to provide, and should continue to provide, financial institutions with information on suspected terrorists so that such suspects may also be prevented from opening accounts. At the very least, requiring basic information and immediate verification of this information will provide some security against terrorist investors.

On the whole, the United Kingdom has had terrorism legislation in place for much longer than most nations, due to its exhaustive history of domestic terrorism. However, recent events, such as September 11th, and the recognition of "intelligent terrorism" has forced Parliament to revisit its securities legislation. The 2001 Anti-Terrorism, Crime and Security Bill reflects the United Kingdom's concerted efforts to more effectively identify terrorist activity in their markets. Nevertheless, there should be, more focused legislation regarding KYC laws and adequate enforcement of existing provisions.

2. United States

The United States, under the authority of the SEC, has the most sophisticated securities legislation in the world. Though it is a leader, the United States cannot single-handedly force other nations to improve their securities laws. Unless there are universal regulations at or above the level of U.S. laws, there may be a "race to the bottom with clever or fraudulent operations seeking the jurisdiction with lax regulation." This means that investors may take

210 See supra notes 102-04 and accompanying text.
211 See Bloomenthal & Wolff, supra note 120.
212 See id. at 27-338.
their business to the country with the most relaxed securities laws. In an effort not to lose business to the countries with relaxed laws, other nations might also weaken their securities laws. If other nations do not relax their laws, clever investors may still take their business elsewhere. Inconsistent securities laws allow intelligent terrorists to slip through the cracks.

In the United States, as in the United Kingdom, more stringent and adequately enforced KYC laws are necessary to accomplish anti-terrorist objectives. The hijackers of the airplanes used in the September 11th attacks opened thirty-five American bank accounts without legitimate Social Security numbers.\(^{213}\) No bank officials followed up on these applications to verify the information provided.\(^{214}\) The U.S.A. PATRIOT Act requires financial institutions to collect a range of data on accounts opened in the United States by foreign persons.\(^{215}\) However, the Act should require similar provisions for accounts opened by Americans as well. Terrorism does not only come from abroad, it may even be instigated by American citizens. The United States should supplement its current regulations to allow the Secretary of Treasury to impose fines on financial institutions, banks and securities firms that do not take the simple step of verifying new account information.

The U.S.A. PATRIOT Act is otherwise a strong piece of legislation that will truly assist the United States in stopping terrorist abuses of its financial systems. Perhaps one of the most important items in the bill is its extension of money-laundering provisions to securities firms.\(^{216}\) In the past, most money-laundering legislation had been directed towards banks.\(^{217}\) The Act sets a one-year deadline by which the Secretary of Treasury and SEC must submit suggestions to Congress.\(^{218}\) This stringent deadline has already led to reformulations of the Bank Secrecy Act requiring, for example, that securities firms report cash transaction in excess of U.S. $5,000.\(^{219}\) The specificity and clear deadlines of the U.S.A. PATRIOT Act to the strength and enforceability of the law.

\(^{213}\) See Risen, supra note 1.
\(^{214}\) Id.
\(^{216}\) See id. at § 356.
\(^{219}\) See 31 C.F.R. § 103.19(2).
3. Islamic Countries

The events of September 11th have placed a new focus on the Islamic nations in their contributions to the global securities community. With an increased focus on Islamic terrorist organizations such as al Qaeda, there must be a concerted effort to involve these states within the global economic community. A report by the U.S. Federal Bureau of Investigation traced some of the September 11th funds back to the United Arab Emirates, but they were unable to trace the movement of funds before reaching this country. If Islamic states are unwilling to develop and enforce their securities laws, other nations will not be able to trace funds adequately, and the endeavor to stop terrorist abuses of financial systems will be significantly curtailed.

The 1999 Resolution created by the OIC begins the discussion on terrorism. However, the Resolution barely touches upon the issue of terrorist financing. The Resolution criminalizes the illegal trafficking of narcotics and money laundering aimed at terrorist financing, but there is no concentration on more elusive legal activities, such as securities trading, that may be deemed illegal once they are found to be funded by terrorism.

The OIC also seems to address only the more traditional forms of terrorism. Article 3, for example, prohibits state sponsorship of terrorists, but does not punish independent organizations for otherwise seeking contributions. Article 4(4)(b), however, may be the most effective means for assisting members of the Organization in combating securities violations by terrorists since it promotes the exchange of information between member states. Article 4(4)(b) allows members to share information on potentially fraudulent accounts and identities. Thus, the OIC has provided some important foundations from which Islamic nations may fight terrorism financing.

The greatest problem affecting the willingness of the OIC to fight terrorism is its definition of terrorism. Western and Islamic nations have frequently disagreed over the definitions of where to draw the line between terrorism and freedom fighting. In order for the world to combat terrorism, the world must

220 See Risen, supra note 1.
221 See Islamic Terrorism Conference, supra note 145.
222 See id. at pt. I, art. 2 § d.
223 See id. at art. 3(II)(A).
224 See id. at art. 4(4)(b) ("The Contracting States shall provide any other Contracting State with available information or data that will . . . contribute to confiscating any . . . funds spent or meant to be spent to commit a terrorist crime.").
225 See supra notes 152-56 and accompanying text.
first come to an agreement in defining terrorism. The disparity between individual nations' definition of terrorism is yet another hurdle which must be overcome.

Seeking the cooperation of Islamic states in gathering and enforcing securities laws may prove to be difficult. Such an endeavor requires steps that the international community has been hesitant to take, due to some Islamic nations' incorporation of the Shari'a, or Islamic tenets, into their legislation. Particularly with the resurgence of religious fervor in the region, Islamic states may become even less cooperative with Western states. Incorporating the financial system of Islamic states into the current global structure may require strong commitment. However, in order to create more standardized procedures, the step must be taken.

The cooperation of Islamic states is essential to creating stronger and harmonized global securities laws. Especially given the recent trend of Islamic terrorism, the home nations of these terrorists may possess the greatest power in thwarting the terrorist' funding. While the Foundation of Islamic Cooperation for Combating Terrorism is a testament to the contribution of Islamic states toward anti-terrorism efforts, they still have yet to legislate or enforce many anti-terrorism policies.

D. Looking Forward

1. Memoranda of Understanding

Achieving global harmonization of securities regulations is a tall order and will take years to achieve. Perhaps the best solution currently available is the use of MOUs. They have already been useful in assisting investigators in tracing the funds of the September 11th terrorists and may provide even greater assistance in tracking future terrorist funds.

IOSCO’s Multilateral Memorandum of Understanding is a form MOU which may be signed by any member state, allowing it to give and receive information to any other member who also signs the document. The document even provides specific details on how to frame a request for information, which calls on the requesting nation to provide details on the misconduct being investigated, a description of the information needed, and

\[226\] See Shaaban, supra note 162, at 157-59.
\[227\] See Bershadsky, supra note 163.
\[228\] See Multilateral Memorandum of Understanding, supra note 184.
the time frame for which the information is needed. Providing such a clear
and concise form will facilitate the proliferation of MOUs because countries
will no longer have to spend countless man-hours drafting and researching
their own provisions.

MOUs are now the cornerstones of global cooperation in the securities
industry. If a country does not have certain securities information available,
however, it should not agree to share non-existent information with the other
contracting nation. Such a false provision weakens the power of the MOU.
When entering an MOU, a country should agree to provide that information to
which it actually has access to and authority to provide. When MOUs embrace
only those provisions which both contracting nations can support the
MOU is stronger and more likely to be enforced. If more nations agree to these
bilateral agreements, then information may be more readily available and
shared.

2. Managing Threats in the Future

There are many difficulties that arise in using financial information to link
or track down terrorists. The mere presence of financial data under the name
of a suspected terrorist does not often establish clear and convincing evidence
for the purposes of prosecution. The funds must actually be linked to the
specific terrorist activity before further action may be legally taken. Further-
more, because the amount of money that terrorism requires is relatively small
compared to the billions of dollars (or rupees or pounds) worth of transactions
that occur globally, even the largest and most sophisticated terrorist organiza-
tions could transfer all of their funds in one day without making a significant
impact against the grand scale of global financial transactions.

Comprehensive money laundering provisions are also crucial in fighting
terrorist funding. Especially in regards to the securities industry, provisions
relating to money laundering—from collecting client identification information
to reporting suspicious trades—can help reduce terrorist abuses of financial
systems. Money laundering essentially deals with either obscuring illicit funds
or using legitimate money for an underlying crime. In light of the new wave

229 See id.
230 See Fiebeg, supra note 177 and accompanying text.
231 See Financial Aspects of Terrorism, supra note 20, at 579-80.
232 Id. at 580.
233 See Cloherty & Brenner, supra note 76, at III(a).
of “intelligent terrorism”, “the radar is up for clients [of financial institutions] who may not care so much for accumulating illicit money as for using good money for evil acts.”234 Although there are few documented accounts of money laundering via broker-dealers, governments are concerned with increasing attempts to use the securities industry to launder money.235 If strong money laundering provisions, such as those of the United States, are implemented in more countries, not only will illicit funds be traced, but so may legitimate funds intended for illegitimate causes be traced. The major markets of the world have been focusing on securing the markets against fraudulent corporations and financial institutions, with minimal concern for fraudulent investors. Global leaders such as the United States, Japan, the United Kingdom, and the European Union, have disclosure schemes relating and regulating investment companies and broker-dealers.236 However, they rely on very basic KYC laws to help capture fraudulent investors. Traditionally, KYC laws only asked for such information as the name, birth date, address, financial history, and financial objectives of the account owner. Today, KYC laws must be broadened to include inquiries about where the money will go in order to truly target fraudulent investors.237 Moreover, if the current basic KYC laws are properly enforced, terrorism fund-raising could be more easily targeted.

Another concern of securities firms is the speed at which transactions and transfers occur. After opening accounts and making trades, firms may only then discover the suspicious nature of their client. Once the assets are discovered, the firms must be able to prevent the transfer of monies out of the account.238 In 1999, the UN Security Council sought a freeze on certain assets of the Taliban government of Afghanistan, but by the time the threat was placed into action, the assets had been moved to an off-shore account.239 As previously discussed,240 the United States and the United Kingdom have already addressed this concern in recent legislation.241 Other countries should

234 See Financial Aspects of Terrorism, supra note 20, at 580.
235 See GAO Study, supra note 29.
236 See Einisman, supra note 30, at 300. A disclosure scheme is an obligation to disclose all facts relevant to a security, as required by securities regulators. See Investor Words, supra note 5.
237 See id.
240 See supra notes 115-17, 136 and accompanying text.
strive to enact similar legislation to slow the transfer and expedite the freezing of terrorist assets.

Perhaps the most helpful step that a government can take is to provide financial institutions around the world with the names of suspected and known terrorists. Providing institutions with names has been practiced in the United Kingdom since 1989 and the United States since 1996. Since the attacks of September 11th, authorities have made a more intensive effort to compile and provide the names of suspected terrorists to financial institutions. However, checking the names of account owners against those on domestic government lists and international lists can be an exceedingly time-consuming endeavor. Plus, since it is often difficult to spell a foreign, and in most cases Islamic, name in the non-native language, financial institutions may struggle even more when cross-checking names. In the future, an international organization such as the FATF should take on the task of synthesizing the lists and proper spellings of suspected terrorists to increase the efficiency of financial institutions and the cross-checking process. If the FATF were to provide a single list to financial institutions around the world, terrorist assets may be more easily and quickly identified.

Finally, as globalization continues, so will an increase in the interaction of individuals and markets of different economies. Stephen Kroll notes that as much as governments do not want to admit it, there is a poor understanding of the financial system. Governments must find the holes in their securities regulations and plug them. Though the means to track assets have improved, so have the means of deception. If governments fail to find the holes, the terrorists will.

(2)(3); Anti-Terrorism, Crime and Security Bill 2001, at c. 24, pt. 1 § 1(2) (Eng.).

242 See Simpson, supra note 35.


244 See Roger Thurow et al., Private Bankers Become Sleuths to Track Terrorist Funds, WALL ST. J., Oct. 23, 2001, at A20. UBS AG has gathered a list of over 1,000 suspects since September 11th. The bank has run the names through its records six times to cross-reference the suspects with accounts which they might hold. Id.

245 See Michael Peel & John Willman, Inside Track—The Dirty Money that is Hardest to Clean Up, FIN. TIMES, Nov. 20, 2001, at A3.

246 See id. For example, the same name may be spelled as “Muhamad,” “Mohomad,” “Mohamad,” “Mohammed” or a variety of other ways.

247 See Financial Aspects of Terrorism, supra note 20, at 581.

248 See Hufbauer & Oegg, supra note 238, at 16.
According to Alvin James, a former investigator for the Department of Treasury, "[t]he problem with a lot of the terrorism stuff is it . . . isn’t suspicious until after the fact. . . . To say [a] new law is going to prevent a terrorist from moving money through a legitimate institution, it just isn’t so." The enormity and obscurity of terrorist funding should not intimidate governments. Even though new legislation may not fully obstruct the use of the legitimate securities industry for illegitimate terrorists funding, some laws must be passed to mitigate it. If these laws are properly enforced, a substantial percentage of terrorist funding could be obstructed.

IV. CONCLUSION

Since September 11th, countries around the world have revisited and revised their anti-terrorism legislation. The actions nations must now consider include getting financial institutions involved, reviewing the global economic structure, adopting suggestions made by the United Nations and IOSCO, drafting more MOUs and, most importantly, enforcing existing and new legislation.

The review of legislation across the United Kingdom, the United States, and Islamic nations and the provisions of international organizations reveals the wide variation in securities regulations and terrorism financing legislation. The review also reveals the need for nations to make a connection between these two areas to combat the “intelligent terrorists” of today.

Today’s securities markets are closely interwoven and cross-border transactions are routine. Due to the global nature of the securities industry, information needed in one country may only be available in another country. MOUs could be the key to helping countries expeditiously gain valuable information. Without cooperation and mutual assistance, efforts to thwart terrorism funding may prove fruitless.

Financial institutions will play an important role in this effort. Financial institutions, such as banks and securities firms, sometimes may be the only bodies capable of tracking terrorist assets and preventing those assets from being used for violent acts. Stringent enforcement of KYC laws could be a base from which to fight terrorists.

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249 Simpson, supra note 35.
250 See id.
251 See Patton, supra note 19, at 146.
In order to target the funds by which terrorists are able to finance their missions, a general overview of the entire global market economy is necessary. The new opportunities for terrorism have largely arisen due to breakdowns in the barriers of global commerce. Though the opening of trade and commerce has led to many advances in the market economy, it invariably provides more holes by which terrorists may sponsor their endeavors. In order to combat the financing of terrorism, there must be a better understanding of how exactly the financial system operates and how terrorists manipulate it.

Several key nations such as the United States and United Kingdom, already have stringent securities regulations. Some of the actions taken after September 11th by individual nations have been available for years to international organizations. The resolutions set forth by the United Nations and IOSCO have been available as guidelines since the early 1990s. However, few other nations have made an effort to adopt the suggestions of these supranational organizations into their domestic regulatory schemes. Adoption of the United Nations and IOSCO resolutions by more individual states will help establish a strong basic level of securities regulations.

Standardized laws are necessary to mitigate the potential for terrorists to use securities as a method of financing their actions. It is especially necessary to assist governments in tracking down assets of terrorists after an attack occurs. Revised and reviewed securities regulations must be able to assist individual nations' authorities, such as the SEC, as they approach emergency situations, such as the September 11th attacks.

Traditional terrorism was a state-sponsored form of warfare. Today, it has evolved into global operations of ingenious individuals, seeking to further their political or religious agendas through violence. Such an evolution has also created an evolution of their financing, from drug trafficking to securities fraud. In the aftermath of September 11th, countries are beginning to recognize the need for laws to look beyond drug trafficking and organized crime to funds associated with promoting profiting from terrorism via market manipulation. Financing is the heart of terrorism, so breaking down the financial base will drastically mitigate the repercussions of terrorist acts.

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252 Financial Aspects of Terrorism, supra note 20, at 580.
253 See DeYoung, supra note 129.
254 See id.
255 Edgardo Rotman, The Globalization of Criminal Violence, 10 CORNELL J.L. & PUB. POL’Y 1, 21 (2000); see also Murphy, supra note 32.
256 Id.
257 Cloherty & Brenner, supra note 76.
The success of the global economy is based on a lack of confidence, and a creation of minimum standards keeps the system from being destroyed by its weakest link. There must be a concerted effort to enforce those securities laws already in existence, introduce new legislation where necessary, and bring the global economic community to a common minimum standard of supervision.
