U.S. and International Responses to Terrorist Financing

Strategic Insights, Volume IV, Issue 1 (January 2005)

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Strategic Insights is a monthly electronic journal produced by the Center for Contemporary Conflict at the Naval Postgraduate School in Monterey, California. The views expressed here are those of the author(s) and do not necessarily represent the views of NPS, the Department of Defense, or the U.S. Government.

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According to one well-informed observer, the U.S. effort to combat terrorists' access to financial resources has been dubbed "the most successful part" of the global community's counter-terrorism strategy since the Al Qaida September 11, 2001 attacks on the United States.[2] This longevity of this success, I argue, hinges on the United States' ability to continue to frame the nascent pre-9/11 international anti-money laundering regime as a counter-terrorist financing regime. The international norms and practices that make up the new counter-terrorist financing (CTF) frame have rapidly spread in the past three years. However the ultimate effectiveness, measured in terms of implementation and enforcement, of the new CTF regime depends on states' redefinition of their national interests to include combating terrorist finance.

The Problem of "Terrorist Finance" and "Counter-Terrorist Finance"

Before discussing how states have approached the problem of terrorist finance, it is necessary to define what terrorist finance encompasses. Terrorist financing incorporates two distinct sets of financial activities. One set involves the funds required to put on a terrorist operation. It includes funds to pay for such mundane items as food, lodging, transportation, reading materials, audio-video equipment as well as purchases of legal precursors for bomb making (the Madrid bombings relied on cell phones for detonation triggers), as well as purchase of illegal material for operations. Such transactions are mainly "pre-crime:" they are perfectly legal until they can be linked to support for a criminal act.[3] They are also minute in terms of monetary value and therefore extremely hard to detect in the absence of other indicators regarding the identity of the persons involved. Such profiles raise a number of legal and civil liberties issues.[4] These difficulties in detection are immeasurably increased if cash is used and the formal financial system is avoided. The second set of terrorist financial activities involves the raising of funds to support terrorist operations, training and propaganda. Funds can be raised through illicit means, such as drug and human trafficking, arms trading, smuggling, kidnapping, robbery and arson, which are more amenable to traditional anti-money laundering tools. Terrorists also receive funds from legitimate humanitarian and business organizations. Charities raising funds for humanitarian relief in war-torn societies may or may not know that their funds are going to terrorism. Corrupt individuals at charities or at recipient organizations may divert funds to terrorist organizations.[5] Legitimate funds are commingled with funds destined for terrorists, making it extremely difficult for governments to track terrorist finances in the formal financial system. The difficulties inherent in tracking terrorist finance in the formal financial system is multiplied many times as terrorists move to informal financial systems, using money remitters and *hawaladars*, who in turn may engage in

trade-based money laundering.[6] Detecting terrorist finances is therefore an extremely difficult task. It is different from anti-money laundering efforts in that much of the funds that are to be detected fall in the “pre-crime” category.

The fight against terrorist funding is a tremendously complex issue. It involves the design and interaction of national economies and security agencies, as well as the political problems of achieving and sustaining cooperation among a very diverse set of public and private actors. To be effective, the international effort to combat terrorist financing requires well-functioning, transparent and non-corrupt economies. Successfully disrupting terrorist financial flows requires an appropriate anti-money laundering legal framework regulating the formal and informal financial services industry and trade services. It demands an ability to enforce laws and collect real-time intelligence and documentary evidence on financial flows.[7] It also requires properly trained experts in financial intelligence collection and criminal investigations, prosecutors, regulators, customs agents, and bank employees.[8] Building all this institutional capacity to combat money-laundering is a prerequisite for fighting terrorist financing. But because terrorist finance differs from money laundering, countering terrorist financing requires additional intelligence collection and analysis capacities for detecting needles in the financial haystack. The remaining criterion for successfully combating terrorist financing is sustained political will. Governments must be willing and able to share information and expertise with relative ease and speed across a number of policy domains and with public and private actors. They must also have the capacity to act quickly to disrupt and interdict funds and track the money trail to terrorists. In most cases, this cooperation must be transnational as well. And all of this requires a long-term and high-level commitment to combat terrorist finance.

Studies of international and national organizations suggest that such profound political cooperation and organizational change requires participants to have redefined their interests to include combating terrorist financing.[9] Domestically many states, even the most developed, lack the institutional capacity for successful implementation and enforcement of the CTF regimes norms and practices.[10] Well-developed and integrated interagency cooperation is required to effectively manage the sheer complexity of combating terrorist access to finances. Competing interests among those within and those outside of government make implementing international best practices politically difficult.[11] And in many countries, the political pain brought on in an effort to comply with an international regime, rather than merely adopt its standards, is deemed avoidable. So states are much more likely to adopt but not enforce institutional changes, unless their calculus of the costs of non-enforcement changes. In the area of terrorist financing, we should expect such changes where states have directly suffered the costs of terrorist incidents.

Internationally, the issue of counter-terrorist financing competes with a slew of other items on states’ bilateral and multilateral agendas. I argue that the primary cause of success of international implementation of CTF norms outside of the OECD is not U.S. power and pressure, but the exogenous shock of terrorist attacks in the countries in question. While the international regime would not spread without U.S. efforts at reframing states’ understanding of their common interests, its ultimate effectiveness requires that states define the problem of financial crime as an ongoing national security threat and continue to prioritize terrorist financing. Otherwise, it is likely that the tremendous complexity of the issue and the competing interests at play will erode states’ willingness and overwhelm their ability to comply with CTF norms and practices. To support this argument, I analyze both the international effort to suppress terrorist financing as well as the “best case” of U.S. efforts to do so. Analysis of U.S. efforts is important for understanding the prospects for the international regime for two reasons. As international regime theory make clear, a “hegemon” that is both willing and able to promote and underwrite an international counter-terrorist finance regime is essential for such regimes to form when states have an incentive to pass the costs of the regime off to others.[12] Secondly, the United States should have the most will and capacity to domestically tackle the problem. If it is unable or unwilling to do so, then there is little reason to expect other countries with less motive and capacity to follow suit.

International Counter-Terrorist Finance Efforts before 9/11

Prior to the terrorist bombings of the U.S. Embassies in Tanzania and Kenya in 1998, the issue of terrorist financing had been handled almost entirely in one of two contexts: state sponsors of terrorism, and money laundering and criminal finance targeting non-state actors (primarily drug traffickers and organized crime). Efforts to curtail the flow of funds to terrorists therefore took different approaches: pressuring states to curb their support for terrorism versus ensuring that states had the domestic capacity and incentives to suppress transnational criminal networks.

Countries have long divided ideologically over the political motivations of violent organizations, such as the *contras*, PLO, IRA, Hamas, and Hezbollah, and have been unwilling to define specifically define terrorism and terrorists. This lack of consensus resulted in slew of UN treaties dealing with particular terrorist acts (such as hijackings and political assassinations), rather than terrorism in general.[13] The focus has been on pressuring states seen to be directing or materially supporting such organizations. UN Security Council resolutions and treaties authorizing economic sanctions (and targeted military strikes) were used to persuade state-sponsors such as Libya and Sudan to stop their support for terrorism.[14] Even after the 1998 Embassy bombings, the UNSC first emphasized the duty of states to suppress terrorism.[15] The 1999 UN Convention for the Suppression of Terrorist Financing also makes states responsible for the actions of private actors operating within their jurisdiction. UN Security Council Resolution 1269 (1999) was the first to use the term “terrorist financing,” when the Security Council made clear that states harboring, funding, aiding, or failing to adopt measures to suppress terrorism would held accountable for acts committed by those terrorists it sponsored. Sudan and Libya were effectively persuaded to suppress terrorism through the sanctions approach, in conjunction with the demise of Cold War sponsors, but Afghanistan ’s Taliban were not.[16]

The state-sponsorship of terrorism declined after the end of the cold war as outcasts such as Libya, Iran, Syria and Sudan sought to reduce their international isolation. Terrorist organizations relied increasingly on other means, licit and illicit, to fund their activities.[17] Terrorists had long been involved in drug trafficking and organized crime, but until 1999, the international community had not explicitly linked the two. Drug traffickers and organized crime were dealt with under separate international agreements and agencies, such as the UN Office for Drug Control and Crime Prevention (UNODCCP). The inability to agree on a definition of “terrorism” prevented the international community from including terrorist acts in many international efforts to suppress the drug trade and other transnational crime.[18] The UN first explicitly linked the drug trade and terrorism after the UNODCCP highlighted the Taliban’s levy of $15-27 million per year on taxes on opium production.[19] This reliance reduced the Taliban’s susceptibility to sanctions on licit economic activity.[20] The Security Council demanded in Resolution 1214 (1998) that the Taliban stop its trade in narcotics, and strengthened the linkage between terrorism and drugs when in Resolution 1333 (1999) it declared that the drug profits increased the Taliban’s ability to harbor terrorists.

After the bombings of the U.S. embassies in Kenya and Tanzania, the U.S. and other western states pushed for international recognition that non-state actors were equally as important in the struggle against terrorism as states had long been assumed to be. The U.S. had led in getting international action on interdicting drug traffic, organized crime and the laundering of their proceeds. While terrorist acts had been gradually incorporated into these efforts, after the 1998 bombings, the U.S. led the Security Council in focusing on transnational terrorism.[21] The Council passed Resolution 1267 in 1999, requiring states to impose sanctions on and freeze the assets of the Taliban because of their hosting of Al Qaida. While this resolution reflected the traditional emphasis on targeting state sponsors (the Taliban), this was the first time the council had recognized that a transnational terrorist group was a threat to international peace and security.[22] In 1999 France led the UN in adopting the UN Convention on the Suppression of Terrorist Financing. This Convention recognized that states had to work not only with each other but with private financial institutions to block the flow of terrorist funds. States are required to

establish domestic legislation criminalizing terrorist financing and regulating financial industries within their jurisdiction.[23] In 2000 the Security Council passed resolution 1333 which imposed an arms embargo and travel ban on the Taliban. It for the first time took on the non-state actor of Al Qaida through a freeze on the financial assets of Osama Bin Laden and those associated with him, as designated on a list maintained by the 1267 Committee.[24] This shift in emphasis at the working level on the responsibility of non-state actors in the area of criminal finance and the public-private nature of the problem would intensify after the 2001 attacks on the United States, though it was often drowned out by U.S. foreign policy focus on "rogue states." Resolution 1333 reflects the beginnings of the transformation of the state-sponsor approach to counter-terrorism to a transnational criminal finance approach.

The bulk of the pre-9/11 multilateral effort that would become counter-terrorist financing took place in the counter-drug, counter-crime domain. Here, the major western powers took the lead in developing a soft law regime to combat transnational criminal finance. The strategic emphasis was ensuring that states had the domestic capacity to combat organized criminal finance. Such capacity required enacting and enforcing financial, banking, law enforcement and anti-corruption legislation. The creation of the Financial Action Task Force (FATF) on money laundering in 1989 marked the first in a series of efforts to establish informal inter- and trans-governmental bodies to handle the problem of criminal finance. FATF sets and promotes best practices in combating transnational financial crimes, and monitors the status of countries' legislative and regulatory conformity with these standards. In essence, it promotes the anti-money laundering standards put forward by the United States and the United Kingdom and seeks to universalize them.[25] It published a set of 40 Recommendations in 1990 (revised in 1996), that layout the basic framework for states to establish comprehensive anti-criminal finance systems. In 2000, FATF began a campaign of "naming and shaming" jurisdictions that did not cooperate in the global effort to combat money laundering. It created a non-cooperative countries and territories (NCCTs) list, which prompted many of those named to alter their domestic legislation in order to be removed. It further suggested a set of counter-measures that states could take against the NCCT countries to prod compliance.[26] A number of regional FATF-style organizations were established between 1999 and 2000.[27] In 1995 the financial intelligence units (FIUs) of a twenty states began an informal transgovernmental network for sharing information concerning money laundering. This group, dubbed the Egmont Group, grew rapidly to 58 by June 2001.[28] It has served as useful informal means to improve information sharing, analysis, and training to combat money laundering. The 2000 UN Convention against Transnational Organized Crime required member states to enact comprehensive domestic banking laws and regulations to deter and detect money laundering.[29]

International Efforts to Combat Terrorist Financing after the 9/11 Attacks

On September 28 2001 the UN Security Council passed a U.S.-sponsored resolution that obligated all members of the United Nations to act to suppress terrorism and terrorist financing.[30] Resolution 1373 is in effect a "mini treaty."[31] It requires all of the same changes to domestic legislation, denial of safe haven, and criminalization of terrorism as the 1997 Convention on the Suppression of Terrorist Bombing and the 1999 Convention on the Suppression of Terrorist Financing. But since these treaties were not yet in force on September 11, 2001 (the U.S. had not ratified either; both have since come into force), the Security Council used its Chapter VII authority in Resolution 1373 to obligate all members to implement their provisions. Resolution 1373 goes beyond Resolution 1267 to require states to act against all terrorist organizations and their associates, not merely Al Qaida and the Taliban. This broad language reflects the U.S. determination to take advantage of the sympathetic post-9/11 environment in passing much tougher measures than states would have otherwise accepted.[32] Resolution 1373 established the Counter-Terrorism Committee to monitor implementation. Unlike the 1267 Committee however, the CTC does not maintain a designated terrorist list (the UK would not support such a proposal)[33] and the CTC adopted a neutral profile to generate as

much responsiveness from the UN members as possible.[34] The U.S. is not very active in the work of the CTC and devotes much more attention the 1267 Committee.[35]

The international response appears remarkable on its surface: over 100 nations drafted and passed laws addressing money laundering or terrorist financing shortly after 9/11. $136 million dollars in assets were frozen ($36 million of which are in the U.S.).[36] Approximately 188 countries have the ability to freeze assets associated with Al Qaida and the Taliban, and 170 against terrorist groups more generally.[37] In October 2001 the FATF expanded its anti-money laundering mission to include terrorist financing, and FATF issued 8 special recommendations to fight terrorist financing. The Egmont Group also took terrorist financing under its purview. The widespread acceptance of multilateral norms to prevent terrorist use of the formal financial system led states to seek membership in the Egmont Group and ensure their removal from the FATF NCCT list. The Egmont Group has grown by forty countries and territories since 2000.[38]

The international effort on terrorist financing, while impressive, has largely been superficial. States have taken steps they otherwise would not have taken in passing desired domestic legislation and in ratifying the UN's various terrorism conventions. But the only carrot offered by Resolution 1373 is technical assistance in combating terrorist financing, and the total U.S. spending on technical assistance on this issue since 9/11 has not exceeded $20 million.[39] States initially designated individuals and entities that the U.S. designated under Executive Order 13224, but because of early errors the U.S. made there is less willingness to do so.[40] Implementation of the best practices advocated by FATF and the minimum standards required by Resolution 1373 has been much less forthcoming, with some officials indicating that Abu Ghraib scandal and the war in Iraq has lessened Middle Eastern countries interest in working with the U.S..[41] U.S. threats of financial sanctions have produced important changes in state behavior in asset freezing and in complying with the FATF standards in some cases (the Philippines). But in the cases of most concern to the United States, particularly Saudi Arabia, Indonesia and the Philippines, it has only been the domestic experience of terrorism that has sparked real action on counter-terrorist financing.[42] As U.S. officials repeatedly stated, foreign governments do not see terrorist financing as their problem, and they correspondingly do little to enforce anti-money laundering and terrorist financing measures.[43]

U.S. Efforts to Combat Terrorist Financing Prior to September 11, 2001

In the United States prior to the 2001 attacks, there was no sustained, concerted effort to counter terrorist financing. *The 9/11 Commission Report* and *The 9/11 Commission Staff Monograph on Terrorist Financing* paint an authoritative picture of disaggregated data collection, mistaken understandings regarding information sharing, conflicted organizational cultures and jealousies, and interrupted attention-spans that impeded the government and congress from focusing on the issue of terrorism and how it was funded. The only governmental body focused on the issue more or less consistently was the White House, particularly the National Security Council, which since 1985 has coordinated government efforts to counter terrorism.[44] Terrorism was one of the first national security issues the new Clinton Administration had to face, with the assassination of two CIA employees outside CIA headquarters in Virginia in January 1993, and the bombing of the World Trade Center the next month. The issue of terrorism and terrorist financing occupied the NSC from the aftermath of the 1993 World Trade Center bombing onward.[45] In 1995, Clinton issued a classified Presidential Decision Directive 39 making detection and prevention of WMD terrorism the very highest priority for his own staff and all agencies. In 1998 he elevated the NSC Counterterrorism Security Group (CSG), giving its head, Richard Clarke, direct access to cabinet level officials, and issued two PDDs outlining ten counterterrorism programs and attendant agency responsibilities. The reorganization gave the Department of Justice and the FBI the lead on the domestic front, with the CIA, State Department and others responsible for the foreign front.[46] While the issue of terrorism and terrorist financing received a high level of attention from the president and his national security advisors, the NSC was incapable of systematically engaging and directing a host of sub-units within various government agencies in addressing the

problem.[47] Because of the Attorney General's concerns, the CSG Director was only authorized to give advice regarding budgets and coordinate interagency guidelines for action.[48] The NSC therefore could not to task agencies to take action and appropriate funds. One former NSC official suggested that this was the fundamental problem preventing successful interagency coordination and action.[49] Tragically, the government's success in finding and prosecuting the 1993 World Trade Center terrorists impeded the White House's efforts to reframe and prioritize terrorism and terrorist financing as a major threat.[50] By the end of the Clinton presidency, non-state terrorists and their finances were recognized as a serious threat to U.S. national security.[51] But the White House was incapable of translating this recognition into a coordinated and effective domestic and international counter-terrorist effort.[52] The new Bush Administration did not begin its term with the understanding of non-state threats that the Clinton Administration had learned, and its foreign policy priorities, such as missile defenses, were driven by the familiar paradigm of states as the most serious threats facing the United States.[53]

Knowledge of how terrorist financed their operations was ill-founded and slow in coming.[54] The CIA was aware that Bin Laden had provided funds to several terrorist organizations but not that he was at the heart of a terrorist network. As late as 1997, it identified him merely as an "extremist financier."[55] Because the National Security Advisor had expressed a personal interest in terrorist financing, the head of CIA's Directorate of Operations was able to set up a unit to track terrorist financial links in 1996. It focused solely on Bin Laden, and moved quickly away from a focus on financial links to operational planning.[56] The NS C and the Vice President pressed for access to an Al Qaida financial officer who had been detained by the Saudis in 1997. The issue of terrorist financing gained more attention after the 1998 U.S. embassy bombings. NSC Senior Director Richard Clarke set up a NSC-led interagency group on terrorist financing after the 1998 embassy bombings which included the NSC, Treasury Department, the CIA, FBI and State Department. While the CIA cooperated in this group, the FBI would not meaningfully participate.[57] The NSC was the entity maintaining pressure on this issue. It led in pressing the Saudis for access to the Al Qaida financial officer, which was only granted in 1999 and 2000 after the bombings of the U.S. embassies in Nairobi and Dar es Salaam in early August 1998.[58] The President and the State Department, again after NS C urging, began to pressure Pakistan on its support for jihadists in Kashmir and for the Taliban. And the President issued E x ecutive Order 13099 freezing all financial holdings that could be associated with Bin Laden.[59] The FBI was gathering intelligence against organizations suspected of raising funds for terrorists on a field-office level, but with no centralized collection or sharing system in place.[60] At Richard Clarke's urging the Treasury Department was designated in March 2000 as the home for a new Foreign Terrorist Asset Tracking Center (FTATC), a recommendation seconded by the independent Bremer Commission on Terrorism. President Clinton authorized the creation of the FTATC as part of $300 million counterterrorism initiative in May 2000. $100 million was designated to use in countering terrorist financing. Congress authorized FTATC's funding in October that year. Neither Treasury nor the CIA was willing to commit resources for building the center. In spring 2001 National Security Advisor Rice approved the establishment of the office, but the Treasury Department failed to follow through and the FTATC was only hastily staffed three days after 9/11.[61]

Despite the lack of coordinated effort in the executive branch, prior to 9/11 there was a somewhat ad hoc system of laws, authorities and regulations in place that directly or indirectly addressed terrorist finances. These rules need to both criminalize the provision of funds to terrorists and provide the government the means to collect information with which to detect the flow of such funds. The 1990 Anti-Terrorism Act made material support, including funding and financial services, for foreign terrorist organizations illegal. In 1995 the Clinton Administration pushed for increased federal criminal laws, making it easier to deport terrorists and act against terrorist fundraisers. After the Aum Shinrikyo chemical weapons attack on the Tokyo subway and the Oklahoma City bombing, Clinton proposed increased wiretap and electronic surveillance authority for the FBI and new funding for the FBI, CIA and local police.[62] The 1996 Anti-Terrorism and Effective Death Penalty Act makes the provision of such support a criminal act, and allows civil

suits against a foreign state, state agency or instrumentality which either committed or aided in the commission of a terrorist act.[63] A series of anti-money laundering statutes made conducting financial transactions to further or to conceal criminal acts, including the destruction of aircraft, hostage taking among many others.[64]

Another critical element of the anti-money laundering legal framework was the 1970 Bank Secrecy Act, which requires banks to create audit trails of large bank transactions and allow law enforcement access to such information or face criminal penalties. In 1985 the Federal Reserve and the Office of the Comptroller of the Currency began requiring financial institutions to submit suspicious activity reports (SARs), and the Annunzio-Wylie Anti-Money Laundering Act added Treasury to the list of agencies able to require this information as well as requiring for the first time that banks keep records of wire transfers.[65] The decision of what activity was "suspicious" fell to the discretion of bank employees. The Treasury Department lobbied for controls on foreign banks with U.S. accounts in 1999 and 2000. Despite bipartisan support in the House, this effort was hung up in the Senate Banking Committee where the chair rejected further regulating banks. In 1999 Treasury and the federal financial regulators also proposed draft regulations requiring banks to "know your customer." These requirements would ensure that banks to reasonable steps to know who the beneficial owner of an account was and the sources of funds flowing through accounts. This sparked such a firestorm of controversy and resistance from the banking industry that these efforts failed and Congress even considered weakening the money-laundering controls then in place.[66] The banking industry successfully defeated Treasury's initial attempts to specify exactly what information must be collected on wire transfers. This essentially prevented the creation of standardized records, significantly impairing the efficiency and speed with which law enforcement could access such information.[67] Such anti-money laundering requirements do little to aid the detection of funds flowing to terrorists, as they were designed to detect large flows of funds (over $10,000), and these funds increasingly flow outside the formal financial system. Congress had authorized Treasury in 1994 to draw up regulations governing the informal financial system (money remitters and other money services businesses). However these regulations were only issued in 1999 with an implementation date of December 2001; in the summer of 2001 the Treasury Department announced that the implementation would take place in 2002.[68]

The most powerful legal tool in the counter-terrorist financing toolkit prior to 9/11 was the 1977 International Emergency Economic Powers Act. Under the IEEPA, if the President declares a national emergency with regard to an "unusual or extraordinary" foreign threat, he can block, through a presidential decision directive, the assets of individuals or organizations associated with that threat, as well as U.S. imports from and exports to those designated. The Office of Foreign Assets Control (OFAC) in the Department of the Treasury then identifies the designated individuals or entities and orders their bank accounts frozen. This tool had been used against drug money launderers. The courts have given the president wide latitude in using this authority as IEEPA is a law regarding foreign policy and national security and therefore a political rather than legal issue.[69] The U.S. has long used this tool to freeze the assets of states sponsoring terrorism, such as Iran, Libya, and Sudan. According to the 9/ 11 Commission staff, "[i]n the 1990s the government began to use these powers in a different, more innovative way, to go after nonstate actors."[70] In 1995, the Clinton Administration used the IEEPA to sanction terrorists seeking to disrupt the Middle East Peace Process.[71] OFAC had hoped to target Bin Laden in this way, but did not have access to the intelligence required to make the case for designating him. This would wait until after the 1998 embassy bombings, when President Clinton formally designated Bin Laden and Al Qaida under the IEEPA. This had little practical effect, as Bin Laden had moved most of his assets out of the formal financial system after he left Sudan in 1996 and the IEEPA gave OFAC authority over U.S. persons. In 1999 the president designated the Taliban under the IEEPA for harboring Bin Laden and Al Qaida, and blocked Taliban assets worth over $34 million held in private U.S. banks and $217 million in gold and deposits held at the Federal Reserve.[72]

The picture of U.S. efforts to suppress terrorist financing prior to the September 11, 2001 attacks is one of fragmented attention spans and lack of a comprehensive approach to the multifaceted problem of terrorist finance. During the 1990s, the Clinton Administration began to slowly redefine the threat of terrorism as one separate from the traditional paradigm of states against which economic and military sanctions could be applied. But the redefinition was taking place at the NSC and its expansion to higher levels of the government and waxed and waned in sequence with the terrorist attacks on the U.S. in 1993, 1998 and 2000. The U.S. counter-terrorism effort was fragmented among many different agencies and lacked any central coordination and direction, particularly at the FBI.[73] The U.S. Congress had not made this shift in paradigms to a new post-Cold War, non-state actor framing of national security.[74] The Congress remained enamored of economic sanctions against states for a slew of reasons. This hindered the United States ability to work with critical states such as Pakistan on suppressing Al Qaida and pressuring the Taliban.[75] Domestic ideological battles often interfered with serious attention to the issue, and lessened the sense of threat that non-state posed to the United States.[76] Congress only focused on non-state terrorism in a completely reactive fashion, in the wake of attacks on the U.S.. Even this attention was minimal and not sustained. According to the 9/11 Commission, ["t]errorism was a second- or third-order priority within the committees of Congress responsible for national security."[77]

The story is similar at the global level. Internationally, movement on suppression of terrorism remains hampered by the lack of consensus on who is a terrorist. The progress made in the 1990s in creating formal international laws on terrorism resulted from heightened awareness in the aftermath of major terrorist attacks against the United States. The 1997 UN Convention on the Suppression of Terrorist Bombings was adopted after the 1993 World Trade Center Bombings and the 1999 Convention on the Suppression of Terrorist Financing came after the bombings of the U.S. embassies in 1998. But these conventions would not enter into force until after 2001. No overarching frame united the problem of terrorism and the international security problem of funds flowing through the international economy to finance them. Slowly and haltingly the problem of terrorism and terrorist financing was being redefined by the great powers as falling within a new paradigm of non-state sponsored actors. Led by the United States, the Security Council had begun focusing the Council's powers on non-state actors such as Al Qaida. But other states saw little incentive to engage on an issue that was not seen as their problem.

U.S. Counter-Terrorist Financing Efforts after the 9/11 Attacks

The shock of the September 11, 2001 attacks caused radical changes in the way the U.S. framed and managed the issue of terrorist financing. Within days, federal bureaucracies came together to act collectively to understand the financial basis of the attacks. Agencies immediately established new units to work the problem, and agreed to interagency cooperation. The FBI, which was harshly criticized in the 9/11 Commission Staff Monograph for its failures prior to 9/11, established an interagency Financial Review Group within days of the attacks. This group became the Terrorist Financing Operations Section (TFOS). It focuses on ensuring that the U.S. develops a real-time financial tracking capability for urgent financial investigations and that each terrorism investigation has a financial component. Most importantly, for the first time it coordinates in a single office the FBI's counter-terrorist financing efforts.[78] The U.S. Customs established Operation Green Quest to investigate terrorist financing. The Justice Department reallocated resources from other areas after 9/11 to create a unit devoted to pursuing and coordinating terrorist financing criminal investigations nationwide.[79] In 2003, a FBI-led Joint Terrorism Task Force combined the investigative efforts of the FBI, Justice Department, Customs (now under the Department of Homeland Security) and the IRS. Within a week of the September 11 attacks, the CIA had created a new interagency section to develop long-term intelligence on terrorist financing, track terrorists and disrupt their operations.

The NSC set up an ad hoc structure immediately after the attacks, which was replaced by a Policy Coordinating Committee (PCC) on Terrorist Financing in March 2002.[80] The PCC was

chaired by the Treasury Department Office of Legal Counsel until November 2003, and owing largely to General Counsel David Aufhauser's personality, was able to overcome differences.[81] The Treasury's lead on counter-terrorist financing came under fire from an Independent Task Force on Terrorist Financing of the Council on Foreign Relations, which insisted that the NSC must take the lead on the PCC because of diplomatic and intelligence aspects of counter-terrorist financing. The Independent Task Force also recommended that the Administration needed to designate a single point person for terrorist financing in the NSC to chair the PCC in order to insure the requisite level of priority and integration with the government's broader counterterrorism strategy.[82] The 9/11 Commission staff also reported that the PCC was not well integrated into the U.S.' broader counterterrorism effort, particular with regard to Saudi Arabia, a criticism loudly echoed by the Council on Foreign Relations Independent Task Force.[83]

A number of bureaucratic battles developed in the aftermath of the September 11 th attacks. The Treasury Department was at the center of most of them. Within the Treasury Department, the Office of Foreign Asset Control (OFAC) was hastily made the home of the Financial Assets Tracking Center, established and funded in fall 2000, but it was only established three days after the September attacks. It initially was made up of the same agencies as Customs' Operation Green Quest. FTATC never fully functioned at Treasury, and the CIA essentially took over the operation. This fact was made official by November 2002, when the Bush Administration renamed it the Foreign Terrorist Asset Tracking Group and made it an independent entity administered by the CIA. Since its move to the CIA, the Treasury Department has not detailed any analysts from Treasury to FTATG. Treasury's Financial Crimes Enforcement Center (FinCEN) also does not detail analysts to FTATG. FTATG now functions as a targeting arm of the PCC, but it appears to have a low priority within the Administration, as it had been without a director for five months as of August 2004.[84]

Another bureaucratic battle took place between the U.S. Customs Service and the FBI TFOS over Customs Service's Operation Green Quest. Both had interagency groups to investigate terrorist financing that overlapped. These were resolved in 2003 with the formation of an FBI-led Joint Terrorism Task Force, but under an agreement to ensure the continued participation of experts at Customs (now the Immigration and Customs Enforcement (ICE) branch of the Department of Homeland Security).[85]

A third bureaucratic battle is in full swing. After 9/11, an interagency Terrorist Finance Working Group (TFWG) was established that is co-chaired by the State Department's Office of the Coordinator for Counter Terrorism and the Bureau for International Narcotics and Law Enforcement Affairs, and reports to the NSC's PCC. The TFWG identifies and assists important countries in making their financial systems less vulnerable to manipulation by terrorists. It provides technical assistance and training programs in establishing and implementing legal and regulatory frameworks to comply with UN Resolution 1373, creating financial intelligence and financial crimes units, as well as prosecuting and adjudicating terrorism finance crimes.[86] The Treasury Department's Office of Technical Assistance has worked with Congress to secure $2.2 million for counterterrorism financing training and has not cooperated in the TFWG.[87] The Treasury Department is reportedly working through Congress to take the lead in the PCC for counter-terrorist financing from the NSC, to gain authority to take the lead in the TFWG, on intelligence and operations, and produce a counterterrorist financing strategy report that emulates the State Department's *International Narcotics Control Strategy Report.* The State Department is resisting this.[88] A number of interviews with officials at the State Department, FinCEN, and OFAC suggest that cooperation on counterterrorist financing may be eroding in the area of technical assistance. One State Department official stated that the biggest interagency problems were the Office of Technical Assistance and a number of personalities, while a FinCEN official called the TFWG dysfunctional.[89]

Running underneath these battles lays a fundamental policy debate over which of two strategies is most appropriate and effective in suppressing terrorist financing. The first approach focuses on

designating and detaining terrorists and their associates and freezing their assets. The second, "follow the money" strategy, focuses on intelligence collection, analysis, and sharing to track and disrupt terrorist operations. One would expect from a bureaucratic politics model that different government actors would express distinct preferences regarding these strategies. The agencies with financial regulatory, anti-money laundering and law enforcement authorities, such as the Departments of Treasury and Justice, as well as those feeling the greatest pressure to demonstrate that actions were being taken after 9/11 to combat terrorism, would prefer the designations and asset freezing strategy. Designations are highly public and visible, with those suspected of financing terrorist rounded-up in sweeps as the designations are unsealed. The freezing of assets is easily quantifiable (while the number of total terrorist assets is not widely known), providing a rapid and easily communicated measure of the government's success in vigorously suppressing terrorism. Such actions demonstrate to those who hold budgetary purse strings and to the electorate that concrete efforts and results have occurred. Prosecutorial and investigative agencies and civil liberties advocates should prefer the designations and asset freezing approach, as long as proper evidentiary standards are used. The intelligence community, including that within the FBI ought to prefer the intelligence strategy, as it offers greater potential for terrorists to be tracked and killed or captured. For the foreign affairs agencies, the private or covert nature of the intelligence strategy increases the government's flexibility in cooperating with foreign countries, as secret assistance may be more forthcoming than public. The financial services industry should favor the intelligence strategy, as it reduces the likelihood of tighter government regulations on their activities. The post 9/11 experience, while remarkably cooperative by all accounts, tends to broadly support such predictions.[90] The strategies are not mutually exclusive, but unthinking or compartmented reliance on one can seriously impede the effectiveness of the other. Resources are not infinite. The bureaucratic interests engaged in each strategy create a tendency to compartment information and guard bureaucratic prerogatives. Such tendencies were dramatically exposed in the 9/11 Commission's report on the bureaucratic compartmentalization and turf battles that existed prior to 9/11 and which in the Commission's estimation representative massive failures to successfully detect and prevent terrorist attacks.[91]

Early on in the Bush Administration, the designations and asset freeze approach to combating terrorist financing dominated.[92] Under his IEEPA authority President Bush issued ("with great fanfare," in the words of the 9/11 Commission) Executive Order 13224 designating Bin Laden and Al Qaida and authorizing the freezing of assets of entities associated with them, calling it the "first strike in the war on terror." This order ratified OFAC's authority derived from Clinton-era executive orders to go after Bin Laden's and Al Qaida's assets. In October 2001, President Bush signed the Patriot Act into law. It significantly expanded the government's regulatory authority regarding money laundering and criminal finance. It put into effect the "know your customer" and wire transfer requirements which had been defeated by the bank industry in 2000. As one State Department official put it, the existing proposal was renamed and passed. Most of this power goes to the Department of the Treasury. It can designate countries or business sectors as failing to meet minimum anti-money laundering standards, and, in consultation with other agencies, to impose sanctions and other "special measures" such as restricting countries' or financial institutions' access to the U.S. financial system.[93] The Patriot Act clarified an IEEPA provision and empowered a single government official, the Director of Treasury's OFAC, to freeze assets before legally sufficient evidence had been collected.[94] OFAC worked feverishly after the attacks to add organizations and individuals to the designations list, using names provided by the CIA. Very high level and public announcements of the freezing of terrorist assets occurred soon after the September 11th attacks.

The goal set at the policy levels of the White House and Treasury was to conduct a public and aggressive series of designations to show the world community and our allies that we were serious about pursuing the financial targets. It entailed a major designation every four weeks… Treasury officials acknowledged that the evidentiary foundations for the early designations were quite weak. …The rush to designate came primarily from the NSC.[95]

The White House, the Secretary of the Treasury and the Attorney General all trumpeted actions taken against those designated of terrorist associates and the freezing of millions of dollars in terrorist assets. Meanwhile the CIA reasoned that the designations would have little or no effect on terrorists, as they would simply move their funds to other institutions that had not been designated. The intelligence supporting some of the highest profile designations was found to be seriously flawed from legal perspective and the volume of money disrupted significantly overstated.[96] The U.S. in August 2002 was forced into the embarrassing position of de-listing some foreigners under pressure from allies, and some U.S. citizens, after they filed lawsuits.[97] It was also unable to attain a conviction on a terrorism charge for a leader of an Illinois charity.[98] One State Department official described the initial post-9/11 designations as "a political process" driven by "the need for public action and the availability of a hammer."[99]

The debate over strategies in turn depends on how closely one identifies the problem of terrorist financing with that of money laundering. The powers granted to regulators and the Treasury under the Patriot Act are anti-money laundering tools, designed for tracking large sums of money.[100] But the sums transferred by terrorists to fund their operations and fundraisers to terrorist entities are tiny when placed in the context of billion dollar global finance system. The Treasury Department under Clinton had already learned this when it sought freeze Bin Laden's assets: it was unable to gain sufficient information on these assets, in large measure because the fundraising for Al Qaida was dispersed and commingled with legitimate humanitarian donations.[101] After its "early missteps" in pursuing the designations strategy, the Bush administration has begun pursuing the intelligence strategy.[102] Designations have dropped off and the amount of asset freezes has fallen dramatically.[103]

Conclusion

What does the U.S. effort to counter terrorist financing augur for the global effort? By all accounts, the horror of the September 11 attacks galvanized government bureaucracies and broke down interagency walls that had withstood lesser terrorist attacks.[104] Interagency cooperation as well as the banking industry's cooperation with the government was unprecedented in the immediate aftermath of the attacks. This cooperation remains a marked improvement over the pre-9/11 situation. But there are indicators that the passage of time may erode the political will to put the national interest ahead of private and bureaucratic ones. Working-level officials repeat that they "don't want to be the reason another 9/11 happens" and that this makes them willing to make the interagency process work. But they worry that the issue of counter-terrorist financing has slipped in the hierarchy of priorities at higher levels of government.[105] This concern is echoed in high profile criticism from outside of government.[106]

The U.S. effort to counter terrorist financing is being funded largely through reallocations from other budget lines rather than generating a significant new budgetary commitment.[107] Banks are reportedly experiencing "blocking fatigue. The international community is willing to act only under UN designations, and U.S. actions in Iraq have made some states reluctant to follow the U.S. lead in implementing and enforcing legislative changes.[108] U.S. willingness to underwrite the technical assistance to enable states to enforce the CTF regime at home has been minimal ($20 million since 2001) in comparison with the broader U.S. war on terrorism. However, the U.S. had succeeded in globalizing the anti-money laundering framework and recasting it as a regime to combat terrorist financing. The U.S. domestic approach to the problem of terrorist financing has changed in the short period since 2001, and its international efforts reflect this shift.

As the U.S. effort has shifted away from designations and asset freezes, its international efforts have focused on sharing intelligence with other states to track, capture or kill important terrorist finance figures.[109] Its efforts have focused bilateral pressure on a small number of countries rather on underwriting a global multilateral regime. While there has been substantial and important movement through informal international bodies such as FATF and the Egmont Group, the U.S. has not supported the work of the UN's Counter-Terrorism Committee. The U.S. has

been unwilling to underwrite a formal counter-terrorist financing regime under Resolution 1373, focusing on the narrower issue of Al Qaida under Resolution 1267. Fundamentally, the U.S. has devoted the majority of its attention internationally to the “global war on terror,” which it defines to include the war in Iraq. The U.S. efforts internationally on terrorist financing illustrate that this war is not really global for the U.S., but focused on 20 states where Al Qaida and other Islamic terrorists operate. The U.S. has focused the bulk of its counter-terrorist financing efforts on tactically targeting groups and individuals, rather than building a robust international regime. So the prospects for the successful global development of national institutional capacity to combat counter-terrorist-financing framework seems to depend on states’ acceptance recognition that terrorist financing is their problem, not the U.S..

The developed countries, with the most domestic capacity to combat terrorist financing, recognize this threat. Even they, however, have been inconsistent in their willingness to enforce counter-terrorist finance laws and engage in international cooperation. Less developed countries without this capacity often do not even see the threat. Redefining the national interest to include countering terrorist finance unfortunately appears to correlate closely with states’ experience of terrorist attacks.[110] Without such attacks, and without U.S. pressure and incentives to do so, it is unlikely that states will take the steps to build and enforce an effective counter-terrorist financing regime.

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