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Terrorist Financing: The 9/11 Commission Recommendation

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Summary

Although efforts to seize terrorist funds have met with some success, in July 2004, the 9/11 Commission asserted that the likelihood of being able to continue freezing funds may diminish as terrorists seek increasingly more informal methods of earning and moving money. The financial support of terrorism involves both earning funds, through legal and illegal means, and the illicit movement of money to terrorist groups. The Commission recommended that the U.S. government shift the focus of its efforts to counter terrorist financing from a strategy based on seizing terrorist assets to a strategy based on exploiting intelligence gathered from financial investigations. This report will be updated as events require.

Since the September 11, 2001 attacks, there has been increasing interest in terrorist financing. Following the attacks, the administration stated its goal of "starving the terrorists of funding and shutting down the institutions that support or facilitate terrorism."[1] In the months immediately following the attacks, a significant amount of funds were frozen internationally. After this initial sweep, the freezing of terrorist assets slowed down considerably. As of November 2002, estimates indicated that of the roughly $121 million in terrorist assets frozen worldwide, more than 80% were blocked in the first three months following the attacks.[2] Over the next year and a half, an additional $80 million has been seized, bringing the current total frozen to roughly $200 million.[3]

While separating terrorist organizations from their assets will continue to be a major component of the campaign against terrorism, many have questioned the feasibility of this

[1] Statement of Secretary Paul O'Neill on Signing of Executive Order Authorizing the Treasury Department to Block Funds of Terrorists and their Associates, September 24, 2001.

[2] CRS Report RL31658, *Terrorist Financing: The U.S. and International Response*, p. 1.

[3] Testimony of Samuel W. Bodman, Deputy Secretary U.S. Department of the Treasury Before the Senate Committee on Banking, Housing and Urban Affairs, April 29, 2004.

goal. The slowdown in the amounts frozen reflects numerous changes in how Al Qaeda and other terrorist groups finance their activities. Terrorist organizations are increasingly relying on informal methods of money transfer, and regional cells have begun independently generating funds through criminal activity.[4]

In response to these changes, the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission), an independent, bipartisan commission created by congressional legislation and President Bush has recommended that the U.S. government shift the focus of its efforts to counter terrorist financing from a strategy based on seizing terrorist assets to a strategy based on exploiting intelligence gathered from financial investigations. According to the Commission, the United States should "expect less from trying to dry up terrorist money and more from following the money for intelligence, as a tool to hunt terrorists, understand their networks, and disrupt their operations."[5] According to Commission Chairman Thomas Kean, "Right now we have been spending a lot of energy in the government trying to dry up sources of funding. When it only costs $400,000 to $500,000 to pull off an operation like 9/11, we'll never dry up money. But by using the money trail, we may be able to catch some of these things [terrorist plots] and break them up." Kean further asserted, "Obviously if you can dry up money, you dry it up, but we believe one thing we didn't do effectively is follow the money. That's what we have to do."[6]

While the goals of freezing terrorist funds and tracking them for intelligence[7] are not mutually exclusive, they tend to emphasize different strategies and approaches. For example, the FBI and other intelligence agencies have a history of gathering intelligence by monitoring financial transactions and relationships over extended periods of time, for example in its investigations of the Mafia, and then using laws against financial crimes to eventually arrest the perpetrators. The Department of the Treasury, by contrast, has traditionally favored freezing terrorist assets as soon as possible. Each strategy reflects the agency's primary skills and capabilities. According to Treasury Assistant Secretary for Terrorist Financing and Financial Crime Juan Zarate, "I think we need to do everything the commission said with respect to the money trail, but we also need to continue — and frankly be even more vigorous — on attacking the sources because that affects the long-term ability of Al-Qaeda to do all the nasty things we want to stop them

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[4] See General Accounting Office Report GAO-04-163, *Terrorist Financing: U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms,* November, 2003.

[5] Executive Summary, Final Report of the National Commission on Terrorist Attacks Upon the United States, July 2004, pp. 18-19, available at [http://www.9-11commission.gov/report/911Report_Exec.pdf]

[6] Laura Sullivan, "U.S. Split on Usefulness of Tracing Money Trails to Prevent Terrorist Plots," *The Seattle Times,* August 3, 2004.

[7] In its full report, the Commission embraced tracking, recommending that vigorous efforts to track terrorist financing remain front and center. In contrast, "trying to starve the terrorists of money," said the Commission, "is like trying to catch one kind of fish by draining the ocean." *Final Report of the National Commission on Terrorist Attacks Upon the United States,* July 2004, p. 382.

from doing."[8] This tension is echoed by Jonathan Winer, a former Deputy Assistant Secretary of State for International Law Enforcement under President Bill Clinton, "There is a big ideological divide right now between the asset freezers and the people who want to follow the money as it changes hands. There's no easy answer one way or another."[9]

Effectively combating terrorist financing requires effective coordination of many different elements of national power including intelligence gathering, financial regulation, law enforcement, and building international coalitions. "There are a number of areas where jurisdiction is blurred," according to one senior official.[10] According to most analysts, interagency cooperation is imperative to successfully combat this threat.

What Is Terrorist Financing?

Earning Money. The financial support of terrorism involves both earning funds — through legal and illegal means — and the illicit movement of money to terrorist groups. It is important to note that in many cases, charities being the main example, funds transferred to terrorists are often raised legally and only acquire their relationship to terrorist financing through subsequent money laundering. In a case currently under investigation, on July 27, 2004, the Holy Land Foundation for Relief and Development, the largest Muslim charity in the United States, was indicted on charges it provided financial support to Hamas, an Islamic terrorist group.[11] Its finances had been frozen more than two years earlier, in December 2001. Many of the organization's donors reported no knowledge that their donations were being diverted to illegal activities. In addition to charities, apparently legitimate businesses whose profits go to terrorism are another means of earning funds. Finally, terrorists have engaged in criminal activity such as drug trafficking, and smuggling cigarettes or commodities as a means of raising funds.

Moving Money. For many years — especially prior to the September 11, 2001 attacks — terrorists have exploited the formal banking sector's international reach and often weak regulation. While the international system is moving towards increased regulation of international banking, there are many built-in impediments to regulatory and law enforcement cooperation. For example, domestic laws and regulations have allowed the United States to freeze large amounts of terrorist assets in banks located in U.S. jurisdictions. However, the ability of the United States to freeze funds in other jurisdictions is limited. The United States and other countries are working to make the international financial sector more secure from terrorist financing abuses. For example, the Federal Reserve Board recently fined the U.S. arm of UBS AG $100 million for funneling $5 billion to countries such as Cuba, Iran, and Libya.[12] Riggs Bank was fined

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[8] Ibid.

[9] Ibid.

[10] Lauren Shepherd, "Nominees Stalled by Turf Battle," *The Hill*, June 9, 2004.

[11] "Holy Land Foundation, Muslim Charity, Accused of Aiding Terror," *Bloomberg*, July 27, 2004.

[12] See Kathleen Day and Terence O'Hara, "Obstacles Block Tracking of Terror Funding; Task Is Complex, Leadership Is Lacking, Critics Say," *The Washington Post*, July 14, 2004.

$25 million in May 2004, for failing to report unusual transactions.[13] The United States is also working with the Financial Action Task Force (FATF) and other international financial institutions to create new standards and best practices for the formal financial sector.

As governments have begun to crack down on terrorist abuse of the formal banking sector, terrorists have increasingly turned to informal means in order to move money around. These services are cheaper than formal banking or money transfer arrangements, they can provide anonymity for all parties involved, and they can reach countries where there is no formal banking sector, in some cases even arranging for hand delivery of the cash. While most use these systems for legitimate purposes, their lack of documentation and anonymous, informal nature make them attractive for money laundering and/or terrorist financing purposes.

Alternative remittance systems, or more broadly informal value transfer systems (IVTS) date back hundreds of years and were originally used to finance trade in regions where traveling with gold or other forms of payment was not safe.[14] The system goes by various names including *Hue* (Vietnam), *Fei-Ch'ien* (China) *Phei Kwan* (Thailand) *Hundi* (South Asia), or *Hui Kuan* (Hong Kong). The primary current network is the *hawala* system (*hawala* means "transfer" in Arabic) in use in South Asia and the Middle East. The primary users of the *hawala* system are emigrants in Europe, the Persian Gulf, and North America who send remittances back to their family in South and East Asia, Africa, Eastern Europe, and other regions.[15] The most basic *hawala* transfer would involve a migrant going to a *hawaladar* (an IVTS agent), mostly likely located through an ethnic neighborhood, and giving the agent money to send to someone abroad. The agent will call/fax/or e-mail instructions to a counterpart in the recipient country with instructions. Accounts may be settled in multiple ways. Since the *hawala* system operates on trust, and often familial networks, accounts between *hawaladars* can remain open and active for years before being settled. Settlement might occur simply with a transfer in the opposite direction, over (or under) invoicing of traded items, through occasional wire transfers, or some other bartering arrangement.

Authorities have also noted the use of cash couriers to transport sums of money between terrorist operatives. Cash couriers are particularly common in Middle Eastern and South Asian countries with predominantly cash economies. Many of these countries have weak or no formal financial system. In many countries, cross border currency transportation limits are relatively high or nonexistent.

Can Terrorist Financing Be Stopped?

As the 9/11 Commission has stressed, the cost of a terrorist attack is very small, and the impediments to freezing money are many and varied. Collaboration between local, state, national, and international actors, both private and public provides a comprehensive response that can prevent terrorists from exploiting gaps or weaknesses within the multi-

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[13] Ibid.

[14] Mohammed El-Qorchi, "Hawala," *Finance and Development*, December 2002, p. 31.

[15] Ibid.

layered international financial system. Going forward, action at the multilateral level may become increasingly more important.

Financial Action Task Force (FATF). FATF is an inter-governmental body that develops and promotes policies and standards to combat money laundering (the so-called *Forty Recommendations*) and terrorist financing (*Eight Special Recommendations on Terrorist Financing*). It is housed at the Organization for Economic Cooperation and Development(OECD) in Paris. FATF currently has 33 members.[16] FATF sets minimum standards and makes recommendations for its member countries.

During 2003-2004, the IMF and the World Bank undertook a twelve-month pilot program that evaluated 33 countries and assessed their compliance with the FATF 40 + 8 recommendations. In addition, 8 countries were assessed either by FATF or one of the FATF-style regional bodies. At the G-7 meeting in Boca Raton during February 2004, finance ministers requested the IMF to make the assessments a normal component of its economic surveillance reports. In March 2004, the IMF and World Bank reviewed the pilot program and subsequently included AML/CFT assessments as part of its normal country surveillance. [17]

A concern is that of the 41 countries assessed in the Bank/Fund pilot program, only three — Jordan, Oman, and Algeria — are in the Middle East or North Africa, arguably the region of primary concern regarding terrorist financing, especially informal money transfers. An assessment of numerous Islamic countries' compliance with international counter terrorist finance standards was undertaken by the Watson Institute for International Studies at Brown University in consultation with the Council on Foreign Relations (CFR) Independent Task Force on Terrorist Financing.[18] According to the Watson Institute's report, Saudi Arabia's compliance with the guidelines established by FATF is "among the most robust in the sample."[19] A similar assessment of Saudi Arabia was reached by FATF in 2004.[20] Other Middle Eastern countries, while making strides in establishing legal and administrative frameworks, still lack effective regulatory and enforcement tools. A step in this direction is a 2004 initiative to start a FATF-style regional body for the Middle East and North Africa.

Legislation. The Intelligence Reform and Terrorism Prevention Act (P.L.108-458) made technical corrections to Title III of the USA PATRIOT Act and included provisions that would require the Treasury Department to develop a national money laundering strategy; grant the Securities and Exchange Commission (SEC)

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[16] See FATF website for a list of member countries and observer organizations [http://www1.oecd.org/fatf/]

[17] International Monetary Fund, "IMF Executive Board Reviews and Enhances Efforts for Anti-Money Laundering and Combating the Financing of Terrorism" Public Information Notice No. 04/33, available at [http://www.imf.org/external/np/sec/pn/2004/pn0433.htm]

[18] Council on Foreign Relations Independent Task Force on Terrorist Financing, *Update on the Global Campaign Against Terrorist Financing,* Appendix C, "A Comparative Assessment of Saudi Arabia with Other Countries of the Islamic World."

[19] Ibid., p. 8

[20] See CRS Report RL32499, *Saudi Arabia: Terrorist Financing Issues*.

emergency authority to respond to extraordinary market disturbances; boost the authority of the Financial Crimes Enforcement Network, the U.S. Government's financial intelligence unit; and equates the possession of counterfeiting tools with the intent to use them and the actual act of counterfeiting. The Treasury Department would also be authorized to print the currency, postage stamps, and other security documents of other nations.

A provision to crack down on illegal internet gambling by barring financial institutions from processing certain internet gambling transactions that occur via credit cards, wire transfers, or other bank instruments was also added. FinCEN was authorized an additional $35.5 million to improve technology and the SEC would be given emergency authority for up to 90 days to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as provided for in a 2003 House-passed bill.

Congress also required the President to submit to Congress within 270 days a report evaluating and making recommendations on: (1) the effectiveness of efforts and methods to track terrorist financing; (2) ways to improve governmental cooperation; (3) ways to improve the performance of financial institutions; (4) the adequacy of agency coordination and ways to improve that coordination; and (5) recommendations for changes in law and additional resources required to improve this effort. The Administration would be required to submit an annual report on the allocation of funding within the Treasury's Office of Foreign Asset Control (OFAC).

Potential Issues for Congress. The recommendation of the 9/11 Commission to shift the U.S. strategy from one focused on freezing assets to one of exploiting terrorist financing networks for intelligence, combined with terrorist organizations' increasing shift to informal methods of money transfer point to a few challenges that may dominate future discussions on how best to counter terrorist financing. These include (1) establishing an overall U.S. strategy (seize assets vs. tracking networks), (2) establishing clear jurisdiction among the various federal departments and agencies involved in tracking terrorist financing, (3) establishing an inter-agency policy coordination mechanism, (4) increasing cooperation between law enforcement operatives, customs and border patrol authorities, and intelligence agencies, (5) establishing a congressional oversight mechanism, (6) deciding how to regulate charitable organizations and alternative remittance systems (*hawala* registration), and (7) creating a public diplomacy apparatus that can address cultural sensitivities related to increased regulation of charities and *hawala* systems.[21]

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[21] In April, 2004, U.S. agents raided an Eritrean civic center that provided remittance services for immigrants, yet did not fully comply with Patriot Act requirements. See Allan Lengal and Mary Beth Sheridan, "Business for Fund Transfers Raided; U.S. Takes Records at Eritrean Center," *The Washington Post*, April 17, 2004.