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# War Through Pharmaceuticals: How Terrorist Organizations Are Turning to Counterfeit Medicine to Fund Their Illicit Activity

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# WAR THROUGH PHARMACEUTICALS: HOW TERRORIST ORGANIZATIONS ARE TURNING TO COUNTERFEIT MEDICINE TO FUND THEIR ILLICIT ACTIVITY

*Douglas T. Cannon<sup>1</sup>*

*The current international framework is ill equipped to proactively handle the growing threat terror organizations play on the international pharmaceutical industry. Globally, there lacks a true enforcement mechanism that can both proactively thwart these offenses, but also retroactively prosecute the offenders. Our typical image of terrorism is a group of masked men opening fire on a crowded area, or detonating improvised explosive devices to harm hundreds or thousands of innocent civilians. But what if terrorists became so advanced that they were able to harm millions, without their targets ever knowing? Imagine taking over-the-counter pain medication to relieve your horrible sinus pressure, but unbeknownst to you, that medicine had been tainted with Cyanide. While that example is horribly graphic—it is a real example of what many call a chilling display of domestic terrorism. Similarly, what if that generic Viagra being sold was secretly produced by Hizballah and used to finance its ongoing terror operations globally. Experts have warned the pharmaceutical industry that they are vulnerable to terror threats, little has pragmatically been done. This Note proposes a new International Task Force, which will have both the authority to seek out these offenders, use force – if needed—to take down these groups, a database to organize this information, and finally, a Treaty establishing counterfeit medicine as a crime. While many Notes detail international responses to terrorism, or global responses to pharmaceuticals, no Note has yet to combine the two very real issues. Providing exposure to this issue, this Note will provide for a unique plan to impede these offenders.*

“The price of freedom is eternal vigilance.” – Thomas Jefferson

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I. INTRODUCTION

In the post-9/11 world, terrorist groups are becoming ever more resourceful in discovering novel techniques to increase funding.<sup>2</sup> One such way is the manufacturing and distributing of counterfeit drugs.<sup>3</sup> As one author noted, “[c]ounterfeiting is a serious problem that transcends law enforcement...and clearly has entered the realm of terrorism.”<sup>4</sup> While others have written about how terror groups finance their operations vis-à-vis the exchange of narcotics, this Note

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2. See Matthew Levitt, *Political Hardball Within Hamas: Hardline Militants Calling Shots in Gaza*, WASH. INST. (Jan. 6, 2009), <http://www.washingtoninstitute.org/policy-analysis/view/political-hardball-within-hamas-hardline-militants-calling-shots-in-gaza>.

3. See *Hezbollah Tries to Use Counterfeit Medications as a Terrorist Weapon*, MISSING PEACE (Jun. 3, 2013), <http://missingpeace.eu/en/2013/06/hezbollah-tries-to-use-counterfeit-medications-as-a-terrorist-weapon/>.

4. Jay Fraser, *Counterfeiting—A Matter of National Security*, THREATS WATCH, <http://threatswatch.org/rapidrecon/2008/05/counterfeiting-a-matter-of-nat/> (last visited Nov. 7, 2013).

will focus on the illegal production, and sale of pharmaceutical medication, commonly referred to as “Counterfeit Medicine.”<sup>5</sup> As part of the larger issue of counterfeiting, the World Health Organization (“WHO”) in 2006 launched the International Medical Products Anti-Counterfeiting Taskforce (“IMPACT”) to “build coordinated networks across and between countries in [o]rder to halt the production, trading and selling of fake medicines around the globe.”<sup>6</sup>

In analyzing the issue of Counterfeit Medicine, its funding of terror, and IMPACT’s mission, it is first important to understand how terror financing has changed in the last decade. Accordingly, Part II of this Note provides a background of this issue, focusing on the terror aspects as they relate to counterfeit medicine. This section focuses on well-known terror groups and their methods of funding. In addition, this section lays the framework for an analysis in the final section detailing a method of preventing these groups from using counterfeit medicine to further proliferate their terror activity. Part III analyzes the current framework of counterfeit medicine. It explores which markets have been affected; who, in the international community, has the authority to act, and who is acting. Part III analyzes the efficacy of the United States government and other countries’ task forces in combatting counterfeit medicine, as well as the WHO and their unit- IMPACT. Finally, Part IV provides a critique and a discussion of a possible solution to combating this problem: instituting an international anti-counterfeiting task force akin to the International Anti-Poaching Foundation.

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5. See *Counterfeit Medicine*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/CounterfeitMedicine/default.htm> (last visited Oct. 20, 2013) (defining counterfeit medicine as “fake medicine[, that] may be contaminated or contain the wrong or no active ingredient. They could have the right active ingredient but at the wrong dose. Counterfeit drugs are illegal and may be harmful to [one’s] health.”).
  6. *IMPACT: International Medicine Products Anti-Counterfeiting Taskforce*, WORLD HEALTH ORG., <http://www.who.int/impact/about/en/> (last visited Apr. 1, 2015).

## II. BACKGROUND- TERROR GROUPS, THEIR FUNDING, AND COUNTERFEIT MEDICINE

Terrorism is defined as “the use of violence and threats to intimidate or coerce.”<sup>7</sup> While terrorism is not a recent phenomenon, largely, since the 1980s it has threatened Western existence.<sup>8</sup> In modernity, terrorism has greatly evolved into complex organizations fighting for a common cause. While there is yet to be an organization focused solely on counterfeiting medicine, many current terror organizations have dabbled in this area. The following provides background into the designation of a terror group, how they receive funding, and how these designation’s and funding factors relate to counterfeit medicine.

### *A. Terror Groups—A Primer*

The U.S. Department of State champions a list of policy determinations and classifications defining a Foreign Terror Organization (“FTO”).<sup>9</sup> In this capacity, the Secretary of State, in accordance with §219 of the Immigration and Nationality Act (“INA”) designates the group(s) to be added to this list.<sup>10</sup> Section 219 of the INA states that for an organization to be listed:

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7. *Terrorism*, DICTIONARY.COM, <http://dictionary.reference.com/browse/terrorism> (last visited Oct. 20, 2014).
  8. See generally J.M.B. Porter, *Osama bin Laden, Jihād, and the Sources of International Terrorism*, 13 IND. INT’L & COMP. L. REV. 871, 876 (explaining how in Osama Bin Laden’s view, the Christian Crusades were no different than Islamic terror of today).
  9. See Office of The Coordinator For Counterterrorism, *Chapter 6. Foreign Terrorist Organizations*, U.S. STATE DEP’T., <http://www.state.gov/j/ct/rls/crt/2011/195553.htm> (last visited Oct. 20, 2013). It is worth noting that the FTO is not the only list that the U.S. government employs in its aim to define terror organizations. See e.g., section 6(j) of the Export Administration Act of 1979, 50 U.S.C. § 2405(j) et seq., available at <http://www.treas.gov/offices/eotffc/ofac/sdn/index.html>. In addition to the lists the U.S. government employs, there is a multitude of lists compiled by the international community. See e.g., S.C. Res. 1267, U.N. Doc. S/RES/1267 (Oct. 15, 1999); S.C. Res. 1333, U.N. Doc. S/RES/1333 (Dec. 19, 2000); S.C. Res. 1390, U.N. Doc. S/RES/1390 (Jan. 28, 2002); S.C. Res. 1455, U.N. Doc. S/RES/1455 (Jan. 17, 2003). For a list of individuals and organizations classified by the EU as terror organizations see L 340/64 23.12.2005, available at [http://eurlex.europa.eu/LexUriServ/site/en/oj/2005/l\\_340/l\\_34020051223en00640066.pdf](http://eurlex.europa.eu/LexUriServ/site/en/oj/2005/l_340/l_34020051223en00640066.pdf).
  10. See *Foreign Terrorist Organizations*, supra note 8; see also *INA: Act 219—Designation of Foreign Terrorist Organization*, U.S. CITIZENSHIP & IMM. SERVS., <http://www.uscis.gov/sites/default/files/ilink/docView/>

1. It must be a foreign organization.
2. The organization must engage in terrorist activity, as defined in section 212 (a)(3)(B) of the INA (8 U.S.C. § 1182(a)(3)(B)), or terrorism, as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. § 2656f(d)(2)), or retain the capability and intent to engage in terrorist activity or terrorism.
3. The organization's terrorist activity or terrorism must threaten the security of U.S. nationals or the national security (national defense, foreign relations, or the economic interests) of the United States.<sup>11</sup>

Currently, according to the Department of State, there are over forty-five groups listed.<sup>12</sup> These groups include, Hizballah,<sup>13</sup> Abu Sayyaf Group, Al-Shabaab, Al-Qa'ida (and their derivations) as well as non-Islamic groups such as the Real IRA.<sup>14</sup> Both Hizballah and the Real IRA have been linked to counterfeiting medicine, and as such, a brief history of each will be explored.<sup>15</sup>

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SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-5017.html (last visited Apr. 1, 2015) [hereinafter INA Act 219].

11. See INA Act 219, *supra* note 9.
12. The State Department updates the list of foreign terror organizations yearly, and changes are additionally made as Congress updates its statutes. Organizations can challenge their FTO designation by filing a petition for revocation two years after the designation date (or in the case of redesignated FTOs, its most recent redesignation date) or two years after the determination date on its most recent petition for revocation. The moving party, to successfully overcome this challenge, must provide material evidence that the basis for the FTO designation warrants such a removal of said designation. Additionally, if no challenge is made within five years of placing an organization on the FTO list, the Secretary of State is required to conduct a review to determine the appropriateness of the designation. See Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 1011(a), 118 Stat. 3638.; see *Foreign Terrorist Organizations*, *supra* note 8 (at the time of writing this Note, Department of State lists 49 groups as TFO).
13. Hizballah is also commonly referred to as Hezbollah.
14. See *Foreign Terrorist Organizations*, *supra* note 8 (at the time of writing this Note, Department of State lists 49 groups as FTO).
15. NICHOLAS RIDLEY, TERRORIST FINANCING: THE FAILURE OF COUNTER MEASURES 127 (2012); see also *Hezbollah Tries to Use Counterfeit Medications as a Terrorist Weapon*, MISSING PEACE, <http://missingpeace.eu/en/2013/06/hezbollah-tries-to-use-counterfeit-medications-as-a-terrorist-weapon> (last visited Nov. 10, 2013).

1. Hizballah

Hizballah received its FTO designation in October of 1997.<sup>16</sup> The Department of State characterizes Hizballah as a radical Shia based group, which takes its ideological inspiration from the Ayotollah Kohmeini.<sup>17</sup> Hizballah is often termed the “long arm of Iran.”<sup>18</sup> Most recently, the UN Special Tribunal for Lebanon indicted members of Hizballah for the assassination of Lebanese Prime Minister Rafiq al-Hariri, killed by a car bomb in Beirut in 2005.<sup>19</sup>

2. *Real Irish Republican Army (Real IRA)*

The Real IRA received its FTO designation in May of 2001 after forming in 1997 with the express purpose of “removing British forces from Northern Ireland and unifying Ireland.”<sup>20</sup> Located in Northern Ireland, the Real IRA is a paramilitary group whose purpose is to reunite “Ireland’s 32 counties under an independent Republic of Ireland.”<sup>21</sup> It is now believed the RIRA is splintering, focusing more on soft targets while attempting to regroup.<sup>22</sup> Most recently, in March 2013, local authorities foiled an attempted mortar attack by RIRA.<sup>23</sup>

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16. See *Foreign Terrorist Organizations*, *supra* note 8.

17. *Id.*

18. See *Iran & Hezbollah Axis of Terror—A Worldwide Threat*, IDF BLOG (Oct. 8, 2013), <http://www.idfblog.com/hezbollah/2013/10/08/iran-hezbollah-axis-terror-worldwide-threat/>; see also Attila Somflavi, *Official: Hezbollah Attack More Dangerous than Iran Missiles*, YNET NEWS (Jun. 8, 2012), <http://www.ynetnews.com/articles/0,7340,L-4265026,00.html>.

19. See Leena Saidi and David Stout, *Huge Car Bomb Kills Lebanon’s Former Prime Minister*, N.Y. TIMES (Feb. 14, 2005), <http://www.nytimes.com/2005/02/14/international/14cnd-beirut.html>; see also Martin Chulov, *UN Court Indicts Four Hezbollah Members Over Hariri Car Bomb*, GUARDIAN (Jun. 30, 2011) <http://www.theguardian.com/world/2011/jun/30/lebanon-indicts-hezbollah-hariri-car-bomb>; see also *The Prosecutor v. Mustafa Amine Badreddine, Salim Jamil Ayyash, Hussein Hassan Oneissi & Assad Hassan Sabra*, Case No. STL-11-01/I/PTJ, Indictment (Jun. 10, 2011), <http://www.stl-tsl.org/en/the-cases/stl-11-01/main/filings/indictments/f0007>.

20. *Foreign Terrorist Organizations*, *supra* note 8.

21. *Real Irish Republican Army (RIRA)*, START: NAT’L. CONSORTIUM FOR STUDY TERRORISM & RESPONSES TO TERRORISM, [http://www.start.umd.edu/start/data\\_collections/tops/terrorist\\_organization\\_profile.asp?id=91](http://www.start.umd.edu/start/data_collections/tops/terrorist_organization_profile.asp?id=91) (last visited Apr. 1, 2015)

22. *Id.*; Compare, e.g., Scott Stewart, *The Persistent Threat to Soft Targets*, STRATFOR GLOBAL INTELLIGENCE (Jul. 26, 2012), <http://www.stratfor.com/weekly/persistent-threat-soft-targets>.

23. Chris Buckler, *Londonderry Mortar Bomb Attack Averted*, BBC (Mar. 4, 2013), <http://www.bbc.co.uk/news/uk-northern-ireland-21656775>.

*B. Terrorist Financing*

The prevention of terrorist financing since 9/11 has proved to be quite daunting.<sup>24</sup> One reason is that some of these funds are smuggled via legitimate business networks and charities.<sup>25</sup> The U.S. government is adamant about “starving the terrorists of funding and shutting down the institutions that support or facilitate terrorism.”<sup>26</sup> As of 2005, the U.S. government has frozen nearly \$200 million in terrorist funds, though over 80% were frozen the first few months after 9/11.<sup>27</sup> Since this time, the U.S., in concert with 36 other countries, organized the Financial Action Task Force on Money Laundering (“FATF”).<sup>28</sup> The prime directive of FATF is to adopt a uniform set of standards regarding money laundering and terrorist financing, that encourage an effective implementation of legal, regulatory and operational measures for these actions which pose a threat to our financial systems.<sup>29</sup>

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24. Laura K. Donohue, *Anti-Terrorist Finance in the United Kingdom and United States*, 27 MICH. J. INT’L L. 303, 304 (2006); see also MARTIN A. WEISS, CONG. RESEARCH SERV., RS 21902, TERRORIST FINANCING: THE 9/11 COMMISSION RECOMMENDATION 3 (2005).
  25. John Roth et. al, National Commission on Terrorist Attacks Upon the United States: Monograph on Terrorist Financing 4, available at [http://govinfo.library.unt.edu/911/staff\\_statements/911\\_TerrFin\\_Monograph.pdf](http://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf); see also Judith Miller and Jeff Gerth, *A Nation Challenged: Al Qaeda; Hone Trade Said to Provide Funds and Cover to bin Laden*, N.Y. TIMES (Oct. 11, 2011), <http://www.nytimes.com/2011/10/11/world/nation-challenged-al-qaeda-honey-trade-said-provide-funds-cover-bin-laden.html> (stating that American officials have evidence that AQ’s \$ is coming from shops that sell honey); see also Amelia Hill, *Bin Laden’s \$20m African ‘Blood Diamond’ Deals*, GUARDIAN (Oct. 19, 2012) <http://www.theguardian.com/world/2012/oct/20/alqaida-terrorism>.
  26. Statement of Treasury Secretary Paul O’Neill on Signing of Executive Order Authorizing the Treasury Department to Block Funds of Terrorists and their Associates, (Sept. 24, 2001).
  27. WEISS, *supra* note 23, at 1.
  28. The FATF members are Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, India, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Norway, People’s Republic of China, Portugal, Russian Federation, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States; the two international organizations are the European Commission, and the Gulf Cooperation Council. There are also an array of international organizations and countries with “observer status.” For more information see *FATF Members and Observers*, FIN. ACTION TASK FORCE (2014), <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/>.
  29. *Who We Are*, FIN. ACTION TASK FORCE (2014), <http://www.fatf-gafi.org/pages/aboutus/whoweare/>.



Though lacking an enforcement mechanism, countries voluntarily agree to the following conditions, promulgated by FATF, in order to receive membership:

(1) [B]e fully committed at the political level to implement the 40 recommendations within a reasonable time frame (three years) and to undergo annual self-assessment exercises and two rounds of mutual evaluations; (2) be a full and active member of the relevant FATF-style regional body; (3) be a strategically important country; (4) have already made the laundering of the proceeds of drug trafficking and other serious crimes a criminal offense; and (5) have already made it mandatory for financial institutions to identify their customers and to report unusual or suspicious transactions.<sup>30</sup>

The recommendations of FATF have been adopted by the UN,<sup>31</sup> and affirmed by the G-20 in their annual conferences located in Pittsburgh, Seoul, and Cannes.<sup>32</sup> While unable to actively enforce their regulations—due to a lack of proper regulating body, and no true enforcement mechanism—FATF has made meaningful progress since its inception.<sup>33</sup>

Before delving into how this illicit money is raised, and what is being done to thwart that fundraising, it is prudent to understand what the money raised is used for, and just how little money is truly needed to organize and create the chaos on which these organizations thrive, thus exhibiting the great impact the sale of counterfeit medicine has.<sup>34</sup> The funding of terrorist organizations can generally be categorized into two general categories: operational costs, and organizational costs.<sup>35</sup>

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30. JAMES K. JACKSON, CONG. RESEARCH SERV., RS 21904, THE FINANCIAL ACTION TASK FORCE: AN OVERVIEW 1.

31. See S.C. Res. 1617, U.N. Doc. S/RES/1617 (Jul. 29, 2005).

32. See generally *Cannes Summit Final Declaration—Building on Our Common Future: Renewed Collective Action for the Benefit of All*, UNIV. TORONTO G20 INFO. CTR. (Nov. 4, 2011), <http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html> [hereinafter G-20 Cannes].

33. Jackson, *supra* note 29, at 4 (showing that since its inception, only two countries have been deemed “non-cooperative countries” [North Korea and Iran] and sixteen countries where progress is still needed to meet the mutual cooperativeness FATF seeks [Cuba, Bolivia, Ethiopia, Ghana, Indonesia, Kenya, Myanmar, Nigeria, Pakistan, São Tomé and Príncipe, Sri Lanka, Syria, Tanzania, Thailand, and Turkey]).

34. FIN. ACTION TASK FORCE, TERRORIST FINANCING 4 (2008) at 4, available at <http://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Terrorist%20Financing%20Typologies%20Report.pdf>.

35. *Id* at 7.

1. Operational Costs

The amount of money needed to carry out an attack varies based on a multitude of factors, some of which include: location, method, and personnel. An indication of the estimated costs of attacks can be detailed in the following table:

**Table 1: The direct attack costs of a terrorist conspiracy**

Attack	Date	Estimated cost <sup>3</sup>
London transport system	7 July 2005	GBP 8 000 <sup>4</sup>
Madrid train bombings,	11 March 2004	USD 10 000
Istanbul truck bomb attacks,	15 & 20 November 2003	USD 40 000
Jakarta JW Marriot Hotel bombing	5 August 2003	USD 30 000
Bali bombings	12 October 2002	USD 50 000
USS Cole attack	12 October 2000	USD 10 000
East Africa embassy bombings,	7 August 1998	USD 50 000

Analyzing the table, it is apparent that the relative cost of financing a terror operation is quite low vis-à-vis the yield for injury.<sup>36</sup> In just two attacks, the infamous London Tube and Madrid Train bombings, nearly 2400 individuals were injured, and over 210 lost their lives.<sup>37</sup> Counter that figure with the combined expenditure to carry out the attack, roughly a mere \$14,000<sup>38</sup> and it is quite apparent why tracking and stopping these small monetary operations becomes quite tricky.<sup>39</sup> Other operational costs include per diems to the martyrs, communication protocols, and training.<sup>40</sup> Quantifying

36. *Compare e.g. 7 July Bombings*, BBC NEWS (2011), [http://news.bbc.co.uk/2/shared/spl/hi/uk/05/london\\_blasts/what\\_happened/html/russell\\_sq.stm](http://news.bbc.co.uk/2/shared/spl/hi/uk/05/london_blasts/what_happened/html/russell_sq.stm) (claiming 26 deaths and 340 injuries) *with The Ruling Excludes ETA Condemns Zougam Trashorras and El-Gnaoui and acquits "The Egyptian,"* LA VERDAD, <http://especiales.laverdad.es/juicio-11m/> (last visited Oct. 11, 2013) (asserting that 192 casualties and 2050 injuries); *see also* Indictment of Spanish Bombers, Sumario N 20/2004 (Jul. 5, 2006) *available at* [http://www.elmundo.es/documentos/2006/04/11/auto\\_11m.html](http://www.elmundo.es/documentos/2006/04/11/auto_11m.html).

37. *See 7 July Bombings*, *supra* note 36; *see* LA VERDAD, *supra* note 26.

38. *See 2005 FX Daily Forex Rates U.S. Dollar £ GBP € Euro*, TAX FREE GOLD <http://taxfreegold.co.uk/2005forexrates.html> (last visited Apr. 1, 2015).

39. *See* Robin Finn, *Cutting Off Terror's Money Supply*, N.Y. TIMES, Aug. 17, 2007, at B4 (comparing going after the small money operations to "trying to shut down the phone company by going to people's homes and apartments and individually smashing their phones instead of destroying the satellites and cables that conduct the signals.")

40. FIN. ACTION TASK FORCE, *supra* note 33 at 8.

training to expense per operation can be quite perplexing.<sup>41</sup> Quantifying an exact amount is nearly impossible, though it may be less than one would think if groups with similar ideologies share the brunt of expenses.<sup>42</sup>

## 2. Organizational Costs

Beyond the assumed costs of running a clandestine operation, recruitment, planning, and procurement represent the largest tranche of necessary financial resources.<sup>43</sup> Take, for example, Hamas. Hamas has a tripartite structure composed of a social welfare branch, a political branch, and a military division.<sup>44</sup> Funding for these operations can be quite burdensome.<sup>45</sup> While some of the military division's costs can be accounted for under the operational category, such as guerilla and terrorist activities, the public face of the Hamas, though formally a FTO, engenders many other expenses. Roughly 50% of Hamas' annual budget (nearly \$450 million) is dedicated to these operating expenses.<sup>46</sup> While Hamas stands as an outlier<sup>47</sup> it is estimated that Hizballah's operating budget is around \$200-\$500 million with roughly \$100 million coming from the Iranian government.<sup>48</sup> Further, as of 2011, the Taliban was estimated to take in approximately \$560 million annually,<sup>49</sup> and the UN revealed that

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41. See TERRORIST FIN. STAFF, NAT'L COMM. ON TERRORIST ATTACKS UPON U.S., AL QAEDA'S MEANS AND METHODS TO RAISE, MOVE, AND USE MONEY 19, available at [http://govinfo.library.unt.edu/911/staff\\_statements/911\\_TerrFin\\_Ch2.pdf](http://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Ch2.pdf) (estimating overhead at approximately \$30m for all).
  42. FIN. ACTION TASK FORCE, *supra* note 33 at 8.
  43. *Id.*
  44. Levitt, *supra* note 1.
  45. See Omar Shaban, *Hamas Budget a Small Step Toward Transparency*, AL-MONITOR (Jan. 21, 2013), <http://www.al-monitor.com/pulse/iw/contents/articles/opinion/2013/01/hamas-budget-transparency.html> (noting that until 2007 funding of Hamas equaled roughly \$4-5m per month).
  46. *Id.*
  47. Besides being a radical terror organization, Hamas is also the controlling government in the Gaza Strip. See *Gaza Strip*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/gz.html> (last visited Apr. 1, 2015).
  48. See *Hezbollah*, DISCOVER THE NETWORK, <http://www.discoverthenetworks.org/printgroupProfile.asp?grpId=6256> (last visited Jan. 21, 2014).
  49. See *The World's 5 Richest Terrorist Groups*, MONEY JIHAD, <http://moneyjihad.wordpress.com/2011/08/29/the-worlds-5-richest-terrorist-groups/> (Aug. 29, 2011).

\$70-\$100 million is approximately al-Shabaab's revenues.<sup>50</sup> Compare those figures with estimates recently from Forbes, and other outlets, that estimate al Qaeda is actually bankrupt.<sup>51</sup> Due to continued constraints on its funding pipeline by the U.S. and allies, "al Qaeda's home office [is] no longer able to subsidize operations."<sup>52</sup>

### 3. How Do Terrorists Finance Their Operations?

Unlike normal businesses, terror organizations do not have the luxury of simply using earned income, or revenue, to finance their counterfeiting operations directly. This is due to a few reasons, the last of which is United States Federal banking law.<sup>53</sup> Instead, there are two main categories that define how terror groups fundraise: moving money, and earning money. This section will analyze the ways in which terror organizations move and earn their money.

#### *a. Moving Money*

The process in which terrorists, or other nefarious persons, turn dirty/tainted money—obtained from their less than legal activities—into “clean” usable money is known as laundering.<sup>54</sup>

Terrorists launder ‘clean’ money by moving and storing it for the purposes of financing training and future operations. The lack of physical evidence in mobile transactions, and the ability to easily move and store money through various New Payment Methods, should be of great concern to the law enforcement community.<sup>55</sup>

There are a few forms of “moving money” that the terror organizations can employ. A classical Islamic law, dating back to the

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50. See Barbara Starr, *U.N. Report: Al-Shabaab is Raising Millions Illegally in Somalia*, CNN, <http://edition.cnn.com/2011/WORLD/africa/08/05/somalia.al.shabaab.report/> (Aug. 5, 2011).

51. See Nathan Vardi, *Is Al-Qaeda Bankrupt?*, FORBES <http://www.forbes.com/forbes/2010/0301/terrorism-funds-finance-osama-al-qaeda-bankrupt.html> (Feb. 21, 2010); see also Bruce Watson, *Is Al Qaeda Bankrupt? Authorities Cripple Group by Cutting Off Money Supply*, DAILYFINANCE, <http://www.dailyfinance.com/2010/02/14/authorities-are-crippling-al-qaeda-by-cutting-off-its-money-supp/> (Feb. 14, 2010); Compare with Stephen Gandel, *Will Osama's Death Bankrupt al-Qaeda?*, TIME, <http://business.time.com/2011/05/02/will-osamas-death-bankrupt-al-qaeda/> (May 2, 2011).

52. Vardi, *supra* note 51.

53. See 18 U.S.C § 1956.

54. See Jenni Hesterman, *Mobile Payments a New Way for Terrorists and Criminals to Move Money*, IN HOMELAND SECURITY, [http://inhomelandsecurity.com/mobile\\_payments\\_a\\_new\\_way\\_for/](http://inhomelandsecurity.com/mobile_payments_a_new_way_for/).

55. *Id.*

8<sup>th</sup> century, dictates a form of transferring money known as Hawala.<sup>56</sup> Formally, “Hawala is an alternative or parallel remittance system” which operates outside, or occasionally parallel to traditional western banking systems.<sup>57</sup> What makes Hawala so difficult to track and prevent is the complicated manner in which Hawala transactions occur. There are no receipts, the bookkeeping is in aggregate, not in terms of individual remittances, and while money changes hands domestically, the passing of funds internationally is not quite as obvious.<sup>58</sup> In many cases, the money does not need to transfer from broker to fulfiller as the fulfiller can be simply repaying a current debt.<sup>59</sup> Because of these “off the book” dealings, tracking is near impossible unless wiretaps are used or tracking systems are in place to monitor couriers. As such, a key attractiveness to Hawala is anonymity.<sup>60</sup> Since 9/11, the United States and other governments have been on particularly high alert for illicit trading via Hawala networks, in some cases shutting down networks, and/or issuing sanctions, or advisory statements.<sup>61</sup> But, while many Western countries are increasingly suspicious of Hawala transactions, a large portion of the Western world still allows for Hawala transactions.<sup>62</sup>

With the increased prevalence of new and novel payment methods, at least one analyst believes “[w]e do not have another year to waste.”<sup>63</sup> In the digital age, it is increasingly difficult to “follow the

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56. See Patrick M. Jost, *The Hawala Alternative Remittance System and its Role in Money Laundering*, FIN. CRIMES ENFORCEMENT NETWORK, <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/FinCEN-Hawala-rpt.pdf> at 15.

57. *Id.* at 5.

58. *Id.* at 7.

59. *Id.*

60. *Id.* at 9. For a more thorough examination of the ramifications of Hawala in regards to money laundering see *id.* at 12–13.

61. See *United States v. Banki*, 2010 WL 1459442 (S.D.N.Y. Apr. 6, 2010) (analyzing whether Hawala transactions to Iran violated U.S. sanctions against Iran); see also *Informal Value Transfer Systems*, FIN. CRIMES ENFORCEMENT NETWORK (Sept. 1, 2010), [http://www.fincen.gov/statutes\\_regs/guidance/html/FIN-2010-A011.html](http://www.fincen.gov/statutes_regs/guidance/html/FIN-2010-A011.html), (examining the issues with Hawala or informal value transfer systems).

62. See e.g., WORLD BANK & INT’L MONETARY FUND, *INFORMAL FUNDS TRANSFER SYSTEMS: AN ANALYSIS OF THE INFORMAL HAWALA SYSTEM* 33-40 (2003) (explaining the variety of countries which regulate, administrate, and ban Hawala financing).

63. See Rachel Ehrenfeld & John Wood, *How Terrorists Send Money*, UNITED PRESS INT’L, [http://www.spacewar.com/reports/How\\_Terrorists\\_Send\\_Money\\_999.html](http://www.spacewar.com/reports/How_Terrorists_Send_Money_999.html).

money[.]” when these m-payments are used.<sup>64</sup> This gives terrorists and illicit financiers a remarkable advantage.<sup>65</sup> Technological advancements have made constricting the channels of illicit banking increasingly difficult. Take for example, mobile payment systems.<sup>66</sup> Recently, Square, a mobile payment aggregator, released a product called Square Cash.<sup>67</sup> The technology allows users to seamlessly transfer money using an app or email.<sup>68</sup> While still requiring a debit card, no further information is needed.<sup>69</sup> While mobile payment systems<sup>70</sup> “M-payment” is not new, it is presenting additional challenges to governments, regulators, law enforcement, as well as the M-payment industry in regards to delivering a safe payment system while limiting the threat of money laundering, and criminal/terrorist activity.<sup>71</sup> In March of 2008, the U.S. Department of State issued a statement detailing mobile payments and their increased threat for

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64. See Bureau of Int’l Narcotics & Law Enforcement Aff., *Mobile Payments—A Growing Threat*, U.S. STATE DEP’T (Mar. 2008), <http://www.state.gov/j/inl/rls/nrcrpt/2008/vol2/html/101346.htm> [hereinafter Int’l Narcotics Control Strat. Rep.]. For a further explanation of “m-payments” see generally H. Paul Leyva, J.D., *M-Payment: A Threat to Anti-Money Laundering*, VT. B.J., Fall 2008, at 62, 63
65. Int’l Narcotics Control Strat. Rep., *supra* note 64 ; see also Angela Angelovska-Wilson; Jaimie, Feltault, *M-Payments: The Next Payment Frontier—Current Developments and Challenges in International Implementation of M-Payments*, 8 J. INT’L BANK. L. & REG. 575, 575-93 (2007) (detailing m-payments)
66. See e.g. Salvador Rodriguez, *Square Cash for Sending Money: How It Stacks Up Against Rivals*, L.A. TIMES (Oct. 17, 2013), <http://www.latimes.com/business/technology/la-fi-tn-square-cash-comparison-20131016,0,2453599.story#axzz2kIKLJTBg> (showcasing various mobile payment systems).
67. Square is a merchant services aggregator—also known as purchase aggregator—and mobile payment software developer and hardware producer. Square’s products are used in a range of small to midsize boutiques. For more information on Square and its products, see SQUARE, <https://squareup.com>.
68. *Id.*
69. Int’l Narcotics Control Strat. Rep., *supra* note 64.
70. Jenni Hesterman, *Mobile Payments a New Way for Terrorists and Criminals to Move Money*, IN HOMELAND SECURITY (Aug. 27, 2008), [http://inhomelandsecurity.com/mobile\\_payments\\_a\\_new\\_way\\_for/](http://inhomelandsecurity.com/mobile_payments_a_new_way_for/) (defining mobile payments or m-payments as “point-of-sale cash transactions made through a mobile device such as cell phone or personal data assistant.”).
71. See John A. Cassara, *How M-Payments Might Be the Global Money Laundering Machine of Criminals’ Dreams*, SAS (Jun. 17, 2013), [http://www.sas.com/en\\_us/insights/articles/risk-fraud/m-payments-machine-criminals-dreams.html](http://www.sas.com/en_us/insights/articles/risk-fraud/m-payments-machine-criminals-dreams.html).

terror activity.<sup>72</sup> It is estimated that the remittances of global mobile payment exceed two hundred and fifty billion dollars annually.<sup>73</sup> With the prevalence of these mobile payment systems, proceeds of crime or contributions to terrorist organizations can now be transmitted via mobile or wireless networks. Due to these transfers, nefarious groups and individuals avoid the risk of physical cash movement, thus bypassing financial reporting requirements, and gaining an advantage via the swift remittance of currency across a country or around the world.<sup>74</sup>

*b. Earning Money*

To fund the activities of a terror organization, money comes from a variety of avenues.<sup>75</sup> Three leading categories are front companies, charities, and illegal activity.<sup>76</sup> Front companies are legitimate business owned and operated for legitimate purposes, but their proprietors or investors often are nefarious individuals.<sup>77</sup> Charities at one point were the largest source of terrorist funding and the “funds transferred to terrorists are often raised legally and only acquire their relationship to terrorist financing through subsequent money laundering.”<sup>78</sup> In the Islamic world alone there are thousands of charities, though it is estimated the funding is channeled through a few hundred.<sup>79</sup> Many terror organizations raise funds with the express intent of supporting terrorists; while others seek to promote their religion – Islam – through legitimate programs, but are coopted by jihadists who subsequently consume the funds to promote their own radical cause.<sup>80</sup> Further illustrating this point is the case of Holy Land Foundation for Relief and Development.<sup>81</sup> In July of 2004, the U.S.

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72. Int’l Narcotics Control Strat. Rep., *supra* note 64.

73. *Id.*

74. *Id.*

75. See Eben Kaplan, *Tracking Down Terrorist Financing*, COUNCIL FOR REL. (Apr. 4, 2006), <http://www.cfr.org/terrorist-financing/tracking-down-terrorist-financing/p10356>.

76. *Id.*

77. See *id.* at 2 (explaining how Osama Bin Laden allegedly owned a “string of retail honey shops throughout the Middle East and Pakistan” which, among selling honey, was “used to conceal shipments of money and weapons.”); see also WEISS, *supra* note 23, at 3.

78. WEISS, *supra* note 23 at 3. see also Kaplan, *supra* note 75, at 2.

79. Kaplan, *supra* note 75 at 2.

80. *Id.*

81. See *United States v. El-Mezain*, 664 F.3d 467 (5th Cir. 2011), as revised (Dec. 27, 2011), cert. denied, 133 S. Ct. 525, 184 L. Ed. 2d 338 (U.S. 2012) and cert. denied, 133 S. Ct. 525 (U.S. 2012)

government indicted Holy Land Foundation for Relief and Development, the largest Muslim charity in the United States, for providing financial support to Hamas.<sup>82</sup> Its leaders were accused of materially supporting a FTO, among other charges.<sup>83</sup> The charity's assets were frozen shortly after the 9/11 attacks.<sup>84</sup> Allegedly, over \$57 million in donations had been sent to "Hamas-controlled organizations and programs in the West Bank and Gaza." Further substantiating the naivety upon donors, the charities donors asserted a lack of knowledge as to the claim that their contributions were being diverted to terrorism.

*C. Terrorism and Counterfeit Medicine*

One of the principal features in the U.S. War On Terror ("WOT") is the Joint Terrorism Task Force ("JTTF"). This "Task Force" is a fairly recent phenomenon where the FBI and participating agencies act in concert to either thwart attacks or solve cases.<sup>85</sup> The JTTF, is comprised of over 682 State, Federal, and Local agencies.<sup>86</sup> In 2006, a Joint Terrorism Task Force ("JTTF") indicted nineteen individuals in Detroit that were tied to a cartel whose principal purpose was fundraising for the Lebanese terrorist organization Hizballah.<sup>87</sup> Historically, much of the focus for these cartels has been linked to cigarettes<sup>88</sup> and other goods.<sup>89</sup> Similarly, in 2010, Lebanese police uncovered a medical counterfeiting operation in Lebanon, run by Hizballah.<sup>90</sup> It is estimated that from this cartel alone, over "10

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82. See Laurence Arnold, *Holy Land, a Muslim Charity, Accused of Aiding Terror*, BLOOMBERG, <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aXJstxtVhcZ8> (July 27, 2004).

83. *Id.*

84. *Id.*

85. See The Joint Terrorism Task Force and *National Joint Terrorism Task Force*, NJTTF, <http://www.gwumc.edu/hspi/policy/NJTTF%20Outreach%20Brief.pdf>.

86. For a detailed list see *Id.* at p. 10.

87. See *Nineteen Charged With Racketeering to Support Terrorist Organization*, PR NEWSWIRE (Mar. 29, 2006), <http://www.prnewswire.com/news-releases/nineteen-charged-with-racketeering-to-support-terrorist-organization-70737752.html>.

88. *Id.* See also *United States v. Hammoud*, 483 F. App'x 865, 866 (4th Cir. 2012) (sentencing Hammoud to 155 years for selling contraband cigarettes and providing the windfall of such to Hezbollah.)

89. See Jay Fraser, *Counterfeiting—A Matter of National Security*, CTR. FOR THREAT AWARENESS THREAT WATCH (May 12, 2008), <http://threatswatch.org/rapidrecon/2008/05/counterfeiting-a-matter-of-nat/>.

90. Missing Peace, *supra* note 2.



tons of hazardous pills” have flooded the market, and Hizballah has benefitted in the range of “hundreds of millions of dollars.”<sup>91</sup>

“Illegal drug trafficking and terrorism cannot be viewed as a victimless crime.”<sup>92</sup> In South America, despite decade’s worth of attempts to thwart its growth, “the production and trafficking of popular illicit drugs—cocaine, marijuana, opiates, and methamphetamine” creates a multi-billion dollar illicit market.<sup>93</sup> Amongst the facilitation, promulgation, and production of illegal drugs and their use, these markets, and the cartels within, create the nexus of fragile States, and lead to the growth of corrupt governments and officials.<sup>94</sup> Many of these South American cartels are described as the “greatest organized crime threat to the United States.”<sup>95</sup> Many of these organizations can, on their own facet, be labeled terrorists.<sup>96</sup> For example, FARC, and Sendero Luminosos contain paramilitary wings that create havoc and chaos amongst their countries, villages, and farmers within.<sup>97</sup> Additionally, “[s]ome traffickers based in the tri-border area have ties to radical Islamic terrorist groups such as Hizballah.”<sup>98</sup>

Prior to September 11<sup>th</sup>, few Americans realized the connection between drug money and how it has been used to fund terrorism.<sup>99</sup> Besides the obvious concerns of illicit drug trading, narco-terror, and traditional terror organizations forming relationships in Latin America pose numerous risks to the United States as well as the globe. One

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91. *Id.*

92. See Press Release, Department of Justice, DEA and Giuliani Open National Museum Exhibit on Drugs and Terrorism (September 3, 2002) available at <http://www.justice.gov/dea/pubs/pressrel/pr090302p.html>

93. See CLARE RIBANDO SEELKE ET AL., LATIN AMERICA AND THE CARIBBEAN: ILLICIT DRUG TRAFFICKING AND U.S. COUNTERDRUG PROGRAMS at 1, available at [http://assets.opencrs.com/rpts/R41215\\_20100430.pdf](http://assets.opencrs.com/rpts/R41215_20100430.pdf)

94. *Id.*

95. *Id.*

96. For the purpose of this Note, *terrorism* shall follow the definition set by Congress for the Secretary of State when preparing the annual country reports on terrorism: “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.” 22 U.S.C. § 2656f(d)(2) (2004).

97. SEELKE, *supra* note 93 at 5.

98. Edwin Mora, *Hezbollah, Hamas Raise Money for ‘Terrorist Activities’ From Drug Trade in South America*, Congressional Research Service Says, CNSNEWS.COM (Jun. 8, 2010), <http://cnsnews.com/node/67377>.

99. Fraser, *supra* note 89.

such example is the possibility of terrorists being smuggled in via the Mexican border.<sup>100</sup>

### III. CURRENT FRAMEWORK OF COUNTERFEIT MEDICINE

In the United States, numerous agencies act both in unison and on their own volition to combat counterfeit medicine. While these agencies act to thwart, and prevent the dissemination of counterfeit medicine, they also act to promulgate information.<sup>101</sup> One pitfall of a concert of agencies acting is that “[t]he ‘data’ begins to resemble a house of mirrors as each group cites the other as the source of the information.”<sup>102</sup> Before exploring the various levels of action, some background information is needed. According to the WHO, counterfeit medicine accounts for nearly 10% of readily available medicine.<sup>103</sup> One staggering statistic, promulgated by the WHO, posits \$32 billion annual estimated revenue from counterfeit medicines

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100. *See Feds Warn Of Terrorists Sneaking Into U.S. Through Mexico*, JUD. WATCH BLOG (May 8, 2010), <http://www.judicialwatch.org/blog/2010/05/feds-warn-terrorists-sneaking-through-mexico/> (confirming that an Al Qaeda terrorist is planning to sneak into the U.S. through Mexico, and furthering previous statements that Islamic terrorist and Mexican drug cartels are teaming up to finance terror in the Middle East and perpetrate attacks against America); *see also* Joe Wolverton II, *Terrorist Smuggling Into U.S. a Real Concern*, NEW AMERICAN (Jul. 30, 2010), <http://www.thenewamerican.com/usnews/crime/item/5961-terrorist-smuggling-into-us-a-real-concern> (confirming “that aliens with ties to Hezbollah, Hamas, and al-Qaeda have been arrested by local law enforcement and Border Patrol agents while attempting to cross into” Texas).
101. For example, the FDA and other organizations have online bulletins listing drugs that are currently recalled or banned, as well as issue Press Releases stating similar findings. *See generally Recalls, Market Withdrawals, and Safety Alerts*, U.S. FOOD & DRUG ADMIN. (Apr. 30, 2015), <http://www.fda.gov/Safety/Recalls/> (providing information on all drugs with safety concerns and the reasons for the recalls).
102. *See* Kevin Outterson & Ryan Smith, *Counterfeit Drugs: The Good, the Bad and the Ugly*, 16 ALB. L.J. SCI. & TECH. 525, 528 (2006)
103. *See* World Health Org., Fact Sheet No. 275, Substandard and Counterfeit Medicines (Nov. 2003), *available at* <http://www.who.int/mediacentre/factsheets/2003/fs275/> (reporting that the FDA estimates that 10% of the global medicine market is made up of counterfeits [hereinafter WHO 275]; *see also* Press Release, Int’l Council of Nurses, Nurses Raise the Alarm: Counterfeit Medicines Kill (May 11, 2005), *available at* [http://www.icn.ch/PR09\\_05.htm](http://www.icn.ch/PR09_05.htm) [hereinafter Nurses Raise the Alarm]; *see also* Press Release, World Health Organization, WHO and Partners Accelerate Fight Against Counterfeit Medicines, *available at* <http://www.who.int/mediacentre/news/releases/2006/pr69/en/> [hereinafter WHO Counterfeit Medicine Press Release] (claiming “Up to 50% of medicines sold through rogue web sites are fake.”).

globally.<sup>104</sup> Further promoting this “house of mirrors”<sup>105</sup> attitude is the problem wherein the FDA cites to the WHO numbers.<sup>106</sup> In 2008, a publication by the International Federation of Pharmaceutical Manufacturers Association indicated counterfeit drugs represent a loss of over \$6 billion in sales per annum.<sup>107</sup> Considering the enormous loss in sales, combined with the amount of money these illegal manufacturers are making, foreign and domestic initiatives are currently in place to stymie both the manufacturing processes as well as the distribution channels. Domestically, the Food and Drug Administration (“FDA”), Federal Bureau of Investigation (“FBI”), and the Office of the United States Trade Representative in concert with private pharmaceutical companies, lead the charge. Internationally, the WHO and its subsidiary IMPACT attempt to obstruct the dissemination of these illicit counterfeit pharmaceuticals.

*A. Domestic Impediments to Counterfeit Medicine*

The United States, due in part to housing fifty-percent of the world’s leading pharmaceutical companies, is extremely rigorous in their prevention of counterfeit pharmaceuticals.<sup>108</sup> Led in part by the U.S.’s strong intellectual property (“IP”) protection, the first defense against IP infringement is the USTR.<sup>109</sup> Meanwhile, one facet of the FDA’s mission is, in regards to drugs, medical devices, foods, blood and biological products, to investigate counterfeiting.<sup>110</sup> Finally, in so far as public impediments are concerned, the FBI and U.S. Customs

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104. WHO Counterfeit Medicine Press Release, *supra* note 103.

105. Outterson & Smith, *supra* note 102, at 528.

106. *Compare e.g., Counterfeit Drugs Questions and Answers*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/oc/initiatives/counterfeit/qa.html> (last visited Oct. 21, 2013) (“It is estimated that upwards of 10% of drugs worldwide are counterfeit, and in some countries more than 50% of the drug supply is made up of counterfeit drugs.”), *with* WHO Fact Sheet, *supra* note 103 (“[E]stimates put counterfeits at more than 10% of the global medicines market.... In some countries, the figure [of counterfeit medicines consumed in developing countries] is thought to be as high as 50%.”).

107. Office of The Coordinator For Counterterrorism, *supra* note 8

108. *See* Rinu Chacko, *Top 10 World’s Largest Pharmaceutical Companies 2013*, LIST DOSE (Jun. 29, 2013), <http://listdose.com/top-10-worlds-largest-pharmaceutical-companies-2013/>.

109. *See* U.S. TRADE REP., <http://www.ustr.gov> (last visited Jan. 12, 2014). The USTR consults closely with the United States Congress in determining its priorities and strategies and consults with the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO) to effect this change.

110. *See* Maria Nelson et. al., *Counterfeit Pharmaceuticals: A Worldwide Problem*, 96 TRADEMARK REP. 1068, 1076 (2006)

and Border Protection (CBP) contribute in obstructing drug imports at U.S. borders and within the country.<sup>111</sup>

1. The USTR and Counterfeit Medicine

One of the USTR's most significant tools is the Special 301 Report, which allows the USTR to issue an annual report specifying countries that deny effective protection of IP rights or deny access to information regarding IP rights.<sup>112</sup> The power to issue this 301 Report is conferred unto the USTR by Congress.<sup>113</sup> In order to provide the most effective guidance, the USTR designates the most egregious offenders as "priority" countries.<sup>114</sup> Under the Act, "priority" is defined as:

[T]hose foreign countries - (A) that have the most onerous or egregious acts, policies, or practices that (i) deny adequate and effective intellectual property rights, or (ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection, (B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and (C) that are not (i) entering into good faith negotiations, or (ii) making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of intellectual property rights.<sup>115</sup>

This designation is particularly important as being designated a priority "warns a country of U.S. concerns and also warns companies based in the United States, or other developed countries that intend to do business abroad, that their intellectual property rights are not likely to be satisfactorily protected."<sup>116</sup> Additionally, a label of priority is used to pressure non-complying countries to adopt stricter IP

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111. *Id.*

112. *See The Work of USTR, Intellectual Property*, U.S. TRADE REP. (Jul. 8, 2004), [http://www.ustr.gov/Trade\\_Sectors/Intellectual\\_Property/The\\_Work\\_of\\_USTR\\_-\\_Intellectual\\_Property.html](http://www.ustr.gov/Trade_Sectors/Intellectual_Property/The_Work_of_USTR_-_Intellectual_Property.html).

113. For more information *see generally* 19 U.S.C. § 2242 (stating that the USTR must by April 30 of each year: "identify (1) those foreign countries that (A) deny adequate and effective protection of intellectual property rights, or (B) deny fair and equitable markets access to United States persons that rely upon intellectual property protection, and (2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.")

114. *Id.*

115. 19 U.S.C. § 2242(b).

116. Nelson, *supra* note 110, at 1075.

protection, and ultimately compliance with the USTR's goals.<sup>117</sup> Another program the USTR has instituted to thwart counterfeiting is the "Strategy Targeting Organized Piracy" (or "STOP!") Initiative.<sup>118</sup> Under STOP!, the USTR works to dismantle criminal enterprises that steal IP by empowering law enforcement authorities (FBI, Police, U.S. Attorneys, District Attorneys) to arrest and prosecute offenders.<sup>119</sup>

As mentioned previously, the work of the USTR is just one aspect in a multi-faceted domestic approach to thwart counterfeit medicine, and ultimately terrorism via counterfeit medicine.

## 2. The FDA and Counterfeit Medicine

Responding to the evolving problem of counterfeit drugs, the FDA created a mechanism for thwarting counterfeiting – the result was the creation of an FDA Counterfeit Drug Task Force.<sup>120</sup> Through the FDA's Office of Criminal Investigations, the FDA has taken a proactive stance on identifying the component suppliers thereby availing themselves the opportunity to seize the counterfeit drugs prior to their reaching consumers.<sup>121</sup> The FDA estimates that for every dollar a consumer spends, twenty-five cents are investigated by the FDA-OCI.<sup>122</sup> Recently, the FDA proposed new measures to protect the nation's food supply.<sup>123</sup> These rules stem from the Food

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117. See generally Eric H. Smith, *Copyright Industries Urge Greater Global Protection of American Jobs and Exports Threatened by Piracy*, INT'L INTELLECTUAL PROP. ALLIANCE (Feb. 18, 2010), <http://www.iipa.com/pdf/IIPASpecial3012010SubmissionPressReleaseFinal011810.pdf>.

118. See *STOP Initiative Targets Piracy, Counterfeit Trade*, U.S. DEP'T OF STATE (Oct. 4, 2004), <http://usinfo.state.gov/ei/Archive/2004/Oct/05-501889.html>; see also *Trade Remedy Investigations*, U.S. INT'L TRADE COMM., [http://www.usitc.gov/trade\\_remedy/int\\_prop/index.htm](http://www.usitc.gov/trade_remedy/int_prop/index.htm) (last visited Jan. 17, 2014).

119. *STOP Initiative*, *supra* note 118.

120. See FDA, *COMBATING COUNTERFEIT DRUGS 2* (2004), available at <http://www.fda.gov/counterfeit/>.

121. See *Combating Counterfeit Drugs: A Report of The Food and Drug Administration Annual Update*, U.S. FOOD & DRUG ADMIN. (May 18, 2005), <http://www.fda.gov/oc/initiatives/counterfeit/update2005.html>. For more information on where the FDA derives its investigative power see 18 U.S.C. § 1518 (1996), 18 U.S.C. § 2314 (2013), 18 U.S.C. § 2320 (2012).

122. See *Inspections, Compliance, Enforcement, and Criminal Investigations*, U.S. FOOD & DRUG ADMIN. (Jan. 28, 2015), <http://www.fda.gov/ICECI/CriminalInvestigations/ucm123062.htm>.

123. See *Focused Mitigation Strategies To Protect Food Against Intentional Adulteration*, FED. REG., <https://www.federalregister.gov/articles/2013/12/24/2013-30373/focused-mitigation-strategies-to-protect-food-against-intentional-adulteration>; see also Lynne Terry, *FDA Proposes*

Safety Modernization Act that President Obama signed in 2011.<sup>124</sup> Its purpose is to in part, require large food plants to have a defense plan to protect vulnerabilities in their processing apparatus.<sup>125</sup> This is significant as this protects against an area in which terrorists can assault vis-à-vis attacking the general populous.

### 3. The FBI and U.S. Customs and Counterfeit Medicine

Switching from regulatory and supply constraints to a more active and engaged role yields the actions of the FBI and U.S. Customs and Border Patrol (“CBP”). In regards to the CBP, their role in preventing counterfeit medicine, and terrorism, is attempting to thwart wrongdoers at the border. One way CBP thwarts wrongdoers is by analyzing all shipments for copyright/trademarks. By requiring this recordation, in conjunction with U.S. law, which requires owners of copyrights and trademarks record their rights, CBP officials can seize pirated or counterfeit goods at the borders.<sup>126</sup> While CBP is charged with preventing smuggling at the border, once these nefarious counterfeit products have entered the country the FBI is charged with sourcing them, and arresting the individuals involved.<sup>127</sup> In this capacity, their mission is to protect the public from the threat of these fake medications.<sup>128</sup> In their joint task force responsibilities, the FBI works closely with the WTO, FDA, and others, which has allegedly yielded a deterrent effect regarding the exploitation of counterfeit pharmaceuticals. In addition to working with foreign services, the FBI also works closely with local, and international, law enforcement to thwart would be criminals.<sup>129</sup>

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*Food Safety Rule to Thwart Terrorism*, OR. LIVE (Dec. 20, 2013), [http://www.oregonlive.com/health/index.ssf/2013/12/fda\\_proposed\\_food\\_safety\\_rule.html](http://www.oregonlive.com/health/index.ssf/2013/12/fda_proposed_food_safety_rule.html).

124. *See generally* 21 U.S.C §§ 301–399.

125. Terry, *supra* note 123.

126. *See* 19 C.F.R. § 133.1 *et seq.*, Customs Duties; Bureau of Customs and Border Protection, Dep’t of Homeland Security; Dep’t of the Treasury; Trademarks, Trade Names, and Copyrights. 19 C.F.R. § 133.22, Restrictions on importation of articles bearing copying or simulating trademarks, subsection (b), for instance, allows for denial of entry of any “articles of foreign or domestic manufacture imported into the United States bearing a mark or name copying or simulating a *recorded* mark or name” (emphasis added).

127. *See* ALBERT L. WERTHEIMER ET. AL, COUNTERFEIT MEDICINES: POLICY, ECONOMICS, AND COUNTERMEASURES 61 (2012).

128. *Id.*

129. *See* Press Release, FBI, Two Pakistani Nationals Indicted for Conspiring to Illegally Ship Pharmaceuticals into the U.S. (Nov. 7, 2012) <http://www.fbi.gov/washingtondc/press-releases/2012/two->

From the comprehensive analysis above, it appears the U.S. has an elaborate grasp on the counterfeit medicine problem. In reality, while the structure seems stable and concrete, it fails to address the more pressing issue – preventing the production and exploitation of counterfeit pharmaceuticals by international terror organizations.

#### IV. CRITIQUE OF CURRENT FRAMEWORK OF COUNTERFEIT MEDICINE AND SOLUTION

While the United States and International partners theoretically have an elaborate network of processes and agencies designed to prevent the promulgation of counterfeit pharmaceuticals, the reality is that most of the work occurs on U.S. soil. Though this ultimately protects the end-user, it fails to eradicate the source. Another key dilemma is the lack of a true coordinated effort to thwart this process. INTERPOL, IMPACT, FDA, and FBI task forces liaise between one another – which purportedly yields the sharing of data and vital mission planning. Until the U.S. and the rest of the world rid the “house of mirrors” concern, the prevention of the *War Through Pharmaceuticals* will continue to vastly lag behind the *War on Terror*. In this section, this Note will propose a solution to help fix this difficulty.

The international community, through a coordinated effort, can effectively prevent the dissemination of counterfeit pharmaceuticals. This proposal features two interdependent facets – an international task force, and an international database – that, in unison create an extremely effective solution to an extremely expensive and dangerous problem.<sup>130</sup>

##### *A. International Task Force*

One of the key difficulties surrounding IMPACT, and other international solutions, is the absence of a true enforcement apparatus.<sup>131</sup> In the United States, and many countries around the

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pakistani-nationals-indicted-for-conspiring-to-illegally-ship-pharmaceuticals-into-the-u.s

130. SEELKE, *supra* note 93, at 1.

131. See George F. Will, Opinion, *The Perils of “Legality,”* NEWSWEEK, Sept. 10, 1990, at 66 (exclaiming “[i]f international law is really law, who enacts, construes, adjudicates and enforces it? The phrase “international law” often is virtually an oxymoron. Law without a sword is mere words: lacking an enforcement mechanism soi-disant “law” is merely admonition or aspiration. Law must be backed by coercion legitimized by a political process.”) Cf. James G. Apple, *Enforcement Of International Law Is Not Dependent On A “Sword” Or Enforcement Mechanism*, AM. SOCIETY INT’L L. & INT’L JUD. ACAD. (2007) [http://www.judicialmonitor.org/archive\\_0207/generalprinciples.html](http://www.judicialmonitor.org/archive_0207/generalprinciples.html).

world, laws are obeyed because failure to abide leads to penalty—typically arrest or in the case of civil violations, fines; while internationally there is the pressure of the international community to contemplate, which may on its own pose a great enough stigma to deter behavior.<sup>132</sup> Unfortunately, IMPACT, in its current formation, merely acts in an advisory manner.<sup>133</sup> Through IMPACT's coordinated networks, agencies, in theory, act as one. The problem tends to be a lack of systematic coordination. While IMPACT and its partners' actions produce interception of contraband, they are not proactive in attacking or raiding the sites where terrorists harvest and make the counterfeits.<sup>134</sup> This Note focuses on the creation of an international Taskforce to seek out and prevent the terrorists from either attacking pharmaceutical production, or producing counterfeits before they are shipped. This Note is not meant as a scathing critique of IMPACT, but merely a renovation of a stable foundation, that if implemented, will yield to greater results in preventing terrorists from producing counterfeit medicine.

In order to effectively staff this standing task force, the United Nations Security Council must authorize the action.<sup>135</sup> While there will invariably be some dissent, due to the severe nature of this problem, all countries will ultimately agree this is necessary.<sup>136</sup> One of the principal cornerstones of the United Nations is international

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132. *See generally* 2013 USSC GUIDELINES MANUAL, [http://www.ussc.gov/Guidelines/2013\\_Guidelines/index.cfm](http://www.ussc.gov/Guidelines/2013_Guidelines/index.cfm) (detailing all the federal sentencing guidelines and their rationales).

133. *See* IMPACT, *supra* note 5.

134. *See* BRIAN D. FINLEY, COUNTERFEIT DRUGS AND NATIONAL SECURITY 12 (2011) (stating that “[g]overnments should be more proactive... from a public health perspective, as well as from a national security standpoint.”).

135. *See* U.N. Charter art. 41; *see also, e.g., Preparatory Process to Develop the Terms of Reference for the UN Interagency Task Force on NCDs*, WORLD HEALTH ORG. (Dec. 2011), [http://www.who.int/nmh/events/ncd\\_task\\_force/en/](http://www.who.int/nmh/events/ncd_task_force/en/) and Press Release, World Health Org., UN to Establish WHO-led Interagency Task Force on the Prevention and Control of NCDs (22 July, 2013), *available at* [http://www.who.int/mediacentre/news/notes/2013/ncds\\_ecosoc\\_20130722/en/](http://www.who.int/mediacentre/news/notes/2013/ncds_ecosoc_20130722/en/) (discussing the United Nations establishing a joint task force on the Prevention and Control of NCDs.)

136. *See* Michelle Nichols, *Russia, China veto U.N. Security Council resolution on Syria*, REUTERS (Jul. 19, 2012), <http://www.reuters.com/article/2012/07/19/us-syria-crisis-un-idUSBRE86I0UD20120719>; *see also* Peter James Spielmann, *Russia Holding Security Council 'Hostage,' Power says*, BOS. GLOBE (Sept. 5, 2013), <http://www.bostonglobe.com/news/world/2013/09/05/russia-holding-security-council-hostage-power-says-russia-holding-hostage-syria-power-says/61e7i5M0sTlD0dY0SIqLkO/story.html>.



cooperation.<sup>137</sup> The ability to depend on this body of Nations for swift and just action has, on numerous occasions, led to a multitude of cooperation and resolutions that have not only stymied war, but also created new countries, and protected the rights of countless unrepresented minorities.<sup>138</sup> The proposal calls for a U.N. Security Council resolution authorizing the standing use of force for a dedicated mission.<sup>139</sup> That mission will be the neutralization and systematic targeting of terror organizations focused on counterfeiting and pharmaceuticals.<sup>140</sup>

In theory, this new task force – affectionately labeled the Medical Anti-Counterfeiting Task Force (MACT) – will act as an autonomous asymmetrical unit. In analogizing this proposed unit, the model will be similar to that of the International Anti-Poaching Foundation (“IAPF”). The IAPF acts akin to a structured military-like battalion, employing modern technology to fend off violent poachers.<sup>141</sup> The sole mission of the IAPF is to protect wild life reserves in the African from

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137. See U.N. Charter art. 1, para. 3 (stating that the main purposes of the United Nations are “international co-operation in solving international problems of an economic, social, cultural, or humanitarian character.”).

138. See e.g. G.A. Res. 67/262, U.N. Doc. A/RES/67/262 (May 15, 2013) (addressing “The situation in the Syrian Arab Republic.”); see also G.A. Res. 47/147, U.N. Doc. A/RES/47/147 (condemning “the [s]ituation of human rights in the territory of the former Yugoslavia”); see also G.A. Res. 47/145 & 47/146, U.N. Docs. A/RES/47/145 & A/RES/47/146 (condemning “the [s]ituation of human rights in the Islamic Republic of Iran” and “the situation of human rights in Iraq.”); see also G.A. Res. 181(II), U.N. Doc. A/RES/181(II) (Nov. 29, 1947) (recommending “to the United Kingdom, as the mandatory Power for Palestine, and to all other Members of the United Nations the adoption and implementation... [of] the Plan of Partition [for Palestine].”).

139. Under Art. 39 of the U.N. Charter, the Security Council can authorize force when they determine “the existence of any threat to the peace, breach of the peace, or act of aggression” and in accordance with Art. 42 “may take such action by air, sea, or land forces as may be necessary.” See U.N. Charter arts. 39, 42.

140. Previously, the Security Council has authorized force for use against Iraq, among other occasions. See e.g., S.C. Res. 678, U.N. Doc. S/RES/678 (Nov. 29, 1990) (authorizing use of “all necessary means” to uphold S.C. Res. 660 demanding Iraq’s withdrawal from Kuwait, as well as numerous subsequent resolutions enacted to ensure the restoration of peace within this area) and S.C. Res. 687, U.N. Doc. S/RES/687 (Apr. 3, 1991) (having been cited as recently as 2001 to authorize force against Iraq for failure to abide by the conditions precedent).

141. *About the IAPF*, INT’L ANTI-POACHING FOUND. <http://www.iapf.org/en/about> (last visited March 16, 2014). See also Damien Mander, *Rise of the Drones*, AFR. GEOGRAPHIC (Feb. 2013), <http://www.iapf.org/images/documents/riseofthedronesjan2013.pdf>.

poachers.<sup>142</sup> The IAPF is a remarkable model to analogize this task force to, though it is a private non-profit.<sup>143</sup> In seeking funding for this recommended task force, one possible avenue is a public-private model.<sup>144</sup> Currently, the WHO estimates that pharmaceutical companies lose \$75 billion per year due to counterfeit pharmaceuticals.<sup>145</sup> Though some have security forces to cease illegal mills' production, relinquishing this expenditure to multinational force would allow for a more effective handling of the issue, and thus the likely possibility that the total loss will drastically be diminished.<sup>146</sup>

Much like the IAPF, this taskforce should have both a central location, as well as various locations "in theatre."<sup>147</sup> The central location should be located on a current military installation (AfriCom and CentCom for example) and be pre-loaded with the top Special Forces soldiers that countries make available.<sup>148</sup> The use of unmanned aerial vehicles ("UAV") can also aide and assist the taskforce.<sup>149</sup> In

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142. *Id.* (noting the groups motto is "To protect and preserve wildlife in volatile regions.").

143. *See A Rhino and a Gun*, THUMBS UP AFR., <http://www.thumbsupafrika.org/program/program-2/iapf.html> (last visited March 14, 2014).

144. *See Technology Partnership*, UNITED NATIONS, <http://www.unfoundation.org/what-we-do/campaigns-and-initiatives/mobile-technology/technology-partnership.html> (last visited March 14, 2014) (explaining that through the public-private partnership, and donation of Ted Turner, mobile technology is able to be given to those in developing countries to "play a vital role in developing solutions").

145. *See* Eric Palmer, *Top Counterfeit Drug Events in 2012*, FIERCEPHARMA (October 10, 2012), <http://www.fiercepharma.com/special-reports/top-counterfeit-drug-events-2012>. *Cf.* HEMA VITHLANI, *THE ECONOMIC IMPACT OF COUNTERFEITING* 17 (1997) (estimating that in 1997, legitimate losses may be as high as \$17 billion).

146. *See* Carl Quintanilla, *War on Counterfeit Goods*, CNBC (Original air date: July 14th, 2010.), <http://www.cnbc.com/id/37824347/>; *see e.g.*, LEV RATNOVSKI, *COMPETITION POLICY FOR MODERN BANKS* 3 (2013) (explaining that the IMF is more effective at lending to underdeveloped and developing countries [Crisis Lending] than traditional banking structures).

147. *English Definition of "Theatre,"* CAMBRIDGE DICTIONARIES ONLINE, [http://dictionary.cambridge.org/dictionary/british/theatre\\_4](http://dictionary.cambridge.org/dictionary/british/theatre_4) (last visited March 14, 2014).

148. Besides United States Tier 1 operators, British SAS, German GSG9, Polish GROM, and French GIGN soldiers, and veterans, should be recruited to carry out these missions. For a more exhaustive list, *see Top Ten Special Operations Forces in the World*, ARMED FORCES HISTORY MUSEUM, <http://armedforcesmuseum.com/top-ten-special-operations-forces-in-the-world/> (last visited March 14, 2014).

149. *See* Mander, *supra* note 141.

using these asymmetric warfare capabilities, it will give the UN taskforce a much-needed advantage over these terror cells harvesting and planning on tampering with pharmaceuticals.<sup>150</sup> The benefits and advantages of such a task force are numerous, but succinctly, it allows for greater outreach and the ability to be proactive in this action against counterfeit pharmaceuticals. Much like joint task forces have been successful in their various UN uses, these task forces have also been beneficial in the war against terror.<sup>151</sup>

The efficacy of current task forces provides optimism for the effective use of this unit.<sup>152</sup> Unlike IMPACT, which acts purely in an advisory manner, this task force would work in a preemptive manner.<sup>153</sup> The addition of this task force does not preclude the use of IMPACT, but – much like the spirit of the UN – would be a further cooperative angle designed to thwart terrorist organizations from producing, marketing, and selling counterfeit medicine.<sup>154</sup> Further, IMPACT has failed to yield any newsworthy results since Operation Pangea, in 2011.<sup>155</sup> While commendable, Operation Pangea failed to prevent the production and dissemination of these counterfeit medicines, but rather – through Internet Service Providers (ISP), and Customs Officials – seized the drugs upon their arrival, and shut

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150. *Id.*

151. See Press Release, United Nations, United Nations-African Union Joint Task Force on Peace and Security Holds Third Consultative Meeting in New York (Sept. 26, 2011) available at <http://www.un.org/News/Press/docs/2011/afr2254.doc.htm>; see also JENA BAKER MCNEILL ET AL. 39 TERROR PLOTS FOILED SINCE 9/11: EXAMINING COUNTERTERRORISM'S SUCCESS STORIES ABSTRACT (2011).

152. See, e.g., *Select Achievements in 2008-2009*, U.N. REG. TASK FORCE ON INJECTING DRUG USE & HIV/AIDS FOR ASIA & PACIFIC, <https://www.unodc.org/southeastasiaandpacific/en/topics/hiv-and-aids/unrtf.html#4> (last visited March 14, 2014) (exclaiming the Task Force's numerous accomplishments including: Collaboration and support to legal and policy reviews by the HIV/AIDS Asia Regional Program (HAARP) supported by AusAID, and Issuance of a document: Step-by-Step Algorithm for the Procurement of Controlled Substances for Drug Substitution).

153. See IMPACT, *supra* note 5.

154. See U.N. Charter art. 1, para. 3 (stating that the main purposes of the United Nations are “international co-operation in solving international problems of an economic, social, cultural, or humanitarian character.”).

155. See Press Release, Interpol, Global Operation Strikes at Online Supply of Illegal and Counterfeit Medicines Worldwide (September 29, 2011) available at <http://www.interpol.int/News-and-media/News/2011/PR081> (stating that through a campaign to prevent the prevalence of counterfeit pharmaceuticals being sold online, IMPACT and INTERPOL have shut down websites and learned valuable information to effectively prevent the sale of counterfeit drugs online.)

down the conduits (websites).<sup>156</sup> This approach is far from effective, as exemplified by the lack of progress since 2011. While a task force is an extraordinary improvement from the status quo, it alone will not properly facilitate the end of this pandemic. Thus, in addition to the newly created task force, IMPACT's focus will shift to the establishment of an international database of pharmaceutical drugs currently being counterfeited, the suspected parties involved in the operation and identifying where the funding is coming from and being diverted. The creation of this database will be used as a guide for MACT to pinpoint, with surgical precision, attacks aimed at disrupting and terminating this counterfeit production.

*B. International Database, Regulation, and the Adoption of a Treaty Making the Production of Counterfeit Medicine a Crime.*

Through IMPACT's mission statement, its operation is to construct coordinated international networks to halt the production, and sale of counterfeit medicine.<sup>157</sup> While continuing to promulgate rules, advisory opinions, and white papers on counterfeit medicine, under this proposal, IMPACT will be tasked with compiling, maintaining, and promulgating to MACT the database. The purpose of this database is to furnish to both MACT as well as the major anti-counterfeiting players, a timely database consisting of pharmaceutical drugs currently being counterfeited, the suspected parties involved in the operation and identifying where the funding is coming from and being diverted.<sup>158</sup> In theory, this database will be similar to United Nations Educational, Scientific, and Cultural Organization's (UNESCO) International and National databases of "Illicit Trafficking of Stolen Property," or the United Nations Office of Drugs and Crime's Electronic Legal Resources on International Terrorism<sup>159</sup> The UNESCO Database allows for aggrieved parties to report stolen Art – equipped with photos and detailed information of the piece – on an Interpol based database.<sup>160</sup> In its iteration as an art

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156. *See id.*

157. *See* IMPACT, *supra* note 5.

158. *Id.* (explaining that the "players" include "international organizations, non-governmental organizations, enforcement agencies, pharmaceutical manufacturers associations and drug and regulatory authorities").

159. *See e.g., Illicit Trafficking of Cultural Property*, U.N. ED., SCI. & CULT'L ORG., <http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/databases/> (last visited March 14, 2014). *See also Electronic Legal Resources on International Terrorism*, UNODC, <https://www.unodc.org/tldb/> (last visited March 14, 2014).

160. *See e.g., Bearded Man*, INTERPOL, <http://www.interpol.int/notice/search/woa/1185172> (last visited March 14, 2014).

database, individual countries also have website based databases for individuals to report stolen art and seek aide in having it returned.<sup>161</sup>

While borrowing the form from UNESCO's database, pharmaceutical companies, as well as national organizations (FBI, Masad, local police departments, Pakistani Inter-Services Intelligence etc.), and international groups (WHO, IMPACT, Interpol) can update this database upon their findings.<sup>162</sup> Ideally, it would provide a form that would allow for key descriptors to be provided. These descriptors would items such as: location of seizure, description of pill (size, color, legible text or identifying marks), origin, group responsible, and suspected location of production facility. In the spirit of international cooperation and coordination, this data would be securely stored on Interpol's servers, and transmitted to the task force to provide real time updates as to the location of counterfeit production. From this, the task force could launch preemptive strikes and coordinate with sovereign territories as to how to effectively negotiate the jurisdictional boundaries often present in international endeavors. Access to submit to the database would be open to credentialed individuals, with credentials being made possible after proof of affiliation in the aforementioned list of individuals. As previously mentioned, administration, and funding would be made possible through IMPACT and the WHO's budget, as well as voluntary contributions.<sup>163</sup> It would be encouraged for individual country's to have their lead investigative assembly (for example the FBI in the United States) have sub-databases at their level where users could post and they could vet prior to uploading to the international database. While this may seem like a detailed process, and in effect it is, it has proven to be of assistance.<sup>164</sup> As illustrated on

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161. See e.g., *L'Office Centrale de Lutte Contre le Trafic des Biens Culturels* [Central Office for the Fight Against Traffic in Cultural Goods], POLICE NATIONALE [FRENCH NATIONAL POLICE] (Dec. 13, 2011), <http://www.police-nationale.interieur.gouv.fr/Organisation/Direction-Centrale-de-la-Police-Judiciaire/Lutte-contre-la-criminalite-organisee/Office-central-de-lutte-contre-le-traffic-de-biens-culturels> (Fr.); *National Stolen Art File*, FBI, [http://www.fbi.gov/about-us/investigate/vc\\_majorthefts/arttheft/national-stolen-art-file](http://www.fbi.gov/about-us/investigate/vc_majorthefts/arttheft/national-stolen-art-file).

162. See e.g., *Bearded Man*, INTERPOL, <http://www.interpol.int/notice/search/woa/1185172> (last visited March 14, 2014).

163. See WORLD HEALTH ORG., PROGRAMME BUDGET 2012-2013 82-83 (2012) [hereinafter WHO Budget], available at [http://whqlibdoc.who.int/pb/2012-2013/PB\\_2012-2013\\_eng.pdf](http://whqlibdoc.who.int/pb/2012-2013/PB_2012-2013_eng.pdf).

164. See e.g., *Recent Restitution Cases of Cultural Objects Using the 1970 Convention*, UNESCO, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/recent-restitution-cases-of-cultural-objects-using-the-1970-convention/> (last visited March 14, 2014).

the UNESCO website, there are many cases of individuals, and countries, having their lost art returned to them.<sup>165</sup>

The next component is increased regulation. IMPACT has already undertaken a massive campaign against counterfeit online sales of drugs, but this action needs to be further expanded to properly account for terrorist organizations.<sup>166</sup> Following in the action of the Customs and Border Patrol, other countries should place Import Alerts on drugs from countries listed in the database.<sup>167</sup> Doing so will have a multi-faceted effect. First, Import Alerts trigger mandatory searching and testing of drugs. Second, this will have an undesirable economic effect on the origin country.<sup>168</sup> Finally, United States Customs and Border Patrol, along with their international counterparts, should flag medicine from countries known to harbor, produce, and ship counterfeit medicine produced from terrorist organizations. By crosschecking with the aforementioned database, a wide array of countries can be listed which will yield to further descriptors to add to the aforementioned database.<sup>169</sup>

The final approach is the creation of a Treaty, which promulgates stringent rules and definitions for which countries must abide. As one author noted, if a crime amounts to an offence against the international community at large, or sans international cooperation the crime will further persevere, then said crime should be considered an international crime.<sup>170</sup> In this situation, it is increasingly apparent

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165. See *Other Cases of Return or Restitution of Cultural Objects*, UNESCO, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/other-cases-of-return-or-restitution-of-cultural-objects/> (last visited March 14, 2014); *Recent Restitution Cases of Cultural Objects Using the 1970 Convention*, UNESCO, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/recent-restitution-cases-of-cultural-objects-using-the-1970-convention/> (last visited March 14, 2014) (explaining that objects both in accordance with the 1970 convention, as well as outside the province of that document, were returned to their owners).

166. See *Operations*, INTERPOL, <http://www.interpol.int/Crime-areas/Pharmaceutical-crime/Operations/Operation-Pangea> (last visited March 14, 2014) (explaining the efficacy of Operation Pangea).

167. See *Import Alert*, FOOD & DRUG ADMIN., <http://www.fda.gov/ForIndustry/ImportProgram/ImportAlerts/default.htm> (last visited March 14, 2014) (explaining what Import Alerts are, and allowing for access to a current list of Alerts).

168. See BRYAN A. LIANG, PIGS, DRUGS, AND TERRORISTS 12, <http://safemeds.typepad.com/files/pigs-drugs-and-terrorists.pdf> (last visited March 14, 2014) (explaining that by placing an Import Alert, all drugs from that country will be stopped and subject to exhaustive testing).

169. See *supra* sec. IV(A)(2).

170. See M.C. Bassiouni, *The Penal Characteristics of International Criminal Law*, 15 CASE W. RES. J. INT'L L. 27, at 28-29 (1983).

that individual countries cannot singlehandedly prosecute offenders, thus, it should be considered an international crime.<sup>171</sup> Finally, the Declaration of Rome held that counterfeiting medicines is “widespread and has escalated to such an extent that effective coordination and cooperation at the international level are necessary for regional and national strategies to be more effective.”<sup>172</sup>

As numerous treaties have previously specified international crimes, using these prior treaties, and applying them towards counterfeit medicine, is a worthwhile cause.<sup>173</sup> The first step in determining the language of a Treaty would be a consensus on the impropriety, followed by a definition of counterfeit medicine.<sup>174</sup> Using the International Convention for the Suppression of Counterfeiting Currency, the following would most likely be accepted as universal acts falling under the purview of counterfeit medicine:

- (i) the manufacturing or preparation of counterfeit medicine;
- (ii) the provision or possession of equipment, instruments or ingredients used in the manufacturing or preparation of counterfeit medicine;
- (iii) the sale, offering for sale, dispatch, transportation, and import or export of counterfeit medicine, or equipment or ingredients used in the manufacturing or preparation of counterfeit medicine;
- (iv) the falsification of documents in relation to a counterfeit medicine or its ingredients;

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171. See Amir Attaran et al., *Why and How to Make an International Crime of Medicine Counterfeiting*, 9 J INT’L CRIM. JUST. 325, 327 (2011).

172. See Declaration of Rome, *Conclusions and Recommendations of the WHO International Conference on Combating Counterfeit Medicines*, at Section 4, available at <http://www.who.int/medicines/services/counterfeit/RomeDeclaration.pdf> (last visited March 14, 2014) (declaring, inter alia, “Counterfeiting medicines... is a vile and serious criminal offence; Combating counterfeit medicines requires the coordinated effort of all the different public and private stakeholders; [and] Counterfeiting medicines is widespread and has escalated to such an extent that effective coordination and cooperation at the international level are necessary for regional and national strategies to be more effective.”).

173. See e.g., *Hague Convention for the Suppression of Unlawful Seizure of Aircraft*, 860 UNTS 105; (delineating hijacking aircraft as an international crime). See also *Single Convention on Narcotics Drugs*, 520 UNTS 204; as amended by the *Protocol Amending the Single Convention on Narcotic Drugs*, 976 UNTS 3; (demarcating trafficking narcotics as an international crime). See also International Convention against the Taking of Hostages, UN Doc. A/34/46 (1979).

174. Attaran et al., *supra* note 171, at 334–35.

(v) the entering into a conspiracy to commit, or the making of an attempt to commit, or the aiding, abetting, facilitating, or counseling to commit, any of the foregoing offences.<sup>175</sup>

The final element in drafting the Treaty is the inclusion of *mens rea* or intent. While many laws specifically articulate the culpable intent, in this case—as all of the elements deal with counterfeit medicine—it may be more prudent to include the *mens rea* requirement in the definition.<sup>176</sup> Regarding the definition of counterfeit medicine, in keeping with the prior used definition – promulgated by the WHO, but with slight modification for *mens rea* – for the purpose of the Treaty shall be: “fake medicine[, that] may be contaminated or contain the wrong or no active ingredient,” which is intentionally mislabeled or knowingly identified as that unto which it is not.<sup>177</sup> The Treaty will undoubtedly face scrutiny from member-nations in approving and ratifying the law in their nation, but as explained previously, the Treaty merely adopts pre-existing language, and crafts it for counterfeit medicine, thus alleviating some of the concern many member-nations may have.<sup>178</sup>

#### IV. CONCLUSION

The issue of counterfeit medicine has surpassed the ability to contain, and yields an immensely profitable result for terrorists.<sup>179</sup> Terror organizations have eclipsed the age of narcotic smuggling, and traditional financing, and have transcended in to an era of sophisticated counterfeit medicine trafficking to gain an advantage over authorities and groups looking to obstruct them.<sup>180</sup> The WHO estimates counterfeit medicine has surpassed a \$75 billion industry, in which some is directed towards terror organizations bank accounts.<sup>181</sup> While the international community has known about this problem for some time, an effective solution – until now – has yet to be proposed, or enacted. When countries on their own cannot enact change, it should be the responsibility of the internationally community to act, in concert, and provide what the singular country cannot.

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175. *Id.* at 335.

176. *See id.*

177. *See Counterfeit Medicine*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/CounterfeitMedicine/default.htm> (last visited Oct. 20, 2013).

178. Attaran et al., *supra* note 172, at 352–53.

179. *See THREATS WATCH*, *supra* note 3.

180. *See WASH. INST.*, *supra* note 1.

181. Palmer, *supra* note 145.



In proposing, and evaluating a solution, this Note examined the actions of two groups – Hizballah, and the Real IRA – and exposed the lesser known counterfeit medicine production that they have previously and, in some cases, continue to employ to raise their funds. Next, an analysis of the complex issue of terror financing was explored. In examining how terrorist organizations fundraise, several methods are employed to raise funds that traditionally, were much easier to procure.<sup>182</sup> Of the most common, charities are no longer the easiest method for terrorist organizations to traffic illicit money into for their activity.<sup>183</sup> In the last decade, nearly \$200 million in terrorist funds were seized or frozen, and the U.S., in concert with 36 other countries, organized the Financial Action Task Force on Money Laundering (“FATF”) to further combat terrorist organizations from laundering their criminal gains.<sup>184</sup> Countries such as the United States, have attempted to take action via domestic agencies such as the FDA, FBI, and the JTTF. While their effort should be commended, this effort fails to actively disrupt an activity that has the possibility to kill millions.<sup>185</sup> In the international community, little has been done – once again – to proactively seek or disrupt these production facilities.<sup>186</sup> While white papers have been written, and missions have been waged against online retailers and at Customs offices, a systematic failure to be proactive has led to the rise of an industry that has been condoned by religious zealots and their leaders for use only on Western infidels, and non-Shiite believers.<sup>187</sup> The only way to truly neutralize terrorist organizations from producing counterfeit medicine, and thus funding their illicit activity, is a proactive task-force melded with a world-wide, constantly updated database, and an international treaty providing countries and their courts with the authority to strike, seize, and sentence infringing individuals for their offenses. A properly produced a task-force should be molded after the IAPF in that it should consist of special forces soldiers, trained in asymmetric warfare and advanced combat techniques.<sup>188</sup> The accompanying database should be modeled after the UNESCO Art

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182. Kaplan, *supra* note 75.

183. *Id.*

184. Statement of Secretary Paul O’Neill, *supra* note 25. FATF, *supra* note 27.

185. Attaran et al., *supra* note 172, at 330–31.

186. *See Operations*, INTERPOL, *supra* note 167.

187. *Hezbollah Manufacturing Counterfeit Medicine*, CLARION PROJECT (Sept. 11, 2012), <http://www.clarionproject.org/news/hezbollah-manufacturing-counterfeit-medicine>.

188. Mander, *supra* note 141.

databases for both ease of use, and effectiveness.<sup>189</sup> Allowing governmental agencies, international organizations, and non-governmental agencies to upload their findings to the database, provides the task-force instant feedback on the location, terrorist organization, and magnitude of their operation. IMPACT, through their WHO mandate shall be responsible for operating and ensuring proper connectivity with Interpol and their servers. In furthering the global knowledge of counterfeit medicine and specific drugs' whereabouts, Customs officials should produce an Import Alert on all items from countries known to harbor production facilities for counterfeit medicine.<sup>190</sup> Finally, to assist the international community in prosecuting these terrorists, a Treaty should be adopted, which both sets out the elements of the crime for producing counterfeit medicine, and also defines what counterfeit medicine is.<sup>191</sup> Effectively setting forth these four principles, this Note proposes a solution, which should both garner the support of the international community, and frustrate the uncivilized attacks of terrorist organizations by disrupting their financing regimes.

“Let terrorists be aware that when the rules of international behavior are violated, our policy will be one of swift and effective retribution.” – Ronald Reagan.<sup>192</sup>

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189. *Illicit Trafficking of Cultural Property*, *supra* note 159.

190. LIANG, *supra* note 168.

191. Attaran et al., *supra* note 172, at 335.

192. Ronald Reagan, President of the United States of America, Remarks at the Welcoming Ceremony for the Freed American Hostages (Jan. 27, 1981).

