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TIME TO REEXAMINE REGULATION DESIGNED TO COUNTER THE FINANCING OF TERRORISM

*Richard Barrett**

I. INTRODUCTION

The attacks in the United States on September 11, 2001, stunned the world and demanded an immediate response. But the perpetrators of the attacks were dead, their identities undiscovered, their cause obscure, and their associates hidden. Although the United States had the option to initiate immediate military action against the Taliban, Al Qaeda, even then, was too nebulous a target to defeat by military means alone. Instead, the U.S directed the main thrust of its non-military action against the financing of terrorism, and a great deal of new regulation resulted. It is not easily determined what impact this regulation has had on the terrorist threat, though it has had considerable consequences for the financial community.

This article looks at the development of regulation designed to counter the financing of terrorism in the aftermath of the attacks of September 2001. It looks at Al Qaeda's financial needs and how it tries to meet them. It notes that the cost of mounting a significant attack need not be large, and points out that local terrorist cells generally raise money in unobtrusive ways. Against this background, the article questions whether the current amount of regulation of the financial sector has the impact that it intends. It suggests that it is time to reexamine rather than to increase regulation, and proposes bringing the private sector into closer cooperation with counter terrorist officials in order to design a more effective and more dynamic counter terrorist financing regime.

II. THE IMMEDIATE REACTION TO THE 9/11 ATTACKS

Before September 11, 2001, the threat from terrorism initiated by Osama bin Laden and Al Qaeda had been of concern to counter-terrorist specialists but had attracted little political attention, especially at the international level.¹ The United Nations Security Council had instituted the most

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¹ See generally, e.g., GEORGE TENET, *AT THE CENTER OF THE STORM: MY YEARS AT THE CIA* (2007); Interview by Scott Pelley with George Tenet, *60 Minutes* (CBS television broadcast Apr. 29, 2007), available at <http://www.cbsnews.com/stories/2007/04/25/60minute/s/main2728375.shtml>.

notable international action by imposing sanctions against the Taliban in Afghanistan pursuant to Resolution 1267 in 1999.² These sanctions were designed to put pressure on the Taliban to hand Osama bin Laden over for trial following the near simultaneous bombings of the United States Embassies in Nairobi and Dar es Salaam in August 1998, for which bin Laden and his Al Qaeda organization were held responsible.³

Serious as the East Africa attacks were,⁴ the 9/11 attacks were of a different magnitude.⁵ Osama bin Laden later claimed that the 9/11 attacks cost the U.S. economy \$500 billion.⁶ Although his estimate was an optimistic guess, the actual costs exceed that estimate when taking into account the cost of all resulting counter-terrorist measures, including the wars in Afghanistan and Iraq.⁷ In addition to the deaths and economic consequences, the attacks had a profound psychological impact. The attacks were not only carried out on American soil, but also on global television, constantly replayed in every corner of the world. Even in 2001 people recognized that the attacks had caused a new departure in international relations.⁸ Although it was not obvious where this new departure would lead, it was clear that the U.S. administration was determined to show its might and its reach as soon as possible, as evidenced by the immediate decision to declare a war on terrorism.⁹

Seeking to strike back, the U.S. saw the Taliban regime in Afghanistan as its first and clearest target. The Taliban not only provided sanctuary to Osama bin Laden, but also allowed Al Qaeda a base from which to plan further attacks.¹⁰ The “war on terrorism” took speedy form, and by

² S.C. Res. 1267, U.N. Doc. S/RES/1267 (Oct. 15, 1999).

³ Press Release, Security Council, Security Council Demands that Taliban Turn Over Usama bin Laden to Appropriate Authorities, U.N. Doc. SC/6739 (Oct. 15, 1999).

⁴ See NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT, 70 (2004) (documenting the Embassy casualties at 224 killed and over 5000 injured).

⁵ See RAND CORPORATION, COMPENSATING THE VICTIMS OF 9/11, at 2 (2004), http://www.rand.org/pubs/research_briefs/2005/RAND_RB9087.pdf (estimating civilian casualties at 2,551 killed and 215 injured, and emergency responder casualties at 425 killed or seriously injured).

⁶ Osama bin Laden, Message to the American People (Oct. 29, 2004), available at <http://www.memri.org/bin/articles.cgi?Area=sd&ID=SP81104>.

⁷ See generally Olivia Jackson, *The Impact of the 9/11 Terrorist Attacks on the US Economy*, 20 J. OF 9/11 STUDIES 1 (2008), <http://www.journalof911studies.com/volume/2008/OliviaJackson911andUS-Economy.pdf>.

⁸ See, e.g., Press Release, Security Council, Security Council Condemns, ‘In Strongest Terms’, Terrorist Attacks on United States, U.N. Doc. SC/7143 (Sept. 12, 2001) for statements made at the 4370th meeting of the Security Council on Sept. 12, 2001.

⁹ See President George W. Bush, Address to the Nation (Sept. 11, 2001) (“[W]e stand together to win the war against terrorism.”).

¹⁰ S.C. Res. 1267, U.N. Doc. S/RES/1267 (Oct. 15, 1999).

October the Taliban had been chased from Kabul and Al Qaeda dispersed.¹¹ But the overthrow of the Taliban regime could not be the end of the story; it already was evident that Al Qaeda had no clear geographical limits, nor any dependence on an active, free and visible leadership. Al Qaeda was a loose-knit global movement with a sustained capacity to inflict real harm, and therefore demanded a response greater than the United States or its close allies could provide on their own.¹²

The U.N. Security Council adopted Resolution 1373 on September 28, 2001, just seventeen days after the attacks.¹³ This elaborate and far-reaching resolution passed unanimously, and since the Security Council had adopted the resolution under Chapter VII of the U.N. Charter, it had mandatory effect for all Member States. One of the primary consequences of the resolution was to oblige universal compliance with the main provisions of the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism,¹⁴ which had been negotiated through the General Assembly and had therefore already gained the support of a large number of the other 174 Member States of the United Nations.¹⁵ Following the Security Council meeting, on October 21, 2001, the Financial Action Task Force, set up by the G7 in 1989, adopted eight special recommendations on terrorist financing to add to its existing forty recommendations on anti money laundering.¹⁶

From the start therefore, in addition to the military response, the U.S. and the rest of the international community were highly focused on preventing the financing of terrorism as a primary means of reducing the threat of further attacks. This was because of all the non-military actions that seemed necessary, perhaps dealing with the financing of terrorism seemed the most obvious. It also had two principal attractions: first there was already a great deal of work in hand, such as the negotiation of the international convention, and second, financing was an area where the terrorists had to interact with the non-terrorist world. The focus on financing al-

¹¹ See LAWRENCE WRIGHT, *THE LOOMING TOWER: AL-QAEDA AND THE ROAD TO 9/11* at 370 (2006).

¹² See Al Qaida, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/pa/ra/al-qaida.htm> (last visited Feb. 7, 2009).

¹³ S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

¹⁴ International Convention for the Suppression of the Financing of Terrorism, *adopted* Dec. 9, 1999, 39 I.L.M. 270, 2178 U.N.T.S. 38349.

¹⁵ Subsequently Switzerland, Timor L'Este, and Montenegro also joined the United Nations, on September 10, 2002, September 27, 2002, and June 28, 2006, respectively. See U.N. Member States, List of Member States, <http://www.un.org/members/list.shtml> (last updated Oct. 3, 2006).

¹⁶ Financial Action Task Force, *Nine Special Recommendations on Terrorist Financing*, http://www.fatf-gafi.org/document/9/0,3343,en_32250379_32236920_34032073_1_1_1_1,0.html (last visited Feb. 7, 2009) (updated to nine recommendations on Oct. 22, 2004).

lowed exploitation of an area of common ground where the advantage might lie with counter-terrorist efforts.

Especially in the West, the idea that a group of relatively accomplished and well-educated men could be driven by such strong motivation to commit suicide in a well-planned, pre-meditated and outstandingly dramatic way, designed deliberately to cause the death of many others, was almost beyond understanding. There was no immediate effort to analyze what had given rise to this motivation, nor how to undermine it; it was assumed to be an expression of the Al Qaeda agenda, in itself opaque and seemingly irrelevant to the modern world. What was known in 2001 about the demands and grievances of Al Qaeda had been learned from statements made by its leaders, including Osama bin Laden's "Declaration of War Against the Americans Occupying the Land of the Two Holy Places," first published in the London newspaper *Al-Quds Al-Arabi* in August 1996.¹⁷ These demands were not only unrealistic and unacceptable, they offered no basis for dialogue—not that there was then, nor has been since, any serious talk of negotiation.¹⁸ What was required in response to Al Qaeda was international solidarity behind an effort to starve the movement of resources and stifle its development.

III. THE DEVELOPMENT OF REGULATION AND ITS IMPACT

A new global regime emerged to counter the flow of money to Al Qaeda. This was based in part on the international regulation introduced by the United Nations and in part on regional initiatives, such as the FATF Eight Special Recommendations.¹⁹ Other regional bodies and individual States that introduced their own rules for financial institutions operating within their jurisdictions, such as Executive Order 13224 made by former President George W. Bush on September 23, 2001, extended this regime.²⁰ The rules and regulations introduced by the U.S. had a particular impact, not only because of the size of the U.S. financial market, but also because the regulations demanded compliance beyond the territorial limits of the U.S. to include "all U.S. persons and entities . . . wherever located."²¹ The

¹⁷ See *Bin Laden's Fatwa*, ONLINE NEWSHOUR, http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html (last visited Feb. 7, 2009).

¹⁸ See JONATHAN POWELL, *GREAT HATRED, LITTLE ROOM: MAKING PEACE IN NORTHERN IRELAND* (2008), which sparked some discussion of the need to negotiate with Al Qaeda, but no negotiations occurred.

¹⁹ FATF adopted a ninth special recommendation, covering cash couriers, in October 2004. See Financial Action Task Force, *supra* note 16.

²⁰ Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

²¹ Office of Foreign Assets Control, U.S. Dept. of Treasury, *Terrorism Sanctions*, <http://www.ustreas.gov/offices/enforcement/ofac/programs/terror/terror.shtml> (last visited Feb. 7, 2009).

PATRIOT Act, signed into law in October 2001, added further demands on U.S. financial institutions doing business abroad and on foreign banks doing business in the U.S., including increased record keeping and reporting requirements.²²

Regulation designed to counter the financing of terrorism took center stage after 9/11, and the importance and urgency of preventing further attacks meant that financial institutions subject to the regulation risked fines and serious reputational harm should they fail to comply, or be accused of less than full compliance with the rules. The new regulation and enforcement therefore has had considerable impact on the way that financial markets operate, and on the level of State control and inspection.²³ What might have been regarded before as unnecessarily intrusive now has become acceptable as a set of precautionary measures. As a result, the cost of doing business has risen for banks and other financial institutions that now must ensure due diligence in knowing their customers and checking that transactions will not benefit sanctioned individuals or entities.²⁴ As one example, the number of Suspicious Transaction Reports²⁵ submitted to U.S. authorities by regulated financial institutions in 2000 was a little over 163,000; in 2007 the total was over 1.25 million.²⁶ Despite the extra burden created by the new regulation and the administrative structures to support it, few people inside or outside the private sector have questioned publicly the fundamental necessity for such regulation, nor whether it is worthwhile.

The lack of public discussion is not necessarily surprising. The global nature of financial markets and the similarity of financial instruments in use around the world suggest the need for a universal regime. A hole in the defenses, wherever it might be, could allow money to enter the system and flow to a recipient planning or supporting terrorism. Regulation should apply universally so as to close all possible gaps, and to ensure uniformity of effort. From the point of view of the financial sector, universal application and enforcement also has the advantage of ensuring that rivals operating in other jurisdictions have no unwarranted competitive edge as a result.

²² See Financial Crimes Enforcement Network, U.S. Dept. of Treasury, USA PATRIOT Act, http://www.fincen.gov/statutes_regs/patriot/index.html (last visited Feb. 7, 2009).

²³ See Financial Crimes Enforcement Network, U.S. Dept. of Treasury, *Enforcement Actions*, http://www.fincen.gov/news_room/ea/#eaf (last visited Feb. 7, 2009) (listing enforcement actions in the United States).

²⁴ While it is not easy to compute these costs, a study in 2003 commissioned by the United Kingdom Financial Services Authority found that some firms surveyed estimated that compliance had led to a twenty percent increase in their operating costs, though most believed the increase was in single figures. See EUROPE ECONOMICS, COSTS OF COMPLIANCE 21 (2003), available at http://www.fsa.gov.uk/pubs/other/cost_compliance.pdf.

²⁵ Suspicious Transaction Reports are also known as Suspicious Activity Reports.

²⁶ Financial Crimes Enforcement Network, U.S. Dept. of Treasury, *SAR Activity Review by the Numbers*, http://www.fincen.gov/news_room/rp/files/sar_by_num_10.pdf.

It is worth asking, however, whether international agreement on the necessity and nature of the new regulation exists because States agree that the regulation is well designed to attack specific terrorist methodology, or because the regulators have identified weak points within the financial system that may be exploited for terrorist purposes. The answer to this question is important because regulation based on assumption is less likely to be effective in achieving its purpose than regulation based on analysis. This is not to say that regulation should be designed exclusively by experts in terrorism, but nor should it be designed solely by experts in financing. Both groups must play a part, and they should do so in concert. If not, it is possible that the slightest suggestion that terrorists are funding their operations through precious stones, stored value cards, inflated invoices or through any of the thousands of other ways that exist to make money at the edge of the law, would trigger a totally unwarranted and burdensome set of new regulations. Carried to the extreme, this would impact all international trade, including other ways to store and move money that are currently beyond the reach of regulation, if only because they exist in the virtual world.

Any bureaucratic response to an immediate problem will tend to introduce new regulation and then adapt it, rather than risk delay by first conducting an extensive study of the problem and only afterwards designing a regulation that fully meets the needs of the specific challenge. In 2001, with little understanding of the realm of terrorism and with the fear that another devastating attack could happen at any time, such a precipitate approach was understandable. Now, however, seven years and considerable study later, it is perhaps appropriate not only to consider whether further regulation is necessary to address current terrorist methodology, but also to cast aside or trim away regulation that does not seem to have been particularly relevant or effective. It is, of course, difficult to measure the impact of the regulations, because they are designed to prevent things from happening and there is no way to know what might have happened without them. But given the resources devoted to countering the financing of terrorism and the costs of getting it wrong, a re-examination of what has been ordained and a recalibration based on what is known, is not merely overdue, but is somewhere between important and essential.

IV. AL QAEDA'S NEED FOR MONEY AND ITS FUNDING CHANNELS

The ways that a terrorist group finances itself depends on several factors, most importantly opportunity. Most terrorist organizations are local and depend either on local sources of money or on sources with a local connection. The Tamil Tigers, for example, raise money in whatever way is easiest in Sri Lanka, but also benefit from money-raising activity within

Tamil communities abroad.²⁷ Similarly, the Real Irish Republican Army (RIRA), now largely inactive, raised money in the immediate area of its operations in Northern Ireland, but at the same time received support from Irish-origin sympathizers in the U.S.²⁸ Al Qaeda is different in that it has little opportunity to raise funds in its local heartland on the Afghan-Pakistan border, and has no specific expatriate ethnic group to rely on.

All terrorism is politically motivated and seeks to achieve political change. The terrorism perpetrated by Al Qaeda, however, is political protest that also seeks cultural change—it seeks the righting of wrongs and the re-writing of history. Al Qaeda has no realistic forward-looking political program or obvious short-term goals. It is not like the Tamil Tigers or the RIRA in having a clear desire for more influence in a particular country or political sphere; rather, it wants the world to be different. As such its appeal is very broad and can sweep up an individual with deep grievances about his own personal situation along with a broad idealist seeking a new world order.²⁹

Given the range of its adherents and the generality of its program, Al Qaeda does not need a highly organized structure with established systems of recruitment, training, financing and operational planning. Al Qaeda has moved on from the days when it was an organization for Arab fighters in Afghanistan with guesthouses and a series of training camps where individuals went according to nationality and even according to specialty.³⁰ Although fairly shambolic, at that time there was an attempt at organization. In 2001, however, Al Qaeda lost its safe haven in Afghanistan and with it the organizational infrastructure that it had built up since Osama bin Laden returned there from Sudan in 1996.³¹ From then on Al Qaeda became an amorphous movement comprising disconnected cells which drifted further apart in the absence of central direction.³²

²⁷ For a brief account of the Tamil Tigers, see *Liberation Tigers of Tamil Eelam*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/para/ltte.htm> (last visited Feb. 7, 2009).

²⁸ Office of the Coordinator for Counterterrorism, U.S. Dept. of State, *Country Reports on Terrorism*, Apr. 30, 2008, available at <http://www.state.gov/s/ct/rls/crt/2007/103714.htm>.

²⁹ See generally MARC SAGEMAN, *LEADERLESS JIHAD: TERROR NETWORKS IN THE TWENTY-FIRST CENTURY* (2008).

³⁰ See WRIGHT, *supra* note 11, at 141, 182; Statement of Facts of Defendant at 1, *United States v. Moussaoui*, No. 01-455-A (E.D. Va. Apr. 22, 2005), available at http://capitaldefenseweekly.com/library/moussaoui/1_01-cr-00455/docs/70543/0.pdf.

³¹ See Michael Radu, *Visitors of Death*, FRONTPAGE MAGAZINE, Aug. 23, 2004, <http://www.frontpagemag.com/articles/Read.aspx?GUID=49AC7DFF-1C4E-4D0C-A803-D14C7670A71A>.

³² See Al Qaida, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/para/al-qaida.htm> (last visited Feb. 7, 2009).

Without other choice, these cells have had to find ways to finance themselves. The central leadership has managed to find a secure new base in the Afghan-Pakistani border area. The needs of the local cells are relatively modest, and both reflect and limit their ambitions. Al Qaeda attacks since 9/11 have not been expensive. There is little definitive calculation of costs but even the November 2003 suicide bombings in Istanbul, which attacked four targets in two double bombings five days apart and involved the hiring of light trucks and a warehouse in which to construct the bombs, is unlikely to have cost more than \$40,000.³³ The attacks on trains in and around Atocha station in Madrid in March 2004 cost around \$10,000, excluding the drugs imported from Morocco which were bartered for explosives.³⁴ The suicide attacks on the London transport system in July 2007 were estimated by investigators to have cost less than \$16,000.³⁵ The London bombers appear to have paid for the materials used in the attacks with their savings, credit cards, personal loans, and bounced checks.³⁶

Fundraising has been easier in some areas than in others. In Iraq for example, Al Qaeda found it could attract recruits who would bring some money with them, and it also had wide opportunity to indulge in all sorts of lucrative criminality, from kidnap and ransom, extortion, oil smuggling and car theft, to siphoning off a percentage of the huge amounts of reconstruction aid that has poured into the country.³⁷

Things have not been so easy for Al Qaeda's leadership. It too has needed money to rent compounds, pay for security, maintain the families of fallen comrades, and find ways to reassert its presence, if only by developing a sophisticated propaganda operation.³⁸ The leadership no doubt also has understood that to be able to plan and organize further spectacular attacks, it needs money to contact, train and direct new operatives. Traditionally, Al Qaeda has relied on donations from supporters or money from un-

³³ See *First Report of the Analytical Support and Sanctions Monitoring Team*, ¶45, delivered to the Security Council, U.N. DOC. S/2004/679 (Aug. 25, 2004), available at <http://www.undemocracy.com/S-2004-679.pdf>.

³⁴ See Phil Williams, *Terroris Financing and Organized Crime: Nexus, Appropriation, or Transformation?*, in COUNTERING THE FINANCING OF TERRORISM 126, 144 (Thomas J. Biersteker & Sue E. Eckert eds., 2008).

³⁵ See HOUSE OF COMMONS, REPORT OF THE OFFICIAL ACCOUNT OF THE BOMBINGS IN LONDON ON 7TH JULY 2005 (May 2006), H.C. 1087, at 23, available at <http://www.homeoffice.gov.uk/documents/7-july-report?view=Binary>.

³⁶ See *id.*

³⁷ See Lennox Samuels, *Al Qaida Nostra*, NEWSWEEK, May 21, 2008, <http://www.newsweek.com/id/138085>.

³⁸ See *Eighth Report of the Analytical Support and Sanctions Monitoring Team*, ¶13, delivered to the Security Council, U.N. DOC. S/2008/324 (May 14, 2008).

witting donors to humanitarian causes.³⁹ But after 2001, many sources dried up, whether as a result of State regulation or because the attacks in the U.S. caused revulsion.⁴⁰ Even in 2008, there were reports of Ayman Al-Zawahiri trying to revive a financial support network in the Arabian Peninsula.⁴¹

The extent of the problems faced by the Al Qaeda leadership can also be seen from a letter written by Ayman Al-Zawahiri to Abu Musab Al-Zarqawi, the leader of Al Qaeda in Iraq, in July 2005.⁴² This letter set out to rein in Zarqawi, an unruly (and in many ways unwelcome) associate whose brutality was undermining support for Al Qaeda in the Muslim world.⁴³ But Zawahiri could not just discard Zarqawi; first, he needed him to wear an Al Qaeda label because he was the most visible part of the Iraq resistance and the Al Qaeda leadership needed the advertising, kudos and suggestion of relevance that the association with Zarqawi provided, and second because Zarqawi had money. Zawahiri's letter therefore mixes criticism with encouragement and also asks for \$100,000.⁴⁴ Similarly, Mustafa Abu Al-Yazid, the head of Al Qaeda in Afghanistan, noted in an interview in May 2007 that money was the greatest need for the organization.⁴⁵ These facts all confirm that money is important for Al Qaeda and is not as abundant as the leadership would like. At least some of the international action to limit the flow of funds has clearly had effect.

The Al Qaeda leadership's total income is unknown, but its expenses for food, housing and protection are fairly constant, and its obligations to non-combatant dependents difficult to decrease. It is under severe pressure to mount attacks and back up its threats, particularly as it faces an increasingly skeptical and critical appraisal of its legitimacy and tactics from better-respected and more qualified scholars, including Sayyed Imam Al-Sharif, also known as Dr. Fadl, a former mentor of Zawahiri, who

³⁹ JOHN ROTH, DOUGLAS GREENBURG & SERENA WILLE, NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE U.S., MONOGRAPH ON TERRORIST FINANCING 13, available at http://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf (last visited Feb. 7, 2009).

⁴⁰ See *id.* at 17.

⁴¹ See Information Office, Royal Embassy of Saudi Arabia, *Interior Ministry Warns Recipients of Al-Qaeda Phone Message*, IN FOCUS, Mar. 11, 2008, at 2, <http://www.saudiembassy.net/Focus/IN-FOCUS-2008/08-FOCUS-03-11.pdf>.

⁴² Letter from Ayman al-Zawahiri to Abu Musab al-Zarqawi (July 9, 2005), http://www.fas.org/irp/news/2005/10/letter_in_english.pdf.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Evan F. Kohlmann, *Dossier: Shaykh Mustafa Abu al-Yazid (a.k.a. "Shaykh Saeed")*, THE NEFA FOUNDATION, June 2008, <http://www.nefafoundation.org/miscellaneous/FeaturedDocs/nefayazid0608.pdf>.

launched an attack on Al Qaeda's specious religious arguments in November 2007.⁴⁶

V. TALIBAN FINANCES

The relative ease with which the Taliban can mount operations from the same area where the Al Qaeda leadership is located provides further evidence of the effectiveness of the initiatives taken to prevent money from reaching Al Qaeda. The Taliban has a local agenda and a local battleground. It recruits from the neighborhood, mainly through tribal connections, it has little problem moving within its area of operation and seeks confrontation with Afghan and international forces when it is ready for a fight.⁴⁷ Given its opportunity to move around and its access to money, often generated from a tax on poppy farmers,⁴⁸ the Taliban is able to recruit, train, and equip young men who generally have no other or no better source of employment.⁴⁹ Equally important, there is little in the way of a counter narrative to persuade people against the Taliban. Local government is generally just as corrupt as the Taliban, and cannot offer effective protection or security against it.⁵⁰ Local government also often challenges the very livelihood of villagers by threatening to eradicate their poppy crops without offering any viable alternative livelihood, allowing them no choice but to seek Taliban protection.⁵¹ Unsurprisingly therefore, given its local focus and local sources of funding, the Taliban is relatively successful as a movement and largely immune from international measures designed to prevent the financing of terrorism.

VI. THE CURRENT THREAT

Counter-terrorism initiatives have put the Al Qaeda leadership under pressure and the most urgent challenge is now to discover and defeat individual cells. These cells raise relatively small amounts of money through legal or illegal means in order to mount whatever attack is possible given opportunity, imagination and resources. Where cells raise money ille-

⁴⁶ See Lawrence Wright, *The Rebellion Within*, NEW YORKER, Aug. 1, 2008, at 37.

⁴⁷ Interview with the Director of Analysis of the National Directorate for Security, Kabul. (May 2008).

⁴⁸ RAPHAEL F. PERL, CONG. RESEARCH SERV., TALIBAN AND THE DRUG TRADE 3 (2001), <http://fpc.state.gov/documents/organization/6210.pdf>. The farmgate value of opium produced in Afghanistan in 2007 is estimated at \$1 billion, with the total export value to neighboring countries estimated at \$4 billion. See U.N. OFFICE ON DRUGS AND CRIME, 2008 WORLD DRUG REPORT at 40, U.N. Sales No. E.08.XI.1 (2008).

⁴⁹ See Barnett Rubin, *Saving Afghanistan*, FOREIGN AFFAIRS, Jan.-Feb. 2007, at 57, 66.

⁵⁰ *Id.* at 57, 60-61.

⁵¹ *Id.* at 69.

gally, the techniques and amounts involved are likely to be indistinguishable from the mass of other low-level financial crime that generally falls below a threshold that merits serious investigation.⁵² The Al Qaeda leadership would like to have reliable sources of significant amounts of money so that it can more easily find ways to contact and direct these individual cells and promote major attacks. But in the absence of direct contact, Al Qaeda leaders have nonetheless been able to maintain influence and impart strategic guidance through use of the Internet and other inexpensive communication tools.⁵³

VII. A WAY FORWARD

International efforts to counter the financing of terrorism have achieved many positive results. Apart from any impact on the flow of money to Al Qaeda, these efforts have built awareness of the threat, generated a sense of shared responsibility between States, and made it more difficult for all classes of major criminals, not just terrorists, to raise, move and store their money.⁵⁴ But the international community can no more rely on countering the financing of terrorism to prevent further attacks than it can rely on military means. Financing is only one aspect of the problem. As Al Qaeda continues to dissolve into small, self-reliant groups which, independent from the leadership, interpret a general strategy according to local circumstances, financing may become decreasingly relevant to efforts to contain the threat. As the amounts of money used to mount attacks become smaller, they become harder to regulate.

More regulation of the financial sector, however, will not necessarily lead to less terrorism, and any drive towards the former should be conducted without reference to the latter. While the 9/11 attacks demonstrated the scope of Al Qaeda's ambition and the vulnerability of its targets, the attacks did not suddenly reveal the way in which Al Qaeda planned and financed its operations. Nor is Al Qaeda's methodology static; Al Qaeda is opportunistic and highly adaptive. Any measures to counter the financing of terrorism therefore should aim to be equally agile, allowing effort and resources to flow to where they are most needed, and the best way to decide

⁵² See Craig Whitlock, *Al-Qaeda Masters Terrorism On the Cheap*, WASH. POST, Aug. 24, 2008 at A1.

⁵³ See generally Steve Coll and Susan B. Glasser, *Terrorists Turn to the Web as Base of Operations*, WASH. POST, Aug. 7, 2005, at A1.

⁵⁴ Despite increased regulation and international efforts, however, criminals continue to find new ways to carry out their crimes. See generally MISHA GLENNY, *MCMAFIA: A JOURNEY THROUGH THE GLOBAL CRIMINAL UNDERWORLD* (2008) (arguing that organized crime is enormously inventive and entrepreneurial and always at least one step ahead of the regulators).

where they are most needed is to examine how terrorists have been funding their operations since 9/11.

The amount of data available on terrorist financing is growing as terrorism cases pass through the courts and the details of investigations of terrorist acts become public. This evidence of what terrorists actually do to raise, store and move money provides an opportunity to look at the problem through the eyes of the terrorists themselves. Such an examination may disclose some general patterns, or it may disclose none. It may disclose regional trends or specific choke points. It may encourage greater enforcement of some current regulations, and it may bring into question the value of others.

But whatever such an examination concludes, such a study will be of value, not only to the regulators, but also to those private institutions that must devote their own resources to ensure compliance with the regulations. The more confidence private financial institutions have that the rules they are asked to enforce are tested against their objectives, the more likely they are to enforce them willingly and effectively. Financial institutions have as much interest in preventing terrorist attacks as any other sector of society and their potential contribution as experts in financing should be harnessed as effectively as possible. All sides would benefit if the suspicious activity reports submitted by banks and similar bodies were based on real concerns of possible criminality rather than the fear of falling short of the regulators' expectations. If the financial skills of the reporters are drawn into better alignment with the forensic skills of the investigators, an effective and mutually reinforcing dialogue could emerge between them, with feedback and briefing from the investigators re-motivating and re-focusing the work of the reporters. It will never be possible to eliminate all terrorist financing, but the objective should be to minimize the risk through a flexible regulatory system based on collaboration with the private sector and careful examination of terrorist methodology.