

---

Volume 36 | Issue 2

---

2004

# The Obstacles to Suppressing Radical Islamic Terrorist Financing

John D.G. Waszak

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>



Part of the [International Law Commons](#)

---

## Recommended Citation

John D.G. Waszak, *The Obstacles to Suppressing Radical Islamic Terrorist Financing*, 36 Case W. Res. J. Int'l L. 673 (2004)  
Available at: <https://scholarlycommons.law.case.edu/jil/vol36/iss2/23>

This Note is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

## THE OBSTACLES TO SUPPRESSING RADICAL ISLAMIC TERRORIST FINANCING

*John D.G. Waszak*\*

### *I. Introduction - Terrorism Pays: Small Money, Big Bang*

The September 11 attacks cost al-Qaeda a relatively modest sum. The Federal Bureau of Investigations estimates that al-Qaeda spent \$175,000 to \$500,000 on the attacks and lost nineteen operatives.<sup>1</sup> The damage to the United States was estimated to be in excess of \$135 billion and over 3,000 dead.<sup>2</sup> The cost of making a suicide bomb can be as low as five dollars, while deployment of a suicide bomber, including transportation and reconnaissance, can cost as little as \$200.<sup>3</sup> A suicide bomber is an asset that can be traded for weapons or cash, or who can, for a relatively low cost, be deployed with “successful” results.<sup>4</sup> Terrorist organizations often get enormous returns on their modest operational investments.

In addition to the funds needed to conduct actual attacks, organizations like al-Qaeda need funds for support infrastructure, such as training camps, traveling expenses, payment of operatives, weapons, technology, and housing. Al-Qaeda’s start up costs for establishing a base of operations in

---

\* J.D., 2005, Case School of Law, Cleveland, Ohio. The author would like to thank the following for providing much needed context and guidance: Professor and Dean for Academic Affairs Hiram Chodosh; Professor and Director of the Frederick K. Cox International Law Center Michael P. Scharf; Professor Amos Guiora; Adjunct Professor Geoffrey S. Mearns; Adjunct Professor Jason A. Korosec; officials of the United States Departments of Justice, Treasury, and State interviewed; and anyone else who helped me out in any way, including Research Librarian Andrew Dorchak, and Will Carmines and the rest of the Editorial Staff of the Journal of International Law. Finally, the author would like to thank his parents for supporting him throughout his law school education.

<sup>1</sup> According to testimony of FBI Director Robert Mueller and FBI reports, the attacks cost between \$175,000 and \$250,000. HOUSE PERMANENT SELECT COMM. ON INTELLIGENCE AND THE SENATE SELECT COMM. ON INTELLIGENCE, *Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001*, S. REP. NO. 107-351 & H.R. REP NO. 107-792, at 147-148 (2002) (hereinafter 9/11 Joint Congressional Inquiry Report). FBI Supervisory Special Agent Steven Garfinkel revealed that the total disbursements of money (\$303,671.62) from the hijackers bank accounts in Florida exceeded the total deposit amount (\$303,481.63). Mr. Garfinkel added that the hijackers also used substantial amounts of loose cash, and estimated the total cost of the attacks to be as much as \$500,000. Paul Beckett, *September 11, Attacks Cost \$303,672; Plot Papers Lacking, FBI Says*, WALL ST. J., May 15, 2002, at B4.

<sup>2</sup> LORETTA NAPOLEONI, MODERN JIHAD: TRACING THE DOLLARS BEHIND THE TERROR NETWORKS 179 (2003).

<sup>3</sup> *Id.* at 178-79.

<sup>4</sup> *Id.*

Afghanistan was estimated to be around \$50 million.<sup>5</sup> Before the United States attack on al-Qaeda in Afghanistan, Al-Qaeda's estimated annual expenditures, the money necessary to maintain a core strength of 3,000 members in Afghanistan and its international operatives, was estimated at \$36 million, with a total annual budget estimated to be around \$50 million.<sup>6</sup>

After the September 11 attacks, stopping terrorism became a paramount concern to both Americans and the international community. Terrorist organizations require money and money transfer methods to support their organizations and conduct attacks. Accordingly, it makes sense to focus on terrorist financing and to strengthen laws designed to detect and stop terrorist financing. However, the international money laundering and terrorist financing laws and standards mandated by various United Nations Security Council Resolutions and recommended by various international organizations like the Financial Action Task Force (FATF),<sup>7</sup> are ineffective due to a complex intersection of various religious, cultural, economic and political factors and institutions present in many relevant States.

### A. The Difference between Money Laundering and Terrorist Financing: *Greed v. Revolution*

Radical Islamic terrorist financing differs dramatically from the money laundering of illegal profits seen in criminal enterprises—most notably narcotics trafficking and “narco-terrorism.” The Department of Defense defines narco-terrorism as violence conducted to further the aims of drug traffickers.<sup>8</sup> But there is no universal definition of “terrorism.”<sup>9</sup> The

---

<sup>5</sup> ROHAN GUNARATNA, *INSIDE AL-QAEDA* 81-82 (2002) (explaining that the estimates are based on a comparison of “budgets of terrorist groups in relation to their sources of finance, geographic distribution, organizational sophistication, size and other factors”). *But see*, Dirk Laabs, *A Dwarf Known as al Qaeda: The Threat Posed the Group is Hugely Overblown*, L.A. TIMES, Nov. 30, 2004, at B13 (according to French terrorism investigator, Judge Jean-Louis Bruguiere, “al-Qaeda never had a ‘macro-financing’ structure . . . and there were never larger flows of external money financing any attack”).

<sup>6</sup> GUNARATNA, *supra* note 5, at 81-82.

<sup>7</sup> The Financial Action Task Force was created in 1989 as a multilateral initiative to develop policies to help States combat money laundering. In 2001, it expanded its scope to combat terrorist financing. FINANCIAL ACTION TASK FORCE, *More about the FATF and its Work*, at [http://www.fatf-gafi.org/AboutFATF\\_en.htm](http://www.fatf-gafi.org/AboutFATF_en.htm).

<sup>8</sup> JOINT DOCTRINE BRANCH, DEPARTMENT OF DEFENSE: DICTIONARY OF MILITARY AND ASSOCIATED TERMS, at <http://www.dtic.mil/doctrine/jel/doddict/data/n/03533.html>.

<sup>9</sup> *See* Boaz Ganor, *Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?*, INT'L POLICY INST. FOR COUNTER-TERRORISM, available at <http://www.ict.org.il/articles/define.htm>. (discussing the differences between national liberators, revolutionaries, anarchists, etc., and proposing that terrorism be defined as “the

motivation for terrorism is predominantly political, while the motivation for narco-terrorism and other criminal enterprises is predominantly economic.<sup>10</sup> Unlike criminal enterprises that derive income from criminal activities, radical Islamic terrorist organizations often work from largely legitimate funds including charity donations and business profits.

Terrorist financing and money laundering share key features, yet also differ in several aspects. Narcotics traffickers work from illegal profits (“dirty money”). The first phase of money laundering is *placement*, which involves the physical placement of the dirty money, usually in the form of cash, into the formal financial system.<sup>11</sup> This is often achieved by breaking up large sums of cash into smaller sums (“smurfing” or “structuring”) or converting the cash into less suspicious instruments like money orders, and then depositing the small sums or monetary instruments into separate bank branches.<sup>12</sup> In the second phase of money laundering, *layering*, the dirty money is transferred from its original source through a series of transactions, often including the purchasing of investment instruments and the wire transfer of funds to accounts in States that have strict bank secrecy laws.<sup>13</sup> In the third phase, *integration*, the now laundered money re-enters the legitimate economy, and is used to purchase luxury goods, real estate, or businesses.<sup>14</sup>

The key difference between the money laundering of criminal profits and terrorist financing is simple: money laundering cleans dirty money; terrorist financing dirties clean money. By using convoluted transactions in the layering stage, terrorist financing conceals the source of the funds, which ensures that such sources remain fertile. However, the dirty work of terrorist financing, the terrorist act, is at the integration stage, which is the exact opposite outcome of money laundering.<sup>15</sup>

Purely criminal organizations, such as the Colombian Medellin Cartel, can conduct terrorist attacks and political negotiations that resemble the

---

intentional use of, or threat to use violence against civilians or against civilian targets, in order to attain political aims”).

<sup>10</sup> U.S. DEP’T. OF STATE, 2003 INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, *Volume II: Money Laundering and Financial Crimes* 8 (2004) (prepared annually every March 1 for Congress, in accordance with §489 of the Foreign Assistance Act of 1961).

<sup>11</sup> FINANCIAL ACTION TASK FORCE, *Basic Facts about Money Laundering*, available at [http://www1.oecd.org/fatf/MLaundering\\_en.htm#How%20is%20money%20laundered?](http://www1.oecd.org/fatf/MLaundering_en.htm#How%20is%20money%20laundered?) (2004).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Hawala and Underground Terrorist Financing Mechanisms: Before the Subcomm. on Int’l Trade and Fin. of the Comm. On Senate Banking, Housing, and Urban Affairs*, 107 Cong. 49 (2002) (statement of Mr. Patrick Yost, Product Development Manager, SRA International, Inc., formerly of FinCEN).

methods and aims of a true terrorist organization. However, these criminal organizations are focused on securing profits through illegal enterprise, and are not as capable of gathering popular donations the way the Irish Republican Army did in the 1970's and 1980's or HAMAS does today.<sup>16</sup> Additionally, some radical Islamic organizations have also participated in drug trafficking, and by transferring these illicit profits to an organization-controlled front company or donating to a controlled front charity organization, these funds can be effectively laundered. Groups like al-Qaeda, however, benefit from a network of charities, mosques, banks and other financial institutions that have served Islamic causes since the Soviet invasion of Afghanistan.<sup>17</sup>

Operationally, money laundering and terrorist financing use many of the same techniques to move funds.<sup>18</sup> However, the size of the transactions often differ because money launderers must place large quantities of illegal cash into a financial system without detection, while a terrorist financier needs to move a smaller amount of funds to a terrorist cell.<sup>19</sup> To move their funds, drug traffickers and terrorist groups can readily identify those States that have weak money laundering and terrorist financing laws and regulations. To raise funds, terrorist groups conduct their activities in States where there are affluent and sympathetic communities, such as the United States, and where their fundraising activities are either legal or easily concealed. On this latter point, this includes those nations that do not consider a group like HAMAS to be a terrorist organization, which includes nearly all nations of the Middle East, and until September 6, 2003, the European Union.<sup>20</sup> Until recently, in many nations key to stopping terrorist financing, such as Saudi Arabia and the United Arab Emirates, money laundering of drug profits was illegal while terrorist financing was not.<sup>21</sup>

---

<sup>16</sup> RENSSLAER LEE, CONGRESSIONAL RESEARCH SERVICES, *TERRORIST FINANCING: THE U.S. AND INTERNATIONAL RESPONSE* 6 (2002).

<sup>17</sup> COUNCIL ON FOREIGN RELATIONS, *TERRORIST FINANCING: REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS* 7 (2002) (hereinafter CFR Report on Terrorist Financing 2002).

<sup>18</sup> U.S. DEP'T. OF STATE, *2002 INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT, Money Laundering and Financial Crimes*, at 7 (2003) (asserting that criminal organizations and terrorists both employ the services of the same types of money professionals, including currency exchangers, bankers, accountants and lawyers, to assist in the transfer of their funds) (hereinafter INCSR 2002).

<sup>19</sup> *Id.* at 6.

<sup>20</sup> COUNCIL ON FOREIGN RELATIONS, *UPDATE ON THE GLOBAL CAMPAIGN AGAINST TERRORIST FINANCING: SECOND REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS*, 12 (2004) (hereinafter CFR Update on Terrorist Financing 2004).

<sup>21</sup> INCSR 2002, *supra* note 18, at 79-80.

## B. Formal Financial Institutions and Informal Funds Transfer Systems: Two Potential Conduits for Terrorist Financing

In States all over the world, both formal financial institutions<sup>22</sup> and informal funds transfer systems<sup>23</sup> permit transactions under relative degrees of secrecy. To detect illegal transactions in formal financial institutions, some States mandate reporting requirements on suspicious transactions or transfers over a designated amount. Many States do not have the financial intelligence infrastructure necessary to detect illegal transactions. In other situations, the cost of regulating and enforcing laws are prohibitive. Businesses and individuals from all over the world are attracted to States with bank secrecy laws,<sup>24</sup> such as the Cayman Islands, where the selling of financial services represents an estimated thirty percent of the gross domestic product.<sup>25</sup>

Informal funds transfer systems are difficult to detect because of their underground nature. The *hawala* is an often informal network based on trust that is particular to various South Asian ethnicities and found wherever these groups relocate, including the United States and the United Arab Emirates (“U.A.E.”).<sup>26</sup> Informal networks vary in operational method

---

<sup>22</sup> For this Note, formal financial institutions generally include those institutions that are regulated by a government, such as banks and other traditional institutions.

<sup>23</sup> “Informal funds transfers systems” are also commonly described as “alternative remittance systems,” “informal value transfer systems,” or “underground banking.” Specific types of informal funds transfers systems include the “hawala,” “hundi,” “fei-ch’ien” and others. The general term “informal funds transfer systems” will be used in this Note, and the type focused on will be the “hawala.” See generally, Mohammed El Qorchi et al., *INFORMAL FUNDS TRANSFER SYSTEMS: AN ANALYSIS OF THE INFORMAL HAWALA SYSTEM*, INTERNATIONAL MONETARY FUND, Occasional Paper 222, 1-2, 6 (2003).

<sup>24</sup> Bank secrecy laws prohibit a bank from revealing the existence of an account and disclosing information about the account without the consent of the customer.

<sup>25</sup> Natasha Lance Rogoff, *Haven or Havoc*, P.B.S. Frontline website, available at <http://www.pbs.org/wgbh/pages/frontline/shows/tax/schemes/cayman.html>.

<sup>26</sup> *Hawala and Underground Terrorist Financing Mechanisms: Before the Subcomm. on Int’l Trade and Fin. of the Comm. On Senate Banking, Housing, and Urban Affairs*, 107 Cong. 43 (2001) (prepared statement of Rahim Bariek, Bariek Money Transfer). Mr. Bariek, a U.S. based hawala operator (“hawaladar”) based in Northern Virginia, describes his licensed business:

One of my customers comes to me with \$300 and asks to send it to his brother in Pakistan. Charging about a 5 percent commission, I take the money and give my customer a transfer/code number which they give to their family in Pakistan. They will need that transfer/code number and identification to get the money from *Insaf Exchange*. The family member in Pakistan must also sign a form to show that they received the money. I call and fax *Insaf Exchange* with the name of the person who will get the money and the transfer/code number. Within 24 hours, the money is guaranteed safe in the hands of my customer’s family in Pakistan.

*Id.*

and often fail to leave a paper trail. Al-Qaeda allegedly used such methods, including hawala transfers, to implement the September 11<sup>th</sup> attacks.<sup>27</sup> Because these networks are often used for legitimate reasons,<sup>28</sup> the current approach to stopping their usage in terrorist financing appears to be formalization through governmental regulation or criminalization.

### C. The Roadmap for this Note

Part II of this paper will provide an outline of the legal framework designed to stop and suppress terrorist financing, starting with the international response that establishes the legal norms and obligations of States. The laws of the United States, including the anti-terrorist financing provisions of the Patriot Act, will be examined as an example of a reasonably effective regulatory and law enforcement regime. Additionally, Saudi Arabia and the U.A.E. are crucial to the analysis of radical Islamic terrorist financing. Saudi Arabia has been regarded as an “epicenter” of terrorist financing by the General Counsel of the Department of the Treasury,<sup>29</sup> and will be examined in relation to fundraising via charities. According to the *Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001*, the “banking and wire service infrastructure” of the U.A.E. aided the September 11 hijackers. Four transfers totaling approximately \$110,000 to a SunTrust account in Venice, Florida, served as the principal funding for the attacks.<sup>30</sup> Due to such transfers, and the reputation of the U.A.E. as a financial center of the Persian Gulf with lax banking regulations and unregulated free trade zones, the U.A.E. serves as a particularly illustrative example of the problems of money laundering and terrorist financing mechanisms in the Middle East.<sup>31</sup>

Part III will examine how radical Islamic terrorist organizations actually finance their operations. Additionally, it will be necessary to

---

<sup>27</sup> INCSR 2003, *supra* note 10, at 22; *but see*, Samuel Munzele Maimbo & Nikos Passas, *The Regulation and Supervision of Informal Remittance Systems*, 15 SMALL ENTERPRISE DEV. 53, at 59, (2004) (“It is worth noting that despite some claims made in the press about methods used by the September 11 hijackers to transfer funds, all available evidence points to their use of banks, wire services, credit card accounts and other regulated remitters”).

<sup>28</sup> One legitimate usage of informal funds transfer systems is when an immigrant worker sends money to his family that lives in a nation that lacks reliable formal financial institutions.

<sup>29</sup> David Aufhauser, General Counsel, Dep’t of the Treasury, Written testimony before the Comm. on Senate Banking, Housing, and Urban Affairs (Sept. 25, 2003), *available at* <http://www.treas.gov/press/releases/js760.htm>.

<sup>30</sup> 9/11 Joint Congressional Inquiry Report, *supra* note 1, at 147-148.

<sup>31</sup> *See* Glenn R. Simpson, *U.A.E. Banks Had Suspect Transfers*, WALL ST. J., Sept. 17, 2003, at A10; Timothy L. O’Brien, *Terror Fund Focus is on Dubai: Ancient Ways Make Money Hard to Track*, INT’L HERALD TRIB., Oct. 6, 2003, at 1.

describe certain cultural, political, and economic conditions that complicate the battle against terrorism in general, and terrorist financing in particular. Furthermore, the context provided will demonstrate why the laws set up both internationally and nationally are substantially ineffective.

## *II. The Legal Framework Designed to Suppress Terrorist Financing*

### **A. The International Response to the Attacks of September 11<sup>th</sup>**

#### **1. The United Nations Security Council Resolutions**

On September 28, 2001, the United Nations Security Council adopted Resolution 1373, which specifically requires that States shall:

[1] [p]revent and suppress the financing of terrorist acts;

[2] [c]riminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

[3] [f]reeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities; and

[4] [p]rohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.<sup>32</sup>

Security Council Resolutions are considered binding on member States, but the extent of the legal obligation depends on the language used

---

<sup>32</sup> S.C. Res. 1373, U.N. SCOR, 56th Sess., 4385th Mtg., at ¶1(a)-(d), U.N. Doc. S/RES/1373 (2001).



in the Resolution.<sup>33</sup> The verb “shall” used in the first paragraph of the resolution, which includes the four requirements discussed above, imposes a legal obligation on States.<sup>34</sup> Resolution 1373 also obligates all States to submit reports detailing measures taken to comply with the order to suppress and prevent terrorist financing, which the Security Council’s Counter-Terrorism Committee reviews to identify problems.<sup>35</sup>

Other relevant Security Council Resolutions include action against specific parties. Resolution 1390<sup>36</sup> was adopted on January 16, 2002, and serves as a continuation of Resolutions 1267<sup>37</sup> and 1333,<sup>38</sup> which called for the freezing of assets owned or controlled by Osama bin Laden, al-Qaeda, and the Taliban. Essentially, these resolutions require nations to “freeze without delay the funds and other financial assets or economic resources” of those entities and individuals designated by the U.N.<sup>39</sup>

## 2. The International Convention for the Suppression of the Financing of Terrorism (1999)

In 1999, the United Nations adopted the International Convention for the Suppression of the Financing of Terrorism (“Convention”).<sup>40</sup> The Convention obligates party States to: (1) create domestic laws that criminalize the financing of terrorist acts;<sup>41</sup> (2) provide legal and law enforcement to other party States;<sup>42</sup> and (3) require financial institutions to implement reporting and diligence requirements.<sup>43</sup>

Criminal legislation written to comply with the Convention would have to include the mental element of (1) willfulness of the act and (2) either the intention or knowledge that the funds would go towards a terrorist act.<sup>44</sup> “Financing” is defined broadly as the provision or collection of funds

---

<sup>33</sup> INTERNATIONAL MONETARY FUND, LEGAL DEPARTMENT, SUPPRESSING THE FINANCING OF TERRORISM: A HANDBOOK FOR LEGISLATIVE DRAFTING 16 (2003) (hereinafter IMF Terrorist Financing Legislative Handbook).

<sup>34</sup> *Id.*

<sup>35</sup> S.C. Res. 1373, *supra* note 32, at ¶6.

<sup>36</sup> S.C. Res. 1390, U.N. SCOR, 57th Sess., 4452nd Mtg., U.N. Doc. S/RES/1390 (2002)

<sup>37</sup> S.C. Res. 1267, U.N. SCOR, 54th Sess., 4051st Mtg., U.N. Doc. S/RES/1267 (1999).

<sup>38</sup> S.C. Res. 1333, U.N. SCOR, 55th Sess., 4251st Mtg., U.N. Doc. S/RES/1333 (2000).

<sup>39</sup> S.C. Res. 1390, *supra* note 36, at ¶ 2(a).

<sup>40</sup> *International Convention for the Suppression of the Financing of Terrorism*, G.A. Res. 54/109, U.N. GAOR, 54th Sess., 76th mtg., Supp. No. 49, U.N. Doc. A/Res/53/108 (1999).

<sup>41</sup> *Id.* at art. 4.

<sup>42</sup> *Id.* at art. 18.

<sup>43</sup> *Id.*

<sup>44</sup> IMF Terrorist Financing Legislative Handbook, *supra* note 33, at 7.

“by any means, directly or indirectly, unlawfully and willfully.”<sup>45</sup> “Terrorist act” is defined as any act that (1) causes death or serious injury to a civilian that is (2) meant to compel a government to do or not do something.<sup>46</sup>

The Convention has been signed by 132 States, and ratified by 112 States.<sup>47</sup> Absent from the list of States that have ratified the Convention are Saudi Arabia and the United Arab Emirates.

### 3. The Financial Action Task Force: Special Recommendations on Terrorist Financing (2001)

In 1989, the G7 founded the multi-governmental agency of the Financial Action Task Force on Money Laundering (“FATF”) with the purpose of documenting cases of money laundering and developing strategies to counter laundering, and convincing States to adopt measures to detect and prosecute laundering.<sup>48</sup> FATF is made up of 29 States (U.A.E. and Saudi Arabia are not members) and after the September 11<sup>th</sup> attacks, it focused on money laundering as it relates to terrorist financing.<sup>49</sup>

FATF developed the eight Special Recommendations,<sup>50</sup> which have become the international standard for evaluating a state’s anti-terrorist financing laws. Additionally, an ad-hoc Group on Non-Cooperative Countries and Territories (“NCCT”) was created to evaluate and apply pressure on those States that undermine the money laundering efforts of the FATF. States end up on the list of NCCT by having financial regulation loopholes, regulatory requirements obstacles, obstacles to international cooperation, and failing to provide adequate resources for preventing and detecting money laundering activities.<sup>51</sup>

The Special Recommendations overlap with both the Convention and Security Council Resolutions. For example, Recommendation I asks States

---

<sup>45</sup> International Convention for the Suppression of the Financing of Terrorism, *supra* note 40 at art. 2, ¶1.

<sup>46</sup> *Id.*; IMF Terrorist Financing Legislative Handbook, *supra* note 33, at 7.

<sup>47</sup> UNITED NATIONS website, *Multilateral Treaties Deposited with the Secretary General, The International Convention for the Suppression of the Financing of Terrorism*, available at [http://untreaty.un.org/ENGLISH/Status/Chapter\\_xviii/treaty11.asp](http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty11.asp).

<sup>48</sup> FINANCIAL ACTION TASK FORCE, *More about the FATF and its Work*, at [http://www.fatf-gafi.org/AboutFATF\\_en.htm](http://www.fatf-gafi.org/AboutFATF_en.htm).

<sup>49</sup> FINANCIAL ACTION TASK FORCE, *Members and Observers*, at [http://www1.oecd.org/fatf/Members\\_en.htm](http://www1.oecd.org/fatf/Members_en.htm).

<sup>50</sup> FINANCIAL ACTION TASK FORCE, SPECIAL RECOMMENDATIONS ON TERRORIST FINANCING (2001).

<sup>51</sup> FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, REPORT ON NON-COOPERATIVE COUNTRIES AND TERRITORIES, 11-13 (2000).

to ratify and implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. The United States enacted the Suppression of the Financing of Terrorism Convention Implementation Act of 2002 to comply with this recommendation.<sup>52</sup> Many key nations are party to the convention, but have yet to ratify and implement it, including Saudi Arabia, Bahrain, and Columbia.<sup>53</sup> Other key nations have not yet signed the convention, including the United Arab Emirates and Pakistan.<sup>54</sup> Recommendation III addresses terrorist asset freezing, and requires jurisdictions to implement measures that will freeze and seize terrorist-related funds and assets in accordance with Security Council Resolutions 1267 and 1373.<sup>55</sup>

In response to the usage by radical Islamic terrorist organizations of the financing mechanisms briefly introduced in Part I, FATF has made three pertinent recommendations regarding charity organizations, wire transfers, and informal funds transfer systems (“alternative remittance systems”).

Certain terrorist groups use charity organizations to both collect and to transfer funds. Recommendation VIII urges nations to take measures to ensure that non-profit organizations are not abused for the purposes of terrorist financing. The FATF calls for States to impose verification, oversight, and financial transparency requirements on charities as well as sanctions against those charities that support terrorism.<sup>56</sup>

The September 11<sup>th</sup> hijackers received various international wire transfers that originated in the United Arab Emirates. With Recommendation VII, the FATF aspires to ensure that basic information on both the beginning and end users of wire transfers are immediately available to law enforcement, financial intelligence units, and target financial institutions.<sup>57</sup>

Additionally, terrorist organizations like al-Qaeda have allegedly used informal networks to move funds. Recommendation VI asks States to regulate informal funds transfer systems such as the hawala through licensing, registering, and the imposition of civil and criminal sanctions on those that do not comply. The goal of the FATF is to bring these methods

---

<sup>52</sup> *Multilateral Treaties Deposited with the Secretary General, The International Convention for the Suppression of the Financing of Terrorism, supra* note 47.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> FINANCIAL ACTION TASK FORCE, INTERPRETATIVE NOTE TO SPECIAL RECOMMENDATION III: FREEZING AND CONFISCATING TERRORIST ASSETS (2003).

<sup>56</sup> FINANCIAL ACTION TASK FORCE, COMBATING THE ABUSE OF NON-PROFIT ORGANISATIONS: INTERNATIONAL BEST PRACTICES, 4-8 (2002).

<sup>57</sup> FINANCIAL ACTION TASK FORCE, INTERPRETATIVE NOTE TO SPECIAL RECOMMENDATION VII: WIRE TRANSFERS (2003).

into the mainstream of financial regulatory norms, and to apply money laundering and terrorist financing laws to these systems outside the mainstream financial sector.<sup>58</sup>

## **B. The Domestic Laws of Key States: The United States, Saudi Arabia, and the United Arab Emirates**

### **1. The United States Counterterrorist Financing Regime**

According to the Department of Justice, new counterterrorist financing laws allow for four initiatives: the (1) criminalization of terrorist financing; the (2) enforcement of terrorist crimes on known terrorist organizations and their supporters; the (3) identification of other terrorists and supporters of terrorist organizations through financial analysis; and the (4) freezing and confiscation of assets of identified terrorist organizations and their supporters.<sup>59</sup> Underlying these initiatives is the concept of “list making,” that is, the designation and publication by the Executive branch of individuals and organizations that have been determined to be terrorists.<sup>60</sup> No one is allowed to conduct or facilitate a financial transaction with those who appear on the list.

The major weapon in the arsenal of the counterterrorist financing regime is the criminalization of material support for terrorist organizations.<sup>61</sup> Such a law can be used against a variety of actors, including individuals engaged in cigarette smuggling, banks that knowingly transfer funds to designated terrorists, or charity organizations that collect funds for terrorist organizations, as well as the donor. Because charity organizations work from otherwise legitimate sources of money, the criminalization of providing material support is, in essence, the major criminal counterterrorist financing provision of the United States Criminal Code. This provision, combined with the anti-money laundering laws discussed below, provide effective tools for prosecutors bringing charges against a terrorist financier.

---

<sup>58</sup> FINANCIAL ACTION TASK FORCE, INTERPRETATIVE NOTE TO SPECIAL RECOMMENDATION VI: ALTERNATIVE REMITTANCE (2003).

<sup>59</sup> U.S. DEP’T. OF JUSTICE, United States Attorney’s Bulletin: Terrorist Financing Issues 8 (Jul. 2003).

<sup>60</sup> See Generally Nina J. Crimm, *High Alert: The Government’s War on the Financing of Terrorism and Implications for Donors, Domestic Charitable Organizations, and Global Philanthropy*, 45 WM. & MARY L. REV. 1341, 1355-73 (2004).

<sup>61</sup> 18 U.S.C. §§ 2339A-2339B (2001).

### a. A Brief History of Anti-Money Laundering Laws

The Patriot Act<sup>62</sup> adds additional burdens on banks and brokerages to report suspicious activities and to compile data on customers,<sup>63</sup> as well as expand forfeiture laws,<sup>64</sup> restrict the ability of shell banks to do business in the United States,<sup>65</sup> and encourage information exchange between the government and private banks.<sup>66</sup> The private banking industry serves as a front line of investigation regarding terrorist financing.

The Patriot Act amplifies and extends pre-existing anti-money laundering laws. Money laundering is a crime in America, and its status as a crime has undergone two evolutions. First, the Bank Secrecy Act of 1970 ("BSA") required financial institutions to file Currency Transaction Reports ("CTR") whenever an individual deposited over \$10,000 in a single day or transferred funds in excess of \$10,000 within or outside the United States.<sup>67</sup> The BSA of 1970 was largely a law enforcement device for criminal, tax, and regulatory investigations, and actual money laundering was not a crime. Additionally, banks did not comply with the BSA on a regular basis by banks.<sup>68</sup>

In 1984, Congress criminalized money laundering by passing 18 U.S.C. §1956 ("Laundering of monetary instruments") and 18 U.S.C. §1957 ("Engaging in monetary transactions in property derived from specified unlawful activity").<sup>69</sup> The 1986 Money Laundering Control Act made structuring of transactions to avoid Currency Transaction Reports a crime. The criminalization of money laundering was largely in response to the massive amounts of money exchanging hands and sifting through American financial institutions as a product of the illegal trade of narcotics. Clearly, with the Patriot Act's amplified reporting and due diligence requirements, Congress has intended to provide a means to conduct additional financial analysis as part of a counterterrorist financing regime.

---

<sup>62</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Acts of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in scattered sections of 8, 15, 18, 22, 31, 42, 49, and 50 of the United States Code) (2001) (hereinafter Patriot Act) (2001).

<sup>63</sup> Patriot Act, *supra* note 62, at §312 and §326.

<sup>64</sup> *Id.* at §319 and §372.

<sup>65</sup> *Id.* at §313.

<sup>66</sup> *Id.* at §314.

<sup>67</sup> Scott Sulzer, Money Laundering: *The Scope of the Problem and Attempts to Combat It*, 63 TENN. L. REV. 143, at 153 (1995).

<sup>68</sup> *Id.* at 154.

<sup>69</sup> *Id.* at 159-60.

b. Expanding the Definition of Financial Institutions:  
Regulating the Hawala

The Patriot Act expands the class of financial institutions in America that have are required to file Currency Transaction Reports (“CTR”) and Suspicious Activity Reports (“SAR”) and otherwise comply with the Bank Secrecy Act, to include securities brokers-dealers,<sup>70</sup> commodity traders,<sup>71</sup> and non-financial trades and businesses transacting in excess of \$10,000.<sup>72</sup> The Patriot Act also requires every financial institution, including banks, savings associations, and credit unions; securities brokers; futures commission merchants and introducing brokers; casinos; money services businesses; mutual funds; and credit card system operators, to establish an internal anti-money laundering program.<sup>73</sup>

Non-bank money transmitters, (informal funds transfer systems) are considered Money Service Businesses (“MSBs”), which include check cashers, currency exchangers, and issuers, sellers, and redeemers of traveler’s checks, money orders, and stored value.<sup>74</sup> The definition of “money transmitter” was formerly limited to those individuals who engaged “as a business” in the acceptance or transmission of funds through the formal financial institutions sector, such as through a bank.<sup>75</sup>

The definition of the MSB was updated to include those informal funds transfer systems that did not operate in a formal business setting or operated outside the formal financial institutions sector; such informal funds transfer systems are now responsible for complying with the Bank Secrecy Act.<sup>76</sup> The informal *hawala* now fits into the regulatory definition of a money transmitter and treated, for purposes of the Bank Secrecy Act, as a Money Service Business.

As of 2002, the principals of all MSBs were required to register with the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Department of the Treasury, as well as submit a list of agents and subagents.<sup>77</sup> The MSBs are now required to comply with all provisions of

---

<sup>70</sup> Patriot Act, *supra* note 62, at §356(a).

<sup>71</sup> *Id.*, at §356(b).

<sup>72</sup> *Id.* at §365.

<sup>73</sup> *Id.* at §352.

<sup>74</sup> U.S. DEP’T. OF TREASURY, A REPORT TO THE CONGRESS IN ACCORDANCE WITH SECTION 359 OF THE UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM ACT OF 2001 8 (2002) (hereinafter Treasury Dep’t Report on Section 359)

<sup>75</sup> 31 C.F.R. §103.11(uu)(5) (2002).

<sup>76</sup> Patriot Act, *supra* note 62, at §359; *see* Treasury Dep’t Report on Section 359, *supra* note 74, at 8.

<sup>77</sup> 31 C.F.R. §103.41 (2002).

the Bank Secrecy Act, including due diligence and verification of customer identities and target beneficiaries for transfers over \$3,000.<sup>78</sup> Additionally, MSBs must report all transactions over \$750 when subject to a Geographic Targeting Order, which, under the BSA, imposes stricter reporting and recordkeeping requirements on specified financial service providers in a certain geographical area for a limited time period, for law enforcement and intelligence operations.<sup>79</sup>

MSBs that fail to register properly with FinCEN are subject to penalties of \$5,000 a day until registration is completed, and may also be imprisoned for five years. Additionally, failure to operate an MSB in compliance with Treasury Department regulations of reporting and record keeping can result in civil and criminal penalties.<sup>80</sup>

These regulatory and legal instruments requiring due diligence, record keeping, and reporting by formal financial institutions and informal funds transfer systems are designed to detect two crimes relevant to terrorist financing. First, money laundering is a crime under Section 1956 and 1957 of the U.S. Criminal Code.<sup>81</sup> Money laundering involves financial monetary transactions with criminal profits. Under Section 1956, a defendant must act with the intent to: (1) promote the carrying on of a specified unlawful activity; (2) engage in tax fraud; (3) conceal or disguise the nature, location, source, ownership, or control of the property; or (4) avoid a transaction-reporting requirement.<sup>82</sup> Section 1957 encompasses the same elements, but the defendant need not have knowledge of a specific unlawful activity, only know that the money being transacted had general criminal origins.<sup>83</sup>

Second, Sections 2339A and 2339B of the U.S. Criminal Code criminalize the provision of material support to a terrorist or to a designated terrorist organization.<sup>84</sup> To be prosecutable, a defendant would have to knowingly provide material support or resources to a foreign terrorist organization, or attempt or conspire to do so.<sup>85</sup>

The key difference between money laundering and providing material support involves the source and destination of the transaction: the source of the money in a money laundering case is often criminal and the destination for the material support to a terrorist organization is what renders the transaction criminal. However, a terrorist financier can easily launder

---

<sup>78</sup> *Id.* at §103.33(f).

<sup>79</sup> *Id.* at §5326(d).

<sup>80</sup> 18 U.S.C. §1960 (2004).

<sup>81</sup> *Id.* at §§ 1956-57.

<sup>82</sup> Treasury Dep't Report on Section 359, *supra* note 74, at 9.

<sup>83</sup> *Id.*

<sup>84</sup> 18 U.S.C. §§ 2339A-2339B (2002)

<sup>85</sup> *Id.* at §2339B(a)(1).

criminal funds in providing material support to a terrorist organization. Additionally, a person who structures bank deposits of legally obtained funds to avoid reporting requirements is guilty of money laundering, and if he or she provides these funds to a designated terrorist organization, he is also guilty of providing material support.

### c. Equipping the Raider: Regulation of Charity Organizations

At a fundraiser in Cleveland, Ohio during the fall of 1991, Imam Fawaz Damra passionately pleaded with his audience to donate money for Palestinian Islamic Jihad, an organization that has since been designated as a Foreign Terrorist Organization: "whoever equipped a raider for the sake of God, he himself has raided . . . The one who supports a raider gains honorarium."<sup>86</sup>

In response to this phenomenon, actors in the United States that abuse charities for the purposes of terrorist financing are prosecutable for providing material support to terrorists.<sup>87</sup> Charity organizations in the United States are not subject to exclusive regulation, and the only federal oversight comes from the Internal Revenue Service, which examines the activities of organizations to determine whether or not they deserve tax-exempt status in accordance with tax law.<sup>88</sup> Additionally, most States require charities to register locally, in accordance with the Model Act Concerning the Solicitation of Funds for Charitable Purposes, which ensures that consumers are protected from fraudulent charities.<sup>89</sup> Another important level of regulation is within the private sector, and includes the Better Business Bureau Wise Giving Alliance and Guidestar.<sup>90</sup>

Presidential Executive Order 13224, under the legislative authority discussed below, allows for the designation of global charity organizations

---

<sup>86</sup> John Caniglia, *Damra is Classic Islamic Militant, Witness says*, CLEV. PLAIN DEALER, May 28, 2004 at A1.

<sup>87</sup> 18 U.S.C §§ 2339A-2339B (2002) ("the term "material support or resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials").

<sup>88</sup> LETTER DATED 14 JUNE 2002 FROM THE CHARGÉ D'AFFAIRES A.I. OF THE UNITED STATES MISSION TO THE UNITED NATIONS ADDRESSED TO THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED PURSUANT TO RESOLUTION 1373 (2001) CONCERNING COUNTER-TERRORISM, at 9, U.N. Doc. S/2002/674 (2002).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 16.



as terrorist organizations, which permits the freezing of their assets and prohibits U.S. persons from conducting business with them.

d. Reaching for the Faucet: Entities that are prohibited from Accessing the U.S. Financial System

Four legislative acts grant the Executive the authority to publicly designate individuals and entities as terrorist organizations, which permits the blocking of their assets and funds and prohibits U.S. persons from conducting business with the designated individuals.<sup>91</sup> Two lists of designations authorized by these legislative acts are particularly instrumental: (1) a "Foreign Terrorist Organization" ("FTO") is an organization designated to be a foreign terrorist organization by executive order or by notification by the Secretary of State to Congress of the intention to designate the organization as a foreign terrorist organization under the 8 U.S.C. §1189(a) of the AEDPA; and (2) a "Specially Designated Global Terrorist" ("SDGT") is either a foreign or domestic individual or organization designated to be a SDGT by the Secretary of the Treasury, or by the Secretary of State but without notification to Congress under 50 U.S.C. §1701 of the IEEPA and Executive Order 13224. Individuals can administratively and legally challenge their designations.

Another effective tool, "special measures," as authorized by Section 311 of the Patriot Act, grants power to the Executive to restrict access to the United States financial system of whole States and foreign banks and their subsidiaries that lack effective terrorist financing countermeasures.<sup>92</sup> The United States has a five tier response to these States and institutions: (1) requiring domestic financial institutions to broadly implement enhanced reporting requirements; (2) requiring the identification of beneficiaries of accounts; (3) requiring due diligence for payable-through accounts; (4) requiring additional information and record keeping on correspondent accounts; and (5) prohibiting the opening and maintenance of correspondent accounts for institutions from a named jurisdiction.<sup>93</sup> This tool can be used to persuade States and foreign banks to change the way they bank, or be prevented from accessing the world's the United States economy as a consequence.<sup>94</sup>

---

<sup>91</sup> (1) The "Trading With the Enemy Act" (TWEA), as codified by 50 U.S.C. §§ 1-44; (2) the "International Emergency and Economic Powers Act" (IEEPA), as codified by 50 U.S.C. §§ 1701-1702; (3) the "Antiterrorism and Effective Death Penalty Act" (AEDPA), as codified by 8 U.S.C. §1189(a); and (4) the "umbrella" delegation by the President of his powers to the head of any Executive agency under 3 U.S.C. §301. see Crimm, *supra* note 60, at 1354-68.

<sup>92</sup> Patriot Act, *supra* note 62, at §311.

<sup>93</sup> CFR Report on Terrorist Financing 2002, *supra* note 17, at 12-13.

<sup>94</sup> *Id.*

## e. Enforcement and Criticisms

Since September 11, the United States Department of Justice has aggressively pursued terrorist financiers as a principal component of the overall “war on terrorism.” On February 10, 2002, Enaam Arnaout, Executive Director of an Islamic charity in Illinois, plead guilty to funneling money to a terrorist network through the Benevolence International Foundation (BIF).<sup>95</sup> The indictment describes a network that used charity donations to support al-Qaeda and the mujahideen of Chechnya and Bosnia.<sup>96</sup> Arnaout plead guilty to mail and wire fraud, and admitted specifically to diverting funds to overseas fighters by transmitting monetary donations from misled donors to the BIF’s bank accounts within the United States and internationally.<sup>97</sup>

Additionally, the U.S. Treasury Department has frozen the bank accounts of several charities from Texas<sup>98</sup> to Northern Virginia<sup>99</sup> and the Department of Justice has initiated many investigations that have led to many indictments. Often, alleged terrorist financiers are convicted on lesser charges, such as immigration or naturalization violations.<sup>100</sup>

According to the U.S. Treasury Department, as of October 11, 2003, 1439 accounts have been frozen worldwide, containing more than \$136.7 million in assets (\$36.6 million in the U.S. alone); over \$60 million in additional terrorist assets have been seized globally; 315 individuals and organizations have been declared to be Specially Designated Global Terrorists under Executive Order 13224.<sup>101</sup> The Treasury Department has

---

<sup>95</sup> DEP’T OF JUSTICE, U.S. ATTORNEY NORTHERN DISTRICT OF ILLINOIS, PRESS RELEASE, *Benevolence Director Pleads Guilty to Racketeering Conspiracy and Agrees to Cooperate with the Government*, Feb. 10, 2002, available at [http://www.usdoj.gov/usao/iln/pr/2003/pr021003\\_01.pdf](http://www.usdoj.gov/usao/iln/pr/2003/pr021003_01.pdf).

<sup>96</sup> Indictment, U.S. v. Arnaout, No. 02 CR 892 (N.D. Ill. 2002).

<sup>97</sup> Plea Agreement, U.S. v. Arnaout, No. 02 CR 892 (N.D. Ill. 2002).

<sup>98</sup> Stephen Braun, *Charity’s Fate Seen as Test of Wider War on Terror, U.S. Accuses an Islamic Foundation of Ties to HAMAS*, L.A. TIMES, Sept. 14, 2003, at 1.

<sup>99</sup> Douglas Farah, *U.S. Indicts Prominent Muslim Here, Affidavit: Alamoudi Funded Terrorists*, WASH. POST, Oct. 24, 2003, at A1; Glenn R. Simpson, *Unraveling Terror’s Finances: Investigators Say a Key Figure in Network is Indicted*, WALL ST. J., Oct., 24, 2003, at A2.

<sup>100</sup> Jerry Markon, *Man Convicted in Islamic Charity Probe; Prosecutors Say Investment Firm Founder Had Ties to Terrorists, Urge Longer Sentence*, WASH. POST, Oct. 10, 2003, at A12; Glenn R. Simpson, *U.S. Details an Alleged Terror-Financing Web, Defunct New Jersey Firm Called Hub of Connection, Suspect to Stay in Custody*, WALL ST. J., Sept. 15, 2003, at A5.

<sup>101</sup> U.S. DEP’T. OF TREASURY, FACT SHEET, PROGRESS IN THE WAR ON TERRORIST FINANCING (2003) (hereinafter Treasury Dep’t Fact Sheet 2003).

characterized these seizures as a global disruption of a terrorist financial network, and has attributed this progress to international cooperation in designations and seizures.<sup>102</sup> Additionally, within the United States the operations of three major charities and terrorist fundraisers, the Global Relief Foundation, Benevolence International Foundation, and Holy Land Foundation for Relief and Development, were designated and stopped.<sup>103</sup>

However, according to a Treasury Department official speaking on the condition of anonymity, there were an estimated 500,000 unlicensed and unregistered MSBs before the Patriot Act went into effect. About 10,000 MSBs have registered since January 1, 2002, however, very few can be categorized as part of a hawala network.

According to a former Department of Justice official also speaking on the condition of anonymity, the SARs and CTRs financial institutions are required to file trigger few investigations. This is due largely to the sheer amount of SARs that are filed, and the fact that FinCEN lacks the adequate resources to do real-time scrutiny.<sup>104</sup> Most investigations involving terrorist financing are prompted by traditional law enforcement techniques, including the use of confidential informants. Additional investigations are prompted by the use of intelligence gathered outside the United States by the National Security Agency, the Federal Bureau of Investigations, and the Central Intelligence Agency.

One former bank regulator and State Department official stated that the problem with America's war on terrorist financing was that it focused too much on traditional financial institutions. More expertise is needed in locating and understanding elusive and esoteric ethnic-based informal funds transfer systems, including hawala and trade-based money laundering,<sup>105</sup> and until such expertise is developed, many of these networks will continue to slip through the cracks.

---

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> The Financial Crimes Enforcement Network (FinCEN), the division of the Treasury Department in charge of examining all CTRs and SARs, received more than twelve million reports in the year 1997. With dramatically more reports generated because of more "financial institutions" and the fear of civil and criminal liability, as well as a marginal increase in FinCEN's staff, it is inevitable that a backlog of reports to review and overall information glut will be created. *See generally* Megan Roberts, *Big Brother Isn't Just Watching You, He's Also Wasting Your Tax Payer Dollars: An Analysis of the Anti-Money Laundering Provisions of the USA Patriot Act*, 56 RUTGERS L. REV. 573, at 596-7 (2004).

<sup>105</sup> Trade-based money laundering is the "use of trade to legitimize, conceal, transfer, and convert large quantities of illicit cash into less conspicuous assets or commodities. In turn, the tangible assets or value are transferred worldwide without being subject to financial transparency laws and regulations." INCSR 2003, *supra* note 10, at 21.

## 2. Saudi Arabia: The “Epicenter” of Terrorist Fundraising

Saudi Arabia has been described as the “epicenter” of terrorist financing, primarily because of the existence of a myriad of charity organizations that have a global presence.<sup>106</sup>

### a. The Regulation of Charity Organizations

Saudi Arabia relies on Shariah law, and the financing of terrorism is categorized as “spreading evil on earth” (*al-ifsad fi al-ard*).<sup>107</sup> The Ministry of Labour and Social Affairs, empowered by the Charitable Institutions and Associations Ordinance passed by the Council of Ministers Resolution 107 of 1990, is charged with regulating charities.<sup>108</sup> Charity organizations must obtain a permit from the Ministry of Labour and Social Affairs, and only those licensed charities may collect contributions.<sup>109</sup> Furthermore, the Ordinance grants authority to the Ministry to examine the books, records and documents of charities, and requires charities to disclose any information requested by the Ministry.<sup>110</sup>

The High Committee on Fundraising has the authority to approve the transfer of charitable funds collected within Saudi Arabia to foreign States.<sup>111</sup> A charity can only disperse funds or operate in those areas of Saudi Arabia or foreign States that are specified in their charter.<sup>112</sup> Additionally, the Ministry of Labour and Social Affairs can revoke the charter and dissolve a charity if it departs from or violates materially its charter; disposes of its assets in a manner other than specified; or violates the provisions of the Charitable Institutions and Associations Ordinance.<sup>113</sup>

---

<sup>106</sup> Aufhauser, *supra* note 29.

<sup>107</sup> REPORT OF THE KINGDOM OF SAUDI ARABIA IN RESPONSE TO THE COMMENTS CONTAINED IN THE LETTER DATED 18 APRIL 2002 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED PURSUANT TO RESOLUTION 1373 (2001) CONCERNING COUNTER-TERRORISM, at 4, subparagraph 1(b), U.N. Doc. S/2002/869 (2002) (hereinafter Saudi Arabia 1373 Report July 2002).

<sup>108</sup> REPORT OF SAUDI ARABIA CONTAINING RESPONSES TO THE OBSERVATIONS RECEIVED ON 24 FEBRUARY 2003 IN A LETTER FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED PURSUANT TO RESOLUTION 1373 (2001) CONCERNING COUNTER-TERRORISM, at 9, ¶1.11, U.N. Doc S/2003/583 (2003) (hereinafter Saudi Arabia 1373 Report May 2003).

<sup>109</sup> *Id.* at 5, subparagraph 1(d).

<sup>110</sup> *Id.* at 9-10, ¶1.11.

<sup>111</sup> Saudi Arabia 1373 Report July 2002, *supra* note 107, at 5, subparagraph 1(d).

<sup>112</sup> *Id.* at 5, subparagraph 1(d).

<sup>113</sup> Saudi Arabia 1373 Report May 2003, *supra* note 108.

### b. Laws Effective only on Paper

According to the Financial Action Task Force, new Saudi Arabian laws and regulations meet or exceed international counterterrorist financing and anti-money laundering standards as written legislation.<sup>114</sup> However, having effective legislation is only the first part of the process, and according to a recent Council on Foreign Relations report, Saudi Arabia has failed to fully implement or enforce its laws, particularly its failure to enforce such laws on politically protected persons; its failure to take public punitive actions on those who are “convicted” for terrorist financing; its failure to make public arrests, trials, or incarcerations; and its failure to separate Radical Islamic clerics and sympathetic members of the Royal Family from the now centralized oversight of charities.<sup>115</sup>

As mentioned above, the U.S. Treasury Department has reported as of October 11, 2003 that 1,439 accounts, containing more than \$136.7 million in assets, have been frozen worldwide.<sup>116</sup> However, in Saudi Arabia, Yasin al-Qadi, a Specially Designated Global Terrorist, who heads the Saudi-based Muwafaq Foundation and “processes” donations from wealthy Saudi businessmen to al Qaeda, remains free, uncharged and unhindered in his abuse of the zakat and engaging in terrorist financing.<sup>117</sup> Additionally, Wa’el Julaidan, who was jointly designated by both the United States and Saudi Arabia as a terrorist financier remains free in Saudi Arabia, still directing charities that provide funding for al-Qaeda.<sup>118</sup>

Part of the problem with Saudi Arabia’s enforcement has to do with a lack of a universal definition of terrorism. According to Saudi Arabia, terrorism under Shariah law is “spreading evil on earth” and is illegal. However, when the Security Council Committee on Counter-Terrorism inquired about the procedure of freezing assets, Saudi Arabia responded as follows:

In the absence of a precise and unequivocal definition of terrorism endorsed by the international community, in Saudi Arabia measures for the freezing and seizure of funds can only be taken in accordance with specific statutory procedures and on the basis of a request from the Minister of the Interior addressed to the Minister of Finance and National Economy.<sup>119</sup>

---

<sup>114</sup> Robin Allen, *Saudis Meet Anti-Terrorist Financing Benchmarks: International Assessment*, FIN. TIMES, Mar. 8, 2004, at A7.

<sup>115</sup> CFR Update on Terrorist Financing 2004, *supra* note 19, at 17-25.

<sup>116</sup> Treasury Dep’t Fact Sheet 2003, *supra* note 101.

<sup>117</sup> CFR Update on Terrorist Financing 2004, *supra* note 19, at 19.

<sup>118</sup> *Id.*

<sup>119</sup> Saudi Arabia 1373 Report July 2002, *supra* note 107, at 5.

While there might be laws on the books designed to confront terrorist financing, the disparity is in the enforcement of those laws. According to a State Department Official, the Saudi Government has been reluctant to share the names of accounts that have allegedly been frozen. Clearly, well written laws that criminalize terrorist financing and money laundering are a step in the right direction, but without enforcement and implementation, such laws are meaningless. While there has been some cooperation between the United States and Saudi Arabia regarding the war against terrorism and terrorist financing, by and large, the motive of the Saudi Government has been the preservation of the status quo. The political problems in Saudi Arabia will be discussed further in Part III.

### 3. The United Arab Emirates: A Conduit for the Movement of Terrorist Funds

#### a. Bank Secrecy Laws

According to its report to the U.N., made pursuant to Security Council Resolution 1373, the United Arab Emirates first enacted money laundering laws in 1987.<sup>120</sup> Section 150(c) of the Federal Penal Code of 1987 criminalizes the collection of funds and resources for groups that are hostile to the United Arab Emirates.<sup>121</sup> Section 180.3 criminalizes the acquisition of funds and resources from sources outside the U.A.E. for the express purpose of overthrowing the U.A.E.<sup>122</sup>

In response to Resolution 1373, the Anti-Money-Laundering Law was enacted in January of 2002.<sup>123</sup> Additionally, the authority that governs banking policy, the Central Bank, has issued circulars to all banks that require due diligence in establishing customer identity and reporting suspicious money transfers, including large deposits of cash, third-party checks, and the close scrutiny of letters of credit.<sup>124</sup>

The Minister of Justice has issued rules prohibiting the collection of contributions by unlicensed charities.<sup>125</sup> The Central Bank has been

---

<sup>120</sup> Law No. 3 of 1987, Federal Penal Code, United Arab Emirates, *discussed in* REPORT OF THE UNITED ARAB EMIRATES ON THE IMPLEMENTATION OF SECURITY COUNCIL RESOLUTION 1373, at 4, ¶1(a), U.N. Doc. S/2002/239 (2002) (hereinafter U.A.E. 1373 Report March 2002).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 4.

authorized to consult with the Ministry of Justice to begin the regulation and licensing of banks to open transparent accounts for approved charities.<sup>126</sup>

The Arab Convention for the Suppression of Terrorism, which the U.A.E. ratified in 1999, provides for the blocking and confiscation of assets and funds related to terrorist crimes.<sup>127</sup> Additionally, the U.A.E. must comply with U.N. Security Council Resolution 1373, which requires all nations to suppress terrorist financing and freeze assets of terrorists. Local legislation includes Article 182 of the Federal Penal Code, which gives a court the power to confiscate the property of organizations hostile to the U.A.E.<sup>128</sup> The newer Article 4.2.2 of the Anti-Money-Laundering Law (Federal Law No. 4 of 2002) grants the Central Bank, the Office of the Public Prosecutor and a court the authority to order the freezing or attachment of funds belonging to terrorist organizations suspected of crimes addressed in the international conventions to which the U.A.E. is a party, including the Arab Convention and any U.N. Resolutions.<sup>129</sup>

#### b. The Hawala and Free Trading Zones

Various regulations issued by the Central Bank, including Circular No. 24 of November 2000, mandate the application of the FATF recommendations on Money Laundering and Terrorist Financing.<sup>130</sup> In May 2002, Abu Dhabi hosted an international conference on the hawala system, which adopted the "Declaration of Abu Dhabi," which encourages the application of the FATF recommendations to the hawala system and urge international cooperation in creating norms for hawaladars.<sup>131</sup> However, despite these plans to regulate the hawala, including the registering and licensing of hawaladars, the U.A.E. admitted in its latest report to Security Council pursuant to Resolution 1373 that "[p]resently there is no law governing parallel fund transfer systems."<sup>132</sup>

The September 11<sup>th</sup> hijackers were wired \$110,000 from U.A.E. banks. At the behest of the United States and Resolution 1373, the U.A.E. has increased scrutiny of both formal financial institutions and informal funds

---

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 4, ¶1(a).

<sup>128</sup> *Id.* at 5.

<sup>129</sup> *Id.*

<sup>130</sup> REPORT OF THE UNITED ARAB EMIRATES TO THE COUNTER-TERRORISM COMMITTEE, at 4, U.N. Doc S/2003/280 (2003) (hereinafter U.A.E. 1373 Report March 2003).

<sup>131</sup> Stanley Carvalho, *Central Bank Begins Registering Hawala Operators*, GULF NEWS ON-LINE EDITION, Nov. 4, 2002, available at <http://www.gulf-news.com/Articles/news.asp?ArticleID=67552>.

<sup>132</sup> U.A.E. 1373 Report March 2003, *supra* note 130, at 4, U.N. Doc. S/2003/280 (2003).

transfer systems. Banks are now required to report incoming transfers of more than \$11,000, and hawaladars, those few that have voluntarily registered with the government, are required to report transfers larger than \$550.<sup>133</sup>

Additionally, free trade zones in the U.A.E. permit complete foreign ownership and there is little meaningful governmental regulation or oversight; there is no taxation or import duties and trading licenses are easily obtainable.<sup>134</sup> Incoming and outgoing goods are rarely scrutinized.<sup>135</sup> These regulation-free areas provide ample opportunity to conduct illegal transactions.

### c. Serious Efforts?

The Central Bank has frozen over \$3 million in eighteen bank accounts pursuant to U.N. Security Council Resolutions 1267 and 1390.<sup>136</sup> Additionally, several individuals have been charged and convicted of money laundering.<sup>137</sup> However, a State Department official speaking on the condition of anonymity offered little enthusiasm for these convictions, commenting that the individuals charged were inconsequential immigrant workers targeted by the government to demonstrate merely action against terrorist financing. That same official commented that there exists a cultural resistance to change regarding record keeping. Off-the-record trade and transactions is how business has been done for centuries in the Middle East.

## III. *Why the Laws are Ineffective: The Cultural, Religious, Political, and Economic Factors of Terrorist Financing*

### A. **A Brief History of the al-Qaeda Financial Network: The Soviet Invasion of Afghanistan and the Mujihadeen**

The Soviet conflict in Afghanistan provided the need and opportunity to cultivate a system of finance for the purposes of jihad<sup>138</sup> against a

---

<sup>133</sup> Anwar Faruqi, *Ambiguous Dubai Money System is Center of Probe*, KAN. CITY STAR, Jan. 18, 2004, at A17.

<sup>134</sup> INCSR 2003, *supra* note 10, at 404.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Jihad means "struggle," and can be interpreted as a personal spiritual struggle or a theo-political struggle.



superpower. The relative success of the mujihadeen<sup>139</sup> emboldened actors like Osama bin Laden, who was a chief architect of the financial network.<sup>140</sup> Osama bin Laden created the al-Qaeda financial network, utilizing the same methods that channeled resources to the mujihadeen in their struggle against the Soviets.<sup>141</sup> Similar to Irish-Americans donating to the Irish Republican Army during the 1970's and 1980's,<sup>142</sup> the network utilized a sense of brotherhood amongst Muslims all over the world, and charity organizations obtained donations that were funneled through Islamic banks, routed to Pakistan, where they were used to purchase weapons and other supplies necessary to fight the Soviets.<sup>143</sup> The US government encouraged this network, because the target of the jihad was its long time adversary, the Soviet Union.<sup>144</sup>

However, old friends became new enemies, and the relative success of the mujihadeen emboldened actors like Osama bin Laden, who is credited for the artful application of these fundraising techniques in creating the current terrorist finance network that now supports radical Islamic terrorism.<sup>145</sup> Gradually, radical Islamic terrorist organizations have abused and perverted the principle of charity embodied in the zakat, and it has become intertwined with terrorist operations and support.<sup>146</sup>

Furthermore, with the disintegration of the Soviet Union, both Islamic and radical Islamic institutions, including banks, charities, and schools filled the void in war-torn areas of Central Asia and the Balkans that had Muslim populations, yet secular institutions.<sup>147</sup> Saudi Arabia and other nations provided services that were absent, often coupling much needed humanitarian relief with an intense radical Islamic propaganda machine.<sup>148</sup> Chechnya, though having a Muslim majority population, was traditionally a secular nation.<sup>149</sup> The Russian decimation of Chechnya, combined with the

---

<sup>139</sup> Mujihadeen are the warriors of the jihad, often referred to as "Freedom Fighters" by former President Ronald Reagan. In this context, it refers to actual guerilla attacks against military targets as well as terrorist attacks against civilians.

<sup>140</sup> CFR Report on Terrorist Financing 2002, *supra* note 17, at 5.

<sup>141</sup> *Id.* at 5.

<sup>142</sup> NAPOLEONI, *supra* note 2, at 30-32.

<sup>143</sup> *Id.* at 79-86.

<sup>144</sup> "There were 58,000 dead in Vietnam and we owe the Russians one," commented Texas Democratic Congressman Charles Wilson, *quoted in id.* at 7.

<sup>145</sup> CFR Report on Terrorist Financing 2002, *supra* note 17, at 5.

<sup>146</sup> *Terrorist Financing: Origination, Organization, and Prevention: Hearing Before the Committee on Senate Governmental Affairs*, 108 Cong. 80 (2003) (statement of Dr. Dore Gold, President of the Jerusalem Center for Public Affairs) (hereinafter Gold Testimony).

<sup>147</sup> NAPOLEONI, *supra* note 2, at 79-86.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

introduction of al-Qaeda mujihadeen, has given the conflict in Chechnya a new radical religious overtone.<sup>150</sup>

### **B. Radical Islamic Terrorism: A Clean Money Fundraising Machine**

Osama bin Laden's family's wealth, stemming from an extensive construction empire, is valued at \$300 million, and his personal wealth is estimated to be around \$30 million.<sup>151</sup> He has invested in the manufacture and trade of honey in Yemen and the Sudan, an ostrich farm and shrimp business in Kenya, various holding companies, venture capital firms, banks, and import-export businesses.<sup>152</sup> Additionally, terrorist operations are supported by multi-billion dollar businesses run by such financial institutions as al-Barakaat and al-Taqwa, institutions that run hawalas and banks.<sup>153</sup>

Beyond personal wealth and legitimate business revenue, radical Islamic terrorist organizations utilize principles of charity found in Islam. The *zakat* is the obligatory alms tax or a tax on wealth, which is authorized in the Koran.<sup>154</sup> Saudi companies and individuals are subject to the *zakat*,

---

<sup>150</sup> *Id.* at 180.

<sup>151</sup> GUNARATNA, *supra* note 5, at 81-82.

<sup>152</sup> NAPOLEONI, *supra* note 2, at 160-163.

<sup>153</sup> Press Release, President George W. Bush, Office of the Press Secretary, Terrorist Financial Network Fact Sheet (Nov. 7, 2001), *available at* <http://www.whitehouse.gov/news/releases/2001/11/20011107-6.html>.

<sup>154</sup> *Zakat* in the Koran:

Al-Baqarah (2), verse 267: "O you who believe! Spend of the good things which you have (legally) earned, and of that which We have produced from the earth for you, and do not aim at that which is bad to spend from it, (though) you would not accept it save if you close your eyes and tolerate therein. And know that Allah is Rich (Free of all wants), and Worthy of all praise";

Koran, Surah Taubah (9), verse 60: "Zakat is only for the poor, and the needy and those who collect them, and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives and those in debt, and for the cause of Allah, and for the wayfarers; a duty imposed by Allah. And Allah is Knower, Wise";

Koran, Surah Taubah (9), verse 34: "O ye who believe! there are indeed many among the priests and anchorites, who in Falsehood devour the substance of men and hinder (them) from the way of Allah. And there are those who bury gold and silver and spend it not in the way of Allah. Announce unto them a most grievous penalty,"

*quoted in* JEAN-CHARLES BRISSARD, TERRORISM FINANCING: ROOTS AND TRENDS OF SAUDI TERRORIST FINANCING, REPORT PREPARED FOR THE SECURITY COUNCIL PRESIDENT OF THE UNITED NATIONS 12 (2002).

and their contribution is calculated on earnings, profits, capital, and all other property and monetary acquisitions.<sup>155</sup>

Saudi banks pay *zakat* on financial transaction fees.<sup>156</sup> Since these contributions are voluntary, there is little governmental oversight in Saudi Arabia, particularly over individual contributions which often leave no paper trail.<sup>157</sup> *Zakat* from companies are supposed to be controlled by the Department of Zakat and Income Taxes of the Saudi Ministry of Finance and National Economy, which establishes instructions on who pays and how to pay *zakat*, and collect the funds and transfer them to charities.<sup>158</sup>

Previous attempts to regulate Saudi charities have been ineffective, including one effort to coordinate charity efforts towards specific goals. The Saudi Joint Relief Committee for Kosovo and Chechnya included dispersals to the International Islamic Relief Organization, the Muslim World League, and the World Assembly of Muslim Youth—all organizations that appear on the State Department's Comprehensive List of Terrorists and Groups Identified Under Executive Order 13224.<sup>159</sup>

And *zakat* is a tremendous source of income, with nearly 6,000 members of the Saudi Royal Family worth over \$600 billion, making their 2% *zakat* contribution alone estimated at \$12 billion annually.<sup>160</sup> One estimate suggests that al-Qaeda has received between \$300 million and \$500 million in the ten year period of 1992-2002.<sup>161</sup>

During the 1960's and 1970's, large global charities were developed in Saudi Arabia for the purpose of spreading Wahhabism,<sup>162</sup> and with the rise of the Mujihadeen during the 1980's, became intertwined with terrorist operations.<sup>163</sup> While not all Islamic charities are involved in terrorist operations, some donators have their *zakat* contribution diverted by charities that fund legitimate humanitarian operations as well as a militant arm. Other individuals knowingly contribute to charities that funnel the funds to terrorists. Some donate to what they believe to be a legitimate

---

<sup>155</sup> Royal Decree No. 17-2-28-2077 of 1380 A.H. (1960), *discussed in* BRISSARD, *supra* note 154, at 20-21.

<sup>156</sup> NAPOLEONI, *supra* note 2, at 123-24.

<sup>157</sup> *Id.* at 121.

<sup>158</sup> BRISSARD, *supra* note 154, at 16-17.

<sup>159</sup> *Id.* at 17; U.S. DEP'T. OF STATE, *Comprehensive List of Terrorists and Groups Identified Under Executive Order 13224*, available at <http://www.state.gov/s/ct/rls/fs/2001/6531pf.htm> (2003).

<sup>160</sup> NAPOLEONI, *supra* note 2, at 120

<sup>161</sup> BRISSARD, *supra* note 154, at 3.

<sup>162</sup> The official interpretation of Islam in Saudi Arabia, often regarded as radical or fundamentalist.

<sup>163</sup> Gold Testimony, *supra* note 146.

charity and the recipient organization turns out to be a terrorist front for direct and deceptive fundraising.

Saudi Arabian charities receive between \$3 billion to \$4 billion annually, of which between 10% and 20% is sent abroad.<sup>164</sup> Many prominent Saudi banking families, including the al-Rajhi and the bin Mahfouz, have supported charity organizations that have been revealed to be fundraising fronts for al-Qaeda, including the International Islamic Relief Organization, the al-Rashid Trust, and the Muslim World League.<sup>165</sup> The Muslim World League was created in 1962 by the Saudi government, and is funded by the government as well as other wealthy Saudi families.<sup>166</sup> The Muslim World League is the umbrella under which many other charities receive support.<sup>167</sup> Complex fund raising schemes are created, and the organizations, many sharing the same address, employ what appear to be multiple fund transfers between organizations, in an attempt to obscure both the source and destination of the funds.<sup>168</sup>

### C. Formal Financial Institutions and Informal Funds Transfer Systems: *Difficult to Understand, Detect, and Penetrate.*

#### 1. Formal Financial Institutions and Islamic Banking

Islamic banks are another religious instrument allegedly utilized by terrorist organizations to move funds.<sup>169</sup> Because these institutions operate under Islamic law, they are not subject to the same types of money laundering regulations required of secular banks.<sup>170</sup> Islamic banks, under

---

<sup>164</sup> BRISSARD, *supra* note 154, at 26-27.

<sup>165</sup> RACHEL EHRENFELD, FUNDING EVIL 35-45 (2003).

<sup>166</sup> *Id.* at 37.

<sup>167</sup> Declaration in Support of Pre-Trial Detention, Aff. of Senior Special Agent David Kane of the Bureau of Immigration and Customs Enforcement, *United States v. Bihieri*, Case No. 03-365-A (E.D. VA 2003): Agent Kane stated that the defendant, who ran an investment firm accused of materially supporting terrorists, was associated with charities that according to the CIA had "extremist connections" with Palestinian, Algerian, and Egyptian terrorist groups. "The IIRO [International Islamic Relief Organization] is affiliated with the Muslim World League, a major international organization largely financed by the government of Saudi Arabia." The affidavit further connects the IIRO to Osama bin Laden and al Qaeda and convicted terrorist Ramzi Yousef.

<sup>168</sup> See Amanda Garrett, *Terrorists' Money Takes Convoluted Path in U.S.; Web of Links Leads Investigators to Imam*, CLEV. PLAIN DEALER, Jan. 18, 2004, at A1.

<sup>169</sup> See Marc Hambach, *Islamic Financing: Facts to Replace the Fear*, 16 MONEY LAUNDERING ALERT 11 (Feb. 2005) (suggesting that Islamic banks are regulated no differently than secular banks, and arguing that Islamic law does not conflict with the international anti-money laundering and counter-terrorist financing laws and practice).

<sup>170</sup> CFR Report on Terrorist Financing 2002, *supra* note 17, at 9-10.

Islamic law are prohibited from participating in transactions involving un-Islamic activities, such as gambling or alcohol, as well as criminal activities.<sup>171</sup> However, just as Saudi Arabia and other States do not consider providing material support to some terrorist organizations to be "terrorist financing," it is easy to suspect how some Islamic banks could take advantage of the lack of a universal definition of terrorism and also be complicit in the role they may play in the problem.

These banks may voluntarily choose to comply with regulations, but there exists no control mechanism to monitor compliance.<sup>172</sup> Many Islamic charities use these banks, which makes them ideal for clever terrorists to hide and transfer funds. Islamic banks operate throughout the Middle East, Africa and Asia, and have even opened up investment houses in Europe. The goal of Islamic banking is to serve and promote Islam and some of these banks are suspected of being sympathetic and complicit in channeling funds marked for terrorist organizations.<sup>173</sup>

Osama bin Laden paid \$50 million to gain control of the al-Shamil Islamic Bank in Sudan,<sup>174</sup> and used the banks to channel funds to his agent sleeper cells.<sup>175</sup> Testimony given during a 2001 criminal trial dealing with the 1998 embassy bombings in Dar es Salaam and Nairobi reveals bin Laden's involvement.<sup>176</sup>

Q. Did you work on the finances for al Qaeda while you were in the Sudan?

A. Yes.

Q. Did you know where the bank accounts of Osama bin Laden and al Qaeda were?

A. Yes.

Q. Do you know whose names they were in?

A. The bank account under Osama bin Laden in Bank Shaml [al Shamal Islamic Bank], Khartoum.

Q. That was under Osama bin Laden's true name?

A. Yes.

Q. Were there accounts in other names?

---

<sup>171</sup> Hambach, *supra* note 169.

<sup>172</sup> BRISSARD, *supra* note 154, at 20-21.

<sup>173</sup> NAPOLEONI, *supra* note 2, at 112.

<sup>174</sup> Borzou Daraghi, *Financing Terror*, TIME, Nov. 2001.

<sup>175</sup> Jonathan Wells et al., *War on Terrorism: Saudi Elite Tied to Money Groups Linked to bin Laden*, B. HERALD, Oct. 14, 2001.

<sup>176</sup> Trial Testimony of Jamal Ahmed al-Fadl, US v. Usama bin Laden, S(7) 98 Cr. 1023, at 319-21 (S.D. NY 2001).

A. Yes. Afad Makkee got account also.

Q. Afad Makkee, the account that he had under his name, do you know what name that is?

A. I remember Madani Sidi al Tayyib.

Q. Do you know of any other persons who had al Qaeda money in their accounts?

A. Abu Rida al Suri.

Q. Do you know his true name?

A. Nidal.

Q. Anyone else that you knew had al Qaeda money in bank accounts in their name?

A. Abu Hajer al Iraqi.

Q. Do you know his true name?

A. Mamdouh Salim.

Q. Did you have any accounts in your name?

A. Shared with Abu Fadhl.

Q. So you had accounts in your name that were shared with Abu Fadhl?

A. Yes.

Q. Do you recall anyone else that had bank accounts in their name for al Qaeda?

A. Abdouh al Mukhlafi.

Islamic banks have been described as the “lifeline of Islamist insurgency.”<sup>177</sup> A 1999 audit by the Saudi government found that the National Commercial Bank had transferred \$3 million to charity<sup>178</sup> organizations that served as fronts for Osama bin Laden’s network.<sup>179</sup>

## 2. Informal Funds Transfer Systems: The Hawala

The U.A.E. at one time had vast oil reserves, but with the oil supply now receding, the U.A.E. has refashioned itself as the major financial center of the Middle East. The lax regulation of banking and commerce has provided Dubai with tremendous wealth and growth, and it is often compared to the *laissez-faire* Hong Kong of the 1970’s. This dependence

---

<sup>177</sup> NAPOLEONI, *supra* note 2, at 121.

<sup>178</sup> Jack Kelly, *Saudi Money Aiding bin Laden: Businessmen are Financing Front Groups*, USA TODAY, Oct. 29, 1999 at 1A.

<sup>179</sup> EHRENFELD, *supra* note 165, at 47.

on being a financial center, combined with its many "free trade zones" makes unrealistic any hopes of strengthening regulation.

The U.A.E. has long had a history of opaque transactions, which mix legal and illegal free trade and funds.<sup>180</sup> Western-based arms dealers and South American drug cartels have long taken advantage of the anonymity the country's lax banking regulations permit.<sup>181</sup> The Emirates also have "free trade zones" which allow foreigners unfettered access and control over commercial activities that include legitimate items like Sony televisions to illegal gemstones.<sup>182</sup> Another factor that makes Dubai a conduit of terrorist financing are the presence of over eighty known hawala operators.<sup>183</sup>

A hawala is an informal funds transfer system, and it is mostly used by Asian and Middle Eastern migrants to send money back to their home country.<sup>184</sup> However, the networks provide a possible primary delivery system for terrorists, who allegedly take advantage of the lack of formal record keeping, enabling the clandestine transfer of funds.

Hawala transaction methods vary in sophistication. One journalist's description demonstrates the subtlety often employed by hawaladars:

Hawala consists of transferring money (usually across borders in order to avoid taxes or the need to bribe officials) without physical or electronic transfer of funds. Money changers (hawaladar) receive cash in one country, no questions asked. Correspondent hawaladars in another country dispense an identical amount (minus minimal fees and commissions) to a recipient or, less often, to a bank account.

Hundi (short term, discountable, negotiable promissory note) couriers carrying an e-mail or letter convey the necessary information (the amount of money, the date it has to be paid on) between hawaladars. The sender provides the recipient with code words (or numbers, for instance the serial numbers of currency notes), a digital encrypted message or agreed signals

---

<sup>180</sup> INCSR 2002, *supra* note 18, at 297-99.

<sup>181</sup> Glenn R. Simpson, *U.A.E. Banks Had Suspect Transfers*, WALL ST. J., Sep. 17, 2003, at A10.

<sup>182</sup> Timothy L. O'Brien, *Terror Fund Focus is on Dubai: Ancient Ways Make Money Hard to Track*, INT'L HERALD TRIB., Oct. 6, 2003, at 1.

<sup>183</sup> *Id.*

<sup>184</sup> Sam Vaknin, *Analysis: Hawala, the Bank That Never Was*, UNITED PRESS INT'L, Oct. 17, 2001, available at <http://www.upi.com/print.cfm?StoryID=16102001-025648-5774r>; see *Hawala and Underground Terrorist Financing Mechanism*, *supra* note 26 (describing a licensed hawaladar operating within the United States).

like handshakes to use to retrieve the money. Big hawaladars use a chain of middlemen in cities around the globe.<sup>185</sup>

The system is difficult to penetrate and understand due to the lack of paperwork needed to complete a transaction, and the ancient and ethnic character of this network based on trust.<sup>186</sup> In India, despite being outlawed, some 50% of the economy uses the hawala network.<sup>187</sup> In the money laundering hub that is Dubai, the hawalas have only recently been asked to *register* with the government.<sup>188</sup> Still, the governor of the U.A.E. Central Bank, Sultan bin Nasser al Suwaidi, admitted that the hawaladars are left to police themselves, and expressed a reluctance to disrupt the ancient practice.<sup>189</sup>

#### D. Mixing Religion with Politics: *Wahhabism and the House of Saud*

##### 1. Wahhabism

Osama bin Laden and fifteen out of nineteen of the September 11<sup>th</sup> hijackers were Saudi nationals. In Saudi Arabia, the official interpretation of Islam is Wahhabism, a puritanical conception of the faith that is particularly adept at converting disillusioned men into terrorists.<sup>190</sup> What is particularly alarming about Wahhabism is the intolerance for other religions and interpretations of Islam, including a hatred for Shi'ites and non-devout Sunnis.<sup>191</sup> Awareness of Wahhabism is central to understanding terrorist financing because it provides the ideological framework that targets non-followers for terrorist attacks. Fundraising occurs by combining this radical interpretation with more universal characteristics of Islam, such as the *zakat* (mandatory charity donation).

---

<sup>185</sup> *Id.*

<sup>186</sup> FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, REPORT ON MONEY LAUNDERING TYPOLOGIES: 1999-2000 (2001).

<sup>187</sup> *Id.*

<sup>188</sup> Timothy L. O'Brien, *Terror Fund Focus is on Dubai: Ancient Ways Make Money Hard to Track*, INT'L HERALD TRIB., Oct. 6, 2003, at 1.

<sup>189</sup> *Id.*

<sup>190</sup> NAPOLEONI, *supra* note 2, at 118-19, 128-29.

<sup>191</sup> Michael Scott Doran, *The Saudi Paradox*, 83 FOREIGN AFF. 35, 46-49 (2004) (describing the "U.S.-Shi'ite conspiracy").



Wahhabism began in the Arabian Peninsula around 1740.<sup>192</sup> Sheikh Muhammad bin Abd al-Wahhab added a sixth pillar to the known Five Pillars<sup>193</sup> of Islam: jihad for the purpose of spreading Islam.<sup>194</sup> By the 1930's, The House of Saud had managed to unify the Arabian Peninsula, due in large part to its alliance with Wahhabist clerics. Under this arrangement, the King of Saudi Arabia is charged with the duty of spreading Wahhabism throughout the world.<sup>195</sup>

As a key component of Saudi foreign policy, the proselytizing nature of Wahhabism caused the Saudi government to recognize the Taliban regime.<sup>196</sup> Another aspect of the Saudi influence is the proliferation of *madrasas*, religious schools that teach primarily Wahhabism over other areas like mathematics or chemistry.<sup>197</sup> Saudi Arabian charities actually give scholarships to foreign students in disillusioned places like Bosnia to study fundamentalism at a *madrassa*.<sup>198</sup>

## 2. The House of Saud

When the House of Saud<sup>199</sup> unified the Arabian Peninsula, it struck a partnership with influential clerics of the Wahhabi faith.<sup>200</sup> Understanding this relationship is essential to understanding why the United States' supposed allies in the war on terrorism have been at best halfhearted or at worst uncooperative in their efforts.

Within domestic Saudi politics, there are two principles opposed to each other over the question of whether or not the state should be more secularized.<sup>201</sup> The first is the Taqarub, which promotes peaceful coexistence with non-Wahhabists as well as democratic reform.<sup>202</sup> In direct opposition to Taqarab is Tawhid, which means "monotheism" and brands

---

<sup>192</sup> David E. Kaplan, *The Saudi Connection*, U.S. NEWS & WORLD R., Dec. 15, 2003, at 20.

<sup>193</sup> EHRENFELD, *supra* note 165, at 25.

<sup>194</sup> *Id.*

<sup>195</sup> NAPOLEONI, *supra* note 2, at 129.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> The Saudi royal family that runs Saudi Arabia as a division of fiefdoms. There are estimated to be about 4,000 members of the royal family, with four or five princes regarded as the most powerful and influential. Doran, *supra* note 191, at 35-36.

<sup>200</sup> Kaplan, *supra* note 192.

<sup>201</sup> Doran, *supra* note 191, at 36.

<sup>202</sup> *Id.* at 38-42.

non-Wahhabists as polytheists or idolators.<sup>203</sup> The Wahhabist clerics follow Tawhid, while many of the Saudi elite follow Taqarab.<sup>204</sup> Crown Prince Abdullah aligns himself with Taqarab, while his half-brother Prince Nayef, the interior minister and head of the secret police, has chosen Tawhid.<sup>205</sup>

This dominance of Wahhabism in Saudi politics and society causes the commercial relationship (selling of oil) with the west and the stationing of U.S. troops on Saudi soil to be under constant scrutiny.<sup>206</sup> The most radical clerics want the creation of a pure Wahhabist state, and they want the end of economic exploitation by the non-Wahhabists, or “infidels.”<sup>207</sup>

The radical clerics of Wahhabism have similar ideologies to al-Qaeda, but they differ as to their attitude towards the Saudi royal family.<sup>208</sup> The clerics need sympathetic royal family members like Nayef to ensure their dominance in Saudi society by preventing reform that would undermine their power.<sup>209</sup> The royal family needs the clerics because the clerics grant religious legitimacy to the throne.<sup>210</sup>

Osama bin Laden and other terrorist organizations with similar agendas have a dislike for the West,<sup>211</sup> and as seen in recent al-Qaeda attacks in Riyadh, they also hate regimes that they view as illegitimate, including those in the royal family that are reform minded. To institute global and local jihad, it is believed that the “far enemy”, the U.S., was attacked, to cause a domestic crisis against the “near enemy,” the Saudi royal family.<sup>212</sup>

The Saudi government’s interest to crack down on terrorist financing appears obvious, but such a crack down would cause social upheaval and even further radicalize the Middle East. So the government of Saudi Arabia finds itself in a very tight spot, with lucrative oil revenues and self-survival at risk. In fact, it has been alleged that some of Osama bin Laden’s key

---

<sup>203</sup> *Id.* at 36-38.

<sup>204</sup> *Id.* at 37.

<sup>205</sup> *Id.* at 37, 38.

<sup>206</sup> NAPOLEONI, *supra* note 2, at 25, 175.

<sup>207</sup> *Id.* at 25, 175.

<sup>208</sup> Doran, *supra* note 191, at 37, 43-44.

<sup>209</sup> *Id.* at 47-48.

<sup>210</sup> *Id.* at 37.

<sup>211</sup> See SECOND REPORT OF THE MONITORING GROUP ESTABLISHED PURSUANT TO SECURITY COUNCIL RESOLUTION 1363 (2001) AND EXTENDED BY RESOLUTION 1390 (2002), at ¶15, U.N. Doc. S/2002/1050 (2002) (“[t]he bottom line is that members of al-Qa’idah, deployed in many countries across the world, will, given the opportunity, have no compunction in killing as many of those who do not conform to their ‘religious/ideological’ beliefs”).

<sup>212</sup> Doran, *supra* note 191, at 42-43.

financial contributors are independent wealthy businessmen.<sup>213</sup> They donate not necessarily out of sympathy for the cause of Wahhabism, but to prevent their businesses from being the target of terrorist attacks.<sup>214</sup> This political reality causes the Saudi Arabian government to take a near schizophrenic position: to appear to be confronting terrorism by *writing laws*, but to *not enforce* those laws in order to appease the radical clerics and al-Qaeda.

In reality, some \$12 billion dollars from the Saudi royal family alone, is collected annually for *zakat*.<sup>215</sup> The terrorist Ramzi Yousef had funds transferred to him, money that was a charitable donation from a Holy Water import company.<sup>216</sup> At least 50% of HAMAS' operating budget of \$10 million dollars a year allegedly comes from Saudi Arabia.<sup>217</sup> Saudi officials allegedly channel between \$80 to \$100 million a year to the Palestinian Authority.<sup>218</sup> Individual Saudi donors have not been prohibited from donating to HAMAS. Although the U.S. has tried to persuade nations and organizations to designate HAMAS and Hezbollah as a terrorist organization, Saudi Arabia distinguishes between the military and political arm of the group.

### 3. The Economic Relationship between Saudi Arabia and the United States

The relationship between the United States and Saudi Arabia is important because it affects energy security (oil), Iraq, the Middle East peace process, and the war on terrorism.<sup>219</sup> Ever since the first oil embargo by OPEC in the early 1970's, an arrangement was made between the United States and Saudi Arabia, where Saudi Arabia, as the largest oil producer on the oil market, would control the market price of crude oil, and sell barrels

---

<sup>213</sup> NAPOLEONI, *supra* note 2, at 121-22.

<sup>214</sup> *Id.*; but see Robin Allen & Roula Khalaf, *Al Qaeda: Terrorism after Afghanistan*, FIN. TIMES, Feb. 21, 2002, at 10 (quoting one sympathetic Saudi businessman: "Who did not pay for Kashmir and Chechnya? Muslims were being hurt there and people didn't ask where the money was going . . . It's about defending our brethren.").

<sup>215</sup> NAPOLEONI, *supra* note 2, at 120.

<sup>216</sup> Mark Huband, *Inside al-Qaeda, Bankrolling bin Laden*, FIN. TIMES, Nov. 29, 2001, at 10.

<sup>217</sup> Don Van Natta Jr. & Timothy L. O'Brien, *Saudi Aid to HAMAS Raises Eyebrows*, N.Y. Times News Service, DESERET MORNING NEWS, Sept. 18, 2003, at A7.

<sup>218</sup> Josh Meyer, *The Terrorism Money Trail is Filled with Roadblocks; The Financial and Legal Infrastructures Needed to Freeze Terrorist Assets are Years Away for some Countries*, ORLANDO SENTINEL, Oct. 5, 2003, at G1.

<sup>219</sup> CFR Update on Terrorist Financing 2004, *supra* note 19, at 27.

to the United States at a discount rate.<sup>220</sup> Additionally, Saudi Arabia was convinced to use its oil revenues and invest heavily within the United States, routinely purchasing such expensive items as weapons and commercial jets, as well as investing heavily in commercial enterprises such as Citibank.<sup>221</sup> Because of the heavy presence of Saudi investment inside America, and America's reliance on Saudi market price controls on crude oil, the economic consequences of a true breakdown in Saudi and American relations are unimaginably catastrophic to the United States. Perhaps that is why American policy has been as favorable as possible to Saudi Arabia,<sup>222</sup> despite American criticism of Saudi Arabian counterterrorism efforts as "seriously flawed."<sup>223</sup>

#### IV. Conclusion

The laws designed to suppress terrorist financing are ineffective for a variety of reasons. It is not enough to have well written laws on the books that criminalize such activity. Enforcement of laws is needed to really make a difference, and such enforcement must be fair, seeking to minimize collateral consequences to those actors who are engaged in non-criminal charity activity or informal funds transfer. The United States, Saudi Arabia, and the United Arab Emirates all have laws on the books that, if enforced would be key contributions in stopping terrorism. However, the problem of suppressing terrorist financing is not necessarily one of laws or law enforcement. Rather, the suppression of terrorist financing is made difficult for the non-legal reasons summarized below.

##### A. Sensitivity and Restraint

Radical Islamic terrorist organizations abuse various Islamic principles, such as the *zakat*, in order to further their purposes. Such an intertwining of terrorism with legitimate religious principles of charity and peace necessitates that any counterterrorist financing regime be sensitive to peaceful followers of Islam not materially supportive of terrorism or

---

<sup>220</sup> See generally, ROBERT BAER, SLEEPING WITH THE DEVIL: HOW WASHINGTON D.C. SOLD OUR SOUL FOR SAUDI CRUDE (2004); Robert Baer, *The Fall of the House of Saud*, ATLANTIC MONTHLY (May, 2003).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> CFR Update on Terrorist Financing 2004, *supra* note 19, at 2-3. "In public, White House and State Department spokespersons continued to refuse to criticize the job Saudi Arabia was doing to combat terrorist financing; indeed, the same week of public reports concerning the possible imposition by the president of unilateral sanctions, the White House spokesperson maintained that Saudi Arabia was a good partner in the war on terrorism."

terrorist organizations. It is important to avoid the appearance of a uniform restriction on all Islamic charity organizations. However, as a group, all Islamic charities within the United States have seen a decline in donations, and it appears that such activity has been chilled, because of concern about the criminal and civil liability exposure that following the Second Pillar of Islam, the *zakat*, could trigger.<sup>224</sup>

### **B. It Takes Time and Effort to Develop a Financial Intelligence Network**

On one level the laws are not sufficiently enforced because many States lack the sufficient law enforcement infrastructure to do sophisticated financial investigations. Because funds can be transferred via many different and circuitous routes, uniform international enforcement of Security Council Resolution 1373 is necessary to stop the flow of funds. In the U.S., the best that can be hoped for is the prevention of domestic financial institutions being used as a conduit for terrorist financing. Furthermore, high profile material support prosecutions in the United States may eventually have a deterrent effect on individuals and terrorist front charity organizations. Still, all financial institutions, not just those in the Middle East, have little economic interest in cutting off all illegal funds: the influx of banking proceeds brings in revenue. Rather, financial institutions may do just enough to appease regulators, and regulators may not ask too much of financial institutions because they do not want to destroy the financial sector.

Money laundering as it relates to drugs is a crime in the United Arab Emirates.<sup>225</sup> However, banks in the U.A.E. value secrecy, and there appears to be little urgency to regulate all money laundering and terrorist financing because its cities are largely devoid of the street crime that made narcotics such a pressing concern in America.<sup>226</sup> Being as it is not in the economic interest of those that operate in free trade zones, and being as there is little street crime or drug dealing in Dubai, it is quite possible that the authorities "just don't get it." A financial intelligence infrastructure takes time to develop, and with further technological developments and investigational experience, improved detection of crimes and enforcement of laws may

---

<sup>224</sup> Crimm, *supra* note 60, at 1349-51.

<sup>225</sup> INCSR 2002, *supra* note 18, at 298-99.

<sup>226</sup> "Dubai is about the size of Las Vegas, but a woman can safely walk alone at night pretty much anywhere," in J. Orlin Grabbe, *In Praise of Hawala*, THE LAISSEZ FAIRE ELECTRONIC TIMES (May 13, 2002), at <http://freedom.orlingrabbe.com/lfetimes/hawala.htm>; "We don't have the causes of money laundering: we don't have drugs, and corruption and crimes are very limited," U.A.E. Central Bank Governor Sultan bin Nassar al Suwaidi, in Timothy L. O'Brien, *Terror Fund Focus is on Dubai: Ancient Ways Make Money Hard to Track*, INT'L HERALD TRIB., Oct. 6, 2003, at 1.

become an eventuality, so long as there are no other impediments to suppressing terrorist financing. Unfortunately, there are major obstacles that hinder law enforcement that are unlikely to be removed without catastrophic consequences.

### C. The Political Obstacles

The problem is political in nature. The Royal family of Saudi Arabia is engaged in a struggle for its existence, and to expect that regime to crack down on very popular activities is unrealistic. As discussed at the end of Part III, the many different domestic political factions within Saudi Arabia, sans al-Qaeda, are self-interested in preserving the status quo, because only the status quo allows the co-existence of reformers and Wahhabists. This complicated situation, combined with an American interest in preserving a beneficial commercial relationship with Saudi Arabia, is a recipe for inertia in the war against terrorism.

### D. The Economic Problem

The problem of terrorist financing is economic in nature. States like the Cayman Islands and the United Arab Emirates pride themselves on the financial secrecy their laws and banking practices permit. Such jurisdictions see a large increase in gross domestic product by virtue of the large amount of business their culture of financial secrecy attracts. Additionally, many Middle Eastern States have never regulated private business; rather, informal and secretive transactions are how business is conducted. It might take a long time before this laissez-faire culture may be modified to stop international problems such as narcotics trafficking or terrorism.

### E. The Political and Economic Problem Combined

The problem of terrorist financing is sometimes both economic and political. A state with reasonably written and enforced counterterrorist financing laws, such as the United States, often is prohibited from enforcing the laws against such actors like Saudi Arabia. Under §311 of the Patriot Act, the President has the authority to ban whole States and foreign financial institutions that are suspected of terrorist financing, also known as "special measures." This tool can be used to persuade States and foreign financial institutions to change the way they bank, or suffer the consequences of no access to the world's most stable economies.<sup>227</sup> Special measures have been *threatened* against the States of Nauru, Ukraine, and Burma, States that are known to be money laundering havens, but not

---

<sup>227</sup> CFR Report on Terrorist Financing 2002, *supra* note 17, at 12-13.

necessarily terrorist financing jurisdictions.<sup>228</sup> However, special measures have actually been imposed on two Syrian institutions in Syria and its subsidiary in Lebanon, two terrorist financing jurisdictions.<sup>229</sup> But, with the bulk of terrorist funds being raised in Saudi Arabia, and both nations dependent on each other for economic and security reasons, it is doubtful that the United States would ever impose special measures on the “epicenter of terrorist financing.”

---

<sup>228</sup> CFR Update on Terrorist Financing 2004, *supra* note 19, at 25.

<sup>229</sup> Press Release, U.S. DEP'T OF TREASURY, *Treasury Designates Commercial Bank of Syria as Financial Institution of Primary Money Laundering Concern*, (May 11, 2004) available at <http://www.treas.gov/press/releases/js1538.htm>.