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The Fight against Terrorist Financing

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According to a well-informed former participant, the effort to combat terrorists' access to financial resources has been "the most successful part" of the global community's counterterrorism endeavor since the al Qaeda 11 September 2001 attacks on the United States.[1] Genuine success, however, hinges on U.S. ability to successfully frame terrorist financing as a collective action problem, both internally, to overcome interagency rivalries, and internationally, to overcome the benefits of free-riding behavior. This requires reframing the nascent pre-September 11 international anti-money-laundering regime as a counter-terrorist-financing regime as well as recasting the collective good of an open financial system as requiring collective management of its negative security externalities.

The norms and practices that make up the new counter-terrorist-financing frame have rapidly spread internationally in the past five years. However, the ultimate effectiveness, measured in terms of implementation and enforcement, of the new counter-terrorist-financing regime depends on states' redefinition of their national interests to include combating terrorist finance and a new understanding of the collective responses necessary to manage nonstate transnational actors. The U.S. case suggests that successful implementation of a counter-terrorist-financing regime will be much harder to achieve and to sustain than the adoption of regime norms, because even the experience of terrorist attacks appears to yield only temporary surges in a state's willingness to bear the costs of regime compliance. It is therefore unlikely that should present practices continue, countering terrorist financing will be counted a global success.

[1] Personal communication from Daniel Benjamin, former National Security Council Director for Transnational Threats during the Clinton administration, 27 September 2004. See also Thomas Kean et al., "Final Report on 9/11 Commission Recommendations," 9/11 Public Discourse Project, 5 December 2005, accessed at http://www.9-11pdp.org/press/2005-12-05_report.pdf, 16 April 2006 (hereafter 9/11 Public Discourse Project Final Report).

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The Problem of Terrorist Financing

Terrorist financing incorporates two distinct sets of financial activities. One set involves the provision of the funds required to carry out a terrorist operation. It includes funds to pay for such mundane items as food, lodging, transportation, reading materials, and audio-video equipment, as well as purchases of legal precursors for bomb making (the 2004 Madrid bombings relied on cell phones as detonation triggers, and the 2005 London bombs were homemade from legal ingredients), as well as purchase of illegal materials for operations. Such transactions, unlike money laundering, are mainly "pre-crime": they are perfectly legal until they can be linked to support for a criminal act.[2] They are also minute in terms of monetary value and therefore extremely hard to detect in the absence of other indicators regarding the identity of the persons involved. Such identity profiles raise a number of legal and civil liberties issues.[3]

The second set of terrorism-related financial activities involves the raising of funds to support terrorist operations, training, and propaganda. Funds can be raised through illicit means, such as drug and human trafficking, arms trading, smuggling, kidnapping, robbery, and arson, which are more amenable to traditional anti-money-laundering tools. Terrorists also receive funds from legitimate humanitarian and business organizations. Charities raising funds for humanitarian relief in war-torn societies may or may not know that their funds are going to terrorism. Corrupt individuals at charities or at recipient organizations may divert funds to terrorist organizations. This appears to be one of the main means through which al Qaeda raises funds. Legitimate funds are commingled with funds destined for terrorists, making it extremely difficult for governments to track terrorist finances in the formal financial system.

The difficulties inherent in tracking terrorist finance in the formal financial system are multiplied many times over as terrorists move to informal financial systems, using money remitters and *hawaladars*, who, in turn, may engage in trade-based money laundering.[4] Al Qaeda began relying on the informal financial system around 1996. Detecting terrorist finances is therefore an extremely difficult task, more difficult even than preventing money laundering.

Countering Terrorist Financing: the Need to Redefine Collective Interests

The fight against terrorist funding is tremendously complex. It requires collective action not only internationally among states but also internally among gov-

[2] Author's interview with senior official in the Office of Foreign Assets Control (OFAC), Department of the Treasury, Washington DC, 14 October 2004 (hereafter OFAC).

[3] John Roth, Douglas Greenburg, and Serena Wille, *Monograph on Terrorist Financing,* Staff Report to the National Commission on Terrorist Attacks Upon the United States (hereafter *9/11 Staff Monograph*), 11.

[4] U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report*, *Part II. Money Laundering and Financial Crimes* (March 2004, hereafter *INCSR 2004* and March 2005, hereafter *INCSR 2005*).

ernment agencies and private actors. It essentially requires re-conceptualizing the public good of open financial systems as having negative security externalities that must be collectively managed. It involves the design and interaction of national economies and security agencies, as well as the political problems of achieving and sustaining cooperation among a very diverse set of public and private actors. To be effective, the international effort to combat terrorist financing requires well-functioning, transparent, and noncorrupt economies. Successfully disrupting terrorist financial flows therefore requires an appropriate anti-money-laundering legal framework regulating the formal and informal financial services industry and trade services. It demands an ability to enforce laws and collect real-time intelligence and documentary evidence on financial flows. It also requires experts properly trained in financial intelligence collection and criminal investigation, as well as prosecutors, regulators, customs agents, and bank employees.[5] Building all this institutional capacity to combat money laundering is a prerequisite for fighting terrorist financing.

However, because terrorist finance differs from money laundering, countering terrorist financing requires additional intelligence collection and analysis capacities for detecting "needles" in the financial "haystack." The remaining criterion for successfully combating terrorist financing is sustained political will to ensure that the power granted by legislation is actually matched by the capacity to implement counter-terrorist finance measures. Governments must be willing and able to share information and expertise with relative ease and speed across a number of policy domains and with public and private actors. They must also have the capacity to act quickly to disrupt and interdict funds and track the money trail to terrorists. In most cases, this cooperation must be transnational as well. All of this requires a long-term and high-level political commitment to combating terrorist finance.

Studies of international organization suggest that such profound political cooperation and organizational change requires participants to have redefined their interests.[6] Drawing on this insight, the argument made here is that such long-term and high-level commitment is only likely if top- and mid-level decision makers have re-conceptualized national security threats to include transnational financing of terrorists and if they have redefined the paradigm of security threats from one centered on nation-states to one incorporating transnational nonstate actors. Such a redefinition includes recognizing a need for

[5] Author's interviews in Washington DC with: State Department officials in the Office of the Coordinator for Counterterrorism's Counterterrorism Finance Unit (hereafter S/CT) and Bureau of International Organizational Affairs (hereafter IO), 20 and 23 September 2004, respectively; the Bureau of Economic and Business Affairs (hereafter EB) and International Narcotics and Law Enforcement (hereafter INL), 13 October 2004; Joseph M. Myers, former Director of Counter-Terrorist Financing at the National Security Council under the Bush administration, 12 October 2004; Treasury Department Financial Crimes Enforcement Network (hereafter FinCEN) official, 12 October 2004; and OFAC official.

[6] Ernst Haas, *When Knowledge Is Power* (Berkeley: University of California Press, 1990).

transnational and national sharing of information, moving from a paradigm of "need to know" to one of "need to share," and the subsequent re-organization of subnational and international authorities and cooperative endeavors.

Such a redefinition is most likely to occur in the aftermath of domestic experience of terrorist attacks. Even then, redefinition appears episodic and short-term. It had haltingly begun to take place among top national security officials in the White House during the last years of the administration of Bill Clinton but was discarded after the change in administrations and has not taken firm hold again. This redefinition has not systematically occurred globally, even among those states most subject to threats from transnational actors. As such, the initial counter-terrorist-financing "success"—in the form of unprecedented interagency and international cooperation—has not yet translated into the redefinition of national and international interests necessary to build upon and sustain it.

The Collective Action Problem Posed by Terrorist Financing

From a theoretical perspective, countering terrorist financing is a classic collective action problem. The majority of states benefit from limiting the ability of nonstate terrorist groups to finance violent challenges to state authority and control. They also benefit from ensuring that unofficial financial flows and a nontransparent economy do not undermine investor confidence and the state's capacity to govern. More broadly, states have an interest in ensuring that the international financial system and domestic economies are not disrupted through terrorist penetration and exploitation. Yet every state has an incentive to pass the costs of constraining terrorist financing off to others, as long as the costs of doing so are less than the benefits of attracting financial clients craving secrecy and of appeasing domestic actors (including charities, casinos, banks, money services, and civil liberties advocates) who oppose government scrutiny.

Institutional Capacity

Domestically, many states, even the most developed, lack the institutional capacity for and the political interest in successful implementation and enforcement of the counter-terrorist-financing regime's norms and practices.[7] States must have the ability to ensure compliance of private-sector actors in collecting and sharing sensitive information. Well-developed and integrated interagency cooperation is required to effectively manage the sheer complexity of combating terrorist access to finances. Competing interests among those within and those outside of government make implementing international best practices politically difficult. The difficulty of intergovernmental cooperation is considerably complicated by widespread resistance among key domestic con-

[7] Author's interviews with S/CT, INL, and OFAC officials, 20 September and 12-13 October 2004.

stituencies to increased regulation of financial activities and therefore a rejection of framing finance in terms of national security.[8]

In many countries, the political pain brought on by an effort to comply with an international regime, rather than merely adopt its standards, is deemed avoidable. States are much more likely to adopt but not enforce institutional changes, unless their calculus of the costs of nonenforcement changes. In the area of terrorist financing, we should expect such changes when the net costs of nonenforcement are raised (through the brandishing of international "carrots" and "sticks" that increase the costs to the state's reputation of being politically uncooperative and economically nontransparent, expose it to painful issue linkage and conditionality, or deny desired material incentives).[9] We should also expect such changes when states alter their definition of the problem to one of collective, not merely foreign, concern—which is most likely to occur after the domestic experience of transnational terrorist acts.[10]

Punctuated Learning

Change is likely to take the form of punctuated learning to redefine the national interest. Such learning is unlikely to be sustained without high-level attention and persuasion to maintain the new security paradigm and definition of national interests. The collective action required to create and pay for the public goods of an open and transparent financial system and constrained transnational terrorism is likely to be overpowered by free-riders for whom it is cheaper to pass the costs of such public goods on to others. In such cases, the power and ability of a hegemon or k-group—a small group of states wielding considerable power in the issue area—to set the rules of the game and impose them on free-riders through the manipulation of transactions costs and incentives is often critical to the successful provision of public goods.

The U.S. case is illustrative. As one of the centers of the international financial system, the United States is a necessary participant in the creation of a counter-terrorist-financing regime, whether as the hegemon or a member of the k-group. The United States should have considerable will after the terrorist attacks of September 2001 and capacity, in terms of expertise and resources, to domestically and internationally tackle the problem. If the United States is unable or unwilling to do so, then there is little reason to expect other countries with less motive and capacity to do so on their own.[11]

[8] Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42 (Summer 1988): 427–460.

[9] Beth A. Simmons, "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs," *The American Political Science Review* 94 (December 2000): 819–835.

[10] Ernst B. Haas, "Words Can Hurt You: Or Who Said What to Whom About International Regimes," *International Organization* 36 (Spring 1982): 207–244.

[11] Mancur Olson, *The Logic of Collective Action* (Cambridge, MA: Harvard University Press, 1967/1971); and Russell Hardin, *Collective Action* (Baltimore, MD: Johns Hopkins University Press for Resources for the Future, 1982).

To support this argument, both the international effort to suppress terrorist financing as well as the "best case" of U.S. efforts to do so are developed below. International regime theory suggests that the existence of a hegemon or a small group of powerful states that is both willing and able to promote and underwrite an international counter-terrorist finance regime is often essential for such a regime to form when states have an incentive to pass the costs of the regime off to others. Such costs exist in abundance in the area of counter-terrorist financing.[12]

COUNTER-TERRORIST FINANCE EFFORTS BEFORE 11 SEPTEMBER 2001

Prior to the terrorist bombings of the U.S. embassies in Tanzania and Kenya in 1998, the issue of terrorist financing was handled almost entirely either as a problem of state sponsors of terrorism, or money laundering and criminal finance by nonstate actors (primarily drug traffickers and organized crime). Efforts to curtail the flow of funds to terrorists therefore took different approaches: pressuring states to curb their support for terrorism versus ensuring that states had the domestic capacity and incentives to suppress transnational criminal networks.

The Inklings of a New, Nonstate Terrorism Paradigm

States traditionally have been seen as the sponsors of terrorism. International focus has been on pressuring states seen to be directing or supporting violent organizations. Countries have long been divided ideologically over the political motivations of such organizations, such as the Nicaraguan *contras*, the Palestine Liberation Organization, the Irish Republic Army, Hamas, and Hezbollah. As a result, states have been unwilling to define specifically what constitutes terrorism. This lack of consensus has resulted in a host of UN treaties dealing with particular terrorist acts (such as hijackings and political assassinations) rather than with terrorism in general.[13] UN Security Council (UNSC) resolutions and treaties authorizing economic sanctions (and unilateral U.S. military strikes) were used to persuade state sponsors such as Libya and Sudan to stop their support for terrorism.[14]

State sponsorship of terrorism declined after the end of the Cold War as outcasts such as Libya, Iran, Syria, and Sudan sought to reduce their international

[12] Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984); and Charles Kindleberger, *The World in Depression, 1929-1939* (Berkeley: University of California Press, 1973).

[13] For the full list of anti-terrorism conventions, see United Nations Treaty Collection, "Conventions on Terrorism," 5 January 2006, accessed at http://untreaty.un.org/English/Terrorism.asp, 5 January 2006.

[14] Chantal de Jonge Oudraat, "The United Nations and the Campaign against Terrorism," *Disarmament Forum* 1 (2004): 29–37.

isolation. Terrorist organizations relied increasingly on other means, licit and illicit, to fund their activities.[15] Terrorists had long been involved in drug trafficking and organized crime, but until 1999, the international community had not explicitly linked these. The inability to agree on a definition of terrorism prevented the international community from including terrorist acts in many international efforts to suppress the drug trade and other transnational crime.

This gradually began to change in the late 1990s. The UN first explicitly linked the drug trade and terrorism after the UN Office for Drug Control and Crime Prevention highlighted the Taliban's levy of $15-27 million per year from taxes on opium production.[16] This reliance reduced the Taliban's susceptibility to sanctions applied to legal economic activity.[17] The Security Council demanded in Resolution 1214 (1998) that the Taliban stop its trade in narcotics. In 1999, the UNSC strengthened the linkage between terrorism and drugs when in Resolution 1333 it declared that the drug profits increased the Taliban's ability to harbor terrorists.

After the 1998 bombings of the U.S. embassies in Kenya and Tanzania, the United States and other Western states began to push for international recognition that nonstate actors were equally as complicit in supporting terrorism as states. The United States had led in getting international action on interdicting drug traffic, organized crime, and the laundering of their proceeds. While terrorist acts had been gradually incorporated into these efforts, after the 1998 bombings, the United States steered the Security Council to focus on transnational nonstate terrorism.[18] The Council passed Resolution 1267 in 1999, requiring states to impose sanctions on and freeze the assets of the Taliban for hosting al Qaeda. While this resolution reflected the traditional emphasis on targeting state sponsors (the Taliban), this was the first time the council had recognized that a transnational terrorist group was a threat to international peace and security.[19] Also in 1999, France led the UN in adopting the UN Convention on the Suppression of Terrorist Financing. This convention recognized that states had to work not only with each other but with private financial institutions to block the flow of terrorist funds. Under this convention, states are required to establish domestic legislation criminalizing terrorist financing and regulating financial industries within their jurisdiction.[20]

[15] Ilias Bantekas, "The International Law of Terrorist Financing," *American Journal of International Law* 97 (April 2003): 315–333.

[16] United Nations, "Report of the Committee of Experts appointed pursuant to Security Council Resolution 1333 (2000), paragraph 15 (a), regarding monitoring of the arms embargo against the Taliban and the closure of terrorist training camps in the Taliban-held areas of Afghanistan," (21 May 2001) UN Doc. S/2001/511, para. 60.

[17] Oudraat, "United Nations," 31.

[18] Ibid., 30.

[19] United Nations, "First report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities," (25 August 2004) UN Doc. S/2004/679 (hereafter UN August 2004), 5.

[20] Bantekas, "International Law," 323–324.

Yet, even after the 1998 embassy bombings, the UNSC first emphasized the duty of states to suppress terrorism, without reframing the problem in terms of nonstate-sponsored terrorism.[21] For example, the 1999 UN Convention for the Suppression of Terrorist Financing highlights state responsibility for the actions of private actors operating within their jurisdiction. UN Security Council Resolution 1269 (1999) was the first to use the term "terrorist financing," but here the Security Council made clear that states harboring, funding, aiding, or failing to adopt measures to suppress terrorism would be held accountable for acts committed by those terrorists it sponsored. Sudan and Libya were effectively persuaded to suppress terrorism through this sanctions approach, in conjunction with the demise of their Cold War sponsors, but Afghanistan's Taliban were not.[22]

In 2000, the Security Council passed resolution 1333 and for the first time took on the nonstate actor al Qaeda through a freeze on the financial assets of Osama bin Laden and those associated with him, as designated on a list maintained by the 1267 Committee.[23] Resolution 1333 reflects the beginnings of the transformation of the state sponsor approach to counterterrorism to a transnational criminal finance approach.

A Piecemeal Anti-Money-laundering Regime

The bulk of the pre-September 11 multilateral cooperation that would be used after September 11 to counter terrorist financing took place in the counter-drug, counter-crime domain. Here, the major Western powers took the lead in developing a soft-law regime to combat transnational criminal finance. The strategic emphasis was on ensuring that states had the domestic capacity to combat organized criminal finance, and later, its new cousin, terrorist finance. Such capacity required enacting and enforcing domestic financial, banking, law enforcement, and anticorruption legislation. The regime developed in a piecemeal fashion.

The creation of the Financial Action Task Force on money laundering in 1989 marked the first in a series of efforts to establish informal inter- and transgovernmental bodies to handle the problem of criminal finance. The Financial Action Task Force sets and promotes best practices (put forward by the United States and the United Kingdom) in combating transnational financial crimes, and monitors the status of countries' legislative and regulatory conformity with these standards.[24] It published a set of forty recommendations in 1990 (revised in 1996), that laid out the basic framework for states to establish comprehensive anti-criminal-finance systems. In 2000, the Financial Action

[21] Ibid., 316.
[22] Oudraat, "United Nations," 31.
[23] UN August 2004, 5.
[24] Author's interview with INL official; and Bantekas, "International Law," 328.

Task Force began a campaign of "naming and shaming" jurisdictions that did not cooperate in the global effort to combat money laundering, which prompted many of those named to alter their domestic legislation in order to be removed from the list. It further suggested a set of countermeasures that states could take against the recalcitrant countries to prod compliance.[25] A number of regional Financial Action Task Force-style organizations were established between 1999 and 2000.[26]

In 1995, the financial intelligence units of twenty states (led by the United States and Belgium) established an informal transgovernmental network for sharing information concerning money laundering. Dubbed the Egmont Group, it grew rapidly to 58 states by June of 2001 and 101 by 2006.[27] It has served as a useful informal vehicle to improve information sharing, analysis, and training to combat money laundering.[28] The 2000 UN Convention against Transnational Organized Crime required member states to enact comprehensive domestic banking laws and regulations to deter and detect money laundering. This nascent anti-money-laundering regime would form the basis of the newly anointed international counter-terrorist-financing regime after the terrorist attacks on the United States on 11 September 2001.[29]

The progress made in the 1990s in creating formal and informal international rules on terrorism resulted from heightened awareness in the aftermath of major terrorist attacks in 1993 and 1998 against the United States. No overarching transnational security frame united the problem of terrorism and the problem of funds flowing through the international economy to finance them. Slowly and haltingly, the problems of terrorism and terrorist financing were being redefined by the Western powers as falling within a new paradigm of nonstate-sponsored actors. Led by the United States, the Security Council had begun focusing the Council's powers on nonstate actors such as al Qaeda. But other states saw little incentive to engage on an issue that was not seen as their problem, so learning was episodic and of limited duration. The same pattern plays out in the post-September 11 period.

International Efforts after the September 11th Attacks

On 28 September 2001, the UN Security Council passed a U.S.-sponsored resolution that obligated all members of the UN to act to suppress terrorism

[25] *INCSR 2004*, 49–50, and "NCCT Initiative," Financial Action Task Force, 16 July 2005, accessed at http://www1.oecd.org/fatf/NCCT_en.htm, 16 July 2005.

[26] *INCSR 2004*, 52–57.

[27] The Egmont Group, "Financial Intelligence Units of the World," 13 June 2001, accessed at http://www.fatf-gafi.org/pdf/EGFIUlist2001_en.pdf, 5 January 2006; and "Financial Intelligence Units of the World," 29 June 2005, accessed at http://www.fincen.gov/int_egmont.html, 5 September 2006 (hereafter *Egmont FIU List 2001* and *Egmont FIU List 2005*).

[28] Author's interviews with S/CT official and FinCEN official.

[29] *INCSR 2004*, 48; and author's interview with INL official.

and terrorist financing. Resolution 1373 is in effect a "mini treaty." It requires all of the same changes to domestic legislation, denial of safe haven, and criminalization of terrorism as the 1997 Convention on the Suppression of Terrorist Bombings and the 1999 Convention on the Suppression of Terrorist Financing. But since these treaties were not yet in force on 11 September 2001, the Security Council used its Chapter VII authority in Resolution 1373 to obligate *all* members to implement their provisions. Resolution 1373 goes beyond Resolution 1267 to require states to act against all terrorist organizations and their associates, not merely al Qaeda and the Taliban. This broad language reflects the U.S. determination to take advantage of the sympathetic post-September 11 environment in passing much tougher measures than states would otherwise have accepted.[30] Resolution 1373 established the Counter-Terrorism Committee (CTC) to monitor implementation and increase the capability of UN members to fight terrorism through the promotion and targeting of technical assistance.[31] Unlike the 1267 Committee however, the CTC does not maintain a designated terrorist list (the United Kingdom would not support such a proposal) and it adopted a neutral profile to generate as much responsiveness from UN members as possible.[32]

Problems in Sustaining Collective Action

The international response appears remarkable on its surface: over 100 nations drafted and passed laws addressing money laundering or terrorist financing shortly after September 11. The indicators used to measure the success of international efforts to combat terrorist financing include those most often cited by U.S. governmental officials (such as the amount of national and global asset freezes, establishment of financial intelligence units, conventions signed, treaties ratified and domestic legislation passed, and technical assistance programs run), as well as the International Monetary Fund (IMF) and World Bank measures of compliance.[33] After the attacks of September 11, the number of states ratifying the UN terrorism conventions soared, with 154 ratifying the 1999 Convention on the Suppression of Terrorist Financing and 148 ratifying the 1997 Convention on the Suppression of Terrorist Bombings.[34] Approxi-

[30] Bantekas, "International Law," 326.

[31] UN Office on Drugs and Crime, "Terrorism," accessed at http://www.unodc.org/unodc/en/terrorism.html, 16 July 2005.

[32] Author's interview with IO official; and Oudraat, "United Nations," 33.

[33] The indicator of assets frozen is problematic, because U.S. government reports are unsystematic. The Government Accountability Office harshly criticized the State Department and especially the Treasury Department for this. See "Terrorist Financing: Better Strategic Planning Needed to Coordinate U.S. Efforts to Deliver Counter-Terrorism Financing Training and Technical Assistance Abroad," United States Government Accountability Office Report to Congressional Requesters, October 2005 (hereafter GAO 2005).

[34] "Nuclear Threat Initiative, International Convention for the Suppression of the Financing of Terrorism," accessed at http://www.nti.org/e_research/official_docs/inventory/pdfs/finterr.

mately $147 million dollars in assets were frozen after the attacks of 11 September 2001 (about $44 million of which were in the United States).[35] Since September 11, approximately 188 countries have legislated the ability to freeze assets associated with al Qaeda and the Taliban, and 170 have passed legislation against terrorist groups more generally.[36]

In October 2001, the Financial Action Task Force expanded its anti-money-laundering mission to include terrorist financing, and it issued nine special recommendations for fighting terrorist financing. The Egmont Group also took terrorist financing under its purview. The widespread acceptance of multilateral norms to prevent terrorist use of the formal financial system led states to seek membership in the Egmont Group and ensure their removal from the Financial Action Task Force Non-Cooperative Countries and Territories list. Since 2000, the Egmont Group has grown by over 40 countries and territories to a total of 102.[37] The IMF and World Bank agreed to provide technical assistance to countries to ensure compliance with the Financial Action Task Force's anti-money-laundering and counter-terrorist-financing recommendations and inclusion of anti-money-laundering considerations in their country evaluations.[38]

Yet the international effort on terrorist financing, while impressive, has largely been superficial. States have taken steps they otherwise would not have taken in passing desired domestic legislation and in ratifying various UN terrorism conventions. The shock of the September 11 terrorist attacks on the United States, combined with Western pressure to adopt the existing pieces of the anti-money-laundering/counter-terrorist-financing regime made the costs of non-adoption higher. However, the only "carrot" offered by Resolution 1373 was technical assistance in combating terrorist financing, and total U.S. spending on technical assistance on this issue since September 11 has not exceeded $30 million.

The United States is not very active in the work of the UN CTC and devotes much more attention to the narrower purview of the 1267 Committee. The United States prefers expanding the al Qaeda and Taliban list of the 1267 Committee to sanction governments, groups, and individuals and using

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pdf#search=%22convention%20terrorism%20financing%20nti%22, 4 October 2006; and "International Convention for the Suppression of Terrorist Bombing," accessed at http://www.nti.org/e_research/official_docs/inventory/pdfs/bomb.pdf#search=%22convention%20terrorist%20bombing%20nti%22, 4 October 2006." See Table 2, United Nations, "Report of the Secretary General to the Commission on Crime Prevention and Criminal Justice, UN Economic and Social Council," (17 March 2004) UN doc. E/CN.15/2004/8, 14 (hereafter UN March 2004).

[35] *9/11 Staff Monograph*, 45; and *INCSR 2004*, Introduction.

[36] UN March 2004, 12; and *9/11 Staff Monograph*, 45.

[37] *Egmont FIU List 2001*; and *Egmont FIU List 2005*.

[38] "Twelve-Month Pilot Project of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Assessments," IMF and the World Bank Joint Report on the Review of the Pilot Project, 10 March 2004 (hereafter IMF-World Bank Joint Report).

bilateral and regional organizations to monitor and encourage compliance rather than developing a global multilateral regime focusing on technical assistance to build the capacity to implement and enforce laws against terrorist financing.[39] Of the $2.2 million given to the UN to implement technical assistance in counter-terrorist financing, the United States contributed less than 10 percent, while Austria alone made up over half of the contributions.[40] Indeed, it appears that there is disagreement at the political level in the United States over whether working through multilateral fora is anything other than "a waste of time."[41]

The available international "sticks" involve designations and sanctions (under UNSC Resolutions 1373, 1333, and 1267) and international pressure (the Financial Action Task Force's list of Non-Cooperative Countries and Territories). States initially followed the U.S. lead and designated individuals and entities that the United States named under Executive Order 13224. However, because of early U.S. errors in these designations and the widespread perception that they were intended for domestic political consumption, states—including almost all European states—now prefer to follow the UN lead on designations.[42] European citizens were among some of the early designees who were subsequently "de-listed." These mistakes raised concerns in European countries about the evidence involved, while other European countries faced lawsuits from the families of those who were designated. Of the $9 million in new asset freezes in 2004, $8 million were frozen by the United States.[43] Willingness to "name and shame" through the Financial Action Task Force's list of Non-Cooperative Countries and Territories evaporated, and political lobbying meant that as of February 2006, only Myanmar and Nigeria were listed as noncooperative while notorious money-laundering havens such as Nauru were not.[44] Some U.S. officials indicated that the Abu Ghraib scandal and the war in Iraq lessened Middle Eastern countries' interest in working with the U.S.[45]

Implementation of the best practices advocated by the Financial Action Task Force and the minimum standards required by Resolution 1373 has been much less forthcoming. Of forty-one countries surveyed in 2003, the IMF and World Bank found that compliance with the Financial Action Task Force special recommendations on terrorist financing was weakest in lower- and middle-income countries (categories that feature prominently in the list of "countries of concern" for terrorism financing compiled by Western states). The IMF and World Bank also reported that compliance was much less for the

[39] Author's interviews with State Department officials.

[40] See Table 1 in UN March 2004, 7.

[41] Author's interview with S/CT official.

[42] Author's interview with FinCEN official.

[43] Author's interview with OFAC official; and *INCSR 2005*, Introduction.

[44] "NCCT Current List," Financial Action Task Force, 17 February 2006, accessed at http://www.fatf-gafi.org/document/4/0,2340,en_32250379_32236992_33916420_1_1_1_1,00.html, 16 April 2006.

[45] Author's interviews with State Department officials.

more domestically intrusive and costly recommendations (such as regulating alternative money remittance systems and charities and know-your-customer requirements for wire transfers).[46]

U.S. threats of financial sanctions have produced important changes in state behavior in asset freezing and in complying with the Financial Action Task Force standards in some cases (the Philippines). But in the cases of most concern to the United States, particularly Saudi Arabia, Indonesia, and the Philippines, U.S. officials have suggested that it has only been the domestic experience of terrorism—after al Qaeda "fouled its own nest"—that sparked real action in these states on counter-terrorist financing. Even then, the bulk of cooperation has not been in the area of designations or in bolstering implementation of the counter-terrorist-financing regime, but in capturing and eliminating terrorist financiers.[47]

Problem Definition among the Most Financially Powerful States

The prospects for sustaining international collaboration on counter-terrorist financing and solidifying a global counter-terrorist financing regime are uncertain. Ongoing terrorist attacks present continual reminders of the danger of permitting penetration of national and international financial systems. In the absence of such attacks, U.S. officials have repeatedly stated, foreign governments do not see the institutional structures that facilitate terrorist financing as their problem, and they correspondingly do little to enforce anti-money-laundering and anti-terrorist-financing measures.[48] The major actors who would form any k-group interested in and necessary for sustaining a counter-terrorist-financing regime have different priorities, as the European response suggests.

There is emerging recognition of the problem posed by transnational actors among the European states. However, the European approach differs from that of the United States, suggesting fundamental disagreement on how to define the problem of counterterrorism and counter-terrorist financing. At a basic level, the original EU members are vitally concerned with ensuring that new and old members improve their counterterrorism laws. For them, September 11 and the 2004 Madrid and 2005 London bombings demonstrated that Islamic radicalism was a threat not only to the United States but to Europe as well. Yet internationally, the Europeans emphasize a global multilateral approach to anti-money-laundering/counter-terrorist-financing standard setting and technical assistance to implement such standards, and downplay the utility of designations and asset freezes. In their cooperation with the United States after September 11, the Europeans all took measures to counter terrorist fi-

[46] IMF-World Bank Joint Report, 48.

[47] Author's interviews with S/CT and EB officials.

[48] Author's interviews with FinCEN, S/CT, and IO officials.

nancing and to improve their compliance with the Financial Action Task Force standards.[49] However, they moved away from support of the U.S. focus on high-profile designations toward an "intelligence-based" approach that emphasized European and G8 information sharing to identify and track terrorist finances as well as greater attention to UN and EU-wide multilateral standard setting and implementation.[50]

While formally supportive of the work of the UN, the United States has chosen to use UN instruments for the narrow purpose of targeting Islamist groups rather than terrorism more broadly. The United States has favored bilateral and regional information sharing and targeted technical assistance over global multilateral efforts.[51] The United States seems to prefer the current patchwork approach of utilizing the multiple international frameworks (IMF/World Bank, the Financial Action Task Force, 1267 Committee) when it suits U.S. interests to pressure particular countries that are sources of Islamic terrorist financing and terrorist activity. The Europeans' interests are broader, seeking to create rule-of-law economies and attack the root causes of terrorism through multilateral best practices and technical assistance. While there is not the fundamental rift in the transatlantic discussion over terrorism financing that exists over U.S. willingness to unilaterally use force in waging its war on terror, the differences between the United States and the Europeans over priorities and domestic costs are significant enough to impede collective action to create a robust counter-terrorist-financing regime.

The fundamental cause of the different approaches appears to be the lack of a common definition of the problem posed by terrorist financing and terrorism more broadly and the uneven and sporadic internalization of a new security paradigm that places nonstate actors and nontraditional concerns closer to the center of the notion of national security. Collective action theory suggests that without a common U.S. and European definition of the problem and a subsequent common interest in underwriting the costs of such a regime, it is likely that these countries will fail to produce the public good of a global financial system that is less penetrable by terrorists. A detailed study of the

[49] Author's interview with EB official; *INCSR 2004*; United States Department of State, *Patterns of Global Terrorism 2003,* March 2004, accessed at http://www.state.gov/documents/organization/31912.pdf, 4 October 2006; Francis T. Miko and Christian Froehlich, "Germany's Role in Fighting Terrorism: Implications for U.S. Policy," CRS Report for Congress, 27 December 2004; and HM Treasury, "Combating the Financing of Terrorism: A Report on UK Action, 24 October 2002," accessed at http://www.hm-treasury.gov.uk/documents/international_issues/terrorist_financing/int_terrorfinance_combatfinance.cfm, 16 July 2005.

[50] "The Fight against Terrorist Financing," Note of the Secretary General/High Representative and the Commission to the Council of the European Union (EU Doc. 16089/04), 14 December 2004, accessed at http://ue.eu.int/uedocs/cmsUpload/EUplan16090.pdf, 4 October 2006; see also "EU Plan of Action on Combating Terrorism—Update," First Review by the Presidency of the European Council, (EU Doc. 16090/04), 14 December 2004, accessed at http://ue.eu.int/uedocs/cmsUpload/16089fight_against_terrorist_financing.pdf, 4 October 2006.

[51] Author's interviews with all State Department officials.

U.S. case suggests that lack of continuous political attention to the problem and bureaucratic infighting prevent the United States from redefining the problem of terrorist financing.

U.S. Effort to Combat Terrorist Financing before 11 September 2001

Prior to the 2001 attacks, there was no sustained, concerted effort by the United States to counter terrorist financing. *The 9/11 Commission Report* and *The 9/11 Commission Staff Monograph on Terrorist Financing* paint an authoritative picture of disaggregated data collection, mistaken understandings regarding information sharing, conflicting organizational cultures and jealousies, and interrupted attention spans that impeded the government and Congress in focusing on the issue of terrorism and how it was funded. The only governmental body focused on the issue more or less consistently was the White House, particularly the National Security Council (NSC), which since 1985 has coordinated government efforts to counter terrorism.[52]

Terrorism was one of the first national security issues the new Clinton administration had to face, with the assassination of two Central Intelligence Agency (CIA) employees outside CIA headquarters in Virginia in January 1993 and the bombing of the World Trade Center the following month. The issues of terrorism and terrorist financing occupied the NSC from the aftermath of the 1993 World Trade Center bombing onward. Detection and prevention of weapons of mass destruction terrorism were made the very highest priority for President Clinton's own staff and all agencies; a reorganization gave the Department of Justice and the FBI the lead on the domestic front, with the CIA, the State Department, and others responsible for the foreign front.[53]

Although the issues of terrorism and terrorist financing received a high level of attention from the President and his national security advisors, the NSC was incapable of systematically engaging and directing a host of subunits within various government agencies to address the problems.[54] Because of the attorney general's concerns and the legacy of the Iran-Contra affair during the Reagan administration, the NSC Counterterrorism Security Group Director Richard Clarke was authorized only to give advice regarding budgets and to coordinate interagency guidelines for action.[55] The NSC therefore could not task agencies

[52] *The 9/11 Commission Report. Final Report of the National Commission on Terrorist Attacks Upon the United States,* authorized ed. (New York: W.W. Norton & Company, 2004), 98–100, 122–123, 185.

[53] Ibid., 100–102.

[54] *9/11 Staff Monograph*, 4–5; and author's interviews with OFAC, FinCEN, and INL officials.

[55] *9/11 Commission Report*, 101; and Congressional Research Service, "Terrorist Financing: Current Efforts and Policy Issues for Congress," CRS Report for Congress, 20 August 2004, 9–10 (hereafter CRS August 2004), and "Terrorist Financing: U.S. Agency Efforts and Inter-Agency Coordination," CRS Report for Congress, 3 August 2005, 14 (hereafter CRS August 2005).

to take action and appropriate funds, which one senior official suggested was the fundamental problem preventing successful interagency coordination and action.[56]

Knowledge of how terrorists financed their operations was poorly sourced and slow in coming.[57] As late as 1997, the CIA was aware that Osama bin Laden had provided funds to several terrorist organizations but not that he was at the heart of a terrorist network. Because the national security advisor had expressed a personal interest in terrorist financing, the CIA had set up a unit to track terrorist financial links in 1996. It focused solely on bin Laden, however, and moved quickly away from a focus on financial links to one on operational planning.[58]

The issue of terrorist financing gained more attention after the bombings of the U.S. embassies in Nairobi and Dar es Salaam in early August of 1998. An NSC-led interagency group on terrorist financing was established, which included the NSC, the Treasury Department, the CIA, the FBI, and the State Department. While the CIA cooperated in this group, the FBI would not meaningfully participate.[59] The NSC alone maintained pressure on the issue of terrorist financing. It led in pressing the Saudis for access to a key al Qaeda financial officer.[60] The President and the State Department, again after NSC urging, began to pressure Pakistan on its support to jihadists in Kashmir and the Taliban. The President issued Executive Order 13099, freezing all financial holdings that could be associated with bin Laden.[61]

Despite the increased focus on counter-terrorist financing from the White House, there was little change in the behavior of federal agencies. The FBI was gathering intelligence against organizations suspected of raising funds for terrorists on a field office level, but with no centralized collection or sharing system in place.[62] At NSC urging, the Treasury Department was designated in March 2000 as the home for a new Foreign Terrorist Asset Tracking Center (FTATC) and congressional authorization came in October. However, due to bureaucratic tug-of-wars between Treasury and the CIA, the FTATC was only hastily staffed three days *after* September 11.[63]

Financial Industry Objections and U.S. Capacity for Collective Action

Despite the lack of coordinated effort in the executive branch, prior to September 11 there was a somewhat ad hoc system of laws, authorities, and regulations in place that directly or indirectly addressed terrorist finances.

[56] Author's interview with James B. Steinberg, Deputy National Security Advisor to the Clinton administration, Washington DC, 14 October 2004.

[57] *9/11 Commission Report*, 170–171; and *9/11 Staff Monograph*, 34–35.

[58] *9/11 Commission Report*, 109.

[59] *9/11 Staff Monograph*, 40–41.

[60] *9/11 Commission Report*, 122.

[61] E.O. 13099, 20 August 1999, cited in Ibid., 126.

[62] *9/11 Commission Staff Monograph*, 4–6.

[63] *CRS August 2005*, 11–12.

These rules both criminalized the provision of funds to terrorists and provided the government the means to collect information with which to detect the flow of such funds. The 1990 Anti-Terrorism Act made material support, including funding and financial services, to foreign terrorist organizations illegal. In 1995, the Clinton administration pushed for increased federal criminal laws, making it easier to deport terrorists and to act against terrorist fund-raisers. After the Aum Shinrikyo chemical weapons attack on the Tokyo subway and the Oklahoma City bombing in 1995, Clinton proposed increased wiretap and electronic surveillance authority for the FBI and new funding for the FBI, CIA, and local police.[64] The 1996 Anti-Terrorism and Effective Death Penalty Act made the provision of support to terrorists a criminal act, and allowed civil suits against a foreign state or its instruments committing a terrorist act.[65] A series of anti-money-laundering statutes made conducting financial transactions to further or conceal criminal acts—including the destruction of aircraft and hostage taking, among many others—illegal.[66]

Despite these advances in counter-terrorist-financing legislation, the financial industry blocked most other efforts in the 1990s to strengthen the anti-money-laundering regime. A critical element of the anti-money-laundering legal framework was the 1970 Bank Secrecy Act. It required banks to create audit trails of large bank transactions and to allow law enforcement access to such information or face criminal penalties. In 1985, the Federal Reserve and the Office of the Comptroller of the Currency began requiring financial institutions to submit suspicious activity reports. The Annunzio-Wylie Anti-Money Laundering Act of 1992 added Treasury to the list of executive agencies able to require this information and required for the first time that banks keep records of wire transfers.[67] The decision on what activity was "suspicious" fell to the discretion of bank employees. The Treasury Department lobbied for controls on foreign banks with U.S. accounts in 1999 and 2000. Despite bipartisan support in the House, this effort stalled in the Senate Banking Committee, where the chair rejected further regulation of banks.

In 1999, the Treasury Department and federal financial regulators proposed draft regulations requiring banks to "know your customer." These requirements would ensure that banks took reasonable steps to know who the beneficial owner of an account was and the sources of funds flowing through accounts. This sparked such a firestorm of controversy and resistance from the banking industry that these efforts failed and Congress even considered weak-

[64] *9/11 Commission Report*, 100–101.

[65] Bantekas, "International Law," 328.

[66] Mariano-Florentino Cuellar, "The Tenuous Relationship between the Fight against Money Laundering and the Disruption of Criminal Finance" (Stanford Public Law and Legal Theory Working Paper Series, research paper no. 64, September 2003): 337–338.

[67] Ibid., 358. The Federal Reserve and Office of the Comptroller of the Currency had been requiring SARs since 1985.

ening the money-laundering controls then in place.[68] The banking industry successfully defeated Treasury's initial attempts to specify exactly what information must be collected on wire transfers. This essentially prevented the creation of standardized records, significantly impairing the efficiency and speed with which law enforcement could access such information.[69]

Additional efforts to regulate the informal financial system (for example, money remitters and other money services businesses) were also thwarted. The informal system was increasingly important as money launderers and terrorists shifted their operations outside the formal financial system. Although Congress had authorized Treasury in 1994 to draw up regulations governing the informal sector, these regulations were only issued in 1999, with an implementation date of December 2001. In the summer of 2001, the Treasury Department deferred implementation to 2002.[70]

The most powerful legal tool in the counter-terrorist-financing tool kit prior to September 11 was the 1977 International Emergency Economic Powers Act (IEEPA). Under the IEEPA, if the president declares a national emergency with regard to an "unusual or extraordinary" foreign threat, he can block, through a presidential decision directive, the assets of individuals or organizations associated with that threat, and trade between the United States and those designated. The Office of Foreign Assets Control in the Department of the Treasury then identifies the designated individuals or entities and orders their bank accounts frozen. U.S. courts have given the president wide latitude in using this authority because it relates to foreign policy and national security and is therefore a political rather than legal issue.[71] The United States has long used this tool to freeze the assets of states sponsoring terrorism, such as Iran, Libya, and Sudan.

According to the 9/11 Commission staff, "In the 1990s the government began to use these powers in a different, more innovative way, to go after nonstate actors."[72] In 1995, President Clinton used his authority under the IEEPA to issue an executive order freezing the U.S. assets of Colombian drug traffickers and barring U.S. businesses from dealing with the traffickers or their front companies. The same year, the Clinton administration used the IEEPA to sanction terrorists seeking to disrupt the Middle East peace process. Treasury's Office of Foreign Assets Control had hoped to target bin Laden in this way, but did not have access to the intelligence required to make the case for designating him. This would wait until after the 1998 embassy bombings, when President Clinton formally designated bin Laden and al Qaeda under the IEEPA. This had little practical effect, because bin Laden had

[68] *9/11 Staff Monograph*, 38.
[69] Cuellar, "Tenuous Relationship," 359–360.
[70] *9/11 Staff Monograph*, 38–39.
[71] Cuellar, "Tenuous Relationship," 360–361.
[72] *9/11 Staff Monograph*, 37.

moved most of his assets out of the formal financial system after he left Sudan in 1996 and the IEEPA only gave Treasury's Office of Foreign Assets Control authority over assets in U.S. banks and over other U.S. legal persons. In 1999, the President designated the Taliban under the IEEPA for harboring bin Laden and al Qaeda, and blocked Taliban assets worth over $34 million held in private U.S. banks and $217 million in gold and deposits held at the Federal Reserve.[73]

U.S. Inability to Redefine the Collective Interest prior to September 11

The picture of U.S. efforts to suppress terrorist financing prior to the 11 September 2001 attacks is one of fractured attention spans and lack of a comprehensive approach to the multifaceted problem of terrorist finance. During the 1990s, the Clinton administration began to slowly redefine the threat of terrorism as one separate from the traditional paradigm of state sponsors against which economic and military sanctions could be applied. But the redefinition was taking place at the NSC, and its expansion to higher levels of the government and Congress waxed and waned in sequence with the terrorist attacks against the United States in 1993, 1995, 1998, and 2000. The U.S. counterterrorism effort was fragmented among many different agencies and lacked any central coordination and direction, particularly at the FBI.[74]

The U.S. Congress had not made the shift in paradigms to a new post-Cold War, nonstate actor framing of national security. The Congress, in addition to resisting the executive branch's efforts to reframe anti-money-laundering measures as national security measures, remained enamored of economic sanctions against out-of-favor states. This hindered the U.S. ability to work with critical states such as Pakistan on suppressing al Qaeda and pressuring the Taliban.[75] Domestic ideological and political battles often interfered with serious attention to the issue of transnational terrorism, and lessened the sense of threat that nonstate actors posed to the United States. Congress only focused on nonstate terrorism in a completely reactive fashion, in the wake of attacks on U.S. targets at home and abroad. Even this attention was minimal and not sustained. According to the 9/11 Commission, "Terrorism was a second- or third-order priority within the committees of Congress responsible for national security."[76]

By the end of the Clinton presidency, nonstate terrorists and their finances were recognized in the executive branch as a serious threat to U.S. national security.[77] The White House, however, was incapable of translating this recognition into a coordinated and effective domestic and international counterterrorist

[73] Ibid., 37–38.
[74] Ibid., 4–6.
[75] *9/11 Commission Report*, 102–107.
[76] Ibid., 107, 118–119.
[77] Ibid., 100–102; author's interviews with Steinberg and Myers.

effort. Ironically, the government's success in finding and prosecuting the 1993 World Trade Center terrorists impeded White House efforts to reframe and prioritize terrorism and terrorist financing as a major threat.[78]

The U.S. Effort to Combat Terrorist Financing after September 11

The new administration of George W. Bush did not begin its term with the understanding of nonstate threats that the Clinton administration had learned, and its foreign policy priorities, such as missile defenses, were driven by the familiar paradigm of states as the most serious threats facing the United States.[79]

The shock of the 11 September 2001 attacks caused radical changes in the way the U.S. federal government framed and managed the issue of terrorist financing. Within days, federal bureaucracies came together to act collectively to understand the financial basis of the attacks. Agencies immediately established new units to work on the problem, and agreed to interagency cooperation.

The FBI, which was harshly criticized in the 9/11 Commission Staff Monograph for its failures prior to September 11, established an interagency Financial Review Group within days of the attacks. This group became the Terrorist Financing Operations Section. It focused on ensuring that the United States developed a real-time financial tracking capability for urgent financial investigations and that each terrorism investigation had a financial component. Most importantly, for the first time, it coordinated in a single office the FBI's counterterrorist-financing efforts.[80] Other agencies followed suit. The United States Customs Service established Operation Green Quest to investigate terrorist financing. The Justice Department reallocated resources from other areas after September 11 to create a unit devoted to conducting and coordinating terrorist-financing criminal investigations nationwide.[81] Within a week of the September 11 attacks, the CIA had created a new interagency section to develop long-term intelligence on terrorist financing, track terrorists, and disrupt their operations. In 2003, the FBI-led Joint Terrorism Task Force combined the investigative efforts of the FBI, the Justice Department, Customs (now under the Department of Homeland Security), and the IRS.

The NSC set up an ad hoc structure immediately after the attacks, which was replaced by a Policy Coordinating Committee on Terrorist Financing in March 2002.[82] The Policy Coordinating Committee was chaired by the Treasury Department Office of Legal Counsel until November 2003 and, owing largely to General Counsel David Aufhauser's personality, was able to overcome interagency dif-

[78] *9/11 Commission Report*, 73.

[79] Author's interview with Steinberg.

[80] *9/11 Staff Monograph*, 41–42.

[81] This became the Terrorism Financing Unit under the Department of Justice Counterterrorism Section. Ibid., 42.

[82] Ibid., 47.

ferences.[83] The Treasury Department's lead role in counter-terrorist financing came under fire from the Independent Task Force on Terrorist Financing at the Council on Foreign Relations, which insisted that the NSC take the lead on the PCC because of the diplomatic and intelligence aspects of counter-terrorist financing.[84] The 9/11 Commission staff also reported that the PCC was not well integrated into the broader U.S. counterterrorism effort, a criticism loudly echoed by the Council on Foreign Relations Independent Task Force.[85] A Government Accountability Office study suggested that the lack of integration continued through 2005.[86]

Bureaucratic Politics and Collective Action

Even well-endowed and motivated states such as the United States that have legal authorities in place and have recently suffered terrorists attacks find it difficult to develop the capacity to implement collective action domestically. Domestically, capacity requires interagency cooperation to produce effective counterterrorism strategies and implement them. However, domestic agencies, even after attacks as profound as those on 11 September 2001, are likely to pursue their bureaucratic interests at the expense of the collective effort against terrorist financing. Initially, government officials report, interagency cooperation was unprecedented. Yet domestically, cooperation was not well-institutionalized and bureaucratic politics undermined its effectiveness.[87]

A number of bureaucratic battles developed in the aftermath of the September 11th attacks that interfered with the implementation of domestic collective action against terrorist financing. The Treasury Department was at the center of most of them, as it sought to take the lead both domestically and internationally on designations of terrorist financiers and technical assistance training. Within the Treasury Department, the Office of Foreign Assets Control was hastily made the home of the FTATC (authorized and funded in fall 2000, but only established three days after the September attacks). The FTATC never fully functioned at Treasury. The CIA essentially took over the operation, a fact made official by November 2002, when it was renamed the Foreign Terrorist Asset Tracking Group and made an independent CIA-administered entity. After its move to the CIA, neither the Treasury Department nor the Financial Crimes Enforcement Center (FinCEN) detailed any analysts to the Tracking Group. The Tracking Group functioned as a targeting arm of the Policy Coordinating Com-

[83] Ibid.; author's interviews with Myers and INL and FinCEN officials.

[84] "Terrorist Financing," report of an independent task force sponsored by the Council on Foreign Relations, November 2002, 23 (hereafter 2002 CFR Report), and "Update on the Global Campaign Against Terrorist Financing," report of an independent task force sponsored by the Council on Foreign Relations, 15 June 2004, 31 (hereafter 2004 CFR Report).

[85] *9/11 Staff Monograph*, 47; 2002 and 2004 CFR Reports.

[86] GAO 2005, 31.

[87] Author's interviews with Myers and FinCEN, OFAC, INL, and EB officials.

mittee on Terrorist Financing. However, this committee was given a low priority within the administration; it was left leaderless for months, and funds that were to be used for it were reallocated to build a protective barrier around the Treasury Department in 2005.[88]

Another bureaucratic battle took place between the U.S. Customs Service and the FBI Terrorist Financing Operations Section over Customs Service's Operation Green Quest. Both led overlapping interagency groups to investigate terrorist financing. This dispute was resolved in 2003 with the formation of an FBI-led Joint Terrorism Task Force, but with an agreement to ensure the continued participation of experts at Customs (now the Immigration and Customs Enforcement branch of the Department of Homeland Security).[89]

A third bureaucratic battle developed over which agency should lead in the international effort to implement counter-terrorist-financing measures through technical assistance. After September 11, an interagency Terrorist Financing Working Group was established. Co-chaired by the State Department's Office of the Coordinator for Counter Terrorism and Bureau for International Narcotics and Law Enforcement Affairs, it reported to the NSC Policy Coordinating Committee on Terrorist Financing. The Terrorist Financing Working Group identified and assisted important countries in making their financial systems less vulnerable to manipulation by terrorists. It provided technical assistance and training programs to establish and implement legal and regulatory frameworks to comply with UN Resolution 1373, create financial intelligence and financial crimes units, and prosecute terrorism finance crimes. The Treasury Department's Office of Technical Assistance worked with Congress to secure $2.2 million for counterterrorism financing training independent of the Working Group and did not cooperate in it. The Treasury Department sought to take the lead in the Policy Coordinating Committee on Terrorist Financing away from the NSC. It also sought to displace the State Department lead in the Terrorist Financing Working Group on intelligence and operations, and in the production of a counter-terrorist-financing strategy report (the annual State Department *International Narcotics Control Strategy Report* covers terrorist financing). The State Department resisted this.[90] Officials at the State Department, FinCEN, and Treasury's Office of Foreign Assets Control suggested that cooperation on counter-terrorist financing was eroding in the area of international technical assistance because of interagency problems, particularly with Treasury's Office of Technical Assistance, and a number of personalities. A FinCEN official called

[88] CRS August 2004, 10–12; and letter from Joshua Bolten, Director of the Office of Management and Budget, to the President, 8 June 2005.

[89] *9/11 Staff Monograph*, 44; and CRS August 2004, 27, 37.

[90] Author's interviews with FinCEN, S/CT, EB, INL, and OFAC officials. This battle has subsequently become public. See GAO 2005, 14–15; and *Terrorist Financing: Agencies Can Improve Efforts to Deliver Counter-Terrorism-Financing Training and Technical Assistance Abroad*, Committee on Financial Services, Subcommittee on Oversight Investigations, U.S. House of Representatives (testimony of David M. Walker, 6 April 2006), United States Government Accountability Office, GAO-06-632T, 1–30.

the Terrorist Financing Working Group "dysfunctional." While high-level Treasury officials continue to stress the designations and freeze process as a key tool in the counter-terrorist-financing fight, working-level officials at the State Department and FinCEN emphasize that designations are largely ineffectual because the funds move into alternative financial systems. As one State Department official said, "Any objective to block funds is a fool's chase."[91] Instead, the working-level officials stress the domestic and international need to extend anti-money-laundering measures to these systems in order to use intelligence gathered from anti-money-laundering measures to track and disrupt terrorist activities.

U.S. Inability to Redefine the Collective Interest

Underlying these battles is a fundamental debate over which of two strategies is most appropriate and effective in suppressing terrorist financing. The first strategy focuses on designating and detaining terrorists and their associates, freezing their assets, and passing the necessary legislation to make such designations and freezes legal. The second "follow-the-money" or intelligence strategy, focuses on improving regulation of formal and informal financial systems, and intelligence collection, analysis, and sharing to track and disrupt terrorist operations. The debate reflects disagreement over how the United States should define its collective interest regarding terrorist financing.

One would expect from a bureaucratic politics model that different government actors would express distinct preferences regarding these strategies.[92] The agencies with financial regulatory, anti-money-laundering, and law enforcement authorities, such as the Departments of Treasury and Justice, as well as those feeling the greatest pressure to demonstrate that actions were being taken after September 11 to combat terrorism (such as the White House), would prefer the designations-and-asset-freezing strategy. Designations are highly public and visible, with those suspected of financing terrorists rounded up in sweeps as the designations are unsealed. The freezing of assets is easily quantifiable (while the number of total terrorist assets is not widely known), providing a rapid and easily communicated measure of the government's success in vigorously suppressing terrorism. Such actions demonstrate to those who hold budgetary purse strings and to the electorate that concrete efforts and results have occurred. Prosecutorial and investigative agencies and civil liberties advocates should also prefer the designations-and-asset-freezing approach, as long as proper evidentiary standards are used.

In contrast, the intelligence strategy is preferred by the intelligence community, including that within the FBI and FinCEN, because it offers greater potential for terrorists to be tracked and killed or captured, as well as providing

[91] Author's interview with EB official.

[92] David Welch, "The Organizational Process and Bureaucratic Politics Paradigms: Retrospect and Prospect," *International Security* (Fall 1992): 112–146.

the data necessary for building profiles of terrorists. For the foreign affairs agencies, the private or covert nature of the intelligence strategy increases the government's flexibility in cooperating with foreign countries, inasmuch as secret assistance may be more forthcoming than public. Members of the financial services industry should favor the intelligence strategy, because it reduces the likelihood of tighter government regulation of their activities or, at a minimum, provides less publicity regarding their cooperation with government authorities regarding client information. The post-September 11 experience, while remarkably cooperative by all accounts, tends to broadly support such expectations.[93]

The strategies are not mutually exclusive, but unthinking or compartmented reliance on one can seriously impede the effectiveness of the other. Resources are not infinite. The bureaucratic interests engaged in each strategy create a tendency to withhold information and guard bureaucratic prerogatives. Such tendencies were dramatically exposed in the 9/11 Commission's report on the bureaucratic compartmentalization and turf battles that existed prior to September 11 and that, in the Commission's estimation, represent massive failures to successfully detect and prevent terrorist attacks.[94]

Lack of Common Definition of the Problem of Terrorist Financing

During the first G.W. Bush administration, the designations-and-asset-freezing approach to combating terrorist financing dominated, although both strategies were pursued.[95] As the bureaucratic model would suggest, under his IEEPA authority, President Bush issued Executive Order 13224 designating bin Laden and al Qaeda and authorizing the freezing of assets of entities associated with them, calling it the "first strike in the war on terror." This order ratified Treasury's Office of Foreign Assets Control authority (which had been derived from Clinton-era executive orders) to go after bin Laden's and al Qaeda's assets. In October 2001, President Bush signed the USA Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act into law. It significantly expanded the government's regulatory authority regarding money laundering and criminal finance. It put into effect the "know-your-customer" and wire transfer requirements that had been defeated by the banking industry in 2000.[96] Most of this power goes to the Department of the Treasury to designate countries or business sectors as failing to meet minimum anti-money-laundering standards and, in consultation with other agencies, to impose sanctions and other "special measures" such as restricting countries' or financial institutions' access to the

[93] *9/11 Commission Report*, ch. 3; and *9/11 Staff Monograph*, 4–6.
[94] Ibid.
[95] *9/11 Staff Monograph*, 79; and author's interviews with Myers, and IO, and EB officials.
[96] Author's interview with EB official.

U.S. financial system.[97] The USA PATRIOT Act also empowered a single government official, the Director of the Office of Foreign Assets Control at the Treasury Department, to freeze assets before legally sufficient evidence had been collected.[98] Treasury's Office of Foreign Assets Control worked feverishly after the attacks to add organizations and individuals to the designations list, using names provided by the CIA, whose intelligence was very poor.[99] Very high level and public announcements of the freezing of terrorist assets occurred soon after the September 11th attacks. As the 9/11 Report put it:

> The goal set at the policy levels of the White House and Treasury was to conduct a public and aggressive series of designations to show the world community and our allies that we were serious about pursuing the financial targets. It entailed a major designation every four weeks. … Treasury officials acknowledged that the evidentiary foundations for the early designations were quite weak. … The rush to designate came primarily from the NSC.[100]

The White House, the secretary of the treasury, and the attorney general all trumpeted these actions. However, the intelligence supporting some of the highest-profile designations was found to be seriously flawed from a legal perspective and the volume of money disrupted significantly overstated. In August 2002, the United States was forced into the embarrassing position of de-listing some foreigners under pressure from allies and U.S. citizens who filed lawsuits. The United States was also unable to obtain a conviction on a terrorism charge for a leader of an Illinois charity.[101] The CIA reasoned that designations would have little effect on terrorists, who would simply move funds to nondesignated institutions. It reportedly successfully pressed for more attention to the "follow-the-money" strategy.[102] One State Department official described the initial post-September 11 designations as a political process driven by "the need for public action and the availability of a hammer."[103]

The debate over strategies in turn depends on how closely one identifies the problem of terrorist financing with that of state responsibility and control. The powers granted to regulators and the Treasury under the PATRIOT Act are anti-money-laundering tools, designed for tracking large sums of money. But the sums transferred by terrorists to fund their operations and fund-raisers for terrorist entities are tiny when placed in the context of a multi-trillion-dollar global finance system.[104] The Treasury Department under Clinton

[97] Cuellar, "Tenuous Relationship," 361–362; and 2002 CFR Report, 13, 26.

[98] *9/11 Staff Monograph*, 99.

[99] Author's interview with FinCEN official.

[100] *9/11 Staff Monograph*, 79.

[101] Ibid., 80–81, 85–86 and Illinois charities case study.

[102] Eric Lichtblau and James Risen, "Bank Data is Sifted by U.S. in Secret to Block Terror," *The New York Times*, 23 June 2006.

[103] Author's interview with EB official.

[104] Author's interview with FinCEN, OFAC, and INL officials.

had already learned this when it sought freeze bin Laden's assets. Unable to gain sufficient information on these assets—in large measure because the fundraising for al Qaeda was dispersed and commingled with legitimate humanitarian donations—Treasury sought but failed to get anti-money-laundering tools from Congress more appropriate to finding terrorist finances.[105]

After early missteps in pursuing the designations strategy, the Bush administration began emphasizing the intelligence strategy.[106] In June 2006, *The New York Times* reported that secret monitoring of the SWIFT financial database—the central hub for global banking transactions—led to the arrest of the alleged mastermind of the 2002 Bali nightclub bombings.[107] Designations and the number of asset freezes declined.[108]

The change in emphasis suggests that some in the Bush administration may have started to reach conclusions similar to the Clinton administration's regarding a state's capacity to control nonstate terrorists. Rather than an emphasis on state power and responsibility to shut down terrorists' access to finances, a gradual understanding of the need for comprehensive financial regulation and information sharing to manage nontraditional national security threats emerged under the Clinton administration. Such a learning process may have begun in the Bush administration, at least in the area of counter-terrorism financing. However, the continued lack of a comprehensive counter-terrorist-financing policy, the unwillingness to allocate specific funds for counter-terrorist financing, and the dominance of the state-centric paradigm among key administration officials suggest that such a redefinition has not been internalized at either the highest or working levels of the U.S. government.[109]

CONCLUSION

What does the United States effort to counter terrorist financing augur for the global effort? By all accounts, the horror of the September 11 attacks galvanized government bureaucracies and broke down interagency walls that had withstood lesser terrorist attacks.[110] Interagency cooperation and banking industry collaboration with the government was unprecedented in the immediate aftermath of the attacks. This cooperation remains a marked improvement over the pre-September 11 situation. Working-level officials repeat that "we're not going to be the reason 9/11 happens again." It is this sentiment that makes them willing to make the interagency process work. Yet there are strong indicators that the passage of time has eroded the political will to put the national

[105] *9/11 Staff Monograph*, 37.
[106] Ibid., 48–49.
[107] Lichtblau and Risen, "Bank Data."
[108] Author's interview with EB, INL, IO, and OFAC officials.
[109] GAO 2005, 19; and author's interview with Steinberg.
[110] *9/11 Staff Monograph*, 48–49.

interest ahead of private and bureaucratic interests. As one official handling counter-terrorist financing said, bureaucratic "rivalries have reemerged with greater fervor."[111]

Working-level officials worry that the issue of counter-terrorist financing has slipped in the hierarchy of priorities at higher levels of government.[112] This concern is echoed in high-profile criticism from outside of government.[113] The U.S. effort to counter terrorist financing is being funded largely through reallocations from other budget lines rather than by generating a significant new budgetary commitment.[114] Banks are reportedly experiencing "blocking fatigue." The international community is willing to act only under UN designations, and U.S. actions in Iraq have made some states reluctant to follow the U.S. lead in implementing and enforcing legislative changes. U.S. willingness to underwrite the technical assistance to enable states to enforce the counter-terrorist-financing regime at home has been minimal ($20-30 million since 2001) in comparison with the broader U.S. war on terrorism.[115]

The United States and its European allies have succeeded in globalizing the anti-money-laundering framework and recasting it as a regime to combat terrorist financing. However, the U.S. domestic approach to the problem of terrorist financing has changed in the short period since 2001, and its international efforts reflect this shift. As the U.S. effort shifted away from designations and asset freezes, its international efforts turned more to sharing intelligence with other states to track, capture, or kill important terrorist finance figures.[116] Its efforts have focused bilateral pressure on a small number of countries rather than underwriting a global multilateral regime. While there has been substantial and important movement through informal international bodies such as the Financial Action Task Force and the Egmont Group, the United States has been unwilling to underwrite a formal global counter-terrorist-financing regime.

Fundamentally, the United States has devoted the majority of its attention internationally to the "global war on terror," which it defines to include the war in Iraq. U.S. efforts internationally on terrorist financing illustrate that this war is not really global for the United States, but focused on about twenty-five states in which al Qaeda and other Islamic terrorists operate. Despite the fact that the number of "states of concern" to the United States has grown from nineteen to twenty-six in less than a year, the United States has focused the bulk of its counter-terrorist-financing efforts on tactically targeting groups and

[111] Author's interviews with all State Department, OFAC, and FinCEN officials; quotations are from FinCEN official.

[112] Author's interviews with EB, INL, IO, and FinCEN officials.

[113] See 2002 and 2004 CRF Reports and 9/11 Public Discourse Project Final Report.

[114] Author's interviews with all those interviewed. See also GAO 2005, 19–20; and Walker, *Terrorist Financing*, 1–30.

[115] Author's interview with INL official.

[116] *9/11 Staff Monograph*, 46–47.

individuals, rather than on building a robust international regime.[117] The problem with such an approach is that terrorist and other criminal finances will flow to wherever the regulatory environment is loosest, so a partial approach is likely to be ineffective. A truly global counter-terrorist-financing regime could change the operating environment of terrorists, forcing them into criminal activity that is easier to trace and prosecute than is "pre-criminal" terrorist financing. The development of a global counter-terrorist-financing regime that would change the operating environment for terrorist financiers does not appear to have genuine support from one of the critical actors needed to promote and underwrite it.

The prospects for the successful global development of national institutional capacity to combat the counter-terrorist-financing framework depends on states' recognition that terrorist financing is their problem, not someone else's. The developed countries, with the most domestic capacity to combat terrorist financing, recognize this threat. Even they, however, have been inconsistent in their willingness to enforce counter-terrorist-financing laws and engage in international cooperation. Less-developed countries without this capacity often do not even see the threat. Redefining the national interest to include countering terrorist financing unfortunately appears to rise and fall with states' experience of terrorist attacks.[118] Without such attacks, and without Western pressure and incentives, it is unlikely that a permanent redefinition of national security to include the financing of terrorism will occur or that states will take the steps to build and enforce an effective global counter-terrorist-financing regime.*

[117] Author's interviews with S/CT official; GAO 2005, 12; and *INCSR 2005*, Introduction.

[118] Author's interviews with all State Department officials.

* The views expressed in this document do not represent the official position of the Department of Defense or the U.S. government, but are the sole responsibility of the author.