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Countering Terrorist Financing: Successes and Setbacks in the Years Since 9/11
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FOLLOWING THE 9/11 attacks, efforts to counter the financing of terrorism (CFT) became a centerpiece of counterterrorism policy in the United States and in several European countries. These efforts have spanned a broad range of policy tools. New organizational units have been created, intelligence gathering platforms invented, substantial diplomatic pressure exerted against “passive state sponsors of terrorism” and multi-agency analytical units have become an integral part of U.S. counterinsurgency efforts. Yet in spite of the extensive intelligence assets and research efforts poured into understanding the field during the past decade, practitioners and academics remain deeply divided over the effectiveness of these efforts.

This article presents some measures of the effectiveness of CFT efforts and criticisms from scholars regarding negative side effects of these policies. It then explains why terrorism financing has proven challenging to prove in court, outlines some alternative responses from intelligence agencies and concludes by suggesting complementary indicators by which to judge the effectiveness of CFT efforts.

Measuring CFT Effectiveness
Measuring the effectiveness of CFT efforts is challenging since the metrics tend to be either insufficient or unavailable to researchers. Merely studying convictions in court and asset forfeiture vastly underestimates the achievements, whereas indicators such as intelligence gathered, terrorist financiers deterred or impact on the internal dynamics of terrorist groups is challenging to access and quantify. When assessing the most obvious indicator—number of convictions on terrorist financing charges—the achievements thus far are modest. For the United States, a partial study found 59 convictions from 2001 to 2007, with 16 acquittals and another 15 charges dropped due to plea bargains on other charges. Since then, the number of convictions seems to be increasing. Whereas in 2006 eight out of 54 convictions in terrorism-related cases involved material support charges, 28 out of 35 did so in 2009. Comparing convictions across jurisdictions is complex and can easily be misleading, but in 2006 eight percent of all 703 arrests in terrorism cases in the European Union were on terrorist financing suspicions. Following a crude estimation—since no exact data exists—this would be expected to result in approximately 20 convictions.

Critical Trade-Offs for CFT Policies
In terms of assets seized from suspected terrorists, the total amount of assets frozen rose dramatically following the 9/11 attacks, but then leveled off and are now increasingly being challenged in court by some of the individuals targeted by such asset freezes. Legally complex, the international asset seizure regime is subject to a number of due process concerns and seems unlikely to yield any dramatic achievements in the future.


7  EU Terrorism Situation and Trend Report 2007 (The Hague: European Police Office, 2007), pp. 14-16. Assuming the same prosecution rate (43%) and conviction rate (85%) as that for the total sample of cases (which possibly overstates the real number) this would result in approximately 20 convictions. Some of what is reported as “facilitation” in the European Union report is included in the “material support” provisions of the United States, which may skew the comparison somewhat.

8  EU Terrorism Situation and Trend Report 2010 (The Hague: European Police Office, 2010), p. 27. Obviously, not all arrests result in prosecutions the same year, so these numbers are mainly mentioned by way of illustration. Financing of Islamist terrorist groups is also a major concern—20 Algerian and Moroccan citizens were arrested in 2008 in Spain alone, mainly on suspicions of financing and recruiting for such groups. For details, see “Country Terrorism Report: Spain,” U.S. State Department, 2008. In January 2009, 17 Algerian citizens were arrested across Europe on suspicions of terrorism financing. For details, see “Terror Fundraising Group Held in Italy,” The Western Mail, January 13, 2009.

9  From 2001 to 2009, the total number of Suspicious Activity Reports filed by U.S. financial institutions increased from approximately 200,000 to over 1.2 million. See the SAR Activity Review, June 2010, p. 4.


11 For example, the Swedish section of the informal money transmitter al-Barakaat was removed from the UN and EU sanctions lists in October 2009, presumably as an indirect result from a 2008 European Court of Justice decision that found the defendant had not been granted a right to be heard by the court. See “Al Barakaat stryks från FN’s terrorlista,” Sveriges Radio, October 26, 2009.
due process versus being able to freeze very liquid assets, among others. The most difficult trade-off, however, is that between humanitarian aid and countering terrorist financing, as epitomized by contemporary Somalia.

The shutting down of Somali informal money transmitter al-Barakaat following 9/11 was later roundly criticized for cutting remittances to Somalia by half, while producing no or very few prosecutions. Five years later, Dalsan, another Somali money transmitter, collapsed, with the UN Monitoring Group on Somalia noting that “one of the reasons for the bankruptcy was that an ICU military leader managed to divert a large amount of money to help financially support the organization in its fight for the control of Mogadishu.” Today, al-Shabab has begun “taxing” aid offices, impelling many agencies to leave in spite of the dire humanitarian situation. There is no simple solution to this conundrum, and it is still not clear whether it is the legitimacy of al-Shabab or that of the international community that will suffer the most.

Somewhat cursorily summarized, these aspects—the low number of convictions, the problems of the terrorist asset freeze regime and the negative impact on development finance—have led several academics to conclude that the current CFT regime is not working as well as it should.12

Achievement of CFT Programs for Counterterrorism Efforts

Current and former intelligence officials with first-hand experience of CFT efforts in practice have vigorously defended these policies. The Federal Bureau of Investigation, for example, argues that in a sample of 500 terrorist investigations, 42% of the cases had information from Suspicious Transaction Reports included in the case file. So-called financial intelligence has also allegedly helped prevent terrorist attacks such as the 2006 airport plot in the United Kingdom and tracking down senior terrorist leaders such as Hambali, the suspected mastermind behind the 2002 Bali bombings.13

Sources outside of government have also claimed that certain wire transfer companies have been cooperating with U.S. intelligence agencies in monitoring money transfers to terrorist suspects, yielding important intelligence and tactical successes. The U.S. Treasury Department has also vigorously defended the Terrorist Finance Tracking Program, which taps SWIFT data on interbank transactions, pointing to some 1,550 leads shared with EU countries and a number of attacks prevented as a result of the program. Undersecretary for Terrorism and Financial Intelligence Stuart Leavey also stated on July 9, 2010 that data from the program had provided support to Norway in its arrest of three individuals suspected of plotting an attack against the country.14

Such self-evaluations obviously need to be taken cautiously and are close to impossible to verify, but they still underline a fundamental divergence in the perceptions of the relative effectiveness of CFT efforts writ large.

The Challenges of Prosecuting Terrorist Financing Cases

In assessing these diverging views of the effectiveness of U.S. and EU CFT efforts, a few basic points need to be emphasized. Terrorist financing is extraordinarily difficult to prosecute in court due to the nature of the crime. Terrorist financing operations, for example, tend to be cash-based, involve loosely regulated organizational entities (hawaladars, charities, NGOs) and involve multiple jurisdictions. Moreover, the target countries often lack efficient law enforcement, or their impartiality is questionable. A few simple evasive measures by the terrorist financier can also make the case vastly harder to prove, such as infiltrating an existing NGO, diverting only a fraction of money collected to terrorist aims, using encrypted e-mails or talking in code on the phone. In the one successful prosecution on terrorist financing charges in Sweden, two men who were transferring money to Ansar al-Islam in northern Iraq used several of these techniques, making the admission of guilt by one of the men arguably crucial to the guilty verdict in spite of extensive circumstantial evidence.21

In two failed prosecutions against the al-Aqsa Foundation in Denmark and Sweden (prosecuted separately) that were suspected of financing Hamas, the final acquittal in both cases hinged largely on the court finding much of the evidence provided by Israel to be either inadmissible or not credible, with the Danish court divided on several counts.22 Issues of mutual trust and confidence in its human rights record may explain why Spain has been fairly successful in combating the financing of the ETA with French assistance, whereas Turkey is increasingly irritated by...
what it perceives as a lack of European cooperation in combating the financing of the Kurdistan Workers’ Party.\textsuperscript{24}

**Alternative CFT Approaches for Security Services**

Challenges to prosecuting terrorist financing cases implies that security services are often forced to adopt other tactics, such as focusing on intelligence gathering, pursuing less serious criminal charges or aiming to disrupt, deter or simply slow down terrorist financing networks. As Matthew Levitt has argued, one option is to move from criminal investigations toward “silent monitoring” and intelligence gathering.\textsuperscript{25} In theory, such monitoring of financial intermediaries can help map out both support networks in country “A” and operative cells in country “B,” but this typically requires additional intelligence from other sources, strong mutual trust between the countries and well-resourced intelligence agencies on both ends.

Another less noted approach is “pretextual prosecution,” also known as “the Al Capone strategy,” which refers to pressing charges on less serious but easier to prosecute charges.\textsuperscript{26} For example, in a data set of “terrorism associated” cases in the United States compiled by New York University, in only 42% of cases the “top charge” was on either terrorism or national security grounds, whereas 29% were racketeering, drug crimes or commercial fraud, embezzlement and theft.\textsuperscript{27} In the so-called Lebanese Hizb Allah cigarette smuggling case in which more than $2 million was allegedly channelled to Hizb Allah, only one of 13 defendants was indicted on terrorism charges.\textsuperscript{28}

As for sentencing, convictions on terrorism charges resulted in 16 years imprisonment on average, national security 7.5-10.4 years and for other charges 1.2 years.\textsuperscript{29} Hence, less severe crimes related to logistical support resulted in less severe sentences, but may nonetheless be efficient in disrupting logistical networks and planning. It is difficult to study the same trend in the European Union due to lack of data, but in 2006 19% of Islamist terrorism suspects were arrested for either preparing or carrying out an attack, whereas 27% were arrested on suspicions related to “facilitation” or “false documents.”\textsuperscript{30} In Sweden, the case of Yassin Ali provides a case in point. Ali was arrested in February 2009 on suspicion of terrorist financing to Somalia, but was released in April without charge, then convicted in October for bookkeeping errors and added to the U.S. Office of Foreign Assets Control (OFAC) list by April 2010.\textsuperscript{31}

**Conclusion**

Bridging the divide between scholars and intelligence officials, other possible indicators for taking stock of CFT effectiveness includes asking whether terrorist groups have been forced to change their methods for collecting or transferring funds to slower or more burdensome means, whether would-be terrorist financiers have been deterred and whether specific terrorist groups show signs of having trouble acquiring sufficient funding.\textsuperscript{32}

Groups that have access to drug trafficking—such as the Kurdistan Workers’ Party and the Revolutionary Armed Forces of Colombia—are difficult to starve of funding, whereas other groups seem to be more critically dependent on outside support. As such, CFT efforts will not herald the end of terrorist groups, but they have opened a new front and created a new set of techniques for making life harder for such groups. Reversely, intelligence officials focused on CFT issues arguably need to better address the negative impact of some of their policies, including civil liberties concerns and disruption of humanitarian aid since the main battlefield against terrorist groups is not that over money, but over legitimacy in the eyes of the population.

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\textsuperscript{24} Michael Jonsson, “Cashing up – Funding the Basque Battle for Independence,” Jane’s Intelligence Review, February 1, 2006; Michael Jonsson and Svante Cornell, “Kurds and Pay – Examining PKK Financing,” Jane’s Intelligence Review, March 13, 2008. Also see the EU Terrorism Situation and Trend Report 2010, which cites the successful cooperation between France and Spain in countering the financing of the ETA.


\textsuperscript{26} Chesney.


\textsuperscript{28} Ibid., p. II.

\textsuperscript{29} Ibid., p. 14.

\textsuperscript{30} EU Terrorism Situation and Trend Report 2007, p. 20.

\textsuperscript{31} Stockholms Tingsrätt, Dom Mål B 23273-07, October 17, 2009 (court sentence); “Recent OFAC Actions,” U.S. Office of Foreign Assets Control, April 13, 2010.

\textsuperscript{32} Terrorist groups may, for example, abandon the formal financial system, making it harder and costlier to transfer money where and when they need it. Deterrence may include both making diaspora groups more cognizant of the risk of abuse of charitable donations to conflict zones, and increasing pressure on key countries to rein in donations from a few wealthy donors. As for groups having trouble financing themselves, signs may include increased waves of extortion letters or non-lethal attacks against business owners, increased public appeals for donations or intercepted messages indicating a lack of funds, or simply an increase in seemingly underfunded attacks.
