

Countering Terrorist Financing: Successes and Setbacks in the Years Since 9/11

By Michael Jonsson

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,¹ intelligence gathering platforms invented,² substantial diplomatic pressure exerted against “passive state sponsors of terrorism”³ and multi-agency analytical units have become an integral part of U.S. counterinsurgency efforts.⁴ 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.⁵ 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 2009.⁶ 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.⁷ For

2009, the data for EU member states is even less precise, but 21 persons were convicted of financing the Liberation Tigers of Tamil Eelam, and more than 80 persons arrested for financing separatist groups in Spain and France, which following the same method would be expected to result in 40 convictions.⁸ The number of convictions seems to be increasing, but remains modest in relation to the Herculean efforts demanded of financial institutions.⁹

Critical Trade-Offs for CFT Policies

In terms of assets seized from suspected terrorists, the total amount of assets frozen rose dramatically shortly 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.¹⁰ 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.¹¹ Overall, CFT efforts face a number of daunting policy trade-offs—personal integrity versus data access, financial integrity versus investor friendliness,

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.

10 Steve Kiser, “Terror Finance: An Analysis and Simulation for Affecting Al Qaeda’s Financial Infrastructure,” *Pardee RAND Graduate School*, 2005, p. 135; Craig Whitlock, “Terrorism Financing Blacklists At Risk,” *Washington Post*, November 2, 2008.

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.

1 David P. Friedovich, “Tracking and Disrupting Terrorist Financial Networks: A Potential Model for Inter-Agency Success,” congressional hearing before the U.S. House Armed Services Subcommittee on Terrorism, Unconventional Threats and Capabilities, March 11, 2009.

2 Such as the Terrorist Financing Tracking Program tapping into SWIFT data. See Eric Lichtblau, “U.S. Sifts Bank Data in Secret to Block Terrorist Financiers,” *New York Times*, June 23, 2006; John Snow, “Bank Data Report: Treasury Dept’s View,” *New York Times*, June 29, 2006.

3 Daniel Byman, “Passive Sponsors of Terrorism,” *Survival* 47:4 (2005): pp. 117-144.

4 Such as the Threat Finance Units in Iraq and Afghanistan. See John F. Burns, “Iraq Insurgency has Funds to Sustain Itself, U.S. Finds,” *New York Times*, November 26, 2006.

5 Adam Liptak and Leslie Eaton, “Mistrial is Latest Terror Prosecution Misstep for the U.S.,” *New York Times*, October 27, 2007; Robert Chesney, “Federal Prosecution of Terrorism-Related Cases: Conviction and Sentencing Data in Light of the ‘Soft Sentence’ and ‘Data Reliability’ and Critiques,” *Lewis & Clark Law Review* 11:4 (2007): pp. 879, 884. This study only covers the 18 U.S.C. § 2339B and 50 U.S.C. § 1705 statutes, whereas the terrorism financing offense in the United States usually also includes 18 U.S.C. § 2339A and 2339C statutes. Hence, the total number of convictions on terrorist financing may be higher. For details, see “United States Mutual Evaluation Report,” Financial Action Task Force, June 23, 2006, pp. 38-39.

6 “Introduction to National Security Statistics on Unsealed International Terrorism and Terrorism-Related Convictions,” U.S. Department of Justice, March 26, 2010. Calculations by author, covering provisions 18 U.S.C. § 2339A-C and 50 U.S.C. § 1705.

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

due process versus being able to freeze very liquid assets, among others.¹² The most difficult trade-off, however, is that between humanitarian aid and countering terrorist financing, as epitomized by contemporary Somalia.

The shuttering 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.¹³ 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.”¹⁴ Today, al-Shabab has begun “taxing” aid offices, impelling many agencies to leave in spite of the dire humanitarian situation.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸

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.¹⁹ 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.²⁰

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.²¹ 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.²²

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.²³ 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

12 Ibid.; James Kanter, “Europe Resumes Sharing Bank Data with the US,” *New York Times*, July 8, 2010; Laura K. Donohue, “Anti-Terrorist Finance in the United Kingdom and United States,” *Michigan Journal of International Law* 27:303 (2006): pp. 399, 407.

13 John Roth, Douglas Greenburg and Serena Wille, “National Commission on Terrorist Attacks Upon the United States – Monograph on Terrorist Financing,” 2004, pp. 57-86.

14 Nazzir Abdulaziz al-Nasser, “Report of the Monitoring Group on Somalia Pursuant to Security Council Resolution 1676 (2006),” United Nations, November 2006.

15 Christian Larson, Michael Jonsson and Nir Artzi, “Tax Evasion. Dealing with the Shabab’s Financing,” *Jane’s Intelligence Review*, March 2010.

16 Thomas Biersteker and Sue E. Eckert, “Conclusion: Taking Stock of Efforts to Counter the Financing of Terrorism and Recommendations for the Way Forward,” in Thomas Biersteker and Sue E. Eckert eds., *Countering the Financing of Terrorism* (New York: Routledge, 2008), pp. 289-304.

17 John Pistole, deputy director of FBI, speech given at American Bankers’ Association’s Money Laundering Enforcement Conference, October 22, 2007.

18 Matthew Levitt and Michael Jacobson, “The Money Trail: Finding, Following and Freezing Terrorist Finances,” The Washington Institute for Near East Policy, November 2008.

19 Ron Suskind, *The One Percent Doctrine: Deep Inside America’s Pursuit of its Enemies Since 9/11* (New York: Simon and Schuster, 2006).

20 “US: Anti-Terror Program Leads to Arrests,” United Press International, July 10, 2010; “The Terrorist Financing Tracking Program: Questions and Answers,” press release, U.S. Treasury Department, June 24, 2010.

21 Law enforcement agencies in countries that are repeatedly attacked by terrorist groups may either commit human rights abuses or other transgressions making evidence inadmissible in court, or the country may simply be judged to be in a “war-like situation” against the group, lowering its credibility.

22 Michael Jonsson and Klas Kärrstrand, “Money Problems – Tackling Terrorist Financiers in Sweden,” *Jane’s Intelligence Review*, February 1, 2007, extensively citing the final verdict.

23 Michael Jonsson and Christian N. Larson, “Scandinavian Trials Demonstrate Difficulty of Obtaining Terrorist Financing Convictions,” *Terrorism Monitor* 7:5 (2009), citing court transcripts from both cases.

what it perceives as a lack of European cooperation in combating the financing of the Kurdistan Workers' Party.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.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.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.²⁷ In the so-called Lebanese Hizb Allah cigarette smuggling case in which more than \$2 million was allegedly channeled to Hizb Allah, only one of 13 defendants was indicted on terrorism charges.²⁸

24 Michael Jonsson, "Cashing up – Funding the Basque Battle for Independence," *Jane's Intelligence Review*, February 1, 2008; 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.

25 Matthew Levitt, "Follow the Money: Challenges and Opportunities in the Campaign to Combat Terrorism Financing," The Washington Institute for Near East Policy, March 6, 2007.

26 Chesney.

27 Karen J. Greenberg ed., "Terrorist Trial Report Card: 2001-2009," Center on Law and Security, New York University School of Law, 2009, p. 18.

28 Ibid., p. 11.

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.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."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 2010.³¹

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.³² The

29 Ibid., p. 14.

30 *EU Terrorism Situation and Trend Report 2007*, p. 20. Due to the complexities of comparisons across multiple legal systems and languages, carrying out comparative studies such as that compiled by New York University is decidedly more challenging within the European Union, which typically makes researchers dependent on the information presented in the annual *EU Terrorism Situation and Trend Reports*.

31 Stockholm's Tingsrätt, Dom Mål B 23273-07, October 17, 2009 (court sentence); "Recent OFAC Actions," U.S. Office of Foreign Assets Control, April 13, 2010.

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

impact varies between groups, but there have been signs that both the ETA and the core of al-Qa`ida are struggling to obtain sufficient funding.³³ Whereas single terrorist attacks can be cheap, maintaining an efficient terrorist network is not, and even single attacks have frequently been underfunded, underlining that this remains a critical concern for terrorist groups.³⁴

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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against business owners, increased public appeals for donations or intercepted messages indicating a lack of funds, or simply an increase in seemingly underfunded attacks.

33 Jonsson, "Cashing up – Funding the Basque Battle for Independence"; Nathan Vardi, "Is Al Qaeda Bankrupt?" *Forbes*, March 15, 2010.

34 Jacob N. Shapiro "Terrorist Organizations Vulnerabilities and Inefficiencies: A Rational Choice Perspective," in Jeanne K. Giraldo and Harold A. Trinkunas eds., *Terrorist Financing and State Responses* (Palo Alto, CA: Stanford University Press, 2007).