

THE CHALLENGES CONFRONTING THE GLOBAL EFFORT TO STOP TERRORIST FINANCING

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I. Introduction

The Bush Administration's top priority is winning the global war against terrorism. To that end, the Bush Administration has developed an anti-terrorism strategy that is comprehensive, consisting of multiple components. In a speech delivered on September 24, 2001, President George W. Bush outlined the general elements of that strategy, declaring:

“We will direct every resource at our command to win the war against terrorists; every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence. We will starve terrorists of funding, turn them against each other, rout them out of their safe hiding places, and bring them to justice.”

I would like to limit my remarks to the financial component of the United States government's anti-terrorism strategy, which is intended to identify, disrupt, and dismantle the financial networks of terrorist organizations that threaten the peace and security of the United States and the international community, as well as discuss the challenges confronting the global effort to stop terrorist financing.

II. ANTI-TERRORIST FINANCING STRATEGY

The United States government's anti-terrorist financing strategy is preventive in nature. The goal is to prevent terrorist attacks that kill innocent people. As you know, the heinous acts that occurred on September 11, 2001, took the lives of approximately 3,000 innocent civilians, including people from over 60 foreign countries. The terrorist acts of September 11 also had a devastating impact on the United States and global economy, temporarily shutting down the New York Stock Exchange, grounding all commercial air traffic for several days, as well as severely disrupting tourism and the flow of commerce in the United States.

Many lessons have been learned from what occurred on September 11th. However, the most important lesson is that it is not enough to merely prosecute the perpetrators of such heinous acts after the fact. Instead, we must be proactive and seek to prevent terrorist attacks in the first instance.

By doing so, we can save lives.

Why go after the money? Terrorist organizations like al Qaeda need money to recruit new members, finance terror training camps, sustain terrorist cells around the world, and purchase instruments of death and destruction, including small arms, mortars, rocket propelled grenades, as well as biological and chemical weapons. The United States government's anti-terrorist financing strategy intends to identify, disrupt and dismantle the financial infrastructure of terrorist groups, and make it more difficult and risky for them to raise money and transfer it globally.

(A) DOMESTIC BLOCKING ACTIONS

(1) Executive Order 13224

On September 23, 2001, President Bush directed the first strike to starve terrorists of their support funds by issuing Executive Order 13224. The presidential order provides authority to freeze or block the assets of foreign nationals and entities located in the United States and prohibits financial transactions by U.S. persons with any person or entity designated pursuant to the order. Specifically, Executive Order 13224 authorizes blocking all assets and financial transactions of foreign individuals, groups, and entities within the jurisdiction of the United States designated by the President, the Secretary of State, or the Secretary of the Treasury committing, or posing a significant risk of committing, acts of terrorism threatening the United States' national security, foreign policy or economy. Equally important, the order permits blocking the property of persons providing support to, or otherwise associated with, any of these designated foreign persons, and prohibits U.S. persons from doing business with those individuals. Simply stated, the intent of Executive Order 13224 is to isolate from the U.S. financial system all designated terrorists, terrorist organizations, and their financial supporters.

The blocking actions also serve as a deterrent for non-designated parties who might otherwise be willing to finance terrorist activity. The freeze orders expose terrorist financing money trails that may generate leads to previously unknown terrorist cells and financiers, as well as disrupt terrorist financing networks by terminating terrorist cash flows and shutting down the pipelines used to move terrorist-related assets. Finally, the blocking actions force terrorists to use alternative, more costly and high-risk means of financing their activities.

When the President signed Executive Order 13224, the U.S. Treasury Department designated 27 individuals, entities and organizations as financiers of terror. The Office of Foreign Assets Control ("OFAC"), an agency within the Treasury Department, published these names on their website requiring all U.S. financial institutions to examine their records to determine whether they had any accounts in the names of the designated individuals and entities. If so, the financial institutions were mandated to take action to block access to those accounts. To date, the United States and our international partners have designated 379 individuals and organizations as terrorists and terrorist supporters, and have frozen approximately \$140 million in terrorist-related assets.

(B) INTERNATIONAL COOPERATION

(1) U.N. Security Council Resolutions

Terrorist financing networks are global, and consequently, efforts to identify and deny terrorists access to funds must also be global. Moreover, because the overwhelming bulk of terrorist assets, cash flows, and evidence lie outside the United States, international alliances against terrorism are crucial. Recognizing the importance of international cooperation, the United States has worked not only through the United Nations on blocking actions, but also through multi-lateral organizations and on a bilateral basis to establish protocols for combating terrorist financing.

The United Nations has played a key role in the global strategy to starve the terrorists of funds. On September 28, 2001, the United Nations Security Council unanimously adopted Resolution 1373, requiring all member States to “[f]reeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts.”

On January 16, 2002, the Security Council adopted Resolution 1390, which modifies and continues the international sanctions against the Taliban, Usama bin Laden, and al Qaeda as set forth by United Nations Security Council Resolutions 1267 and 1333. Resolution 1267 was adopted on October 15, 1999, and targeted the Taliban by freezing its funds and other financial resources and those of any entity owned or controlled by it. On December 19, 2000, the Security Council adopted Resolution 1333, requiring member States to freeze “without delay” the funds and other financial assets of Usama bin Laden and al Qaeda associates.

Resolution 1267 further established a U.N. Sanctions Committee, consisting of all members of the Security Council, which has proven to be a very useful mechanism for internationalizing financial and asset freezes against the Taliban, Usama bin Laden, al Qaeda and those linked or associated with them. The names of individuals and entities designated under Executive Order 13224 are submitted to the 1267 Sanctions Committee for inclusion on the Committee’s list of terrorist financiers. Once a name is placed on the U.N. list, member States are obligated to freeze the funds and assets located within their respective countries. The net effect is to isolate the designated person or entity from the international financial community.

The United States has worked closely with the 1267 Sanctions Committee. For example, prior to being publically designated under Executive Order 13224, the names of individuals and entities are submitted by U.S. Treasury Department officials to the 1267 Sanctions Committee. If no member State objects, the U.S. Treasury Department names are added to the U.N. list, and the assets of suspected terrorist financiers are blocked worldwide. The interaction between the U.S. Treasury Department and the U.N. Sanctions Committee represents a model of international cooperation in the war on terror.

(2) EUROPEAN UNION

The United States and members of the European Union have worked closely together to ensure that terrorist financiers designated by one party are also designated by the other. For example, in August 2002, Italy joined the United States in submitting to the U.N. Sanctions Committee the names of 25 individuals and entities linked to al Qaeda so that their assets could be frozen.

(3) G7/G8 NATIONS

The G7 Finance Ministers and Central Bank Governors have played an important role in combating the financing of terror. On October 6, 2001, the G7 issued an Action Plan on terrorist financing. In April 2002, the G7 Ministers submitted a list of ten names to the U.N. so that the assets of those individuals could be frozen worldwide. In September 2002, the G7 Ministers released a one year report on terrorist financing.

In June 2002, the G8 Foreign Ministers endorsed a revised set of recommendations on counter terrorism, which included a commitment to full implementation of U.N. Security Council Resolution 1373, and the eight special recommendations adopted by the Financial Action Task Force.

(4) FINANCIAL ACTION TASK FORCE

Another good example of international cooperation in the war against terrorist financing involves the Financial Action Task Force (“FATF”). FATF is the premier international body dedicated to the establishment of legal and regulatory standards and policies to combat money laundering. Established by the G7 in 1989, FAFT has grown to 31 member States covering five continents. The fundamental FATF document is the FATF 40 Recommendations, which represent a set of international standards for countries to establish an effective anti-money laundering regime.

Following the terrorist attacks on September 11, 2001, the FATF expanded its mandate to include terrorist financing. Specifically, the FATF adopted eight special recommendations which, when combined with the FATF 40 Recommendations, establish the basic framework to detect, prevent and suppress the financing of terror. One of the eight special recommendations encourages countries to take immediate steps to ratify and implement fully the 1999 International Convention for the Suppression of the Financing of Terrorism, as well as immediately implement United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly U.N. Security Council Resolution 1373.

(C) FINANCIAL REGULATIONS – USA PATRIOT ACT

The financial services community has been enlisted to fight in the global war against terrorism. On October 26, 2001, President Bush signed into law the USA PATRIOT Act. The International Money Laundering Abatement and Anti-Terrorist Financing Act (IMLAA) is contained within Title III of the broader anti-terrorism legislation. The IMLAA represents the most significant anti-money laundering legislation for financial institutions since the enactment of the original Bank

Secrecy Act of 1970. It contains numerous regulatory and law enforcement provisions that will affect the business and daily operations of financial service firms, including foreign financial institutions.

The IMLAA is designed to enhance the U.S. government's ability to combat terrorism, the financing of terrorism, and money laundering. The legislative drafters of the IMLAA were guided by several important principles: (1) enhancing transparency in financial transactions; (2) protecting the international gateways to the U.S. financial system; and (3) "leveling the playing field" by increasing the vigilance of all financial institutions that serve as gatekeepers of the financial system. Finally, Congress adopted a risk-based approach, focusing on high-risk jurisdictions, financial institutions, transactions, and accounts vulnerable to money laundering.

Several of the key provisions of the IMLAA have extraterritorial effect, regulating and, in some cases, prohibiting certain transactions between U.S. and foreign financial institutions.

(A) SECTION 311--IMPOSING "SPECIAL MEASURES" AGAINST A "PRIMARY MONEY LAUNDERING CONCERN"

The flagship provision of the IMLAA is section 311, codified at 31 U.S.C. § 5318A, which authorizes the Secretary of the Treasury to require U.S. financial institutions, including U.S. operations of foreign financial institutions, to impose a graduated set of five "special measures" if the Secretary determines that a foreign jurisdiction, a foreign financial institution, a type of international transaction, or a type of foreign account constitutes a "primary money laundering concern."

It should further be emphasized that under the IMLAA, the definition of "financial institution" is extraordinarily broad, encompassing not only institutions such as banks, but also securities broker-dealers, insurance companies, travel agencies, persons involved in real estate closings, businesses engaged in vehicle sales, and other businesses not ordinarily associated with financial activities.

The primary motivation for seeking the authority in section 311 was to give the Secretary of the Treasury the authority to impose a range of sanctions less than a freezing or blocking action against the assets of a particular individual or entity. For example, prior to the enactment of section 311, the terrorist designation process was an "all or nothing" process, whereby entities had their assets blocked or no action was taken. Congress recognized that there are undoubtedly instances in which insufficient evidence exists to justify blocking an account, but some action might be desirable, and that one of the "special measures" could assist in accumulating additional evidence to justify blocking actions. In such an instance, an entity could be designated a "primary money laundering concern," and one of the special measures could then be applied.

The application of section 311 involves a two-step process – designation as a primary money laundering concern and application of special measures. The initial determination is based on the fairly permissive standard of whether "reasonable grounds" exist to believe that the proposed entity

is a primary money laundering concern. This low threshold of proof is substantially less than the criminal standard of beyond a reasonable doubt, and even lower than the civil standard of preponderance of the evidence.

If the Secretary of the Treasury determines that a foreign jurisdiction, a foreign financial institution, a type of international transaction, to type of foreign account constitutes a primary money laundering concern, the second step in the process is to decide on the “special measures” to be imposed. The five special measures require domestic financial institutions to do the following:

- (1) keep records and file reports on particular transactions, including the identities of the participants in the transaction and the beneficial owner of the funds involved;
- (2) obtain information on the beneficial ownership of any account opened or maintained in the U.S. by a foreign person or a foreign person’s representative;
- (3) identify and obtain information about customers permitted to use or whose transactions are routed through a foreign bank’s “payable-through” account;
- (4) identify and obtain information about customers permitted to use, or whose transactions are routed through, a foreign bank’s “correspondent” account; or
- (5) prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable-through account.

This new authority was used for the first time on December 20, 2002, when the Ukraine and Nauru were designated a primary money laundering concern. In designating the Ukraine, the U.S. Treasury Department placed heavy emphasis on the fact the Ukraine was identified by the FATF as being non-cooperative in the fight against money laundering and placed on the list of non-cooperative countries and territories. Treasury officials stated that the Ukraine was added to the NCCT list because it “lacked an effective anti-money laundering regime, including an efficient and mandatory system for reporting suspicious transactions to a financial intelligence unit, adequate customer identification provisions, and sufficient resources devoted to combating money laundering.”

Nauru was designated a primary money laundering concern largely because of its notorious record of permitting offshore banks with no physical presence to operate in Nauru. The Financial Crimes Enforcement Network (“FinCEN”) reported that 400 offshore banks have been granted licenses by Nauru.

The use of section 311 has not been limited to foreign jurisdictions. On May 11, 2004, the U.S. Treasury Department designated the Commercial Bank of Syria (“CBS”), along with its subsidiary Syrian Lebanese Commercial Bank, as a financial institution that constitutes a “primary money laundering concern.” Information gathered by the Treasury Department showed that CBS had been used by terrorists and their sympathizers for the laundering of proceeds generated from the

illicit sale of Iraqi oil. It is alleged that billions of dollars were illegally diverted by Saddam Hussein's regime from the U.N.'s Oil for Food program, and some of these proceeds flowed through accounts at CBS. In conjunction with this designation, Treasury sent to the Federal Register a notice of proposed rule-making that would prohibit any U.S. bank, broker-dealer, futures commission merchant, introducing broker or mutual fund from opening or maintaining a correspondent account for or on behalf of CBS.

Finally, in November 2003, the U.S. Treasury Department designated Burma and two Burmese banks, Myanmar Mayflower Bank and Asia Wealth Bank, "primary money laundering concerns." The Treasury Department further announced a notice of proposed rule-making that would require U.S. financial institutions to terminate correspondent accounts involving Burmese financial institutions, subject to certain specified exemptions. Correspondent accounts involving the two designated banks would have to be terminated without exception.

A press release issued by the Treasury Department stated that "[t]he designation of Burma is the result of its failure to remedy serious deficiencies in its anti-money laundering system, and is consistent with the Financial Action Task Force's call . . . for its members to take anti-money laundering countermeasures against Burma." Myanmar Mayflower Bank and Asia Wealth Bank were found to be of "primary money laundering concern" because of their link to narcotics trafficking organizations in Southeast Asia.

Section 312 – Due Diligence for U.S. Private Banking and Correspondent Accounts Involving Foreign Persons

Section 312 of the USA PATRIOT Act requires all financial institutions to apply due diligence, and, in some cases, enhanced due diligence, standards with regard to "private banking accounts" and "correspondent accounts" established, maintained, administered, or managed in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person.

Section 313 – Prohibition on U.S. Correspondent Accounts with Foreign "Shell Banks"

Pursuant to section 313, codified at 31 U.S.C. § 5318(I), U.S. banks are prohibited from maintaining a correspondent account on behalf of a foreign bank with no physical presence in any country. It also requires a financial institution to take "reasonable steps" to ensure that it is not indirectly providing correspondent banking services to shell banks through foreign banks with which it maintains a correspondent relationships.

Section 319(a) – Forfeiture of Funds in U.S. "Interbank Accounts"

Finally, section 319(a) of the USA PATRIOT Act authorizes the forfeiture of funds deposited into an account at a foreign bank, if the foreign bank has an interbank account in the United States. In essence, the provision creates a legal fiction that when (1) funds are deposited into an account at a foreign bank, and (2) the foreign bank has an interbank account in the United States, (3) "the funds

are deemed to have been deposited into the interbank account in the United States.” Thus, a forfeiture action may be brought against the funds located in the United States interbank account. It should be emphasized that tracing is not required. In other words, the U.S. government is not required to trace the funds in the U.S. interbank account to the tainted funds deposited into the foreign bank.

III. **THE CHALLENGES AHEAD**

(a) Corrupt Charities

One of the most vexing problems in the U.S. government’s efforts to combat terrorist financing is the use of Islamic charities to raise money to support terrorism. While charities do important work, making a difference in the lives of millions of people, unfortunately, some charities have been corrupted through schemes to siphon money away from humanitarian purposes and funnel it support terrorism. Money is donated to Islamic charities for the purpose of funding schools, orphanages, hospitals, and other humanitarian programs. However, the money is often diverted to fund Islamist armed organizations, some of which have been shown to have links to Usama bin Laden’s terror network. In some cases, charitable donations have been used to fund madrasses, Islamic schools that teach hatred, killing of innocent civilians, and jihad. In other instances, funds are used as to support the surviving family members of suicide bombers. Families receive about \$30,000 for each son’s or daughter’s death from outside sponsors, such as charitable organizations, groups of sympathizers or foreign regimes, and until recently that of Saddam Hussein in Iraq.

Under the authority of Executive Order 13224, the United States has designated 23 charitable organizations as having ties to al Qaeda or other terrorist groups, including the Holy Land Foundation for Relief and Development, Global Relief Foundation, Benevolence International Foundation, and the Bosnia and Herzegovina branches of the Al Haramain Islamic Foundation. Additionally, on May 6, 2004, the Treasury Department designated the Al Haramain and Al Masjed Al-Aqsa Charity Foundation of Bosnia as a “global terrorist” organization. The Islamic charity is a subsidiary of the Muslim World League, a Saudi religious organization.

According to its tax returns, the Holy Land Foundation for Relief and Development collected \$42 million from 1994 to 2000. In 2000, it raised over \$13 million in the United States alone. In 2001, the Benevolence International Foundation raised more than \$3.6 million, most of which was allegedly funneled to armed groups rather than needy Muslims.

Most recently, the Saudi government shut down the al Haramain Islamic Foundation and folded it into a new entity, the Saudi National Commission for Relief and Charity Work Abroad. According to Saudi officials, the al Haramain Islamic Foundation raised \$50 million annually within Saudi Arabia and funneled the money to its branches overseas, many of which are connected to terrorist groups, including al Qaeda.

While the international community is establishing standards to prevent the abuse of charities,

and the U.S. government is further working with interested countries to develop regulations to protect charitable organizations from abuse, greater oversight of charitable organizations is clearly needed. More specifically, foreign charities operating in the United States should be required to report to the U.S. Treasury Department the amount of monies raised annually, and if distributed to foreign entities, the name of the foreign entity receiving the funds and the amount of money received.

(b) Accountability

While important government regulations and international standards have been adopted to prevent financial institutions from being used to funnel money to terrorists and terrorist organizations, more needs to be done to ensure that financial institutions are held accountable for failure to comply with these obligations. In a recent case, Riggs Bank, located in Washington, D.C., agreed to pay a record \$25 million in civil penalties for what federal regulators called a “willful, systemic” violation of anti-money laundering laws. Regulators said the bank failed to report, detect or even look for clearly suspicious transactions by foreign customers, particularly those connected with the embassies of Saudi Arabia and Equatorial Guinea. While some Treasury officials have posited that the problems at Riggs Bank are not typical of the banking industry, some members of Congress have wondered if they are more widespread. At the very least, additional personnel and resources are needed so that rigorous audits of suspect banks can be conducted to ensure that wilful and systemic deficiencies are detected.

Additionally, accountability must be introduced into the domestic and international process for blocking assets of designated terrorists and their financial supporters. When persons are designated by the U.S. Treasury Department pursuant to Executive Order 13224, or added to the U.N. list pursuant to U.N. Security Council Resolutions 1267 and 1373, financial institutions are mandated to block the assets of the designated persons. However, compliance should not entirely depend on the good faith of the financial institution. In other words, procedures must be developed requiring financial institutions to certify the steps they have taken to freeze the accounts of the designated persons and entities and deny access to those accounts. Financial institutions should further be required to report to ministry of finance or other relevant government agency the accounts that have been blocked and amount of funds frozen. Financial institutions that fail to comply with their legal obligations should be punished.

(c) International Cooperation

International cooperation is critical to defeating global terrorism. While immediately following the September 11 terrorist attacks, the level of international support and cooperation was outstanding. However, today international cooperation to combat terrorist financing has greatly diminished. This lack of cooperation is demonstrated in the declining number of designations and terrorist-related assets being blocked. To date, the U.S. and our international allies have frozen approximately \$140 million in funds. However, in February 2003, when I left my position as Under Secretary, the Treasury Department had blocked \$125 million in terrorist-related funds. Thus, the Treasury Department has frozen \$15 million in terrorist assets in the last fifteen months. Frankly,

this is not a very impressive record.

One explanation for the loss of momentum is that the international community no longer views combating the war on terror with the same sense of urgency that existed following September 11, 2001. While the memories of the catastrophic attacks on the World Trade Center and the Pentagon may have faded over time, the global terrorism threat is even greater today. Moreover, while some progress has been made in disrupting the flow of funds to terrorists, funds remain plentiful to finance another terrorist attack on the scale of what the world witnessed on September 11.

Simply stated, terrorism is a global problem that threatens international peace and security. Thus, to effectively combat global terrorism, the response must be global in nature. The ultimate tragedy would be for the international community to become complacent and wait for another terrorist attack on the scale of September 11 to cause it to renew and enhance its efforts to combat terrorism. If we work together, the international community can prevent another September 11.