
A DISSENTING VIEW: SOME GUARDED OPTIMISM ON COMBATING TERRORISTS' MONEY LAUNDERING~

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We will not win the terrorism war only by pursuing the money-laundering techniques of the terrorists and their financiers, but that effort will play an important role. Foreign countries must participate in ways they have not done so before, and anti-laundering enforcement is but one tool, with emphasis on infiltration of the terrorists and their allies. We'll also need to ensure that new money-laundering tools aren't misused to erode our civil liberties. But recent successes provide reason for hope amidst an attitude of healthy skepticism.

The PATRIOT Act and Its Initial Use Give Some Reasons for Optimism

The PATRIOT Act introduces new measures that enable law enforcement to pursue the flow of money, share information, and enlist the aid of foreign jurisdictions in ways not done before. The provisions which suggest a different outcome for the use of anti-laundering tools include mandates that (1) domestic law enforcement agencies share information among themselves and with foreign governments, and (2) the U.S. can cut off foreign financial institutions and entire countries from access to our financial system for failure to assist in investigations of financial flows. Moreover, the Act authorized FinCEN to play the primary role in gathering and disseminating the records that would document potential terrorist financing flows, an authorization the Clinton Administration never pursued with vigor.

Just since October 26 2001, the effective date of the Act, there have been some notable successes in applying the Act. Treasury Department and law enforcement authorities credit the new legal authorities with success in simultaneously freezing the assets of Al Barakaat here and in the United Arab Emirates. The U.A.E. action, an unprecedented cooperative effort by an Arab country against a major Arab financial institution, indicated the potential success of the information-sharing provisions. Recent actions by the Treasury to freeze the assets of American Moslem-based charitable organizations were the result of infiltration and money-laundering investigations not previously undertaken in the U.S., and indicate a level of enforcement not seen in this nation's longstanding war on drugs. Under the implied threat of the unprecedented sanctions under the Act, at least five countries have changed banking laws to add more stringent money-laundering provisions. The latest Treasury statement with respect to the Republic of Nauru, a country notorious for its role in Russian money laundering, advised banks of the requirement under the PATRIOT Act to avoid doing business with shell banks, and since, according to senior Treasury officials, every single bank in Nauru is a shell bank, the pronouncement effectively ended all U.S. banking relationships with the country.

These actions are evidence of a new seriousness in

enforcement, but they are not long-term proof of success in the use of money-laundering tools against terrorism. A recent New York Times article put it best: "As the inquiry proceeds, government officials said, the effort is as much directed at detecting financial patterns that could signal another potential attack as it is at unraveling the financing of the Sept. 11 attacks. Despite the progress that has been made, there are some frustrations among law enforcement officials about the pace of the financial investigation, government officials said, largely resulting from the complexity of obtaining and analyzing a huge volume of foreign records. Those difficulties have as yet prevented investigators from analyzing financial records from Germany, a focal point in the hijacking conspiracy." Only if foreign governments provide the level of cooperation never given before, and only if American law enforcement uses the anti-laundering tools as one part of an expanded effort to infiltrate terrorist groups and their financiers, can we expect some success. Additionally, low-dollar-volume methods of financing, such as a stream of ATM withdrawals and credit card use, are much more impervious to any investigative technique.

Assuming that foreign governments continue to cooperate, whether as a result of a U.S. Government threat of sanctions or otherwise, the PATRIOT Act does appear to have raised the cost of establishing and employing a worldwide laundering network. Such a network will now take more time and more transactions, with the attendant cost, to move the same amount of money. In this way, the Act resembles the export licensing and enforcement regime built during the Reagan Administration to block shipments of technology to the old Soviet Union. That effort did not end all such shipments, but required the Communist leaders to devote far more resources to procurement. Perhaps that will be the result of the new emphasis on money laundering investigations in the war on terrorism.

~ While written in 2001, the authors felt this is a good counterpoint to the preceding article.

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