
International efforts to combat the financing of terrorism

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Following the terrorist attacks in September 2001, there have been a number of developments in measures to combat the financing of terrorism. This article discusses the characteristics of terrorist financing and summarises the international initiatives to counter the financing of terrorist activities, including measures taken by the United Nations, Financial Action Task Force, regional bodies and national authorities, including New Zealand.

1 Introduction and background

International initiatives that are aimed at combating the financing of terrorism (CFT initiatives) were given increased impetus by the terrorist attacks against targets in the United States on September 11, 2001 (9/11 events). Investigations after the 9/11 events indicated that the financing of the attacks was an important part of the overall terrorist planning process. Without an adequate financing structure, terrorist attacks are likely to be more difficult to mount. The authorities in the United States came to the view that CFT initiatives were far more important, and likely to be far more effective, than had previously been thought. CFT initiatives became accepted as an important part of counter-terrorism. This change of attitude was translated into action on a national and international basis.

Many countries have recently enacted laws aimed at combating the financing of terrorism, such as in the United States, with the US Patriot Act 2001¹, and in New Zealand, with the Terrorism Suppression Act 2002. Although some of these laws have extraterritorial effect, international cooperation is necessary if CFT initiatives are to work effectively across borders.

International organisations, such as the OECD-affiliated Financial Action Task Force (FATF), have contributed in this area. They have developed standards that can be applied internationally so that CFT initiatives can be more effective. The United Nations also has an important role to play, with the UN Security Council having implemented resolutions that contain measures to combat the financing of terrorism.

2 Characteristics of terrorist financing

There are numerous ways by which terrorism is financed. Criminal activities, such as extortion, kidnapping, drug trafficking and fraud are often the source of terrorist financing in Europe, East Asia and Latin America. In the Middle East, funds are sourced more from legitimate means, such as commercial enterprise, charitable donations and state sponsorship.² Paradoxically, funds used for illegitimate purposes can be financed from legitimate sources.

Terrorist operations require that money be raised, collected and distributed. An essential feature of terrorist financing is that funds must be moved from their source to where they are required. This is often where terrorist financing can be combated most effectively. Most CFT initiatives are designed to detect the movement of funds. These movements of funds are often done through informal financial networks, business structures, and underground banking systems.

Charities have been used to collect funds intended to finance terrorism. Donations to charities for terrorist purposes can be mixed with other funds and subsequently diverted to terrorist groups. Apparently legitimate but complex, company and trust structures can be used for the hiding and transfer of funds. Subsidiaries are established in different countries and funds transferred between companies. Businesses that deal mainly in cash also tend to be used to launder funds intended to finance terrorism.

¹ Pub L 107-56 115 Stat 272 (26 October 2001).

² K Alexander *United States Financial Sanctions and International Terrorism, Part 2* (Butterworth's Journal of International Banking and Financial Law, May 2002) page 213.

The international transfer of funds is often achieved through underground banking systems that are not subject to effective regulatory oversight. The best example of this is the Hawala system. This system operates on trust and informal relationships which involve no documentation. It works by informal assurances that funds made available in one country will be settled by a reverse transaction in another country. On this basis, funds do not physically cross borders, and so detection is difficult. The Hawala system has been widely used in the Middle East and East Asia for centuries. To date, countries have not succeeded in developing adequate regulatory controls over this type of financing, but initiatives are underway to understand better the risks associated with Hawala-type structures and to devise mechanisms for reducing the risk that these structures may be used for money laundering or terrorist financing purposes.³

3 United Nations initiatives

The United Nations has developed a number of initiatives aimed at combating the financing of terrorism, although there are two principal initiatives.

The International Convention for the Suppression of the Financing of Terrorism of 1999⁴ (the Convention), predated the 9/11 events, while the UN Security Council adopted Resolution 1373 (the Resolution) on 28 September 2001. There have also been some other Security Council resolutions dealing with CFT issues, but Resolution 1373 is the single most important resolution. Resolution 1373, drafted under Chapter VII of the United Nations Charter, was immediately applicable to all member states, as required by Articles 25 and 103 of the Charter.

The Convention does not automatically apply to all UN members, but it received the minimum number of ratifications (22) necessary for it to come into effect⁵ on 10 March 2002. As at 12 August 2003, 132 countries have

signed the Convention, and it has been ratified by 91 countries.

International Convention for the Suppression of the Financing of Terrorism 1999

This Convention is the only internationally significant anti-terrorist initiative focussing specifically on combating the financing of terrorism to pre-date the 9/11 events. The offence created by the Convention is that of providing or collecting funds that are to be used to carry out terrorism. The definition of terrorism in Article 2 of the Convention has two parts:

- An act which constitutes an offence, as defined in one of a number of pre-existing terrorism conventions, including aircraft hijacking, the taking of hostages, and crimes against diplomats.
- Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.

UNSC Resolution 1373

This Resolution explicitly derives its authority under Chapter VII of the United Nations Charter. Chapter VII deals with "action with respect to threats to peace, breaches of the peace, and acts of aggression". The Resolution places a formal obligation on all member states to implement its provisions. It contains no definition of terrorism, but calls on states (inter alia) to:

- prevent and suppress the financing of terrorism;
- criminalise the collection of funds for terrorism;
- freeze funds of terrorists and those who support terrorists.

The Resolution also established a Committee of the Security Council to monitor compliance with the Resolution (the United Nations Counter-Terrorism Committee). As well as monitoring compliance, the Committee has a role in

³ Alexander above, page 215.

⁴ GA Res 54/109 4th Session (9 December 1999).

⁵ FATF Secretariat *Guidance notes for the special recommendations on terrorist financing and the self-assessment questionnaire* 27 March 2002.

encouraging implementation. In Article 8 of the Resolution, the Security Council “expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter.”

4 FATF 8 Special Recommendations

The FATF is an inter-governmental body of 31 member states affiliated to the OECD. It was formed in 1989 at a meeting of the Group of Seven nations in Paris because of concerns about the financial power of drug trafficking syndicates. Other states were subsequently invited to join. Its initial purpose was the development and promotion of policies to combat money laundering, which was later extended to include the financing of terrorism. The initial mandate of the FATF was:

“... to assess the results of co-operation already undertaken in order to prevent the utilisation of the banking system for the purposes of money laundering, and to consider additional preventative efforts in this field, including the adaptation of the legal and regulatory systems so as to enhance multilateral judicial assistance.”⁶

It has developed a set of standards, known as the FATF 40 Recommendations, which are widely accepted as the leading international anti-money laundering standards. There is international pressure on all states to comply with these standards, so the effective reach of FATF goes beyond the OECD and FATF members.

In October 2001, the FATF expanded its role beyond money laundering to include the combating of terrorist financing. It published an additional set of recommendations on the financing of terrorism, known as the 8 Special Recommendations. A statement issued by the FATF President in October 2001 said “Today the FATF has issued new international standards to combat terrorist financing. Implementation of these Special Recommendations will deny

terrorists and their supporters access to the international financial system.”⁷

The 8 Special Recommendations require members to do the following:

- Take immediate steps to ratify and implement the relevant United Nations instruments.
- Criminalise the financing of terrorism, terrorist acts and terrorist organisations.
- Freeze and confiscate terrorist assets.
- Report suspicious transactions linked to terrorism.
- Provide assistance to other countries’ authorities for terrorist financing investigations.
- Impose anti-money laundering requirements on alternative remittance systems.
- Strengthen customer identification in wire transfers.
- Ensure that entities, particularly non-profit organisations, cannot be misused to finance terrorism.

5 FATF compliance monitoring

Enforcement of the FATF’s 40 Recommendations and 8 Special Recommendations is based on both moral pressure and the threat of economic sanctions. Many of the FATF member countries have undertaken self-assessments of their degree of compliance with the FATF Recommendations, and have been urged to move towards full compliance. “All countries around the world will be invited to participate on the same terms as FATF members.”⁸

The International Monetary Fund (IMF) has recently assumed the principal role of monitoring countries’ compliance with the FATF Recommendations. The IMF has adopted the FATF recommendations as part of the standards it uses when conducting its Financial Sector Assessment Programs (FSAP).⁹

⁶ W C Gilmore *Dirty money: The evolution of money laundering countermeasures* (Council of Europe Publishing 1999) p79.

⁷ Financial Action Task Force *FATF cracks down on terrorist financing*. Press statement of 31 October 2001.

⁸ Financial Action Task Force above.

⁹ G Mortlock and I Woolford *Reserve Bank of New Zealand Bulletin* Financial sector assessment programme, March 2003.

The FSAP process and the related IMF offshore financial centre assessment process are becoming the most frequently used vehicles for assessing the compliance of both FATF members and non-members with the FATF Recommendations. (The offshore financial centre assessments review the status of financial regulation and supervision in the offshore jurisdictions, as well as their arrangements for anti-money laundering and combating the financing of terrorism).¹⁰

The IMF intends to apply the FSAP process to all IMF member countries in due course, although participation is voluntary at present.

6 Egmont Group

The FATF has facilitated the development of an international network of Financial Intelligence Units (FIU), called the Egmont Group.¹¹ The Egmont Group is an informal international grouping, and has “ become a genuine international forum and, though having no official status, has become an essential element in the international fight against money laundering.”¹²

Some countries’ FIUs are part of the police force or the financial supervisory authority, and some are separate agencies. The number of national FIUs being created and joining the Egmont group continues to grow. The Egmont Group is emerging as a genuinely global forum for anti-money laundering and CFT cooperation.¹³

The objective of the Egmont Group is to combat money laundering, including terrorist financing, through the exchange of information and sharing of expertise.¹⁴ The Egmont Group works towards reviewing and improving national CFT legislation, seeking to ensure that terrorist financing is a predicate offence to money laundering and is included as a suspicious transaction that must be reported

¹⁰ Further information on the OFC programme is available from the IMF website at www.imf.org/external/np/ofca/ofca.asp.

¹¹ The name comes from the place it first met – Egmont-Arenberg Palace in Belgium.

¹² Gilmore above, page 72.

¹³ Gilmore above, page 73.

¹⁴ *Statement of Purpose of the Egmont Group of Financial Intelligence Units* 13 June 2001.

to the appropriate FIU, facilitating information requests from other FIUs, and pooling resources on strategic initiatives.¹⁵

7 United States Initiatives

The United States’ reaction to the 9/11 events included two principal CFT initiatives, both of which have significant implications outside of the United States:

- Executive Order 13224 of 24 September 2001, entitled Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit or Support Terrorism (the Order); and
- The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act 2001 (the Patriot Act).

Executive Order 13224

Executive Orders are legally binding regulations made by the President of the United States under powers granted to the President by the US Constitution and under specific US legislation. Executive Order 13224 declares a state of national emergency because of the threat of terrorism, and contains measures for dealing with that threat.¹⁶

The definition of terrorism used in the Order is as follows:

The term “ terrorism” means an activity that —

- (i) involves a violent act or an act dangerous to human life, property, or infrastructure; and
- (ii) appears to be intended —
 - (a) to intimidate or coerce a civilian population;
 - (b) to influence the policy of a government by intimidation or coercion; or
 - (c) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

¹⁵ Alexander above, page 221.

¹⁶ US Dept of the Treasury *Terrorism: What you need to know about U S sanctions* (6/6/2003) – see <http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html>

The Order names a large list of individuals and organisations as designated terrorists, and requires all persons subject to United States jurisdiction to freeze and block the movement of any assets held on behalf of a designated terrorist. The Order has extraterritorial effect. It prohibits all foreign third parties from assisting, providing material support, or associating with designated terrorists. It imposes financial sanctions against all foreign persons that support or otherwise associate with designated terrorists.

Agencies of the United States government are charged with doing what they can to ensure that the Executive Order is effectively implemented beyond the territories of the United States by working with foreign governments and by taking enforcement action in the United States against the interests of foreign third parties.

Patriot Act

The significance of the CFT initiatives contained in the Patriot Act is that they have an extraterritorial impact. The Patriot Act authorises the imposition of special measures against foreign jurisdictions and foreign financial institutions that are considered to pose a money laundering risk. These measures include:

- additional record keeping and reporting of financial transactions;
- identification of foreign owners of accounts at US financial institutions;
- requiring foreign banks to identify their customers who transfer funds through an account at a US financial institution;
- requiring foreign banks to identify the customers who use correspondent accounts opened by foreign banks at US banks.¹⁷

The overall effect of these measures is to require foreign banks doing business in the United States (and US banks with branches in other countries) to collect and disclose customer information to the US authorities. If businesses outside the United States do not have effective systems and

procedures in place to investigate money transfers and customers, US institutions are prohibited by the Act from doing business with them.

The Patriot Act also requires US authorities to encourage foreign governments to require the disclosure of information by their financial institutions to US authorities, and to encourage foreign governments to adopt more effective financial regulation and supervision aimed at anti-money laundering.

8 European initiatives

At its extraordinary meeting on 21 September 2001, the European Council declared that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union (EU). The Council also reiterated the EU's determination to attack the sources which fund terrorism, in close cooperation with the United States.¹⁸

Following the establishment of this common position, the EU adopted a regulation on 27 December 2001¹⁹ entitled "Specific restrictive measures directed against certain persons and entities with a view to combating terrorism." This regulation contains a list of designated terrorist entities. It requires EU member states to act within their competence to adopt financial sanctions applicable within the EU that will ensure that funds, financial assets and other economic resources and services will not be made available to designated terrorists. It also places disclosure obligations on financial institutions holding the funds of designated persons.

The regulation expressly requires EU states to take legal measures to restrict third parties from providing direct or indirect support to terrorists. Member states are free to determine the actual scope of the civil or criminal penalties imposed when the provisions of the regulation are infringed.²⁰

¹⁸ Official Journal of the European Communities *Council Common Position of 27 December 2001 on combating terrorism* (2002/930/CPSF)

¹⁹ Regulation (EC) 2580/2001.

²⁰ K Alexander *United States Financial Sanctions and International Terrorism, Part 2* Butterworth's Journal of International Banking and Financial Law, May 2002; page 221.

¹⁷ K Alexander *United States Financial Sanctions and International Terrorism, Part 1* Butterworth's Journal of International Banking and Financial Law, February 2002; page 83.

9 Regional bodies

A number of international bodies that have a regional focus, and that are concerned with economic development and the financial sector, take an interest in anti-money laundering and CFT matters. Such bodies exist in all regions of the world, including in the Asia-Pacific region. Examples of such bodies in the Asia-Pacific region are:

- Asia-Pacific Group on Money Laundering (APG);
- Asia-Pacific Economic Cooperation (APEC);
- Asian Development Bank (ADB);
- Pacific Islands Forum (PIF).

The APG was established in 1997, and an initial term of reference was adopted. Its establishment was as a result of the awareness-raising efforts of FATF. The APG is an autonomous body that used the FATF 40 Recommendations as its primary guideline for the implementation of anti-money laundering policies in the Asia-Pacific region. The APG uses similar mechanisms to those used by the FATF to monitor and facilitate progress in its member countries. There are currently 26 member states, including New Zealand.

In 2002, the APG added references to CFT to its terms of reference, and adopted the FATF 8 Special Recommendations as its CFT standards. The purpose of the APG includes the following:²¹

“The APG provides a focus for co-operative anti-money laundering and anti-terrorist financing efforts in the region. The APG facilitates the adoption and implementation by member jurisdictions of internationally accepted anti-money laundering and anti-terrorist financing measures.”

APEC was established in 1989 in response to a recognition of the growing interdependence among Asia-Pacific economies. Its goal is to promote freer and more open trade and investment, and to foster greater financial stability in the region. It currently has 21 member economies, including New Zealand.

A statement issued by APEC says that:²²

“We will jointly work to deny terrorists access to the world's financial system and use the money trail to locate and apprehend terrorists...through measures to:

- fully implement UN and other international instruments...
- promote better monitoring of alternative remittance systems and non-profit organisations...
- enhance law enforcement and regulatory capabilities.”

In this context, the Finance Ministers' process within APEC has undertaken work on anti-money laundering and CFT issues, including encouraging member economies to self-assess their compliance with the FATF 40 plus 8 recommendations and urging all member economies to implement the standards and meet other international requirements so as to promote best practice anti-money laundering and CFT regulation in the region. APEC has also recently conducted an assessment of alternative remittance systems within member economies, with a view to identifying the risks of money laundering and terrorist financing within these systems and the mechanisms to reduce these risks. It is likely that APEC will develop a regional training programme in the near future to promote more effective anti-money laundering and CFT capacity-building in the region to further enhance the fight against terrorism.

The ADB is a multilateral development finance institution dedicated to reducing poverty in Asia and the Pacific. It was established in 1966 and currently has 61 member states. In 2003, the ADB adopted a policy in relation to anti-money laundering and CFT issues. This policy includes the ADB adopting the anti-money laundering and CFT standards of the FATF and the UN, and strengthening collaboration with the APG.²³

The PIF was formed in 1971 to represent the interests of Pacific Island countries. It currently has 18 member states. One of its current projects is to develop model legislation

²¹ Asia-Pacific Group on Money Laundering *Terms of Reference* June 2002.

²² Asia-Pacific Economic Cooperation *APEC leaders' statement on fighting terrorism* 26/10/03.

²³ Asian Development Bank *Enhancing the Asian Development Bank's role in combating money laundering and the financing of terrorism* 1/4/03.

that deals with measures to combat terrorism and its financing, and in particular, to implement Resolution 1373, the international conventions and protocols on terrorism, and the UN Convention against Transnational Organised Crime (which contains money laundering provisions) and its two protocols. This model legislation will assist Pacific Island countries to prepare their individual responses to international obligations.²⁴

10 New Zealand initiatives

New Zealand takes its international CFT obligations seriously. It has enacted CFT laws and is a participant in various international CFT initiatives.

The most significant legislation that covers CFT issues is the Terrorism Suppression Act 2002. A terrorist act is defined in this Act as follows:²⁵

“(1) An act is a terrorist act for the purposes of this Act if—

- (a) the act falls within subsection (2); or
 - (b) the act is an act against a specified terrorism convention (as defined in section 4(1)); or
 - (c) the act is a terrorist act in armed conflict (as defined in section 4(1)).
- (2) An act is a terrorist act for the purposes of this Act if...it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified...and is carried out for the purpose of advancing an ideological, political, or religious cause, and with the following intention:
- (a) to induce terror in a civilian population; or
 - (b) to unduly compel or to force a government or an international organisation to do or abstain from doing any act.
- (3) The outcomes referred to in subsection (2) are—
- (a) the death of, or other serious bodily injury to, 1 or more persons (other than a person carrying out the act);
 - (b) a serious risk to the health or safety of a population;
 - (c) destruction of, or serious damage to, property of great

value or importance, or major economic loss, or major environmental damage, if likely to result in 1 or more outcomes specified in paragraphs (a), (b), and (d);

- (d) serious interference with, or serious disruption to, an infrastructure facility, if likely to endanger human life;
- (e) introduction or release of a disease-bearing organism, if likely to devastate the national economy of a country.”

The Act makes it an offence to finance terrorism, as follows:²⁶

“A person commits an offence who, directly or indirectly, wilfully and without legal justification or reasonable excuse, provides or collects funds intending that they be used, or knowing that they are to be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.”

The Act included a range of measures that are designed to enable New Zealand to meet its international CFT legal obligations. It enabled New Zealand to comply with the financing aspects of UN Security Council Resolution 1373, and with the obligations in the International Convention on the Suppression of the Financing of Terrorism. The Convention was ratified by New Zealand on 5 December 2002.

Another piece of legislation, the Counter Terrorism Bill, was being considered by Parliament at the time this article was prepared. This Bill contains supplementary powers in the form of new terrorism related offences and penalties, including the provisions needed to implement two terrorism conventions (on the protection of nuclear material and marking of plastic explosives) and a range of investigative measures designed to combat terrorism and address miscellaneous problems encountered by agencies in the investigation and enforcement of offences. When this Bill is enacted, New Zealand will be party to all 12 international conventions and protocols on combating terrorism

New Zealand actively participates in international CFT initiatives, both through regional bodies, such as the APG, PIF, APEC and ADB, and also through the broader international forums such as FATF and the Egmont Group.

²⁴ Pacific Island Forum *Press Statement of 28/2/03*.

²⁵ Terrorism Suppression Act 2002 s5.

²⁶ Terrorism Suppression Act 2002 s8.

The Ministry of Justice, the Ministry of Foreign Affairs and Trade, the New Zealand Police and the Reserve Bank are involved in this work. The Ministry of Justice is the lead agency for New Zealand.

The role of the Reserve Bank is to encourage banks to use best practice in respect of money laundering policies and procedures. The Reserve Bank seeks confirmation on a regular basis that banks are applying best practice.

During the last quarter of 2003, New Zealand will be undergoing an FSAP assessment by the International Monetary Fund (IMF). This assessment will look at a number of aspects of the financial sector in New Zealand, with a view to evaluating the quality of New Zealand's financial

sector regulation and assessing the potential vulnerability of the financial system to economic and financial shocks. The FSAP will include an assessment of New Zealand's compliance in the anti-money laundering and CFT area. The anti-money laundering and CFT assessment will be based largely around how well New Zealand complies with the FATF 40 Recommendations and 8 Special Recommendations, as well as best practice standards for bank customer due diligence set by the international banking supervisory standard setter (the Basel Committee). As a precursor to the FSAP assessment, New Zealand is compiling a self-assessment of its compliance, using the assessment methodology drafted jointly by the FATF and the IMF.