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**STOP THE MONEY, STOP THE ATTACKS:
A CATEGORICAL APPROACH TO ACHIEVING AN
INTERNATIONAL TERRORIST FINANCING
SANCTION REGIME**

*Vietlong Nguyen **

Money allows terrorist organizations to continue their day-to-day operations. Stopping the flow of financial support to terrorist organizations will diminish the intensity and frequency of the attacks and ideally lead to a cessation of such attacks. One country may be able to establish barriers to terrorist financing through government sanctions. These barriers will not stop terrorist financing; but rather, it will divert it to another country. The only way to effectively stop such financing is to implement international standards for terrorist financing sanctions. But as countries differ economically and politically, a solution must accommodate each countries' unique situation. This comment analyzes the approaches of the United States, Tanzania, and Macau, showing the gaping differences that exist within the international community. By applying the "Willingness to Buy" Theory, this comment offers a solution which coordinates and maximizes participants in the international terrorist financing sanctions regime.

INTRODUCTION

Behind every terrorist attack, there are financiers.¹ As money flows into these organizations, the threat of terrorism persists.² Cutting off the financial

* Vietlong Nguyen, J.D. candidate 2012, Penn State University Dickinson School of Law. First, I would like to thank Professor John E. Lopatka for his insight, knowledge, and guidance. I would also like to thank Thomas Caldwell for his feedback and tremendous patience. Lastly, to my friends and family, I am eternally grateful for your unending support.

¹ See, e.g., NAT. COMM. ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT 108-09 (2004) [hereinafter 9/11 COMMISSION REPORT], available at <http://www.9-11commission.gov/report/911Report.pdf>. Osama Bin Laden funded the training of Egyptian terrorists in Sudan, as well as Yemeni terrorists in their 1992 attempt to kill U.S. troops in Yemen. *Id.* at 169 ("The 9/11 plotters . . . spent somewhere between \$400,000 and \$500,000 to plan and conduct their attack."); but see also Section III.A. *infra* p. 19 (The validity of the statement; however, may depend upon which definition of "terrorism" is applied.).

² See Section I.A. *infra* p. 4.

resources for terrorists will drastically alter the landscape of the battlefield.³ Terrorist financing sanctions serve a practical and desirable purpose – diminishing the effectiveness of terrorist organizations – but the implementation and enforcement of these measures are flawed.⁴ Throughout the international community, there is asymmetric treatment of this issue. While the United States is at the forefront,⁵ there are other States who are either unable⁶ or unwilling⁷ to follow suit. Once the world effectively partakes in this initiative, terrorist financing sanctions will provide a strong deterrent against acts of terrorism and will enhance international security.⁸

Terrorist threats to international security stem from a wide array of attacks, schemes, and ploys. These are premeditated acts of violence perpetrated against noncombatants in furtherance of a political goal.⁹ It may be a suicide bomber on a crowded street, a coordinated bombing of an embassy, or the kidnapping of select high-profile individuals; the possibilities are endless and the impact is highly effective. In order to preserve international security, there must be an international effort against terrorism.¹⁰

One possible course of action is to take on the terrorists directly by foiling the masterminds before their planned attack comes to fruition. This plan, however, would only be a short-term solution to a long-term problem. The problem lies in the terrorist organization's "ability to regroup and replenish the loss of its physical infrastructure and its leadership."¹¹ Despite having only immediate impact with no

³ Hillel Frisch, *Strategic Change in Terrorist Movements: Lessons from Hamas*, 32 *STUD. IN CONFLICT & TERRORISM* 1049, 1051-1052 (2009) (If terrorist organizations lose their financial network, they will have to turn to other less expensive means to carry out their attacks.).

⁴ This comment will show that terrorist financing sanctions make a difference when the international community participates as a whole. The problem is the lack of an effective approach towards the creation and implementation of these sanctions in non-participating countries. *See, e.g., Financing Terrorism: Looking in the Wrong Places*, *ECONOMIST*, Oct. 22, 2005, at 63.

⁵ *See* Section I.B.2. *infra* p. 8.

⁶ *See* Section I.B.4. *infra* p. 11.

⁷ *See* Section I.B.3. *infra* p. 19.

⁸ *See* Conclusion Section IV *infra* p. 24.

⁹ There is no internationally accepted definition for "terrorism." The U.S. alone has multiple definitions for this phenomenon. *See* 18 U.S.C.A. § 2331 (2001) ("violent acts or acts dangerous to human life . . . intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping."); 22 U.S.C. § 2656F(d)(2) (2004) (U.S. Department of State: "terrorism" means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents"); Dep't of Def., Dep't of Def. Dictionary of Military and Associated Terms 368 (Joint Publication 1-02 2010), *available at* http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf ("The calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological."); *but see* *There is no UN definition of terrorism*, *EYE ON THE UN*, <http://www.eyeontheun.org/facts.asp?1=1&p=61> (last visited Apr. 16, 2012) (The U.N. has not defined the term "terrorism.").

¹⁰ *See Financing Terrorism, supra* note 4, at 63 (Terrorist financiers will alter their operations in order to exploit or bypass standing sanctions.).

¹¹ Rohan Gunaratna & Aviv Oreg, *Al Qaeda's Organizational Structure and its Evolution*, 33 *STUD. IN CONFLICT & TERRORISM* 1043, 1044 (2010).

residual effects, these direct encounters remain vitally important to provide relief to innocent bystanders.¹²

The other, more favorable, option is to eliminate the financial source; the very source that empowers these terrorist organizations with the monetary means to conduct their operations. This would provide a long-term solution to a recurring international issue.¹³ These financial measures have been implemented, but not uniformly throughout the world.¹⁴ Though the expected positive consequences are tempting, this outcome can only be achieved through full international cooperation.¹⁵ Anything short of full collaboration will provide terrorists with the opportunity to exploit the deficient terrorist financing measures.¹⁶ This comment advocates that the solution to international terrorism is international cooperation to regulate terrorist financing.

Section I will provide a brief overview of current terrorist financing sanctions and the international efforts accompanying those sanctions.¹⁷ Section II introduces the “willingness to buy” theory. This section will explain how an individual’s behavior may be applied to international states in conjunction with terrorist financing sanctions.¹⁸ Also, this section describes the four categories into which a state may fall based on their ability and willingness to implement terrorist financing sanctions. Section III seeks to resolve the terrorist financing problem with a reasonable, yet novel, solution which the international community may adopt.¹⁹ This solution would respond to and combat the continuing threats of terrorism by maximizing the participants in terrorist financing sanctions.

I. THE CURRENT LEGAL FRAMEWORK

Nothing is free. There is a cost associated with everything, including terrorist attacks. With effective terrorist financing sanctions, the frequency of terrorist attacks will be reduced. Countries, however, are in different predicaments. Some lack the financial resources to follow through on these sanctions; whereas others choose to refrain from participating. By understanding the important circumstances that afflict a given country, an effective solution can be developed and implemented.

¹² See Section I.A. *infra* p. 4. By reducing the amount of money in the hands of terrorists, they will be unable to afford weapons and explosive devices. Therefore, frequency of attacks against innocent bystanders will decrease.

¹³ See Section III *infra* p. 19.

¹⁴ Compare United States Section I.B.2. *infra* p. 8 with Macau Section I.B.3. *infra* p. 91 and Tanzania Section I.B.4. *infra* p. 11.

¹⁵ See *Financing Terrorism*, *supra* note 4, at 63 (“The multilateral effort is based on the notion that terrorists will exploit the weakest links in the global financial system.”).

¹⁶ See *id.*

¹⁷ See Section I. *infra* p. 3.

¹⁸ See Section II. *infra* p. 13.

¹⁹ See Section III. *infra* p. 19.

A. *Why International Terrorist Financing Sanctions Are Necessary*

The first step is to understand the underlying goal that these terrorism financing measures hope to achieve. In addition to troops on the ground, another way to prevent terrorist attacks from occurring is to cut off their financial resources.²⁰ With the means to sever terrorist organizations from their supply of munitions, logistical support, or compensation, terrorist activities will come to a halt.²¹

Terrorist organizations derive their financial support from illegal activities,²² networks of financial supporters,²³ and charitable organizations.²⁴ With the effective implementation of terrorist financing sanctions, these terrorist organizations will lose their financial resources. This strategy, in turn, will force terrorists to utilize less devastating substitutes.²⁵ Terrorist attacks will, therefore, become less potent.²⁶ The beauty of terrorist financing sanctions, at least in the U.S., is that the government does not need to show that there was a specific intent by the financier to support, directly or indirectly, terrorist organizations.²⁷ Regardless of whom the financier is and to whom the money is sent, if the funds are determined to have reached or will

²⁰ President George W. Bush, President Freezes Terrorists' Assets (Sep. 24, 2001) ("We will starve terrorists of funding, turn them against each other, rout them out of their safe hiding places, and bring them to justice."), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010924-4.html> (hereinafter "President Bush's Speech").

²¹ Frisch, *supra* note 3, at 1051–1052 (By imposing greater economic costs on current terrorist operations, "perpetrator of organized violence will substitute new techniques of violence to replace or complement those that are no longer efficient.").

²² Mark Basile, *Going to the Source: Why Al Qaeda's Financial Network Is Likely to Withstand the Current War on Terrorist Financing*, 27 *STUD. IN CONFLICT & TERRORISM* 169, 172 (2004) ("One such business is the diamond business, which Al Qaeda runs in Liberia and Burkina Faso, two countries involved in the illicit diamond trade. Al Qaeda diamond trafficking, which has gone undisturbed since 1998 when it was established in the \$20 million industry in West Africa, represents an illegitimate business that Al Qaeda has significantly profited from by working with a number of local companies."); see also *Hezbollah around the World*, ANTI-DEFAMATION LEAGUE (Mar. 31, 2008), http://www.adl.org/main_Terrorism/hezbollah_overview.htm?Multi_page_sections=sHeading_5 (Diamond smuggling and money laundering are some sources of illegal financial support.).

²³ *State Sponsors: Iran and Syria*, ANTI-DEFAMATION LEAGUE (Mar. 31, 2008), http://www.adl.org/main_Terrorism/hezbollah_overview.htm?Multi_page_sections=sHeading_6 ("Quds force provides Hezbollah with \$100-\$200 million in funding every year . . ."; "In 2008 alone, Iran provided more than \$200 million in funding to Lebanon and trained more than 3,000 Hezbollah fighters, according to the State Department.").

²⁴ Basile, *supra* note 22, at 171; and *Hezbollah around the World*, *supra* note 22.

²⁵ See Frisch, *supra* note 3, at 1052 (The Palestinians had to change their strategy. "As suicide bombings became more difficult, Palestinian ballistic and mortar activity significantly increased.").

²⁶ See *id.* at 1054 (Suicide attacks were the main cause of Israeli fatalities. By forcing the Palestinians to change their tactic away from suicide bombing, they were able to carry out more attacks, but with less efficiency.).

²⁷ See Exec. Order 13,224, 66 Fed. Reg. 49,079 (2001) (It is a violation of this order for a person to "to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed . . . or determined to be subject to this order." There is no requirement that the government must show that the person committed the listed acts with the intention of actually supporting terrorist organizations.).

soon reach terrorist organizations, then those assets may be frozen.²⁸ By depriving terrorist organizations of financial resources, the incentive to engage in these terrorist activities will decrease.²⁹

The financial status of these organizations is well-rooted in deep pockets with abundant resources. The al-Qaeda terrorist network is “approximated at over \$300 million in value,”³⁰ dispersing between \$30 and \$40 million per year.³¹ Hezbollah, on the other hand, has been estimated to maintain an operational budget of approximately \$200-\$500 million annually.³² In addition to criminal activity, other countries provide direct financial support to these organizations. For example, “the Iranian regime operates as the central banker of terrorism, spending hundreds of millions of dollars each year to fund terrorism.”³³

The other source of terrorist funds comes from charitable contributions. Due to the fact that one of five principle pillars of the Islamic religion relates to charitable contributions, terrorist organizations have been able to take advantage of this tenet.³⁴ Monitoring these charities and its disbursement is integral to the success of terrorist financing sanctions.

Funds would be allocated, and accounted for, by the charity for community development and charitable activities. Once the full amount was pulled out for the charitable project, a small percentage (around 10%) of the cash was skimmed off the top and physically passed to [terrorist] operative who deposited this clean money into [terrorist] accounts.³⁵

²⁸ *Id.*

²⁹ Frisch, *supra* note 3, at 1051–1052. With less financial resources available, the incentive for costly attacks greatly decreases as terrorist organizations are required to seek out alternative measures which may be ineffective substitutions.

³⁰ Basile, *supra* note 22, at 170.

³¹ R.T. NAYLOR, WAGES OF CRIME: BLACK MARKETS, ILLEGAL FINANCE, AND THE UNDERWORLD ECONOMY 288 (rev. ed. 2004).

³² Hezbollah’s International Reach, ANTI-DEFAMATION LEAGUE (Dec. 7, 2004), http://www.adl.org/terror/hezbollah_print.asp.

³³ *Between Feckless and Reckless: U.S. Policy Options to Prevent a Nuclear Iran: Joint Hearing Before Subcomm. on the Middle East and South Asia and the Subcomm. on Terrorism, Nonproliferation, and Trade of the H. Comm. on Foreign Affairs*, 110th Cong. 27 (2008) (statement of Daniel Glaser, Deputy Assistant Sec’y for Terrorist Fin. & Fin. Crimes).

³⁴ *See, e.g.*, MILLIARD BURR & ROBERT O. COLLINS, ALMS FOR JIHAD 11–25 (2006); THOMAS J. BIERSTEKER & SUE E. ECKERT, COUNTERING THE FINANCING OF TERRORISM 9 (2008) (Zakat is “the Islamic concept of tithing and alms obliging Muslims to contribute to charitable causes.”); 9/11 COMMISSION REPORT, *supra* note 1, at 170 (“Some individual donors surely knew, and other did not, the ultimate destination of their donations. Al Qaeda and its friends took advantage of Islam’s strong calls for charitable giving, *zakat*.”).

³⁵ Basile, *supra* note 22, at 173.

It is estimated that “it cost al-Qaeda about \$30 million per year to sustain its activities before 9/11 and that this money was raised *almost entirely through donations*.”³⁶ Due to lax regulations, donations may be moved to terrorist organizations unbeknownst to the donor.³⁷

Though it is plain to see that charitable donations pose a significant problem to the War on Terror internationally,³⁸ there are problems with addressing this issue. The first is that many Muslim charities do provide genuine humanitarian assistance and services,³⁹ so most of these charitable contributions do not arouse suspicion from the authorities.⁴⁰ Also, because these charities may provide assistance to the community, “shutting them down may create serious problems for local beneficiaries and have negative impacts on humanitarian needs.”⁴¹ Lastly, illegitimate charities will continue to accept donations when the semi-legitimate charities are decommissioned.⁴²

With abundant resources available at their disposal, these terrorist organizations are able to operate within a spectrum limited only by their creativity.⁴³ Shockingly, “[a]s today’s weapons of mass destruction go, the human bomb is cheap.”⁴⁴ It costs about \$150 to execute a suicide bombing mission.⁴⁵ “[A]part from a willing young man [or woman], all that is needed is such items as nails, gunpowder, a battery, a light switch and a short cable, mercury . . . , acetone, and the cost of tailoring a belt wide enough to hold six to eight pockets of explosives.”⁴⁶ More expensive than these parts is the transportation to the targeted town.⁴⁷ The most expensive part of a suicide bombing, however, is the payments to the family of the suicide bomber.⁴⁸

³⁶ 9/11 COMMISSION REPORT, *supra* note 1, at 170 (citing C.I.A. ANALYTIC REPORT, TERRORISM: AMOUNT OF MONEY IT TAKES TO KEEP AL-QA'IDA FUNCTIONING (2002), and C.I.A. ANALYTIC REPORT, TERRORISM: AL-QA'IDA OPERATING ON A SHOESTRING (undated post-9/11)) (emphasis added).

³⁷ See Basile, *supra* note 22, at 173-74.

³⁸ See *id.*

³⁹ See Martin Rudner, *Hizbollah Terrorism Finance: Fund-Raising and Money-Laundering*, 33 STUD. IN CONFLICT & TERRORISM 700, 703 (2010).

⁴⁰ See *Money Laundering and Terror Fin. Issues in the Middle East: Testimony of Stuart Levey, Under Sec’y Office of Terrorism and Fin. Intelligence, U.S. Dep’t of the Treasury before the U.S. S. Comm. on Banking, Housing and Urban Affairs*, 109th Cong. (2005), available at <http://www.treasury.gov/press-center/press-releases/Pages/js2427.aspx>.

⁴¹ Basile, *supra* note 22, at 173.

⁴² *Id.*

⁴³ See, e.g., *Female Suicide Bomber Identified*, AL-BAWABA NEWS, Jan. 28, 2002 (“This was the first suicide attack carried out by a Palestinian woman.”); Hala Jaber, *The Avengers*, SUNDAY TIMES (LONDON), Dec. 7, 2003 (The use of women is a way around security complications.).

⁴⁴ See Nasra Hassan, *An Arsenal of Believers: Talking to the “Human Bombs”*, THE NEW YORKER, Nov. 19, 2001.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See, e.g., *id.*; *Palestinians get Saddam Funds*, BBC NEWS, Mar. 13, 2003, http://news.bbc.co.uk/2/hi/middle_east/2846365.stm (Saddam paid \$25,000 to the family of a suicide bomber but only \$10,000 to those who died in combat; Hizbollah increases pay for suicide attacks from \$20,000 to \$100,000 after Israel returns terrorists bodies in “goodwill gesture”);

The overarching theme of the terrorist finance sanctions is to “starve terrorists of funding . . . and bring them to justice.”⁴⁹ “Money is the lifeblood of terrorist operations.”⁵⁰ Without the financial ability to supply the organization, the incentive for suicide bombers and terrorists drop. Thus, not only are the lives of U.S. and international troops spared, but also those of innocent civilians.

B. Current Terrorist Financing Sanctions

Each sovereign country can choose to handle its affairs as it sees fit. But, when it comes to terrorist financing, the relevant United Nations resolution mandates that its member nations pursue a common goal – implement terrorist financing sanctions. Countries (U.S., Macau, and Tanzania), however, have responded to this mandate with differing levels of ambition.

1. U.N. Terrorist Financing Resolutions

In 1999, the U.N. Security Council created the 1267 Committee which had the power to freeze financial assets of individuals and entities associated with Al-Qaida, Osama Bin Laden, and the Taliban.⁵¹ These entities were then placed on a consolidated list.⁵² The scope was then broadened in 2001 to include all individuals who finance acts of terrorism.⁵³

Even with very little proof of terrorist financing activity, the controversial listing procedure allowed the 1267 Committee to freeze an individual’s [or entity’s] assets.⁵⁴ The Security Council then conducted a review of all names on the consolidated list and established an Office of an Ombudsperson to assist in the considerations of delisting requests.⁵⁵ In the end, however, the decision on whether a listed entity is removed remains with the Security Council.⁵⁶

MILITANTISLAMMONITOR.ORG, Feb. 15, 2005, <http://www.militantislammonitor.org/article/id/434> (Hezbollah increased payments to family of suicide bombers from \$20,000 to \$100,000.).

⁴⁹ President Bush’s speech, *supra* note 20.

⁵⁰ *Id.*

⁵¹ S.C. Res. 1267, U.N. Doc. S/RES/1267 (Oct. 15, 1999).

⁵² *See* S.C. Res. 1333, U.N. Doc. S/RES/1333 (Dec. 19, 2000).

⁵³ *See* S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

⁵⁴ *See* S.C. Res. 1526, U.N. Doc. S/RES/1526 (Jan. 30, 2004) (There was an attempt to alleviate this point of tension by requiring the State “submitting new names . . . to include identifying information and background information.” This effort, however, only required states to adhere to the “greatest extent possible.” In the end, individuals and entities may still be listed with limited disclosure as to why they have been listed.). *See, e.g.*, Kalyani Munshani, *The Essence of Terrorist Finance: An Empirical Study of the U.N. Sanctions Committee and the U.N. Consolidate List*, 18 MICH. ST. J. INT’L L. 229 (2010) (discussing listing procedures).

⁵⁵ *See* S.C. Res. 1822, U.N. Doc. S/RES/1822 (June 30, 2008); S.C. Res. 1904, U.N. Doc. S/RES/1904 (Dec. 17, 2009).

⁵⁶ *See* U.N. Sec. Council, Al-Qaida and Taliban Sanctions Committee, Guidelines of the Committee for the Conduct of Its Work, July 22, 2010, http://www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf (This Sanctions Committee is the Committee of the Security Council which was established by Security Council Resolution 1267.).

The exercise of authority by the Security Council in this instance is not an abuse of power. Article 41 of Chapter VII of the Charter of the U.N. authorizes the Security Council to implement regulations that are binding on all 192 members.⁵⁷ This article grants the Security Council the power to “decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the U.N. to apply such measures.”⁵⁸ The Members of the U.N. are then bound by that decision and are obligated to carry it out.⁵⁹ Furthermore, if there are conflicting obligations between other international agreements and the U.N. Charter, the obligations under the U.N. Charter prevail.⁶⁰ Although this topic has been the subject of recent litigation,⁶¹ this comment will assume that the legal authority hierarchy established in the U.N. Charter remains unchanged (*i.e.*, U.N. Resolutions trump international agreements).⁶²

2. *U.S. as the Frontrunner: Both Willing and Able to Implement Terrorist Financing Sanctions*

Shortly after declaring war with Al Qaeda,⁶³ former President George W. Bush signed an Executive Order, pursuant to the International Emergency Economic Powers Act, aimed at eliminating terrorist assets.⁶⁴ Similar to S.C. Resolution 1267, this Executive Order was designed “to disrupt the financial support network for terrorists and terrorist organizations by authorizing the U.S. government to designate and block the assets of foreign individuals and entities . . . as well as their subsidiaries, front organizations, agents, and associates.”⁶⁵

Departing from the tactics of implementing country-wide sanctions, the U.S. adopted a more internationally accepted strategy of targeting specific persons and entities.⁶⁶ In order to uproot these financiers of terrorism, the U.S. Treasury Office of Foreign Assets Control (OFAC) has over 100 employees “working full time on [the] implementation of financial sanctions.”⁶⁷ As compared to other Western

⁵⁷ See U.N. Charter art. 41.

⁵⁸ *Id.*

⁵⁹ See U.N. Charter art. 25.

⁶⁰ See U.N. Charter art. 103.

⁶¹ See, e.g., *Joined Cases C-402 & 415/05, Kadi & Al Barakaat Int’l Found. V. Council & Comm’n*, 2008 E.C.R. I-6351.

⁶² See U.N. Charter art. 103.

⁶³ President George W. Bush, Address to a Joint Session of Congress and the American People (Sep. 20, 2001), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>.

⁶⁴ See generally, Exec. Order 13,224, 66 Fed. Reg. 49,079; President Bush’s speech, *supra* note 20.

⁶⁵ See Exec. Order 13,224, 66 Fed. Reg. 49,079.

⁶⁶ See John F. Cooney, *Targeted Financial Sanctions*, 34 ADMIN. & REG. L. NEWS 8, 9 (2009) (Country-wide sanctions are less favorable because “innocent civilians in the targeted country would suffer from cutting its links to international financial markets.”).

⁶⁷ MAURICE R. GREENBERG, WILLIAM F. WECHSLER & LEE S. WOLOSKY, *TERRORIST FINANCING: REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS* 2 (2002).

nations, OFAC has a significantly greater staff.⁶⁸ In addition to the lack of manpower, there is a “lack of political will among U.S. allies,” which either ignore or assign the issue a lower priority.⁶⁹

The terrorism financing sanctions are close to an all-or-nothing situation.⁷⁰ For this policy to be effective on the world stage, all members of the U.N. must partake in the 1267 Resolution.⁷¹ Similar to a chain, the weakest link will cause the strategy against terrorist financing to break down.⁷² As money is fungible and difficult to track, a gap in one country’s domestic laws will create a loophole which financiers of terrorism will exploit.⁷³

Since the 9/11 attacks, the U.S. has spearheaded the attack against terrorist financiers.⁷⁴ However, future success demands international cooperation and participation. Without a unified effort, terrorist financiers will be able to accomplish their goals, leading to the deaths and injuries of tens of thousands of innocent people. Given the financial resources of the U.S., it certainly possesses the ability to implement terrorist financing sanctions. More importantly, its targeted efforts to uproot terrorist financing schemes demonstrate its willingness.

3. *Macau: Able but not Willing*

Macau was returned to China on December 20, 1999 under a 1987 Joint Declaration between the Government of the People’s Republic of China and Portugal.⁷⁵ Under this declaration, Macau operates with a high degree of autonomy and enjoys independent powers.⁷⁶ However, the country’s autonomy is limited to

⁶⁸ See *id.* at 17. For example, “the Bank of England had a staff of about seven, the French Ministry of Finance has two people working part-time, the German Bundesbank had one, and the European Commission in Brussels had only one person and a half-time assistant.

⁶⁹ *Id.* at 2.

⁷⁰ See *id.* at 22 (2002) (Deficiencies in political will abroad – along with resulting inadequacies in regulatory and enforcement measures – are likely to remain serious impediments to progress); see, e.g., *id.* at 5 (2002) (The al-Qaeda financial network is resilient and is capable of supporting a nomadic terrorist organization as it moves around the world.).

⁷¹ See *Financing Terrorism*, *supra* note 4, at 63 (“The multilateral effort is based on the notion that terrorists will exploit the weakest links in the global financial system.”).

⁷² See *id.*

⁷³ See ROHAN GUNARATNA, *INSIDE AL-QAEDA: GLOBAL NETWORK OF TERROR* 223 (2002) (“With the U.S. building its multinational coalition and deploying its troops in Afghanistan, the Philippines, Yemen and in Georgia, Al Qaeda is responding by building a multinational alliance of terrorist groups. Advancing the concept of the universality of the battle, it is seeking to widen the conflict from the territorial to the global, countering U.S. initiatives by expanding its existing alliance.”).

⁷⁴ See Per Cramer, *Recent Swedish Experiences with Targeted U.N. Sanctions: The Erosion of Trust in the Security Council*, in *REVIEW OF THE SECURITY COUNCIL BY MEMBER STATES* 85, 88 (Erika de Wet & Andre Nollkaemper eds., 2003).

⁷⁵ See Joint Declaration of the Government of the People's Republic of China and The Government of the Republic of Portugal on the Question of Macau, China-Port., Apr. 13, 1987, available at <http://bo.io.gov.mo/bo/i/88/23/dc/en/>.

⁷⁶ *Id.*

matters not involving foreign policy and defense.⁷⁷ In that regard, the province is bound to the Security Council Resolutions via China's membership.

Currently, Macau's gaming industry generates a substantial portion of the country's direct taxes for public finances,⁷⁸ but it is also the sector that poses the greatest threat to terrorist financing sanctions. While a colony of Portugal, one single private organization, the Sociedade de Turismo e Diversoes de Macau, held the only government license for games and casinos, thus giving them a monopoly over all gambling.⁷⁹ This practice, however, ended in 2002 when additional licenses were issued.⁸⁰ Consequently, a flood of new casinos entered the market.⁸¹ These casinos are now valued at over \$10 billion USD/year.⁸² The revenue generated by the new casinos is a welcome addition given the Macau's economy's tourism base.⁸³ The growth and economy is not the problem the U.S. has with Macau, but rather Macau's threshold reporting requirement.⁸⁴

Recently, Macau has been scrutinized for allowing an unreasonably high threshold before reporting transactions.⁸⁵ The international norm reporting level is approximately \$3,000, and Macau's is \$62,500. This high threshold allows large sums of money to be potentially transferred between financiers and terrorist organizations without question.⁸⁶ The fear of such a high threshold arrives from the gradual evolution of terrorist financing operations.⁸⁷ For Macau, the high threshold may allow the government to maximize tax revenues, but also makes the province a potential site for money laundering and terrorist financing activities.⁸⁸

The Macau loop-hole presents an easy target for exploitation by terrorist financiers. One could walk up to the counter, withdraw the maximum of \$62,500 and pass it on without any oversight. Two transactions of this size would be more than enough to supply a suicide bomber with an explosive vest and provide

⁷⁷ *Id.*

⁷⁸ See *The Gaming Industry*, GOVERNMENT INFORMATION BUREAU OF THE MSAR, http://www.gcs.gov.mo/files/factsheet/Gaming_EN.pdf (In 2009, the gaming industry contributed \$5.71 billion in direct taxes. This amounted to 65% of Macao's total public finances.).

⁷⁹ Angela Veng Mei Leong, *Macau Casinos and Organised Crime*, 74 J. MONEY LAUNDERING 298, 300 (2004).

⁸⁰ *Id.*

⁸¹ See *The Gaming Industry*, *supra* note 78 (The MSAR government signed concession agreements with Sociedade de Jogos de Macau, Wynn Resorts, and Galaxy Casino Company. The government then allowed sub-concessions which brought in the Venetian Group, MGM Grand Paradise, and Melco PBL Gaming.).

⁸² See Mary-Anne Toy, *A bet bigger than Vegas*, THE AGE (MELBOURNE), Apr. 1, 2006, at 3.

⁸³ See *The Gaming Industry*, *supra* note 78 (gaming industry accounts for 65% of Macao's total public finances).

⁸⁴ See John Carney, *Macau in US Cross Hairs Over Terror Financing*, S. CHINA MORNING POST, Aug. 15, 2010.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See *Financing Terrorism*, *supra* note 4, at 63 ("Counter-terror experts say some groups have simply switched to using more cash, slipping across borders undetected. Authorities say they recognise the changing money flows, but cutting them off is no simple matter, particularly in cash-based economies with loose border controls.").

⁸⁸ See Carney, *supra* note 84.

compensation to his/her family.⁸⁹ The problem is not that Macau cannot lower the threshold, but rather that it chooses not to. Macau's concern is that reducing the cap from \$62,500 to \$3,000 would impede high-rollers from gambling, which, consequently, would interfere with the Macauan government's most significant source of revenue.⁹⁰ However, with an economy deeply rooted in the tourism and gambling industries, the Macauan economy is extremely vulnerable to terrorist attacks.⁹¹ Macau has the financial ability to implement terrorist financing sanctions, but is unwilling to do so.

4. *Tanzania: Willing but Not Able*

The situation in Tanzania exhibits a different set of problems to the implementation of international terrorist finance sanctions. Unlike Macau, the Tanzanian government does not have the financial resources available nor is it a priority to implement terrorist financing measures due to financial constraints.⁹² Terrorist organizations in Tanzania and East Africa “[have] concentrated most of the financial activities in informal sectors long before 2001.”⁹³ Therefore, “[by] the time the U.S. government began its international drive . . . to develop an international counter-terrorism finance regime . . . , [these] terrorist finance networks . . . had already achieved some insulation.”⁹⁴

The more fundamental problems lie in the country's lack of ability⁹⁵ and lack of priority⁹⁶ to tackle terrorist financing. Despite enacting measures in furtherance of the terrorist financing sanctions,⁹⁷ “law enforcement agencies and political agents . . . are widely considered among the most corrupt elements of society, [thus] undermining their credibility to combat terrorism.”⁹⁸ Furthermore, even if it were to be stipulated that Tanzania had a stable and trustworthy government, there are more pressing concerns that demand the local government's attention before it is able to effectively combat terrorism.⁹⁹ Several of these concerns pertain to the humanitarian and economic crises that plague the State.¹⁰⁰

⁸⁹ See, e.g., Hassan, *supra* note 44 (putting cost of suicide attack at approximately \$150); *Palestinians get Saddam Funds*, *supra* note 48; *Hizbollah increases pay*, *supra* note 48.

⁹⁰ JOHN A. MILLER & JEFFREY A. MAINE, *THE FUNDAMENTALS OF FEDERAL TAXATION* 3 (2nd ed. 2010).

⁹¹ See ROSS C. DEVOL ET AL., *THE IMPACT OF SEPTEMBER 11 ON U.S. METROPOLITAN ECONOMIES* 5 (Jan. 2002).

⁹² See, e.g., Jessica Piombo, *Terrorist Financing and Government Response in East Africa*, in *TERRORIST FINANCING AND STATE RESPONSES* 185, 186 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007) (Other issues need to be addressed first, such as border security, smuggling, arms transfers, and human trafficking. From these measures, it would indirectly fight terrorist financing but also extend beyond the threat of terrorism.).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 197.

⁹⁶ Jodi Vittori, Kristin Bremer, & Pasquale Vittori, *Islam in Tanzania and Kenya: Ally or Threat in the War on Terror?*, 32 *STUD. CONFLICT & TERRORISM* 1075 (2009).

⁹⁷ See Piombo, *supra* note 92, at 197 (noting Tanzania has criminalized terrorist financing).

⁹⁸ *Id.* at 199.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

The international dilemma is getting Tanzania, a country unable to effectively seek out terrorist financiers, to allocate sufficient resources to an “unimportant” domestic cause.¹⁰¹ To the Tanzanian government, this feat would be nearly impossible for several reasons. First, a strike at terrorist financing may be a strike at the foundation of their political power.¹⁰² Ironically, if the Tanzanian government officials were to implement and enforce the suggested measures, it may erode a base of their financial income.¹⁰³ With part of the government rooted in corruption and terrorism, politicians will be hesitant to pursue measures that lead to their demise.

Secondly, “there simply are no substitutes in these cash-based economies.”¹⁰⁴ Supposing that the Tanzanian government would then pursue sanctions on the informal banking systems, they would meet “sharp resistance . . . , potentially leading to political upheaval.”¹⁰⁵

Unlike the situation in Macau, Tanzania does not have the capabilities to implement effective enforcement measures to combat terrorist financing.¹⁰⁶ Interestingly, the situation in Tanzania mirrors the former situation in Iraq, where one of the most effective counter-terrorism tactics was support for the development of a democratically elected government.¹⁰⁷ For Tanzania, a government riddled with corruption and gapping flaws, the only realistic method for reform requires third-party intervention to reset and recalibrate the political infrastructure.¹⁰⁸ Tanzania, by and through its people, would be more than willing to implement these terrorist financing measures. These measures will bring stability to the government and its people. Without sufficient financial resources, Tanzania will be unable to implement effective counter-terrorism financing sanctions, despite its willingness to do so.¹⁰⁹

A comparative examination of the counterterrorism financing regimes in the U.S., Macau, and Tanzania illustrates the need for a coordinated international effort. Depending on the political and economic climate, a state’s ability to allocate resources to terrorist financing regulation varies. Independent from this ability is a state’s willingness to actually pursue these measures. As the following sections will show, there is a possible solution to eliminate the gaps in terrorist financing sanctions.

¹⁰¹ *Id.*

¹⁰² Piombo, *supra* note 92, at 200.

¹⁰³ *Id.* at 201. By providing money laundering services, individuals involved receive payments for their assistance.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *See, e.g., id.* at 186 (Other issues are of greater importance to the Tanzanian government than terrorist financing sanctions.).

¹⁰⁷ *See* Piombo, *supra* note 92, at 202.

¹⁰⁸ *See, e.g., id.*

¹⁰⁹ Financial resources may be derived from the domestic state or from a foreign source. For example, military aid provided by a third-party is a financial resource. This military aid provides the domestic country with a resource which costs nothing to that country.

II. ANALYSIS: APPLYING THE “WILLINGNESS TO BUY” THEORY TO INTERNATIONAL TERRORIST FINANCING SANCTIONS

Politics, filled with complex nuances, revolve around give and take. A more simplistic and practical approach would be to apply economics; specifically, behavioral economics. This allows one to understand the decision making processes of a country. This phenomenon explains how a country should react under certain stimuli. Based upon reactions, countries can be classified into one of four categories. The dynamic relationship between these categories will allow the creation of an effective solution.

A. *Willingness Versus Ability*

To show the inadequacy of the current Security Council resolutions with regard to terrorist financing, one must understand the distinction between a state’s willingness and ability to implement these measures. Understanding how a state behaves in light of certain factors will allow the international community to tailor an effective solution.

The “willingness to buy” theory, created by George Katona in 1960, was first used to analyze individual consumer behaviors, but it may also be applied to countries when they are viewed as individual actors.¹¹⁰ By applying this theory to states, in regard to terrorist financing sanctions, the theory explains why a state chooses to participate (or not to participate).

The “willingness to buy” theory elaborates on the classical economic model.¹¹¹ The classical model ties one’s consumption directly to its income and ability to buy.¹¹² The “willingness to buy” theory, however, holds that there may be “fluctuations in willingness to buy, independent of fluctuations in ability to buy, and that they, too, influence demand.”¹¹³ For example, an individual receives additional income, which enables her to make more purchases; however, she refrains from making the purchase because of the ongoing economic depression.¹¹⁴

When an individual acquires income, there are two ways in which the consumer may dispose of his or her income: spend or save.¹¹⁵ Depending on that person’s propensity to consume and propensity to save, the income would be divided accordingly.¹¹⁶ From the money allocated to spending, consumers typically

¹¹⁰ See Section II.B. *infra* p. 15.

¹¹¹ See GEORGE KATONA, THE POWERFUL CONSUMER 5 (1960).

¹¹² *Id.*

¹¹³ *Id.* at 25.

¹¹⁴ *Id.* at 17.

¹¹⁵ *Id.* at 14.

¹¹⁶ See Propensity to Consume Definition, Britannica.com, <http://www.britannica.com/EBchecked/topic/478975/propensity-to-consume> (last visited Apr. 16, 2012); see also Propensity to Save Definition, Britannica.com, <http://www.britannica.com/EBchecked/topic/478976/propensity-to-save> (last visited Apr. 16, 2012).

purchase their necessities before purchasing luxury goods.¹¹⁷ Subsequent purchases for non-necessities are categorized as discretionary purchases.¹¹⁸

Both the classical economic model and the “willingness to buy” theory have the same starting point. The analysis begins with the determination of the consumer’s demand, which is the conditions (income, assets, and debts) that grant a consumer the ability to buy.¹¹⁹ A portion of the consumer’s income would be siphoned into savings, while the rest would be allocated towards spending.¹²⁰ Under both theories, the consumer would first purchase their necessary goods;¹²¹ however, classical economics states that discretionary purchases (purchases other than necessities) are determined by the remaining availability of income.¹²²

Unlike classical economics, the “willingness to buy” theory refines discretionary expenditures by adding a subjective component.¹²³ As the consumer already has the ability to buy (because discretionary expenditures, by their very nature, are made from the excess of spending income after necessary purchases have been made), the question then falls on whether the consumer would be willing to make this purchase.¹²⁴ The answer lies in the subjective expectations of the consumer.¹²⁵ In times of economic prosperity and worldwide euphoria, a consumer will spend the additional income that he/she has acquired.¹²⁶ Conversely, when the consumer is pessimistic or has an insecure outlook on life, the consumer is less likely to spend despite having additional income.¹²⁷

This theory can be seen in consumer behavior between World War II and the years after its end. During the war, consumers were not forced to save, yet the American people “accumulated approximately \$100 billion worth of savings.”¹²⁸ After the war ended, economists believed that an economic crisis would occur as soldiers would be demobilized, orders for military equipment would be cancelled, and millions of people would be laid off.¹²⁹ Despite all of those factors, there was no economic crisis. When war turned to peace, consumers expressed a strong desire to spend more and save less in spite of economic reconversion.¹³⁰ While the post-war

¹¹⁷ KATONA, *supra* note 111, at 14.

¹¹⁸ Cristina Poncibo, *Some Thoughts on the Methodological Approach to EC Consumer Law Reform*, 21 LOY. CONSUMER L. REV. 353, 362 (2009).

¹¹⁹ KATONA, *supra* note 111, at 6.

¹²⁰ *See Propensity to Consume*, *supra* note 116; *see also Propensity to Save*, *supra* note 116 (When a consumer receives income, it may only be spent or saved. By adding the amount spent to the amount saved, you get the consumer’s income.).

¹²¹ KATONA, *supra* note 111, at 14.

¹²² Suppose a consumer makes \$100 and decides to save 10%, which is \$10. Of the remaining \$90, she spends \$50 on necessary goods. Classical economics would hold that the \$40 left over would be spent on discretionary expenditures. *See id.* at 26.

¹²³ *Id.* at 25.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *See* KATONA, *supra* note 111, at 25.

¹²⁷ *See id.*

¹²⁸ *Id.* at 32.

¹²⁹ *Id.* at 31.

¹³⁰ *Id.* at 32.

economy was in a worse economic position, spending increased due to consumer's belief of prosperous futures.¹³¹

The implications of this theory may be applied to the issue of international terrorist financing. By understanding the spending habits of individual countries, a more effective solution may be formed which would increase participation in creating and maintaining international security.

B. Applying the "Willingness to Buy" Theory to International Actors

In order for international states to fall within the "willingness to buy" theory, several factors must be explained so that there are no large incompatibilities between an individual's consumption and the state's consumption. As individuals are utility-maximizers, in that they spend their income on goods that would increase their utility, states operate in a similar fashion.¹³² While individuals seek to maximize happiness, states seek to maximize security.¹³³ Therefore, countries have an incentive to implement and enforce sanctions against terrorist financing.¹³⁴

Even if a state adamantly opposes the enforcement of these sanctions, arguing that international security has no benefit whatsoever to the host country, their decision to join the U.N. will impute a derived benefit from greater international security.¹³⁵ Despite arguments that international security bears no benefit, direct or indirect, to the host country or that the country's decision to join was purely political, this comment maintains that a substantial underlying reason for participation in the U.N. revolves around the concept of international security.¹³⁶

However, unlike individual goods, international security is a public good, subject to the "free rider" effect.¹³⁷ Public goods are "nonrivalrous," meaning that the consumption of the good by one individual does not reduce the availability of the good for consumption by others.¹³⁸ Public goods are also "non-excludable," meaning that no one can effectively be excluded from using the good.¹³⁹ The problem with the "good" of international security is that states enjoy the benefits the good creates but are reluctant to contribute to the system that created those benefits.¹⁴⁰ Therefore, under the "willingness to buy" theory, able states are willing to buy, but they choose not to in hope that they are able to "free ride" the benefits.¹⁴¹

¹³¹ See KATONA, *supra* note 111, at 32.

¹³² See ROBERT B. COOTER & THOMAS ULEN, LAW AND ECONOMICS 12 (6th ed. 2011).

¹³³ See *id.*

¹³⁴ *Id.* at 12-13.

¹³⁵ See U.N. Charter art. 1, para. 1 ("The Purpose[] of the United Nations [is] . . . to maintain international peace and security.").

¹³⁶ See, e.g., *id.*

¹³⁷ See COOTER & ULEN, *supra* note 132, at 41 ("They hope to benefit at no cost to themselves from the payment of others.").

¹³⁸ *Id.* at 40.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 41.

¹⁴¹ See *id.* A common example is national defense. A consumer may be able to increase the defense of the nation, but it comes at the risk of injury/death. However, if the consumer decides to

Next, in looking at a state's ability to pay, the conditions that grant a state the ability to buy are the same as the conditions that grant an individual consumer the ability to buy. The state derives income from taxing individuals and businesses.¹⁴² But unlike individuals who purchase goods, the government provides services to its citizens. From the tax revenue, the government has the option of saving a portion for rainy days or spending it on the people.¹⁴³ Of the portion allocated towards spending, it would be divided between necessary services or discretionary services.¹⁴⁴

Necessary services are services which are absolutely necessary to create or maintain a fully functional government.¹⁴⁵ The most widespread example is national defense which the government funds through compulsory taxation.¹⁴⁶ Discretionary services would be those that are not fundamental to the role of the government, like healthcare, social security, etc.¹⁴⁷ Enforcement of terrorist financing sanctions falls under the latter.

Similar to an individual's willingness to buy, a state's willingness to buy is grounded in the state's subjective expectations based on past events, current situation, and future outlook.¹⁴⁸ Here, it would turn on the state's geographic location, past history with terrorist encounters, current investment in the fight against terrorist financing, political climate, and expectation of other state's involvement.

Consequently, states will first allocate their resources toward the creation and maintenance of a stable government. Only then will these states consider the implementation of international terrorist financing sanctions.¹⁴⁹ As previously mentioned, the problem with the benefits that these sanctions produce is that it is a public good.¹⁵⁰ With receipt of benefits without payment of resources, some states will de-prioritize their investments for terrorist financing sanctions.

While a state is by no means an individual consumer, states may behave as such in their decision-making process. When a state bases its expenditures on both its ability and willingness to pay, it allows the international regulatory body of the U.N. to carefully tailor mandates and sanctions in order to maximize participation.

not contribute to the nation's defense, there is no possible way to exclude the consumer from this benefit.

¹⁴² MILLER & MAINE, *supra* note 90 at 3.

¹⁴³ See, e.g., Propensity to Consume, *supra* note 116; Propensity to Save, *supra* note 116.

¹⁴⁴ KATONA, *supra* note 111, at 15.

¹⁴⁵ See *id.* at 15 (Expenditures on necessities for the government arises from their obligation to provide the required services to the general population).

¹⁴⁶ See COOTER & ULEN, *supra* note 132, at 41.

¹⁴⁷ See KATONA, *supra* note 111, at 16-17 (These discretionary expenditures "are not inevitably necessary, not habitual, and not made on the spur of the moment.").

¹⁴⁸ See *id.* at 26.

¹⁴⁹ See *id.* at 14-15 (Terrorist financing sanctions are discretionary expenditures which would be invested in so long as the necessary obligations have been met.).

¹⁵⁰ See, e.g., COOTER & ULEN, *supra* note 132, at 41.

C. *How Terrorist Financing Sanctions Fall Within the “Willingness to Buy” Theory*

When we turn to the specific enforcement of international terrorist financing sanctions, there are four categories under which a country may fall: (1) willing and able, (2) able but unwilling, (3) willing but unable, and (4) unwilling and unable. The importance of sorting countries into the correct category is that it allows the U.N. to better draft specific measures to induce compliance. More specifically, the key objective is to persuade countries in categories 2 and 3 to implement enforcement measures against terrorist financing.

Category 1: Willing and Able. Category 1 countries, such as the U.S., do not require extra attention from the U.N. For example, the U.S. has already demonstrated that it is both willing and able to implement sanctions against terrorist financing sanctions.¹⁵¹ Therefore, no additional attention is required to increase or maintain their participation.¹⁵²

Category 2: Able, but Unwilling. Countries category 2 may be subdivided by the reason for why these countries are able, yet unwilling. The first subdivision would be countries that refuse on political and religious grounds. Countries, like Iran and Syria, which are state-sponsors of terrorism and likely will never agree to the implementation of terrorist financing sanction measures. Furthermore, these countries may even argue that these “terrorists” are freedom-fighters and fall outside the scope of the targeted group.¹⁵³

The second subdivision consists of countries that have neglected to implement terrorist sanctions due to the negative economic impact that may result. These countries are fully able to spare financial resources in furtherance of the international effort to stop or hinder terrorist financiers.¹⁵⁴ As seen with Macau, the downside to compliance with international measures is the possible negative impact borne by the game and casino industry. For Macau, abiding by the sanctions regime may possibly decrease revenue streams from the gaming industry. However, these sanctions are necessary in order to preserve the state’s economy.¹⁵⁵

As economic growth and success depends on continuing international security, most category 2 countries and/or provinces like Macau are willing to enforce terrorist financing sanctions. However, the allure of receiving all the benefits without having to put in the work tempts these countries to sit back and let category

¹⁵¹ See Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

¹⁵² See *id.* (The U.S. has already enacted and implemented terrorist financing sanctions, so there is no need for additional incentives.).

¹⁵³ See Section III.A. *infra* p. 19.

¹⁵⁴ See Macau Section I.B.3. *supra* p. 9.

¹⁵⁵ Terrorist attacks in the United States devastated the country’s economy. Not even Las Vegas was insulated from the fallout. See, e.g., *Gambling Revenue Fell 6.9% in April*, N.Y. TIMES, June 7, 2003, at C2 (As a result of the war with Iraq and the state of the economy, travel to Las Vegas decreased.); DEVOL, *supra* note 91, at 5; and *Attacks May Cost U.S. 1.8 Million Jobs*, N.Y. TIMES, Jan. 13, 2002, at A16 (“The Sept. 11 terrorist attacks will cost the nation more than 1.8 million jobs by the end of the year.”).

1 countries do all the work.¹⁵⁶ Unbeknownst to those in category 2, the success of the War on Terror turns heavily on a unified international effort.¹⁵⁷

Category 3: Unwilling, but Able. As earlier mentioned the application of the “willingness to buy” theory begins with the determination of the state’s ability to buy.¹⁵⁸ A problem arises when this cannot be established.¹⁵⁹ However, unlike individual consumers whose future actions are not bound by their association to a group, members in the U.N. have, in essence, pledged their willingness to promote international security through their participation within the U.N. itself.¹⁶⁰ So in the context of countries within the U.N., it is possible to arrive at the conclusion that a state is unable yet willing.¹⁶¹

When we are presented with a category 3 state, the problem arises from the inability of the state to expend their precious resources on discretionary expenditures when they are not even able to supply the basic services of a functional government. A “free rider” effect takes place as these countries enjoy the fruits of other states’ labor.¹⁶² However, unlike category 2 countries, the predicament cannot be ameliorated by the same inducements.

Tanzania, for example, has both an unstable government and terrorist organizations residing within its borders.¹⁶³ The government is filled with corrupt politicians and, as a result, these terrorist financing measures are left unenforced.¹⁶⁴ If the U.N. were to force Tanzania, by any means necessary, to implement and enforce terrorist financing sanctions, it would create more problems than it would solve.¹⁶⁵ Terrorist organizations thrive on ineffective government and this forced diversion from necessary services to discretionary services would bolster terrorism in Tanzania.¹⁶⁶ While a unified international effort is required to successfully inhibit the financing of terrorism, one-hundred percent cooperation may be an unnecessary evil in this case.

¹⁵⁶ See COOTER & ULEN, *supra* note 132, at 41.

¹⁵⁷ See *Financing Terrorism*, *supra* note 4, at 63 (“The multilateral effort is based on the notion that terrorists will exploit the weakest links in the global financial system.”).

¹⁵⁸ KATONA, *supra* note 111, at 25.

¹⁵⁹ *Id.* at 3-4 (The “willingness to buy” theory requires the consumer to first have the ability to buy, then the second part is to analyze whether the consumer would be willing to make the purchase.).

¹⁶⁰ U.N. Charter art. 103.

¹⁶¹ See *id.*

¹⁶² COOTER & ULEN, *supra* note 132, at 41.

¹⁶³ See Piombo, *supra* note 92, at 202.

¹⁶⁴ See *id.* at 200-01 (Effective implementation of terrorist financing sanctions will only affect the politician’s political survival. So even though these measures have been enacted, they have yet to be enforced.).

¹⁶⁵ See, e.g., *id.* at 201 (The Tanzanian government would face mass protests if it tried to crack down on terrorist finance routes); *id.* at 186 (More pressing matters that concerns the Tanzanian government include effective border security, control of illicit activities, and human trafficking).

¹⁶⁶ See, e.g., *id.* at 202 (Combating terrorism in Tanzania requires police and security forces. By implementing financing sanctions, nothing would be done to solve the underlying problem.).

Category 4: Neither Willing nor Able. Category 4 countries are both unable and unwilling to implement terrorist financing sanctions. Again, this category may be broken down into two subdivisions. One group is developing countries that are supported by Iran and other state sponsors of terrorism. The other category is developing countries that have not yet joined the U.N. This group, however, is extremely small.¹⁶⁷ There is no possible way for the U.N. or its regulatory bodies to extend sanctions beyond their jurisdiction. In lieu of the abundance of benefits a state derives from participation with the U.N., these countries will be granted full free-riding privilege.

III. FOUR-STEP SOLUTION

Much attention has been paid to the quality of the procedures through which organizations, entities, and even individuals are targeted. Some argue that too much discretion is left in the hands of government with no supervisory oversight.¹⁶⁸ Others claim that a more effective answer to the harsh treatment of sanctions is to create an intermediate level between no sanctions and sanctions.¹⁶⁹ This comment does not address the fairness question presented when a target has been listed and subjected to sanctions. Rather, this comment seeks to examine a separate flaw in the system - the lack of international implementation and enforcement of terrorist financing sanctions. In addition, this comment proposes a four-step solution designed to eliminate terrorist financing networks and bring devastating terrorist attacks to a halt.

A. Defining "Terrorism"

Before implementing any specific enforcement mechanism, the parameters in which the body operates must be defined. More specifically, "terrorism" needs an international definition.¹⁷⁰

One of the biggest threats of terrorism is the lack of consensus on "how to define [international] terrorism."¹⁷¹ While the international agreement may be difficult, the U.S., shockingly, has nineteen different definitions of terrorism in

¹⁶⁷ See *UN welcomes South Sudan as 193rd Member State*, UN NEWS CENTRE (July 14, 2011), available at <http://www.un.org/apps/news/story.asp?NewsID=39034&Cr=South+Sudan&Cr1=> (The United Nations currently has 193 Member States.); see also U.S. Dep't of State, *Independent States of the World* (July 29, 2009), available at <http://www.state.gov/s/inr/rls/4250.htm> (The U.S. Department of State currently recognizes 195 independent states in the world.).

¹⁶⁸ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, May 16, 2005, Warsaw, 16.V.2005.

¹⁶⁹ See generally Robert E. O'Leary, *Improving the Terrorist Finance Sanctions Process*, 42 N.Y.U. INT'L.L. & POL. 549 (2010).

¹⁷⁰ See, e.g., *There is no UN Definition for Terrorism*, *supra* note 9.

¹⁷¹ Craig S. Smith, *Debate Over Iraq Raises Fears of a Shrinking Role for NATO*, N.Y. TIMES, Jan. 26, 2003 (quoting Celeste A. Wallander, senior fellow at the Center for Strategic and International Studies).

federal law.¹⁷² With so many conflicting definitions, the prerequisite requirement lacks clarity.

The discrepancy arises through the manner in which terrorism is defined. Generally, “[t]errorism is defined variously by the perpetrators’ motives, methods, targets, and victims.”¹⁷³ For example, the U.N. attempted to distinguish between “terrorists” and “freedom fighters,” in which acts of violence in pursuit of self-determination do not constitute terrorism.¹⁷⁴ The approach, however, may “legitimate as non-terrorist certain groups nearly universally recognized as terrorist, including . . . Hezbollah, and Hamas.”¹⁷⁵

Others have found it more suitable to define terrorism solely by the method of violence.¹⁷⁶ For instance, the European Convention on the Suppression of Terrorism prescribes certain offenses, such as the use of a bomb, grenade, rocket, or automatic firearm that endanger persons, as terrorist acts.¹⁷⁷ In doing so, it explicitly removes the actor’s political judgment by defining most violent acts as not political.¹⁷⁸ This approach, however, leaves evil minded people with the opportunity to avoid terrorist liability by tailoring their methods outside of the statute’s scope.¹⁷⁹

Another approach to the definition of terrorism is to “focus on the victims of the attacks or the relationship between the perpetrators and the victims.”¹⁸⁰ The victims are selected as the target of violence and exist in a state of chronic fear.¹⁸¹ They are immobilized and become disoriented and/or compliant.¹⁸² The impact of

¹⁷² See 50 U.S.C. § 1801(c) (2000); 18 U.S.C.A. § 2331(1) (2001); 18 U.S.C.A. § 2331(5) (2001); 18 U.S.C.A. § 2332b(g)(5) (2008); 18 U.S.C. § 2332b(a)(1) (2008); 18 U.S.C. § 2332(d) (1996); 18 U.S.C.A. § 1992 (2007); 18 U.S.C. § 43 (2006); 18 U.S.C. § 921(a)(22) (2006); 8 U.S.C.A. § 1182(a)(3)(B)(iii) (2010); 22 U.S.C. § 2656f(d)(2) (2004); 22 U.S.C. § 2708(k)(1) (2008); Homeland Security Act of 2002, Pub. L. No. 107-296, § 2(15), 116 Stat. 2135, 2141 (2002); *id.* at 2242; Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, § 102(1)(A), 116 Stat. 2322, 2323-24 (2002); 49 U.S.C.A. § 44703(g)(3) (2010); Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, § 14(1), 110 Stat. 1541, 1549 (1996); Exec. Order No. 13224, § 3, 66 Fed. Reg. 49,079, 49,080; 28 C.F.R. § 0.85(1) (2003).

¹⁷³ *United States v. Yousef*, 327 F.3d 56, 107 n. 42 (2d Cir. 2003). *But see* Arab Convention on the Suppression of Terrorism, Apr. 22, 1998, IOR 51/001/2002 (Terrorism is defined, but it is only deemed a terrorist attack if it committed against the Arab states; otherwise, it is not an act of terrorism.).

¹⁷⁴ See, e.g., Declaration on Principles of International Law Concerning Friendly Relations Among Co-operating States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR Supp. No. 28, U.N. Doc. A/8028, at 21 (Oct. 24, 1971).

¹⁷⁵ *Yousef*, 327 F.3d at 107 n. 42.

¹⁷⁶ European Convention on the Suppression of Terrorism, Nov. 10, 1976, 1137 U.N.T.S. 93.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ See *Yousef*, 327 F.3d at 107 n. 42.

¹⁸⁰ *Id.*

¹⁸¹ ALEX P. SCHMID & ALBERT J. JONGMAN, POLITICAL TERRORISM 1-2 (1988).

¹⁸² *Id.* at 2.

the violence, however, extends beyond the victims to the audience.¹⁸³ This causes the audience to change their behavior to favor the terrorists' interest.¹⁸⁴

The problem should be obvious: how to fight terrorism when there is no universal definition? Applying the abstraction of Coase Theorem would help answer this question. This theorem states that “[w]hen transactions costs¹⁸⁵ are zero, an efficient use of resources results from private bargaining, regardless of the legal assignment of . . . rights.”¹⁸⁶ In the alternative, “[w]hen transaction costs are high enough to prevent bargaining, the efficient use of resources will depend on how . . . rights are assigned.”¹⁸⁷ The U.N. consists of 192 members,¹⁸⁸ many of whom offer different definitions of “terrorism.” If it is left to U.N. member states to create a definition, the cost of bargaining will be insurmountable.¹⁸⁹ The U.N. needs to create a reasonable definition for “terrorism” that is binding on all member states.¹⁹⁰ The definition itself is not as important as the clear-cut standard it creates. It provides notice of which actions are “terrorist” acts and which are not.¹⁹¹

B. Create a U.N. Committee to Determine the States' Category

Once a workable definition of terrorism is agreed upon, the second step requires the U.N. to create a committee (similar to the 1267 Committee) with the authority to place members into the three possible categories.¹⁹²

With a set definition in place, this committee would categorize each state. Countries fully partaking in the sanctioning effort (both willing and able) will fall under Category 1. These states would not be sanctioned; rather, the committee would bestow special privileges onto them.¹⁹³

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ COOTER & ULEN, *supra* note 132, at 85 (“transaction costs’ [encompasses] *all* impediments to bargaining.” So the vast amount of States with an interest in the definition of “terrorism” would constitute as an impediment.).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ United Nations Member States, *supra* note 167.

¹⁸⁹ See COOTER & ULEN, *supra* note 132, at 88 (“Bargaining becomes more costly and difficult as it involves more parties.”).

¹⁹⁰ This comment makes no effort to present a method in which this definition may be ascertained. It asserts the end conclusion that one must be established to aid the fight against terrorism. See, e.g., H.H.A. Cooper, *Terrorism: The Problem of the Problem of Definition*, 26 CHITTY'S L.J. 105 (1978) (“The problem of the definition of terrorism is more than semantic. It is really a cloak for a complexity of problems, psychological, political, legalistic, and practical.”); Michael P. Scharf, *Defining Terrorism as the Peace Time Equivalent of War Crimes: A Case of Too Much Convergence between International Humanitarian Law and International Criminal Law*, 7 ILSA J. INT'L & COMP. L. 391 (2001) (“The problem of defining ‘terrorism’ has vexed the international community for years.”).

¹⁹¹ The definition should not be set in stone and should be open to amendments and modification. Also, it should include a residual clause to allow new innovative tactics to fall within its categorization.

¹⁹² While there are four possible categories of willingness and ability, Category 4 is not an option. It is assumed that when a county joins the United Nations, they agree to be bound by the U.N. Charter. Therefore, all states must be “willing.” See Section II.C.4. *supra* p. 19.

¹⁹³ See Section III.C. *infra* p. 22.

Category 2 (unwilling, but able) and Category 3 (unable, but willing) states will be determined by analyzing their economic status. The spectrum will range from developed to undeveloped (or poor to rich). States determined to be developed will fall under Category 2; whereas those that are not will fall under Category 3. The duty of this committee is purely administrative with no enforcement mechanism. It has one simple task: determine the applicable category for each state.

C. Grant Regulatory Authority to Category 1 States over Category 2 and Category 3 States

Rather than have the U.N. create an enforcement mechanism, this authority will be delegated to states that are both willing and able (Category 1). This solution will allow Category 1 states to regulate terrorist financing sanctions of non-compliant states (Category 2 & 3). By expanding the authority of compliant countries, it addresses the enforcement gap within the international scheme.

For the compliant states, this is a double-edged sword. The material benefit here is that Category 1 states have the opportunity to usurp limited control over the affairs of a non-compliant state. But at the same time, the additional exercise of authority imposes a financial burden. For some, this may be an opportunity for Category 1 states to enhance its influence on the international stage. For others, like the U.S., it would be an opportunity to fix a broken system. With compliant states picking up the slack, it is more difficult for terrorist organizations to find and exploit the weak links.¹⁹⁴

To noncompliant states, the message is clear: implement effective terrorist financing sanctions or have someone else do it for you. Category 2 states will internalize this threat on their autonomy and respond accordingly.¹⁹⁵ However, Category 3 states have no choice but to have a third-party intervene in their affairs. To some, it is a blessing.¹⁹⁶ To others, like Tanzania, which are rooted in corruption, third-party intervention will corrode their political power.¹⁹⁷

The authority bestowed upon Category 1 states will make several impacts. Here, Category 2 states will immediately implement effective terrorist financing sanctions for fear of losing a portion of their sovereignty. Because these states are able to implement terrorist financing sanctions, the balancing of sovereignty with increased financial burden will usually fall in favor of sovereignty. Once these sanctions have been enacted, the committee (created in the previous section) will routinely review the states within each category. Therefore, Category 2 states may be

¹⁹⁴ See *Financing Terrorism*, *supra* note 4, at 63.

¹⁹⁵ Category 2 states have the ability to provide for effective terrorist financing sanctions; however, they choose not to as it run against one of their interests. The threat to autonomy should make Category 2 states very willing to comply. See Category 2 Section II.C.2. *supra* p. 17.

¹⁹⁶ Category 3 states do not have the ability to provide for effective terrorist financing sanctions. First, these states must provide the necessary services to its citizens, but until it can do that, its discretionary expenditures (i.e. funds for terrorist financing sanctions) are limited. See Category 3 in Section II.C.3. *supra* p. 18.

¹⁹⁷ See, e.g., Piombo, *supra* note 92, at 201.

re-categorized as Category 1 states when committee deems this state to have demonstrated its willingness and ability.

The other impact comes from the sharpened focus of Category 1 states on developing and implementing terrorist financing sanctions in Category 3 states. This will lessen the burden of each Category 1 state. Category 3 states will then receive the benefit of discretionary services without having the ability to provide for it.

In the end, this solution will guarantee an international effort against terrorist financing. Category 2 will become empty as the threat of decreased autonomy forces compliance. All that would remain are Category 1 & 3 with Category 1 states filling in where Category 3 states cannot.

D. Reduce the Involvement of the U.S. in Pursuing Terrorist Financiers

One of the biggest impediments to international involvement stems from the U.S.'s investment in the terrorist financing sanctions. With the U.S. taking such a dominant role, other countries feel no pressure to implement these sanctions for their safety. However, by initially expanding the possible scope of U.S. jurisdiction, it forces many other countries to enact effective sanctions.¹⁹⁸ With others participating in fighting terrorist financiers, the U.S.'s role will lessen.

International security is a free-ride good, meaning that all countries benefit from increased international security regardless of whether that country has invested in the effort.¹⁹⁹ It is also non-excludable.²⁰⁰ The U.S. would be unable to limit the benefits of their terrorist financing sanctions to only themselves and other participating countries.²⁰¹ Therefore, countries like Tanzania will reap the benefits despite being unable to pay into the system.²⁰² Also, countries/provinces like Macau will also be able to enjoy the benefits even if they do not want to participate.²⁰³

Once other states implement effective terrorist financing measures, the U.S. will be able to reduce its role. Also, because an international effort is in place, the lessened U.S. role will not bear negative consequences. If the U.S. were to limit its effort prior to the establishment of an international effort, the threat of terrorism would potentially increase. But, by decreasing its effort after, this issue is averted.

By decreasing the U.S.'s role, the goal is to integrate other states into the regulatory scheme. If a state believes its contribution has gone unnoticed, hidden in the shadow of the U.S., it will be hesitant to continue to contribute. By simultaneously removing the U.S. from the pedestal and increasing the participation

¹⁹⁸ See Section III.C. *supra* p. 22.

¹⁹⁹ COOTER & ULEN, *supra* note 118, at 41.

²⁰⁰ See *id.* at 40.

²⁰¹ See *id.*

²⁰² See Tanzania Section I.B.4. *supra* p. 11.

²⁰³ See Macau Section I.B.3. *supra* p. 9.

of other actors, the importance of an international commitment to the fight against terrorist financing will be solidified.

The weakness here is that the U.S. has been and continues to be a key target of terrorist attacks.²⁰⁴ Since the 9/11 attacks, the U.S. has been leading the charge with regards to terrorist financing sanctions.²⁰⁵ Having been attacked by terrorist organizations, the U.S. greatly values international security.²⁰⁶ Therefore, an increase in international participation will not alter the U.S.'s level of regulation.

IV. CONCLUSION

Terrorism and the havoc it wreaks are real. These attacks affect people in every corner of the world. From the rich to the poor, the concussive effect of terrorism knows no boundaries. While the U.S. was the primary target of the 9/11 attacks, the impact left the entire world in disarray.²⁰⁷

Terrorist attacks, however, can be prevented and/or mitigated. There are substantial financial resources that go into the execution of each terrorist attack.²⁰⁸ By eliminating financial support to terrorist organizations, their policies and methodologies will drastically change.²⁰⁹ The lives of innocent victims will be spared. No longer will civilians have to live in fear of uncertain death.

Theoretically, terrorist financing sanctions seem trivial and obvious. The issue lies in the implementation and enforcement of these sanctions. Similar to a colander, anything short of a unified international effort to block each loop-hole, financial resources will be diverted, but still flow through to terrorist organizations.²¹⁰ Every state needs to cooperate in order to effectively sever the ties between terrorist financiers and terrorist organizations.²¹¹

The problem arises when countries cannot or choose not to pay into the international system. In the current state of affairs, terrorist financiers can move and launder money with ease.²¹² A solution needs to be introduced which holds all countries to the U.N. Charter.²¹³ By usurping a portion of a nation's sovereignty, this

²⁰⁴ See, e.g., The Terrorist Attack Cycle: Selecting the Target, STRATFOR GLOBAL INTELLIGENCE, Sept. 30, 2005 (Terrorists will choose their targets carefully. "They prefer to generate a [high] number of casualties and generate more media attention.").

²⁰⁵ See Cramer, *supra* note 74 at 88.

²⁰⁶ After the 9/11 attacks, the dangers of terrorist attacks became a reality. The fact Americans were attacked on their own soil instills fear, which will affect one's valuation of goods/services. See, e.g., KATONA, *supra* note 111, at 26.

²⁰⁷ Floyd Norris & Jonathan Fuerbringer, *Stocks Tumble Abroad; Exchanges in New York Never Opened for the Day*, N.Y. TIMES, Sept. 12, 2001.

²⁰⁸ See, e.g., Hassan, *supra* note 44; *Palestinians get Saddam Funds*, *supra* note 48; *Hizbollah increases pay*, *supra* note 48.

²⁰⁹ See Frisch, *supra* note 3, at 1052.

²¹⁰ See *Financing Terrorism*, *supra* note 4, at 63.

²¹¹ See *id.*

²¹² See Basile, *supra* note 22, at 171; see also *Hezbollah around the World*, *supra* note 22.

²¹³ See U.N. Charter art. 41.

will ensure that all countries that are able to implement terrorist financing sanctions do so.²¹⁴ This will bear two effects: (1) all countries that are able to implement these sanctions will exploit the opportunity to expand their sovereignty; and (2) only countries that are unable will remain subject to third-party regulations.

In the end, this will maximize the number of participants in the fight against terrorist financiers. Terrorist organizations will starve and dissolve. The fight against terrorism will take a turn for the best. While international terrorist financing sanctions cannot prevent all acts of terrorisms, these sanctions will reduce the frequency and intensity of terrorist attacks.

²¹⁴ See Section III.C. *supra* p. 22.