

**SEND ME YOUR MONEY:
CONTROLLING INTERNATIONAL
TERRORISM BY RESTRICTING
FUNDRAISING IN THE UNITED STATES**

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I. INTRODUCTION

Policy relating to international terrorism has long been a hotly debated issue in the United States.¹ While virtually everyone would agree that terrorism is bad, few agree whether to bargain with terrorists, how to punish terrorists, or even who qualifies as a terrorist.²

However one chooses to define terrorism, its international impact cannot be underestimated.³ The U.S. State Department recently reported that while incidents of international terrorism have fallen over the last ten years, the number of victims has increased.⁴ According to FBI Director Louis Freeh, "Although the number of attacks directed at American interests remains comparatively low, the trend toward more large-scale incidents designed for maximum destruction, terror, and media impact actually places an increasing proportion of our population at risk."⁵ Religious fanatics were responsible for most terrorist acts in 1996.⁶ The most active terrorist group that year was the Kurdistan Workers Party, which was blamed for seventy-six minor

1. See, e.g., Terry Atlas, *2 Aides at Odds on Terrorism: Weinberger Opposes Shultz "Fight Back" Stance*, CHI. TRIB., Jan. 18, 1986, at C6 (discussing the dispute between Secretary of State George Shultz and Defense Secretary Caspar Weinberger regarding the Reagan Administration's policy on terrorism).

2. See *id.* (outlining the differences between the very aggressive Shultz and more cautious Weinberger approaches to dealing with terrorists); see also Roger Simon, *Going Rate for Hostages Too High*, CHI. TRIB., Nov. 9, 1986, at C5 (criticizing the Reagan Administration for bargaining with terrorists while claiming its official policy was "swift and effective retribution").

3. See Toni Marshall, *Terrorists Attack Less Often, Claim More Victims in 1996*, WASH. TIMES, May 1, 1997, at A13 (summarizing international terrorist activity in 1996). "In my view, the forces of militant extremism in the Middle East and Africa are among the greatest international dangers currently facing America and its vital interests. The deadly threat posed by international terrorists must not be underestimated." *Prohibition on Financial Transactions with Countries Supporting Terrorism Act of 1997: Hearings on H.R. 748 Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 105th Cong. 1 (1997) (statement of Rep. Bill McCollum).

4. See Marshall, *supra* note 3, at A13 (citing the State Department's annual report on international terrorism stating that the number of victims was "one of the highest in history").

5. *U.S. Counter-Terrorism Policy: Hearing before the Senate Comm. On Judiciary*, 105th Cong. (1998) (statement of Louis J. Freeh, Director, Federal Bureau of Investigation), available in LEXIS, News Library, Fednew File [hereinafter *Freeh's Prepared Statement*].

6. See Marshall, *supra* note 3, at A13 (stating that religious fanatics, especially Muslims, topped the list of those organizations responsible for international terrorist acts in 1996).

terrorist attacks in Germany.⁷ While the attacks of the Kurdistan Workers Party caused little damage and no casualties, Iran was probably responsible for over fifty murders of political dissidents between 1990 and 1996.⁸ The State Department reported that approximately twenty-five percent of the terrorist attacks were directed toward American targets outside of the United States.⁹

In response to terrorist incidents at home and abroad, Congress pushed terrorism back into the limelight and developed new preventative legislation. Congress passed 18 U.S.C. § 2339A in 1994.¹⁰ It was amended by the Antiterrorism and Effective Death Penalty Act of 1996.¹¹ These laws include provisions that make it illegal to solicit funds or donate money to international terrorist organizations.¹² In addition, President Clinton signed an executive order designed to protect the Middle East Peace Process in 1995.¹³ Congress hopes these measures will stem the tide of money being sent from the United States to foreign terrorist organizations.¹⁴ Following the federal lead, in 1996 Illinois became the first state in the country to pass legislation restricting terrorist funding.¹⁵

These laws could have a strong impact on international terrorism by cutting off a major source of funding for terrorist groups.¹⁶ However, the laws have had virtually no effect thus far because they are nearly impossible to enforce.¹⁷ This

7. *See id.*

8. *See id.*

9. *See id.*

10. 18 U.S.C. § 2339A (1994), *amended by* 18 U.S.C. § 2339A (Supp. II 1997).

11. Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections of 18 U.S.C. and 22 U.S.C.).

12. *See* 18 U.S.C. § 2339A (1994 & Supp. II 1997); 18 U.S.C. § 2339B(a) (Supp. II 1997).

13. *See* Exec. Order No. 12,947, 3 C.F.R. 319, 320 (1996).

14. *See* 18 U.S.C. § 2339B (Supp. II 1997) (Findings and Purpose).

15. *See* David Southwell, *Bill Banning Terror Funding Draws Fire: Arabs, Irish See Threat to Charities*, CHI. SUN-TIMES, May 19, 1996, at 8.

16. *See* Stephen J. Hedges & Terry Atlas, *War on Terror a Slippery Business: U.S. Has Many Tools, But Plans Can Backfire*, CHI. TRIB., Aug. 23, 1998, at C1 (quoting Raphael Perl, a specialist in international terrorism policy as stating, "You take away [Osoma] bin Laden's money and he's like a 90-year-old man without Viagra. . . . Ideology is great, but you got to eat.").

17. *See* Benjamin Wittes, *Anti-Terrorism Act: Rhetoric or Reality: One Year Later, Key Enforcement Tools Remain Unused*, LEGAL TIMES, June 2, 1997, at 1

comment will explore the new legislation and the problems with enforcement.

II. WHY ANTITERRORISM LAWS WERE PASSED

The antiterrorist funding restrictions respond to the government's fear that terrorist groups are using charitable inclinations of Americans to fund terrorist activities abroad.¹⁸ The 1995 Global Pattern of Terrorism study reported that the Palestinian group HAMAS, the radical Jewish groups Kach and Kahane Chai, the Sri Lankan group Liberation Tigers of Tamil Eelam, the Provisional Irish Republican Army (PIRA),¹⁹ and the Sikh groups of Babbar Khalsa and Khalistan Liberation Front received external aid from North America.²⁰

While it is clear that American money is sent to fund foreign terrorists, it is unclear how much of the money is actually raised in the United States.²¹ FBI Director Louis Freeh said, "We have been able to show the transfer of substantial cash funds from the United States to areas in the Mid-East where we could show Hamas received an even expenditure of those funds."²² However, Freeh admitted that FBI surveillance may have only uncovered a small percentage of this activity.²³ New York Senator Charles Schumer believes

(stating that none of the key provisions from recent antiterrorism legislation have been successfully enforced).

18. See Ben Barber, *Terrorism Law Pulls Purse Strings*, WASH. TIMES, May 26, 1996, at A1.

19. Recently one of Sinn Fein's largest American contributors, Charles "Chuck" Feeney, stopped donating money to the group after a disagreement with Mairead Keane, former head of the group's Washington office. See Liam Clarke, *RUC Celebrates Peace With a Jig*, SUNDAY TIMES (London), Oct. 11, 1998, available in LEXIS, World Library, Times File; see also *Backer of Sinn Fein Criticised*, FIN. TIMES (London), Jan. 24, 1997, at 8 (reporting the Irish-American businessman was Sinn Fein's single biggest contributor in 1996 with a donation of \$200,000).

20. See Barber, *supra* note 18, at A1 (listing terrorist groups receiving external aid from North American contributors per the 1995 Global Pattern of Terrorism report).

21. See Walter Pincus, *Freeh Says Hamas Raising Money Here: FBI Chief Testifies Funds Hard to Trace to Terrorist Groups Outside U.S.*, WASH. POST, Mar. 13, 1996, at A18; see also Matt Campbell, *'Modest, Strong' Site Named for Kelley*, KAN. CITY STAR, Sept. 11, 1998, at C1 (noting the FBI has identified people in the Kansas City area involved with fundraising and logistical support of international terrorist acts).

22. *Burden of Proof* (CNN television broadcast, Mar. 13, 1996) (transcript available at the office of the *Houston Journal of International Law*).

23. See Pincus, *supra* note 21, at A18. "FBI surveillance had been able to identify funds coming from Hamas to its members in the United States, but 'it's a very inadequate picture of what perhaps is much greater activity.'" *Id.*

HAMAS may get as much as fifty percent of its funding from the United States.²⁴ Steven Emerson testified before the Senate Foreign Relations Committee that HAMAS has a yearly budget of seventy to ninety million dollars, approximately half of which is received from the United States and other Western countries.²⁵

Some estimate that Kahane Chai and Kach may receive as much as seventy percent of their funding from the United States, predominately from Los Angeles and New York.²⁶ Ian Lustick, a professor at the University of Pennsylvania who monitors Israeli extremist groups, noted, "Fund-raising by Kach is well-known to take place in New York and Florida under the names of various front organizations claiming tax deductible status as charities for settler groups in Israel."²⁷

Another source estimates a network of ethnic Tamils provide two to three million dollars per month to the Liberation Tigers of Tamil Eelam.²⁸ Regardless of the exact figures, the awareness that U.S. funds are used by international terrorist groups triggered the push for restrictive legislation.²⁹

Critics of this legislation suggest that the laws were not passed for their substantive effect, but rather as a public

24. See *Hamas Raises Funds in U.S., Lawmaker Claims*, DEUTSCHE PRESSE-AGENTUR, Mar. 14, 1996, available in LEXIS, News Library, DPA File [hereinafter *Hamas Raises Funds*] (reporting Shumer's comments in calling upon the Clinton Administration to investigate front organizations for terrorist groups).

25. See *Terrorism and the Middle East Peace Process: Hearing Before the Subcomm. on Near Eastern and South Asian Affairs of the Senate Comm. on Foreign Relations*, 104th Cong. 26 (1996) [hereinafter *Hearings*] (statement of Steven Emerson, noted expert on terrorism) (noting that the other half of HAMAS' funding is provided by the Persian Gulf states). *But see* Robert Marquand, *Clinton Tries to Plug Pipeline to Hamas*, CHRISTIAN SCI. MONITOR, Mar. 15, 1996, at 1 (estimating HAMAS has raised only \$500 thousand to \$1 million in the United States, and Israeli officials estimate funding from the United States and Europe may only account for ten percent of HAMAS' funding).

26. See Jonathan Peterson, *Israeli Settlers Rely on U.S. Donations to Keep Effort Alive*, L.A. TIMES, Nov. 6, 1995, at A11.

27. Richard Sisk, *Terror Group's \$203 Frozen*, DAILY NEWS (New York), Nov. 10, 1995, at 15.

28. See Stefan Leader, *Cash for Carnage: Funding the Modern Terrorist*, JANE'S INTELLIGENCE REV., May 1, 1998, at 36.

29. See Barber, *supra* note 18, at A1.

relations stunt.³⁰ Georgia Congressman Bob Barr said, “Since none of these provisions have been used, I would have to conclude that these items were more politics than substance.”³¹ Others see the legislation as symbolic rather than substantive.³² It is difficult to predict whether the government will actively prosecute violations under the legislation, because enforcement problems may make the legislation virtually powerless in the fight against terrorism.³³

III. FEDERAL LEGISLATION

A. 1994: Providing Material Support to Terrorists

On September 13, 1994 Congress passed 18 U.S.C. § 2339A making it a crime to provide material support or resources to terrorists.³⁴ The statute defined material support or resources as “currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, but does not include humanitarian assistance to persons not directly involved in such violations.”³⁵ Investigations utilized in enforcement of the section were strictly limited by

30. See Wittes, *supra* note 17, at 1 (discussing the political and practical effects of the recent antiterrorism legislation, which was urgently passed, but its measures were not implemented after it had been in effect one year).

31. *Id.* This comment was made in reference to the Antiterrorism and Effective Death Penalty Act, but similar criticisms have been expressed with respect to earlier antifundraising efforts. See Barber, *supra* note 18, at A1.

32. See Marquand, *supra* note 25, at 1. “Stopping the funding is really more symbolic than anything,” says terrorism expert Neil Livingston, who runs an international crisis management agency in Washington.” *Id.*

33. See discussion *infra* Section V, for a review of the relevant problems with the federal and Illinois legislation.

34. See Pub. L. No. 103-322, 108 Stat. 2022. The offense read,

A person who, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation . . . or in preparation for or carrying out the concealment of an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 2339A (1994), amended by 18 U.S.C. § 2339A (Supp. II 1997) [footnotes omitted].

35. *Id.*

subsections (c)(1) and (c)(2).³⁶ Subsection (c)(1) only permitted investigations where it reasonably appeared that the individual or group knew they violated federal criminal law.³⁷ Investigations were further limited by subsection (c)(2), which restricted investigations that may interfere with activities protected by the First Amendment of the U.S. Constitution.³⁸ These investigative limitations prevented this statute from being enforced. The statute has since been extensively revised.³⁹

B. 1995 Executive Order

The next attempt to limit foreign terrorist fundraising occurred on January 24, 1995 when President Clinton issued an executive order to protect the Middle East Peace Process.⁴⁰ The executive order named twelve foreign organizations⁴¹ that

36. See *id.* (containing state of mind requirements and free speech limitations on the statute).

37. See *id.* Subsection (c)(1) read,

Within the United States, an investigation may be initiated or continued under this section only when facts reasonably indicate that—(A) in the case of an individual, the individual knowingly or intentionally engages, has engaged, or is about to engage in the violation of this or any other Federal criminal law; and (B) in the case of a group of individuals, the group knowingly or intentionally engages, has engaged, or is about to engage in the violation of this or any other Federal criminal law.

Id.

38. See *id.* Subsection (c)(2) read, “An investigation may not be initiated or continued under this section based on activities protected by the First Amendment to the Constitution, including expressions of support or the provision of financial support for the nonviolent political, religious, philosophical, or ideological goals or beliefs of any person or group.” *Id.*

39. See H.R. REP. NO. 104-383, at 82 (1995) (arguing that the original § 2339A investigative limitations were ineffective and proposing the deletion of subsections (c)(1) and (c)(2)); see also 18 U.S.C. § 2339A (Supp. II 1997) (amending § 2339A to exclude subsections (c)(1) and (c)(2), adding offenses under subsection (a), and changing the definition of “material support and resources” under subsection (b)).

40. See Exec. Order No. 12,947, 3 C.F.R. 319, 319–320 (1996). “Attempts to disrupt the Middle East peace process through terrorism by groups opposed to peace have threatened and continue to threaten vital interests of the United States, thus constituting an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.” President’s Message to the Congress on Terrorists Who Threaten to Disrupt the Middle East Peace Process, PUB. PAPERS 95, 95 (1995) [hereinafter President’s Message to the Congress].

41. These organizations are Abu Nidal Organization, Democratic Front for the Liberation of Palestine, Hizballah, Islamic Gama’at, Islamic Resistance Movement, Jihad, Kach, Kahane Chai, Palestinian Islamic Jihad-Shiqaqi

had threatened violence against the peace process, and it empowered the Secretary of State, in coordination with the Secretary of the Treasury and the Attorney General, to designate additional groups as terrorists.⁴² Property in the United States owned by these designated organizations and their members may be blocked.⁴³ The order prohibited all transactions between these designated persons or groups and citizens of the United States.⁴⁴ It also prohibits attempts to avoid the executive order.⁴⁵ The executive order is broad since the ban also prohibits donations for humanitarian causes.⁴⁶

On January 25, 1995 the Department of the Treasury issued a notice identifying thirty-one entities whose assets

faction, Palestine Liberation Front-Abu Abbas faction, Popular Front for the Liberation of Palestine, and Popular Front for the Liberation of Palestine-General Command. See Exec. Order 12,947, 3 C.F.R. 319, 321 (1996).

42. See *id.* at 5079; see also President's Message to the Congress, *supra* note 40, at 74.

I have authorized the Secretary of State to designate additional foreign persons who have committed, or pose a significant risk of committing, acts of violence that have the purpose or effect of disrupting the Middle East peace process, or who assist in, sponsor, or provide financial, material or technological support for, or services in support of, such acts of violence. Such designations are to be made in coordination with the Secretary of the Treasury and the Attorney General.

Id.

43. See Exec. Order 12,947, 3 C.F.R. 319, 319 (1996); see also President's Message to the Congress, *supra* note 40, at 95.

I . . . [have issued] an executive order that: Blocks all property, including bank deposits, of foreign persons or organizations designated in the Executive order or pursuant thereto, which is in the United States or in the control of United States persons, including their overseas branches; and Prohibits any transaction or dealing by United States persons in such property, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of such designated persons.

Id.

44. "[A]ny transaction or dealing by United States persons or within the United States in property or interests in property of the persons designated in or pursuant to this order is prohibited, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of such persons." Exec. Order No. 12,947, 3 C.F.R. 319, 319 (1996).

45. "[A]ny transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in this order, is prohibited." *Id.*

46. See 141 CONG. REC. S10,818 (daily ed. July 27, 1995) (statement of President Clinton).

were blocked because they acted for, or on behalf of, the twelve organizations identified in the executive order.⁴⁷ The notice also identified eighteen individuals who were leaders of the groups and nine name variations or pseudonyms used by the leaders.⁴⁸ The executive order froze approximately \$800 thousand in funds of Palestinian groups by March 1995.⁴⁹ Two of the three individual accounts that held a majority of the impounded funds were HAMAS related.⁵⁰ Even small amounts of cash were frozen in U.S. accounts. In November 1995 \$203 raised by Kahane Chai was frozen in a New York account.⁵¹

Despite these results, FBI officials and analysts believe the executive order was largely unsuccessful in halting fundraising by the designated terrorist organizations.⁵² The order may not have been widely enforced due to concerns about infringing upon the organizations' civil liberties.⁵³ Pressure from Muslim groups on the Clinton Administration may also have slowed enforcement.⁵⁴ Despite these issues, on January 21, 1997 and January 21, 1998 the President issued notices continuing enforcement of the executive

47. See List of Specially Designated Terrorists Who Threaten to Disrupt the Middle East Peace Process, 60 Fed. Reg. 5084 (Dep't Treasury 1995).

48. See *id.* at 5085–86. These individuals include Abu Abbas, Abu Nidal, Shaykh Umar Abd Al Rahman, Dr. Ayman Al Zawahiri, Abbud Al-Zumar, Abd Al Aziz Awda, Shaykh Muhammad Fadlallah, George Habash, Nayif Hawatma, Mohammad Shawqi Islambouli, Ahmad Jabril, Imad Fa'iz Mughniyah, Talal Muhammad Rashid Naji, Hasan Nasrallah, Talat Fouad Qasem, Fathi Shaqaqi, Subhi Tufayli, and Shaykh Ahmad Yasin. See *id.*

49. See Marquand, *supra* note 25, at 1.

50. See *id.*

“Two of the accounts are Hamas-related, those of Mohammed Salah, a Palestinian American now in an Israeli prison, and Musa Abu Marzuk, a U.S. resident considered a political leader of Hamas who is in a New York jail awaiting an extradition hearing. Mr. Salah was detained with \$650,000 that he confessed was for Hamas military operations.”

Id.

51. See Sisk, *supra* note 27, at 15 (quoting a U.S. Treasury official who stated, “We never expected to find significant amounts of cash. The goal was to prohibit fund-raising efforts in the U.S.”).

52. See Barber, *supra* note 18, at A1. For instance, Collette Avital, the Israeli consul general in New York, said that she knew of \$1 million raised by Kach in New York at the time the \$203 was impounded. See Sisk, *supra* note 27, at 15. It appears the \$203 was just the tip of the iceberg.

53. See Barber, *supra* note 18, at A1 (stating that this concern applied to situations where groups collected funds for legitimate purposes).

54. See *id.*

order.⁵⁵ In July 1998 President Clinton noted his intent to “continue to exercise the powers at my disposal to apply economic sanctions against extremists seeking to destroy the hopes of peaceful coexistence between Arabs and Israelis”⁵⁶

Hours after the U.S. retaliatory strikes on a pharmaceutical factory in Sudan and a training camp in Afghanistan, President Clinton signed an executive order asking the Treasury Department to add bin Laden to the list of designated terrorists.⁵⁷ Bin Laden was suspected of several terrorist attacks in Africa.⁵⁸ While the order prohibits all Americans and U.S. companies from engaging in financial transactions with bin Laden,⁵⁹ a senior Clinton Administration official said the order would have a very limited effect because few of bin Laden’s assets are likely to fall under the scope of the law.⁶⁰ However, the official said the Clinton Administration hoped other countries would follow the United States in freezing bin Laden’s assets.⁶¹

C. *Comprehensive Anti-Terrorism Act of 1995*

Following the 1995 executive order, the U.S. House of Representatives considered the Comprehensive Anti-

55. See Notice of January 21, 1997—Continuation of Emergency Regarding Terrorists Who Threaten to Disrupt the Middle East Peace Process, 62 Fed. Reg. 3439 (1997); see Notice of January 21, 1998—Continuation of Emergency Regarding Terrorists Who Threaten to Disrupt the Middle East Peace Process, 63 Fed. Reg. 3445 (1998).

56. President’s Message to the Congress Reporting on Terrorists Who Threaten the Middle East Peace Process, 34 WKLY COMP. PRES. DOC. 1449, 1450 (July 21, 1998).

57. See Exec. Order No. 13,099, 63 Fed. Reg. 45,167 (1998); see also *Clinton Freezes bin Laden Assets*, NEWS AND OBSERVER, Aug. 23, 1998, at A1 (reporting that Clinton signed the executive order only hours after U.S. military strikes in Afghanistan and Sudan).

58. See Stephen J. Hedges, *Bin Laden Just One of Many; U.S. Overestimates Indicted Terrorist’s Reach, Experts Say*, CHI. TRIB., Nov. 8, 1998, at C1 (reporting bin Laden was the FBI’s prime suspect because two months earlier he was charged by a New York grand jury with building a terrorist network targeting U.S. interests).

59. See Exec. Order No. 13,099, 63 Fed. Reg. at 45,167 (adding bin Laden to the list of individual terrorists designated by the Secretary of State under Executive Order 12,947).

60. See *Clinton Freezes*, *supra* note 57, at A1 (reporting that a White House official did not believe the order would significantly impact bin Laden’s financial empire).

61. See *id.* (calling the executive order a formal legal step).

Terrorism Act of 1995.⁶² This Act was never passed into law.⁶³ However, many of the changes included in the Act were incorporated into the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).⁶⁴ The Comprehensive Anti-Terrorism Act of 1995 proposed to modify 18 U.S.C. § 2339A(a) by adding sections 956 and 2332b to the list of applicable offenses.⁶⁵ The Act also would have modified the definition of material support.⁶⁶ The proposed new definition of material support or resources included “currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”⁶⁷ Under the proposed new definition, material support need not be given to a designated terrorist organization, but must be used in furtherance of a specifically listed criminal offense.⁶⁸

62. See H.R. 1710, 104th Cong. (1995), H.R. REP. NO. 104-383, at 2 (1995).

63. See George B. Griffin, *White House, Congress Active: Bills Aim to Gather Information*, SUNDAY TELEGRAM (Worcester, MA), Oct. 27, 1996, at A21.

64. Compare H.R. 1710 § 103, with 18 U.S.C. § 2339A (Supp. II 1997).

65. See H.R. REP. NO. 104-383, at 82. See also H.R. 1710 § 103 for the proposed 18 U.S.C. § 2339A(a) language, which read,

Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for or in carrying out, a violation of section 32, 37, 351, 844(f), or (i), 956, 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, 2332a, or 2332b of this title or section 46502 of [T]itle 49, or in preparation for or in carrying out the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than ten years, or both.

Id.

66. See H.R. REP. NO. 104-383, at 82 (maintaining the original categories, but specifically excluding medicine or religious materials from the definition of “material support or resources”).

67. H.R. 1710 §103. The only difference from the 1994 definition is the inclusion of “except medicine or religious materials” to replace “does not include humanitarian assistance to persons not directly involved in such violations.” Compare 18 U.S.C. § 2339A(a) (1994), with H.R. 1710 § 103. Also, medicine “should be understood to be limited to the medicine itself, and does not include the vast array of medical supplies.” H.R. REP. NO. 104-383, at 82. “Religious materials’ should not be read to include anything that could be used to cause physical injury to any person. It is meant to be limited to those religious articles typically used during rituals or teachings of a particular faith, denomination, or sect.” *Id.*

68. See H.R. REP. NO. 104-383, at 82.

Another modification to 18 U.S.C. § 2339A proposed by the Comprehensive Anti-Terrorism Act of 1995 was the omission of subsections (c)(1) and (c)(2).⁶⁹ The House of Representatives found that (c)(1) was unworkable because it precluded investigation or prosecution unless the Attorney General certified evidence of intent to violate federal law.⁷⁰ Since criminal intent can generally only be shown through circumstantial evidence or indirect proof, it can rarely be demonstrated without extensive investigation.⁷¹ Consequently, subsection (c)(1) negated the efficacy of section 2339A.⁷² Subsection (c)(2) further limited investigations where First Amendment protections could be invoked.⁷³ Rather than legislatively limiting possible constitutional conflicts, the House Judiciary Committee determined that the Attorney General should be responsible for determining the constitutional boundaries of government actions.⁷⁴

In addition to the proposed modifications to section 2339A, the Comprehensive Anti-Terrorism Act of 1995 added section 2339B which banned the material support provision for terrorist organizations.⁷⁵ This offense read,

Whoever, within the United States, knowingly provides material support or resources in or affecting interstate or foreign commerce, to any organization which the person knows or should have known is a terrorist organization and that has been designated under section 212(a)(3)(B)(iv) of the Immigration and Nationality Act as a terrorist organization shall be fined under this title or imprisoned not more than 10 years, or both.⁷⁶

This section differs from section 2339A because it does not specify acts of terrorism that the material support would apply to, but it would require the designation of specific

69. See H.R. 1710 § 103 (including no subsections (c)(1) and (c)(2)); see also H.R. REP. NO. 104-383, at 82 (explaining the reasons for the deletions).

70. See H.R. REP. NO. 104-383, at 82.

71. See *id.*

72. See *id.*

73. See *id.*

74. See *id.*

75. See H.R. 1710, 104th Cong. § 102 (1995).

76. H.R. 1710 § 102.

terrorist organizations.⁷⁷ The section was designed to restrict material support for known terrorist organizations even if the donor does not know exactly what terrorist act their donation is supporting.⁷⁸

D. Antiterrorism and Effective Death Penalty Act of 1996

The AEDPA was passed one year after the bombing of the Federal Building in Oklahoma City.⁷⁹ The purpose of the legislation is to “provide the Federal Government the fullest possible basis, consistent with the Constitution, to prevent persons within the United States, or subject to the jurisdiction of the United States, from providing material support or resources to foreign organizations that engage in terrorist activities.”⁸⁰ The law includes provisions that deny entrance visas to members and representatives of designated foreign terrorist organizations, prohibit foreign terrorist fundraising, reform habeas corpus, and expedite asylum procedures.⁸¹

The AEDPA adopted some of the changes proposed in the Comprehensive Anti-Terrorism Act of 1995 for 18 U.S.C. § 2339A.⁸² For example, the definition of material support proposed by the Comprehensive Anti-Terrorism Act was

77. Compare H.R. 1710 § 102 (relating to specific violations), with H.R. 1710 § 103 (relating to specific organizations).

78. Compare H.R. 1710 § 103 (“Whoever . . . provides material support . . . knowing or intending that they be used in . . . *carrying out, a violation . . . of this title . . . [violates section 2339A],*) (emphasis added), with H.R. 1710 § 102 (Whoever knowingly provides “material support to a foreign organization, that a person knows or should have known is *a terrorist organization . . . [violates section 2339B]*”) (emphasis added).

79. See 142 CONG. REC. H3605, H3613 (daily ed. Apr. 18, 1996) (statement of Rep. Lucas of Oklahoma). The Oklahoma City bombing took place April 19, 1995. See *id.* The Anti-terrorism and Effective Death Penalty Act of 1996 passed April 24, 1996. See Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections of 18 U.S.C. and 22 U.S.C.).

80. 18 U.S.C. § 2339B (Supp. II 1997) (Findings and Purpose).

81. See The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 101-108, 303, 422, 110 Stat. 1214 (codified as amended in scattered sections of 18 U.S.C. and 22 U.S.C.); see also CONG. REC. H3605, H3606 (daily ed. Apr. 18, 1996) (statement of Rep. Hyde) (noting that raising money in the United States is the “lifeblood” of many terrorist organizations).

82. Compare H.R. 1710 § 103, with 18 U.S.C. § 2339A (Supp. II 1997) (adopting the definition of “material support” proposed by the Comprehensive Anti-Terrorism Act but swapping the section contents and adding violations to the list of offenses).

adopted by the AEDPA.⁸³ However, the AEDPA expanded the offense list proposed by section 2339A of the Comprehensive Anti-Terrorism Act.⁸⁴

The largest terrorist funding related change in AEDPA compared to the failed Comprehensive Anti-Terrorism Act of 1995, is the expansion of section 2339B. The name of the section was changed to “Providing Material Support or Resources to Designated Foreign Terrorist Organizations.”⁸⁵ The prohibition now states, “Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 10 years, or both.”⁸⁶ Additionally, financial institutions are required to freeze assets belonging to foreign terrorist organizations.⁸⁷ The section explicitly defines the correct

83. The definition of material support and resources reads, “currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.” 18 U.S.C. § 2339A(b) (Supp. II 1997). *Compare id.*, with H.R. 1710 § 103 (reciting the same definition).

84. See 18 U.S.C. § 2339A(a) (Supp. II 1997). The new provision reads,

Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section[s] 32, 37, 81, 175, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332(c), or 2340A of this title or section 46502 of [T]itle 49, or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both.

Id. *Compare id.*, with H.R. 1710 § 103 (listing fewer violations).

85. 18 U.S.C. § 2339B (Supp. II 1997). *Compare id.*, with Comprehensive Anti-Terrorism Act of 1995, H.R. 1710 § 102 (entitling section 2339B, “Providing Material Support to Terrorist Organizations”).

86. 18 U.S.C. § 2339B(a)(1) (Supp. II 1997). See 18 U.S.C. § 2339A(b) (Supp. II 1997) defining material support or resources as “currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”

87. See 18 U.S.C. § 2339B(a)(2) (Supp. II 1997). Subsection (a)(2) reads,

Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in

procedure for enforcement of the provisions.⁸⁸ It includes provisions regulating injunctions, extraterritorial jurisdiction, investigations, classified information in civil proceedings, introduction of classified information, taking of trial testimony, appeals, and interlocutory appeals.⁸⁹

IV. STATE LEGISLATION

A. Illinois Legislation

On January 1, 1997 legislation went into effect⁹⁰ making Illinois the first state in the country to outlaw contributions to terrorist groups.⁹¹ The legislation was inspired by former Bridgeview used car dealer Muhammad Salah, who claimed that the Chicago area was a major source of funding for HAMAS.⁹² Salah, a leader in HAMAS' military wing, claims to have delivered large sums of money to members in Palestine and occupied territories.⁹³ In addition, Israeli officials submitted evidence of bank transfers from Chicago in the extradition hearing of Mousa Abu Marzook,⁹⁴ a political leader of HAMAS.⁹⁵ Rep. Tom Cross, a cosponsor of the legislation, said, "There was a concern there has been funding in the state of Illinois that was disguised as

which a foreign terrorist organization, or its agent, has an interest, shall-(A) retain possession of, or maintain control over, such funds; and (B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.

Id.

88. See 18 U.S.C. § 2339B(c),(d),(e),(f) (Supp. II 1997).

89. See *id.*

90. See 720 ILL. COMP. STAT. ANN. 5/29C-5 (Michie Supp. 1998); 720 ILL. COMP. STAT. ANN. 5/29C-10 (Michie Supp. 1998); 720 ILL. COMP. STAT. ANN. 5/29C-15 (Michie Supp. 1998).

91. See Southwell, *supra* note 15, at 8.

92. See Dave McKinney, *Edgar Bars Terrorist Fund-Raising*, CHI. SUN-TIMES, July 19, 1996, at 53. In June 1997, the Federal government filed a civil suit against the Quranic Literacy Institute and Salah, an Institute volunteer, after seizing their assets and claiming they were funneling money to HAMAS. See William Gaines & Andrew Martin, *Terror-Funding Probe Touches Suburban Group*, CHI. TRIB., Sept. 8, 1998, at 1.

93. See Southwell, *supra* note 15, at 8.

94. See Teresa Puente & Stephen Franklin, *Fight Persecution with Politics, Muslims Told*, CHI. TRIB., Jan. 2, 1997, at D1.

95. "[Mousa Abu Marzook] is the political leader of Hamas under detention in New York pending extradition to Israel." *Id.*

fundraising for charitable or nonprofit organizations, and the money was really used for terrorist activities.”⁹⁶

The bill was drafted with the support of the Jewish United Fund of Chicago and the Jewish Community Relations Council (JCRC).⁹⁷ The JCRC was concerned about the terrorist links in Chicago.⁹⁸ Michael Kotzin, one of the originators of the bill, commented, “It’s a cruel paradox that as peace is on the upswing, the violence has escalated.”⁹⁹

The Illinois legislation restricts both soliciting and donating money for terrorist groups.¹⁰⁰ The solicitation provision states as follows:

A person, charitable organization, professional fund raiser, or professional solicitor commits solicitation of material support or resources in support of international terrorism when he, she, or the charitable organization raises, solicits, or collects material support or resources intending that the material support or resources will be used, in whole or in part to plan, prepare, carry out, or escape from an act or acts of international terrorism.¹⁰¹

96. *Id.*

97. *See* Southwell, *supra* note 15, at 8.

98. *See id.* The director of JCRC, Michael Kotzin, said, “[s]uddenly before us is all sorts of evidence with Chicago links.” *Id.*

99. *Id.*

100. *See* 720 ILL. COMP. STAT. ANN. 5/29C-10(a), 5/29C-15(a) (Michie Supp. 1998).

101. 720 ILL. COMP. STAT. ANN. 5/29C-10(a) (Michie Supp. 1998). A charitable organization is defined as

[A]ny benevolent, philanthropic, patriotic, or eleemosynary person or one purporting to be such which solicits and collects funds for charitable purposes and includes each local, county, or area division within this State of such charitable organization, provided such local, county or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

225 ILL. COMP. STAT. ANN. 460/1(a) (Michie 1993). A professional fund raiser is

[A]ny person who for compensation or other consideration, conducts, manages, or carries on any solicitation drive or campaign in this State or from this State or on behalf of a charitable organization residing within this State for the purpose of soliciting contributions for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds himself out to persons in this State as independently engaged in the business of soliciting contribution for such purposes. A bona fide director, officer, employee or unpaid volunteer of a charitable organization shall not be deemed a professional fund raiser unless the person is in a management position

The contribution provision states as follows:

A person commits providing material support or resources for international terrorism when he or she provides material support or resources to a person or an organization, intending that the material support or resources will be used, in whole or in part, to plan, prepare, carry out, or escape from an act or acts of international terrorism.¹⁰²

The article defines “international terrorism” as follows:

Activities that: (i) involve a violent act or acts, perpetrated by a private person or non-governmental entity, dangerous to human life that would be a felony under the laws of the State of Illinois if committed within the jurisdiction of the State of Illinois; and (ii) occur outside the United States; and (iii) are intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of government by assassination or kidnapping.¹⁰³

The terrorist activities are not required to be directed toward Americans to fall under this provision.¹⁰⁴

The Illinois statute’s definition of “material support and resources” is almost identical to the federal definition.¹⁰⁵ The Illinois provision defines material support or resources as “currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel,

and the majority of the individual’s salary or other compensation is computed on a percentage basis of funds to be raised, or actually raised.

225 ILL. COMP. STAT. ANN. 460/1(d) (Michie 1993). “Professional solicitor” means any natural person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes from persons in this State or from this State or on behalf of a charitable organization residing within this State.” 225 ILL. COMP. STAT. ANN. 460/1(j) (Michie 1993).

102. 720 ILL. COMP. STAT. ANN. 5/29C-15(a) (Michie Supp. 1998).

103. *Id.* 5/29C-5.

104. *See id.* The statute states that international terrorism includes “activities . . . intended to intimidate or coerce a civilian population.” *Id.* (emphasis added).

105. Compare 18 U.S.C. § 2339A(b) (Supp. II 1997), with 720 ILL. COMP. STAT. ANN. 5/29C-5 (Michie Supp. 1998).

transportation, and other physical assets.”¹⁰⁶ The main difference between the Illinois and the federal legislation is that Illinois does not explicitly exempt medicine or religious materials from the definition of “material support and resources.”¹⁰⁷ However, Illinois does limit investigations to protect the constitutionality of the legislation.¹⁰⁸ These restrictions resemble the original 18 U.S.C. § 2339A(c)(2) passed in 1994¹⁰⁹ that was removed under the AEDPA in 1996.¹¹⁰ The Illinois provision only allows investigations where the group or the individual has knowingly and intentionally engaged in the violation of a state criminal law.¹¹¹ First Amendment protection is provided by the clause stating that:

[A]n investigation may not be initiated or continued under this Section based on activities protected by the First Amendment to the United States Constitution, including expressions of support or the provision of financial support for the nonviolent political, religious, philosophical, or ideological goals or beliefs of any person or group.¹¹²

While these provisions are designed to ensure the constitutionality of the legislation, like the federal provisions that they resemble, the provisions may also render the legislation unenforceable.¹¹³

106. 720 ILL. COMP. STAT. ANN. 5/29C-5 (Michie Supp. 1998).

107. Compare 18 U.S.C. § 2339A(b) (Supp. II 1997) (exempting medicine or religious materials from the definition of material support), with 720 ILL. COMP. STAT. ANN. 5/29C-5 (Michie Supp. 1998) (containing no exemptions for medicine or religious materials).

108. See 720 ILL. COMP. STAT. ANN. 5/29C-15(b)(2) (Michie Supp. 1998).

109. Compare 18 U.S.C. § 2339A(c)(2) (1994), amended by 18 U.S.C. § 2339A(c)(2) (Supp. II 1997) (protecting First Amendment rights against other provisions of the legislation), with 720 ILL. COMP. STAT. ANN. 5/29C-15(b)(2) (Michie Supp. 1998) (excluding activities protected by the First Amendment from the scope of the legislation).

110. See 18 U.S.C. § 2339A (Supp. II 1997) (Amendments).

111. See 720 ILL. COMP. STAT. ANN. 5/29C-15(b)(1) (Michie Supp. 1998).

112. *Id.* 5/29C-15(b)(2).

113. See H.R. REP. NO. 104-383, at 82 (1995) (proposing that the explicit First Amendment protections of § 2339A(c)(2) in the 1994 legislation be deleted because such provisions hinder enforcement of the statute). “As former Attorney General William P. Barr succinctly stated at the June 12th hearing on this bill, Article III judges are the appropriate arbiters of Constitutional norms.” *Id.*

B. Other States' Legislation

In Maryland, antiterrorism legislation was introduced in February 1996.¹¹⁴ This bill made it a criminal offense to

solicit contributions if the person has actual knowledge that the contributions solicited are for an international terrorist organization and will be used for violent and illegal acts of international terrorism; or make a contribution if the person has actual knowledge that the contribution is for an international terrorist organization and will be used for violent and illegal acts of international terrorism.¹¹⁵

The Maryland proposal defined contribution as “the gift, transfer, or promise of: money; property or services . . . or any other thing of value.”¹¹⁶ This definition is unique because it would allow convictions for promises of money even if no funds were actually transferred.¹¹⁷ Because legislators expressed concern about this definition and other constitutional issues, the bill was rejected.¹¹⁸

Wisconsin legislators have also considered antiterrorism legislation. Although they were unsuccessful on their first attempt,¹¹⁹ a new bill was introduced in September 1997 that resembles the Illinois legislation.¹²⁰ The bill amends a current statute that requires charitable organizations to register with the Department of Regulation and Licensing.¹²¹ The

114. See Act Concerning Contributions—International Terrorism, H.B. 973, 1996 Leg. Sess. (Md. 1996) (LEXIS).

115. *Id.*

116. *Id.*

117. See *id.* Compare *id.* (providing that a “promise” of material support is sufficient to constitute a contribution), with 720 ILL. COMP. STAT. ANN. 5/29C-5 (Michie Supp. 1998) (defining “material support and resources” as only the transfer of physical assets with no provision for the “promise” of an asset transfer).

118. See Victoria Meyerov, Comment, *The Buck Stops Here: Illinois Criminalizes Support for International Terrorism*, 30 J. MARSHALL L. REV. 871, 889–90 (1997).

119. See *id.* at 890.

120. See A.B. 504, 1997 Leg. Sess. § 2 (Wis. 1997) (making it a crime to solicit material support for or to provide material support to international terrorism). Compare *id.*, with 720 ILL. COMP. STAT. ANN. 5/29C-10, 5/29C-15 (Michie Supp. 1998) (making it a felony to solicit or provide material support or resources to international terrorism).

121. See A.B. 504 § 1 (amending Wis. Stat. § 440.475 to allow the state to deny, limit, suspend, or revoke the license of a charitable organization or may

legislation calls for penalties against any organization that makes false statements, violates other rules of the subchapter, or violates section 947.07.¹²² Section 4 of the bill states that no person may solicit, collect, or provide material support “if he or she knows that the material support is intended to be used in whole or in part to plan, prepare, commit or escape after committing an act of international terrorism.”¹²³ The provision defines material support as currency or securities, financial services, personnel, transportation, training, lodging, safe houses or other facilities, false documentation or identification, or any physical assets, including communications equipment, dangerous weapons, poisonous substances and explosives.¹²⁴ This definition of material support is similar to both the Illinois definition and the federal definition.¹²⁵ The Wisconsin bill also adopts a broad definition of “act of international terrorism.”¹²⁶ Since this bill has not been passed, it remains to be seen whether Wisconsin (or any other state) will join Illinois in creating a state action against international terrorist funding.

reprimand a charitable organization for providing or seeking support for international terrorism); *see also* WIS. STAT. ANN. § 440.42(1) (West 1998) (requiring charitable organizations to register with the Wisconsin Department of Regulation and Licensing).

122. *See* A.B. 504 § 1. The penalties include having the charitable organization’s registration denied, limited, suspended or revoked. *See id.*

123. *Id.* § 4.

124. *See id.*

125. *Compare* A.B. 504, § 4, *with* 720 ILL. COMP. STAT. ANN. 5/29C-5 (Michie Supp. 1998), *and* 18 U.S.C. § 2339A(b)(Supp. II 1997).

126. A.B. 504, § 4 (defining “international terrorism” generally as felonious acts of violence committed outside the United States and intended to influence government policy or intimidate or coerce civilian populations). The definition of act of international terrorism under this bill is,

an act committed by a private person to which all of the following applies: (1) the act occurs outside the United States; (2) the act would be a felony under chs. 939 to 951 if committed in this state; (3) the act causes bodily harm, great bodily harm or death to another or, in committing the act, the person uses force or violence or the threat of force or violence; (4) the act is intended to influence the policy or conduct of a government, governmental unit or government agency or to intimidate or coerce a civilian population.

Id.

V. PROBLEMS WITH ENFORCEMENT

A. *Federal Legislation*

While the provisions of the AEDPA appears to be a much needed mechanism for stopping international terrorism, enforcement is problematic. The problems include defining terrorist organizations, monitoring the transfer of funds by suspect groups, and proving criminal intent to obtain a conviction. Another issue is whether the law can be construed narrowly enough to be deemed constitutional, but broadly enough to prevent terrorist organizations from sidestepping its provisions. If the law is constitutional, there is still some concern that it can not be effectively enforced without further angering terrorist organizations and bringing on retaliatory attacks. The aggregation of these problems may ultimately render the antiterrorist fundraising provisions ineffective. Some of these problems are addressed in a recent case, *Humanitarian Law Project v. Reno*.¹²⁷

1. *Defining the Terrorist Organization*

One major problem with enforcing this legislation is deciding which groups qualify as terrorist organizations.¹²⁸ It is difficult to determine the primary function of organizations that focus on political or religious issues but occasionally utilize terrorist tactics.¹²⁹ Other organizations have many loosely related subgroups, some of which may perform terrorist functions.¹³⁰

Section 1189 of Title Eight of the U.S. Code authorizes the Secretary of State to designate an organization as a foreign terrorist organization if “the organization is a foreign organization; the organization engages in terrorist activity (as defined in [s]ection 1182(a)(3)(B) of [Title Eight]; and the

127. 9 F. Supp. 2d 1176 (C.D. Cal. 1998).

128. See U.S. Dep’t of State, *Daily Press Briefing by James P. Rubin*, Oct. 8, 1997 (visited Oct. 30, 1998) <<http://secretary.state.gov/www/briefings/9710/971008db.html>> (discussing the controversy over whether to list the PIRA as a terrorist organization for purposes of federal terrorist funding laws).

129. See *Hearings*, *supra* note 25, at 37 (statement of Steven Emerson) (rejecting the notion that HAMAS’ activities can be compartmentalized into terrorist and nonterrorist activities because the “social-charitable-political wings” are so tightly integrated that all HAMAS activities are tainted by a “violent ideology”).

130. See *Hearings*, *supra* note 25, at 10 (statement of Vincent M. Cannistraro) (describing the two faces of organizations PIRA, HAMAS, and Hizballah, each with undercover military brigades and overt political leaders).

terrorist activity of the organization threatens the security of United States nationals or the national security of the United States.”¹³¹ While this definition does not specifically address the issue of multifaceted organizations, it appears that if an organization engages in any form of terrorism, it will be considered terrorist regardless of the other functions the group may perform.¹³²

A good example of an organization with multiple purposes is HAMAS. HAMAS was created as a nonprofit religious and charitable organization focused on conservative religious activity.¹³³ Some estimate that as much as ninety-five percent of HAMAS’ activities are focused on social welfare and religious work and only five percent are terrorist.¹³⁴ HAMAS attracts funds from donors due to its reputation for providing relief to poor people, especially those in the Gaza Strip.¹³⁵ Many view HAMAS as less corrupt than other relief networks.¹³⁶ Even the United Nations Relief Works and Agency has acknowledged, “Hamis is the only faction they trust to distribute food donations to the people.”¹³⁷ In Palestine, HAMAS gives “poor families subsidies and extra food, and even scholarships for university studies.”¹³⁸

HAMAS receives its funding from individuals, Muslim political networks, Islamic parties, and other organizations, including charitable organizations, across the world.¹³⁹ Some people working for these organizations may sympathize with HAMAS and provide it donations, but are not actually part of the group’s structure.¹⁴⁰ Groups such as the Quranic

131. 8 U.S.C. § 1189(a)(1) (Supp. III 1998).

132. *See id.* § 1189(a)(1)(B) (authorizing the “terrorist” designation of any organization engaged in terrorist activity without requiring that the organization be exclusively engaged in terrorist activities).

133. *See Hearings, supra* note 25, at 10 (statement of Vincent M. Cannistraro).

134. *See Hearings, supra* note 25, at 37 (statement of Steven Emerson).

135. *See Hamas-Local Sources*, ARAB PRESS SERV. ORG., Feb. 3, 1997, available in LEXIS, Market Library, IACnews File. [hereinafter *Hamas-Local Sources*].

136. *See id.*

137. *Id.*

138. *Id.*

139. *See id.*

140. *See id.*

Literacy Institute,¹⁴¹ Mercy International USA, the Islamic Association for Palestine, the Islamic Center for Palestine in North America,¹⁴² the Islamic Charity Project, the Muslim Arab Youth Association, and the Holy Land Foundation for Relief and Development have been linked to HAMAS.¹⁴³

Other organizations, such as the Provisional Irish Republican Army (PIRA), have both political and social functions in addition to military or terrorist functions.¹⁴⁴ The PIRA has been held responsible for multiple terrorist attacks and was excluded from recent peace talks in Belfast.¹⁴⁵ Sinn Fein was eventually invited to participate in the talks, but not without some negative response from other parties involved in the process.¹⁴⁶ Sinn Fein is often considered the political wing of the PIRA, although Sinn Fein officials claim that they are an entirely separate organization.¹⁴⁷

The problem posed by the broad organizational structure of groups like HAMAS and the PIRA is evident in the Secretary of State's delayed action in naming terrorist organizations under the AEDPA.¹⁴⁸ The Secretary of State has the power to identify foreign terrorist organizations and

141. Federal authorities are investigating whether the Quranic Literacy Institute was involved in a money laundering scheme involving Chicago-area real estate developments. See Gaines & Martin, *supra* note 92, at 1.

142. The Islamic Association for Palestine denies supporting terrorism or raising money for groups outside of the United States. However, the association has circulated fliers to raise money for HAMAS leader Mousa Abu Marzook's legal defense fund. Puente & Franklin, *supra* note 94, at D1.

143. See *Hamas Raises Funds*, *supra* note 24 (listing the Islamic Center for Palestine, the Islamic Charity Project, and Mercy International USA as groups that collect money from American donors); *Hamas-Local Sources*, *supra* note 135 (referring to the Muslim Arab Youth Association and the Holy Land Foundation for Relief and Development as conduits for channeling funds to HAMAS).

144. See *Hearings*, *supra* note 25, at 10 (statement of Vincent M. Cannistraro).

145. See *Sinn Fein Delegates Enter Northern Ireland Peace Talks*, FACTS ON FILE WORLD NEWS DIG., Sept. 18, 1997, at 678 D1.

146. See *id.*

147. See *id.* The point is subject to much debate. Sinn Fein officials "reiterated their frequently repeated assertion that their party and the [PIRA] were distinct organizations." *Id.* David Trimble, head of the Ulster Unionists, the largest Protestant party, stated that these claims are a "pathetic attempt to pretend that Sinn Fein and the [PIRA] are not inextricably linked." *Id.*

148. See Wittes, *supra* note 17, at 1 (criticizing the Secretary of State for not identifying the prohibited groups and triggering the ban on domestic fundraising one year after the enactment of AEDPA).

thereby trigger the ban on domestic fundraising.¹⁴⁹ However, it took Secretary of State Madeline Albright over a year to do so.¹⁵⁰ Philip Wilcox, Jr., the State Department's coordinator for counter terrorism, claims that the process moved slowly because of the need to "develop the administrative records in a particularly detailed manner so that they can be relied upon in possible legal challenges to the designations of foreign terrorist organizations."¹⁵¹ Acting Deputy Attorney General Seth Waxman cited the requirements of building a new infrastructure and recruiting and training personnel as reasons for the inaction.¹⁵²

However, the 1995 presidential executive order named several Middle Eastern organizations as terrorist groups,¹⁵³ and Louis Freeh has testified that there are terrorist links for groups such as HAMAS and Hizballah.¹⁵⁴ The State Department was sharply criticized for the delay in identifying terrorist organizations because the other provisions of the law could not be enforced until terrorist organizations were officially designated.¹⁵⁵

On October 8, 1997 Secretary of State Madeleine K. Albright officially designated thirty organizations as terrorists subject to the AEDPA.¹⁵⁶ The designated organizations are Abu Nidal Organization, Abu Sayyaf Group, Armed Islamic Group, Aum Shinrikyo, Democratic Front for the Liberation of Palestine-Hawatmeh Faction, Euzkadi Ta Askatasuna, Gama'a al-Islamiyya (Islamic Group), HAMAS (Islamic Resistance Movement), Harakat ul-Ansar, Hizballah (Party of God), Japanese Red Army, al-Jihad, Kach, Kahane Chai, Khmer Rouge, Kurdistan Workers' Party, Liberation Tigers of Tamil Eelam, Manuel Rodriguez Patriotic Front Dissidents, Mujahedin-e Khalq Organization, National Liberation Army, Palestine Islamic Jihad-Shaqaqi Faction, Palestine Liberation Front-Abu Abbas Faction, Popular Front for the Liberation of

149. See 8 U.S.C. § 1189(a)(1) (1996).

150. See Wittes, *supra* note 17, at 1. Secretary Madeleine Albright finally designated some thirty organizations as foreign terrorist organizations in October of 1997. See Designation of Foreign Terrorist Organizations, 62 Fed. Reg. 52,650 (Dep't State 1997).

151. Wittes, *supra* note 17, at 1.

152. See *id.*

153. See Exec. Order No. 12,947, 3 C.F.R. 319, 321 (1996).

154. See Wittes, *supra* note 17, at 1.

155. See *id.*

156. See Designation of Foreign Terrorist Organizations, 62 Fed. Reg. 52,650-651 (Dep't State 1997).

Palestine, Popular Front for the Liberation of Palestine—General Command, Revolutionary Armed Forces of Colombia, Revolutionary Organization 17 November, Revolutionary People's Liberation Party/Front, Revolutionary People's Struggle, Shining Path (Sendaro Luminoso) and Tupac Amaru Revolutionary Movement.¹⁵⁷ Other organizations may be added to the list at any time.¹⁵⁸

This announcement was both praised and criticized. The Spanish government hailed the decision to designate the Basque guerrilla group Euzkadi Ta Askatasuna as a terrorist organization.¹⁵⁹ However, one of the most vocal criticisms was related to the PIRA,¹⁶⁰ because it is not currently a designated terrorist organization.¹⁶¹ Senators John Kyl and Dianne Feinstein attacked the decision, calling the PIRA “one of the oldest, most violent and indiscriminate terrorist organizations in modern history.”¹⁶² The omission prompted Senator Jesse Helms to write to President Clinton to demand that the PIRA and the Sinn Fein be added to the list if the current ceasefire is broken.¹⁶³ Helms expressed concern about the omission of the PIRA because the United States Embassy in London is considered a medium-threat post.¹⁶⁴ Helms noted that the PIRA is identified with seventeen terrorist actions in the previous six years, including an attempted assassination of British Prime Minister John Major in 1991.¹⁶⁵ In response, Representative Peter King said

157. See *id.* Compare Exec. Order No. 12,947, 3 C.F.R. 319, 321 (1996) (listing the groups designated under the 1995 Presidential executive order) with Designation of Foreign Terrorist Organizations, 62 Fed. Reg. at 52,650–651.

158. See Jane A. Morse, *U.S. Steps Up Fight Against Terrorist Organizations*, M2 Presswire, Oct. 9, 1997, available in LEXIS, News Library, Wires File.

159. See *Islands to Track Quakes*, SUN-SENTINEL (Ft. Lauderdale), Oct. 9, 1997, at 16A; Susan Aschoff, *The Politics of Immigration*, ST. PETERSBURG TIMES, Dec. 21, 1997, at 1F.

160. See Martin Kettle, *White House Excludes IRA from List of Terror Groups*, GUARDIAN (London), Oct. 9, 1997, at 2 (discussing the reaction from Irish organizations and U.S. Senators to the Clinton Administration's exclusion of the PIRA from the list of designated terrorist organizations).

161. See Designation of Foreign Terrorist Organizations, 62 Fed. Reg. at 52,650–651.

162. Kettle, *supra* note 160, at 2.

163. See *Helms' Letter to President Urging Designation of IRA as a Foreign Terrorist Organization*, Cong. Press Releases, Oct. 21, 1997, available in LEXIS, News Library, Wires File.

164. See *id.* Helms said, “We must not coddle these people, no matter how strong their domestic political constituency.” *Id.*

165. See *id.*

Senator Helms' letter "literally reeks of bigotry and ignorance."¹⁶⁶ King accused Helms of trying to undermine the ongoing Northern Ireland peace talks.¹⁶⁷ In early October 1997 State Department spokesman James P. Rubin said Secretary of State Albright did not include the PIRA because it had declared a ceasefire July 19, 1997 and was participating in the peace negotiations.¹⁶⁸ However, Rubin said the State Department would continue to actively monitor the PIRA's activities and could add them to the list if violence in Ireland resumes.¹⁶⁹

HAMAS also criticized its position on the list.¹⁷⁰ HAMAS spokesman Abdel Aziz Rantissi said, "I believe that Hamas did not bomb Nagasaki and Hiroshima, like America did, . . . so I believe the U.S. is the major terrorist state in the world, and it is a ring, in which America is acting against Islam itself."¹⁷¹ Pakistan also denounced the inclusion of Harkat ul-Ansar as terrorists, claiming, "They are fighting for the right of self-determination, they are fighting against oppression, they are fighting against (Indian) terrorism."¹⁷²

The separatist group Liberation Tigers of Tamil Eelam may have had a more violent reaction to its inclusion on the terrorist list. On October 15, 1997 just one week after the official designations were released, a truck bomb blew up in the central business district of Colombo, Sri Lanka.¹⁷³ The bomb went off outside of the Hilton Hotel and the newly

166. Susan Benkelman, *Helms Blasted by King*, NEWSDAY, Oct. 22, 1997, at A25.

167. *See id.*

168. *See* U.S. Dep't of State, *Daily Press Briefing by James P. Rubin*, *supra* note 128; *see also* James Morrison, *IRA Still Terrorists?*, WASH. TIMES, Oct. 22, 1997, at A13 (reporting that Secretary of State Albright did not include the PIRA as a designated terrorist organization because of the July ceasefire).

169. *See* U.S. Dep't of State, *Daily Press Briefing by James P. Rubin*, *supra* note 128.

170. *See U.S. Lists Terrorist Organizations; Hamas Condemns Decision*, Compass Newswire, Oct. 9, 1997, *available in* LEXIS, News Library, Compass File.

171. *Id.*

172. *Pakistan Defends Kashmiri Groups Fighting for Freedom*, Agence France-Presse, Oct. 9, 1997, *available in* LEXIS, News Library, AFP File. The spokesman denied that the Al-Faran group existed and blamed India for releasing propaganda linking Al-Faran to Harkat ul-Ansar. *See id.* Al-Faran has been blamed for abducting six Western hikers in Kashmir in July 1995. *See id.* Of the six abducted, one American escaped, a Norwegian was found beheaded, and several others are still missing. *See id.*

173. *See Rebel Bombing Kills 18 in Colombo*, FACTS ON FILE WORLD NEWS DIG., Oct. 16, 1997, at 754 B3. [hereinafter *Rebel Bombing*].

opened World Trade Center.¹⁷⁴ Eighteen people were killed, and over one hundred were injured in the blast.¹⁷⁵ Many of the injured were foreign tourists and business travelers, and seven of the injured were Americans.¹⁷⁶ While the Tamil spokesman denied involvement in the bombing, Sri Lankan officials acknowledged that the rebels had routinely denied involvement in past attacks.¹⁷⁷ These officials felt that the bombing was a response to the American designation because the rebels are dependent on ethnic Tamils in Western countries to finance their activities.¹⁷⁸ An unidentified senior official said, "We were afraid this would happen. We hoped the Americans would include the Tigers on the list, and we urged them to do it, but we recognized all along that this could remove the only reason for suspending the bombings."¹⁷⁹

Despite the tragic Colombo bombing, the designation of groups is a positive sign in the fight against international terrorism. Secretary of State Albright noted that the designation has three main consequences.¹⁸⁰ The first is that it is a crime to provide funds, weapons or other tangible support to any of these designated groups.¹⁸¹ The second consequence is that members of the designated organizations are ineligible for visas to enter the United States.¹⁸² The third consequence is that any funds of the designated groups located in the United States will be blocked.¹⁸³ The most important aspect of the announcement is that the Clinton Administration has taken the first step toward enforcing the antifunding law by designating terrorist groups subject to the AEDPA.¹⁸⁴ This may signal an intent to actively pursue

174. *See id.*

175. *See* John F. Burns, *Tamil Bombing Tied to U.S. Terror Listing*, INT'L HERALD TRIB. Oct. 17, 1997, at 4.

176. *See id.* (reporting that injuries were mainly caused by flying glass).

177. *See id.* (reporting that the officials stated the incident "bore all the hallmarks of a Tamil Tiger operation").

178. *See id.*

179. *Id.*

180. *See* Morse, *supra* note 158.

181. *See id.*

182. *See id.*

183. *See id.*

184. *See id.* *See also* Wittes, *supra* note 17, at 1 (stating that before the United States can effectively enforce the AEDPA, the Clinton Administration must designate the foreign terrorist organizations to which Americans are prohibited from providing support).

violations, or it may be nothing more than a response to criticism of Clinton's foreign policy.¹⁸⁵ Regardless of the Clinton Administration's intent, the government will continue to struggle in the quest to define the terrorist organization.¹⁸⁶

2. *Tracing the Money*

Once terrorist organizations are named, the next major problem with enforcement is tracing money donated to the organizations.¹⁸⁷ This is an issue because "terrorist organizations do not file tax returns."¹⁸⁸ The broad structure of the target organizations makes it difficult to identify how funds are being dispersed.¹⁸⁹ FBI surveillance has identified some money coming from suspected terrorist groups into the United States, but "it's a very inadequate picture of what perhaps is much greater activity," according to FBI Director Louis Freeh.¹⁹⁰ Freeh has acknowledged, "It is very difficult from an evidentiary point of view to trace those funds to actual military or terrorist operations outside the U.S."¹⁹¹

185. See Morse, *supra* note 158 (reporting antiterrorism comments made by the Clinton Administration at a press conference the day the terrorist groups were designated); see also Wittes, *supra* note 17, at 1 (criticizing the Clinton Administration for its failure to enforce the AEDPA). Secretary Albright voiced a willingness to prosecute by saying the U.S. goal is

to make the United States fully a no-support-for-terrorism zone. Our message to anyone who comes into our country intending to raise money for a terrorist organization is, you risk going to jail. And our message to anyone who is part of a terrorist organization and who wants to enter the United States is, you are not welcome here.

Morse, *supra* note 158. On the other hand, President Clinton appeared less forceful when he said, "Today's action sends a clear message: the path to change is through dialogue and open deliberation, not violence and hatred. The United States is committed to fight against those who speak the language of terror." *Id.*

186. "Just because [an organization is] not on the list doesn't mean we're not looking into the process. This is an excruciatingly difficult legal process . . . just to get to the point where these 30 [organizations] were designated." U.S. Dep't of State, *Daily Press Briefing by James P. Rubin*, *supra* note 128.

187. See Pincus, *supra* note 21, at A18.

188. *Hearings*, *supra* note 25, at 26 (statement of Steven Emerson) (noting that the " Hamas does not file a 1040").

189. See *U.S. Lawmakers Rip PLO, Threaten to Bar Aid*, COM. APPEAL (Memphis), Mar. 13, 1996, at A4 [hereinafter *U.S. Lawmakers Rip PLO*]. Freeh recently told the Senate Judiciary Committee, "Investigations into the financial operations of clandestine organizations on the shadowy fringes of transnational politics can be particularly complex." *Freeh's Prepared Statement*, *supra* note 5.

190. Pincus, *supra* note 21, at A18.

191. Barber, *supra* note 18, at A1.

Freeh said that the ad hoc associations outside of the framework or structured organizations “are much more problematic.”¹⁹² The FBI will need to find more sophisticated means of tracking the financial activities of designated terrorist groups before the law can be effectively enforced.

In 1995 after Executive Order 12,947 was issued, there was significant concern surrounding the mechanics of enforcing the fundraising provisions.¹⁹³ In response to a series of questions about how the government planned to attack suspected terrorist funds, a Senior Administrative Official said, “all’s [sic] I can tell you is that it is being transferred and that this will stop it, and that we will be able to successfully interdict it and prevent it from being transferred.”¹⁹⁴ However, he acknowledged that the order is not a foolproof method of stopping all funds from going to terrorists, and that there are means of circumventing the law.¹⁹⁵ In 1997 a similar press conference was held to discuss the State Department’s list of terrorist organizations under the AEDPA.¹⁹⁶ James Rubin said, “[T]he goal of this law was more deterrence than confiscation.”¹⁹⁷ This change in attitude may reflect the difficulty the government experienced in trying to enforce the executive order.

International cooperation may be the key to successfully tracing terrorist funds. On February 22, 1996 security experts from nineteen nations held a secret meeting on terrorism and agreed to stop the flow of funds to international terrorists.¹⁹⁸ On March 13, 1996 at the Sharm

192. Pincus, *supra* note 21, at A18. Freeh notes that groups of “loosely affiliated extremists may pose the most urgent threat to the United States because groups are often organized on an ad-hoc, temporary basis, making them difficult for law enforcement to infiltrate or track. They can also exploit the mobility that technology and the lack of a rigid organizational structure offers.” *Freeh’s Prepared Statement*, *supra* note 5.

193. See *White House Background Briefing on Presidential Executive Order No. 12,947 Relating to Terrorism*, FED. NEWS SERV., Jan. 24, 1995, available in LEXIS, News Library, Fednew File (responding to questions about the mechanics of implementing the Executive Order).

194. *Id.* This official never gave any specific explanation regarding how the government planned to track the funds. He just repeatedly answered, “[W]e will be able to stop and interdict those funds.” *Id.*

195. See *id.*

196. See U.S. Dep’t of State, *Daily Press Briefing by James P. Rubin*, *supra* note 128.

197. *Id.*

198. See *Secret Meeting Held on Terrorism*, FIN. POST (Toronto), Feb. 23, 1996, at 2.

Al Shaikh Summit, twenty-nine world leaders drafted a declaration demonstrating their commitment to the international fight against terrorism.¹⁹⁹ Among other things, the leaders agreed to cooperate in tracing and restricting money and arms used by terrorists.²⁰⁰ In September of 1998 Madeline Albright met with President of the European Union (EU) Council of Ministers, Wolfgang Schuessel, and Senior Vice President of the EU Commission, Sir Leon Brittan.²⁰¹ One issue the group discussed was the effort underway to develop measures to stop terrorist fundraising in the United States and the EU countries and to restrict terrorists from crossing borders.²⁰²

In April of 1998 Canadian Solicitor General Andy Scott announced plans to enact new laws on money laundering and cross-border currency controls.²⁰³ In addition, Canada plans to work closely with other Group of Eight industrialized countries to restrict terrorist fundraising.²⁰⁴ These laws are designed to target organized crime and aid international counterterrorism efforts.²⁰⁵

The United Nations is also working on measures to fight international terrorism, with several representatives strongly

199. See *Arabs-Israel—March 13—Sharm Al Shaikh Summit*, ARAB PRESS SERV. ORG., Mar. 16, 1996, available in LEXIS, News Library, IACwld File.

200. See *id.* The applicable provisions of the declaration read,

We decided . . . (D)—To promote co-ordination of efforts to stop acts of terror on bilateral, regional and international levels, ensuring instigators of such acts are brought to justice, supporting efforts by all parties to prevent their territories from being used for terrorist purposes and preventing terrorist organisations from engaging in recruitment, supplying arms or fund-raising. To exert maximum efforts to identify and determine the sources of financing for these groups and to cooperate in cutting them off, and by providing training, equipment and other forms of support to those taking steps against groups using violence and terror to undermine peace, security or stability.

Id.

201. U.S. Dep't of State, *Secretary of State Madeleine K. Albright, and Wolfgang Schuessel, Foreign Minister and President of the EU Council of Ministers, and Sir Leon Brittan, Senior Vice President of the EU Commission, Joint Press Availability, Vienna, Austria, September 3, 1998* (visited Oct. 30, 1998) <<http://secretary.state.gov/www/statements/1998/980903a.html>> .

202. See *id.*

203. See *Canada Developing Range of Tough Measures Against Terrorists Says Solicitor General Andy Scott*, Canada NewsWire, Apr. 30, 1998, available in LEXIS, News Library, CNW File (reporting that the new laws were discussed before the Canadian House of Commons in a statement on national security).

204. See *id.*

205. See *id.*

supporting efforts towards cooperative legislation.²⁰⁶ At a recent meeting, Israeli representative Daniel Taub said that terrorist fundraising under the guise of charity was a “doubly heinous crime.”²⁰⁷ He noted Israel had within the past year declared four extremist groups’ fundraising illegal and urged all nations to take similar actions.²⁰⁸ Taub called for international coordination in areas such as “information exchange, tracking of funds and armament, and the elimination of terrorist infrastructures,” and on the legal level, intensification of cooperation with regard to “extradition and prosecution of terrorist suspects.”²⁰⁹ The United Nation’s Sixth Legal Committee is continuing to work on measures to combat international terrorism.²¹⁰ If Taub’s suggestions are incorporated into the new measures, the United States may be able to greatly increase its ability to track fundraising money as it travels across international borders.

President Clinton’s speech to the United Nations General Assembly in September 1998 echoed Taub’s sentiments.²¹¹ He said the global response should be “[t]o give terrorists no support, no sanctuary, no financial assistance. To bring pressure on states that do. To act together to step up extradition and prosecution. To sign the global anti-terror convention.”²¹² Chandrika Kumaratunga, the President of Sri Lanka, along with British Prime Minister Tony Blair, and Jacques Chirac agreed that an international effort to control terrorist fundraising is necessary.²¹³ Blair said that as chairman of the Group of Eight industrialized countries, he

206. See UN: *Discussion of Measures to Combat International Terrorism Continues in Legal Committee*, M2 Presswire, Nov. 14, 1997, available in LEXIS, News Library, Wires File [hereinafter *Discussion of Measures*].

207. *Id.*

208. *See id.*

209. *Id.*

210. *See id.*

211. See Barbara Crossette, *Clinton Urges World Action on Terror*, N.Y. TIMES, Sept. 22, 1998, at A12 (encouraging global cooperation in the fight against international terrorism).

212. *Id.*

213. See *Blair Proposes High-Level Conference on Terrorist Funding*, Agence France-Presse, Sept. 21, 1998, available in LEXIS, News Library, AFP File [hereinafter *Blair Proposes*]; see also Crossette, *supra* note 211, at A12 (reporting that Blair invited world leaders to London to discuss ways to impede terrorist fundraising).

offered “to host a high-level conference in London this autumn to deny the terrorists this means of support.”²¹⁴

International cooperation will help the United States track funds traveling across borders.²¹⁵ However, to prepare to effectively enforce the fundraising provisions the United States has had to significantly increase its expenditures to the FBI and other investigative departments.²¹⁶ Despite the pressure being put on the federal government to cut funding and control the budget deficit, \$6.7 billion in antiterrorism funds have been approved for the 1999 budget, with \$725 million going to the Justice Department, which includes the FBI.²¹⁷

3. *Criminal Intent*

Another problem with enforcing the fundraising restrictions is the difficulty in establishing the necessary criminal intent. The federal regulations require donors to know that their donations will be used by a terrorist group or will be used to commit a terrorist act.²¹⁸ Section 2.02 of the Model Penal Code states,

A person acts knowingly with respect to a material element of an offense when: (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.²¹⁹

Thus, the prosecution would have the burden of demonstrating that the donor was aware his donation was going to a terrorist organization or would be used for a

214. *Blair Proposes*, *supra* note 213.

215. *See Discussion of Measures*, *supra* note 206.

216. *See FBI Targets Groups Linked to Terrorism*, SALT LAKE TRIB., Nov. 1, 1998, at A17 [hereinafter *FBI Targets*]; *see also* Vernon Loeb, *Target: Bin Laden CIA's Counterterrorism Center "at War" with Extremist*, FLA. TIMES UNION (Jacksonville), Sept. 20, 1998, at C1 (reporting that since fighting terrorism became a national priority in 1995, both the CIA and FBI have had “huge funding increases in that area.”).

217. *See* Loeb, *supra* note 216, at C1.

218. *See* 18 U.S.C. §§ 2339A(a), 2339B(a) (Supp. II 1997).

219. MODEL PENAL CODE § 2.02(2)(b) (1962).

terrorist activity.²²⁰ This is a difficult burden of proof in light of some organizations' broad range of functions and the complicated front groups of other organizations.²²¹ The donor may have no idea where his contribution is really going. Even if he does, there may be very little evidence of the donor's intent other than his own testimony. Donors rarely write checks directly to terrorist organizations with notations directing the money to be spent exclusively on terrorist activities.²²²

The recent verdict in the Terry Nichols trial demonstrates the difficulty the prosecution faces in proving its burden. In spite of the extensive evidence presented, the jury was unwilling to convict Nichols of murder.²²³ The jury seemed unwilling to convict Nichols of first degree murder or use of a weapon of mass destruction because he was not actually present at the time of the bombing.²²⁴ It follows that a jury

220. See H.R. REP. NO. 104-383, at 81-82 (1995); see also Southwell, *supra* note 15, at 8 (commenting that the same burden is on the prosecution under the Illinois antiterrorism law).

221. See *Hearings*, *supra* note 25, at 37 (statement of Steven Emerson); see also *U.S. Lawmakers Rip PLO*, *supra* note 189, at A4 (calling the front groups "different guises").

222. See Southwell, *supra* note 15, at 8 (discussing the difficulty in proving that U.S. contributors knowingly provided material support to terrorist organizations, especially when organizations like HAMAS and the PIRA have both military and charitable functions).

223. See *United States v. Nichols*, No. 96-CR-68, 1998 WL 2518, at *1 (D. Colo. Jan. 7, 1998). Nichols was on trial for his part in the bombing of the Alfred P. Murrah Federal Building in Oklahoma. See *id.* The jury found him guilty of conspiracy to use a weapon of mass destruction, not guilty of actual use of a weapon of mass destruction, not guilty of destruction by explosive, and guilty of involuntary manslaughter. See *id.* He was charged with eight counts of involuntary manslaughter for the deaths of eight federal employees killed in the blast. See Michael O'Keefe & John C. Ensslin, *Lawyers Say Judge's Offer Puts Nichols in Bind*, ROCKY MTN. NEWS (Denver), Mar. 26, 1998, at 19A.

224. See Andrew Cohen, *Echoes of "McVeigh" Permeate Day One*, DENVER POST, Nov. 4, 1997, at A8 (discussing how Michael Tigar, Nichols' defense attorney, compared the roles of Nichols and McVeigh emphasizing, "McVeigh was involved from the get-go, . . . Nichols "wasn't there" when the bad stuff occurred. McVeigh may have been in Oklahoma City on the morning of the bombing, but Nichols wasn't there. McVeigh may have rented the Ryder truck, but Nichols wasn't there."); see also Kevin Flynn & Lou Kilzer, *Nichols In Up to Neck, Paper Says He Made the Bomb, McVeigh Team's Document Claims*, ARK. DEMOCRAT-GAZETTE, Jan. 20, 1998, at A1 (reporting that McVeigh was sentenced to death for his role in the terrorist attack while Nichols was convicted of conspiring with McVeigh and faced only a life sentence because "prosecutors could not convince jurors beyond a reasonable doubt that Nichols was an equal partner with McVeigh in the bombing."); see also Victoria Loe Hicks, *Nichols Ordered to Pay Restitution; \$14.5 Million Would Go to Government*, DALLAS MORNING NEWS, May 14, 1998, at A23 (reporting that

would be unlikely to convict someone for “knowingly providing material support or resources” where the person had no further control or input regarding the usage of the resources after they were donated.

The intent requirement may prevent innocent people from being convicted of supporting terrorists unknowingly. However, it also provides an easy means of sidestepping the statute. The intent requirement gives soliciting organizations greater incentive to create false fronts and to lie to donors. It also gives donors incentive to avoid carefully researching organizations with questionable backgrounds. Some jurisdictions find the knowledge requirement satisfied in criminal cases where the defendant is willfully blind.²²⁵ However, it is premature to assume that the willful blindness doctrine would be applied to these antiterrorism statutes.²²⁶ Thus, even if the federal government tries to enforce the statutes, it may be virtually impossible to produce enough evidence to support a conviction.

4. *Constitutionality*

The constitutionality of the antifunding provisions may affect their enforcement.²²⁷ The statute must be construed narrowly in order to avoid infringing on the constitutional guarantees of freedom of religion and freedom of association.²²⁸ However, the statute must be interpreted

Michael Tigar suggested prosecutors were being vindictive in seeking restitution damages and did so because the jury refused to convict Nichols of all the crimes the prosecution charged him with).

225. See *United States v. Giovannetti*, 919 F.2d 1223, 1226 (7th Cir. 1990) (providing the language of the so called “ostrich” instruction and holding the instruction is given properly when the evidence shows the defendant took steps to make sure not to gain “full or exact knowledge of the nature and extent” of the criminal activity).

226. The AEDPA was not enforced at all until late 1998 when the FBI targeted Mohammad Salah of Bridgeview, Illinois who was suspected of providing money to HAMAS for “Uzis, rifles and other weapons.” See *FBI Targets*, *supra* note 216, at A17. This was the first use of AEDPA, and prosecutors seized Salah’s bank account, then tried to take his house, all without a criminal trial. See *id.* Therefore, since the knowledge requirement has not been tested in the courts, it is difficult to determine how the government will go about trying to prove knowledge.

227. See Barber, *supra* note 18, at A1 (commenting that “since earlier efforts to bar terrorist fund raising have been criticized as ineffective—in part due to stringent constitutional guarantees on privacy and freedom of expression—it is not clear if the new law will be effective”).

228. See U.S. CONST. amend. I. “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging

broadly enough to allow for enforcement. For example, while the government cannot restrict donations for religious purposes,²²⁹ it should not be prevented from restricting donations to fraudulent front groups with religious names that serve no purpose other than laundering money to terrorists.²³⁰

Congress addressed this issue when it debated the Comprehensive Anti-Terrorism Act of 1995, which proposed eliminating the First Amendment protections contained in the 1994 law that severely limited the investigative and prosecutive authority of the government.²³¹ Congress justified deleting these provisions because many organizations were unfairly using constitutional protections for religious freedom as means of raising money for terrorist activities.²³² Proponents argued that the antifunding provisions do not restrict a person's right to join an organization or to believe in the organization's tenets.²³³ They argue that the provisions were designed only to criminalize the contribution of financial

the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." *Id.*

229. *See id.*

230. *See* H.R. REP. NO. 104-383, at 43-44 (1995) (explaining that the First Amendment protects one's rights to associate with groups involved in both legal and illegal activities, but it does not prevent the government from restricting donations to a foreign organization that has been designated a threat to national security); *see also* Sisk, *supra* note 27, at 15 (reporting that the legislation is aimed to stop groups like Kach which use charitable front organizations for fundraising in New York and Florida).

231. *See* H.R. REP. NO. 104-383, at 43, 82 (1995).

232. *See id.* at 43. "Many of these organizations operate under the cloak of humanitarian or charitable exercise, or are wrapped in the blanket of religion. They use the mantle of religion to protect themselves from scrutiny, and thus operate largely without fear of recrimination. This legislation severely restricts the ability of terrorist organizations to raise much needed funds for their terrorist acts within the United States." *Id.*

233. *See id.* at 43-45. The test to determine whether a general ban is constitutional is found in *United States v. O'Brien*. 391 U.S. 367 (1968). The Supreme Court held that a governmental regulation is sufficiently justified if

it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on the alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Id. at 377. The House Committee reviewing the proposed legislation determined that the government's interest in the antifunding provision was necessary to protect the nation's safety from the growing terrorist threat, and should, therefore, be constitutional. *See* H.R. REP. NO. 104-383, at 45 (1995).

or material resources to designated foreign organizations that pose a threat to the United States.²³⁴

Opponents argued that without the First Amendment provisions, the proposed law is unconstitutional because it restricts the freedom of association.²³⁵ The dissenting Members of Congress believed that the 1995 modifications proposed for section 2339A were intended to make it a crime to donate property or services to terrorist groups even if the resources were used for purely humanitarian purposes.²³⁶ They argued that the existing law applied to donations for terrorist purposes,²³⁷ so the modifications must work to criminalize humanitarian activities as well.²³⁸ Despite the dissenting views, legislation deleting the First Amendment protections of the original law passed in 1996 as part of the AEDPA.²³⁹

Since that time, constitutional concerns have been raised and challenges have been made against the AEDPA.²⁴⁰ An additional constitutional concern is that by allowing the Secretary of State and Attorney General to designate terrorist organizations, AEDPA gives them the power to determine which organizations have political support based on their popularity.²⁴¹ While the government has only recently begun to enforce the AEDPA,²⁴² these arguments have already been

234. See H.R. REP. NO. 104-383, at 44 (1995).

235. See *id.* at 178.

236. See *id.*

237. See 18 U.S.C. § 2339A(b) (1994) amended by 18 U.S.C. § 2339A(b) (Supp. II 1997).

238. See H.R. Rep. No. 104-383, at 178 n.3. "Current law already criminalizes the provision of material support for criminal terrorist activities (18 U.S.C. § 2339A); so the legislation would criminalize support for humanitarian activities." *Id.*

239. See Pub. L. No. 104-132, § 323, 110 Stat. 1214, 1255 (1996) (codified as amended at 18 U.S.C. § 2339A (Supp. II 1997)).

240. See, e.g., *Humanitarian Law Project v. Reno*, 9 F. Supp. 2d 1176, 1185-86 (C.D. Cal. 1998) (reviewing plaintiffs' argument that the AEDPA is unconstitutional based on guilt by mere association, and that the First Amendment freedom of association should allow plaintiffs protections to make contributions to designated terrorist organizations' humanitarian and political causes).

241. See 142 CONG. REC. H3605, H3610-H3611 (daily ed. Apr. 18, 1996) (statement of Mr. Scott). For example, "Politicians can choose which side in El Salvador we ought to be supporting or not supporting by designating one or the other as terrorist." *Id.* at H3611.

242. See *FBI Targets*, *supra* note 216, at A17 (reporting that the first use of the law occurred in late 1998).

addressed in *Humanitarian Law Project v. Reno*.²⁴³ These arguments probably will be successful if enforcement of the law appears to violate any of the First Amendment protections.

5. *Fear of Retaliation*

Another potential problem with enforcing the antifunding provisions is fear of retaliation from angry terrorists. Critics of the 1995 executive order cited fear as a major reason for its limited impact.²⁴⁴ Counter terrorism analyst Steven Emerson said, "Elements of government agencies are afraid of these Islamic groups."²⁴⁵ Louis Freeh noted, "Unfortunately, American successes can spur reprisals. As the United States develops a stronger investigative and prosecutorial response to terrorism, we may witness more attempts at reprisal both here and abroad."²⁴⁶ The concern surrounding retaliatory attacks is further justified by the Colombo bombing, which was blamed on the Liberation Tigers of Tamil Eelam (LTTE).²⁴⁷ However, if the government has no intention of enforcing the law because of fear of retaliation, it serves no purpose other than being politically popular.

6. *Humanitarian Law Project v. Reno*²⁴⁸

A 1998 case brought before the United States District Court for the Central District of California demonstrates the extensive problems with enforcing the antifunding provisions.²⁴⁹ The plaintiffs in the case were six organizations and two American citizens who sought to provide support to the Kurdistan Workers' Party (PKK) and the LTTE.²⁵⁰ Both of these groups are designated terrorist organizations per the

243. 9 F. Supp. 2d 1184–85 (listing three allegations from plaintiffs' complaint, two of which relate to the "unreviewable authority" and "unfettered discretion" of government officials to designate terrorist organizations, thereby inviting discrimination and First Amendment violations).

244. See Barber, *supra* note 18, at A1.

245. *Id.*

246. Freeh's Prepared Statement, *supra* note 5.

247. See *Rebel Bombing*, *supra* note 173, at 754 B3.

248. See *Humanitarian Law Project v. Reno*, 9 F. Supp. 2d 1176 (C.D. Cal. 1998).

249. See *id.* at 1176.

250. See *id.* at 1180.

Secretary of State's official notice of October 8, 1997.²⁵¹ Fearing criminal prosecution under AEDPA if they continued to support these groups,²⁵² the plaintiffs sued for a nationwide injunction against enforcement of the antifundraising provisions of the law.²⁵³

Plaintiffs made three arguments against AEDPA. First, they argued section 302 and section 303 of AEDPA violate the First Amendment rights of freedom of speech and association, as well as the right to petition the government. Second, they argued that the First and Fifth Amendments are violated because the Secretary of State is given authority to designate foreign terrorist organizations, and this authority "invites impermissible viewpoint discrimination."²⁵⁴ Lastly, they argued that the First and Fifth Amendments were also violated because the terms "material support and resources" and "foreign terrorist organization" were impermissibly vague.²⁵⁵ The court held AEDPA was a content-neutral regulation of speech, or in this case political expression, and was consequently subject to an intermediate level of scrutiny.²⁵⁶ The court applied the *O'Brien* test, balancing the government's interests with the impact on First Amendment rights, and held that the national security interest was sufficiently important to justify an infringement upon First Amendment rights.²⁵⁷ The court noted, "even if it had applied a strict scrutiny analysis to the AEDPA's prohibition on Plaintiffs' monetary contributions to the PKK and LTTE, the court would still find the Government's proffered justification for the prohibition on all monetary contribution constitutionally sufficient."²⁵⁸

The court also denied the plaintiffs' argument that the foreign terrorist designation was unconstitutional.²⁵⁹ The court held that AEDPA has sufficient safeguards to ensure

251. See Designation of Foreign Terrorist Organizations, 62 Fed. Reg. 52,650 (Dep't State 1997).

252. See Humanitarian Law Project, 9 F. Supp. 2d, at 1180.

253. See *id.* at 1185.

254. *Id.*

255. *Id.* at 1184-85.

256. See *id.* at 1188 (defining laws that impose burdens on speech without reference to the ideas or views expressed as "content-neutral").

257. See *id.* at 1192-97. See also *supra* note 233 for a description of the *O'Brien* test.

258. *Id.* at 1197 n.20.

259. See *id.* at 1200.

groups are not unfairly targeted by the Secretary of State, and that the plaintiffs presented no evidence that the PKK or LTTE were unfairly targeted because of their political views.²⁶⁰

The plaintiffs' final claim was that AEDPA violated the First and Fifth Amendments because its language was impermissibly vague.²⁶¹ While the court denied the argument that the statute gives the Secretary of State unfettered discretion to deem groups foreign terrorist organizations, it agreed that the terms "training" and "personnel" as "material support or resources" are vague.²⁶² These terms are used in the definition of "material support and resources" and are sufficiently vague that a person of ordinary intelligence would not be able to identify exactly what activity the definition covers.²⁶³

Based on these findings, the court agreed that a preliminary injunction would be granted against enforcement of the AEDPA's antifunding provision with respect to the use of the terms "personnel" and "training," while denying all other relief requested by the plaintiffs.²⁶⁴ Several days later, the court issued a preliminary injunction that enjoined the government from prosecuting the named plaintiffs under section 303 of the AEDPA for providing "personnel" or "training" to the PKK or LTTE.²⁶⁵ The court refused to grant a nationwide injunction or an injunction against enforcement of the entire statute because it wanted to tailor the injunction as narrowly as possible.²⁶⁶

The *Humanitarian Law Project* case is not an enforcement action brought by the government.²⁶⁷ However, the court did address many of the issues previously discussed concerning enforcement of the antifundraising provisions.²⁶⁸ The court

260. *See id.* at 1201.

261. *See id.* at 1184.

262. *Id.* at 1202-03.

263. *Id.* at 1203-04.

264. *Id.* at 1204-05.

265. *Humanitarian Law Project v. Reno*, 9 F. Supp. 1205, 1215 (C.D. Cal. 1998).

266. *See Humanitarian Law Project v. Reno*, 9 F. Supp. 1176, 1205 n.31 (C.D. Cal. 1998) (noting injunctive relief should generally be limited to named plaintiffs where there is no class certification). "The Court can adequately shape relief by tailoring it to the named Plaintiffs." *Id.*

267. *See id.* at 1179.

268. *See id.* at 1184-85 (outlining the constitutional challenges to the statute).

addressed the problems of defining the terrorist organization and the criminal intent standard in the context of constitutional issues raised by the plaintiffs.²⁶⁹ It is likely that other groups will file similar actions for injunctions against enforcement of AEDPA.

B. *Special Problems with the Illinois Legislation*

Illinois faces many of the same enforcement problems as the federal government.²⁷⁰ Illinois must also contend with the broad infrastructure of terrorist groups.²⁷¹ However, Illinois may have a more difficult time trying to trace terrorist money since the state has fewer resources to devote to enforcement of the law.

Like the federal government, the Illinois government may have trouble proving criminal intent.²⁷² Representative Tom Cross, a sponsor of the Illinois bill and a former assistant prosecutor, concedes the difficulty in proving intent.²⁷³ He said, "This bill requires knowledge on the part of [the] contributor before there is a criminal act. It's a tough burden for a prosecutor to prove [I]t's a tough connection to make."²⁷⁴ As with the federal legislation, the prosecution cannot prove its case without convincing evidence that the donor intended to break the law.²⁷⁵ This evidence may be virtually impossible to procure.

Another issue common to both the state and federal legislation is constitutionality.²⁷⁶ Some commentators feel that the Illinois law will withstand constitutional scrutiny. One recent law review author, Victoria Meyerov, concludes, "Illinois' antiterrorism law contains appropriate safeguards and would withstand any constitutional challenge."²⁷⁷

269. *See id.* at 1189–92, 1198–200.

270. *See* Southwell, *supra* note 15, at 8 (noting the difficulty in defining terrorist organizations and proving criminal intent under the Illinois legislation).

271. *See id.* Rafiq Jabar, President of the Islamic Association for Palestine, criticized the Illinois legislature for lumping all of HAMAS' activities under one name. "They [HAMAS] really have a lot of charitable activities going on," he said. "What is reported is probably a small fraction of what they do." *Id.*

272. *See id.*

273. *See id.*

274. *Id.*

275. *See id.*

276. *See* Meyerov, *supra* note 118, at 890–905 (discussing the constitutionality of the Illinois legislation).

277. *Id.* at 905.

However, the limitations imposed on investigations²⁷⁸ may be excessively restrictive. It is exceptionally difficult for the state to investigate because the statute allows one only when the facts reasonably indicate that the individual or group knowingly violated the law.²⁷⁹ Scierter is difficult to prove before conducting a full investigation. This provision seems to imply that a donor can avoid investigation entirely by claiming ignorance. Enforcement will also be restricted by the First Amendment protection provision because it stops any investigation from being initiated if First Amendment rights are involved.²⁸⁰ While it is important to uphold these constitutional protections, any terrorist group can easily escape investigation and prosecution by diverting fundraising through religious fronts.²⁸¹ Illinois may decide that in an attempt to ensure constitutionality, it has drawn this statute so narrowly that it precludes enforcement.

On the other hand, Illinois has been sharply criticized for unfairly discriminating against Arabs and the Irish.²⁸² Rafiq Jabar, President of the Islamic Association for Palestine, feels that HAMAS is being unfairly targeted.²⁸³ Jabar is concerned that the Israeli lobbyists are trying to sway public opinion against groups supporting Palestine.²⁸⁴ Hala Maksoud, President of the American Arab Anti-Discrimination Committee in Washington says, "We are being targeted, singled out. . . . Every Muslim who goes to a mosque is

Because the law includes definitions of legal terms of art, in effect it permits only the most narrow application, punishing support of brutal terrorist attacks on innocent civilians overseas. Moreover, the Illinois law criminalizes only support of violent acts that unquestionably would be felonious according to the existing laws of Illinois. Most importantly, public policy requires state intervention where its residents are involved in support of deadly attacks conducted abroad. Finally, because the new Illinois law complements the existing federal legislation and is incidental to the field of foreign relations, it should be upheld as constitutional for purposes of the Supremacy Clause.

Id.

278. See 720 ILL. COMP. STAT. ANN. 5/29C-15(b) (Michie Supp. 1998).

279. See *id.*

280. See *id.* 5/29C-15(b)(2).

281. See *U.S. Lawmakers Rip PLO*, *supra* note 189, at A4 (indicating the federal government has acknowledged these concerns).

282. See Southwell, *supra* note 15, at 8.

283. See *id.*

284. See *id.*

suspect.”²⁸⁵ Jewish organizations strongly promoted the Illinois legislation, supporting the Palestinian supporters’ fears of persecution.²⁸⁶

Irish organizations like Irish Northern Aid (INA) and the Prisoners Dependent Fund have a strong support base in the Chicago area, and they are also troubled by the potential effects of the new law.²⁸⁷ For example, Tom Birt, a Chicago area bar owner who has helped raise money for INA, explains the position of many Irish Americans: “Most of the Irish population in Chicago doesn’t [sic] denounce the IRA, but they don’t support it. My heart goes out to the families in Belfast and Derry who have endured so much hardship. The money that has reached these has helped them survive.”²⁸⁸ Illinois must make a strong effort to enforce its antiterrorism fundraising law equally against all groups in violation and not just against specific target organizations.

VI. CONCLUSION

The antifunding legislation may prove to be essential in the fight against international terrorism. It is economically inefficient to spend millions of dollars fighting terrorism abroad while the terrorists are being funded by American citizens. When terrorists cannot fund their activities in the United States, they will be forced to seek funding elsewhere. This has caused the U.S. government to urge other countries to adopt similar funding bans. If the majority of developed nations could effectively cut off funding, many terrorist organizations may cease to exist or at least lose much of their power.

However, while the antifunding provisions have the potential to slow international terrorism worldwide, they must first be enforced in the United States. The State Department has finally designated which organizations are terrorist organizations, opening the door for enforcement of the provisions. States like Illinois will closely monitor suspect transactions within their jurisdictions. The FBI and the Treasury Department may find more accurate ways of tracking the flow of donations. The threat of enforcement may be sufficient to scare terrorist organizations from openly and actively soliciting funds as they do now.

285. Puente & Franklin, *supra* note 94, at D1.

286. See Southwell, *supra* note 15, at 8.

287. See *id.*

288. *Id.*

Another step toward enforcement of the law is publicity. Both the federal government and Illinois need to publicize the law because it will make it more difficult for terrorist groups to prey on mainstream America's sympathies if Americans are aware they may be breaking a criminal law. It may also help the prosecution to establish intent if the law and target organizations are more commonly known. The most important factor in enforcement is for federal government and Illinois to actively seek and prosecute all groups that violate the law.

Thus, it is conceivable that the antiterrorist provisions can be enforced in the future. However, the problems with the statutes are inherent in the nature of the law. For example, any official designation identifying foreign organizations as terrorists will have some political element, and some groups will feel they are being unfairly discriminated against. It will always be difficult to effectively monitor and control international money laundering. The criminal intent and constitutional issues are inevitable where the government is trying to balance the rights of individual citizens against the safety of society. There is no way to reword the statute to eliminate this conflict. Other courts may agree with the *Humanitarian Law Project* case and find that elements of the law are unconstitutional. The risk of retaliation will always exist when dealing with organizations that commit violent acts. These problems are serious and virtually impossible to eliminate. Consequently, the combination and severity of these issues may ultimately render both the federal and Illinois antiterrorist fundraising provisions unenforceable.

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† This comment won the Adams & Reese writing award.