

BOOK REVIEW

Terrorism Financing: The Rise and Fall of Counter-Terrorism Policy Primacy[†]

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ABSTRACT

Throughout this review I will offer a critique of the book in several forms. In addition to the general synopses of the viewpoints expounded throughout the book, I insert my own opinions which corroborate, and, in a few cases, contradict the opinions of the authors. For the most part, as this is a *book* review, I will critique the main author's (Giraldo) strategy, recommendations, and of course, her success or failure in her attempts to achieve her stated goal: a comprehensive assessment of the nature of terrorism financing, government responses, and the efficacy of both. However, the structure of *State Responses* makes it necessary to also summarize and critique the individual contributions as well. Because we are approaching four years since the inception of *State Responses*, I make an effort to scrutinize the accuracy, or lack thereof, of any predictions made by the contributors.

Part I is an overview of the nature of the terrorist threat. In doing so, the authors employ political economy and rational choice approaches to understanding the sources of funding networks within terrorist organizations. This section further previews the key debates surrounding counter-terrorism policy and advocates a greater degree of focus on intelligence-based strategies. Part II, through case studies, conducts a comparative survey of terrorist financing and government responses to the development of the Taliban and al Qaeda terrorist organizations. This section argues that even highly motivated states face obstacles in their attempt to stifle terrorist finances. It highlights U.S. responses to terrorist financing and attempts to explain the shortcomings of these measures. Part III assesses the legal implications of CTF policies. This section explains how *State Responses* fell short in its address of the human rights and civil liberties issues which have stifled international cooperation. Finally, Part IV concludes my Review.

[†] A book review of TERRORISM FINANCING AND STATE RESPONSES. By Jeanne K. Giraldo. Stanford, C.A.: Stanford Univ. Press. 2007. Pp. ix, 296.

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As an aside, it is worth noting that my Review does not analyze each of the contributions contained within *State Responses*. Rather, I have carefully chosen the articles which, in my opinion, highlight the overarching issues surrounding terrorism finance—leaving out, for example, issues such as organized crime and warning indicators. Likewise, with respect to case studies, I have chosen to address areas which have received the majority of publicity by the U.S. media—namely the Taliban and Al Qaeda financing efforts, and of course, the United States response.

TABLE OF CONTENTS

| | |
|---|-----|
| I. Introduction..... | 267 |
| II. Depicting the Terrorist Threat..... | 268 |
| A. The Political Economy of Terrorism Financing (Giraldo and Trinkunas)..... | 268 |
| B. Terrorism Financing Mechanisms and Policy Dilemmas (Nikos Passas)..... | 270 |
| C. Terrorist Organizations' Vulnerabilities and Inefficiencies: A Rational Choice Perspective (Jacob Shapiro)..... | 272 |
| III. Case Studies: A Comparison of Local Regimes..... | 273 |
| A. Rise of the Taliban and al Qaeda Coalitions..... | 273 |
| 1. Financing Afghan Terrorism: Thugs, Drugs, and Creative Movements of Money (Thomas H. Johnson)..... | 273 |
| 2. Al Qaeda Finances and Funding to Affiliated Groups (Victor Comras)..... | 275 |
| B. Domestic and International Responses to Threat..... | 277 |
| 1. Anti-Terror Strategy, The 9/11 Commission Report, and Terrorism Financing: Implications for U.S. Policy Makers (Raphael Perl)..... | 277 |
| 2. U.S. and International Responses to Terrorist Financing (Anne Clunan)..... | 279 |
| 3. Terrorist Financing: Explaining Government Responses (Giraldo and Trinkunas)..... | 282 |
| IV. Legal Implications..... | 284 |
| V. Conclusion..... | 286 |

I. INTRODUCTION

Since the terrorist attacks of September 11, 2001, extensive resources have been devoted to the study of terrorism financing. What has been found, as expected, is that financial resources are the crux of terrorist operations both domestically and abroad. Thus, much has been made of the importance of combating the financial infrastructure of terrorist organizations internationally. Much has also been written on the subject. The advancement of the present volume is a significant contribution in the area of counter-terrorist finance.¹ It is a collaboration of articles and case studies by experts who, together, represent a comprehensive network of authority in the area of national security affairs. Through the coalescence of these authors, Jeanne K. Giraldo and Harold A. Trinkunas—in *Terrorism Financing and State Responses* (hereinafter “*State Responses*”)—seek to provide a thorough analysis of our current understanding of terrorism financing. This analysis is juxtaposed with a synopsis of governmental responses to the problem of terrorism financing.

The motivation behind this book is simple: in order to understand the battle against terrorist financing, we must take an evaluation of the overall state of affairs. In order to do so, we must evaluate recent literature in this area, address preconceived illusions which have developed around the issue, and gauge the current policy debates. Upon doing so, we can then have a better measure of our success in this fight against terrorism finance. In the author’s own words, the thrust of the book is this: “It argues that both terrorism financing and government responses face problems of coordination, oversight, and information asymmetries that render them vulnerable to disruption.”²

State Responses is the result of the conference *Terrorism Financing and State Responses in Comparative Perspective*, held in November 2004 at the Naval Postgraduate School in Monterey, CA. Editor Jeanne Giraldo is the Program Manager for the Defense Institution Reform Initiative, a new Office of the Secretary of Defense initiative. She also teaches in the National Security Affairs Department at the Naval Postgraduate School. Her co-editor, Dr. Harold Trinkunas, is an Associate Professor and Chair in the Department of National Security Affairs at the Naval Postgraduate School. Trinkunas received his PhD in Political Science from Stanford University in 1999. Giraldo and Trinkunas were the co-organizers of the project *Terrorism Financing and State Responses in a Comparative Perspective*. This volume is the product of those efforts.

¹ *TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE* (Jeanne K. Giraldo & Harold K. Trinkunas eds., 2007).

² *Id.* at 2.

The value of *State Responses* stems from its structure, rather than its content. The book makes its greatest contribution to the debate surrounding counter-terrorist financing by allowing the reader to see the issues from numerous perspectives. The compilation of contributions from various authors highlights the major debates in this area; it also enables the reader to grasp the debates from many perspectives. Overall, the book is an ambitious attempt to give a thorough history of terrorism financing and an even deeper explanation of government responses in this arena. However, the book's focus on providing a comprehensive historical overview severely limits its ability to advance the debate beyond its current status. *State Responses* leads readers to deduce that we know little about the effectiveness of counter-terrorism financing (hereinafter "CTF") efforts, and even less about the future significance of these efforts. Given this deduction, it is critical to explore the future of terrorism financing, but the reader is left wanting in this regard. The absence of this perspective is the book's greatest weakness.

II. DEPICTING THE TERRORIST THREAT

A. *The Political Economy of Terrorism Financing* (Giraldo and Trinkunas)

The opening chapter of *State Responses* develops the nature of the terrorist threat within a political economy framework.³ It is important to note this chapter is co-authored by the editors of *State Responses*, allowing readers to analyze these initial viewpoints against which the remaining authors' opinions can be weighed. In fact, a large part of this Review is devoted to assessing these opinions in light of any similar or divergent views by the other contributors.⁴ The authors develop a political economy framework, which analyses the various actors within terrorist organizations as a way of showing how funding sources influence the behavior of these groups. This approach leads the authors to the conclusion that conventional wisdom about terrorist financing exaggerates the efficiency and effectiveness of these efforts.⁵ This argument stems from the idea that while state sponsorship of terrorist organizations has historically limited financing efforts, "new terrorist"⁶ groups are becoming less constrained due to the rise of a financial model in which terrorists are becoming increasingly self-

³ Jeanne K. Giraldo & Harold A. Trinkunas, *The Political Economy of Terrorism Financing*, in *TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE* 7, 11 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007).

⁴ The book is formulated as a comparative perspective. It is a collection of works from experts in the field, many of which make similar arguments, while others diverge. My argument is that this structure is the book's key strength, so an analysis of these works respective of each other is essential.

⁵ GIRALDO & TRINKUNAS, *supra* note 3, at 19.

⁶ *Id.* at 7.

sufficient.⁷ In sum, terrorists are bypassing state funding in search of other funding sources.

What proceeds from this is the obvious deduction that terrorism financing is driven more so by the availability of alternative funding than by a lack of state sponsorship.⁸ A fair point is made by the argument that the growing deadliness of new terrorism is the product of the diversification of funding sources and the declining importance of state support. This point dispels the myth that states are the ultimate financiers of terrorism and highlights a critical reason why curtailing terrorist financing has become more difficult in recent decades.

However, the authors undermine to some degree the fundamental concept of terrorism. It seems contradictory to suggest CTF agencies avoid overestimating the capabilities of terrorists, while also noting the increase in the lethality of such attacks.⁹ How can we question the effectiveness of terrorists' efforts when they continue to be successful? Traditional notions of terrorism by definition make it incapable of overestimation. It is a bit counterintuitive: the overarching theme of the book is the explanation of why state responses have proven largely ineffective, yet the authors insinuate that we have somehow overestimated our adversary. If terrorists are becoming increasingly resourceful in their search for funding, and the deadliness of attacks continues to intensify, it would seem to reason they are becoming more efficient, not less so.

In the authors' defense, the confusion seems to be more a product of the wording than an actual conceptual miscalculation. To suggest that we have exaggerated the "efficiency" and "effectiveness" of terrorists financing leads the reader to believe CTF tactics have been unsuccessful.¹⁰ However, the authors use these words to say the opposite—that while globalization has forced terrorists to adapt, making government measures more difficult to implement, it also creates opportunities for these governments because terrorists have become more vulnerable.¹¹ It is proposed as a recommendation that is repeated subsequently throughout the book: the need to develop a realistic view of the terrorist threat. Unfortunately, it is phrased in a manner which diverts its intended message. It is a small misstep at an inopportune time. The reader closes the opening chapter with a disparaged view of the threat, not in sync with the remainder of the book and certainly not the intended result.

⁷ *Id.* at 8.

⁸ *Id.* at 7.

⁹ *Id.* at 19.

¹⁰ *Id.*

¹¹ *Id.* at 20.

As noted previously, my one qualm with this piece is found in the final line, when the authors caution agencies to “[A]void overestimating the power, flexibility, and capabilities of the groups.”¹² While the authors’ point is well taken, it is formulated in such a manner to create confusion. The lay reader is likely to find the above suggestions perplexing in light of the fact that only a few sentences prior the authors note the increasing ease with which globalization has enabled terrorists to organize funding. Overall, this piece stands for the proposition that the challenges facing governments has become greater due to the onset of globalization in the wake of the Cold War. The stage is thus sufficiently set for the remainder of the book to explain the successes and failures of government responses.

B. Terrorism Financing Mechanisms and Policy Dilemmas (Nikos Passas)

Similar to the previous article by Giraldo and Trinkunas, the commentary by Nikos Passas argues that the effectiveness of financial controls is limited. Passas suggests that imprudent expectations can not only be ineffective, but also highly counterproductive.¹³ Furthermore, the misapplication of these controls can have the same effect, causing more harm than good.¹⁴ Passas argues that rather than focusing on unrealistic goals, governments should monitor terrorists from a social context in order to better track and predict shifting preferences.¹⁵

The key divergence from Giraldo and Trinkunas, however, is that Passas advocates the realization that CTF measures are inherently limited in their effectiveness, whereas the former advocate the recognition that terrorists are themselves limited in their capabilities. This difference makes Passas’ contribution significant. Rather than demeaning the capacity of our opposition, Passas believes we should accept the situation for what it is and adjust our policies accordingly. This is not to say the former commentary failed to credit the accomplishments of terrorist organizations; but rather, by focusing on our own inefficiencies, the immediate score advances the debate towards a groupthink resolution to the problem.

Through the use of numerical figures, Passas is able to generate a cognizable threat. He notes that the 9/11 attacks are estimated to have cost as little as \$350,000; such petty sums simply cannot be controlled effectively.¹⁶ A

¹² *Id.*

¹³ Nikos Passas, *Terrorism Financing Mechanisms and Policy Dilemmas*, in *TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE* 21, 22 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007).

¹⁴ *Id.*

¹⁵ *Id.* at 23.

¹⁶ *Id.* at 33.

major point of his piece is that our knowledge of terrorist financing is trivial at best. Without better knowledge of the threat, he asks, how can we prevent it? For this reason, I find this piece to be one of the better contributions in *State Responses*. It highlights the reality of our limited knowledge in this area and dispels any beliefs to the contrary. The reality here is that terrorism is cheap, and as long as this continues to be true, small amounts of financing will always be available to fuel terrorist motivations.¹⁷

Potentially even more edifying and especially pertinent to this Review, Passas says “[W]e have been fighting terror with error. . . .”¹⁸ From a legal perspective, the U.S. has undermined the legitimacy of its efforts by taking measures prematurely. This lack of due process has caused a hesitancy to cooperate from other nations.¹⁹ This cooperation is essential to effective counter-terrorist financing efforts. In this respect we have been our own greatest enemy. As Passas so eloquently articulates, “We cannot defend democracy, human rights, and due process by undermining them at home or internationally.”²⁰ The debate on requisite due process for suspected terrorists still rages. The military commissions have been compared to the Nuremberg trials of Nazi war criminals following World War II, in which defendants were given limited due process.²¹ The debate has been polarized such that compromise has been an arduous process. Passas thus points out an important aspect of the battle against terrorism, which is that the effectiveness of government responses is severely limited as long as opposing sides do not converge.

Viewed in the context of the volume as a whole, Passas offers a distinctive complement to the opening chapter. His excerpt underlines the incompleteness of our knowledge with respect to the nature of terrorist funding. It further emphasizes the discrepancies amongst the international community regarding proposed courses of actions. It is also the first of many pieces to stress the need to facilitate greater international cooperation, which Passas believes is impossible if we continue to violate human rights in our efforts. His key thrust is the avoidance of counterproductive policies, which serves as a nice counterpart to the previous piece which recognizes the need to make a realistic assessment of the threat. Thus, his contribution effectively builds upon the previous, helping the reader further understand the complete picture.

¹⁷ *Id.* at 37.

¹⁸ *Id.*

¹⁹ *Id.* at 36.

²⁰ *Id.* at 37.

²¹ Jeffrey Rosen, *A Terror Trial, With or Without Due Process*, N.Y. Times, Sept. 10, 2006, <http://www.nytimes.com/2006/09/10/weekinreview/10rosen.html>.

C. Terrorist Organizations' Vulnerabilities and Inefficiencies: A Rational Choice Perspective (Jacob Shapiro)

Shapiro's ideas share some similarities, albeit some differences with the first two pieces. Similar to the first excerpt is the idea that terrorist organizations are inefficient in their funding strategies. However, in contrast to the political economy framework²², his principal-agent framework is more easily relatable, and thus more understandable to readers. In what he deems a "rational choice perspective," Shapiro describes a moral hazard situation created by the need for leaders (principals) to delegate fundraising to middlemen (agents).²³ Essentially, he argues that terrorists face a security-efficiency tradeoff created by this problem of moral hazard which arises when funds are scarce.²⁴ Shapiro concludes that governments can exploit this tradeoff. By restricting finances, terrorists are forced to choose between security and efficiency. Choosing efficiency exposes terrorist vulnerabilities. Choosing security means fewer operations.²⁵

Unlike Giraldo and Trinkunas, Shapiro suggests these inefficiencies are not necessarily the result of globalization and decreasing state sponsorship. Instead, they must be brought about by government intervention.²⁶ This is what he means by rational choice: when governments restrict terrorist finances, terrorist leaders must make a choice between efficiency and security. Regardless of which strategy they pursue, the government is better off because terrorist leaders cannot pursue both options.²⁷

While Shapiro's views are to some degree analogous to those of Giraldo and Trinkunas, they deviate significantly from Passas' proposals. The key difference lies in Shapiro's advocacy of a proactive government approach. Passas, on the other hand, advocates a reactive approach²⁸, stressing the importance of minimizing the adverse effects of government efforts. Instead of taking proactive actions, Passas believes efforts should be focused on gathering information on terrorist financing in order to facilitate monitoring and anticipation of future terrorist movements. In this vein, Passas can be said to advocate a passive strategy, whereas Shapiro recommends undertaking specific (proactive) actions to place terrorist organizations on the defensive. This

²² GIRALDO & TRINKUNAS, *supra* note 3, at 11.

²³ Jacob Shapiro, *Terrorist Organizations' Vulnerabilities and Inefficiencies*, in *TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE* 56, 58 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007).

²⁴ *Id.* at 60.

²⁵ *Id.* at 71.

²⁶ *Id.*

²⁷ *Id.*

²⁸ NIKOS PASSAS, *supra* note 13, at 37.

distinction is arguably the principal reason for the inclusion of Shapiro's work in this volume. The debate over effective CTF policies is again furthered by providing a unique perspective through Shapiro's rational choice theory. *State Responses* begins to take shape in its attempt to show why the global effort to combat terrorism financing has met considerable resistance—a lack of consensus over appropriate policy responses makes global cooperation largely unworkable.

III. CASE STUDIES: A COMPARISON OF GLOBAL REGIMES

A. *Rise of the Taliban and al Qaeda Coalitions*

1. Financing Afghan Terrorism: Thugs, Drugs, and Creative Movements of Money (Thomas H. Johnson)

The origins of Afghan terrorism, most easily identified with the Taliban, are explained by Johnson through a historical context.²⁹ He explains how Afghanistan initially attracted extremists due to the fact that the country was in continuous conflict for decades prior to the 1990s. This conflict and the remoteness of the region provided a haven for extremists to train and base their operations.³⁰ Johnson makes an excellent point here, one that is not easily ascertained by the American public: Afghanistan was a target of U.S. anti-terror efforts long before the attacks of 9/11.

Johnson begins by explaining the impetus behind Afghanistan's development as a hotbed for extremism, beginning with the Soviet Union's invasion in 1979. The invasion saw the influx of Muslim volunteers eager to aid the Afghan resistance. It was deemed a "holy war," or *jihad*, a term with which many are now familiar. Among these volunteers was Osama bin Laden, originally of Saudi Arabia. From his base in Afghanistan bin Laden was able to recruit extremists from all over the Middle East. The withdrawal of the Soviets in 1989 led to the dispersion of Afghan extremists across the Middle East.³¹ More importantly, they had been radicalized and unified by their defeat of the great Soviet power. The defeat of Soviet imperialism spurred the belief that they could do the same to U.S. imperialism.³²

²⁹ Thomas H. Johnson, *Financing Afghan Terrorism: Thugs, Drugs, and Creative Movements of Money*, in *TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE* 93, 94 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007).

³⁰ *Id.* at 93.

³¹ *Id.* at 102.

³² *Id.* at 103.

As Johnson explains, Afghan Arabs received funding during the Soviet resistance. The funding continued after the Soviet withdrawal. So the growth of Afghan terrorist financing began with the early insurgents against the Soviet invasion, but developed into terrorist organizations connected to a transnational jihadi network.³³ Johnson's contribution here is appreciated because it explains how Afghanistan became a haven for terrorism, a history that is presumably not readily known to the lay person. In fact, it seems a fair conclusion to say that most Americans are not aware that Osama bin Laden is actually from Saudi Arabia and only began his ties to Afghanistan during the Soviet invasion. In this respect, Johnson's historical overview is not exhaustive. It is informative and entirely crucial to an understanding of Afghan terrorism.

Johnson makes another important contribution by explaining the interconnectedness of the Taliban and al Qaeda terrorist organizations. As he explains, the groups are distinct, but the differentiation between bin Laden and the Taliban was blurred after 1996 due to their similar roles in the jihadi network.³⁴ Bin Laden and al Qaeda provided financial support to Afghanistan. In return, bin Laden was allowed to move freely in his host state.³⁵ The complex relationships between the groups served to erode the distinction between the two. Johnson's description of bin Laden's involvement with the Taliban enables the reader to grasp the interrelatedness of the groups while also understanding their differences.

Also of particular interest is what has been termed "blowback,"³⁶ a term used to refer to the unintended consequences of many states'—including the U.S.—initial support of the *mujahidin* during the anti-Soviet jihad.³⁷ The *mujahidin* were Muslim guerilla warriors fighting against the Soviet invasion. Johnson describes how the U.S. funded the *mujahidin* with the hopes of forcing the Soviets to withdraw in humiliation, turning Afghanistan into a Soviet "Vietnam."³⁸ The U.S. used Pakistan to distribute aid to Afghanistan, who in turn pursued their own interests. Johnson describes how the U.S. extended aid to the *mujahidin* without first considering who they represented.³⁹ Reminiscent of the Passas article, the U.S. was its own greatest enemy. Through all our efforts to stomp out terrorist financing, we may have once been a patron to its initial growth—a catalyst in Afghan's rapid rise to the forefront of Arab extremism.

³³ *Id.* at 94.

³⁴ *Id.* at 104.

³⁵ MICHAEL SCHEUER, *IMPERIAL HUBRIS: WHY THE WEST IS LOSING THE WAR ON TERRORISM* 140-41 (2004).

³⁶ AHMED RASHID, *TALIBAN: MILITANT ISLAM, OIL AND FUNDAMENTALISM IN CENTRAL ASIA* 198 (2001).

³⁷ THOMAS H. JOHNSON, *supra* note 29, at 112.

³⁸ *Id.*

³⁹ *Id.*

Overall, Johnson sheds light on many historical elements of the Afghan terrorist network not readily apparent to most readers. Johnson's most important contributions are his underlining of Afghanistan's rise as a transnational haven for terrorist efforts after the Soviet invasion, the growing affiliation of al Qaeda (founded in Pakistan by Osama bin Laden) and the Taliban (originated in Afghanistan), and the development of Osama bin Laden as a figurehead in the jihadi movement. In the wake of the recent Iraq War, it emphasizes the importance of Afghanistan as an ongoing threat to American freedom. Due to the potential for the reemergence of Afghanistan as a haven for international terrorists, he stresses a continued focus on Afghanistan.⁴⁰ Thus, Johnson goes beyond offering a mere historical overview, making a practical suggestion regarding the importance of securing the Afghan region going forward.⁴¹

2. Al Qaeda Finances and Funding to Affiliated Groups (Victor Comras)

As discussed in the previous article, the roots of al Qaeda's financial network trace directly to the recruiting and financing networks established to support anti-Soviet jihad activities in Afghanistan in the late 1980s. The subsequent overthrow of the Taliban regime and the elimination of al Qaeda's bases in Afghanistan resulted in al Qaeda splintering into smaller, independent cells responsible for their own funding.⁴² While the U.S. has made significant headway, our efforts have been made more difficult because terrorist assets are becoming increasingly difficult to trace. As the other authors have noted, the adaptability of terrorist organizations has forced counter-terrorism units to reassess their strategies, creating an enduring chess match of sorts, each party constantly reacting to the moves of the other.⁴³

Comras suggests these difficulties have been furthered by shortcomings in the way in which the asset-freezing regime has been implemented.⁴⁴ He explains why countries are reluctant to provide governments with the names of

⁴⁰ *Id.* at 114.

⁴¹ Contrary to other pieces, Johnson shows not only how the terrorist threat originated, but why it remains a continuing threat. This contribution is thus significant as an outlier to my argument that *State Responses* offers little in the way of forward-looking thinking.

⁴² Victor Comras, *Al Qaeda Finances and Funding to Affiliated Groups*, in *TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE* 115, 116 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007).

⁴³ The adaptability of terrorist organizations is a central theme of *State Responses*. It is one of few underlying justifications throughout the book for why government responses have largely failed to address the threat over the last decade.

⁴⁴ VICTOR COMRAS, *supra* note 42, at 131.

their residents, and thus how they have limited freezing actions to bank accounts which are easily avoided by adept terrorists.⁴⁵ Without the ability to reach past these accounts, our impact is severely limited. To make matters worse, Comras points out that the continuing Israeli-Palestinian conflict and the Iraq War have fostered recruitment for a new generation of al Qaeda-related terrorist factions.⁴⁶

The chief premise of Comras' article is that international cooperation remains greatly insufficient to make any significant headway in the international war on terror.⁴⁷ Comras points out that most cooperation has taken place on a strictly bilateral basis while multilateral cooperation has been limited.⁴⁸ The lack of multilateral cooperation leaves many known terrorist funding operatives free to continue their financial support structures. The commentary of Comras makes it clear that a priority must be placed on controlling terrorists groups globally by keeping them separated and thereby limiting their ability to raise adequate funds. The best way to do this is through international cooperation, which has proven a slow road. This argument is akin to that of Nikos Passas, who urged governments to avoid counterproductive policies⁴⁹ which hinder, rather than cultivate international cooperation.

Comras leads the reader to the conclusion that the adaptability of contemporary terrorist organizations is a consequence of modern-day warfare. It is my opinion that this article's best contribution is not its detailed discussion of al Qaeda financing, but the realization that we are fighting a battle that cannot be entirely won. The 20th century saw imperialistic world powers go head to head for world domination. The modern era has ushered in a new kind of war—the "war on terror." The war on terror is not a battle against a fellow nation or government; it is a battle against a group of insurgents committed to a cause. This is the key distinction—terrorists have chosen to enlist in this war. They believe in it, and it is for this reason the war on terror will not end at the hand of a peace treaty: it will continue until the adversary loses its will to fight for its beliefs. Arriving at this conclusion is by no means a necessary corollary to the Comras' article, but it certainly opens the door to a number of possible suppositions.

⁴⁵ *Id.*

⁴⁶ *Id.* at 117.

⁴⁷ *Id.* at 132. The notion of international cooperation, or lack thereof, has been a central theme in *State Responses*.

⁴⁸ *Id.*

⁴⁹ NIKOS PASSAS, *supra* note 13, at 22.

B. Domestic and International Responses to the Threat

1. Anti-Terror Strategy, The 9/11 Commission Report, and
Terrorism Financing: Implications for U.S. Policy Makers
(Raphael Perl)

Perl does well in his explanation of the shift in U.S. strategy away from the seizure of assets to the doctrine of preemption.⁵⁰ He acknowledges that these wars have never been won, and never will be won, by defensive operations.⁵¹ Accordingly, U.S. anti-terrorism strategy relies on the doctrine of preemption, part of which involves targeting terrorist finances. In this respect, Perl is similar to Comras in that they both promote a strategy involving proactive efforts to create a web of international cooperation. A majority of the remainder of the article focuses on the 9/11 Commission Report⁵² (hereinafter “The Report”), highlighting policymakers’ inevitable realization that we must change our strategy in order to combat terrorism financing.

Perl provides a sound background in U.S. anti-terror strategy. He explains the differences between the National Strategy for Homeland Security—which focuses on attacks *within* the U.S.—and the National Strategy for Combating Terrorism, which focuses on defusing threats *before* they reach U.S. borders.⁵³ The latter has an inherent preemptive component. Perl further explains the concept of “defense-in-depth,” a plan founded on four pillars of defense—defeat, deny, diminish, and defend.⁵⁴ The key to this synopsis is the centrality of law enforcement cooperation centered on international cooperation. The priority on international cooperation remains a theme amongst the authors of *State Responses*.

The above analysis is followed by an overview and critique of The Report. Overall, The Report calls for redefining terrorist financing strategy goals away

⁵⁰ “Preemption” in this context is the notion that governments should commence proactive actions to rout terrorist funds before they materialize. Examples of preemptive tactics are the Bush administration’s actions following 9/11, as well as the American invasion of Iraq in the Iraq War.

⁵¹ Raphael Perl, *Anti-Terror Strategy, The 9/11 Commission Report, and Terrorism Financing*, in *TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE* 247 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007).

⁵² NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., *FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES* (2004) (hereinafter “9/11 Commission Report”).

⁵³ See OFFICE OF HOMELAND SEC., *NATIONAL STRATEGY FOR HOMELAND SECURITY* (July 2002), http://whitehouse.gov/homeland/book/nat_strat_hls.pdf.

⁵⁴ *Id.*

from a focus on seizing assets and towards a focus on gathering intelligence for preemption purposes.⁵⁵ In addition to these recommendations, The Report advises continuing aid to Pakistan and Afghanistan, who The Report perceives to be vital allies in the war on terror.⁵⁶ This is an interesting concept given what Thomas Johnson previously described as “blowback,” noting the acknowledgment of the consequences of aid to these nations prior to 9/11. Despite this, Pakistan is widely considered an ally in the war on terror, although many Americans have blamed the resurgence of al Qaeda and Taliban forces on Pakistan’s lackluster efforts. While some argue making continued aid conditional on Pakistan’s performance, others believe convincing Pakistani officials that defeating terrorism is in their own best interest is the most effective way to use this ally.⁵⁷

As Perl points out, The Report seemed to reach the conclusion that it may not be feasible to deny terrorists funding in any meaningful sense.⁵⁸ Though one might view this as a step forward, Perl describes this conclusion as a key shortcoming of The Report. He believes The Report overlooked a crucial detail—that although dollar amounts seized may be smaller, the ultimate impact is high in that these funds are critical to the ultimate operation of terrorist organizations.⁵⁹ Perl refers to The Report as “nothing less than a policy bombshell” for its failure to adequately assess the focus and effectiveness of our strategy.⁶⁰ In a 2004 article, writer Benjamin DeMott stated that: “The plain, sad reality...is that The 9/11 Commission Report, despite the vast quantity of labor behind it, is a cheat and a fraud...At the core of all these failures lies a deep wariness of earnest, well-informed public debate.”⁶¹

In closing, Perl advocates implementing clear ways to measure our success in this area. He believes we must first establish attainable goals and then

⁵⁵ 9/11 COMMISSION REPORT, *supra* note 50, at 18. According to The Report, the U.S. should “expect less from trying to dry up terrorist money and more from following the money from intelligence, as a tool to hunt terrorists, understand their networks, and disrupt their operations.”

⁵⁶ *Combating Terrorism: The 9/11 Commission Recommendations and the National Strategies*, H. Subcomm. on Nat’l Sec., Emerging Threats, and Int’l Relations (2004) (testimony of Raphael Perl).

⁵⁷ Ashley J. Tellis, Policy Brief, *Pakistan—Conflicted Ally in the War on Terror*, CARNEGIE ENDOWMENT FOR INT’L PEACE (December 2007).

⁵⁸ RAPHAEL PERL, *supra* note 51, at 251.

⁵⁹ *Id.*

⁶⁰ *Id.* at 253.

⁶¹ Benjamin DeMott, *Whitewash as Public Service: How The 9/11 Commission Report Defrauds the Nation*, HARPER’S MAGAZINE, Oct. 2004, <http://www.harpers.org/archive/2004/10/0080234>.

measure the success with these goals in mind.⁶² Perl also offers a number of policy options. One proposal includes a strategy focused on the demand driving the money, rather than simply on the money alone. This proposal views terrorism as the product of an ideology that must be countered.⁶³ Perl stresses the importance of understanding the social and cultural values of other countries in order to achieve maximum international cooperation.⁶⁴ This point cannot be overlooked. The ethnocentric tendencies of the U.S. as a whole have plagued us in the eyes of fellow nations, and likely have caused much of the terrorist hatred we battle currently.

A notable strength of Perl's contribution is his effort to suggest practical policy options for decision makers. Although they are quite broad, these suggestions at least acknowledge that our current efforts must be adjusted in order to achieve maximum efficiency. Perl makes an important point that U.S. policymakers must target areas where gains can be made, cutting our losses in areas with diminishing returns.⁶⁵ He further urges striking a balance between the pursuit of anti-terrorism policies and the protection of civil liberties.⁶⁶ It is no secret that individual rights have already been eroded to a dangerous extent in pursuit of homeland security.

2. U.S. and International Responses to Terrorist Financing (Anne Clunan)

Clunan begins with a discussion of CTF regimes within the framework of a collective action problem. She notes that while most states would benefit from limiting terrorist finances, there is an incentive to pass the costs of these efforts on to others when the benefits outweigh the costs.⁶⁷ Further, Clunan identifies how the U.S. effort has been undermined by competing interests within its own government.⁶⁸ As the figurehead of the war on terror, the inability—and, quite possibly, the indifference—of the U.S. to combat the problem leaves little reason to expect other states to do so.⁶⁹ Clunan's main argument is that the U.S. is not doing enough to create international cooperation, which Clunan describes as a

⁶² RAPHAEL PERL, *supra* note 51, at 258.

⁶³ *Id.* at 255.

⁶⁴ *Id.* at 258.

⁶⁵ *Id.*

⁶⁶ *Id.* at 259.

⁶⁷ Anne Clunan, *U.S. and International Responses to Terrorist Financing*, in *TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE* 260, 262 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007).

⁶⁸ Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 *INT'L ORG.* 427–60 (1988).

⁶⁹ ANNE CLUNAN, *supra* note 67.

“classic collective action problem.”⁷⁰ This failure is the result of cognitive dissonance associated with the passage of time. The main impetus for states to implement CTF norms has not been U.S. pressure but the immediate need to prevent terrorist attacks domestically.⁷¹ We cannot expect others to cooperate if they do not recognize the necessity of doing so.

According to Clunan, there appears to be agreement among the U.S. political elite that cooperation on a multilateral level is fruitless.⁷² U.S. officials have determined that foreign governments do not view combating terrorist financing as their problem.⁷³ Likewise, although U.S. agencies agreed to interagency cooperation immediately following 9/11, the passage of time has eroded the political will to put the national interest ahead of private interests.⁷⁴ Officials worry that CTF no longer represents a top priority at higher levels of government.⁷⁵ The U.S. domestic approach has transformed since the period immediately following 9/11. U.S. international efforts now focus on intelligence sharing with a small number of states using *bilateral* pressure rather than funding a global *multilateral* regime.⁷⁶

Clunan concludes by underscoring an unfortunate reality, which is that redefining the national interest to include CTF appears directly correlated with states' personal experience with terrorism.⁷⁷ Accordingly, as time passes, the reality of terrorism becomes less tangible, causing other nations to back away from their efforts to combat terrorism financing. Clunan makes an excellent point: with time we tend to cast aside things which we once deemed paramount. As we approach the 10 year anniversary of 9/11, the lack of any significant domestic threat since that time⁷⁸ has caused U.S. policy makers to focus on other efforts. A direct corollary has been the diminished importance of our counter-terrorism efforts. In the weeks after 9/11, then-President George W. Bush stated that “We will direct every resource at our command to win the war against

⁷⁰ *Id.* at 261.

⁷¹ *Id.* at 263.

⁷² Interview by Anne Clunan with State Department official (Sept. 20, 2004).

⁷³ Interviews by Anne Clunan with FinCEN and State Department officials (Sept. 20, 23 and Oct. 12, 2004).

⁷⁴ ANNE CLUNAN, *supra* note 67, at 272.

⁷⁵ Interviews by Anne Clunan with State Department and FinCEN officials (Oct. 12–13, 2004).

⁷⁶ NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, 108th CONG., MONOGRAPH ON TERRORIST FINANCING—REPORT TO THE COMMISSION 46–47 (Comm. Print 2004) (print authored by John Roth, Douglas Greenburg, and Serena Wille).

⁷⁷ ANNE CLUNAN, *supra* note 67, at 280.

⁷⁸ No significant domestic threats other than the perceived threat of nuclear weapons stockpiling by Iraq, a theory which led to U.S. intervention in the Iraq War but has since been dispelled.

terrorists...” The immediacy of this threat appears to have weakened with the passage of time. Not only have U.S. efforts eroded, but the international interest in CTF appears to be dwindling as well. This point is corroborated by others in the field who view this as a fundamental reason for waning international support.⁷⁹

Clunan’s contribution is significant for its recognition that while the U.S. realizes the need to pursue an intelligence-based strategy involving international cooperation, we have essentially failed in this endeavor. We continue to focus our efforts in the wrong areas instead of cooperating with our allies and fostering an international recognition of the need to make CTF a priority. Clunan echoes her fellow contributors by stressing the need for international cooperation. However, she is unique in her identification of the ways in which the U.S. has been counterproductive by failing to adhere to its stated agenda. For example, she highlights how in the weeks following 9/11 the UN Security Council passed a *U.S.-sponsored* resolution (Resolution 1373) obligating members to take measures to suppress terrorism financing.⁸⁰ However, the only incentive offered by Resolution 1373 was technical assistance, of which only \$20 million was spent by the U.S. in the six years following the resolution’s inception.⁸¹ For some perspective, the U.S. contributed less than 10 percent to the UN during that period, versus more than half from Austria.⁸²

Clunan leads the reader to the proposition that the U.S.—despite its alleged intent—has failed itself. The global war on terrorism financing is largely a creation of the U.S. war on terror in the aftermath of 9/11, meaning the U.S. has been at the core of this pursuit. The United Nations appears to be our best hope of attaining the “international cooperation” necessary to make real, tangible progress, yet we continue to negate UN efforts. It is not imprudent to call our actions over the last decade hypocritical. While we have maintained the notion that transnational collaboration is crucial, we have not made the requisite effort, namely financially, to combat terrorism finances.

⁷⁹ Michael Jacobson, *Grading U.S. Performance against Terrorism Financing*, WASHINGTON INSTITUTE FOR NEAR EAST POLICY (September 5, 2007), available at <http://www.washingtoninstitute.org/print.php?template=C05 &CID=2656> (arguing that international cooperation is likely to wane as 9/11 grows more distant).

⁸⁰ Chantal De Jonge Oudraat, *The United Nations and the Campaign Against Terrorism* 32 (2004) (unpublished manuscript) (available at <http://www.unidir.org/pdf/articles/pdf-art2017.pdf>).

⁸¹ Interview by Anne Clunan with State Department officials (Sept. 20, 23 and Oct. 13, 2004).

⁸² *Strengthening International Cooperation and Technical Assistance in Preventing and Combating Terrorism*, UN Economic and Social Council, tables 1, 7, U.N. Doc. E/CN.7/2009/13 (Sept. 22, 2009).

3. Terrorist Financing: Explaining Government Responses (Giraldo and Trinkunas)

The closing piece brings readers full circle. The editors of *State Responses*, who opened the book with a broad overview of the threat, provide an explanation of government responses. They argue that the most important source of divergence in government responses is domestic factors.⁸³ As they explain, although the current CTF regime encourages states to confront the threat, this result is dependent upon domestic factors that ultimately determine the degree to which a country participates effectively in the overall scheme.⁸⁴

Giraldo and Trinkunas underline a major encumbrance to the regime's success, which is the sheer deficiency in the financial resources necessary to implement an effective plan. The lack of adequate funding means many states have not yet established the costly mechanisms required to effectively track terrorist finances.⁸⁵ They point out that the ultimate decision regarding compliance with an international CTF regime depends on how governments appraise the costs and benefits of these policies.⁸⁶ This assessment is controlled by external factors such as U.S. incentives for cooperation and public sentiment against U.S. policies which often circumvent necessary legal requirements.⁸⁷ These arguments echo Clunan, who also believes the onus is on the U.S. to stimulate meaningful cooperation. Even more challenging is the realization that CTF policies intrinsically provoke greater levels of domestic resistance in comparison to other counter-terrorism policies.⁸⁸ As a consequence, any growth in international cooperation must be spurned by supplying the funds necessary to implement these strategies as well as measures to ensure our money is spent properly.

An evaluation of the effectiveness of CTF policies post-9/11 leads the authors to suggest an increased focus on an intelligence-based approach—a shift recommended by others throughout *State Responses*. While this shift has occurred to some degree, the effectiveness of such an approach is difficult to measure. Furthermore, the U.S. government has taken the position that CTF efforts have made terrorist financing “riskier, more costly, and more time-consuming.”⁸⁹ However, the article points out that the real question is one of

⁸³ Jeanne Giraldo & Harold Trinkunas, *Terrorist Financing: Explaining Government Responses*, in *TERRORISM FINANCING AND STATE RESPONSES: A COMPARATIVE PERSPECTIVE* 282 (Jeanne K. Giraldo & Harold A. Trinkunas eds., 2007).

⁸⁴ *Id.* at 283.

⁸⁵ *Id.* at 286.

⁸⁶ *Id.*

⁸⁷ *Id.* at 288.

⁸⁸ *Id.* at 287.

⁸⁹ *Id.* at 293.

measuring the *degree* of effectiveness, rather than a quantitative measurement based on assets seized.⁹⁰ In short, we have certainly disrupted terrorist financing efforts, but was it worth it?

In response to this question critics point to terrorists' adaptability as proof of the futility of the CTF regime; proponents see it as evidence of the efficacy of existing policies.⁹¹ The problem lies in the inability to devise useful "measures of effectiveness."⁹² Thus, while the benefits of CTF policies are difficult to assess, the costs resulting from defective efforts are more easily measured by gauging public reactions to these efforts.⁹³ The best way to ensure positive sentiment is to avoid undermining individual rights in our pursuit of asset seizures. The past has seen public sentiment tarnished by administrative procedures that require lower standards of proof and offer little recourse to its targets. Governments can ill-afford to continue down this path.

Analogous to their initial argument, Giraldo and Trinkunas cite the adaptability of terrorist organizations as the basis for the recent trend in attacks which are both more frequent and lethal in nature.⁹⁴ This problem is compounded by the failure to attain meaningful international and interagency cooperation.⁹⁵ They offer possible solutions to these problems: the U.S. should assume a greater burden to incentivize multilateral cooperation, work more closely with other countries to establish workable policies, and implement an intelligence-based approach.⁹⁶

The final piece is a satisfactory complement to the contributions which precede it, yet its value is dependent on the viability of its recommendations going forward. Thus, the book closes strongly by leaving the reader with *tangible* recommendations. However, the preceding articles make it readily apparent that the *feasibility* of these measures depends on the U.S. government's willingness and ability to outlay significant amounts of cash. Such a request seems unlikely given the state of our current economy and the ongoing priority of controlling the budget deficit.⁹⁷ Although it is clear what needs to be done, U.S. CTF

⁹⁰ *Id.*

⁹¹ *Id.* at 294.

⁹² U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-06-19, TERRORIST FINANCING: BETTER STRATEGIC PLANNING NEEDED TO COORDINATE U.S. EFFORTS TO DELIVER COUNTER-TERRORISM FINANCING TRAINING AND TECHNICAL ASSISTANCE ABROAD (October 2005).

⁹³ GIRALDO & TRINKUNAS, *supra* note 83, at 294.

⁹⁴ *Id.* at 295.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ The 2009 budget deficit represented 12.3% of gross domestic product, the largest share since WWII.

expenditures over the last decade make it clear that we are nowhere near the level of commitment required to realize these objectives.

IV. LEGAL IMPLICATIONS

This Review would not be complete without an assessment of *State Responses* from a legal standpoint. Unfortunately, although contributors cite human rights infringement as a major obstacle to both domestic and international cooperation, the authors fail to go beyond a mere statement of the problem. Given the book's focus on government responses, and the six-year removal of 9/11 at publication, the absence of this assessment is perplexing. If the book seeks to fully appraise government responses to terrorism, an evaluation of the consequences of these policies—such as their affect on civil liberties—must flow from this investigation. The absence of this analysis makes it necessary to briefly highlight but a few of these legal debates, some of which apply broadly to the war on terror but nonetheless have affected the efficacy of counter-terrorism as a whole, including the CTF regime.

It is no secret that the U.S. counter-terrorism agenda has had the unintended consequence of undermining the war on terror. A major debate in this area involves the Fourth Amendment to the U.S. Constitution. With respect to non-U.S. citizens, the debate was spurned by President Bush's detention of persons in situations where there is "reason to believe" a connection to terrorist activity exists.⁹⁸ Moreover, the problem is exacerbated by the refusal to allow detainees to challenge the legality of the arrests.⁹⁹ Proponents defend the order on the grounds that it applies only to non-citizens; critics argue that this procedure patently defeats the purpose of the Fourth Amendment, regardless of its alleged targets.¹⁰⁰

Domestically, we can look to the U.S.A. PATRIOT Act¹⁰¹ (hereinafter "Patriot Act") as a source of heated debate. Unlike the detainee process described above, the Patriot Act is written in such a way as to *mandate* approval by the judiciary.¹⁰² Similar to other government policies in the wake of 9/11, officials appear to be bypassing fundamental legal prerequisites. In short, the

⁹⁸ Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, Executive Order, 66 Fed. Reg. 57833 (proposed Nov. 13, 2001).

⁹⁹ See *id.* § 7(b)(2) (providing that "the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof").

¹⁰⁰ Charles Lane, *Court Case Challenges Power of President: Military Tribunals' Legitimacy at Issue*, WASH. POST, March 26, 2006.

¹⁰¹ USA PATRIOT Act, Pub. L. No. 107-56, 15 Stat. 272 (2001) (hereinafter "Patriot Act").

¹⁰² See STEPHEN J. SCHULHOFER, *RETHINKING THE PATRIOT ACT* 55–78 (2005).

U.S. government passed the Patriot Act as a means to do virtually whatever they so chose in the name of fighting terrorism. But this is just the tip of the iceberg. A major discord involves the broad-sweeping measures of the Patriot Act. It applies not only to proven terrorists, but also to *suspected* terrorists and law-abiding citizens alike. Again, the Patriot Act ushers in debate on Fourth Amendment formalities. Namely, the immigration provisions, which allow for the indefinite detention of any alien whom the Attorney General suspects of possible terrorist involvement, and the expanded definition of “terrorism” to include domestic terrorism.¹⁰³

Constitutional issues surround the debate on counter-terrorism policies generally. More specific to CTF regimes, however, we see a tradeoff between privacy rights and the public’s right to disclosure of these initiatives. Critics have questioned government’s insistence on maintaining the secrecy of these measures, further raising eyebrows concerning the legitimacy of these actions.¹⁰⁴ One example is the Terrorist Finance Tracking Program (TFTP), which allows access to international bank databases. While the TFTP has led to many arrests, concerns have been raised about potential violations of financial privacy laws.¹⁰⁵ The TFTP is likened to the NSA wiretapping controversy, which authorized the warrantless monitoring of communications within U.S. borders as part of Bush’s “terrorist surveillance program”.¹⁰⁶ The underlying skepticism surrounding these programs is that they have been initiated in the absence of public approval and/or knowledge.

These are but a few of the vast number of issues in this area, but they all seemingly point to the same general conclusion: U.S. counter-terrorism policies have been implemented in a manner which has caused a great divide in public sentiment. Domestically, citizens question the government’s ability to implement measures in the name of national security which bypass Constitutionally-protected rights. Internationally, states question the U.S. insistence on receiving more than we are willing to give in return. All in all, it becomes evident that cooperation on the CTF front has suffered from a lack of legal credibility. Onlookers are given the perception that the U.S. government believes the benefits of evading legal requisites outweigh the concomitant costs. Unfortunately, the deterioration of international cooperation proves the consequences of such legal circumvention have been grossly underestimated.

¹⁰³ Patriot Act, *supra* note 101.

¹⁰⁴ Dan Bilefsky, *Rights Group Complains*, BOSTON GLOBE, June 28, 2006 (indicating that individual search warrants to access financial data are rarely obtained in advance).

¹⁰⁵ *Id.*

¹⁰⁶ David E. Sanger & John O’Neil, *White House Begins New Effort to Defend Surveillance Program*, N.Y. TIMES, January 23, 2006.

V. CONCLUSION

State Responses stands for the proposition that while much is known about the history of anti-terrorism financing efforts, we know little about the effectiveness of these efforts, and even less about the future significance of these efforts. *State Responses* is nothing short of incredibly informative. It sheds light on a fact which is little known by the American public as a whole: that despite the alleged importance of the “war on terror,” the U.S. has balked at the steps necessary to yield results on a grand scale. The collaborative effort of *State Responses* leads the reader to the stark realization that any attempt to completely rid the world of terrorism is futile. Moreover, although the global effort has brought about considerable results, only one thing is capable of creating any considerable increase in international cooperation: the proliferation of terrorist attacks on a global scale.

State Responses contributes to the growing scholarly debate on counter-terrorist financing measures by providing a thorough history of terrorism financing, including highlighting current policy debates and obstacles in the global effort to coordinate counter-terrorism finance policy. By endeavoring to explain the problem from various perspectives, Giraldo and Trinkunas succeed in enabling the reader to fully grasp the internal dynamic of funding networks within terrorist organizations. Further, the reader is given a detailed explanation of the reasons behind policy success and, more appropriately, policy failure.

However, as a consequence of limiting its assessment to historical and comparative perspectives, the book does little to address the significance of this knowledge going forward. As such, the book serves as a credible resource on contemporary terrorist finance, but falls short of any attempt to meaningfully advance the scholarly debate. While this compilation of expert contributions provides an excellent history of terrorism financing for the lay person, it leaves something to be desired for anyone seeking to proactively shape the future of U.S. policy in this area. The nature of the issue calls for a deeper discussion of the future consequences of these government responses, and while the author does not endeavor to broach this topic, this oversight may be the book's one shortcoming. This aside, *State Responses* does a commendable job accomplishing its professed purpose, which is to provide a theoretical overview of the terrorist threat and to assess state responses to the threat within the context of counter-terrorism financing.