



## **U.S. TREASURY DEPARTMENT OFFICE OF PUBLIC AFFAIRS**

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### **Assistant Secretary for Terrorism and Financial Intelligence David S. Cohen Remarks to the Washington Institute for Near East Policy As Prepared for Delivery**

Good afternoon. I want to thank the Washington Institute for Near East Policy for inviting me to speak today. It is a great privilege to have the opportunity to offer my voice to the exchange of views fostered by this distinguished institution.

Before I begin, I want to offer my special thanks to Matt Levitt and Mike Jacobson for facilitating this event. As many of you know, Matt and Mike each spent several years doing outstanding work in Treasury's Office of Intelligence and Analysis. We at Treasury remain grateful for their service, and the Washington Institute has been fortunate to benefit these past few years from their insightful and innovative scholarship on critical issues relating to terrorism and terrorist financing.

As you know, the Treasury Department's Office of Terrorism and Financial Intelligence, referred to as TFI, plays a unique role in U.S. national security.

As I stand before you today, TFI is contributing to work on a new, robust set of sanctions against the Government of Iran; ensuring compliance with the letter and spirit of U.N. Security Council Resolutions regarding North Korea's nuclear program; assisting the courageous Calderon Administration in targeting the financial networks of violent drug trafficking organizations in Mexico; and committing substantial resources to combating illicit finance in Afghanistan and Pakistan, as we work to disrupt the money flows that support al Qaeda, the Taliban and other extremist groups.

In short, we are active on many fronts—here at home, and around the world—to foster a well-regulated, transparent and secure financial system, one that is inhospitable to money laundering, terrorist financing and other forms of illicit finance.

Today, I'd like to focus on TFI's work to disrupt and dismantle terrorist financing networks. In particular, I will discuss the importance of strong and enduring mechanisms of international collaboration in the ongoing effort to combat terrorist financing.

We say it often, but it bears repeating: Our national security interests are best advanced when a broad coalition of nations work together to fight against those who engage in terrorist activity. There is no question that we can do a great deal to combat terrorist financing simply through the exercise of our national authorities—and Treasury has made great progress against terrorist financing and facilitation through designations under our counter-terrorism Executive Order.

But in today's global environment, where terrorists have no regard for national boundaries, and money rockets around the globe, effective and empowered multilateral forums and mechanisms significantly amplify our own efforts and provide some of the most powerful defenses against terrorist threats.

I want to begin by briefly addressing some of the very real terrorist threats we face—threats that powerfully demonstrate the need for coordinated international action. As you are well aware, often these threats are associated with terrorist networks linked to the Middle East, whose avowed goal is to disrupt any and all efforts at achieving peace in that troubled region.

First and foremost, there is al Qaeda, which is now in the worst financial shape it has been in for years. But al Qaeda is not disabled, nor is it bankrupt, and our progress in degrading its financial strength will not be lasting without continued, vigorous efforts.

Reacting to the financial state of al Qaeda core, al Qaeda affiliates in Africa and the Arabian Peninsula have come to rely less on support from the al Qaeda network as they plan and mount terrorist attacks. These al Qaeda affiliates instead have taken up independent fundraising activities to sustain themselves—including drug trafficking, kidnapping for ransom and extortion.

Unlike al Qaeda, the Taliban is not experiencing much financial stress, and it has sufficient resources to sustain its recruiting and training infrastructure, conduct devastating attacks on Afghan civilians and present substantial resistance to our troops. Working with the Afghan government, we have achieved some key successes against the Taliban's finances, and we are confident that there are many more successes to come. But the Taliban still has the funding necessary to hold territory, buy allegiance, and fundamentally challenge our core national security objective of bringing peace and stability to Afghanistan.

In the Middle East, Hamas—which ignores demands from the international community to renounce violence—receives substantial support from the Government of Iran, as well as contributions from donors and non-governmental organizations (NGOs) in the Gulf States and in Europe. The Palestinian Authority, which understands the threat that Hamas poses to peace in

the region, has taken important steps to limit Hamas's influence by supervising both the Palestinian banking system and the charitable sector in the West Bank and Gaza. Working closely with the Palestinian Authority, last month we designated the Islamic National Bank of Gaza for providing financial services to Hamas.

Even more than Hamas, Hizballah receives support from Iran, which is supplemented by expatriate sympathizers, NGOs, and a variety of revenue-generating commercial enterprises. This financial backing helps fund Hizballah's communications, security, weapons systems and terrorist operations. Suffice it to say, we are keenly focused on the threat that Hizballah poses to destabilize the region.

The ability of any of these terrorist organizations to function—including their ability to raise, move and expend funds in support of their violent activities—represents a clear threat to our national security. We are hard at work combating this activity. But make no mistake: Our success depends in significant part on the extent to which we are able to engage our international partners in a cooperative effort to combat terrorist financing.

Against this backdrop, I want to highlight three key international mechanisms for coordinating global efforts against terrorist financiers and facilitators: first, the terrorist designation program under U.N. Security Council Resolution (UNSCR) 1267 and its counter-terrorist financing companion, U.N. Security Council Resolution 1373; second, the recent work by the Financial Action Task Force to identify jurisdictions with strategic deficiencies in their anti-money laundering and counter-terrorist financing laws; and finally, Treasury's Terrorist Finance Tracking Program, a key tool in our counter-terrorism arsenal. Each of these mechanisms can be highly effective in protecting our national and international security—and even more so when the international community as whole embraces and supports them.

#### The U.N. Counter-Terrorist Financing Regime

The core of the United Nations Security Council's efforts against the financing of terrorism is UNSCR 1267—its' al Qaeda and Taliban sanctions regime—and UNSCR 1373—which requires every U.N. member state to adopt laws preventing and suppressing the financing of terrorism.

Without question, these resolutions are among the most effective international coordination mechanisms we have in combating terrorist financing. Yet, because of some unfounded concerns about the fairness of the UNSCR 1267 designation process, and because of limited compliance with UNSCR 1373's requirements, one of the international community's most powerful counter-terrorist financing mechanisms is not operating as effectively as it could or should.

Now more than a decade old, the 1267 designation process has been quite effective in disrupting and disabling terrorist activity. Indeed, al Qaeda's weakened financial state today is traceable, at least in part, to designations of al Qaeda financiers under UNSCR 1267.

But in the past few years, the 1267 regime has come under attack, particularly in Europe, for not providing adequate procedural protections for those designated. Some listed individuals and

entities have brought their complaints to courts in Europe, asserting that the designation process violates EU guarantees of fundamental human rights. These critiques and court cases have led some to doubt the long-term viability of the UN designation process.

These challenges are misplaced, largely because they do not take into account improvements that have been introduced over the last few years in two successor Resolutions, UNSCR 1822 and UNSCR 1904 that have markedly enhanced the procedural protections for those who are designated.

UNSCR 1822, adopted in June 2008, requires the posting on the 1267 Committee's website of narrative summaries explaining the bases for each designation. It also calls for a comprehensive review of every person and entity that appears on the 1267 List. This comprehensive review, which is to be completed by June of this year, is to be followed by periodic reviews of all listings in the future. These reviews involve an extremely thorough and detailed analysis of the facts around each designation to determine whether a sufficient basis continues to exist to maintain a designation or, alternatively, that a designee should be delisted.

Bear in mind that a delisting may be warranted for a variety of reasons—including, most importantly, that there is evidence that the designee has taken affirmative steps to disassociate from al Qaeda or the Taliban. After all, a key goal of a designation is to encourage a change in behavior—to persuade someone who is affiliated with al Qaeda or the Taliban to renounce terrorism and rejoin the legitimate political process. Altogether, 58 names have been taken off the 1267 List since the 1822 review process began.

UNSCR 1904, adopted last December, expands the protections for designees. Most importantly, it created an "Ombudsperson" to receive delisting requests from designees and to assist the Committee in considering these requests by conducting research, engaging in dialogue with relevant parties, and drafting a report on the delisting petition for Committee review.

These procedural enhancements, among others, go a long way to resolving concerns about the fundamental fairness of the 1267 designation process. But regardless of whether some of the criticisms of the original 1267 regime had validity, the UN designation process as it operates today—with its emphasis on transparency, accuracy and redress—is worthy of broad international support.

But that is not enough. The other key component of the UN's counter-terrorist financing program is UNSCR 1373, which obligates each member state to adopt laws that would allow it to apply targeted financial measures against terrorists and their support networks. Each member state is required to criminalize terrorist financing, forbid providing financial support to terrorists, and freeze the assets of those who commit or support terrorist acts.

Unfortunately, compliance with UNSCR 1373 is quite spotty. In fact, my colleagues and I spend a good deal of time traveling the globe to encourage states to come into compliance with this Resolution.

We do not do this because we fancy ourselves the UNSCR 1373 compliance police. We do this because, when a country criminalizes terrorist financing and develops the legal basis to apply targeting financial sanctions, it sends a powerful message to its citizens that terrorist financing is wrong. And when a country demonstrates its commitment by taking action against terrorist financiers, it also amplifies the effectiveness of global efforts to combat terrorist financing, including the U.N. 1267 designation process.

Which brings me back to my key point: When the community of nations works together, in a coordinated and cohesive fashion, to combat terrorist financing, we all benefit.

### The Financial Action Task Force

The second international counter-terrorism mechanism I'd like to address is the Financial Action Task Force (FATF), and in particular the recent work by the FATF to publicly identify jurisdictions that pose substantial threats to the international financial system due to significant, unresolved deficiencies in their anti-money laundering and counter-terrorist financing legal regimes.

I imagine that many of you are familiar with the FATF, the premier international standard setting body for regulating anti-money laundering and counter terrorist financing regimes. Its 40 recommendations for legal and regulatory structures to protect against money laundering and its nine special recommendations against terrorist financing represent the unquestioned "gold standard" in the international effort to combat illicit finance, having been recognized as authoritative by the U.N. Security Council and the G-20.

It is instructive to compare how the FATF and the U.N. Security Council go about their work against terrorist financing. Unlike the U.N. Security Council, whose efforts are targeted at individuals and entities engaged in terrorism or terrorist financing and whose actions have the force of international law behind them, the FATF focuses on systemic issues and relies on voluntary compliance to achieve its goals.

But much like the Security Council's 1267 designation process, the FATF's success in combating terrorism and terrorist financing depends in large part on the extent to which countries around the world join in the effort. The FATF elicits cooperation not through the force of law or the threat of compulsion—it has neither at its disposal—but through a combination of unquestioned expertise, widespread acknowledgement of the validity of its technical judgments, and a strong dose of peer pressure.

Over the past decade, working with the International Monetary Fund, the World Bank and FATF-style regional bodies, the FATF has assessed virtually every country against its standards. These mutual assessments produce lengthy reports detailing each country's compliance, in law and in practice. Although addressing highly charged issues, these mutual assessments have been enormously successful in improving the worldwide anti-money laundering (AML) and counter-terrorist financing (CFT) regime, in large part because the mutual assessments are understood to be objective reviews against technical standards, where accuracy and impartiality are the overriding concern. Because of this, many countries have chosen to remedy the deficiencies

noted in their mutual assessments by modifying their AML/CFT legal structures and following through to implement effective AML/CFT controls.

Nonetheless, some countries have refused to bring their AML/CFT regime into line with the FATF's standards, or have failed to translate adequate laws into real action. As a result, in 2006 the FATF upped the ante. It established a new initiative to publicly identify those uncooperative jurisdictions that have gone through the mutual evaluation process, whose AML/CFT regime have been found to be deficient, and that have failed to take corrective action.

One notable result of this process has been the FATF's actions to highlight the serious threat to the international financial system posed by Iran's lack of comprehensive AML/CFT controls. The FATF publicly identified Iran's AML/CFT deficiencies in October 2007, and three more times in 2008. Each time, the FATF called for its members to advise their financial institutions to take the risk arising from Iran's deficiencies into account if they engaged in or facilitated transactions with Iran.

Then, in February 2009, after Iran still failed to meaningfully address its AML/CFT deficiencies, the FATF called for its members to apply countermeasures to protect their financial sectors from the risks emanating from Iran. The FATF has reiterated its call for countermeasures against Iran three times, most recently in February of this year.

In April 2009, the G-20 asked the FATF to reinvigorate its review process and publicly identify high-risk jurisdictions for terrorist financing and money laundering. The FATF responded and in February 2010 publicly identified 28 countries—in addition to Iran—with strategic deficiencies in their AML/CFT controls.

The apprehension generated by the G-20's request that the FATF identify AML/CFT laggards was itself a powerful motivating force. By the time FATF issued its report in February of this year, most of the countries that were publicly identified as having strategic AML/CFT deficiencies had made clear, high-level political commitments to work with the FATF to remedy their problems. In its February statement, the FATF welcomed these commitments.

But a few countries—Angola, Ecuador, Ethiopia and North Korea—failed to engage constructively with the FATF and commit to improving their AML/CFT regimes. The FATF responded by calling on its members to consider the money laundering and terrorist financing risks arising from these countries. Heeding this call, several countries, including the United States, issued advisories to their financial institutions highlighting these countries' lack of commitment to AML/CFT reform and instructing their institutions to apply enhanced due diligence in conducting transactions with banks in these countries.

Clearly, the FATF's effectiveness comes from the broad-based, international consensus—which it has carefully nurtured and promoted over the past two decades—that money laundering and terrorist financing represent a serious risk to our mutual security. It is critical that the international community continue to respect the FATF's judgments, respond to its calls for due diligence and countermeasures, and support its continued work to protect the international financial system.

## The Terrorist Finance Tracking Program

Finally, I'd like to turn to the Treasury Department's Terrorist Finance Tracking Program (TFTP), a crucial international mechanism in countering illicit finance and transnational terrorism.

As I am sure many of you know, recently the European Parliament voted down an agreement between the United States and the European Union that was designed to continue the flow of critical data to the TFTP, on an interim basis, while a long-term agreement was negotiated. This very disappointing development has created a gap in our ability to track the financial transactions of terrorist suspects around the world. Since the beginning of this year, we have not been able to use the TFTP to its full potential to protect our citizens here in the United States and in Europe because we no longer receive information that is now stored only in Europe.

I'd like to describe the program's origins, operations, robust privacy protections, and exceptional value as a counter-terrorism tool, because I have seen that when we "demystify" the TFTP, we assuage concerns—whether in Europe or here at home—about the value and necessity of this program, and the effectiveness of its privacy safeguards.

In the aftermath of the terrorist attacks on September 11, 2001, the Treasury Department determined it was critical to make use of the financial information left behind when terrorists and their financial supporters conduct international funds transfers, and to add this financial data to the overall mix of information collected to help identify terrorist threats.

The result was the Terrorist Finance Tracking Program. Under the TFTP, the Treasury Department obtains, by administrative subpoena, a limited set of international funds transfer message data from the Society for Worldwide Interbank Financial Telecommunication (SWIFT), an international bank-to-bank payment messaging system. Over the years, the Treasury Department has refined and narrowed the scope of its request, ensuring that the subpoena is focused as narrowly as possible on information necessary to combat terrorism.

From the outset, we recognized that even with a narrowly tailored subpoena, it was important to put procedures and safeguards in place to ensure the data obtained was being accessed only for counter-terrorism purposes and that its confidentiality was maintained.

Privacy protections in the program specify that the data in the TFTP may only be searched in connection with a specific counter-terrorism investigation, and not for any other law enforcement, national security or other purpose. In fact, the TFTP data can be searched only if an independent basis exists to believe that the subject of a search is connected to terrorism or its financing. This independent evidentiary predicate must exist—and must be recorded—before any search in the TFTP data is conducted.

The TFTP cannot be used for data mining. This point is critically important. No data mining of any kind has ever been permitted in the TFTP. There is no algorithmic or automated profiling.

And there is absolutely no use of the TFTP for commercial or competitive purposes. It is—and always has been—purely and exclusively a counter-terrorism tool.

To verify the TFTP's robust safeguards, an independent auditor reviews the program's physical security, ensures proper procedures are implemented, and confirms that no data mining occurs.

The privacy protections already embedded in the TFTP were enhanced even further when the Treasury Department, in late 2006, made a series of public commitments to the European Union concerning the processing of personal data in the TFTP. In these commitments, we reiterated that the TFTP would be used only for fighting terrorism and that no data mining of any kind would ever occur. These commitments further ensured that European citizens' personal financial data was protected, while, at the same time, preserving the utility of the TFTP in combating terrorism.

To provide further comfort to the Europeans, the U.S. also permitted a noted French counter-terrorism expert, Judge Jean-Louis Bruguière, to review the TFTP on behalf of the EU, and offered him unprecedented access to the program.

In late 2008, Judge Bruguière issued a report in which he reached two critical conclusions. First, he found that the Treasury Department had implemented significant and effective controls and safeguards that ensure the protection of personal data. Second, he reported that the TFTP generated significant value, in particular for countries in the EU, where over 1,300 TFTP-derived leads concerning specific terrorist threats had been shared with Member States. Judge Bruguière reiterated both of these conclusions in a second report on the TFTP, which he issued in early 2010.

Judge Bruguière's conclusion that the TFTP is an extremely effective counter-terrorism investigative tool—not only for the United States, but for Europe as well—is emphatically true. TFTP-generated leads have aided thousands of investigations, here and abroad, by providing law enforcement and counter-terrorism officials with information that helps them follow the money to the violent extremists who are dead-set on doing us harm. This is the stuff of everyday, nose-to-the-grindstone work that protects our mutual security in often imperceptible, but nonetheless consequential, ways.

Let me offer some examples: TFTP-generated leads have assisted in the investigations of the 2002 Bali bombings; the Van Gogh murder in the Netherlands in 2004; the plan to attack John F. Kennedy airport in 2007; the Islamic Jihad Union plot to attack Germany that same year; the Mumbai attacks in 2008; and the Jakarta hotel attacks in 2009.

Information gleaned from the TFTP has been used productively in investigations of several al Qaeda-linked terrorist attacks, including the 2004 Madrid train bombings and the 2005 bombings in the London Underground.

Results from searches of TFTP data have also aided investigations that have disrupted several planned al-Qaeda plots. For example, we passed results from TFTP searches to European governments during their 2006 investigation into the al Qaeda-directed plot to attack transatlantic

airline flights between the UK and the U.S. The plot was foiled, and in mid-September 2009 three individuals were convicted for their involvement and each was sentenced to at least thirty years in prison.

To take another example, in October 2008, eight individuals were arrested in Spain for their suspected involvement with al Qaeda. European partners provided us information outlining these individuals' suspected connection to terrorism, and TFTP information clarified connections between the targets and other individuals in Spain, Morocco, and the Netherlands. Many of those arrested are now serving jail time.

As of today, we have shared over 1,550 TFTP-generated reports with our European colleagues. But despite the enormous value of this program, and the robust data privacy protections built into it, the continued operation of the TFTP is in doubt.

In early 2010, SWIFT moved a large portion of data critical to the program to a new storage location in Europe. In anticipation of this change in the SWIFT network's architecture, in mid-2009 the Treasury Department and the European Commission started negotiations to ensure that the U.S. would continue to have access to the full scope of SWIFT data for the TFTP.

We reached an interim agreement in late November 2009, and the agreement was put before the European Parliament for ratification. The debate was quite vigorous, and despite our efforts to allay concerns over both process and substance, in early February the European Parliament voted not to give its consent to the interim agreement.

We now find ourselves in a worrisome situation. The interim agreement would have ensured our continued access to SWIFT data that is now stored only in the Europe. Because the interim agreement was rejected, however, this critical data has not been provided to us since the beginning of this year. Each day we go without it, we run the very real risk that information crucial to preventing an attack—the kind of information the TFTP produces—is not available to U.S. and EU authorities.

Notwithstanding the European Parliament's action earlier this year, we are hopeful that we will be able to negotiate a long-term agreement with the European Union that both we and the European Parliament will find acceptable. As we work to address the issues and concerns that have been voiced in Europe, it is crucial that the core functionality of the TFTP be maintained. We are confident that this can be achieved. Indeed, press reports indicate that just a few days ago, the European Commission proposed a negotiating mandate for a long-term agreement that will provide European negotiators with sufficient negotiating flexibility.

For our part, the U.S. stands ready to negotiate an agreement that we hope ensures the long-term operation of this crucial tool that has provided valuable, actionable information not only for the United States, but for jurisdictions around the globe as we seek to identify, disrupt, and prevent terrorist activity. As our European counterparts understand, this is a security responsibility we owe to every citizen—in the U.S., in Europe, and around the world.

There is, of course, much we can do through the exercise of our own authorities to combat terrorism and terrorist financing, and we at TFI will continue to aggressively employ our own tools against al Qaeda, the Taliban, Hamas, Hizballah and other violent extremists that threaten our security.

Nonetheless, we also recognize that our efforts to combat terrorism and terrorist financing are substantially augmented by effective international mechanisms, including the U.N. 1267 terrorist designation process, the FATF's campaign to enhance global AML/CFT compliance, and the Terrorist Finance Tracking Program. For these mechanisms to operate as effectively as possible, it is crucial that we obtain the collaboration and cooperation of a broad array of international actors. We at the Treasury Department, along with our colleagues across the national security community, work daily to foster this cooperation and, in doing so, help protect Americans, as well as others around the world, from the threat of terrorist attacks. It is tremendously rewarding work, and I appreciate the opportunity to describe it to you this afternoon.

Thank you.

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