

An Assessment of South Africa's Vulnerability to Terrorism Financing and the Counter-Terrorist Financing Framework¹

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Abstract:

Terrorism financing poses a direct threat to South Africa's national security as well as the integrity and reputation of its financial system. Terrorism financing has the potential to finance and enable terrorist activities locally and abroad. Over and above posing a security threat, it also impacts the integrity of non-financial institutions such as charities and non-profit organizations which could be exploited, often unwittingly, for the financing of terrorism. Terrorist groups make use of multiple methods to raise, move, store and/or use funds and exploit the inherent vulnerabilities of countries' regulatory, financial, law enforcement and security frameworks. Their techniques vary and depend on the sophistication and objectives of terrorists, terrorist organizations and their sympathizers. Terrorism financing investigations are usually extremely complex, particularly with regard to the identification of financiers and ultimate end-users of the generated funds. This is due to the myriad financial transaction mediums such as cash and crypto assets, the international nature of transfers between financial jurisdictions, the informal financial sector (e.g. Hawala), as well as the capacity and capability challenges faced by financial institutions, regulators, supervisory bodies and law enforcement agencies. Funds intended for terrorism related activities may be derived from legitimate as well as from illicit sources, making terrorism financing particularly difficult to detect, disrupt and prevent. The constant evolution of terrorism financing methods in response to new and increasingly sophisticated countermeasures remains a continual challenge locally and for international financial oversight bodies such as the Financial Action Task Force (FATF) and its regional-style bodies. This paper will investigate and assess South Africa's vulnerability to terrorism financing and the counter-terrorist financing framework to effectively combat terrorism financing. The key issues to be appraised include an assessment of factors that contribute to SA's vulnerability to terrorism financing. A counter-terrorist financing framework adopted by SA.

Keywords:

Counter-terrorism, FATF, finance, South Africa, terrorism

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Introduction

Terrorism financing can be defined as the financial and logistical support of any form of terrorism, individuals, entities or groups that encourages plans or engages in acts of terrorism that includes plans or intended plans to support or commit an act of terrorism (Levi and Gilmore 2003). Terrorism financing constantly poses a threat and risk to the national security, integrity and reputation of any country's financial system by enabling terrorist activities to thrive locally and abroad. Both financial and non-financial institutions such as charities and Non-Profit Organizations (NPOs) can be exploited negatively by being used as channels for terrorism financing acts. Different terrorist groups use multiple channels such as financial and non-financial institutions to raise, move, save, use funds and exploit the inherent vulnerabilities of countries' regulatory, financial, law enforcement and security frameworks. The terrorist modus operandi differs and is depended on the terrorist group's objectives, organizations and membership (Levi and Gilmore 2003).

In response to the increasing threats posed by terrorism financing, many countries, including SA have adopted different counter terrorism measures. These measures seek to stop the flow of illegal cash to terrorist organizations (Ryder, 2022). However, it is important to note that addressing the threat presented by terrorism financing demands a global, coordinated and unified response. This is because the investigation process for counter terrorism financing is usually lengthy and extremely complex as it entails identifying financiers and the ultimate end user of the generated funds. The investigation process is complicated by the countless financial transactions avenues used such as cash, crypto assets, the international transfer nature used between financial jurisdictions, the informal sector (Hawala). The capacity and capability challenges experienced by financial institutions, regulators, supervisory bodies and law enforcement agencies also complicate the terrorism financing investigations. Furthermore, terrorist groups use legitimate as well as illicit sources to generate funds, which makes terrorism financing difficult to detect, disrupt and prevent. Thus, there remains a continual challenge locally and internationally to investigate terrorism financing because of the constant evolution of terrorism financing methods in response to new sophisticated countermeasures (Levi and Gilmore 2003). This paper will seek to assess South Africa's vulnerability to terrorism financing and the counter-terrorist financing framework adopted by the country. The subsequent section will assess factors that contribute to South Africa's vulnerability to terrorism financing.

An Assessment of Factors that Contribute to SA's Vulnerability to Terrorism Financing

South Africa is facing numerous terrorism financing vulnerabilities and risks which are perpetuated by many factors such as the porous borders, challenges in addressing the

informal economic sector as well as the use of often inadequately regulated alternative remittance system and mobile payment systems. The informal economic sector pose a terrorism financing threat to the country through the use of cash and alternative remittance services. The risk associated with the use of cash is attributed to the fact that it is accessible, largely untraceable and anonymous. The use of cash also poses a cross-border movement risk as it can be used by South Africans and/or foreigners in transit as a channel to fund terrorist groups and their activities in a foreign country. These risks increases when South Africans travel to high-risk countries such as Syria, Afghanistan, Yemen and areas on the African continent where terrorism activities have been declared such as Somalia, Burkina Faso, and Nigeria. South Africans may travel to these countries to participate in the terrorism activities, be used as money mules or cash couriers to these areas from SA.

SA hosts a large émigré communities from countries associated with terrorism such as Somalia, Pakistan, Kenya, Nigeria and Somalia. The presence of this émigré communities contributes to the threat of terrorism financing in the country through the use of cash that they sent to their home countries. The predominant use of cash in the émigré communities is in the form of remittances which is associated with the large informal economy in the country and neighboring countries. Remittances is usually understood as the money or goods that migrants send back to families and friends in their countries of origin (Levitt, 1998). The use of remittance services such as Hawala and mobile money payments by the émigré communities may be carried directly to a particular conflict country or neighboring countries where it can be carried overland across further borders. Various risks associated with the use of remittance services is the anonymity of the sender and recipient. This anonymity can make it difficult for service providers to identify the source of funds and the ultimate recipient. This anonymity can also make it difficult for service providers to identify the source of funds and the ultimate recipient which can lead to money laundering or other illicit activities. Additionally, the high volume of transactions increases the terrorism financing risks, which can make it difficult for compliance officers to manually monitor every transaction. This can create opportunities for criminals to exploit the remittance system (Levitt, 1998).

According to Nicoli et al. (2018) an estimated 25% of adults in the South African Development Communities (SADC) were reported to be using regulated remittance services while 8% were reported to be using unregulated (informal) channels such as friends and family (Nicoli et al., 2018, p. 8). Research conducted by the World Bank (2011) suggests that close to 80% of émigré communities in SA sent money home through the unregulated channels. Furthermore, the World Bank reports that SA has the largest outbound remittance markets outflow in Africa with recorded \$1.1 billion in outflows in 2022 (Gilbert, 2023).

The challenges associated with remittance outflow from the country is that it is difficult to detect and confiscate cash moved across borders, and outside the formal banking sector. For the country a significant challenge is to develop an alternative



remittance system that can be used for channeling funds by the vast émigré communities in the country. This is because the informal remittance system used currently by the émigré communities are unregistered, unregulated and operate outside the formal banking sector. It is equally challenging to distinguish between legitimate diaspora remittances for the maintenance and financial support of families in countries of origin and money syphoned off to fund terrorism related activities (Gilbert, 2023).

The second terrorism financing vulnerability factor is porous borders. The porous borders of the country have enabled international terrorist individuals and groups to travel in and out of the country undetected by using fake SA travel and identity documents. Many of the international terrorists are attracted by the unique geographical position and status of SA as a regional economic hub in Africa. Additionally, the sophisticated financial system of the country makes it attractive for terrorist and their supporters as well as making it vulnerable to being used for terrorism financing. Porous borders as a results of poor controls at the land and sea entry points as well as the borderlines are common in Africa, making the continent vulnerable to undetected movement of terrorist individuals and groups. The easy access and undetected entry movements into the country allows suspected terrorist individuals and groups to illegally enter the country and extend their stay to avoid detection. This international terrorist groups often link up with local terrorist groups in the country to become a channel through which funds are collected or transmitted to terrorist groups in the region as well as worldwide (Rédaction Africanews, 2006).

Although SA has never battled with jihadist attacks, the current terrorist activities in Northern Mozambique have brought the terrorism threat closer. There has been a recorded cross-border movement of small number of terrorist suspects between SA and Mozambique in the past. The terrorist suspects cross the border with cash to be used for personal consumption or to fund the activities of the insurgents in Mozambique. SA is also vulnerable to being seen as providing funding for terrorist attacks in Mozambique, Somalia and Kenya based on the fact that the country hosts a large number of émigré communities from these countries (Rédaction Africanews, 2006). There is a high possibility of international crime syndicates and refugees travelling through the region to abuse SA by facilitating the movement of cash or other assets to terrorist groups in the region.

South African border security is challenging because of its numerous lands, sea, and airports of entry for international travelers. Multiple South African law enforcement agencies police its borders, but they are often stove piped. Inadequate communication and equipment limit their border control ability. The Department of Home Affairs in 2016 submitted to Parliament the Border Management Authority Bill to create an integrated and coordinated agency to ensure effective control of the border. President Ramaphosa signed the Border Management Authority Bill into law on July 2020. CT measures at the international airports include screening with advanced technology X-ray machines, but land borders do not have advanced technology or infrastructure.

Trafficking networks use these land borders for illicit smuggling, and South Africa does not require neighboring countries' citizens to obtain visas for brief visits. SAPS internal affairs office investigated corruption allegations related to illicit sale of passport and other identity documents in the Department of Home Affairs, but utilization of illegitimately obtained identity documents continues (U.S. Department of State, 2020).

The third factor is charities, Faith-Based Organizations (FBOs) and Non-Profit Organizations (NPOs), which play a critical role in providing educational, religious and humanitarian services in the country. SA has a large footprint of charities and NPOs which play important roles in the daily lives of many people, however they can also be exploited and used as channels of raising, storing and diverting funds towards terrorism financing. South African-based NPOs and charities are vulnerable to potential abuse by terrorist groups despite the fact that they are not currently assessed as posing a significant terrorism financing risk. Although there have been no terrorism financing convictions related to the South African NPO sector, the prevalence of cash and specifically charities operating near or in conflict zones associated with terrorism pose a higher terrorism financing risk. These charities and NPOs, or individuals within the charities and NPOs are at risk of being exploited by terrorist groups in these areas (Bissett, 2023).

Funds collected in South African communities, ostensibly for benevolent causes, through crowd funding or donations, and channeled abroad for humanitarian aid could potentially be intercepted and siphoned off by terrorist groups. Some donors may willingly provide donations to support these groups as a means to support a particular call for aid and assistance, while other donors, and the charities and NPOs themselves, may be coerced, extorted or misled about the purpose of funding. The possibility that funds channeled by local charities and NPOs to international NPOs and aid organizations can also be used to disguise funding to foreign conflict zones and terrorist groups. The risk of potential terrorism financing abuse could increase if funds collected are channeled through less formal, unregulated and start-up entities. It is likely that funds collected could be sent via conduit countries to conflict zones making it more difficult for financial institutions to link international money transfers directly to terrorism. Conduit entities may also be used to channel terrorism financing to evade resolutions of the United Nations Security Council (Bissett, 2023).

Counter-Terrorist Financing Frameworks Adopted by South Africa

South Africa has enacted Laws and Acts to assist in countering terrorist financing in the country. In addition to the Acts, the country is a signatory member to organizations both on the continent and internationally to help combat terrorism financing. The Prevention of Organized Crime Act 121 of 1998 (POCA) was enacted to introduce measures to combat organized crime, money laundering and criminal gang activities. The Act also provides for the prohibition of money laundering and for an obligation to



report certain information (Republic of South Africa, 1998). Another Act is the Financial Intelligence Centre Act No 38 of 2001 (the FIC Act) established to combat money laundering activities and financing of terrorist activities. The intelligence Centre applies the FIC Act to perform various duties such as imposing certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities. They implement financial sanctions and administer measures pursuant to resolutions adopted by the Security Council of the United Nations. They provide for risk management and compliance programmes, governance and training relating to anti money laundering and counter terrorist financing. They facilitate the registration of accountable and reporting institutions as well as acting as a supervisory body with powers to conduct inspections. The Centre has the authority to regulate certain applications to court, provide for administrative sanctions that may be imposed by the Centre and supervisory bodies. The Centre has the authority to amend the Prevention of Organized Crime Act, 1998, and the Promotion of Access to Information Act, 2000 (Republic of South Africa, 2001).

The FIC Act introduces a regulatory framework of measures requiring certain categories of business (accountable institutions) inter alia an authorized user of an exchange, a collective investment scheme manager and a financial services provider to take steps regarding customer due diligence, record-keeping, reporting of information to the Financial Intelligence Centre and internal compliance governance. The Financial Intelligence Centre uses this financial data reported to it and other available data to develop financial intelligence, which it is able to make available to the competent authorities i.e. law enforcement agencies, South African Revenue Services and supervisory bodies for follow-up with investigations or to take administrative action (Financial Intelligence Centre, 2017). The Financial Sector Conduct Authority (the FSCA) is responsible to supervise and enforce compliance with the FIC Act by authorized users of an exchange, collective investment scheme managers and financial services providers. The FSCA has delegated its obligation to supervise authorized users to the licensed exchanges. The FSCA may, however, still take enforcement actions against authorized users (Republic of South Africa, 2001).

In 2004 government established another counter terrorism financing Act called The Prevention and Combating of Corrupt Activities Act (PCCA). PCCA is the primary law governing anti-bribery, corruption prevention and enforcement in South Africa. It applies to organizations based in the country and those based outside but doing business in the country. Additionally in 2004 the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (POCDATARA) was established. The Act provides for measures to prevent and combat terrorist and related activities. To provide for counter-terrorism measures on terrorism offences and other offences associated or connected with terrorist activities. To support international instruments dealing with terrorist and related activities as well as providing for a mechanism to comply with binding United Nations Security Council Resolutions. To provide for measures to

prevent and combat the financing of terrorist and related activities including conducting investigations in respect of terrorist and related activities (Republic of South Africa, 2005).

In July 2020 Through the POCDATARA Act, South African police arrested individuals in South Africa with Islamic State of Iraq and al-Sham (ISIS) propaganda, weapons, and flags. The court was also able to arrest and charge Sayfudeen Del Vecchio and Fatima Patel, in 2018 with murdering British-South African dual nationals Rodney and Rachel Saunders. In 2019, South African Police arrested four members of the National Christian Resistance Movement, a white supremacist group that allegedly planned attacks on shopping malls, informal settlements, and government installations. The four suspects were charged under the Protection of Constitutional Democracy against Terrorism and Related Activities Act. Two members were found guilty and sentenced in December for an effective eight years' imprisonment for preparing and planning to carry out acts of terrorism. Their leader Harry Knoesen was sentenced by the Mpumalanga court to two life terms and 21 years behind bars for terrorism-related offences (McCain, 2022).

In early November 2022, the U.S. Department of the Treasury levied sanctions on associates and companies of Farhad Hooper, an alleged South African Islamic State (IS) cell leader (Maack, 2023). According to U.S. authorities, Hooper headed an IS cell in Durban, which he organized in 2017-2018. The cell is believed to have provided technical, financial, and material support to IS in southern Africa. In addition, the sanctions indicate that the IS cell was mainly raising funds for IS operatives elsewhere in Africa, such as in Mozambique and the Congo, for conducting kidnapping-for-ransom operations and extorting major businesses, which provided more than one million South African rand (around \$60,000 dollars) in revenue for the cell (Maack, 2023). The sanctions targeting Farhad Hooper shine a light on ISIS's attempts to exploit Africa's most industrialized economy to raise and move funds to support the growth of ISIS affiliates and networks in Africa. There are other innovative fundraising methods used by ISIS such as using fake Tinder profiles in an attempt to catfish and blackmail South Africans into funding the organization. Using fake profiles set up by IS militants and photos of lesser known actresses and models, they target South Africans by asking them to share intimate pictures of themselves. These ISIS profiles then use these photos to blackmail the targeted individuals by demanding payment, which is then funneled to the ISIS leadership (Maack, 2023).

However, South African authorities seem to be struggling with the terrorism caseload. This was evidenced by the U.S. Treasury Department's announcement on Hooper after the U.S. Embassy in Pretoria and other Western countries' embassies issued a security alert about a possible terrorist attack in the upper class Sandton commercial district of Johannesburg (Fabricius, 2022). The attack did not occur, as a result of the heightened security prompted by the alert. South African politicians,



including President Cyril Ramaphosa, nevertheless criticized the U.S. for issuing a public alert without consulting with South African authorities (Rédaction Africanews, 2022).

In addition to the above Acts, South Africa is a member of the Financial Action Task Force (FATF) and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). The Financial Action Task Force (FATF) is an inter-governmental body that leads global action to tackle money laundering, terrorist and proliferation financing. FATF is essentially a policy-making and standard setting body that promotes policies to combat money laundering and terrorist financing. The FATF researches how money is laundered and terrorism is funded, promotes global standards to mitigate the risks, and assesses whether countries are taking effective action. FATF continuously monitors how criminals and terrorists raise, use and move funds. As countries put in place effective measures to disrupt illicit financial flows, criminals also find alternative ways to launder their dirty money. FATF regularly publishes reports that raise awareness about the latest money laundering, terrorist financing and proliferation financing techniques so that countries and private sector can take the necessary steps to mitigate these risks (FATF, 2023).

The FATF Recommendations, ensure a coordinated global response to prevent organized crime, corruption and terrorism. They help authorities go after the money of criminals dealing in illegal drugs, human trafficking and other crimes. The FATF also works to stop funding for weapons of mass destruction. The FATF continuously strengthens its global standards to address new risks, such as the regulation of virtual assets, which have spread as cryptocurrencies gain popularity. The FATF monitors countries to ensure they implement the FATF Standards fully and effectively.

In total, more than 200 countries and jurisdictions have committed to implement the FATF's Standards and they are assessed with the help of nine FATF associate member organizations and other global partners, the IMF and World Bank. The FATF holds countries to account that do not comply with the FATF Standards. If a country repeatedly fails to implement FATF Standards, it can be named a Jurisdiction under Increased Monitoring or a High Risk Jurisdiction. These are often externally referred to as "the grey and black lists" (FATF, 2023). For example: on 24 February 2023, FATF took the decision to include SA on its grey list by classifying it as a jurisdiction under increased monitoring. SA was subjected to an onsite visit by FATF in 2019 where it was assessed on its compliance with the FATF recommendations. SA was given 67 recommendations to act upon by the FATF with the following areas requiring corrective action state capture, money laundering risks, law enforcement, and inadequate records and monitoring of beneficial ownership and judicial capacity.

The 2021 follow-up report that supplemented the 2019 report and included 12 shortcomings in SA's anti money laundering and counter terrorism financing framework propelled FATF to conclude that the legal framework of the country was incapable of addressing the scope of risks within the FATF mandate. They concluded that the

legislated areas lacked the necessary implementation oversight. SA was thus given one year to report on the progress made to achieve the recommendations set out in the 2021 report, failing which the country would be added to the list of "jurisdictions under increased monitoring" (the "grey list") at the following FATF plenary meeting in February 2023. At the plenary meeting, the FATF determined that South Africa had serious weaknesses in its Anti Money Laundering/Counter Terrorism Financing (AML/CTF) framework and had not successfully demonstrated sufficient compliance with the Recommendations. This posed a threat to the international finance system and as a result South Africa was added to the grey list (Department of National Treasury, 2023).

South Africa is also a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). ESAAMLG is a Regional Body subscribing to global standards to combat money laundering and financing of terrorism and proliferation. Its 20 Member Countries are Angola, Botswana, Eritrea, Eswatini, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, South Sudan, Tanzania, Uganda, Zambia and Zimbabwe and includes a number of regional and international observers such as Commonwealth Secretariat, East African Community, FATF, IMF, SADC, United Kingdom, United States of America, UNODC, World Bank and World Customs Organization. The United Kingdom and United States of America have been cooperating and supporting nations of the organization since it was established in 1999 (Eastern and Southern Africa Anti-Money Laundering Group, 2021).

Their main objectives are to adopt and implement the 40 Recommendations of the FATF which are divided into seven distinct areas such as AML/CFT Policies and coordination, money laundering and confiscation, terrorist financing and financing of proliferation, preventive measures, transparency and beneficial ownership of legal persons and arrangements, powers and responsibilities of competent authorities and other institutional measures, international cooperation. Other objectives are to apply anti-money laundering measures to all serious crimes, implement measures to combat the financing of terrorism, implement any other measures contained in the multilateral agreements and initiatives relevant to prevention and control of laundering of proceeds of all serious crimes and the financing of terrorism and proliferation of weapons of mass destruction. The ESAAMLG efforts includes coordinating with other international organizations concerned with combating money laundering, studying emerging regional typologies, developing institutional and human resource capacities to deal with these issues, and coordinating technical assistance where necessary. It enables regional factors to be taken into account in the implementation of anti-money laundering measures (Eastern and Southern Africa Anti-Money Laundering Group, 2021).

Despite the established CTF laws in the country as well as being a member of the both the international and continental organizations SA has failed to effectively address the terrorism financing threats. This failure to deal effectively with terrorist financing has a host of causes such as problems in the intelligence, detection and prosecution services

as well as the fact that the country is still recovering from the ravages of state capture during Jacob Zuma's presidency. These issues are aggravated by political factors such as an ideological disposition to underestimate the terror threat and see it as an obsession of the West. The FATF report alluded to this by noting that South Africa's reluctance 'to classify politically motivated violent acts as terrorism' was constraining its ability to tackle terrorist financing. Apart from increasing the risk of violence, these failures will damage South Africa economically. The February 2023 FATF grey listing ratings has the potential to lead to a ratings downgrade, followed by decreased investment and reduced trade if SA is placed on this rating for a long period.

With the grey-listing, the country needs to continue working to improve their counter-terrorism financing frameworks. The country needs to make improvements to meet the FATF recommendations requirements in the outlined areas. The country also needs to continue strengthening its capability to fight money laundering, terrorist financing, corruption, and other financial crimes. This will principally be for the benefit of the country, its economy, its financial system, and also for the safety and security of the country's citizens. In this regard, continuously improving the integrity of the financial system is not merely an FATF exercise, but rather part of government's objectives for the regulation of the financial sector. The Department of National Treasury must continue to strengthen and expand anti-money laundering (and combatting terror finance) systems in the financial sector, to minimize perceived risks relating to this sector, including from new and emerging risks (e.g. crypto-related risks). This is because the biggest economic risks of being grey-listed is related to the withdrawal of banking and payments services necessary for trade, remittances, and other transfers and economic growth.

Conclusion

The strengthening of the working relationship between the following role players in the country is important in ensuring that the country acts and addresses the recommendations made by the FATF. The Minister of Finance, and the South African Police Service (SAPS) responsible for investigating terrorism financing cases and offenses pertaining to terrorism, the Special Investigating Unit (SIU) that deals with fraud, corruption, and serious maladministration in state institutions. The National Prosecuting Authority (NPA) including the National Prosecuting Services (NPA: NPS) which institutes criminal proceedings on behalf of the State. The Priority Crimes Litigation Unit (NPA: PCLU) which manages and directs investigations into and prosecutes all offenses under the POCDATARA (including Terrorism Financing), non-proliferation offenses, as well as other serious crimes impacting on State security. Specialized Tax Unit who guides investigations into and prosecutes tax cases.

The Asset Forfeiture Unit (NPA: AFU) which implements the freezing and forfeiture provisions in respect of the proceeds and instrumentalities of crime, as well as freezing obligations created under UNSCRs 1267 and 1373. The Investigative Directorate (NPA:ID), which has special investigative powers to address serious and complex economic crimes with a focus on the crimes detected by the Commissions of Inquiry into State Capture (Zondo Commission), the Public Investment Corporation (PIC), and the SARS. The NPA: ID is also mandated to investigate and prosecute statutory offenses including contraventions of, inter alia, the POCA and the FIC Act. The South African Revenue Service (SARS) which is the tax and customs authority. Along with the SAPS and the National Immigration Branch (NIB) of the Department of Home Affairs (DHA). The SARS is involved in controlling the movement of people and goods across the border. The SARS investigates tax offenses of which tax evasion is a predicate offense to terrorism financing. Finally, the State Security Agency (SSA) which is responsible for the domestic and foreign intelligence and counter-intelligence security. It coordinates all counterterrorism and terrorism financing investigations in its capacity as the chair of the CTFC.

The strengthening of the important role players and improving their working relationship will help South Africa take control of its counter-terrorism framework. This will also help the country achieve restoration of its international and domestic confidence. Therefore, determined and concerted action is needed by all government agencies involved – including better cooperation with other governments.

Conflict of Interest

The author hereby declares that they have no financial interest in this manuscript.

Notes on Contributor

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