

**Understanding Terrorism Financing  
Report prepared for the Major  
Commission of Inquiry into the Investigation  
of the Bombing of Air India Flight 182**

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**CONTENTS**

|   |     |
|---|-----|
| Introduction  | 19  |
| Understandings and Definitions of Terrorist Finance                         | 23  |
| Methods of Fundraising by Terror Groups                                     | 28  |
| Legitimate Sources  | 31  |
| Illegitimate Sources  | 35  |
| Terror-Crime for Profit Typology  | 40  |
| Methods of Transfer   | 42  |
| Informal/Unregulated Channels   | 42  |
| Formal/Regulated Means  | 47  |
| Amounts Involved  | 51  |
| Operating vs. Operational Costs (Acts vs. Large Groups and Infrastructures) | 52  |
| A Typology of Terrorist Groups  | 56  |
| Problems with Imperfect Knowledge   | 58  |
| “Conflict Diamonds” and al Qaeda: A Theory with no Empirical Support        | 58  |
| Al Barakaat and Terrorism: Links Never Substantiated                        | 62  |
| Charities and Terrorism: Undercutting Our Own Objectives?                   | 72  |
| Regulatory Responses  | 76  |
| Objectives and Risks of CFT   | 78  |
| Cost-Benefit Analyses?  | 79  |
| Are Certain Areas Overlooked or Over-Emphasized?                            | 80  |
| Financial Controls and Remittances  | 80  |
| CFT and Trade   | 83  |
| Policy implications   | 84  |
| Evidence-Based CFT Policy Construction                                      | 87  |
| Identifying the Highest Risks and Trade Transparency                        | 91  |
| Legitimacy of CFT   | 101 |
| Conclusion  | 106 |
| Appendix: Two Solutions   | 107 |
| Leadminer   | 109 |
| Distributed Capital   | 109 |



## Introduction

Even though this was recognized widely with some delay, financial controls are an essential and indispensable counter-terrorism tool. The utility of financial controls was first neglected, then overestimated and subsequently more reasonably considered in conjunction with the rest of our counter-terrorism arsenal.

As the day of September 11, 2001 arrived, the United Nations 1999 Convention for the Suppression of the Financing of Terrorism was awaiting ratifications and did not come into force until April 10, 2002. The USA ratified it on June 26 of that year, following a post 9/11 sense of urgency and an official policy aimed at choking off al Qaeda and other terrorists' money. A series of measures at the national, regional and international levels were introduced and enforced in an effort to deprive militants of the means to inflict serious damage.

Internationally, UN Security Council Resolutions 1267, 1373 and 1377 and initiatives from the European Union, the Financial Action Task Force (FATF) and organizations including the World Bank and the IMF have combined to raise the profile of financial controls. Consequently, a powerful arsenal has been implemented by both governments and private sector entities alert to the possibility of being abused by extremists around the world.

Six years into drastic and extensive financial controls directed at terrorist groups, one needs to assess the impact of this arsenal and whether the assumptions underlying these controls are accurate. Unfortunately, our knowledge remains incomplete, mainly due to a lack of systematic and comprehensive collection of reliable data, which could then be properly analyzed. Despite several individual cases and pieces of information or, perhaps more likely, because of our fragmented collective vision of the social organization of terrorist groups and the financial aspects of it in particular<sup>1</sup>, there are some strong controversies revolving on several issues: the role played by non-profit organizations and charities, the informal sector (compared to the formal financial system, which is presumed to be well regulated and more transparent), the trade in various commodities (especially precious stones, gold, tobacco, or counterfeit goods), the nexus between terrorist groups and 'organized crime', especially links

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<sup>1</sup> This fragmentation is due to the parallel and at times competing activities of multiple organizations and agencies, the lack of quick and smooth sharing of information, and the absence of rigorous analysis of the available evidence scattered through various jurisdictions within the same country and around the world.

between drug trafficking and terror groups, etc.. The lack of in-depth 'peer review' and double-checking of the proliferating reports and publications in different media about terrorism have allowed inaccurate, wrong and misleading interpretations to enter into official thinking and policy planning.

Ongoing debates revolve mainly around the actual and potential sources of funds, the ways in which funds are stored or transferred, the amounts involved or required for terrorism, the ways in which national authorities and the international community can effectively respond, and the foreseeable consequences of current and proposed courses of action. Disagreements are not so much about whether this or that type of funding has been used by extremist groups. There is such a diversity of sources that one can hardly find a single way in which funds have not been raised for some militant group. The disagreements are rather about the relative extent and significance of different fund-raising methods used by specific groups. Which argument one decides to adopt has consequences on policy and security.

An argument of this report is that lofty or misguided expectations and misapplication of financial controls may be not only ineffective but also counter-productive, ultimately hurting national interests and the international community. It is, thus, imperative that we understand the limits and risks of financing controls. At the same time, it is indispensable that we fine-tune and apply them on the basis of hard data and a good understanding of the social organization<sup>2</sup> of terrorist groups. The financial aspects of terrorism are part of that social organization and require constant monitoring and attention, as they often evolve over time (also adjusting to control practices and effects). The existence of very serious disagreements on these issues so long after 9/11 shows that much more systematic and thoughtful work is required as we seek to gather valid evidence and engage in proper analysis<sup>3</sup>.

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<sup>2</sup> That is, the division of labor, area of operations, selection of targets and methods, available resources, sympathy and support, etc.

<sup>3</sup> See, for instance, the strong critique of US policies in Naylor Naylor, R. T. (2006). *Satanic Purses: money, myth, and misinformation in the war on terror*. Montreal: McGill-Queen's University Press); the strong critique of Naylor's book by Jeff Breinholt of the US Department of Justice; the strong rejection of Rohan Gunaratna (Gunaratna, R. (2002). *Inside Al Qaeda: Global Network of Terror*. New York: Columbia University Press) as 'expert' by former US Department of Homeland Security terrorism analyst Joshua Sinai (Sinai, J. (2007). A Dubious Source: Counterterrorism Book Falls Short. *The Washington Times*(April 17), the strong critique of Gunaratna's vision of al Qaeda by Jason Burke (Burke, J. (2003). *Al-Qaeda: Casting a Shadow of Terror*. London ; New York: I.B. Tauris), the strong critique of the conflict diamonds story appearing in media, NGO and policy reports by Nikos Passas (Passas, N. (2004). *The Trade in Diamonds: Vulnerabilities for Financial Crime and Terrorist Finance*. Vienna, VA: FinCEN, US Treasury Department; Passas, N., & Jones, K. (2006). The Trade in Commodities and Terrorist Financing: Focus on Diamonds. *European Journal of Criminal Policy and Research*, 12, 1-33), etc.

This paper will hopefully provide a basis on which this debate can move forward towards a consensus-building and commonly accepted empirical ground ('consensual knowledge').

Even though this paper does not address the question of what is terrorism, the problematic nature of its definition cannot be ignored when we seek to understand the financing of terrorist groups and their operation. The point is simple and practical: if terrorism is not separated from a host of phenomena that one side or the other labels as "terrorism", then virtually all conflicts are within the scope of this report. The whole question of terrorist fundraising then becomes trite and generic: every legal and illegal source imaginable has been and can be used. Every group involved in violent conflict is bound to employ whatever means and resources are available to it.

Rebels, insurgents, resisters, guerillas, militants, militias, independence movements, nationalists etc. come in different sizes, operate in diverse contexts, enjoy differential popular (or state) support, antagonize different social actors and represent high or low priorities of domestic, regional and international controllers. Placing them all in the same category and discussing this in general terms as 'terrorist finance and its control' obscures more issues than it clarifies. Inevitably, the label 'terrorist' is a blanket political and polemical concept that varies from one legal system to another. As a result, any discussion of 'terrorist finance' is directly affected and infected by the problem of defining terrorism.

Terrorism is far from a scientific or objective term. Consequently, responses have varied from 'regime de faveur' for political offenders in olden times to regime de rigueur' in recent times<sup>4</sup>. With no universally accepted definition, treatment has varied greatly from place to place and overtime. As the US National Research Council also concluded, it is simply not possible to define it<sup>5</sup>.

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<sup>4</sup> See Passas, N. (2006). International Terrorism. In J. Greene (Ed.), *Encyclopedia of Police Science* (pp. 1267-1274). London: Routledge; Passas, N. (1986). Political Crime and Political Offender: Theory and Practice. *Liverpool Law Review*, 8(1), 23-36.

<sup>5</sup> See (US) National Research Council. (2002). *Terrorism: Perspectives from the Behavioral and Social Sciences*. Washington, D.C.: National Academies Press.

We are left with legal definitions, the work of political bodies in different countries, which still makes it a nebulous concept that is operationalized by the executive listing of concrete groups and organizations that fit the general descriptions<sup>6</sup>.

Even so, there are huge gaps and asymmetries in legal definitions, cultural understandings and actual practices. While al Qaeda has had the potential to unify the world (“Nous sommes tous americains”, read the headline in Le Monde after 9/11), the weight of the counter-terrorism measures has been felt by multiple other groups where matters are more complicated<sup>7</sup>.

The distinction between different types of extreme or militant groups is also critical to the effectiveness of financial controls. If we all agree that the top priority in the West is al Qaeda, then attacks on other groups less radical or less threatening to Western interests and collateral damage risk escalation, radicalization and shifts towards support of more aggressive and costlier methods by larger numbers of people. If Western countries, for example, prioritize their fight against groups such as Hizb-ut Tahrir or groups seeking independence or basic rights in Central Asia and former Soviet Republics, the risk is that non-violent or relatively moderate groups may get radicalized and some of their supporters may gradually become more prepared to use violence. As sympathizers come from different societal backgrounds, their skills and access to methods of fund raising and value transfers become so diverse and non-transparent or untraceable that both monitoring and preventing terrorism efforts are undermined.

So, even if we follow country-based legal definitions, we are still left with a very wide range of groups and organizations. For example some countries may list or classify as terrorists political dissidents, whom they try to link to enemies of other states in order to achieve strategic and tactical advantages or personal/political gains. There is a need to establish priorities for the greatest threats.

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<sup>6</sup> The wide definition of “terrorism” by Canada and parallel listing of specific groups as terrorist in s, 83 of the Criminal Code is an innovative approach. It will be interesting to see how frequently the list may need to be amended in the light of fresh assessments of the global and domestic threats on the basis of new evidence or other considerations.

<sup>7</sup> Heated debates focus, for example, on groups such as Hamas and Hizbollah. George Soros wrote an opinion piece in April 2007 about the need to de-escalate the conflict in the Middle East through dialogue with the political side of Hamas towards a path of peace – G. Soros (2007) “On Israel, America and AIPAC”, *New York Review of Books*, Volume 54, Number 6.



If terrorism becomes an all inclusive/blanket concept, then one should not complain about trivialized conclusions to the effect that “everything funds terrorism” and “all channels are used for fund transfers”. Such conclusions would not be particularly helpful to strategic planning, prioritization and focus of limited resources.

For example, as each group uses whatever means are available and each group has different needs and requirements, all kinds of sources will be considered. Then lone wolves (e.g., the two persons who attempted to use a suitcase bomb in Germany in the summer of 2006) will be confused with movements which enjoy popular support and require significant amounts for welfare funding and alternative government functions (e.g., Hamas, the Liberation Tigers of Tamil Eelam [LTTE], Algerian independence movement, etc.).

In another example, one can conceive of a charitable organization where 99.9 percent of its proceeds go as publicly declared, but a tiny fraction may be diverted to support a designated terrorist group. In such case, a blanket concept of terrorism may be accompanied by indiscriminate targeting of the entire charitable organization as well as affiliated financial or other individuals and institutions.

In this report, the discussion is more generic and seeks to offer a general overview of several methods and approaches to financial support and control of groups and organizations officially described as terrorists by many countries and/or the UN and EU. For future purposes, it makes policy and analytical sense to identify and focus on the particular priorities and groups one is concerned about. This will facilitate the setting of concrete targets and objectives, rendering assessments of success or failures more feasible and helpful.

### **Understandings and Definitions of Terrorist Finance**

The United Nations 1999 International Convention for the Suppression of the Financing of Terrorism provides that one commits the offense of terrorist financing if one “by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex” (nine of the universal instruments against terrorism) or any act “intended to

cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act" (Article 2).

This means that it is not necessary that the terrorist acts are eventually perpetrated or that the funds raised for that purpose were indeed used for these acts. The term "funds" covers "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit" (Article 1)<sup>8</sup>.

United Nations Security Council Resolution 1373 defines terrorist finance as "the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts."<sup>9</sup>

Model international legislative provisions for domestic application in common and civil law jurisdictions have been furnished by the United Nations. The common law draft deals with the provision or collection of property or making available property or financial or other related services directly or indirectly with the intent, knowledge or reasonable belief they will be used toward carrying out terrorist acts in whole or part. Notably, making property or services available is also an offense, if it merely benefits a terrorist group.<sup>10</sup> The civil law version focuses on "An act by any person who by any means, directly or indirectly, willfully provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in full or in part

- a) to carry out a terrorist act, or
- b) by a terrorist, or
- c) by a terrorist organization."

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<sup>8</sup> United Nations, International Convention for the Suppression of Terrorist Financing, [http://www.unodc.org/unodc/resolution\\_2000-02-25\\_1.html](http://www.unodc.org/unodc/resolution_2000-02-25_1.html)

<sup>9</sup> United Nations Security Council, Resolution 1373, 28 September 2001, UN Doc. NO. S/RES/1373 (2001). At: <http://daccess-ods.un.org/TMP/7843815.html>.

<sup>10</sup> At: <http://www.imolin.org/imolin/tfbill03.html>.

The text goes on to state that the offense of financing of terrorism “is committed irrespective of any occurrence of a terrorist act referred to in [the previous] paragraph..., or whether the funds have actually been used to commit such act.”<sup>11</sup>

The World Bank and International Monetary Fund offer a most generic definition of the financing of terrorism: “the financial support, in any form, of terrorism or of those who encourage, plan, or engage in it.”<sup>12</sup>

### **National provisions**

Australia’s law relative to financing a terrorist provides that an offense is committed when one intentionally makes funds available to another person (directly or indirectly); or collects funds for, or on behalf of, another person (whether directly or indirectly); and the first-mentioned person is reckless as to whether the other person will use the funds to facilitate or engage in a terrorist act.<sup>13</sup> The offense is punishable with life imprisonment and committed regardless of the occurrence of a terrorist act, or whether the funds were used to facilitate a particular terrorist act or multiple terrorist acts.

Canada’s arsenal against terrorist finance contains three offenses. The first offense is committed when one “directly or indirectly, wilfully and without lawful justification or excuse, provides or collects property intending that it be used or knowing that it will be used, in whole or in part, in order to carry out” terrorist activity or “any other act or omission intended to cause death or serious bodily harm to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of that act or omission, by its nature or context, is to intimidate the public, or to compel a government or an international organization to do or refrain from doing any act”.<sup>14</sup>

The second offense also requires direct or indirect activity and it relates to the collection or provision, or solicitation to provide property, financial or other services with the intent or knowledge that they will be used in whole or in part, “for the purpose of facilitating or carrying out any terrorist

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<sup>11</sup> See Article 5.5 of text available at: <http://www.imolin.org/pdf/imolin/ModelLaw-February2007.pdf>

<sup>12</sup> World Bank, & International Monetary Fund. (2006). *Reference guide to anti-money laundering and combating the financing of terrorism* (2nd ed.). [Washington, D.C.]: The World Bank : International Monetary Fund. P I-1. Available at <http://www1.worldbank.org/finance/html/amlcft/referenceguide.htm>.

<sup>13</sup> Anti-Terrorism Act (No. 2) 2005, No. 144, An Act to Amend the Law Relating to Terrorist Acts, and for Other Purposes, 14 December 2005, amending the Criminal Code, 103.2.

<sup>14</sup> Canada, Criminal Code, Part II.1 Terrorism -Financing of Terrorism, R.S.C. 1985, c. C-46, s. 83.02.

activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity” or with the knowledge that they will be used by or benefit a terrorist group.<sup>15</sup>

The third offense prohibits the direct or indirect use or possession of property with the purpose of facilitating or carrying out a terrorist activity.<sup>16</sup>

Germany has no legal definition of the financing of terrorism and its laws do not provide a separate crime for the financing of terrorism. The financing of terrorism is considered as one possible type of terrorist activity punishable as participation in or support of a terrorist group (see section 129a of criminal code, which does not require the commission of a terrorist act – participation in a terrorist group is sufficient<sup>17</sup>).

Jordan’s law on terrorism finance is limited to the movement of funds within banking/financial institutions, if the funds are related to terrorist activity.<sup>18</sup>

Saudi Arabia, meanwhile, does not define terrorist acts per se, but terrorist financing is handled as a money laundering offense.<sup>19</sup>

Syria’s legislative decree states that the direct or indirect provision or collection of funds, lawfully or unlawfully sourced, for the purpose of a terrorist act, within or outside the country, is a terrorist financing offense.<sup>20</sup>

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<sup>15</sup> Canada, Criminal Code, Part II.1 Terrorism -Financing of Terrorism, R.S.C. 1985, c. C-46, s. 83.03. This last paragraph s.83.03(b) refers simply to a group’s use or benefit, thereby covering ground beyond the requirements of the 1999 UN Convention, which relates always to a terrorist act. This enables the possible sanctioning of even non-violent activities of a given group.

<sup>16</sup> Canada, Criminal Code, Part II.1 Terrorism -Financing of Terrorism, R.S.C. 1985, c. C-46, s. 83.04.

<sup>17</sup> Interestingly, because the German law’s definition of a “terrorist group” requires three or more persons, the law could not be applied to the 2-person terrorist attempt in the summer of 2006 (when a suitcase with explosives was to be placed in a train; personal interviews). As Dr. Sonja Heine, a German prosecutor, noted in Germany’s 2007 national report to the Association Internationale de Droit Pénal (AIDP) “If the financing of terrorism consists in commerce with a person or organization listed by a UNSC Resolution or the EU this will fall under section 34 of the Foreign Trade and Payments Act (Außenwirtschaftsgesetz). This statute sanctions any activity that provides financial services to or makes available, directly or indirectly, any funds, other financial assets and economic resources to or for a listed person or organization. Penalties vary between 6 months and 5 years imprisonment and a fine and, under aggravated circumstances, between 2 years and 15 years imprisonment. Negligent commission of the offence is also punishable.”

<sup>18</sup> Hashemite Kingdom of Jordan, Penal Code, Chapter Two: Penalty Provisions Related To Time, (3) Terrorism.

<sup>19</sup> Kingdom of Saudi Arabia, The Law of Combating Money Laundering (2003), Royal Decree No. M/39, 25 Jumada II 1421 (23 August 2003).

<sup>20</sup> Syrian Arab Republic, Legislative Decree NO. 22 (2005).

The United Arab Emirates law provides that whoever “gains, provides, collects, carries or transfers property, directly or indirectly, with intention to be used or knows they are going to be used, in whole or in part, to financing any of terrorist acts provided in this Decree by Law within the State or abroad, whether the said act occurred or non occurred,” shall be punished with life or provisional imprisonment.<sup>21</sup> Another article states one who “carries, transfers, deposits property on the account of another person, or conceals or disguises its nature, essence of its source or its place as well whoever possesses property or deal with, directly or indirectly, with intention to be used or knows they are going to be used, in whole or in part, to financing any terrorist acts provided in this Law, within the State or abroad, whether the said act occurred or non occurred,” commits a terrorist act and is subject to imprisonment.”<sup>22</sup> This definition is comparatively more specific than the above two and requires intent and knowledge about an act.

The United Kingdom’s definition specifies that asking another to provide, receiving, or providing money or property with intent or reasonable cause to suspect it may be used for terrorism is an offense. One who possesses such money or property with intent is also guilty as is one who becomes involved in arrangements in which such money or property is made available.<sup>23</sup>

The United States law states that the offense of “material support to terrorists” is committed when someone “provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of” specified statutes<sup>24</sup> or “in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act”<sup>25</sup>.

The statute further states that “‘material support or resources’ means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging,

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<sup>21</sup> United Arab Emirates, Decree by Federal Law No. 1 of 2004 on Combating Terrorism Offenses, article 12.

<sup>22</sup> Id at article 13.

<sup>23</sup> The United Kingdom, Terrorism Act 2000, Chapter 11, Part III, Terrorist Property.

<sup>24</sup> Specifically, violations of section 32, 37, 81, 175, 229, 351, 831, 842 (m) or (n), 844 (f) or (i), 930 (c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 1993, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, or 2340A of title 18, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), section 46502 or 60123 (b) of title 49, or any offense listed in section 2332b (g)(5)(B) (except for sections 2339A and 2339B).

<sup>25</sup> United States, 18 USCS, §2339A, Providing Material Support to Terrorists.

training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.”<sup>26</sup>

It is clear that there is no uniform legal approach to countering the financing of terrorism (CFT). Some jurisdictions mirror UN model laws, while others adopt their own methods or merely extend money laundering provisions to cover CFT. The national regimes vary with respect to the range of activities and groups covered, the types of assets or financial activities included, the origin of funds raised to finance terrorist acts, the intent or knowledge of individuals, whether an activity act or group is financed, etc.

For the present purposes, the general definition of the World Bank and the IMF will be adopted: “the financial support, in any form, of terrorism or of those who encourage, plan, or engage in it”.

### **Methods of Fundraising by Terror Groups**

Terrorist financing was far from a priority for intelligence collection or academic research before the attacks of 9/11. As a result, research on the topic was thin and based mostly on secondary and superficial sources. The emergence of “instant experts”, who relied on second-hand, sensationalist, biased, out-of-context, and wrong information to make their arguments, has done a disservice to the international community by creating a baseless conventional wisdom that risks misguiding policy and control efforts. Given the spread of “facts by repetition”<sup>27</sup>, we must treat the secondary literature and data with caution and critical spirit, especially in the age of the internet<sup>28</sup>.

The 9/11 Commission criticized early over-enthusiasm about the use of financial controls thus: “But trying to starve the terrorists of money

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<sup>26</sup> Ibid.

<sup>27</sup> Passas, *Informal Value Transfer Systems and Criminal Organizations: A Study into So-Called Underground Banking Networks* (The Hague: Ministry of Justice, 1999).

<sup>28</sup> For example, a report on the Saudis by French author Jean-Charles Brisard has been self-labeled and cited as a “Report prepared for the President of UN Security Council of the United Nations,” but it was neither solicited nor endorsed by the UN. Jean-Charles Brisard, *Terrorism Financing: Roots and Trends of Saudi Terrorism Financing*, cited in “Saudi Arabia: Terrorist Financing Issues,” Congressional Research Service Reports, 10/03/04, ; available at <<http://fpc.state.gov/fpc/37089.htm>>, accessed 24 June 2005.

is like trying to catch one kind of fish by draining the ocean”<sup>29</sup>. It also demonstrated how wrong statements had permeated policy discussions even with respect to the most investigated case of TF, al Qaeda and the 9/11 hijackers.

At the outset, the Commission frankly admitted, “The nature and extent of al Qaeda fund-raising and money movement make intelligence collection exceedingly difficult, and gaps appear to remain in the intelligence community’s understanding of the issue. Because of the complexity and variety of ways to collect and move small amounts of money in a vast worldwide financial system, gathering intelligence on al Qaeda financial flows will remain a hard target for the foreseeable future”<sup>30</sup>

Nevertheless, it has been possible to dispel the popular myth that al Qaeda was drawing on bin Laden’s presumed personal fortune from inheritance or businesses he had in the Sudan and elsewhere. It is now clear that particularly after his move from Sudan to Afghanistan, he neither had much personal wealth nor a network of business to rely on<sup>31</sup>.

The 9/11 Commission report detailed the financing of the 9/11 operations and pointed to a number of baseless but persistent media reports and speculation: for example, contrary to media and popular beliefs,

- “there is no evidence the hijackers ever used false Social Security numbers to open any bank accounts”<sup>32</sup>
- “no financial institution filed a Suspicious Activity Report (SAR)... with respect to any transaction of any of 19 hijackers before 9/11”<sup>33</sup>
- “there is no convincing evidence that the Spanish al Qaeda cell, led by Imad Barkat Yarkas and al Qaeda European financier Mohammed Galeb Kalaje Zouaydi, provided any funding to support the 9/11 attacks or the Hamburg participants”<sup>34</sup>

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<sup>29</sup> National Commission on Terrorist Attacks upon the United States. 2004. *The 9/11 Commission Report*, National Commission on Terrorist Attacks Upon the United States, Washington D.C. 2004 (subsequently referred to as the 9/11 Commission report), p382.

<sup>30</sup> National Commission on Terrorist Attacks upon the United States. “Monograph on Terrorist Financing.” Washington, DC: National Commission on Terrorist Attacks upon the United States, 2004, p13.

<sup>31</sup> Ibid. and 9/11 Commission report, p. 20.

<sup>32</sup> 9/11 Commission report, p. 254.

<sup>33</sup> Ibid, p. 545.

<sup>34</sup> Ibid, Chapter 5 footnote 132.

- the Staff monograph on Terrorist Financing has clarified that “Allegations that al Qaeda has used the trade in conflict diamonds to fund itself similarly have not been substantiated”<sup>35</sup> and
- “contrary to some public reports, we have not seen substantial evidence that al Qaeda shares a fund-raising infrastructure in the United States with Hamas, Hezbollah, or Palestinian Islamic Jihad”<sup>36</sup>.

The Staff Monograph also dispelled other popular myths, including the nexus between Barakaat and al Qaeda as well as the theory that al Qaeda profited from short-selling airline shares in the stock market before the 9/11 attacks.

This report will illustrate how wrong assumptions lead to ill-conceived measures, which are both ineffective and counter-productive but first it is important to examine some general aspects of terrorist finance (TF). On an abstract level, the TF cycle may include fund raising, storing, transfer and application or use. The activities most visible, albeit not always identifiable in advance as related to terrorism, are the fund raising and transfers on which we will focus.

A comprehensive description and analysis of the financial aspects of all kinds of terrorism is beyond the scope of this report. It is possible, however, to outline the main elements of fund raising and fund transfers. At the same time, commentary will be offered on items researched in depth on the basis of primary data.

One aspect of terrorist finance is clear and undisputed: there is a wide range of fund-raising methods and sources, some of which are particular to specific groups or contexts, while others are quite common across the board. Some of the funding sources are legitimate, such as ordinary income, legal businesses, investments, charitable organizations and cultural activities. Others sources are criminal, including petty crime, kidnapping, and criminal enterprises of various types. The discussion

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<sup>35</sup> National Commission on Terrorist Attacks upon the United States. “Monograph on Terrorist Financing.” Washington, DC: National Commission on Terrorist Attacks upon the United States, 2004, p.23.

<sup>36</sup> Ibid, p. 27.



will proceed by examining state sponsorship, illegal and legal sources in sequence, before turning to the fund transfer methods.

### **Legitimate Sources of Funding State Support**

The significance and role of all of funding sources changed substantially at the end of the Cold War, as this signaled a marked decline in state sponsorship of terrorist acts. During the Cold War the major powers funded and supported militant groups and “death squads” in various parts of the globe under the guise of “counter-insurgency” or “international solidarity”. Apart from widely discussed examples of politics and diplomacy by other means engaged in by France, USA, or the USSR, several smaller States made their own contributions to bloody conflicts and terrorists. Afghanistan, Cuba, Iran, Iraq, Libya, North Korea, Pakistan, Saudi Arabia, Syria, and Turkey have been among the usual suspects at different periods of time<sup>37</sup>, while many States in all continents have been accused of employing state terrorism themselves in the territories under their control, as they confronted insurgency, rebel or other radical groups.

Well known cases from the past include the state support for extremist Irish, Palestinian, Central and South American, Angolan, South African and other groups. It is worth noting that state sponsorship does not always mean direct (albeit covert) funding; it may also entail the turning of blind eyes to both legal and criminal fund raising activities (e.g., allowing the diversion of charity funds or the operation of arms or drugs trafficking enterprises from which extremist groups benefit). This point is important as it makes clear that the resort to criminal fundraising methods is nothing new. It does not result from less state involvement in terrorism.

Even though virtually everyone agrees that state sponsorship is in decline, the phenomenon has not disappeared. A long list of groups many countries regard as terrorist or subversive are currently supported by states, including Hamas, Hezbollah, Hizbul Mujahideen, the Islamic Militant Union (IMU), Islamic Jihad, Lashkar e Taiba (LeT), Jaish-e-Mohammad (JeM) and Sipah-e-Sahiba (SSP). At the same time, there are

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<sup>37</sup> See State Department global terrorism annual reports at [www.state.gov/s/ct/rls/pgtrpt/2003/](http://www.state.gov/s/ct/rls/pgtrpt/2003/); Waselar unpublished paper.

glaring examples of continuing state and corporate complicity in atrocities committed by armed militias and other similar organized groups<sup>38</sup>.

The recent decline in sponsorship by major world powers did not make all groups disappear or turn to conventional politics<sup>39</sup>. To the extent conflicts continued, the decline in state sponsorship meant that needs would have to be met through other means. Theoretically, one option was to commit the type of crimes usually committed by actors motivated by profit, while another was to partner with criminal entrepreneurs. Some cross-group support has also been reported suggesting that we ought to keep an eye on how extremist groups may collaborate and support each other<sup>40</sup>. Yet another option is to seek the support of sympathizers.

### **The Ethnic Community and Wider Society: Charities, Businesses, Individuals**

When the issue of charities is raised in the context of terrorism in recent times, most frequently the discussion turns to Islamist terrorism and zakat. Yet, almost invariably, ethnic communities and wealthy supporters have made contributions to parties in conflict back home – for one or the other side. In virtually every conflict, ethnic communities, members, outside supporters and wealthy sympathizers at home and abroad have contributed to respective causes.<sup>41</sup> This may occur through informal revolutionary taxes levied on businesses or entire communities or through direct voluntary contributions and the organization of fundraising events, such as speeches and dinners. Informal revolutionary taxes have been applied by the Palestinian Liberation Organization (PLO) when it

<sup>38</sup> As noted recently, Chiquita Brands International, a big fruit company, agreed to pay \$25 million in fines to the US government for making over several years payments of more than \$1.7 million to Colombian terrorist groups (mainly to Autodefensas Unidas de Colombia - AUC- a right-wing paramilitary organization to which Colombian security forces have turned a blind eye, as well as to the leftist FARC and ELN guerrilla groups). Colombian authorities are also looking into charges that the company used one of its ships to smuggle weapons for the UAC (see Evans, M. (2007). 'Para-politics' Goes Bananas. *The Nation* (April 4), <http://www.thenation.com/doc/20070416/evans>).

Another recent example is provided by allegations that USA has been financing warlord/extremist groups in Somalia; see Sanders, Edmund, "U.S. Role in Somalia Questioned: Government Leaders Charge U.S. with Backing Mogadishu Warlords", *Los Angeles Times*, 2006 (May 21); Wax, Emily, DeYoung, Karen, "U.S. Secretly Backing Warlords in Somalia", *Washington Post*, 2006 (May 17), A01

<sup>39</sup> Indeed, some of them turned against their erstwhile supporters (e.g., mujaheddin groups in Afghanistan).

<sup>40</sup> For example, Jemaah Islamiya with al Qaeda or Kashmir militants receiving funds from other radical Islamic groups.

<sup>41</sup> See Naylor, R. T. (1993). *The Insurgent Economy: Black Market Operations of Guerilla Organizations*. *Crime, Law and Social Change*, 20, 13-51.

was outlawed, Fuerzas Armadas Revolucionarias de Colombia (FARC), Autodefensas Unidas de Colombia (AUC), Movimiento 19 Abril (M19), ETA, Provisional IRA, Christian Phalange in Lebanon, the LTTE and other groups.

More generally, militants have drawn on their own ethnic or other communities for funding through direct voluntary contributions and charitable organizations or events. Lashkar-e-Toiba (LeT), for example, uses its public rallies, conferences and evening seminars for fund raising from the general public as well as illegal business activities. Members of the Palestinian Islamic Jihad<sup>42</sup> have apparently employed the following methods, inter alia: (a) fund-raising conferences and seminars; (b) inviting militants from outside the United States to speak at such conferences and seminars; (c) sending letters and other documents requesting funds to individuals and countries in the Middle East and elsewhere; (d) utilizing the Internet computer facilities to publish and catalog acts of violence committed by the PIJ, which are then used to solicit funds for the cause.

It appears that ethnic communities, members, outside supporters and wealthy sympathizers at home and abroad have contributed to respective causes in conflict around the world<sup>43</sup> (e.g., the Irish Republican Army [IRA] and the Irish Northern Aid (Noraid), ETA, LTTE, Al Qaeda, Hamas, Jemaah Islamiya, Korean, Armenian, Khalistani, Chechen, and many others). In an example of fund raising that falls between state sponsorship and private contributions, businesspeople in the US were encouraged to support the Contras after the US Congress prevented the US government sponsorship of this group acting against the government of Nicaragua. In some occasions government officials did the introductions between prominent US-based contributors and the Contras<sup>44</sup>. In other instances, member of an ethnic community may seek the removal of their favorite organizations from documents listing terrorist groups and suspected supporters. A recent example of this is the organization of Tamils for Justice operating in the USA and seeking to raise funds for the purpose of de-listing the

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<sup>42</sup> See US v. al-Arian indictment. It is very important to note, however, that the jury found al Arian not guilty in most charges and he decided to plead guilty to charges on which the jury was hung in order to expedite his release from prison. The case is ongoing, however, as the prosecution has demanded cooperation he unprepared or unable to offer in other cases, so his detention may be prolonged.

<sup>43</sup> See Naylor, R. T. (1993). *The Insurgent Economy: Black Market Operations of Guerilla Organizations*. *Crime, Law and Social Change*, 20, 13-51

<sup>44</sup> See Bellant, R., & Political Research Associates. (1991). *The Coors Connection: How Coors Family Philanthropy Undermines Democratic Pluralism*. Boston, MA: South End Press; Rosenbaum, D. E. (1987). 3 Contra Donors Cite North's Role. *The New York Times* (May 22), <http://query.nytimes.com/gst/fullpage.html?res=9B0DE0DD1330F1931A15756C15750A961948260&sec=&spon=&pagewanted=print>.

LTTE (unsurprisingly their website does not disclose the names of officials, managers or supporters - see <http://www.tamilsforjustice.org/>).

With respect to charities, a distinction can be drawn between those that have had their funds unknowingly diverted and those that have been corrupted and act as fronts<sup>45</sup>. In spite of a notable lack of criminal convictions, government agencies, media and other reports have associated the Global Relief Foundation with al Qaeda, the Holy Land Foundation for Relief and Development and the Quranic Literacy Institute with Hamas, the Islamic Concern Project; World and Islam Studies Enterprises; and the Islamic Academy of Florida with the Palestinian Islamic Jihad<sup>46</sup>. Mosques and non-governmental organizations mentioned in the African embassy bombing trial included the Farouq mosque in Brooklyn, the non-governmental organization Help Africa People and the relief agency Mercy International.<sup>47</sup>

The 9/11 Commission reported that prior to the 9/11 attacks, al Qaeda relied on diversions from Islamic charities and financial facilitators who gathered money from witting and unwitting donors, primarily from the Arabian Gulf region.

Finally, but quite importantly for the most resilient and well organized groups, a diversification into legal businesses has been noted. The Abu Nidal Organization, LeT, LTTE, FARC, [Fuerzas Armadas Revolucionarias de Colombia], Hezbollah, the Irish Republican Army (IRA), and Jemaah Islamiya are among groups that have generated funds through legitimate investments and business activities. Therefore, while a large amount of

<sup>45</sup> See the 9/11 Commission report; Also see Maurice R. Greenberg, chair, *Terrorist Financing: Report of an Independent Task Force*, (New York: Council on Foreign Relations, 2003); and Matthew A. Levitt, "The Political Economy of Middle East Terrorism," *Middle East Review of International Affairs*, vol. 6, no. 4, 49-65. Levitt M. 2002b. Combating Terrorist Financing, Despite the Saudis. *Policywatch* No 673, available at: <http://64.233.187.104/search?q=cache:BKQyUelGXj4J:washingtoninstitute.org/watch/Policywatch/policywatch2002/673.htm+POLICYWATCH+Combating+Terrorist+Financing,+Despite+the+Saudis+673&hl=en>

<sup>46</sup> Just as this report was about to be printed, however, a conviction was announced in Boston (not for terrorist finance charges but) for conspiring to defraud the United States and concealing information from the U.S. Government, making false statements to the FBI and filing false tax returns on behalf of Care International, Inc. The main matter was about failing to report to the Internal Revenue Service that Care International used some of its tax-exempt donations to publish a newsletter and other writings in favor of jihad and mujahideen overseas (US v. Muntasser et al.; Murphy, S. (2008). 3 Guilty in Case Tying Charity to Militants. *Boston Globe* (January 12), [http://www.boston.com/news/local/articles/2008/2001/2012/2003\\_guilty\\_in\\_case\\_tying\\_charity\\_to\\_militants?mode=PF](http://www.boston.com/news/local/articles/2008/2001/2012/2003_guilty_in_case_tying_charity_to_militants?mode=PF)).

<sup>47</sup> USA vs. Usama bin Laden Trial Transcripts: Digital transcripts from the Court Reporter's of Office; available at <<http://cryptome.org/usa-v-ubl-dt.htm>>, accessed 24 June 2005.

the funds used to carry out terror operations originate from crime, it is also true that significant amounts are obtained through licit activities as well.

### **Illegitimate Sources**

For a variety of reasons, ideologically or religiously motivated offenders may have turned to “ordinary” crime more now than in the past. State disinterest on the one hand and crackdowns on non-profit organizations sympathetic to their cause created a possible gap<sup>48</sup>. At the same time, a number of activities in which militant groups engage have been criminalized in several countries, including the recruitment of members, propaganda through the internet and other means, fund raising, harboring members of designated organizations, gathering of information on their behalf, arms procurement, providing means of communication and other logistical support<sup>49</sup>.

It may also be that terrorists recruit more specialized individual criminals into their ranks, so that it is not actually the whole terrorist group that gets more criminalized, but just certain members<sup>50</sup>. Moreover, it may be that a radicalization of criminal offenders inside prisons or in their communities contributes to a shift from ideology-driven to profit-oriented crimes. Finally, the terrorism-crime nexus includes the possibility that terrorist groups or some of their members may evolve into profit seeking enterprises as their socio-economic and political context changes (or the other way round). An illustration of this possibility comes from the Madrid bombings, where many of the perpetrators were radicalized offenders involved in illicit drug trafficking - they bartered drugs to acquire bomb-making materials<sup>51</sup>.

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<sup>48</sup> Facilitators and local crime are reported to be the main fundraising options for al Qaeda now according to the UN Monitoring Team (2005: para. 65, 94ff). U.N. Monitoring Team. (2005). Second report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities. New York: U.N. Security Council.

<sup>49</sup> Dandurand, Y., & Chin, V. (2004). *Links Between Terrorism and Other Forms of Crime*. Vancouver: Report to Foreign Affairs Canada and The United Nations Office on Drugs and Crime.

<sup>50</sup> Préfontaine, D. C., & Dandurand, Y. (2004). *Terrorism and Organized Crime: Reflections on an Illusive Link and its Implication for Criminal Law Reform*. Paper presented at the International Society for Criminal Law Reform annual meeting.

<sup>51</sup> This is widely reported in open source, but was confirmed through interviews with those who conducted the financial investigation of the Madrid bombings.

Whatever the precise reasons, there is abundant evidence that ordinary crime is very much part of the political economy of extremism: robberies, extortion, kidnapping, hijacking, informal taxation, and blackmail have been employed by most terrorist groups to secure funds. Protection rackets have been associated in the past with the IRA, ETA, Shining Path, the Abu Nidal Organization<sup>52</sup>. Kidnapping is common in all conflicts, including contemporary Iraq, the whole of South and South East Asia, Africa and Latin America (e.g., Iraqi insurgent groups, FARC, Movimiento 19 Abril, AUC, ETA, the IMU, etc.). Members of the Abu Sayyaf Group have also been reported to take hostages within the Philippines and elsewhere, in order to compel a person or government organization to pay ransom as a condition for the release of the persons detained<sup>53</sup>.

Various types of fraud, with differing degrees of scope and complexity, are employed by contemporary terrorist groups. The GIA and the Salafist Group for Prayer and Combat (GSPC) have been reported to use credit card fraud and document forgery schemes. Two men were convicted at the end of 2007 in Germany for supporting al Qaeda; according to the authorities, life insurance policies were taken out for one of the defendants, who intended to commit suicide bombing in Iraq. The attack was to be covered up through a fake car accident in Egypt and his brother would have received the funds as designated beneficiary of the policies<sup>54</sup>. Al Gamaat al Islamiya, al Qaeda, Hezbollah, the Irish Republican Army (IRA), Chechen insurgents and the Liberation Tigers of Tamil Eelam (LTTE) have reportedly engaged in the counterfeiting of both currency and goods. American, European and Australian currencies have all been illegally reproduced. Some examples of the use of counterfeit goods to raise funds include the illegal copying and sale of intellectual property and computer software, the distribution of counterfeit cigarette stamps, and the manufacture and sale of counterfeit clothing, watches, and copyrighted films, music albums and video games. Interpol has linked intellectual property violations with extremist groups in Northern Ireland, Kosovo and North Africa as well as with al Qaeda<sup>55</sup>. With respect

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<sup>52</sup> Adams, J. (1986). *The Financing of Terror*. London: New English Library; Horgan, J., & Taylor, M. (1999). Playing the 'Green Card' - Financing the Provisional IRA - Part 1. *Terrorism and Political Violence*, 11(2), 1-38.

<sup>53</sup> See indictment US v. Khadafi Abubakar Janjalani et al. US District Court of the District of Columbia, Crim. # 02-068 (JDB).

<sup>54</sup> Pegna, D. (2007). 3 Convicted in Germany of al-Qaida Aid. *Washington Post* (December 5), [http://www.washingtonpost.com/wp-dyn/content/article/2007/2012/2005/AR2007120500906\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/2012/2005/AR2007120500906_pf.html).

<sup>55</sup> Noble, R. K. (2003). *The Links between Intellectual Property Crime and Terrorist Financing*. Testimony before the Committee on International Relations: Washington, DC: United States House of Representatives.

to counterfeit goods, it should be noted that, as of the beginning of summer 2006, all intensive efforts of US law enforcement had detected no case of intellectual property violation related to terrorism<sup>56</sup>.

It may be noted, however, that on July 12, 2006, two men pleaded guilty to RICO charges and trafficking in contraband tobacco, counterfeit rolling papers and Viagra, money laundering. Some proceeds of these crimes were passed on to Hezbollah. Sixteen additional persons were charged with the same offenses and participating in the criminal enterprise which operated through Lebanon, Canada, China, Brazil, Paraguay and the United States<sup>57</sup>.

In addition, a recent investigation into counterfeiting, drug trafficking and money laundering has also focused on "the possibility that proceeds from the alleged crime rings have gone for years to Lebanon and the militant Islamic group Hezbollah"<sup>58</sup>.

Other types of fraudulent income-generating activities believed to be used by terror networks include trade scams, tax and value added tax (VAT) fraud, insurance fraud and ATM fraud. Hezbollah members reportedly netted millions of dollars after ordering large containers of merchandise from Asian companies and then defaulting on payments. The IRA has practiced subsidy, tax and VAT frauds<sup>59</sup>, while Lashkar-e-Toiba (LeT) has been linked to insurance fraud involving the filing of false stolen vehicle reports. ATM fraud reportedly played a small part in raising funds for the Madrid train bombing. Finally, the LTTE has also been associated with social security, bank, casino, and immigration frauds<sup>60</sup>.

Human smuggling has also been used in Sri Lanka for militant purposes<sup>61</sup>, while about a quarter of 38 countries surveyed observed the link between terrorism and the smuggling of illegal migrants<sup>62</sup>. The KLA, GIA and

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<sup>56</sup> Personal interviews.

<sup>57</sup> See *American Chronicle*: "Two Men Plead Guilty to Funding Terrorist Group Hezbollah" (emphasis added)

<sup>58</sup> Krikorian, G. (2007). 6 Accused of Selling Counterfeit Clothing. *Los Angeles Times* (November 15).

<sup>59</sup> Passas, N. (1991). *Frauds Affecting the Budget of the European Community*: Report to the Commission of the European Communities.

<sup>60</sup> Personal interviews in August and November 2004 with a leading prosecutor of terrorism cases in France for the last 25 years, J-L. Brouguières, and with officials at the British Terrorist Finance Intelligence Unit corroborate the view that petty and ordinary crime is a primary source of funds for militancy throughout Europe.

<sup>61</sup> Schmid, A. 2003. "Links between terrorist and organized crime networks: emerging patterns and trends" <http://www.iss.co.za/Seminars/terro19sep03/links.pdf>

<sup>62</sup> Dandurand, Y., & Chin, V. (2004). *Links Between Terrorism and Other Forms of Crime*. Vancouver: Report to Foreign Affairs Canada and The United Nations Office on Drugs and Crime

Jemaah Islamiya have also been reported to involve themselves in this type of illicit enterprise.

The trade in various commodities is another large area ripe for exploitation by militants. The nexus between terrorism and illegal drug trafficking is one of them. This nexus is in fact controversial despite persistent media reports that tend to take it for granted. The term “narco-terrorism” may sound merely descriptive, but it is actually a heavily loaded concept. Although some observers in the 1980s used it to refer to some narco-communist conspiracy of sorts and suggested that left-wing insurgencies trafficked illicit drugs in order to purchase arms from the Soviet Union, the drug trade has attracted guerrilla groups of all races, colors, creed and ideological orientations. Indeed, some of the heaviest involvement in this trade has been by right wing paramilitaries and terrorists<sup>63</sup>. The overuse of this term has also resulted in the poor application of policy and a misidentification of the main issues<sup>64</sup>.

According to a survey of 38 countries, about half of them noticed some link between the drug trade and terrorism<sup>65</sup>. As noted by a UN report, “the Taliban are again using opium to suit their interests. Between 1996 and 2000, in Taliban controlled areas 15,000 tons of opium were produced and exported – the regime’s sole source of foreign exchange at that time. In July 2000, the Taliban leader, Mullah Omar, argued that opium was against Islam and banned its cultivation (but not its export). In recent times, Taliban groups have reversed their position once again and started to extract from the drug economy resources for arms, logistics and militia pay<sup>66</sup>. Even though such links are not surprising, it must be impressed that there are very good reasons why any alliances between terrorists and drug traffickers *cannot* last for very long, due to fundamental incompatibilities of objectives and outlook as well as attitudes toward the State. They are fundamentally different actors with incompatible ultimate goals. Militants desire a change of the status quo, whereas criminal enterprises are politically conservative and simply wish to manipulate or partially neutralize political systems and actors (or divert attention to competing illegal entrepreneurs). In addition, to many militant groups, any open association with drug trafficking or other

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<sup>63</sup> Naylor, R. T. (2002). *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy*. Ithaca: Cornell University Press.

<sup>64</sup> Dandurand, Y., & Chin, V. (2004). *Links Between Terrorism and Other Forms of Crime*. Vancouver: Report to Foreign Affairs Canada and The United Nations Office on Drugs and Crime

<sup>65</sup> *Ibid.* See also CRS 2002 Report: A Global Overview of Narcotics-Funded Terrorist and Other Extremist Groups.

<sup>66</sup> United Nations Office of Drugs and Crime. (2007). *Afghanistan Opium Survey 2007*. Vienna: UNODC, p iv.



serious crimes would be politically damaging and at loggerheads with their ideology or religious beliefs - thereby undermining recruitment, public and material support efforts. The involvement of al Qaeda in the drug trade, both before and after the 9/11 attacks, has been the subject of some controversy, but no evidence of significant links has been produced.

Similar linkages have been reported with tobacco smuggling (e.g., with respect to Hamas, Hizbollah, IRA, PKK) and with the trade in natural resources. For example, there have been reports of oil for arms barter deals between the Armenian militia in Nagorno-Karabakh and the National Congress of the Chechen People<sup>67</sup>. Cassiterite, cobalt, copper, precious stones, gold and other materials have been fuelling conflicts in Africa despite UN sanctions regimes<sup>68</sup>. Timber<sup>69</sup> and precious stones have also been used as fuel for conflict in several parts of the globe. Particularly controversial have been persistent reports of al Qaeda's involvement in the rough diamond trade in West Africa, which have been contradicted by intelligence and law enforcement agencies, scholarly research and investigative committees<sup>70</sup> (see below case study).

Following in-depth research on this issue, the conclusion is that beyond warring parties and insurgents, some terrorist groups or persons associated with them may have engaged in diamonds transactions, the amounts involved do not appear to be substantial, but the sector is vulnerable for future use by militants. The vulnerability seems to be particularly acute with polished stones (rather than the rough diamonds on which most reports have focused), where the value is more certain, one does not have to be an insider to participate and one can much more easily store and hide value or transfer it across borders.

Most importantly, identified vulnerabilities are not specific to diamonds, but apply equally to trade in general. Trade is currently not transparent and represents a significant threat to all efforts countering money laundering, terrorist finance or other financial crime. The threat is not only potential, but we have already observed cases of trade-facilitated money

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<sup>67</sup> Graduate Institute of International Studies, *Small Arms Survey*, p. 178.

<sup>68</sup> For example, reports of United Nations Security Council panels of experts regarding Angola, the DR of Congo, Liberia and Somalia are replete with such references.

<sup>69</sup> Global Witness. (2002). *The Logs of War: The Timber Trade and Armed Conflict*. London: Global Witness.

<sup>70</sup> Passas, N. (2004). *The Trade in Diamonds: Vulnerabilities for Financial Crime and Terrorist Finance*. Vienna, VA: FinCEN, US Treasury Department; Passas, N., & Jones, K. (2006). The Trade in Commodities and Terrorist Financing: Focus on Diamonds. *European Journal of Criminal Policy and Research*, 12(available at <http://dx.doi.org/10.1007/s10610-006-9006-3>), 1-33; 9/11 Commission Report 2004.

laundering and terrorist finance. For example, two persons pleaded guilty to charges of conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act by engaging in contraband and passing some of the proceeds on to Hizbollah. The goods in question included contraband cigarettes, counterfeit Zig Zag rolling papers and counterfeit Viagra. The criminal enterprise operated from Lebanon, Canada, China, Brazil, Paraguay and the United States<sup>71</sup>. This is just one of several cases illustrating the vulnerability of trade to significant abuse<sup>72</sup>.

Thus, one need only break up intended deals into a series of financial transactions and engage in some commercial transactions, in order to obscure the investigative trail controllers may wish to follow. The creation of such “black holes” is easy, because data on financial and trade transactions are a) not always accurate and b) not matched to ensure that errors and misstatements can be detected. As a result, irregularities, suspicious transactions and blatant abuses go largely unnoticed.

The heated debate on the role of conflict diamonds in the financing of al Qaeda therefore practically diverted attention from more important policy issues and areas of concern in other parts of the precious stones pipeline and other commercial sectors. Consequently, the possibility of substantial amounts raised or transferred undetected or without the authorities’ ability to identify the contracting parties is a cause for serious concern and a matter that requires urgent attention.

It is also important to note that groups other than al Qaeda are possibly benefiting from or taxing the participants in the precious stones trade (e.g., South Lebanese groups, Northern Alliance).

### **Terror-Crime for Profit Typology**

Sorting out the crime for profit-extremism nexus is beyond the scope of this paper, but it is worth suggesting a tentative typology of the possible connections. This typology does not make any empirical assertions, but rather seeks to organize in a meaningful way reported associations. Its main objective is to assist with differentiating the strength, longevity,

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<sup>71</sup> See *American Chronicle*, July 12, 2006 “Two Men Plead Guilty to Funding Terrorist Group Hezbollah”; emphasis added.

<sup>72</sup> Simpson, G. R., & Faucon, B. (2007). Trade Becomes Route For Money Tied To Terrorism. *Wall Street Journal*(July 2).

intensity and quality of various associations which require diverse policy responses.

- Firstly, militants may provide **protection** for this trade in territories they control; alternatively, this may be characterized as informal **taxation** of the trade (e.g., Shining Path, AUC, FARC, PKK and tobacco into Iraq).
- Secondly, ideology may be merely **camouflage** for a criminal enterprise (some suggestions in that direction have surfaced regarding Northern Alliance groups<sup>73</sup>, as well as KLA, some Nicaragua Contra groups, some members of 17<sup>th</sup> of November).
- Thirdly, a militant group may be involved as **illegal entrepreneurs** in the trade itself (e.g., the Islamic Movement of Uzbekistan – IMU - or Abu Sayyef). A variation of this is when militant organizations divide labor and assign financing and procurement functions to specific individuals or groups who engage in full-time criminal enterprises (there have been recent examples of this with regard to the LTTE)<sup>74</sup>.
- Fourthly, militants and traffickers may be **partners in the illicit trade** (e.g., Irish paramilitaries, PKK).
- Fifthly, it can be that **individual members** of a group occasionally get involved in the trade (e.g., LTTE, IRA and others).
- Sixthly, some **traffickers may sympathize** with a particular cause and make a contribution in the same way that a legitimate businessman might (see counterfeit and smuggling of tobacco cases cited earlier and below).

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<sup>73</sup> The vulnerability in that part of the world is underscored by the 2005 State Department's International Narcotics Control Strategy Report, which points out that opium poppy production in Afghanistan is on the rise, with the acreage devoted to poppies soaring almost 240 percent in 2003 – more recent estimates are more alarming.

<sup>74</sup> The arrest of Tamil Tiger wanted financier and smuggler, Kumaran Pathmanadan, was first reported in Thailand and then denied; see media reports from the Bangkok Post "Top Tamil Tiger arrested in Bangkok" available at <http://www.bangkokpost.com/topstories/topstories.php?id=121507> and BBC's report entitled "Thailand denies arresting KP" available at [http://www.bbc.co.uk/sinhala/news/story/2007/09/070916\\_kp\\_bangkok.shtml](http://www.bbc.co.uk/sinhala/news/story/2007/09/070916_kp_bangkok.shtml)

- Finally, there may be mere **exchange relations** between terrorist groups and criminal enterprises, such as non-militant individuals or groups procuring arms and conflict-useful materiel (for example, arms traffickers selling to FARC).

Such variety of relationships between criminal enterprises and terrorist groups renders clear the unhelpfulness of terms such as 'narco-terrorism': the policy challenges are rather different when a given group receives some support due to unauthorized/hidden participation of a member in profitable crimes from a situation where a group knowingly comes to depend for its survival and growth on benefits from criminal markets. In the latter scenario, economic incentives may favor the continuation of the armed conflict. Criminal markets in other words may become vested interests in the maintenance of existing power arrangements and undermine any efforts at de-escalation<sup>75</sup>.

### **Methods of Transfer**

Again, one can hardly find a method that has not been used by one group or another to make payments or transfer funds and value. Militant groups have been able to exploit relatively well-regulated financial systems<sup>76</sup> (as did the 9/11 hijackers), poorly regulated formal banking and wire transfer systems, and informal value transfer systems (IVTS), the regulation of which varies from place to place and over time.

### **Informal/Unregulated Channels**

The term IVTS refers to ways in which value can be transferred either without leaving easily identifiable traces or entirely outside the formal

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<sup>75</sup> Such perverse effects and counter-intuitive motives have been noted in African regions where actors were seen as not really aiming for an end to conflicts but their continuation – see Cilliers, J., & Dietrich, C. (2000). *Angola's War Economy: the Role of Oil and Diamonds*. Pretoria: Institute for Security Studies.

<sup>76</sup> U.S. Department of the State, "International Narcotics Control Strategy Report," 2003. Available at <http://www.state.gov/g/inl/rls/nrcrpt/2003/vol2/html/29843.htm>

financial system.<sup>77</sup> IVTS include a wide range of channels, ranging from the simple use of couriers to complex trade arrangements and the use of modern technology, most of which have been actually used by terrorist groups in the past. Some of the IVTS identified include the following:

- Hawala
- Hundi
- Black market peso exchange networks
- Fei chien, door-to-door, and other Asian varieties
- Invoice manipulation schemes
- In-kind fund transfers
- Trade diversion schemes
- Courier services and physical transfer methods
- Corresponding banking accounts employed as sophisticated hawala
- Charities
- Gift and money transfer services overseas via special vouchers and internet web sites
- Digital/Internet based transfers
- Stored value, such as pre-paid telephone cards
- Debit and credit cards used by multiple individuals

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<sup>77</sup> The term was coined in Passas, N. (1999). *Informal Value Transfer Systems and Criminal Organizations: A Study into So-Called Underground Banking Networks*. The Hague: Ministry of Justice (The Netherlands). See also Passas, "Financial Controls of Terrorism and Informal Value Transfer Methods," in *Transnational Organized Crime: Current Developments*, Henk van de Bunt, Dina Siegel, and Damian Zaitch, eds., (Dordrecht: Kluwer, 2003); Passas, "Hawala and Other Informal Value Transfer Systems: How to Regulate Them?" *Journal of Risk Management*, 2003 [vol. 5 and no. 5]: 39– 49; Passas, "Informal Value Transfer Systems, Money Laundering and Terrorism," report prepared for the National Institute of Justice and Financial Crimes Enforcement Network, January 2005, available at <http://www.ncjrs.org/pdffiles1/nij/grants/208301.pdf>, accessed 26 June 2005; Passas, "Indicators of Hawala Operations and Criminal Abuse," *Journal of Money Laundering Control*, Vol. 8(2): 168-172; Passas, *Informal Value Transfer Systems and Criminal Activities* (The Hague: WODC (Wetenschappelijk Onderzoek-en Documentatiecentrum), Netherlands Ministry of Justice); Mohammed el Qorchi, Samuel M. Maimbo, and John F. Wilson, "Informal Funds Transfer Systems: An Analysis of the Informal Hawala System," International Monetary Fund, Occasional Paper No. 222, 2003; Rensselaer Lee, "Terrorist Financing: The U.S. and International Response," Congressional Research Service, Doc. Order Code: RL31658 2002; Samuel M. Maimbo, *The Money Exchange Dealers of Kabul: A Study of the Informal Funds Transfer Market in Afghanistan* (Washington: World Bank, 2003), World Bank Working Paper No. 13]. See also, Financial Action Task Force (FATF), 2000–2001 Report on Money Laundering Typologies (Paris: Financial Action Task Force, OECD, 2001); FATF, *Combating the Abuse of Alternative Remittance systems: International Best Practices* (Paris: Financial Action Task Force, OECD, 2003); and Christine Howlett, *Investigation and Control of Money Laundering via Alternative Remittance and Underground Banking Systems* (Sydney: Churchill Fellowship, 2001).

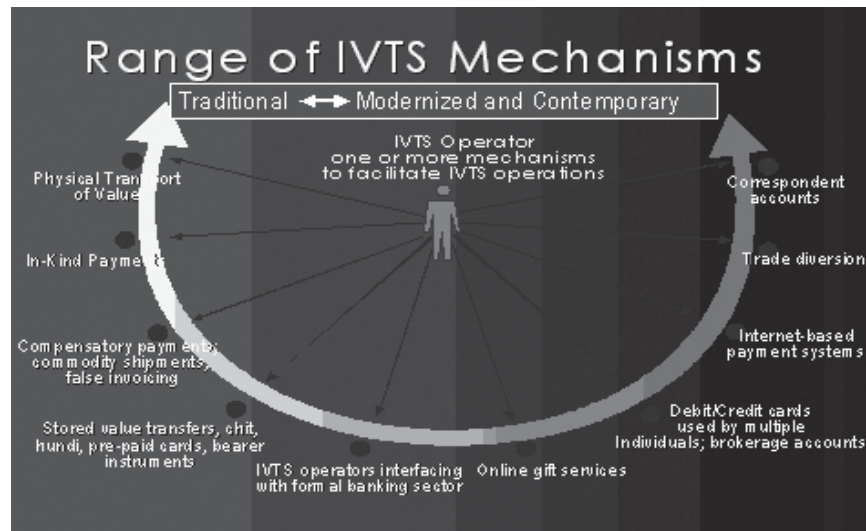


Table 1. Range of IVTS mechanisms from the most traditional to the most sophisticated [networks and single operations may involve more than one method for interim transfers and settlement among the various actors that take part]

Hawala and similar ethnic networks<sup>78</sup> have attracted policy attention and aggressive law enforcement action after the word was uttered during a US Congressional hearing suggesting that this was the preferred method for al Qaeda and similar Islamist groups. Hawala originated in South Asia, possibly centuries ago. The word means “reference” in Hindu (that is, you provide a reference and receive funds or credit in exchange). The Arabic root h-w-l means transfer. Hawaladar is a hawala dealer or operator. Hawala and very similar IVTS operate in many ethnic communities, such as S. Asian, Southeast Asian, Chinese, African, South American and Middle Eastern. It is clearly not a method solely used today by just Muslim communities.

Hawala is a trust-based efficient, convenient and inexpensive method. All it takes is a network of agents and sub-agents who take the remitters’ money, consolidate it, and fax payment instructions to counterparts within the same country or overseas for delivery usually in 24-48 hours

<sup>78</sup> See Passas, “Informal Value Transfer Systems, Money Laundering and Terrorism”; Nikos Passas, 2004. *Informal Value Transfer Systems and Criminal Activities* (The Hague: WODC, Ministry of Justice, The Netherlands). Nikos Passas, *The Trade in Diamonds: Vulnerabilities for Financial Crime and Terrorist Finance* (Vienna, Virginia: FinCEN, U.S. Treasury Department, 2004).

(although this can also be accomplished in minutes in cases of emergency and upon request). Agents balance their accounts through formal and informal channels, sometimes directly and sometimes through a series of third parties.<sup>79</sup> Kashmiri, Hamas, JI, LTTE, and other Asian groups have indeed employed hawala, as have many other organizations, both legal and criminal. Al Qaeda has relied on it when it operated in places where no formal infrastructure or other options were available, especially in Afghanistan. There is no evidence at all, however, that the 9/11 hijackers ever used hawala or similar transfers.<sup>80</sup> In fact, there is only one case so far in the US, Canada or Europe, where Islamist terrorists used hawala for their operations, even though this is an important channel for militants operating in South Asia and Africa<sup>81</sup>.

At the same time, it is important to note that hawala has been used heavily for fund transfers to militant groups in many parts of the world, especially in Asia and Africa, and is vulnerable to abuse by criminals of all sorts, including terrorists. However, even though hawala networks are not transparent in the sense of allowing for easy and accessible review of information/data (instant or automated visibility of transactions related information), they are traceable: access to such information is not instant but there is knowledge of where to go and ask questions about sender, recipient, etc. of transactions (capacity to easily locate and access the relevant information). It is thus important to distinguish between *transparency* (the means of acquiring necessary and useful information) and *traceability* of transactions and counterparties (one of the main goals of financial controls).

Employing physical couriers as a method of fund or value transfer is frequently used for legitimate, criminal and terrorism-related purposes. Whenever formal financial channels are unavailable or too costly, or when

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<sup>79</sup> The settlement process is vulnerable to abuse and the least visible part of the hawala business. See Passas, N. (2003). Hawala and Other Informal Value Transfer Systems: How to Regulate Them? *Journal of Risk Management*, 5(2), 39-49; Passas, N. (2004). Indicators of Hawala Operations and Criminal Abuse. *Journal of Money Laundering Control*, 8(2), 168-172; Passas, N. (2004). Law Enforcement Challenges in Hawala-related Investigations. *Journal of Financial Crime*, 12(2), 112-119; Passas, N. (2004). Secrets of the Money Trade: Understanding Hawala and its role in the War on Terror. *Northeastern University Magazine*(November), 10-12; Passas, N. (2005). Formalizing the Informal? Problems in the National and International Regulation of Hawala. In *Regulatory Frameworks for Hawala and Other Remittance Systems* (pp. 7-16). Washington, DC: IMF; Passas, N. (2006). Demystifying Hawala: A Look into its Social Organisation and Mechanics. *Journal of Scandinavian Studies in Criminology and Crime Prevention* 7(suppl. 1): 46-62(7(suppl. 1)), 46-62.

<sup>80</sup> See 9/11 Commission Staff Monograph on Terrorism Financing.

<sup>81</sup> This is the case of two persons found guilty in Sweden of "receiving and transferring large sums to the terrorist organization Ansar al-Islam with the aim that the money be used for terror crimes". There are some ongoing cases, in which hawala was allegedly used for the support of terrorist groups.

trust is absent, both legal and criminal actors physically move cash on their own, hand it to friends and relatives or resort to couriers. Cash has been moved in anything from containers to toys, suitcases or even inside one's body. Couriers are also used by money changers in the Middle East, who trade in currencies and therefore need to have the cash in place. Value can also be physically transferred; for instance cash may be used to buy jewelry or gold that can later be sold and its value encashed in the place of destination.

In my own research, I have found that hand carry is occasionally combined with hawala. For example, those wishing to send money to family members in Afghanistan during the Taliban rule had a hard time using hawala channels. As most Afghani families had members residing in Iran or Pakistan, remitters from Europe or the US would use hawala to get the money to relatives in these two countries and ask that they hand-deliver money to their loved ones, when those relatives planned to travel to Afghanistan themselves.

Invoice manipulation. This is an extremely widespread practice facilitative of several types of offenses ranging from tax and duty evasion to capital flight, corruption, money laundering and terrorist finance. One can engage in it by simply mis-declaring the value of exported or imported goods. Under-invoicing sends value secretly, while over-invoicing leads to the receipt of value by the issuer of the invoice.

For example, if goods worth \$100,000 are shipped to Pakistan but the business partner is invoiced for \$150,000, the shipper will receive an additional \$50,000 in North America. Why would a Pakistani importer do this? Because he may wish to minimize his declared profit from the sale of these goods or because he would like the \$50,000 deposited in an account in the US or Europe. So, this can be a method of evading currency and capital controls and of converting funds into a hard currency overseas beyond the government's reach.

Similarly, the value of imports can be understated, so that Customs duties can be evaded or because someone wishes to fund a terrorist operation with the proceeds generated from the sale of higher value imports.

Literally volumes can be written about the vulnerabilities to abuse of trade transactions, which constitute a weak link (possibly the weakest and riskiest link) in AML/CFT efforts and other regulatory regimes (see below section on neglected policy areas).



Charities operating in more than one country have been used to hide the sending of funds to extremists and militants. Small amounts can be diverted from legitimate and needed projects to militants. Raising funds in multiple countries for the same project, for example, may raise no red flags and leave few traces for investigators to follow, unless a global audit of a given group and affiliates is done (more on the charities see below).

Digital/internet-based fund payments can also be used for small amounts that may not trigger any suspicions. Some transactions lending support to the July 2005 bombings in London included international transfers through companies which convert cash into digital currency and allow walk-in clients to remit funds without much due diligence and know-your-customer procedures.

Finally, we have seen the illegal use of correspondent accounts (which are designed and intended for bank-to-bank transactions) to hide illicit transfers for individual clients.

Most observers of terrorist finance suspect that militant groups are moving more towards couriers and hawala methods, partly because of the regulatory and law enforcement scrutiny of the formal banking sector and partly because of their reliability and assumed lower detectability<sup>82</sup>. Hand deliveries through trusted individuals, in particular, are reported to be rising with respect to al Qaeda and many other groups<sup>83</sup>.

### **Formal/Regulated Means**

The US State Department has argued that terrorist organizations “have exploited poorly regulated banking systems and their built-in impediments to international regulatory and law enforcement cooperation, and have made use of their financial services to originate wire transfers and establish accounts that require minimal or no identification or disclosure of ownership.”<sup>84</sup> Nevertheless, the problems go far beyond some ill-managed institutions or countries with law regulatory regimes.

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<sup>82</sup> See Lee, R. (2002). *Terrorist Financing: The U.S. and International Response*. Washington, DC: Congressional Research Service. See also U.S. Department of the State, “International Narcotics Control Strategy Report,” 2003. Available at <http://www.state.gov/g/inl/rls/nrcrpt/2003/vol2/html/29843.htm>.

<sup>83</sup> See Juan Zarate testimony to Congress; Biersteker, T. J., & Eckert, S. E. (2007). *Countering the Financing of Terrorism*. New York: Routledge. See also Martin A. Weiss, “Terrorist Financing: The 9/11 Commission Recommendation.” CRS Report for Congress. February 2005. At: <http://www.fas.org/sgp/crs/terror/RS21902.pdf>.

<sup>84</sup> U.S. Department of State, “International Narcotics Control Strategy Report 2003, n.p.,” available at <http://www.state.gov/g/inl/rls/nrcrpt/2003/vol2/html/29843.htm>, accessed 26 June 2005.

For example, the 9/11 Commission report pointed out that al Qaeda funded the hijackers in the United States by three main “unexceptional” means: (1) wire or bank-to-bank transfers from overseas to the United States; (2) hand carrying cash or traveler’s checks into the United States; and (3) debit or credit cards to access funds held in foreign financial institutions. Instead of going through ostensibly weak spots, tax havens, secrecy jurisdictions, or “underground” channels, all of the hijackers used the U.S. banking system, regulated US and British financial institutions, to execute their transactions. Contrary to media and popular belief, the 9/11 Commission report noted that “there is no evidence the hijackers ever used false Social Security numbers to open any bank accounts” and “no financial institution filed a Suspicious Activity Report... with respect to any transaction of any of the 19 hijackers before 9/11.”<sup>85</sup>

So, over \$300,000 passed through the US banking system without triggering suspicious activity reports (SAR) or otherwise raising any red flags<sup>86</sup>. Many observers underlined that funds came through accounts in the UAE, but omitted to add that US and British big institutions were used for the transfers and all amounts ended up in the US in the ‘unremarkable’ ways noted by the 9/11 Commission. For example, Z. Moussaoui brought cash with him, but he duly declared it at the airport raising no suspicions. The 9/11 Commission reported that the hijackers’ transactions should not have triggered suspicious activities reports because compliance officers from the biggest banks have noted the routine nature of the hijackers’ finances. In brief, the argument is that their transactions are similar to the majority of their legal customers. There is no way of differentiating such transactions when used for terrorism and legitimate purposes.

Having seen some credit card statements of 9/11 hijackers, I have some concerns about whether this is entirely accurate and whether some analytical effort could assist both banks and controllers in their work. For instance, the US-based conspirators used credit cards to make cash withdrawals at ATM machines at the maximum limit and routinely in groups of 2-3 individuals at once. This incurred fees and finance charges, which they did not pay at the end of the statement period. They occasionally left all of the balance and did not even pay the minimum amount. Then a deposit would be made in the UAE adding tens of thousands of dollars

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<sup>85</sup> 9/11 Report, 254 and 545.

<sup>86</sup> Incidentally, this fact demonstrates that the talk and concerns that followed the 9/11 attacks about the role of low tax and secrecy jurisdictions are off the mark. If there was no such jurisdiction involved in AQ or other terrorist financial scheme, why do we need to raise these as priority problems?

to the credit card account, ending up with a positive balance that would sit there without any interest. Other than cash withdrawals, the credit card was used only rarely for the odd gas station payment or a hair cut. In other words, no living expenses or purchases could be seen in that record. Why would someone have to pay ATM fees using a machine in a shopping mall, when they can use the same card in shops next door instead? This pattern is not a red flag that someone is plotting a terrorist attack, but I am not sure it fits the majority of credit card holders in the US or elsewhere, so it could trigger further inquiries.

In any event, debit and (sometimes pre-paid) credit cards (which can be anonymous and used as a bearer instrument) used by multiple individuals are another alternative to fund transfer. Holders of bank or credit card accounts can have multiple cards on the same account and hand them over to other persons, who use them for withdrawals in other countries. Only the account holder may know, thus, who is taking the cash and for what purpose. However, even she/he may not know where the money and the card goes next, if a terrorist group is reasonably sophisticated, to fragment the division of labor and knowledge of operations.

The Islamic banking system has also attracted policy concerns<sup>87</sup>. Nevertheless, discussions of its actual use are frequently not based on a good understanding of the evidence and operations of Islamic institutions. Before actions are taken, it would make sense to take a number of steps: establish the range of Islamic financial services and instruments available, outline the variations in which they are offered in different countries, analyze the vulnerabilities for abuse (actual and potential) in the future, review existing regulatory arrangements to find out whether such vulnerabilities are addressed, and offer policy recommendations and measures for possible improvements.

Another issue that has generated some debate is the 'storing' of funds by terrorist organizations. As will be seen below, conflict diamonds were reportedly used to store the value of al Qaeda's war chest. Yet, the accounts were later found to be neither founded on evidence nor plausible. In fact, one of the alleged diamond dealers generating and storing millions of dollars has admitted to Guantanamo interrogators that during the entire period when he was supposed to be doing all this in West Africa, he was at an al Qaeda training camp in Afghanistan, which he left after

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<sup>87</sup> See Landon, T. (2007). Islamic Finance and its Critics. *The New York Times* (August 9), [http://www.nytimes.com/2007/2008/2009/business/2009trust.html?\\_r=2001&oref=slogin&pagewanted=print](http://www.nytimes.com/2007/2008/2009/business/2009trust.html?_r=2001&oref=slogin&pagewanted=print)

9/11 to go to Pakistan (where he was later arrested). The main point to make here is that, again, it depends on what sort of terrorist/militant group we are focusing on. Most threats come in small sizes and budgets. In other words, they would not have any funds to 'store' in any event. Even al Qaeda was operating hand to mouth after they left the Sudan to return to Afghanistan (see amounts involved section below). The matter is different, of course, for groups enjoying wide popular support, having a long history and existence, large membership and governance needs (salaries, health, education, general welfare) when they control territories of a certain size (these were most of the cases discussed by those calling for policy attention to the financing of terrorism as an additional weapon in the counter-terrorism arsenal)<sup>88</sup>.

Given the wide range of raising and transferring funds, it may be useful to make some comments on what general factors may influence the decision of a given militant group to use this or another method:

- Popular support for cause. To the extent a group enjoys legitimacy and sympathy in large sections of a society or population, legal sources of funding are much more likely. The need for criminal methods is diminished. The revelation of shady and illegal sources or practices would have a negative impact on the following and popularity of the group.
- Range/extent of financial needs of a given group
- Size of group. Small militant groups would have limited needs and may be able to accomplish their goals with readily available means. Bigger groups would more likely have to diversify their sources and seek continuous support.
- Scope of activities. One-off, sheer sabotage or bombing activities require fewer resources. On the other hand, if militant activities are only one part of broader political and government-like activities (e.g., security, health-care, education, general welfare, etc.) then very substantial resources will be necessary.

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<sup>88</sup> Adams, J. (1986). *The Financing of Terror*. London: New English Library.

- Location/Geographic coverage. Fund-raising and transfer opportunities depend on the context in which a group operates. Some areas are rich in natural resources, others lend themselves for illicit drug production, others are close to unguarded borders, still others are in parts of the world with large informal economies and fund transfer methods.
- Ideology/political orientation. To the extent a given group has articulated grievances and an ideological orientation that is incompatible with involvement in certain types of illegal activities (e.g., drug trafficking), the group is likely to stay away from such fund raising methods.
- How well met are the group's needs? Well resourced groups are likely to stay away from illegal enterprises, which attract additional and more international law enforcement attention
- Internal discipline. Some groups may be averse to the use of illegal financing methods or association with criminal enterprises, but the degree to which individual members may get involved in such activities will depend on the strength of the group's internal discipline..

### **Amounts Involved**

Little is known with certainty and precision about the amount of money involved in terrorist financing and how this is distributed within terrorist organizations. As a result, it is difficult to know whether financial controls targeting large transactions or smaller sums may be more useful and where these controls should be targeted.

There is a serious disconnection between high estimates (popular and repeatedly cited by some presumed experts) and the existing empirical evidence from terrorism cases in N. America and around the world. Some have even spoken of a multi-billion "global economy of terror". Had the reality been even close to such misleading exaggerations, one could consider most current financial controls and other measures in the post 9/11 context at least *prima facie* as reasonable. If the international regulatory net is truly seeking to sweep such gigantic amounts, then the due diligence and reporting processes implemented or recommended

could make sense. Even so, one would be wise to adopt a critical approach, as the overwhelming majority of the measures were a revival and strengthening of AML ideas taken off the shelf and applied to terrorism. Interestingly, such measures were for the most part in the process of being dismantled by US Treasury officials concerned that they would not withstand basic cost-benefit analyses. A growing number of scholars have also voiced serious doubts that the AML regimes have been remotely as successful as AML is officially assumed to be against drug trafficking and other forms of serious criminal enterprises, national and international<sup>89</sup>.

As noted earlier, the problem is that the amounts connected to terrorism are much smaller, despite widespread media as well as 'expert' assumptions to the contrary. For example, if we put together the various theories about al Qaeda's finances, the group would have to be awash with millions of dollars from rough diamonds, gold, charitable donations, legitimate businesses and criminal enterprises including drug trafficking. On the other hand, operatives have been found to be under-resourced or required to raise their own funds for operations. The perpetrators of the first World Trade Center bombing complained that they did not have more than \$19,000 to buy more explosives for a bigger bomb<sup>90</sup>. As al Qaeda departed the Sudan for Afghanistan, many operatives were left behind for they could not afford their modest salaries<sup>91</sup>. Indeed, al Qaeda's wealth has generally been over-estimated. As revealed by computer files retrieved by a reporter in Afghanistan, "The computer did not reveal any links to Iraq or any other deep-pocketed government; *amid the group's penury the members fell to bitter infighting*. The blow against the United States was meant to put an end to the internal rivalries, which are manifest in vitriolic memos between Kabul and cells abroad"<sup>92</sup>.

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<sup>89</sup> See Beare, M. E., & Schneider, S. *Money Laundering in Canada: Chasing Dirty and Dangerous Dollars*. Toronto: University of Toronto Press 2007; Cuellar, M.-F. The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance. (2003) *Journal of Criminal Law and Criminology*, 93, 311-465; Naylor, R. T. (1999). Wash-out: A Critique of Follow-the-money Methods in Crime Control Policy. *Crime, Law and Social Change*, 32(1), 1-57; van Dyne, P. C., Groenhuusen, M., & Schudelard, A. A. P. (2005). Balancing Financial Threats and Legal Interests in Money-Laundering Policy. *Crime, Law and Social Change*, 43, 341-377; Reuter, P., & Truman, E. M. (2004). *Chasing Dirty Money: the fight against money laundering*. Washington, DC: Institute for International Economics.

<sup>90</sup> See testimony of Louis J. Freeh, Director, Federal Bureau of Investigation (FBI), "President's Fiscal Year 2000 Budget, before the Senate Committee on Appropriations, Subcommittee for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, Washington, D.C., Feb. 4, 1999 [session of Congress].

<sup>91</sup> See also: "Bin Laden was not entirely devoid of resources on his return. Though his bank accounts were depleted, they still existed and funds from wealthy private backers in the Gulf were still flowing in." (Burke 2004, p. 167)

<sup>92</sup> Cullison, A. (2004). Inside al Qaeda's Hard Drive: Budget Squabbles, Baby Pictures, Office Rivalries—and The Path To 9/11. *The Atlantic Monthly* (September); emphasis added.

So, how much money is currently available to al Qaeda or other groups? The lack of precise answers to this question shows that a more systematic search for information on seizures, estimates of net worth, fund raising capacities, number and type of sympathizers, etc. is necessary. Current estimates, with the notable exception of the 9/11 Commission Report, are often out of touch with the empirical reality as it emerges from trial evidence and investigations.

### **Operating vs. Operational Costs (Acts vs. Large Groups and Infrastructures)**

A proper analysis of the costs of terrorism cannot be done in abstract terms. It is important to differentiate between the funding of particular acts or attacks and the funding for the ongoing operations of an organization or movement. While the cost of an *act* such as a bombing can be trivial, the funding of a militant *group* can involve significant amounts<sup>93</sup>. Such costs would include training, procurement, travel, communications, command and control, propaganda, intelligence gathering and counter-intelligence, bribery of officials, etc. Establishing, maintaining and increasing such *infrastructures*, thus, can be rather expensive. While this is true in general terms, it does not mean that all terrorist groups necessarily require substantial resources. Small and marginal groups may have no expenses at all that cannot be covered by petty crimes or the members' own means and income.

In addition, the operating costs may also relate to legitimate activities. Depending on the longevity, size, targets, methods and objectives of a given group, large *legitimate infrastructures* may also be part of a group's operating expenses<sup>94</sup>. Many insurgent and militant organizations have had extensive welfare, education and social work, security and other functions to perform, especially when they brought limited geographic areas under their control (IRA, LTTE, Hamas, Hizbollah, FARC, etc.). How is one to distinguish between funds needed for terrorism as opposed to the provision of basic services to needy populations? Hezbollah, for example, is said to run twenty-five primary secular schools and has built five

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<sup>93</sup> As noted by S. Levey, for instance, "The real operating costs of terrorists inhere in maintaining and perpetuating their networks, and these costs are considerable" (Testimony of Stuart A. Levey, Under Secretary, Terrorism and Financial Intelligence, U.S. Department of the Treasury, before the Senate Committee on Banking, Housing, and Urban Affairs, September 29, 2004)

<sup>94</sup> See Levitt, M. (2006). *Hamas: Politics, Charity, and Terrorism in the Service of Jihad*. New Haven: Yale University Press.

hospitals, with European assistance.<sup>95</sup> Moreover, they cart more than 300 tons of garbage a day from the *dahiyeh*, an impoverished, predominantly Shi'ite area of southern Beirut, and treat it with insecticides.<sup>96</sup> When a decision is made to criminalize a particular organization, such a mixing of militant and legitimate functions, is a moot point, as all relationships with the designated group are prohibited. However, matters are more complicated when the very definition of a given group as terrorist or freedom/independence fighters, insurgents or resistance is in question and leads to diverse approaches in different countries.

Al Qaeda belonged to this category of groups, when it operated out of the Sudan and later in Afghanistan. According to CIA estimates accepted by the 9/11 Commission as reasonable, al Qaeda had a \$30 million annual budget for the overall organization, including \$10-20 million paid to the Taliban<sup>97</sup>.

As Australia's Director of Public Prosecutions suggested in 2003: "al Qaeda spends about 10% of its income on operational costs. The other 90% goes on the cost of administering and maintaining the organization, including the cost of operating training camps and maintaining an international network of cells. So called 'sleepers' must also cost significant sums to establish and maintain"<sup>98</sup>.

The target and context of CFT is very different, when it comes to individual operations, which are mostly quite inexpensive. In many instances, these can be self-financed and low budget. Estimates for the first World Trade Center attack are less than \$19,000, for the Bali bombings less than \$20,000, for the Madrid train bombing about 15,000 € plus the value of some illicit drugs, while a reported attempt at chemical attack in Amman, Jordan that might have caused large numbers of fatalities would have cost about \$170-180,000. The 9/11 operation cost an estimated \$350,000-500,000 over many months (about \$320,000 have been precisely accounted for by the FBI, but some assume that some additional funds were used). As the 9/11 Commission admitted, "The nature and extent of al Qaeda fund-raising and

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<sup>95</sup> Pasquini, Elaine. 2004. "Hezbollah May Have 'Bright Political Future' in Lebanon, says Dwight J. Simpson." *The Washington Report on Middle East Affairs*. September.

<sup>96</sup> Harik, Judith Palmer. 2004. *Hezbollah - The Changing Face of Terrorism*. New York: I.B. Tauris. Additional services attributed to Hezbollah include surveying for reconstruction projects, preventive spraying for mosquitoes, the provision of drinking water and the expansion of roads; see Sachs, Susan. 2000. "Helping Hand of Hezbollah Emerging in South Lebanon." *The New York Times*. May 30.

<sup>97</sup> 9/11 Commission Staff Report: 27.

<sup>98</sup> Damian Bugg Speech to IAP Conference, December 8, 2003. Available at <http://www.cdpp.gov.au/Media/Speeches/20030812db.aspx>



money movement make intelligence collection exceedingly difficult, and gaps appear to remain in the intelligence community's understanding of the issue. Because of the complexity and variety of ways to collect and move small amounts of money in a vast worldwide financial system, gathering intelligence on al Qaeda financial flows will remain a hard target for the foreseeable future<sup>99</sup>. In any event, it is not clear, whether al Qaeda in its current form requires or possesses such large amounts of funding or whether the raising and distribution of funds continues to be organized in the same manner as before. Different assumptions of what is or what has become of al Qaeda lead to radically different policy approaches and measures.<sup>100</sup>

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<sup>99</sup> 9/11 Commission Report, 2004:13.

<sup>100</sup> Contrast, for example, Rohan Gunaratna, *Inside Al Qaeda: Global Network of Terror* (New York: Columbia University Press, 2002); and Jason Burke. *Al-Qaeda: Casting a Shadow of Terror*. London ; New York: I.B. Tauris, 2003.

At the same time, evidence from terrorism trials and investigations around the world keeps accumulating and reinforcing the impression that terrorism is for the most part inexpensive and that amounts are very often in the thousands if not in the hundreds of dollars (see table below).

| <b>Operational Cost of Terror</b>  |
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| • Madrid 2004 bombings - about 15,000 € (in addition to these operational costs explosives were acquired in a barter deal for illicit drugs with a street value of about 35,000 €) |
| • Bali nightclub bombings – about \$20,000   |
| • US embassy bombings in Kenya and Tanzania – about \$10,000   |
| • Attacks in Istanbul – less than \$40,000   |
| • 9/11 attacks – about \$320,000 for 19 hijackers over about two years   |
| • Paris bombs – a few hundred €  |
| • USS Cole 2000 attack in Aden - less than \$10,000  |
| • Bishopsgate IRA attack - £3000   |
| • London 2005 attacks – a few hundred British pounds   |
| • Jakarta 2003 Marriott Hotel bombing - about \$30,000   |
| • Chechnya:  |
| • \$4,000 to down the airplanes;   |
| • \$7,000 for bomb attacks on Kashirskoye Highway and near metro station.  |
| • Nord-West operation in Beslan \$ 9,500   |
| • Germany  |
| • Planned 2006 train bomb attempt – less than €200   |
| • Cologne bomb \$241   |
| • Air India bombings – 3,000 CAD   |
| • Planned Amman, Jordan chemical attack – \$170,000  |

Sources: Personal interviews with investigators and prosecutors from the US, UK, France, Germany, Spain, Turkey, FBI; UN Monitoring Team reports; on Jordan: Air Security International; on Chechnya: Shamil Basaev statement; on US East Africa embassy and Bali bombings, 9/11 Commission Staff report: 27-28. It should be noted that an official inquiry into the London bombings in 2005 estimated the total cost of overseas and UK trips, bomb-making equipment, rent, car hire, to less than £ 8,000.

This was funded through defaulted loans, account overdrafts and checks that eventually bounced<sup>101</sup>.

Apart from pointing up the need for collecting all reports on estimates and analyzing them critically, the above suggests that, when it comes to funds for specific operations, we are indeed searching for a needle in a gigantic haystack. The whole infrastructure of financial controls we have put in place against terrorism can assist in undermining, monitoring and investigating terrorist activities, but it is largely irrelevant with respect to finding the relatively insignificant amounts or value that one could carry in a pocket.

While particular acts may be inexpensive, operating costs may be high or low, depending on the terror group in question. In this light, it makes sense to differentiate between the various terror groups.

### **A Typology of Terrorist Groups**

On the one hand, we can have large and popular groups, controlling certain geographic areas and engaged in de facto government functions as well as militant activities (for example, LTTE, Hizbollah, Hamas).

On the other hand, there are small, isolated groups that act independently even though they may be inspired by grievances and arguments voiced by others. Those responsible for the attacks in Madrid, Germany and Glasgow appear to fall under this category.

The second type of groups are unlikely to have extensive financial needs or cross-border transfers and transactions, while the first type will need to raise substantial funds to maintain existing infrastructures and support diverse operations and attacks.

A third type of terror group or network may be placed between the above two ideal types. Small groups acting on their own may also interface with wider networks operating through legitimate ethnic communities, charities and criminal enterprises in several countries. It appears that the group responsible for the attacks in Madrid belongs in this category. A

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<sup>101</sup> House of Commons, *Report of the Official Account on the Bombings in London on 7<sup>th</sup> July 2005*, HC 1087, 11 May 2006. Available at <http://www.official-documents.gov.uk/document/hc0506/hc10/1087/1087.pdf> (accessed April 30, 2007): p. 23.

recent briefing described an apparently self-organizing network in which one finds the Madrid bombers as well as suicide bombers in Iraq and which spreads from Morocco to Spain, other European countries and the Middle East:

- A young person from Mezuak is given the name of someone in Sebta (the Spanish enclave of Ceuta). Money is passed on to handlers connected with, or riding piggyback on, the widespread contraband and drug trafficking that is peculiar to Tetuan and Ceuta (about 25,000 people cross daily from Tetuan into Ceuta without passports).
- Contraband and drug trafficking are integral to Tetuan's economy and even its social fabric, and authorities will not stop it.
- Barcelona is a possible transit point, where there is also a growing Pakistani jihadi community involved in bombing plots in Spain and perhaps elsewhere in Europe. This is a possibility that should be looked into.
- The pipeline seems to resemble the traditional Silk Road that allowed commerce between China and Western Europe for many centuries, where persons at place A would send on merchandise to relatives or other confidants at place B, who in turn would send on or exchange the merchandise to other relatives and confidants at place C, and so on.. Understanding the self generation and maintenance of these networks is a new theoretical challenge for us."<sup>102</sup>

This suggests that between a tiny or marginal group and a large organization with infrastructure, there are networks of support, such as the above. Calculating the cost of suicide bombings in Iraq, thus, would have to consider not only the explosives and intelligence gathering or other preparation for attacks and the travel expenses of a foreigner into Europe, Iraq or other places, but also the general costs of running the

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<sup>102</sup> Extract from S. Atran and M. Sageman, 2007 "Terror Networks and Sacred Values: Synopsis of report from Madrid – Morocco – Hamburg – Palestine – Israel – Syria"; delivered to NSC staff, White House, Wednesday, March 28, 2007, by Scott Atran, Robert Axelrod and Richard Davis, available at: [http://www.sitemaker.umich.edu/satran/files/synopsis\\_atran-sageman\\_nsc\\_brief\\_28\\_march\\_2007.pdf](http://www.sitemaker.umich.edu/satran/files/synopsis_atran-sageman_nsc_brief_28_march_2007.pdf)

network procuring suicide bombers. In this case, we see an interface with contraband and drug trafficking.

### **Problems with Imperfect Knowledge**

No one would disagree with the principle that counter-terrorism policy and priorities ought to be set in as objective a manner as possible on the basis of good evidence and sound analysis. Because everything has been used to fund one terrorist activity or another, however, special interest groups focused on particular problems seek to associate their cause with terrorism in order to gain support. Occasionally, a consequence of their good intentions and strong commitment to possibly worthy causes is that they divert attention and resources to areas of lower risk or priorities. The same applies to governments seeking external support for the suppression of their political opponents at home, by alleging connections between local groups and al Qaeda.

It could be potentially quite damaging to let priorities set themselves thanks to the differential persuasive or other power of particular groups acting against illicit drug use, counterfeit products, a particular terror group that may not pose as strong a threat (or any) to a given country's national interests. For example, allying ourselves too readily with Central Asian republic authoritarian governments against groups, such as Hizb-ut-Tahrir<sup>103</sup>, can have the effect of radicalizing that group and creating a fertile ground for recruiting more militant and violent actors (e.g., by the IMU).

Three examples taken from the trade in commodities, fund transfers and charities illustrate how exaggerated claims or assumptions not based on solid evidence have led to ineffective and counterproductive measures and policies.

### **"Conflict Diamonds" and al Qaeda: A Theory with no Empirical Support**

Reports that al Qaeda is involved in the trade of conflict diamonds in West Africa have been repeated since 2001. At first, they made a very useful contribution by drawing attention to problems in the regulation of trade in precious commodities as well as to the role of natural resources

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<sup>103</sup> See Rashid, A. (2002). *Jihad: The Rise of Militant Islam in Central Asia*. New Haven: Yale University Press.

in local or regional conflicts. Subsequently, however, as evidence of al Qaeda fund-raising and value storage in conflict diamonds turned out to be very weak, the reporting of such links continued unabated causing diversion of law enforcement and policy resources away from areas of higher terrorism finance risk areas a) within the diamond sector, b) in other geographic locations and c) other commodities and trade in general.

Media articles indicated that al Qaeda associates have been involved in the conflict diamonds trade, particularly rough diamonds from Sierra Leone mined by the Revolutionary United Front (RUF). It was reported that al Qaeda raised funds through African conflict diamonds and then sought to store value and convert cash into portable, valuable and easily convertible commodities, such as diamonds and gold.

This reporting has been challenged by intelligence and law enforcement agencies, scholarly research and the 9/11 Commission report.<sup>104</sup> While there is cause for concern that the diamond industry can be used to support conflict, terrorist activity and a variety of other crimes, the argument that al Qaeda has had a significant involvement in West African conflict diamonds is unsubstantiated. The al Qaeda-diamonds nexus theory sprang from five main sources,<sup>105</sup> all of which routinely refer to each other and rely on the same or similar material or informants. Careful scrutiny of the quality and consistency of information has belied the allegation that precious stones constituted a significant fund raising or value storage method for al Qaeda.

<sup>104</sup> Passas 2004, *The Trade in Diamonds: Vulnerabilities for Financial Crime and Terrorist Finance* (Vienna, Virginia: FinCEN, U.S. Treasury Department). 9/11 Commission report (2004). The Staff Monograph clarifies that "Allegations that al Qaeda has used the trade in conflict diamonds to fund itself similarly have not been substantiated." Staff Monograph, p. 23.

<sup>105</sup> See Doug Farah's series of articles in the *Washington Post*: "Al Qaeda Cash Ties to Diamond Trade," 2 November 2001, p. A01; "Digging Up Congo's Dirty Gems," 30 December 2001, p. A01; "Al Qaeda's Road Paved With Gold; Secret System Traced Through a Lax System in United Arab Emirates," 17 February 2002, A01; "Report Says Africans Harbored Al Qaeda; Terror Assets Hidden in Gem-Buying Spree," 29 December 2002, A01; "Liberian Is Accused of Harboring Al Qaeda," 15 May 2003, A18; "Al Qaeda's Finances Ample, Say Probers," 14 December 2003; and his book, *Blood From Stones: The Secret Financial Network of Terror*, (New York: Broadway Press, 2004). The other four sources are: *The Wall Street Journal* (Block, Robert. "Liberia Cooperates in Study of Terrorist in Diamond Trade."- *The Wall Street Journal*. November 21, 2001, p. A11; Block, Robert. "Spreading Influence: In South Africa, Mounting Evidence of al Qaeda Links --- Officials Cite Smuggling Cases And a Deadly Bombing." *The Wall Street Journal*, December 10, 2002, p. A1; a BBC documentary ("Blood Diamonds," October 21, 2001. At: <http://news.bbc.co.uk/1/hi/programmes/correspondent/1604165.stm>); a report by the non-governmental organization Global Witness ("For a Few Dollars More: How Al Qaeda Moved into the Diamond Trade," April 2003), 1-97; and leaked reports or public statements from the Special Court for Sierra Leone (established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of August 14, 2000) (e.g., "Liberia's Taylor 'Player in the world of Terror.'" *AFP*, May 15, 2003; Doug Farah, "Liberian Is Accused of Harboring Al Qaeda." *The Washington Post*, May 15, 2003, p. A18)

My own review of the cited sources, interviews with those directly involved in such investigations, and other primary data disconfirm these links. Some of these sources (e.g., the FBI and Belgian federal police) strongly disagree with the media reports and emphasized that, despite time and resources allocated to this effort, they have failed to find transactions indicating unusual transactions and prices at critical times or to corroborate the important components of the al Qaeda and conflict diamonds theory.<sup>106</sup> The 9/11 Commission, which has taken into account additional non-public data (e.g., from al Qaeda detainees) has also pointed out that there is “no persuasive evidence that al Qaeda funded itself by trading in African conflict diamonds.”<sup>107</sup> A Belgian Parliament inquiry and Canadian intelligence sources came to the same conclusion.<sup>108</sup> A review of the 1998 African U.S. Embassy bombing trial shows that the same people who supposedly raised funds from diamonds, also turned to the trade in animal hides, asphalt, assembly watches, bananas, bicycles, butcher equipment, calculators, camels, canned food, cars and tires, cement, fava beans, fish, gold, hibiscus, honey, gemstones, insecticides, iron, lathing machines, leather, lemons, ostrich eyes, palm oil, peanuts, salt, seeds, sesame, shower pipes, soap, sugar, sunflower, tanzanite, textiles, tractors and tractor parts, wheat, white corn, and wood. One has to wonder why al Qaeda associates would stretch themselves so thin, if they could raise the reported millions of dollars through diamonds. Many details of media reports have thus been disconfirmed and their plausibility questioned<sup>109</sup>.

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<sup>106</sup> Research efforts of more than three years included interviews with intelligence personnel and investigators from the UN, United States and Europe, NGO officials, reporters, industry participants and academics who studied the diamond industry in the past five years. It included also a review of the transcripts and the evidence from the trial for the West African embassy bombings, literature on the subject, public and confidential reports. This study revealed gaps in the evidence, erroneous statements, exaggerations and implausible assumptions. Whether al Qaeda extensively used the rough diamonds trade in its financial operations is doubtful, if it actually dealt in diamonds at all before the 9/11 attacks (Passas, N. *The Trade in Diamonds: Vulnerabilities for Financial Crime and Terrorist Finance* (Vienna, Virginia: FinCEN, [U.S. Treasury Department]. 2004).

<sup>107</sup> 9/11 Commission, (2004: 171).

<sup>108</sup> Christian Dietrich, 2000; Christian Dietrich (2002). Audition de M. Christian Dietrich, (IPIS), diamond analyst. Paper presented at the Commission d'Enquete Parlementaire, Belgique. AVAILABLE AT <http://www.senat.be/crv/GR/gr-06.html> ] Royal Canadian Mounted Police, “Link Between Al Qaeda and the Diamond Industry,” 2004; available at <[http://www.rcmp.ca/crimint/diamond\\_e.htm](http://www.rcmp.ca/crimint/diamond_e.htm)>, accessed 26 June 2005.

<sup>109</sup> For example, one of the reported al Qaeda operatives, Ghailani, was said to have dealt in and generated millions of dollars in Africa in the late 1990s and early 2000s. However, he was subsequently arrested in Pakistan and has confirmed to US authorities at Guantanamo Bay that he moved to Afghanistan in 1998 after the Tanzania embassy bombings, went to al Qaeda’s al Farouq training camp and stayed there before he found out he was wanted for assisting in the attacks. He moved to Pakistan after the bombing of the country by the US and coalition (see verbatim transcript of open session combatant status review tribunal hearing for ISN 10012: 11-16).

The value storage part of the theory is also weak. If al Qaeda operatives stored substantial assets in rough diamonds, they would have lost about half of their value, as they supposedly bought at 15-20 percent premium<sup>110</sup> and then saw the price fall another 30 percent after 9/11.<sup>111</sup> In addition, such voluminous activities by newcomers would have been noticed by the Lebanese, Jewish and Indian participants in this market or, indeed, the whole industry. Yet, no one reported anything unusual or suspicious at the time or after the al Qaeda allegations were investigated.

In short, the conclusion is that apart from participants in African conflicts, some terrorist groups or persons associated with them may have engaged in some diamond transactions, although the amounts involved do not appear to be substantial. However, the sector is vulnerable to future use by militants. The vulnerability seems to be particularly acute with polished stones (not just the rough diamonds on which most reports have focused so far). Where the value is more certain, as with polished stones, one does not have to be an insider to participate and one can much more easily store and hide value or transfer it across borders.

The media and NGO reports had the effect of pointing out the unexplained resistance of some US agencies to consider precious stones as one possible or potential fund raising and fund transfer medium of AQ. This point has been made, attention has been directed to this industry, and law enforcement is looking into the vulnerabilities. There is no need to keep recycling the same claims further because it became counterproductive: significant law enforcement and intelligence time and resources were applied in Europe, N. America and Africa when they could have been used more effectively elsewhere.

It is important to note that the identified vulnerabilities are not specific to diamonds, but apply equally to trade in general. Trade is currently not transparent and represents a significant threat to all efforts countering money laundering, terrorist finance or other financial crime. The current relative inattention to commercial transactions results in 'nominee trade', whereby authorities have wrong or insufficient information regarding the importer, exporter, value of goods, as well as their origin and final destination. Given the large volumes and numerous actors involved

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<sup>110</sup> This also begs the question: Why would one voluntarily lose 15-20 percent of the value he is trying to preserve?

<sup>111</sup> Christian Dietrich and Peter Danssaert, "Antwerp Blamed, Again," IPIS (International Peace Information Service); Diamondstudies.com, November 16, 2001.] Accessed at: <http://ossaily.bravehost.com//antwerpblamedagain.htm> .



in the import/export business, significant value transfers and serious misconduct can be hidden behind them.

There are three global flows one needs to pay attention to in order to control terrorism finance and other crimes: financial, commercial and information flows. While most efforts focus on financial flows and to a certain extent messaging and information flows, the problem is that trade flows are neglected. One need only include some commercial or cash transactions in a series of operations in order to obscure the investigative trail controllers would wish to follow. The creation of such “black holes” is easy since financial, trade and information flows are not fully transparent or traceable and are not matched to make sure that what is declared to authorities is what is actually occurring. As a result, irregularities, suspicious transactions and blatant abuses go largely unnoticed. The heated debate on the role of conflict diamonds in the financing of al Qaeda therefore diverts attention from more important policy issues and challenges. Consequently, the possibility of substantial amounts raised or transferred undetected or without the authorities’ ability to identify the contracting parties is a cause for serious concern and a matter that requires urgent attention.<sup>112</sup>

### **Al Barakaat and Terrorism: Links Never Substantiated**

In many parts of the world, hawala is regulated as a money transfer business. In Somalia, however, regulation is left to private sector initiatives because the state is absent. Nevertheless, Somali networks have been the subject of regulatory attention since the attacks of 9/11. Al Barakaat, in particular, has undergone the most thorough scrutiny of any such network anywhere in the world due to allegations that it was closely associated with bin Laden and supported al Qaeda. Media, government reports, terrorism (presumed) experts and high-level officials continue to this day to repeat the early allegations even though none of them has been proven in any country.

Somalia’s principal export during many years of crises has been human labor. Remittance flows have a particularly significant impact on human

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<sup>112</sup> See Passas, N. (2006). Setting Global CFT Standards: A Critique and Suggestions. *Journal of Money Laundering Control*, 9(3), 281-292; Passas, N., & Jones, K. (2007). The regulation of Non-Vessel-Operating Common Carriers (NVOCC) and Customs Brokers: Loopholes Big Enough to Fit Container Ships. *Journal of Financial Crime*, 14(1), 84-93; available at <http://www.emeraldinsight.com/Insight/viewContentItem.do?contentType=Article&contentId=1585488>; Passas, *The Trade in Diamonds*.

development options there<sup>113</sup>. Al Barakaat used to be the largest remittance provider before it stood accused of sponsoring and providing logistical support to terrorism. In November 2001, the US government accused al-Barakaat of funneling millions of dollars to Osama bin Laden and his Al Qaeda network<sup>114</sup>. The U.S. Treasury Department claimed that Barakaat had been funneling about \$25 million a year from customer fees to bin Laden's network. On the 7<sup>th</sup> of November 2001, police raided Barakaat offices in five U.S. states, seized their records and froze their assets. Similar actions took place around the world, including the United Arab Emirates (UAE), where al Barakaat was headquartered and where top executives were arrested.

Yet, the only terrorist finance accusations were made by government officials speaking at press conferences<sup>115</sup>. The US President, the Secretary of the US Department of Treasury and other high-level officials publicly and repeatedly announced that al Barakaat and its principals were "financiers of terror", "the money movers, the quartermasters of terror", "a principal source of funding, intelligence and money transfers for bin Laden"<sup>116</sup>, used "pseudonyms and shell companies to disguise their true identities".<sup>117</sup>

I have conducted research into the charges leveled against Barakaat as well as the extensive and intensive administrative and investigative efforts.

It is true that Barakaat operated in forty countries and in depth investigations got off the ground very quickly. Law enforcement and regulatory authorities had al Barakaat and other hawala networks on their radar screen before the flurry of activity in the immediate aftermath of 9/11. The FBI, Customs (Greenquest), OFAC, FinCEN and other organizations paid very close attention to the case and gathered all

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<sup>113</sup> UNDP (United Nations Development Programme). (2001). *Human Development Report*. New York: United Nations.

<sup>114</sup> For a detailed discussion of the federal government's actions with respect to Al-Barakaat including the November raids, see Chapter 5 of Staff Monograph on Terrorist Financing (Al-Barakaat Case Study), National Commission on Terrorist Attacks upon the United States (9-11 Commission) (2004). [http://www.9-11commission.gov/staff\\_statements/911\\_TerrFin\\_Ch5.pdf](http://www.9-11commission.gov/staff_statements/911_TerrFin_Ch5.pdf)

<sup>115</sup> President Bush, for example stated: "Acting on *solid and credible evidence*, the Treasury Department of the United States today blocked the U.S. assets of 62 individuals and organizations connected with two terror-supporting financial networks -- the Al Taqua and the Al Barakaat. Their offices have been shut down in four U.S. states. And our G8 partners and other friends, including the United Arab Emirates, have joined us in blocking assets and coordinating enforcement action" (emphasis added); see full statement at <http://www.whitehouse.gov/news/releases/2001/11/20011107-4.html>

<sup>116</sup> Exhibit 6 (statement of Treasury Secretary Paul O'Neil).

<sup>117</sup> Exhibit 8.

computers, paperwork and other evidence available in the US. Overseas counterparts acted swiftly and coordinated with US law enforcement. Massive records became available in an unprecedented fashion, as UAE-based Barakaat officials, including the founder, were taken into custody, while all records and evidence were seized. These actions shut down internationally the most successful Somali company and business model, while devastating those working for it in many countries.

The main question is whether al Barakaat's designation as an organization suspected of supporting terrorism and the drastic actions taken against the entire network and its people around the world were based on compelling evidence. One would expect such an impressive collaborative effort and exhaustive global investigation to yield evidence in support of these measures and of terrorism charges.

More than six years after the first press conference on al Barakaat, there is still not a single indictment or charge related to terrorism in the US or any other country that I could identify. The US-based criminal cases dealt with structuring and unlicensed money transmission charges, but not with terrorism.

Within months of the global sanctions on al Barakaat, countries, officials and observers started raising questions about the strength and quality of evidence that could be produced in court or otherwise. For example, Canada was requested to extradite a Barakaat co-defendant in a case in Massachusetts. After thorough investigation, Canada released the frozen funds and defendant, while announcing through a Justice Department spokesperson that they looked at the case and found no evidence:

"Based on a full and thorough investigation of the information collected in relation to the extradition proceedings, the Government of Canada has concluded that there are no reasonable grounds to believe Mr. Hussein is connected to any terrorist activities. The Government has therefore removed him from the list under Canada's UN regulations."<sup>118</sup>

After hundreds of hours spent by federal agents reviewing records and interviewing witnesses about al-Barakaat in Minneapolis, no charges were filed against al-Barakaat participants, with the exception of charges against one customer for a low-level welfare fraud. The FBI in the end decided to close that investigation.

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118 See public announcement on official Justice Canada website: [http://www.justice.gc.ca/en/news/nr/2002/doc\\_30513.html](http://www.justice.gc.ca/en/news/nr/2002/doc_30513.html)

The Barakaat allegations and listing by OFAC, the UN and the European Union came increasingly into question by other governments too. International collaboration in counterterrorism efforts were undermined: law enforcement agencies took action at the request of US authorities, but as there was no evidence to justify these actions, overseas counterparts became more cautious and reluctant to act equally swiftly in the future. The lack of evidence in the Barakaat case had also consequences on how the international community was to go about the listing and sanctioning process through the United Nations. Precipitous and unnecessary action is counterproductive and undermines counter-terrorism. Sweden, for instance, attempted to persuade the UN Security Council to adopt a criminal evidentiary standard before anyone is placed on the sanctions list. If that had gone through, most UN designations could have been removed<sup>119</sup>.

Aggressive efforts by US law enforcement to investigate and prosecute terrorist finance through hawala has yielded no case of al Qaeda terrorism so far. Despite media reports and some official statements that hawala was used by the 9/11 hijackers, the evidence shows that formal banks and financial institutions or cash couriers were used by the hijackers and their overseas facilitators. So, not only Barakaat but no other US-based hawala network has been found to assist bin Laden and al Qaeda in their murderous plans<sup>120</sup>.

Law enforcement, intelligence and regulatory officials in the US and many other countries have confirmed to me in personal interviews the authoritative and conclusive statements made by the 9/11 Commission Staff report on Terrorist Finance<sup>121</sup> before and after the publication of this report. It is worth reiterating some of its main observations, which are based on open sources as well as classified information:

Shortly after 9/11 al-Barakaat's assets were frozen and its books and records were seized in raids around the world, including in the United

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<sup>119</sup> The proposal was defeated after the US State Department urged "in the strongest terms" all Security Council members to oppose it.

<sup>120</sup> Hawala has been used, of course, by bin Laden in Afghanistan and Pakistan, where everyone is using such networks for their efficiency, convenience and low cost or because there is no other alternative. Hawala has also been used in a case of Ansar-al-Islam financing from Sweden to Northern Iraq in support of the insurgency. Another case currently going through the US courts includes allegations that a Pakistani network of hawala operators provided material support to terrorists.

<sup>121</sup> National Commission on Terrorist Attacks upon the United States. (2004). *Monograph on Terrorist Financing* (Staff Report to the Commission). Washington, DC: National Commission on Terrorist Attacks upon the United States.

States. Subsequent investigation by the FBI, including financial analysis of the books and records of al-Barakaat provided in unprecedented cooperation by the UAE, failed to establish the allegations of a link between al-Barakaat and AlAI or Bin Ladin. No criminal case was made against al-Barakaat in the United States for these activities. Although OFAC claims that it met the evidentiary standard for designations, the majority of assets frozen in the United States under executive order (and some assets frozen by other countries under UN resolution) were unfrozen and the money returned after the U.S.-based al-Barakaat money remitters filed a lawsuit challenging the action<sup>122</sup>.

The Staff Report goes on to note that “the intelligence sources for much of the reporting regarding al-Barakaat’s connection to al Qaeda have since been terminated by the relevant agency as intelligence sources, *based on concerns of fabrication*”<sup>123</sup>.

The report also notes counter-productive effects of un-substantiated allegations and unwarranted actions using Barakaat as a case study:

When terrorism charges are not possible, the government has brought non terrorist criminal charges against those suspected of terrorist financing. Such an approach, while perhaps necessary, leaves the government susceptible to accusations of ethnic or religious profiling that can undermine support in the very communities where the government needs it most. Moreover, ethnic or geographic generalizations, *unsupported even by intelligence*, can both divert scarce resources away from the real threats and violate the Constitution. Because prosecuting criminal terrorist fund-raising cases can be difficult and time consuming, the government has at times used administrative orders under the IEEPA to block transactions and freeze assets even against U.S. citizens and entities, as we show in the case studies of the al-Barakaat money remitters and the Chicago charities (in chapters 5 and 6). In some cases, there may be little alternative. But the use of administrative orders with few due process protections, particularly against our own citizens, raises significant civil liberty concerns and risks a substantial backlash. The government ought to exercise great caution in using these powers, as officials who have participated in the process have acknowledged, particularly when the entities and individuals involved have not been convicted of terrorism offenses<sup>124</sup>.

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<sup>122</sup> Ibid at p. 11.

<sup>123</sup> Ibid Footnote 71; emphasis added.

<sup>124</sup> Ibid at p. 50; emphasis added.

In the urgency to act, actions and decisions were made in less than ideal circumstances. In this context, it is not surprising that errors were made and remedial action would be warranted.

The post-9/11 period at OFAC was “chaos.” The goal set at the policy levels of the White House and Treasury was to conduct a public and aggressive series of designations to show the world community and our allies that the United States was serious about pursuing the financial targets. It entailed a major designation every four weeks, accompanied by derivative designations throughout the month. As a result, Treasury officials acknowledged that some of the evidentiary foundations for the early designations were quite weak. One participant (and an advocate of the designation process generally) stated that “we were so forward leaning we almost fell on our face.”

The rush to designate came primarily from the NSC and gave pause to many in the government. Some believed that the government’s haste in this area, and its preference for IEEPA sanctions, might result in a high level of false designations that would ultimately jeopardize the United States’ ability to persuade other countries to designate groups as terrorist organizations. *Ultimately ... this proved to be the case with the al-Barakaat designations, mainly because they relied on a derivative designation theory, in which no direct proof of culpability was needed.* A range of key countries were notified several days in advance of the planned U.S. designation of the al-Barakaat entities, and were urged to freeze related assets pursuant to the own authorities<sup>125</sup>.

Law enforcement became aware of the absence of evidence as well:

Before the second trip [to the UAE], the agent spearheading the effort for the FBI reviewed the OFAC designation package for al-Barakaat and noticed some discrepancies between it and the evidence obtained on the first UAE trip. His review left him with a number of significant factual questions concerning what he thought to be uncorroborated allegations of al-Barakaat’s ties to al Qaeda and AIAI. For example, the designation package described Jumale as an associate of Usama Bin Ladin from the original Afghanistan jihad, who was expelled from Saudi Arabia and then moved to Sudan, and who currently lives in Kenya. However, the documentation obtained from the first UAE trip, including Jumale’s

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<sup>125</sup> Ibid at p. 79; emphasis added.

passport, did not support that intelligence. In addition, a number of EBI accounts that had been frozen did not appear, from the records obtained and analyzed, to be associated with al-Barakaat at all. Overall, the agent believed that much of the evidence for al-Barakaat's terrorist ties rested on unsubstantiated and uncorroborated statements of domestic FBI sources. The second U.S. delegation to the UAE enjoyed a level of cooperation similar to that of the first. The UAE Central Bank placed 15 people at the investigative team's beck and call. The UAE government did everything the U.S. team requested, including working all night at times to make copies of documents. Jumale was interviewed by U.S. federal agents twice, the first time for ten hours. The U.S. investigative team interviewed 23 individuals (including Jumale), other top al-Barakaat personnel, its outside accountant, and various UAE banking officials. *They also reviewed approximately 2 million pages of records, including the actual EBI bank records.* To review some records, the U.S. government team worked where the records were maintained: in un-air-conditioned warehouses in the desert, in stifling 135-degree heat. *The agents found that the bank maintained the same kind of records as one would find in the United States and that they were relatively complete, well-organized, and well preserved. In fact, it appeared to the agent that the records extended far into the past...*

The FBI agent who led the second U.S. delegation said diligent investigation in the UAE revealed no "smoking gun" evidence—either testimonial or documentary—showing that al-Barakaat was funding AIAI or al Qaeda. In fact, *the U.S. team could find no direct evidence at all of any real link between al-Barakaat and terrorism of any type. The two major claims, that Bin Ladin was an early investor in al-Barakaat and that al-Barakaat diverted a certain portion of the money through its system to AIAI or al Qaeda, could not be verified.* Jumale and all the al-Barakaat witnesses denied any ties to al Qaeda or AIAI, and none of the financial evidence the investigators examined directly contradicted these claims. Moreover, some of the claims made by the early intelligence, such as the assertion that Jumale and Bin Ladin were in Afghanistan together, proved to be wrong. In addition [sic], it appeared that the volume of money was significantly overstated. *Secretary O'Neill, in his announcement of the al-Barakaat action, had estimated that al-Barakaat had skimmed \$25 million per year and redirected it toward terrorist operations. The agents found that the profits for all of al-Barakaat (from which this money would have to come) totaled only about \$700,000 per year, and could not conclude whether **any** of that money had been skimmed*<sup>126</sup>.

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<sup>126</sup> Ibid at pp. 82-83; emphasis added; the emphasis on "any" in the line above is in the original report

The conclusions of these investigations were shared. Thus the unsubstantiated and damaging allegations in official and other public statements should have stopped.

At the conclusion of the trip, the agent spearheading the FBI portion of the trip drafted a memorandum, to be distributed to the UAE officials, describing the conclusion the team had reached:

It has been alleged that the Barakaat Group of Companies were assisting, sponsoring, or providing financial, material, or other services in support of known terrorist organizations. Media and U.S. law enforcement reports have linked al-Barakaat companies and its principle manager, Ahmed Nur Ali Jumale, to Usama bin Ladin and bin Ladin's efforts to fund terrorist activities. *However, this information is generally not firsthand information or it has not been corroborated by documentary or other circumstantial evidence that supports the allegation.* For example, it has been reported that it is common knowledge in the United States-based Somali community that Al Barakaat is a money laundering operation backed by bin Ladin. It has also been reported that bin Ladin provided Mr. Jumale the initial financing to start the Al Barakaat businesses. *At this time, these items of information have not been substantiated through investigative means*<sup>127</sup>.

The Report's clearest statement of intelligence and law enforcement evidence-based understanding is that:

Thus, notwithstanding the unprecedented cooperation by the UAE, significant FBI interviews of the principal players involved in al-Barakaat (including its founder), and complete and unfettered access to al-Barakaat's financial records, the FBI could not substantiate any links between al-Barakaat and terrorism. At this writing, neither the FBI nor OFAC is attempting to continue to investigate this case<sup>128</sup>

Finally, one wonders whether all the collateral damage caused by the swift and early actions produced any positive results with respect to counter-terrorism. Yet, the Report is very clear: "To this day, the Commission staff has uncovered no evidence that closing the al-Barakaat network hurt al Qaeda financially"<sup>129</sup>.

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<sup>127</sup> Ibid at pp. 83-84; emphasis added by the authors of the 9/11 Staff Report.

<sup>128</sup> Ibid at p. 84.

<sup>129</sup> Ibid at p. 81.



US and other government agencies did all they could in a situation of crisis and emergency in order to respond to the attacks of September 11. It is understandable that all leads would be followed and that some executive decisions would be made before the completion of careful investigations. Al Barakat was sanctioned and closed down in a climate of urgency and pressures.

Thorough, sober, lengthy and costly investigations and intelligence-gathering furnished no compelling evidence that any of the public statements and allegations were based in fact. As a result, it is wise and appropriate for everyone to accept the findings, repair the damage done to counter-terrorism and international cooperation against serious crimes, and avoid compounding the problems by insisting on uncorroborated accusations. The connection between Al Barakaat, al Qaeda, bin Laden and other terrorism has not been established.

Problems I pointed out in a 2006 publication have still not been addressed:

“Despite the lack of evidence and formal charges, the names of the owner and the company in Somalia remain on that and the European Union lists ...”

To add insult to the injuries, the 2004-2005 methodologies report of the FATF produced something one is tempted to call “case laundering”. This report of the international standard-setting organization presents a case that left much to be desired as a good practice to be emulated. Under the title “Typology 6: Regulatory Investigation Detects and Disrupts Terrorist Activity”, we find in a box “Case Example 8” and the following text:

MH and his brother were arrested during a crackdown on Somali ARS outlets operating across the United States. In August of 2000, the ARS operator filed an application with the Massachusetts Division of Banks and Loan Agencies for a licence to receive deposits and to transmit money overseas but was never issued a licence. The investigation found that the *Hussein* brothers wired about USD 2.8 million to an account in the United Arab Emirates between September 2000 and November 2001, even though the brothers knew they were breaking the law by not having a state licence. It has been alleged that the profits *supported terrorism*. MH was convicted in April of 2002 of two counts of illegally transmitting money abroad” (emphasis added).

The “analysis” of this case was that:

This is a case where investigation and prosecution for operating an unlicensed ARS service can be used as a method to disrupt a perceived threat of TF. In some jurisdictions, evidence that an ARS [alternative remittance services] operator is acting illegally is more easily obtained than evidence of the larger offence. Disruption of this kind can prompt the formation of a licensed sector serving migrant groups. Education and outreach programmes can help ARS operators to understand their obligations and can serve as the basis for a future prosecution.

The reason why so much detail has been outlined above is to show that there was no real ground on which to take these actions; the terrorism link has not been substantiated despite tremendous resources, global investigations, plenty of records, unprecedented cooperation among authorities. All it caused was collateral damage and animosity unnecessarily. The risk of using the easiest charge is also that unfairness can result when comparatively minor transgressions receive disproportionate sanctions. Not only was there no terrorism charge in this case, but the name of the defendant is disclosed in this report contrary to the routine FATF practice of sanitizing these examples before they go to print after multiple reviews. How “effective” can be the fight against terrorist finance when we devote significant resources tackling an entity found years earlier to have no links with terrorism?. We have also seen that the problem with the US regulatory regime is not so much lack of understanding of remitters’ obligations, but making these obligations realistic, coherent and consistent with public policy objectives.

This case raises the question of whether and how the “Al Capone strategy” of using the easiest charge available should be used. It is reasonable to apply such tactics when we know that we have the right target. The details quoted here is to show that there was no real ground on which to take these actions in the Barakaat case. The terrorism link has not been substantiated despite substantial resources, global investigations, availability and review of plenty of records, unprecedented cooperation among authorities. All the official actions have caused was collateral damage and animosity unnecessarily. The risk of using the easiest charge is also that unfairness can result when comparatively minor transgressions receive disproportionate sanctions.

Ironically, we saw 9/11 hijackers' funds flow through formal Western institutions and – very sensibly – imposed no adverse consequences on them. We saw no funds flow through al Barakaat and yet we devastated the most successful business of Somalia along with the livelihood of all those working for it<sup>130</sup>. Then, we held out all this as a success. Such practices convey messages and create perceptions that are deeply unhelpful in the fight against terrorism and harm international cooperation against serious crime."<sup>131</sup>

### **Charities and Terrorism: Undercutting Our Own Objectives?**

All ethnic groups have supported one or another side of conflicts in the homeland, so there is no doubt that non-profit and charitable organizations are a vehicle of possible terrorist finance that must be scrutinized. As pointed out by the UK Charity Commission, charities may assist designated terrorist groups in several ways, including:

- raise money to fund terrorist groups
- use charities to smuggle people into countries
- use charities or supported schools for recruitment and training
- use charities to spread propaganda
- use charities for money laundering purposes<sup>132</sup>

Unsurprisingly, in the context of post 9/11 CFT, non-governmental organizations and charities not only found themselves in the center of the battleground, but have been targeted sometimes in ways apparently

<sup>130</sup> Interestingly, piracy is raising funds for warlords in the current conflicts in Somalia, but the international community has done little to deal with that problem. For instance, in 2004, there were only 2 attacks. Since 15 March 2005, 32 attacks took place off the Somalia coast. They usually hijack the vessel, take it into Somali waters beyond the legal reach of foreign naval vessels and demand substantial ransom. Local militias are behind the pirates, providing them with support and protection. We have little insight into where the funds go, but normally, when the ransom is paid, the crew and vessel are released (Source: ICC International Maritime Bureau, Piracy Reporting Centre). It is also interesting to note that the US government has denied allegations that it is financing terrorist groups in Somalia; see Sanders, Edmund, "U.S. Role in Somalia Questioned: Government Leaders Charge U.S. with Backing Mogadishu Warlords", Los Angeles Times, 2006(May 21); Wax, Emily, DeYoung, Karen, "U.S. Secretly Backing Warlords in Somalia", Washington Post, 2006(May 17), A01.

<sup>131</sup> Passas, N. (2006). Fighting Terror with Error: The Counter-productive Regulation of Informal Value Transfers. *Crime, Law and Social Change*, 45(4-5), 315-336.

<sup>132</sup> See UK Charity Commission, Operational Guidance, Charities and Terrorism, OG 96 – 29 August 2007 available online at <http://www.charitycommission.gov.uk/supportingcharities/ogs/g096.asp>

not based on solid evidence and through processes which undermine transparency, human rights, the indispensable work charities provide in some of the most challenging parts of the world, and needlessly alienate ethnic and other communities equally concerned about the threat of terrorism and prepared to genuinely assist authorities to prevent it.

At this point, our knowledge is so incomplete that official statements from leading government agencies in the United Kingdom and Canada, for example, point to diametrically opposite conclusions with respect to the extent to which charities have been supporting terrorist groups. According to the UK Charity Commission, “The involvement of registered charities in the funding or support of terrorist activities is *thankfully an uncommon occurrence* but **any** links between a charity and terrorist activity are totally unacceptable.”<sup>133</sup>

Canadian law enforcement has also been alert and active with regard to charities, but the estimated extent of the problem is seen to be much more significant:

Other types of disruptions that we are tracking are RCMP investigations of Canadian charities, which resulted in three charities being denied charitable status because of their links to terrorist activities or groups. This limits the ability of these organizations to raise funds that may be in support of terrorist activity. The work of the RCMP also resulted in the Canada Revenue Agency conducting forensic audits on two charities to examine links to terrorist activity. If the RCMP is unable to address terrorist financing issues in an appropriate manner, Canadians and our allies would be in an environment of elevated risk. Terrorists and their sympathizers would be able to exploit the enforcement weaknesses to collect funds for their operations. As mentioned above, this program has been implemented and thus reduces the risk. Any perceived inability could also have a negative impact on the economic integrity of the Canadian system. Furthermore, *it is important to note that the majority of terrorist financing involves registered charities.*<sup>134</sup>

The estimated extent of the problem ranges from a “thankfully uncommon occurrence” according to the UK Charity Commission to the “majority of terrorist financing” according to the RCMP. It is possible that each agency

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<sup>133</sup> Ibid, paragraph 3; italics emphasis added; bold emphasis in original.

<sup>134</sup> See DPR 2005-2006 Royal Canadian Mounted Police, Section II: Performance Results for Departmental Strategic Outcomes and Strategic Priorities; available online at [http://www.tbs-sct.gc.ca/dpr-rmr/0506/RCMP-GRC/rcmp-grc02\\_e.asp](http://www.tbs-sct.gc.ca/dpr-rmr/0506/RCMP-GRC/rcmp-grc02_e.asp)

focuses on different terrorist groups with different funding sources. However, the ethnic make-up of the two countries is not sufficiently different to explain this discrepancy. The point is that we still have a lot to learn.

If every diaspora group has supported one or the other side of conflict in the homeland (e.g, Irish, Armenian, Tamil, Kashmiri, Muslim, Jewish, Chechen, Kurdish, Greek, Palestinian, Basque, Cuban, S. African, Sikh, etc.) and given the clear need for oversight, the chief question is: have we reached an appropriate balance? Unfortunately, heated debates and controversies abound in this policy arena.

An example of negative publicity and unfounded accusations is provided by the case of the Sewa International. Awaas-South Asia Watch published a report in 2004 alleging that Sewa International funded the Rashtriya Swayamsevak Sangh (RSS - Organisation of National Volunteers), an Indian group accused of extremist actions. The report alleged that funds were raised in the course of a Gujarat Appeal for natural disaster relief efforts, village reconstruction and related work, but were diverted to the RSS. The UK Charity Commission investigated the matter and was satisfied that "the trustees have taken sufficient steps to ensure funds have been applied in accordance with the appeal. In January 2004, Sewa International (UK) arranged for a delegation of 30 people from major donors to visit Gujarat to view the completed rehabilitation projects. The delegates produced a report which confirms they were satisfied that the funds had been spent in accordance with the Gujarat appeal". At the same time, the Charity Commission never received formal audited statements, while "its request for visas to visit India to undertake an inspection visit were refused by the Indian government". So, the outcome of the Inquiry gave a much more nuanced version of reality, as a result of which Sewa was allowed to continue its operations in the UK.

Another controversial case is that of the Holy Land Foundation (HLF), the largest Muslim charity in the USA before it was closed down for alleged support of Hamas. The allegation was not about direct contributions but rather that the HLF distributed funds to zakat committees in ways that supported Hamas and its violent campaign (e.g., support of martyrs' and detainees' families). The defense argued that while the indictment charged that funds went to organizations 'controlled by' or 'acting on behalf of' Hamas, none of these organizations were ever designated and that other non-profit actors had been allowed to partner with these

organizations, including the US Agency for International Development. The result of many years of investigations and a long trial was a not guilty verdict for some charges and a hung jury for the rest. Important to note is that HLF was not the only organization affected by this process, because a rather long list of 'unindicted co-conspirators' was published and made available on the internet.

In another two cases covered in the media last year, US authorities seized a \$17,870 payment from the Swedish Trade Union LO-TCO to an educational project in Liberia in March 2006, and impounded two transactions involving the Norwegian Church Aid (NCA) totaling about \$70,000 in 2003 and 2004. The LO-TCO stated that its money was released to the intended Liberian bank after about two months, but only after its Swedish bank vouched for the union's reputation as an established international nongovernmental organization. In the Norwegian Church Aid case, the first transaction was seized in 2003 and released two years later. The financial director of NCA stated: "The second transaction [intended for a YMCA branch in Burma] was confiscated in 2004 and, even though we have sent in the paperwork OFAC [the Office of Foreign Asset Control] required both by fax and PDF file, we still haven't heard anything. I sent the last reminder in January 2007"<sup>135</sup>.

The US Treasury Department's "voluntary" anti-terrorist financing guidelines issued in 2002 have been found by much of the non-profit sector to be unrealistic, impractical and costly<sup>136</sup>. As a result, they are discouraging international charitable activity at a time when it is greatly needed, as witnessed by the recent tsunami disaster and earthquake catastrophe. Moreover, one set of guidelines for all charities would be ill-conceived and dysfunctional, as it ignores the diversity of organizations and the settings in which they offer the various services.

While some limited work has been done in this field, critics of the current arrangement point to the absence of a single conviction of a charity in

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<sup>135</sup> Collin, C. (2007). Legitimate Charities Snared in Terror Net. *The Washington Times* (22 September), <http://washingtontimes.com/article/20070922/FOREIGN/109220032/109221003>.

<sup>136</sup> See Guinane, Kay, "Safeguarding Charity in the War on Terror; Anti-Terrorism Financing Measures & Nonprofits," Report from OMB Watch, October 2005; Guinane, Kay, "The USA Patriot Act and Its Impact on Nonprofit Organizations," Report from OMB Watch, available online at [www.ombwatch.org/article/articleview/1803/1/\(category\\_id\)](http://www.ombwatch.org/article/articleview/1803/1/(category_id))

the USA on terrorism charges in the past six years<sup>137</sup>, while assets have been frozen and operations shut down or disrupted around the world<sup>138</sup>.

Ultimately, the problem is that crime control and counter-terrorism objectives are undercut as well: a valuable ally - the initially very supportive ethnic communities familiar with conflicts, cultures, arguments, practices and networks through which terrorists recruit and operate - has been alienated by measures and practices widely perceived as unjustified, arbitrary and discriminatory. This process generates frustration among recipients and donors, contributing to a context in which views are radicalized, blind eyes are turned to extreme actions so that militants can more easily recruit supporters and operatives. Terrorism-fuelling grievances and poverty are thus aggravated. Populations in vulnerable positions and politically unstable environments are neglected or abandoned, in some cases receiving aid and services vital to basic needs or survival from the very radicals counter-terrorism policies aim to eliminate. Loyalties and commitments are thereby shaped in a vicious circle adding to militancy and radicalization. Police agencies also find that recruiting informants in these environments is made harder, riskier and costlier too.

Law enforcement and international cooperation are hampered also by overzealous and premature requests for assistance, conducive to designation of organizations and individuals as suspects of terrorism, asset freezes, arrests and investigations. Similarly to the consequences caused by the Barakaat actions we discussed earlier, once such requests prove to be baseless and erroneous, overseas counterparts feel exposed and become reluctant to assist in subsequent cases. Matters get worse when mistakes are found but not admitted and corrective action to repair some of the damage caused to innocent parties is not taken<sup>139</sup>. This is a "lose-lose" situation in which we find ourselves unnecessarily.

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<sup>137</sup> At the beginning of 2008, there was a conviction in a tax related case, where a Massachusetts charity did not disclose to the IRS that it promoted jihad and supported Islamic militants overseas. The case did not include terrorism finance charges; see *US v. Muntasser et al.*

<sup>138</sup> In addition to extensive comment on the Barakaat case, the 9/11 Commission also took interest in actions taken against some charitable organizations (see Staff monograph on terrorist finance). It is also instructive to visit the UK Charity Commission website, where results of its investigations are reported. In the case of Palestinians Relief and Development Fund, known as Interpal - a "Specially Designated Global Terrorist" organization for allegedly supporting Hamas' political or violent militant activities on the basis of a US Presidential decree - the Commission reported that the US Authorities were unable to provide evidence to support allegations made against Interpal within the agreed timescale. As a result, Interpal's bank accounts were subsequently unfrozen and the Inquiry was closed in September 2003 (<http://www.charity-commission.gov.uk/investigations/inquiryreports/interpal.asp>).

<sup>139</sup> The mis-handling of al Barakaat discussed earlier is a case in point.

## Regulatory Responses

The responses to terrorism financing have been based essentially on thinking and policies developed in relation to money laundering. Given the urgency of the situation and the need to respond quickly and to reassure the wider public that the situation is under control, it is understandable that policy makers would draw on whatever means and experiences appeared relevant to the problem. As noted earlier, anti-money laundering measures were under critical review and about to be scaled back, but in the circumstances, anything that related to the control of criminal funds had to be mobilized. Resistance to such measures from the public at large or the private sector was minimal in a context where everyone wished to appear patriotic and selfless.

Some advantages of such measures were also that quantitative measures of action and success could be provided: one could cite the numbers of designated suspected terrorists, accounts closed, amounts or assets frozen, the growing number of countries following the lead, etc.

One would expect much more careful consideration to be given to similarities and differences between the laundering of criminal proceeds and the funding of militancy in order to ensure that measures are effective and on target. As information and knowledge about terror threats and groups accumulated, the problem and challenges became clearer. The temptation to pursue such financial controls is that they can be politically useful. For example, one may counter evidence of ineffectiveness with tautologies: if terror attacks are fewer, this means that we are succeeding, so no reason to change the approach. If attacks rise, this means that we need to further strengthen our financial controls.

Yet, financial controls remain largely a supply-side approach to crime problems similar to interdiction of illicit drugs. As with the problem of illicit drugs, supply side controls must be complemented with demand side approaches in order to be successful.

In addition, some of the assumptions underlying current financial controls may be incorrect. The first one is that the global "terror economy" is very large and contains a lot of assets to be frozen and seized. As we have seen, this can be wrong in cases of lethal but tiny and independent groups acting with their own means and capabilities. Not all terror groups need or can raise large amounts for their operations.



Another implicit assumption is that the resources available for terror groups and activities are limited. When claims like “Al Qaeda’s cash flow has been reduced by two thirds” are made<sup>140</sup>, one presumes to know the total cash flow of a group whose leaders are still eluding all government authorities. Moreover, such claims assume that no alternative fund-raising methods can be found, such as ordinary crimes for profit committed by members and sympathizers.

We have already seen clearly how small funds can be sufficient to mount terrorist operations with very significant impact. Claiming, thus, that money is the “lifeblood” of terrorism is misleading and unhelpful for counter-terrorism purposes. Such over-emphasis on financial controls may convey the wrong impression that if we turn this life support off, we can stop terrorism. Supply-side counter-terrorism, however, is doomed to fail. This may work against isolated and marginal individuals or groups with no sympathizers or public following. In such cases, identifying and incapacitating them can solve the problem. Nursing such illusions with respect to al Qaeda or other groups the causes of which (if not their methods) command some popular support diverts attention and policy resources from efforts to address the roots of the problem and to construct long-term de-escalation strategies.

To the extent that grievances remain, funds will always be found or made available to those prepared to use violence. We have seen how wide-ranging and accessible fund-raising methods are in different contexts. Keeping the historical, socio-economic, cultural and political context in mind is essential and instrumental to more effective policies.

### **Objectives and Risks of CFT Policies**

Some criticize terrorism financial controls as useless, while others have lofty expectations from them. The truth is in the middle. Targeting terrorist finance is both worthwhile and necessary. CFT can certainly reduce the possible harm of attacks. Secondly, it serves to monitor militant activities so that preventive actions can be taken. In a field where no margin of error is acceptable, this intelligence gathering function cannot be over-estimated. Thirdly, CFT enables the easier reconstruction of events and the discovery of co-conspirators who can then be prosecuted. Finally,

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<sup>140</sup> Bowers, F. (2003). Headway on the Al Qaeda money trail *The Christian Science Monitor*(October 10); available at <http://www.csmonitor.com/2003/1010/p02s02-usfp.html>

the mere knowledge that financial operations are under scrutiny forces extremists to make tactical changes and engage in communications, which generates additional opportunities for intelligence gathering and monitoring.

At a more operational level, the main CFT objectives are higher transparency (e.g., with respect to operators and clients) and traceability of transactions, deterrence and prevention of abuse of financial systems, prevention terrorist finance (e.g., asset seizures), and the monitoring of militants.

The risks of inadequate or ill-thought CFT measures are that we may

- drive networks and transactions underground, losing the opportunity to monitor, prevent, better understand and design long-term strategies
- cause collateral damage and unnecessary economic disruptions,
- alienate ethnic groups<sup>141</sup>,
- undermine our own legitimacy,
- induce superficial (paper) compliance by various countries or agencies, thereby having an ineffective international CFT regime (i.e., rules and laws may be in place, but they are of little use if they go unenforced)
- neglect of more serious problems (regarding terrorist financial vulnerabilities or other serious crimes),
- produce more grievances and provide more fertile ground for the recruitment of new militants. Moreover, if the root causes of terrorism are ignored, the problems the international community faces will remain in place despite apparent successes: that is, even if designated individuals or

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<sup>141</sup> This would not be the first time: see Ramraj, V. V. (2006). Counter-Terrorism Policy and Minority Alienation: Some Lessons from Northern Ireland. *Singapore Journal of Legal Studies*, 385-404.

groups are arrested or killed in action, other groups or secular radicalism may follow.

### **Cost-Benefit Analyses?**

No one has calculated the precise costs of the international 'war on terror', which includes actions against Islamist extremism as well as other religious and secular groups. New rules, laws and procedures have increased the role and responsibilities of the private sector. This raises questions of transparency and accountability, but also of monetary cost.

Compliance to the 'regulatory tsunami' of international and regional conventions, rules and recommendations of the last few years is a significant challenge to both governments and private companies around the world. Beside proper implementation and genuine enforcement, compliance for private companies has become quite expensive, even though exact figures cannot be produced (companies aggregate several types of expenses for one, but are disinclined to share such information in public). Cost-benefit analyses are common in many areas of public policy, but no such exercise has been undertaken with regard to financial controls of terrorism. The costs are not only financial. Competition, development, human rights and justice may also be affected by misguided CFT measures. Legitimacy, counter-terrorism and anti-crime objectives are also undercut by some of the measures and the neglect of more serious vulnerabilities. This point can be illustrated by the over-emphasis on remittances and the oversight of trade transactions.

### **Are Certain Areas Over-emphasized or Overlooked?**

Hawala and similar traditional ethnic networks enabling the informal transfer of funds around the globe came to the forefront of policy attention due to fears that these were a main financial instrument used by al Qaeda. The regulation of remittances illustrates well the problem of actions taken on the basis of imperfect knowledge, assumptions that Western approaches to control can apply successfully to traditional and informal networks, and lack of broad consensus on the need and appropriateness of particular rules to a given industry.

## Financial Controls and Remittances

As has been frankly pointed out, some initiatives against terrorist finance at the international level have not had the desired effect. For example, the UN sanctions against the Taliban and al Qaeda have not been effective against bin Laden's followers<sup>142</sup>. The nine special FATF Recommendations against terrorist finance would not have red-flagged any of the hijackers' transactions, even if they had been fully implemented before the 2001 attacks. The designation lists of those suspected of providing support to terrorist organizations in the UN, the European Union and particular countries have grown so long and with so many common names as to offer limited assistance and pose issues of due process<sup>143</sup> and enforceability.

AML measures have been extended and become tools in the control of terrorist finance even though doubts are growing about their effectiveness with respect to the laundering of proceeds of serious crime, especially drug trafficking. The amounts involved in terrorism are tiny in comparison to those produced by serious crimes.

Informal fund transfer systems and hawala in particular were singled out from early on as a crucial target in the policies against al Qaeda. Even though such networks have always catered for legitimate remittance needs of millions of immigrants, they are also able to resist controls throughout the world. The way in which countries address informal value transfer systems has varied<sup>144</sup>. Such diversity is not conducive to international cooperation and pushes informal operators underground.

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<sup>142</sup> U.N. Monitoring Team. (2005). Second report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities. New York: U.N. Security Council.

<sup>143</sup> See, for example, the opinion of the Advocate General in *Kadi v. Council*, Case C-402/05 P, (January 16, 2008), <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>, which is expected to have an impact on the listing regime and process not only in the European Union but quite possibly the United Nations as well. In his August 2006 report, Martin Scheinin, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism dealt with the practice of placing individuals and entities on terrorist lists (see A/61/267, paras. 30-41). He acknowledged "the need for preventive action is an important aspect of the fight against terrorism" and emphasized that certain basic human rights must be respected: (a) precise definitions should be used for placement on lists; (b) reviews after reasonable periods, such as 6 or 12 months, necessary to ensure that sanctions remain temporary and preventive, rather than permanent and akin to criminal punishment; and (c) certain procedural guarantees should be utilized for those placed on lists, including proper notice, the right to judicial review (whether at the national or international level), the right to a remedy if wrongly listed, and the right to humanitarian exemptions.

<sup>144</sup> Know-you-customer, record keeping and reporting standards are very asymmetric. Some countries criminalize all informal remittance operations, others outlaw them, many subject them to registration or licensing rules, while other countries do not regulate them at all.

Even at the domestic level, policies have been uncoordinated and even unrealistic. The US regime, for example, has undermined its own stated objectives<sup>145</sup>. At the federal level, the rules for money service businesses (MSBs)<sup>146</sup> include registration, know-your-customer, record-keeping and reporting duties.

At the state level, most jurisdictions require licensing for MSBs. At this level, the regulatory framework is a patchwork of non-pragmatic provisions. The absence of coordination among states and between state and federal authorities has caused confusion, lack of awareness and understanding of specific requirements. Many states' requirements are designed mainly for formal institutions of a certain size, but apply to small, ethnic and informal remitters as well. Cross-state transactions necessitate compliance with the requirements of all states concerned. As can be seen from the table below, bond, capitalization, and other fees entail unaffordable costs to small enterprises and corner shops serving ethnic communities.

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<sup>145</sup> This analysis draws heavily on Passas, N. (2006). Fighting Terror with Error: The Counter-productive Regulation of Informal Value Transfers. *Crime, Law and Social Change*, 45(4-5), 315-336.

<sup>146</sup> MSBs include money transmitters, check cashers, issuer of traveller's checks, money orders or stored value, sellers or redeemers of traveler's checks, money orders or stored value, currency dealing or exchange. Regularly updated information is available at <http://www.msb.gov/>

| State        | Net worth   | Bond   | Fee  |
|--------------|---|--|--|
| California   | min \$ 500,000 in equity  | Determined by Commissioner   | \$ 5,000 plus \$50 per agent   |
| Florida      | Min \$100,000 plus \$ 50,000 per location in FL up to \$ 500,000  | Set by commission rule – max. \$ 250,000 – up to \$500,000   | Appl. \$500+\$50 per agent; ren. \$1000 - \$20,000                     |
| New Jersey   | (1) min. \$100,000 + \$25,000 per agent in NJ up to \$1,000,000.<br>(2) \$50,000 to \$400,000 for foreign money transmitter | (1) \$100,000 to \$1,000,000<br>(2) foreign remitters: \$25,000-\$100,000 - commissioner may require up to \$900,000 | Appl. \$1,000<br>Lic.: \$4,000<br>Biannual fee \$25 to \$5,000         |
| New York     | Investments equivalent to outstanding payments  | Min. \$ 500,000  | \$ 500 annual + \$1,000 investig.                                      |
| Illinois     | \$35,000-\$500,000 depending on number of locations   | \$100,000 to \$2,000,000   | \$100 Appl.<br>\$100 license<br>\$10 per/l – ren.<br>\$100- \$10 p/l   |
| Pennsylvania | \$500,000   | \$1,000,000  | Appl. \$ 1,000, renewal \$300  |
| Texas        | \$25,000 per location up to \$1,000,000   | \$300,000 to \$ 400,000  | Appl./lic., invest. and renewal<br>[\$500 licensing + \$2,500 invest.] |

Table 1. Source: N. Passas (2006) "Fighting Terror with Error: The Counterproductive Regulation of Informal Value Transfers" in *Crime, Law and Social Change*.

Furthermore, failure to comply with a state licensing requirement is a federal offence, even if the defendant was unaware of it. So, the regulatory environment is extremely harsh for new and small MSBs. Not all those who succeeded in raising the necessary capital and meeting these obligations have been allowed to operate.

Following an Office of the Comptroller of the Currency advisory and certain FDIC (Federal Deposit Insurance Corporation) examiners' practices

the message was conveyed to banks that money service businesses (MSBs) constitute a high risk for money laundering and terrorist finance. Consequently, many banks decided to close or not open accounts for hundreds of legitimate operators throughout the USA. Despite efforts from FinCEN (Financial Crimes Enforcement Network), OCC (Office of the Comptroller of the Currency), FDIC and other agencies to address the banks' concern, including a joint statement explicitly stating that banks are not expected to police other financial institutions, the problem remains in 2006.

As noted earlier, hawala has not been used for the 9/11 operations or detected for al Qaeda transactions in North America or Europe. It has certainly been used by al Qaeda in other continents and by other groups. While the potential is certainly there for the use of such channels for terrorist finance (as it is in the formal sector), evidence and analysis points to other areas which should be regarded as matters of higher priority, including trade transparency.

### **CFT and Trade**

One area of high priority is the import-export business. While much attention is focused on informal remitters and general financial controls, commercial transparency is lacking.

Currently, there are serious gaps in the way government authorities deal with trade transactions. Incomplete, erroneous or illegal documentation can be found through routine review of forms filed with Customs agencies. There is plenty of room for improving enforcement action and attempts at rendering the transactions accurate and transparent. Mistakes and mis-statements concerning country of origin, ultimate consignee, counter-parties or value abound and reveal significant opportunities for misconduct, including terrorist finance. In other instances, trade diversion practices and mis-invoicing cannot be easily detected as the paperwork in such cases is not forged or fake but the content of the documents is wrong. Very high values can be moved literally under the nose of even quite careful inspectors. Such infractions may only be detected through inside information or in-depth checks and inquiries, which cannot be routinely instituted.<sup>147</sup>

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<sup>147</sup> Due to the trade and financial disruption they would cause.

Such vulnerabilities were found in the trade of precious stones and metals, electronics, medicine, cosmetics, textiles, foodstuff, tobacco, car or bicycle parts, etc.. In short, trade is currently not transparent and represents a serious threat to all efforts countering money laundering, terrorist finance or other financial crime.

Given that financial and trade transactions are not jointly monitored and matched, irregularities, suspicious transactions and blatant abuses may be going undetected. Research has shown that irregularities amounting to billions of US dollars go undetected and uninvestigated<sup>148</sup>. In the light of the large volumes of trade conducted daily, the risk of financing serious crime includes activities not only related to more expensive forms of terrorism as well as proliferation and weapons of mass destruction.

### Policy Implications

In the aftermath of 9/11, national and international measures were introduced with the aim of controlling terrorist finance: identifying supporters and funding sources, tracking and stopping money flows, freezing and confiscating assets. The UN convention for the Suppression of the Financing of Terrorism was speedily ratified and entered into force and UN Security Council Resolutions<sup>149</sup> resulted in national progress reports on the implementation of CFT measures. The Financial Action task Force (FATF) quickly added nine special recommendations on terrorism finance complementing its 40 previous recommendations against money laundering. World Bank and IMF assessment and evaluation practices included terrorist finance. International organizations such as the United Nations and the European Union as well as several countries maintained growing lists of suspected terrorists and supporters. Many countries introduced laws and issued executive orders aiming at assets suspected of belonging to or supporting designated terrorist organizations.

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<sup>148</sup> Naim, M. (2005). *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy*. New York: Doubleday; Passas, N. (2006). *Terrorist Finance and the Nexus with Transnational Organized Crime: Commodities Trade*. Washington D.C.: Report to the National Institute of Justice (NIJ); Passas, N. (2006). Setting Global CFT Standards: A Critique and Suggestions. *Journal of Money Laundering Control*, 9(3), 281-292; Passas, N., & Jones, K. (2006). The Trade in Commodities and Terrorist Financing: Focus on Diamonds. *European Journal of Criminal Policy and Research*, 12 (available at <http://dx.doi.org/10.1007/s10610-006-9006-3>), 1-33; Passas, N., & Jones, K. (2007). The regulation of Non-Vessel-Operating Common Carriers (NVOCC) and Customs Brokers: Loopholes Big Enough to Fit Container Ships. *Journal of Financial Crime*, 14(1), 84-93; available at <http://www.emeraldinsight.com/Insight/viewContentItem.do?contentType=Article&contentId=1585488>

<sup>149</sup> See UN Security Council Resolution 1267, which imposed financial sanctions against the Taliban in Afghanistan and established a Committee to monitor and enforce them. After 9/11, UN Security Council Resolution 1373 established procedures to shape CFT measures.



Controlling terrorist finance is vital and necessary. Particularly important are the functions of monitoring, intelligence gathering and prevention that can be performed or facilitated through such controls. Mechanisms put in place against money laundering have been strengthened and supplemented with additional ones, all of which enables the tracing of certain transactions and activities, which is helpful for law enforcement purposes as well.

However, over-emphasis on the supply-side of counter-terrorism leads to a comparative neglect of demand side approaches (e.g., what fuels militancy and the willingness of so many individuals to engage in extreme acts or suicide in the name of a given cause). Short-term, military and law enforcement approaches are then not sufficiently supplemented by long-term socio-economic and political strategies. Imperfect knowledge and vested interests left un-scrutinized for analytical quality, objectivity and accuracy have compounded the problem and created a misleading conventional wisdom based on 'facts by repetition'.

Claims of success notwithstanding<sup>150</sup>, the CFT arsenal was developed and applied too fast, to the point of being in several respects unnecessarily costly, ineffective, unfair and even counterproductive. In addition, many of the control functions have been de facto outsourced to the private sector without proper guidance and accountability.

In general, new controls were introduced to enable government authorities to trace the source and destination of various funds and assets, task forces were set up to investigate and prosecute terrorist financing, international cooperation between countries and agencies was encouraged, new laws criminalized the financing of terrorism, know-your-customer and suspicious activity reporting requirements contributed to promoting greater financial transparency, and name-and-shame policies sought to induce compliance.

The success of these controls has been measured occasionally by the amount of money and number of bank accounts that have been frozen, or the number of suspicious activity reports filed by financial institutions.<sup>151</sup>

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<sup>150</sup> See, for example the recent views of a former US government official in Jacobson, M. (2008). Extremism's Deep Pockets: The Growing Challenge of Fighting Terrorist Financing. *The Politic.org*, <http://thepolitic.org/content/view/91/37/>.

<sup>151</sup> See "UK Minister Calls For Less 'Money Secrecy' To Combat Terrorism, Crime," *London FCO*, October 15, 2002 [Address by UK Foreign Office Minister Denis MacShane at the FT Conference in London on 15 October: "Fighting Financial Crime"].

In other instances, the number of prosecutions or closures of unlicensed remitters has been discussed as measure of progress. By such standards, controls over formal and informal financial institutions may be considered successful. Even though it is difficult to determine how many terrorist attacks have been actually thwarted by these actions, it is possible that amounts that could have been used to support militant infrastructures or operations have been taken away.

Over-reliance on these methods, however, may lead to misapplications. As the 9/11 Commission and others have pointed out, in several cases, asset freezing and designations turned out to be premature and problematic. A very large part of the funds and assets that have been frozen are of "suspected" or "alleged" terrorists and supporters. In many cases, there has been no strong evidence to support the arrests, freezing of assets and statements that government officials have made, causing serious damage to innocent parties through processes that afford them no opportunity to challenge their designation and without formal charges leveled against them.

More critically, some of the measures may be not be just ineffective in increasing transparency, traceability and prevention of terrorist finance, but also counter-productive. Instead of promoting transparency and traceability of transactions, the result may be that more actors go underground and employ obscure value transfer methods with which controllers are less familiar. Instead of strengthening alliances against terror, some communities may feel marginalized or alienated. Instead of supporting and collaborating with non-governmental organizations active in conflict zones, we may be undercutting their de-escalation and humanitarian assistance work. Instead of bringing a growing share of economic transactions into formally regulated and well monitored vehicles, we may be pushing more economic activity underground. Instead of enhancing possibilities of intelligence gathering and monitoring of suspect groups, we may be losing opportunities to gain insights into terror groups and planned attacks. Instead of focusing our efforts on the highest risks and threats, we may be leaving the worst vulnerabilities unattended. Instead of contributing to better security, we may end up with more grievances and fertile ground for militant recruitment and extreme actions.

This is where the apparent consensus over the means and objectives of CFT ends and the debates begin on the top priorities and how to address

them. In order to move this debate forward, this report concludes with a discussion of policy implications under three main headings: evidence-based policy making, identification of high-risk areas and trade transparency, and legitimacy.

### **Evidence-Based CFT Policy Construction**

Effective policies against terrorist finance can only be based on solid empirical evidence and analysis. Self-evident as this may appear, we have seen how imperfect knowledge and particular interests or concerns have affected priorities and approaches at the national and international levels. An important task, thus, is to establish the facts on comparative risks (e.g., in particular areas in the formal and informal sectors, finance and commerce, profit and non-profit institutions, etc.). This sort of threat assessment can be conducted through the *systematic* and *comprehensive* collection and review of all available evidence and policy arguments, an endeavor that has still not been undertaken. This involves the following tasks.

### **Establish the Nature and Social Organization of Extremist Groups**

Fighting “terrorism” in general may sound like a worthy cause, but it is unrealistic to expect that all groups so defined can be effectively fought at the same time. There are simply too many terrorisms and extremisms around the globe for even the mightiest country to tackle them all at once. It is essential that each country focus on the top risks and threats with the proper balance of urgency and commitment to doing this well and right. Many would agree that al Qaeda and groups considered as associated with it pose the most serious and imminent risks<sup>152</sup>.

Nevertheless, even on this point we cannot be entirely sure we have correctly identified the main target, for there are divergent views on the nature, social organization and structure of al Qaeda. Different assumptions of what is or what has become of AQ lead to radically different approaches

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<sup>152</sup> At times the severity of the threat has varied. For example, a secret FBI report leaked some time ago to the media suggested that their capacity to inflict harm in the US at the time had been drastically reduced and that, contrary to official positions, there were no sleeper cells in the country (Whitaker and Meo, 2005).

and measures<sup>153</sup>. If we believe that al Qaeda is a relatively stable network or that it possesses some elements of a hierarchical organization, then we would expect more predictable flows of information and funds that could be targeted with the current CFT policies based on models used in anti-money laundering (AML) and counter-drug efforts. Interestingly, to the extent that such policies degrade the more stable organizational patterns and network nodes of al Qaeda, such as those that existed in Afghanistan during the Taliban regime, this would tend to contribute to the group's transformation into a loose coalition of small cells held together by a worldview and shared enemies rather than a network—an unintended consequence that would make al Qaeda members harder to identify and attack.

Others have argued that al Qaeda was never such an organization, but an idea or worldview that inspires locally operating individuals and groups. Either way, the point is that at the present time al Qaeda is not the sort of affluent and rationally organized group that conventional wisdom imagines. Bin Laden and his followers do not have big fortunes or huge assets to draw on. Rather, the amount of funds to be controlled appear to be much smaller, while the means used to raise them vary widely, include ordinary crime and depend on local conditions. In this light, there would be less of a need for cross-border fund transfers, while communications among different terror groups or other intelligence we may seek to extract by monitoring such operations would be limited.

Besides al Qaeda, there are many more terrorist threats that different countries can be expected to perceive as of a higher or lower priority. Each of these groups would need to be examined and understood to ensure that the appropriate measures are applied as needed.

### **Determine the Size of Funds Available to Extremists**

In addition to *theoretical* or analytical arguments on al Qaeda's finances, there is a marked discrepancy between high estimates (popular and repeatedly cited as they are) and the available *empirical* evidence. If we

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<sup>153</sup> Contrast, for example, Gunaratna, R. (2002). *Inside Al Qaeda: Global Network of Terror*. New York: Columbia University Press with more critical statements by Burke, J. (2003). *Al-Qaeda: Casting a Shadow of Terror*. London and New York: I.B. Tauris or Naylor, R. T. (2006). *Satanic Purses: Money, Myth, and Misinformation in the War on Terror*. Montreal and Kingston: McGill-Queen University Press. See also a more recent and empirically founded assessment of al Qaeda in Sageman, M. (2008). *Leaderless Jihad: Terror Networks in the Twenty-first Century*. Philadelphia: University of Pennsylvania Press.

put together the various theories of al Qaeda financing, the group would have to be awash with millions of dollars from rough diamonds, gold, charitable donations, legitimate businesses and criminal enterprises including drug trafficking.

According to CIA estimates accepted by the 9/11 Commission as reasonable, al Qaeda had \$30 million per annum for the overall organization. For this size of funds - most of which need to be raised internationally and, thus, require fund transfers - the type of financial controls introduced in the aftermath of 9/11 are not unreasonable.

On the other hand, al Qaeda operatives have been found to be under-resourced or required to raise their own funds for operations. As al Qaeda departed the Sudan for Afghanistan, many operatives were left behind for the group could not afford their modest salaries. The militants behind the first World Trade Center attack regretted not having a few thousand dollars more to pack additional explosives and increase their impact. This is all at a time when very few governments or agencies were paying close attention to terrorist finance.

So, how much money is currently available to al Qaeda or other groups, when the international community is mobilized against terrorist finance? How much is available to other groups and threats? The lack of precise answers to these questions points to the need for a more systematic search for and evaluation of information on seizures, estimates of net worth, fund raising capacities, number and type of sympathizers, etc.

We have seen the importance of differentiating between the funding of particular operations and the funding for an organization or movement. Depending on the length of life, size and objectives of a group, large infrastructures may be necessary to support its activities. Many insurgent and militant organizations have had extensive recruitment, arming, training, command and control, welfare, education and social work, intelligence and other functions to perform, especially when they succeeded in bringing geographic areas under their direct control (IRA, LTTE, Hamas, Hizbollah, FARC, etc.). The target and context is very different, when it comes to individual operations, which are most often very inexpensive. In many instances, these can be self-financed and low budget.

We have also seen that between a tiny or marginal group and a large organization with substantial infrastructure, there are also networks of support, such as those fuelling the insurgency in Iraq as described earlier. Calculating the cost of suicide bombings in Iraq, would have to consider not only the explosives and intelligence gathering or other preparations for attacks, not only the travel expenses of a foreigner into Europe, Iraq or other places, but also the general/operating costs of a network procuring suicide bombers. In this particular case, we noted an observed interface with contraband and drug trafficking.

Most of the current CFT measures may affect the larger and resource-rich type of groups<sup>154</sup>, but do very little against the smaller ones (other than ex post facto). Current CFT measures cannot help much with finding amounts or value that can be carried in one's pocket and may not even have to be declared. In other words, we may have devised and implemented financial controls that are inadequate for some of the tasks at hand. When we are looking for a needle in a haystack, the use of a huge and wide pitchfork will not be particularly helpful. The truth is that small amounts cannot be stopped. To the extent that al Qaeda inspired actors are in the second group category, intelligence/monitoring/demand side measures are much more critical than financial controls.

So, we need to sort out who exactly is the target and what is their social organization, in order to fine tune our policy instruments accordingly. Yet, details regarding the amount of money involved in terrorist financing and how exactly resources are distributed within and between terrorist organizations remain limited or unreliable. As a result, it is difficult to determine which financial controls may be more useful (whether we should be targeting larger or smaller sum transactions, for instance) and where the focus of these controls should be directed (e.g., money services businesses, banks, or trade institutions). This imperfect knowledge affects resource allocation and priorities in counterterrorism and other areas of public policy.

A related point in this respect is also that the objectives and functions of financial controls must be well understood, and particularly the point

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<sup>154</sup> In those instances, one would also have to consider the implications relative to non-combatant populations affected by such measures. For instance, what (de-)escalation effects would be generated by decisions on strict controls against groups controlling populated regions affected by natural disasters, poverty or other serious problems when the governments in charge are unable to unwilling to assist?

that intelligence gathering and investigative leads are the key goals, rather than 'drying up' the financial resources of terrorism, which is an impossible task.

### **Identifying the Highest Risks and Trade Transparency**

Because everything has been used to fund one terrorist activity or another, special interest groups fighting against particular problems seek to connect their issue with terrorism in order to gain support for their cause. Their commitment and good intentions notwithstanding, counter-terrorism policy and priorities ought to be set in as objective a manner as possible on the basis of good evidence and sound analysis. The same applies to governments seeking external support for the suppression of their political opponents at home, by alleging connections between local groups and al Qaeda.

It is potentially quite damaging to let priorities set themselves thanks to the differential persuasive or other power of particular groups acting against drug use, counterfeit products, a particular group that may not pose as strong a threat (or no threat) to North American interests, etc. For example, allying ourselves too readily with some Central Asian authoritarian government against groups, such as Hizb-ut-Tahrir<sup>155</sup>, can have the effect of radicalizing that group and creating a fertile ground for recruiting more militant and violent actors (e.g., for the IMU).

It is unclear, however, which terrorist groups rely mostly on which sources, under what conditions, in collaboration with what actors, and how/when do they adjust when particular controls and measures affect their operations. Also unclear is whether certain regions, type of goals or targets and ideological inclinations favor some methods or associations compared to others. An attempt was made earlier to offer a springboard through a typology of interfaces between criminal enterprises and terror groups. This, however, is but a starting point based on a preliminary review of a variety of sources the reliability of which cannot be guaranteed at this stage.

Necessary for the support of strategic and operational CFT initiatives is a program or a tool that evaluates the quality and strength of terrorism finance information so that actions against sources of terror finance may be better targeted, prioritized, coordinated, and effective. This may occur

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<sup>155</sup> See Rashid, A. (2002). *Jihad: The Rise of Militant Islam in Central Asia*. New Haven: Yale University Press.

with respect to some intelligence material, but it has not been done with respect to open source data.

The lack of confirmed and validated information about terrorism finance limits the effectiveness of CFT efforts. Canadian authorities have stressed the integration of the various agencies involved in counter-terrorism. This may be the case in Canada, but not everywhere else. Limited intelligence distribution to different domestic agencies and overseas counterparts is a long standing problem that could be resolved through the use of a terrorism finance database supported by open source information. Another obstacle to effective CFT is the intelligence community's reluctance to integrate open source information into their analyses. While true that open source information is often misleading and biased (we have seen this), it can provide the context against which classified information can be interpreted, aid in the verification of classified information, and offer information where classified data are unavailable. Importantly, open source information also helps the intelligence community assess the knowledge base and inherent biases of presumed subject matter experts. Misinterpreted intelligence, whether from classified or open sources, can lead to strategic and tactical errors.

There is a lot of public information, which can be usefully collected and analyzed by or for intelligence and law enforcement agencies. The analytical task would have to involve *inter alia* a careful scrutiny of experts and their writings, so that not all sources are thrown in indiscriminately. A critical review process can identify possible conflict of interest, inconsistencies, lack of updates, mistakes and partial coverage of issues. In this way, users of such a database could access to both the raw material and a screening they could benefit from.

The determination of sources and associations of terror groups would also be assisted by an analysis and mapping of illicit networks. In addition to the tentative typology presented earlier, it must be noted that offenders rarely specialize in one kind of crime. Their involvement in a variety of illegal enterprises and offenses complicates the specialized law enforcement agencies that devote themselves to particular types of crime. Additional challenges are posed by:

- Difficulties in ascertaining the validity and reliability of information at the center of such cases. Often information is treated as 'fact' by virtue of simple repetition and not double-checked for accuracy even by scholars and policy analysts;



- Jurisdictional firewalls against the effective flow of relevant information and knowledge, which can slow down investigations;
- A narrow and limited focus on particular offenses may lead to a neglect of ways in which a variety of serious crimes may be committed by or through the same actors and networks<sup>156</sup>.
- The fact that there is no initiative to collect, organize and analyze in a systematic and comprehensive fashion data available through courts, media, scholarly outlets, think-tank, government or other reports.

What is thus called for is a project designed to do this work and to map terrorism and illicit networks. This sort of knowledge basis would inform multi-level and multi-lateral strategies and responses against terrorism and other serious crimes in ways minimizing collateral damage and maximizing synergies and efficiencies. This project will examine such processes as division of labor across and within illicit networks and will examine the ways in which illicit networks transcend geographic location, both within and across national boundaries. It would further facilitate analysis, studies of adjustments and shifts in terrorist finance methods, risk assessment, as well as anticipation<sup>157</sup>.

This initiative would also support an “Al Capone strategy” against terrorism; in other words, incapacitation policies could be facilitated by prosecutions on charges of terrorist finance or several other crimes against those deemed by intelligence to be the greatest threat. At the same time,

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<sup>156</sup> The background to the London 2005 bombing illustrates this problem. MI5’s surveillance of a group of suspected terrorists led to the detection of another group. Both groups were photographed during four meetings across the London area. However, the ‘new’ group at the time was dismissed as less of a threat than the suspected terrorists (i.e. labeled merely ‘criminal’) because the discussions between the two groups related to ‘criminal’ matters, and not ‘terrorism’. In fact, that group that was categorized as ‘criminal’, and therefore thought to pose less threat than the suspected terrorist grouping, was eventually revealed to be the four-man cell that blew themselves up in July 2005, killing 52 people and wounding several hundred. What was in reality an extended illicit network, was downgraded in importance because of narrow assumptions about the nature of terrorism, the nature of involvement in terrorist activity and about the nature of criminality (Many thanks to my good colleague Prof. John Horton for drawing my attention to this illustration).

<sup>157</sup> A study of likely terrorist finance scenarios was conducted by German police authorities with support and participation from the European Union, Europol, private sector and academic experts; see EDGE 2007 Report on *Criminal Money Management as a Cutting Edge between Profit-Oriented Crime and Terrorism: Possible Developments until the Year 2012 and Strategic Recommendations*. Published by Landeskriminalamt Nordrhein Westfalen and the European Commission AGIS Programme.

well founded charges and prosecutions would prevent premature actions and unnecessarily aggressive measures against innocent parties or those who may be guilty of minor misconduct but having nothing to do with terrorism. To a certain degree, the reliance on a broad, deep and high quality information base would turn crime control into very effective and fair counter-terrorism.

The question of how to merge law enforcement and intelligence work is a hard one to resolve, especially when it comes to security matters. Different methods, approaches, functions and mandates do not make it easier. An evidence-based and analysis-guided approach, however, enables appropriate interactions between intelligence and law enforcement. Intelligence combined with open source information can better guide law enforcement actions, which can further develop the sort of evidence that can be shared more widely and presented in courts.

Another advantage of broader informational support is that more precise and useful guidelines can be offered to controllers and private sector about priority areas and indicators of abuse or suspicious activities that must be reported to authorities. For example, charities and informal remittances are sectors we discussed briefly earlier.

### **Charities**

With regard to charities, the UK Charity Commission has offered the following indicators of suspicious activity, which should be taken into consideration in other jurisdictions as well:

- “If offered large donations from persons unknown to the trustees, the trustees may wish to make further enquiries before accepting the donation, and may refuse a donation if satisfactory replies to enquiries are not received
- Donations conditional upon particular individuals or organisations being used to do work for the charity may be refused
- Offers of donations in cash, for a certain period of time, the charity to receive the interest, but the principal to be returned to the donor at the end of the specified period, may be refused

- Donations in foreign currencies, with the provision as above, but the principal to be returned to the donor in the form of a sterling cheque, should be refused<sup>158</sup>

As the 9/11 Commission report pointed out, a fundamental issue raised by the US government's approach to combating terror financing is "the problem of defining the threshold of information necessary to take disruptive action." We certainly need to distinguish "the difference between seeing '*links*' to terrorists and providing the funding for terrorists."

An approach that merits some consideration is the following. Once intelligence interpretations suggest that a charitable organization supports a terrorist group, one could systematically monitor its activities in order to identify the donors and establish their knowledge, the intent of principal charity actors, the channels and jurisdictions through which funds go and activities take place, the final destination and social organization of receiving groups, etc. In this way, if the intelligence interpretation is correct, authorities will be able to prevent attacks, collect valuable information on the modus operandi of a terror group and its sources of support, gather the evidence which can be used in a court of law, and bring criminal action as soon as deemed useful and necessary. If the intelligence interpretation proves to be incorrect, then no unnecessary collateral damage would be caused.

### **Hawala and Informal Sectors**

With respect to hawala and informal economic issues in general, it is important for countries to assess as accurately as possible the extent, nature and activities in their informal economic sectors. Careful analysis can furnish insights and knowledge that may be counter-intuitive. For instance, research based on both public and non-public data has shown that, while *transparency* of hawala-like networks is comparatively low, *traceability* of transactions by competent and well-informed/trained investigators is often very high<sup>159</sup>. Traceability may be achieved by means other than formalization, computerization or centralization of data. In other words, knowing where to look and what questions to ask

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<sup>158</sup> Operational Guidance; Charities And Terrorism, Og 96 – 29 August 2007, [Http://www.Charitycommission.Gov.Uk/Supportingcharities/Ogs/G096.Asp](http://www.Charitycommission.Gov.Uk/Supportingcharities/Ogs/G096.Asp)

<sup>159</sup> We have seen earlier why it is important to distinguish between transparency and traceability of transactions.

is of critical importance<sup>160</sup>. Details on customers, beneficiaries, dates and amounts may be accessible to controllers, even if the informal financial service providers are not regulated in the same way as formal institutions. In other words, it is better to pursue maximum traceability than over-concentrate on transparency and thereby marginalize operators who may cooperate.

Criminal abuses of hawala may be investigated more easily than generally assumed. Because they interface with formal banking institutions, fund transfers can be tracked. The frequent fax and telephone traffic among hawala agents and their clients, intermediaries and counterparts creates monitoring opportunities and trails that can be followed. More importantly, hawala agents leave paper trails at home or in business premises. Often, they keep detailed ledgers with transactions for legitimate clients, while suspicious transactions may be recorded in shorthand or codes.

Secondly, informal fund transfer methods are attracting just as much attention from intelligence and law enforcement agencies as do formal channels. Seasoned investigators in South and Southeast Asia and the Middle East have always been aware of the significance of such networks for terrorist finance and other misconduct. In the West, the regulatory response has shifted from earlier neglect to exaggeration and miscalculations of comparative risks, costs and AML/CFT benefits of recent measures, some of which may have undercut counterterrorism efforts<sup>161</sup>.

Thirdly, the operation of some international and global terror groups notwithstanding, many terrorist groups and their operations are local, thereby necessitating no funds *transfers*. To the extent that fund raising and expenses are in the same place, what would be the purpose of any transfers? In addition, if an inexpensive terrorist attack is planned and executed, even if the perpetrators have some international associations or connections, the funds may be raised locally, again without the need for any transfer. One of the suicide bombers in London left behind savings and investments that could have been used for their attacks, but this apparently was not necessary. This points up yet again the importance of a) establishing the social organization and methods of terrorists groups

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<sup>160</sup> See Passas, N. (2006). Demystifying Hawala: A Look into its Social Organisation and Mechanics. *Journal of Scandinavian Studies in Criminology and Crime Prevention* 7(suppl. 1): 46-62(7(suppl. 1)), 46-62; see also Passas, N. (2008). Dirty Money: Tracing the Misuse of Hawala Networks. *Jane's Intelligence Review* (13 February), <http://jir.janes.com/public/jir/index.shtml>.

<sup>161</sup> Passas, N. (2006). Fighting Terror with Error: The Counter-productive Regulation of Informal Value Transfers. *Crime, Law and Social Change*, 45(4-5), 315-336.

and particularly the nature and extent of international/global linkages, *if any*; and b) assessing and prioritizing a government's terrorist threats, so that resources can be allocated to the most immediate and important problems.

Fourthly, it is essential to note that hawala is not necessarily the preferred mechanism for terrorist funding transfers. The formal banking and funds transfer system (such as Western Union, Moneygram, etc.) has often been exploited as well.

In conclusion, hawala is a vital vehicle for expatriate remittances to their homeland, an important instrument facilitating trade and a development tool, as well as a means for terrorist financing and other misconduct. Contrary to conventional wisdom, hawala offers unique opportunities for monitoring illicit networks, investigative leads and traceability<sup>162</sup>. Some of the proposed policy responses to these challenges include:

- Encouraging banks and other formal institutions to stop being overcautious when dealing with Money Service Businesses (MSBs) and ethnic remitters. This can have the effect of forcing such businesses to go underground.
- Diversifying rules applicable to different service providers.
- Simplifying and harmonizing rules and regulations at the national and international levels.
- Paying more attention to traceability means that formalism should give way to pragmatism; effectiveness ought to be a higher priority than paper compliance and window-dressing. Unnecessary rigidity of rules applicable in diverse contexts must be avoided; initiatives seeking region-specific AML/CTF approaches consistent with United Nations, Financial Action Task Force (FATF) or other international standards as well as economic or other policy objectives need to be encouraged.

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<sup>162</sup> For example, investigations such as those of the attacks on the Indian Parliament and of the recent bombings in Mumbai made progress because hawala transfers for the operational costs furnished information on the conspirators.

- In federal states, it is imperative that different jurisdictions and agencies coordinate and synchronize their efforts in consultation with the concerned sectors.
- The economic and social role of remittance providers needs to be publicized. Banks could be offered incentives, so that they maintain old and open new accounts for legitimate and compliant MSBs.
- Define the role of banks with respect to due diligence and risk management, avoiding the impression that they are expected in practice to police MSBs.
- Offer incentives for high quality and well implemented AML/CFT programs at banks and MSBs.
- Enforce rules consistently and with due process by keeping line agents and bank examiners aware of amended rules, updated guidelines and best practices.
- Law enforcement actions must be taken on the basis of evidence that may be produced in a court of law. As in the case of charities, when evidence is not 'actionable' or originates from non-shareable intelligence, one could follow the money and monitor activities.

Studies based on combined open source and non-public information have produced a list of red flags relative to informal remittances, which can be used by regulators, controllers as well as the private sector:

- Different commission charged to ordinary clients
- Different recording methods for some clients
- No recording of certain (large) transactions
- Large sums (from single customer)
- Different collection methods

- Transactions divergent from usual pattern (such as very large amounts once in a while)
- Transfers to companies in a very different business
- Transfers to accounts of individuals or companies involved in illegal activities<sup>163</sup>.

### Trade Transparency

Other work based on combined public and non-public information offers additional insights needed for risk assessments. We noted earlier how some publications drew attention to the role of diamonds and other natural resources in terrorism finance, while unfortunately being misleading on the extent, type and location of the highest threats. At the same time, research into precious stones, precious metals and tobacco revealed serious vulnerabilities in the commercial sector in general due to lack of transparency and many uninvestigated irregular trading practices. Consistently with calls by the FATF and other policy bodies for consideration of trade-based financial crime<sup>164</sup>, this work suggests that the highest priority regarding financing militant threats stems from certain trade-facilitated types of informal value transfer systems (IVTS)<sup>165</sup>.

Interviews with Customs officials and analysis of US import data demonstrate that there are serious gaps in the way the US and all other governments deal with trade transactions. Incomplete, erroneous or illegal documentation can be found through routine review of forms filed with Customs authorities. Inattention, lack of adequate resources and expertise, high transnational volumes and complex rules and regulations add to the challenge.

<sup>163</sup> Passas, N. (2004). Indicators of Hawala Operations and Criminal Abuse. *Journal of Money Laundering Control*, 8(2), 168-172.

<sup>164</sup> See FATF 2006 "Trade Based Money Laundering Report" available at <http://www.fatf-gafi.org/dataoecd/60/25/37038272.pdf>

<sup>165</sup> Passas, N. (2003). *Informal Value Transfer Systems, Money Laundering and Terrorism*. Washington D.C.: Report to the National Institute of Justice (NIJ) and Financial Crimes Enforcement Network (FINCEN); Passas, N. (2004). *The Trade in Diamonds: Vulnerabilities for Financial Crime and Terrorist Finance*. Vienna, VA: FinCEN, US Treasury Department; Passas, N. (2006). Setting Global CFT Standards: A Critique and Suggestions. *Journal of Money Laundering Control*, 9(3), 281-292; Passas, N. (2006). *Terrorist Finance and the Nexus with Transnational Organized Crime: Commodities Trade*. Washington D.C.: Report to the National Institute of Justice (NIJ); Passas, N., & Jones, K. (2007). The regulation of Non-Vessel-Operating Common Carriers (NVOCC) and Customs Brokers: Loopholes Big Enough to Fit Container Ships. *Journal of Financial Crime*, 14(1), 84-93; available at <http://www.emeraldinsight.com/Insight/viewContentItem.do?contentType=Article&contentId=1585488>

The skills, experience and opportunity to raise funds and transfer them across borders through trade undetected are available in many corners of this planet with sympathizers for groups aspiring to acquire capacity to inflict serious harm on national and international community interests. It only takes a handful of sympathizers to exploit the current gaps in trade transparency and the resulting lack of accountability. Mis-invoicing alone can serve to transfer significant funds without detection. Unfortunately, nominee trade and obscure value transfers can occur in billions of dollars in ways not detected or fully understood by the authorities.

If a serious security concern for the future is the possible use of WMD by terrorists or other proliferation issues, the 'black box' that trade represents must be addressed as a matter of extreme urgency. So, it is strongly recommended that we devise and implement measures aimed at enhancing transparency, traceability and accountability in all trade. It is essential to note that concentrating too much and prematurely on particular economic sectors would risk unnecessary costs on the affected industries and would enable the undetected commission of serious misconduct through other routes, while creating the illusion that trade vulnerabilities to terrorist finance have been addressed.

The technology for beginning to monitor trade and to red-flag irregular transactions already exists and has been used by US and other Customs agencies in the past, but not consistently or systematically and with the necessary support<sup>166</sup>. Import and export data can be compared to see whether they match (they almost never do), offering the opportunity to examine the reasons for such asymmetries and strategically or tactically use the information. Analyses of such discrepancies and their displacement following law enforcement actions can provide invaluable support for proactive and reactive investigations as well as for monitoring activities and anticipating moves. Trade raw data of course are far from perfect and entirely accurate themselves. This method, thus, is not a panacea, but a solid and promising beginning.

At the present time, there are trade data in addition to the official records and material used by governments with the software program. The program integrates and compares import and export data with other material, such as suspicious activities reports, reports on cash transactions, reports on cross-border cash movement, reports of criminal

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<sup>166</sup> The software program NIPS (Numerical Integrated Profiling System), now renamed Leadminer is available to the US Trade Transparency Unit at the Department of Homeland Security as well as some overseas counterparts.



investigations, information on ongoing investigations, criminal records, etc<sup>167</sup>. However, shippers, brokers, exporters and importers keep their own records anyway. These records would complement and confirm official sources. More importantly, they would also add insights into where identified irregularities are located and where explanations can be found. That is, if exported containers do not appear in import records of the relevant country, the diversion may have occurred at different trans-shipment points, which can be established only through these other records.

Two major benefits would be gained by such trade transparency initiatives. Firstly, there will be no need for all countries to participate and contribute to such knowledge or information exchange. If several neighboring countries share their trade data, then the dots can be connected more easily even with regard to jurisdictions where governance and Customs capacity need improvement. Effectively, this initiative would shed light on commercial flows that remain currently obscure.

Secondly, once commercial flows become more transparent and traceable, they could be compared and matched with financial and messaging flows, which are more closely monitored now, but independently. Consequently, the effectiveness of AML/CFT will improve drastically.

Finally, as with the financial sector, control objectives can only be achieved with the active and willing cooperation of the private sector and traders who are often in the best position to spot irregularities and notify authorities. This cooperation can be enhanced and maximized when private actors perceive the control system as appropriate and necessary, which brings us to the question of consensus building and legitimacy.

### **Legitimacy of CFT**

The success of any policy depends on the degree to which participants and stakeholders believe that it is necessary, appropriate and effective. For some, legitimacy is a matter of moral and legal principle on its own, a goal in itself. For others, it is an instrument towards the achievement of wide and genuine international collaboration. Either way it is a necessary condition for effective policies and long-term success. CFT measures must enjoy legitimacy, which can be strengthened through partnerships

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<sup>167</sup> See Appendix for more information on the software program.

with the private sector and civil society, outreach, integration and coordination of government efforts, accountability, alignment with other public policies and fundamental legal principles at the domestic and international levels.

### **Partnerships and Outreach**

Government partnerships with the private sector and wider society are indispensable for the goals of prevention, transparency and traceability to be achieved domestically and internationally<sup>168</sup>. In a sense, the best counter-terrorism we can think of would come as close as possible to a community policing approach, where everyone works together and makes distinct contributions in comparative harmony.

The best way of earning private cooperation and collaboration is by formulating responses through outreach and consensus building (to the extent possible) and then implementing them without overburdening either the private actors or government agencies with rules and procedures that cost a great deal and produce little result.

For example, with respect to informal and ethnic remittance services, government agencies' statements and actions are occasionally inconsistent. While the economic and social role of money service businesses is recognized, outreach efforts have been limited and rather one-way communications of new and poorly explained duties and responsibilities. Whenever all stakeholders are invited to participate in a consensus-building process, the expected compliance rate and effectiveness of measures can be much higher. It is possible that charities and financial institutions of different sizes, operating in different parts of the world, dealing with different legal or geo-political conditions, performing different functions, etc. will be able to suggest processes and practices in differentiated and proportionate ways with which they can live and which also serve the security and crime control needs. They may even become more proactive and report on suspicious activities not previously considered by the authorities.

On the other hand, over-zealousness and strict enforcement for unachievable and non-pragmatic objectives may backfire: fewer people

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<sup>168</sup> It is still undecided on how government agencies ought to interface with financial institutions regarding classified information. Giving clearance to bankers is an idea rejected by the 9/11 Commission, while gaining access for counter-terrorist finance purposes only on ad hoc basis cannot be accomplished on the basis of current technologies and infrastructure.

may see the need for particular controls, shun heavy paperwork and reporting requirements, resent unclear guidelines on “suspicious transactions”. They may not see such measures as necessary and therefore regard them as less legitimate or binding. Overburdening private actors and government agencies with rules that produce little result undermines legitimacy, while measures may miss their target. For example, bank compliance officers and government officials have confirmed in interviews the 9/11 Commission’s finding: the 9/11 hijackers’ financial activities were not unusual, did not trigger reports by financial institutions and should not have done so either. Even if current rules were in place before 9/11, including the FATF nine special recommendations, the terrorist transactions would not have been red-flagged. This begs the question of what adjustments must be made.

Further, we need to transcend the notion that one set of standards can be equally productive, useful or applicable throughout the world. We must always consider the context of each region, prioritize sectors to be regulated by risk, and avoid formal and legalistic criteria of compliance rather than judging the effect and efficiency of measures on the substance.

Moreover, we need to recognize that countering terrorist finance is not the same as anti-money laundering. Money laundering is when dirty funds are intended for legitimate use and need to show a legally acceptable origin. If funds, dirty or clean, are to be used for criminal purposes, there is no need for laundering them. Gun runners and nuclear proliferators do not ask for receipts or explanations on the provenance of funds. Secondly, the amounts we are attempting to control pale by comparison to the volume of criminal proceeds laundered, therefore mechanisms and expectations must be differentiated. Thirdly, many argue that we have had only moderate successes even with respect to AML efforts. Therefore, adjustments need to be made for both CTF and AML. Fourthly, the process of terrorist finance is often the reverse of money laundering, when clean funds are used for evil acts. It is after the fact and for monitoring purposes that we need certain controls in place, because otherwise there is little irregular or uncommon about the transactions before the identification of terrorist actors. Finally, to the extent that we go on designating supporters of terrorist groups and freezing or seizing of their assets, sympathizers willing to offer financial support will wish to cover their name and the origin of their funds. In such scenarios, it is plausible to assume that infrastructures and methods employed by

money launderers may also be used for terrorist finance. Hence the need to constantly update our understanding of these methods, to try to anticipate their next moves and to keep an eye on the participants in this illegal market.

### **Integration and Coordination of Efforts**

Short-term responses must be combined with long term policies and measures in order to address some of the root causes of terrorism. CFT is a supply side approach to counter-terrorism which must be accompanied by a demand side approach too. Understanding the reasons why militants emerge, persevere, resonate with larger social groups, evolve and radicalize or de-escalate their activities are all essential. In this spirit, we also need to understand and appreciate the consequences of financial controls domestically and internationally.

Proper regulatory measures are best developed when we avoid ethnocentric thinking. For instance, many efforts were made to see whether reports about short covering of airline and other stocks before 9/11 was practiced by militants as a fund-raising method. We absolutely must think of all possibilities and cover all bases. However, our thinking must not be constrained by our own context and experiences. As the 9/11 Commission reported, there was no terrorist involvement in short covering after all. We need to think “outside the box” and put ourselves in the shoes of the militants in as realistic a fashion as possible.

In this process, it is vital that we avoid or minimize “collateral damage”. As noted below, unrealistic and aggressive practices against ethnic money remitters may a) not produce any results or help make the homeland more secure and b) alienate communities that would otherwise be inclined to join in coalitions against terrorism. At the very least, we would not be creating new motives for sympathizers and outsiders to support or turn a blind eye to terrorist actions.

Every country is faced with multiple regulatory requirements due to a number of international instruments which have come recently into force, including not only UN the convention and Security Council Resolutions regarding terrorist finance, but also the UN convention against corruption, the UN convention against transnational organized crime, the FATF Recommendations and many others. As a result, both governments and private actors have been overwhelmed by what I have

termed a “regulatory tsunami”. In this context, it is imperative to find synergies among those instruments by coordinating the implementation of mandatory and other requirements. It is also important to keep in mind and enforce CFT consistently with other broad social policy priorities, (such as economic growth and development, poverty, environment, public health, conflict).

Finally, networked terrorist actors demand a networked response. Counter-terrorism these days necessitates multi-agency and international efforts. This is easier said than done, but the mutual benefits for security and crime control will hopefully prove conducive to more effective international cooperation.

### **Accountability**

We have seen how the effectiveness of AML measures was questioned by government officials before 9/11 and yet the same or similar measures have been used without question against terrorist financial. The logic of cost-benefit considerations underlying the earlier critical spirit would be usefully applied to current CFT approaches, in order to determine at what point we face an issue of diminishing returns.

In view of the previous recommendations relative to evidence-based policy-making, one could also envisage regular assessments and adjustments as needed. As terrorist methods change, so must the response. In this process, we could introduce reasonable qualitative and quantitative yardsticks of progress, which could be used also as self-assessment tools by government agencies.

### **Compliance with Fundamental Legal Principles**

Finally, premature and aggressive actions can create a climate of pressure to prevent disclosure of exculpatory evidence or admission of mistakes in the process. It is in such climate, for example, that former chief military prosecutor at Guantanamo Bay, Air Force Col, Morris Davis was so upset

with the process and conditions that he turned into a defense witness for bin Laden's driver<sup>169</sup>.

The point is that we can not win the battle against terrorism if we undermine our own fundamental legal principles. We cannot defend democracy, human rights and due process by undermining them domestically or internationally. All countries must make sure that errors made by themselves or other countries be detected and corrected. Canada has set great precedents by properly refusing to satisfy international legal assistance requests in the Barakaat case, which lacked foundations, and by taking appropriate remedial actions in the Arar case.

Legitimacy will be generally strengthened and preserved as we make clear and visible efforts to act on the basis of solid evidence and sound analysis, minimize negative consequences of CFT policies for innocent actors, protect constitutional rules, and observe our legal rules and international standards.

## Conclusion

In short, CFT is necessary and vital, but we must have realistic expectations and targets. We may have been successful in some respects, including the neutralization of al Qaeda's infrastructure in Afghanistan, but many aspects of CFT need re-thinking and re-adjustment. This need is based not only on the basis of legal, ethical or moral grounds but also because of the net results for economic, political, physical and other interests of Canada and the international community. In some respects, we have been fighting terror with error causing collateral damage to ourselves.

It is essential to bear in mind that, in many ways, terrorism is cheap and that small amounts will never dry out for any militant cause. We have to clearly identify our main problems and targets, collect and analyze

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<sup>169</sup> Col. Davis has been reported as affirming that "Pentagon general counsel William Haynes said in August 2005 that any acquittals of terrorism suspects at Guantanamo would make the United States look bad, calling into question the fairness of the proceedings. ..." He said 'We can't have acquittals, we've got to have convictions (see Fox, B. (2008). Ex-Guantanamo Prosecutor to Aid Detainee. *ABC News* (February 21), <http://abcnews.go.com/TheLaw/wireStory?id=4326458>). See also how politics has contaminated the military commissions in Mark Falkoff (2008) "Politics at Guantanamo: The Former Chief Prosecutor Speaks" available at <http://jurist.law.pitt.edu/forum/2007/11/politics-at-guantanamo-former-chief.php>; see also former administration official's accounts making similar points: Clarke, R. A. (2004). *Against All Enemies: Inside America's War on Terror*. New York: Free Press; Goldsmith, J. L. (2007). *The Terror Presidency: Law and Judgment inside the Bush Administration*. New York: W.W. Norton & Co.

critically the evidence on their modus operandi, motives, aims, financing and support, and then to focus on carefully planned and consistently applied policies that are instrumental to our goals and minimize the externalities and adverse effects.

We must keep working to facilitate monitoring and to enable investigations as well as to enhance cooperation within and across national borders. We must not lose sight of our critical intermediate goals: to maximize compliance, to increase transparency and traceability in economic transactions (both financial and trade) and to control crime of all sorts. An important as yet unaddressed vulnerability is that of trade transparency; dealing with that problem is imperative and urgent. These goals can be attained through reasonable, pragmatic, realistic policies, which are based on consensus building efforts with the private sector, do not alienate communities and allies, and enjoy wide legitimacy.

In most areas of public policy, there are very difficult zero sum calculations to consider. The optimistic conclusion of this report is that with respect to CFT we either have win-win or lose-lose options. This should not be a hard decision to make.

## **Appendix: Two Solutions**

The trade non-transparency issues discussed in the report have clear implications for a global CFT strategy. Low and locally raised amounts entail no or lesser need for cross-border fund transfers. Cross-border communications may be fewer and the use of intelligence on one particular group may be less relevant to other groups. Ordinary crime (petty and large scale) is very likely to be used for fund raising.

All this points to the increased importance and potential role of sympathizers as well as the significance of ideological, political and socio-economic factors. Implementing ways in which 'community policing' approaches to counter-terrorism can be enhanced and strengthening alliances supportive of efforts to prevent terrorism are crucial.

This renders clear how crucial a role the larger society and especially the private sector can and should play. Stakeholders and active participants in the financial and commercial business are aware of irregular and suspicious patterns and transactions that may be extremely helpful to controllers. They should also be made more familiar with additional patterns and trends identified by the authorities.

The small amounts which we have seen are quite sufficient to cause serious harm and societal damage will never dry out for extremist and militant causes. We have discussed the need to clearly establish each country's main problems and targets, collect and analyze critically the evidence on the militants' modus operandi, motives, aims, financing and support, and then to focus on carefully planned, consistently enforced and fairly applied policies that are instrumental to our goals and minimize the negative externalities.

We must keep working to facilitate monitoring and to enable investigations as well as to enhance cooperation within and across national borders. We must not lose sight of our critical intermediate goals: to maximize compliance, to increase transparency and traceability in economic transactions (both financial and commercial) and to control all types of crime.

In this context, trade transparency ought to be given a very high priority. Addressing adequately and squarely this problem is imperative and urgent. The CFT goals outlined in the main report can be attained through



reasonable, pragmatic, realistic policies, which are based on consensus building efforts with the private sector, do not alienate communities and allies, and enjoy wide legitimacy.

As all countries are under pressure to introduce and apply international standards on multiple issues and deal with a 'regulatory tsunami', it is necessary to seek and take full advantage of all synergies with respect to the implementation of overlapping provisions and functions. Governments, pursue other goals too: security, peace, good governance, human rights, poverty, economic growth and development, public health, environmental protection, etc. As we move towards global CFT standards we must recognize the externalities of some current policies and avoid "regulatory fundamentalism", that is the persistent and thoughtless application of ineffective and/or counter-productive measures.

At the present time and in many countries, the right balance has not yet been found. Discontent and anxiety about the current regulatory arrangements can be found in all circles (e.g., among banks, money service providers, migrant communities, traders, regulators, law enforcement agencies, non-profit organizations, the public and the international community). As argued in the main report and elsewhere, we must scrutinize presumed "experts", engage in evidence-based threat assessment, offer better guidance to the private and non-profit sectors, and apply existing human and technological capital to productive use. The lack of trade transparency has been isolated as one of the most significant vulnerabilities partly because it constitutes a serious threat on its own and partly because it simultaneously undermines all other regulatory efforts which are made relative to financial transparency and traceability as well.

This is where two available and inexpensive programmes/technologies can assist effectively and without any substantial additional paperwork or change in procedures, rules, or modus operandi. The private sector and scholarly contributions can assist in the effort to connect trade with finance. One may start with an analysis of known terrorist financial activities, establish red flags, and thereby enhance the utility of Suspicious Transaction/Activity Reports. In this way, such reports will not overwhelm financial institutions or inundate authorities with irrelevant or unused information.

The two promising private-sector initiatives on trade and on cross-border remittances are Leadminer and Distributed Capital. The former addresses

trade, the latter finance; they can both be used in parallel to allow almost complete transparency and traceability in both with the capacity to cross-check them and thereby generate economies of scale and immediate results.

### **“Leadminer”**

The skills, experience and opportunity to raise and transfer funds across borders undetected through trade are available in many places where sympathizers of militant or extremist causes live and operate.

The technology for better monitoring of trade and red-flagging of irregular transactions is in place and has been used by the US and other Customs agencies in the past, but not systematically or with the necessary support. The software program Numerical Integrated Profiling System (NIPS), which has been renamed Leadminer and has undergone constant development for additional functionalities, allows the parallel use of any database one wishes (or is cleared) to connect, such as import-export official data, PIERS and carrier records, suspicious transaction reports, criminal records, active investigations, cash transactions or transfers etc. Cargo and container movements, import and export data from different sources and countries can be compared and contrasted. This offers an opportunity to track transactions and operators, examine the reasons for discrepancies and use the information and analysis by commodity, region or subjects strategically and tactically. Analyses of import-export irregularities (e.g., in country of origin, destination, pricing or routing) and their displacement following law enforcement actions can support proactive and reactive investigations, the monitoring of suspicious and illicit activities and the anticipation of future moves by offending actors.

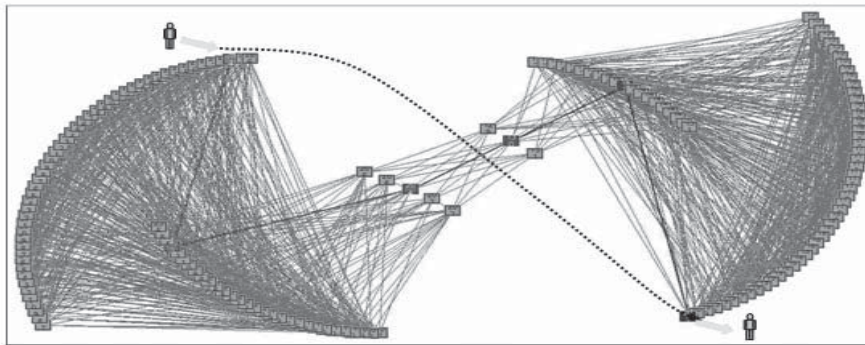
### **“Distributed Capital” (DC)**

Informal networks are efficient, convenient, inexpensive, accessible, omnipresent and fast. Their business model relies on trust and integrates multiple trade and financial nodes in a global network. In part they also gain a competitive advantage when they also allow illicit transactions to go through (illegal actors or those who wish to hide something are prepared to pay a premium), which informal operators may take advantage of and thus be in a position to offer better rates to perfectly legitimate clients whose funds provide liquidity for the whole system. Transparency is not a distinguishing feature of informal networks, although they can be

quite useful with respect to tracing counterparties and transactions. This tracing, however, is labor intensive and requires skills and patience not always readily available.

Formal payment systems, on the other hand, are slower, more expensive and occasionally bureaucratic or inaccessible, at least in many parts of the world. Yet, they offer transparency and a degree of speedy traceability.

Distributed Capital seeks to combine the best aspects of the two formal and informal worlds. In essence, it attempts to provide a method drawing on the informal (hawala) business model with complete transparency. It also connects big with small financial operators and increases public access to financial services.

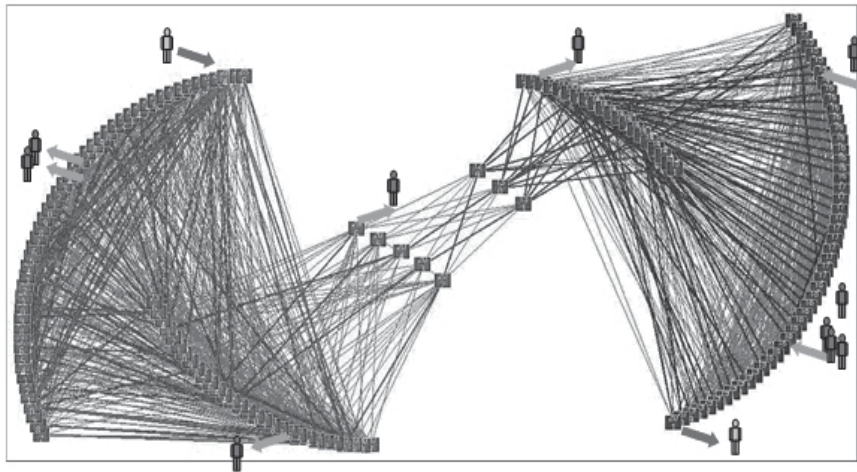


Graphic 1

Graphic 1 shows how a retail remitter sends money to someone in a different country. The dotted line shows the intended trajectory of the transaction, while the money gets to the final destination through a number of intermediary relays (red line). The green lines represent institutional connections or correspondent relationships, while the red line shows the actual travel-pathway of a payment over those relationships. This is how Money-Service Businesses (which use bank accounts) and formal banks route the payments.

Wherever there is more than one intermediary between the sending and receiving institutions, neither the sending nor the receiving institution has full transparency on which institutions the payment actually traveled

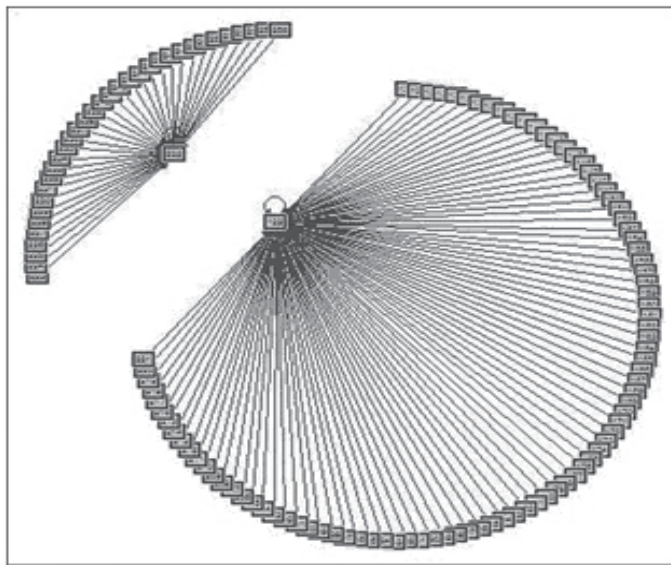
through. Given the number of permutations in a global network of thousands of participating institutions with multiple relationships, it is hard to track down all activity that occurs along these routes. Tracking crime that leverages this global complexity to engage in or facilitate terrorist finance or other illegal activity is difficult, expensive and time consuming. It also necessitates multi-jurisdictional efforts in order to reconstruct the complete transaction route. This drawback to conventional routing undercuts transparency. This is one feature or problem that Distributed Capital can help remove or reduce substantially to more manageable proportions.



Graphic 2

Graphic 2 depicts transfers in both directions. The blue arrows highlight the original intended payment, while the brown arrows illustrate payments made by other counterparties at about the same time. In the conventional bank network, each payment would be routed as illustrated by the red lines. If informal methods are used to execute these payments, however, we would see only or mostly local (redirected) payment flows. For example the outbound blue-arrow flow at top left can be re-routed locally to fulfill the inbound brown-arrow flow also at left (in the same country and currency).

Distributed Capital can implement effectively such local redirecting of capital flows in all jurisdictions simultaneously to deliver a more efficient payments processing. At the same time, it can record and monitor every intended payment alongside of the actual resolved set of instructions that deliver the local-rerouting method of settlement. The more institutions and jurisdictions/currencies use this platform, the more efficient the system becomes by minimizing further the need for cross-currency and cross-border transactions and eliminating the opaque settlement process that raises crime risks and concerns among controllers (see Graphic 3).



Graphic 3

These two solutions separately or combined will by no means solve all problems of traceability or terrorist finance. They do highlight however the progress and gains we can achieve through the use of existing technologies and through partnerships between the public and public sectors.

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He specializes in the study of financial/trade flows, white-collar crime, corruption, terrorism, financial regulation, organized crime and international crimes. He has published more than 100 articles, book chapters, reports and books in 11 languages. He is the author of Informal Value Transfer Systems (IVTS) and Criminal Activities (2004), Legislative Guide for the Implementation of the UN Convention against Corruption, Legislative Guide for the Implementation of the UN Convention Against Transnational Organized Crime (2003), IVTS and Criminal Organizations: Underground Banking Networks (1999) and the editor of The United Nations Convention against Corruption as a Way of Life (2007), International Crimes (2003), It's Legal but It Ain't Right: Harmful Social Consequences of Legal Industries 2004); Upperworld and Underworld in Cross-Border Crime (2002); Transnational Crime (1999), The Future of Anomie Theory (1997), and Organized Crime (1995). In addition, he has recently edited a volume on the Regulation of Informal remittance Systems for the IMF, co-authored a World Bank study into Migrant Labor Remittances in the South Asia Region, authored two reports to FinCEN on the trade in precious stones and metals and completed studies on procurement fraud, corruption asset recovery, as well as on governance, development and corruption international policy.

He serves as editor-in-chief of the international journal Crime, Law and Social Change and associate editor of the International Journal of Comparative and Applied Criminal Justice, the Open Criminology Journal, and the European Journal on Criminal Policy and Research. He is on the Board of Directors of the International Society of Criminology.

Passas offers training to law enforcement, intelligence and private sector officials on regulatory and financial crime subjects. He regularly serves as expert witness in court cases or public hearings and consults with law firms, financial institutions, private security and consulting companies and various organizations, including the Financial Crimes Enforcement Network (FinCEN), the IMF, the World Bank, other multilateral and bilateral institutions, the United Nations, the Commission of the European Union, the US National Academy of Sciences, research institutions and government agencies in all continents.

He is currently working on the regulation of free trade zones and of extracting industries, trade based financial crimes, money laundering and terrorist finance, the implementation of the UN conventions against transnational crime and against corruption, identity fraud and human trafficking. For example, he is the *Rapporteur General* on terrorism finance for the International Association of Penal Law Congress in 2009 in Istanbul, advisor of the Caribbean Financial Action Task Force, the UN Monitoring Group on Taliban and Al Qaeda sanctions, the Commission of the European Union, the UN Office of Drugs and Crime, the UN Development Programme, the Interpol Anti-Corruption Academy etc. His current projects focus on the development of a self-assessment tool for the implementation of the UN Convention against Corruption and the UN Convention Against Transnational Organized Crime and on research and analytical support for the International Association of Anti-Corruption Authorities (IAACA) and the creation of an international knowledge management consortium on corruption laws, cases, strategies, asset recovery and anti-corruption bodies.

