

# Suppressing Terrorist Financing and Money Laundering

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Jae-myong Koh

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*For my father:*  
*Kwang-woong KOH (1941-)*

# Preface

When watching the collapse of the Twin Towers on CNN 11 September 2001, the international community was awakened to the urgent needs of open discussion to identify the emerging threat and the way to cope with it. Given the unprecedented heinous nature of the incident, the moves that the international community made were quick and included countermeasures in various dimensions. One of the major countermeasures highlighted as a result was to target the financial infrastructure of terrorist organisations. In this campaign, diverse organisations have participated, including the Security Council, Financial Action Task Force (FATF), IMF, World Bank, etc. At the same time, various methodologies have also been introduced at both the international and national level. Such a consensus and mobilisation of resources to one end in the international community may be considered phenomenal in the history of public international law, and without doubt merits an in-depth analysis for both academic and practical purposes.

In this context, this book examines the evolution and implementation of international standards on countering the financing of terrorism. There are two dimensions to be taken into account to understand the structure of this book. The first is concerned with a sequential perspective. Given that 9/11 has provided a critical momentum in this area, chapter 2 deals with the international position prior to 9/11, whereas chapters 3, 4 and 5 analyse development following 9/11. The second is related to a hard law and soft law perspective. Chapters 2 and 3 look into the development of hard law in this area, while chapters 4 and 5 focus on international standards and their monitoring and enforcement from a soft law perspective.

Chapter 1, as a preliminary, presents an overview of terrorism in general and current terrorist financing problems in the world. This chapter points out that religious terrorism has emerged as a major driving force behind the international terrorist movement, and places emphasis on a financial war on terrorism. Particularly, it clarifies the elusive relationship between terrorist financing and money laundering.

Chapter 2 examines the manner in which the international community dealt with terrorism prior to the 9/11 attack. The practices of the UN General Assembly and the Security Council are analysed for this purpose. Of particular note is the full commentary on the 1999 International Convention for the Suppression of the Financing of Terrorism, given that an analysis of the overall text of the convention is scarcely to be found in the existing literature.

Chapter 3 analyses the way in which the Security Council has been involved in a counter-terrorist financing campaign since 9/11. To this end, this chapter analyses two distinctive approaches. One is a structural approach which comprises long-term measures to build up a counter-terrorism infrastructure at both the international and national level, as with Resolution 1373 (2001). The other is an operational approach which refers to immediate measures taken in the context of an imminent or actual crisis or danger caused by some terrorists. In other words, this approach could be said to be a crackdown on particular terrorists, and Resolution 1390 (2002) plays a pivotal role in this operational campaign.

Chapter 4 examines the current developing international standards set by specialist bodies such as the Financial Action Task Force (FATF), the Basel Committee on Banking Supervision, the Wolfsberg Group of Banks, and the Egmont Group, etc. Particularly, the commentary on the Nine Special Recommendations on Terrorist Financing and the 2003 revised FATF Forty Recommendations is provided in a comparison with the 1996 version of FATF Forty Recommendations. In the course of this, a parallel development of hard law and soft law is also highlighted by way of contrast with earlier chapters. In so doing, attention is given to the non-binding nature as well as detailed contents of the standards, which is typical of the soft law phenomena.

Chapter 5 analyses the monitoring and enforcement of these international standards by the specialist bodies. Firstly, the overall work of the FATF is examined as well as some controversial issues such as the Non-Cooperative Countries and Territories (NCCT) initiative. Furthermore, the involvement of the IMF, World Bank, and FATF-style regional bodies are dealt with in detail, which is seldom found in the existing literature. Lastly, in-depth analysis of the soft law nature of the involvement of specialist bodies is made, and the transformation process from soft law into hard law is highlighted as well.

Chapter 6 examines the overall impact of 9/11 on the anti-money laundering and counter-terrorist financing campaign. Finally, suggestions are made to utilise the issue of the suppression of the financing of terrorism as a Trojan horse in providing further support to anti-money laundering campaigns and to extend the operational approach of the Security Council to other criminal finances.

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I also feel grateful to Mr. John Stevenson and Mr. Seung-hwan Jin for their suggestions and assistance in the development of my book. Last but not least, I appreciate wholeheartedly the unconditional love and support of my family thus far.

The views contained in this work are mine alone and are not intended to represent the perceptions of any institution or government with which I am associated. I am solely responsible for the outcome. The text seeks to represent the position as of 1 July 2005 although I have incorporated changes of a more recent vintage where possible.

Seoul, February 2006

Jae-myong KOH

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## List of Abbreviations

AML	Anti-Money Laundering
APG	Asia/Pacific Group on Money Laundering
BCBS	Basel Committee on Banking Supervision
CAS	Country Assistance Strategy
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CFT	Combating the Financing of Terrorism
CTC	Counter-Terrorism Committee
CTED	Counter-Terrorism Committee Executive Directorate
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force on Money Laundering
FSA	Financial Sector Assessment
FSAP	Financial Sector Assessment Programme
FSRBs	FATF-Style Regional Bodies
FSSA	Financial System Stability Assessment
GAFISUD	Financial Action Task Force on Money Laundering in South America
IAIS	International Association of Insurance Supervisors
ICSFT	International Convention for the Suppression of the Financing of Terrorism
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
KYC	Know Your Customer
MONEYVAL	Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures
NCCT	Non-Cooperative Countries and Territories
OFC	Offshore Financial Centre
OGBS	Offshore Group of Banking Supervisors
ROSC	Report on Observance of Standards and Codes
TA	Technical Assistance
WMD	Weapons of Mass Destruction

# 1 Terrorism and its Financing

## 1.1 Introduction

“Terrorists want a lot of people watching and a lot of people listening and *not* a lot of people dead”(emphasis added). This is a famous remark made by Brian Jenkins in 1975<sup>1</sup>, and there was for decades widespread acceptance of his observation.<sup>2</sup> However, the September 11<sup>th</sup> 2001 attack on the US has shaken this general acceptance to its foundations. Nowadays there is a growing concern that terrorists might use even weapons of mass destruction (WMD) thus annihilating as many innocent people as possible.

Nevertheless, some may ignore this concern simply by saying, “I am not living in the Western Hemisphere”. Then the scenario of “Pandora’s Box”<sup>3</sup> about which Western intelligence agencies have serious concerns, may be helpful in awakening indifferent readers to the devastating and universal impact of this new kind of terrorism. With this scenario, terrorists could for example load a portable nuclear suitcase bomb<sup>4</sup>, or a dirty bomb made with nuclear material wrapped around conventional explosives onto a cargo ship and detonate it in a major port.<sup>5</sup> Unfortu-

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<sup>1</sup> Jenkins BM (1975) “International Terrorism: A New Mode of Conflict”. In: Carlton D, Schaerf C (eds) *International Terrorism and World Security*, p.15.

<sup>2</sup> Hoffman B “Re-Thinking Terrorism in Light of a War on Terrorism”, Testimony before the Subcommittee on Terrorism and Homeland Security, House Permanent Select Committee on Intelligence, US House of Representatives, 26 September 2001.

<sup>3</sup> Felsted A, Odell M, “Agencies fear extent of al-Qaeda’s sea network”, *Financial Times*, 21 February 2002.

<sup>4</sup> Al-Qaida reportedly obtained several nuclear suitcase bombs in the autumn of 1998 (see Reeve S (1999) *The New Jackals: Ramzi Yousef, Osama bin Laden and the future of Terrorism*, pp.214-216). This allegation seems to be supported by the remarks of General Aleksandr Ivanovich Lebed, the former security czar of Russia. He told a visiting US congressional delegation in May 1997 that of 132 “suitcase bomb” in the former Soviet arsenal, he had been able to locate only 48, leaving 84 unaccounted for. Other senior Russian officials also told the congressional delegations that tactical nuclear weapons were missing (see, Stern J (1999) *The Ultimate Terrorist*, p.90).

<sup>5</sup> Felsted A, Odell M, *supra* note 3.

nately, this is not a remote possibility. For instance, roughly 6 million containers enter US ports annually and only 2 percent of them are checked.<sup>6</sup> If this scenario happens, needless to say, there would be huge casualties, and to make matters worse, government authorities might have to check all containers physically, thus seriously depressing international trade.<sup>7</sup>

Facing such overwhelming challenges, it is worthwhile to examine the question of why terrorism has recently changed so much in character and scope, and what the implications for the future are. In this vein, this chapter points out that among several kinds of terrorism, religious terrorism has emerged as a major driving force behind the international terrorist movement. Then, as countermeasures, analysis is given to the appropriateness of waging a financial war on terrorism and the roles of anti-money laundering regimes in this campaign.

## 1.2 Terrorism in the 21<sup>st</sup> Century

### 1.2.1 An overview of general trends in modern terrorism

#### 1.2.1.1 *The types of terrorist groups*

In the 20<sup>th</sup> century, terrorist activities with various causes were observed, but three are of significance and direct relevance to the present analysis<sup>8</sup>: ethno-nationalist/separatist terrorism, ideological terrorism, and religious terrorism.

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<sup>6</sup> “An Overview of International Terrorist Organizations”, Hearing before the Subcommittee on International Terrorism, Nonproliferation and Human Rights of the Committee on International Relations, House of Representatives, 108<sup>th</sup> Congress, 1<sup>st</sup> Session, 26 March 2003, Serial No.108-10, p.36.

Currently, 35 million containers are estimated to be in use around the world (Felsted A, Odell M, *supra* note 3).

<sup>7</sup> The US was concerned about this scenario that it brought up the issue at the G8 summit in June 2002 (For the result, see “G8 Recommendations on Counter-Terrorism” (visited on 7 July 2004) <[http://www.iaea.org/NewsCenter/Features/RadSources/G8\\_Recomend.html](http://www.iaea.org/NewsCenter/Features/RadSources/G8_Recomend.html)>).

<sup>8</sup> Thus far, there is no clear-cut categorisation of terrorism phenomenon in literature but a common thread can be drawn without difficulty. See, e.g., Hoffman B (1999) *Inside Terrorism*; Wilkinson P (2001) *Terrorism Versus Democracy: The Liberal State Response*, pp.19-21; Russell CA, Banker Jr LJ, Miller BH (1979) “Out-Inventing the Terrorist”. In: Alexander Y, Carlton D, Wilkinson P (eds) *Terrorism: Theory and Practice*, pp.31-32; Dinse J, Johnson S (1993) “Ideologies of Revolutionary Terrorism: Some Enduring and Emerging Themes”. In: Han HH (ed) *Terrorism & Political Violence: Limits & Possibilities of Legal Control*, pp.61-68; Comb C (2003) *Terrorism in the Twenty-First Century*, 3rd edn, pp.44-47.

The ethno-nationalist/separatist groups seek political self-determination as is the case with the IRA (Irish Republican Army), the ETA (Basque Homeland and Liberty), and the PLO (Palestinian Liberation Organisation) of the 1970s.<sup>9</sup> Secondly, the ideological terrorist groups attempt to change the entire political, social and economic system either to an extreme left, or extreme right model.<sup>10</sup> The Revolutionary Armed Forces of Columbia (FARC) and Red Brigades in Italy are cases in point.<sup>11</sup> Lastly, religious terrorist groups conduct terrorist activities for the realisation of their religious goals as illustrated by Al-Qaida's attack on the US or Dr. Goldstein's massacre in the Cave of the Patriarchs.<sup>12</sup> However, in reality, it is difficult to simply classify certain terrorist groups into one category given that a group might comprise several components at the same time as with the "Catholic" IRA or the "Islamic" Hamas.<sup>13</sup>

### 1.2.1.2 The trend in the late 1960s and 1970s

Among the three major types of terrorism, it was the ethno-nationalist/separatist groups that brought the advent of modern international terrorism in the late 1960s.<sup>14</sup> The Popular Front for the Liberation of Palestine (PFLP), one of the six groups then comprising the PLO, hijacked an El Al commercial flight en route from Rome to Tel Aviv, and diverted it to Algiers on 22 July 1968.<sup>15</sup> Importantly, this incident is different from many of the post-war anti-colonial terrorist campaigns.<sup>16</sup> For the first time, the transnational "third country operation" concept was

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<sup>9</sup> Russell CA, Banker Jr LJ, Miller BH, *supra* note 8, p.31. However, it should be pointed out that although the PLO began as a terrorist group, it was later recognised as a legitimate political organisation by the international community. See, Adams J (1988) *The Financing of Terror*, p.145, 158.

<sup>10</sup> Wilkinson P, *supra* note 8, p.20.

<sup>11</sup> *Ibid.*, p.20.

<sup>12</sup> In 1994, Dr. Baruch Goldstein, an orthodox Jew and ardent disciple of Kahane, entered the Ibrahim Mosque located at the Cave, and opened fire on Muslim worshippers, killing 22 and wounding 150 (Ranstorp M (2002) "Terrorism in the Name of Religion". In: Howard RD, Sawyer RL (eds) *Terrorism and Counterterrorism: Understanding the New Security Environment*, p.121).

<sup>13</sup> Hoffman B, *supra* note 8, p.87; Ranstorp M, *supra* note 12, p.122; Russell CA, Banker Jr LJ, Miller BH, *supra* note 8, p.8.

<sup>14</sup> Hoffman B, *supra* note 8, p.67. There seems to a general consensus to this argument. See, e.g. Wilkinson P, *supra* note 8, p.28; Russell CA, Banker Jr LJ, Miller BH, *supra* note 8, p.5.

<sup>15</sup> Hoffman B, *supra* note 8, p.68. The negotiations extended over forty days, and both the hijackers and hostages went free later.

<sup>16</sup> For example, most hijacks before the late 1960s were generally aimed at facilitating refugee escapes to otherwise inaccessible countries such as Cuba.



applied in modern terrorism.<sup>17</sup> Terrorists began to travel regularly from one country to another to launch their attacks.<sup>18</sup> In addition, the terrorist operation was aimed at promoting their political cause worldwide<sup>19</sup> and bringing about changes in government policies.<sup>20</sup> In this sense, it ushered in the era of international terrorism in the full sense. It was followed by a wave of terrorist operations of a similar nature.<sup>21</sup>

Along with the surge of ethno-nationalist/separatist terrorism, ideological terrorism, mostly revolutionary left-wing terrorism, began to flex its *international* muscles in the late 1960's and early 1970's.<sup>22</sup> However, these kinds of terrorist groups, such as the Red Army Faction and the Japanese Red Army, for the most part originated within industrialised liberal democracies, and did not seem to constitute any serious long-term threat to Western states.<sup>23</sup> Perhaps, the unprecedented economic prosperity allowed the youth of affluent and privileged homes the "luxury of introspection and self-criticism" on socio-economic iniquities.<sup>24</sup> Yet, these ideological sects were politically marginalised, especially after the demise of the Cold War.<sup>25</sup> Nonetheless, some left-wing local terrorists groups, such as the

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<sup>17</sup> Alexander Y, Carlton D, Wilkinson P, *supra* note 8, p.6.

<sup>18</sup> *Ibid.*, p.68.

<sup>19</sup> For example, Zehdi Labib Terzi, the PLO's chief observer at the UN, remarked in a 1976 interview, "The first several hijackings aroused the consciousness of the world and awakened the media and world opinion much more- and more effectively-than 20 years of pleading at the UN", quoted in Schmid AP, de Graaf J (1982) *Violence as Communication: Insurgent Terrorism and the Western News Media*, p.32.

<sup>20</sup> Hoffman B, *supra* note 8, pp.67-69. Consequently, the PLO could force the Israeli government to communicate directly with it, despite the Israeli government's previous policy pronouncements to the contrary.

<sup>21</sup> For example, the PLO's attack on the Israeli athletes' dormitory during the Munich Olympic Games in 1972 earned it wider publicity given that estimated 900 million people saw the crisis on their TV screens. As a result, Yassir Arafat, the PLO's leader, was invited to address the UN General Assembly and shortly afterwards the PLO was granted special observer status in the UN (*Ibid.*, pp.71-75).

<sup>22</sup> The revolutionary left-wing terrorists attempted to benchmark the success of the PLO. Furthermore, an alliance had developed between these different movements in the form of the training of the German Red Army Faction (RAF) by the PLO. Eventually, this unprecedented cooperation led to the Lod airport massacre by the Japanese Red Army in 1972, and the seizure of the OPEC oil ministers' conference in Vienna 1975 by the combined teams of German RAF and Palestinian Terrorists (*Ibid.*, pp.82-83).

<sup>23</sup> Wilkinson P, "Terrorist Movements". In: Alexander Y, Carlton D, Wilkinson P (eds), *supra* note 8, pp.106-107.

<sup>24</sup> *Ibid.*, p.107; Hoffman B, *supra* note 8, p.80.

<sup>25</sup> For example, the Red Army Faction finally collapsed in 1992. See, Hoffman B, *supra* note 8, p.84.

FARC, are still very active in the 21<sup>st</sup> century. However, it is doubtful whether they could be properly classified as “modern international” terrorist groups given their indigenous nature and the limited scope of their operations.<sup>26</sup> Moreover, they are criticised for the allegation that their criminal enterprises have assumed greater priority than their own ideological agendas.<sup>27</sup>

### 1.2.1.3 The trend since the 1980s

To make a long story short, the late 1960s and 1970s were characterised by the rise of “secular” ethno-nationalist/separatist and left-wing terrorist groups. In contrast, the early 1980s saw the dramatic emergence of “religiously” motivated terrorism, more precisely that involving extreme Islamist movements.<sup>28</sup>

What triggered this change was the success of the Iranian Revolution in 1979.<sup>29</sup> It was a great surprise to the world that a *theocratic* state should emerge in the *secularised* international political arena. The concern about theocracy was recently summarised by Francis Fukuyama as follows:<sup>30</sup>

“If politics is based on religion, there will never be any civil peace because people cannot agree on fundamental religious values. Secularism is a relatively recent development in the West: the modern democratic state emerged out of the bloody religious conflicts in Europe during the sixteenth and seventeenth centuries in which different Christian groups slaughtered one another mercilessly. The separation of church and state became a necessary component of modernization precisely because of the need for civil peace.”

<sup>26</sup> Berry LV, Curtis GE, Hudson RA, Kollars NA (2002) “A Global Overview of Narcotics-Funded Terrorist and Other Extremist Groups”, Library of Congress, May, pp.50-57.

<sup>27</sup> For example, the FARC is alleged to pursue power and economic gains under the guise of promoting their Marxist agenda (*Ibid.*, p.2).

<sup>28</sup> Wilkinson P, *supra* note 8, p.34. According to Bruce Hoffman, there has been a dramatic increase in identifiable religious terrorist groups from none in 1968 to eleven in 1992. A decade later, if we look at the list of the terrorist organisations designated by the US government, more than half of the 37 designated groups include strong religious components (US Department of State, “Patterns of Global Terrorism-2003”, 29 April 2004). For the use of the term “Islamists”, see, Paz R, “Targeting Terrorist Financing in the Middle East”, *International Policy Institution for Counter-Terrorism*, 23 October 2000.

<sup>29</sup> For the background to the Iranian Revolution, see, Han HH, “Autocracy of the Shah of Iran: Views of the Media Reporters”. In: Han HH (ed), *supra* note 8, pp.167-185.

<sup>30</sup> Fukuyama F, “History and September 11”. In: Booth K, Dunne T (2002) *World in Collision: Terror and the Future of Global Order*, p.30.

When the international community took secularism for granted, the Iranian Revolution seemed to turn the wheels of history backwards.<sup>31</sup> Following the success in Iran, the modern Islamist terrorist groups have aimed at exporting the Islamic revolution all over the world, especially from the Middle Eastern countries such as Saudi Arabia, Egypt, Turkey, etc.<sup>32</sup> Indeed, the same “domino theory” used in the Cold War is now deployed by analogy to the spread of militant Islam.<sup>33</sup>

In order to secure a “domino success”, it is imperative for the Islamist terrorist groups to keep the Western powers from influencing the Middle East.<sup>34</sup> However, since they cannot overwhelm the Western states, more precisely the US, by military force, they instead employ terrorism as an alternative tactic to engage the enemy.<sup>35</sup> Nevertheless, it is extremely difficult to bring about a sufficient change in the policies of the Western states (e.g., to withdraw from the oil-rich Middle East). Thus, terrorist attacks need to be very powerful to “inflict so much pain on these states that their governments would find it impossible to tolerate the public outcry and be compelled to withdraw and stop the Islamist terrorism at home”.<sup>36</sup> To this end, the attacks need to be carried out on a huge scale, even using weapons of

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<sup>31</sup> From the point of view of the Islamists, legitimacy of a nation can be conferred only through the adoption of Islamic law (*Sharia*) with sovereignty resting with Allah. See, Capitanichik D “Terrorism and Islam”. In: O’Sullivan N (ed) (1986) *Terrorism, Ideology, and Revolution*, pp.126-127.

<sup>32</sup> See, Bodansky Y (1999) *Bin Laden: The Man Who Declared War on America*, pp.53-55; Robbins JS (2002) “Bin Laden’s War”. In: Howard RD, Sawyer R L (eds), *supra* note 12, pp.354-355; Gunaratna R (2002) *Inside Al Qaeda: Global Network of Terror*, pp.88-89.

<sup>33</sup> According to Simon Reeve, if the fundamentalists take over in Egypt, the theory goes, the whole of North Africa and the Middle East will follow. Then Afghanistan, and the Muslim Central Asian states will fall consecutively (Reeve S, *supra* note 4, p.227).

In their revolutionary campaign, the Islamists emphasise their role as a vanguard of professional revolutionaries to awaken and lead the Muslim masses. In this context, we can find a surprising analogy with communist revolutionary terrorism theory. See, e.g., Dinse J, Johnson S “Ideologies of Revolutionary Terrorism: Some Enduring and Emerging Themes”. In: Han HH (ed) (1993), *supra* note 8, pp.61-63; Napoleoni L (2003) *Modern Jihad: Tracing the Dollars Behind the Terror Networks*, p.155.

<sup>34</sup> Bodansky Y, *supra* note 32, p.177, p.190, p.349, and p.385. Furthermore, for the situation of the Central Asia, see, Olcott MB, “Narco-Terror: The Worldwide Connection Between Drugs and Terrorism”, Testimony, United States Senate Committee on the Judiciary, 13 March 2002.

<sup>35</sup> Bodansky Y, *supra* note 32, p.203, pp.334-335; Richardson L (2002) “Global Rebels: Terrorist Organisations as Trans-National Actors”. In: Howard RD, Sawyer RL (eds), *supra* note 12, p.99; Gearson J (2002) “The Nature of Modern Terrorism”. In: Freedman L (ed) *Superterrorism: Policy Responses*, p.23.

<sup>36</sup> Bodansky Y, *supra* note 32, p.177.

mass destruction (WMD), but more importantly *with continuity*. The case of the Vietnam War would be a good scenario: a benchmark.<sup>37</sup> In this context, it seems that a significant change has taken place in the nature of terrorism, constituting a real threat to international peace and security indeed.<sup>38</sup> The concerns about this change are well exemplified by the US adoption in September 2002 of a new doctrine in the use of force, the core of which is recourse to pre-emptive strikes based on the right to self-defence.<sup>39</sup>

Given these scenarios, as the next logical step, there can be conceived an important question: “If the Western powers withdraw, could the Islamist groups succeed in winning support at grassroots level, thus transforming a political system into a theocracy, by either revolution or a peaceful referendum?”<sup>40</sup> Unfortunately, many scholars are of the view that the Islamist trend has grown and will continue to expand because of its genuine grassroots and popular appeal.<sup>41</sup>

Among many complicated factors underlying its popular appeal, two common reasons can be observed: economic poverty, and loss of self-esteem. For the purpose of understanding the widespread economic poverty in the Middle East, let us consider for example Saudi Arabia which is the biggest oil-producing country in the region. Oil revenues that had earned the nation more than US\$ 140 billion a year during the 1980s appeared to dwindle to just US\$ 20 billion a year in the 1990s.<sup>42</sup> Moreover, GDP per capita is said to have fallen from US\$ 15,000 per year a decade ago to as low as US\$ 4,000 in 1998.<sup>43</sup> Consequently, unemployment and discontent is growing among the population.<sup>44</sup> Saudis who used to travel to smaller Gulf countries to party and shop are now being forced to take employment

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<sup>37</sup> The US public opinion was then sick of endless war, and subsequent huge casualties and costs, thus urging to pull U.S. troops out of Vietnam.

<sup>38</sup> Murphy SD (2003) “Contemporary practice of the United States relating to international law: the U.S. Adoption of New Doctrine on Use of Force”, *American Journal of International Law*, vol.97, p.207.

<sup>39</sup> *Ibid.*

<sup>40</sup> In Algeria, an Islamist party (the Islamic Salvation Front) scored a stunning victory in the June 1990 municipal elections, and in the June 1997 parliamentary elections. However, the Algerian military intervened, arresting the Islamist party’s leaders and imprisoned them in desert camps. Thus, a cycle of violence and counterviolence was set in motion. See, Esposito JL (2002) *Unholy War : Terror in the name of Islam*, pp.102-103.

<sup>41</sup> See, e.g., Bodansky Y, *supra* note 32, p.133 and p.334; Esposito JL, *supra* note 40, pp.79-84, pp.93-95, and p.116; Wilkinson P, *supra* note 8, p.35; Capitanichik D, *supra* note 31, pp.127-129; Fukuyama F, *supra* note 30, p.33; Ranstorp M, *supra* note 12, p.129 and p.132; Reeve S, *supra* note 4, pp.228-230.

<sup>42</sup> Reeve S, *supra* note 4, p.230.

<sup>43</sup> *Ibid.*, p.230.

<sup>44</sup> *Ibid.*, p.230.

there, even in menial jobs, which is almost unprecedented for Saudi citizens.<sup>45</sup> Usama bin Laden did not overlook this point, utilising it as a rallying cause.<sup>46</sup> He claimed in 1997 that the US was stealing Muslim oil given that the price of Arab oil increased by no more than 8 dollars while the price of American wheat increased threefold over a period of 24 years.<sup>47</sup> Needless to say, this kind of revolutionary message exacerbates a sense of deprivation among Muslims.

However, more fundamentally, incompetent authoritarian regimes in the region are criticised for aggravating their problems. It is understandable in some sense that several Middle Eastern states were created by the West following the First World War<sup>48</sup> and thus have a relatively short experience of governance. Nonetheless, the governments within the region have not made good use of the opportunities for economic and political reform, thus failing to create a self-sustaining industrial society.<sup>49</sup>

Along with underlying economic poverty, Arab states have suffered a continuous loss of self-esteem. For instance, they saw a humiliating defeat of the combined forces of Egypt, Jordan, and Syria by US-backed Israel in the 1967 Six-Day war.<sup>50</sup> To the despair of Arab people, they are continuously reminded of the US's pro-Israel policy through the development of the Palestine issue.<sup>51</sup> The US military presence on the "holy soil" of Saudi Arabia since the first Gulf war in the early 1990s also inflamed anti-Western feeling.<sup>52</sup> To make matters worse, the US was not free from the suspicion of abusing the Iraq issue for domestic purposes as was the case in the US bombing campaign against Iraq and Afghanistan in 1998 when the US House of Representatives decided to seek to impeach President Clinton for his sex scandals.<sup>53</sup> Since the US and the UK invaded Iraq in 2003 in large measure

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<sup>45</sup> *Ibid.*, p.230.

<sup>46</sup> *Ibid.*, p.230.

<sup>47</sup> *Ibid.*, p.230. For every barrel sold over the period, he further claimed that the US swindled US\$ 135 and the total loss of income has been estimated at US\$ 4 billion a day, thus entitling the 1.2 billion Muslims worldwide to claim US\$ 30 million each in compensation from the US (Jacquard R (2002) *In the Name of Osama Bin Laden*, p.96). According to *The Economist*, this argument seems to make some sense, given that oil prices in the late 1970s equaled US\$ 80 a barrel in today's money ("Pain at the pump", *The Economist*, 22 May 2004, pp.85-86).

<sup>48</sup> Esposito JL, *supra* note 40, pp.80-81.

<sup>49</sup> Fukuyama F, *supra* note 30, p.33. Fukuyama further pointed out that no Arab governments have decided on their own to voluntarily step down in favour of democratic rule, like the Spanish monarchy after the dictator Franco.

<sup>50</sup> Esposito JL, *supra* note 40, pp.83-84.

<sup>51</sup> *Ibid.*, pp.83-84.

<sup>52</sup> On the occasion of the 2<sup>nd</sup> Gulf war in 2003, the US finally withdrew its troops from Saudi Arabia.

<sup>53</sup> Bodansky Y, *supra* note 32, pp.351-355.

on the pretext of preventing the development of WMD, anti-Western feelings seems to have reached a peak. This may be explained, in part, by the fact that the war was fought without any substantial proof of Iraq's development of WMD.<sup>54</sup>

Indeed, where there is no way out to express their despair and no reason to expect any solutions from their own governments, the Muslim masses are thought by some to have no option but to admire and eulogise the Islamist terrorist groups<sup>55</sup> which dare to confront the Western states as well as local authoritarian secular regimes.<sup>56</sup> Moreover, where governments fail to meet the basic needs of their people, Islamist groups sometimes establish their own structures of health, education and welfare provision, in many cases better than governments have been able to deliver.<sup>57</sup>

In addition to increasing popularity, Islamist groups have become more and more emboldened by their continuous victories in Iran in 1979, Lebanon in 1983, Afghanistan in 1989, and Somalia in 1994 where they succeeded in evicting the "Imperialist powers".<sup>58</sup> These Islamist groups have further strengthened their powers since the mid 1990s. In this, the role of Usama bin Laden cannot be overlooked given his ability to use his financial resources and charismatic appeal to unite disparate groups throughout the Muslim world under a common cause to attack the West.<sup>59</sup>

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<sup>54</sup> Duelfer C, "Comprehensive Report of the Special Adviser to the DCI on Iraq's WMD", (30 September 2004) <[http://www.cia.gov/cia/reports/iraq\\_wmd\\_2004/](http://www.cia.gov/cia/reports/iraq_wmd_2004/)>; The BBC News, "US gives up search for Iraq WMD", 12 January 2005.

<sup>55</sup> Retired lieutenant general Asad Durrani of Pakistan, quoted in Bodansky Y, *supra* note 32, p.334.

<sup>56</sup> Islamists continue to weaken or topple the secular regimes as with Pakistan or Egypt. In relation to Pakistan, Benazir Bhutto warned that Islamists try to infiltrate every class of society as follows:

"These Islamist groups are working to try and influence the placing of people within the military, within the intelligence services, within the election commission, and they are creeping towards power in every sphere of the country." (Reeve S, *supra* note 4, p.227).

In the case of Egypt, they employed a bolder tactic as illustrated by the assassination attempt on President Mubarak in 1995 who adopted a strict policy to repress Islamist challenges (Bodansky Y, *supra* note 32, pp.121-133).

<sup>57</sup> Wilkinson P, *supra* note 8, p.35.

<sup>58</sup> The eviction of the Soviet army from Afghanistan by Mujahideens (Islam's holy warriors) in some degree restored the injured self-esteem of the Muslim masses since the 1967 defeat in the Six-Day war. In Somalia, Islamists are said to have been behind the attacks on the US troops, thus forcing them to withdraw. For further details, see, Bodansky Y, *supra* note 32, p.55 and pp.78-90.

<sup>59</sup> Kressel NJ (2002) *Mass Hate: The Global Rise of Genocide and Terror*, p.xiii; Bodansky Y, *supra* note 32, p.404.

## 1.2.2 The importance of financing for modern terrorism

### 1.2.2.1 Context

A common criticism against the effectiveness of a financial war on terrorism is that terrorist operations do not necessarily cost much, and thus the targeting of the financial aspects of terrorist organisations might not be as effective in preventing terrorism as people expect.<sup>60</sup> This argument seems in some sense to hold water, especially given that some modern terrorist organisations tend to adopt a decentralised cell structure, thus eliminating the need for significant financing to maintain their entire organisations.<sup>61</sup>

However, it should be remembered that we are here aiming not at preventing a single terrorist attack but at staving off a transnational mega-trend in our time. Any terrorist groups that are engaged in a sustained and significant campaign, will require some degree of organisation, some training in the special skills of terror-

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The differences between Sunni and Shi'a originated from the position on whether to recognise the legitimacy of the first three caliphs elected after the death of Prophet Muhammed. Sunnis recognise the legitimacy of the three caliphs but Shi'as reject them on the ground that they were not descendants of Muhammed and only when the fourth caliph, the cousin of Muhammed, succeeded the post, the legitimacy was restored. As a result, Shi'as are opposed to all Arab monarchies and secular regimes in that the leadership of the Muslim world should be appointed by divine ordinance. The success of Shi'a was illustrated by the Iran Revolution that overthrew the regime of the Shah (Capitan-chik D, *supra* note 31, pp.118-128). See also, Adams J, *supra* note 9, p.91.

In particular, given that even within the Muslim world different sects have antagonised and competed with each other as illustrated by the rivalry between Sunni and Shi'a, Usama bin Laden's capacity to unite disparate groups in a common cause to attack the West is worthy of note. See, Richardson L (2002) "Global Rebels: Terrorist Organisations as Trans-National Actors". In: Howard RD, Sawyer RL (eds), *supra* note 12, pp.72-73; Reeve S, *supra* note 4, pp.224-225.

<sup>60</sup> Navias MS, "Financial Warfare as a Response to International Terrorism". In: Freedman L (ed) *supra* note 35, p.69; Gunaratna R, *supra* note 32, pp.64-65; US Department of States, "International Narcotics Control Strategy Report", March 2002, p.XII-5.

<sup>61</sup> The cell structure has many strong points. First of all, since cells do not know each other, even if a cell gets caught, other cells would not be affected and proceed with their work normally. Moreover, individual cells usually finance themselves, and thus financial needs are not so big as they are in a traditional hierarchical organisation. Furthermore, even a single cell might constitute an individual terrorist group. Therefore, sometimes, this cell structure is compared to the "Hydra". For further details, see, e.g., Gunaratna R, *supra* note 32, p.76; Arquilla J, Ronfeldt D, Zanini M (2002) "Networks, Netwar, and Information-Age Terrorism". In: Howard RD, Sawyer RL (eds) *supra* note 12, pp.102-103; Wilkinson P (1986) "Fighting the Hydra". In: O'Sullivan N (ed), *supra* note 31, p.210.

ism, as well as weapons, and other supplies.<sup>62</sup> Furthermore, given the grand goals of major terrorist groups, which include, for example, the reestablishment of a Caliphate from North Africa to Central and Southeast Asia, it goes without saying that global, long-term coordination among various groups and support for each other would be necessary to realise their aims.<sup>63</sup> This course of action would inevitably require constant and reliable funding sources.<sup>64</sup> A glimpse into the financial structure of Al-Qaida, the most successful terrorist organisation with the broadest cell network yet known,<sup>65</sup> confirms the old premise that “there is no successful organisation without successful financing”.<sup>66</sup> Indeed, it has built the most complex, robust and resilient financial network yet seen, as acknowledged by Western intelligence agencies.<sup>67</sup> This success in financial management was possible with Al-Qaida’s policy placing a high priority on sustained generation and investment of funds.<sup>68</sup> Usama bin Laden seems to clearly understand that money facilitates and speeds the growth and self-sufficiency of the jihad he has instigated.<sup>69</sup>

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<sup>62</sup> Wilkinson P, *supra* note 8, p.62. See also, Bell RE (2003) “The Confiscation, Forfeiture and Disruption of Terrorist Finances”, *Journal of Money Laundering Control*, vol.7, no.2, p.105.

<sup>63</sup> Robbins JS, *supra* note 32, pp.354-355; Gunaratna R, *supra* note 32, pp.88-89.

<sup>64</sup> The importance of financing of terrorism was also hinted by Usama bin Laden himself in an interview by *al-Quds a-Arabi*, a Arab newspaper:

“If we wanted small actions, the matter would have been easily carried out. But the nature of the battle calls for operations of a specific type that will make an impact on the enemy, and this, of course, calls for excellent preparation.”(recited from Bodansky Y, *supra* note 32, p.326).

<sup>65</sup> Along with his doctrinal flexibility, bin Laden has attracted widespread support due to his anti-Western and anti-Israeli rhetoric. Moreover, he has advocated pan-Islamic unity rather than just pan-Arabism. See, Gunaratna R, *supra* note 32, pp.86-87.

<sup>66</sup> The best success story of an old-style terrorist group is the case of the PLO. Its survival and transition to mainstream politics were primarily due to its skillful handling of finances. Initially, the PLO depended on donations from other Arab countries but a prudent and clever handling of long-term investment transformed it into a financial colossus in the Middle East that cannot be ignored any more. See, Napoleoni L, *supra* note 33, p.63. As of 1999, the PLO was said to possess assets worthy of US\$ 58 billion. See, Ehrenfeld R “Intifada Gives Cover to Arafat’s Graft and Fraud”, *Insight on the news*, 16 July 2001.

<sup>67</sup> Gunaratna R, *supra* note 32, p.61.

<sup>68</sup> *Ibid.*, p.61. Rohan Gunaratna explains that Al-Qaida’s finance and business committee which consists of professional bankers, accountants, and financiers, manages the group’s funds across continents.

<sup>69</sup> Anonymous (2003) *Through Our Enemy’s Eyes: Osama bin Laden, Radical Islam, and the Future of America*, p.32.



### 1.2.2.2 Various needs for financing

Although currently published data is not conclusive, it helps us to understand the importance of financing in strengthening the overall capacity of modern terrorist groups. For the purpose of facilitating the understanding of various needs for financing, terrorist organisations can be classified into two simple categories depending on whether they have a specific constituency or not. While most of both *religious* terrorist groups and *secular* terrorist groups are tied to their specific constituencies such as Hamas of Palestine, the Islamic Movement of Uzbekistan (IMU), Abu Sayyaf of the Philippines, and the FARC of Colombia, some modern religious terrorist groups such as Al-Qaida, a transnational revolutionary movement, do not have any fixed constituencies. Despite this distinction, what both types of terrorist organisations have in common is that they need money, typically for spending on recruiting and training, the procurement of weaponry and the launching of operations. However, importantly, terrorist groups without any specific constituency tend to need financing for more strategic and broader causes.<sup>70</sup> With this basic difference in mind, let us proceed to examine the financing needs of modern terrorist groups.

Firstly, solid financing is necessary for the purpose of recruiting and training. Numerous cases can be identified to confirm the importance of this dimension. For instance, Al-Qaida was reported to have had 70,000 Islamist militants trained in its camps in Afghanistan prior to 9/11.<sup>71</sup> In the Philippines, the Abu Sayyaf group, one of the most violent Islamist separatist groups,<sup>72</sup> was once suffering financial difficulty, and its armed militants reduced to only 200.<sup>73</sup> However, after raising US\$ 5.5million through kidnapping in 2000, the Abu Sayyaf's ranks expanded to at least 3,000.<sup>74</sup> According to Philippine intelligence sources, Abu Sayyaf paid US\$ 1,100 to its militants. In a desperately poor area with high unemployment, Abu Sayyaf has become the single biggest employer.<sup>75</sup> In Uzbekistan,

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<sup>70</sup> Since 1998, Al-Qaida consists of three major parts: a pyramidal structure to facilitate strategic and tactical direction; a global cell network; a base force for guerrilla warfare inside Afghanistan. Among these parts, the pyramidal structure is the brain of the entire organisation and is made up of four committees: a military committee, a finance and business committee, a *fatwa* and Islamic study committee; and, a media and publicity committee. See, Gunaratna R, *supra* note 32, p.57.

<sup>71</sup> "Bin Laden's martyrs for the cause", *Financial Times*, 28 November 2001.

<sup>72</sup> Unlike other terrorist groups in the Philippines, Abu Sayyaf clearly belongs to the world of Islamism. For a comparison of the Islamist terrorist groups in the Philippines, see, Yom SL (Fall 2001) "Abu Sayyaf in the Philippines: More Than Just Criminal", *CSIS Prospectus*, vol. 2, no. 3.

<sup>73</sup> Shahar, Y., "Libya and the Jolo Hostage: Seeking a new image, or polishing the old one?", *International Policy Institute for Counter-Terrorism*, 20 August 2000.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

the IMU which aims at establishing an Islamic state there, is reported to be a major employer in the region, paying its men between US\$ 100-500 a month.<sup>76</sup> Young men in the poverty-stricken local area have no choice but either to go to Russia to look for work or to join the IMU.<sup>77</sup> Indeed, this terrorist group seems to greatly benefit from its financial ability in promoting its cause. In Palestine, the more extreme examples can be noted in relation to recruitment of suicide bombers in the occupied territories who are reported to be given US\$ 30,000 for their families. The money comes mostly from outside sponsors such as charitable organisations, groups of sympathisers or foreign regimes.<sup>78</sup> In Colombia, the FARC and M19 (Movimiento 19 Abril) were struggling to survive on an income from armed robbery and the kidnapping of local businessmen until 1980.<sup>79</sup> The number of their followers dropped to around 200, and recruitment was at a standstill since there was no cash for salaries, and the leaders of the two organisations predicted the end of their campaign.<sup>80</sup> However, in 1981, the FARC and M19 struck a deal with the Colombian drug mafia; they would provide armed protection against the army in exchange for a share in the coca profits.<sup>81</sup> By 1984, the FARC and M19 were said to earn US\$ 150 million a year from the business of protecting drug traffickers.<sup>82</sup> A large percentage of the profits were spent on recruitment, so that by 1988 both groups commanded a combined militia of 10,000 people, large enough to be feared by the government.<sup>83</sup>

Secondly, terrorist groups attempt to get access to a stock of weaponry. For instance, Usama bin Laden has paid attention to “high-tech” conventional weaponry such as surface-to-air missiles (SAM). Since 1998, there has been something of a race between Usama bin Laden and the Pentagon, with the latter trying to recover all the Stinger missile launchers that had been distributed during the war in Afghanistan.<sup>84</sup> If the American military offered US\$ 100,000 for a Stinger, Usama bin Laden was said to offer twice that.<sup>85</sup> The current black market price is said to

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<sup>76</sup> Ahmed R (2002) *Jihad: The Rise of Militant Islam in Central Asia*, p.163.

<sup>77</sup> *Ibid.*

<sup>78</sup> Goldberg S, “The Man behind the Suicide Bombers”, *Guardian*, 12 June 2002.

<sup>79</sup> Adams J, *supra* note 9, p.303

<sup>80</sup> *Ibid.*, p.303.

<sup>81</sup> The FARC levied a 10 per cent protection tax on all coca growers in areas under its control.

<sup>82</sup> *Ibid.*, p.303.

<sup>83</sup> Adams J, *supra* note 9, p.303. It is said to cost about US\$ 75 million a year to equip a militia army of 10,000 troops with light arms (Block R, Doyle L, “Drug Profits Funds Weapons for Balkans”, *Independent*, 10 December 1993).

<sup>84</sup> Jacquard R, *supra* note 47, p.127.

<sup>85</sup> *Ibid.*, p.127.