

CAIMUN 2018

CANADA INTERNATIONAL MODEL UNITED NATIONS



UNODC

Backgrounder

Topic B: Money Laundering and the
Financing of Terrorism

Introduction

Organized criminal activity such as human or drug trafficking is a problem in and of itself, but an even more disturbing trend has emerged as of late, where terrorist groups are employing these tactics themselves to build financial empires with the purpose of undermining public safety and international economic stability.¹

Since the 1980s, law enforcement at all levels has been focused on anti-money-laundering strategy. Beginning with the challenge posed by drug cartels like the Medellin and Cali cartels of Columbia, international response has been swift. In fact, one of the instruments employed by the United Nations, and specifically the UNODC, has already been discussed: the 1988 United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances.

In general however, these tactics focused on one flaw deemed to be the Achilles Heel of organized crime at the time: “their need to utilize the legal channels of the banking and financial system to transfer funds and disguise the origin of assets.”² It seemed that by focusing on the market where these funds would be transferred, law enforcement could be more targeted, effective, and safe.

However, a wake up call would present itself on September 11th of 2001, when an Al-Qaeda attack would result in nearly 3,000 deaths and \$10 billion in infrastructure and property damage.³ The attack proved that prior efforts to track terrorist money had been ineffective in this situation, and added to the growing concern that the tactics implemented in the 1980s were no longer relevant in an increasingly globalized world.

With different laws in countries around the world regarding topics like shell companies, offshore bank facades, and the ownership of suspicious assets,⁴ it seems that tracking criminal money is as hard as ever.

Timeline

1985

Air India Flight 182 operating on the Toronto-Montreal-London-Delhi route crashes as a result of an aviation bombing masterminded by the Babbar Khalsa Society.

1988

United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances is made.

1988

Political Declaration and Action Plan Against Money Laundering.

1990

Financial Action Task Force (FATF) 40 Recommendations.

1 <https://www.imf.org/external/np/leg/sem/2002/cdmfl/eng/thony.pdf>

2 Ibid.

3 https://en.wikipedia.org/wiki/September_11_attacks#Planning

4 <https://www.imf.org/external/np/leg/sem/2002/cdmfl/eng/thony.pdf>

1996

Babbar Khalsa Society's charitable status is revoked by Canada.

1998

United Nations' Special Assembly Session, Political Declaration and Action Plan against Money Laundering.

1999

International Convention for the Suppression of the Financing of Terrorism is held.

2000

United Nations Convention Against Transnational Organized Crime is made.

2001

September 11th, 2001 attacks on the World Trade Center complex in New York City occurs.

2002

International Convention for the Suppression of the Financing of Terrorism (2002) requires Member States to take measures to protect their financial systems from being misused by persons planning or engaged in terrorist activities.⁵

2006

UN General Assembly Resolution 60/288 (Sep. 2006) enhances national, regional and international efforts to counter terrorism.⁶

Historical Analysis

Understanding how to tackle this problem first requires one to see the money laundering process through the eyes of the perpetrator, and in effect, the process is quite logical.

Organized crime is in the business of making profit, and as such, basic economic principles apply: these schemes are heavily reliant on systemic, scaled operation. But with large scale comes problems, and sudden unexplained wealth along with copious amounts of uneasily hidden or utilized cash raises suspicion for investigators.

The result is a need for a way to eliminate the connection between the money generated and any form of crime, a method by which to hide the true owner of the new, clean money, and finally a way to store the money in such a way that confiscation/seizure is implausible.

Based on this knowledge, money laundering can be broken down into three distinct phases that have been widely used to understand the very nature behind the operation:

1. Phase 1: Introduction of funds gained from criminal activity into the banking and financial system⁷

⁵ <https://egmontgroup.org/en/content/money-laundering-and-financing-terrorism>

⁶ Ibid

⁷ <https://www.imf.org/external/np/leg/sem/2002/cdmfl/eng/thony.pdf>

Recently, this phase has become increasingly difficult with the heightened focus given to movement of cash and the fact that in general, banks are required by law to report suspicious transactions.

2. Phase 2: Putting funds that have entered the financial system through a series of financial operations⁸

With the purpose of misleading investigators as to the origination of the funds, this phase uses offshore mechanisms heavily. To make the money seem of legal origin, financial havens, launderers' banks, false invoices, false loans, and other mechanisms are employed.⁹

3. Phase 3: Reintroduction into the legal economy

In general, there are three ways through which this is done:

- “Consumption of luxury items;
- Investment in commonplace assets (i.e. stock market shares, real estate holdings, etc.);
- Investment in economic entities susceptible to becoming money laundering machines (i.e. casinos, hotels, restaurants, cinemas, etc.)”¹⁰

Essentially all mediums through which the “dirty money” can be quickly burned and turned into legal assets.

General and simplistic, this overview of the money laundering process is the basis behind most schemes. However, the challenge that policy makers face is the ingenuity and complexity that can be found in some of the systems implemented around the world today.

Terrorism and Money Laundering

There is in fact a distinction to be made between the laundering of criminal funds and the financing of terrorism. Inherently, the purpose of laundering money is to make money of illicit origin appear legal; however, financing is not necessarily the same. Instead, it is defined to involve the obscuring of assets of legal origin. Different in theory, the gap is much smaller in practice.

Although the money must not necessarily be illicit in origin, the money that finances terrorist activities often is. Loretta Napoleoni, an expert on terrorist financing, discussed how the largest source of terrorist income is the illicit drug trade.¹¹ It may also come as a surprise to some that counterfeit sales have emerged as a major source as well. It's interesting to look at specific cases, like the 1993 World Trade Center bombing and the 2004 Madrid train bombings, where counterfeit t-shirts sold on New York City's Broadway and counterfeit CDs and trafficked drugs were sources of funding for each event respectively.¹²

8 Ibid

9 Ibid

10 Ibid

11 <https://www.cfr.org/background/tracking-down-terrorist-financing>

12 Ibid

In addition, separating the two practices becomes increasingly pointless when criminal and terrorist groups seem to unite rather often. Analyzing objectives alone, its not uncommon for them to seem convergent. After all, criminal organizations benefit from the destruction terrorist groups inflict economically and in the public domain, and in return, terrorist organizations are able to fully take advantage of the funds provided by those very same organized crime groups. Looking at the relative locations between terrorist/guerrilla groups and drug-trafficking hotspots, this relationship is made clearer. The Revolutionary Armed Forces of Columbia are almost exclusively found in areas tied to cocaine production. Al-Qaeda and Khun Sa Rebels have concentrated their military actions in some of the largest opium producing regions.

The link between organized crime and terrorism is undeniable, and something that needs to be continued to investigated if policymakers hope to achieve an overarching solution that effectively tackles each problem.

The Financing of Terrorism

Discussed briefly previously, the funding of terrorism is diverse, with each source having specific consequences for policy making. By far the largest source of money for terrorist activity is the illicit drug trade, but the other sources cannot be ignored: human trafficking, precious stone trafficking, counterfeit goods, racketeering, abductions with ransoms, etc.¹³

One omission from this list that might be glaring to some is arms trafficking, but the complexity of the issue is the reason for it. This trade can't be solely treated as a method of funding, as it acts as a medium of exchange as well as a resource in and of itself.

However, it really isn't all too long ago that the chief source of financing for many terrorist groups were governments themselves. During the Cold War period, battlefields for the two blocs were often the location of regional conflicts, making it ripe opportunity for terrorists to destabilize the other bloc. Since the end of the Cold War, this source of financing has become far less lucrative for these terrorist organizations, but still, isolated states continue to provide weapons, training, and financing in terms of support.¹⁴

A more recent outlook sees charitable organizations becoming an ever more common culprit. Close to home, many Canadians and Indians alike will remember the bombing of Air India Flight 182 in June of 1985, which was on route to Canada. After a lengthy investigation, Babbar Khalsa Society, a militant organization dedicated to the establishment of an independent state in Northern India, and its members were found to have taken part in the planning of the terror act.¹⁵ Most shocking however, it was revealed that the Society had been granted charitable status in Canada, and it wasn't until 1996 when funds were suspected of being diverted to Sikh militants in India that it was revoked.

There are many more similar cases; for example, the Benevolence International Fund and its links to al-Qaeda, as identified by the U.S. Treasury Department and the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), reported that one third of its case disclosures related to "terrorist financing and other threats to the security of Canada" involve non-profit

¹³ Ibid

¹⁴ Ibid

¹⁵ https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1109&context=fac_pubs

organizations.¹⁶

In response to the widespread funding of terrorist organizations by non-profit organizations/charities, the Financial Action Task Force (FATF) adopted in 2001 Special Recommendation VIII – calling upon countries to review their laws and regulations relating to entities potentially susceptible to being involved in the financing of terrorism while maintaining the ease and practice of charity.¹⁷ However, like many broad, general statements involved in key policy, the FATF has found it difficult to implement the Special Recommendation.

Since then, numerous conventions have been signed, many of them tackling areas the original FATF SR VIII couldn't with varied success.

Current Situation

Today, the international framework for the fight against money-laundering and the financing of terrorism generally involves four distinct ideas: prevention of wealth accumulation, targeting the means of laundering, involvement of the financial/banking sector, and increased focus on creating legal basis internationally.

In general, all the above can still be summed up in three main objectives: protecting the global financial systems, preventing the funds amassed by criminals from being utilized in the economy, and stopping criminal and terrorist organizations alike from using any economic power gained to enact terror or harass civilians. Knowing this, it becomes logical that the modern, preferred method of attacking crime – unlike initiatives like Ronald Reagan's "war on drugs" – are focused on combating money from crime more so than the crime itself. It also makes sense intuitively because attacking the money indirectly results in the suppression of profitable, criminal activity. It's intuitive, but also feasible, since unlike traditional instruments which criminal organizations employ to attain their goals (blackmail, violence, racketeering, etc.) these groups are forced to use legal channels/methods to make the funds appear of legal origin.

This then ties directly into the second point: the involvement of the financial/banking sector in any strategy. The legal channels/methods that were referred to previously involve the financial sector, and specifically corporate and banking law. Therefore, any strategy to tackle the means of money-laundering must involve legislative action taken by the government. Today, this legislative action takes three main forms: prevention, detection, and suppression. Prevention means specific legislation designed to identify the origination of funds, and place certain limitations on transactions typically utilized as mediums for laundering activity. Detection is legislation that will widen the jurisdiction of law enforcement – especially through special investigative measures (like access to communication networks) – and place greater responsibility for reporting suspicious activity on the shoulders of enforcement bodies. Finally, suppression is policy that puts into place methods of confiscation, freezing/seizure of assets, and other complements to enforcement discussed earlier.

These three main strategies are highly important because of how often money-laundering will use channels outside the nation's sphere of influence/jurisdiction. The main issue with this is

¹⁶ Ibid

¹⁷ <https://www.un.org/counterterrorism/ctitf/en/charities-project>

not that authorities can't act using policy previously implemented to combat money-laundering schemes, but rather that they don't have the necessary information to do so. Conversely, financial institutions have the necessary information to act, but not the ability to do so as written in law.

This point is further exacerbated by the strict client confidentiality agreements that banks have with customers, leaving many potential cases of money-laundering hidden from the eyes of governments. In addition, the individual knowledge of the bank and law enforcement alone often cannot identify transactions with the purpose of laundering money, since often times, the key is not in the nature of the transaction itself, but the external factors that go along with it – such as the nationality of the customer, transaction history, connections between transaction and previous economic activity, and many other behavioral patterns that can be analyzed.

The question then is how a balance can be reached between allowing the continued, effective functioning of the financial system while still allowing law enforcement to attain the necessary information to prevent crime. So far, the solution has been Financial Intelligence Units (FIUs). These are “national centre[s] for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and financing of terrorism, and for the dissemination of the results of that analysis.”¹⁸ However, new and fresh takes on solutions to this problem are still needed.

UN/International Involvement

The 1988 Convention

For the first time, a convention was focused more so on the prevention of all organized crime versus the direct repression of drug trafficking, and this came in the form of the 1988 United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances. In the phrase, “illicit drug traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels,” the Convention also became the first to treat the proceeds of crime as a medium through which to tackle the problem of organized crime.¹⁹

Perhaps most importantly, the Convention pushed for international cooperation to mitigate slowness and ineffectiveness of any solutions. It called for limits on refusals to cooperate in bad faith and expanded the area within which governments can cooperate with regards to international confiscation/seizure/freezing of assets.²⁰

The OECD Convention on Corruption

This Convention on Combating Bribery of Foreign Public Officials in International Business Transactions took effect in 1999 with the goal of protecting international trade by eliminating corruption and maintaining equality in trade opportunity.

18 <https://egmontgroup.org/en/content/financial-intelligence-units-fius>

19 <https://www.imf.org/external/np/leg/sem/2002/cdmfi/eng/thony.pdf>

20 Ibid

In particular, the articles of the convention called for the corruption of foreign public officials to be made a criminal violation on the same level as it would for a national official in terms of the implementation of “effective, proportionate, and dissuasive” sanctions.

Like the 1988 Convention, the OECD Convention further discussed the need for the “harmonization of legislation” or at least a “function equivalent” with regards to the verification of financial accounts and judicial action.²¹ It also provided a basic structure for territorial jurisdiction to help accommodate transnational cooperation in the future.

The Palermo Convention Against Transnational Organized Crime

The first of its kind designed to address transnational organized crime, it was a multi-purpose instrument designed to tackle the treatment of individuals, trafficking of migrants, and the illegal manufacturing/trafficking of arms.²²

The articles of the Convention that were most impactful called for financial institutions to implement regulatory regimes designed to detect/deter all money-laundering – especially the reporting and identifying of suspicious clients.²³ As well, it called for a financial information service that would supervise international capital transfers.²⁴

Although the Convention was signed by 147 states, ultimately only 28 of those 147 have ratified it.²⁵

The Convention for the Suppression of the Financing of Terrorism

Originally launched in 1999, this convention established much of what modern international strategy against the financing of terrorism looks like. Before the events of September 11th in 2001, the articles and recommendations generated little controversy, but soon after, the issues were brought to light and cooperation among nations was deemed to be of the utmost importance moving forward.

Interestingly, this convention defined money-laundering to be much broader than ever – encompassing “originators” as well as the eventual users of the funds.²⁶ The term “originators” refers to the legal entities, associations, and companies – providing money of legal or illegal origin – with knowledge/view of a terrorist act being carried out.²⁷ In fact, it also notes that whether or not the funds have been used is irrelevant to whether the offense exists.

In addition to increasing the breadth of a money-laundering offense, the Convention also provided an additional definition of terrorist action: “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 and context, is to intimidate a

21 Ibid

22 Ibid

23 Ibid

24 Ibid

25 Ibid

26 Ibid

27 Ibid

population or to compel a government or an international organization to do or abstain from doing any act.”²⁸

The most important aspect of this Convention was the emphasis placed on offshore finance loopholes. Unlike any previous or current instrument/initiative, it included articles that specifically mentioned strategies to combat the establishment of shell companies (ones not adhering to the customary standards involving commercial companies).²⁹ It specifically states “that financial institutions, when necessary, take measures to verify the legal existence and structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer’s name, legal form, address, directors and provisions regulating the power to bind the entity.”³⁰

The Financial Action Task Force “40 Recommendations”

Created in 1989 at a G7 Summit, the FATF submitted a report that detailed a new plan to strengthen the fight against money-laundering.³¹ 40 recommendations in total, the three main objectives were:

1. “Improve national systems to combat money-laundering”³²
2. “Strengthen the role of the financial system”³³
3. “Strengthen international cooperation”³⁴

The first point specifically focused on setting up systems that would criminalize all money-laundering crime, including but not limited to those associated with drugs, and creating effective systems of confiscation. The second point was defined to include both banking and non-banking financial institutions, and called upon these institutions to more actively identify suspicious clients and transactions, and incorporate more modern, secure transaction methods/techniques.

The final point has been seen in numerous conventions, and again focuses on the exchange of information at the judicial level to assist investigation, seizure, confiscation, and extradition. Revised in 1996, eight new recommendations were added after the September 11, 2001 attacks, focusing more specifically on the link between terrorism and money-laundering. They called upon nations to:

- “Take immediate steps to ratify and fully implement the 1999 United Nations Convention for the Suppression of the Financing of Terrorism, as well as United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373;
- Criminalize the financing of terrorism, terrorist acts and terrorist organizations;
- Freeze without delay funds or other assets of terrorists and those who finance terrorism and terrorist organizations;
- Require that financial institutions or other entities subject to anti-money laundering

28 Ibid

29 Ibid

30 Ibid

31 Ibid

32 Ibid

33 Ibid

34 Ibid

obligations report their suspicions to the competent authorities, when they suspect that funds may be linked, related to, or are to be used for financing terrorism, terrorist acts or terrorist organizations;

- Afford other countries the greatest possible assistance in connection with criminal, civil or administrative inquiries, investigations or proceedings in this area;
- Ensure that they do not provide safe havens for individuals being sought for financing terrorist, terrorist acts or terrorist organizations;
- Institute supervisory measures applicable to individuals or legal entities that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, particularly “Hawala” networks;
- Require financial institutions, including money remitters, to include accurate and originator information (name, address and account number) on fund transfers and related messages that are sent, and
- Give particular attention to non-profit organizations, such as charitable organizations, that can be used or exploited by terrorist organizations.”³⁵

Potential Solutions

Financial Crime Risk Management Systems

Already being implemented, these systems act as global hubs of information that are accessible to a multitude of nations, financial institutions, and law enforcement agents so that coordinated action can be taken against the schemes commonly seen in the markets today. The challenge with these, as we have seen over the last few years, is an inability to navigate around policies, jurisdictional concerns, and an unwillingness of major financial institutions to reveal client information.

“Intelligent” Anti-Money Laundering Solutions

In addition to hubs of information accessible to many institutions and states, products have been made available - like NICE’s - that are available to financial institutions specifically. They are computerized systems that monitor markets, use analytics, and ultimately alert institutions to potential laundering with the ultimate goal of reducing costs.

Although these systems in theory prevent money laundering, they do take law enforcement and other agencies out of the loop, leaving delegates with the question as to whether uniform implementation of systems such as these are enough.

Education

One of the most problematic aspects of the money laundering problem and its link to terrorism is the fact that everyday civilians are often unknowingly involved. In 2015, the European Commission unveiled an Action Plan “Package” that outlined ways for not only the authorities, but everyone to be more aware and proactive about the problem.³⁶

For delegates, education is often a solution that is leaned back upon, but this is for good reason. Any solution will need to involve some sort of education that informs the general public of steps that should be taken.

³⁵ Ibid

³⁶ <http://www.bmmagazine.co.uk/in-business/advice/6-ways-prevent-money-laundering/>

Bloc Positions

North America

For delegates of this bloc, the concern is primarily the lack of regulation in other countries where infractions typically take place - with ramifications on the continent. Offshore havens and financial institutions with lax policies compared to those present within the continent often allow for laundering and financing to continue to take place despite domestic policies. These delegates will look favourably upon uniform financial regulations and increased pressure put on countries typically seen as offshore havens to take steps towards solving the issue.

Asia

Money laundering in Asia is a major concern, and the Asia/Pacific Group on Money Laundering was set up specifically for this reason. Since its creation however, the problem has considerably lessened in severity; going forwards, there is an increased emphasis on continuing to work with agencies like INTERPOL.

Delegates of the Asian bloc will seek solutions that break down barriers and place less emphasis on specific nations, but more so on the collective.

Middle East

Managing the terrorism financing problem in this area has been particularly challenging for authorities, and having to deal with sanctions imposed by the likes of the United States has complicated it even more so. There have been numerous cases in recent times where the U.S. has accused individuals in certain nations of conducting suspicious activities that violate the terms of the sanctions.

For the Middle East in particular, the informal economy constitutes such a large portion of the economy that collection of data and monitoring of transactions is next to impossible. It is essential going forward that these nations look to the UNODC to implement changes that give the government more information and power to take action against these individuals.

Latin America

Perhaps the greatest problems in the Latin American countries today with regards to money laundering and the financing of terrorism is corruption of law enforcement. Reports from the previously mentioned Financial Action Task Force (FATF) have repeatedly pointed to a need for increased government proactiveness and intervention in the fighting of money laundering to offset the damage done by previous administrations, institutionalized corruption, and lax policies on self reporting. For these countries, the key will be to challenge other blocs on the point that the problem is completely self created, and instead look for a balance that focuses on implementing stricter policies within, but also tackling the problem of global law enforcement corruption.

Africa

Africa has long faced problems with regards to terrorism and money laundering, and it should be known by delegates that there have been many measures taken all over the continent to combat it to date. There should be a focus on reading up on meetings like GIABA (Intergovernmental Action Group Against Money Laundering in West Africa), with a focus on the need for revamping

the criminal justice system and law enforcement. African nations will look to tackle this problem through a strengthening and unification of global judicial system processes as well as through an enforcement standpoint.

Discussion Questions

1. Will solutions need to be specifically tailored towards either money laundering or terrorist financing, or will they be inherently similar?
2. To what extent should client privacy be a consideration of bank and non-bank financial institutions when it comes to suspicious cases?
3. How will jurisdiction across nations be considered, and how much will nations be willing to cooperate and share intelligence?
4. With the numerous conventions signed in the past, and the problem still persistent in modern times, what will new solutions include that will lead to different results?
5. Many of the conventions in the past were signed by nations, but few were fully ratified. Will this need to be addressed?
6. Offshore, financial havens are abundant. How will solutions distinguish between legitimate and illegitimate use of these institutions?

Further Resources

- Offshore Money-Laundering Activity: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/595371/IPOL_STU\(2017\)595371_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/595371/IPOL_STU(2017)595371_EN.pdf)
- Summary of Previous Conventions Related to the Topic: <https://egmontgroup.org/en/content/money-laundering-and-financing-terrorism>
- Canadian Proceeds of Crime and Terrorist Financing Act: <http://laws-lois.justice.gc.ca/eng/acts/P-24.501/>
- U.S. Department of State Global Threat Analysis: <https://www.state.gov/j/inl/rls/nrcrpt/2003/vol2/html/29843.htm>

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