ANALYSIS

The Confiscation, Forfeiture and Disruption of Terrorist Finances

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INTRODUCTION

Following the September 2001 attacks in New York and Washington DC, the UK’s Prime Minister urged the world to ‘rethink dramatically’ how it fights terrorism and one of the issues being revisited is terrorist finance. Just as there have been attempts to deprive organised crime of its finance, so too attempts to deprive terrorist organisations of their working capital are therefore receiving increased attention.

Terrorist organisations are clearly a species of organised crime. Instead of being motivated by profit, however, they are motivated by ideological or political ends; since behind most terrorist offences will usually lie a desire to obtain publicity for a cause or to achieve political objectives. The obtaining of money will be a subsidiary objective, a means to an end rather than an end in itself. Terrorist groups may therefore be described as ‘not-for-profit organised crime groups’.3

This paper uses open source material to examine the ways in which terrorist groups raise and launder their finances and then considers strategies by which their financial affairs may be disrupted.

THE COSTS OF TERRORIST CAMPAIGNS

The cost of mounting a terrorist campaign will depend on a number of factors, including the size of the group and the nature and extent of the campaign.

The size of a terrorist group may affect its financial requirements since smaller groups, for example those perpetrating ‘animal rights’ terrorism, may require more limited finance than larger organisations. The finance necessary to carry out violent attacks on persons or property may only amount to a small proportion of the funds needed to finance the running costs of the organisation as a whole. Terrorist groups, like all other organisations, require money to pay for their infrastructures. Larger terrorist groups may require greater amounts of finance to recruit and train their members. In any business, employees’ skills need to be developed and the investment in terrorist competences is likely to have a financial cost. Business costs may be divided into fixed and variable costs and the fixed costs of a larger terrorist group will be larger than those of a smaller one. There may, for example, be a need for an organisation to provide financial aid to their prisoners’ families without which aid, supporters’ commitment might wane.

The nature of a terrorist organisation’s campaign will also affect its financial requirements. While individual terrorist acts, for example the hijacking and setting alight of a bus, may not require significant finance, a sustained terrorist campaign may do so. For example, over the past 30 years various terrorist organisations in Northern Ireland have carried out sustained campaigns and to achieve this they have required significant finance. The purchase of weapons, particularly sophisticated ones, will often represent a significant expense. The cost of obtaining weapons of mass destruction would inevitably exceed that of constructing car bombs. Mounting operations in a foreign jurisdiction is likely to be more expensive than conducting operations in a domestic one. A terrorist organisation may also spend a proportion of its total income on political activities in order to gain or retain popular support. Such factors may lead to a distinction between ‘low-cost’ terrorism and ‘high-cost’ terrorism.

To assemble and train the terrorist team for the 11th September operation required considerable financial resources. One member reportedly paid for 12 hours’ flight training at $88 per hour and then followed this by enrolling in a Florida flight school, paying $10,000 by cheque, finally training at other flight schools on bigger planes and spending $1,500 for three hours in a Boeing 727 simulator.7 Investigators discovered that, while two of the members...
had lived for five years in Hamburg where they had been enrolled as electronics students, they had had no student grants and had not claimed state benefits. When five of the suspects attempted to buy mobile telephones, they were initially refused because they offered no form of identification but staff relented when they offered $3,000 in cash. Accommodation in the USA for one suspect cost $1,400 per month. In total, over $500,000 in overseas funding was transferred into bank accounts used by the hijackers. Of course, by comparison, many al-Qaeda attacks were carried out on a much more limited budget and the 1993 World Trade Centre bombing is believed to have cost $20,000.

**SOURCES OF TERRORIST FUNDING**

Sources of terrorist finance may conveniently be divided into four distinct areas. First, organisations may depend on contributions from sympathisers. Al-Qaeda is believed to gather large donations from wealthy contributors and smaller contributions from Islamic militants. The Indian Government believes that more than £6m is sent from Britain annually to groups with links to al-Qaeda. Collecting tins may be passed around on behalf of terrorist groups in situations where there is considerable social pressure to give and there have been reports that such fund raising occurs in the USA and Great Britain for Irish republican terrorist groups. Collecting methodologies may, of course, be more high-tech. The military wing of Hamas launched a website appeal for funds to buy weapons and explosives, noting that a Kalashnikov costs $2,000 while an explosive belt for a suicide bomber costs less than $150. The FBI was said to have caused the closure of a website which provided addresses to which donations for the Real IRA (Irish Republican Army) could be forwarded. Donors may not always know exactly to what cause their donations are being given as there is evidence that donations are sometimes sought for ostensibly legal and charitable purposes and then diverted to terrorist ends.

Secondly, groups may use finance that is derived from crime. Any acquisitive crime can be used to fund terrorist organisations. Terrorist activities in Northern Ireland have been funded through crimes as varied as theft and handling stolen goods, blackmail, robbery, the misuse of the tax-exemption scheme used by sub-contractors in the building industry, counterfeiting, gaming rackets, cross-border smuggling and fraudulent insurance claims. Criminal proceeds are also said to have been a significant source of al-Qaeda’s income. Some al-Qaeda members have supported themselves via petty crime such as credit card fraud and benefit fraud. Other terrorist groups reportedly benefited from frauds on the Department of Education’s Individual Learning Accounts programme. It is also alleged that al-Qaeda was partly financed by trafficking in heroin culled from the Afghan poppy fields and that UK and German al-Qaeda cells raised money by street-level drug dealing. In Ireland, the IRA has reportedly stayed out of direct drug trafficking, preferring to receive protection money from drug dealers, while loyalist paramilitary groups are said to control most organised criminal activity, including street-level drug dealing, in certain neighbourhoods. Where terrorist finance is derived from criminal proceeds, members of small cells may spend more time and energy committing crime for the purposes of raising finance than in direct terrorist activities.

Thirdly, terrorist groups may depend on finance from legal businesses which may or may not have used illegal funds as start-up capital. If terrorist groups are allowed to establish and operate such businesses they can embed these into a country’s financial infrastructure. Bin Laden’s alleged investments read like those of a multinational corporation. His organisation is alleged to have invested in forestry in Turkey, agricultural holdings in Tajikistan, diamond trading in Africa, and ostrich farming in Kenya. Bin Laden also reportedly owns a substantial portion of a legitimate manufacturing company and a shipping fleet under a variety of flags of convenience. Businesses as generators of revenue suffer, however, from the weakness that they are subject to market forces and normal commercial risks. In a 1996 interview bin Laden claimed to have lost more than $150m on farming and construction projects in Sudan. Although bin Laden, a former student of finance and economics, was independently wealthy, having inherited allegedly as much as $300m, it is suggested that these failed Sudanese business deals may have lost him much of his wealth and that he may also have lost much when Saudi Arabia froze his assets, thus leaving him potentially bankrupt. The UK Government’s view is that it is not bin Laden’s personal wealth that now represents the primary source of al-Qaeda funding, but rather the profits from the drugs trade and other businesses, together with donations from individual and corporate sponsors.
Fourthly, terrorist funding may derive from the assistance of a foreign government. While some terrorist groups are allegedly state sponsored,\(^41\) this form of funding has declined in recent years.\(^42\) Nevertheless Hezbollah is believed to be currently funded and supported by the Iranian Revolutionary Guard.\(^43\) On occasion it may be difficult to distinguish between official state support and funding from wealthy individuals close to government. The legal proceedings instituted in the US District Court on behalf of some of the victims of the 11th September attacks allege that senior members of the Saudi royal family gave £200m to al-Qaeda in exchange for an agreement that there would be no attacks by the organisation on Saudi Arabia. Among the 70 defendants in the proceedings is the Saudi defence minister, Prince Sultan Bin Abdul Aziz.\(^44\) If such allegations were true, would such funding be categorised as state sponsorship? Similarly, there have been allegations that Iranian intelligence agencies have been assisting al-Qaeda’s financial transfers. However such countries cannot be viewed as monolithic and, where certain agencies assist a terrorist organisation, that does not necessarily reflect a decision of government to do so.\(^45\)

These four sources might, in theory, suggest four different models of terrorist funding. These could be termed ‘the Popular Support model’ (where funding comes from donations); ‘the Criminal Proceeds model’ (where funding is derived from crime); the ‘Entrepreneurial model’ (where businesses generate funding); and ‘the State Sponsor model’ (where funding comes from a foreign state). This would, however, be simplistic and misleading. A more realistic approach is to suggest a more sophisticated model, where finance comes from multiple sources with opportunity being the principal factor influencing the combination of funding sources for a particular terrorist group. Other factors, such as public opinion, may also, however, influence the combination. The use of kidnapping for ransom, used by the Provisional IRA in the 1980s, was dispensed with after public outrage in Ireland apparently caused a rethinking of this tactic.\(^46\) Any terrorist group attempting to fund itself through drug trafficking, for example, must therefore assess what, if any, influence this would have on its popular support.

The estimated fundraising capacity of the Provisional IRA is considered to be between £5m and £8m per annum. Given that their estimated annual running costs are approximately £1.5m, the organisation’s capacity to raise money far outstrips actual need.\(^47\)

That terrorist funding may come from a variety of sources is a major difference between organised crime groups and terrorist groups. All the former’s finances are likely to be gained through illegal sources, whereas the latter’s may be derived from both legal and illegal sources. This makes the investigation and prosecution of terrorist finance offences inevitably more difficult since, if there were a single source of finance, that would make investigation, prosecution, and perhaps, ultimately, forfeiture, easier. Multiple sources of finance are more difficult to target.

While members of organised crime groups may overtly enjoy their criminal proceeds, members of terrorist groups may often have modest standards of living, particularly if their ideological discipline remains strong. However, where this weakens and the group is in transition from being a terrorist group to being an organised crime group, then more of the funds obtained may be used to finance higher personal standards of living for certain members of the group.

THE LAUNDERING OF TERRORIST FINANCE

Money laundering is generally understood as a process designed to give illegally obtained property the appearance of having been legally obtained. Where terrorist funds have been illegally obtained, they may require to be laundered, just like those of ‘for-profit’ organised crime groups. Even where the funds have been legally obtained there may be a need for the terrorist group to conceal their origins if they are to be used to finance terrorist acts without hindering future revenue flows. Terrorists may therefore use the same laundering methods that organised crime groups adopt, for example, shell companies, trusts, and nominees.\(^46\) While the investigation of al-Qaeda’s finances has apparently shown the use of many such laundering methods, it has also shown at least five particular characteristics.

First, there is the sheer scale of al-Qaeda’s operations. In February 2001 US prosecutors indicted four individuals for conspiracy in connection with the 1998 bombings of the American embassies in Kenya and Tanzania. One of the prosecution witnesses, Jamel Ahmed al-Fadi, gave evidence that he had worked for al-Qaeda and helped manage its payroll. He described al-Qaeda’s banking arrangements,
naming institutions in Sudan, Malaysia, Britain, Hong Kong and Dubai where the organisation kept accounts. The scale of the organisation’s operations has been demonstrated by the discovery of ‘an archipelago of bank accounts’, including offshore accounts in Cyprus, Switzerland and several Caribbean and Pacific nations and the allegation that bin Laden allegedly paid $50m for part ownership of a Sudanese bank, presumably to make use of correspondent bank relationships. Some believe that searching for al-Qaeda accounts will ultimately be fruitless since bin Laden has the cooperation not only of some wealthy individuals but also of some governments to conceal his organisation’s money.

A second particular feature of al-Qaeda’s financial arrangements is the use of charities to launder its funds and it is noteworthy that, among those entities whose accounts were ordered by the US Government to be frozen, are three charities. The CIA is reportedly investigating the transfer of hundreds of millions of pounds between Islamic charities in the belief that some of it was used to fund the attacks and that some of the charities are believed to be fronts for terrorist groups. Certain charitable funds were sent in cash to locations in the Balkans and either smuggled to Germany or paid directly into bank accounts used by terrorists. A charitable network used in the 1980s to channel funds to anti-Soviet forces in Afghanistan is still partly intact and funds ostensibly destined for humanitarian work in Bosnia and Chechnya may have been diverted to al-Qaeda. In particular, suspicion has fallen on Islamic charities in Kuwait, Saudi Arabia, the United Arab Emirates and Qatar. The investigation of these charities in connection with the funding of terrorism may come as a shock to those donors who have contributed in good faith to humanitarian causes. A recent report commented that since the Afghan jihad years, the diversion of funds for educational and humanitarian projects to jihadi activities has been normal practice and that it has therefore become difficult to separate finance for terror from those for charity. A number of allegations made against charities have been disputed, however, and, for example, the Al-Kashid Trust has responded that it is a humanitarian organisation and would fight in the Pakistan courts any action taken against it.

A third significant feature of al-Qaeda’s financial arrangements has been the use of _hawala_ banking. This paperless network based on trust obscures the money trail and makes arrangements extremely difficult for financial investigators to penetrate. _Hawala_ originated as a method of enabling merchants to travel without taking large amounts of money with them and can be used by those who find it too risky to carry large amounts of funds over international borders. While to those who have not experienced it, _hawala_ may seem a risky way to transfer money, it has been described as ‘faster, cheaper and more reliable than Citibank’ and is much used by expatriates from third world countries to remit funds to their families. The amount of money transferred globally using _hawala_ banking is significantly large. For example, by some estimates, as much as 60 per cent of money from Burma’s drug trade passes through underground banks. It is extremely difficult to estimate the extent to which _hawala_ banking methods are used in the UK, either by organised crime generally or terrorist organised crime in particular.

A fourth feature of al-Qaeda’s financial arrangements has been the use of bulk cash movements. Like organised crime groups, al-Qaeda has transferred cash by hand, Jamal al Fadl testified that he was once told to fly to Jordan and hand over $100,000 in cash. The organisation’s cash couriers were simply given an address at which to hand the money over or meet someone at an airport and did so.

A fifth significant feature of al-Qaeda’s financial arrangements has been the use of gold. Al-Qaeda is reported to have moved large quantities of gold into Afghanistan after the Taliban rose to power in the mid-1990s. Gold is useful because, first, donations to al-Qaeda were often made in the form of gold; and, secondly, assets may have been transferred in the form of gold in order to avoid record keeping by financial institutions. Gold has been described as ‘the preferred financial instrument’ of al-Qaeda and there have been reports of the organisation having shipped large quantities of it almost a year after the 11th September attacks.

**UK ANTI-TERRORISM LEGISLATION**

The Terrorism Act 2000 represented a major overhaul of the UK’s anti-terrorism legislation which had previously been principally directed at terrorism in, or related to, Northern Ireland. The 2000 Act was passed following a review by Lord Lloyd in which he concluded that the terrorist threat now seemed more diffuse; that political instability and inter-ethnic conflicts in many regions of the world had encouraged minority groups to pursue nationalist
ambitions by terrorist means,\textsuperscript{65} that terrorism was likely to remain an attractive option to those engaged in regional power struggles,\textsuperscript{66} and that the UK was particularly likely to be caught up in these struggles because of the number of communities of foreign nationals who live or seek sanctuary here.\textsuperscript{67}

Lord Lloyd considered that the traditional definition of terrorism as the threat or use of violence for political ends\textsuperscript{68} was both too narrow and too wide. It was too narrow because, being limited to political ends, it could be said not to apply to acts of terrorism perpetrated by single issue or religious fanatics and it was too wide because it covered trivial as well as serious acts of violence.\textsuperscript{69} The 2000 Act made a significant change to this definition and defines `terrorism' as meaning the use or threat of action which:

(a) involves serious violence against a person;
(b) involves serious damage to property;
(c) endangers a person's life (other than the person committing the action);
(d) creates a serious risk to the health or safety of the public or a section of the public; or
(e) is designed seriously to interfere with or seriously to disrupt an electronic system

and where the use or threat of that action is designed to influence the government or to intimidate the public or a section of the public and is made for the purpose of advancing a political, religious or ideological cause.\textsuperscript{70}

It also provides that `action' includes action outside the UK and that `government' includes the government of a country other than the UK. The definition also clearly includes those who would use `cyber-terrorism', as well as more traditional terrorist means.

Some Members of Parliament found the breadth of this definition worrying\textsuperscript{71} and it received considerable parliamentary scrutiny as it brought within its meaning the activities of organisations not traditionally considered terrorist. Thus, during the parliamentary debates, MPs considered whether the Animal Liberation Front,\textsuperscript{72} Greenpeace,\textsuperscript{73} the African National Congress,\textsuperscript{74} Trident Ploughshares 2000,\textsuperscript{75} Cremate Monsanto,\textsuperscript{76} Genetix Snowball,\textsuperscript{77} Friends of the Earth,\textsuperscript{78} the Kosovo Liberation Army,\textsuperscript{79} anti-abortion activists\textsuperscript{80} and hunt saboteurs\textsuperscript{81} might fall within the proposed definition. While the definition of terrorism is clear from a UK legislative perspective, some would like to see a consensus develop the East-West and North-South political and cultural divides.\textsuperscript{82}

The 2000 Act creates a number of offences in connection with terrorist finance, replacing what had been described as a `legislative shambles'.\textsuperscript{83} First, there are offences in respect of terrorist fund raising, namely providing money for the purposes of terrorism, inviting others to provide money for such purposes and receiving money for such purposes.\textsuperscript{84} Secondly, there are offences in respect of using money or other property for the purposes of terrorism and possession of money or other property for the purposes of terrorism.\textsuperscript{85} Thirdly, there is an offence of entering into or becoming concerned in an arrangement, as a result of which money or other property is made available, or is to be made available, to another, knowing or having reasonable grounds to suspect that it will, or may be, used for the purposes of terrorism.\textsuperscript{86}

Fourthly, there is an offence of entering into or becoming concerned in an arrangement which facilitates in any way the retention or control by or on behalf of another person of terrorist property. It is a defence for a person charged with this offence to prove that he did not know, and had no reasonable cause to suspect, that the arrangement related to terrorist property.\textsuperscript{87} Jurisdiction for these terrorist finance offences is extremely wide. The usual principle of territoriality underlying the criminal law is removed since, if a person does anything outside the UK, but his actions would have constituted an offence under ss. 15-18 of the 2000 Act if it had been done in the UK, he incurs criminal liability within the UK.\textsuperscript{88}

Thus no terrorist money launderer can afford to be detained in the UK if any other jurisdiction has sufficient evidence against him.

Fifthly, there is an offence of failing to disclose to a constable a belief or suspicion that another has committed an offence under ss. 15-18 of the 2000 Act, where that belief or suspicion came to one's attention in the course of a trade, profession, business or employment. Statutory defences exists for a person who disclosed the suspicion in accordance with his employer's procedures for disclosures or for a person who proves that he had a reasonable excuse for not making a disclosure.\textsuperscript{89}

The concept of `terrorist property', important in respect of a number of these offences, is widely defined by the 2000 Act as:

(a) money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation);
(b) proceeds of the commission of acts of terrorism, and
(c) proceeds of acts carried out for the purposes of terrorism.90

The definition is therefore sufficiently wide to include money donated by supporters of a terrorist organisation in a foreign jurisdiction and money derived from criminal acts such as bank robberies carried out for the purpose of augmenting terrorist funds.

Where a person has been convicted of an offence under ss. 15–18 of the 2000 Act the court may make a forfeiture order in respect of property which at the time of the offence he had in his possession or under his control and which he intended should be used or had reasonable cause to suspect might be used for the purposes of terrorism.91 In order to make these powers effective, the 2000 Act provides for the making of restraint orders and the appointment of receivers.92

The 2000 Act also introduced a new system for the forfeiture of terrorist cash.93 This was clearly modelled on the UK’s drug-trafficking cash seizure scheme and allowed for the seizure of cash for a period of 48 hours by a constable, customs officer or immigration officer if he had reasonable grounds for suspecting that it was intended to be used for the purposes of terrorism or was terrorist property. An officer who seized such cash could apply to a magistrates’ court for an order authorising its continued detention so as to give time for further investigation into its origin. Where a magistrates’ court was satisfied on the balance of probabilities that the cash was intended to be used for the purposes of terrorism or was terrorist property, it could make a forfeiture order. The scheme was limited to cash that was being imported or exported from the UK or being moved from Northern Ireland to Great Britain or vice versa, or was intended to be so exported or moved. A significant difference between the drug trafficking cash scheme and the terrorist cash scheme was that the latter included no minimum limit of £10,000 for seizures. The Anti-terrorism, Crime and Security Act 200194 replaced the terrorist cash scheme in the 2000 Act, expanding it significantly so as to include not just cash which was being moved, or about to be moved, across borders but also cash discovered anywhere in the UK. In so doing, the 2001 Act borrowed concepts from the Proceeds of Crime Bill 2001, then before Parliament.

The 2000 Act provided new powers to assist investigations into terrorist finances.95 First, there is an explanation order, under which a person is required to provide an explanation of any material obtained by means of a search warrant or a production order. Secondly, there is a customer information order under which financial institutions may be required to provide information as to whether they hold accounts in the name of a specified person. The 2001 Act introduced further provisions, some of which paralleled intrusive investigation powers in the Proceeds of Crime Bill 2001. It created an account monitoring order, which obliges a financial institution to provide specified information in relation to particular accounts for the duration of the order. This allows police to monitor transactions on the account.96 Further, the Act opened information gateways between government departments, including the Inland Revenue, for the purposes of criminal investigations.97

THE DIFFICULTIES FOR FINANCIAL INSTITUTIONS

Financial institutions face a difficult task in relation to terrorist finance since transactions may involve small amounts of cash, often coming from apparently non-criminal sources. Thus institutions may be handling funds with a perfectly legitimate origin that have been deposited in the account of a charity or business with genuine functions but which are to be used with murderous intent. Unlike non-terrorist money laundering, it is not always the origin of the funds that is the issue, but rather the purpose to which they will be put.

It is difficult to say what characteristics should provoke suspicion relating to possible terrorist property. Although the Financial Action Task Force (FATF) has issued guidance for financial institutions in detecting terrorist financing activities, the guidance recognises that most of its list of characteristics of financial transactions that may be a cause for increased scrutiny may also apply in identifying suspicious transactions generally.98 There may therefore be no characteristics which relate specifically and solely to terrorist funds. Similarly, it may be impossible to draw a profile of an individual who deals with terrorist funds that does not include a massive number of ordinary customers. Disclosures by UK financial institutions have increased substantially as a result of 11th September, 2001, and there is now a much greater media focus on Middle East terrorism. A concern must be that institutions will consequently profile customers on the basis of race, religion or ethnic or
national origin. However, if terrorists derive a significant proportion of their finance from crime, then there is perhaps little distinction between terrorism and organised crime from a financial institution’s perspective.

Of course, financial institutions are not called to make clear differentiations between terrorist money laundering and non-terrorist money laundering but rather are responsible simply to report any suspicion to the National Criminal Intelligence Service (NCIS). It has been suggested that the IRA has at its disposal a relatively large network of disciplined individuals who can launder small sums through a multitude of bank accounts without triggering the existing alert systems which are designed with organised crime in mind to detect the movement of relatively large sums. Similar, the suspected terrorists involved in the events of 11th September, 2001, had nine accounts at the SunTrust Bank in Florida, which, according to some bank officials, showed no signs of unusual activity. The individuals were ostensibly foreign students who appeared to be receiving money from their parents or in the form of grants for their studies. Only one wire transfer of $69,985 from the Gulf apparently prompted a suspicious transaction report by the bank. Al-Qaeda used the US banking system in a different way from that used in traditional organised crime laundering patterns. Large deposits from overseas were split up into smaller amounts, essentially the opposite of smurfing. Banks therefore have to accustom themselves to looking for different financial patterns. This will have an impact on both staff training and the computer software used to examine transactions. Banks may also have to pay particular attention to transfers from outside the jurisdiction. Since fund raising can also come from persons within an expatriate community, transfers from countries with connections to an ethnic conflict may require additional scrutiny.

Financial institutions may not have suspicions in relation to individuals until an event occurs, such as, for example, an individual being arrested by police and charged with terrorist offences, or an individual being killed in an internecine feud between different terrorist groups. Only then, once media attention is focused on the individual, may the institution, realising that he is one of their customers, be prompted to make a disclosure. So, if a bank is aware that one of its clients has been convicted of arson of a laboratory which has allegedly conducted experiments on animals, then it will have to consider whether to make a disclosure to NCIS. The FATF guidance acknowledges that financial institutions will probably be unable to detect terrorist financing as such and that the only time that financial institutions might clearly identify terrorist financing, as distinct from other criminal misuse of the financial system, is when a known terrorist or terrorist organisation opens an account. This is unlikely to be a frequent event.

One further difficulty for financial institutions may be the need to consider whether a wide range of social and political organisations ought to be customers. Indeed, in the light of the definition of terrorism, some organisations may find it difficult to get banking facilities. Banks might require organisations to sign a disclaimer saying they do not use or advocate means which contravene the 2000 Act. However, any group whose ethics allow it to use terrorist methods may, in all probability, have no ethical difficulty in dishonestly signing such a disclaimer.

The difficulties for financial institutions following 11th September in relation to the lists produced by the UN and various national governments, can also be seen in the differences between the various lists and the varieties of spelling of the different names in translation from the Arabic. A Money Laundering Reporting Officer at one major bank told this author that his bank had spent more money on checking customers’ names than al-Qaeda had on funding the entire 11th September operation.

ORGANISATIONAL STRUCTURES AND MONEY
It is crucial to assess how terrorist groups structure themselves and their financial arrangements. Just as new business structures emerge so too can new terrorist structures. Three principal models may be suggested.

First, terrorist organisations can organise their financial arrangements so that money is distributed from a central point. This model of organisation operates like a large company with a corporate headquarters which controls its subsidiaries. It is more likely to have large numbers of bank accounts and layering activities. It is likely to have a Director of Finance with a very hands-on role and to whom all important financial information is passed.

Secondly, organisations can adopt a decentralised approach, whereby terrorist cells receive initial start-up finance, but are then expected to become self-supporting through legal or illegal means. In this
model a Director of Finance will only possess financial information in relation to central funds and will have little knowledge of what fund raising activities the individual franchises are involved in. Al-Qaeda has been likened to a large holding company which provides seed money and then encourages cells to become self-financing.106 If an organisation operates on the decentralised model, with compartmentalised groups generating their own support through fraud, then there may be no global financial organisation to unravel. On the other hand, particular national terrorist 'franchises' may not be very sophisticated and may be amenable to being wound up through dealing with them as organised crime groups. As a matter of practice, however, the sums involved may be insufficient to attract significant attention from police.

Thirdly, the organisation may be a network of independent and autonomous units working in a coordinated manner and held together by common views and strategic goals. Innovation in structure and strategy recognises that the command and control organisational model is unsuitable in a globalised world. The organisation does not need to be large to have a global reach since international linkage and leverage can be the new drivers of terrorist structuring. This organisational architecture points to a terrorist environment which is more pluralistic, diverse and dynamic. In the business field, this new multinational form has been described by using the Chinese characters meaning 'circle of dragons with no leading dragon'.107 While the metaphor of a spider's web with a masterly evil plotter at its centre may be appealing to describe a terrorist group, it may thus be incorrect.108 Developing an appropriate strategy to combat terrorist finances will require an appreciation of what types of organisational structures the target groups have adopted.

Financial structures may be affected by whether terrorists channel their funds through a political front. Where a terrorist organisation has an affiliated political organisation, funds will be required to finance the activities of both. It may be that the funding of both organisations will be kept completely separate so that the political funding is not compromised. Alternatively, the terrorist organisation may covertly fund its political wing from criminal funding. In 2002 Spanish police arrested 11 leaders of the separatist Batasuna party and claimed to have dismantled a multimillion pound operation which funded both armed attacks by the Euskadi Ta Askatasuna (ETA) organisation and also political activities.109 Such problems suggest a need for transparency in relation to funding of political parties. It may be difficult for investigators and prosecutors practically to disentangle the finances of a political organisation from those of its related terrorist organisation, and controversial to try to do so.

The understanding of terrorist financial infrastructures may be made more difficult by interactions between terrorist groups and non-terrorist organised crime groups. In 2002 three persons were convicted in respect of smuggling counterfeit US dollars in a case which allegedly involved the Official IRA, the Russian Mafia and organised crime in Ireland.110 Although Michael Levi observed a decade ago that sometimes, particularly in the laundering sphere and in the case of organised crime groups, the same people are involved in drug trafficking, fraud and terrorism,111 such interactions have now evolved to being described as 'a convergence between terrorism and organised crime'.112

EVIDENCE VERSUS INTELLIGENCE

Legal proceedings of any kind require evidence and consideration needs to be given to what forms of evidence might be gathered in order to prove a link between finance and terrorism. For example, the discovery of terrorist-type materials co-located with financial material might be thought evidentially significant. Police searches of a video shop in Paraguay following the events of 11th September discovered fund-raising propaganda for Hezbollah, descriptions of over 30 terrorist attacks in Israel and financial statements detailing $250,000 in transfers to the Middle East.113 A prosecutor might not, however, consider this to be sufficient evidence of a link between the finance and terrorism. If a comparison is drawn with legal proceedings in US organised crime cases, other types of evidence which the authorities might adduce to prove such a link could be evidence of informer-accomplices, the product of telephone intercepts, evidence from undercover officers and confessions.

Nevertheless striking a correct balance between using financial information as evidence or intelligence is crucial. The intelligence community will necessarily have a different set of priorities from that of law enforcement agencies. The age-old problem for the intelligence community is that if intelligence is used to produce evidence, future intelligence gathering may be compromised. Transforming intelligence into evidence may not be desirable if important
intelligence assets are put at risk. If intelligence on terrorist finances is obtained, should matters be allowed to continue so as to obtain evidence as to where the money goes? This may be invaluable for identifying new suspects, mapping terrorist networks and frustrating further outrages.\textsuperscript{114} Intelligence is also essential if the authorities are to understand changes made by terrorist groups in fundraising methods. As one fundraising method is superseded by another, intelligence gathering must take place to identify the new method so that a strategy can be designed to counter it. If a prosecution is commenced, how much intelligence will be publicly revealed? Disclosing how much is known and how it came to be known can be damaging. A particular issue in respect of financial investigations is whether proceedings might result in disclosures by financial institutions being revealed since to do so might put bank staff at risk of reprisals or reveal evidence-gathering methods. Seizing financial assets must not always therefore be seen as the pre-eminent objective of financial investigation. If the choice is between seizing assets or discovering the whereabouts of, for example, bin Laden through following a money trail, the latter may be more desirable in the public interest.\textsuperscript{115} This raises a difficult question; how high a strategic priority should the removal of terrorist finance carry and by what mechanisms can that priority be put into effect? The answer may differ with each case.

**A BASKET OF STRATEGIES**

It is clear that there will never be one simple and effective strategy against terrorist funding and laundering, not least because, if there were, governments would have already implemented it. Instead, a basket of different strategies is required. This includes strategies concerning different sources of terrorist finance; against terrorist property which exists in various forms, for example, cash, credit balances held in financial institutions, gold, land or businesses being operated by or on behalf of terrorist organisations; and against different laundering methods. In a UK context, care is necessary to ensure that strategies being considered are compatible with the European Convention on Human Rights (ECHR) which was incorporated into domestic legislation by the Human Rights Act 1998 and, in particular, compatible with Article 1 of the First Protocol which guarantees the right to peaceful enjoyment of property.

**CONVICTION FOR TERRORIST FINANCE OFFENCES, FOLLOWED BY FORFEITURE**

The UN Convention on the Suppression of the Financing of Terrorism provides that states should create criminal offences under their domestic law in respect of terrorist finances\textsuperscript{116} and should take appropriate measures for the detection and seizure of terrorist funds with a view to forfeiture of them.\textsuperscript{117} The UK clearly meets this international standard. The primary difficulty for the prosecution in terrorist finance cases, however, is to prove beyond a reasonable doubt that the property is terrorist property. This difficulty is exacerbated when the funds are raised in support of terrorism overseas. It is noteworthy that there have been no successful prosecutions for terrorist funding offences in Northern Ireland over the last 30 years and the forfeiture provisions under the Prevention of Terrorism (Temporary Provisions) Act 1989 (hereafter PTA) have never been utilised. Indeed, in 1992 Lord Colville in his review of the PTA spoke of "the pessimism of police forces in all three UK jurisdictions about the usefulness of PTA powers in relation to terrorist funds".\textsuperscript{118} Nevertheless a new trend may be developing in terms of police attempting to make greater use of these offences. For example, in April 2003, Baghdad Meziane and Ibrahim Benmerzouga were both convicted of terrorist finance offences under the 2000 Act\textsuperscript{119} and a number of similar cases are yet to come to trial. Clearly, every major terrorist organisation will have individuals in key roles including perhaps arms procurers and bomb-makers, who are targeted by law enforcement agencies and every effort also needs to be made to target those in key financial roles. Spanish police have arrested one person whom they believe is the treasurer of the al-Qaeda organisation in Spain and another who they believe to have been responsible for financing the network in several other countries.\textsuperscript{120}

Nevertheless, as a strategy against terrorist funding, this option is the most difficult from an investigative and prosecutorial perspective. Experience suggests, therefore, that only rarely will it be possible to prove terrorist finance charges, for example, where an exact tracing exercise has been carried out showing a financial trail between money in a particular account and arms purchases on behalf of a terrorist organisation.
CASH FORFEITURE
There is clear evidence that, as money laundering legislation tightens, organised crime groups resort to cash smuggling so as to avoid leaving an audit trail. Terrorist groups appear to do likewise and Lord Lloyd received anecdotal evidence from Special Branch officers that they occasionally encountered people leaving the UK with large quantities of cash in circumstances which led them strongly to suspect that the money was destined to finance terrorism overseas. There have been some recent seizures of cash under the 2000 Act but the proceedings in these have not yet concluded. Forfeiture proceedings may be particularly useful where cash is being moved for terrorism overseas. However, producing evidence even to the civil standard may be difficult in many cases. If couriers are used who lack close connections with terrorism, there may, for example, be difficulties in determining whether the seized cash is drug trafficking or terrorist cash. If this problem occurs, a possible legislative solution might be to adopt the US approach of creating a criminal offence of bulk cash smuggling. With such an offence it is the fact of the non-declaration of the cash which is the central issue rather than its provenance or the purpose to which it is intended that it be put.

As a strategy against terrorist funding, this option is less difficult from an investigative and prosecutorial perspective in that it requires the link between terrorism and the property to be proved to the civil and not the criminal standard. Nevertheless that nexus still requires to be proved. While making small civil forfeitures can be worthwhile as a disruptive approach, it has little long-term value unless the cash can be traced back to its origin and becomes useful in detecting a terrorist funding source and those who rely upon it.

CIVIL FORFEITURE
The experience in a number of jurisdictions is that civil forfeiture has been necessary in dealing with the finances of organised crime groups. The Proceeds of Crime Act 2002 now allows for civil recovery (civil forfeiture by another name) of real property which is derived from criminal conduct. In addition to a lower standard of proof, the rules of evidence which apply in civil proceedings allow the High Court to admit a greater range of evidence than that admissible in criminal proceedings, including hearsay evidence, evidence of previous convictions, and self-incriminatory material obtained under compulsion.

Logically, in dealing with organised crime groups of a terrorist nature, the UK legal system might usefully provide for stand-alone civil forfeiture proceedings in respect of terrorist property. As a strategy against terrorist funding, this option would again be less difficult from an investigative and prosecutorial perspective, in that it would require the link between terrorism and the property to be proved to the civil and not the criminal standard. This would exceed the simple borrowing of concepts from the proceeds of crime legislation because it would allow the forfeiture of property, perhaps legally obtained, in respect of which it could be argued that it was destined to be used for terrorist purposes. Although the ECHR provides a right to the peaceful enjoyment of property this is a qualified right and it is doubtful whether a system of civil forfeiture of terrorist property with appropriate judicial safeguards would breach that right. While this strategy might appear a logically useful addition to the authorities' strategic options, it is nevertheless doubtful how useful it would be in practice. Since many of the more established terrorist organisations are well embedded in the business and financial infrastructure, the financial trail may have long gone cold and tracing may therefore be difficult. There seems to be little indication of significant assets in the form of real property or credit balances in financial institutions which the authorities are eager to seize but lack the powers to do so.

FREEZING OF TERRORIST FUNDS
Following the events of 11th September, the UN adopted Resolution 1373 (2001) in respect of terrorist funding. The UK gave effect to this by the Terrorism (United Nations Measures) Order 2001 whereby all financial institutions were directed that any funds they held, on behalf of the individuals or entities named, were not to be made available to the account holders except under a licence granted by the Treasury. While such funds as may be discovered are frozen indefinitely by the Order, there is no mechanism for their forfeiture. The freezing of terrorist assets has arguably had some impact as some £307,000 in 15 accounts has been frozen in the UK. This has been acknowledged, however, to be a fraction of the funds available to terrorists. A similar approach to terrorist assets is also taken under domestic US law. Under the Antiterrorism and Effective Death Penalty
Act 1996 a terrorist organisation is any organisation designated as such by the Secretary of State and, once designated, the Secretary of the Treasury may require any financial institution controlling the organisation’s assets to freeze them until it receives a further directive.\(^{126}\)

The advantage of this option for governments is that intelligence is used to justify the inclusion of persons or entities on the list and there is no requirement to link specific property to terrorism. The disadvantage of this blunt tool is that it can only deal with property which is being overtly held. Where the property is being held by nominees, it is more difficult to deal with. In a number of jurisdictions such freezing of assets is being tested in court and it has yet to be seen how courts will require governments to justify their actions in freezing funds in this way.\(^{127}\) While the UK courts may be willing to countenance assets being frozen following a UN Resolution, it might be more difficult to design a system based on the US domestic model which was compatible with the ECHR. The impact of freezing orders is difficult to measure. Some suggest that potential donors have been reluctant to donate money for fear of having their assets frozen\(^{128}\) while others suggest that since 11th September, 2001, al-Qaeda is reputed to have been deluged with new funds.\(^{129}\)

**CONVICTION FOR ‘ORDINARY’ CRIMINAL OFFENCES FOLLOWED BY CONFISCATION**

Where a terrorist organisation relies on the proceeds of crime for funding, this creates a built-in weakness to its funding model in that it provides the authorities with a means of combating the organisation’s finances, namely by focusing on the underlying crime and, in the event of a conviction, seeking a confiscation order. It is thus approached as pure economic crime rather than terrorist finance crime. However, there is widespread recognition, acknowledged by the Court of Appeal in *R v Risdale-Tomlin*,\(^{130}\) that the criminal justice system has performed poorly in relation to the confiscation of criminal proceeds and that it is desirable that confiscation powers should be used more frequently. In particular, it is recognised that police are driven by a conviction culture and have been slow to take confiscation on board. Indeed the performance indicators by which police performance is judged usually contain no reference to recovering the proceeds of crime. Although the government’s Asset Recovery Strategy is seeking to ensure that more confiscation orders are obtained, this will require a significant culture change in the criminal justice system as a whole.

As with any organised crime group, a terrorist organisation will tend not to expose its senior members by involvement in direct criminal activity. They may, however, be involved in dealing with the proceeds of those crimes. There may therefore be a greater possibility of convicting them for money laundering than for any other criminal offence. Nevertheless, if one examines the position in Northern Ireland, where terrorist activity in the UK has been most concentrated over the past 30 years, little use of money laundering offences has been made. Certainly there have been investigations of terrorist financing activities but, although a Chief Constable stated that one of his main strategies towards the defeat of terrorism was to curtail the money supply to paramilitary groups,\(^{131}\) there has not been a significant focus on money laundering. Rather, much of the focus has been on identifying the sources of finance and disrupting the flow of money to terrorist groups by prosecuting for the underlying offences that gave rise to the funds.\(^{132}\) The Proceeds of Crime Act 2002 significantly strengthens the UK money laundering offences, greater use of which can now be expected.

As a strategy against terrorist funding, this option is easier from an investigatory and prosecutorial perspective in that, although it requires proof beyond a reasonable doubt of the underlying crime which gave rise to the funds, it does not require any proof of a nexus between finance and terrorism. A further benefit of prosecuting for ordinary criminal offences is that, in the event that the defendant absconds prior to trial, a confiscation order may nevertheless be sought against him.\(^{133}\)

Although the thrust of a strategy may be to use ‘ordinary’ criminal offences, this does not mean that any indictment will be limited to such offences. In *United States v Mohamed Youssef Hammoud* the defendant was charged with a terrorist finance offence in relation to providing financial support to Hezbollah but was also charged on the same indictment with money laundering, cigarette smuggling, racketeering and other charges.\(^{134}\)

**TAXATION**

The Proceeds of Crime Act 2002 makes a significant change to UK revenue law in that income from an
unidentified source can now be subject to tax by the Director of the Assets Recovery Agency.\textsuperscript{135} The need for such a change has come from the recognition that those who fund themselves from criminal lifestyles are unlikely to have declared their income to the Inland Revenue and paid tax on it. This may also be true of those who gather funding for terrorist purposes. It may therefore be that the Director of the Assets Recovery Agency will be able to use her power to tax revenue from an unknown source in a way which has an impact on terrorist funding. In Ireland, the Criminal Assets Bureau was reported to be intending to use similar taxation powers in relation to 12 suspected members of the Real IRA.\textsuperscript{136}

**DISRUPTION**

Disruption is generally understood as meaning action which has a negative impact, particularly on organised crime, and which takes place when legal proceedings are not possible.\textsuperscript{137} Disruption can come in many forms. Some impact on the IRA’s finances was achieved in Northern Ireland by, for example, repeated visits from tax inspectors to ensure that social clubs were complying with Value Added Tax (VAT) regulations.\textsuperscript{138} Frequent seizure of counterfeit goods is unlikely to represent a direct disruption of terrorist finances, since the terrorist organisation is likely to have already been paid for the goods. However, frequent seizure, and hence loss of such stock, may deter traders from purchasing further such goods, unless intimidation is used by the organisation to force traders to make purchases. An effective disruption campaign will often require a persuasive element. Where smuggling and bootlegging may, in certain sections of a community, be regarded as acceptable, a possible solution may be to attempt to remove the market by a public relations campaign to persuade existing and potential customers that purchasing bootlegged alcohol and tobacco deprives, for example, the National Health Service of necessary funding. There is little hard evidence, however, as to the effect of such campaigns. Whether the campaign should also state that purchase of smuggled goods contributes to a terrorist organisation’s ability to conduct violent acts is a more difficult issue to determine. To do so might amount to free advertising for the organisation and its products. There is therefore a difficult balance to be struck.

Some argue that disruption may require action on an international level. Where terrorist finance is being derived from, for example, smuggling, there may be an argument for change in the economic context that makes smuggling profitable. Political issues such as harmonisation of tax rates and equalising duties across borders, for example in an EU context, then arise. While change might make smuggling unprofitable, it may not be politically acceptable to all member states.

A disruption strategy may be the only possible option in cases where it is not possible to initiate legal proceedings which will lead to the confiscation or forfeiture of funds. A disruption strategy may also need to be pursued in addition to legal proceedings since, once a funding source has been identified, it will not usually be sufficient simply to deprive a group of specific funds, but rather necessary also to deprive it of future opportunities to gain new funds. Ultimately, however, disruption alone is not a sufficient strategy, as individuals whose activities are disrupted can simply transfer their energies to other revenue-producing activities. In addition, the finance which has already been generated remains available for terrorist use. Unlike conviction, therefore, disruption may produce few deterrent effects.

**REGULATORY ACTION**

Another strategic option is the use of regulatory mechanisms to stem the flow of finance to terrorist groups. A significant example where regulatory action has been adopted on the anti-money laundering front in the UK is in respect of bureaux de change.\textsuperscript{139} The potential effectiveness of a regulatory approach was demonstrated in the Netherlands in 1996 when regulations on bureaux de change were imposed and two thirds of operators closed down rather than register with the authorities.\textsuperscript{140} A second area in which regulatory action has been recognised as necessary is that of money transmission services. In 1993 the US Congress passed legislation requiring money transmission services to register with the government and report all transactions over $3,000. However the legislation was not fully implemented\textsuperscript{141} and the failure to do so was subsequently recognised as a significant vulnerability by which terrorists could anonymously obtain cash below the radar of the US financial services regulatory system,\textsuperscript{142} a vulnerability which was only rectified in April 2002.\textsuperscript{143} In November 2001 the US authorities acted against Al-Barakaat, a Somali-based hawala
operation with a presence in 40 countries, which they believed was used to provide financial support for terrorism. This action closed eight Al-Barakaat offices in the USA and froze some $1.9m. In addition, indictments have been returned against the principals of Al-Barakaat's Boston branch for operating an unlicensed money transmitting business.  

Subsequently, it has been suggested that the evidence against Al-Barakaat is tenuous and that the impact of the US authorities' action has been devastating on Somali citizens who relied upon the service to remit funds earned in the USA to family members in Somalia. However, since investigations have indicated that al-Qaeda has made significant use of hawala banking, effective regulation of money transmission services must include these informal systems. Concern has been expressed as to whether it is possible to deal with underground banking systems without imposing overly restrictive regulations on legitimate business transactions and whether, if attempts are made to regulate hawala, that will drive it further underground. Nevertheless the UK approach has been to attempt to regulate hawala by regulating the transmission of money, or any representation of monetary value, by any means.

A third area where regulatory activity has been perceived as potentially useful, is in relation to charities. Where an investigation by the Charity Commission results in a discovery that funds have not been used for the charitable objects of the charity, that charity may be removed from the Charities Register, as has been the position in a number of cases. Following 11th September the Charity Commission has frozen the bank accounts of one UK charity and required full disclosure of its accounts and records. Of course the Charity Commission cannot be expected to carry out investigations into terrorist finances. It may only be in a position to take regulatory action once it has received the product of an investigation carried out by other agencies. Terrorists who use charities in the UK but whose terrorist activities take place in other countries may try to be scrupulously lawful in their handling of funds in the UK so as not to breach UK law. The regulatory option is critically important where a significant proportion of a terrorist organisation's income is derived from donations.

Some of the new anti-money laundering legislation imposes onerous burdens on the financial sector and has been criticised as an overreaction. Following 11th September, regulatory proposals which may previously have been considered unacceptably burdensome may now be regarded as a proportionate response to the increased terrorist threat. Accordingly, regulations in respect of, for example, disclosure of beneficial ownership of companies, may now be more broadly acceptable.

CULTURAL CHANGE, STRUCTURAL CHANGE AND RESOURCE MANAGEMENT

Implementing an effective strategy against terrorist finance will require appropriate organisational responses from law enforcement agencies. These may be examined in three areas; cultural change, organisational change and resource management.

First, cultural change. It may be suggested that the longstanding weaknesses present in financial investigation of the proceeds of crime in the UK also exist in the anti-terrorist field. A recent Cabinet Office report observed that financial investigation was underused, undervalued and under-resourced in the UK and concluded that it should be made central to UK law enforcement. Similarly, there may be officers in Special Branch who view financial issues as merely peripheral to their investigations. Even where officers do adopt a financial perspective it may be that, just as in non-terrorist cases, investigators tend to focus on criminal offences that create those funds rather than also focus on the laundering of the funds. If so, the focus may be on shutting down counterfeiting rackets rather than attempting to discover how the finance is laundered in an attempt to destroy the laundering infrastructure by prosecution for money laundering offences. In practice, the focus on terrorist funding in the UK has arguably been too weak. Just as the PIU Report observed the lack of financial investigation focus has hindered the fight against organised crime, so too it probably hinders the fight against terrorism. There is a need to bring in financial investigators earlier and more centrally to terrorist investigations. This is undoubtedly true of many jurisdictions and not just the UK. The traditional focus of agencies seeking to combat terrorism has been on weapons and targets rather than finance. The change in strategy against organised crime to include a financial focus should be mirrored in the strategy against terrorist organisations. There is a need for managers to bring about any necessary cultural change so that organisations with a responsibility to investigate terrorist crime fully integrate.
financial investigation into all levels of their investigations. Even prior to 11th September there were indications that this need for change was beginning to be recognised. The US Money Laundering Strategy 2000, as part of its effort to strengthen international cooperation to disrupt the global flow of illicit money, suggested a training programme for investigators, prosecutors and judges which would concentrate specifically on terrorist financing for countries which face this problem. 152

Cultural change is also required in the private sector to ensure that necessary disclosures are made. It has been suggested that the mindset of the entire banking system requires change and that international bankers will have to be persuaded to show a great deal more curiosity than they have in the past. Such a human resource approach to the issue requires to be complemented by an information technology approach whereby transactions are monitored by specially designed software products. Disclosures by financial institutions in many jurisdictions following 11th September have greatly exceeded those preceding that date. The difference is that organisational cultures have been changed by that event and disclosures have been mindful of their obligations. Undoubtedly, however, there is still more cultural change necessary in a number of institutions. Achieving this change is crucial as the private sector possesses monitoring systems that law enforcement agencies cannot rival.

Secondly, cultural change without structural change in organisations will be insufficient. It is a well-accepted management proposition that structure should follow strategy.153 Following 11th September certain organisational changes have occurred in the UK. The Official Committee on Domestic and International Terrorism (Terrorist Financing) was established to provide coordination and monitoring of UK efforts for countering terrorist financing.154 The Financial Sanctions Group, chaired by HM Treasury, was established to provide a formal framework for asset freezing of terrorist funds.155 A new Terrorist Finance Team was established within the NCIS Economic Crime Unit to deal with suspicious transaction reports in respect of terrorist funds.156 However, intelligence needs to be transformed into evidence if legal proceedings are to be instituted. To do so, the UK arguably requires an increased terrorist finance investigative capacity. This should be multidisciplinary in nature. For example, not only will forensic accountancy skills be necessary but also a Customs presence since, where finance is being derived from complex VAT carousel frauds or smuggling activities, the need for a Customs perspective will be essential. A multidisciplinary Terrorist Finance Unit, including staff from police, Customs, Inland Revenue and accountancy backgrounds, did exist in Northern Ireland between 1989 and 1996. Its role included intelligence gathering, assisting in investigations and developing regulatory solutions in areas that were being exploited by terrorists. Organisationally, however, it left primacy for investigations with the police and very limited information is publicly available about the outcomes of its work.157

If a multidisciplinary Asset Recovery Agency is necessary to investigate and take appropriate legal action in respect of the assets of organised crime, then arguably such an investigative capacity is also necessary in respect of terrorist funds. Questions then arise as to where it should be organisationally located and whether it should be centralised as a national unit or decentralised throughout the UK. The first, and perhaps most realistic, option would be to increase the resources of the National Terrorist Financial Investigation Unit of the Metropolitan Police Special Branch, formerly known as the Financial Investigation and Special Access Centre (FISAC). Currently the best resourced UK anti-terrorist financial investigation unit,158 it already has a national role and delivers the National Terrorism Financial Investigation Course for Special Branch officers from across the UK.159 It could be transformed into a multi-agency unit by seconding specialists and staff from other agencies. If this option was chosen, it might well therefore outgrow a Metropolitan Police context and have to become a stand-alone agency or become accommodated within another organisational context. This is especially so since terrorist activities occur nationally rather than centred around London. However, other organisational options do exist. A second option is to locate the capacity within the Special Branch operations in each police service. This, however, would suffer from the weakness that the function would become dissipated throughout the UK. It might also be argued that Special Branch officers, particularly in smaller forces, will not always be equipped to carry out in-depth financial investigations since they may not have sufficient specialist expertise. A third organisational option would be to expand the remit of the National Crime Squad (NCS) to include terrorist finance. This would have the advantage of giving the responsibility to an existing national agency with
a proven track record of incorporating financial investigations into criminal investigations. But the NCS has never hitherto had an anti-terrorist function. A fourth organisational option would be to expand the NCIS Terrorist Finance Team and grant it an investigative remit. However, this would move NCIS away from being an agency that deals with criminal intelligence to one which has an investigative role. Each of the suggested options involves the need for significant organisational change which might not come easily. Such change will also need to be considered in the context of the current examinations of whether there should be a new dedicated national agency to investigate serious organised crime.

It is noteworthy that there has also been significant structural change in US law enforcement agencies to reflect the increased strategic importance now attached to terrorist finance. First, the Foreign Terrorist Asset Tracking Centre, which performs an intelligence analysis function, has been established. Secondly, this has been complemented by an investigative arm, Operation Green Quest, which has brought together financial investigative expertise from a number of law enforcement agencies and which is carrying out some two hundred financial investigations. Thirdly, the Financial Review Group, an interagency task force operating from FBI headquarters serves as a central repository for financial evidence. Fourthly, the Terrorist Financing Task Force is a task force of prosecutors which works with the Finance Review Group and other entities in developing terrorist finance cases. While the respective roles and responsibilities of these various entities may not be immediately apparent to a UK perspective, it is apparent that significant organisational change has been instituted in that jurisdiction also.

Thirdly, well-drafted legislation will not be enforced, even in culturally reformed and restructured organisations, if they lack the necessary resources to carry out investigations. It has been suggested that after 11th September the US authorities were deluged with thousands of reports from US banks. Does NCIS have sufficient staff to be able to examine terrorist-related disclosures in the light of the similar increase that has occurred in the number of UK disclosures? While additional resources for NCIS will improve the delivery of intelligence packages to agencies which have the responsibility of investigating disclosures, the investigative outcomes may not improve unless these agencies also receive similar increases in resources. One must therefore ask what proportion of Special Branch resources in the UK are dedicated to investigating and tracing the finances of terrorists. The issue of lack of resources to investigate disclosures was raised in Parliament and the Chancellor admitted that the UK has to date lacked the asset tracking skills that would permit it to get at terrorist funding. Such investigations will take investigators into complex financial arrangements, perhaps demonstrating a need for the recruitment of specialised investigators. It may be that terrorists, like their counterparts in organised crime, are sometimes better resourced and more sophisticated than those who investigate them (with the possible exception of resources in the Security Service and the Secret Intelligence Service). Since resource policies have an impact on organisational cultures, those in management roles must therefore consider whether their human resource policies imply that investigating the financing of terrorism is not particularly important.

A GLOBAL APPROACH

While some terrorist groups only operate within one jurisdiction, a significant number operate transnationally. Again this parallels what occurs with organised crime groups generally. In many cases, therefore, disruption of terrorist finance networks cannot be accomplished by individual nations alone, but rather requires a coordinated, global approach. Some terrorist organisations, like ordinary organised crime groups, may seek to move money through jurisdictions that lack the banking regulation to monitor transactions properly and thus exploit vulnerabilities in the world's financial systems. The United Arab Emirates is said to be the hub of al-Qaeda's banking operation, as it maintains a very vulnerable banking system with few controls. Without global transformation, investigations are likely to reach the dead ends of banks in weak or uncooperative jurisdictions. The UK's Chancellor of the Exchequer has said that every financial centre that refuses to operate in a way which fulfils international standards will increasingly be outlawed from the rest of the international community. Nevertheless, as the Financial Services Authority investigation into the Abacha case discovered, banking system vulnerabilities are not restricted to offshore jurisdictions. In addition, the US banking system has been described as 'immensely porous' and correspondent banking practices have
allowed high-risk foreign banks widespread access to the US financial system.\textsuperscript{166}

Individual terrorist finance investigations will often require close international cooperation. Even terrorists whose violent activities are restricted to one country may be funded by supporters in another, or may attempt to conceal its funds outside the country in which it acts. In 1992 the Chief Constable of the Royal Ulster Constabulary noted that investigators in this field from his service were in regular contact with police forces and other investigative agencies in the UK, Ireland, Canada and the USA.\textsuperscript{167} This demonstrates a need for financial intelligence units to pass relevant disclosures to partner jurisdictions for terrorist finance investigations.

The recognition of the need for global action is evidenced by the fact that, following 11th September, a special plenary of the FATF was quickly convened to agree the imposition, enforcement and monitoring of new international standards to combat terrorist finance\textsuperscript{168} and a special set of FATF recommendations subsequently issued.\textsuperscript{169} The FATF will undoubtedly be used as one of the organisations to put pressure on countries to introduce terrorist finance laundering reform, following on from the considerable success it has experienced since its Report on Non-Cooperative Countries and Territories.\textsuperscript{170} Given the lack of distinctiveness of terrorist laundering methods, such reform may, however, be general money laundering reform rather than reform relating to terrorist finances specifically.

The issue of terrorist finance is now much closer to the top of many political agendas compared with those prior to 11th September, when the UN Convention on the Suppression of the Financing of Terrorism had only been ratified by four countries. Indeed, the process of introducing uniform international standards on money laundering has now been described as unstoppable.\textsuperscript{171} Nevertheless, regulation is expensive for banks and the influence of the financial sector represents a powerful lobbying force which may yet frustrate such reform, particularly when US politicians seek fundraising for re-election campaigns.\textsuperscript{172} Wider political issues also arise. Gulf states may resent Western insistence on greater regulation of matters which touch on traditional attitudes to religion and business methods.\textsuperscript{173} The USA has acknowledged that tackling possible terrorist fundraising through Islamic charities, particularly those in Saudi Arabia, involves difficult political issues.\textsuperscript{174}

There are particular implications for jurisdictions which permit bank secrecy. Following the 11th September attacks, the UK’s Chancellor of the Exchequer urged that countries such as Switzerland which have traditionally valued bank secrecy must now accept the need to reduce bank secrecy and report suspicious transactions involving what may be terrorist activities.\textsuperscript{175}

\section*{MEASURING SUCCESS}

How can performance and progress in depriving terrorists of finance be evaluated? HM Inspectorate of Constabulary has recognised the difficulty of quantifying the product of Special Branch work but is of the view that progress can be made by at least defining outputs by means of a suite of performance indicators.\textsuperscript{176}

A number of elementary measures of success may be suggested in respect of terrorist finances. First, the number of confiscation and forfeiture orders made and enforced. The number of orders made under anti-terrorist legislation will be simple to calculate. More difficult will be recognising those orders made under anti 'ordinary' criminal legislation where funding from criminal offences was likely to be used for terrorist purposes.

Secondly, the value of assets which have been removed from the control of terrorist organisations. Again, this may require the recognition and inclusion of amounts taken under ordinary criminal legislation. However, definitions of terrorist assets may vary between jurisdictions. While in one analysis the USA and other countries have frozen more than \$80m in terrorist-related assets, this figure is inflated by the inclusion of assets once controlled by the Taliban regime in Afghanistan\textsuperscript{177} which some might not agree should be included as terrorist assets.

Thirdly, the amount of terrorist financing which is disrupted. This figure, essentially the amount by which the income of terrorist organisations has been reduced, is even more difficult to estimate and is likely to be reached via an intelligence assessment. For example, the USA believes that, by shutting down the Al-Barakaat hawala network, al-Qaeda has been deprived of some \$15-20m annually.\textsuperscript{178} A UK Foreign Office Minister has suggested that al-Qaeda income has fallen by 90 per cent since 11th September as a result of international efforts.\textsuperscript{179}

Fourthly, the extent of international cooperation. This may be assessed, for example, by the number of countries willing to obtain appropriate court orders
to assist investigations and the number of such orders obtained.

As the strategies against terrorist financing evolve, so too the measures used to assess success may also have to change. What is important is that attempts are made to measure performance against terrorist finance. The mere fact of measurement may in itself produce culture change, since it will communicate a vision of organisational objectives to staff. In the same way that there is an agreed Asset Recovery Strategy containing performance indicators in respect of non-terrorist criminal assets, so too there is a need for a detailed strategy containing performance indicators in the terrorist finance field, even if much of it is too sensitive to be published.

CONCLUSION
The issue of terrorist finance is not one which has only arisen following the tragic events of 11th September. In 1997 the Acting Director of the CIA said:

‘International terrorist groups have developed large transnational infrastructures which in some cases literally circle the globe. These networks may involve more than one like-minded group, with each group assisting the others. The terrorists use these infrastructures for a variety of purposes, including finance, recruitment, the shipment of arms and material, and the movement of operatives. With regard to finance, we have seen increasingly complicated channels for soliciting and moving funds, including the use of seemingly legitimate charitable or other non-governmental organisations as conduits for the money.’

Nevertheless the events of 11th September demonstrate that a tragic incident can serve as a driver for change, and that there was immediate political pressure for global action to tackle terrorist money laundering. One of the outcomes of the tragedy is an increased recognition that major terrorist operations require significant finance and that this instrumentality must be denied to terrorist organisations if our cities are to be safe from terrorist action. It is in the shadow of this event that state responses to terrorist finance will be judged. Each legal system needs a range of provisions to combat terrorism and among those must be measures that deal with terrorist finance. The nature of these measures will depend on various factors; the degree to which the terrorist groups have evolved; the type of methods groups use for both fund raising and laundering; and the current form and manner in which their assets are held. Many of the changes to legal systems will inevitably go further than dealing with terrorist finance in particular and will benefit the general anti-money laundering effort.

There is evidence that measures which attack the financial assets and infrastructures are among the most effective means of seriously disrupting terrorist activities. Past legislation which provided police with powers to attack the financing of terrorism was described as providing ‘a potentially valuable additional weapon against the international terrorist groups that have attempted to establish infrastructures of financial and logistical support in Britain’. Nevertheless, the UK record of tracing and seizing the assets of the IRA was described as ‘lamentable’, and Lord Lloyd observed in 1996 that there was little evidence that the then legislation had had little more than a marginal effect in depriving terrorists of their funds. That legislation has now been replaced by the 2000 and 2001 Acts leaving the position, both in terms of the terrorist finance offences and the investigative powers, arguably among the strongest in the world.

If this is the situation, why have there been so few prosecutions for terrorist finance offences, no forfeitures of terrorist property and, as yet, no forfeitures of terrorist cash? The lack of success to date, despite the adequacy of the legislation, suggests that an explanation lies at one or more of three levels; a cultural level; an organisational and structural level; and a resource management level.

Even if law enforcement agencies were operating efficiently, the difficulties in obtaining evidence in relation to terrorist finance should not be underestimated. Lord Lloyd pointed out that, while there was universal agreement that terrorists should be deprived of their means of raising money for terrorist purposes, this was easier said than done. Terrorist structures are likely to be more difficult to penetrate than organised crime structures. This may be especially true of laundering structures as the organisation may be more content to sacrifice those involved in armed attacks than those involved in laundering finance, since the former may be more easily replaced. Innovative approaches such as sting operations, evidential use of telephone intercepts and the use of accomplices as witnesses may therefore require consideration in order to obtain relevant evidence.
Some fear that expansion of powers to tackle terrorist finance will result in the trampling on civil liberties. In Germany, the data protection lobby and tax experts accused the government of using terrorist funding concerns as a pretext for the introduction of measures that would aid it in its fight against tax evasion, regardless of the implications for civil liberties. In the UK, it has been argued that the extensive powers created by the 2000 Act had barely been explored before the government responded to 11th September with the passing of the 2001 Act. Indeed it has been suggested that much of the 2001 Act ‘smuggled in other powers that have little or nothing to do with terrorism.’ Such concerns have led to ‘sunset’ provisions being incorporated into anti-terrorist legislation in some jurisdictions. A balance must be properly struck between protecting both individual financial privacy and protecting society as a whole from terrorist acts. In attempting to strike that balance after 11th September, more intrusive powers can arguably be justified as a proportional response to the threat of terrorism. Within the UK legal changes will require to be ECHR compliant.

The events of 11th September reaffirm that terrorism is global and that investigating terrorist finance, certainly in respect of the larger and more evolved terrorist organisations, has to be carried out in a global way. This shows the need for prompt and effective mutual legal assistance.

To speak of a ‘financial war against terrorism’ makes for good media coverage but is a misleading metaphor to describe what is necessary. There is no such thing as a ‘financial war’, merely persistent, investigative work followed by appropriate legal proceedings.

There is always a risk of fighting the battles of the past. Shifts in both terrorist funding sources and terrorist laundering methods must be expected and be rapidly responded to. While those options chosen from the basket of strategies may be effective today, jurisdictions must not become inflexibly wedded to a particular mix of strategies. Terrorist organisations undoubtedly monitor action taken by governments against terrorist funding and seek to learn which methods of fundraising possess the least risk. Cutting off terrorist finance has been compared to cutting off the heads of the hydra; every time one head is chopped off, more will grow back in its place.

It is difficult to estimate how effective measures against terrorist finance can be. A UN report has concluded that, despite initial successes in locating and freezing al-Qaeda assets, the network continues to have access to considerable financial and other economic resources. The report suggests that private donations, estimated at $16m per annum, are believed to continue, largely unabated and that it has proved exceedingly difficult to identify the organisation’s funds. It is necessary, therefore, to be realistic and recognise what can and cannot be accomplished by targeting terrorist finance. While ‘low-cost’ terrorism will not benefit from such a focus, ‘high cost’ terrorism may. Despite significant powers against criminal proceeds in many jurisdictions, only a very small proportion of such proceeds are recovered and it is likely to be the same with terrorist finances. Indeed, it is doubtful whether there is any large concentration of terrorist funds, a ‘pot of gold at the end of the rainbow’ to be seized, as any sensible terrorist organisation will diversify its assets. Nevertheless the effort must still be made. Society must meet the challenge and respond with vigour. Much of the ‘war’ against terrorist funding will be conducted in secret. Although where legal proceedings are instituted against terrorist finance the results will be public, where disruption occurs the public may never know what has been accomplished on its behalf.

REFERENCES
(1) ‘Hereafter referred to simply as ‘11th September’.
(3) There may, however, be individuals within a terrorist group who use their position to profit personally.
(5) Al-Qaeda allegedly attempted to purchase a nuclear device from South Africa in 1993 for $1.5m: ‘Al-Qaeda’s “dirty bomber” arrested’, The Times, 11th June, 2002.
(9) Ibid.
(10) Ref. 6 above.
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(109) 'Spanish raids disrupt ETA global money network', The Independent, 1st May, 2002.

(110) 'Gang made £27m forgeries', The Times, 25th April, 2002.


(116) Article 4 of the Convention.

(117) Article 8 of the Convention.


(121) Ref. 11 above.


(123) USA Patriot Act 2001, s. 371.


(132) Ibid.

(133) Proceeds of Crime Act 2002, s. 29.


(135) Section 319 of the 2002 Act.


(137) Prosecution of individuals for criminal offences may in itself have a disruptive effect on an organised crime group but the concept of a disruption strategy is wider than this.

(138) Ref. 58 above.


(140) Ref. ‘Crime always pays – “shady” bureau de change’, The Financial Times, 6th October, 2001. It is, however, difficult to determine whether this was because regulatory costs made business unprofitable or because they had been doing illegitimate business.


(143) USA Patriot Act, s. 352(a).


(148) ‘UK assets of Islamic charity are frozen’, The Times, 16th January, 2002.


(152) 2000 strategy, p. 72.


(158) Ref. 154 above, pp. 176-177.

(159) ‘For Police Eyes Only: Special Branch Thematic Inspection 2000’, Her Majesty’s Inspectorate of Constabulary for Scotland.


(164) Ref. 11 above.

(165) Ref. 163 above.


(168) Ref. 163 above.


(177) Statement of K. W. Dan, Deputy Secretary to the US...
Department of the Treasury, to the US Senate Banking Committee, 29th January, 2002.

(178) Ibid.


(180) www.homeoffice.gov.uk/proceeds/asset_recovery/asset_recovery.htm.

(181) Statement of George J. Tenet, Acting Director of Central Intelligence, to the Senate Select Committee on Intelligence, 5th February, 1997.


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