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**Analysis of the causes and reasons for the failure of a decade of
international efforts and measures against terrorist financing
since the 9/11 attacks.**

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**Thesis for PhD awarded by London Metropolitan University
for submission of prior output**

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ABSTRACT OF THESIS

The submitted prior output works form an analysis of the reasons for the overall failure of a decade on international efforts and measures in anti terrorist financing since the 9/11 attacks.

The covering document deals with three perspectives, highlights the impact of such works and integrates them with current and relevant developments.

The analysis is drawn from three perspectives.

The three perspectives are, the inherent legal difficulties of promulgating anti terrorist and anti terrorist finance measures; the strategic oversight in identifying and realising the full significance of certain *modus operandi* of terrorist financing; and the strategic mindset of government policy makers and law enforcement intelligence in the area of certain types of financial crime and in the implementation of counter measures against terrorist financing.

The inherent legal difficulties are dealt with by showing the basic difficulties of defining terrorism, and then the post 9/11 measures and the impediments to achieving the objective of intelligence exchange, between law enforcement agencies and between law enforcement and the banking institutions, and the particular issue of charities and NGOs compounding such difficulties.

The strategic oversight of *modus operandi* for terrorist financing are dealt with through three examples of potential underestimations of a particular *modus operandi*, and an over focussing of another. Paradoxically, one of the underestimated potential *modus operandi* appears to provide its own exception to its trend in that a related but far more applicable *modus operandi* was highlighted by the studies.

The third perspective, that of strategic mindset of policy makers and law enforcement leads on from the *modus operandi* in that it identifies part of the reason for understating one such *modus operandi* was due to the post 9/11 reaction and measures having their origins in past anti money laundering strategies, without recognising differences between money laundering and terrorist financing. Furthermore, later in the decade, as strategic intelligence identified trends, one such trend was utilised in error to support a flawed premise regarding the assessment of the continuing global capability of al Qaeda to finance and co-ordinate extremist groups and to fund their attacks.

Finally an overall conclusion is formulated.

In terms of impact, it is respectfully submitted that the cited works have all contributed and enhanced knowledge in the area of terrorist financing. Particular impact has been made in the specific areas of,

- the overlooking of the true significance of the role of cash couriers, highlighted in the study of 2007, the report of which was disseminated to the trustees of sponsoring organisation, including Brigadier Ed Butler, former commander 16 Airborne Assault Brigade Helmand Province Afghanistan and Professor Paul Wilkinson, Emeritus, Professor of International Relations and former Director of the University of St Andrews Centre for the Study of Terrorism and Political Violence¹
- the vulnerabilities of Islamic banking, the study of which was received by the commissioning organisation and then disseminated to the Swiss National Bank and Swiss government ministers².

¹ See ENDNOTE FIVE

² Feedback from ISSN to author of 18 December 2007. See ENDNOTE FIVE

- the significance of the Somalia-Ethiopia region, in terms of,
 1. Eritrean involvement in assisting Islamic extremist fighters in the Somalia civil wars being identified as early in studies as 2007³
 2. the Somali- Yemeni axis which was highlighted as having existed since 2003⁴,
 3. and the cash courier modus⁵ for financing such extremist fighters
- the possible underestimation of the deployment of central banks, and their specialist knowledge against financing of terrorism⁶
- the issue of SWIFT being utilized for financial intelligence highlighted and identified in the study on central banks and their deployment against terrorism, and in the context of the intelligence exchange facilitation, afforded by the Belgian Central Bank⁷
- counterfeiting of goods⁸ as a potential *modus operandi* for financing of terrorism,
- within the wide crime category of the counterfeiting of goods, counterfeiting of medicines as a potential *modus operandi* for financing of terrorism with south east Asian groups perpetrating a significant variation of this illicit revenue raising modus.⁹

³ Ridley (2007) "Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes for financing of terrorism" study commissioned to London Metropolitan University by the Airey Neave Trust p 49

⁴ *ibid* pp 43. See also ENDNOTE FOUR and time chart

⁵ *ibid*

⁶ Ridley (2008) "Central Banks and their role against financing of terrorism in the post 2001 period" project commissioned to London Metropolitan University by the Institute of Security Analysis and Strategic Networking

⁷ *ibid* pp 39-40

⁸ Ridley (2008) "Counterfeiting of goods and its possible use as a *modus operandi* of terrorist financing" research project of Airey Neave Trust Research, commissioned to London Metropolitan University

⁹ *ibid*

COVERING DOCUMENT

The submitted works form an analysis of the reasons for the overall failure of a decade on international efforts and measures in anti terrorist financing since the 9/11 attacks.

The analysis is drawn from three perspectives, the inherent legal difficulties of promulgating anti terrorist and anti terrorist finance measures, strategic oversight in identifying and realising the full significance of certain *modus operandi* of terrorist financing, and the strategic mindset of government policy makers and law enforcement intelligence in certain types of financial crime and counter measures against terrorist financing

Inherent legal difficulties in international efforts against financing of terrorism.

During the late Twentieth century the lack of a coherent and comprehensive definition of terrorism hampered both strategic analysis and formulation and enactment of anti terrorist financing legislation. In the immediate reaction to 9/11, there was an opportunity to promulgate a unified definition as a basis when international governments, law enforcement and regulatory agencies were focussed against a threat that had apparently assumed proportions hitherto unknown and unforeseen. However, paradoxically, the 9/11 crisis necessitating such focus and such frenzy of international interface was the very reason why no such legal definition was forthcoming¹⁰. The general consensus appeared to be that such efforts were not of significance, as

¹⁰ Ridley 'Pan European Law Enforcement Strategic Analysis' in Grieve J and Harfield C eds (2008) "Handbook of Intelligent Policing-consilience, crime control and community safety" p 138

“With the still smouldering twin Towers visible from our respective emergency meetings, we would have been ridiculed and damned for ever if it had become known that we had spend even one minute of valuable time trying to obtain an academic and legal definition of terrorism”¹¹

One particular problem in formulating and setting into place counter measures against terrorism, and the financing of terrorist, is the difficulty known as ‘double criminality’. This is criminalising terrorist acts, designating them as specific criminal offences. All the statutes and legislative measures cannot cover each and every *modus operandi*. One example is that of Nigeria, where there is a myriad of inter-locking laws and investigative powers relating to the criminal acts involving oil and commodity fraud, and theft of oil in its various component forms and differing locations but there is no specific criminal act in blowing up oil pipelines. Yet Nigeria is criss-crossed with oil pipelines, the majority of which are ideal targets for potential terrorist attacks¹².

The difficulties of definition and of specific terrorist offences have led to differing perceptions amongst differing countries leading, as in 2004, to intense exchanges¹³. At operational level law enforcement investigations against terrorist financing resulted in the perpetrators being charged with other criminal offences for comparative ease of prosecution and subsequent conviction, as in the case of Arnoaut. Between 2002 and 2003 US investigations into the Islamic charity Benevolence International Foundation

¹¹ Europol Director briefing to Europol staff October 2001), cited in Ridley ‘*Pan European Law Enforcement Strategic Analysis*’ in Grieve J and Harfield C (eds) (2008) “Handbook of Intelligent Policing-consilience, crime control and community safety” p 138

¹² Ridley (2009) ‘*The Sinews of War*’ in Beyer, C and Bauer M (eds) “Effectively Countering Terrorism” Sussex Academic Press, citing Chukwuemerie A “International legal war against the financing of terrorism, a comparison of Nigerian, UK US and Canadian acts” in *Journal of Money Laundering Control* vol 1 no 9 2006 Institute of Advanced Legal Studies London, Emerald Press

¹³ Ridley (2008) ‘*Pan European Law Enforcement Strategic Analysis*’ in Grieve J and Harfield C (eds) “Handbook of Intelligent Policing-consilience, crime control and community safety” p 138

and
Ridley (2010) ‘*Organised Crime, Money Laundering and the nexus to terrorism*’, in “Human Resources and Development in the Arabian Gulf” Emirates Centre for Strategic Studies and Research p 387

resulted in illicit transfers of monies to Islamic extremist movements in Pakistan. Enaam Arnaout was the Chief Executive Officer of Benevolence International Foundations. After long discussions with the prosecution, Arnaout submitted a guilty pleas to one count of racketeering, in which he admitted subverting between \$300,000 to \$400,000 of charitable funds. In return the prosecution acknowledged that neither Arnaout nor BIF had acted contrary to the interests of the United States, nor had they ties to al Qaeda or Osama bin Laden¹⁴ Yet there is substantial intelligence and documentation to the close relationship between Arnaout and Osama bin Laden, dating from the mid-1980s¹⁵.

Prior to 9/11 international legal efforts against financing of terrorism were comparatively few and ill-supported. Between 1970 and 1997 UN Conventions were promulgated against various types of terrorist attacks against diplomats, maritime installations, economic targets, the aviation sector¹⁶. It was not until 1999 that the United Nations passed an international convention against terrorist financing, the International Convention for Suppression of Financing of Terrorism. Even this remained a moribund attempt. By the beginning of 2001, of the 22 UN Member State ratifications needed to bring the 1999 Convention into force, only 4 had been obtained¹⁷.

9/11 had a cataclysmic effect upon geopolitical strategy and law enforcement strategic concepts and priorities for the following decade¹⁸. International regulatory bodies and

¹⁴ "Few convictions on terror since 9/11-most arrested not linked to extremists", *Washington Post* (2005 June 12) *Washington Post*

¹⁵ US Dept of the Treasury, Terrorism Financial Intelligence and Terrorism, Protecting Charitable Organizations, *Additional Background Information on Charities Designated Under Executive Order 13224*, entry for Benevolence International Organisation, found on http://www.treas.gov/offices/enforcement/key-issues/protecting/charities_execorder_13224-b.shtml

¹⁶ Ridley (2007 September) presentation ,NATO, Centre of Excellence-Defence against Terrorism,-"Aspects of Combating Terrorism training course to NATO personnel 17-21 September 2007 " Ankara Turkey

¹⁷ Ridley (2008) 'Combating Terrorist Financing-the dichotomy between formulating the legal basis and effective operational intelligence' in " Legal Aspects of Combating Terrorism," NATO Science for Peace and Security Studies Series E vol. 47 IOS Press Centre of Excellence Defence Against Terrorism Ankara Turkey p 59

and
Ridley (2009)"Combating the Financing of Terrorism" *Emirates Occasional Papers no 70* Emirates Centre for Strategic Studies and Research p 3

¹⁸ Ridley (2003) 'Law Enforcement' in "A Practitioner's Guide to International Money Laundering Law and Registration" City & Financial Publishing p 47

agencies sustained a similar radical impact. The Financial Action Task Force, hitherto an international strategic body issuing advice, guidelines and formulating best practice on anti money laundering, was galvanised into reaction¹⁹. Less than six weeks after 9/11, at an Extraordinary Plenary Session, convened in New York on 29-31 October 2001, guidelines for financial institutions to assist in identifying techniques and modus operandi of terrorist financing were issued; these were the FATF 8 Special Recommendations against Terrorist Financing. The United Nations also responded with unusual vigour against both terrorism and financing of terrorism after 9/11. The necessary ratifications to bring the UN 1999 Convention against Financing of Terrorism into force were forthcoming by November 2001, rising from 4 to 117 countries. The 1997 Convention for the Suppression of Terrorist Bombing saw an increase from 28 countries at the beginning of 2001 to 115. Collectively there was a 20 to 40% overall increase in ratification of counter-terrorism conventions.

In addition the United Nations passed Security Council Resolutions 1368 and 1373. The United Nations specifically stated that, whilst Resolution 1373 of 2001 drew upon the language of earlier conventions relating to terrorism, it also delivered a particularly emphatic message, in operational terms directed at Member States to implement effective measures against terrorist financing²⁰.

The Resolution issued a summary call on states to prevent and suppress the preparation and financing of terrorism, and criminalise the wilful collection of funds. Significantly, the Resolution stipulated the freezing terrorist assets on an international scale.

It further obligated states to render each-other with assistance, information sharing and prosecution of international terrorists²¹. Resolution 1373 had two further

and

Ridley (2008) '*Analyse this...and that,- Intelligence Analysis*' in "Combating International Crime-the longer arm of the Law" editor Brown S Routledge-Cavendish p 212

¹⁹ Ridley (2010) '*Organised Crime, Money Laundering and Terrorism*', in "Human Resources and Development in the Arabian Gulf" Emirates Centre for Strategic Studies and Research p 374 and p 389

²⁰ Presentation of UK Ambassador Greenstock, chairman of the Counter-Terrorism Committee in Vienna, 3 June 2002

²¹ Note by the Chairman of CTC 16 October 2001 (S/AC 40/2001/CRP.1)

significant aspects. Firstly, it created a Counter Terrorism Committee (CTC) which is tasked with the duty of monitoring Member States' progress in implementing the Resolution. Secondly, a specific measure also required that states freeze terrorist assets. This was replicated by FATF Special Resolution III²². To assist the CTC in asset freezing it enhanced, by Resolution 1390 of 2002, its consolidated list of individuals and entities whose assets were required to be frozen.

The immediate post 9/11 shock amongst the international community - generally but not exclusively sympathetic to the United States - resulted in an overall imperative for international action in terms of countering terrorist financing. Given this, and with the benefit of hindsight of subsequent resolutions and UN measures, Resolution 1373 marks a hiatus²³ in terms of the extent to which individual states were pressurised to act effectively.

Resolution 1373 was speedily implemented by the 8 Special Recommendations of the Financial Action Task Force²⁴, which set the measures which it was incumbent on all countries and jurisdiction to implement in countering terrorist financing. One such measure was information and intelligence exchange, while another exhorted enhancement of suspicious transaction reporting procedures of banks and financial institutions.

For sums of monies to be transferred internationally, the international banking system utilises the electronic transfer system, known as SWIFT, or The Society for Worldwide Interbank Financial Telecommunications. SWIFT is a Belgian and US-based industry-owned cooperative and co-ordinates and facilitates the global network of inter-bank and inter-financial institutions electronic transfer payments.

²² Ridley (2008) 'Combating Terrorist Financing-the dichotomy between formulating the legal basis and effective operational intelligence' in "Legal Aspects of Combating Terrorism," NATO Science for Peace and Security Studies Series E vol. 47 IOS Press Centre of Excellence Defence Against Terrorism Ankara Turkey p 60

²³ Ridley (2009) "Combating the Financing of Terrorism" *Emirates Occasional Papers no 70* Emirates Centre for Strategic Studies and Research

²⁴ Promulgated in an emergency Plenary Session in New York 29-31/10/2001, the month following the attacks of 9/11

Given the nature of the traffic it handles the SWIFT organisation maintains a high level of security and confidentiality. However, in the post 9/11 aftermath, in order to facilitate intelligence exchange between the EU and the USA law enforcement, a certain degree of exchange was afforded by SWIFT on an *ad hoc* informal intelligence basis, facilitated by the European Central Bank²⁵, an arrangement which was hurriedly brought to a halt following it becoming public by investigative journalism of the *New York Times* in 2006.

On 1 February 2010 an international arrangement was made permitting SWIFT, to divulge financial information regarding its EU based transfers to US law enforcement authorities. The arrangement was temporary, subject to EU parliamentary ratification. Resolving the agreement is causing a strain on EU-US relations, has raised controversy within the European Parliament²⁶, and caused a rift between the EU Justice and Home Affairs Committee and the EU Security Commission. The former held that such an agreement was an infringement of the right to privacy of EU citizens, and is unnecessary, as such intelligence could be gained by regular official US-EU requests for judicial co-operation, or could be carried out on a bilateral information exchange between the US and individual EU Member States. Also the JHA questioned if such an agreement was the appropriate mechanism, given the wide nature of the SWIFT database, and referred to risks of acting on purely intelligence-led information. The EU Security Committee countered such arguments by pointing to at least three cases of EU based terrorist activities, whose perpetrators were prevented from further illicit activities by timely EU-US exchange on data regarding financing of terrorism, and also refer to the time factor, whereby official judicial requests are too lengthy in process to resolve the real time necessities of intelligence exchange. Significantly, within a fortnight of the temporary agreement coming into

²⁵ Ridley (2008) "Central Banks and their role against financing of terrorism in the post 2001 period" p 39 project commissioned to London Metropolitan University by the Institute of Security Analysis and Strategic Networking

²⁶ Waterfield B (2010 February 5) "EU and US clash over banking privacy" *Daily Telegraph*

force, in subsequent parliamentary proceedings, ratification was rejected by the European Parliament²⁷.

The whole issue was an example of the legal difficulties encountered in international combating financing of terrorism, and where pragmatic, *ad hoc* and often unofficial intelligence exchange, ongoing in the post 9/11 decade, are at variance with international legal procedures and the time taken to develop and implement such procedures.

Another set of difficulties lay in the details of the legal obligations of banking institutions to divulge information. Banks are of paramount importance in that they hold a significant proportion of financial intelligence essential for law enforcement to combat both money laundering and terrorist financing²⁸. Following the various UN Resolutions and the UK statutory instruments implementing them, from 2002 onwards UK and foreign banks implemented anti money laundering and anti terrorist financing measures. However, legislators reacting to the events of 9/11 formulated financial defence measures for institutions, costing large sums of monies to scope and implement within banks, in terms of time, resources, equipment and staff, all taking a commercial toll on the working day. The measures, hastily promulgated, were made more costly by lack of consultation, input or advice from banking practitioners as to what was practicable. The overall result was evidenced in a late 2003, to early 2004

²⁷ vote in European Parliament Strasbourg, 11 February 2010, Voting; 378 against, 196 for, with 31 abstentions BBC World Service (2010 February 11) "European SWIFT bank data angers US", found on <http://news.bbc.co.uk/2/hi/europe/8510471.stm>, and

Deutsche-Welle (2010 February 11) "European parliament rejects SWIFT deal for sharing bank data with US", found on <http://www.dw-world.de/dw/article/0,,5238246,00.html>

See also ENDNOTE THREE

²⁸ Ridley (2003) '*Law Enforcement*' in "A Practitioner's Guide to International Money Laundering Law and Registration", City & Financial Publishing p 29 and

Ridley (2008) '*Pan European Law Enforcement Strategic Analysis*' in Grieve J and Harfield C eds "Handbook of Intelligent Policing-consilience, crime control and community safety " p 139 and

Ridley (2010) "*Organised Crime, Money Laundering and Terrorism*", in "Human Resources and Development in the Arabian Gulf" Emirates Centre for Strategic Studies and Research p 375

survey carried out by the international auditing firm, Price Waterhouse Cooper of over 200 international and UK banks. All had stated that compliance costs to their own institution had risen by over 60%²⁹.

The measures were costly, but apparently of little effect. In a research survey carried out on a particular *modus operandi* of terrorist financing³⁰ one banker as late as December 2007, stated that, despite all the measures and checking systems that had been implemented he,

“had yet to meet any compliance officer who could speak with any degree of confidence on the financing of terrorism and who was confident that it was in any way effective”³¹

Currently international banks are being confronted with another potential problem arising from legal difficulties in terrorist financing, that of punitive damages. One *modus operandi* of terrorist groups engaged in illicit funding is that of exploitation of the NGO/charity sector. Such a *modus operandi* has been recognised strategically by international law enforcement but counter-measures to date have been comparatively ineffective. The eminent academic and anti terrorists specialist, Gunaratna, stated in 2002,

“...al Qaeda set great store by establishing infiltrating, and trying to gain control of many Islamic NGOs, be they government-registered charities engaged in socio-economic, educational or welfare projects”³²

Half a decade later, the eminent criminologist Professor Phil Williams, analysing the faltering efforts of international law enforcement and regulatory efforts to curb terrorist financing, cited as one of the principal causes,

Second, anti terrorist forces have not been able to deal adequately with Islamic charities”³³

²⁹ Ridley (2009) *The Sinews of War* in Beyer C and Bauer M (eds) “Effectively Countering Terrorism” Sussex Academic Press p 161

³⁰ Ridley (2007) “Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes of financing of terrorism” Airey Neave Trust Project commissioned to London Metropolitan University.

³¹ cited in Ridley (2009) “Combating the Financing of Terrorism” *Emirates Occasional Papers no 70* Emirates Centre for Strategic Studies and Research p 26

³² Gunaratna R (2002) “Inside al Qaeda” p 6 Colombia University Press.

On 19 August 19 2003 a terrorist attack occurred in Israel. A suicide bomber on a bus detonated devices composed of ball bearings and 5 kgs of explosives in the Jerusalem suburb of Hanavi, resulting in 22 fatalities, including children, and wounding a further 118 individuals. HAMAS was responsible for the attack. Amongst the injured was a student, Tzvi Weiss, then studying in Jerusalem on a three year course. Weiss has taken recourse to a civil action.

There have been actions before by individuals or relatives of individuals seeking compensation for Islamic extremist terrorist attacks, as in the case of *Weinstein vs. Iran*³⁴ and other related cases³⁵. However in such cases the plaintiffs have either cited organisations or governments. Weiss, in *Weiss vs. National Westminster Bank plc*, took action against a UK based bank, and sought damages from the bank for allegedly providing financial services to terrorists through accounts held directly in the name of the international NGO/charity, Interpal. During the period 1997 to 2007, National Westminster Bank maintained accounts for Interpal and transferred funds on the instructions of the account holder.

The plaintiff *ratio* was that National Westminster Bank was aware of the terrorist links of Interpal. The United States clearly designated Interpal as linked to HAMAS, in unequivocal terms,

“Interpal, headquartered in the UK, has been a principal charity utilised to hide the flow of money to HAMAS. Reports indicate it is the conduit through which money flows to HAMAS from other charities, e.g. the Al Aqsa Foundation (designated under EO 13224 on May 29th) and oversees the activities of other charities. Reports further indicate that Interpal is the fundraising coordinator of HAMAS. This role is of the type that includes, ... instructing how funds should be transferred...”³⁶

³³ Williams P chapter on anti terrorist financing, in Giraldo JK and Trinkunas HA (eds) (2007)

“Terrorist Financing and ‘State Responses” Stanford University Press p 74

³⁴ *Susan Weinstein et al vs Islamic Republic of Iran et al*, US District Court for District of Colombia, Civil Action no 00- 2601(RCL) 6 February 2001

³⁵ *Easeful vs Iran* 172 F.Supp.2d1(DDC 2000) and *Mousa vs Iran* 238 F.Supp2d.1(DDC 2002)

³⁶ US Treasury Department, ,Office of Public Affairs, Press Statement 22 August 2003 JS-672 ,

National Westminster Bank countered that the United States proscribing of Interpal was after the attack occurred³⁷, and within the UK, where the account was held, there has been no such terrorist designation against Interpal. It further contended that, whilst true that Israel designated Interpal as a terrorist organisation in 1998, the list was published in Hebrew, and issued for Israeli based financial institutions. This last point may have some validity in that there are over 177 nation states who have ratified the UN Convention of the Suppression of the Financing of Terrorism, and accordingly complying with UN Security Council Resolution 1373 which makes it incumbent upon Member States to ensure financial institutions take measures to avoid giving support to terrorist financing. It would appear to be excessive expectations of due diligence for financial institutions to be aware and versed in at least 117 differing proscribed lists.

The outcome of the case was resolved out of court. However the wider ramifications are profound. The action and potential substantial loss of assets as a result of punitive damages to banks may result in such financial institutions being less willing to speedily deploy assets of international NGOs and charities, essential to the legitimate role of the latter, or even commit themselves to opening further accounts, essential to the logistics of international disaster and emergency relief³⁸. Such a retrograde development would also deprive law enforcement of one strand of intelligence, in terms of the banks and financial institutions monitoring accounts of possibly suspect international NGOs for suspicious transaction

Further legal anomalies occurred with international developments, further frustrating international co-operation against financing of terrorism. The coalition invasion of Iraq and the subsequent insurgency gave rise to certain issues. In 2003 four suspects of North African origin were arrested and charged by Italian police on various counts of giving financial support to terrorism. Appearing before the Italian magistrate in

³⁷ Office of Foreign Assets Control, Recent OFAC Actions, 21/8/2003, found on <http://www.ustreas.gov/offices/enforcement/ofac/actions/20030821.shtml>

³⁸ Ridley cited in lectures International Masters course on Transnational Financial Crime University of Teramo Italy, October 2009

Milan, Judge Clementina Forleo in January 2004, their release was ordered³⁹.

According to Judge Forleo, even if it was proved that there were contacts between the accused and paramilitary groups engaged upon acts of violence, it could only be stated that they were supportive of the guerilla wars in Iraq and Afghanistan. It was ruled that this, in itself, did not signify terrorism because, guerrilla war differs from terrorism, and

“one who commits attacks on the context of armed conflict, if these do not involve civilians, is not a terrorist...terrorism diverges from that of subversion and as such is not defined in the normal way”

The Italian prosecution appealed, and the case was pursued through the Italian legal system⁴⁰. Finally, in late 2007, it was held that the offences were terrorist related. In 2008 a similar case came before the Belgian courts,⁴¹, in which four individuals of North African origin and a Belgian national were charged with terrorist financing offences. The same defence was offered by defence counsel, citing the ruling *obiter dictum* of Forleo. It appeared that the defence pleas were gaining acceptance, and the Belgian authorities were unaware of the final outcome of the *Forleo* ruling in Italy. It was only through the intervention of Eurojust, the pan EU judicial authority who informed their Belgian judicial counterparts of the final ruling in Italy, that swayed the Belgian case to the prosecution case being heard, and convictions resulting. However, German prosecution authorities voiced concern, in that the final outcome of the *Forleo* case had not been widely known, and that there may have been several similar cases between 2005 and 2008 within Germany, held before the Lander or state courts, in which adverse rulings may have been made.

³⁹ Ridley (2007) "Central Banks, merging banks and murky Italian waters" in *Journal of Financial Crime*, vol 14 no 2 2007 Institute of Advanced Legal Studies and Emerald Publishing. case of Bouyia, Toumi and Daki before juge d'instruction Milan, January 2004

⁴⁰ Between January 2005 and October 2007, during which the Milan Appeal Court upheld Forleo ruling, then the Italian Supreme Court rejected the ruling and sent the case back to the Milan Appeal court for a reconsideration, in which the Milan Appeal Court overturned the ruling of Forleo and held that the offences were those concerning financing of terrorism.

⁴¹ Ridley (2007 September) presentation, NATO Centre of Excellence-Defence against Terrorism,- Aspects of Combating Terrorism, training course to NATO personnel 17-21 September 2007 Ankara Turkey citing case of Belgian criminal court, Brussels,2007 accused Bilal Soughir, Souhaieb Soughir, Younis Loukili, Nabil Karmun, and Pascal Cruypenninck, and

Ridley (2009)"Combating the Financing of Terrorism" *Emirates Occasional Papers no 70* Emirates Centre for Strategic Studies and Research p 5

This uncertainty regarding the nature of terrorism and quasi-liberation conflicts in the post 9/11 environment is yet another compounding legal factor hampering international concerted efforts against financing of terrorism⁴².

Intelligence exchange between international law enforcement agencies is essential to international anti terrorist efforts. In the post 9/11 period the European Commission agreed to form a pan EU anti terrorist task force, to be based at Europol, the international law enforcement intelligence agency in Netherlands. The Task Force consisted of representatives from Europol anti terrorist unit, and representatives from the law enforcement and security services from individual Member States. None of the Member States' representatives, police or security services, had access to intelligence data held, having to request information via a Europol official having access to the data. Legally such data is under the possession of the Member state, being placed at the disposal of Europol and stored as such.

Such difficulties of EU intelligence exchange of anti terrorist data were compounded by the issue of Third (i.e. non EU countries)⁴³ which arose in February 2002 when the United States seconded an FBI officer to the Europol anti terrorist unit. The officer was not permitted to access any operational data, to attend any Europol anti terrorist meetings save those of a general housekeeping and overview nature. A month after the secondment took effect seconded terrorist experts from the Member States voted that the officer could not be located in the secure corridor, where the anti terrorist unit was situated⁴⁴. The officer was recalled to FBI headquarters Washington within months⁴⁵.

In 2005 another FBI liaison officer was seconded to Europol in 2005, and engaged in non-terrorist related activities. Strategic co-operation with representatives from the United States and other non EU Member States continued but without operational

⁴² Ridley lectures *International Masters course on Transnational Financial Crime University of Teramo Italy, October 2009*

⁴³ Ridley (2007) "Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes of financing of terrorism" Airey Neave Trust Research Project, commissioned to London Metropolitan University

⁴⁴ confidential source Europol

⁴⁵ confidential source FBI Washington

data exchange. In 2003 a European Council Act⁴⁶ amended the regulations regarding exchange of information with non EU States but a period of time elapsed before this was finally brought into effect. At an expert terrorist meeting held at Europol, the FBI liaison officer was physically denied access to the meeting. The United States, at a subsequent EU-US informal High Level Meeting at Brussels in March 2006 pointedly stated that,

”it would be disappointing if the FBI had to reach once again the conclusion that it was not worth keeping a liaison officer at Europol”⁴⁷ .

At the time of the 2006 meeting the Europol Convention amendment, promulgated in 2003, had still not yet been ratified by seven EU Member States. It did not finally come into effect until 2007⁴⁸.

US anti terrorism efforts and measures owe their origin and power to the 2001 US Patriot Act. The US Patriot Act⁴⁹ must be viewed in conjunction with its own passing and the New York State law outlawing money laundering⁵⁰. It was passed in a highly charged backcloth of post 9/11, in the words of US international lawyer in 2003⁵¹,

“Since September 11 2001 the US has been at war. Comprehension of that fact is necessary in order to understand the legal changes made in banking as a result”

The immediate pre 9/11 US political background compounded the intense emotional charging of the various draconian provisions concerning anti money laundering (and terrorist financing. Prior to the 9/11 attacks US federal efforts against money laundering, in terms of establishing anti money laundering systems was faltering. The individual preventing such legislation was Senator Phil Gramm, a former Democrat turned Republican⁵². Between March and June 2000 the Clinton administration

⁴⁶ 27 November 2003, which drew up a Protocol amending article 10(9) of the Europol Convention

⁴⁷ Brussels 27 March 2006 NOTE from Council Secretariat, Report of the EU-US informal High Level Meeting on Freedom Justice and Security 2-3 March 2006 LIMITE JAI 118 CATS 44

⁴⁸ Official Journal of the European Union. Decision of Management Board of 20 March 2007 (2007/C 72/15)

⁴⁹ Bill H.R 3162, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act 2001.

⁵⁰ New York State Anti Money Laundering Law, section 470.00 *et al*

⁵¹ John Moscow, former Chief Prosecutor New York County, at a closed anti money laundering conference London in mid 2003.

⁵² part of Gramm's implacable opposition was due to his position as chairman of the Texas Banker's Association. The general functioning of day to day economic business life in the late 1990s in Texas

introduced to Congress tougher anti money laundering laws, centering around more stringent customer identity measures, identifying the source of incoming monies and more in depth checks on monies to or from tax havens and offshore jurisdictions. These measures were stopped in their tracks in June when Senator Gramm as chairman of the Senate Banking Committee refused to allow the measures to come before it⁵³. This happened again in 2001.

The events of 9/11 rendered any domestic opposition unthinkable to US stringent regulations being applied to banks and financial institutions for checks, and as aids to investigations. The international UN Resolutions and the US Patriot Act were particularly welcomed by US law enforcement and regulators alike. The effusive welcome was part of the reaction of pent up frustration against what was perceived to have been politically inspired delay in implementing such necessary measures⁵⁴.

Strategic oversight in identifying the *modus operandi* of post 9/11 terrorist financing

In the immediate aftermath of 9/11 the collective strategic intelligence of law enforcement and regulatory agencies immediately identified certain *modus operandi* of terrorist financing. Others only became apparent at later stages in the post 9/11 decade. This delay in identifying⁵⁵ was partially due to the pre 9/11 mindset of financial crime strategists that the same *modus operandi* of money launderers were utilised by terrorist groups for financing⁵⁶.

was intensely cash based. The proposed new regulatory system, with their reinforced principles of 'know your customer' would, if implemented, threaten to radically delay and disrupt the customer banking operations of all the major Texas banks.

⁵³Cohen A (2001 October 14) "Banking in secrecy" *TIME*, found on <http://www.time.c/time/magazine/article/0,9171,179467-2,0.html>

⁵⁴ Ridley (2007) "Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes of financing of terrorism" Airey Neave Trust Research Project, commissioned to London Metropolitan University

⁵⁵ Ridley (2008) '*Analyse this...and that,- Intelligence Analysis*' in "Combating International Crime-the longer arm of the Law" editor Brown S Routledge-Cavendish p 213

⁵⁶ *ibid* p 213

and

Ridley (2010) '*Organised Crime, Money Laundering and Terrorism*', in "Human Resources and Development in the Arabian Gulf" Emirates Centre for Strategic Studies and Research p 389

One method or *modus operandi* of terrorist financing which was immediately identified and universally agreed upon by law enforcement agencies, financial regulators and governmental agencies on an international scale was that of the exploitation international charities and n.g.o.s⁵⁷.

However, other methods were - and some may still be - overlooked. As stated above, the FATF acted with remarkable decisiveness on 29-31 October 2001, and issued the guidelines - the 8 Special Recommendations - as practical guidance to assist the implementation of Resolution 1373, in terms of recommending to financial institutions the identified techniques and *modus operandi* of terrorist financing on which to focus. The 8 Special Recommendations were comprehensive,⁵⁸ and covered the necessity of updated ratifying anti terrorist financing convention(s), criminalised the financing of terrorism, specific financial intelligence exchange and bank transaction reporting systems, and – radically – international seizing and freezing of suspected terrorist assets, terrorist use of the formal banking system, use of the informal banking system and methods of transfer including wire transfer institutions and ngo/charities⁵⁹.

However, the Special Recommendations omitted one rather basic method, namely that of the use of cash couriers. It was only during a period 2004 to 2005 , with terrorist financing cases coming to light involving the use and dependence upon, cash couriers, that a Ninth Special Recommendation was formulated, and not until 2007 that it was

⁵⁷ Ridley (2007) '*Combating financing of terrorism -the dichotomy between formulating the legal basis and effective operational intelligence*' in "Legal Aspects of Combating Terrorism,"(ed) Centre of Excellence-Defence against Terrorism, Ankara Turkey NATO Sciences for Peace and Security Series E; Human and Social Dynamics-vol 47 IOS Press p 61

And

Ridley (2009) '*The Sinews of War*' in Beyer C and Bauer M (eds) "Effectively Countering Terrorism" Sussex Academic Press pp 168-169

⁵⁸ Ridley (2007) '*Combating financing of terrorism -the dichotomy between formulating the legal basis and effective operational*' in "Legal Aspects of Combating Terrorism,"(ed) Centre of Excellence-Defence against Terrorism, Ankara Turkey NATO Sciences for Peace and Security Series E; Human and Social Dynamics-vol 47 IOS Press p 60

Ridley (2007) "Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes of financing of terrorism" Airey Neave Trust Research Project, commissioned to London Metropolitan University p 12

⁵⁹ given the nature of terrorist funds ,i.e. possibly legitimate monies being suspected of future nefarious use, the measures, particularly freezing and seizing of bank accounts on an international basis and the comprehensive scrutiny of all international charities and n.g.o.s in terms of possible exploitation

ratified and cash declaration reporting systems were uniformly in place within the EU⁶⁰.

The tardiness in recognition was epitomised by Jimmy Gurule, former head of anti terrorist financing in the US Treasury from 2001 to 2003 and responsible for all intelligence, policy and training in anti terrorist financing. He stated in 2005,

“I really do not know why we were so late in recognizing the use of cash couriers for terrorist financing.”⁶¹

The frankness of Jimmy Gurule was not universally shared by law enforcement and government agencies.

When the intelligence indicators came to light that cash couriers were being utilised by Islamic extremist groups and that there was likelihood that this was a terrorist financing modus operandi, the reaction by certain law enforcement and politicians alike was that it was increasingly utilised by terrorist groups of necessity as a result of international co-operation successfully countering⁶² other more conventional methods of terrorist fund transfer. United States governmental and law enforcement representatives throughout 2004 and 2005, in official press releases at meetings in Brussels, in giving expert testimony at US Senatorial investigations, and at anti terrorist symposium conference in Kuwait gave out the same premise of increasing use of cash couriers by terrorist groups⁶³.

This official reaction to the indicators regarding cash couriers was somewhat disingenuous. The premise of *increasing* use was incorrect.

⁶⁰ Ridley (2007 September 20) presentation ,NATO Centre of Excellence-Defence against Terrorism,-“ Aspects of Combating Terrorism training course to NATO personnel 17-21 September 2007 ” Ankara Turkey

⁶¹ presentation, in his official capacity as Associate Professor University of Notre Dame,USA to Criminology and Law departments,Universita Cattolica, Milan, November 2005

⁶²Ridley (2007) "Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes of financing of terrorism" study commissioned to London Metropolitan University by the Airey Neave Trust p 15

⁶³ ibid p 14

It is worthy of note that one of the principal reasons for the ultimate insurgent success during a territorial/liberationist struggle in the mid Twentieth Century was due entirely to the development of a cash courier network which maintained a constant and reliable flow of finances to fund the armed struggle. This struggle occurred from 1956 to 1962 as a high profile example, it had been in full evidence for over two generations to strategic law enforcement and governmental intelligence organisations alike; the use of cash couriers was certainly not unknown, nor could be cited as a surprise trend.⁶⁴

Throughout the 1970s and for a three year period in the 1980s the Provisional IRA utilised cash couriers to move and store monies. The large amounts of funds originating from Libya, of 3.5 million US\$ in the 1970s and 1.5 million US\$ in a three year period from 1984 to 1987, ensured a degree of financial solvency, even gave rise to a certain degree of complacency, and encouraged somewhat ramshackle methods amongst the couriers in terms of moving and storing the monies⁶⁵.

During the significant period 2003-2004 three attacks by terrorist groups were perpetrated in Europe. They occurred in Istanbul, Budapest, and Madrid. All had different types of target, and all had varying degrees of success. The first was entirely thwarted by law enforcement due to proactive intelligence, the second was carried out, but all those responsible were detected, hunted down and killed, whilst the third was carried out but only some of those responsible were identified and apprehended.. However all were perpetrated by al Qaeda affiliated terrorist groups, all had the express objective of substantial and indiscriminate fatalities and substantial damage to property. In the financing of all three attacks, occurring during this post 9/11 period of apparent strategic oversight of cash couriers, the perpetrators relied upon cash couriers⁶⁶.

⁶⁴ Ridley (2007) "Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes of financing of terrorism" study commissioned to London Metropolitan University by the Airey Neave Trust pp 9-10

⁶⁵ *ibid* p 11, and see also ENDNOTE ONE

⁶⁶ Ridley (2008) '*Terrorism financing of terrorism, and suicide bombing*' in '*Suicide as a Weapon*' edited Centre of Excellence-Defence against Terrorism, NATO, Ankara Turkey, Science for Peace and Security Studies-Human and Social Dynamics.IOS Press Amsterdam pp 154-155

Terrorist groups on a global scale in the pre 9/11 era always were heavily dependent upon cash couriers for moving funds. The original establishing of training camps and personnel in the expansion of Jemmah Islammiyah in Indonesia in the 1980s and the 1990s operations of Lashkar Jihad in its attacks on Christian groups in Maluku, all required a flow of monies, transported by cash couriers⁶⁷. In the late 1990s a fund flow from a individual al Qaeda operative in Spain in Europe to sections of Jemmah Islammiyah in South East Asia was facilitated by cash couriers⁶⁸. Jemmah Islammiyah operations in Poso in 2000, and the Medan Christmas eve bombings both involved single journey cash transfers facilitated by cash couriers. The series of preparatory meetings and transfer of finances during the period 1999-2002 for attacks on the *USS Cole* off the Yemeni coast, the 9/11 attacks on Washington and New York, USA, and the 2002 Bali bombing, all involved complex coordinated meetings and several stage transfer of cash consignments, ferried by individual cash couriers⁶⁹.

By 2006 the representatives of the United States appeared to have amended the official reaction, and that the coming to light of the use of cash couriers was not due to an *increase* in utilising this *modus operandi*, but that an existing *modus operandi* had not been identified and given due intelligence consideration. One US government report significantly admitted that the international efforts being ‘slow to focus’ on cash couriers was an ‘oversight’ in terms of intelligence which afforded terrorist groups opportunity for facilitating terrorist finances⁷⁰. This change in official reaction was the acceptance of an intelligence oversight, reinforced by events in two locations in the mid 2000s, Iraq and Gaza.

In Iraq, despite the much vaunted successful invasion by coalition forces and the debacle of the Iraqi armed forces, unexpected and prolonged resistance and insurgency by various groupings occurred. The groups were of differing Islamic

⁶⁷ Ridley (2007) “Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes for financing of terrorism” study commissioned to London Metropolitan University by the Airey Neave Trust p 46 and p 50

⁶⁸ *ibid* p 55

⁶⁹ *ibid* p 55

and Ridley (2009) “Informal fund transfer systems” *Anti Money Laundering*, the journal of the Australian Financial Markets Association March 2009 issue p 47

⁷⁰ Ridley (2007) “Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes for financing of terrorism” study commissioned to London Metropolitan University by the Airey Neave Trust pp 15-16

religious alignment and differed either in being Iraqi nationalist or al Qaeda affiliated *jihadists* ;however, during the period 2005 to 2008 their common enemy was the coalition forces. As they became more prominent, it became apparent that at least one element of resistance, the Sunni resistance groups in the period before and during the early stages of the invasion had made careful arrangements for ensuring continued logistical support; these included large amounts of stored cash in selected locations, brought in by cash couriers⁷¹. The overall situation was epitomised by an intelligence report compiled in 2006 which found that no less than 590 foreigners joined the insurgent groups in Iraq, travelling via Syria ;each one conveyed for the struggle an average equivalent of 25,000 US\$ in cash⁷².

In Gaza in 2006 the HAMAS faction of the Palestinian Authority gained electoral victory in Gaza. An uneasy period of mutual distrust followed between the militant groups supporting Fatah and HAMAS within Gaza, which eventually spiraled into armed conflict in June of the following year, with Fatah groups making spasmodic attacks on their HAMAS counterparts. HAMAS retaliated and, as a result of the escalating conflict HAMAS forces found themselves in sole undisputed control of Gaza with the Fatah forces. This development was unexpected and both the ferocity and success of the HAMAS forces and the well-equipped nature of their forces was a matter of concern and surprise. That they were so well equipped was due to substantial funds being available to them over a period of four years. These funds were smuggled in by cash couriers mingling with the large amounts of pedestrian traffic entering and leaving Gaza from Egypt. Israeli intelligence sources assessing the situation acknowledged the intelligence oversight of such funds being facilitated by cash couriers⁷³.

⁷¹ *ibid* pp 62-63

⁷² US Intelligence report 2008, cited at Cambridge International Economic Crime Symposium Jesus College Cambridge 2 September 2009, plenary session on Terrorist Financing, made under Chatham House Rules.

⁷³ Ridley (2007) "Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes for financing of terrorism" study commissioned to London Metropolitan University by the Airey Neave Trust p 69

and

Ridley (2009) "Informal find transfer systems" *Anti Money Laundering*, the journal of the Australian Financial Markets Association March 2009 issue p 47

In India the Maoist terrorist groups, cited in 2008 by the Indian Prime Minister as the greatest internal challenge facing the Indian state, have adapted their methods of financing, and are heavily dependent upon, and are successful by, cash couriers⁷⁴.

The exploitation of the insurance sector is another potential *modus operandi* that has been both underestimated and doubted by international law enforcement as to its use for financing of terrorism. Between 1990 and 2005, as with the banking sector, the insurance sector has grown exponentially, and operated under the same overall regulatory methodology as that of the banking sector⁷⁵. The insurance sector is vulnerable to illegal fund-raising and funds transfer⁷⁶. Once an account is opened- a policy is sold - there is little or no continuous verification of customer identification. Financial products are brokered and sold through third party agencies, who are often located in jurisdictions different to those of the insurance company and the policy holder; such agencies have the overall objective of selling a product as opposed to overall customer due diligence. Incoming payments can be made by third parties. The final beneficiary can be a third party. Premature encashment, albeit at a reduced yield, can be effected without scrutiny, and can be transferred to third party beneficiaries.

Spasmodic cases coming to light in the half decade after 9/11 involving insurance and terrorist financing were either speedily detected or speedily disrupted by law enforcement, as in the case in Mainz in 2004. Other cases were perceived as having a direct economic impact as a result of a terrorist attack whose main objective was mass casualties, as in the case of the Philippines⁷⁷. During the mid 2000s the potential for the insurance sector to be exploited for terrorist financing receded within the strategic deliberations of law enforcement agencies, and was clouded by the wider - debated issue of whether al Qaeda was waging a coordinated long term strategy of economic warfare⁷⁸.

⁷⁴ Ridley (2010) "India and the evolving, adaptable methods of terrorist financing" *Anti money-laundering*, the monthly journal of the Australian Financial Markets Association. May 2010 issue p 47

⁷⁵ Ridley (2010) "Illicit exploitation of the insurance sector" *999 Society and Security Monthly*, Abu Dhabi Police UAE Ministry of Interior, issue 469, January 2010 pp 31-32

⁷⁶ *ibid*

⁷⁷ Ridley (2005) 'Terrorism as economic warfare,' in *Berichte & Studien-the Journal of the Hans Seidel Stiftung Academy of Politics and International Relations*, Munich Germany, the issue on Islamismus, B&S volume 86 2005, pp 157-158

⁷⁸ *ibid*

issue of whether al Qaeda was waging a coordinated long term strategy of economic warfare⁷⁸.

However, cases came to light in 2008 in Bologna, Italy and Catalonia, Spain⁷⁹, where small al Qaeda affiliated terrorist cells were raising revenues for funding by vehicle insurance fraud in order to cover costs of facilitating the travel and recruitment of volunteers for insurgent groups in Iraq.

The criminal activity of counterfeiting of goods had been fully accepted by international law enforcement, the EU Commission, and the private sector alike as a criminal problem on a global scale with full organized crime involvement since the late Twentieth Century⁸⁰. However, the possibility of counterfeiting of goods as a *modus operandi* for terrorist financing was regarded askance by international law enforcement for at least half a decade after post 9/11⁸¹. This was despite the assertions of several academics specialising in terrorism and organised crime⁸².

Certain terrorist groups are using counterfeiting of goods as a *modus operandi* for raising finances since 2000, including the Real IRA⁸³ the Chechen resistance groups, and those with a presence in South America since the mid 1990s⁸⁴.

⁷⁸ *ibid*

⁷⁹ Ridley (2009 May) "al Qaeda and a decade of financing of terrorism" in *Anti Money Laundering*, the journal of the Australian Financial Markets Association May 2009 issue p 43

⁸⁰ Ridley (2008) "Counterfeiting of goods and its possible use as a *modus operandi* of terrorist financing" research project of Airey Neave Trust Research, commissioned to London Metropolitan University pp 6-10

⁸¹ *ibid* p 54 and at p 57, Conclusion 1 – the temporal dimension'

⁸² *ibid* pp 51-54

⁸³ *ibid* p 48

⁸⁴ *ibid* pp 41-42 and 48-49

Counterfeiting of goods is a global problem, and one particular facet of counterfeiting that has caused concern is the counterfeiting of medicines⁸⁵. Since 2006 this concern has intensified due to the change in focus of the counterfeiters. Up to 2007 the main counterfeit commodities were those of life enhancing and luxury consumer medicines such as anti headache, influenza and anti depressants; since 2007 the *modus operandi* consists in illicit reproduction and widespread distribution of medicines and pharmaceuticals treating life threatening diseases⁸⁶.

It is suggested that the salient aspect regarding both the South American dimension and the Chechen groups in the various case studies is not the nexus between organised crime and terrorism being highlighted by counterfeiting of goods, but that the use of counterfeiting of goods as a *modus operandi* in financing of terrorism emphasizes and is part of the trend of the pragmatic mixing, adapting and combination of various differing methods for fund raising and fund transfer being used in terrorist financing⁸⁷. The importance of counterfeiting of goods is not reinforcing the link between organised crime and terrorism, but forming *part of a trend* within terrorist financing.

The possibility of counterfeiting of goods as a *modus operandi* is becoming more apparent, and law enforcement are increasingly accepting some form of potential link between counterfeiting of goods and terrorist financing⁸⁸.

The region of south East Asia is also involved in counterfeiting of medicines⁸⁹. Within South East Asia there are several interlocking terrorist groups, whose links are due to reasons of past history and of formation and operational pragmatism⁹⁰. The main terrorist groups, Jemaah Islamiyah, Moro Islamic Liberation Front and Abu

⁸⁵ ibid pages 16-22

⁸⁶ ibid p 16 and Conclusion I p 57

⁸⁷ Ridley (2008) "Counterfeiting of goods and its possible use as a *modus operandi* of terrorist financing" research project of Airey Neave Trust Research, commissioned to London Metropolitan University, case studies

⁸⁸ ibid p 54, and Conclusion 5 p 59

⁸⁹ ibid p 51

⁹⁰ Ridley (2007) "Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes for financing of terrorism" study commissioned to London Metropolitan University by the Airey Neave Trust pp 46-52 and ENDNOTE TWO

Sayyaf have long term links with al Qaeda and its affiliates⁹¹. Therefore it would be reasonable to assume that south east Asian terrorist groups would conform to the general trend of adapting *modus operandi* of terrorist financing, including possibly engaging in, or investing in, or facilitating, counterfeiting of medicines and pharmaceuticals for terrorist financing.

In fact such involvement in counterfeit medicines is not occurring. When the possibility of terrorist groups in south East Asia was considered with regard to perpetrating counterfeiting of medicines, an alternative-literally as well as differential-form of illicit revenue raising came to light. This alternative is the manufacture, retailing and distribution of herbal or alternative medicines. This has been a long traditional method, with a widespread demand amongst the poorer elements of south east Asian society. These elements are the same dissatisfied social strata who have a natural affinity to the fundamentalist aims proclaimed by the terrorist groups. Alternative medicines are exploitable by terrorist groups in the region for fund raising, recruitment through commercialism, in that outsiders are enticing outsiders to join or form a group for economic gain by becoming a retail or supply agent, and disseminating propaganda in tandem with the dissemination of the alternative medicine⁹². It is submitted that this *modus operandi* is one which to date is comparatively underestimated by anti terrorist law enforcement and regulators and needs further research and inquiries.

As well as possibly underestimating the significance of certain terrorist financing *modus operandi* in the aftermath of 9/11, one possible *modus*, that of, was arguably overestimated. This was the potential exploitation of the vulnerabilities of Islamic banks for transferring funds

⁹¹ For MILF and Abu Sayyaf links to al Qaeda, *ibid* p 46; for JI links to al Qaeda, Ridley (2008) "Counterfeiting of goods and its possible use as a *modus operandi* of terrorist financing" research project of Airey Neave Trust Research, commissioned to London Metropolitan University p 50, and ENDNOTE TWO

⁹² Ridley (2008) "Counterfeiting of goods and its possible use as a *modus operandi* of terrorist financing" research project of Airey Neave Trust Research commissioned to London Metropolitan University pp 50-52,

As part of the international reaction to 9/11 various possible *modus operandi* of terrorist financing became the subject of international attention. One such area was the potential exploitation of Islamic banking and financial institutions. Accordingly Islamic banking and finances came under scrutiny⁹³.

However, this scrutiny was against an unfortunate background of Arab ill-feeling. The initial reaction of Arab states to 9/11 was shock and disbelief⁹⁴, accompanied by official denials that any Arab states were involved in financing of al Qaeda. Between October 2001 to early 2002 such denials, by Lebanese Prime Minister, the Governor of the Central Bank of the UAE, the Governor of the Central Bank of Kuwait, the Deputy Governor of the Central Bank of Egypt, the Governor of the Central Bank of Oman all categorically asserted that no terrorist financing had occurred or was occurring within their countries. Such denials were accompanied by a certain intransigence to provide assistance to United States and EU investigators. This was cultural posturing but it was interpreted by the US and EU governments and investigators alike as obduracy and as a refusal to co-operate, and requests for assistance changed to aggressive demands. This period of ill-feeling was epitomised by the Egypt passing in 2002 its first anti money-laundering legislation. A fortnight after the bill was passed in the People's Assembly the United States declared it unacceptable in that its provisions against terrorist financing were insufficient and threatened sanctions if the legislation remained unchanged. Egypt complied some months later, but with extreme ill-grace. By the end of 2002 the prevailing attitude on the Arab world had changed from shock and empathy with, to defensiveness and a reluctance to co-operate with, United States and EU investigators⁹⁵.

⁹³ In 2002-2003 Interpol, and Europol made internal studies of Islamic banking. In late 2002 the FBI expressed an interest and requested information exchange and analysis and included an overview of Islamic banking as part of its 2003 training seminars on terrorist financing at its academy at Quantico in 2003. Islamic financial institutions were the subject of US Canadian Europol information exchange in a case of suspected terrorist financing, 2003-2004, Kombassom case.

⁹⁴ Ridley (2009) "Combating the Financing of terrorism" Occasional Paper commissioned by Emirates Centre for Strategic Studies, Abu Dhabi UAE to London Metropolitan University. Occasional Paper no 70 ECSSR p 27

⁹⁵ Moraes Rueshen, M.de (2007) '*Arab Government responses and terrorist financing*' in Giraldo JK and Trinkunas HA (2007) "Terrorist Financing and State Responses" Stanford University Press pp 152-170. de Moraes Rushen charts and analyses in this chapter the deterioration of US and western- Arab countries relations and its causes, and the points later in the post 9/11 decade when the US realised its mistaken policies and attempted to retrieve the situation.

The intense interest in Islamic banking shown by various EU and US law enforcement agencies and regulatory bodies fuelled the ongoing deterioration in that the initial post 9/11 shock and empathy towards the United States by certain Arab jurisdictions shaded off into sullen resentment. The Gulf States were and are origins and centers of scholarship and pioneering initiatives of Islamic banking, and this status is recognized and highly valued within Arab countries. All therefore viewed the sudden interest and scrutiny of Islamic financial systems and miniscule examinations of apparent vulnerabilities of banking as intrusive and forming part of a policy of unnecessary targeting of Arab jurisdictions.

It is indeed true that Islamic banking has vulnerabilities to illicit money transfer, which could be exploited for nefarious purposes, both criminal and terrorist. Regulation and supervision of Islamic banks and their financial products differ within Islamic jurisdictions⁹⁶ and there is comparatively scant international standardised regulatory supervision⁹⁷.

Since the 1990s several rival regions and jurisdictions, principally in the Gulf region and in South East Asia have created centres of excellence, learning and scholarship in Islamic finances, have progressed the advancement of Islamic financial systems, and each one aspires to be the leading authority on Islamic finance. To alleviate these rivalries, the Islamic Financial Services Board was established and located in Kuala Lumpur, Malaysia, whose non-Islamic banking system is extremely pragmatic in combining with and accepting Islamic financial products and procedures.

⁹⁶ Ridley (2007 November) "Islamic Financial Institutions and potential vulnerability to money laundering and illicit transfer of terrorist funds", study commissioned to London Metropolitan University by the Institute of Security Analysis and Strategic Networking, pp 6-7

⁹⁷ *ibid*, and

Ridley (2003) '*Anti money laundering terrorism and international law enforcement*' in "A Practitioner's Guide to International Money Laundering Law and Regulation", City and Financial Publishing Publishing p 42

The Islamic Financial Services Board has little power of regulatory enforcement, and can only issue guidelines, which may not have universal recognition⁹⁸. There are significant accounting and auditing differences in Islamic banking and finance⁹⁹. In addition, there is a need for higher capital adequacy levels than those of conventional banks, due to an overall high liquidity of funds, which itself gives rise to an inordinate amount of money movements. These may be conducive to illicit transfer transactions¹⁰⁰.

Within the context of the post 9/11 reaction to terrorism and terrorist financing any research which could identify vulnerabilities to terrorist financing in any banking system, including the Islamic banking system, was fully valid.

However, it was not lost upon the Arab and Islamic jurisdictions that the same vulnerabilities concluded in the various studies on Islamic banking, namely the overall extent of failure in accountancy and auditing, had been dramatically highlighted in conventional¹⁰¹ European Union and United States banking and corporate entities. Conventional auditing and accountancy procedures had been proven flawed and unfit for purpose less than twelve months before 9/11, as a result of the ENRON and WORLDCOM international frauds, leading to the dramatic collapse of the global accountancy firm Arthur Anderson. Also the current series of post 2007 economic crises would reveal dramatically that regulatory systems of conventional bank supervision were as flawed as any Islamic counterparts. The UK Financial Services Authority in 2010 has executed a complete *volte face* in terms of reversing its *laissez faire* bank supervision policy¹⁰². In the aftermath of the economic crises, during 2009-2010 central banks and financial regulators have been obliged to propose and promulgate-and if necessary impose- proposed countermeasures imposed

⁹⁸ Ridley (2007 November) "Islamic Financial Institutions and potential vulnerability to money laundering and illicit transfer of terrorist funds", study commissioned to London Metropolitan University by the Institute of Security Analysis and Strategic Networking, pp 31-32

⁹⁹ *ibid* pp 6- 8

¹⁰⁰ *ibid* p 10

¹⁰¹ Contrary to some popular misconceptions, Islamic banking and finance is an official and legally endorsed financial system and banking practice, as opposed to *hawala* banking with which it is often confused. In some jurisdictions the sole financial system in the entire country is that of Islamic banking. As academic governmental and law enforcement interest in Islamic banking has increased, the terms 'conventional banking' or 'conventional financial system' have become accepted terms for the 'traditional' or non Islamic banking systems in operation in the majority of countries.

¹⁰² Economist (2010 22-29 March) "From light touch to heavy brigade; the FSA gets tough"

by central banks implementing mandatory higher levels of capital adequacy to be maintained by banks, the same vulnerability found in Islamic banks¹⁰³.

The perception amongst Arab and Gulf states and those Islamic states of south east Asia, was that of a targeting by the USA and EU law enforcement and governmental agencies of a financial system because it was Islamic. In the post 9/11 era international anti terrorist efforts focusing upon Islamic banking and finance proved to be a distraction. It also proved to be costly in terms of dissipated goodwill within Arab jurisdictions, particularly the Gulf region.

Strategic mindset of government policy makers and law enforcement intelligence

The delay in accepting the full significance of cash couriers as a potential terrorist financing *modus operandi* was due to the collective response of international law enforcement and regulatory authorities in the post 9/11 reaction to terrorist financing being founded upon anti money laundering principles¹⁰⁴. Globally suspicious transaction reporting systems in differing jurisdictions could be fitted into only one of three models of transaction reporting regime. These three models are known as the EU model, the US model, and the South American model. The variations depend upon the standardisation of intelligence received and/or which agency has primacy within the reporting system¹⁰⁵. The US model encompasses different law enforcement agencies, processing financial intelligence and following up inquiries in differing ways, but all financial intelligence received is in the format of SARS and currency transaction variation reports. The EU model encompasses financial intelligence received in differing forms - up to 27 as per 27 different Member States – but standardised law enforcement agencies and responses in the form of Financial Intelligence Units (FIU). The South American model envisages anti money

¹⁰³ Ridley (2007 November) "Islamic Financial Institutions and potential vulnerability to money laundering and illicit transfer of terrorist funds" study commissioned to London Metropolitan University by the Institute of Security Analysis and Strategic Networking, p 8

¹⁰⁴ Ridley (2009) '*The Sinews of War*' in Beyer, C and Bauer M (eds) "Effectively Countering Terrorism" Sussex Academic Press, p 153

¹⁰⁵ Ridley (2008) "Central Banks and their role against financing of terrorism in the post 2001 period" project commissioned to London Metropolitan University by the Institute of Security Analysis and Strategic Networking p 27

laundering being combated by a variety of differing law enforcement and governmental agencies, all being coordinated and driven by one central agency, usually the central bank¹⁰⁷

The 2001 Special Recommendations were formulated on an EU-USA transatlantic methodology that was, in keeping with the turn of the Twentieth Century, grounded in anti money laundering¹⁰⁸

In this era large scale money laundering was perpetrated through, and increasingly reliant upon, sophisticated financial instruments and increasingly complex financial investment products in the pre-2007 era dubbed by financial press as ‘the era of financial engineering’. Simple cash consignments were not considered a major element of substantial money laundering.

Furthermore, whilst the exploitation of charities and NGOs was recognized comparatively early as a *modus operandi*¹⁰⁹ as opposed to a delay in recognising the use of cash couriers as such, there also appears to have been a similar delay in full awareness of monies being transferred by combining the two methods.

Cases came to light where charities were being utilised for fund transfer by cash couriers acting for terrorist groups¹¹⁰.

It was only in 2008 that the Financial Action Task Force (F.A.T.F.), by issuing a report specifically dealing with terrorist financing, outlined various *modus operandi*,

¹⁰⁷ *ibid*

¹⁰⁸ Ridley (2007) ‘Combating terrorist financing –the dichotomy between formulating the legal basis and effective operational intelligence’ in “Legal Aspects of Combating Terrorism,”(ed) Centre of Excellence-Defence against Terrorism, Ankara Turkey NATO Sciences for Peace and Security SeriesE;Human and Social Dynamics-vol 47 IOS Press p 61

and

Ridley (2008) training lecture, NATO Advanced Training ,Legal Aspects of Combating Terrorism, Centre of Excellence Defence against Terrorism Ankara Turkey 4-8 February 2008 Sarajevo Bosnia and Herzegovina,

and

Ridley (2009) “Combating the Financing of Terrorism” *Emirates Occasional Papers* Emirates Centre for Strategic Studies and Research p 5

¹⁰⁹ Ridley (2009) ‘The Sinews of War’ in Beyer,C and Bauer M (eds) “Effectively Countering Terrorism” Sussex Academic Press p 168

¹¹⁰ Ridley (2007) “Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes for financing of terrorism” study commissioned to London Metropolitan University by the Airey Neave Trust pp 22-23

which included a combination of these two methods. The report included a section dealing with the exploitation of charities, and in the same section it also highlighted this in combination with the *modus operandi* of cash couriers,

“ Terrorist abuse of the charitable sector...legitimate transactions to disguise cash travelling to the same destination...”¹¹¹

During the half decade after 9/11, as has been mentioned above, suspicious transaction reporting systems in differing jurisdictions fitted into only three models according to the standardisation of intelligence received and/or which agency had primacy within the reporting system. In identifying a prime agency for dealing with terrorist financing the possibility of the central bank, changing and evolving over a long period¹¹², and enhanced by the development of a de facto standardised European banking system¹¹³, was overlooked during this period. The central bank still remains overlooked by the majority of countries in terms of providing expertise in global money flow and macro transaction analysis and also as a co-coordinating role. In terms of involvement in efforts against terrorist financing, there are seven possible levels of involvement by central banks, of which two levels appear to be most productive¹¹⁴. Few countries avail themselves of utilising the central bank in their efforts against terrorist financing, and as a result international efforts may be lacking a valuable organisational resource¹¹⁵.

¹¹¹ Financial Action Task Force (2008 February 29) “Terrorist Financing” FATF-GAFI, section Moving Terrorist Funds; Use of Charities and Non Profit Organisations, pp 25-27

¹¹² Ridley (2007) “Central Banks, merging banks and murky Italian waters” in *Journal of Financial Crime*, vol 14 no 2 2007 Institute of Advanced Legal Studies and Emerald Publishing

¹¹³ Ridley (2007) “Financial Enmeshment-banking systems in Western and Central and South-Eastern Europe” in *Journal of Money Laundering Control*, Institute of Advanced Legal Studies and Emerald Publishing vol 9 no 1 2006 p 95

¹¹⁴ Ridley (2008) “Central Banks and their role against financing of terrorism in the post 2001 period” project commissioned to London Metropolitan University by the Institute of Security Analysis and Strategic Networking p 42

¹¹⁵ Ridley (2008) “Central Banks and their role against financing of terrorism in the post 2001 period” project commissioned to London Metropolitan University by the Institute of Security Analysis and Strategic Networking p 44
and

Ridley (2009) “Combating the Financing of Terrorism” *Emirates Occasional Papers no 70* Emirates Centre for Strategic Studies and Research pp 18-21

The same strategic mindset during the half century after 9/11 is evidenced in the operational issue of potential terrorist finances to the Somalia region.

A series of suspicious money transfers by Somali individuals came to light in Sweden and Denmark. Transfers were made through banks in Denmark between 1993 and 1998, and in Sweden throughout the shorter period of August 2001, to the same banking institutions in Dubai¹¹⁶. In 2003 intelligence gained by Finnish police indicated that large amounts of cash were being collected, stored and then deposited in a bank in Helsinki and transferred, via US accounts in Finnish banks, to the same banking institution, same bank account, in Dubai. It was suspected that the monies were then channeled by money transfers, *hawala* exchanges and cash couriers, to Somalia.¹¹⁷ This was examined by Finnish authorities, and intelligence was exchanged with other EU Member States. However the perceived collective opinion, as at 2003-2004 was that it was criminal money laundering, the proceeds originating from petty crime perpetrated by small criminal groups based in Helsinki. It was not regarded a potential terrorist financing case.

In the mid 2000s a new force became apparent in the conflict in Somalia, that of the Union of Islamic Courts. This movement was undoubtedly an Islamic fundamentalist one, but also had the avowed objective of stability, and building a commercial and business base in Somalia, thereby enjoying considerable support from local small scale entrepreneurs and also the poorer sections of the affected Somali population, long ravaged by civil wars. Due to their increasing influence within Somalia, the Union of Islamic Courts was perceived by 2005 as establishing a potential Islamic extremist finance centre. The Union of Islamic Courts was countered by an anti insurgency coalition, with troops from the African Union. The defeat of the Union of Islamic Courts by late 2006 was an apparent defeat of excessive Islamic influence. In fact during this same period al Qaeda was slowly increasing its influence, by

¹¹⁶ Ridley (2007) "Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes for financing of terrorism" study commissioned to London Metropolitan University by the Airey Neave Trust p 38

¹¹⁷ *ibid* pp 40 - 41.

replacing the ousted Union and by undertaking unofficial relief work to poorer sections of the population suffering due to the civil wars¹¹⁸.

This strategic concentration by international governmental efforts against terrorism in 2005-2007 on the perceived threat of the Union of Islamic Courts distracted international strategic monitoring from the more insidious influence of al Qaeda. The complacency after the ousting of the Union of Islamic Courts overshadowed the rise of the extreme al Shabab fighters which only became apparent in the beginning of 2008 in Somalia, and who were eventually to openly declare themselves to be at one with al Qaeda¹¹⁹ and to establish a presence in Yemen.

In 2008 the UN Security Council passed Resolution 1844 of 2008 specifically dealing with Somalia¹²⁰. One section specifically called for freezing and seizing of assets which were potentially used for financing the warring factions¹²¹.

In 2009 the UN Monitoring Group and the UN Panel of Experts on Somalia reported that both Eritrea and Djibouti¹²² were continuing support to differing warring militant groups in Somalia and there was a renewed emphasis on cash contributions from Eritrea, and that cash couriers, via various routes, were a principal source of transferring such finances¹²³.

On 24 December 2009 the United States imposed sanctions against Eritrea, due to its continued logistical support to al Shabab fighters in the conflicts in Somalia.

¹¹⁸ Ridley (2009), "*The Sinews of War*" in Beyer C and Bauer M (eds) "Effectively Countering Terrorism" Sussex Academic Press pp 160-161

¹¹⁹ See ENDNOTE FOUR and accompanying timechart

¹²⁰ UN Security Council, Security Council resolution 1844 (2008) [the situation in Somalia], 20 November 2008, S/RES/1844 (2008), found on, <http://www.unhcr.org/refworld/docid/492bd1e42.html>

¹²¹ Section 3

¹²² Timma Times (2009 August 22) "UN Report on Eritrea's aid to insurgents in Somalia" found on http://www.jimmatimes.com/article/Latest_News/Latest_News/UN_report_on_Eritreas_aid_to_insurgents_in_Somalia/32630

¹²³ *ibid*

As at 2009 anti terrorist expert opinion held that there were confirmed links between individual Shabab leaders and individual members of al Qaeda, in terms of operations and joint activities in which both groups participate¹²⁴.

One expert pointed to foreign *jihadists* who had been training al Shabab members since 2007, although the majority of the foreigner trainers were not al Qaeda members¹²⁵. The alliance between the two groups was indeed established, but

‘..as much a tactical arrangement as an ideological alignment’¹²⁶

However, by early 2010 at least one anti terrorist expert was predicting stronger links between al Shabab and al Qaeda¹²⁷.

On 2 January 2010 UK Premier Gordon Brown cited Yemen as an ‘incubator for terrorism’, and that Yemen presented together with Somalia, constituted a regional and global threat for terrorism¹²⁸ and in the same month, the US Secretary of State designated al-Qa’ida in the Arabian Peninsula (AQAP) as a Foreign Terrorist Organization¹²⁹. In August 2010 an annual US Department of State security report cited the greatest terrorist threat to the United States as al Qaeda in Pakistan and its affiliates in Somalia and in Yemen¹³⁰.

Somalia from 2002 to the present serves as a long term example of firstly, the misperception of law enforcement between money laundering and potential terrorist financing¹³¹, secondly, an underestimation of the use of cash couriers¹³², and thirdly

¹²⁴ Hanson S (2009 February 27) “*Backgrounder-al Shabab*” found on <http://www.cfr.org/publication/18650> p4

¹²⁵ Roland Marchal, senior research fellow of the National Center for Scientific Research in Paris, Science-PO University

¹²⁶ Bruton B (11/2009) ‘In the Quicksand of Somalia’ *Foreign Affairs* November-December 2009

¹²⁷ M Lupers, (2009 January 7), terrorist analyst, interview Deutsche Welle TV

¹²⁸ Jagger S (2010 January 2) “Call for summit on terror” *The Times*

¹²⁹ Under Executive Order 13224

¹³⁰ US Department of State (2010 August 5) “Country Reports on Terrorism 2009” Chapter 1 Strategic Assessment, Chapter 2 Country Reports Middle East, Chapter 5 Terrorist Safe havens, found on <http://www.state.gov/s/ct/rls/crt/2009/index.htm>

¹³¹ Ridley (2007,) “Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes for financing of terrorism” study commissioned to London Metropolitan University by the Airey Neave Trust pp 38-39

the strategic indecision regarding the real significance of the region in terms of Islamic extremist presence and terrorist financing ¹³³.

The differing *modus operandi* of terrorist financing indirectly resulted in another strategic oversight. Increasing awareness, in the mid 2000s by law enforcement and strategic intelligence of differing *modus operandi* discerned a trend of terrorist cells within the EU were engaging in small time criminality such as petty fraud, credit card fraud, and low level drug dealing for terrorist revenue raising, with each activity on a short term basis, changing pragmatically¹³⁴.

Such cells were discovered to be self financing. This trend was developed and during the mid 2000s became used as intelligence to support a false premise. The premise was that al Qaeda, globally coordinating financing of Islamic terrorism in 2001 was incapable by 2006 of operating a central financial command.

This incapacity was ascribed to the success of international efforts against terrorist financing ensuring that al Qaeda could no longer sustain and co-ordinate Islamic extremist groups on a global scale; hence the self financing cells, particularly within the EU¹³⁵, raising revenue from small term criminality. Such self financing and acting in isolation was of necessity, due to al Qaeda no longer being able to either support or coordinate the disparate cells. By 2005 and 2006 US and EU strategic anti terrorist financing law enforcement representatives were agreeing that al Qaeda central financial control was broken¹³⁶.

However, the premise was found to be flawed and, in the post 2007 period there was a change in strategic intelligence tenets regarding al Qaeda centralised financing.

¹³² *ibid* p 42

¹³³ *ibid* pp 43-44. See also ENDNOTE FOUR and accompanying time chart

¹³⁴ Ridley (2009), "*The Sinews of War*" in Beyer C and Bauer M (eds) "Effectively Countering Terrorism" Sussex Academic Press pp 169-170, and p 172

¹³⁵ Ridley (2009 May) "Al Qaeda-a decade of global ? terrorist financing" *Anti money-laundering*, the monthly journal of the Australian Financial Markets Association. May 2009 issue p 43

¹³⁶ Napoleoni L (2005) "Terror Inc" Penguin Books, cited in Ridley (2009 May) "Al Qaeda-a decade of global (?) terrorist financing " *Anti money-laundering*, the monthly journal of the Australian Financial Markets Association. May 2009 issue p 43

In 2008 the head of the US National Intelligence Agency warned of al Qaeda's resilience, and in the same year a study by a Washington based think tank, specifically commissioned to brief the incoming Obama administration on terrorism, stated that al Qaeda was not funding operations *as much as previously*; the report specifically avoided stating that it had *ceased* centrally funding and coordinating operations¹³⁷.

By 2005-2006 this centralized capacity and control was deemed broken; by 2009-2010 this was amended to that of being severely disrupted, but still capable of some form of central coordination and control of fund flow and operations¹³⁸.

Part of this change was due to realigning the misperceptions of self financing and isolated cells. Al Qaeda affiliated Islamic extremist cells were not working in isolation, and intelligence indicated a degree of central coordination¹³⁹.

One cell within the EU formed part of a wider network where Italian locations were an important component of a network of al Qaeda affiliated cells giving logistical support during and after the Zarqawi-inspired resistance to coalition forces (see following diagram) ¹⁴⁰

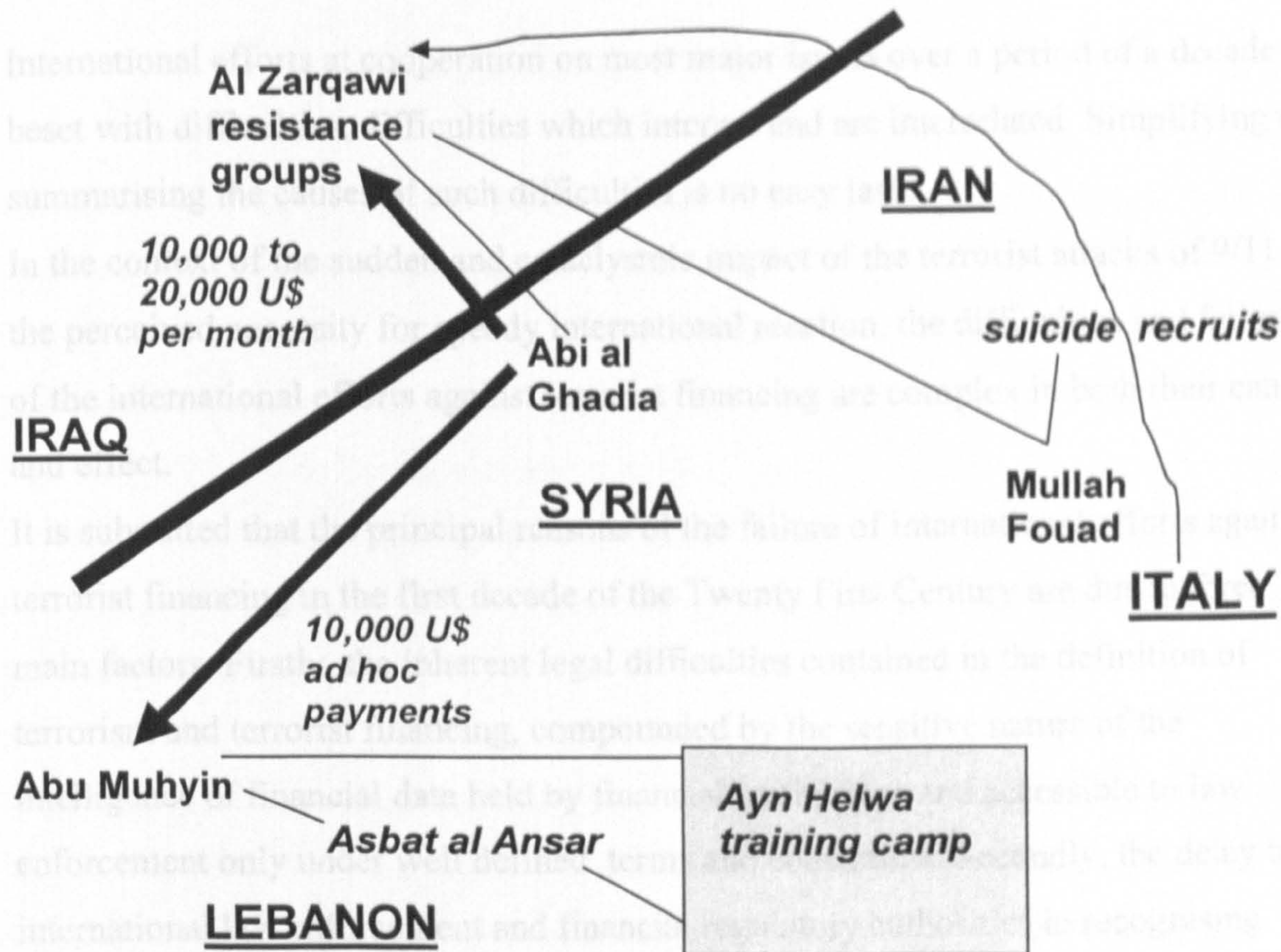
¹³⁷ Ridley (2009 May) "Al Qaeda-a decade of global (?) terrorist financing " *Anti money-laundering*, the monthly journal of the Australian Financial Markets Association. May 2009 issue pp 42-43

¹³⁸ Ridley (2010) '*Organised Crime, Money Laundering and the nexus to terrorism*', in "Human Resources and Development in the Arabian Gulf" Emirates Centre for Strategic Studies and Research pp 385-386

¹³⁹ Ridley (2009 May) "Al Qaeda-a decade of global (?) terrorist financing " *Anti money-laundering*, the monthly journal of the Australian Financial Markets Association. May 2009 issue p 43

¹⁴⁰ Ridley *lectures International Masters course on Transnational Financial Crime University of Teramo Italy, October 2009*

OVERALL CONCLUSION



Another cell within the EU engaged in raising finances by criminality was co-ordinating and supporting the recruitment and transportation of suicide bombers to Afghanistan¹⁴¹.

Thus the initial intelligence indicator, recognised at late stage in the post 9/11/ decade, of apparently self-financing al Qaeda affiliated cells was deployed in error to support a flawed larger strategic premise, that of al Qaeda being totally ceasing to be capable of coordinating and supplying terrorist financing on a global scale.

¹⁴¹ Ridley (2010) "Illicit exploitation of the insurance industry" 999 *Society and Security Monthly*, Abu Dhabi Police UAE Ministry of Interior, issue 469 January 2010 pp 31-32

OVERALL CONCLUSION

International efforts at cooperation on most major issues over a period of a decade are beset with difficulties, difficulties which interact and are interrelated. Simplifying and summarising the causes of such difficulties is no easy task.

In the context of the sudden and cataclysmic impact of the terrorist attacks of 9/11 and the perceived necessity for speedy international reaction, the difficulties and failures of the international efforts against terrorist financing are complex in both their cause and effect.

It is submitted that the principal reasons of the failure of international efforts against terrorist financing in the first decade of the Twenty First Century are due to three main factors. Firstly, the inherent legal difficulties contained in the definition of terrorism and terrorist financing, compounded by the sensitive nature of the intelligence of financial data held by financial institutions and accessible to law enforcement only under well defined terms and constraints. Secondly, the delay by international law enforcement and financial regulatory authorities in recognising certain potential *modus operandi* being utilised by terrorist groups for terrorist funding and illicit transfer of those funds. This delay has been partially caused by the third factor, that of strategic oversight in that international measures and their implementation against terrorist financing were formulated in the aftermath of 9/11 within the contextual mindset of anti money laundering, as opposed to combating terrorist financing. Later strategic oversights included the delay-despite intelligence indicators since 2001 of illicit international fund transfer-in recognizing the full significance of the Somali regional dimension, and in misinterpreting a terrorist financing trend which contributed to an underestimation of the continuing-albeit limited-capacity of al Qaeda to finance terrorisms on a global scale.

Since 9/11 undoubted progress has occurred in international efforts against terrorist financing, but it has taken until 2010 to achieve such progress. Given the continuous terrorist attacks occurring since 9/11, and the sole purpose of each and every individual attack is to inflict maximum indiscriminate fatalities, a decade is an intelligence luxury that can be ill-afforded.

ENDNOTE ONE

The funding of PIRA by Libya

The actual funding by Libya to the Provisional IRA has been somewhat understated by the standard works on terrorism and on Ireland.

In an almost contemporaneous work on global terrorism of 1978, "A Time of Trouble" Bowyer Bell J (Basic Books) devotes a whole chapter on the IRA, but their finances are briefly alluded to in dealing with the split in the IRA and formation of the Provisional IRA and that the latter were tacitly funded in the early stages by the Irish political party Fianna Fail¹⁴¹

In an ambitious and comprehensive scoping of a history of terrorism and of terrorist movements Chadian G and Blin A, in their 2007 "The History of Terrorism from Antiquity to al Qaeda" (University of California Press), refer to IRA finances, in stating that the original early XXth Century IRA territorial liberationist guerrilla army of Collins was partly financed by Irish America¹⁴². They also allude to the link with Libya, but, this is part of a general reference that most foreign terrorist groups have a representative office in Tripoli, "including the Irish IRA"¹⁴³

Ghaddafi himself admitted operational support by Libya to the Provisional IRA in a speech of 9 July 1972, and is referred to by Coogan TP in his 1996 work, "The Troubles-Ireland's ordeal 1966-1996 and the search for peace" (Arrow Books). In this work the Libyan link is cited as one of two important factors-the other being the Enniskillen Remembrance Day bombing-which stimulated increased and vigorous security responses from authorities in both Northern Ireland and the Republic¹⁴⁴.

¹⁴¹ pp 204 -233

¹⁴² p 186

¹⁴³ p 175

¹⁴⁴ p 234

In another authoritative work, Coogan TP, in his 2003 “Ireland in the Twentieth century”, in the chapters dealing with the IRA activities in both north and south of the border, the Libyan link is only cited¹⁴⁵ in the context of the arms shipment seizure of the *Eskund* as one of three events occurring in 1987-the others being the SAS operation in Loughall, and the Enniskillen Remembrance Day bombing outrage- which were part of the combined gathering momentum towards starting the peace process. Neither of the above works of Coogan make specific reference to *financial* support to the Provisional IRA from Libya.

In a general overview on terrorism, Harmon C, in 2000, in “Terrorism Today” (Frank Cass), cites the Libyan support to the Provisional IRA, but only in specific terms of giving large supplies of explosives and materials.

In a later work of 2005 specifically on criminal and terrorist financing, Kochan N in “The Washing Machine” (Thomson) states¹⁴⁶ PIRA in receipt of foreign funding, in the period of the ongoing peace process, but specifies that the funds originate from the Colombian liberationist organization FARC.

In another work specifically on terrorist financing of 2007 Giraldo and Trinkunas, in their edited 2007 work “Terrorist Financing “ (Stanford University Press) cite both the LTTE and the IRA as in receipt during the 1970s and 1980s and up to the end of the Cold War as in receipt of foreign state funding¹⁴⁷, but do not specify any donor country. Tupman, in 2009 in the *Journal of Money Laundering Control* “Ten Myths about terrorist financing” vol 12 ,no 1, gives a short revision of his 1998 article on the IRA finances in the *Journal of Money Laundering Control* vol 1 no 4,2 “Where has all the money gone?The IRA as a profit making concern” and in neither mentions the financial support; the 2009 article of Tupman in its “revisit to IRA PLC” mentions only the arms supplies from Libya.

¹⁴⁵ p 616

¹⁴⁶ p 85

¹⁴⁷ p 10

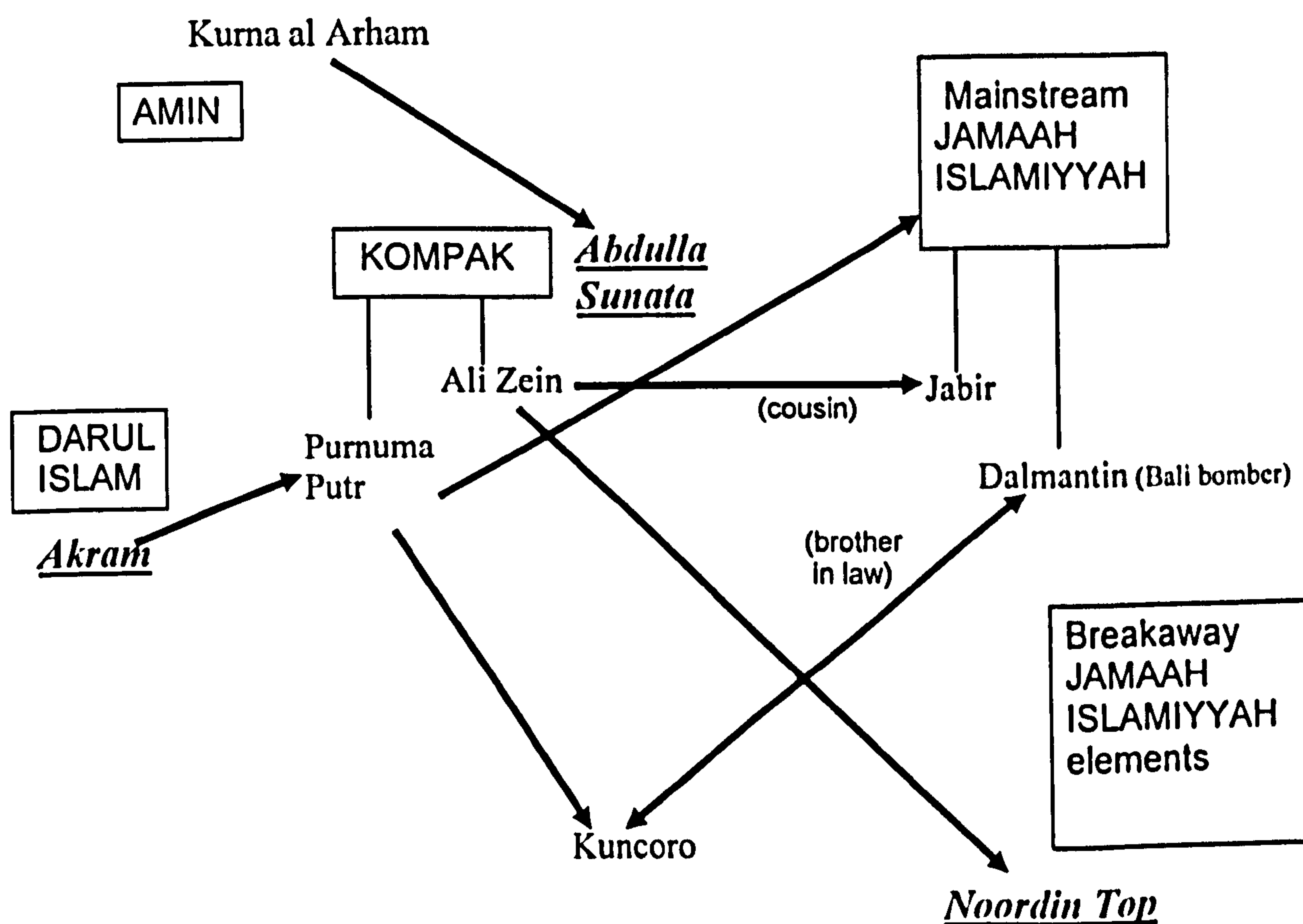
It falls to Moloney in a well-sourced work on the IRA in 2007 “The Secret History of the IRA” (Penguin Books) to state that the IRA received financial sums of monies, specifying the total amounts, in both the 1970s and 1980s¹⁴⁸. A report by the author of this submitted covering document regarding organised crime and terrorism, to the Independent Monitoring Commission for Northern Ireland in 2006, also cites direct Libyan funding, with amounts in the equivalent of millions Sterling. (For various security reasons, this report cannot be deployed by the author as a source for this thesis.)

¹⁴⁸ pp 10-12 and p 13

ENDNOTE TWO

South East Asian terrorist groups

Formative years up to 2002

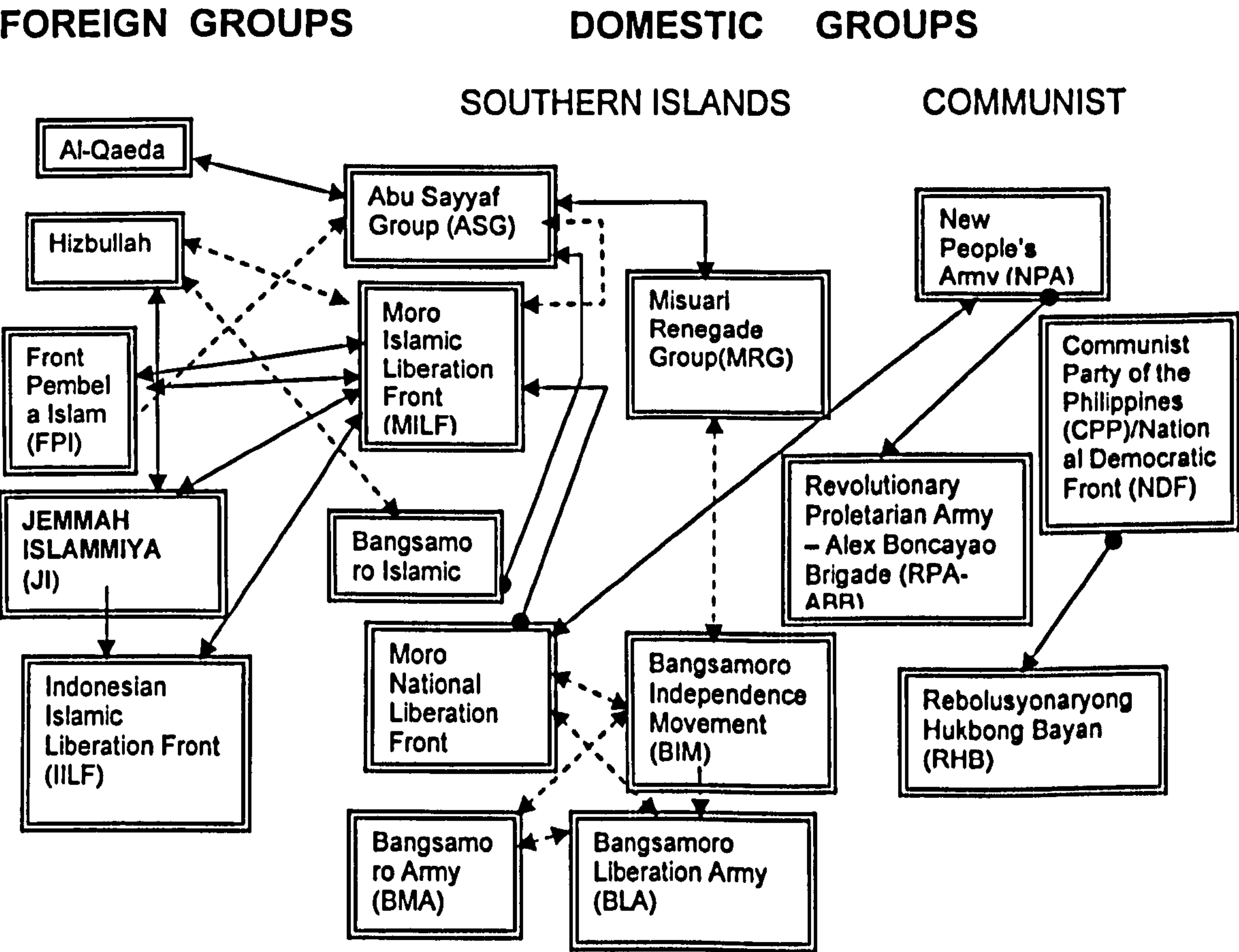


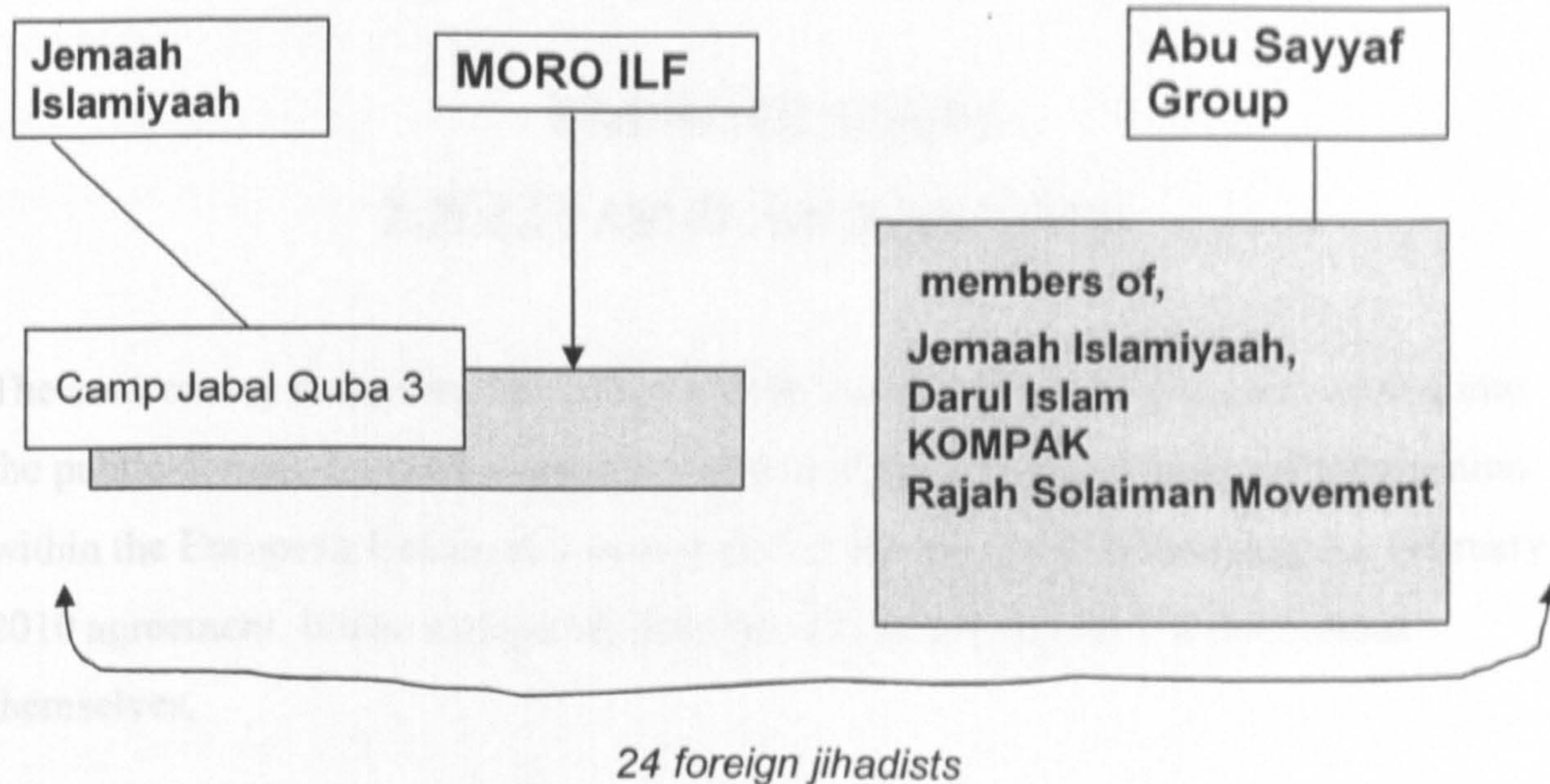
By the mid 2000s there was a proliferation of inter-linked terrorist groups within the region, some having territorial liberationist aims, others having ideological and societal changing objectives. Some were international, others concerned with more local and regional issues.

This complex network afforded international terrorist movements such as al Qaeda, and post 1989 militant communist movements opportunities for forging operational links in order to advance their common goals, or even to gain potential safe operational bases during periods when international governmental and law

enforcement efforts were successful in eradicating their numbers sand operational capabilities for attack in other regions.

The charts below outlines the various groupings, their associations and those linked to al Qaeda, and an updated situation as at 2009.





2008-2009

ENDNOTE THREE

S.W.I.FT and the European Union.

The controversy caused by the *ad hoc* intelligence sharing arrangements coming into the public domain touched a sensitive issue of dissemination of financial information within the European Union, as was revealed in the debates over ratifying the February 2010 agreement. It also exposed divided priorities amongst the EU institutions themselves.

Amongst the European Commission, the Justice and Home Affairs Directorate questioned whether such an agreement was the most efficacious mechanism for obtaining and exchanging information. Also it held that, given the wide nature of the SWIFT database, such an agreement was unnecessary and any requests could be database can be undertaken and dealt with on a bi-lateral basis between the United States and the individual EU Member State, and that such data could be accessed for requests for judicial co-operation. This was countered by the Security Commission which argued that in the post 9/11 period until 2006 there had occurred three cases of terrorist financing within the EU where such intelligence exchange had disrupted the perpetrators. Also, given the time factor involved in terrorist financing, judicial exchange requests cited by the Justice and Home Affairs Directorate were inappropriate.

These divisions were concerning the issue of the best possible way to exchange financial intelligence, not on the issue of whether to exchange or what type and volume of data to so exchange which was the central preoccupation of the European Parliament.

Accordingly the latter was resentful against the European Commission, for sidelining the Parliament and ignoring these more fundamental issues. These concerns were encapsulated by a Dutch M.E.P. who stated publicly on BBC World News,

“The Americans were angry (at the non-ratification),but the European Commission are angry and confused....the President and the European Commission have failed to make the United States aware of the role and potential of the European Parliament”

In May 2010 the European Parliament again debated the question of a possible intelligence sharing arrangement and passed a resolution. This resolution did not address a part of an agreement, but exhorted and gave *de facto* instructions to the European Commission how they should negotiate with the USA and on what details. The M.E.P for Malta who stated, the main concern being

“safeguarding the integrity of bulk financial data”

A new agreement was formulated which contained certain safeguards including the intervention of Europol, which would ensure the validity of each US request for information and the implementation of a three- tier monitoring system of the work of SWIFT in searching and dissemination of data in response to US requests. On 8 July 2010 the European Parliament ratified this new agreement¹⁴⁹ .

Thus there were several divisions and preoccupations within EU institutions; however, the result remains the same, delays and frustration in international intelligence exchange regarding potential financing of terrorism.

¹⁴⁹ European Voice (2010 July 1) “Parliament to back SWIFT agreement” vol 16 no 25

EU Business (2010 July 8) “Europe to give US access to bank data for terror probes”, found on <http://www.eubusiness.com/news-eu/us-attacks-banking5hi>

ENDNOTE FOUR

Somalia and Yemen

A time chart is attached, depicting open sources from 2008 to mid 2010.

This may give an indication how, even during the late second half of the decade following 9/11 the potential intelligence indicators regarding the nature of the conflict in Somalia and the emerging significance of Yemen were only partially and spasmodically coming to light.

London Metropolitan University, Department of Applied Social Sciences
John Nicholas Cunningham Ridley
Submitted thesis for award of PhD by prior output
Endnote Four of Covering Document

ENDNOTE FOUR

Time Chart of Somalia and Yemen

SOMALIA

28/1/2008

Main insurgent group known as al Shabab
takes over town of Badoia
“Insurgents impose Islamic law in Somali town”
Thaindian News 28/1/2008

YEMEN

8/8/2008

al Shabab insurgents take control of Hudur,
provincial capital of Bakool
Thaindian News 8/8/2008

7/2008

Yemeni security forces kill 5 al Qaeda suspects
and break up and disperse a second cell
“Yemen faces new *jihadi* generation”
BBC News 17/9/2008

17/9/2008

Islamic Jihad car bomb attack
on US Embassy
“Yemen faces new *jihadi* generation”
BBC News 17/9/2008

by 10/2008

terrorist attacks have cost Yemeni economy
26 billion US\$ in disrupted economic sectors
Yemeni Foreign Minister Abu Bahir al Qirbi
Thaindian News 19/10/2008

12/11/2008

Islamic port of Merka taken by al Shabab

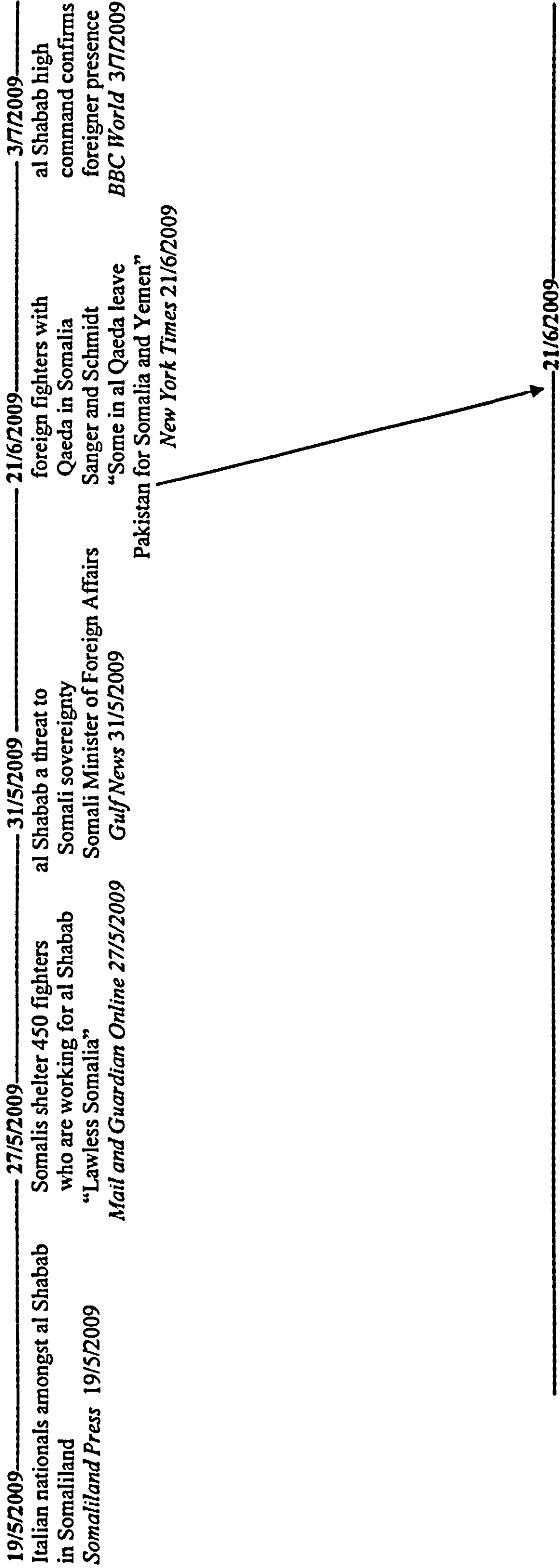
together with Islamic Courts Union al Sahabab
constitutes a grave ..threat to the security of the United States

“Good news-al Qaeda linked to insurgents capture Somali port”
The Jawa Report

“Islamic insurgents take Somali port city without a fight”
Gettleman *J New York Times* 12/11/2008

16/11/2008

al Shabab consolidate hold
on southern Somalia,
and al Shabab linked to al Qaeda
ABC News 16/11/2008



30/7/2009

3 Dutch and
1 Moroccan
arrested on Kenyan border
attempting to join al Shabab
BBC World 30/7/2009

19/9/2009

al Shabab-many recruits from USA
- testimony of Peter Bergen before US House of
Representatives, Committee on Homeland Security
Sub-Committee on Intel. Sharing and Terrorist Risk

28/7/2009

Al Qaeda presence in Yemen
Hammond A
"al Qaeda seen gaining new foothold in Yemen"
WORLD News, Reuters, 28/7/2009

1/8/2009

3 soldiers killed in attack in Marib Province
Gulf News 1/8/2009

6/1/2010

Swedes travel to Somalia for jihad training,
and Somali Muslim extremists are active in Sweden,
according to Swedish Intelligence Service
Counter Jihad 7/1/2010

3/11/2009

Al Qaeda announces that Yemeni and Saudi branches
fighters

and affiliates have merged

"to broaden attacks in the region"

BBC World News 3/11/2009

5 Yemeni security forces killed by al Qaeda in north Yemen

"Top Yemeni officers die in ambush"

BBC News Middle East 3/11/2009

6/1/2010

Yemen launches offensive against al Qaeda

Clinton comments on the

"successful counter terrorist operations

by government of Yemen"

Jordan Times 6/1/2010

15/1/2010

Iraqi and Algerian insurgents in Somalia
to fight alongside al Shabab

Foreign Affairs Jan-Feb
Stern N,"Mind over Martyr"

6/1/2010

Al Qaeda
is highly
organised in Yemen
Washington Post 6/1/2010

7/1/2010

Yemen authorities arrest
3 al Qaeda fighters
Jordan Times 7/1/2010

18/1/2010

al Qaeda regrouping in Yemen
100,000 Somalis taking root in Yemen
50,000 Somalis crossing in 2008
The Hindu 18/1/2010
Aneja A " al Qaeda
spreads tentacles to Yemen"

2/2010

al Qaeda laying roots in Yemen
inter-marrying within tribal
entities-safeguards against
targeting of leaders
Foreign Affairs Jan-Feb 2010
Johnston AD "Welcome to Qaederistan"

5/4/2010

10 to 15 members al Qaeda
move from Yemen to Somalia
to set up base HQ
Yemen Post 5/4/2010

26/4/2010

suicide bomber
unsuccessfully attacks
UK ambassador's convoy San'aa,
4 individuals involved, including German national
Reuters 28/4/2010
"German accused of attempted bomb attack on British ambassador to Yemen"
telegraph.co.uk 23/10/2010

12/5/2010

al Qaeda in Arabian Peninsula
claims responsibility
for April attack on UK ambassador
AFP News 12/5/2010
telegraph.co.uk 13/5/2010

8/6/2010

Two identifiable al Qaeda affiliated groups fighting govt forces in Somalia

- ,al Shabab and Hizb al Islam

Respective commanders admit foreign fighters

al Shabab contains Asians, Arabs with US passports, Kenyans, Tanzanians

Hizb al Islam contains Arabs with US passports, Yemenis, Somalis from Netherlands UK, Sweden

Ahad GA "How Somalia's civil war became new front in battle against al Qaeda"

Guardian Online 8/6/2010

6/6/2010

Yemeni Police arrest over 30 foreigners

with suspected al Qaeda links

France International News 24/7 6/6/2010

Ethiopian Review 6/6/20

20/6/2010

al Qaeda gunmen kill 11 in

attack on Yemeni intelligence HQ

"al Qaeda kill 11 in alleged rescue raid"

Gaia Times 20/6/2010

Two bomb attacks in Kampala Uganda during public viewing of World Cup final
76 killed. Al Shabab claim responsibility
“Who is al Shabab- Somali terror organisation extends its reach”
Hasan MO Muhumed M
AFP and Associated Press 13 July 2010

14 individuals based in Minnesota USA charged with recruiting for al Shabab
Two individuals charged with raising funds in USA and Canada for al Shabab by false pretences claiming funds raised for welfare and relief.
Yost, P Forliti, A Associated Press 3/8/2010

US annual security report
the greatest threat of the United States and its interests
is al Qaeda in Pakistan
and its affiliates in Somalia and Yemen
US Department of State
Country Reports on Terrorism 2009
5/8/2010

ENDNOTE FIVE

Feedback and dissemination of prior out project reports commissioned to London Metropolitan University

The following feedback was received 18 and 19 December 2007, regarding
*The development of Islamic banking and financial institutions, and potential
vulnerabilities to criminal exploitation and terrorist fund transfers.*

Dear Nick

Clearly your report is seen to be of the highest significance. Well done indeed.
Brian

nicholas ridley wrote:

> good morning, Please find copy of additional e mail received this am from
ISSN, financial sponsor of bollag project regarding feedback from bollag project
report of John Grieve Centre DASS etc

> "david.gottlieb@issn-foundation.org" <David.Gottlieb@issn-foundation.org>

> Wednesday, 19 December, 2007 9:24:14 AM

> To: nicholas ridley <ridleynicholas@yahoo.co.uk>

> Cc: Find:

> AW: Johnn Grieve Centre London Metropolitan University

>

>

> Dear Mr Dr Ridley

>

>

> A post scriptum to the last mail:

>

> In the last few days, Mr Dr Bollag has handed out your paper to several Swiss
ministers as well to the executive staff of the Swiss Federal Banking Commission.

>

> I also take this opportunity to wish you a very happy Christmas and a restful
holiday.

>

> Best wishes,

> David

> *ISSN Foundation

> **Institute for Security Analysis and Strategic Networking*

> Phone (+41) 41 729 20 10 Telefax (+41) 41 729 20 11

> Mobile (+41) 76 322 05 12 E-Mail david.gottlieb@issn-foundation.org

<<mailto:david.gottlieb@issn-foundation.org>>

>

> ----- Forwarded Message -----

> From: nicholas ridley <ridleynicholas@yahoo.co.uk>

> To: John Gabriel <j.gabriel@londonmet.ac.uk>; clive.harfield
<clive.harfield@ntlworld.com>; Brian Hall <b.hall@londonmet.ac.uk>

> Sent: Tuesday, 18 December, 2007 12:39:11 PM

> Subject: bollag project, feedback from sponsor

>

> good morning,

> Please find below feedback from the financial sponsor of the JGC Bollag project.

> (I will acknowledge on behalf of the JGC DASS, and of course will keep in
contact)

> for update and with best wishes,

> Nick

>

> ----- Forwarded Message -----

> From: "david.gottlieb@issn-foundation.org" <David.Gottlieb@issn-foundation.org>

> To: ridleynicholas@yahoo.co.uk

> Sent: Tuesday, 18 December, 2007 12:02:52 PM

> Subject: Your Paper

>

> Dear Mr. Ridley

>

>

> On behalf of Mr. Bollag I forward you following words:

>

> Dear Mr. Ridley

>

>

> With great pleasure, I have read your work on "The development of Islamic
banking and financial institutions, and potential vulnerabilities to criminal
exploitation and terrorist fund transfers". I am very proud I was able to contribute to
this work. It is absolute excellent and gives an actual overview and understanding of
the situation. Please accept my congratulations and I am looking forward for the next
project, where I would also be glad to contribute financially.

>

>

> Best regards

>

>

> Josef Bollag

> I am also looking forward to seeing you soon again.

>

> Best regards

>

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With regard to the projects commissioned by the Airey Neave Trust,

Cash couriers being utilised for illicit revenue disposal and transfer of monies for purposes of financing of terrorism

and

Counterfeiting of goods, and its possible use as a modus operandi of terrorist financing,

The reports were peer reviewed by Dr Patrick Sookdheo, visiting lecturer at Cranfield University /Defence Academy of the UK, and then disseminated to the trustees of the Airey Neave Trust.

The trustees are as follows;

Mr Hugh Tilney
The Hon Sir William McAlpine Bart
Dame Veronica Sutherland DBE CMG
Professor Paul Wilkinson
Professor Christopher Andrew PhD FR HISTS
Dr Patrick Sookdheo
Sir Kevin Tebbit
Brigadier Ed Butler
The Hon Marigold Webb
The Hon Patrick Neave
Miss Ro Billiard
The Hon William Neave,

APPENDIX; PRIOR OUTPUT WORKS

Ridley, N (2003) "*Anti money laundering terrorism and international law enforcement*" in *A Practitioner's Guide to International Money Laundering Law and Regulation*, City and Financial Publishing 2003
ISSN 0406 93248 4

Ridley, N (2005) "Terrorism as economic warfare," in *Berichte & Studien-the Journal of the Hans Seidel Stiftung Academy of Politics and International Relations*, Munich Germany, the issue on Islamistischer Terrorismus, B & S volume 86
ISBN 3-88795-282-0

Ridley, N (2006) "Financial Enmeshment-banking systems in Western and Central and South-Eastern Europe" in *Journal of Money Laundering Control*, Institute of Advanced Legal Studies Emerald Publishing vol 9 no.1 2006
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Ridley, N (2009) "al Qaeda and a decade of financing of terrorism" *Anti Money Laundering*, the journal of the Australian Financial Markets Association May 2009 issue

Ridley, N (2009) "*The Sinews of War*" in Beyer,C and Bauer M (editors) "Effectively Countering Terrorism". Sussex Academic Press
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Ridley, N (2010) "*Organised Crime, Money Laundering and Terrorism*", in "Human Resources and Development in the Arabian Gulf" Emirates Centre for Strategic Studies and Research
ISBN 978-9948-14-248-5

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Ridley, N (2010) "India, and the evolving, adaptable methods of terrorist financing" *Anti money-laundering*, the monthly journal of the Australian Financial Markets Association. May 2010 issue

Lectures

October 2009 lectures International Masters course on Transnational Financial Crime
University of Teramo, Teramo, Italy

20 September 2007, lecture NATO, Centre of Excellence-Defence against Terrorism,-
Aspects of Combating Terrorism training course to NATO personnel 17-21
September 2007 Ankara, Turkey

5 February 2008 training lecture, NATO Advanced Training ,Legal Aspects of
Combating Terrorism Centre of Excellence Defence against Terrorism Ankara Turkey
4-8 February 2008 Sarajevo, Bosnia and Herzegovina

The Turkish lectures were placed on cd and one copy sent to all lecturers. Copies of this and other lectures are available for inspection