

ASSESSING TERRORIST FINANCE REGULATION: DO THE
MEANS MEET THE ENDS?

By

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ABSTRACT

Terrorism is a complex ancient problem. The attacks of September 2001 in U.S soil prompted a new strategic approach to its control. This thesis focuses on that new approach, the targeting of terror's financial basis. This research considers the international dimensions of terrorism as well as Canadian terrorism. It discusses the ties between money and terror, and the Canadian regulation, the Anti-Terrorism Act, which seeks to sever those ties. Against this background, it offers an analysis of the effectiveness of the regulation of the financial aspects of terrorism in preventing new terror activities.

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DEDICATION

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“Non nobis Domine”



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INTRODUCTION

“What is happening now is related to what has happened in the past.”¹

Terrorism is a complex evil. Some argue it is a *necessary* evil when the strength of revolutionaries cannot match the force of an oppressive government giving rise to the proverbial one man’s terrorist is another man’s freedom fighter. Cicero long ago encouraged political assassination by comparing the tyrant to a “pestilent and godless brood” who:

[S]hould be utterly banished from human society. For as we amputate a limb in which the blood and the vital spirit have ceased to circulate, because it injures the rest of the body, so monsters, who, under human guise, conceal the cruelty and ferocity of a wild beast, should be severed from the common body of humanity.²

Modern society continues to be marked by this evil though its scale and global reach have expanded dramatically since the days of Cicero. Strategies for dealing with terror have

¹ Albert Parry, *Terrorism: from Robespierre to Arafat* (New York, NY: The Vanguard Press, Inc, 1976) at 39.

² “No fellowship with Tyrants” in Walter Laqueur & Yonah Alexander, ed, *The Terrorism Reader: A Historical Anthology*, Revised Edition (New York, NY; Scarborough, ON: Nal Penguin, 1987) 16.

also modernized. The dramatic scale of September 11, 2001 in the United States gave rise to a focus on terror finance, the creation of contemporary laws aimed at the resources connected to terrorist activity.

This thesis examines Canadian anti-terrorist finance laws. Chapter 1 begins with a brief survey of terrorism across the ages. Chapter 2 discusses the international dimensions of terrorism as well as Canadian approaches to terrorism prior to, and post, 2001. Chapter 3 considers the ties between money and terror, the aspects with which the contemporary strategies seeks to attend. Chapter 4 sets out Canadian terrorist finance regulation. Against this background, Chapter 5 offers an analysis of the attempts to control terrorism by targeting its financial basis.

CHAPTER 1

A Brief History of Terrorism

“Terrorism is an emotionally charged, morally laden and political contentious concept.”¹

Introduction

To assess modern anti-terrorism strategies, it is important to understand some of the history of terrorism and some of the many complexities it entails. While the modern approach to terrorism (the focus on its financial dimensions) is presented as a part of a solution to terrorism, that solution is necessarily imposed upon a complicated problem with a lengthy historical pedigree.

¹ Victor V. Ramraj, Michael Hor & Kent Roach, eds, “Introduction” in *Global Anti-Terrorism Law and Policy* (Cambridge: University Press, 2005) 1 at 2.

1. Terror and Terrorism

Terror comes from Latin *terrere*, “to frighten.” It is a synonym of fear, “a feeling of agitation and anxiety caused by the presence or imminence of danger.”² It is double-edged, used both as a weapon and constituting a reaction. As Aristotle states in *The Origins of Tyranny*, when death is almost certain, fear becomes the fuel that makes people rebel against the tyrant.³ Fear is the predictable⁴ emotional reaction to a threat.⁵ Groups lacking political and military power use terror “to create a psychological climate of fear in order to compensate for the legitimate political power they do not possess.”⁶

Not all violent acts, even massacres, are considered terrorism. Not all organizations involved in the extraordinary cases of violence are terrorists. In the international realm, the imposition of the “terrorist label” reflects to some degree international politics or ideology: what a majority of states may define as an act of terrorism, a smaller group, or a non-state actor, might define as a revolutionary act.⁷ Groups do not proclaim to be terrorists; rather, others attach the title. Organizations may refer to themselves as “freedom fighters”, “armies of God”, “revolutionaries”, “avengers”, “keepers of the

² Yahoo Education, online, *sub verbo* “Fear”, <<http://education.yahoo.com>>.

³ in Walter Laqueur & Yonah Alexander, eds, *The Terrorism Reader: A Historical Anthology*, Revised Edition (New York, NY ; Scarborough, ON : Nal Penguin, 1987) 10.

⁴ Charles P. Weber, *Terror, Terrorism, and the Human Condition*, (New York, NY: Palgrave MacMillan, 2004).

⁵ Clark McCauley, “Psychological Issues in Understanding Terrorism and the Response to Terrorism” in Bruce Bongar et al. eds, *Psychology of Terrorism*, (New York, NY: Oxford University Press, 2007) 13.

⁶ Micheal Burleigh, *Blood and Rage: a Cultural History of Terrorism*, (New York, NY: HarperCollins Publishers, 2009) at XIII.

⁷ A clear example of this are the members of the African National Congress; Nelson Mandela’s party, that are “inadmissible to Canada on security grounds and can only enter Canada with a special waiver”; see CCR, “Questions about Canada’s Security Agenda... and its impact on Refugees & Immigrants: Are Canada’s Immigration Laws too Lax?”, Canadian Council for Refugees, online: <<http://ccrweb.ca/Security.htm>>.

peace” and so on.⁸ The Peruvian entity known as Shining Path self-identifies as a revolutionary movement engaged in the war for the people since 1980.⁹ They justify multiple acts of violence touching on the lives of Peruvians as “a necessary part of a long-term struggle to take power in a country in which elites have always violently exploded peasants and workers.”¹⁰

When terror is identified with a state, as opposed to some other actor, is sometimes referred to as “terrorism from above”, while the phrase “terrorism from below” is reserved for non-state actors.¹¹ Although the terrorist label is a politically charged term,¹² there is clearly agreement that fear is terrorism’s key ingredient. During a United Nations Security Council (UNSC) Meeting in September 2005, the President of the United Republic of Tanzania, Mr. Mkapa stated:

While we may not have a common definition and understanding of

⁸ Martha Crenshaw, “Thoughts on Relating Terrorism to Historical Contexts” in Martha Crenshaw, ed., *Terrorism in Context*, (University Park, Pa: Pennsylvania University Press, 1995) 3.

⁹ David Scott Palmer, “The Revolutionary Terrorism of Peru’s Shinning Path” in Crenshaw, *supra* note 8, 249.

¹⁰ *Ibid.*

¹¹ This latter type of terrorism should not be confused with war, revolution or guerrilla warfare. Traditionally, war is described as a hostile contention by means of armed forces, an open prolonged state of conflict between nations, states or parties initiated and conducted according to socially recognized forms or rules, like the Geneva conventions. War refers to military operations, usually with a clear start, end, and standards of measuring success. Acts of war are commonly done by similar powers it is a fair fight. Revolution is a complete overthrow of the established government in any country or state by those who were previously subject to it; is a change of the established government by means of violence with the instauration of a new political order completely different. This change is done on a relatively short time. Usually a revolution has the support of the masses. The word Guerrilla comes from the Spanish “small war.” It is an irregular military or paramilitary force; carried on by small bodies of men acting independently targeting established military forces. The objective of the guerrilla’s violent acts is to harass and sabotage the enemy until the guerrilla gathers a bigger force or the political and military pressure makes the enemy seek peace.

Nevertheless, war, revolution and guerrilla can become terrorism if the proper conditions are present. Example of this evolution are the mujahedeen, who at first started as freedom fighters, afterwards Taliban government and once overthrown became a terrorist organization. One type of terrorism, as well, can evolve into the other as it happened during Russia’s terror. It started as revolutionary terrorism, and then when the revolution won in 1917, the new government used terror to control and secure its new position.

¹² Bruno S. Frey, *Dealing With Terrorism – Stick or Carrot* (Cheltenham, UK; Northampton, MA : E. Elgar, 2004).

terrorism, I do not think that we have disagreements about its impact upon our societies. However one defines it, terrorism and conflicts always elicit, by design or in consequence, the common characteristics of anxiety, suspense, fear, senselessness, violence, destruction and the disruption of the social and economic situation of our countries and peoples.¹³

Military psychologists agree that fear, stress and exhaustion lead to more casualties than bullets and bombs. Fear as an emotion cannot be controlled but it can be created. Terrorism involves the psychological strategy of fear, the creation of the public belief that an attack is inevitable:

[E]very drink of water, every mouthful of food, every bed, every bush, every paving stone, every path and footpath, every hole in a wall, every slate, every bundle of straw, every pipe bowl, every stick, every pin may be a killer. For them as for us, may fear be the herald and murder the executor.¹⁴

And fear can be very persuasive.¹⁵

Crenshaw points out that “terrorism targets a few in a way that claims the attention of the many.”¹⁶ Following the World Trade Center attacks on September 11, 2001, millions of people worldwide “felt unprecedented levels of stress, anxiety, trauma and related feelings of having been ‘terrorized’ by these attacks.”¹⁷ The relationship between terror and terrorism has been described as follows:

The essential danger - and objective - of terrorism is the creation of terror - a state of mind and its resultant behavioral responses. Terrorism applies the science and practice of psychology for political purposes in much the

¹³ UNSC, “Security Council Sixth Year: 5261st Meeting: Provisional” (14 September 2005), online: <<http://documents.un.org>>, at 3.

¹⁴ Karl Heisen, “Murder”, in Laqueur & Alexander, *supra* note 3, 53 at 64.

¹⁵ Scott Gerwehr & Kirk Hubbard, “What is Terrorism? Key Elements and History”, in Bongar et al, *supra* note 5, 87.

¹⁶ Crenshaw, *supra* note 8 at 4.

¹⁷ Charles P. Webel, *Terror, Terrorism, and the Human Condition*, (New York, NY: Palgrave MacMillan, 2004) at 6.

same way that thermonuclear weapons apply the science of physics for military purposes.¹⁸

Media enhances the range of the terror weapon, with modern communications giving terrorist a tactical advantage: news coverage of terrorist acts adds “high drama”, immediacy and visual realism.¹⁹ Through media coverage acts of terror can acquire legitimacy.²⁰

Single or serial murder can constitute terror if linked to a particular political goal and its effects reach beyond the immediate victim.²¹ During the 1840’s, Karl Heinzen wrote *Murder and Liberty* in which he encouraged the use of murder as a revolutionary weapon to create a state of fear to make the barbarians fear for their lives.²²

The first time the terms terrorism and terror entered into common use was in France during the Reign of Terror. On July 14, 1789, crowds in Paris stormed the royal fortress of La Bastille, setting in motion the first democratic revolution. The proponents of change confronted a monarchy seized by crippling debts acquired during the American war of Independence. The French Revolution was initially conceived as a way of establishing a constitutional monarchy similar to Great Britain and force the monarchy to respond to representative governance. By the spring of 1792, little was achieved.

¹⁸ Dennis D. Embry, “Psychological Weapons of Mass Disruption Through Vicarious Classical Conditioning” in Bongar et al, *supra* note 5, 164 at 164.

¹⁹ James N. Breckenridge & Philip G. Zimbardo, “The strategy of Terrorism and the Psychology of Mass-Mediated Fear” in Bongar et al, *supra* note 5, 116.

²⁰ Bethami A. Dobkin, *Tales of Terror: Television News and the Construction of the Terrorist Threat*, (New York, NY: Praeger, 1992).

²¹ Frey, *supra* note 12.

²² Heizen, *supra* note 14.

Alleged radical lawyers and disgruntled intellectuals assumed control (such as Danton, Robespierre, Marat and St. Just) a police state was created in which public beheadings became a regular practice.²³ As terms such as *communisme*, *idéologie* and *guillotine* became common vocabulary, a particular term was used for the first time by the common French folk to describe that particular political and social turmoil: terror. Edmund Burke used the word *terreur*, referring to political violence and used *terreuriste* as a pejorative term in his condemnation of the Jacobins.²⁴

The guillotine served a macabre goal as an instrument of terror. This device claimed the lives of King Louis XVI, Queen Marie Antoinette, nobles and peasants. During the 25 months identified as the French Great Terror, 17,000 victims were executed and in the final 2 months alone 2,663 people were guillotined. After Robespierre's death by guillotine in 1794, his surviving aides were punished by the white terror.²⁵

2. A Global Historical Account

Most scholars agree that one of the first recorded terrorists groups were the Sicarii.²⁶ In 50 A.D. a Jewish political group, used assassination as means of insurrection against the

²³ Parry, Albert, *Terrorism: from Robespierre to Arafat* (New York, NY : The Vanguard Press, Inc, 1976).

²⁴ *Ibid.*

²⁵ The white terror refers to the year after "Red Terror" ended when the Jacobins were murdered by retributive attacks. When Robespierre was executed, 21 of his "faithful" were guillotined, including his brother Augustin and St. Just. His prisoners were released; one of them being Josephine whose husband Alexandre de Beauharnais was executed just 4 days before Robespierre. Later on she married Napoleon and was crowned Empress of the French; *ibid.*

²⁶ Bruce Bongar, "The Psychology of Terrorism: Defining the Need and Describing the Goals", in Bongar et al, *supra* note 5, 3 at 3; Richard A. Horsley, "The Sicarii: Ancient Jewish "Terrorists" ", *The Journal of Religion*, 59:4 (October 1979), 435, online: The Journal of Religion <<http://www.jstor.org>>.

Roman rule over Judea. They become known as the Sicarii because their members concealed a small dagger under their cloaks; “to commit terroristic acts they carried a dagger, *sicae*, in their bosoms which they used to commit their terroristic acts, and they were therefore called Sicarii.”²⁷ Their assassination practices consisted of poisoning or stabbing the intended target in the market or some other highly visible place. Josephus would write that the Sicarii:

[M]urdered men in broad daylight in the heart of the city. Especially during the festivals they would mingle with the crowd, carrying short daggers concealed under their clothing, with which they stabbed their enemies. Then when they fell, the murderers would join in the cries of indignation and, through this plausible behavior avoided discovery.²⁸

Oddly, the Sicarii did not directly target the Romans, their oppressors but countryman “friendly” to the Empire, scholars’ account that the Sicarii killed more Judeans than the Romans.²⁹ Their main targets were the Jewish ruling groups. This selective tactic had a demonstration effect: it created fear in those, specially the ruling Jew society, which mingled and ruled Judea on behalf of the Roman Empire.³⁰ Their first target was Jonathan the High Priest.³¹ It is widely believed that most members of the Sicarii, rather than submit to the Roman Empire, committed suicide in 72 A. D.³² With the Sicarii, similar to other terrorist movements, political, ideological and religious motivations

²⁷ Solomon Zeitlin, “The Sicarii and Masada”, *The Jewish Quarterly Review, New Series*, 57:4 (April 1967), 251 at 259, online: The Jewish Quarterly Review <<http://www.jstor.org>>.

²⁸ Horsley, *supra* note 26 at 436.

²⁹ Zeitlin, *supra* note 27.

³⁰ Horsley, *supra* note 26 at 250.

³¹ *Ibid.*

³² According to some accounts, 960 people committed suicide in the Masada fortress rather than submit to Flavius Silva, the Roman General who sieged them. Only 7 survivors were found, two old ladies and five children. By other accounts there were more survivors who were hiding in a cave; however they committed suicide as well.

drove their actions. It is believed that the Sicarii sought to create an utopia in which no man ruled over any other because the only ruler of men was God.³³

Terrorist chronology tends to leap forward from the Sicarii to the 11th century and the appearance of assassins in Syria and Persia. Deploying murder as a political tactic and enticing would-be participants with the appeal of martyrdom, Hassan-I-Sabbah allegedly recruited and prepared assassins by “giving them hashish and taking them to a lush garden filled with beautiful women. On awakening, the would-be killers were told they have been to paradise and they would enter it permanently after assassinating their victims.”³⁴

These “hashish users” better known as Assassins, were rebel Ismailis opposed to the caliphate of ‘Abbasids’ in Baghdad. This group pledged alliance to the Egyptian caliphate of Nizar, the deposed older son of Caliph al-Mustansir who died in 1094. They were responsible for killing a number of Muslim dignitaries and Crusader knights;

Even the most powerful and carefully guarded rulers of the age—the Abbasid and Fatimid caliphs, the sultans and viziers of the Great Seljuk and Ayyubid empires, the princes of the Crusader states, and emirs who ruled important cities like Damascus, Homs, and Mosul—lived in dread of the chameleonlike Assassin agents.³⁵

³³ It is also believed that the founder of the Sicarii, Judah the Galilaean, followed the “Fourth Philosophy.” It began during a time when Augustus Caesar sent Quirinus to take a census over Judea. Judah the Galilaean argued that census was against Biblical tradition; further more, he specified that paying taxes to Romans was equal to be their slaves; that the Jewish people should work with God to accomplish his purposes, and last, but not least, the members of the fourth philosophy had a “Passion for Liberty”, whose only ruler would be God.

³⁴ Matthew Carr, *The infernal Machine: A History of Terrorism*, (New York ; London : The New Press, 2006).

³⁵ Jefferson Gray, “Holy Terror: The Rise of the Order of Assassins”, *The Quarterly Journal of Military History* (24 February 2010), online: Historynet.com <<http://www.historynet.com>> ¶1.

For the Nazari Ismailis, terrorism was viewed as a sacred religious duty.³⁶

In 1090, the assassins captured the hill fortress of Alamut, in Kazvin Iran, making it their main stronghold. In the 12th century in Syria, a new fortress in Masyaf was created. From this new command center located in the ‘Al-Alawiyyin mountains, the Syrian grand master Rashid and his successors ruled almost independently from Alamut. The reign of these early terrorists ended when Alamut fell under Mongol control in 1236³⁷.

Even though political and religious violence was still present, there is silence in the scholarship as of the next terrorist groups are. This may be due to the fact that:

[K]ey ingredients of terrorism were lacking. Until the rise of the modern nation state after the Treaty of Westphalia in 1648, the sort of central authority and cohesive society that terrorism attempts to influence barely existed. Communications were inadequate and controlled, and the causes that might inspire terrorism (religious schism, insurrection, ethnic strife) typically led to open warfare. By the time kingdoms and principalities became nations, they had sufficient means to enforce their authority and suppress activities such as terrorism.³⁸

The Carbonari in Italy, literally “charcoal burners”, were a secret organization created in Naples in 1807.³⁹ At first opposed to Napoleonic rule in southern Italy, they turned against Ferdinand I, the Bourbon monarch, when he was restored to the Kingdom of Naples throne following the collapse of the Napoleonic Empire. The Carbonari believed a

³⁶ The enemies of the assassins were enemies of their faith, *Ibid*.

³⁷ *Encyclopædia Britannica*, online, *sub verbo* “Assassin”, <<http://www.britannica.com>>.

³⁸ Terrorism Research, “Early History of Terrorism”, online: [Terrorism-Research.com](http://www.terrorism-research.com) <<http://www.terrorism-research.com>> ¶4.

³⁹ Martin A. Miller, “The Intellectual Origins of Modern Terrorism in Europe”, Crenshaw, *supra* note 8, 27 at 32.

constitutional republic was the correct government for Italy. During the Restoration Era⁴⁰ this cluster succeeded in creating European liberation organizations that led to revolutionary upraising in 1848.

This group believed in violence and assassination to overthrow governments and their main targets were royal and army officials, magistrates, police chiefs and, members of the Catholic Church loyal to the monarchial regime.⁴¹ There were a number of attempts to assassinate Napoleon III; however, the first attempt to be carried out for “explicitly political reasons as part of a secret and transnational conspiracy in the context of simultaneously creating an atmosphere of intimidation and fear in the general society” was by Orsini.⁴²

During the attempt to kill Napoleon carried in 1858, eight bystanders were killed and 156 were injured when three bombs exploded.⁴³ With the Carbonari, the terror is linked largely to political ends, the overthrow of Napoleonic rule, although religious tension was present.

The next groups to attract significant historical attention are the twentieth century Irish Terrorists. Their grievances began when the Pope Adrian IV presented Ireland to Henry II of England as a gift. Much earlier, in 1171, dissident barons had failed to establish rule

⁴⁰ The Restoration Era is described as the time when the Congress of Vienna, after Napoleon’s escape to France decided that the Bourbons should return to the throne of Naples.

⁴¹ Miller, *supra* note 39.

⁴² There is an interesting note in this matter; social image of Orsini in Paris was that of a “wild beast”; but for Russia’s radical Herzen, he was a “great man in history”; *see* Miller *supra* note 39.

⁴³ *Ibid.*

over the island and during the reign of Elizabeth I, three revolts against English rule were crushed. A rebellion that began in 1641 cost 600,000 lives, and was ultimately defeated in 1649 by Oliver Cromwell. Cromwell continued the King's policy of settling Ireland with English people. Over time, much of the economic elite in Catholic Ireland was Protestant, especially in the north.⁴⁴ This religious division evolved into the socio-economic context where terrorists groups were formed.⁴⁵

In 1858, the Irish Republican Brotherhood (IRB), also known as the Fenians, formed as a secret society that sought to use force and intimidation to acquire Irish independence.⁴⁶ In 1867, while trying to release prisoners from the Clerkenwell prison, an explosion intended to take down a prison wall caused death and injuries that shocked English society. This accidental act of terror created such panic that hundreds of thousands enrolled in the police.⁴⁷ Nevertheless, the IRB leadership decided to leave the use of terror to others: "the IRB leadership was not prepared to repeat this terror process, or to acknowledge that such terror could be justified"⁴⁸ This decision reflected the view of the IRB at the time (and that of several organizations). The IRB was:

[E]litist in its arrogation of the right to decide the nation's destiny, violent in rhetoric and hostile to constitutional (parliamentary) politics. But it was not terrorist. Quite the reverse: its leaders always strove to maintain the unsullied purity of their insurrectionist principles. They wanted a fair fight

⁴⁴ Most landlords in Catholic Ireland were Protestants, this was due the practice of binging Protestant settlers to the north as landowners to establish British rule over the new territories, thus taking land from Catholics already settled there; see Parry, *supra* note 23 at 376.

⁴⁵ Charles Townshend, "The Process of Terror in Irish Politics" in Noel O'Sullivan, ed., *Terrorism, Ideology, and Revolution*, (Boulder, Colorado: Westview Press, 1986) 88 [Townshend, "Process of Terror"].

⁴⁶ There was a plot in 1865 from some members to 'liberate' Canada from Britain's rule and use it as a hostage to obtain the Island's independence.

⁴⁷ Charles Townshend, "The Culture of Paramilitarism in Ireland", in Crenshaw, *supra* note 8, 311 at 322 [Townshend, Culture of Paramilitarism"]; Townshend, "Process of Terror", *supra* note 45 at 96.

⁴⁸ *Ibid.*

in which Ireland's honour would be tempered and restored.⁴⁹

Following the dissolution of the IRB, the Irish National Invincibles (INI) formed. The INI carried out the assassination of the under-secretary Thomas H. Bluke and the new chief-secretary Lord Frederick Cavendish using surgical knives.⁵⁰ At the same time, another group, the Irish-American *Clan na Gael*, declared that they would defy England's power in public and in secret.⁵¹ Soon after, the group's bomber leader William Lomasney died while trying to blow up the London Bridge. Shortly thereafter, this fledgling terrorist campaign died out.⁵²

The Irish Republican Army (IRA), whose members were formally Catholic, formed in 1919. From 1919 onwards, the IRA conducted a campaign of terror, attacking government officials, military, police officers and civilians associated with police. Bending to pressure in 1921, the British agreed to the formation of the Irish Free State. In 1949 and without the six northern counties with Protestant majority loyal to Britain, the Irish Republic, and Ulster, the separate state, now more commonly known as Northern Ireland were born. The republic immediately outlawed the IRA.⁵³

⁴⁹ *Ibid* at 95-96.

⁵⁰ In May 6 1882, both men were murdered close to the Phoenix monument in the park. This act is known as the Phoenix Park murders. Nevertheless, some authors mention that in fact the murders were a plot to kill the Viceroy Earl Spencer, while others accounts mention that the real target was the under-secretary Mr. Thomas H. Bluke. What all accounts agree on is that Lord Cavendish was collateral, he happened to be walking in the park accompanying the undersecretary who was going to his official residence in the park. *Ibid* at 97; *see also* A. M. Sullivan, "Story of Ireland; Chapter XCII (continued)", *Library Ireland*, online: <<http://www.libraryireland.com>>; Senan Molony, *The Phoenix Park Murders: Conspiracy, Betrayal & retribution*, (Dublin: Mercier Press, 2006); Kevin Casey, "The Story of a House", *Aras an Uachtarain* online: <<http://www.president.ie>>.

⁵¹ Townshend, "Process of Terror", *supra* note 45 at 98.

⁵² *Ibid*.

⁵³ *Ibid*.

Another phase of conflict started in 1969, evolving from attacks by Protestant extremists on the Catholic civil rights workers' movement.⁵⁴ The Catholic minority in Ulster asked the IRA to intervene when the Protestant Reserve Police killed a Catholic. In December 1969, the outlawed IRA splintered into two factions: those who supported peaceful resolution of the conflict and the Provisionals (Provos or PIRA) who felt that unity in Ireland would be only achieved by terror against the Protestant majority.⁵⁵

PIRA terror left a profound mark on the Ulster society.⁵⁶ In 1972, the Provos began recruiting youth and women as a consequence of losses sustained in the previous terror campaign.⁵⁷ In 1974 a cease-fire agreement was reached at Christmas and prolonged until mid-January of 1975. A second cease-fire was called on February 10 1975, shortly after both Protestant and Provos attacks. Between then and the peace accord reached in 1990, some 3,600 people died. The IRA currently has a political wing with members in the provincial Northern Irish government.⁵⁸

In the 19th century, Tsar Nicholas I died and his son Alexander II ascended to the throne. When Alexander II began to introduce liberal reforms, extremists were opposed to the slow pace of change. The younger Russian generation, mainly students, formed the

⁵⁴ Parry, *supra* note 23 at 377.

⁵⁵ *Ibid.*

⁵⁶ The religious discrepancy was reflected with "black humor. When three Scottish soldiers were killed by an IRA gunman, the gleeful Catholic ghetto children wrote on the walls, "Celtics 3, Rangers 0," in a triumphant allusion to the well-known Celtics (Catholics) and Rangers (Protestant) soccer rivalry. On the other side, Protestant children cheered when Catholic men were taken by the Army from their homes for internment: boys and girls stood outside the homes of the arrested and sang derisive versions of "Where's Your Daddy Gone?"", *see* Parry, *supra* note 23 at 381.

⁵⁷ In 1972, an estimated 1,000 Provos were in Ulster, in late July their numbers diminished to three of four hundred, and by late November to 150; *ibid.*

⁵⁸ *Ibid.*

Nihilism movement from the Latin *nihil* meaning nothing.⁵⁹ One nihilist group, known as the ‘Organisation’, sought to liberate from Siberian exile the Russian philosopher Nikolai Chernyshevsky whose ideas they followed.⁶⁰ In 1866, a Nihilist group known as ‘Hell’ began to use assassination, blackmail and robbery.

Besides killing, torture and disfiguration by acid, terrorist practice also consisted of extensive use of “propaganda by the deed.” This transformed terrorism from a strategic tactic to a “symbolic act that reflected the motivations, passion, and power of a group.”⁶¹

Members of the Intelligentsia formed the *Zemlya I Volya* (Land and Freedom) group and *Narodnaya Volya* (People’s Will).⁶² They believed that killing Tsar Alexander II would awaken the oppressed. Several attempts were made on the Tsar’s life and, in 1881, the People’s Will succeeded. Members justified terrorism as self-defense against police,⁶³

Terror would be used against the most harmful members of the regime; it would be used to dispose of spies; it would be invoked in retaliation for the government’s most heinous acts. Terrorist successes would show the *narod* that the government was not invincible, raise morale and instill revolutionary fervor.⁶⁴

⁵⁹ The nihilist movement “is an inability to accept pain, conflict, and antagonism... is the invention of another illusory world in which pain, conflict, and antagonism cease to exist”, Bülent Diken, *Nihilism*, (Florence, KY, US: Routledge, 2009) at 2; *see also* Charles I. Glicksberg, “The Literature of Nihilism”, *Contemporary Literature*, online: <<http://www.jstor.org>>.

⁶⁰ Chernyshevsky was jailed because of his critics to the Russian government. His views were against liberalism and big landowners; he believed in life in communes.

⁶¹ Bethami A. Dobkin, “The Television Terrorist” in J. David Slocum, ed, *Terrorism, Media, Liberation*, (NJ, US; Rutgers, 2005), 121 at 122.

⁶² According to Pomper, (*infra* note 64) the period 1878 to 1882 was the “turning point in the history of Russian terrorism. The heroes and heroines of the People’s Will established terrorism as a noble activity in the eyes of later generations. They created the image of the virtuous assassin.”

⁶³ This was probably due to the tendency of the group to “exaggerate their own failures among the peasants and the government’s repressive measures against them.” Pomper, *infra* note 64.

⁶⁴ Philip Pomper, “Russian Revolutionary Terrorism”, in Crenshaw, *supra* note 8, 63 at 83.

In the 1900's, the Socialist Revolutionary Party, a predominately Marxist organization, took ideas from the populists and nihilists, and revived the terrorist tradition.⁶⁵ There were fewer assassinations but they were more spectacular due to the status of the victims. After the establishment of a parliamentary regime in 1905, the use of terror became harder to justify to public opinion.⁶⁶ In 1908, the discovery that the political police, known as Okhrana agents, were behind "heroic" terrorist acts brought Russian revolutionary terrorism to an end.⁶⁷ Russian terrorism resurfaced with Vladimir Lenin, for whom the use of terror was a mass revolutionary coordinated action,⁶⁸ and his successor Joseph Stalin. Accordingly, Lennin created the first official arm of Bolshevik terror, known as Cheka in December 1917.⁶⁹ Lenin's successor Stalin outdid him in power and in terror. Under his regime almost 700,000 people were executed.⁷⁰ This last type of terror is clearly state terrorism.

Euzkandi ta Askatasuna, better known as ETA, formed in 1959 in the Basque region of Spain by a "coalition of radical youth groups" that split from the Basque National Party.⁷¹

⁶⁵ The ideas were mainly focused on obtaining a socialist society primary in the countryside, instead of focusing their efforts as their predecessors did in the urban centers. Nevertheless, the urban centers as with the other groups provided most on the recruits for their terror campaigns what were "met with great success"; *ibid* at 89.

⁶⁶ *Ibid* at 92.

⁶⁷ *Ibid* at 97.

⁶⁸ A coordinated action of terror was preferable, but there were some terror created by accident; Albert Parry (*supra* note 23 at 154) mentions in his book that once in a meeting, Lenin asked Dzerzhinsky in a note how many counterrevolutionaries were in prisons, he answered in writing "about 1500"; Lenin read the note and put a cross mark opposite the number before returning the note. That night 1500 prisoners were executed because Dzerzhinsky ignored that Lenin custom was to cross out every document he had read.

⁶⁹ It is believed that the Cheka executed between 100,000 to 500,000 people and placed 70,000 more in concentration camps by 1920.

⁷⁰ Terry Martin, *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923-1939*, (NY, US: Cornell University Press, 2001), online: Google Books <<http://books.google.com>> at 338.

⁷¹ Goldie Shabad & Francisco Jose Llera Ramo, "Political Violence in a Democratic State: Basque Terrorism in Spain", in Crenshaw, *supra* note 8, 410 at 411.

Their goal is to recuperate Basque independence, culture and language.⁷² ETA begun to use terror as a weapon in 1962 and, in 1973, assassinated Prime Minister Luis Carrero Blanco. ETA violence escalated after General Franco's death in 1975, especially in key events related to Basque autonomy and the restoration of democracy.⁷³

Of the more than six hundred deaths attributable to ETA between 1968 and 1991, about 93 percent occurred after Franco's death; about 27 percent took place in 1979 and 1980 alone, during which time the Basque Autonomy Statute was being negotiated an elections to the first Basque regional government were being held.⁷⁴

According to statistics published in the early 1990's ETA was responsible "for more that [sic] 70 percent of all people killed in terrorist actions in Spain during the last twenty years (...) the majority of its victims have been police and military officers"⁷⁵ Additionally ETA has performed kidnappings for ransom, bombings, sabotages, robberies, and armed assaults directed not only to Spanish targets but to Basque and French businesses and individuals.⁷⁶ In 1985 the Basque government officially

⁷² The minimum conditions that the Spanish Government must meet in order for ETA to stop their violent acts are contained in the KAS alternative of the 1970's. Four points related to this goal are for the Spanish Constitution to recognize the right to self-determination; the restoration of the province of Navarra to the Basque Autonomous Community in Spain; the "institutional predominance of Euskera", the Basque language; the liberation and amnesty of "Political Prisoners" and the withdrawal of the police and Spanish military from Basque territory; *ibid.*

⁷³ The transition coincided with an economic crisis in Spain that was felt primary in the Basque region due to the heavy industry economy present. Policies of restructuring and ETA actions against Basque industries created high levels of unemployment with the youth; this was reflected in complaints about economic exploitation and a fertile ground for recruitment of new members; *ibid.*

⁷⁴ *Ibid* at 411.

⁷⁵ *Ibid* at 441.

⁷⁶ France has been involved in the conflict since the beginning due to the fact that three Basques provinces are in French territory and a lot of *etarras* fled to France as 'exiles' to be welcome by French Basques. Nevertheless the French government acted against ETA. French officials arrested several ETA activists looking for sanctuary within her borders, starting in 1964 and intensified the practice after the assassination of Carrero Blanco. In 1974 France banned all separatist groups. By 1976 the French government made more difficult to achieve resident status, in part due to the fact that a lot of *etarras* were French residents. As a result of increased violence against French targets after the Spanish Constitution of 1978 and the Basque autonomy Statute of 1979 a harsher policy against ETA was adopted. Which has "severely constrained ETA's ability to carry out frequent actions and has exacerbated internal organizational problems of coordination and communication"; *ibid.*

condemned ETA, for the first time, in response to the assassination of the chief of the Autonomous Basque Police.⁷⁷

In the Americas, one of the most notable terrorist groups is Shining Path, a political and ideological movement in Peru.⁷⁸ Shining Path's roots began in the 1960's at a small university in a remote and almost inaccessible town, Ayacucho. Students formed an activist organization led by Abimael Guzman Reynoso, it was "one more group on the Marxist Left within a pluralistic Latin American academic context (...) [that] developed ties with national political movements in the 1960s and competed for influence in universities and unions around the country."⁷⁹ By 1978, they had grown from a study and activist group into an armed organization.⁸⁰ According to scholars Shining Path's objective is to destabilize the government and force authorities to make unpopular

⁷⁷ *Ibid* at 461.

⁷⁸ David Scott Palmer, "The Revolutionary Terrorism of Peru's Shinning Path", in Crenshaw, *supra* note 8, 249.

⁷⁹ Palmer, *supra* note 78 at 251.

⁸⁰ A combination of factors influenced this evolution. The first factor was the isolation and poverty suffered by Ayacucho's population. From a total of 500,000 people, 90% was rural in 1961 diminishing to almost 70% in 1972. There were almost no paved streets, no telephone, no military, a small police force, two buses, only evening electricity for most of the city, a small dirt runway with three prescheduled flights per week and a single lane dirt road to Lima. The second factor was the reopening of the University of Huamanga in 1959, after being closed since 1880 due to the crisis created by the war with Chile (1879-1883). The University had two years of basic education and specialization in nursing, applied anthropology, education and rural and agricultural engineering and the mission to reach out the wider community. This centered the region on the university's activities, which became increasingly Marxists.

The third factor was the government development programs of the 60's and 70's; changes by the end of the 1960's included the establishment of a military garrison, installation of a telephone system, construction of a lengthened and paved airport landing and a new dirt highway that cut the traveling time from Ayacucho to Lima in half. Although small, these changes were necessary to the community of Ayacucho. The region experienced economic growth, better access to health and education and increased migration between urban and rural areas. In spite of this period of modest prosperity, there was a decline in the 1970's of the well being of the population due to new government programs and policies. The fourth factor in Shining Path's creation was the split with the Red Flag Party in 1970. Shining Path took a Marxist path to revolution, due in part to close ties between Ayacucho's intellectuals and peasants.

The fifth factor was the leadership's ability to attract followers and convince them to use violence despite the high risks involved. The last factor was the military regime of the 1970's in which the government adopted reformist policies with unintended consequences. The state's bureaucracy increased in size, from being one of the smallest to one of the largest in Latin America, and the public debt contracted produced inflation followed by a substantial decline in government services and economic crisis

decisions thereby causing the loss of legitimacy in the eyes of the people. The members of this group do not consider themselves terrorists, but revolutionaries.⁸¹

By the early 1990's Shining Path had been held responsible for 23,580 terrorist incidents, at least 23,610 deaths, over 3,000 missing people and \$24 billion in property damage.⁸²

With the capture of Guzman and other leaders in 1992, Shining Path splintered into smaller groups. Guzman's role was taken over by Oscar Ramirez, who was captured in 1999. Shortly after, Shining Path divided once more. Small cells still remain active. As of December 2011, reports surfaced indicating that Comrade Artemio, the current Shining Path's leader, has announced the group's defeat.⁸³ The estimated total death toll of the conflict is 70,000.⁸⁴

While much terrorism is blamed on marginalized groups in society, groups excluded from positions of power, a highly contentious aspect is the occasioning of terror by states. Stalin's extermination of 700,000 individuals constitutes state-terrorism. Sometimes states are accused of being "sponsors of terrorism" when they create safe-havens for terrorist group that commit terrorism abroad.⁸⁵ In 2005, the US State Department

⁸¹ Palmer, *supra* note 78 at 250.

⁸² *Ibid* at 251.

⁸³ "Peru's Shining Path defeated, rebel leader admits", *BBC News* (7 December 2011) online: BBC News <<http://www.bbc.co.uk>> [*BBC News*, "Defeated"]; Mariano Castillo, "Shining Path leader says it's defeated", *CNN* (7 December 2011), online: Cable News Network <<http://edition.cnn.com>>; according to recent reports, Comrade Artemio was captured badly injured on February 12, 2012. "Peruvian Police Captures 'Shining Path boss' Walter Diaz", *BBC News* (4 March 2012), online: BBC News <<http://www.bbc.co.uk>>.

⁸⁴ *BBC News*, "Defeated" *supra* note 83.

⁸⁵ A clear example of this label is the late Libyan leader, Coronel Muammar Gaddafi; he was accused of sponsoring different terrorist organizations "There was a time when Qaddafi's Libya was one of the world's foremost sponsors of terrorism. Throughout the 1980s, Libya had its hands in terrorism all over the world. Qaddafi made common cause with just about any terrorist organization that asked for his assistance. The most notorious Libyan-sponsored terrorist attack during Qaddafi's terror-sponsoring heyday was, of

identified Cuba, Iran, Libya, North Korea, Sudan and Syria as supporters of international terrorism.⁸⁶ Notably and historically, “most major acts of terrorism against American citizens and other targets abroad were supported, and in some cases, instigated by state sponsors.”⁸⁷

Canada, of course, has not been entirely immune to terrorism.

3. Terrorism in Canada

A country known for its geographical vastness and its very high standards of living does not immediately strike one as a bastion of terrorism. Compared with the lengthy struggles of its commonwealth brethren Britain, Canada’s experiences with terrorism are rather modest.⁸⁸ Independence movements have been present since Canada’s foundation: Louis Riel in Manitoba, the rebellions of the 1830’s in Lower and Upper Canada and the French Canadians in Quebec. Some categorize Louis Riel, leader of the Métis rebellion in Manitoba, Canada, in 1869, as a terrorist.⁸⁹ Significant to Canadian history is the

course, the Pan Am 103 bombing over Lockerbie, Scotland, *see* Joscelyn Thomas, “The Libyan Terrorist: Muammar Gaddafi”, Blog, *The Weekly Standard* (24 February 2011), online: The Weekly Standard <<http://www.weeklystandard.com>>; Uganda’s president Youweri Museveni, accused Gaddafi of “sponsoring terrorists behind the bombing and killing of 75 people watching the 2010 FIFA World Cup football in Kampala”, *see* “African Leaders cannot fool us on the West’s Double Standards on Gaddafi”, Editorial, *The [Zimbabwe] Mail* (22 March 2011), online: The Zimbabwe Mail <<http://www.thezimbabwemail.com>>.

⁸⁶ Gary Clyde Hufbauer & Thomas Moll “Using sanctions to fight terrorism” in Sean S. Costigan & David Gold, eds, *Terronomics* (Hampshire, England; Burlington, USA: Ashgate Publishing, 2007) 179.

⁸⁷ *Ibid* at 187.

⁸⁸ One influential rationale for legislation focusing on terrorist finance, both within Canada and elsewhere, is the prevention of terrorism rather than dealing with its aftermath.

⁸⁹ Louis Riel was born in 1844. He led the Métis on a rebellion against the unilateral sale by HBC of Rupert’s Land to Canada in 1869. The provisional Government established by Riel negotiated the terms in

bombings; violence and death associated with the Front de Liberation de Quebec in the late 1960s and early 1970s.

Even before France signed the *Treaty of Paris* ceding the New France (Quebec) to Great Britain in 1763, serious tension defined the relationship between the French and the English.⁹⁰ In 1837, the Quebec “Patriotes” led a rebellion against English forces in Lower Canada (Quebec), an uprising that was crushed in 1838.⁹¹

While relationships between French and English Canada remained tepid for 130 years, an independence movement was revived in 1960 with the Quiet Revolution, a gradual transformation of Quebec’s Society.⁹² The Quiet Revolution started when Trudeau and other liberals formed an intellectual opposition to Duplessis’ conservative and traditional regime. During the Quiet Revolution, there was a decline of Anglo supremacy in Quebec’s economy, hydroelectric companies were nationalized and the Roman Catholic Church lost influence. Allegedly because the pace of change was not fast enough, the

which the modern Province of Manitoba joined Canada. He was exiled to the U.S. for his participation in this events and the execution of Thomas Scott. In June 1844, Riel was invited by the Métis in Saskatchewan to speak on their behalf with Canadian officials. He was hanged in Regina in November 1885. Debate is still on table whether Luis Riel was friend or foe, the only thing certain is that he died as a traitor and is now honored by Canadians as Manitoba’s founder.

⁹⁰ On June 24, 1534, Jacques Cartier, a French explorer, claimed the Gaspé Peninsula, (located in the south shore of the Saint Lawrence River in Quebec, extends into the Gulf of Saint Lawrence) for his King Francis I. On 1608, Samuel de Champlain founded Quebec City and over time became that capital of the New France. On 1629, Quebec surrendered to the Kirke brothers, British privateers that stopped the two convoys with supplies and more settlers bound to the French colony. Although the Treaty of Susa was reached before the surrender, in which the Kirkes were obligated to return their booty; they did so until 1632 when the Treaty of Saint Germain en Laye was signed.

Once again under French rule, the territory of the New France was in dispute between France and Britain. The General James Wolfe conquered Quebec on September 13, 1759 when he defeated General Louis-Joseph de Montcalm on the Plains of Abraham outside Quebec City. Few years later, on 1763 France signed the Treaty of Paris ceding the New France to Great Britain. The Province of Quebec was born.

⁹¹ Claude Belanger, “The Quiet Revolution” (1999), online: Marianopolis College <<http://faculty.marianopolis.edu>>.

⁹² *Ibid.*

Quiet Revolution evolved into a violent campaign characterized by acts of terrorism presided by the Front de Liberation du Quebec, the FLQ, during the 1960's culminating in the 1970 with the October Crisis.⁹³

Historians claim that the formalization of the separatist movement began in Quebec with Donald Gordon's comments referring to the lack of more French Canadians in the board of directors of the Canadian National Railways. Mr. Gordon stated that there were not enough qualified French Canadians for the job. This statement reflected the common practice at the time that required French Canadians to speak a high level of English while English speakers were not required to learn French.⁹⁴

But the FLQ, the entity associated with the terrorist activities, came not from the *Parti Republicain du Quebec* (PRQ), the first separatist party, founded on December 1962 by Dr. Marcel Chaput. The FLQ splintered from the *Roseau de Resistance* (RR) created at first as the Revolutionary Committee and with the goal of achieving Quebec independence.⁹⁵ FLQ waves of violence began in March of 1963 when a three-person group attacked three armories in Quebec with Molotov cocktails and ended on June 1st of the same year when the three FLQ founders and the bomb maker were arrested.⁹⁶ At first

⁹³ *Ibid.*

⁹⁴ Gustave Morf, *Terror in Quebec: Studies of the FLQ* (Toronto; Vancouver: Clarke, Irwin, 1970).

⁹⁵ *Ibid.*

⁹⁶ On March 29, 1963 "extremists" exasperated with the lack of attention from the French speaking press to the independence cause, toppled the Wolfe monument in Quebec. The following night, a bomb was placed in front of the Canadian Legion in St. Jean Quebec and exploded the morning of April 3rd. The FLQ explained that the Canadian Legion were traitors, a symbol of the assimilation and the elimination, by the federal government, of all national patriotism in Quebec. Three more bombs were planted over the following days: the first one was dismantled in Montreal's Central Station; the other two exploded, one in the National Revenue building on Dorchester, Que. and one more behind an RCMP building in Westmount, a region of Montreal. The RCMP bomb was a response to the "Good Friday Raids", a joint operation by the

the FLQ was considered “harmless” and its actions “may be interpreted as experiments” to test the police and public reactions.⁹⁷

The *Armée de Liberation du Quebec* (ALQ) and the *Armée Revolutionnaire du Quebec* (ARQ) marked a second and a third wave of violence.⁹⁸ Bombings continued through 1965 and 1966 ending when a young FLQ militant was killed while placing a bomb.⁹⁹ In 1968 the cycle began again when a stick of dynamite was found and defused at a liquor

RCMP and Montreal Police in which several houses were searched and around 20 people arrested, then liberated. Although these actions caused considerable property damage, they caused no deaths. On April 20, a bomb exploded in the back lane of the Recruiting Centre of the Canadian Army in Montreal, claiming the first victim of the FLQ. He was the night watchman, Wilfred O’Neil, a 65-year-old veteran that passed by on his way to work; “the reaction was violent. The three members of the FLQ who had made and placed the bomb were shocked. This, they said, was an unfortunate, unforeseeable accident.” The death of O’Neil was received by Quebec with shock, outrage, disbelief and indignation. Before O’Neil’s death the FLQ bombings were seen by society as “experiments”, after wards, support for the “revolutionaries” started to crumble to the point that some or it’s members wanted to quit and the police in Montreal were inundated with false bomb alarms and information about the bombers. The FLQ denied responsibility for the accident, and blamed “the enemy”; this rejection of responsibility would become a common practice of the FLQ. After O’Neill’s death, the FLQ intervened in the strike at the Solbec Copper Mine by placing a bomb in the washroom near their offices in Montreal. An anonymous tip was made to the Canadian Press agency recommending emptying the building. The bomb was deactivated two minutes before it exploded. It caused no deaths. A second victim was claimed on May 17, 1963 when bombs were placed in the English upper class suburb of Montreal, Westmount. Inside several mailboxes, bombs consisting of sticks of dynamite were planted. This was a symbolic attack against foreign occupation because the British Royal Arms and the word “Canada” embellished the mailboxes. Another bomb went off in the Royal Canadian Electrical and Mechanical Engineers (RCEME) building for the celebration of Queen Victoria’s birthday on May 24, Morf, *supra* note 94.

⁹⁷ *Ibid.*

⁹⁸ The denominated second wave started on September 1963 when the Armée de Liberation du Quebec (ALQ) started to carry a series of hold-ups with the purpose of financing the guerrilla war that the FLQ founders ambitioned. After a series of equipment, weapons and cash robberies, ALQ militants, wealthy students and young workers from east end Montreal, were arrested after a hold-up at the Canadian National Bank in Mount Royal on April 1964. Then on August 1964, the Armée Revolutionnaire du Quebec (ARQ) took over the ALQ task. The leader of the ARQ decided to carry a hold-up to finance the group’s training camp located near St. Boniface, Que. International Firearms gun shop in Montreal was the selected target. After killing the store’s owner, acquiring guns and carrying a gunfight with the police, the ARQ commando was arrested outside the shop. Soon after, the camp was raided and the third wave officially ended on August 29, 1964. The fourth wave of the conflict started on August 1965 when the antenna of an English radio station in Quebec was blown up, Morf, *supra* note 94.

⁹⁹ On August 27, 1966 six FLQ militants were arrested after a failed hold-up. The leaders of the fourth wave decided to leave Quebec for New York. In New York, Pierre Vallières and Charles Gagnon protested in front of the United Nations (UN) against the political repression in Quebec and the arrest of their six “comrades”. Both were arrested and imprisoned in Manhattan after a CBC interview.

store.¹⁰⁰ In early 1970, the police discovered two plots, one to kidnap the Israeli Consul and the other to kidnap the U.S. Consul in Montreal.¹⁰¹

On October 5, 1970 Mr. James Cross, the British Trade Commissioner, was kidnapped from his home in Montreal by the FLQ Liberation cell. Hours later, a ransom note was found by reporters of the CKLM, a French radio station.¹⁰² Five days after the kidnapping, the government had only fulfilled one of the seven ransom demands. The FLQ manifesto, the full ransom request, was broadcast on October 8th. Two days later, Quebec Justice Minister Mr. Chroquette, appeared on live television, to announce that the Federal government would not concede any more of the ransom demands but would provide safe conduct to a foreign country for the kidnappers.¹⁰³

The FLQ responded with the kidnapping of the Minister of Labor and Immigration in Quebec, Mr. Pierre Laporte, on October 10th. A second FLQ group, the Chenier cell, claimed responsibility. On October 15th, the Canadian Army was called to assist the

¹⁰⁰ Once again, during this wave the FLQ targeted more symbols of the outsiders in Quebec, like the Black Watch and the Eaton's store. The Quebec Federation of Labor and the Canadian Federation of Independent Associations were targeted as well because the FLQ considered them responsible of the labor shortage. The bombings continued in 1969 at the RCME building, the Maisonneuve Regiment building, the Montreal Stock Exchange, the Liberal Reform Club and the bookstore of the Queen's Printer. At the bookstore, one employee gave a description of the man that dropped the bomb; with the information, the police was able to capture Pierre-Paul Geoffroy.

¹⁰¹ Morf, *supra* note 94.

¹⁰² The ransom note included the details of the exchange to be made at the Montreal International Airport. The note demanded that the conditions were fulfilled within 48 hours. On October 6th, External Affairs Minister Sharp stated that the FLQ demands were unreasonable and would not be met. The FLQ demanded stoppage of police activities and raids related to the kidnapping, disclosure of the full text of the attached FLQ manifesto in the media, the release of 23 listed FLQ members, to whom the ransom note identified as political prisoners and their safe passage by plane to Cuba or Algeria with their families, the reinstatement of Lapalme postal drivers, a *voluntary* tax of \$500,000 in gold bars and finally the identity and photograph of the police informer in the FLQ.

¹⁰³ James Stewart *The FLQ: Seven Years of Terrorism; a special report by the Montreal Star*, design by Robert R. Reid, foreword by Frank B. Walker (Richmond Hill, Ontario: Montreal Star and Simon & Schuster of Canada Ltd. 1970).

Quebec Provincial Police to maintain order. At 9 p.m. Quebec Premier Bourassa issued a short statement in which the FLQ demands were rejected.¹⁰⁴ The FLQ did not respond and on October 16th, the Federal cabinet invoked the *War Measures Act*. With this law, the government outlawed the FLQ and conferred extraordinary powers onto the police to arrest and detain suspects without warrants.¹⁰⁵ The *Act* was active until December 1st when, the *Temporary Measures Act* was enacted, a law specifically drafted to deal with the FLQ.¹⁰⁶

After a week of communiqués, personal letters from the victims and negotiations between the government and the two FLQ cells, the Chenier group returned a “package.” Inside the trunk of the car that was used to kidnap Mr. Laporte his body was found near the Saint-Huber Airport.¹⁰⁷

On November 6th the first of Mr. Laporte’s kidnapers was arrested.¹⁰⁸ The rest were found and arrested on December 28, 1970, in their hideout, near St. Jean Quebec. While terrorist violence declined thereafter, the separatist movement continued.¹⁰⁹ The Parti Québécois (PQ) embodies the Independence aspirations. The PQ has initiated two

¹⁰⁴ He also offered safe conduct for the kidnappers.

¹⁰⁵ Stewart, Reid & Walker, *supra* note 104; Morf, *supra* note 92.

¹⁰⁶ William Tetley, *The October Crisis, 1970: An Insider’s View* (Montreal & Kingston ; London ; Ithaca : McGill-Queen’s University Press, 2007).

¹⁰⁷ According to the cell’s communiqué advising of Mr. Laporte’s death, his execution took place exactly one week after he was kidnapped.

¹⁰⁸ Stewart, Reid & Walker, *supra* note 104; Morf, *supra* note 92; John Saywell, *Quebec 70: a documentary narrative* (Toronto: University of Toronto Press, 1972).

¹⁰⁹ In 2001 Rheel Mathieu, a former FLQ convicted militant firebombed three Second Cup coffee shops in Montreal because of their English name; this attack is believed to be the most recent bombing related to the FLQ.

referendums on Quebec's Independence, the first in 1988 with a 40% acceptance and the last one in 1995 with 49.5% acceptance to Quebec's independence.¹¹⁰

Canada's next experience with terrorism differed greatly from the FLQ crisis. The FLQ crisis, while international in origin (Britain and France) was chiefly a domestic affair. It did not rely upon force beyond Canadian boundaries nor did it touch on international matters. The same might be said of the earlier examples of terror the Sicarii, the IRA and perhaps the Basques.¹¹¹ The tensions underlying the emergence of terror were principally, although not exclusively, confined to particular geographic regions. It is worth noting that, in the case of the IRA, money used to support terror allegedly came from foreign sources.¹¹²

International aspects of terrorism have always been present although terrorism was loosely confined to national borders, the result of internal state conflicts which could be addressed, if not particularly successfully or effectively, through domestic action. The FLQ crisis fits into that category but the subsequent terror incident does not. The international dimensions of the bombing of an Air India jet travelling from Toronto to New Delhi were pronounced. This terrorist act was significantly different from the FLQ terror primarily because the Air India bombing was in direct retaliation for events that occurred outside Canada and aspirations for political recognition outside of Canadian boundaries.

¹¹⁰ Wikipedia, online, *sub verbo* "Parti Quebecois", <<http://en.wikipedia.org>>.

¹¹¹ As mentioned before, the Basque country territory is located in Spain and France.

¹¹² Laura K. Donohue, "Anti-Terrorist Finance on the United Kingdom and United States" (March 2006) Michigan Journal of International Law, Vol. 27:303; *see also* Parry, *supra* note 23 at 379-380.

Sikhs had long sought their own state, Khalistan, independent from India.¹¹³ On June 5, 1984, Indian Prime Minister Indira Gandhi ordered the invasion of the Golden Temple, the most sacred Sikh temple. Unofficial numbers claim more than a thousand people were killed during the raids.¹¹⁴ Sikhs factions were united in pain and anger and sought the death of the Indian Prime Minister. On October 31st, 1984 Indira Gandhi was assassinated.¹¹⁵

In the spring of 1985, Canadian External Affairs received intelligence reports warning that retaliation for the temple raid was expected outside of India. The Canadian Government decided to put extra protection at the Indian Embassy and Consulates and increased the RCMP presence at the Toronto International Airport around the Air India weekly flight to New Delhi. The first anniversary of the Golden Temple Invasion passed without incident.¹¹⁶

On June 23rd, 1985 Air India Flight 182 from Toronto to New Delhi, with stops in Montreal and England, exploded near Ireland. All the passengers and crew died. Two bag handlers also perished at the Narita airport, in Tokyo, almost an hour earlier when

¹¹³ Sikhism is described as “a unique blend of mysticism, revolutionary zeal and idealism, combining elements of both Hinduism and Islam”, it began in Pakistan in 1499 and contrary to Hinduism, believed in a single god with no name, no form and omnipresent. The word Sikh means “disciple” in the old language of the Sikh scripture, Gurmukhi. But in the ancient Indian language, Pali, Sikh means “God’s chosen people.” This revolutionary religion preached universal tolerance, rejected the cast system and favored equity of men and women.

¹¹⁴ Laura Lopez, “Slaughter at the Golden Temple: Mrs. Gandhi risks her future in an attack on Sikh extremists” *Sikh Museum.com* (18 June 1984) online: Sikh Museum.com <<http://www.sikhmuseum.com>>.

¹¹⁵ Allegedly, the assassins were her own bodyguards; Zuhair Kashmeri & Brian McAndrew, *Soft Target: How the Indian Intelligence Service Penetrated Canada* (Toronto : James Lorimer & Company, 1989).

¹¹⁶ *Ibid.*

another related bomb exploded while the luggage was being transferred to an Air India flight from an incoming Vancouver flight. 331 people died in both incidents.¹¹⁷

When the police in Tokyo reconstructed the bomb, the RCMP linked a radio device to Inderjit Singh Reyat, a Sikh mechanic living in British Columbia, who was arrested in 1985.¹¹⁸ Reyat admitted buying the radio but denied any involvement with the bombings. He admitted an attempt to construct a bomb for Talwinder Singh Parmar, the leader of Babbar Khalsa (Tigers of the True Faith) the Canadian chapter of this international organization formed in 1978.¹¹⁹ Parmar and Reyat were charged with possession of explosives with an unlawful purpose and the manufacture of an explosive. Reyat pleaded guilty to lesser charges and was fined with \$2,000. Charges against Parmar were dropped. No one else was charged, at the time, in relation to the bombings.¹²⁰

In February 1988, after Reyat moved to England, he was detained by the police on charges of manslaughter of the two baggage handles at the Narita airport. He was extradited to Canada in 1989 and sentenced to ten years in prison in 1991.¹²¹ The RCMP started an investigation into the Air India bombings in 1992, the same year Parmar was killed while in police custody in Pakistan.¹²² In May 1995 a reward was offered for any information regarding the bombings.¹²³

¹¹⁷ *Ibid.*

¹¹⁸ Clark Blaise & Bharati Mukherjee, *The Sorrow and the Terror: The Haunting Legacy of the Air India Tragedy* (Markham, Ont.: Viking, 1987).

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ Kashmeri, *supra* note 116; *CBC News*, “In Depth: Air India” *infra* note 123.

¹²² “In Depth: The Bombing of Flight 182: Air India”, *CBC News* (25 September 2006), online: *CBC News* <<http://www.cbc.ca>> [*CBC News*, “In Depth: Air India”].

¹²³ *Ibid.*; Kashmeri, *supra* note 116.

During the following years, witnesses came forward with information that led to the 2005 arrest, trial and acquittal of Ajaib Singh Bagri and Ripudaman Singh Malik, a businessmen that helped fund various religious schools known as Khalsa schools.¹²⁴ Reyat, who had already served ten years for manslaughter in connection to the Narita airport explosion, received five additional years in 2003 when he plead guilty to one count of manslaughter for the bag handlers at the Narita airport and to the charges of providing assistance to construct a bomb; the murder charges against him for the death of the passengers and crew of the Air India flight 182 were stayed.

In May 2006 Canadian Prime Minister Stephen Harper called a Commission of Inquiry to investigate the bombing Air India Flight 182 (the Commission). The objective of the Commission was to determine whether Canada was better prepared than in 1985 to deal with a terrorist threat such as that posed by the Sikhs extremists.

Clearly some classic themes of terrorism (a religious aspect, political exclusion and domination) are reflected in the Air India bombing. To Canada, however, Air India was the first time that terrorism possessed global features. It was related to conflicts not located within Canadian territorial boundaries. Although its effects impacted Canada and the Canadian population, its ambitions and its origins lay halfway around the world. The principal threat, or retaliation, was towards the Indian state. Contemporary terrorism tends to be more global in character than previously. That global part is chiefly

¹²⁴ Kim Bolan, *Loss of Faith: How the Air-India Bombers Got Away with Murder* (Toronto, Ont.: McClelland & Stewart Ltd., 2005).

responsible for engendering global responses to terrorism and underpins the global focus on terrorist finance.

Terrorism was again to touch Canadian soil in 2008 and 2009 in Northern, B.C. when six bombings of gas pipelines occurred near Dawson, B.C.;¹²⁵ the explosions caused leaks in the EnCana gas pipelines that transport sour gas.¹²⁶ Letters from the alleged perpetrator were sent to local media and forwarded to the RCMP. In the first letter, the perpetrator called EnCana and other companies “terrorists” who endanger families with deadly gas wells. By the time of the second explosion, the RCMP referred to the bombings as “acts of vandalism not terrorism” because there was no intent to hurt people.¹²⁷ Following a fourth explosion in 2009, CBC reported that the anti-terrorism squad was investigating the case.¹²⁸ After the sixth, authorities labeled the case as “domestic terrorism.”¹²⁹

EnCana offered a \$1 million dollars as reward for information leading to the capture of the bomber. According to a possible third letter from the bomber received by the local media has only “united us more than ever.”¹³⁰ In January 2010 Wiebo Ludwig, a local fierce opposition of the oil and gas industry, was taken into custody and released hours

¹²⁵ “B.C. pipeline bombings 3 years old with no charges laid”, *CBC News* (11 October 2011) online: CBC News <<http://www.cbc.ca>> [*CBC News*, “Bombings 3 years”].

¹²⁶ It is a form of natural gas that contains hydrogen sulphide, a toxic substance that is removed through a treatment process at gas plants.

¹²⁷ “More sabotage feared after 2nd pipeline bombed in northern B.C.”, *CBC News* (16 October 2008) online: CBC News <<http://www.cbc.ca>>; “RCMP probe pipeline sabotage in northern B.C.” *CBC News* (14 October 2008) online: CBC News <<http://www.cbc.ca>>;

¹²⁸ “4th pipeline bombing in northeastern B.C.”, *CBC News* (5 January 2009) online: CBC News <<http://www.cbc.ca>>.

¹²⁹ “6th bomb at B.C. pipeline causes gas leak”, *CBC News* (4 July 2009) online: CBC News <<http://www.cbc.ca>>.

¹³⁰ The possible letter has been received on April 2010, according to CBC, police is still investigating if it is a hoax like a previously received letter; “EnCana bomb letter received by B.C. paper”, *CBC News* (15 April 2010) online: CBC News <<http://www.cbc.ca>>.

later.¹³¹ No more explosions have occurred.¹³² Unlike Air India, the pipeline bombings were entirely local in character, fomented by local situations and tensions within Canadian, if not necessarily British Columbian boundaries. They demonstrate another brand of terrorism, not discussed in this work, industrial, or commercial, terrorism.

Conclusion

Although the awareness to the concept of terrorism and its implications has become increasingly widespread among the general public, terrorism has been a part of human history. Terrorism has been a political leverage presented throughout the millennia. From the early Sicarii in ancient Rome, terrorists have aimed to induce fear into the civilian population through targeted attacks against prominent individuals, important landmarks, or crucial infrastructure sites to help them achieve their agendas.

Terrorism is used to strike at targets that can significantly affect the morale or inner workings of society in order to induce fear and underwhelm the confidence of the population in the established government. Terror was then, a weapon used in the constrictions of a geographical area. Nevertheless, as described in the next chapter, the character and reach of terrorism changed dramatically with the attacks of 9/11; terrorism became World's Public Enemy Number One.

¹³¹ "W5: Behind the pipeline bombings in northern B.C.", *CTV News* (23 January 2010), online: CTV News <<http://www.ctv.ca>>

¹³² *CBC News*, "Bombings 3 years", *supra* note 126.

CHAPTER 2

International Elements and the Focus on Terrorist Finance

“September 11 did not change everything. Rather, it accelerated a number of preexisting challenges already faced by Canada.”¹

Introduction

One of the elements of terrorism that is more significant in modern times is its international character. Modern terrorism is rarely without some international component: terrorism may be conceived abroad, assisted by forces from abroad, or financed or otherwise supported by groups that are not within the jurisdictional boundaries of the state experiencing the terror. Canada’s recent experiences, Air India and the Toronto 18 show that tendency. State borders do not limit financial resources for terrorism. Resources can come from anywhere. In response to the global reach of terrorism and a need to adopt a new approach, international law and Canada law introduced an anti-

¹ Kent Roach, *September 11: Consequences for Canada* (Montreal & Kingston: McGill-Queen’s University Press, 2003) at 15.

terrorist finance strategy. This chapter covers the global elements of recent Canada terrorism and the 2001 adoption of a global approach focused on terrorist finance.

1. International Elements in, and Responses to, Domestic Terror

1.1 International Elements

The Air India disaster showed the relevance of foreign conflicts to the Canadian people. It was Canada's first real brush with international terrorism: the incident was driven by religious, political and historical tensions happening in a foreign country. Those actions had a tremendous impact. Canadian security and peace was "threatened" by foreign relationships. Apart from the residual colonial ties, the crisis in Quebec, the FLQ, was a highly local terrorism incident. All the key parts of the conflicts lay within Canadian national territorial boundaries. The fear engendered was a response confined by national borders.

During the summer of 2006, Toronto police, in conjunction with the RCMP, arrested sixteen people in connection with a terrorist plot to plant bombs in Toronto, Ontario. The alleged targets were RCMP headquarters, nuclear power plants, the Toronto Stock Exchange and the Canadian Broadcasting Corporation headquarters.² The total of suspects involved in this plot was 18 thus the group was labeled the "Toronto 18".³ It is

² "20-year-old convicted in Toronto terror plot", *CBC News* (25 September 2008) online: CBC News <<http://www.cbc.ca>>; "CBC building in Toronto may have been target", *CBC News* (6 June 2006) online: CBC News <<http://www.cbc.ca>>.

³ During the raids, 16 people were arrested, two more were already in jail for other charges and in August one more individual was arrested in connection to the plots.

believed that the Toronto 18 action was inspired by al Qaeda ideologies, perspectives similar to those that underpinned the events of September 2001.⁴

As with Air India, there was a prominent global dimension to the Toronto 18. Coupled with the al Qaeda ideologies, “inspiration”, allegedly part of the rationale for Canadian assaults was to force Canada to withdraw its troops from Afghanistan where they had been active since 2004.⁵

1.2 Domestic Responses to Terrorism

While a modern response to global terror has been to promote a strategy aimed at terror finance, the legal response to the 1970s FLQ crisis was the enactment during peacetime of the *War Measures Act (WMA)*.⁶ The *WMA* was originally adopted in 1914 and gives extraordinary powers to the Federal Cabinet to allow a quick reaction to the First World War.⁷ It allowed the issuance of a proclamation of a state of war, an insurrection or an apprehended insurrection and for reasons of "security, defense, peace, order and well-being of Canada" and permitted control over publications, transportation, trade, products and individuals.⁸ These measures are highly significant but arguably necessary to enable the state to react quickly to protect the country from that crisis.⁹

⁴ CBC News, “Accused ‘inspired by al-Qaeda’, say police” (4 June 2006), reprinted online: Anser Law Professional Corporation <<http://www.anserlaw.com>>.

⁵ *Ibid.*

⁶ R.S., 1985, c. W-2; repealed R.S., c. 22 (4th Supp.), s. 80 [*WMA*].

⁷ Claude Belanger, “Readings in Quebec History: War Measures Act”, (20 August 2004) online: Marianopolis College <<http://faculty.marianopolis.edu>>.

⁸ *WMA* s. 3 reprinted in *ibid.*

⁹ Implementation of such strong measures brings critics of abuse of power; just days after the *Act* was implemented, the government created the Committee to Aid Persons Arrested under the *Act*. Gerard Pelletier states that with the application of the *WMA*, the Federal Government became vulnerable to attacks from those defenders of personal freedom; *The October Crisis*, translated by Joyce Marshall (Toronto; Montreal: McClelland and Stewart Limited, 1971).

Invoking the law during the October crisis, the Canadian government drew on an act that had not been used since WWII and never during a period of non-interstate war. Prime Minister Pierre Elliot Trudeau declared, when he addressed the nation on October 16, 1970:

If a democratic society is to continue to exist, it must be able to root out the cancer of an armed, revolutionary movement that is bent on destroying the very basis of our freedom. For that reason the Government, following an analysis of the facts, including requests of the Government of Quebec and the City of Montreal for urgent action, decided to proclaim the *War Measures Act*. It did so at 4:00a.m. this morning, in order to permit the full weight of Government to be brought quickly to bear on all those persons advocating or practicing violence as a means of achieving political ends (...)

The authority contained in the Act will permit Governments to deal effectively with the nebulous yet dangerous challenge to society represented by the terrorist organizations. The criminal law as it stands is simply not adequate to deal with systematic terrorism (...)

This government is not acting out of fear. It is acting to prevent fear from spreading. It is acting to maintain the rule of law without which freedom is impossible. It is acting to make clear to kidnapers and revolutionaries and assassins that in this country laws are made and changed by the elected representatives of all Canadians – not by a handful of self-elected dictators. Those who gain power through terror rule through terror.¹⁰

Under the *WMA*, the FLQ was outlawed; the police obtained extraordinary powers to search and arrest without a warrant, to detain suspects without charge for up to eleven days and without bail and without trial for up to 90 days.¹¹ By the following morning,

¹⁰ Cited in Dan G. Loomis, *Not Much Glory: Quelling the F.L.Q.* (Toronto, Ont.: Deneau Publishers, 1984) at 139-140.

¹¹ Crelinsten, *infra* note 12 at 63; *see also* Robert Dumont, “Repeal the War Measures Act! Federal Troops out of Quebec! Ottawa invoked the Act to Repress Mass Movement”, (22 October 1970), in *Labor Challenge Special Issue* (23 October 1970) reprinted by Socialist History Project, *Socialists and the October Crisis*, Part 2, online: <<http://www.socialisthistory.ca>>; in same website, Harry Kopyto “War Measures Act is Police State Law”.

238 people had been arrested.¹² In total, during the enactment of the *WMA*, 453 people were arrested in connection to the FLQ from those 252 were from 19-25 years of age.¹³ Nevertheless, most of those detained were liberated after a few hours of interrogation.¹⁴

Only 62 of the almost 500 people arrested during the October crisis were charged. This is one source of controversy. Critics point to this as evidence of a serious abuse of power occurring in the context of extraordinary legal measures: “the government should immediately make an official public apology, accompanied by financial compensation, to the hundreds of citizens of Quebec who were victims of arbitrary arrest and unjustified detention during the enforcement of the *War Measures Act* in the early '70s”.¹⁵

Critics also claim that the *WMA* created a new retroactive crime, that of membership in the FLQ.¹⁶ Allegedly this was to prevent the escalation of violence.¹⁷ Tetley argues, that even though the *War Measures Act* was harsh, it did not suspend all civil rights. Students, members of the press, political parties and other associations could hold meetings and did

¹² Ronald D. Crelinsten, “The Internal Dynamics of the FLQ During the October Crisis of 1970” in David C. Rapoport, ed, *Inside Terrorist Organizations*, 2d ed (Great Britain: Frank Cass Publishers, 2001) 59 at 63-64.

¹³ Albert Parry, *Terrorism: from Robespierre to Arafat* (New York, NY: The Vanguard Press, Inc, 1976) at 374; *contra infra* note 15, Mr. Maurice Bernier talks about more than 500 arrests made.

¹⁴ Pierre Vallières and Charles Gagnon remained in custody until mid-1971 when the first received bail and the second was released while awaiting trial on a number of charges.

¹⁵ *House of Commons Publications*, "Private members, business: War Measures Act", 35th Parl, 1st Sess, no 177 (March 27, 1995) online: Parliament of Canada <<http://www.parl.gc.ca>> at 11029 (Mr. Maurice Bernier).

¹⁶ Denis Smith, *Bleeding Hearts... Bleeding Country: Canada and the Quebec Crisis* (Edmonton: M.G. Hurting Ltd, 1971)

¹⁷ William Tetley, *The October Crisis, 1970: An Insider's View* (Montreal & Kingston; London; Ithaca: McGill-Queen's University Press, 2007).

criticize the *Act*.¹⁸ A large portion of Canadian society, as well as other countries, supported the exercise of powers under the *Act*. The New Democratic Party, and of course, the FLQ were opposed.¹⁹

When the police were unable to locate the members of the Cheniér cell and the Liberation Cell pursuant to the *War Measures Act*, the *Public Order in Canada Temporary Measures Act* replaced this legislation.²⁰ The *Temporary Measures Act* legislation replaced the *WMA* mainly because the latter depended on an existence of apprehended insurrection.²¹ The 1970's *Temporary Measures Act* was created specifically to deal with the FLQ. This *Act* retained the essential features of her predecessor but did not rely on an “apprehended insurrection.”

The *Act* provided temporary emergency powers for the “preservation of the public order in Canada”, because according to the text of the act, the public order was endangered by the FLQ who advocated the use of violence to realize political change.²² This *Act* was, as some scholars have labeled it, more humane than its predecessor the *WMA*; the Attorney General could only retain suspects for seven days without charge. On the last day of April 1971, the *Temporary Measures Act* ended. On that date membership in the FLQ was no longer a crime.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Peter Niemczak & Philip Rosen, “Emergencies Act” (10 October 2001), online: Government of Canada <<http://publications.gc.ca>>.

²¹ Smith, *supra* note 16.

²² *Temporary War Measures Act* (2 November 1970), reprinted by Claude Belanger, “Documents on the October Crisis: Public Order Temporary Measures Act” (1999), online: Marianopolis College <<http://faculty.marianopolis.edu>>.

Because the *Temporary Measures Act* was created with the narrow purpose of dealing with the FLQ crisis, it contained no general emergency power. In July 1988 a new act, the *Emergency Act*,²³ was proclaimed to provide the power to address threats such as public order, public welfare, international events and war. These events are “proclaimed, continued, revoked and subjected to parliamentary review.”²⁴ Unlike previous powers, these new extraordinary powers would be subject to some Parliamentary oversight.

The Air India bombing in 1985 did not elicit a particular legislative response from the Canadian government. Complex multi-faceted investigations ensued and only one individual, Inderjit Singh Reyat was convicted, under existing legislation. In 1995, the bombings finally prompted a comprehensive public inquiry, whose full report was rendered in 2010.

Canada’s anti-terrorist finance strategy is a direct respond to international terrorism, rather than to local events. International developments were influential in prompting that new legal initiative.

²³ R.S.C., 1985, c. 22 (4th Supp.)

²⁴ Niemczak & Rosen, *supra* note 20.

2. Global Terror and Global Responses

2.1 *The Globalizing of Terror*

The bombings of September 11, 2001 in the United States brought world attention to a Middle Eastern organization named al Qaeda (or “the base”).²⁵ The group was allegedly founded in August 11, 1988 by Osama bin Laden, Ayman al-Zawahiri and Dr. Fadl in Peshawar, Pakistan.²⁶ Al Qaeda evolved from a Muslim organization funded by Abdullah Azzam, a doctor of Islamic science. The objective of Azzam’s organization was to raise funds and find recruits for an international jihad. It is believed that al Qaeda’s network was, at first, an office to record the names of the mujahedeen in training camps and to inform the families of those killed.²⁷

The creation of Azzam’s group was the result of U.S. intervention during the Carter administration and later, the Soviet invasion of Afghanistan in 1979.²⁸ In 1987, mujahedeen training camps were being set, some of them funded by Bin Laden’s personal fortune,²⁹ and all using techniques taught by U.S. surrogates. The U.S. strategy to win the “war” against the Soviet Union invasion in Afghanistan was clear: train mujahedeen, with the help of Saudi and Pakistan intelligence forces, to drive the invaders

²⁵ Department of State, 1997, 1998, 1999: Profiles “Usama bin Ladin” in John Prados, ed, *America Confronts Terrorism: Understanding the Danger and How to Think About It. A Documentary Record*, (Chicago : Ivan R. Dee, 2002) 172-175.

²⁶ Matthew Carr, *The Infernal Machine: A History of Terrorism*, (New York ; London : The New Press, 2006).

²⁷ Carr, *supra* note 26; Andrew Wander, “A history of terror: Al-Qaeda 1988-2008”, *The Guardian* (13 July 2008) online: Guardian Unlimited <<http://www.guardian.co.uk>>. *Encyclopædia Britannica*, online, *sub verbo* “Al-Qaeda”, <<http://www.britannica.com>>.

²⁸ Thomas M. McDonnell, “The West’s Colonization of Muslim Land and the Rise of Islamic Fundamentalism” (2010) c.1, Routledge, (SSRN).

²⁹ Estimates were done in 2001 that bin Laden’s personal fortune were around 300 million dollars; *contra* Ibrahim Warde, *The Price of Fear: The Truth behind the Financial War on Terror*, (Berkley & Los Angeles, California: University of California Press, 2007) at 5.

out of the territory and “make Russia bleed.”³⁰ Before the Soviet withdrawal from Afghanistan in 1989, thousands of Muslims would take the Jihad to their countries; the mujahedeen dispersed. When Azzam was murdered by a car bomb, allegedly with Bin Laden’s permission, a significant number of the Bureau’s members joined al Qaeda.³¹

Once Russia was driven out of Holy Land, the Jihad (in theory) should have ended. But as the Hydra in Greek mythology, it came back to life with a bigger reach. When Saddam Hussein invaded Kuwait in August 2, 1990, Osama bin Laden offered assistance to the Saudi government. He wrote to the Prince Nayif bin Abdul Aziz suggesting that the mujahedeen, including his Afghan Arab force, should be call to arms in order to liberate Kuwait. His aid was ignored and instead the Saudi government invited the U.S. This made the U.S. a primary target because al Qaeda’s objective is a Jihad with the infidel states having a presence in Islamic lands.³²

Al Qaeda has been held responsible for several U.S. embassy bombings, the unsuccessful 1993 bombing of the Twin Towers and the September 2001 attacks on the Pentagon and the World Trade Center that launched the war on terror. With the “war on terror” declared after the September 11 attacks, al Qaeda has been driven into exile from Afghanistan.³³ Small cells can be found all over the world, making this organization the model of contemporary terrorism. On May 2011, al Qaeda’s founder and leader, Osama bin Laden was killed by the U.S. in Pakistan. As U.S. President Barack Obama

³⁰ Carr, *supra* note 26 at 252.

³¹ *Ibid.*

³² *Ibid.*

³³ During the early 1990’s, the group’s base was located in Sudan until 1996, when Afghanistan became the organization’s sanctuary.

announced from the white house: "I can report to the American people and to the world that the United States has conducted an operation that killed Osama bin Laden, the leader of al-Qaeda and a terrorist who is responsible for the murder of thousands of innocent men, women and children."³⁴ A cautious Canadian Prime Minister Stephen Harper warned: "Bin Laden's death does not end the threat of international terrorism."³⁵

Different parts of the September 2001 terrorism were organized, arranged or facilitated from outside of United States geographical boundaries. Some of the participants had lived and worked in Florida. Funding for their activities came from abroad using the formal banking system. Al Qaeda terrorist camps that train and equip terrorists exist abroad. A key orchestrator of the events, Osama bin Laden, resided either in Afghanistan or was hiding elsewhere. While the strikes happened upon America territory, they were principally the products of actions that happened outside the reach of U.S. national jurisdiction.

The immediate international response to September 2001 was United Nations Security Council *Resolution 1373*.³⁶ While the resolution seeks to marshal global forces to the anti-terrorism cause, it calls specifically for an assault on the financial element of terror. Countries are called to detect and seize assets linked to terrorism and to introduce laws criminalizing various aspects of terrorist finance.

³⁴ "Bin Laden death ends 10-year manhunt", *CBC News* (1 May 2011) online: CBC News <<http://www.cbc.ca>>.

³⁵ *Ibid.*

³⁶ Resolution 1373 gave the nations a period of 90 days to report on the progress of the signing countries in the implementation of the act. Even though the *ATA* was hastily drafted and enacted as a direct response to the mentioned resolution, some scholars argued that the *ATA* was not needed because of the existence of the *United Nations Act*, which would automatically enact the resolution and because the criminal code was sufficient to deal with the crimes related to terrorism.

The financial aspect of terrorism was not new. It has long been known that the IRA relies on donations, most of which are from Irish-Americans who may not know the final destination of the funds.³⁷ Allegedly the 1993 bombing of the World Trade Center in New York failed to catastrophically destroy a tower because of a lack of funding.³⁸ Within Canada, even the FLQ organizers admitted the importance of the financial part of their operations. Francis Simard, a member of the Chernier Cell comments:

Money is the worst thing on earth. When you don't have any, you're limited. (...) But organizing is expensive. In two years we must have gone through more than a \$100,000. That's real money. (...) At the beginning we put our salaries in the kitty. (...) Pretty soon our salaries weren't enough. We were growing in numbers and involvement. (...) We had to find a way to finance ourselves. (...) Since our salaries were insufficient, we said to ourselves, "We'll have to borrow money." Legally, under our real names. (...) Money was a problem for most of us, and here was the perfect way to resolve it. It worked for a while. (...) Credit cards kept the wolf from the door, we could rent cars and buy gas, and some restaurants even took plastic. Add that to our regular salaries (...) Autumn had come, people were getting their cars ready for winter. We had taken orders all month, buying with cards and selling the merchandise at half price. (...) When it was over we were several thousand dollars richer, enough to keep the organization going for a few more months. (...) Chasing after money took time and wasted energy. (...) We had to find some kind of long-term financing if we wanted to continue.³⁹

While the relationship between money and terror was known before 2001, the 9/11 attacks proved catalytic in lending prominence to that connection.

³⁷ Laura K. Donohue, "Anti-Terrorist Finance on the United Kingdom and United States" (Winter 2006) *Michigan Journal of International Law*, Vol. 27: 303; *see also* Parry, *supra* note 13, at 379-380.

³⁸ *See* chapter 5.

³⁹ *Talking it Out: The October Crisis from Inside*, translated by David Homel (Montreal, Que.: Guernica Editions, 1987).

2.2 Global Responses Pre-2001

Pre-2001, neither Canada law nor international law relied upon a specific offence of terrorism. There was no universal agreement on a definition of terrorism. Under Canadian law acts associated with the act of terror (murder, intent to commit, arson, kidnapping, theft, etc.) have long been criminal offences and could be used to prosecute a terrorist activity. Roach summarizes this practice: “What the September 11 terrorists did was a crime long before they boarded the doomed aircraft.”⁴⁰

International law dealt with terrorism in an ad hoc manner. The perspectives on terrorism (from freedom fighters, revolutionaries and murderers to murderous states) meant that despite protracted attempts, there was no international consensus on a definition of terrorism.⁴¹ Rather, international law developed around the ideas of acts classically associated with terrorist activity. A series of international conventions, while not defining terrorism, call for the criminalization of actions commonly linked to terrorism.⁴² All states, including Canada which signed and ratified these treaties, were required to recognize as criminal offences actions such as hostage taking, the bombing of aircraft, the targeting of internationally protected person and the targeting of nuclear plants.

⁴⁰ “The New Terrorism Offences and the Criminal Law”, in Ronald J. Daniels, Patrick Macklem & Kent Roach, ed, *The Security of Freedom: Essays on Canada’s Anti-Terrorism Bill*, (Toronto: University of Toronto Press, 2001) 151 at 151.

⁴¹ Ilias Bantekas, “The International Law of Terrorist Financing” (2003) 97 *Amer. J. Int. L.* 315 at 315.

⁴² See, *Convention for the Suppression of Unlawful Seizure of Aircraft* signed at the Hague in 1970; *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* signed in Montreal in 1971; *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation* signed at Montreal in 1988; *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, adopted by the General Assembly of the UN in 1973; *International Convention against the Taking of Hostages* adopted by the General Assembly of the UN in 1979; *Convention on the Physical Protection of Nuclear Material* signed at Vienna and New York in 1980; *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* adopted in Rome in 1988; *International Convention for the Suppression of Terrorist Bombings* adopted in 1997 by the General Assembly of the UN.

The targeting of actions associated with terrorism avoided the delicate difficulties of providing a singular definition as well as leaving it open to individual states to craft and apply their own definitions of terrorism. Canada did not embrace any definitions of terrorism prior to 2001. It was content to rely on existing domestic law, particularly criminal law. In confronting the international dimensions of terror, Canada partook of the global machinery by endorsing the international treaty framework.

The most recent international treaty (concluded prior to 2001 but slow to gain acceptance and ratification) was the *Convention on the Suppression of Terrorism Financing*.⁴³ That instrument does adopt a definition of terrorism by requiring that it be considered an offense to:

To directly or indirectly, unlawfully and willfully, provide or collect funds with the intention to be used or in the knowledge that they are to be used, in full or in part, in an act “intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”⁴⁴

The *Terrorist Financing Convention* was the first to begin to apply a financial approach to terrorism. However, a focus on finance as a way of combating criminal activities that operated on a global playing field was already well under construction in international law. Since the early 1990s, international law had tried to contend with the trade in drugs trafficking by targeting its financial aspects. The approach expanded from global drugs

⁴³ *Resolution 54/109, 1999*, UNGA 1999.

⁴⁴ *Ibid* s. 2.

trafficking to global organized crime to global corruption problems.⁴⁵ Typically referred to as money laundering and proceeds of crime legislation, this body of international law did not specifically touch on terrorist finance although since it applied to criminal offences and broadly to money tainted by a connection to crime, arguably it might capture resources that were intended for terrorist purposes. In any event, September 2001 meant that an existing international approach (the focus on finance) was suddenly attached onto terrorism.⁴⁶

Conclusion

The inauguration of International Terrorism and its global Counter-Terrorism strategies had its start with al Qaeda, which for the world before 9/11 was an unknown organization. Suddenly, it became the center of the new approach against terror. Whether the financial approach can promise much success is unknown. The next chapter examines the links between terror and money.

⁴⁵ United Nations *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 19 December 1988; United Nations *Convention Against Organized Crime*, 15 November 2000; United Nations *Convention Against Corruption*, 31 October 2003; William Gilmore, *Dirty Money: The Evolution of Money Laundering Countermeasures* (Council of Europe Publishing: 1999); William Gilmore, *International Efforts to Combat Money Laundering* (Cambridge University Press, 1992).

⁴⁶ As Warde argues, the adding of terrorism onto the money laundering regulation was reactionary rather than thoughtful given the differences between terrorist finance and drugs, or other criminal resources: *supra* note 29 at 35-49.

CHAPTER 3

Money and Terror

“[T]errorist organizations *must* raise, move, and use money to exist and mount operations.”¹

Introduction

Financing is an important element of terrorist activity. According to some, it is the condition without which the terrorist organization cannot exist;

Financial transactions for terrorist purposes support the logistical preparation and implementation of a specific terrorist attack. They can also provide the material means for general terrorist activities, including propaganda, recruitment, infrastructure, and maintenance. Terrorism financing therefore has either an immediate pragmatic or fundamental pragmatic significance in the implementation of overall terrorist objectives.²

¹ Sean S. Costigan & David Gold, eds, “Introduction” in Costigan & Gold, *Terrornomics* (Hampshire, England ; Burlington, USA : Ashgate Publishing, 2007) I at X.

² Michel Hess, “Substantiating the nexus between diaspora groups and the financing of terrorism”, in Costigan & Gold, *supra* note 1, 49 at 49.

This chapter examines the relationship between terror and money, a relationship that the new financing strategy aims to sever.

1. Terror and Money

Rachel Ehrenfeld explains that the largest amount of money needed in a terrorist organization is the “maintenance and expansion of terrorist bases”;³ a terrorist organization does not have financial goals, “terrorists require funding only to the effect that a steady flow of cash helps them to maintain a sufficiently consistent and menacing threat level.”⁴ Mark Clark describes that a terrorist “does not pursue financial gain as an end in itself. (...) [F]unds acquired are directed to media campaigns and used to build political influence, undertake special projects to retain members, recruit new members, and attract sympathizers.”⁵

Thomas Biersteker and Sue Eckert point out that the actual cost of the acts of terrorism is but a small portion of the total funds that a terrorist organization requires to support their infrastructure.⁶ To carry out the terrorist attacks of September 2001, it is estimated that al Qaeda had to raise US \$500,000.00⁷.

³ Rachel Ehrenfeld, “Funding evil: how terrorism is financed and the nexus of terrorist and criminal organizations”, in Costigan & Gold, *supra* note 1, 27 at 27.

⁴ Rico Carish, “Institutionalized responses to 9/11”, in Costigan & Gold, *supra* note 1, 161 at 165.

⁵ Mark Edmond Clark, “An analysis of the role of the Iranian diaspora in the financial support system of the Mujahedin-e Khalq”, in Costigan & Gold, *supra* note 1, 65 at 70.

⁶ “Introduction: the Challenge of Terrorist Financing” in Biersteker & Eckert, *Countering the financing of terrorism* (Abingdon, Oxon; New York, NY: Routledge, 2008), 1.

⁷ John Prados, ed., *America Confronts Terrorism: Understanding the Danger and How to Think About It. A Documentary Record*, (Chicago : Ivan R. Dee, 2002).

Terrorist organizations acquire resources in various ways, all of which are meant to be confronted by Canada's recent anti-terrorist finance legislation. Most scholars contend that a "terrorist activity may be fueled by contributions of revenues derived from unlawful activities. A preoccupation with criminal proceeds fails to concede that supporters of terrorism may contribute their own legitimately acquired assets to the terrorist cause."⁸

Napoleoni explains that before 9/11 "the GDP on the new economy of terror - money generated by all armed terror organizations around the world - was USD 500 billion", from this total one third was raised by legitimate financial transactions and the other two thirds by criminal and illegitimate activities.⁹ Moreover, terrorist organizations are typically very resourceful. They have the ability to "mutate" their funding efforts and mechanisms in reaction anti-financing legislation. It is important to develop an understanding of terrorism financing so to "predict the next mutations in its financial structures."¹⁰ There are certain legitimate and illegitimate sources of terrorist finance. As well, there are different ways terrorists seek to move their resources around.

It may be easier to understand terrorist financing by analogy to conventional business operations, in which "acts of terrorism require some financial investments"¹¹ and

[C]apital includes such things as weapons, camps, equipment, factories, and the physical plants or any business run by the terrorist firm. Labor

⁸ M. Michelle Gallant, *Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies*. (Cheltenham, UK ; Northampton, MA : E. Elgar, 2005) at 3.

⁹ Loretta Napoleoni, "The evolution of terrorist financing since 9/11: how the new generation of Jihadists fund Themselves", in Costigan & Gold, *supra* note 1, 13 at 13; *contra* Warde, *infra* note 22, there is not an specific amount of money available for the terrorists, their economic resources are infinite.

¹⁰ *Ibid.*

¹¹ Gallant, *Supra* note 8.

includes the terrorist leaders plus all the personnel employed by the organization including managers, killers, marketers, financiers, public-relations officers, etc.¹²

The product offered by these enterprises is terror. Ideally, to go out of the business of terror, bankruptcy of the firm is needed. At the same time “overproduction of the terrorist product can undermine the group’s appeal with the population it claims to represent” leading to less popular support which in turn eventually means less funding from sympathizers to the terrorist cause.

Because resources to combat terrorism are limited, governments around the world have combined economic tools; like denial of access to financial resources and the deterrence of individuals and states from financing terrorist organizations, with the use of military force.¹³ Almost two years before the 2001 attacks on New York City and the Pentagon, the general assembly of the United Nations “*deeply concerned* about the worldwide escalation of acts of terrorism in all its forms and manifestations”¹⁴ adopted the *International Convention for the Suppression of the Financing of Terrorism*¹⁵ in which the signing states agreed that any person commits an offense when they willfully provides assets of any kind to be used in terrorist activities, even when the activity is not carried out. As well, the World Bank and the International Monetary Fund (IMF) define the financial support by any method or system of those engage in terrorism as terrorism financing.¹⁶

¹² Jessica Stern & Amit Modi, “Producing terror: organizational dynamics of survival”, Biersteker & Eckert, *supra* note 6, 19 at 22.

¹³ Costigan & Gold, *supra* note 1.

¹⁴ *Resolution 54/109, 1999*, UNGA 1999, s. preamble.

¹⁵ *Ibid.*

¹⁶ Biersteker & Eckert, *supra* note 6.

2. Legitimate Sources of Funding

Terrorist organizations have at their disposal several sources of funding; starting with their own members who will contribute their salaries to the cause, the use of profits from business, the creation or infiltration of charities and Diaspora communities, and last but not least, the sponsorship of a State. However, terrorist organizations in general are very resourceful and they have the ability to “mutate” their funding efforts and mechanisms as a reaction and prevention of the government’s anti financing legislation.¹⁷

2.1 Self-Funding

Terrorist organizations would prefer the use and appearance of legitimacy to “maintain the security of an operation.”¹⁸ Funding acquired through lawful activity, to a considerable degree, offers greater invisibility than funds derived from illegal activities.

Members of terrorist organizations often have legitimate jobs and flow this money into the terrorist organization or use it directly to engage in terrorist activities. This is referred to as self-funded terrorism.¹⁹ In Spain and Italy, for example, members of extremist organizations work as waiters or mechanics to support themselves. Canada has been viewed as the “land of opportunity for terrorists seeking money to finance their campaigns. There are lots of jobs, welfare.”²⁰ One of the most recognized forms of self-funding is the case of al Qaeda. It is believed that in early stages bin Laden’s personal

¹⁷ Napoleoni, *supra* note 9.

¹⁸ Carish, *supra* note 4 at 165.

¹⁹ Napoleoni, *supra* note 9.

²⁰ Stewart Bell, “Canadian Terrorists”, Canadian Institute for the Administration of Justice, in *Terrorism, Law and Democracy: How is Canada changing following September 11*, (Montreal, Quebec : Editions Themis, 2002) 15 at 18.

fortune was fundamental in financing the growth of the organization.²¹ His fortune “provided a basis to help establish businesses and diversify al Qaeda’s finances.”²²

Recent attacks have required little funding and little training in terrorist tactics.²³ The cost of attacks had diminished while the effects have grown.²⁴ For example, the attacks of 9/11 cost approximately US\$500,000; the Madrid train bombings on March 11, 2004 required approximately US \$60,000; the estimated cost of the London attacks of July 7, 2005 was US\$15,000; the assassination of Dutch film director and Islam critic, Theo van Gogh, on November 2, 2004 allegedly cost less than US\$100. With respect at least to the latter, the effects of this murder in terms of social disorder engendered²⁵ were not proportional to the “investment”.²⁶

The operation of legitimate enterprises is another source of self-funding. Some operate as fronts, in some case terrorist groups having partial or complete control of the business and its profits.²⁷ The Eelam Bank in Sri Lanka is controlled by the Liberation Tigers of

²¹ Rohan Gunaratna, “The Evolution of al Qaeda”, in Biersteker & Eckert, *supra* note 6, 47 at 51.

²² *Ibid* at 52-53; *Contra* Ibrahim Warde, *The Price of Fear: The Truth behind the Financial War on Terror*, (Berkley & Los Angeles, California: University of California Press, 2007). In his book, Warde proposes that there is no evidence suggesting that bin Laden’s fortune was used to sustain al Qaeda and that his fortune wasn’t as big as some official documents and authors suggest, due to the fact that he got disowned from his share of the bin Laden fortune years before the attacks in the US, and even before his exile from Sudan.

²³ Napoleoni, *supra* note 9.

²⁴ *Ibid*.

²⁵ In the days after his murder by Islamic extremists there was a feeling of intolerance and xenophobia complains in the Netherlands, as well as attacks to Muslim and Catholic Churches were realized due to his death; Toby Sterling, “Attacks leave Dutch reeling”, *The Guardian* (10 November 2004), online: The Guardian News and Media <<http://www.guardian.co.uk>>.

²⁶ Jon Henley, “Controversial Dutch Film Director Shot Dead in Street”, *The Guardian* (3 November 2004), online: The Guardian News and Media <<http://www.guardian.co.uk>>; Geraldine Coughlan, “Teo van Gogh: Controversial film-maker”, *The Independent* (4 November 2004), online: The Independent <<http://www.independent.co.uk>>; Napoleoni, *supra* note 9; Biersteker & Eckert, *supra* note 6.

²⁷ Ehrenfeld, *supra* note 3.

Tamil Eelam.²⁸ Another example is the Jemaah Islamiyah (JI),²⁹ some of whose operatives have established businesses “with a minimum amount of capital investment, no substance or commercial purpose, and generating few profits”,³⁰ to create some form of income for the organization, to clean dirty money or to clean “other aspects of terrorist operations.”³¹ Certain enterprises created by JI receive contracts and business from supporters of the organization, and a portion of those earnings being then sent to JI.³²

With the establishment of legitimate business, terrorist organizations, aside from funding themselves, use them to laundry money and to provide employment for its members.³³ Osama bin Laden had several legitimate business these included “peanut and sunflower plants; a bakery; a furniture company; International al-Ikhlal Company, which produced honey and sweets; Bank of Zoological Resource, a cattle-breeding operation; and the Laden International import/export company” which were established in 1983 and terminated by 1996 when he was expelled from Sudan.³⁴ A 2001 estimate found bin Laden’s holdings in that country to be about 30 million USD.³⁵

²⁸ Hess, *Supra* note 2; Zachary Abuza, “The social organization of terror in Southeast Asia: the case of Jeremaah Islamiyah”, Biersteker & Eckert, *supra* note 6, 63 at 63.

²⁹ This organization is based in southern Philippines, Indonesia and Malaysia, and it’s goal is to create an Islamic state in those territories. The JI has been linked to Al-Qaeda. The organization has been labeled as the most consistent and lethal group worldwide, due to “the organization’s flexibility and its hybrid nature.” This group has been responsible for Bali’s simultaneous bombings in 2001 and several other deadly attacks.

³⁰ Abuza, *supra* note 28 at 81.

³¹ *Ibid.*

³² *Ibid.*

³³ The businesses most used to laundry money are high cash trafficking ones; i.e. pizzerias and car washes.

³⁴ Ehrenfeld, *supra* note 3 at 40.

³⁵ *Ibid.*; *Contra* Ibrahim Warde, *supra* note 22, where he states that the estimates done on Laden’s fortune were just guesses made by high officials; taking into consideration the family fortune and divided with all the sons and then rounded up to the closest amount.

2.2 Charitable Organizations

Another way terrorist organizations receive resources is through charitable organizations and donations, much of which may be returned to a country by the Diaspora community.³⁶ Zachary Aduza states, “although most of the donations to Islamic charities go to legitimate social work (...) a significant amount of the money is diverted to terrorist and paramilitary activities.”³⁷ A substantial amount of the funding used by the Provisional Irish Republican Army (PIRA) during the terror campaign of the 1970’s came from Irish-American Catholics.³⁸

According to some, charitable donations are not only important financially. The association with charities and charitable work lends legitimacy to organization such as it does to Hamas.³⁹ “If the group ceases to attract ‘charitable’ donors it becomes more difficult to claim that it is fulfilling a humanitarian function.”⁴⁰ According to one particular scholar Hamas ultimate survival as an organization depends on the “middle and lower-middle classes, particularly professionals and the petty bourgeoisie.”⁴¹ He continues:

Hamas derives a considerable amount of political clout from its affiliated charities (...) to be seen to be involved in charitable work and in fundraising for charity helps Hamas bolster its image as a socially active

³⁶ Diaspora community refers to the displaced nationals living abroad.

³⁷ Abuza, *supra* note 28 at 78.

³⁸ Jonathan Duffy, “Rich Friends in New York” *BBC News* (26 September 2001), online: BBC News <<http://news.bbc.co.uk>>.

³⁹ Hamas is a Palestinian group, the largest, whose goals are to drive Israeli forces from occupied territories and to create an Islamic state in all the historic Palestine; most of what it is now Israel. Experts in Hamas group claimed that the organization is divided in several wings, all of them independent from each other, so then; Hamas has a humanitarian, a political and a resistance wing and that generally the Charities agendas do not coincide with the other two wings, although trustees of the charities might share the ideology of the other wings.

⁴⁰ Stern & Modi, *supra* note 12 at 38.

⁴¹ Jeroen Gunning, “Terrorism, charities and diasporas: contrasting the fundraising practices of Hamas and al Qaeda among Muslims in Europe”, Biersteker & Eckert, *supra* note 6, 93 at 98.

and ‘caring’ organization (...) according to Israeli intelligence estimates, 80 to 90 percent of the money raised by ‘ Hamas’ is spend on charitable, educational, and medical institutions -leaving only 10 to 20 percent for ‘military’ endeavors.⁴²

This is probably one of the reasons many Palestinians, even those that do not share Hamas political views, contribute to Hamas-affiliated charities. Charities run or affiliated to Hamas have a good reputation for transparency. That reputation also fuels their political claims and feeds their image of financial security.⁴³

On the other hand, al Qaeda’s relationship with charitable organizations is often characterized as one of “abuse”; it is believed that a high percentage of funds are skimmed without the knowledge of the donors and used to fuel al Qaeda’s violent campaign. There are allegations that charities linked to al Qaeda constitute “one-fifth of all Islamic charities,”⁴⁴ compelling to some experts to conclude that al Qaeda’s most important source of money is “continuous fundraising efforts” realized through a network of worldwide charities.⁴⁵ Recently there have been claims that US Government funds were primarily used to help a charity in Yemen that was working to abolish child labor may have been diverted to al Qaeda.⁴⁶

⁴² *Ibid* at 100.

⁴³ *Ibid*.

⁴⁴ *Ibid* at 94; CBS News, “Al Qaeda Skimming Charity”, *CBS News* (11 February 2009), online: CBS <<http://www.cbsnews.com> >; However, several scholars agree that targeting Islamic charities is a big mistake, because this technique can backfire: either can make charities with terrorist ties go deep under, or can make individuals get more support to those charities because of a feeling of being “wrongfully pursued” because of their ethnicity, *see* Ibrahim Warde, *supra* note 22; *see also* Margaret E. Beare & Stephen Schneider, *Money Laundering in Canada: Chasing Dirty and Dangerous Dollars*. (Toronto, Ont.: University of Toronto Press, 2007) at 275, the authors refer specifically to the *Zakat* (discussed later in section 3 of this chapter).

⁴⁵ Gunning, *supra* 41.

⁴⁶ J.M. Berger, “Exclusive: U.S. Gave Millions to Charity Linked to al Qaeda, Anwar Awlaki”, *Intelwire* (14 April 2010), online: Intelwire.com <<http://news.intelwire.com>>.

The 9/11 Commission Report states that al Qaeda raised around US\$30 million every year to sustain itself before the events of September 11, most of which was “raised almost entirely through donations.”⁴⁷ Often donations are allegedly given under coercive conditions, social pressure or fear a refusal to give may place one’s family in jeopardy or risk being branded as a traitor.⁴⁸ Within Canada, it is believed that the Tamil Tigers raised millions of dollars in Toronto, much of which was raised by front charities in “rallies, held at schools and temples.” Speakers would merely pass a box to collect donations for the cause.⁴⁹

Individual contributors, arguably unaware of the terrorist intent of the organization and the intended use of the money, substantially supported the Mujahedin-e Khalq (MEK), an organization sworn to destroy the Islamic government in Iran.⁵⁰ Al Qaeda’s formative years were made possible through the financial support of “wealthy Arab benefactors”, particularly bin Laden’s personal fortune; “al Qaeda fundraisers increasingly approached wealthy financiers, charities, and business; in fact, one of the key reasons al Qaeda re-established a presence in Saudi Arabia was the vast potential for recruitment and fundraising.”⁵¹ And

The allegation that those involved in political violence use charities, or more broadly non-profit organizations to raise or channel money is not new. (...) The notion of fighting “terrorism” by targeting charities believed

⁴⁷ “The 9/11 Commission Report”, online: National Commission on Terrorist Attacks Upon the United States <<http://www.9-11commission.gov/report/911Report.pdf>>.

⁴⁸ In Canada, according to Bell, *supra* note 20, the LTTE realize rallies to raise funds for their cause. In this rallies two types of donors are found; those that hand out the money voluntarily and those that are coerced by the fear for their and their loved ones safety in their country of origin if no money is given. Bell mentions that these individuals “may get threatening phone calls, or damaging lies will be written about them in the ethnic press.”

⁴⁹ Bell, *supra* note 20.

⁵⁰ Clark, *supra* note 5.

⁵¹ Gunaratna, *supra* note 21.

to be channeling funds to those perpetrating terroristic acts is similarly well established. What distinguishes the current situation from previous ones is the increased commitment of the international community (...).⁵²

In Canada, some authors declare that “its easy enough to set up a charity, dedicated to some worthy humanitarian cause and start laundering the money for terrorist causes.”⁵³

Reliance upon state sponsors is another way terrorist organizations are funded through revenues lawfully acquired by the sponsoring state. Classically, most “major acts of terrorism against American citizens and other targets abroad were supported, and in some cases, instigated by state sponsors.”⁵⁴ Cuba, Iran, Libya, North Korea, Sudan and Syria were identified by the US State Department in 2005 as supporters of international terrorism, a designation at times attracting economic sanctions.⁵⁵ Hezbollah is rather notorious in benefitting from state sponsorship, allegedly receiving between 100-120 million USD from the Iranian government.⁵⁶ Obviously the states involved contend that a recipient is “freedom fighter”, “resistance group” or deny any sponsorship occurs. For instance, when the US requested the freezing of Hezbollah’s assets in 2001, Syria and Lebanon contended Hezbollah was a resistance organization.⁵⁷ The latter underscores the problem of the political involved in providing a single global definition of terrorism.⁵⁸

⁵² Gunning, *supra* note 41 at 93.

⁵³ Bell, *supra* note 20 at 18

⁵⁴ Gary Clyde Hufbauer & Thomas Moll “Using sanctions to fight terrorism”, Costigan & Gold, *supra* note 1, 179 at 187.

⁵⁵ *Ibid.*

⁵⁶ Ehrenfeld, *supra* note 3.

⁵⁷ *Ibid.*

⁵⁸ There have been several attempts by different countries to reach an agreement in the definition of terrorism, power bias are reflected in the definitions of what constitutes terrorism: “even when definitions of terrorism *allow for* state terrorism, state actions in this area tend to be seen through the prism of war or national self-defense, not terror (...) successful political violence tends to be interpreted not as terrorist action, but according to nationalist histories.” Laura K. Donohue, “Terrorism and the counter-terrorist

3. Illegitimate Sources of Funding

Terrorist organizations depend on legitimate means to fund their activities, recognizing that apparent legitimacy helps conceal the underlying enterprise. Reliance on illicit sources of funding “may increase the risks of premature discovery, thus preventing terrorists from carrying out the violent act that is their ultimate goal.”⁵⁹ There is no doubt that, despite the risk, organizations require and depend upon the revenues produced from multiple unlawful activities to “finance the overhead necessary to maintain training camps, conduct surveillance operations, acquire weapons and counterfeit documents, and pay for living allowances.”⁶⁰ The bulk of terrorist funding is widely thought to be from criminal activities.⁶¹

Hezbollah, for example, smuggles cigarettes to the US. Both sides of the Irish conflict are “heavily involved in drug smuggling.”⁶² The IRA has been involved in organized crime, weapons and bombs trading and cigarette smuggling.⁶³ The Revolutionary Army Forces of Colombia (for its Spanish acronym FARC)⁶⁴ is known to be involved in all aspects of the illegal drug business, from production to distribution. The Colombian Police has

disclosure” in Victor V. Ramraj, Michael Hor & Kent Roach, eds, *Global Anti-Terrorism Law and Policy* (Cambridge: University Press, 2005) 13 at 18-21.

⁵⁹ Carish, *supra* note 4 at 165.

⁶⁰ *Ibid* at 166.

⁶¹ Napoleoni, *supra* note 9.

⁶² Stern & Modi, *supra* note 12 at 38.

⁶³ *Ibid*.

⁶⁴ The *Fuerzas Armadas Revolucionarias de Colombia* (FARC) is a left-wing guerrilla founded in 1965, that together with the *Ejercito de Liberacion Nacional*, the National liberation Army (ELN) claim that they represent the poor people in Colombia against their struggles with the wealthy. The FARC is the biggest group in Colombia with estimates of 9,000 members (from a 16,000 strong in 2001) after the government with US help has “toughen up” against its members and several raids in the FARC controlled zone have yielded most of their leadership dead. See Stephanie Hanson, “Backgrounder, FARC, ELN: Colombia’s Left Wing Guerrillas”, *Council on Foreign Relations* (19 August 2009), online: Council on Foreign Relations <<http://www.cfr.org>>.

labeled the FARC the “biggest drug cartel” in Colombia with strong ties to other drug cartels, in particular the Mexican cartel connected with “Chapo” Guzman.⁶⁵ The leader of the Khalistan Commando Force admitted in an interview that his organization raised money by “robbing banks and kidnapping for ransom.”⁶⁶ Many groups, engage in the trade of small arms and ammunition, and may trade, or use, bombs they have stolen.⁶⁷

The production, smuggling and trade of illegal drugs, like heroin, opiates, cocaine, methamphetamine and hashish are, by the far, the significant sources of funding for terrorism organizers.⁶⁸ In 2002, a third of the groups listed on the US Foreign Terrorist Organization (FTO) were identified as involved in illegal drug trade including the Colombian groups FARC, ELN⁶⁹ and AUC⁷⁰; Shining Path; Hezbollah, Palestine Liberation Organization (PLO)⁷¹, Liberation Tigers of Tamil Eelam (LTTE)⁷², PIRA and al Qaeda.

⁶⁵ Kirsten Begg, “Police: FARC is Colombia’s Biggest Drug Cartel”, *Colombia Reports* (13 September 2010), online: Colombia Reports <<http://colombiareports.com>>.

⁶⁶ Stern & Modi, *supra* note 12 at 38.

⁶⁷ Rachel Stohl, “The United States, small arms and terrorism”, in Costigan & Gold, *supra* note 1, 103; Stern & Modi, *supra* note 12.

⁶⁸ Costigan & Gold, *supra* note 1; Ehrenfeld, *supra* note 3.

⁶⁹ The National Liberation Army was founded by students in early 1960’s and it is similar in beliefs to the FARC, nevertheless, the ELN is less internationally known than the FARC.

⁷⁰ The United self-defense forces of Colombia (*Autodefensas Unidas de Colombia* or AUC for their acronym in Spanish) is a right-wing paramilitary group created to oppose and protect the people from the left-wing groups as the Colombian Government failed to do so.

⁷¹ Established in 1964, the PLO objective was to control Palestinian nationalism by the Arab League. In 1967 the Arabs were defeated, the PLO became under the control of the younger generation as a coalition of different political and armed organizations that saw the PLO as their representative; however, Israel did not recognize the PLO as a party on the conflict of liberation; arguing that the PLO was a terrorist organization and that Palestinians should be incorporated to the Arab States. This intransigence obligated the PLO to sustain secret negotiations with Israeli representatives until the Oslo agreement was reached. MERIP, “The Palestine Liberation Organization”, online: Middle East Research and Information Project <<http://www.merip.org>>.

⁷² The LTTE was founded in 1976 and entered armed conflict with the Sri Lankan government for a separate Tamil homeland until 1983. The FBI labeled the LTTE in 2008 as the “most dangerous and deadly extremist” group that inspired other networks like al Qaeda. By 2009, the group went inactive due to the murder of its chief, however, reports exist that there are attempts to revive the organization via the

In hot spots around the globe, terrorist and other anti-state groups have forged symbiotic relationships with dope runners and the criminal underworld. Of the State's Department forty-two designated terrorists groups, eighteen have ties to drug trafficking (...) thirteen of the smuggling organizations the DEA believes are primary responsible for the United States' illegal drug supply have links to terrorist groups.⁷³

Curiously, even in the presence of overwhelming evidence in support of this type of funding, "neither the American government nor its allies consider it a priority to aggressively target this source of funding."⁷⁴

Hezbollah's principal funding method is drug trafficking.⁷⁵ For a fee, Hezbollah also facilitates the use of controlled Lebanon drug routes to aid the smuggling, of Afghan and Iranian, heroin and opium to Europe and North Africa.⁷⁶ According to the U.S. Drug Enforcement Administration (DEA), Afghanistan supplied 70% of heroin consumed worldwide in 2001, amount that went up to 90% in 2006. As for Afghan Opium, it is estimated by the IMF that the profits obtained from the sales were 35% of Afghan GDP, approximately 7.1 billion USD.⁷⁷ It is also believed by French authorities that 80% of the heroin smuggled into Paris is transported via Turkey's Kurdistan Workers Party (PKK)⁷⁸

diaspora community. SATP, "Liberation Tigers of Tamil Eelam (LTTE)", online: South Asia Terrorism Portal <<http://www.satp.org>>.

⁷³ Gretchen Peters, *Seeds of Terror: How Heroin is Bankrolling The Taliban and Al Qaeda*, (New York: Thomas Dunne Books, 2009) at 10.

⁷⁴ Ehrenfeld, *supra* note 3.

⁷⁵ It is believed that cooperation between Hezbollah, the FARC and ELN in Colombia and the 'Abadan Drug Ring', the Iranian drug network, exists.

⁷⁶ Ehrenfeld, *supra* note 3.

⁷⁷ *Ibid.*

⁷⁸ After its Turkish name, *Partiya Karkeren Kurdistan*, was formed in 1974 to create an independent Kurdish state in southeastern Turkey; turning to armed conflict in the mid-1980s, "originally a well-oiled guerrilla force of some fifty thousand men and women, analysts today estimate the force is between three thousand and five thousand fighters. Nonetheless, with cross-border rhetoric increasing, some analysts say the PKK has reached a sort of equilibrium, thanks in part to its mountainous redoubts in northern Iraq, and the Bush administration's unwillingness to put pressure on Iraq to curb the group's attacks." In 1999 its leader was captured and sentenced to death, but the sentence has not been carried out nor the popular

controlled territories, requiring traffickers to pay a “tax” to the PKK.⁷⁹ It is believed that the FARC controls around 35% of Colombia and earns from the cocaine trade \$500 million every year.⁸⁰

Clearly, “the connections between terrorist groups and international criminal organizations are complex, linking money, geography, politics, arms, and tactics to create a mutually beneficial relationship.”⁸¹ The criminal activities in which they engage vary widely: from petty crimes, fraud, forgery, piracy, trade diversion, counterfeiting, human trafficking, identity theft, kidnapping, forced donations, arson, extortion, money laundering and drug trafficking. Some experts have labeled crime as a crucial factor to lengthen a conflict.⁸²

Some organizations have turned to crime when it no longer has state sponsorship. Hezbollah is an example.⁸³ It is estimated that Hezbollah criminal activities yielded a net 2001 profit of upwards of US \$6 million.⁸⁴ A more global 2002 estimate of terrorist revenues amounted to US \$2 trillion annually, most of which was linked to drugs. It

supper has diminished. Greg Bruno, “Backgrounder: Inside the Kurdistan Workers Party (PKK)”, *Council on Foreign Relations* (19 October 2007), online: Council on Foreign Relations <<http://www.cfr.org>>.

⁷⁹ Peters, *supra* note 73.

⁸⁰ *Ibid.*

⁸¹ Ehrenfeld, *supra* note 3 at 29.

⁸² Peters, *supra* note 73.

⁸³ Hezbollah was supported since its foundation in 1982 by Iran and more recently by Syria. *See* ADL “Terrorism: Hezbollah: State Sponsors: Iran and Syria”, (31 March 2008), online: Anti-Defamation League <<http://www.adl.org>>.

⁸⁴ Ehrenfeld, *supra* note 3.

remains, however, very difficult to “collect accurate data about illegal trade, terrorists groups and other criminal activities.”⁸⁵

Information released by a Taliban prisoner to Afghan authorities that “the bulk of their operational funding -including their salaries and cash for fuel, food, weapons and bombs- comes from drugs.”⁸⁶ According to Peters, the DEA estimates that the Taliban raises 70% of their financing through the trade of Opium:

UNODC estimates that approximately 80 percent of Afghanistan’s 8,200-metric-ton opium yield in 2007 came from Taliban regions and sold at an average of US\$86 per kilogram. This would have netted the Taliban more than \$56 million in 2007 from the 10 percent tax known as *ashr* (from the Arabic *ashr*, which means “ten”) that is collected at the farm level. Additionally, more than fifty refineries reportedly operate in Taliban-held areas, where insurgents collect about \$250 for every kilogram refined. (...) [W]hich yields another \$133 million and change per year. The Taliban also earn as much as \$250 million annually providing armed protection for drug shipments moving through their region, as well as receiving tens of millions of dollars’ worth of material supplies from smuggles, including vehicles, food, and satellite phones.⁸⁷

As the author notes the regular drug smuggler “is driven by greed. The terrorist raises money as a means to an end.”⁸⁸

⁸⁵ Katherine Barbieri & Swapna Pathak “Free trade and terrorism”, in Costigan & Gold, *supra* note 1, 145 at 147.

⁸⁶ Peters, *supra* note 73.

⁸⁷ *Ibid* at 14.

⁸⁸ *Ibid* at 18.

4. Transporting and Laundering Terrorist Funds

Intimately interconnected with the sources of terrorist dollars is the concealment and movement of finance: “effective transfers are key for operational terrorist purposes. Without targeted transfers, funds are useless.”⁸⁹ Money laundering, the concealment of the origins or destination of funds, is a critical component of terrorist finance.⁹⁰ In 2006 the IMF has estimated that about 5% of the world’s GDP, or 3.25 trillion USD, was “laundered money” although it is not at all clear how much of this is linked to terrorist.⁹¹

Post 9/11, many parts of the world were immediately characterized as money laundering havens including the identification of Europe as “the most important international hub for the criminal, illegal, and terror economy”⁹² and the transformation of the Euro into the “currency of preference for conducting most money laundering activities.”⁹³ Laundering, whether the concealment and movement of terrorist finance or drugs profits, operates through both the informal and the formal financial sectors.

The *hawala* system is an informal financial exchange medium through “which payments are delivered without money actually being moved.”⁹⁴ The “most prominent and financially powerful terrorist networks” apparently use this type of informal value

⁸⁹ Hess, *supra* note 2 at 56

⁹⁰ Rockford Weitz & Stacy Reiter Neal “Preventing terrorist best practices from going mass market: a case study of suicide attacks ‘Crossing the Cham’ ”, Costigan &Gold, *supra* note 1, 129 at 141.

⁹¹ Ehrenfeld, *supra* note 3.

⁹² Napoleoni, *supra* note 9 at 14-15.

⁹³ *Ibid.*

⁹⁴ Ehrenfeld, *supra* note 3 at 36.

transfer system.⁹⁵ Money can be moved overseas without any currency actually leaving a country and combined with the use of email it becomes almost instantaneous and untraceable.⁹⁶ Traditionally there is little or no documentation or monitoring systems. This makes the tracking of any financial activity through informal channels very difficult.⁹⁷ Although more than 300 billion USD has been transferred around the world in the past two decades using this kind of system, including the 110 billion USD sent by migrant workers, the extent to which informal financial exchanges are used to move terrorist financing is unknown.⁹⁸

Another informal value transfer mechanism is the *zakat*. The *zakat* can also be understood as a religious tax paid on goods and money that exceed basic needs. *Zakat* is “the third of the five pillars of Sunni Islam, and one of the then branches of religion in Shi’a Islam (...) is a mandatory duty (...) performed when certain prerequisites are fulfilled, though it is also possible to donate additional amounts as an act of voluntary charity.”⁹⁹

It is usually paid during Ramadan. It can be paid in food, around 2.25 kg per head per household of the region’s food or an approximately 2.5% of the excess wealth. Because the *zakat* is use to help people in need, it is believed by some that some of the moneys may be used, indirectly, to finance terrorism in certain regions of need.

⁹⁵ Hess, *supra* note 2 at 58; Biersteker & Eckert, *supra* note 6 at 10.

⁹⁶ Ehrenfeld, *supra* note 3.

⁹⁷ Hess, *supra* note 2 at 58.

⁹⁸ *Ibid.*

⁹⁹ *Ibid* at 53.

The informal channels main service is that they are unregulated and operate outside any conventional legal regulatory system. While banks are incorporated, registered and their operations typically subject to at least modest laws, informal value exchange systems are not. Their identity as informal system arises largely from the fact that they are not formally regulated, they operate outside formal financial frameworks. It is that extra-legal operational system that is, itself, of value to terrorist financing – the resources move through unregulated, unmonitored financial channels.

Formal financial machinery has also been acknowledged as wealth transfer used by terrorist. Much of the funding associated with the 9/11 attacks was transferred through the conventional US banking system.¹⁰⁰

Conclusion

Terrorists are not short on ways to fund their enterprises; from legal means to those in the criminal underworld.¹⁰¹ Combating terrorist financing might be harder than regular crime

¹⁰⁰ 9/11 Commission, *supra* note 47.

¹⁰¹ Another way to fund a terrorist organization is by “trade diversion”. Simply resealing goods bought at a lower or wholesale price and reselling them to retail prices is defined as a ‘legal’ trade diversion. Legally this is way of “doing business” is not prohibited by law, although it may be possible that when using a trader to find cheap goods, the goods turn out to be stolen. However, claims have been made that trade diversion, of the criminal kind, is an easy and effective way to launder money. One of this trade schemes is known as the “u-Boat”. The “u-Boat” trade diversion technique is one of the most difficult to trace and one of the most versatile ways to obtain and maintain funds in several countries without alerting the authorities. This scheme is usually performed by buying goods at a reduced price directly form the manufacturer *supposedly* intended for resale in an other market or country, but instead of reaching their destination, the goods are reshipped back to the county of origin as “returned local merchandise” without the border officials making a further inquiry, and then sold for a higher price in the local market; this type of fraud generally works in the millions of dollars.

due to the fact that for a terrorist, money is just a means for an end. There are even alliances between the criminal underworld and terrorists for mutual benefit.¹⁰²

An effective counter strategy aimed at finance would need to accommodate all the various aspects of finance related to terrorism. It would need to address the issue of individuals putting employment income or lawful business income at the disposal of terrorist causes. It would need to account for the vast sums of money involved in drugs trafficking or arms dealing invested in the terrorist infrastructure. A counter strategy would need to deal with the movement of terrorist finance through charitable institutions.

In responding to the modern terrorism, and catalyzed into action by September 2001, states organized an attack on the financial part of terrorism. It was widely recognized that a highly significant component of much terrorist activity, from the IRA through to al Qaeda, was finance. The international community responded through United Nations *Resolution 1373*.¹⁰³ Canada, in compliance with that international edict, enacted the *Anti-Terrorism Act*.¹⁰⁴

¹⁰² Phil Williams, "Terrorist financing and organized crime: nexus, appropriation, or transformation?", Biersteker & Eckert, *supra* note 6, 126.

¹⁰³ *Resolution 1373, 2001*, UNSC 2001.

¹⁰⁴ *Anti-Terrorism Act, 2001*, SC 2001, c 41.

CHAPTER 4

Resolution 1373 and the Anti-Terrorism Act

“[T]hose who work in terrorist financing enforcement will be judged not by the number of convictions they secure but by how many innocent lives are saved.”¹

Introduction

Resolution 1373, the United Nations Security Council (UNSC) resolution that set the anti-terrorist finance strategy in motion is arguably a curious instrument. While most UNSC resolutions deal with specific disputes, this one deals with a phenomenon, global terrorism. Unlike most resolutions that are limited in time, and usually, having force and effect only until a specific set of hostilities between states has ended, this resolution has no such time constraints. Some scholars have characterized *Resolution 1373* as a global legislation, and the UNSC as a global legislator that demands member states to

¹ Jeff Breinholt, “Introduction” (2003) 51:4, United States Attorneys’ Bulletin, online: <<http://www.usdoj.gov>> at 1.

implement particular legal provisions to counter terrorist financing.² And while the resolution speaks of terrorist financing, it also calls upon states to implement the terms of an existing treaty, the *International Convention on the Suppression of Terrorist Financing*.³

While setting the global anti-terrorist strategy in motion, *Resolution 1373* required that states act upon the resolution within 90 days and report back to the United Nations on that implementation. Canada responded with the *Anti-terrorist Act (ATA)*.

The introduction and passage of the *ATA* induced considerable opposition and debate.⁴ Much of its content has little, or nothing, to do with terrorist finance. This chapter briefly considers the short legislative history of the *ATA* and then outlines the three key features that focus on the finance part of terror: the introduction of new offences linked to terrorist finance; the revocation of charitable status for charities associated with terror finance; the monitoring and detection of the movement of terror finance.

² Gilbert Guillaume, "Terrorism and International Law" (2004) 53:3 ICLQ 537.

³ *Resolution 1373, 2001*, UNSC 2001, s 3(d). [*Res. 1373*]

⁴ Kent Roach, "The Role and Capacities of Courts and Legislatures in Reviewing Canada's Anti-Terrorism Law, Special Volume: the Rule (and Role) of Law and Politics in a post 9/11 World" (2008), 24 WRLSI 5.

1. From UNSC *Resolution 1373* to the *ATA*

As noted in chapter 2, *Resolution 1373* (introduced in late September 2001), focuses on terrorism and international action rather than deal exclusively with the finance element of terrorism. It affirms obligations to state members to work collectively to stop terrorism and refrain from assisting or instigating terror.⁵ It requires that states “deny safe haven to those who finance, plan, support, commit terrorist acts and provide safe havens (to terrorists)” and to a certain degree *demand*s that its members prevent the commission of acts of terror by sharing information with other states.⁶ Specific to terrorist finance, *Resolution 1373* mandates that states:

Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.⁷

As well, the Resolution required member states to criminalize the willful provision or collection of funds intended to support terrorist activities; to make sure that any person “who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice” and ensure “that terrorist acts are established as serious criminal offences in domestic laws and regulations.”⁸ Members are required to afford “the greatest measure of assistance” to foreign criminal investigators or

⁵ *Res. 1373*, ss. preamble, 2(a), 3(c).

⁶ *Ibid*, ss. 3(b)-(e).

⁷ *Ibid*, s 1(d).

⁸ *Ibid*, s 2(e).

proceedings related to the financing of acts of terror.⁹ *Resolution 1373* also calls all states to “(b)ecome parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the *International Convention for the Suppression of the Financing of Terrorism of 9 December 1999*.”¹⁰ Finally, it imposed the 90-day limit within which states had to respond.¹¹

Within days of the adoption of the *Resolution*, Canada quickly drafted legislation to implement the terms. This hastiness, while in compliance with the time constraints of *Resolution 1373*, has also been the source of debate and intense criticism.

The *Anti-terrorist Act* is a lengthy law; it amends over 20 statutes and contains 146 clauses.¹² That such a bulky piece of law could be crafted and passed in such a short period of time was not only a response to the time constraints but also to a *perceived need* to deal swiftly with the evils of terror:

Rarely has such a complex omnibus bill proceeded so rapidly through the legislative process. Given the perceived necessity to respond quickly and comprehensively to the threat of terrorism, a majority of parliamentarians were willing to support this key element of the government’s anti-terrorism plan. Parliament accordingly expedited both the study and passage of the Act. However, the legislation also required that a comprehensive review of the provisions and operation of the *Anti-terrorism Act* be undertaken within three years of royal assent. It was felt that this requirement would allow Parliament to assess both the provisions of the Act and their effect on Canadians after an appropriate period of time. It is this review that our Committee has undertaken.¹³

⁹ *Ibid*, s 2(f).

¹⁰ *Ibid*, s 3(d).

¹¹ *Ibid*, s 6.

¹² Mr. Stan Keyes, “Bill C-36 First Reading House of Commons; 37th Parliament 1st Session, October 16 2001” (2001) online: Parliament of Canada <<http://www2.parl.gc.ca/HousePublications>>.

¹³ Special Senate Committee on the Anti-terrorism Act, “Fundamental Justice in Extraordinary Times: Main Report of the Special Senate Committee on the Anti-terrorism Act” (2007) online: Parliament of Canada <<http://www.parl.gc.ca/Content/SEN/Committee/391/anti/rep/rep02feb07-e.pdf>> at 1.

According to Kent Roach, much of the debate in the Bill “revolved around the definition of terrorist activities, the introduction of investigative hearings and preventive arrests and the effects of the law on charities (...) [however] more technical parts of the act relating to intelligence, terrorist financing and government secrecy received less attention.”¹⁴

1.1 Defining Terrorism

A key point of contention during the legislative process was the definition of terrorist activity offered by the *Bill C-36*, or, according to some, the lack of thereof: “there is no definition of terrorism, just definitions for act, action or omission.”¹⁵ It “does not include a definition of a terrorist.”¹⁶ The drafters did not opt for the definition of terrorism contained in the *International Convention on the Suppression of Terrorist Financing* although it drew from that two-fold approach.¹⁷ Terrorist activity was defined to include the offences contained in the existing series of international instruments aimed at terrorism (such as the hijacking of aircraft, bombs on aircraft and the like). Terrorist activity was also defined to include any act or omission committed:

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and (B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a

¹⁴ Provisions dealing with immigration law and the use of security certificates were equally rather ignored. Roach, *supra* note 4. Nevertheless, there was also extensive debate regarding the authorities. Concerns arose in Parliament, some revolved around the RCMP, the CSIS, the CSE, the police forces and point of entry security. The concerns were about their mandates, the number of trained personnel, the funding for new equipment and personnel. Some members of the house were really concerned about not having enough personnel to implement the changes proposed by the legislation; *see infra* note 15.

¹⁵ *House of Commons Debates*, 37th Parl, 1st Sess, vol 137 no 95 (16 October 2001) at 1110 (Ms. Pierrette Venne).

¹⁶ *Ibid* at 2105 (Mr. Robert Lanctôt).

¹⁷ Terrorism is defined by the convention as an “act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”, *Resolution 54/109*, 1999, UNGA 1999, s. 2(1)(b).

government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(ii) that intentionally

(A) causes death or serious bodily harm to a person by the use of violence,

(B) endangers a person's life,

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C).¹⁸

Unlike the international convention, Parliament insisted on including the language of political, ideological and religion motive in the definition, probably to differentiate this type of crime to those “regular” crimes contained in the *Criminal Code*.

Many argue, and indeed the Supreme Court of Canada appears to agree, that the motives (political, ideological or any other underpinnings of terrorist violence) are irrelevant, or, at least, far less important than the fact of causing, or threatening, violence of any form.¹⁹

In *Suresh v. Canada* (2002), the Supreme Court found that “there is not a single

¹⁸ *Criminal Code*, R.S.C. 1985, c C-46, s 83.01.

¹⁹ *Khawaja*, *infra* note 22 at 48; *see also* para 49; nevertheless, as Professor Alan Clarke points out in “Rendition to Torture: A Critical Legal History”, 62 Rutgers L. Rev. 1 2009-2010 (HeinOnline), several reported cases of extraordinary rendering on innocent people, thought to be terrorists or being affiliated to a terrorist organization post 9/11 were based primary in their religious affiliation and a recent trip to areas where terrorists train. In specific (at 52) Professor Clarke bring forth the case of Maher Arar, a Canadian and Syrian national thought by RCMP at first, to have ties with al Qaeda, secured by Immigration Officials in the U.S. when returning from a family vacation, and rendered by the U.S., after his status changed to “clearly and unequivocally a member of al Qaeda”, to Syria where he was incarcerated and faced torture for several months until Canadian Diplomats returned him to Canada. These wrongful renditions (and convictions) may be in part because “law enforcement bureaucracies are under great pressure to solve and prevent crime (...) to prevent another catastrophic terrorist attack” (at 60).

definition [of terrorism] that is accepted internationally.”²⁰ Suresh did not deal with the *ATA* but with a section of immigration law that was challenged for constitutional vagueness. The Court held that the use of the word “terrorism” in the legislative regime, a term that was not defined, was not overly vague. According to the Court, terrorism included any action:

[I]ntended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.²¹

The Court also noted that motive is not typically held to be an element of a crime.²² Although the Supreme Court in *Suresh* was not addressing the *ATA*, its view of terrorism was more narrow and, indeed, as some point out, it was resolved contrary to the act to include motive as a condition *sine qua non* of the existence of the crime of terrorism.²³ Nevertheless, Canada has followed the tendency set up by the UN General Assembly (UNGA) *Resolution 49/60, Measures to Eliminate International Terrorism*. The UNGA included motive in its legal definition of terrorism:

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.²⁴

Another concern evoked by the definition of terrorist activity is that it might extend to unlawful strikes that disrupt essential services, to lawful protests involving elements of

²⁰ (2002) 1S.C.R. 3.

²¹ *Ibid.*

²² Roach, *supra* note 4.

²³ *Ibid.*

²⁴ *Resolution 49/60, 1994*, UNGA 1994.

violence or might otherwise be used to preclude legitimate protests.²⁵ Equally, there was concern that the definition could “be used to target ethnic or cultural communities in Canada” and that it was necessary to ensure “greater certainty that the expression of a political, religious or ideological thought, belief or opinion does not come within the definition of a ‘terrorist activity’.”²⁶

1.2 Investigative Hearings and Preventative Arrests

The most contentious part of the *ATA* is the provisions enabling investigative hearings and preventative arrests.²⁷ Prevention of terrorism is a significant theme of the *ATA*. While the *Criminal Code* is designed to “find and punish those responsible for acts that have already occurred” the *Anti-Terrorism Act* approach is to find the “perpetrators” before the criminal act of terror is fulfilled.²⁸ Investigative hearings and preventative arrests expand government powers to deal with a terrorist threat are quite different from the classically punitive approach of the criminal law.

²⁵ *House of Commons Debates*, supra note 15, at 1430 (Hon. Anne McLellan)

²⁶ *Debates of the Senate*, 37th Parl, 1st Sess, vol 139 no 75 (29 November 2001) at 1520 (Hon. Sharon Carstairs).

²⁷ Roach, *supra* note 4; other concerns include racial profiling Faisal A. Bhabha, “Tracking ‘Terrorists’ or Solidifying Stereotypes? Canada’s Anti-Terrorism Act in Light of The Charter’s Equality Guarantee” (2003) 16 W.R.L.S.I. 95. Faisal Bhabha clearly summarizes those fears: “terrorist” is demonized with the label “fanatic”, a term which, in recent years, has come to be attached almost exclusively to Muslims and which, like “fundamentalist”, carries a similar connotation of imminent, aline danger. Moreover, the “terrorist” is de-humanized, characterized as a transient outsider having little regard for life, a wandering predator with a taste for blood. “This portrayal of the “terrorist” as someone inherently different from “us” --an irrational sub-human creature that must be controlled by force and expelled from our frontiers-- illustrates the manner in which popular perceptions are not only sold to the public, but adopted and entrenched by the courts.”

²⁸ “Backgrounder: Investigative Hearings and the Recognizance with Conditions in the *Criminal Code*” (2007) online: Department of Justice Canada <<http://www.justice.gc.ca>> [DOJ, “Investigative Hearings”].

The problem with the criminal law method of dealing with the terrorist activities was that the threats of terrorism could not be pursued until the event had happened. Proponents of preventative laws argue that:

Using the *Criminal Code* to prosecute such crimes after the fact was inadequate to ensure Canadians' security. We needed better investigative tools and other mechanisms to detect terrorist plots and prevent attacks from taking place. We also needed an approach that would allow us to pursue those who, by indirect means, facilitated terrorist crimes.²⁹

The provisions aimed at terrorist financing are equally preventative in nature since they aim to starve terrorist organizations of their resources or, through enhanced monitoring of financial activity, detect and pre-empt terrorism. As labeled by Ibrahim Warde, the war on terrorist financing is a substitute for military action against terrorists and their aids.³⁰

Preventative arrests under the *ATA* permit the imposition of conditions upon, or the arrest of, individuals when this is essential to preventing terrorist activity.³¹ This extraordinary power needs the consent of the Attorney General.³² It issues under the authority of a judge upon the testimony of a peace officer who “believes on reasonable grounds that a terrorist activity will be carried out”³³ and suspects that the imposition of the conditions “is necessary to prevent the carrying out of the terrorist activity.”³⁴ The preventive arrest or arrest without warrant can be done in exigent circumstances where there are reasonable grounds for the suspicion that a terrorist activity will be carried out which will

²⁹ “Frequently Asked Questions: 5. Why weren't the existing tools in the *Criminal Code* adequate to deal with terrorist activity?” (2008) online: Department of Justice Canada <<http://www.justice.gc.ca>>.

³⁰ *The Price of Fear: The Truth behind the Financial War on Terror*, (Berkeley & Los Angeles, California: University of California Press, 2007).

³¹ CC, s 83.3.

³² *Ibid*, s 83.3 (1).

³³ *Ibid*, s 83.3 (2)(a).

³⁴ *Ibid*, s 83.3 (2)(b).

be suspended when the arrest is made.³⁵ These powers demonstrate that “the social interest in preventing terrorism was greater than in prosecuting terrorism.”³⁶

The *ATA* permits investigative hearings, the purpose of which is “to gather information relevant to the investigation of terrorism offenses rather than the prosecution of offense.”³⁷ Investigative hearings are described as draconian since the person under investigation cannot deny answering a question on the grounds of self-incrimination.³⁸

These powers have been held to be constitutional.

³⁵ *Ibid*, s 83.3 (4)(a)(i). The laying of information before a judge and a judicial determination of the legitimacy of the arrest follow this: *see also* s 83.3(5) and following.

³⁶ Roach, *supra* note 4. Once the preventive arrest has been done, the peace officer can either lay information before a provincial court judge or release the person arrested. The lay of information before the person arrested is presented to the court judge is imperative; otherwise the person will be released. This last requisite is to restrain in some way the exercise of arrest without warrant. If the officer lays information, or the arrest was done with a warrant, the detainee shall then be taken before a provincial court judge “without unreasonable delay” if a judge is available within a twenty-four hour period or as soon as possible if no judge is available. If information has been laid the judge:

(i) shall order that the person be released unless the peace officer who laid the information shows cause why the detention of the person in custody is justified on one or more of the following grounds:

(A) the detention is necessary to ensure the person’s appearance before a provincial court judge in order to be dealt with in accordance with subsection (8),

(B) the detention is necessary for the protection or safety of the public, including any witness, having regard to all the circumstances including

(I) the likelihood that, if the person is released from custody, a terrorist activity will be carried out, and

(II) any substantial likelihood that the person will, if released from custody, interfere with the administration of justice, and

(C) any other just cause and, without limiting the generality of the foregoing, that the detention is necessary in order to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the peace officer’s grounds under subsection (2), and the gravity of any terrorist activity that may be carried out, and

(ii) may adjourn the matter for a hearing under subsection (8) but, if the person is not released under subparagraph (i), the adjournment may not exceed forty eight hours.

³⁷ DOJ, “Investigative Hearings”, *supra* note 28.

³⁸ The process for Investigative Hearings begins *ex parte* when a peace officer applies with the consent of the Attorney General to a judge when there are reasonable grounds to believe that a terrorism offense will be committed or has already occurred. The court may order the examination of a person or object in possession of a designated individual. The order can be executed anywhere in Canada by another judge of the same court that made the order. The law expressly marks that there is an obligation to answer questions and produce things in the hearing: “A person named in an order made under subsection (a) shall answer questions put to the person by the Attorney General or the Attorney General’s agent, and shall produce to the presiding judge things that the person was ordered to bring.” However, the only exception to the obligation to answer is when the information to be disclosed is “protected by any law relating to non-

Peace bonds are related preventative measures.³⁹ These impose constraints on individual liberties such as a prohibition on the possession of “any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all of those things.”⁴⁰

While a preventative approach to terrorism cannot be disputed, these preventative measures have been condemned as extreme, unnecessary and ineffective. Harkening to the FLQ crisis “just think of what happened during the October crisis with the *War Measures Act*: there were hundreds of arbitrary arrests and heavy handed searches without warrants, undoubtedly the worst case of abuse of power ever known in Quebec.”⁴¹ Critics note that most of those arrested during the October crisis were never

disclosure of information or to privilege.” The law continues with the obligation of a witness to present testimony with the following: “No person shall be excused from answering a question or producing a thing under subsection (8) (Investigative Hearings) on the ground that the answer or thing may tend to incriminate the person or subject the person to any proceeding or penalty.”

Even though lawmakers legislated against the principle of self-incrimination in this case, the law clearly states that no information or evidence obtained from the hearing could be used against the witness, except in cases of perjury or contradictory evidence, in what has been called immunity protection. Once a witness has been served with an order to appear in the investigative hearing, he can seek counsel at any stage of the proceedings. And if the witness is evading the order, is preparing to flee, refuses to attend to the hearing, or does not remain in attendance to the hearing the judge can issue an arrest warrant to ensure the compliance of the order. The Supreme Court of Canada upheld the investigative hearings provisions above summarized as constitutional in 2004. Nevertheless, this extraordinary power expired on March 1, 2007, in what was according to Roach was a political move not taking into consideration the risks presented to have this powers available.

³⁹ Roach, *supra* note 4.

⁴⁰ CC, s 83.3(10). According to Dr. Kent Roach, peace bond is a way to respond to remaining fears of terror activities even though the preventive arrests have expired. These provisions are used when the judge is satisfied by the evidence presented that the officer had grounds for the suspicion that lead to the lay of information and with the goal to keep the peace and prevent a terrorist activity to be carried out. The conditions imposed in the bond would not exceed twelve months. In interest of public safety or personal safety for the person under peace bond, the judge can prohibit the person, either for the whole or part of the bond term, to possess “any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all of those things”, if the condition is not imposed, the judge “shall include in the record a statement of the reasons for not adding the condition.”

⁴¹ *House of Commons Debates*, *supra* note 15, at 1110. (Ms. P. Venne)

charged.⁴² Preventative measures also give rise to serious human rights concerns. Former Federal Minister of Justice Mr. Irwin Cotler stated:

[I]t has been said that the legislation is not unlike the *War Measures Act*, that it is violative of our guaranteed fundamental freedoms under the charter of rights and freedoms and that it will not pass constitutional muster. It is important to recall that there was no *Charter of Rights* at the time of the *War Measures Act*, that the provisions authorizing preventive detention and the like under the *War Measures Act* have no parallel under the present legislation; that the rights and freedoms under the *Charter* are not absolute but are subject to reasonable limitations prescribed by law, as can be demonstrably justified in a free and democratic society.⁴³

To mitigate concerns with the investigative hearings and the powers of preventative arrests, a five-year renewable sunset clause was introduced, making the *ATA* subject to regular review.⁴⁴

⁴² On March 27, 1995, a motion was presented in the House of Commons requesting that the government made an official public apology, accompanied by financial compensation, to the hundreds Quebecers who were victims of arbitrary arrest and unjustified detention during the enforcement of the War Measures Act in the early '70s.

⁴³ *House of Commons Debates*, *supra* note 15, at 2150.

⁴⁴ According to the *ATA* Parliamentary Committees will conduct a three year review of the *Act*'s provisions and operation, as well as the renewable five year sunset clauses over the extraordinary powers obtained by the government to make preventive arrests and to compel uncooperative witnesses to provide information on terror investigations. The sunset provisions for Professor Roach, "have the potential to allow legislators to have sober second thoughts"; however, according to the rules imposed by the *Act* "a motion for the adoption of the resolution may be debated in both Houses of Parliament but may not be amended." The extraordinary powers obtained by the government with the *ATA* were set to expire "at the end of the fifteenth sitting day of Parliament after December 31, 2006 unless, before the end of that day, the application of those sections is extended by a resolution (...) passed by both Houses of Parliament." The extension of the powers can be made for any amount of time, not exceeding five years. The Commons 2006 Subcommittee on the Review of the *Anti-Terrorism Act* unanimously agreed that the use of investigative hearings should be extended until the last day of the year 2011 only when a terrorist act is believed to be committed in the imminent future. The motion was presented in February 9 2007, the Government introduced motions in both houses to renew the provisions for another three years. "The government argued that the renewal was necessary for the prevention of terrorism and stressed that the Supreme Court had held in 2004 that investigative hearings were consistent with the *Charter*." However, on February 27, 2007, the motion to renew the sunset provisions for another three years was rejected. The result was that the provisions expired on March 1, 2007, in what was according to Professor Roach, a political move, "without a sustained debate about either the merits or the dangers of those provisions."

2. Terrorist Finance: Key New Provisions

In compliance with *Resolution 1373*'s focus on terrorist financing, the *ATA* introduced a series of provisions aimed at finance linked to terrorism. First, the *Act* introduced offences associated exclusively with the financing of terror; second, the *ATA* introduced the monitoring and reporting of financial activity possibly related to terrorism; third, the *Act* introduced provisions aimed at disabling the use of charities in terrorist activity.

2.1 New Financing of Terrorism Offences

The *ATA* created an offence of directly or indirectly, willfully and without lawful justification, providing or collecting, property intending it will be used, or knowing it will be used, to commit terrorist activity.⁴⁵ The *ATA* introduced a closely related offence:

Every one who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services

(a) intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or

(b) knowing that, in whole or part, they will be used by or will benefit a terrorist group,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.⁴⁶

The third new offence connected directly to the financing of terrorism provides:

Every one who

(a) uses property, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity, or

(b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity,

⁴⁵ CC, s83.02

⁴⁶ *Ibid* s 83.03.

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.⁴⁷

Each of these targets the financial part of terror, the provision or collection of property for the purposes of terrorism, the making available any financial and other services to the terrorist activity and the use of property in the facilitation, or the carrying out of, terrorist activity.

Together with these new crimes, provisions were introduced to permit the freezing and forfeiture of property linked to terrorism. Under the law, no one can knowingly deal directly or indirectly, with any property owned or controlled by a terrorist group nor facilitate any financial transactions regarding that property.⁴⁸ Moreover, every person with knowledge of the existence of terrorist property or any information about transactions connected to that property is under an obligation to disclose that knowledge to the authorities.⁴⁹ It is an offence not to disclose that information as well as an offence to deal with terrorist property.⁵⁰

The *ATA* also created the power to seize and forfeiture property owned, or controlled by terrorist groups or property used, or intended to be used, to facilitate terrorist activity.⁵¹ Seizure is a preventative justice measure, averting property from being used to further terror if reasonable grounds exist to conclude that it has been, or will be, used in that

⁴⁷ *Ibid* s. 83.04.

⁴⁸ *Ibid* s 83.08. Terrorist group is defined at s 83.01 (1). Anyone who acts reasonably in denying access to the property is immune from any derivative civil liability: s 83.08 (2).

⁴⁹ *Ibid* s. 83.1

⁵⁰ *Ibid* s. 83.12.

⁵¹ *Ibid* ss. 83.13, 83.14.

activity. Forfeiture denies permanent access to that property if a judge determines, on a balance of probabilities, that that property is owned or controlled by terrorist groups, or was used, or intended to be used, in terrorist activity.⁵²

These new provisions clearly focus on terrorist finance, broadly covering almost any financial interest, or piece of property, connected, in some way, to some kind of terrorist activity. These provisions capture not only those who conduct terrorist activity directly (who plant the bombs or hijack the planes) but also persons who assist that activity through providing some form of financing, or some kind of property, or resources.

Finally, these offences acknowledge the global environment within which the terrorist enterprise works. The *ATA* applies to terrorist activities done in Canada and, if the act is committed outside Canada, it is deemed to have been committed in Canada if it is committed on a Canadian ship or aircraft, or against a Canadian citizen or permanent resident, or targets the Government of Canada or any of the Provincial Governments.⁵³

As well an act of terror is considered to be committed in Canada if the perpetrators are Canadian citizens or permanent residents.⁵⁴ These ensure terrorist acts committed anywhere with any Canadian connection could be punishable under Canadian law.

2.2 Monitoring and Reporting on Terrorist Finance

The obligation to disclose information related to property constitutes the first part of attempts to monitor, or otherwise detect and track, financial interests associated with

⁵² *Ibid* s. 83.14(5).

⁵³ *Ibid* s. 3.73.

⁵⁴ *Ibid* s. 3.74.

terrorism. The *ATA* also made terror finance subject to a monitoring and reporting structure that was already in existence though it applied to money laundering and the proceeds of crime.

Prior to 2001, the problem of money laundering and proceeds of crime on a global scale lead to the creation of international machinery to detect and monitor the proceeds of crime, or the laundering of proceeds of crime.⁵⁵ The *ATA* subjected terrorist finance to this same regulatory structure. Effectively, it accomplished this by re-naming the legislative applicable to money laundering and proceeds of crime as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCTFA)*.⁵⁶

Under the *ATA*, persons or entities involved in financial activities must report every financial transaction, or attempted transaction, that they have reasonable grounds to suspect is related to the commission of a terrorist financing offence.⁵⁷ This is known as Suspicious Transactions Reporting (STR).

Any STR is made to the Financial Transactions and Reports Analysis Center of Canada (FINTRAC).⁵⁸ FINTRAC is an independent governmental organ created as a financial intelligence unit that was established in 2000 and operated within the ambit of the

⁵⁵ Warde, *supra* note 31; Margaret E. Beare & Stephen Schneider, *Money Laundering in Canada: Chasing Dirty and Dangerous Dollars*. (Toronto, Ont.: University of Toronto Press, 2007).

⁵⁶ *Anti-Terrorism Act*, 2001, SC 2001, c 41, ss. 47-48. [*ATA*]

⁵⁷ *Ibid*, s. 52. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, 2000, SC 2000, c 17, s. 7 [*PCTFA*]; s. 5 lists the specific persons and entities to whom the law applies including such entities as banks, life insurance companies, casinos, trust and loan companies, etc.

⁵⁸ *ATA*, ss. 52-54.

PCTFA.⁵⁹ At first its mandate was to combat money laundering. With the enactment of the *ATA*, it combats terrorist financing as well. FINTRAC's objective is to gather information to detect, prevent and deter the financing of terrorist activities, money laundering and "other threats to the security of Canada." Prior to the *ATA*, terrorist activities did not specifically come within the remit of FINTRAC. While money laundering and other criminal proceeds might overlap with terrorist finance, there was no specific recognition of, or obligation placed upon, the organization to monitor financial activities with a view to detecting terrorist activities.

The intelligence gathered by FINTRAC is shared with several government agencies.⁶⁰ Again, monitoring and detection are, at least partly, aligned with the idea of preventative measures, hopefully detecting and pre-empting terrorist activity before its horrors occur.

It should be noted that while FINTRAC only begin to monitor for terrorist activity in 2001, the monitoring of financial activity it conducts extends beyond the mere receipt of suspicious transactions reports. Under the *PCTFA*, those involved in financial transactions also have obligations to report particular transactions to the organization such as large cash transactions, cross-border currency exchanges and the export and import of financial instruments.⁶¹

⁵⁹ FINTRAC, "Who we are" (2012), online: FINTRAC <<http://www.fintrac-canafe.gc.ca>>.

⁶⁰ Depending on the infractions discovered disclosures are made to the Canadian Security and Intelligence Service (CSIS), Canada Revenue Agency (CRA), Canada Border Services Agency (CBSA) as well as the appropriate police force, including, the Royal Canadian Mounted Police (RCMP), *PCTFA*, s. 55(3)

⁶¹ *PCTFA*, s. 12. Large cash transactions currently include amounts over \$10,000 or two or more cash amounts that total \$10,000 or more in 24 consecutive hours.

Finally, although not exclusive to terror financing, the *ATA* provides that the Governor in Council may establish a list consisting of entities that have carried or attempted to carry terrorist activities.⁶² An entity, or person, can be placed on the list if there are reasonable grounds to believe that they are terrorists or they are helping terrorists to fulfill their acts. The recommendation to place or remove an entity in the list is made by the Solicitor General to the Governor in Council who decides to publish the entity's name on the list, thus legally outlawing them. One ramification of listing includes the freezing of any and all financial interests.⁶³

2.3 Charities Regulation

Resolution 1373 and the *ATA* criminalize the direct or indirect financing by any means of a terrorist organization or a terrorist activity. A special emphasis was made in the *ATA* to regulate the registration of charities and to amend the *Income Tax Act* “to prevent those who support terrorist or related activities from enjoying the tax privileges granted to registered charities.”⁶⁴

Part 6 of the *ATA* enacts the *Charities Registration (Security Information) Act*, with the objective to maintain confidence in the taxpayers that the benefits of charitable

⁶² *Criminal Code*, s. 83.05.

⁶³ A. Dosman, “For the Record: Designated “Listed Entities” for the Purposes of Terrorist Financing Offences at Canadian Law” (2004) U T. Fac. L Rev. 1. There are serious rights concerns with the listing mechanisms, see, *Abdelrazik v Canada (Minister of Foreign Affairs)* [2010] 1 FCR 267; M. Gallant, “Funds, Rights and Terror: Her Majesty’s Treasury v Mohammed Jabar Ahmed and Others”, (2010) 21 KLJ 425.

⁶⁴ *ATA*, ss. summary, part 6.

registration are available exclusively to those operating only for charitable purposes and to prevent charitable institutions from being used for the purposes of terrorist activity.⁶⁵

Under the *Act*, if the Minister of Public Safety and Emergency Preparedness and the Minister of National Revenue, based on security and intelligence reports, have reason to believe that:

- (a) that an applicant or registered charity has made, makes or will make available any resources, directly or indirectly, to an entity that is a listed entity as defined in subsection 83.01(1) of the *Criminal Code*,
- (b) that an applicant or registered charity made available any resources, directly or indirectly, to an entity as defined in subsection 83.01(1) of the *Criminal Code* and the entity was at that time, and continues to be, engaged in terrorist activities as defined in that subsection or activities in support of them; or
- (c) that an applicant or registered charity makes or will make available any resources, directly or indirectly, to an entity as defined in subsection 83.01(1) of the *Criminal Code* and the entity engages or will engage in terrorist activities as defined in that subsection or activities in support of them.⁶⁶

The Ministers may sign and issue a certificate to that effect and inform the charitable institution that it is either eligible to become a registered charity or that its charitable status will be revoked.⁶⁷ Within seven days, that certificate must be either confirmed or cancelled by a hearing in the Federal Court.⁶⁸ While the charity is entitled to notice of the hearing and the opportunity to participate, it is not entitled to the full disclosure of the information underpinning the certificate. The judge may keep confidential any

⁶⁵ *Charities Registration (Security Information) Act*, 2001, SC 2001, c 41 s.113 2(1) [*Charities Registration Act*].

⁶⁶ *Charities Registration Act*, s. 113 4(1).

⁶⁷ *Ibid*, s. 113 5(1).

⁶⁸ *Ibid*, s. 113 5(5).

information the disclosure of which would be injurious to national security or endanger the safety of any person.⁶⁹

These provisions are intended to permit the swift foreclosure of any charity allegedly linked to terrorist activity. Some scholars mention that targeting charities can backfire, because tight controls can “[drive] certain charities underground, [strengthen] informal networks, and [broaden] the potential support system for terrorists”⁷⁰ due to the fact that in areas controlled by terrorists the only relief received by the people comes from those charities that “deal” with terrorists, and to win the “war against terror” popular support should be taken away from terrorist organizations.⁷¹

Conclusion

Canada has responded to the attacks of 9/11 in a timely manner and in compliance with International conventions, practices and pressures by drafting and enacting the *Anti-Terrorism Act* before the end of 2001. The actions have attracted its fair share of criticism. The fact that there is no consensus on the definition of terrorism complicates the application of the legislation. Nevertheless, the core question should be how efficient can the law be to combat a new act of terror via terrorist financing obligations?

⁶⁹ *Ibid*, s. 113 6(b).

⁷⁰ Warde, *supra* note 31 at 149-150.

⁷¹ *Ibid*.

CHAPTER 5

Achievements of the Anti-Terrorist Finance Strategy

“Terror does not exist because there is money; rather, money appears where there is support for terror.”¹

Introduction

In an interview with Peter Mansbridge on *The National*, a Canadian television news program, Prime Minister Stephen Harper was questioned about the fact that in a recent poll most Canadians felt that the war on terror could not be won. Prime Minister Harper’s replied that because there are different manifestations of terrorism the best tactic is to “be perpetually vigilant” and to “have appropriate security apparatus and intelligence apparatus” to identify plots of terrorist attacks before they become a reality.² Former American President George W. Bush was adamant that the war on terror would not “end until every terrorist group of global reach has been found, stopped and defeated”, a feat

¹ Ibrahim Warde, *The Price of Fear: The Truth behind the Financial War on Terror*, (Berkeley & Los Angeles, California: University of California Press, 2007) at XIX.

² Interview in “The National” (News Program) CBC News, (8 September 2011).

accomplished by “starv[ing] terrorists of funding, turn[ing] them one against another, driv[ing] them from place to place until there is no refuge or no rest.”³ He emphasized that the goal of the terrorists organizations “is not making money, its goal is remaking the world and imposing its radical beliefs on people everywhere.”⁴

Targeting terrorist finance was proposed as a core part of the war on terror.⁵ Like any war, there is some indication that any success attributed to anti-terrorist finance laws may be premature or overstated. Any success is very difficult to discern. At present, there is really no effective empirically based method for assessing whether any particular ends are being achieved by this particular means. This chapter examines the issues and criticism raised by the implementation of terrorist finance laws. While it is beyond the scope of this paper to offer any concrete conclusions about the workings of terrorist finance laws, there is certainly considerable reason to question, and re-think, any continued creation of these laws, or placing much reliance on their ability to counter terror. They are not without their merits. They equally beg many questions that should be investigated before continuing to press the anti-terror finance initiative further.

³ “Transcript of President Bush’s address”, Cable News Network (21 September 2001), online: CNN News <<http://articles.cnn.com>>.

⁴ International pressure has mounted to different countries to draft and apply new legislation and procedures to combat terrorism. In Canada’s case, because wrongful claims were made right after the attacks in 9/11 that terrorists came from within our borders, that pressure was even higher. It may not be the first time that criminals use Canada’s legal and financial structure as a *safe heaven* or a *laundry machine*. As Margaret Beare and Stephen Schneider mention in their book, *infra* note 10, the first attempts were made during the prohibition era.

⁵ Warde (*supra* note 1 at XI) points that this is because the “financial front” is the “widest and more durable (...) the least controversial and most prone to spin and political manipulation (...) the one front to which every single country was expected to contribute”; in addition to a faster and popular substitute from a military front.

1. Assessing the Merits of the Regulation of Terror Finance

After the chaos of September 11 subsided, sober thoughts on the *Anti-Terrorism Act (ATA)* have somewhat appeared. The extraordinary powers obtained by the Government to conduct investigative hearings, to apply recognizance with conditions and the enabling of preventive arrest were not renewed by a vote of 159 to 124 in the House of Commons on February 27, 2007.⁶ Nevertheless, at the end of October 2007, the Senate was presented with Bill S-3 whose amendments to the *Criminal Code*, if passed, would reinstate provisions substantially similar to the ones contained in the *ATA*.⁷

If Canada did not have significant problem with terrorism to begin with, how can the result of the laws on terrorist finance be assessed? Jeff Breinholt suggests, “those who work in terrorist financing enforcement will be judged not by the number of convictions they secure but by how many innocent lives are saved.”⁸ How many lives have been saved because of the new terrorist financing offences, because of the monitoring of financial activity and because of the capacity to revoke or deny the charitable status of non-profit organizations? Could the approach of the 1970s, the invocation of the *War Measures Act* to suppress the FLQ, be said to have worked because the organization no longer posed much of a threat after 1971? Can it be said that since Canada has not experienced any full-blown vicious terror attacks in the last decade that the assault on terror finance has had some effect?

⁶ Laura Barnet, “Bill S-3: An Act to Amend the Criminal Code (Investigative Hearing and Recognizance with Conditions”, *Parliamentary Information and Research Service* (rev. 7 March 2008), Library of Parliament online: < <http://www.parl.gc.ca> > at 3.

⁷ *Ibid* at 1.

⁸ “Introduction” (2003) 51:4, United States Attorneys’ Bulletin, online: <<http://www.usdoj.gov>> at 1.

A recurrent proverb in the context of terrorist financing is that of searching for the proverbial needle in a haystack. Many equate the attempts to find terrorist financing with a search for a tiny needle in an oversized haystack. With respect to the monitoring of financial activity, that haystack is an extraordinary amount of financial information that is being generated, much of which some describe as useless or misleading.⁹ There is obviously some potential for detecting drug moneys laundered for terrorism given the scope of the moneys involved. In a haystack, at least bundles of cash from drug transactions might be somewhat visible. And since these moneys derive from illegal activity, the nature of that activity might cast some light to assist in their detection. Yet hidden the haystack are also moneys quite legitimately acquired which are then to be put towards terrorist activities. No amount of regulation could possibly detect the wages of the laborer that she subsequently puts to terrorist use by buying bombing supplies or merely spreading gasoline to cause a fire.

That said, in the 1993 terrorist bombing of the World Trade Centre the plan was to destroy both the North and the South towers and create a “domino effect” in which thousands of people would be killed and many more buildings destroyed.¹⁰ Nevertheless, only the basement of the north tower was destroyed, six people were killed and 1,042 were injured. Estimates place the bombing at a cost of \$18,000.¹¹ The organizer of the attacks, Ramzi Yousef, admitted that the plan was to “build a bigger bomb but were not able to, due to the

⁹ Warde, *supra* note 1 at 160-161.

¹⁰ FBI, “Stories; FBI 100: First Strike: Global Terror in America” (26 February 2008) online: Federal Bureau of Investigation < <http://www.fbi.gov> >.

¹¹ *Ibid*; Thomas J. Biersteker & Sue E. Eckert, “Introduction: the Challenge of Terrorist Financing” in Biersteker & Eckert, eds, *Countering the financing of terrorism* (Abingdon, Oxon; New York, NY: Routledge, 2008) at 6.

lack of funds.”¹² Yousef was arrested when he tried to recover the deposit fee paid on the rental car used to deliver the bomb.¹³

The problem is not that attacking terrorist finance cannot be part of a solution, or part of a counter-strategy. The issue is whether, or maybe how well, the terrorist finance initiative work and how can its effectiveness, or lack therefore, be determined. Answering these kinds of questions, while not easy, is critical to designing additional mechanisms, to eliminating measures that do not work as well as to making informed decisions regarding the public and private cost of terrorist finance regulation (including, as discussed latterly, costs to human rights) consequence upon this pursuit.

2. New Offences and the Counting of Prosecutions

As mentioned earlier, there have been only few criminal cases related to terrorism in Canada and most of those cases arise in the setting of immigration. Most of the prosecutions related to terrorism prior to the *ATA*, specifically the FLQ and Air India, ended in acquittals or stalled proceedings. After the October crisis, hundreds of FLQ militants and sympathizers were arrested, detained and released without charges. The few who received time in prison were related to the FLQ “original 23” that the Liberation and Chernier cell tried to liberate during the crisis. Of those that served time behind bars, none were prosecuted for “terrorism”. They were convicted of murder, theft and other “regular”

¹² *Ibid* at 7; *see also* at 1.

¹³ *Ibid* at 7; FBI, *supra* note 12.

criminal activity recognized by the *Criminal Code*.¹⁴ That so many could be arrested, detained and released without any charges brought against them raises issues of liberty, freedom from detention and violations of human rights.¹⁵

In the case of the Air India Flight 182 disaster, only one person has been jailed in relation to the bombings, with two counts of manslaughter of the Narita Airport bag handler's in Japan, other two individuals charged on several counts have been recently found non guilty due to the fact that the Crown failed to demonstrate beyond reasonable doubt the criminal charges and two more died before their guilt or innocence could be proven in court.¹⁶ Nevertheless, there have been no successful prosecutions under the new financing provisions of the *ATA*.

The first person to be charged under the *Anti-Terrorism Act* was found guilty of several terrorism charges in 2010, including the financing of a terrorist organization.¹⁷ However, during trial proceedings, the judge from the Ontario Superior Court of Justice declared unconstitutional the motive element of an act of terror and severed it from the definition of a terrorist act.¹⁸ The Ontario Court of Appeal resolved that the "trial judge erred" in finding the motive element of the definition of the terrorist activity infringed the Constitution and

¹⁴ This is the main reason Kent Roach in several of his books has labeled the *ATA* as unnecessary because before its enactment the *Criminal Code* would suffice to prosecute and incarcerate those found guilty of the offences that conform a terrorist activity, including financing.

¹⁵ A parallel argument can be drawn in here with the extraordinary renditions that have skyrocketed since the attacks on 9/11; see Alan Clarke, "Rendition to Torture: A Critical Legal History", 62 Rutgers L. Rev. 1 2009-2010 (HeinOnline).

¹⁶ Bruce MacFarlane, "Structural Aspects of Terrorist Mega-Trials: A Comparative Analysis", in Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Research Papers, Volume 3: Terrorism Prosecutions* (Ottawa; Minister of Public Works and Government Services, 2010) 151 at 190 [Commission, *Volume 3*].

¹⁷ R. v. *Khawaja* (2010) ONCA 862, O.J. No. 5471, [*Khawaja* (2010)]

¹⁸ R. v. *Khawaja* (2006) O.J. No. 4245.

that it should have not been severed from the definition and that the sentence imposed was not proper due to level of determination of the accused:

The record indicated that the accused was committed to violent Jihad and was willing to do anything and go anywhere to promote it. The trial judge erred in treating the absence of any evidence of the accused's remorse or rehabilitative prospects as a neutral rather than as an aggravating factor. The accused had shown a willingness to participate in indiscriminate killing and there are good grounds for believing that he remains a serious danger for an indeterminate time. The method of dealing with such offenders is to segregate them from society for an indeterminate period. (...) The sentence in this case failed to reflect the enormity of the accused's crimes and the horrific nature of the crime of terrorism itself, it failed to adequately reflect the continuing danger that the accused presented to society and it did not adequately deter would-be terrorists.¹⁹

Another case of a terrorist plot averted in Canada was that of the denominated “Toronto 18”. All the suspects faced charges under the *Anti-terrorism Act* for knowingly participating in a terrorist organization and engage in terrorist training. Six of the suspects also faced charges related to planning a bombing. Two police moles that infiltrated the group since late 2005, testified that the group attended camps with “military training” exercises and watched videos with explosions. The transcript of a taped conversation released on March 26, 2008 by the Court, showed that the accused hoped their attacks surpassed the London subway bombings of 2005.

Of the 18 suspects, eleven faced charges in court; the other seven suspects had their charges stayed. Of those eleven, the first person to be found guilty under the *Anti-Terrorism Act*, on September 25, 2008, received two and a half years in prison. Five suspects have pleaded guilty to the charges of participating in a terrorist organization, including the leader of the group who received life in prison. As of January 20, 2010, a fifth suspect admitted guilt.

¹⁹ *Khawaja* (2010) *supra* note 18, 103 O.R. (3d) 321.

By May 10, 2010 a sixth suspect changed his plea to guilty after months of evidence hearings in court; three more suspects, to that date are still on trial under terrorism charges.²⁰

Notably, it was good police work, the infiltration of a mole, into the terrorist group that lead to successful prevention. There is nothing to indicate that any financial information, financial monitoring, played a part in pre-empting the Toronto 18. Again, that is not to say that surveillance of financial transactions cannot assist in detecting terrorist organizations (and the subsequent sections discusses that) but that in this particular case, it was good policing, standard tactics and exceptional classic work that lead to the prevention. Maybe some public funds flowing into terrorist finance regulations should be flowing into conventional police budgets.

3. Prevention and the Monitoring of Financial Activity

Scholars mention several types of deterrence in the context of terrorist offenses. One is referred to as the “conventional targeted” method which uses specific offenses found in the *Criminal Code* to target specific individuals. A second method is “untargeted” prevention in which the goal is to gather as much information as possible about the possible threats. A third method is “unconventional targeted” in which “the government seeks to incapacitate the potentially dangerous person on the grounds that may have little or no relationship to

²⁰ “Surprise guilty plea in Toronto terror trial”, *CBC News* (10 May 2010) online: CBC News <<http://www.cbc.ca>>.

terrorism concerns.”²¹ With the untargeted prevention, there is an “increased enforcement of laws governing conduct that may be significant to the preparatory activities to potential terrorists.”²² Terrorist finance fits into this latter category.²³

FINTRAC’s latest Annual Report, dealing with the period of 2010-11, shows that the organization received 19,265,355 reports of suspicious transactions.²⁴ This is a slight decrease from the 2009-10 year in which 24,825,481 reports were received.²⁵ Nevertheless, the number of disclosures of information to law enforcement and other related agencies increased significantly from 579 in 2009-10 to 777 in the 2010-11 period.²⁶ The disclosures were “of information suspected to be relevant to investigations of money laundering, terrorist financing, and/or threats to the security of Canada”²⁷ From all the disclosures in the 2010-11 period 151 were related alleged terrorist finance activity.²⁸

Every disclosure, however, contains information about hundreds, sometimes thousands, of individual transactions. As FINTRAC points out in its Annual Report 2010, attempts are made to evade detection by spreading the activities over several financial institutions. Only 17% of the suspicious transactions made involved only one entity. About 45% used 2 to 5 entities thus diminishing the possible report-disclosure ratio by at least half; secondly 26%

²¹ Robert M. Chesney, “Terrorism and Criminal Prosecutions in the United States”, in Commission, *Volume 3*, *supra* note 18, 81 at 90.

²² *Ibid* at 87.

²³ *Ibid*.

²⁴ “FINTRAC Annual Report 2011”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>> at 21 [FINTRAC “A.R. 2011”].

²⁵ “FINTRAC Annual Report 2010” online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>> at 15 [FINTRAC “A.R. 2010”].

²⁶ FINTRAC “A.R. 2011”, *supra* note 28 at 11; *ibid* at 6.

²⁷ *Ibid*.

²⁸ FINTRAC “A.R. 2011”, *supra* note 28 at 11.

related to 6-10 entities, while 7% performs 11-15 transactions and only 3% used 16 or more entities.²⁹

Since the application of the reporting obligations applied by the *ATA* the amount of reports received by the FINTRAC has multiplied, from around two million received by April 2003 to approximately 20 million reports recently received.³⁰ This amount of reports may reflect the quantity of suspicious money moving in the Canadian financial system. Since every report is made for transactions of \$10,000, this means the possible analysis of two hundred billion dollars in financial activity so to detect or prevent an act of terror to happen.³¹ Complicating matters further, enforcement agencies, researchers and lawmakers may be ignoring, or simply not able to rapidly adapt, to new tendencies used by criminals and terrorists to conceal financial resources.³²

According to the Special Senate Committee on Anti-terrorism, the Federal government must do “more to combat the strong threats of radicalization and home-grown terrorism”,³³ particularly since “Canada’s critical infrastructure (...) is vulnerable to terrorists” and the \$10,000 reporting threshold for cash financial transactions and electronic fund transfers leaves “too many transactions related to terrorist financing going undetected.”³⁴

²⁹ FINTRAC “A.R. 2010”, *supra* note 29 at 8.

³⁰ *Ibid*; FINTRAC “A.R. 2011”, *supra* note 28.

³¹ This is a speculative figure; the reports reviewed by the author do not mention any monetary quantities.

³² For example breaking transactions into smaller amounts to avoid the reporting requirements, entangling innocent people in the transfer of funds, using several institutions and individuals or corporations of registered in different countries or using accounts to transfer and clean funds without the knowledge of the account holders.

³³ “Money Laundering and Terrorist Activity Financing Watch: January-March 2011”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>> at 10.

³⁴ *Ibid*.

Whether the threshold actually leaves any financial activity linked to terror undetected is an almost impossible question to answer, not least without considerable more empirical research on terrorist finance and the ability, or lack of ability, of the monitoring systems to capture that resource. The accounts of the Senate Committee are not backed by any rigorous empirical study into terrorist finance. Combating radicalization (maybe through education, the provision of services, community programs around the themes of multiculturalism, human rights and tolerance) is obviously one of the best ways to fight any growth of terrorism yet the idea that multiple terrorist finance transactions are going undetected is merely speculation. Before thinking about enhancing the existing regulation, more understanding of how well financial monitoring works, or whether other means might better address the terrorism problem, would be helpful.

The few cases that have emerged in the context of forfeitures of alleged terrorist finance or proceeds of crime exiting or entering the country (cases which result from the new monitoring provision) do not really say much about the success of monitoring in depriving terrorists of terrorist finance.³⁵ Many individuals physically crossing Canadian borders have fallen afoul of regulation by failing to declare the export of financial instruments exceeding the \$10,000 threshold. Many of those financial instruments have been subject to permanent forfeiture by the state. In large measure, there may be some indication that those resources come from illegal activity. Nevertheless, none of those cases involve specific allegations of terrorist activity.

³⁵ *Kang v Canada (Public Safety and Emergency Preparedness)* 2011 FC 798; *Mamnuni v Canada (Public Safety and Emergency Preparedness)* 2011 FC 736; *Dobrovolny v Canada (Public Safety and Emergency Preparedness)* 2011 FC 526; *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)* 2008 FCA 255; *Tourki v Canada (Minister of Public Safety and Emergency Preparedness)* 2007 FCA 186.

It might be said too, that as much as regulation catches tainted resources, it also captures non-tainted resources. As Warde points, clean and legally obtained money can appear to be tainted when the rightful owner tries to conceal it, in most cases due to ignorance, misinformation and/or cultural and religious beliefs or, he continues, a completely rightful transaction is filed by a reporting entity “just in case” to avoid fines.³⁶

One can but just question the efficacy and accuracy of the reporting system in place in Canada. Are the reports being focused on the actual “dirty” money or they are just sweeping innocent transactions while ignoring those of concern? If we take into account that terrorists and criminals are constantly shifting the means to raise funds and conceal them as mentioned in previous chapters, are these reporting requirements falling way off from what the current tendencies might be on financial crime and terrorist money? Is it worth expending millions of dollars and man-hours to find the needle in the haystack?

4. Prevention and the Regulation of Charities

How well intervention through regulation of charities helps to prevent terrorist activity is very difficult to answer. Clearly some charitable institutions do have links to terrorism. Intelligence reports compiled by the RCMP suggest charitable funds raised in Canada were being diverted in Lebanon to Hamas and Hezbollah.³⁷ A Hezbollah spokesperson “stated

³⁶ *Supra* note 1 at 161.

³⁷ Beare & Schneider, *supra* note 10.

that the money raised in Canada is used for humanitarian not military purposes though he did admit, however, that some of the money goes to the families of suicide bombers.”³⁸

The inquiry into the Air India tragedy suggested that some measure of regulation of charities aimed at terrorist financing might have helped to detect the terrorist operation. Some money linked to the bombing did move through charitable institutions; the foreclosure of that charity might have played a role in preventing the incident.³⁹ By the same token, the inquiry showed that knowledge of the links between charities and terrorism is incomplete.⁴⁰

Statements about the involvement of charities and any finance tainted by associations could be self-serving, or political, or profoundly contradictory as well as failing to distinguish between legitimate charities abused by terrorist organizations and charities controlled by, and exist as mere extension of, those organizations.⁴¹ It remained relatively unclear as to the extent that charitable organizations actually were co-opted into, or otherwise involved with, terrorist finance, suggesting that better study of those connections would produce better, and maybe less, regulation.⁴²

³⁸ *Ibid* at 274.

³⁹ David G. Duff, “Charities and Terrorist Financing: a Review of Canada’s Legal Framework” Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Research Papers, Volume 2: Terrorism Financing, Charities and Aviation Security* (Ottawa; Minister of Public Works and Government Services, 2010) 199 at 238 [Commission, *Volume 2*].

⁴⁰ Nikos Passas, “Understanding Terrorism Financing”, in Commission, *Volume 2, supra* note 40, 15 at 74.

⁴¹ *Ibid* at 74 & 35; Jeroen Gunning, “Terrorism, Charities and Diasporas: Contrasting the Fundraising Practices of Hamas and al Qaeda among Muslim Europeans” in Biersteker & Eckert, *supra* note 13, 93.

⁴² As noted in chapter 3, i.e. is widely believed that al Qaeda controls 1/5 of all Islamic charities; Warde (*supra* note 1) argues that the targeting of Islamic Charities is done mainly because of their religious affiliation and concurs with Beare & Schneider (*supra* note 10) that targeting this type of charities is a big mistake.

Even in the presence of connections, the revocation of charitable certificates or the denial of charitable status to aspiring charities can fail to take into account the appreciably beneficial aspects of charities. Many charities, particularly charities of global reach (including those rooted in Canada) work in fields of great humanitarian need. Charities can provide food, shelter and other assistance in areas of the world beset with conflict and strife, including areas linked to the problems of terrorism. Sometimes the very institutions allegedly having some terrorist connections also engage in substantive goods works, alleviating poverty and mitigating otherwise difficult and dangerous living conditions; “distinguishing between financing humanitarian networks affiliated with resistance groups and financing of terror is needed. Blanket condemnation of groups providing social welfare alienates Muslim constituencies and prevents aid from reaching those most in need.”⁴³

Revoking the charitable status of an organization can, on the one hand, terminate a conduit used to move terror finance. On the other, it can eliminate social assistance provided to communities in need; the latter may serve to engender antagonist and tension, possibly creating an environment within which terrorism can foster.

Since becoming part of Canadian law, there does not appear to be any use made of the new revocation powers to terminate the life of charities.⁴⁴ The only instance of a charity being specifically constrained for a connection to terror resulted not from the issuance of a new

⁴³ Thomas Biersteker, & Sue Eckert, “Conclusion: Taking Stock of Efforts to Counter the Financing of Terrorism and Recommendations for the Way Forward”, in Biersteker & Eckert, *supra* note 13, 289 at 298; *see also* Beare & Schneider, *supra* note 10; Warde, *supra* note 1.

⁴⁴ Duff, *supra* note 40 at 226-227.

certificate but presumably by a failure to abide by the pre-existing regulation; in this case meaning the failure of a charity to concern itself exclusively with charitable activity.⁴⁵

5. International Pressures and the Making of Terrorist Finance Laws

If the results of pursuing terrorist finance are, at best, ambivalent, what explains the continued and vicious pursuit of tainted terror dollars? In part, the continued focus on finance emanates from the enormous international pressure to do something about terrorism: or maybe simply to appear to do something.

The immediate response to September 2001 was to condemn the assaults. The second UNSC response, allegedly crafted in a short 30 minutes, was to implement the anti-terrorist finance strategy. UNSC resolutions are decrees to which Canada must, under its international obligations, respond.⁴⁶ The UNSC required that states report, within 90 days, on the progress of implementation. Once the strategy was begun, the Financial Action Task Force (FATF), an international agency which regulates global money laundering laws, started to coerce states into introducing terrorist finance laws. The FAFT set up a process to review the national laws of states to examine whether they were in compliance with anti-terrorist finance rules.⁴⁷

⁴⁵ The case of the World Islamic Charity is regularly cited as having had its charitable status revoked for links to terror and Libya. The Canada Revenue Agency provides that the charity had its status revoked for a failure to conduct any charitable activity; “Summary of Reasons for Revocation – World Islamic Call Society” (25 January 2012), online: Canada Revenue Agency <<http://www.cra-arc.gc.ca>>.

⁴⁶ *United Nations Act*, R.S.C., 1985, c U-2, s. 2.

⁴⁷ “Mutual Evaluation of Canada”, online: Financial Action Task Force <<http://www.fatfgafi.org>>.

In a 2008 review of Canadian anti-money laundering and terrorist finance regulation by the FAFT, Canada was found to be in substantial compliance with international regulation with the notable exception of the failure to require that lawyers report suspicious financial activity thought linked to money laundering or to terrorism.⁴⁸ That appraisal, however, did not necessary assess the effectiveness of Canadian laws in dealing with terrorism. Rather, the measuring stick is whether Canadian law is consistent with the regulatory standards set by the FAFT and by international law. In this, the FATF does not propose to assess how well the laws work but whether the laws are, in form, compliant with international standards.

While it is obviously good to ensure that appropriate laws have been implemented, there is no assessment of how well any of these laws are working. Indeed, since the inception of money laundering and terrorist financing laws, this failure to assess the value of regulation has been a particular point of contention.⁴⁹ The research underpinning the 2010 inquiry into the Air India disaster offered a similar conclusion; that Canadian terrorist financing laws should be examined, at least from a cost versus benefit perspective, to determine whether the extent of regulation and the processing of information by Canadian agencies was warranted.⁵⁰

⁴⁸ Financial Action Task Force, Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism: Canada, 29 February 2008.

⁴⁹ Michael Levi, "Lessons for countering terrorist financing from the war on serious and organized crime", in Biersteker & Eckert, *supra* note 13, 260.

⁵⁰ Anita Indira Anand, "An Assessment of the Legal Regime Governing the Financing of Terrorist Activities in Canada", in Commission, *Volume 2*, *supra* note 40, 119.

International pressure and the rhetoric of doing something to combat terrorism tend to lay waste to human rights.⁵¹ The listing mechanism, mentioned in Chapter 4, has been subjected to serious criticism as it has sought to deprive alleged terrorists of access to financial resources while denying them any access to justice. Until recent protracted court challenges lead to a re-visiting of the international mechanism, individuals could be deprived of any and all access to funds without being afforded the opportunity to challenge the case being made against them.⁵² Equally, laws introduced through international pressures have also caught welfare payments, something which most agree is a far cry from any understanding of what constitutes “terrorist finance”. In this regard, within Canadian boundaries, human rights challenges to terrorist finance regulation have had some success.⁵³ Pressure is not being placed on the justice system in terms of relaxing the confidential relationship between lawyers and their clients to ensure that lawyers report any suspicions that their clients are engaged in terrorist financing activity.⁵⁴

⁵¹ *C.f.* Clarke, *supra* note 17.

⁵² *Kadi v Council* (Joined cases C-402/05P and C-415/05P) [2009] AC 1225.; J Almqvist, “a Human Rights Critique of European Judicial Review: Counter-Terrorism Sanctions” (2008) 57 *International and Comparative Law Quarterly* 301; G della Cananca, “Global Security and Procedural Due Process of Law Between the United Nations and the European Union: Yassin Abdullah Kadi & Al Barakat International Foundation v Council” (2008-09) 15 *Columbia Journal of European Law*, 511; C Draghici, “Suspected Terrorists” Rights Between the Fragmentation and the Merger of Legal Orders: Reflections in the Margin of the Kadi ECJ Appeal Judgement (2009) 8 *Washington University Global Studies Law Review* 627; K Ziegler, “Strengthening the Rule of Law, but Fragmenting International Law: The Kadi Decision of the ECJ from the Perspective of Human Rights” *University of Oxford Legal Research Paper Series*, Paper No 11/2009, March 2009.

⁵³ Abdelrazik is a Canadian national recently removed from the UN “blacklist” as a terrorist and supporter of al Qaeda after 6 years; he was not able to work or have a bank account because of his listing. “Abdelrazik says still fighting ‘terrorist’ label: Montrealer’s name is off UN terror blacklist but wants it abolished”, *CBC News* (1 December 2011) online: CBC News <<http://www.cbc.ca>>.

⁵⁴ *Federation of Law Societies v Canada* (Attorney General) 2011 BCSC 1270.

Conclusion

Terrorist financing laws emerged swiftly from the ashes of September 11, 2001, a timely immediate strategy. While Canadian efforts managed to suppress Canadian terrorism in the 1970s, it cannot be said that that approach (invoking the *War Measures Act*) offered much promise for preventing the Air India disaster. That incident shows that some measure of legislation, maybe not so much prosecutions but the laws to detect terrorism through discovery of its financial underpinnings, do hold some promise.

Terrorist financing regulation, however, poses many questions. Is it effective in deterring or detecting terrorism? Does it achieve anything more than the appearance of action? Can there be too much financial regulation?

CONCLUSION

“Anti-terrorism legislation is saddled with the unenviable task of preventing an action it can’t clearly describe.”¹

The utilization of fear as a weapon has been around since Roman times, acquiring the precise name of terrorism during the French Revolution. Modern terrorism has evolved into a hydra of international dimensions. As in every democracy, there are critics and proponents of the counter terrorism strategies implemented in Canada and worldwide. Information relevant to these strategies is, at times, conflicting. While some governmental organizations state that progress has been made in combating terrorism, many claims aspects of the strategy are counter-productive:

[S]ome of the measures may be not be just ineffective in increasing transparency, traceability and prevention of terrorist finance, but also counter-productive. Instead of promoting transparency and traceability of transactions, the result may be that more actors go underground and employ obscure value transfer methods with which controllers are less familiar. Instead of strengthening alliances against terror, some communities may feel marginalized or alienated. Instead of supporting and

¹ Michelle S. Sample, *Canada’s Anti-Terrorism Act: Creating a Paradigm of Insecurity?* (M Arts, Simon Fraser University 2008), SFU, online: <<http://summit.sfu.ca>> at 34.

collaborating with non-governmental organizations active in conflict zones, we may be undercutting their de-escalation and humanitarian assistance work. Instead of bringing a growing share of economic transactions into formally regulated and well monitored vehicles, we may be pushing more economic activity underground. Instead of enhancing possibilities of intelligence gathering and monitoring of suspect groups, we may be losing opportunities to gain insights into terror groups and planned attacks. Instead of focusing our efforts on the highest risks and threats, we may be leaving the worst vulnerabilities unattended. Instead of contributing to better security, we may end up with more grievances and fertile ground for militant recruitment and extreme actions.²

This is not to deny that the reporting obligations imposed by the *ATA* have yielded results. Nevertheless, there is no empirical evidence to show that the financial regulations have prevented acts of terror. And in the specific Canadian case of the “Toronto 18”, it was good police work and infiltration of the organization that yielded results. Perhaps, at best, it suffices to note that the pursuit of terrorist finance strategy is not an unmitigated success that further serious probing of the strategy is warranted.

² Nikos Passas, “Understanding Terrorism Financing”, Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Research Papers, Volume 2: Terrorism Financing, Charities and Aviation Security* (Ottawa; Minister of Public Works and Government Services, 2010) 15 at 88.

BIBLIOGRAPHY

Adams, James, *The Financing of Terror* (Sevenoaks, Kent: New English Library, 1986).

ADL “Terrorism: Hezbollah: State Sponsors: Iran and Syria”, (31 March 2008), online: Anti-Defamation League <<http://www.adl.org>>.

Almqvist, J. “A Human Rights Critique of European Judicial Review: Counter-Terrorism Sanctions” (2008) 57 *International and Comparative Law Quarterly* 301.

Atwan, Abden Bari, *The Secret History of al Qaeda*, (Berkeley & Los Angeles, California: University of California Press, 2006).

Anti-terrorism Act, 2001, S.C. 2001, c. 41.

Austen, Ian “Man Guilty in Canada Terror Plot”, *The [New York] Times* (25 September 2008) online: New York Times <<http://www.nytimes.com>>.

Authier, Philip, “New Bloc Quebecois Leader Daniel Paille: ‘We Will Never Give Up’ ”, *National Post* (11 December 2011) online: Postmedia News <<http://news.nationalpost.com>>.

Barker & McKenzie, “Recap: the Anti-Money Laundering and Counter-Terrorism” (May 2008) 27 *Nat. Banking L. Rev.* 20-24.

Barker, Jonathan, *The No-nonsense Guide to Global Terrorism*, 2nd ed. (Toronto, Ont.: New Internationalist Publications; Between the Lines, 2008).

Barnet, Laura, “Bill S-3: An Act to Amend the Criminal Code (Investigative Hearing and Recognizance with Conditions)”, *Parliamentary Information and Research Service* (rev. 7 March 2008), Library of Parliament online: <<http://www.parl.gc.ca>>.

Bascaramurty, Dakshana, "Fate of terror suspect rests on his own words", *The Globe and Mail* (9 August 2008) online: The Globe and Mail Inc. <<http://www.theglobeandmail.com>>.

BBC News, “Basque group Eta says armed campaign is over”, *BBC News* (20 October 2011), online: BBC News <<http://www.bbc.co.uk>>.

-“Peru’s Shining Path defeated, rebel leader admits”, *BBC News* (7 December 2011) online: BBC News <<http://www.bbc.co.uk>>.

-“Peruvian Police Captures ‘Shining Path boss’ Walter Diaz”, *BBC News* (4 March 2012), online: BBC News <<http://www.bbc.co.uk>>.

-“Timeline: ETA Campaign”, *BBC News* (20 October 2011), online: BBC News <<http://www.bbc.co.uk>>.

-“Who are Hamas?”, *BBC News* (4 January 2009) online: BBC News <<http://www.bbc.co.uk>>.

Beare, Margaret E. & Stephen Schneider, *Money Laundering in Canada: Chasing Dirty and Dangerous Dollars*. (Toronto, Ont.: University of Toronto Press, 2007).

Begg, Kirsten, “Police: FARC is Colombia’s Biggest Drug Cartel”, *Colombia Reports* (13 September 2010) online: Colombia News <<http://colombiareports.com>>.

Belanger, Claude, “Chronology of the October Crisis, 1970, and its Aftermath”, online: Marianopolis College, (23 August 2000) online: Marianopolis College <<http://faculty.marianopolis.edu>>.

-“Documents on the October Crisis: Public Order Temporary Measures Act” (1999), online: Marianopolis College <<http://faculty.marianopolis.edu>>.

-“Readings in Quebec History: War Measures Act”, (20 August 2004) online: Marianopolis College <<http://faculty.marianopolis.edu>>.

-“The Quiet Revolution” (1999), online: Marianopolis College <<http://faculty.marianopolis.edu>>.

Berger, J.M. “Exclusive: U.S. Gave Millions to Charity Linked to al Qaeda, Anwar Awlaki”, *Intelwire.com* (14 April 2010) online: Intelwire.com <<http://news.intelwire.com>>.

Bergmeister, Christian, “Transport Minister defends invasive search of senior”, *The [Ottawa] Citizen* (11 January 2010) online: Postmedia Network Inc. <<http://www.canada.com>>.

Bethami A. Dobkin, “The Television Terrorist” in J. David Slocum, ed, *Terrorism, Media, Liberation*, (NJ, US; Rutgers, 2005), 121.

Bhabha, Faisal A. “Tracking ‘Terrorists’ or Solidifying Stereotypes? Canada’s Anti-Terrorism Act in Light of The Charter’s Equality Guarantee” (November 2003) 16 W.R.L.S.I. 95.

Biersteker, Thomas J. & Sue E. Eckert, eds, *Countering the financing of terrorism* (Abingdon, Oxon; New York, NY: Routledge, 2008).

Black Debra, “Canadians who died in 9/11 attack honoured” *The [Toronto] Star* (12 September 2009) online: Toronto Star Online <<http://www.thestar.com>>.

Blaise, Clark & Bharati Mukherjee, *The Sorrow and the Terror: The Haunting Legacy of the Air India Tragedy* (Markham, Ont.: Viking, 1987).

Bocabella, John, “Profiling the Anti-Terrorism Act: Dangerous and Discriminatory in the Fight Against Terrorism” (2003) 9 Appeal 17-31.

Bolan, Kim, *Loss of Faith: How the Air-India Bombers Got Away with Murder* (Toronto, Ont.: McClelland & Stewart Ltd., 2005).

Bongar, Bruce, Lisa M. Brown, Larry E. Beutler, James N. Breckenridge & Philip G. Zimbardo, eds, *Psychology of Terrorism*, (New York, NY: Oxford University Press, 2007).

Bradshaw, James. "Protesters decry treatment of bomb plot suspects", *The Globe and Mail* (23 April 2008) online: The Globe and Mail Inc. <<http://www.theglobeandmail.com>>.

Breinholt, Jeff, "Introduction" (2003) 51:4 United States Attorney's Bulletin, online: <<http://www.usdoj.gov>>.

Bruno, Greg, "Backgrounder: Inside the Kurdistan Workers Party (PKK)", *Council on Foreign Relations* (19 October 2007), online: Council on Foreign Relations <<http://www.cfr.org>>.

Burleigh, Micheal, *Blood and Rage: a Cultural History of Terrorism*, (New York, NY: HarperCollins Publishers, 2009).

Canada, *Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, Research Papers, Volume 1: Threat Assessment RCMP/CSIS Co-operation* (Ottawa; Minister of Public Works and Government Services, 2010).

- *Research Papers, Volume 2: Terrorism Financing, Charities and Aviation Security* (Ottawa; Minister of Public Works and Government Services, 2010).

- *Research Papers, Volume 3: Terrorism Prosecutions* (Ottawa; Minister of Public Works and Government Services, 2010).

- *Research Papers, Volume 4: The unique Challenges of Terrorism Prosecutions: Towards a Workable Relation Between Intelligence and Evidence* (Ottawa; Minister of Public Works and Government Services, 2010).

- "Dossier 2: Terrorism, intelligence and law enforcement: Canada's response to Sikh terrorism", online: Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 <http://www.ialeia.org/files/docs/dossier2_ENG.pdf>.

- "Opening Statement", (21 June 2006) online: Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 <<http://www.majorcomm.ca/en>>.

- "Update on the Second and Final report of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182" (16 December 2009) online: Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 <<http://www.majorcomm.ca/en>>.

- *The Families Remember* (Ottawa: Minister of Public Works and Government Services, 2007).

Canada, *Debates of the Senate*, 37th Parl, 1st Sess, vol 139 no 75 (29 November 2001) online: Parliament of Canada <<http://www.parl.gc.ca>>.

-*House of Commons Debates*, 37th Parl, 1st Sess, vol 137 no 95 (16 October 2001) online: Parliament of Canada <<http://www.parl.gc.ca>>.

-*House of Commons Publications*, "Private members, business: War Measures Act", 35th Parl, 1st Sess, no 177 (March 27, 1995) online: Parliament of Canada <<http://www.parl.gc.ca>>.

-*Independent Panel on Canada's Future Role in Afghanistan*, "Final Report", John Manley, Chair (January 2008), online: Government of Canada Publications <<http://publications.gc.ca>>.

-*Parliament*, "Proceedings of the Special Senate Committee on the Anti-terrorism Act: Issue 16 - Evidence - Evening meeting", Joyce Fairbairn, Chair (17 October 2005), online: Parliament of Canada <<http://www.parl.gc.ca>>.

-*Prime Minister Stephen Harper* "PM honours the victims of 9/11 and the sacrifices of Canadians in the fight against terrorism", (11 September 2009), online: Office of the Prime Minister <<http://www.pm.gc.ca>>.

-*Transport*, "Government of Canada invests in full body scanners and behaviour screening to further enhance security at Canadian airports", (5 January 2010) online: Transport Canada <<http://www.tc.gc.ca>>.

Canada, *Department of Justice*, "Backgrounder: Investigative Hearings and the Recognizance with Conditions in the *Criminal Code*" (2007) online: Department of Justice Canada <<http://www.justice.gc.ca>>.

- "The Anti-Terrorism Act FAQ's" (20 June 2008), Department of Justice Canada <<http://www.justice.gc.ca>>.

Canadian Institute for the Administration of Justice, *Terrorism, Law and Democracy: How is Canada changing following September 11?* (Montreal, Quebec: Editions Themis, 2002).

Carr, Matthew, *The Infernal Machine: A History of Terrorism*, (New York; London: The New Press, 2006).

Casey, Kevin, "The Story of a House", *Aras an Uachtarain* online: <<http://www.president.ie>>.

Castillo, Mariano, "Shining Path leader says it's defeated", *CNN* (7 December 2011), online: Cable News Network <<http://edition.cnn.com>>.

CATSA, "Full body scanner" (3 March 2011) online: Canadian Air Transport Security Authority <<http://www.catsa-acsta.gc.ca>>.

- "Millimetre Wave Imager: Public Summary – Privacy Impact Assessment" (3 November 2009) online: Canadian Air Transport Security Authority, <<http://www.catsa-acsta.gc.ca>>.

CBC News, -“Toronto 18’ case: Key events in the case”, *CBC News* (2 June 2008), online: CBC News <<http://www.cbc.ca>>.

- “20-year-old convicted in Toronto terror plot”, *CBC News* (25 September 2008), online: CBC News <<http://www.cbc.ca>>.
- “4th pipeline bombing in northeastern B.C.”, *CBC News* (5 January 2009), online: CBC News <<http://www.cbc.ca>>.
- “6 face explosives charges in alleged plot”, *CBC News* (5 June 2006), online: CBC News <<http://www.cbc.ca>>.
- “6th bomb at B.C. pipeline causes gas leak”, *CBC News* (4 July 2009), online: CBC News <<http://www.cbc.ca>>.
- “Abdelrazik says still fighting ‘terrorist’ label: Montrealer's name is off UN terror blacklist but wants it abolished”, *CBC News* (1 December 2011) online: CBC News <<http://www.cbc.ca>>.
- “Accused ‘inspired by al-Qaeda’, say police”, *CBC News* (4 June 2006) online: Anser Law Professional Corporation <<http://www.anserlaw.com>>.
- “Afghanistan. In the line of Duty: Canada’s casualties”, *CBC News* (31 October 2011), online: CBC News <<http://www.cbc.ca>>.
- “Agents watched bomb plot suspects for more than 6 months”, *CBC News* (7 July 2006), online: CBC News <<http://www.cbc.ca>>.
- “Al Qaeda Skimming Charity”, *CBC News* (7 June 2004), online: CBC News <<http://www.cbc.ca>>.
- “Another ‘Toronto 18’ member pleads guilty”, *CBC News* (20 January 2010), online: CBC News <<http://www.cbc.ca>>.
- “B.C. pipeline bombings 3 years old with no charges laid”, *CBC News* (11 October 2011), online: CBC News <<http://www.cbc.ca>>.
- “Bin Laden death ends 10-year manhunt”, *CBC News* (1 May 2011), online: CBC News <<http://www.cbc.ca>>.
- “Body scanners coming to Canadian Airports”, *CBC News* (5 January 2010), online: CBC News <<http://www.cbc.ca>>.
- “CBC building in Toronto may have been target”, *CBC News* (6 June 2006), online: CBC News <<http://www.cbc.ca>>.
- “EnCana bomb letter received by B.C. paper”, *CBC News* (15 April 2010), online: CBC News <<http://www.cbc.ca>>.
- “In Depth: Afghanistan. Canada in Afghanistan”, *CBC News* (10 February 2009), online: CBC News <<http://www.cbc.ca>>.
- “In Depth: ETA Timeline”, *CBC News* (9 January 2007), online: CBC News <<http://www.cbc.ca>>.
- “In Depth: Parti Quebecois, timeline”, *CBC News* (16 November 2005), online: CBC News <<http://www.cbc.ca>>.
- “In Depth: The Bombing of Flight 182: Air India”, *CBC News* (25 September 2006), online: CBC News <<http://www.cbc.ca>>.
- “In Depth: Toronto bomb plot case. Background: Mubin Shaikh”, *CBC News* (15 July 2006), online: CBC News <<http://www.cbc.ca>>.
- “Lawyers for bomb plot suspects upset over publication ban”, *CBC News* (12 June 2006), online: CBC News <<http://www.cbc.ca>>.
- “Man sentenced, then freed, after involvement in Toronto bomb plot”, *CBC News*

(22 May 2009), online: CBC News <<http://www.cbc.ca>>.
-“McCain defends Napolitano, insists 9/11 perpetrators came from Canada”, *CBC News* (24 April 2009), online: CBC News <<http://www.cbc.ca>>.
-“More sabotage feared after 2nd pipeline bombed in northern B.C.”, *CBC News* (16 October 2008), online: CBC News <<http://www.cbc.ca>>.
-“National Security Forces arrest at least 8 in Toronto raids”, *CBC News* (2 June 2006), online: CBC News <<http://www.cbc.ca>>.
-“Plot suspects appear in court”, *CBC News* (3 June 2006), online: CBC News <<http://www.cbc.ca>>.
-“RCMP probe pipeline sabotage in northern B.C.”, *CBC News* (14 October 2008), online: CBC News <<http://www.cbc.ca>>.

CCR, “Questions about Canada’s Security Agenda... and its impact on Refugees & Immigrants: Are Canada’s Immigration Laws too Lax?”, Canadian Council for Refugees, online: <<http://ccrweb.ca/Security.htm>>.

Chavis, Jason C. “Full Body Scan Image for Airport Screening”, Michele McDonough, ed, (13 March 2010) online: Bright Hub Inc. <<http://www.brighthub.com>>.

Clarke, W. Alan, “Rendition to Torture: A Critical Legal History”, 62 Rutgers L. Rev. 1 2009-2010 (HeinOnline).

Clarke, W. Alan & Laurelyn Whitt, “Problem Without Borders: A Comment on Garrett’s *Judging Innocence*”, 33 Queen’s L.J. 619 2007-2008 (HeinOnline).

CNN, “Transcript of President Bush’s address”, *CNN News* (21 September 2001), online: Cable News Network <<http://articles.cnn.com>>.

Costigan, Sean S. & David Gold, ed, *Terronomics* (Hampshire, England ; Burlington, USA : Ashgate Publishing, 2007).

Coughlan, Geraldine, “Teo van Gogh: Controversial film-maker”, *The Independent* (4 November 2004), online: The Independent <<http://www.independent.co.uk>>.

Crelinsten, Ronald D., “The Internal Dynamics of the FLQ During the October Crisis of 1970” in David C. Rapoport, ed, *Inside Terrorist Organizations*, 2d ed (Great Britain: Frank Cass Publishers, 2001) 59.

Crenshaw, Martha, ed., *Terrorism in Context*, (University Park, Pa: Pennsylvania University Press, 1995).

CTV News, “Timeline: the Parti Quebecois Political History”, *CTV News* (12 March 2003), online: CTV News <<http://www.ctv.ca>>.
-“W5: Behind the pipeline bombings in northern B.C.”, *CTV News* (23 January 2010), online: CTV News <<http://www.ctv.ca>>.

Daniels, Dan, ed, *Quebec Canada and the October Crisis* (Montreal, Que : Black Rose Books Ltd., 1973).

Daniels, Ronald J., Patrick Macklem & Kent Roach, eds, *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, (Toronto : University of Toronto Press, 2001).

De Vault, Carole & William Johnson, *The Informer: Confessions of an Ex-Terrorist* (Toronto, Ont.: Fleet Books, 1982).

Della Cananca, G. "Global Security and Procedural Due Process of Law Between the United Nations and the European Union: Yassin Abdullah Kadi & Al Barakat International Foundation v Council" (2008-09) 15 *Columbia Journal of European Law*, 511.

Diken, Bulent, *Nihilism*, (Florence, KY, US: Routledge, 2008).

Dobkin, Bethami A., *Tales of Terror: Television News and the Construction of the Terrorist Threat*, (New York, NY: Praeger, 1992).

Donohue, Laura K., "Anti-Terrorist Finance on the United Kingdom and United States" (Winter 2006) *Michigan Journal of International Law*, Vol. 27: 303.

Draghici, C. "Suspected Terrorists' Rights Between the Fragmentation and the Merger of Legal Orders: Reflections in the Margin of the Kadi ECJ Appeal Judgement" (2009) 8 *Washington University Global Studies Law Review* 627.

Duffy, Jonathan, "Rich Friends in New York", *BBC News* (26 September 2001), online: BBC News <<http://www.bbc.co.uk>>.

EGMONT Group, "Egmont Group Annual Report 2009-2010", online: The Egmont Group of Financial Intelligence Units <<http://www.egmontgroup.org>>.

FINTRAC, "FINTRAC Annual Report 2008", online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.

- "FINTRAC Annual Report 2009", online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>..

- "FINTRAC Annual Report 2010", online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>..

- "FINTRAC Annual Report 2011", online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.

- "Money Laundering and Terrorist Activity Financing Watch: April-June 2009", online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.

- "Money Laundering and Terrorist Activity Financing Watch: April-June 2010", online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.

- “Money Laundering and Terrorist Activity Financing Watch: April-June 2011”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.
- “Money Laundering and Terrorist Activity Financing Watch: January-March 2010”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.
- “Money Laundering and Terrorist Activity Financing Watch: January-March 2011”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.
- “Money Laundering and Terrorist Activity Financing Watch: July-September 2009”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.
- “Money Laundering and Terrorist Activity Financing Watch: July-September 2010”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.
- “Money Laundering and Terrorist Activity Financing Watch: October 2008-March 2009”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca/publications/watch-regard/2009-04-eng.asp>>.
- “Money Laundering and Terrorist Activity Financing Watch: October-December 2009”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.
- “Money Laundering and Terrorist Activity Financing Watch: October-December 2010”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.
- “Who Must report”, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca>>.

Fournier, Louis, *F.L.Q.: The Anatomy of an Underground Movement*, translated by Edward Baxter (Toronto, Ont.: NC Press Limited, 1984).

Fournier, Suzanne “High-Tech airport scanners won’t stop a determined terrorist: terror expert” *Global News* (4 January 2010), online: CW Media Inc. <<http://www.globalnews.ca>>.

Freeze, Colin “Charges stayed against four terrorism suspects”, *The Globe and Mail* (4 April 2008) online: The Globe and Mail Inc. <<http://www.theglobeandmail.com>>.

-“Toronto 18 terror suspects become West Point case study”, *The Globe and Mail* (4 April 2008) online: The Globe and Mail Inc. <<http://www.theglobeandmail.com>>.

-“Terror plot leader apologizes to Canadians”, *The Globe and Mail* (15 January 2010) online: The Globe and Mail Inc. <<http://www.theglobeandmail.com>>.

Frey, Bruno S., *Dealing With Terrorism – Stick or Carrot* (Cheltenham, UK; Northampton, MA: E. Elgar, 2004).

Friscolanti, Michael “God willing, we will get victory: The Crown releases wiretap evidence against the alleged ‘Toronto 18’ terrorists”, *Maclean’s* (26 March 2008) online:

Maclean's <<http://www.macleans.ca>>.

Galicki, Zdzislaw, "International Law and Terrorism" *American Behavioral Scientist* (February 2005) 48:6, 743 (Sage Publications).

Gallant, M. Michelle, *Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies*. (Cheltenham, UK ; Northampton, MA : E. Elgar, 2005).

-"Funds, Rights and Terror: Her Majesty's Treasury v Mohammed Jabar Ahmed and Others", (2010) 21 KLJ 425.

Ganor, Boaz, "Is One Man's Terrorist another Man's Freedom Fighter?" *ICT* (nd) online: International Institute for Counter-Terrorism <<http://www.ict.org.il>>.

Glicksberg, Charles I. "The Literature of Nihilism", *Contemporary Literature*, online: <<http://www.jstor.org>>.

Global Security "Jemaah Islamiya (JI)" online: Global Security.org <<http://www.globalsecurity.org>>.

Grant, Kathy, "The Unjust Impact of Canada's Anti-Terrorism Act on Accused's Right to Full Answer and Defence" (November 2003) 16 W.R.L.S.I. 137.

Gray, Jefferson, "Holy Terror: The Rise of the Order of Assassins", *Historynet.com* (24 February 2010) online: Weider History Group <<http://www.historynet.com>>.

Guillaume, Gilbert, "Terrorism and International Law" (2004) 53:3 ICLQ 537.

Gurule, Jimmy, "Unfunding Terror: The Legal Response to the Financing of Global Terrorism", (17 June 2008) *Notre Dame Legal Studies* 08-13 (SSRN).

Hanson, Stephanie, "Backgrounder, FARC, ELN: Colombia's Left Wing Guerrillas" *CFR* (19 August 2009), online: Council on Foreign Relations <<http://www.cfr.org>>.

Henley, Jon, "Controversial Dutch Film Director Shot Dead in Street", *The Guardian* (3 November 2004), online: The Guardian News and Media <<http://www.guardian.co.uk>>.

Horsley, Richard A. "The Sicarii: Ancient Jewish "Terrorists" ", *The Journal of Religion*, 59:4 (October 1979), 435, online: The Journal of Religion <<http://www.jstor.org>>.

Jenkins, David, "In Support of Canada's Anti-Terrorism Act: A Comparison of Canadian, British and American Anti-Terrorism Law" (2003), 66 *Sask. L. Rev.* 419-454.

Joscelyn, Thomas, "The Libyan Terrorist: Muammar Gaddafi", *The Weekly Standard* (24 February 2011) online: The Weekly Standard LLC <<http://www.weeklystandard.com>>.

Kashmeri, Zuhair & Brian McAndrew, *Soft Target: How the Indian Intelligence Service Penetrated Canada* (Toronto: James Lorimer & Company, 1989).

Kressel, Neil J., *Mass Hate: the Global Rise of Genocide and Terror*, (New York; London: Plenum Press, 1996).

Laqueur, Walter & Yonah Alexander; eds, *The Terrorism Reader: A Historical Anthology*, Revised Edition (New York, NY; Scarborough, ON: Nal Penguin, 1987)

Loomis, Dan G., *Not Much Glory: Quelling the F.L.Q.* (Toronto, Ont.: Deneau Publishers, 1984).

Lopez, Laura "Slaughter at the Golden Temple: Mrs. Gandhi risks her future in an attack on Sikh extremists" *Sikh Museum.com* (18 June 1984) online: Sikh Museum.com <<http://www.sikhmuseum.com>>.

Macleod, Ian, "Terror analyst says 'Toronto 18' suspects posed small threat", *National Post* (6 March 2008) online: Postmedia News <<http://news.nationalpost.com>>.

Matas, David, "The New Laws on Terrorist Financing" (2004) 4 *Asper Rev. Inter. Bus. & Trade L.* 145-154.

McDonnell, Thomas M. "The West's Colonization of Muslim Land and the Rise of Islamic Fundamentalism", *The United States: International Law and the Struggle against Terrorism States*, (2010) Routledge, Chapter 1 (SSRN).

McIssac, Barbara A., "Money Laundering Regulations Regarding Real Estate Developers" (May 2008) 27 *Nat. Banking L. Rev.* 19-20.

McLoughlin, Barry & Kevin McDermott, *Stalin's Terror: High Politics and Mass Repression in the Soviet Union*, (Palgrave MacMillan, 2003).

MERIP, "The Palestine Liberation Organization", online: Middle East Research and Information Project <<http://www.merip.org>>.

Meserve, Jeanne, Mike M. Ahlers, "Body scanners can store, send images, group says" *CNN* (11 January 2011), online: Cable News Network <<http://edition.cnn.com>>.

Molony, Senan, *The Phoenix Park Murders: conspiracy, betrayal & retribution*, (Dublin: Mercier Press, 2006).

Morf, Gustave, *Terror in Quebec: Studies of the FLQ* (Toronto; Vancouver: Clarke, Irwin, 1970).

Mulholland, Angela "Airport full-body scanners: are they safe?", *CTV News* (10 January 2010), online: CTV News <<http://www.ctv.ca>>.

Murphy, Daniel, "Canada's Laws on Money Laundering & Proceeds of Crime: The international Context" (2004) 4 *Asper Rev. Inter. Bus. & Trade L.* 63-84.

Nav Canada, "Nav Canada and the 9/11 crisis", online: Nav Canada <<http://www.navcanada.ca>>.

Niemczak, Peter & Philip Rosen, "Emergencies Act" (10 October 2001), online: Government of Canada <<http://publications.gc.ca>>.

Northcote, Jennifer, Daniella Laise & Alex Colangelo, "Changes to Anti-Money Laundering and Anti-Terrorist Financing Law Imposes New Reporting Obligations" (May 2008) 27 *Nat. Banking L. Rev.* 17-19.

O'Donnell, Daniel "International treaties against terrorism and the use of terrorism during armed conflict and by armed forces", ICRC (31 December 2006) online: International Committee of the Red Cross <<http://www.icrc.org>>.

O'Meara, Dina "WestJet exec says consumers will pay for increased security" *Canwest News Service* (21 January 2010) online: Postmedia Network Inc. <<http://www.canada.com>>.

O'Sullivan, Noel, ed., *Terrorism, Ideology, and Revolution*, (Boulder, Colorado: Westview Press, 1986).

Ontiveros, Suzanne Robitaille, editor, *Global Terrorism: a Historical Bibliography* (Santa Barbara, California; Oxford, England: ABC-Clio, 1986).

Parry, Albert, *Terrorism: from Robespierre to Arafat* (New York, NY: The Vanguard Press, Inc, 1976).

Pelletier, Gerard, *The October Crisis*, Translated by Joyce Marshall (Toronto; Montreal: McClelland and Stewart Limited, 1971).

Peters, Gretchen, *Seeds of Terror: How Heroin is Bankrolling The Taliban and Al Qaeda*, (New York: Thomas Dunne Books, 1st. ed., 2009)

Prados, John, ed, *America Confronts Terrorism: Understaing the Danger and How to Think About It. A Documentary Record* (Chicago: Ivan R. Dee, 2002).

Ramraj, Victor V. Michael Hor & Kent Roach, *Global Anti-Terrorism Law and Policy* (Cambridge: University Press, 2005).

Record, Jeffrey, *Bounding the Global War on Terrorism*, online: US Strategic Studies Institute <<http://www.strategicstudiesinstitute.army.mil/pdffiles/pub207.pdf>>.

Resolution 1373, 2001, UN Security Council 2001

Resolution 49/60, 1994, UN General Assembly 1994.

Roach, Kent, *September 11: Consequences for Canada* (Montreal & Kingston: McGill-Queen's University Press, 2003).

-“The Role and Capacities of Courts and Legislatures in Reviewing Canada's Anti-Terrorism Law, Special Volume: the Rule (and Role) of Law and Politics in a Post 9/11 World” (2008), 24 WRLSI 5.

Rotstein, Abraham, ed, *Power Corrupted: The October Crisis and the Repression of Quebec* (Toronto, Ont.: New Press Toronto, 1971).

Rubenstein, Richard E, *Alchemists of Revolution: Terrorism in the Modern World*, (New York, NY : Basic Books, 1897).

Sample, Michelle S., *Canada's Anti-Terrorism Act: Creating a Paradigm of Insecurity?* (M Arts, Simon Fraser University 2008), SFU, online: <<http://summit.sfu.ca>>.

SATP, “Liberation Tigers of Tamil Eelam (LTTE)”, online: South Asia Terrorism Portal <<http://www.satp.org>>.

Saywell, John, *Quebec 70: a Documentary Narrative* (Toronto: University of Toronto Press, 1972).

Shore, Randy “Canadians support 3D body scans for airport security” *The [Vancouver] Sun* (7 January 2010) online: Postmedia Network Inc. <<http://www.canada.com>>.

Siddiqui, Haroon “A balance sheet on post-9/11 Canada”, *The [Toronto] Star* (17 December 2009) online: Toronto Star Online <<http://www.thestar.com>>.

Simard, Francis, *Talking it Out: The October Crisis from Inside*, translated by David Homel (Montreal, Que.: Guernica Editions, 1987).

Siri, Agrell & Daniel Leblanc “Specially trained personnel, body scanners to join terrorism fight”, *The Globe and Mail* (5 January 2010) online: The Globe and Mail Inc. <<http://www.theglobeandmail.com>>.

Smith, Denis, *Bleeding Hearts... Bleeding Country: Canada and the Quebec Crisis* (Edmonton: M.G. Hurting Ltd, 1971).

Sterling, Toby, “Attacks leave Dutch reeling”, *The Guardian* (10 November 2004), online: The Guardian News and Media <<http://www.guardian.co.uk>>.

Stewart, James, *The FLQ: Seven Years of Terrorism; a special report by the Montreal Star*, design by Robert R. Reid, foreword by Frank B. Walker (Richmond Hill, Ontario: Montreal Star and Simon & Schuster of Canada Ltd. 1970).

Stone, Laura "Full-body scanner operating at Pearson" *Canwest News Service* (21 January 2010) online: Postmedia Network Inc. <<http://www.canada.com>>.

-"Full body scanners in Toronto response to Detroit terror scare" *The [Windsor] Star* (22 January 2010) online: Windsor Star Online <<http://www.windsorstar.com>>.

-"What to expect from full-body scanners" *Canwest News Service* (7 January 2010) online: Postmedia Network Inc. <<http://www.canada.com>>.

Sullivan, A. M, "Story of Ireland; Chapter XCII (continued)", *Library Ireland*, online: <<http://www.libraryireland.com>>

Tam, Pauline "Some full body scanners not without cancer risk: experts" *Canwest News Service* (21 January 2010) online: Postmedia Network Inc. <<http://www.canada.com>>.

Terrorism Research, "Early History of Terrorism", online: Terrorism Research <<http://www.terrorism-research.com/history/early.php>>.

Tetley, William, *The October Crisis, 1970: An Insider's View* (Montreal & Kingston; London; Ithaca: McGill-Queen's University Press, 2007)

The Guardian, "Eta", *The Guardian* (nd), online: The Guardian News and Media <<http://www.guardian.co.uk>>.-"Eta: a short history - timeline", *The Guardian* (21 October 2011), online: The Guardian News and Media <<http://www.guardian.co.uk>>.

The Ottawa Citizen, "Difficult balance tips Canada's terror trials", *The [Ottawa] Citizen* (19 April 2008) online: Postmedia Network Inc. <<http://www.canada.com>>.

-"U.S. Senator revives 9/11 myth about Canada", *The [Ottawa] Citizen* (20 December 2005) online: Postmedia Network Inc. <<http://www.canada.com>>.

The Zimbabwe Mail, "African Leaders cannot fool us on the West's Double Standards on Gaddafi", Editorial, *The [Zimbabwe] Mail* (22 March 2011) online: The Zimbabwe Mail <<http://www.thezimbabwemail.com>>.

Thomas, Joscelyn, "The Libyan Terrorist: Muammar Gaddafi", Blog, *The Weekly Standard* (24 February 2011), online: The Weekly Standard <<http://www.weeklystandard.com>>.

USA, "The 9/11 Commission Report", Thomas H. Kean, Chair & Lee H. Hamilton, Vice Chair online: National Commission on Terrorist Attacks Upon the United States <<http://www.9-11commission.gov/report/911Report.pdf>>.

-*FBI*, "FBI 100: First Strike: Global Terror in America" (26 February 2008), online: Federal Bureau of Investigation <<http://www.fbi.gov>>.

Vallières, Pierre, *White Niggers of America*, translated by Joan Pinkh (Toronto; Montreal: McClelland and Stewart Limited, 1972, 4th printing).

Van Schaack, Beth, "Finding the Tort of Terrorism in International Law" (January 21, 2009). Santa Clara Univ. Legal Studies Research Paper No. 09-03; Review of Litigation, Vol. 28, No. 2, 2009, (SSRN).

Waller, Paul & Katrin Roth von Szepesbela, "Silence is Golden: or is it?: FINTRAC and the Suspicious Transaction Reporting Requirements for Lawyers" (2004) 4 *Asper Rev. Inter. Bus. & Trade L.* 85-130.

Wander, Andrew, "A history of terror: Al-Qaeda 1988-2008", *The Guardian, The Observer* (13 July 2008) online: The Guardian News and Media <<http://www.guardian.co.uk>>.

Warde, Ibrahim, *The Price of Fear: The Truth behind the Financial War on Terror*, (Berkley & Los Angeles, California: University of California Press, 2007).

Webel, Charles P. *Terror, Terrorism, and the Human Condition*, (New York, NY: Palgrave MacMillan, 2004).

Weinreb, Arthur, "Defence Minister acknowledges 9/11 deaths of Canadians", *The [Canada] Free Press* (24 January 2007) online: Canada Free Press <<http://www.canadafreepress.com>>.

White, Marianne "Canadian firm working to make full body scanners less revealing", *Canwest News Service* (8 January 2010) online: Postmedia Network Inc. <<http://www.canada.com>>.

Whittaker, David J., *The Terrorism Reader*, 3rd ed. (London; New York: Routledge, 2007).

Wilshire, Bruce, *Get 'em all! Kill 'em!: Genocide, Terrorism, Righteous Communities*, (USA: Lexinton Books, 2005).

Zeitlin, Solomon, "The Sicarii and Masada", *The Jewish Quarterly Review, New Series*, 57:4 (April 1967), 251 at 259, online: The Jewish Quarterly Review <<http://www.jstor.org>>.

Ziegler, K. "Strengthening the Rule of Law, but Fragmenting International Law: The Kadi Decision of the ECJ from the Perspective of Human Rights" *University of Oxford Legal Research Paper Series*, Paper No 11/2009, March 2009.