

A Publication of the
American Institute for Contemporary German Studies
The Johns Hopkins University

**COMBATING THE
TERRORIST-CRIMINAL NEXUS**

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Stiftung Wissenschaft und Politik

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COMBATING THE TERRORIST-CRIMINAL NEXUS

Jens van Scherpenberg

INTRODUCTION: CATCH THE FISH AND DRAIN THE POND

Immediately after the September 11 terrorist attacks policy makers in the United States as well as in Europe realized that this new and pernicious threat cannot be addressed by traditional security policy means alone. International terrorist organizations will need some territorial sanctuaries to train their manpower and from which to operate – but these need not be states under their control. Some control of territory within failing states will do, as will separatist enclaves with a supportive population. Terrorist organizations will also need financial resources to sustain their members, to acquire weapons and other equipment, in order to carry out their missions in the target countries. However, the required resources are relatively small compared to the vast amount of money from illegal sources circulating through international money laundering networks.

Terrorism, to adapt a famous quote by Mao Zedong, can be seen as some deadly fish that needs the water of a supportive population in which to breathe, breed and move freely – and from which to strike. Thus, any comprehensive antiterrorism policy will have to take aim at the fish and its resources. But it should also try to drain the ponds of discontent, resentment, anti-modernism and bad governance in which terrorism breeds and from which it is operating. Both tasks have been on the international agenda prior to the terrorist attacks of September 11. The need to fight organized crime and money laundering, the criminal infrastructure on which terrorist organizations rely, has been an internationally acknowledged political aim for more than a decade. Global inequality and bad governance, which deny large parts of the population in many developing countries access to the wealth-creating effects of globalization, have increasingly been viewed as a major problem in recent years. For both issues, the September 11 attacks served as a catalyst that helped generate the political momentum needed to overcome the resistance by vested interests among business as well as public institutions. The enhanced role of the multilateral Financial Action Task Force on Money Laundering (FATF) and the speeding-up of national legislation against money laundering in the United States and the European Union would not have been possible without the traumatic experience of September 11. Neither would the WTO Ministerial in Doha in November 2001 have been successfully concluded by offering substantial concessions to developing countries, not to mention the U.S. House of Representatives narrowly voting in favor of the “Trade Promotion Authority” on December 6, 2001.

The latter developments are important, as they sent some clear signals to developing countries: If they are willing to be part of an open, transparent and rule-based globalized economy they can profit from increased access to the markets of the major industrialized nations. However, the immediate priority within the economic dimension of a comprehensive and persistent anti-terrorist strategy is the fight against the terrorist-criminal infrastructure.

The attacks of September 11, 2001 have galvanized policy makers in the United States as well as in Europe into action to tackle this infrastructure. By speeding up legislative processes they put an end to the hesitant approach in dealing with organized crime and money laundering which had prevailed in many Western countries through most of the 1990s. But in the field of economic and financial sanctions and regulations it remains to be seen whether they are fighting the right war.

A HIERARCHY OF EVIL

The evidence that has emerged from intelligence and investigative efforts since September 11 makes it possible to draw an ever more detailed picture of the dense network of financial support behind the attacks. The supporters are operating under various legal covers: charities, legitimate businesses, offshore financial institutions or semi-legal remittance services. These are closely intertwined with the widespread and tightly knit money-laundering network that has been expanding particularly during the 1990s, due to the surge of transnational organized crime.

Prior to the 1990s, most Western industrialized countries used to make a clear – and even hierarchical - distinction between the threat from terrorist or “insurgent” organizations on the one hand, and organized crime and money laundering on the other hand. The former was to be dealt with by security policy means, i.e. by intelligence, police and military forces. In contrast, the destabilizing effects of organized crime and money laundering on economic and social stability were considered a minor threat. This problem could be dealt with by financial authorities within the context of their broader economic policies and according to the interests of the – legal – financial sector. This distinction was warranted by the diverging motives of terrorism and organized crime.

Terrorism

Terrorists pursue political aims of destabilizing or destroying the political and social structures of countries or disrupting international cooperation, e.g. by killing exponents of state power and business or by simply demonstrating the vulnerability of the system they despise. Several European countries have had their own experience with terrorism, mostly left wing in the 1970s and early 1980s, later shifting to right wing action. However, these were mostly fringe activities, without a supportive social and political environment. The same was true for the Militia movement in the United States that resulted in the Oklahoma bombing in 1995. This kind of terrorist challenge was dealt with rather vigorously and effectively, except in those specific cases like Northern Ireland or the Basque province in Spain where terrorist organizations enjoy some popular support. Links to organized crime were not considered an issue, although at least in Italy there was some evidence pointing in this direction. With differing emphasis, the United States and its European allies focused on the support given to terrorist and insurgent movements in Europe, Africa, Asia and Latin America by certain “rogue” states, as they were widely referred to during the Clinton Administration. Some of those insurgent movements, including the Taliban and more recently the Albanian UCK in Kosovo, were initially financed, trained and equipped by Western, mostly American undercover operations, as long as they were fighting “on our side.”

Organized Crime

Organized crime, in contrast, is profit-driven. Criminal organizations are parasitic, seeking illicit gains by violating the law, whether individual and property rights, national laws regulating markets for goods and services or immigration laws. Moreover, as parasites, they are not primarily bent to destroy the system that feeds them. Running highly profitable enterprises, they easily blend in with normal business life, were it not for the more socially disruptive effects of their activities. Particularly, the proceeds from their businesses were welcome inflows in many financial centers around the world as soon as their criminal origin was not obvious anymore. An increasing number of financial institutions even helped to overcome this initial hurdle of money laundering. In a period of rapidly integrating financial markets and with deregulation of financial services capturing the *zeitgeist*, the competitive

pressure on banks and other financial institutions in international capital markets was not particularly favorable to implementing effective regulatory procedures against money laundering.

The fight against money laundering was not taken up by the major industrialized nations until 1989. At their Paris summit, the G-7 decided to create the Financial Action Task Force on Money Laundering (FATF). This institution was supposed to promote stricter regulations and guidelines for the financial sector as well as for financial regulators and supervisors. Financial institutions could thus be discouraged from allowing money laundering operations or participating in such operations themselves.

Corruption

Then there is corruption and bribery. It had been a business practice widely – albeit sometimes grudgingly – accepted as a common feature of, mostly, developing countries. After having enacted its own law against bribery, the Foreign Corrupt Practices Act, in 1977, the United States raised the issue within the OECD. In December 1997, the ensuing negotiations resulted in the signing of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The driving force of U.S. anti-corruption policy at the OECD, however, was trade policy. American firms saw themselves at a disadvantage vis-à-vis their competitors in the absence of similar legislation in Europe or Asia. The erosion of public administrations and of the rule of law as a result of pervasive corruption, which also invites penetration by organized crime, was not the primary issue in the OECD negotiations.

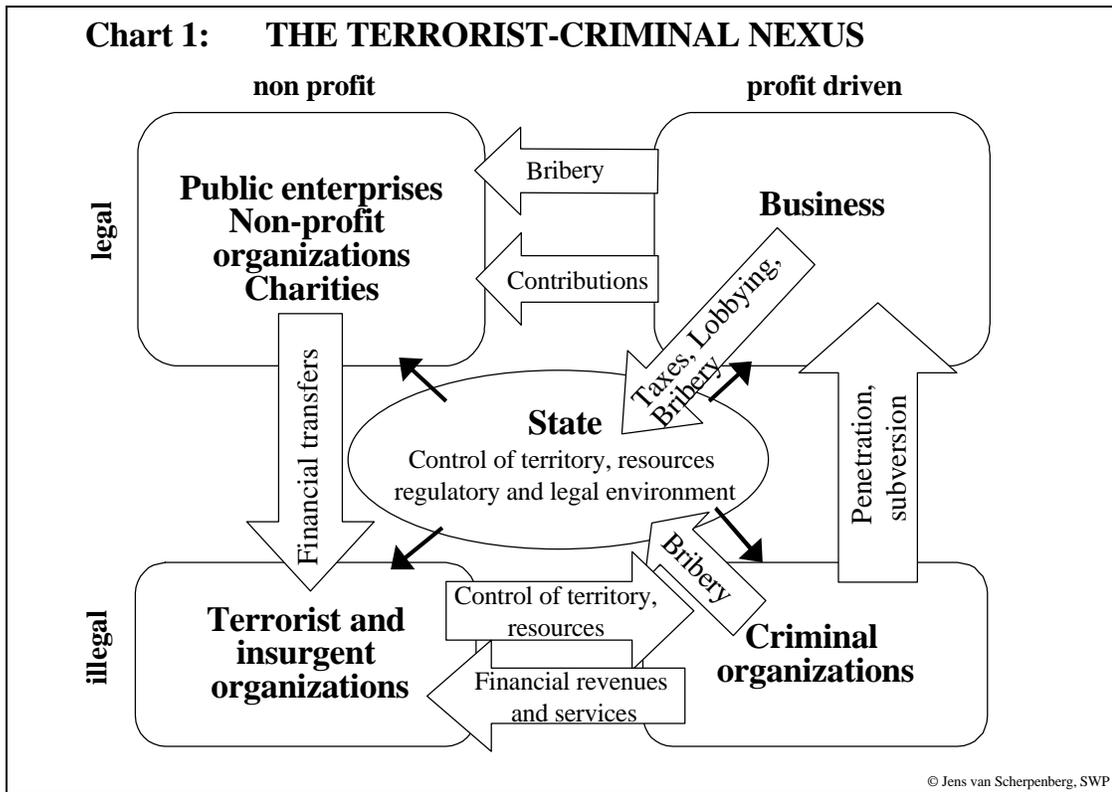
Not until the end of the 1990s did policy makers become aware that those three phenomena – terrorism, transnational organized crime, and corruption –are actually increasingly linked to one another.

THE EMERGING TERRORIST-CRIMINAL NEXUS

Parallel to the progress in global economic integration in the 1990s, integration has also evolved on the “dark side of globalization.” Two developments stand out.

- First, stronger links are to be observed between the non-profit driven, i.e. terrorist sphere and the profit-driven sphere of organized crime. Terrorist organizations such as Al Qaeda have privatized their financial resources, diffusing them into the dispersed and almost impenetrable financial network of organized crime.
- Second, and even more worrying is that the line between the legal and the illegal sphere is becoming blurred. On the one hand, legally operating entities such as charities have emerged as important financial supporters of terrorist organizations, thus replacing the “rogue states” most of which have backed out of supporting terrorism. On the other hand, organized crime seems to be increasingly penetrating the legal economy, with the help of enormous amounts of laundered money.

In a simple matrix, which shows the main links among the four areas and the state, Chart 1 attempts to illustrate this terrorist-criminal nexus that has emerged in recent years.



Terrorist organizations, no matter whether they have been operating in Colombia, in Afghanistan, in sub-Saharan Africa or in former Yugoslavia, all experienced the need to diversify their resource base. The less they could count on support from “sponsor states,” the more they have been engaged with organized crime. This is not a natural relationship, since organized crime, as a parasitic activity, is operating within the system, not necessarily against it. But terrorist organizations, too, have something to offer to criminal organizations. They may control where to grow and process illegal products such as opium or coca (e.g. Al Qaida and the Taliban in Afghanistan, the insurgent groups in Colombia) or where to illegally exploit and market mineral resources such as diamonds or certain strategic minerals (e.g. in Central and West Africa). Moreover, criminal organizations may sometimes deliberately link up with or even merge into terrorist or insurgent organizations in order to destabilize a country or region, thus creating favorable conditions for their business. The example closest to the EU is the connection between the Albanian Mafia and the UCK.

Although not a homogenous group of actors, organized crime is by far the biggest factor in the terrorist-criminal nexus, economically and probably also politically. According to IMF estimates, which are based on data from the mid-1990s, the total amount of money laundered annually from criminal business activities is in the range of 2-5 percent of the aggregate global GNP. At the time of the estimate, the corresponding amount was \$500 billion to \$1.5 trillion. Terrorist finance is just a small part of this vast sphere of illegal finance (the assets attributed directly to terrorist organizations that have been frozen so far amount to no more than a few hundred million dollars). Freezing terrorist assets, therefore, is quite unlikely to have a lasting effect on the access of terrorist organizations to financial resources. But

organized crime has more to offer to terrorists than its sophisticated money laundering services. Some of the major OC industries such as trafficking in human beings, illegal arms trade, forging of documents, cybercrime are valuable to terrorist organizations as well.

Last but not least, corruption and bribery, formerly called the lubricant of business in the less well-governed parts of the world, still is the lubricant that makes the multiple links between organized crime and the legal sphere work smoothly. Corruption corrupts, literally. It renders people susceptible to more corruption and makes them prone to blackmailing and thus is the main agent of subversion and penetration of legal businesses and state authorities (administration, legislative and sometimes even judiciary). The recent cases of corruption and illegal contributions to politicians in Germany and France have demonstrated vividly that corruption and corrupt political decision-making are by no means phenomena limited to badly governed developing countries far away. It is a positive sign that those cases were discovered and that (some of) the persons responsible were brought to justice. But then there is another major European country, Italy, whose government, for rather obvious reasons and, much to the dismay of its partners, is resolutely rolling back any progress in fighting organized crime, corruption and money laundering at home and blocking such progress within the EU.

FIGHTING TERRORISM'S ECONOMIC DIMENSION: MULTILATERALISM BY NECESSITY

Combating this terrorist-criminal nexus is no easy, quick or one-dimensional task, as was pointed out clearly enough by the Bush Administration in the wake of September 11. And it is a task that no single country can take on alone, not even the United States.

Therefore, expectations have grown in European countries since September 11 that the United States would be more inclined to embrace multilateralism in order to rally support for a comprehensive strategy against international terrorism, reversing the reluctant or outright negative attitude of the current Administration towards any policy smacking of global governance.

The Transatlantic Asymmetry of Powers

With regard to the security policy dimension, and the military response to terrorism and its sponsor states in particular, such expectations are unfounded. In dealing with the economic dimension of a sustained antiterrorist campaign, however, the U.S. government has quickly grasped the need for a multilateralist approach. This is good news, since economic and regulatory measures against the wider terrorist-criminal nexus will probably be more sustainable and thus more effective in the long run than current military operations which are bound to come to an end some time soon lest the broad antiterrorist coalition will disintegrate. But the U.S. administration's positive attitude towards multilateral action in this area also reflects the different realities in international economic as opposed to international security relations, the asymmetry between military and economic power. In the world economy there is no "sole superpower" to set the rules and to make sure that they are followed by other countries. The weapons of "economic warfare" available to the United States do not by themselves confer predominance. Notably the EU, ranking equal to the United States as an economic power, is in a position to deny the United States any success in applying economic sanctions to other countries or firms. Therefore, any effort to introduce stricter laws and regulations against money laundering and the financing of terrorist organizations worldwide has to rely on support from other major economic powers in order to create a level playing field for international financial markets.

As the predominant shapers of the international economic order, the United States and the EU are natural partners to join hands in this effort, and they have done so quite successfully since September 11. This was not a foregone fact. In Europe, in particular, governments and public opinion have been quite pleased to witness the United States rediscovering the value of the United Nations as well as of multilateral financial institutions. Those institutions, notably the International Monetary Fund and the FATF, though originally founded at the initiative of the United States, were not particularly popular with the current U.S. administration prior to September 11. As for the IMF, U.S. policy was determined to scale back massively its agenda to macroeconomic surveillance and short-term balance-of-payments support only. In its Annual Report of June 2001, the FATF had ranked the United States twenty-eighth among its twenty-nine members when it came to compliance with those twenty-eight of its forty recommendations that require specific regulatory action. And as recently as July 2001 the U.S. Secretary of the Treasury blocked an OECD proposal for a convention against harmful tax practices.

In the wake of September 11, the Bush Administration has not only performed an about-turn in its attitude towards anti-money-laundering but it has effectively tried to take the lead in this fight. In some regard, this has been easy: The international institutions involved with the fight against organized crime and money laundering, notably the FATF, the Financial Stability Forum (FSF) and the Bank for International Settlements (BIS), have already done substantial work in preparing the enforcement of strict regulatory standards for the financial sector. Apart from issuing a catalogue of recommendations to prevent money laundering and unsound financial practices, the FATF and the FSF started, from 2000 onwards, to “name and shame” those countries that were uncooperative in implementing their recommendations. This “name and shame” policy has been quite effective, and even more so since it has left the actual sanctioning to the markets. Doing business with financial institutions that fall under the jurisdiction of “shamed” countries/financial havens may be contagious from the view point of a bank that cares about its reputation.

Essentially, the implicit sanction threat of being excluded from international financial markets that looms behind the “name and shame” policy prompted even some of the more stubborn financial havens to put into law the FATF recommendations.

A Shaky Building on Solid Ground?

September 11 generated the political momentum to put even stronger pressure on non-cooperative countries and to get FATF members to speed up anti-money-laundering legislation. This applies not only to the United States but also to the EU. The Second EU Directive against Money Laundering had been blocked for more than a year mostly due to German legal objections. Germany in particular objected to requiring lawyers, tax consultants, accountants and others who by German law can claim professional confidentiality to disclose data on major or suspicious financial deposits by their clients.

At the request of the special G-7 finance ministers meeting in Washington on October 6/7, 2001 the Paris-based FATF met in Washington on October 29/30 to decide on expanding its mission to include specific action against terrorist finance. The FATF meeting issued eight additional special recommendations on terrorist financing and agreed on an extremely tight Plan of Action for their implementation. These recommendations ask for common definitions of terrorist criminal offences, for the widest possible range of mutual assistance against terrorism among law enforcement and regulatory authorities and for the freezing of terrorist assets. More specifically, anti-money laundering requirements shall be imposed on alternative remittance systems, and wire transfers of money shall require more effective customer identification. Finally, non-profit organizations shall be prevented from being misused to finance terrorism.

The eight recommendations are due to be implemented by June 2002, with an initial phase of self-assessment. During this stage, which is to be completed by the end of December 2001, each country will identify the steps necessary to comply with the recommendations. The European Commission has already adopted, on Nov. 30, a proposal to create an EU-wide procedure on the freezing of assets of individuals or entities involved in terrorism.

Speedy implementation of these recommendations by the FATF members, by those of other FATF-style regional bodies and possibly by other countries, too, will doubtlessly go some way in denying terrorist organizations and cells of the Al Qaeda type access to their current financial resources, thus limiting their reach. Indeed, even before the short deadlines of the FATF anti-terrorist Plan of Action have lapsed, financial intelligence units and law enforcement authorities are already cooperating quite successfully on the international level, going far beyond the proven transatlantic working relationship among regulatory and investigating agencies. They do so under intense diplomatic pressure from the United States. Time is important to prevent the traces of terror finance from being covered up. But the price may be high and the emerging multilateral regime against terrorism, organized crime and money laundering may not be as solid as it is to be hoped for.

Risks and Irritations

The recent FATF recommendations are indeed what they look like – emergency measures to counter an immediate threat. The more the investigations proceed, the more they risk getting drowned in a deluge of data on suspicious financial transactions and business links and the more they will be penetrating into the legal economy, with potentially harmful effects. Such effects can be violations of business secrets, ethnically based discrimination, and uncritical treatment of denunciation by competitors. If the current fight against the financing of terrorists is not to become discredited, defendants will have to be guaranteed due process. There is also a growing danger that evidence may be suppressed for political purposes the deeper investigations delve into the political network that very often supports and protects criminal business activities.

Even more important, divergences in the conduct of investigations, regarding due process, risk raising mutual suspicion among investigating authorities. Already, there are complaints in Germany about a lack of mutuality from the U.S. side as to information exchange. Moreover, the hustling attitude of the United States towards other countries provokes some irritations among those authorities that have run successful anti-money laundering operations themselves prior to September 11. In Germany, for example, alternative remittance systems have been illegal since the *Kreditwesengesetz* (KWG), the German Law regulating the banking sector, came into force in 1961. The only exceptions are those licensed by the *Bundesaufsichtsamt für das Kreditwesen* (BAKred), the Banking Supervisory Authority. As soon as the FATF began drawing attention to those alternative systems of money transfer, the BAKred started to crack down on them, shutting down some 1000 of their outlets in the last three years alone.

For all the urgency of breaking up Al Qaeda and its financial base, both the United States and Germany as well as other EU countries should not lose sight of the broader terrorist-criminal nexus and of the environment of corruption in which it thrives.

“Multilateralism à la Carte”?

The enthusiasm in Europe over the American rediscovery of multilateralism remains qualified for a couple of reasons. First, the “hard-headed multilateralism” (Richard Haass) of the United States tends to come across as rather hard-nosed instead of being more like the paternal multilateralism P.J. O’Rourke suggested in a Wall Street Journal op-ed three weeks before September 11 (“We’ll Run This Planet as We Please,” WSJ, 23 August, 2001). The

tough American conduct in its cooperation with coalition partners might be the way to sell multilateralism to the current administration's conservative clientele. But it is not really impressing its European allies who are happy to see the United States finally catch up on some effective measures and regulations against money laundering, such as rigorous implementation of the "know your customer" principle by all financial institutions, but still lagging behind in its policy towards other areas of organized crime.

For example, cigarette smuggling is a thriving business for organized crime in the Balkans, especially in Montenegro, as well as in some Eastern European countries. Since the famous cigarette brands supplied by Philip Morris and R.J. Reynolds and other American tobacco corporations are the merchandise most in demand by smugglers and their clients, implementation of the "know your customer" principle by the tobacco corporations in their international business would be very helpful indeed.

Another issue is the illegal trade in small arms, including mines and explosives, which constitutes a major business of organized crime, and, by the way, one of those with the strongest links to terrorist organizations. The United Nations Plan of Action on the Illicit Trade in Small Arms and Light Weapons has been significantly watered down by U.S. opposition to any inclusion of restrictions on civilian possession of arms and on delivery of arms to non-state actors. The almost cultural transatlantic schism on small arms was illustrated most clearly, however, when it became known in December 2001 that the U.S. Attorney General Ashcroft declined to let the FBI cross-check the Justice Department's records of background checks on gun buyers for evidence concerning foreigners currently detained under special anti-terrorism procedures.

The sanctions threatened by the United States against countries ratifying the UN Convention on establishing an International Criminal Court probably are not conducive to strengthening trust in American multilateralism, either. But this topic goes beyond the scope of this contribution.

WHERE DO WE GO FROM HERE?

The multilateral anti-terrorist coalition is perhaps working best on economic and financial issues and measures. But the mostly positive experience of recent months should not deter us from looking at some broader issues and questions that have emerged in the current fight against terrorist finance and money laundering.

Broadening the Agenda: Tax Evasion

Most of the major G-7 countries are pursuing their own agenda, of course, when updating their penal codes, law enforcement procedures and financial sector regulation to conform to the new FATF recommendations. Some of these are rather narrow in scope, others are broader. In an updated draft of its new bill on Financial Market regulation (4th *Finanzmarktfoerderungsgesetz*) the German Ministry of Finance has proposed to create a central registry of all accounts held with any financial institution in Germany. Though limited to the account holder's personal data, the registry may substantially facilitate investigation of illegal money flows, including alternative remittance outlets, and, possibly, including tax evasion.

The German Federal Government is indeed keen on tightening national law against tax evasion, to define the latter as a criminal offence prior to money laundering. The idea obviously is to ensure full legal assistance by other states' law enforcement authorities in suspected cases of tax evasion. Until recently only a few states had been willing to provide such assistance.

This initiative may well succeed. On November 27, for example, the United States signed an agreement with the United Kingdom and the (British) Cayman Islands concerning the

exchange of information on tax matters. The agreement should be seen as a precedent for other tax havens. The EU countries still focus on the OECD Convention against harmful tax practices, and here, too, U.S. resistance dating prior to September 11, may subside.

Privacy and Regulatory Competition: Widening the Scope for Global Economic Governance?

Two related questions arise from financial market regulations in the wake of September 11, both of which touch core elements of the international financial system:

1. Is there a case for privacy in financial transactions? Should there be full disclosure of all financial transactions of firms and individuals to regulatory, tax and law enforcement authorities?
2. Is there room for offshore centers in the future global financial order? Did they play a useful economic role in the past and will they continue to play such a role in the future? Or have they become economically obsolete?

Ultimately, in the absence of privacy and with full information exchange and mutual legal assistance of national regulatory and tax authorities, the nationality principle of taxation and regulation could be reinstated instead of the territoriality principle. Regulatory or tax arbitrage and, thereby, competition between different levels of taxation as well as regulatory regimes would be significantly reduced as it would be confined to firms or individuals taking full residence in another country.

Offshore financial centers would have no further role to play in such a world except for a competitive advantage in terms of efficiency in performing financial services. Shaping its legal and regulatory environment in such a way that offering financial actors the ways and means to circumvent laws and regulations in their home country may cease to be an acceptable way of competing in international markets. Perhaps this would be considered a welcome development. Particularly so, if September 11 has led us to conclude that liberalization and deregulation of financial markets has become history, to make room for global harmonization of rules.

The Future of Terrorism

As shown by the above evidence, focusing primarily on states harboring terrorist organizations may distract from fighting the terrorist-criminal nexus that has grown stronger in recent years.

Al Qaeda may be defeated, but terrorism as such will survive the current anti-terrorist campaign. It will change its character, however, and become more privatized. There may be less religious and ideological zeal, more of a business-like attitude. Strong links and division of labor arrangements with organized crime will prevail. Organized crime itself will increasingly blend in with the legal sphere, whether private firms or charities, religious organizations or public entities. So will terrorism. Osama Bin Laden has gone some way to organize Al Qaeda in this way. Thus, he may have been the first post-modern terrorist.

The current focus on maintaining the global anti-terrorist coalition may eventually contribute to whitewashing newly won anti-terrorist allies who harbor organized crime. Thus, the policies that nurtured Khun Sa's drug empire in the Golden Triangle, the Nicaraguan Contras, the Taliban or the Albanian UCK risk being repeated.

As they become more integrated into regular business and publicly accepted institutions, terrorism and organized crime may, to a certain degree, become less visible, but perhaps all the more pervasive. Moreover, they may penetrate the democratic process in susceptible countries, causing instability and, in a next step, promoting or financing law-and-order

movements that emerge from instability. By being voted into the government, such groups may help to immunize “regular” OC activities, thus creating new opportunities for parasitic penetration of states by organized crime. As recent experience in Europe demonstrates, such a scenario is not too far-fetched.

Multilateral efforts to prevent or control such developments through a comprehensive international regime of standards, of codes of conduct and of transparent and public compliance monitoring may become ever more urgent.