

In Hot Pursuit of Terrorist Funds

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Nigel Morris-Cotterill

*The Anti Money Laundering Network
www.antimoneylaundering.net*

About Nigel Morris-Cotterill

Nigel Morris-Cotterill is an internationally renowned counter-money laundering strategist.

Nigel is an English solicitor with almost a quarter of a century's experience in tracing proceeds of fraud and other crimes. Working with financial institutions and commercial concerns, he has worked on large scale recoveries and international actions.

In doing so, he has been able to identify weaknesses in organisations which have led to opportunities for money launderers.

In 1994 Nigel left full time practice to concentrate on developing counter-money laundering strategies for financial institutions. He has worked with many leading banks, central banks and other financial institutions around the world, providing both consultancy and high level training. He has commented on draft laws and regulations and he has worked with enforcement agencies in both recoveries and in relation to identifying failures in best practice in financial institutions. He is often commissioned by national banking institutes to run counter-money laundering training programmes.

Nigel is author of "*How not to be a money launderer - the prevention of fraud and money laundering in your organisation*" and of the forthcoming "*Counter-Money Laundering Laws of South East Asia*" (Sweet and Maxwell). He is author of countless articles and papers on money laundering including the use and abuse of the internet in fraud and money laundering. He is a frequent contributor to professional journals such as *The Banker* and mainstream press such as *The Times*. He is a regular contributor to broadcast media such as BBC and CNBC. Nigel has been interviewed by the Malaysian press and broadcast organisations on a number of occasions.

Nigel heads The Anti Money Laundering Network, a group of companies providing e-learning, risk assessment software, publications and consultancy and training world-wide. He is now based in Kuala Lumpur where a local company, AML Net Sdn Bhd is an MSC status company to develop technologies to aid banks and others counter money laundering and terrorist financing.

Why "counter-money laundering" not "anti money laundering?"

Because it is impossible to prevent money laundering. Taking steps to prevent money laundering is an objective which cannot be achieved. Given that money laundering will happen, Nigel recognises that we are all

engaged in risk management not risk prevention.

It is many years since Nigel began to explain to bankers and others that there are no solutions to money laundering: only better managed risk. Some consultants and software vendors persist in using the term "solutions." Nigel emphasises that anyone who claims to have a "solution" is misleading themselves and their clients.

For the past ten years, Nigel's courses have all been about Risk Assessment and Risk Management. Recently, that approach has been adopted by the Bank of International Settlements (and therefore regulators world-wide) and by the Financial Action Task Force.

Nigel's courses are intended to make people think. He emphasises that there are no prescriptive remedies, no check lists that will make it possible to detect and deter all money laundering. At the end of his courses, delegates know that countering money laundering is about attitude more than about compliance.

Nigel emphasises that compliance is an objective in itself but of itself, it will not detect and deter money laundering. If the organisation is serious in its intention to detect and deter money laundering, it requires systemic change and continuous awareness of risk and how to identify, manage and deal with it.

In consultancy, Nigel works with businesses to design systems to protect the organisation and to implement systems that are compliant with both domestic and international demands but are designed to permit "business as usual." Nigel has for many years been at the forefront of explaining to legislators and regulators that restrictive legislation and regulation may increase the tendency of those affected by it to find ways to avoid or evade controls.

Nigel advocates systems and controls that are user friendly but which provide severe sanctions for those that step outside acceptable behaviour. And he believes that auditing those systems is a quasi-legal not a quasi-accounting function.

Nigel is frequently invited to speak at and chair conferences all over the world. He is highly regarded by the international media for which he is frequently being quoted in the international media, for example BBC, CNBC and many others.

To find out more visit
www.antimoneylaundering.net,
www.counermoneylaundering.com or
enter "nigel morris-cotterill into google.com

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In Hot Pursuit of Terrorist Funds

The title of this paper raises recollections of, for example, those dire television programmes that show a police car - or if filmed in the USA the dozens of police cars - chasing a single vehicle down a highway at high speed.

But when we look at the topic, it's clear that the image is far from the reality.

First, no matter how hard we try, we are never going to be in the position of being in hot pursuit of a single adversary.

Terrorism is difficult to counter because there is no single person, no cohesive entity that we can attack.

Legislators hope that we can starve terrorism of funds and that in doing so we can reduce the opportunity available to the terrorists. The prospect of identifying the funds is made even more difficult because of the diversity of the operational personnel and the contributors.

I'm sort of lucky in that I am unusual in this gathering in Asia: I am English and like many English lawyers, I served time in the City of London during the IRA bombing campaign.

Now is not the time to list the number of occasions that my guardian angel saved my life either by making me change my plans at the last minute or, if I didn't listen to the warnings in my ear, frustrated me by taking all the available taxis off London's streets so that I was late with the result that I was not where I should have been when bombs went off.

Nor is there a lot of point in explaining the fact that, when I had to attend hearings in Northern Ireland, the High Court had been turned into a fortress and streets that had familiar shop-fronts were rendered bizarre as I turned corners to come face to face with soldiers in full combat uniform and anti-terrorist sub machine guns.

In the UK, especially in London, we lived with terrorism for years. London suffered in many ways that seem petty but made a huge difference to people's lives. When the terrorist threat was deemed over, or largely so, we began to realise what we had missed: new buildings appeared sheathed in glass - the rest of the world had been able to do that but in London we dared not; waste bins appeared in the streets and on railway stations having been removed years earlier after a series of so called parcel bombs had been placed in them.

But we had one significant advantage: the terrorism was, largely, conducted by the IRA. It had a command structure and it had leaders that were known. It had bank accounts, it ran businesses and we even knew where its funding was coming from - a very significant proportion of it was coming from open fundraising in the USA.

The IRA raised its money by extortion, by blackmail, by a wide range of crimes ranging from smuggling and other duty evasions to kidnap and ransom. And it invited contributions from supporters around the world.

The contributions from supporters were channelled through charitable donations: funds were raised on the premise that they were for the support of prisoners and their families.

Many prisoners were held in the notorious H Blocks and, for a period of time a policy of internment - that is imprisonment without trial - was followed. In the liberal USA, which has no history of terrorism in this context, it was not merely acceptable but positively desirable for politicians to support the collection of funds for these charitable purposes.

With some 40% of the US electorate at the time being of Irish descent, there was a clear political imperative to pander to that constituency.

Bill Clinton may have been deeply flawed in many ways but in one respect he broke the mould with a brave step. Of course, he was able to do so because he was in his last term and so would not be standing for re-election. Clinton took steps to block the sending of funds to the charities set up for the benefit of IRA prisoners and their families.

Within months, there was a breakthrough and the IRA were at the negotiating table discussing how they would convert their armed conflict to a political approach.

There are many theories as to how the cease-fire was negotiated, and many heroic tales of both sides making concessions on a wide range of subjects but the fact is that there had been similar initiatives on many occasions over the previous decades. Yet it was only when the money supply was threatened that real progress was made.

So how did Americans send the money? And how did they get away with it when funding terrorism was, in the UK, a very serious offence?

First, they simply shipped it. The technology for identification of large cash sums was not very advanced and the money could be brought into Ireland in suitcase or aboard ships with relative ease.

Secondly, they wired it openly to an account for the benefit of a charitable entity. Amongst the favourite methods was for marching bands to travel to the USA to be present in the St Patrick's Day parades. New York and Boston Irish communities paid extraordinarily high prices to the band companies even though the members were volunteers.

Thirdly, they made funds available in the USA for either the purchase of goods elsewhere, which may or may not be shipped to the IRA or for deposit so that funds could be borrowed in Ireland against the security of a cash deposit in the USA.

And they were able to get away with it because there was - indeed, there still is - poor enforcement by both the police and the regulators of the laws designed to combat terrorist financing.

Why is enforcement so poor? It's because no matter what legislators and regulators in the USA, UK and most other countries say, it's almost impossible to identify funds that are on their way to commit crime.

The irony of much recent legal drafting is that laws in many countries now include the offence of funding or being involved in the financial arrangements of an offence as itself being an offence.

When they do so, they put it into laws in the section marked "money laundering."

And in doing so, they cause a wide range of problems.

I said that terrorism is often funded by the commission of crime, and where it is, then in principle counter-money laundering laws apply.

But if we look at the other ways that terrorism is funded, that of donations and voluntary payments, it is clear that there is a fundamental difference between the financing of future crime and money laundering.

Now, for the next two or three minutes I want to speak of the offence of terrorism itself. My comments are in some respect a little off topic - but I want to throw out a thinking point for later consideration.

Do we need a discrete offence of terrorism? Indeed, is a discrete offence of terrorism desirable?

We already have, in most countries, a maximum sentence per offence, and as robbery, rape, murder and some other offences are already playing up to that maximum, then there is no headroom for terrorism to be subject to a higher sentencing pattern.

So if the offence cannot result in a more serious penalty than, say, murder or blackmail, then there is really little point in maintaining the offence of terrorism as a separate offence.

And if we were to charge terrorists with conspiracy, with murder and other established offences, we would simplify the job of prosecutors. It would make trials quicker and cheaper. And, as I will show, more likely to succeed.

The offence of terrorism requires the proving of two separate states of mind: first the intention to commit the act complained of and second the motive for the act.

It is my submission that the creation of a separate act of terrorism has complicated the job of prosecutors because of the need to prove a motive and it complicates the job of those in financial services because, if they can possibly identify money on its way to commit crime, then it is often necessary for them to decide what crime it is on the way to commit.

In some countries, e.g. Singapore, the funding of any future crime is an offence. If that model is followed, then there is, again, no need to prove a motive, or more properly a motivation, for the activity of providing financial or logistical support.

In general, for crimes other than terrorism, the question of motive is for the judge on sentencing. But by creating a discrete offence of terrorism the effect is that the question of motive becomes one for the arbiters of fact. In most common law countries - and Malaysia is an exception to this general principle - the arbiter of fact is a jury.

So what we have is a jury being asked

a) did this person do it and

b) did he have the necessary motivation arising from ideological, political, religious or any other reason that legislators choose?

There has been much discussion in countries which have a terrorism problem of whether to remove the right to jury trial in terrorism cases. It was considered for perhaps two decades in relation to Northern Ireland but the idea was eventually shelved, in part because it was seen as making too great a change to the UK's admittedly informal constitution.

But by treating acts of terrorism as simple murder, causing damage by explosives, extortion or blackmail (as the case may be) and allowing the Judge to decide whether there was a terrorist connection, perhaps in a post-verdict sentencing hearing which would be properly heard by a Judge alone, then the need for the identification of terrorism by everyone throughout the process would be eliminated.

Moreover, by shifting the question of motive to sentencing and away from the offence, it becomes subject to a decision based on the balance of probabilities, not beyond all reasonable doubt.

This would speed up investigations before trial, would reduce the length of trials and ultimately reduce the costs of both investigations and trials.

And there is another issue: by not having a discrete offence of terrorism, it overcomes the problem that different countries have different definitions of terrorism or, in some cases, none. Again, the question of motive can be left to sentencing and it is far easier for countries to set sentencing guidelines than to try to obtain cross-party political support for a definition of terrorism.

For clarity, by the above, I do not suggest we should avoid the term terrorism nor to see it only as an aggravating factor - indeed, I will use the term throughout this paper.

And, bringing this apparently eccentric diversion back into the loop of my paper, if laws relating to the financing of crime relate not only to terrorism but to the funding of all crime, then it reduces the burden of the obligations placed on financial services business because they do not need to worry about which offence might be intended.

This ties in with two other problem areas:

- the issue of defining predicate crime; and
- the lack of intelligence made available to financial institutions.

The USA has preferred the practice of listing predicate crimes for money laundering purposes. It has to be recognised that the USA opposed suspicion based reporting and only introduced it in the mid 1990s under pressure from the Financial Action Task Force. When it did so, it did so in as narrow a manner as possible. It has been criticised by both the IMF and the FATF for failing to meet the standards set under the FATF 40 Recommendations but brazened it out.

Even now, after the USA PATRIOT Act, the USA remains some ten years behind the EU in application to certain business areas.

The reality is that the USA is not a good model for counter-money laundering laws and systems and it is even less good when it comes to counter-terrorist financing systems. For example, although the USA had signed the UN Convention on

Countering Terrorist Financing, it took no steps to implement the convention until after 11 September. And then the USA went to the UN and cherry-picked those parts of the Convention that it wanted all countries to comply with. It did not seek those parts that the USA felt would damage its economic advantages in relation to the vast amount of money that enters the USA and is invested there, generally on or via Wall Street.

But even US negotiators at the FATF have said, privately, that if they knew then what they know now, they would not have created a list of predicate crime. Unfortunately, the USA has been sending its envoys to countries all across the world, including many to this region, and they have preached the gospel of lists of predicate crime.

The use of lists, in my opinion, is a bad idea. The European model, which is now the accepted FATF model, is that predicate offences should be defined not with regard to a list but with regard to the minimum sentence. Generally this is seen as being one year in jail.

The advantages of this system are two fold:

- new offences do not need to be added to the list so avoiding a long and costly and often argumentative process;
- staff in financial institutions do not need to question what offence they are suspicious of. This is, in my view, vitally important because different staff see different conduct in a different light.

Staff do not go to work to combat money laundering or terrorist financing. They go to work to earn a living. Front line staff in financial institutions are not following a vocation, they are not developing a professional career - they are modern day cannon fodder in the way that factory workers are. The fact they handle money or papers does not make them in some way different to the man who screws on gear-knobs in a car manufacturing plant.

But in telling the bank clerk that he has to identify proceeds of crime or money on its way to commit an offence we are placing an extraordinary burden on him. And we are then complicating it by telling him that he need be suspicious in only a limited number of cases.

It's my view that this is not only unfair to the member of staff but that it is unlikely to result in an effective policy to detect and deter money laundering or the funding of future crime.

The cashier is not going to keep a list of maybe 200 offences in his head; he is not going to keep them in the top of his cash drawer; he works at a different teller's window every day so he is not going to keep a copy in the same place in every workstation, in part because someone else will have a different idea of where it should be kept. He is not going to leave his window to go and look at a list kept on the wall by the water cooler. So he is going to take the line of least resistance and decide that he is not suspicious.

I have to say that our advice to financial institutions in countries where the list approach is adopted is that, at staff level, the staff are not told to think about which crime may be a predicate crime but to have them make a report about everything and leave it to the compliance / money laundering officer to make that decision. Whilst

this has the effect of increasing false positives, in most cases this increase is very small, especially where the number of offences listed is large.

Now to turn to the issue of intelligence.

The history of banking across much of this region is that all aspects of financial services are shrouded in secrecy. This policy permeates into central banks (which are generally the regulators of the banking sector) which have a tendency to take the view that the only people who should know about Bank policy and the regulatory regime are those that are regulated.

I argue that this is both fundamentally lacking in transparency but also that it is counter-productive.

Governments and regulators combine to tell financial institutions that they should search their customer bases for those that are, for some reason, blocked persons or that are, for different reasons, politically connected. Yet the information that governments and regulators provide to those they regulate - and to those that support those regulated entities - is very limited.

Also, some regulators - and I am specifically not naming anyone and as we work globally no one should assume that I am referring to any regulator in this region - notify banks of those with whom dealings are blocked but do not make that information public. In this context, I and my teams are regarded as public, so making it unnecessarily difficult for us to rapidly respond to changes that impact on the way our customers do business.

So lists of blocked persons are available only to regulated persons - one regulator expressly told a researcher for our name checking service that the list was secret; the dates on which counter-money laundering laws will become applicable are sometimes announced at short notice and in one case a regulator simply ignored requests from our researcher for a list of dates on which relevant market segments would be subject to the requirement to put in place counter-money laundering and anti-terrorist financing systems.

In relation to money laundering we, that is governments, institutions and people like me, have the problem of trying to keep up with the money as it moves between institutions, between assets, between jurisdictions and between different legislative regimes.

And in this context we have to remember that the criminals have the advantage of almost total mobility within their schemes. Yet enforcement agencies meet the roadblocks that each country puts in place to protect the information of its citizens and customers. This is not of itself something to be criticised but it does mean that cross-border investigations stutter as formal requests are made to obtain information and all the time that the good guys are following the defined path, the bad guys are moving the money and taking steps to disguise it. And if criminal investigators have it tough, you should try doing it when you are a civil litigator.

But in relation to terrorist financing, the biggest problem we face is not the practical tracing of the money. It's the identification of the money in the first place. Often with little assistance from those who actually have the information that would help us to track and freeze the funds.

I hope that some of the issues I have addressed today will make those who draft law and regulations think. My concepts are radical but that is what a strategist is for: to raise the radical.

Anyway, to go back to the plot. At the top of this paper, we looked at some of the ways that the IRA funded its crime.

What else did they do?

The IRA still exists but it has shed its supposedly justifiable cloak of pseudo-political organisation and is now simply an organised crime gang. And it continues to make money and to launder it in the same ways as before. And it continues to raise subscription funds although to a much less extent. Its street level support has dramatically reduced and, along with it, the violence. Northern Ireland remains filled with tensions, but those tensions are of a very much less violent kind.

The IRA model of funding terrorism consisted of the following:

- renting out marching bands and other paraphernalia for festivals and celebrations.
- extortion: the simple device of threatening the population in order to gain "subscriptions." There was a great deal of "protection money" sought and paid.
- low level crime: burglary, snatch thefts, loan sharking, small time fraud including insurance fraud
- higher level crime such as large scale smuggling of dutiable items and other contraband. Smuggling was a particularly easy task in relation to high value, low bulk cargo such as drugs and cash because the IRA was able to rely on the support - willing or coerced - of fishing boats crews.
- barter: the IRA trained FARC, a Colombian paramilitary group, in urban warfare and in the development of a "political wing," so that FARC could move from its original purpose of protecting the coca fields via control of large areas of rural Colombia to threatening the cities and institutions of the cities and ultimately into politics. Within the past three months, the Colombian government has come to the table with FARC to negotiate a cease-fire and a possible bringing into government some of FARC's representatives. In return for this assistance, which included urban bombing techniques, the IRA received both arms and drugs, which it was able to regard as a cash crop

The IRA model of terrorism is high maintenance. It involves a paramilitary organisation with a command structure. These people are engaged full time. They have pretend jobs and so need to be paid a salary. They were paid by companies who received an equivalent amount in extra orders that were never filled. But the amounts involved were unlikely to be recognised in the turnover of a factory with thousands of employees.

The Church contributed to the welfare of prisoners and their families as did the notorious Noraid charity which had the support of many city, state and national politicians in the USA.

Not only did the IRA have a cohesive command structure, it also had access to large pools of supporters near its primary targets, especially London. Those supporters were able to provide lodgings for transient workers, and the UK has a long history of

employing transient Irish workers in everything from the hospitality industry to construction.

The IRA had the advantage that most of its operatives were legally nationals of the country that it targeted so their movements were generally unrestricted, unless their involvement with the IRA had in some way been identified.

The IRA had the advantage that its support was based in cultural and religious background so it was easy for its people to meet in secret yet in public so that suspicions were not aroused. Also it meant that obtaining information on the group and its operations people was difficult because infiltration of a group which knew each other, directly or by reason of introduction, was difficult.

As an aside, our own intelligence officers include former UK special forces personnel, most of whom undertook undercover ops in relation to the IRA and other terrorist groups operating in or threatening the UK.

In addition to the formalised structure, which devolved management of the units down to the command chain, there were also cells. The existence of the cells was known to both the authorities and the wider community - but the location and make-up of these cells was secret from everyone except the top IRA command.

These had two purposes: first was the gathering of intelligence. This included not just intelligence on sites and human targets but also on those who might be wavering in their allegiance to the cause. These cells would consist of a mix of those in work and those who had come to London, for example, to find work and therefore had an excuse to be wandering the streets during the day. And the Irish community being the friendly and generous people that it is - they would be fed and provided with drinks and generally adopted whilst they were, as the Irish put it, "down on their luck". The second purpose was either to be a support unit or an operational unit: the names do not require further explanation.

Penultimately, there were the freely given contributions from those that truly believed in the unity of Ireland under a single Catholic banner, combining political, cultural and religious objectives into a single aim.

And finally, they simply ran businesses: that allowed them both to launder the proceeds of the offences they committed and to raise money from legitimate profits.

The IRA model may be called "western terrorism." The other primary model, as adopted by al Qaeda, is the "eastern model". Its structure is markedly different and so are its techniques, although as we will see shortly it may be that we are at a different stage in the development cycle and that the form is in fact mutating to resemble the western model.

There is a huge number of Eastern model terrorist groups. There is a general misconception that we need to be concerned only with al Qaeda and Jemaah Islamiyah. This is not so: whilst these are no doubt highly influential, and do have connections with many other groups, they are an influence not a part of the command and control of those groups. Because eastern terrorism is so fragmented and operates over such a wide geography, the identification of the members of the groups – and therefore their funding – is much more difficult than in the case of the IRA, FARC, ETA, and so on.

In structure, eastern terrorism does not have a command structure in a paramilitary style. It is a much flatter organisation. But it does operate on a network basis in a way similar to the deployment of operational personnel under the western model. It has much more direct control from the centre (there being as many centres as there are groups), or at least much less levels between control and execution.

But the primary difference between eastern and western terrorism is the nature of the targets.

With western terrorism, there are occasionally political human targets, and sometimes isolated targets with groups of people expected to be killed or injured but the intention is not to kill significant numbers. This is because western terrorism is not about killing people, it is about economic damage and civil disruption: keeping people nervous. Indeed, in its purest form, terrorism does not require any significant damage or any deaths or injury - it just needs to pre-occupy governments, consume resources and worry populations. That is why the firebombs in the dustbins in the City of London were such an effective terrorist weapon. After a time, the IRA needed only to make an occasional reminder of their ability.

On the other hand, eastern terrorism, as in the al Qaeda / Jemaah Islamiyah model as recently displayed is to target high profile premises but with the intention of causing significant numbers of casualties.

However, there are indications that this may be changing. The attack on the Australian embassy in Jakarta in may have marked a change in strategy - and if so, it is not isolated.

In fact, a few weeks before the Jakarta attack, a fire-bomber threw a firebomb at the Australian High Commission here in Kuala Lumpur. It burst harmlessly against the wall. The attack was naïve and almost certainly bound to fail to even get over the wall, much less cause any damage. But it did what terrorism is supposed to do - it caused concern amongst the population. And all parts of society in KL are now talking about when KL will be a target. There are endless rumours and supposedly official warnings to stay away from areas where there are large numbers of tourists or high profile targets, especially on festivals and - for example, 11 September. This is despite the fact that there is no specific evidence that there is any intention for KL to become a target. This shows that terrorism is working.

The operation at Australian Embassy in Jakarta may have been bungled: perhaps the intention was to claim more lives.

But we think that in fact it was one of a number of examples of a change in strategy.

At its heart, terrorism is a public relations strategy. The terrible twins of al Qaeda and Jemaah Islamiyah as well as some replicant groups, have arrived on the international stage in spectacular fashion and caught the attention of the world. But shock tactics only work to a point.

They can - and patently are - causing dismay, despair and disgust amongst the very community that it seeks to rally.

The targeting of humans is repugnant to Islam and so those who commit acts of terrorism in the misguided claim that they are in some way acting in the interests of, or the defence of, Islam are widely condemned.

Far from unifying Muslims behind their cause - whatever it is - they are increasingly isolated.

Suddenly, in mostly Muslim countries, there is a backlash against those who would see terrorism - and especially the killing of people - as a legitimate mechanism for raising a cause.

And so it is likely that we will see a continuing pattern of small scale attacks designed to demonstrate the ability of the terrorists to strike anywhere at any time but the effects of such on both premises and numbers of people will be small.

All we need to do to realise that the focus has shifted is to consider the press coverage within days of the August 2004 bombing: it was entirely focussed on the story of a young child whose mother was murdered in the attack and whose parentage is in dispute. From a public relations perspective, the new approach provides much more human misery value because the story is manageable. How do you choose one victim to feature out of 3,000? But out of nine, it is simple to focus on a mother and child.

So the inability to comprehend the magnitude of the attacks on New York and Washington, made worse by the fact that out of all the millions of column inches written at the time and since lacked any significant focus, the choice of the Australian Embassy in Jakarta at a time when few people would be injured guaranteed press coverage that had memorable impact.

And by being the third recent attack on Australian targets - two within Indonesia - it brought further coverage because, unlike the USA, Australia is seen as a place populated with nice people who like to have a bit of a laugh whilst cracking a tinnie and chucking another shrimp on the barbie. It is not seen as having any great plans for world domination and although it has a firm policy against illegal immigration, it is not seen as anti-Muslim.

So by attacking the world's third nicest people - after Canadians and New Zealanders - the attacks in Bali, KL and Jakarta have had a disproportionate effect. Their PR benefits are multiplied. And having done a big bombing in Bali, every small attack on an Australian target produces newspaper reminders of that capability.

Palestinian terrorism is also in a new phase: from daily attacks a couple of years ago, attacks now are generally far less deadly and they are much, much less frequent. They are more of a gesture to tell Israel that no matter what Israel does, no matter how much Palestinian land it annexes, no matter how many Palestinian homes Israel demolishes daily, no matter how many businesses are destroyed, no matter how many workers are prevented from reaching their employment, no matter how much material for foreign owned factories is piling up in Israeli airports because the authorities keep it there for as much as six months Palestinians still have the capability to strike. And, sick as it is to say it, it keeps the plight of the Palestinians on the news agenda, albeit often negatively, despite the fact that the UN says that Israel has killed three times more Palestinians than Palestinians have killed Israelis.¹

The fact that smaller, cheaper attacks can now be effective has a direct effect on issues relating to funding.

¹ Causes of Terrorism: World Money Laundering Report: Online 12 August 2004.
<http://www.wmlro.com/ezpublish/index.php/article/view/1568>

Terrorism is cheap. In the days after 11 September, the FBI said that the attacks cost USD6 million. Our analysts said USD250,000. That figure was published in a number of press reports and carried on a number of broadcast news and current affairs programmes around the world. Some six weeks later, the FBI revised its figure to USD300,000 and has since revised it to around USD270,000.

The reason that the bombers of the Jakarta Marriott were discovered so quickly was that they were naïve. They did not follow the basic rule of car-bombing: to buy with cash something that is very cheap and will not attract attention. Car bombs are traditionally in cars or vans that will just about creak to their target before being leant against the kerb pending detonation. The van used for the Marriott cost USD1,000 and that amount of money attracted attention in a country where many people are very poor.

We can compare approaches with the bombing in Bombay several months earlier where the bombers went to the opposite extreme: they did not even buy a car, they just hailed a taxi, put the bomb in the boot and told the driver to run away before he got blown up. In this way, their investment was a few rupees - if they did actually pay the fare.

The IRA model is that the entire bomb and vehicle should be constructed for little more than can be taken out of an ATM: the limit on ATM withdrawal in the UK is typically GBP200 per day.

The petrol bomb in KL cost almost nothing: a bottle and half a litre of petrol is about as cheap as one can get - yet if drive-by petrol bombings became a feature of life in Asian cities - where much life is conducted on the roadside in food stalls - there would be massive disruption to society within hours of the first attack.

Therefore as the nature of the terrorist threat mutates, we can see one major factor - the amount of money needed to commit the offences falls dramatically. The infrastructure needed to make such attacks is greatly simplified - especially if the nature of the tools of terrorism are simplified and there is little or no dependence on specialist bomb-makers.

How are these organisations funded?

First, they are networks, not organisations. They operate on a completely different command and control structure to the IRA model. Thus their costs structure is significantly lower. They do not have trained and heavily armed units on standby. They do have flying enforcers, and they do have sleeper cells and, of course, intelligence gatherers but there the similarity with the IRA model stops.

They do use legitimate businesses: there is a case of a company producing honey for export that was making substantial sums allegedly for the funding of al Qaeda.

They raise money by fundraising, pleas for funds to charities, and by alternative means of meeting liabilities and duties in ways that mean that cash is available for other purposes.

This paper is about chasing terrorist funds and I've hardly mentioned it. Or so it seems. In fact, it's all been about the money: not about chasing it but about where it is, what it is used for and how it is raised.

So now the question is, how is it moved and where is it hidden? And does knowing the basic principles help us to intercept it?

It's important to remember that the money is not generally attached to the offence until a very short time before the attack. The purchase of the vehicle for a car bomb may be only hours before the attack - although under the IRA model, it would usually be bought for cash one week or so before the event and often out of area, in some cases being towed to near the target because it was not capable of making the entire journey on its own.

In hot pursuit? No - we are trying to intercept funds that are going somewhere but we don't know where to do something but we don't know what.

So here we have a problem. Where the money used for funding future crime comes from the commission of a previous crime, then counter-money laundering techniques come into play. But where the money comes from clean sources, those techniques simply do not work.

The amount of money needed to build a bomb can be explained away as a birthday present sent from a relative. We are not, here, looking for international transfers of tens of thousands of dollars: we are looking for a few hundreds.

Or if the operative is a student, his living expenses sent from home monthly may include an uplift which can be explained as "rainy day" money but is in fact simply a way of accumulating the small amount of money he needs.

It is morally and factually wrong to assume that all Islamic charities are fronts for terrorism but that is the widespread perception of the actions by the USA. Certainly when we examine the names of organisations and persons whose names have been added to the OFAC list and to the UN anti-terrorism list at the behest, largely, of the USA they are massively biased towards inclusion of Muslim names.

However, there is no doubt that charities are used for the purposes of moving goods and money around the world in some cases for the support of terrorists and their families.

First, let's consider what is money: for the purposes of counter-money laundering laws and anti-terrorist financing laws, we are not only interested in notes and coin. We are interested in how value may be transferred and how assets may be utilised to increase the availability of funds for criminals. And so anything that has value can be considered "money" for this purpose. That value might even be services.

Focussing on the funding of terrorism, what do terrorists need?

- A way into the territory where the act will take place
- A means of communication
- Somewhere to live
- Something to eat and drink
- Something to do during the period of waiting
- Something with which to commit their acts

□ An exit route

Each of these is, relative to the expenses that the terrorist already has for these items, generally an insignificant additional expenditure.

Let's imagine for a moment that there is a plan to commit a terrorist bombing in an Asian capital.

It costs about three pounds to get a bus that runs about 1000 kilometres across borders. And for a few dollars more, buses run to any one of several countries, through rural areas or into other capital cities. Across waterways, even the relatively expensive high speed ferries can cost as little as GBP15.

Or to get a bus to Penang costs MYR12 and a high speed ferry to Medan in Indonesia costs MYR100 plus an embarkation fee of MYR6.

So we can discount the cost of travel around this region: people can move around for sums of money that are insignificant.

Tourists are often subject to registration at hotels. But those who choose to stay in hostels or guesthouses often find a lower standard applied. And those who can arrange to stay with a family, renting a room, for example, can avoid formal registration completely. And even right in the heart of capital cities, it is possible to rent a room for as little as GBP30 per month.

South East Asia's culture of street food means that people can eat nourishing food for tiny sums of money: it is actually easy for those who put their mind to it to provide a full day's food for under GBP2 per day - and quite possible to live on less than GBP3, even in the very heart of some Asian capitals.

Now, I've used an especially inexpensive city for the above examples, so long as you don't drink alcohol. But even doubling or tripling these figures means remarkably little spending - and therefore little need for extensive fund raising or funds transmission.

So we are not looking for large amounts of money and - importantly - we are not looking for large amounts of cash or value in transit.

Even old cars are expensive in several Asian countries - so a terrorist may decide to steal or hijack a car. This is probably the most high-risk part of his venture. As an agricultural country, there would be little problem in sourcing the chemicals to make a fertiliser bomb. As to venue, many Asian cities following the economic crisis of the late 1990s are full of open car parks with zero security, many close to impressive buildings, foreign institutions and / or centres of entertainment where thousands gather at weekends. Remote or timed detonation in late evening would leave plenty of time to get a bus out of the country.

Put simply, the amount of money that would pass through a bank account for such an activity would be so insignificant that it would be impossible for there to be suspicion.

And if the funds are withdrawn from a foreign bank account using an ATM card, then there is little or no prospect of that transaction being tied to the act.

The whole event including travel, accommodation and subsistence for a week could have been done for somewhere in the region of under GBP200 and largely without outside assistance once the terrorist arrived in the country.

Now revert to the idea of terrorism being a series of minor attacks designed to unsettle the population and consider the firebomb: a stolen motorcycle as vehicle and the use of several firebombs in strategic places over a period of several days and the social life upon which so many Asian cities is so dependent would be devastated. The total cost would be well under GBP200.

Yet financial services businesses are geared up to identify much larger sums - and cannot, in the real world, be expected to identify as connected with any crime, sums of such a small and routine amount.

Moreover, mostly, sums of this sort would not touch the banking sector in any case.

But if we look upstream in the terrorist network, then we can see that the funding requirement increases dramatically. An example is the training camps.

It is in the training camps of the Sudan and other places that the IRA developed its barter system.

The international underground runs on arms, drugs and other forms of trafficking.

Anything that can move can be used in barter. In the appendix to this paper, is an extract from research called THE RELATIONSHIP BETWEEN ILLEGAL DRUGS AND FIREARMS: A Literature Review Conducted for the Department of Justice O'Connell, Eugene (July 1998) but the whole research demonstrates the inter-operation of organised crime and terrorism especially between drugs and guns. The paper also, incidentally, explains how the Ulster Loyalists, the paramilitary force opposing the IRA, also took part in the drugs for guns trade. Nothing has changed since then, except that the IRA is no longer the principle paramilitary force teaching urban warfare.

Even so, the average spend of those involved in the 11 September 2001 attacks on Washington and New York was in the region of USD10,000 including flying lessons and staying in rented accommodation. And that was over a period of months.

So what lessons have been learned from the investigation into 11 September?

First that the participants behaved in what now seems strange:

- they would not go to a bank window if the teller was female
- they would check the bank balance, withdraw cash and then check the balance again, something that the banks now recognise was unusual
- they received money and then sent back whatever they had not used
- some of those involved had multiple accounts
- they purchased one-way tickets
- they paid for almost everything in cash - in a country where cash is not often used.

Secondly, they were very insular.

The Department of Homeland Security / FBI have issued a joint list of ways that might help identify a suicide bomber:

Indicative Behaviors of Suicide Bombers

- Clothing is out of sync with the weather*
- Clothing is loose. Clothing gives impression that body is disproportionately larger than head or feet.*
- Suspect may be carrying heavy luggage, bag, or wearing a backpack.*
- Pale face from recent shaving of beard.*
- Eyes appear to be focused and vigilant.*
- No response to authoritative voice commands or direct salutation from a distance.*
- Behavior is consistent with no future, e.g. individual purchases a one-way ticket or is unconcerned about receipts for purchases, or receiving change.*
- Suspect is walking with deliberation but not running.*

Sherman Hospital in Illinois has added two more items to that list:

- Clenched fist that may be holding a detonator*
- Wires hanging out of sleeves or clothing*

But the danger is that we over-react and profiling becomes a serious problem.

We must guard against erroneous profiling. A "blog" on the internet shows how ignorant people can be:

*"After my wisdom teeth came out, I didn't shave for several weeks, trying to hide my bruised, yellow jowls. When I came to work looking like a suicide-bomber, someone asked me if I "lost a bet." I decided to take it off the next day."*²

We saw a rush to profiling on the basis of "Arab looking" in the days after 11 September 2001. One US commentator said "I think a lot of people, and a lot of liberals, by the way, Floyd Abrams, the New York lawyer; Lawrence Tribe, the Harvard Law Professor, have either said or suggested that for now, it would be crazy to sort of ignore the danger of a repetition by people who look like the people who did it the last time;" Stuart Taylor, a columnist for the National Journal and Newsweek,

² "Rob's Blog" at <http://trinja.cryptek.org/robin/archives/001449.php>.

speaking on PBS, a national public service broadcaster in the USA in a programme called "Profile of a Terrorist" broadcast 26 September 2001.³

We saw a rush of panicked and ill thought out prosecutions: Ernest James Ujaama was arrested in July 2002 and it was alleged that he was running a training camp for al Qaeda in Oregon, and was a sleeper for the terrorist group. A converted Muslim, he pleaded guilty April 2003 to one charge of "of conspiring to provide goods and services to the Taliban, in violation of the International Emergency Economic Powers Act (IEEPA)." He was not sentenced until February 2004. He was sentenced to two years' jail plus three years supervised release. As he had been in jail for almost two years by the time he was sentenced, he may have already been released suggesting that the charges were not viewed with great seriousness.

We saw arguments in favour of racial profiling which made it plain that it was Muslims that are targeted:

*"Post-9/11, the belief that racial, religious and nationality profiling is never justified has become a dangerous bugaboo. It is unfortunate that loyal Muslims or Arabs might be burdened because of terrorists who share their race, nationality or religion. But any inconvenience is preferable to suffering a second mass terrorist attack on American soil," Michelle Malkin author In Defense of Internment: The Case for "Racial Profiling" in World War II and the War on Terror.*⁴

However, in researching the issue of racial profiling, and in researching the commentaries on the use of charities by Islamic groups several things come to light:

1. those most vehemently in favour of racial profiling in connection with terrorism and its funding appear to be Jewish or have close links to Jewish groups: indeed Malkin is a contributor to Jewish World Review

2. the "evidence" produced by many commentators is identically or nearly identically phrased, and recites the same issues as reasons what amount to be a denouncement of all things Muslim. These range from best selling "investigative books" to pamphlets and websites - and startlingly turn up in "testimony" before the US Senate. Our own analysis of much of this material indicates a central source for it, and we, as have several other analysts, have concluded that much of the material published to produce profiles of terrorists is more likely than not to be Mossad (Israeli Secret Service) propaganda.⁵

And the impact of this is clearly visible: "A Gallup poll taken shortly after the 9/11 attacks found that 60 percent of Americans supported racial profiling of Arabs at airports, and the Federal Motor Carrier Administration, which inspects trucks carrying hazardous materials, announced it would start searching Arab-looking drivers based on their race."⁶

This all translates into serious problems for financial services businesses: if the received wisdom upon which banks are expected to identify those suspected of funding terrorism or being involved in terrorism has been co-ordinated by the

³ http://www.pbs.org/newshour/bb/terrorism/july-dec01/racial_profile.html

⁴ USA TODAY at

<http://www.keepmedia.com/ShowItemDetails.do?itemID=529178&extID=10030>

⁵ World Money Laundering Report Vol 5. No 1

⁶ "What next - concentration camps?" Kari Lydersen in Impact
"http://www.impactpress.com/articles/febmar03/racialpro2303.html"

intelligence services of any country with a clearly defined interest in creating a specific impression, then how valid or reliable can it be?

And if it is not valid or reliable, how can we expect a) businesses and b) governments to act upon it?

Now to return to the question of trying to trace the funds: it is true that sometimes we may know the origin of the funds but as they work their way through the financial system the fact that they move without suspicion renders it next to impossible to track them.

This is made worse by the fact that banks may make reports of suspicious transactions to an FIU but may not discuss the position with other banks. So a transfer from Bank A to Bank B may not be suspicious but taking where it came from before Bank A and where it goes after Bank B it may become so. If one bank were to discuss the transaction with the other first it would risk being accused of tipping off and secondly it would not be protected against adverse consequences as a result of that discussion. Moreover, in many countries, such a discussion would be a criminal offence.

The fact that banks often cannot exchange intelligence greatly handicaps their ability to engage in the attempt to stem the flow of funds to future crime.

In the recent US Senate hearings into the debacle at Riggs Bank, US Regulators needed to divert attention from the fact that their supervision of the bank had been, at best, dismal. American regulators like to use - perhaps we should say misuse - the word "oversight" when they mean supervision. In this case, their use of the word appears to be correct. They simply overlooked many signs that Riggs was rotten. But that's not too surprising if some of the rumours that Riggs was a CIA / FBI / any - agency - you - can - think - of front. In the Senate Hearings, there has been a clear attempt to blame someone - anyone - except Riggs and its various regulators for the mess that eventually caused its implosion. And the target has been two large foreign banks which the US wants to slow down in their US growth - HSBC and Banco Santander. Riggs sought confirmation from each of the banks relating to the beneficial ownership of accounts held by those banks and, in accordance with the law in the country where the accounts were held HSBC and BS had to decline to answer the request.⁷

So it is governments themselves that are, in this respect, preventing the development of information exchange between financial institutions. Several governments have, I should note, taken steps to encourage information exchange.

Now, for a final topic, let me turn to alternative remittance systems and alternative fund raising techniques.

First alternative remittance systems.

I cannot recommend strongly enough a book called Lords of the Rim by Stirling Seagrave. In it he does not mention money laundering or organised crime even once. Yet the whole book, which is about the Chinese Diaspora is in fact a history of money laundering and international commercial and financial networks. Similar

⁷ World Money Laundering Report: Online "Riggs: Senate "Plan B's" HSBC and Santander (06.09.2004) <http://www.wmlro.com/ezpublish/index.php/article/articleview/1613/1/2/>

developments have taken place in most cultures over time but as the Chinese started it some 4,000 years ago I think we can say that they invented gunpowder, paper and money laundering. The Chinese system is called The Chop but in these post 11 September 2001 days, we all call it by its middle eastern name of hawala.

It's ten years since I first did research into the use of hawala as a money laundering mechanism and what I found then was that it was widely used for international money transfers in a wide range of commercial dealings and also as a means of payment used by foreign workers to remit money to their families quickly, cheaply and easily, often using their own dialect when dealing with a hawaladar. For like the Chinese described in Seagrave's book hawala works on cultural lines. Indeed, Seagrave describes how clan-relationships have survived hundreds of years with continuing relationships between the speakers of a dialect, often from a very small district within a region of China continuing until today to colonies right around the world. He also describes how merchants in the north of China developed the Chop to send their wealth to Canton and Shanghai because the northern rulers had a habit of deciding they should simply confiscate the wealth of the merchants who could, of course, just make more.

Hawala -type systems are very simple: a person wants to send money to his family. So he goes to a hawaladar near his home and pays the money plus the fee for both ends of the transaction. The hawaladar sends a message using whatever medium he has available to a hawaladar near to the recipient. He recipient goes to his local hawaladar and is given the money. At some time in the future, the hawaladars settle up. What we know is that hawaladars have long term working relationships with each other, they will find novel ways of settling up so that they do not put money into banks or carry cash around the world.

But they are widely abused by criminal gangs and by terrorists. They are equally widely used by legitimate businesses and even NGOs to get funds between two points where there is no effective or efficient banking system.

From our perspective the issue is that hawala-type systems do not leave a paper trail. Unlike a bank, such systems are more or less invisible. They operate from corner shops, from money changers, even - in one Hong Kong case - a little old woman who ran a chop business from her tiny flat with the aid of a fax machine.

So where such systems are used, because the money does not touch the financial system, there is no hope of identifying it using normal channels. And hawaladars tend to retain their money in cash, even if they run another business. The deposit and withdrawal of lots of cash would raise questions so they don't do it.

Incidentally, in 1998 I asked the Financial Action Task Force why they took no steps in relation to hawala. In essence their answer was that it did not feature on the radar of their member countries.⁸

The final issue to touch on in this paper is the use of assets to provide financial benefits elsewhere.

The use of a certificate of deposit or a charge over a property may mean that funds are raised in another country. This is a very simple mechanism by which funds are raised for the benefit of future crime - but it is also used as a laundering mechanism. My final point is therefore one of some hope: this scheme - regardless of whether it is

⁸ World Money Laundering Report: Volume 2 No 3

laundering or fund raising will bear similar hallmarks. There will be little more than a pawn-broking proposition - there may not be a good business plan, or the plan might fall apart rapidly leaving the lender to collect on the security. Whichever it is, this is an area where a lack of due diligence on the part of the lender may result in the lender being seen as having failed in his duty to detect and deter the funding of terrorism, simply because it is probably the only reasonably easy to spot transaction.

So to summarise:

According to US figures some USD128 million in terrorist funds have been identified and frozen world-wide since 11 September 2001.

More than 80% of those funds have been frozen in the USA

A larger figure of just under USD200 million has been quoted but it appears that this figure includes funds relating to Saddam Hussein.

Most countries rely on the UN list of terrorists when deciding who financial services businesses should look out for

The UN List contains woefully insufficient data to produce accurate responses (one UK bank had 700 hits on one name alone and no way of differentiating between them)

Some countries have their own blocked persons list but in some cases this is kept confidential within the regulated sector, so reducing its effectiveness and, importantly, preventing foreign institutions having access to that list and so being able to assist by making domestic reports

Financial services businesses are being encouraged to use profiling but primary form of profiling in relation to terrorism available is racial.

The money used for funding future crime is no different, in principle regardless of the proposed crime

The amounts of money concerned are very small - and almost invariably too small to trigger any cash transaction reporting system

The amounts can be moved by a variety of formal and informal systems without much expectation that they will be identified.

A separate offence of terrorism may not be the best way of dealing with the issues we face: especially where other offences which would apply to the same conduct already provide for a sentence with is as severe as that applicable to terrorism.

I must thank the organisers of this superb event: any event of this nature is always very difficult to mount and even more difficult to co-ordinate.

-end-

Appendix

THE RELATIONSHIP BETWEEN ILLEGAL DRUGS AND FIREARMS: A Literature Review Conducted for the Department of Justice Oscapella, Eugene (July 1998).

Source: http://www.cfc-ccaf.gc.ca/en/research/publications/reports/1998/reports/dg_rpt.asp

In a 1994 interview, Interpol's chief drugs officer, Iqbal Hussain Rizvi, told Reuters News Agency:

..... The end of the Cold War had left global terrorism without financiers, prompting the groups to turn to the drug business, he said. . . . "Drugs have taken over as the chief means of financing terrorism. There are no more free gifts from the earlier patrons," Rizvi said. . . . He said a bloody Kurdish revolt in Turkey was largely financed by money from heroin trafficking. 62

One author discusses the direct political assault by drug traffickers against political authority in Colombia. He concludes, however, that this is not the only threat that they pose to Colombia: "Cocaine trafficking revenue supports violent right-wing militias that terrorize the Colombian countryside and are responsible for a large fraction of Colombia's murders." 63

The Sunday Times (London) reported in January 1998 that Loyalist paramilitaries have established contacts with Scottish drug dealers to bring large quantities of cocaine and heroin into Northern Ireland to finance their terrorist activities. 64

The Sunday Times article continues:

..... In recent years senior figures within the UDA and UVF, the mainstream loyalist organisations, have clashed in a series of local disputes over drugs. They believe a sophisticated network could result in the organisations becoming totally self-financing, rather like terrorist groups in parts of South America.

..... That would enable them to purchase large consignments of arms if their ceasefires end, or prepare them for a move into the more lucrative drugs scene in Britain if they hold.

..... "In theory, these organisations could become self-financing in the foreseeable future. That would have serious implications because they would be in a position to buy weapons in much larger quantities," said a security source. [emphasis added]

In April 1998, an Australian newspaper 65 reported that Australian guns are being swapped for drugs in a growing trade which is arming Papua New Guinean rebels and seeing high-grade cannabis flood the local Australian market:

..... According to a Federal Police intelligence report, the outlawed weapons are being bought and swapped with Papua New Guineans and other islanders for large quantities of cannabis.

..... Criminal syndicates in Australia then distribute the drugs along the eastern seaboard.

..... Recent seizures included a .357 Magnum revolver, pump-action shotgun, pistols, SKK and SKS Chinese assault rifles and hundreds of kilos of cannabis.

Further reading:

Commission on Security and Co-operation in Europe

(a US agency for monitoring the Organisation for Security and Co-operation in Europe)

Hearing: Arming Rogue Regimes: The Role of OSCE Participating States
Testimony of Mr. Roman Kupchinsky
Editor and Senior Analyst, Crime and Corruption Watch
Radio Free Europe/Radio Liberty

http://www.csce.gov/witness.cfm?briefing_id=257&testimony_id=374

US Congress Library

A GLOBAL OVERVIEW OF NARCOTICS-FUNDED TERRORIST AND OTHER
EXTREMIST GROUPS: A Report Prepared by the Federal Research Division,
Library of Congress under an Interagency Agreement with the Department of
Defense May 2002

http://www.loc.gov/rr/frd/pdf-files/NarcsFundedTerrs_Extrems.pdf

National Association of Industrial and Office Properties

The Real Estate Information Sharing and Analysis Center (REISAC)
Tactics and Techniques of Suicide/Homicide Bombers
Quoting the US Department of Homeland Security
<http://www.naiop.org/governmentaffairs/reisac030912.cfm>

Risk Values

We must declare an interest: Risk Values is a company within The Anti Money Laundering Network. It deals with personality profiling at point of sale avoiding any question of race, religion, politics and even place of residence so as to avoid any stereotyped analysis of the individual. How it does it is explained on the Risk Values website at www.riskvalues.com

Michelle Malkin archives

"How many times have you picked up a newspaper and read about terrorist attacks perpetrated not by Muslim terrorists, but by generic "militants" or "guerrillas" or "rebels" or, as Middle East scholar Daniel Pipes noted the Pakistan Times called them, "activists"?"

<http://jewishworldreview.com/michelle/malkin090804.asp>
(David Pipes is part of the loose group that includes "Anonymous" who wrote "Terrorist Hunter.")

Grand Jury regarding Ujaama

<http://news.findlaw.com/hdocs/docs/terrorism/usujaama82802ind.pdf>

The Institute of Race Relations

Analysis: the war on terror leads to racial profiling
By Arun Kundnani 7 July 2004, 12:00pm

<http://www.irr.org.uk/2004/july/ak000006.html>

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The Anti Money Laundering Network
www.antimoneylaundering.net

Malaysian Office:
Level 26 Menara IMC, 8 Jalan Sultan Ismail, 50200 Kuala Lumpur
Tel: +6 03 2142 7588

UK: call +44 207 107 9512
(will divert to KL so please remember time difference)

Malaysia mobile +6 019 349 9310