SUPPRESSING THE FINANCING OF TERRORISM

Proliferating State Crime, Eroding Censure and Extending Neo-colonialism

JUDE McCulloch and SHARON PICKERING *

Combating the financing of terrorism is a key tool in the ‘war against terror’, yet has passed relatively undetected amongst the many other measures that add to the arsenal of the state’s coercive powers and the global dominance of the United States. These measures dramatically expand the discretionary power of law enforcement to respond to political activity as crime and provide a mechanism through which governments can financially cripple individuals, charities, welfare and social justice organizations. This article sets out the nature and impact of some of the combating of financing of terrorism measures post-9/11 within a state crime framework and broader critiques of the war on terror, and highlights a case study of alternative remittance or informal banking systems.

Introduction

After the 11 September 2001 attacks on the United States, measures targeted at the financing of terrorism gained great momentum. President Bush’s ‘first strike on the global terror network’ shortly after 9/11 involved freezing assets and blocking financial transactions of those allegedly involved with terrorism. Combating the financing of terrorism is a key tool in the ‘war against terror’, with some suggesting that the war will be ‘fought in the halls of our financial institutions’ and ‘may be won by the destruction of checkbooks instead of on a battlefield’ (Ayers 2002: 458–9).

Critiques of the ‘war on terror’ argue that it is a Trojan Horse for a reinvigorated colonial project under the auspices of neo-liberal globalization, spearheaded by the United States (see, e.g. Pilger 2002; McLaren 2002; Ali 2003; Mahajan 2003). Within a critical framework, United States-led military actions under the banner of the ‘war on terror’, particularly the invasion of Iraq, are seen as emblematic examples of state crime, encompassing both breaches of human rights and organizational state deviance (Green and Ward 2004). On the war’s domestic front, governments have acted opportunistically to exploit fear and insecurities post-9/11 in order to pass legislation which creates a context conducive to state crime, as well as using ‘counter-terrorism’ measures as a pretext for state terror (Hillyard 2002; Thomas 2002; Schulhofer 2002; McCulloch 2004; Hocking 2004: 193–249; Green and Ward 2004: 107–8; Human Rights Watch 2003).

Unlike many of the other aspects of the ‘war on terror’, the suppression of financing of terrorism measures have been subject to relatively little critical scrutiny (see, however, Ricketts 2002; Binning 2002; Zagaris 2002). This may be because issues related to financing
of terrorism are considered relatively benign compared to, for example, interrogation and detention regimes that have become relatively commonplace and intense in advanced democracies post-9/11, and less spectacular and deadly than the military invasions of Afghanistan and Iraq (see, e.g. Black-Branch 2002 on detention in the United Kingdom). Our own sense is that the sheer volume of international and national ‘counter-terrorist’ measures implemented post-9/11 has meant that the suppression of financing of terrorism measures have passed relatively undetected amongst the many other measures that add to the arsenal of the state’s coercive powers and the global dominance of the United States.

The lacuna of critical scholarship on the suppression of financing of terrorism measures has left the field clear for neoconservatives (Ehrenfeld 2003; Robinson 2003; Gunaratna 2003), law enforcement and security practitioners (Myers 2002; Levitt 2003), financial sector and business commentators (Chenumolu 2003; Ayers 2002), and black letter lawyers (Hardister 2003; Baldwin 2002; Banteks 2003; Selden 2003). These works tend to uncritically accept the veracity of the assumptions and motives underlying the ‘war on terror’ and frame problems with suppression of financing of terrorism measures largely in terms of logistics, lack of adequate commitment to take what are seen as necessary measures, and the potential impact on the global movement of capital that is the bedrock of neo-liberal globalization. Our aim here is to locate measures aimed at combating the financing of terrorism within a state crime framework and broader critiques of the ‘war on terror’.

Measures aimed at combating the financing of terrorism warrant close critical attention. These measures dramatically expand the discretionary power of law enforcement to respond to political activity as crime. In addition, they provide a mechanism through which governments can financially cripple individuals, charities, welfare and social justice organizations, and reduce the ability of individuals and organizations to engage in advocacy on behalf of marginalized groups and to critique government policy. The legislation and measures also undermine the ability of citizens in advanced democracies to engage in international solidarity activities with independence, resistance and social justice movements contesting authoritarian regimes. These impacts undermine the structure of civil society and the type of social movements which challenge and work towards minimizing state crime. By reducing the space for political action and dissent, these impacts also stifle critical discourses and struggles around international law, domestic law and social morality through which state deviance and crime are rendered visible (Green and Ward 2004: 4, 208–9). Moreover, they legitimize and support the actions of states—no matter how offensive in terms of international law, human rights and social justice frameworks—over the actions of ‘sub-state’ actors that seek to overthrow or reform the political, economic, social and cultural status quo embodied in the state.

This article sets out the nature of some of the combating of financing of terrorism measures post-9/11 and the impact of these measures, paying particular attention to their impact on civil society and the latitude towards state crime that is likely to follow. In doing so, it demonstrates the link between counter-insurgency measures of previous eras with the current ‘war on terror’, the creation of ‘suspect communities’ (Hillyard 1993) through the criminalization of non-government organizations (NGOs) and non-traditional financial arrangements such as hawala.

Civil society is considered a key censuring mechanism in identifying and labeling state crime (Cohen 1993; Green and Ward 2004). Consequently, civil society is the
conceptual lynchpin for our discussion of state crime and measures aimed at combating the financing of terrorism. As criminology expands intellectual and empirical work on state crime, it needs to simultaneously take account of the deleterious measures civil society is being subjected to and the concomitant undermining of its censuring function in the designation and recognition of state crime.

State crime scholars have traditionally used quite broad understandings of civil society, some considering all non-state entities a part of civil society (see Green and Ward 2004). This approach mirrors the work of many social theorists. For example, in an historical account of civil society, Hardt and Negri have outlined how it performed the role of mediator between ‘the immanent forces of capital and the transcendent power of modern sovereignty’ (2000: 328). Noting Hegel’s account of civil society as a mediating force between ‘the self-interested endeavors of a plurality of economic individuals and the unified interests of the state’, Hardt and Negri argue that civil society no longer serves this function because the structures and institutions that constitute civil society are ‘withering away’ (2000: 328). We do not agree that civil society is simply withering away. Rather, this article documents one of the increasing ‘flank attacks’ on civil society in liberal democracies which impacts on the capacity for society as a whole to imagine state crime. For the purposes of this article, we study community-based NGOs and non-corporate organizations as one important element of civil society, particularly in liberal democracies such as Australia, the United Kingdom and the United States.

Financing Terrorism: From Counter-insurgency to Counter-terrorism

The ideological antecedents of counter-terrorism lie in counter-insurgency theory and practice which was originally developed by the French and British military in the face of nationalist struggles to overthrow colonial rule. Counter-insurgency theory and practice, like contemporary ‘counter-terrorism’ practice, concerned itself with the maintenance or extension of an existing regime or social order through force and coercion (Schlesinger 1978; Hocking 2004: 70–8). The suppressing of financing of terrorism measures, particularly the focus on movements that pose a potential threat to the domestic and international economic and social hierarchies maintained through the state, are reminiscent of the coercive strategies of an earlier colonial period and can be characterized as neo-colonial. In addition, the measures foreshadow a mandated restructuring of the financial systems of diverse countries and cultures in ways that replicate corporate financial systems. Financial adjustments that promote neo-liberal structures as the universal norm manifest what might be seen as a new or emerging colonial strategy in the guise of counter-terrorism.

Prior to the 9/11 attacks, the counter-terrorist doctrine rendered NGOs involved in what might broadly termed progressive causes suspect and thus ripe for infiltration and surveillance (see, e.g. McCulloch 2001; Cole 2003: 158–79). The suppression of financing of terrorism measures which have proliferated post-9/11 provide governments with greatly increased coercive capacities to target NGOs.

NGOs, including charities, humanitarian organizations, social justice movements and international solidarity groups are seen as particularly suspicious in terms of concealing or providing terrorist financing and are therefore targeted by the combating of financing of terrorism measures. On 28 September 2001, President Bush passed executive order 13224, freezing the assets of certain individuals and entities
suspected of being linked to terrorism. Introducing the order, Bush announced that he was suspending otherwise applicable exemptions from certain humanitarian, medical and agricultural transfers and/or donations, arguing that ‘international terrorist networks make frequent use of charitable or humanitarian organizations to obtain clandestine financial and other support for their activities’ (quoted in Sheppard 2002: 635).

Much of the literature and commentary on combating the financing of terrorism likewise refer to the role that NGOs are alleged to play in terrorist financing. Ehrenfeld, for example, argues that ‘money is often provided to terrorists through legitimate businesses and institutions such as NGOs or even international aid organizations and through various charities’ (2003: 16).

Islamic charities are considered particularly suspect as fronts or conduits for terrorist financing. Hardister maintains that ‘al-Qaeda’s current financial backing is no longer predominantly from the personal funds of bin Laden; instead, this backing comes from wealthy supporters who donate funds to Islamic charities and relief organizations, which are then passed through to the terrorists’ (2003: 610). Bantekas, on the topic of Islamic charities, quotes uncritically an analyst ‘who observed that even socio-cultural Muslim groups that are not connected, nor advocate, political violence or terrorism, create and preserve the “Islamic atmosphere” that is used by more extremist and violent groups’. He claims that the commentator referred to ‘the Islamist “Terrorist Culture” as a pyramid at whose base stand nonviolent groups that attract large crowds, and at whose head one finds the terrorist groups’ (2003: 322; see also Ehrenfeld 2003: 37–45; Gunaratna 2003: 6). Levitt argues that ‘[i]f authorities are serious about cracking down on terrorist financing, they must not only “not allow” the purportedly political or social-welfare “wings” of terrorist groups to flourish, but must also take concrete steps to disrupt their actives. After all, it is there that the fundraising, laundering, and transferring takes place’ (2003: 66; see also Selden 2003: 493).

On 31 October 2001, the Financial Action Task Force (FATF), an international group comprising 31 Member States, issued a set of eight special recommendations related to the financing of terrorism. One of these recommendations states that non-profit organizations are particularly vulnerable to exploitation by terrorists. According to the FATF:

... [c]ommunity solicitation and fundraising appeals are a very effective means of raising funds to support terrorism. Often such fundraising is carried out in the name of organisations having the status of charitable or relief organisations, and it may be targeted at a particular community. . . . Specific fundraising efforts might include: the collection of membership dues and/or subscriptions; sale of publications; speaking tours, cultural and social events; door-to-door solicitations within the community; appeals to wealthy members of the community; and donations of a portion of their personal earnings. (Financial Action Task Force 2002: 4–5)

The characterization of NGOs as potential fronts for terrorist organizations under the suppression of financing measures strongly echoes the counter-insurgency framework of earlier periods. One aspect of counter-insurgency thinking is that NGOs and movements are to be seen as potential fronts for subversives and insurgents who manipulate causes and people for their own ends, namely the eventual violent overthrow of government. According to a prominent proponent of counter-insurgency, Frank Kitson, the leaders of subversive movements:
Counter-insurgency strategies were used by the British government against the catholic minority in Northern Ireland prior to the peace process in the mid-1990s. From the 1970s, these strategies included internment without trial, the use of sensory deprivation techniques against internees (McGuffin 1973), harsh repression of civil rights protesters—including the fatal shooting of 13 unarmed protesters on ‘Bloody Sunday’ 1972 (McCann 1992)—and the use of the military and paramilitary forces in policing operations (Walsh 1988). Emergency legislation facilitated the departure of policing and judicial practice from standards of ‘British justice’ by allowing for extended pre-trial detention of suspected terrorists, juryless trials and the removal of the right to silence (Dickson 1995). The legislation was used extensively against some sections of the community, most notably working-class Catholics, the Irish community in Britain and their supporters. There is now a significant body of evidence that demonstrates the legislation was used primarily to harass suspect populations rather than generate convictions (Hillyard 1988; 1993; Pickering 2002). Paradoxically, such measures resulted in the wider politicization of targeted communities (Pickering 2002), undermined the legitimacy of political institutions (Guelke 1992), located policing and the criminal justice central to the conflict itself, and led to a number of notorious miscarriages of justice (Hillyard 1993).

The original 1974 Prevention of Terrorism (Temporary Provisions) Act made it an offence to financially support proscribed organizations, which, at that time, were all Irish organizations. However, as anti-terrorist legislation has been extended over the past 30 years (see Terrorism Act 2000 and the Anti-terrorism Crime and Security Act 2001), suppression of financing of terrorism measures have broadened and become a more central component of counter-terrorism strategy (see Binning 2002 for details of the suppression of financing provisions in the latter acts). The reliance of counter-insurgency measures in Northern Ireland and Britain on legislation that systematically departed from the rule of law has proved fertile in the production of some of the most extensive suppression of financing of terrorism measures and is evidence of the almost seamless shift from the counter-insurgency to the counter-terrorism moment.

With the waning of the Cold War, ‘counter-terrorism’ eclipsed counter-insurgency as the dominant ideological framework informing police, military and security agencies (Schlesinger 1978; Hocking 2004: 70–8). According to Hocking, counter-terrorism ‘provided a domestic, peace-time adaptation of strategies developed to deal with the essentially war-time exigencies of colonial powers’ (2004: 71).

Nevertheless, the continuum view of dissent—the idea that politically motivated violence and dissent are closely connected—remained unchanged. The views of the former head of Australia’s Protective Services illustrate this. Explaining the security sector’s rationale for considering terrorism a logical extension of non-party politics, and therefore a legitimate focus for counter-terrorism surveillance, he argued that:

What we are finding is more often the lunatic fringes are infiltrating movements where ordinary people are honestly pursuing their ideals and exercising, quite properly, their democratic rights. They
are moving into organisations such as the anti-uranium movement, Greenpeace and even the animal welfare movement. They lie low and pursue their terrorist tactics, which have no connection with the objectives of these organisations. (Malcolm MacKenzie-Orr, quoted in McCulloch 2001: 176)

Within the counter-terrorism/counter-insurgent framework, NGOs are regarded with suspicion and the cohesion of collective action amongst groups of people is disregarded by according responsibility to ‘troublemakers’. Additionally, people and organizations may be seen as implicated in the violent extremes of the political spectrum merely through association with NGOs. The need to address the underlying causes of dissatisfaction is ignored and social issues are translated into security problems. In the counter-insurgent and the counter-terrorism moment, those involved in promoting social change that challenges social and economic hierarchies are either dupes or manipulators, using NGOs as vehicles to ferment social unrest and ultimately armed struggle or terrorism (McCulloch 2001: 174–90).

Combating the Financing of Terrorism

The combating of financing of terrorism regime has the potential to dramatically curtail the funds available to NGOs and deter people from associating with such organizations. Islamic charities and organizations, and those who support or associate with them, are most immediately and directly affected, along with NGOs in advanced democracies that engage in direct action or support independence and social justice movements in authoritarian regimes. Such outcomes will remove an important buffer against destitution in impoverished communities and countries, and reduce the space for political activism and dissent that is an important aspect of civil society. The prohibitions against solidarity work will add to the political isolation of independence and social justice movements in regimes with poor human rights records and increase the likelihood and intensity of state crime committed against members of such movements and their supporters. It will also buttress the impunity afforded states by ensuring crimes committed by states remain hidden from national and international audiences and thus uncensored and unpunished.

Many of the groups and individuals who had their assets frozen under the September 2001 US executive order and subsequent similar orders are Islamic charities or Islamic NGOs (Cole 2003: 76–9). In the immediate aftermath of 9/11, such listings were confined to groups allegedly associated with bin Laden. Subsequent listing expanded to include a whole range of groups and charities active in the Middle East (Zagaris 2002: 48–56). Hamas and Hezbollah, for example, are listed as terrorist organizations under US executive order. These organizations enjoy popular support in the Middle East. Hezbollah has elected members in the Lebanese parliament and Hamas runs various schools and hospitals that serve poor Palestinians (Zagaris 2002: 53–4; Hardister 2003: 642). Hardister maintains that ‘[t]he issue of freezing assets has become controversial because of the inevitable freeze of charitable assets along with those assets supporting terrorism’ (2003: 610).

The US President’s executive power is exercised without reference to substantive criteria, without evidence of any criminal activity, let alone terrorist activity, and without trial or hearing. Anybody who in any way associates with a designated terrorist can be added to the list of designated terrorists (Cole 2003: 77–9; Selden 2003; Sheppard
The ability of the President of the United States to target and name groups and individuals as terrorists and freeze their assets provides a powerful sanction for dealing with groups, or people associated with groups, who are considered politically inconvenient. Hezbollah views its listing as a political tool in the United States’ support for Israel (Hardister 2003: 643). The impact of the US listing extends beyond its borders. The order allows sanction against foreign financial institutions, even for unintentional involvement with allegedly terrorist-related funds (Sheppard 2002). There is a question mark over the authority of the United States to freeze foreign bank assets. Even some supporters of the US ‘war on terror’ agree that ‘the aggressive attack on the financial core of terrorists’ is ‘seemingly overreaching and intruding into the national policies of other countries’ (Hardister 2003: 660).

The 2001 executive order is supported by the authority of UN Resolution 1373, which was successfully initiated by the United States as a way of applying the US sanctions worldwide (Sheppard 2002: 629). The UN Security Council Resolution calls on states, amongst other things, to: prevent and suppress the financing of terrorism; criminalize the willful collection of funds for terrorism; and freeze funds of terrorists and those who support terrorists.

The Resolution provides a mechanism for states to list organizations or individuals as terrorists with the United Nations and then purports to require all Member States to freeze the assets of those listed within their territories and criminalize financial dealings with those on the list. The Resolution does not include a definition of terrorism, set criteria for listing or require states to supply evidence in order to list an organization or individual. The entity or individual so listed has no formal opportunity within the UN process to challenge their listing—although a state has 48 hours within which to object (Zagaris 2002: 78–82). The UN blacklisting mechanism, like the US executive order process, gives states enormous latitude to unilaterally attach the label of terrorist to individuals or organizations and financially cripple them.

Another important international measure is the International Convention for the Suppression of the Financing of Terrorism (1999), which came into effect in 2002 after the requisite number of countries ratified it. It creates the offence of providing or collecting funds that are to be used to carry out terrorism. Although important, unlike the UN Resolution, it has no international enforcement mechanisms attached and applies only to signatory countries (Hardister 2003: 624–8).

Following the lead of the United States, and in line with international developments, many countries enacted national suppression of financing of terrorism laws. These laws provide for the freezing of assets of individuals and organizations designated as terrorists through a process of proscription, similar to the US executive order process described above (Brew 2004). The laws typically create offences related to the financing of terrorism and the provision or collection of funds used to facilitate terrorist acts. The penalties provided for these offences are severe. In addition, these laws provide for greatly increased surveillance of financial transactions (see, e.g. Suppression of Financing of Terrorism Act 2002 (Australia); Criminal Code Amendment (Terrorist Organisations) Act 2004 (Australia); Patriot Act 2001 (USA); Anti-terrorism Crime and Security Act 2001 (UK)).

Like the US and international measures, the national measures have specifically targeted NGOs, particularly Islamic organizations. Under suppression of financing of terrorism measures, individuals who support NGOs that are allegedly connected to
terrorism or financing of terrorism are vulnerable to severe financial and criminal penalties. These can apply even where there is no intention to support terrorism and where the material support given is not connected to a terrorist act. The combating of financing of terrorism measures aimed at NGOs is primarily targeted at financial aid that is directly or even indirectly associated with organizations that are deemed to be terrorist, rather than acts of terrorism themselves. Where the triggers for these measures are ‘terrorism’, rather than association with designated or alleged terrorists or terrorist organizations, terrorism is frequently defined broadly enough to include acts of civil disobedience and armed resistance (Ricketts 2002: 141; American Civil Liberties Union 2003; Thomas 2002).

Giving money to an NGO has become legally precarious in the context of current financial sanctions regimes and changes to the criminal law associated with combating the financing of terrorism. Provisions in the US Patriot Act criminalize financial transactions with those designated as terrorists by executive order. However, harsh financial sanctions can be imposed prior to, or even without, criminal trial. One commentator referring to the provisions in the United States notes that:

\[...\] a US or foreign citizen may be subject to asset forfeiture action if the citizen made a donation from his or her brokerage account to a charity, which unbeknownst to the donor then gave the money to another charity, which in turn provided the money to the family of one of the Sept. 11 hijackers. This citizen would not be required to have any knowledge of the donation’s final destination or any desire to aid this particular family, yet all the citizen’s accounts could be frozen. (Selden 2003: 550)

As Baldwin states, referring to the US suppression of financing of terrorism measures, ‘[w]hether persons are deemed guilty or innocent is irrelevant, it is the money we are after’ (2002: 8).

In the United States, giving material support to terrorist activity is a crime punishable with up to 15 years in prison. Under provisions in the Patriot Act, any individual or group that breaks the law with the intent of influencing the government can be labelled a terrorist if their activities are ‘dangerous to human life’ (Thomas 2002: 95–6). The definition of ‘terrorism’ is broad enough to include a range of diverse direct action organizations, so that under these provisions, someone who gives money or material support to groups like Greenpeace is potentially exposed to serious criminal penalties (American Civil Liberties Union 2003).

In Australia, it is an offence to provide or collect funds in circumstances where a person is ‘reckless’ as to whether the funds will be used to facilitate or engage a terrorist act (Suppression of Financing of Terrorism Act 2002, s. 3). The Australian Parliamentary Library Bill’s digest, considering a draft of this provision, maintained that:

\[...\] it is possible to imagine a scenario where it is alleged in the press that an organisation that claims to be a charity is in fact diverting funds to a terrorist organisation. In such circumstances, would a person who donated money to the charity despite knowledge of the allegation be taking an unjustifiable risk? The allegation is unproven and may well be false. (Department of Parliamentary Library 2001–2: 7)

Analysing these provisions, Ricketts argues that the offence provision is wide enough to impose a legal duty upon members who provide money to foreign aid organizations to ascertain exactly how the funds will be expended (2002: 137). Given the widespread allegations of charitable connections to terrorism, and particularly the connection
made between Islamic charities and terrorism, donors risk criminal prosecution and penalties of up to 15 years’ imprisonment. The existence of this offence, apart from giving wide latitude to prosecution authorities, is likely to have a ‘chilling’ effect on donations to charities, particularly Islamic charities.

Under separate provisions in the Australian Criminal Code 1995, it is an offence to give assistance, including funds, to a ‘terrorist organisation’. The definition of a terrorist organization for the purpose of this section is broad enough to cover almost any political movement that engages in any form of violent struggle or resistance, domestically or internationally. The prohibition on funding extends to all aspects of financial support including food and medical aid. This provision criminalizes fundraising on behalf of groups engaging in armed resistance against occupation, fighting for independence, or acting in self-defence against state violence, and provides a penalty of up to 15 years’ imprisonment (Ricketts 2002). Recent amendments to Australian legislation extend the supporting and associating with terrorist organization offences even further (Anti-Terrorism Act (No. 2) 2004). Human rights organizations argue that the new law potentially criminalizes a whole range of legitimate activities, including the right to freedom of association, the freedom of political communication and the provision of humanitarian aid (Senate Legal and Constitutional Legislation Committee 2004).

If these provisions had been in place between 1975 and 1999, when Indonesia invaded and occupied East Timor, the activities of the ‘free Timor’ movement in Australia in support of the East Timorese resistance movement would have been criminalized. The East Timorese themselves must take the major credit for surviving and their eventual independence in the face of the genocidal policies of the Indonesian government, the indifference of world leaders and craven acquiescence of the government of its nearest neighbor, Australia. Nevertheless, the solidarity movement in Australia made some contribution to East Timor’s remarkable resistance and ultimate escape from occupation, and pervasive Indonesian state crime and terror (Birmingham 2001; McCulloch 2002; Aarons 2001).

The UK Terrorism Act 2000, passed before the 9/11 attacks, states that a person commits an offence if that person is involved in fundraising and intends, or has reasonable cause to suspect, that it may be used for the purposes of terrorism. The legislation includes a very broad definition of ‘terrorism’. Basically, terrorism is defined as action or the mere threat of action that is made for advancing a cause, that attempts to influence the government and that falls into one of several categories, including serious damage to property or disruption of an electronic system. Similar to the US definition of ‘domestic terrorism’, this definition is broad enough to include direct action and civil disobedience, and will also impact on fundraising in solidarity with independence and liberation movements. In the United Kingdom, similar to the United States and Australia, giving material support to an organization designated as a terrorist organization is also criminalized (Hammerton 2000).

**Case Study: Alternative Remittance Systems**

One of the major attacks on civil society under the combating the financing of terrorism banner has been the focus on alternative remittance or informal banking systems (see, e.g. United States Department of Justice 2002). One of the Financial Action Task Force’s terrorist financing recommendations states that:
SUPPRESSING THE FINANCING OF TERRORISM

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions. (2001)

In the orientalist worldview evident in much of the writing on the combating of financing of terrorism—and, indeed, much of the literature on the ‘war on terror’ more generally—informal banking systems are seen as ‘secretive and mysterious’ (Baldwin 2002: 12), even ‘built for terrorism’ (Ganguly 2001). Sometimes, these systems are referred to as ‘underground banking’—an inaccurate description because at least until the recent measures directed against them, informal systems operated with complete legitimacy and were often heavily and effectively advertised (Jost and Sandhu 2000). The association of informal banking with ‘the underground’ suggests illegitimacy if not illegality. In the post-9/11 environment, some commentators refer to these systems as ‘technically legal’ (Baldwin 2002: 130)—a label which suggests that they are not substantively legal, despite having operated for centuries, predating the formal corporate banking systems of the West.

Alternative remittance systems are the norm in countries where formal banking is poorly established. Informal systems provide community-based, extremely cost-effective financial services based primarily on cooperation rather than competition and profit (Grabbe 2002). These systems are informal and sometimes paperless because they function with a high level of trust. Hawala, one of the main informal remittance services (also referred to as hundi), was first developed in India. It is distinguished from formal banking by making extensive use of family relationships and regional affiliations. Hawala is culturally preferred in many communities, economically rational from the point of view of the user, and even religiously mandated where charging of interest is considered counter to the teachings of the Koran (Zagaris 2002: 70). For many, it is the only way to send money to families in villages in Asia and Africa (Knox 2001). Hawala dealers are almost always honest in their dealings with customers and fellow ‘hawaladars’. One of the meanings attached to the word ‘hawala’ is trust. The system works through money transfer without money movement and is relied on by many immigrant communities to remit money back to their countries of origin (International Monetary Fund and World Bank 2003; Jost and Sandhu, 2000).

Post-9/11, offices of the Al Barakaat hawala in the United States were raided and its assets frozen and blocked. The US enforcement actions were coordinated with other countries to close down Al Barakaat offices around the globe. Al Barakaat was a financial and telecommunications business, which, amongst other things, operated a wire transfer service and currency exchange in approximately 40 countries. Al Barakaat was the largest Somalian alternative remittance company utilizing hawala. The United States claimed it was a conduit for terrorist funds. These allegations were strenuously denied and no evidence of terrorist connection was demonstrated, despite repeated requests for the United States to provide such evidence (Schmemann 2002). Despite this, the company was forced to close, with millions in debt to depositors and others. In August 2002, after a long campaign, the US government removed three Al Barakaat businesses and three people associated with them from the list of those whose assets were frozen.

479
under combating of financing of terrorism measures (Fox News 2002). Despite lack of evidence, trial or conviction, the US enforcement action led directly to the financial ruin of Al Barakaat. This in turn led to a financial crisis in Somalia and effectively cut aid programmes in the country (Zagaris 2002: 68–72; Whyte 2001: 153).

The targeting of informal remittance systems under combating of financing of terrorism measures may force some communities and users to move to more expensive corporate systems and, in some cases, leave people with no means to send money to families in dire financial need. The demise of informal financial systems, if achieved, will certainly remove a source of competition for the formal banking system and may lead to an increase in fees and charges for remittances in the formal sector.

It is not apparent that informal banking systems are more conducive to terrorist financing than formal financial systems. The volume of dollars flowing through the formal financial systems creates a snowstorm of data and a virtual ‘white-out’ in the distinction between money that might be used by alleged terrorists and other funds. Looking for terrorist financing amongst the billions of dollars that flow through global financial markets is described as being more difficult than searching for the proverbial needle in a haystack, and instead more ‘akin to searching for an indistinguishable needle amongst a stack of needles’ (Wolosky and Heifetz 2002: 3). The focus on hawala is based on the notion that non-Western, particularly Muslim, users of financial systems, like Islamic charities and NGOs which operate outside the corporate mainstream, are inherently suspect. Mads Andenas, director of the British Institute of International and Comparative Law, maintains that most terrorist financing uses formal financial institutions and argues that ‘[i]t’s a distraction to some extent to hit the weaker ones in the picture, to look at charities or aid organizations or other forms of institutions or associations which deal with people form the third world’ (quoted in Knox 2001).

It seems that the cultural appropriateness, cost-effectiveness and freedom to choose, or even to have access to, financial services where no alternative exists count little in the balance when weighing up the cost of combating of financing of terrorist measures. Chenumolu (2003) argues that ‘[i]ncorporating the financial system of Islamic states into the current global structure may require strong commitment. However in order to create more standardized procedures, the step must be taken’ (2003: 415). Consistent with an imperialist mindset and neo-liberal economic programme, the imposed standard is the formal banking systems of the developed world rather than the long-established alternative systems of less developed nations. While the corporate systems are effective in promoting and servicing the needs of capital, the informal financial systems are superior in terms of meeting community needs. The prioritization of the needs of capital over community is consistent with those critiques of the ‘war on terror’ which argue that it is a fig leaf for promoting the interests of neo-liberal globalization at the expense of other interests (Ali 2003).

The attack on the informal banking systems that rely on trust and connectedness undermine the foundations of civil society. Civil society is based on networks that are developed and sustained outside the state and outside corporate structures. By undermining community networks that form the basis of alternative remittance systems, suppression of financing of terrorism measures is also undermining civil society. As pointed out previously, civil society is vital in naming and minimizing state crime.
The proscription powers under suppression of financing of terrorism measures and the UN blacklisting process gives states enormous ability to label people and organizations as terrorist or terrorist sympathizers. This works to position those so labelled as non-citizens outside the moral community and for whom human rights are seen to have no relevance. Commentators, scholars and the media tend to adopt the categories of terrorism and counter-terrorism promoted by government, with the result that state terror and crime are ignored altogether or permitted to masquerade as ‘counter-terrorism’ (Herman 1993: 56). The criminalization of fundraising in advanced democracies in solidarity with resistance, social justice and independence movements aids and abets the trend by states in the wake of 9/11 to vilify their political opponents as terrorists. It also propagates a notion of ‘security’ which prioritizes the political status quo manifest in the apparatus of the state—no matter how unjust or dictatorial—over social and political movements that seek to change that status quo.

By targeting association rather than criminal or terrorist acts, the suppression of financing of terrorism measures are integral in the construction of ‘suspect communities’ (Hillyard 1993). The targeting of alleged terrorists through the disruption and criminalization of communities which are seen to be associated with them is discriminatory and contrary to the rule of law. Such measures systematically reduce the capacity of these communities to take part in issue-based collective, and otherwise legal, political activity. The tainting of political association with the smear of terrorism is likely to have a ‘chilling’ effect on political discourse and activity, as people feel dissuaded from such activities through fear of adverse legal or financial consequences. In addition, the blurring of the lines between political activity and terrorism tends to delegitimate those activities (Hocking 2004: 247–9).

The threats to NGOs and civil society under suppression of financing of terrorism legislation represent an extension or intensification of the attacks suffered more generally under neo-liberalism. The neo-liberal agenda has reconfigured previously existing institutional arrangements between government and non-government players in democratic policy processes. Governments, neo-liberal think-tanks and commentators have engaged in a ‘hostile, negative and often emotional campaign’ to undermine NGOs (Maddison et al. 2004: viii). NGOs have been vilified as unrepresentative, elite and acting on behalf of special interests to the detriment of the mainstream. Publicly funded NGOs that are critical of public policy are threatened with, or fear, withdrawal of funding or other financial penalties, such as loss of charitable status for tax purposes, if they express dissenting views. In these circumstances, it is increasingly difficult for NGOs to express opinions contrary to, or critical of, government policy or action (Maddison et al. 2004; Sawer 2002; Marden 2003). The exposure of universities to the market under neo-liberalism has likewise impacted on the ability of academics to express dissenting opinions and engage in critical research (Walters 2003; Tombs and Whyte 2003: 3–45; Marginson 2004).

Green and Ward argue that state crime can be defined independently of the state through the capacity of civil society to censure state acts or omissions as deviant:

If civil society plays a crucial role in legitimizing the state in those societies where hegemonic rule prevails, it can also play a crucial role in defining state actions as illegitimate where they violate legal rules or shared moral beliefs. Civil society in other words can label state actions as deviant. (2004: 4)
By providing states with a mechanism to label their opponents’ terrorist, criminalizing association, rather than criminal or terrorist acts, and extending the neo-liberal attack on NGOs, the suppression of financing of terrorism measures give license and latitude to the perpetration and escalation of state crime by reducing the capacity of key sectors of civil society to challenge state actions and legitimacy. The attack on civil society is further manifest in the suppression of financing of terrorism measures which threaten alternative remittance systems. The attack on these systems undermines the basis of civil society and furthers a neo-liberal agenda by seeking to colonize non-corporate forms of social and economic organization. In reducing the space for local, regional and international networks of solidarity around social, political and cultural issues, measures aimed at combating the financing of terrorism are removing the very possibility of imagining, let alone recognizing, acknowledging or proving, state crime.

**Conclusion**

Many aspects of the combating of financing measures fit with the broader critique of the ‘war on terror’. The power of states to proscribe organizations as terrorist financially cripple them, and criminalize and financially penalize those that associate with them, expands dramatically executive power, undermines due process protections and provides states with powerful weapons with which to deal with political opposition. The ‘guilty by association’ aspects of the ‘financial war on terror’ in particular give flesh to President Bush’s oft quoted ‘either you are with us, or you are with the terrorists’ comment (2001). These new coercive powers give latitude to state crime in the form of human rights abuses and state deviance.

The targeting of NGOs and those outside the corporate mainstream under the banner of the financial ‘war on terror’ furthers the neo-liberal project as the mandated norm and comprises a significant attack on civil society. The attack on civil society embodied in the financial ‘war on terror’ erodes the ability of civil society to expose, name and sanction state crime. In particular, it erodes the ability of non-government and non-corporate actors to label the various parts of the ‘war on terror’ as state crime.

The targeting of non-government and non-Western systems and programmes as terrorist suspects under the financial ‘war on terror’ creates an artificial island of intense financial regulation in a sea of free markets. This intense financial regulation is directed primarily at activities outside the corporate mainstream of investment capital and is aimed at not-for-profit organizations, charities and solidarity groups that challenge the political status quo, as well as communities and individuals popularly stereotyped as terrorists. The mandated regulation of informal financial systems is an example of cultural and economic imperialism that is accompanying the progressive colonization of the global commons that exist outside of corporate control. Under the auspices of the financial ‘war on terror’, 21st-century warriors on the neo-liberal frontier are more likely to be wearing suits than combat gear, and armed with briefcases rather than weapons.

**References**


