

TNI Crime & Globalisation

TNI Crime and Globalisation seminar Amsterdam 28-29 April 2005

Global Enforcement Regimes Transnational Organised Crime, International Terrorism and Money Laundering

Tom Blickman of TNI opened proceedings with an overview of the theme and aims of the seminar. He suggested that, over the last decade, and especially since the 9/11 attacks, drug trafficking, transnational organized crime and international terrorism have been fused into a single "axis of evil". This reflects the changes in the traditional appreciation of security threats, which tended to emphasize threats to and from states, as opposed to those that are non-traditional in nature such as terrorism, proliferation, disease, environmental degradation, crime and narcotics flows. Globalization and the resultant impetus it has given to non-traditional transnational threats need a different policy response.

To fight these "new" threats, a global enforcement regime¹ has been created – mainly on the basis of the US's national security priorities. The US has been able to force its agenda on the international community using its unparalleled resources and diplomatic strength. A body of multilateral agreements has been put in place at the international level. At the UN and G8 level conventions against transnational organised crime and regulations to counter money laundering are accepted, while the UN Security Council has set in motion a global programme against international terrorism. The recurrent pattern is remarkably the same since the US internationalised its "war on drugs". Drug trafficking and related issues like organised crime and money laundering of the proceeds are first labelled as a national security threat and subsequently the battlefield is transformed into an international "war on ...".

The wide array of multilateral agreements, conventions, rules and regulations on drugs, crime, money laundering and terrorism amount to a modern day version of the "software of empire" - complementing the hardware of military intervention,

1. Stephen Krasner gave the classic definition of a regime in the journal *International Organization* in 1983. He said: "an international regime is a set of explicit or implicit principles, norms, rules and decision-making procedures around which expectations of actors (States) converge in order to coordinate actors behaviour with respect to a concern to them all".

economic sanctions etc. Increasingly, these multilateral agreements are reached at inter-governmental level (such as the UN, G8, the EU) and presented as a *fait accompli* before national parliaments that are pressured to ratify them. No government wants to be labelled as an outcast because a national parliament refuses to ratify these international agreements that are the result of complicated diplomatic bargaining and an alleged international consensus. At the level of the European Union a similar process is taking place in order to harmonize its justice and security area.

There are few mechanisms in place to evaluate the effectiveness or adverse effects of this regime, nor does it take any account of the root causes or grievances of those who have opposed the status quo. While on the one hand the US has succeeded in transposing its national security concerns into global ones, on the other, it discards and openly sabotages international agreements perceived as contrary to its interests such as the Kyoto Protocol and the International Criminal Court (ICC).² The seminar, it was hoped, might address these issues and examine the possibility of promoting an alternative agenda to realign the focus of 'security' from enforcement and repression towards a "human security" agenda that looks to root causes and social solutions and puts more emphasis on good governance, social and economic development and human rights.³

2. A complicating factor is the fact that in virtually every other country in the world, an international treaty or convention, once ratified, overrides domestic law. Not so in the United States; it simply becomes part of the ordinary body of American law. As such, it can be ignored by the president or Senate if national security, or even ideology, seems more important. (See: The insidious wiles of foreign influence, *The Economist*, June 9th 2005)

3. The 1994 Human Development Report began an exploration of the new concept of human security. Definitions on what human security exactly means, differ. It certainly does not exclude law enforcement and international action against crime and terrorism. However, it pretends to take into account much more the root causes that foster crime and political terrorism, such as poverty, inequality and social exclusion. The power of the human security concept is most clearly evident when it is contrasted with the traditional concept of national security. In the human security approach, the welfare of human beings around the world is the object of concern rather than military and strategic interests of a particular state. The defence of human life is more important than the defence of land, and personal integrity is as important as territorial integrity. It is, as the UN Development Program (UNDP) notes, an "integrative" as opposed to merely a "defensive" concept, and includes security of individuals and communities as well as territories and states. Criticasters of the concept, however, point to the fact that it denies long-established principles of state sovereignty, and may well encourage unwarranted interference in the internal affairs of other states, issuing "a blank cheque for virtually limitless UN interventionism." See: Walter Dorn, *Human Security: An Overview*, at http://www.rmc.ca/academic/gradrech/dorn24_e.html.

The Canadian government has become one of the champions of the human security concept. Canada, along with Norway, sought to foster wider interest and commitment to human security by creating the Human Security Network (<http://www.humansecuritynetwork.org/>), which currently has thirteen member states (Austria, Canada, Chile, Greece, Ireland, Jordan, Mali, The Netherlands, Norway, Slovenia, South Africa, Switzerland and Thailand). However, as Margaret Beare notes in her paper *Fear-based Security: The Political Economy of 'Threat'*, a change in Foreign Affairs Ministers, plus September 11 have caused the Canadian 'security' focus to revert from 'human security' (with the responses appropriate to human security) to 'national security' (with the traditional national security responses). The government position has shifted even though the words 'human security' are still being used. The major threats to human security have become terrorism, drug trafficking and the illicit trade in small arms. Human security priorities are now defined much the same as national security priorities. What is lost is the 'original' concern for root causes. In addition, there is little appreciation that a national security focus might actually be in direct contrast with human security interests.

At the UN level the concept of human security is promoted by the Advisory Board on Human Security (ABHS) that has succeeded the Commission on Human Security – a group of personalities that presented their Final Report, *Human Security Now*, to UN Secretary-General Kofi Annan in May 2003. The Commission was established in January 2001 through the initiative of Japan and in response to the UN Secretary-General's call at the 2000 Millennium Summit for a world "free of want" and "free of fear." The ABHS has no formal status within the UN system, but advises the UN Secretary General. See the

Several papers were prepared for and presented at the seminar:

- *The Global Fix: Neo-liberalism, America's Moral Crusade and International Efforts to Control Transnational Organized Crime*, by David Bewley-Taylor, Department of American Studies, University of Wales Swansea (UK), and Michael Woodiwiss, University of West of England, Bristol (UK)
- *Controlling the international money trail: What Lessons Have Been Learned?* by Michael Levi, Professor of Criminology, Cardiff School of Social Sciences, Cardiff University (UK)
- *Fear-based Security: The Political Economy of 'Threat'*, by Margaret Beare of the Nathanson Centre for the Study of Organized Crime and Corruption, York University (Toronto, Canada).
- A Critical Evaluation of the UN Counter-Terrorism Program: Accomplishments and Challenges, by David Cortright of the Fourth Freedom Forum (US)
- *The exceptional and draconian become the norm: The emerging counter-terrorism regime*, by Tony Bunyan, of Statewatch (UK)

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Michael Woodiwiss presented the paper 'The global fix: neo-liberalism, America's moral crusade and international efforts to control transnational organised crime', co-written with David Bewley-Taylor.

His paper argued that national and international organised crime control policies are inadequate and counterproductive. This is largely because the international community has accepted the limited and blame-shifting approach to crime first adopted by the Nixon administration some thirty years ago. Under Nixon a 'dumbing down' of professional and public understanding of organized crime occurred, whereby most Americans came to believe that the problem was synonymous with a foreign crime group. Nixon accelerated the war on drugs and worked to strengthen the UN based global drug prohibition regime. It was argued that the President's legacy extends beyond international legislation formulated during his time in office. A key part of the 1970 Organized Crime Control Act – the Racketeer Influenced and Corrupt Organizations Act (RICO) - had a bearing upon both the 1988 UN Convention against Trafficking in Narcotic Drugs and Psychotropic Substances and the UN Convention against Transnational Organized Crime. These two treaties can thus be seen in many ways as an extension of the US's methods of crime control.

In the early 20th century there was no real understanding of organized crime. In the 1920s and '30s an ideological rigidity favoured the development of a poorly-policed business system that left the door open to fraud, extortion and other types of organized criminality. However studies by Ross, Lipmann and others tried to broaden the definition of organized crime by seeing it as a function of

UN Human Security website at <http://www.humansecurity-chs.org>. It is clear that the proponents of the human security concept have much less leverage within the informal and formal international institutions that deal with security issues. Not only does the concept need to be improved, but it needs to be embedded in the international security arena as well.

opportunity – the chance to make large illegal profits with minimal risk. During the reform era of Franklin D. Roosevelt's New Deal there was an understanding that with the restructuring of US labour and industry, people needed protection from capitalism.

While many of the checks and balances introduced by the New Deal remained in place for decades, they were gradually watered down and eventually removed. As the checks were weakened, corporate organized criminality became more institutionalised and destructive. At the same time the problem of organized crime was redefined in terms of a deviant aberration in the otherwise flawless American economic system. As corporate ownership became more concentrated, corporate dominance over the rest of society became less accountable.

Nonetheless in the early 1970s, revelations about the role of ITT in overthrowing the democratically elected president of Chile in 1973 and other abuses committed by multinational companies had shocked the international community to the extent that corporate crime was included in early deliberations over the problem of transnational organized crime. The United Nations Centre for Transnational Corporations (UNCTC), created in 1974, set out elaborate codes of conduct to prevent corruption, ensure respect for human rights and to meet certain consumer and environmental protection objectives. Discussions at the Fifth United Nations Congress on the Prevention of Crime in 1975 were concerned about 'crime as business', and about ways to curtail activities such as bribery, price-fixing, smuggling, violation of regulatory laws by private companies, currency offences involving the evasion or avoidance of tax, and the behaviour of transnational corporations as much as that of 'conventional' criminal groups.' The emphasis was on activities rather than groups.

However UNCTC was loathed by successive Republican administrations, and was abolished in 1993. UN attempts to establish more effective controls over transnational corporations were largely abandoned.⁴

4. The rise of transnational corporations (TNCs) as main actors in the world stage led the UN Economic and Social Council in 1973 to entrust a "Group of Eminent Persons" the task of advising on the nature and activities of these corporations and their role and impact on the development process. On the basis of the study *Multinational Corporations in World Development*, and after taking public comments, the Group made recommendations that led to the creation of the United Nations Commission on Transnational Corporations (UNCTC) to provide a permanent intergovernmental forum for deliberations on issues related to TNCs. Given the centrality of TNC issues at that time, the venue for these deliberations within the UN system became the UN Headquarters in New York.

The initiative to create a Programme on Transnational Corporations and, in particular, to formulate a Code of Conduct on Transnational Corporations, was part of a broader drive towards the establishment of a New International Economic Order (NIEO). The objectives set by the NIEO through United Nations resolutions on the Code of Conduct reflected the general perceptions of the time, triggered by political and economic events. The focus was on controlling the political and economic activities of TNCs, out of the concern of developing countries about their sovereignty.

The work of UNCTC and the Commission on Transnational Corporations was affected by the cold war climate of confrontation and mistrust. In the 1980s, the focus of attention increasingly changed towards the positive impacts of foreign direct investment (FDI) and TNCs on development. This change in attitude towards TNCs contributed to the stalling of the Code negotiations in the Commission on Transnational Corporations. Regarding UNCTC, its work reflected the changing times and became more focused on the positive, rather than the negative, effects of FDI and TNCs. The UNCTC was dissolved in 1993 and the Programme on TNCs was transferred to UNCTAD in Geneva and is now being implemented by UNCTAD's Division on Investment, Technology and Enterprise Development.

From the 1950s onwards and for the duration of the Cold War, organized crime had to be seen as something external to America. It was portrayed as a conspiracy of outsiders powerful enough to threaten the nation itself. As President, Richard Nixon supported measures of organized crime control that were increasingly international even though they resulted in more organized crime, not less. In the last two decades the combination of neo conservative liberalism and the structural programmes favoured by the International Monetary Fund (IMF) and World Bank has exacerbated the problem.

The Nixon administration focused first on gambling as the spearhead for anti organized crime efforts, and then on narcotics. First, drug problems were exaggerated, then crime was blamed on drugs, and finally the administration provided firm executive action by waging a 'war on drugs'. This largely consisted – as it does today – of investing in failed efforts at repression at home, and persuading others to do the same. The US donated large sums to the United Nations Fund for Drug Abuse Control (UNFDAC) whose Division on Narcotic Drugs was expected to assume new responsibility for enforcing drug prohibition around the world. While many of UNFDAC's early projects stressed drug use education and voluntary crop substitution, by the end of the 1970s there was a shift of emphasis to US-style law enforcement programmes and greater international law enforcement cooperation. The US also used its diplomatic weight in bilateral relations to pressurize specific countries, such as Turkey, to eradicate opium poppy cultivation.

To institutionalise this process the Bureau of International Narcotic Matters (INM) was created in 1978 in the US State Department. This became the Bureau of International Narcotics and Law Enforcement (INL) in 1995 to reflect the agency's expanded remit of money laundering, contraband, human trafficking and other forms of crime. Its main task is to increase compliance with US crime control strategies and laws. Significantly, the UN drug control apparatus has evolved in a parallel fashion, with the merging of drug control and crime prevention into a single office, the United Nations Office on Drugs and Crime (UNODC). The US government is currently the largest single donor to UNODC, and consequently, other UN member states are forced to accept American-inspired analyses of drugs and organized crime 'threats' as valid and to perpetuate the myth that US drug control and organized crime control methods work.

During the 1990s discussion of organized crime was essentially tailored to fit US interests. It downplayed the criminal involvement of otherwise respectable business institutions or persons, and defined the problem in terms of 'crime multinationals', hierarchical monoliths that 'poison, pollute and infiltrate legitimate business', against which methods pioneered in the US were to be applied. A prominent populariser of the theory of organized crime as conspiracies of multinational crime hierarchies was the writer Claire Sterling. Much appreciated inside the US intelligence community, she contributed to the establishment of a blame-shifting approach deemed to be effective in combating organized crime. This was the

(According to UNCTC website at <http://unctc.unctad.org>)

model sold to the United Nations in the form of the UN Convention against Transnational Organized Crime, signed in Palermo in December 2000. The most striking aspect of the US approach is its exclusive concern with arresting and punishing harmful people rather than a more strategic approach that reduces the opportunity for harmful activity. Thus a flawed approach to organized crime has been fully internationalised.

The international strategies that America has forced on producer countries have been characterised by human rights abuses and have shown little sign of succeeding, despite the claims of US officials. Despite the obvious failure of supply side efforts there have been no serious attempts to evaluate these or examine alternatives. American diplomats and bureaucrats have achieved the same within the UN as US business elites did in the in the early 20th century, when attention was diverted from corruption and problems in the system towards persons and organizations.

While the UN's crime prevention agencies have been perpetuating a misleadingly simple analysis of organized crime with the notion that 'bad guys threaten democracy and civilisation', other parts of the organization have produced studies that could contribute to a better understanding of transnational organized crime by looking at the mismanaged globalisation process. For example the UN Human Settlements Programme (UN-Habitat) study, 'The Challenge of the Slums', looks at the deterioration of conditions of the urban poor and points to the responsibilities of neo-liberalism in producing shrinking urban employment opportunities. Structural adjustment programmes, explosive population growth and unprecedented mass migration have created huge concentrations of people, creating major problems.

In the discussion that followed, there was disagreement over the degree of subordination or consensus with the US. It was suggested (Thoumi) that the paper gave rather too much emphasis to neo-liberalism. By the mid 1980s all countries in South America were neo-liberal. It was a reaction to a style of state management that had been misguided for decades – previous governments had run up very high deficits. There was a need to find careful ways of state intervention. Also, neo-liberalism has evolved: Milton Friedman and the Chicago School would not support prohibition as practised today through the US' current drug policies. The power of the US may not be as wide as was suggested by the paper – the US has no power of veto in the IMF or the World Bank. Human rights in Colombia are a little better now than they were. It is true that the US behaves with cultural imperialism but many other countries desire prohibitionism as well. Latin American countries have consistently tried to impose prohibition. Peru was hoping to manufacture cocaine but at the same time prevent coca use among Indians, since it was felt that drugs were an obstacle to assimilation into white society. There was a clash between those of Spanish and Indian origin; it was not the case that the US was imposing prohibition.

One participant (Dorn) queried what the seminar was hoping to achieve. On drug policies, he suggested that, historically, anti-trafficking policies had much wider

and more varied international roots than the United States, referring to revolutionary China and Iran, whose anti-trafficking policies had been domestically determined. He also queried any notion that anti-trafficking policies automatically rule out harm reduction at trafficking and user levels, pointing out that in some European societies including the UK, these elements can fit together – even if in more conservative countries, east or west, they may not.

It was suggested (Van Duynes) that historically, the point we have reached now looks like the success of elite groups. Against all evidence, US policy on drugs has been a triumph, having lasted for some 80 years! The economic crime debate is often stifled. There *are* more prosecutions for economic crime but these do not make a difference to the way organized crime is viewed. In the Netherlands, article 140 (a specific clause dealing with organized crime) within the criminal law has been used to prosecute economic crime. In fact the cartel clause is administrative not criminal, but because there was evidence of conspiracy and falsification activities, the criminal law was applied. Before this it was unthinkable that economic crime could be punished under organized crime legislation.

A similar situation arose with regard to Enron, it was pointed out (Levi). There are cases when RICO has been used to prosecute white-collar crime, but they have not received much attention. One has to be able to show more evidence of disagreement with the US line. It is not just a question of support for a tough line on drugs, but on crime generally. It was inevitable that in Palermo everyone supported the TOC convention. Every country pushes its own agenda and the US has more weight than the others. Multilateral agencies tend to be decision ratifying rather than decision-making bodies.

Some (Beare) thought the US was being let off the hook. A group of individuals who started work at FinCen have moved on and outwards to the Financial Action Task Force (FATF), Interpol, the Egmont group⁵ and other organisations where they have succeeded in imposing a world view. A seeding process has occurred – a 'moral drive for virtue to fight sin'. There is a certain homogeneity of interests between the US and Canada - businesses want open borders and don't really care about marijuana but if political relations get worse between Canada (or Mexico) due to increased smuggling of marijuana or cocaine then businesses simply have to accept the imposition of new controls even though goods delayed at borders causes problems. However businesses do not want prohibition to be abolished.

5. A number of countries have created specialised government agencies as part of their systems for dealing with the problem of money laundering. These entities are commonly referred to as "financial intelligence units" (FIUs). These units increasingly serve as the focal point for national anti-money laundering programmes because they provide the possibility of rapidly exchanging information (between financial institutions and law enforcement / prosecutorial authorities, as well as between jurisdictions), while protecting the interests of the innocent individuals contained in their data. Since 1995, a number of the FIUs began working together in an informal organisation known as the Egmont Group (named for the location of the first meeting in the Egmont-Arenberg Palace in Brussels). The goal of the group is to provide a forum for FIUs to improve support to their respective national anti-money laundering programmes. This support includes expanding and systematising the exchange of financial intelligence, improving expertise and capabilities of the personnel of such organisations, and fostering better communication among FIUs through the application of new technologies. See the website at <http://www.egmontgroup.org/>

One participant (Apostolou) raised the question of a lack of opposition to the US, and where such opposition could be voiced. In fact, at the CND in March 2005, opposition was expressed to the US position from Iran, China and others. If countries do oppose they voice their dissent, which suggests there is more consensus than one might expect.

Others thought that the US was imposing its policies, maybe not so much in the basic premises on the issues of drugs, crime and terrorism, but certainly when it comes to implementing specific measures to counter these phenomena. The question remains how the premises were construed.

Elites in Colombia have received profits from prohibition (Thoumi). Only when the Revolutionary Armed Forces of Colombia (FARC) became involved did drugs become "evil". To some extent the domestic militarisation in Colombia is part of a broader development, and is not just about drugs, but furthers other aims: it serves a broader political and cultural agenda to punish rebellious groups. A new development in South America is that power is moving to indigenous groups, e.g. in Bolivia, where the next president might well be the coca grower Evo Morales. A similar movement is being strengthened in Peru.⁶ In Peru and Bolivia drugs have strengthened the left, whereas in Colombia, the paramilitary right indirectly funds the regime.

Asked which aspects of the Roosevelt period could be applied today, Woodiwiss suggested pragmatism – the acknowledgement that alcohol prohibition had brought more crime and corruption – and the acknowledgment that capitalism needs to be policed. Banking reform had also been useful.

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Michael Levi, Professor of Criminology, Cardiff University, presented his paper "[Controlling the international money trail: what lessons have been learned?](#)". Since the mid-1980s, the world has witnessed an extraordinary growth in efforts to control crime for gain (and latterly, terrorism) via measures to identify, freeze and confiscate the proceeds of crime nationally and transnationally, coinciding with an opposite tendency to open up general money flows via the liberalisation of currency restrictions and marketisation in the 'Less Developed' world and in former Communist 'societies in transition'.

The efforts of the Anti-Money Laundering (AML) movement to roll back *deregulation* in the non-tax sphere has been described by several government officials as combating 'the dark side of globalisation'. One useful way of conceptualising the issue is as a global exercise in crime risk management which seeks to drag in as a conscript army those governments and those parts of 'the' private sector that seem unwilling to volunteer for transnational social responsibility.

6. See: Coca or Death? Cocacero Movements in Peru and Bolivia, TNI Drugs & Conflict Debate Paper 10, April 2004, at <http://www.tni.org/reports/drugs/debate10.htm>

In 1986, when the legal regulation of money-laundering began, British banking representatives had to go on a newly devised course in the US to find out what money-laundering was (or, to be more precise, what the Americans believed it to be): two decades later, there are (at least) monthly conferences in different parts of the globe updating bankers, regulators, legally required corporate Money-Laundering Reporting Officers and, increasingly, independent lawyers and accountants on changes in regulation and 'money laundering typologies', supplementing interactive videos and CD-ROMS whose viewing is considered to be essential to comply with national legal regulations on staff training. These are supplemented by an army of consultants – usually former senior American, British, Swiss (or, in the Asia-Pacific region, Australian) police, regulators and FATF delegates – carrying out compliance reviews and remedying both national and corporate 'failures' with 'solutions' drawn from US or European legislation aimed at finding favour with evaluators and regulators.⁷

There have been specific policy drivers for change in the evolution of money laundering controls. These include:

- Concern about terrorism;
- International supply side drug controls (investigation of the finances of narcotics production and trafficking);
- Domestic scandals.

International investigations have also increased exposure risk, such as Agusta; Elf, Enron; Fininvest, GAL and Kohl-gate. Abuse of overseas jurisdictions has occurred, both to commit fraud and to hide the proceeds of crime, including tax fraud. Other issues have been concern about tax evasion/avoidance, and concern about transnational corruption.

Some small island economies like Antigua, or especially Montserrat – with little or no other economic activities - use sovereignty as a means of hiding crime and the proceeds of crime. Some business elites think that tax evasion and avoidance are really at the heart of AML/anti-crime efforts. It was rare in the US to have collaboration between tax and law enforcement, at least till 9/11. But there was not then and there is not now any international consensus even within the richer Organisation for Economic Co-operation and Development (OECD) members on the inclusion of tax offences as a 'predicate crime' for money laundering, i.e. as a crime that makes it obligatory for financial services and professional staff to report suspicions to the authorities.

There has been concern about the lack of transparency in derivatives and other financial instruments traded from offshore centres. Even conservatives accept that

7. Nevertheless, in many developing countries there is a low level of participation in the so-called "formal" financial. In several countries, for example, fewer than 10 per cent of the population have a bank account, according to the UNODC. A large portion of economic activities (the transfer and storing of wealth) takes place outside of official financial institutions (for example, the *hawala* system of transferring funds). This means that many of the developed world's law enforcement techniques may be inapplicable in those countries. (See: Economic and financial crimes: challenges to sustainable development, UNODC working paper for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, 18-25 April 2005 at: http://www.unodc.org/unodc/crime_congress_11/documents.html)

some transparency is required after Enron. There is also concern that, due to legislative disparities, there is no 'level playing field' for contracts, and that this has disadvantaged the United States since the Foreign Corrupt Practices Act 1977.

One of the conclusions emerging from the Commission for Africa was the loss of welfare that has derived from large-scale corruption, kleptocracy and so on.⁸ There is also a belief that AML controls can reduce terrorism and organized crime. Jurisdictional reputation has become a new factor, but was not important before the AML movement began. People already knew that Switzerland was a safe location and that Antigua was not.

Sources of intelligence: these can be divided into macro and micro. Macro would include:

- underground economy calculations
- direct calculation of specific activities (including price checks for invoices).

Micro would derive from:

- informants' reports
- case based intelligence debriefings;
- sting operations
- 'mystery shopping' (give someone a large sum and see who reports on what).

How can intelligence be improved? One could study:

- Investigations into major crime networks that throw up suspicions and evidence of *active* lawyer assistance. One would need to connect up a 'depth of field' by looking at highest common factors.
- Suspicious transaction reports made by bankers and other regulated persons;
- Reactively - the collapse of professional firms or business enterprises that generate information about professional misconduct.
- The boldness and powers of the investigative authorities and their priorities
- Legal and other professional privilege are a big issue

How can AML interventions be measured in terms of effects? There is no international and almost no national collective costing of AML or anti-organised crime efforts, nor are benefits in terms of crime reduction outcomes critically examined. For example, the stocks of arms and drugs currently available are not linked to current AML interventions. The proportion of the problem affected by controls is often neglected in favour of a populist preference for headline figures concerning crime, which are disconnected from reality. The proportion of assets restrained is probably so low that the answer would be discouraging. E.g. excluding transnatio-

8. The British Prime Minister Tony Blair launched the Commission for Africa in February 2004. The aim of the Commission was to take a fresh look at Africa's past and present and the international community's role in its development path. See: <http://www.commissionforafrica.org/>

In Brazil, more illicit money is generated through corruption, fraudulent schemes and diverting public resources than as a result of drug trafficking, according to Justice Gilson Dipp – president of the commission in the Federal Justice Council to improve the processes and trials for crimes against the financial system and money laundering – speaking at the IV Global Forum on Fighting Corruption, which was held from June 7-10, 2005, in Brasilia. According to an estimate based on criminal proceedings, illegal financial schemes amount to 70% of illegal money in Brazil. Most of these financial crimes go unpunished and seriously hamper Brazil's development. (See: <http://www.ivforumglobal.org.br/>)

nal corruption, \$2 billion crime confiscations plus freezings by the US Treasury Office of Foreign Assets Control (OFAC) worldwide, are one fiftieth of total unspent proceeds on even the most conservative of non-IMF assumptions. Large aggregate laundering figures (if believed) make any short-run countermeasures seem futile. (But we shouldn't believe them.) In terms of goals, domestic politics and international policy factors usually outweigh anti-crime measures.

Money laundering controls currently have a blame-evading effect with financial institutions. The banking community is not committed to FATF measures, regarding them as tiresome and of doubtful efficacy. The institution's primary concern is to avoid reputation damage, and cannot be seen as an accomplice to money movements made by criminal or terrorist organisations. The mass of Suspicious Transaction Reports (STRs) is impossible to monitor. Before the obligation to report suspicious transactions, banks were sometimes disposed to investigate cases voluntarily; nowadays these cases are only reported to the accountable authorities.

One must separate *operational* from *strategic* goals. Strategic Goals are:

- Reduce levels of terrorism and other criminal behaviour so people are safer and feel safer
- Stop money leaving/bring it back
- Strip assets from/lock up bad people
- Reduce attractiveness of terrorist/criminal role models
- Improve jurisdictional reputation

Impacts of AML regulations:

At international level:

- Create legitimacy issues regarding 'international interference'
- Define 'pirate states' that (intentionally or not) imperil crime control efforts in other nations
- Can lead to international commercial sanctions/loss of custom from major international companies

At national level:

- Pressure 'pirate institutions' as well as network of sociopathic 'wilfully blind' professionals

At individual institutional level:

- Tend to corrupt staff who can be blackmailed or encouraged to do crimes against the institution
- Can lead to de-authorisation if implementation fails
- Can lead to corporate/individual prosecutions

An important development has been the creation of a 'soft law' mutual evaluation process for incorporating AML into regional or global security. This process had to be in place before the system could be moved up the scale to the next stage: FATF's Non Cooperating Countries and Territories initiative (NCCT). However since

IMF has become involved the NCCT has been suspended, as IMF only works by consensus.⁹

There are signs of opposition or 'counter attacks' from professionals. For example lawyers in Canada have protested about the requirement to report SARs. There are still many holes in the system. Those who have difficulty laundering money can find weak spots - people who take drugs or have irregular sexual habits- who can be blackmailed. Citibank has had repeated cases of corruption. Very few banks are really penalised for disregard for AML, but this can lead to corporate prosecutions. There is a kind of revolving door model of how prosecutions work, e.g. there were no prosecutions of Arthur Anderson as this would have led to too much collateral damage so the firm was simply wound up.

The UK now has civil forfeiture laws that were copied from Ireland, copied from the US. These all apply the reversal of the burden of proof. There is evidence that levels of proceeds restraint and confiscation can be increased, but at what cost to legal traditions and to human rights? The Canadian legal profession has objected, and Belgium and others have raised the possibility that the Second and Third EU Directives on Money Laundering may be unconstitutional.

9. The FATF worked away quietly throughout the 1990s, until the G7/G8 decided to raise its profile and give it some more teeth. So in 2000 and 2001 the FATF identified a list of 'non-cooperating jurisdictions', whose practices did not adequately discourage money launderers; these ran the risk of being placed off-limits by Western financial institutions if they did not clean up their act. Some of these jurisdictions were small offshore centres like the Cayman Islands and Liechtenstein; others were larger countries like Israel, Hungary and Russia. The FATF's decisions were endorsed by the G8 leaders at the Okinawa and Genoa summits in 2000 and 2001.

In June 2000 the FATF named 15 jurisdictions (Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines) as non-cooperative countries and territories having critical deficiencies in their anti-money laundering systems or a demonstrated unwillingness to co-operate in anti-money laundering efforts. The "naming and shaming" - with its accompanying stigma - has encouraged jurisdictions to clean up their act. As of February 2005 only three remain: Burma, Nauru and Nigeria. The FATF withdrew counter-measures against Nauru and Myanmar because of progress made in those countries, although they remain on the NCCTs list. See: FATF website on the NCCT Initiative at http://www1.oecd.org/fatf/NCCT_en.htm

After 9/11, the FATF issued new international standards, designed to supplement the FATF 40 Recommendations, called the 8 Special Recommendations on Terrorist Financing. Together they are now commonly known as the FATF 40 + 8 Recommendations. The IMF also became involved in the Anti-Money Laundering / Combating the Financing of Terrorism (AML/CFT) framework. Until a few months before 9/11, the IMF/World Bank programmes dealing with regulating financial markets had had little to do with anti-money laundering efforts. After 9/11, the IMF's involvement spelled the end of the FATF's annual blacklist of countries not doing enough to stop money laundering and terror finance. The IMF is much more inclusive and consensual in contrast to the FATF blacklisting exercises. In a November 2002 agreement with the IMF, the FATF agreed to discontinue its NCCT list, though jurisdictions on the list at that point remained until they had enacted specified reforms. The IMF refuses to get involved with examining legal systems or law enforcement practices, preferring to concentrate on financial regulation. Labelling anyone as "non-cooperative" runs counter to the way the IMF works. Several IMF board members - particularly from developing countries - are strongly opposed to it, accusing the FATF of punishing poor states while letting its richer members off the hook, though countries such as China and India also mysteriously escaped listing, for reasons that were interpreted as geo-political.

The US, as well as Canada, has consistently been assessed as not meeting many of the FATF Forty Recommendations - for instance, Delaware's standards are worse than some jurisdictions on the NCCT list - yet the US never ended up on the NCCT list. Initially when the FATF blacklist was being drawn up, Britain insisted that Switzerland be included because of its financial secrecy provisions. The Swiss delegation replied that if Switzerland was on the list, they would retaliate by making sure Britain was blacklisted as well. Subsequently both parties came to a quiet compromise whereby each agreed that the other would be left off the list. (See: J.C. Sharman, *International Organisations, Blacklisting and Tax Haven Regulation*, April 2004, at <http://visar.csustan.edu/aaba/sharman.html>)

To some extent we have 'evaluation overload'. Monitoring processes are now invariably built in, although in the Council of Europe Cybercrime Convention there is no monitoring mechanism. There are limits to the private sector co-optation process and protests that all the investment is being made by the private sector while the public sector does too little. They give little or no feedback to the private sector with regard to STRs for example. The process has not been fully thought through on consistency grounds, nor have the implications for transnational tax issues. Evaluation and monitoring tend to focus on the process (compliance to the rules) and not on impact: does it really decrease criminal activity?

What impact is there on criminal groups or on the supply of illegal commodities? One effect has been to increase the networking aspect of crime as opposed to hierarchically structured organisations.

Other questions that arise are:

- Are there limits to how much Off Shore Centres should pay for dealing with AML and Mutual Legal Assistance?
- Are there any trade-offs in what governments and police may have to do for the private sector?
- Is AML feedback for STRs feasible?
- What would be a sensible regulatory/crime demarcation?
- What are the limits to transnational governance?
- Do soft law and mutual evaluation have a future?

The discussion considered the extension of AML to terrorist finance and in particular the issue of sanctions and the freezing of assets of individuals and entities allegedly associated with Al Qaeda and the Taleban. Currently there are 400 names on the UN sanctions list. There are doubts as to whether such measures are effective with regard to terrorists. There is no evidence that the 400 ever actually used banks. We know that the WTC attacks required minimal funds. The notion that we can eliminate terrorism by stopping funds is not valid. FATF said before 9/11 that it could not deal effectively with terrorist finance.

The funds required for the Morocco and Madrid bombings were small. It was suggested (Bunyan) that the criminalisation of NGOs and charities could be used as a front for political investigation. There were attempts to introduce a new legal concept in the UK law of "encouragement of terrorism". This was a simply a knee-jerk reaction to bad events.

The move to extend AML to capital flight and tax recovery was initiated by the French. The ultimate effect will be to hit at evaded tax as a part of money management. It makes it easier to obtain authorisation for wiretaps etc: courts will allow special surveillance measures that investigators would not otherwise get for tax crimes. All one needs to do is show high profits. This is how RICO shifted to white-collar crime. (Levi)

Spain and Latin America have a long experience of the term 'illicit enrichment'. This legal concept was on the books before the mid 1980s, but in Colombia it did not work until 2002 when the burden of proof was applied (before conviction) with regard to property. Rodrigues Gacha and Pablo Escobar both had many 'straw men' who held property for them and this has now been expropriated. The CICAD mutual evaluation procedure is a failure - instead it has become a mutual 'appreciation' process.¹⁰ It was conceived as a way out of the unilateral US certification process, but it uses lowest common denominators for evaluation. (Thoumi)

In the UK since 2000 there have been official gateways between the tax and the police authorities. Tax authorities have cyber access to STRs. This has thrown up quite a few 'hidden economy' cases, but not much at the level of corporate tax evasion. (Levi)

When talking about effectiveness we should be clearer about what we mean. Risk assessment and risk reduction methodologies include those developed by law enforcement agencies, auditors, regulators, businesses and social scientists. It is important to make the distinction between assessments of policies in the relatively short term (tactical or operational impacts), and assessments of changes in regulatory regimes, markets and criminal environments over a longer period (strategic re-shapings). Measuring tactical effectiveness would be different from measuring the effects of longer-term strategies, which would need a broader data set. For an intervention to work at tactical level, a specific criminal operation would have to be affected by a specific law enforcement operation. For policy to work at a strategic level, many aspects of policy would have to work in synergy, creating a tipping point, i.e. the moment when policy starts to make a difference. Statements about the success or failure of policies would appear more convincing if more tightly specified and better grounded. (Dorn)

In Canada the bodies that report STRs never get feedback because of confidentiality laws. There is a 'back hole' because Fintrac never gives anything back. The process is extremely expensive but there is no evidence that it is useful. During

10. Enacted by US Congress in 1986, the certification process was designed to press the administration to demand tougher counter-narcotics measures by other governments. Under its provisions, the administration must produce an annual list of countries that have "failed demonstrably" during the previous 12 months to make substantial efforts to adhere to their obligations under international counter-narcotics agreements and take the counter-narcotics measures specified in US law. If a country is not certified, most foreign assistance is cut off and the United States is required to vote against funding by six multilateral development banks to that country. However, these sanctions are not imposed if the administration certifies by the end of February that a country is fully cooperating with U.S. anti-narcotics efforts or if the U.S. deems that the country is taking sufficient steps on its own to meet the terms of the 1988 UN drug control convention. The administration can also waive sanctions if it determines that doing so is in the "vital national interests" of the United States.

In Latin America and elsewhere the certification process is resented as a unilateral, hypocritical, and arbitrary exercise by the world's largest consumer of illegal drugs. Some had hoped that the Multilateral Evaluation Mechanism (MEM), launched by the Inter-American Drug Abuse Control Commission (CICAD) of the Organisation of American States in 1998, might evolve as a viable alternative to the unilateral certification process. The MEM is a multilateral attempt to standardize indicators of progress on drug control efforts, and also provides a forum to share technical expertise in counter-narcotics programs. However, the MEM does not sanction those countries that have failed to combat drugs effectively. Consequently, staunch advocates of certification do not regard it as a viable substitute.

the period when CTRs were voluntary banks had a vested interest in following up their suspicions, and carried out their own investigations before passing on suspicions to the police. Now that reporting is mandatory they do nothing except pass the reports to Fintrac. They are a huge burden on the banks, which need more information if they are to analyse effectiveness. (Beare)

One can observe the status of laundered assets by means of the judicial process – it begins with the STR and goes through the stages of seizure, confiscation, appeal and sentence. (Van Duyne)

The question was asked, what percentage of STRs are followed up and why? In a UK study of 1000 STRs, 0.45 per cent 'led to something'. It is extremely hard to follow up on real estate deals, one needs special investigators, ordinary police officers cannot do this work. (Levi)

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Margaret Beare, Director of the Nathanson Centre for the Study of Organized Crime and Corruption, York University, Toronto, presented the paper [Fear-based Security: The Political Economy of 'Threat'](#).

The messages being sent out by the George W. Bush presidency are in stark opposition to the spirit of President F.D Roosevelt's famous inaugural address in 1933 when he had warned, "*the only thing we have to fear is fear itself*". The emphasis on truth, the call for courage rather than fear and for America to be 'a good neighbour' in Roosevelt's address contrast strikingly with the Bush 'you're either with us or against us' rhetoric that has no middle ground for critique. What has occurred is a convergence of fear-making 'machines' – driven by an overlap of motives that are political, corporate and religious.

International responses to the attacks of 9/11 have been characterised above all by opportunism. Agencies - and in some cases individuals - have taken advantage of 'windows of opportunity' to acquire new powers, resources or mandates, and in the case of certain academics, new reputations. Bush's address to Congress on September 20, 2001 began a long series of 'fear speeches' which told the American people and the world that there was much to be afraid of – and that the answer lay in amassing power and being able to destroy pre-emptedly whatever appeared to have the potential of being, or of becoming, a threat to the United States. In this 'moral panic' situation the role played by 'experts' in framing the debate and justifying the responses was crucial.

Warnings were provided via colour-coded terrorism risks that told people how much fear they should be experiencing – and at what point they should wrap their houses in duck tape. The Canadian Justice Minister availed herself of the useful mechanism of claiming secret special knowledge to defend the measures undertaken. Rather than a 'new era' of terrorist threats, the lesson to be derived ought to have been an awareness of pre-existing insecurities, encouraging an appreciation of the atrocities occurring worldwide and the social, economic and political

responses that fuel ongoing acts of violence. High profile human rights advocates such as Michael Ignatieff expressed his support for the Iraq war on the grounds that 'the moral justification for pre-emption proceed from our verifiable, imminent evidence of attack'. When such 'evidence' proved to have been lacking, he had moved on to focus on the consequences of the war rather than the intentions: 'I had made the human rights judgement that 26 million Iraqis would be better off as a consequence of these acts'.

Michael Foucault may hold the key to understanding the relationship between power and knowledge or power and truth-claims. Against the notion that 'truth' is somehow neutral, Foucault argued that discourses produce 'truths' and that each society has a general 'politics of truth' for determining who, when and how statements can be made that count as true. According to this analysis, you find what you look for and you look where the conventional knowledge regimes or direct self-interest tell you is appropriate. These regimes include divergent orientations – including politics, religion, business and law.

While intelligence regarding terrorism may always be inadequate due to the near limitless opportunities for terrorist acts, within these intelligence gaps there are vested interests and advantageous omissions, with the result that information is altered, 'created' or ignored, and thus is not a 'gap' in any real sense.

How can an 'intent to deceive' be determined? First, examining the question is often more important than the answer. While the commissions and enquiries set up after 9/11 looked at intelligence flaws and mismanagement within the appropriate agencies, there was no examination of how the President and his Cabinet used or misused the information they received about Iraq's weapons programmes, or how they reflected it in their presentations to Congress and the public. Donald Rumsfeld's search for any piece of information that could redirect attention from Afghanistan to Iraq is an example. Second, one could look at what has happened to people who 'messed up' and should have been answerable for the use of flawed intelligence. In this light, the promotions of Condoleezza Rice and of Paul Wolfowitz are significant. A third test might be to examine how seriously the fact-finding enquiries have been taken. The Senate hearings into John Negroponte's candidacy for the position of new Director of the National Intelligence Agency were significant not only because they showed that he had not read the entire 9/11 Commission report, but because no Senator thought to shame him for the omission.

Nowadays there is much talk of 'governance through security' in which abstractions such as 'security' and 'freedom' are waved around like flags. The notion of insecurities has been broadened, with the result that everything that anyone ever wanted rid of is now linked to terrorism. A sense of the 'dangerous other' lurks behind current rhetoric, policies and legislation. This has been accompanied by the spread of a belief in the unproven effectiveness of the various enforcement 'wars' – on crime in general, on organized crime, drugs and now most specifically on terrorism.

The focus of Canadian foreign policy in the late 1980s and 1990s was being extended towards human security with responses that looked to root causes and social solutions, but has reverted since 9/11 to 'national security' with traditional military responses. Human security priorities are now defined in a similar way to national security priorities, and the concern for 'root causes' has been lost. Democracy has become a problematic term of political expediency. The US has developed a messianic approach to spreading 'democracy' and 'freedom' across the world, dominated more by myth than by a serious look at reality. This sits alongside the 'American antithesis' that includes national chauvinism, fear and hatred of outsiders and contempt for the outside world.

Powerful religious groups reach deep into Washington and condition the rhetoric that 'clarifies' the concept of good and evil for the public and determines which groups are expendable. Fundamentalist religious groups are linked to the Bush administration by big money and by the fact that a growing number of congressmen owe their elections to the machine. Among their activities – other than Christianising the world – is fighting for the abolishment of environmental protection acts. Global warming is seen as a hoax.

Corporations feed into the new scenario in at least three ways: first, as promoters of what is increasingly seen to be essential corporate-generated technology to fight terrorism and/or to add to security via increased surveillance; second, as lobbyists to governments for foreign policies that are advantageous for their control of international markets such as oil, and for their share of the massive reconstruction budgets. Mutual interests between government and business perpetuate propaganda and promises regarding the delivery of 'security'.

Naomi Klein has coined the term 'disaster capitalism' to describe the predatory form in which the reconstruction industry has benefited from conflict and natural disasters. This has been particularly evident since the Asian Tsunami.

The US Patriot Act and other measures were passed amidst a 'blaming exercise' for the WTC and Washington attacks upon an 'axis of evil' against which everyone not actively in support was seen to be on the opposing team. Each stage of blame making was accomplished by rhetoric that identified the weak links as external to the US, followed by pressures and demand for policy and legislative changes. US Homeland Security was to be 'secured' far from the confines of the United States. Some of the most controversial post 9/11 powers do not in fact appear as part of the Patriot Act but are powers that the Bush administration gave itself.

The consequences for Canada have been significant. Canadian officials were told that any economic advantages to Canadian business lobbyists would have to be tied to enhanced security measures as dictated by the US. Homeland is increasingly being defined as 'North America'. Of greater concern is that Canadian oil, water, cultural materials and decisions concerning immigration and aid to foreign jurisdictions are all being held hostage under the security umbrella. Profound changes have been suggested and many implemented which have more to do with profit, influence and domination than the fear of terrorism. The security ser-

vices and policing agencies now have overlapping functions in identifying and responding to 'threats to national security'.

A test case for overlapping mandates and national security collaboration across borders is that of Maher Arar, a Canadian citizen arrested while in transit in New York and sent to Syria where he was tortured. It emphasises the dangers of the invisible processes that have come into play post 9/11 and of the enforcement strategy called rendition, whereby interrogation is outsourced to countries where the US knows individuals are likely to be tortured.

Some modest grounds for optimism exist: since the adoption of the Patriot Act by Congress, 342 US cities and four states have moved to reject or refuse to recognize it. In one community in Northern California, cooperation with the Act has been deemed a criminal act. Many Canadians were shocked by images of Abu Ghraib prison, while the renditions are seen as the uncivilized behaviour of an uncontrolled regime. There is opposition to the integration of Canada and the US on security-related matters and an understanding that this would not contribute to greater security for Canadians.

During the discussion the power of the religious right was discussed more fully. Its influence was acknowledged to be exceptional, as for example in reversing Microsoft's policy on same-sex marriages. A distinction was made between the American style of evangelical fundamentalism and Roman Catholicism. Pope John Paul II had been a severe critic of the Iraq war, and indeed of George W. Bush generally.

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Tom Blickman opened the second day of the seminar by asking to what extent the paradigm of the global enforcement regime could provide workable global security, given that US interests and attitudes dominate it. There seems to be no alternative, but is this true? Can we find a more equitable security arrangement? Who is setting the agenda and what is the role of informal bodies like the G8?

David Cortright of the Fourth Freedom Forum presented the paper "[A Critical Evaluation of the UN Counter-Terrorism Program: Accomplishments and Challenges](#)".¹¹ Introducing the work of the Forum, the speaker described himself as a 'scholar activist'. Economic sanctions issues had become his particular subject of research, beginning with Iraq in the early 1990s, when the Forum had recommended the notion of more targeted sanctions.

The UN Security Council adopted Resolution 1373 on 28 September 2001, one of the most sweeping measures ever passed. This mandates every member state to comply with measures designed to block terrorist financing, travel, recruitment

11. David Cortright is involved in the Counter-Terrorism Evaluation Project that is cosponsored by the Fourth Freedom Forum and the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame. It develops policy recommendations for enhancing the work of the United Nations Security Council Counter-Terrorism Committee (CTC) and the recently created Counter-Terrorism Executive Directorate (CTED). See the website at <http://www.ctproject.info>.

and supply. Its primary function is to strengthen the counter-terrorism capacity of UN member states and to facilitate the provision of technical assistance to countries needing help to implement counter-terrorism mandates.

Resolution 1373 was unparalleled in imposing new legal obligations on states and in mobilizing the international community for a campaign of non-military cooperative law enforcement measures to combat global terrorism. Member states were directed to offer one another full cooperation in investigating terrorist acts and to intensify and facilitate the exchange of information. Resolution 1373 also created the Counter-Terrorism Committee (CTC) to monitor enforcement of these measures, and to track compliance with the provisions of the 12 UN counter-terrorism conventions. CTC was fashioned as a committee of the whole, consisting of all 15 members of the Security Council.¹² The Security Council also strengthened sanctions against Al Qaida and the Taliban originally imposed in 1999 and set up a special monitoring group to support sanctions enforcement and monitoring. A watch list of individuals and entities suspected of supporting terrorism was established.

In March 2004 the Security Council created the Counter-Terrorism Executive Directorate (CTED) to serve as a professional secretariat for counter-terrorism implementation. In April 2004 the Security Council adopted Resolution 1540 which enlarged the counter-terrorism programme. It prohibited states from providing any support to non-state actors that attempt to acquire nuclear, chemical and biological weapons; it mandated a series of enforcement measures to prevent proliferation to terrorist groups and established a committee to report on implementation. The Russian-drafted Resolution 1566 was passed in October 2004 in the wake of the Beslan school massacre. This urged greater cooperation in the fight against terrorism and established a working group to consider additional counter-terrorism measures. These resolutions and working groups demonstrate the Council's resolve to counter terrorism, but they have created a potential overlap with the mission of the CTC, and some uncertainty over how the different bodies will work together.

The US and the UK have retained firm control over the political direction of the CTC. To date, developing nations have had little voice in shaping UN counter terrorism policy, whereas prior to 9/11 the General Assembly was a major player, in as much as it created the 12 counter-terrorism conventions. From 2001, with the shift to the Security Council, the agenda changed from preventing terrorism to countering terrorism.

The record of accomplishment is mixed. The CTC has promoted the creation of a specialized system for coordinating global efforts against terrorism, and the UN approach has helped to develop and strengthen international norms. The UN programme has validated the importance of non-military, cooperative law enforce-

12. In June 2003, the G8 decided to create the Counter-Terrorism Action Group (CTAG) "to focus on building political will, coordinating capacity building assistance where necessary." Other states, mainly donors, will be invited to join the group. The CTAG supports the CTC by providing significant counter-terrorism assistance, ensuring that the CTC is sufficiently staffed and providing capacity building assistance. The CTAG also coordinates assistance to third countries in the area of counter-terrorism. The G8 now convenes regular meetings of the CTAG, inviting non-G8 countries, the CTC, and other international and regional organisations.

ment methods as a viable means of countering the global terrorism threat as an alternative to the militarised US strategy of the 'war on terror'. CTC's efforts to collect information on states' counter terrorism capabilities have been extremely successful. All 191 UN member states submitted first round reports to CTC regarding their efforts to comply with Resolution 1373. These suggest that many states are taking concrete steps to revise their laws and enhance their enforcement capacity. Ratification of the UN counter terrorism conventions has increased rapidly, in particular the International Convention for the Suppression of Terrorist Bombings (1997) and the International Convention for the Suppression of the Financing of Terrorism (1999). Conventions that address specific areas of terrorism activity have had a 20 to 40 per cent increase in the rate of ratification since September 2001. Overall, the UN has been successful in mobilizing the international community to create a legal foundation for institutionalising the battle against terrorism.

As a result of multilateral efforts, approximately \$200 million in potential terrorist funding has been frozen. More than 4,000 terrorist suspects, including many senior Al-Qaida operatives, have been taken into custody. However in terms of the impact on terrorist activities, it seems little, if any progress has been made. The 'Patterns of Global Terrorism' report, which the State Department is mandated to produce, has been dropped, officially on grounds of poor methodology. In fact this was a political decision as the news was so bad. A briefing given by the State Department on Capitol Hill and leaked to the press confirmed that terrorism has risen sharply. Terrorism tripled in 2004 from 203 to 655 incidents around the world. Even excluding Iraq, the figure doubled. Terrorist attacks in Iraq increased nine fold to 198 'significant' attacks.

CTC has not developed formal standards for evaluating the degree to which states are actually implementing the conventions and complying with Resolution 1273, but is expected to do so in the course of 2005/2006. Site visits to selected countries began in March 2005. An informal analysis suggested that a preliminary typology of differing levels of compliance could be developed. As of autumn 2003, about thirty countries were considered to have a considerable degree of compliance with Resolution 1373; approximately sixty states were judged to be 'in transition' towards compliance. The largest group of about 70 states were categorized as 'willing but unable', while a final group of about 20 states were described as 'inactive'.

Behind the issue of compliance is the question of enforcement, or the challenge of how to respond to instances of non-compliance. The creation of evaluation criteria would benefit member states and regional organizations in that it would end the current 'paper chase' in which there is a continuous exchange of information but no clear understanding of when or how the process will be completed.

One of the most important incentives to date has been the provision of technical assistance and support for capacity-building efforts. The CTC is not an assistance provider but facilitates the provision of technical assistance to states that request such help. Approximately 100 countries have received such help over the last four years, provided primarily by UNODC. The UN Office on Drugs and Crime and its

Terrorism Prevention Branch have expanded their efforts to develop state law enforcement capacity.

The Secretary-General's High-level Panel on Threats, Challenges and Change acknowledged the fact that many countries do not have the necessary financial, technical and human resources to implement the new laws, and recommended that the UN establish a capacity-building trust fund under the CTED. However most major donors prefer bilateral arrangements to a fund since they have more political control.

Many of the measures required to comply with the counter terrorism mandates of Resolution 1373 parallel the steps needed to strengthen good governance. The linkage between technical assistance and economic development suggests that there is a need for integrated development aid strategies that take account of UN counter terrorism requirements although UNDP is anxious to keep these areas separate.

The question of how counter-terrorism relates to human rights issues has been raised in several fora. At the Madrid International Summit on Democracy, Terrorism and Security in March 2005, UN Secretary General Kofi Annan outlined a general strategy against terrorism that included '5 D's': 1) Dissuading disaffected groups from choosing terrorism, 2) Denying terrorists the means to carry out their attacks, 3) Deterring states from supporting terrorists, 4) Developing state capacity to prevent terrorism and 5) Defending human rights in the struggle against terrorism. The Secretary-General's High-level Panel on Threats, Challenges and Change also recommended a response that would combine the protective with preventive strategies to address underlying political issues and human rights. There is a broad understanding, both in the EU and in the UN, of the need to encompass both preventive and 'root causes' factors.

Despite this, the dominance of the United States in the UN means that efforts have been primarily coercive. States are now using the rubric of counter terror to infringe human rights and to strengthen repressive capacity, for example in Russia post Beslan, and with the Patriot Act. This may prove counterproductive, since undermining political freedom may exacerbate the causes that give rise to terrorism. Empirical research has found a strong correlation between the denial of political freedom and the rise of terrorism. Terrorism may be discouraged when dissident and moderate groups are incorporated into civil society and the political process.

A two level approach to counter terrorism is needed, with greater emphasis to preventive measures and to policies that ameliorate the grievances and conditions that give rise to terrorism. It means addressing the 'demand side' of terrorism, and requires a strategy of conflict transformation – engaging with affected parties to resolve grievances through political rather than military means. For the United States, addressing root causes of terrorism would mean confronting the consequences of its own foreign policies, especially its uncritical support of Israeli occupation, its military aggression against Iraq and its military encroachment into Muslim countries. Since it is unable to do this, it has concentrated on protective measures and has used its influence at the UN to shape international policy along

the same lines. The focus to date has been on denial and deterrence rather than the Secretary-General's 'five Ds'.

The development of a new international counter terrorism agency is currently being debated, and is likely to come to the fore in 2007 when the CTC expires. It would almost certainly be created within the UN framework, possibly on the model of the International Atomic Energy Agency (IAEA). One problem it would have to confront is the lack of an agreed definition of terrorism.

During the discussion that followed, civil rights violations were the subject of particular concern. Regarding Resolution 1373, some EU countries had picked out a non-mandatory recommendation that refugees should be checked against terrorist suspects, and were intending to apply this. (Bunyan)

The procedures for names to be submitted to the UN secretariat's watch list of terrorist suspects for asset freezing were discussed. The UN list is smaller than the US's OFAC list. Within the US Treasury, OFAC is primarily responsible for compiling the list, but it is done using extra- or non-legal procedures. There is only minimal supervision over the process. In the case of Al Barakaat, the US refused to admit there was no connection with terrorism.¹³ At a recent seminar, a session to discuss the legal rights of persons put on terrorist watch lists had to be suspended when the US threatened to boycott the proceedings.

The question arose of what executive powers the new counter terrorism agency would have, generally, and in this regard. If the model were that of the IAEA it would almost certainly be linked to the Security Council. Alternatively, the US could simply create it outside the UN. Whatever the model, the legal aspect is fundamental, in particular with regard to blacklisting. The new agency would have to have legal authority. Any action by it would be that of a non-state actor against a state or an individual. There has to be a right of appeal. Where is the locus of action? What is the individual's right to compensation if assets are frozen and which court issues the judgement? What possibilities would there be for redress? What is the legal authority of the Security Council as regards sanctions?

13. Al Barakaat is Somalia's largest money transfer system. It is a financial and telecommunications conglomerate, operating in 40 countries around the world handling some US\$ 140 million a year from the diaspora. It was founded in 1989, and is involved in telecommunications, wire transfer services, Internet service, construction and currency exchange. According to the US, Al Barakaat is tied to al-Qaeda and Osama bin Laden, and raises money for terror, invests it for profit, launders the proceeds of crime, and distributes terrorist money around the world to purchase the tools of global terrorism. The US labelled Al Barakaat "the quatermasters of terror," when they put it out of business in November 2001. With the help of dozens of countries, the US Treasury Department froze nearly all the company's assets, paralysing the biggest employer in one of the poorest countries in the world. The closure created a crisis of confidence in the remittance operations and greatly affected investment and labour opportunities in southern Somalia and crippled the construction and transportation sectors, as well as major disruptions in the country's communications network. Later, some US officials acknowledged that the evidence of Al Barakaat's backing for terrorism is minimal if not non-existent. Some European countries that assisted in the operation also said that proof of a terror link has not been established. Five months after the shutdown, the UNDP Somalia Office launched a programme to formalise and legalise Al Barakaat and help to comply with standard financial rules and regulations and help the firms institute standard book keeping, auditing and reporting. The UNDP will also help Somalia establish a Financial Action Task Force to combat money laundering.

It has adopted standards that are legally binding on member states, and acts as an executive without any legislative process.

Some Muslim charities have filed legal action in the context of US national law. With regards to legal redress, it might be possible to sue in the jurisdiction in which one's assets were frozen, e.g. sue in Switzerland if one's assets were frozen there. (Fonaroff)

With regard to root causes, poverty seems not to be linked; exclusion and inclusion are more relevant concepts, as well as inequality. This is true of Colombia too, where poverty is not linked to the homicide rate, however there is a lack of strong empirical data on this. Human rights violations are much greater in Colombia than in Peru or Bolivia. In Colombia people realize that they need to build a sane society. The role of civil society is crucial. (Thoumi)

The correlation with political exclusion was generally felt to be important. Hezbollah members tend to be more privileged than the general population. Sometimes there appears to be a link with a relative decline in socio-economic status, which would imply a very indirect poverty link.

The evolution of street gangs into drug gangs in South Africa resulted partly as a result of relocation. Work has been done with gang leaders in prison to see what might change their approach. Most simply didn't see any alternative to the current situation, and this prevented a change in attitude. A good book has been written about gangs called 'The Number' (as gangs are called after numbers) by journalist Johnny Steinberg. It highlights the need to belong, and for cohesion and identity. (Fonaroff)

The issue of accountability for actions and policies is important. There has been no real critique of the outcomes of the war on drugs. During the wars in Iraq and Afghanistan, objectives changed day by day. There has been a low level of public accountability. How this can be dealt with in a UN programme? (Beare) The UN cannot be held to account as it is a function of nation states, and powerful states dominate. Evaluation does exist but only to the extent that private groups carry it out. There is an urgent need for an evaluation of technical assistance, but much of this is done by agencies or groups that do not wish to share their information. The methodology of examining compliance standards is extremely difficult. What can be done when a state has received assistance but has not complied? Sanctions?

Some developing countries (e.g. India) may provide sponsorship for the goal of pushing the linkage between counter terrorism, human rights and development issues. But there is little chance that any subsequent UN reforms will realign the balance of power within the organisation towards developing nations. (Cortright)

UNODC has been sidelined by the location of the CTC in the Security Council. Essentially it only does 'hands on' technical assistance. The merging of drugs with crime and terrorism has moved all the aspects of the drug regime into a crime

and terror focus, producing a criminalisation of what are essentially social problems. There is less and less emphasis on health, AIDS, development and social issues. Here too there has been no evaluation of outcomes. The flawed model of drugs has been applied to the area of terrorism. (Jelsma)

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Tony Bunyan of Statewatch (UK) presented his paper [The Exceptional and Draconian become the norm – the emerging counter-terrorism regime](#): G8 and EU plans for “special investigative techniques”, the use of “intelligence information” in court and new ‘preparatory’ offences. He began by describing the activities of Statewatch, set up in 1991 as a registered charity to monitor civil liberties and the state in the UK and Europe. Statewatch, the American Civil Liberties Union (ACLU) and the human rights group Privacy International have started a project on “policy laundering” to monitor and counter the increasing policymaking influence on civil liberties issues through international organizations such as G8.¹⁴

The strategy of policy laundering is the process in which security and law enforcement agencies are pushing measures through international fora that undermine and endanger civil liberties and privacy which are then introduced through the national political process. A classic case of “policy-laundering” are the plans, that started in G8 which are now being pushed in the EU by the USA and the UK, to bring in preparatory “terrorist” offences, to give a free rein for intrusive investigative techniques and allow “intelligence information” in to be used in court while protecting the sources.¹⁵

14. See The Policy Laundering Project website at: <http://www.policylaundering.org/>

15. The G8 is more than just a series of summit meetings. Over the years a fully-fledged programme of political coordination has grown up around this annual event. Although the G8 is no more than an informal grouping, which can only create obligations for its members, nonetheless, its intention is to raise issues which can then be taken further by the eight member states using other multilateral instruments. The G7 (Russia joined in 1997) pushed for measures against money laundering and was instrumental in setting up the Financial Action Task Force (FATF) in 1989 – hosted by the Organisation for Economic Co-operation and Development (OECD). The G8 called for negotiations that led to the 12th United Nations Counter-Terrorism Convention on the Suppression of Terrorist Financing. Following the 9/11 attacks, the G7 Finance ministers issued an action plan to fight terrorist financing, directing the FATF to design measures.

The G8 has increasingly been focusing on security issues such as crime and terrorism, which call for common answers due to globalisation. The G8 mandates groups of experts on an ad-hoc basis to research topics, such as the international fight against organized crime and terrorism. The key G8 working groups are the Roma Group (set up in 1978 and comprised of intelligence and internal security officials, known as the Counter Terrorism Experts Group) the Lyon Group (law enforcement officials dealing with organised crime set up in June 1996) and the judicial cooperation group (there are others on issues like immigration). Terrorism was the first political issue to be addressed in the context of the G7). The Roma Group prepared 25 measures to address new terrorist threats, which were adopted in Paris in 1996.

In 1995, the G8 appointed a Senior Experts Group to review and assess international agreements and mechanisms to fight organized crime. This G8 Senior Experts Group on Transnational Organized Crime drew up a catalogue of 40 recommendations, which were approved at the G8 summit in Lyon in 1996. The summit also gave the group of experts – henceforth known as the Lyon Group – an open-ended mandate to implement the 40 recommendations in the G8 states and where possible throughout the world. The Lyon Group developed into a permanent multi-disciplinary body with numerous specialized sub-working groups which are involved in preparing the G8 conferences for justice and interior ministers and which report to the G8 summit, from which they receive new tasks.

In October 2001, senior representative of G8 Justice and Home Affairs Ministries met in Rome to discuss action against international terrorism and decided to combine the G8's Lyon Group (fighting international crime) and the G8's Roma Group (fighting international terrorism). In 2002, the Roma Group Counter-Terrorism Experts Group passed 25 Measures to address new terrorist threats as well

The paper describes a new counter-terrorism regime being planned by the G8 and EU. This includes the use of 'special investigative techniques' including phone tapping, bugging of premises, the use of informers, undercover agents and bribes for information, with results being made available to agencies across the EU and outside it. Intelligence information – surveillance 'products' from more than a dozen sources including from outside the EU – will be presented as 'evidence' in court although sources will be protected. And 'preparatory offences' intended to criminalise people prior to a terrorist act being committed may be introduced. As being discussed in the Council of Europe, this could cover the crime of *apologie* or condoning or sympathising with terrorism. These new offences, techniques and changes in the legal process are likely to spill over into the mainstream criminal justice system and establish new norms in regard to transnational crime and crime in general.

The role of the G8 took on a new dimension after 11 September 2001. Two early demands were for international standards for biometrics on passports and the retention of telecommunications traffic data. The EU has agreed to the first and the second is now going through the legislative process, although neither has been proposed in the United States. Another demand is for the checking and surveillance of all visitors entering a country – the USA has introduced this and the EU is about to introduce 'Passenger Name Records (PNR) against terrorist watch lists. It is also of relevance that four G8 members already intern or detain people without charge or trial – the USA, UK, Russia and Canada.

Even before 11 September, much was already in the pipeline. On 21 September an attempt was made to agree a common EU definition of terrorism.¹⁶ Only after some lobbying was it possible to ensure that guarantees for trade unions and other measures were incorporated into the new EU Action Plan. There was critique of the Action Plan in the aftermath of the Madrid bombings. Some 27 of the actions to be taken had more to do with crime or infringement of civil liberties than terrorism. Many were to do with surveillance and data retention of communications such as emails, phone, fax etc. Statewatch published a leaked legal opinion that advised that the measures could not be introduced in the current form, and they are now back on the drawing board.

as an updated version of the 40 Recommendations of the Lyon Group, inter alia with a view to paying more heed to links between organized crime and terrorism. The work of the Roma\Lyon Group has an impact beyond the G8 states. It works successfully to pass on its findings in the form of best practice guides and includes other countries in its work. The UN Convention against Transnational Organized Crime and its three supplementary protocols are the result of the Lyon Group's initiative.

16. At its extraordinary meeting on 21 September 2001, convened in the aftermath of the 9/11 attacks, the European Council reached an agreement on the necessity of a European definition of terrorism. It gave instructions to the Justice and Home Affairs Council to "flesh out that agreement and to determine the relevant arrangements, as a matter of urgency and at the latest at its meeting on 6 and 7 December 2001." A Framework Decision was rapidly negotiated and adopted by the Council on 13 June 2002; 31 December 2002 was agreed on as the deadline for transposition into national law. The instructions constituted "an unprecedented move, (since) the extraordinary European Council of Heads of Government that met on 21 September 2001 'directed' the Justice and Home Affairs Council to act as instructed. The choice of words for its 'conclusions' is significant. Instead of the usual 'urges' or 'recommends', the Heads of Government 'direct' and 'instruct' the relevant Council to act. Thus, not only has it assumed a legislative right of initiative, in effect, but also a right to side-step the usual legislative process." (See: Eugenia Dumitriu, "The EU's Definition of Terrorism: The Council Framework Decision on Combating Terrorism", German Law Journal No.5, May 2004, quoting: Juliet Lodge, "EC Securitisation and Terrorism: 2001-2002", in Miller and Zumbansen (eds.), *Annual of German & European Law*, Berghahn Books, Oxford and New York 2004, p. 246-286)

Since 1 January, the European Parliament has the right of co-decision on asylum and immigration issues. If the EU Constitution is approved these powers will be extended. The Constitution will create a Committee of Internal Security, which in theory will ensure operational cooperation. However, if it takes over a policy-making role it could become unaccountable. It will only be required to inform the European Parliament of its decisions.

The overall result is that the war on terror has replaced the cold war as the legitimation of globalisation. The political has been superimposed over the economic. Worse, there is no viable alternative to globalisation, whereas at least during the Cold War there were competing ideologies. The war on terror reaches outside the specific and has penetrated areas that have nothing to do with terrorism at all. Liberal democracy has been replaced by representative democracy. Leaders act on their own initiatives and civil society has no role.

There may be broad differences between the EU states and the US over the Iraq-Iran-North Korea 'axis of evil' but there is all too much common ground in the war on terror. Through informal groupings such as the G8 the US often has more influence over the EU than any single EU state. The EU is actually ahead of the US in terms of policy discussions and proposed measures. If the measures agreed since 11 September go through, then the European 'core values' presumed to exist will no longer prevail.

Politicians seem to believe that the measures passed do not infringe civil liberties. However the experience of Muslim communities, asylum seekers and others flatly contradicts this. State racism has been institutionalised by means of measures such as passenger name records and surveillance. To date there has been an assumption that in a liberal democracy there is always a legal recourse. But this is no longer the case. New control orders have decreased the powers of judges. Bad laws get passed, such as the Anti-Terrorism Crime and Security act in the UK. The rule of law is diminished.

Investigative techniques are being extended whereby it will be possible to use intelligence gathered about people in a court of law at the same time as protecting sources. This happened with 17 men who until recently were detained without charge in Belmarsh top security prison in the UK. After a House of Lords ruling they were released but are electronically 'tagged'. Their houses can be searched at any time; no computers or mobile phones are allowed.

The new 'control orders' are indicative of where Europe is being urged to go, and are part of the Prevention of Terrorism Act (2005) passed in great haste in the UK. Under this Act the Home Secretary (Interior Minister) is empowered to make a control order against an individual and set out the conditions (e.g. tagging) for suspected 'terrorist related activity'. The Home Secretary receives information from the intelligence services; the court will see some but not necessarily all the evidence. Neither the individual nor his lawyer will ever see all the evidence

against him. Lawyers represent clients with whom they are not allowed to talk. House arrest is also a possibility.

Within the G8 the main players are the UK and US. In this forum the UK is not 'European'. The G8 Justice and Interior ministers' meeting in Canada in May 2002 discussed issues such as surveillance and other investigative techniques, and endorsed Recommendations on Transnational Crime and Terrorism. A major concern for the US was how to share intelligence relating to terrorism while at the same time protecting its sources. In many countries judicial authorisations are necessary in order to implement certain investigative techniques, and these were perceived as 'obstacles'. One contentious issue has been that of a questionnaire sent out first to G8 members under the US presidency of the group in January 2004. After all members had completed the questionnaire, a series of Recommendations followed with regard to special investigative techniques, one of which urged that even if a certain technique would not be available to the requesting state, this 'should not *per se* bar the use of evidence so acquired in the requesting State's courts'.

An identical questionnaire was sent out to EU member states just three weeks after a High Level EU-US meeting in the Netherlands in July 2004. The reason given was that the US authorities were concerned about the counter terrorism capabilities of EU states. Some EU members were quite hostile to this initiative, such as Slovakia and the Czech Republic. There has been dissent among EU states about how to deal with this. The UK's response was that the questions were pertinent to the concerns of the US but that it might be preferable for the G8 to be in charge of putting forward a set of preliminary proposals and then EU states could set out any problems they might have with becoming compliant with them. Clearly the UK feels the US is entitled to set the agenda for the EU.

The concept of terrorism is being extended to include preparatory offences. The Council of Europe is currently holding discussions relating to the concept of 'apologia for terrorism', being incitement to or encouragement of terrorism. This may threaten freedom of expression.

During the discussion some surprise was expressed that there had not been more public opposition to these developments. (Beare) The perceived advantages and disadvantages of the EU Convention were discussed, as was the likelihood of it being approved in various countries by popular referenda. The Constitution is 736 pages long, is largely incomprehensible and is a treaty, not a convention (Bunyan).

In discussion it was suggested that if policy committees are formalised, then they get closer to transparency and accessibility. To some extent what was described in the paper is an institutionalisation of otherwise informal discussions and might be welcome. The same happens in different sectors outside Justice and Home Affairs (JHA), such as audit, competition etc. As for the Constitutional Treaty, it might have (had) some positive aspects in that it encourages more democratic inputs, not

less. For example, the Constitutional Treaty would have resulted in all national parliaments in the EU having a scrutiny role in proposed EU legislation. (Dorn)

Parliamentary oversight works where, as in the UK, there are active scrutiny committees but not all countries have them. The Internal Security Committee is actually a new body able to gather intelligence and make policy proposals. No democratic oversight is envisaged. The EU has made great efforts to comply with US entry requirements such as biometric standard passports. The collaboration over terrorism completely bypasses the EU-US disagreements over the ICC, Iraq, Kyoto etc., because all feel equally threatened by terrorism. Establishment figures in EU bodies are much closer to US positions than outsiders. Cooperation in the war on terrorism continued unabated during the Iraq war. (Bunyan)

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At the concluding session, Tom Blickman proposed the seminar should conclude by looking at what gaps there were in existing knowledge and what follow up there should be as a result of the seminar deliberations. How could the concerns of human security be brought back as the focus of attention?

The current security paradigm is increasingly being questioned. Many doubt whether it will be effective and point to the adverse effects it may have on civil liberties, human rights and national sovereignty in the field of criminal justice. No one doubts that international cooperation is needed to address global security issues, but there is serious doubt over the effectiveness of the current construction of a global enforcement regime, as well as worries about the predominant role of the US in setting the agenda.

The problem is not that transnational security problems should be addressed on a transnational level. The problem is who is setting the agenda on how these transnational security policies are shaped. The US seems to be primarily concerned with safeguarding US national security at an international level instead of addressing global security needs, despite its rhetoric to the contrary.

Tony Bunyan showed in great detail how international security measures are being shaped, in particular at the G8 level. He showed how through a tyranny of small decisions, a nightmare society could be made, to use a quote from Margaret Beare's paper. Originally created to coordinate global economic policies by the major powers of the industrialized world, the G8 is increasingly used to harmonize international policies on drugs, money laundering, transnational organized crime and terrorism, while it fails to address the possible disastrous impact of the US war debt on the global economy.

The G8 security recommendations are introduced through its EU member states at the EU level to harmonize the European security area. Consequently, the US has a remarkable weight on EU security policies in comparison to EU member states that are not part of the G8. Margaret Beare pointed to a similar harmonization process on security between the members of the North American Free Trade

Association (NAFTA). The resources and national policies of Canada and Mexico are being held hostage under the US 'security' umbrella. The militarisation of the US economy will not stop at the border if resources are deemed to be essential for and national policies contrary to US security interests, she warned.

It was suggested that the title of the seminar 'Global Enforcement Regimes' was inaccurate since enforcement was the end result. 'Policy-making regimes' was proposed as an alternative. A global security state is being constructed through the EU and G8. One should not underestimate where the EU is going and what it is capable of. There is talk of it becoming the second military power at global level - since China will never intervene globally. A long term EU philosophy on armed intervention is being developed on the basis of a 60,000 strong intervention force. This would be succeeded by a civil intervention machinery which would help post conflict societies to become independent, with proper civil structures. (Bunyan)

It is important to look at informal policy making groupings, such as the G8, and the G5.¹⁷ There is a need to watch out for unaccountable groups being used to create formal policies: in the autumn of 2003 a European Security Research Agenda was established involving 'personalities' such as Javier Solana and institutions such as Rand. It will have a billion euros per year just for research. The idea seems to be to establish the EU as a 'military industrial complex' in competition with the US. (Bunyan)¹⁸

There might be a consensus on global action, but more disagreement on the methods. (Thoumi) It is important not to overestimate policy congruence and institutional harmonization, but also to look at the competition between the EU and the US. Policy making is often not very sophisticated. Officials all have their own sphere of interest they want to push, which might clash with the interests of other officials,

17. The G5 consists of the Interior Ministers of the five largest EU countries - France, Italy, Spain, Germany and the UK - and was set up in May 2003. The group intends to give impetus to EU work on illegal immigration, border security, organised crime and terrorism. G5 meetings are informal. The decisions taken by the forum are not legally binding but nonetheless serve as a yardstick for EU states in general. G5 is not subject to any form of accountability or public or democratic scrutiny and appears to be having a growing role in driving the JHA agenda. It does not meet the criteria for enhanced cooperation since it does not follow the obligation to apply EC or EU processes (which would entail some degree of accountability and scrutiny) and it does not meet the criteria for minimum participation by Member States (at least 8). However, as the G5 represent two thirds of the population in the enlarged Union, their agreements are likely to set the standards for future EU decisions.

The G5 approach is viewed with some suspicion in other EU countries and at the European Commission, which fear being bounced into decisions taken by the "big five". The G5 argues that in an enlarged union of 25, small and informal groups of countries can discuss issues and "add value" to European decision-making. Nevertheless, according to Jonathan Faull, Director-General European Commission's DG Justice and Home Affairs the G5 has "not led to changes in the JHA Council, where the five countries concerned agree and disagree with each other no more and no less than they did before." Poland might join the group in recognition of the enlarged EU of 25 member states.

In March 2005, the G5 decided to create a technical team that will keep an eye on how organised crime groups and terrorists make use of the web. The group is also likely to make recommendations on shutting down websites that contravene laws on inciting acts of terror. (*Web to have 'terror watch' team*, BBC News, 18 March 2005)

18. See: The Experts Looking Out for Europe's Security, Intelligence Online n° 468, 16 January 2004, at <http://www.intelligenceonline.com/NETWORKS/FILES/468/468.asp?rub=networks>. See also: The Emerging EU Military-Industrial Complex: Arms Industry Lobbying in Brussels, by Frank Slijper, TNI Briefing Series 2005/1, May 2005, at <http://www.tni.org/reports/militarism/eumilitary.pdf>

for instance between the ministry of Finance who want to deregulate financial markets and the Interior ministry that want stricter AML regulations. (Levi).

Cortright mentioned that he was beginning to set up a series of workshops in which compliance issues and standards for the Counter Terrorism Committee might be discussed. He invited contributions on the subject of compliance theory within political science. One strand of this would be to study the role of inducements: the general instinct currently is to favour positive rather than negative reinforcement. The question of compliance standards would be an issue, including those introduced by FATF. None so far exist that cover the human rights dimension. There are probably substantial lessons to be learned in field of drug control and crime, and participants were invited to help to identify lessons learned, especially with regard to AML. Other areas to be covered would be border control and arms control. It would also be necessary to think about broader strategic dimensions, such as risk factors for terrorism and root causes.

With regard to technical assistance in post conflict situations, much of this is outsourced to non-government contractors in the private sector. If one is discussing the provision of positive incentives to countries involving capacity training and development, it is difficult to evaluate compliance. Countries don't know how to sustain training capacity, and one year on, one finds it is not working. Once the process of subcontracting gets under way, new constituencies become involved in policy which have a vested interest, as has happened for example with DynCorp in Afghanistan and in Colombia. It is also important to respect local sensitivities and customs. In Haiti the UN offered to provide training and resources for community-based policing. But the US sent FBI agents who established police stations along the coast to detect drug trafficking (looking after US interests) and provided nothing in the way of 'community policing'. (Beare)

Training is an incentive mechanism, but unless this is linked to institutional change, then the training gets lost. In order to get off the FATF blacklist, countries pass AML laws, introduce financial intelligence units and so on. They know they have to play the game. But the outcomes are hard to measure. (Levi)

There is a need to be aware of unaccountable groups such as the G8 and G5 that create formal policies. But it could also be useful to identify and track the key policy making officials. Certain people keep cropping up: officials from Interpol, the Egmont Group, the FATF, etc. A lot of the AML officials started at FinCen. These policy officials are crucial in the shaping of enforcement policies and strategies at the multilateral level. (Beare)

Tom Blickman brought the seminar to a close by thanking the speakers for the very high quality of the papers and all participants for the richness of the discussions. Participants responded with their enjoyment of the discussions and particular appreciation for the hospitality of the hosts, TNI.

Participants

Thanasis Apostolou is a former Member of Parliament for the Dutch Labour Party and a former advisor to the Greek Ministry of Foreign Affairs. He is now an adviser to the Andreas G. Papandreou Foundation and TNI involved in setting up a policy dialogue on drug policy reform.

Margaret Beare is a criminologist and serves as the Director of the Nathanson Centre for the Study of Organized Crime and Corruption at the York University (Toronto, Canada), where she holds the position of Associate Professor within the sociology and law departments. Mrs Beare worked in the area of police research within the Department of the Solicitor General Canada and served as director of Police Policy and Research. She served as the Solicitor General representative on Canada's Drug Strategy and was instrumental in proposing and securing the funding for the three original integrated proceeds of crime units. Her previous research includes her book *Criminal Conspiracies, Organized Crime in Canada* (Toronto: Nelson Canada, 1996); a report titled *Tracing of Illicit Funds: Money Laundering in Canada* (with Stephen Schneider); and a report titled *Major Issues Relating to Organized Crime* (with Tom Naylor). She has edited the book *Critical Reflections on Transnational Organized Crime, Money Laundering, and Corruption* (University of Toronto Press, 2003).

David Bewley-Taylor is a lecturer at the Department of American Studies of the University of Wales-Swansea. His research interests are US foreign policy, urban America, and international drug control policy. He has presented papers on various aspects of US diplomacy and transnational drug policy in the US, the UK and Continental Europe, including at the European Parliament in Brussels. He also acts as a consultant for international drug policy organisations in Europe. He published in and co-edited a Special Edition of the International Journal of Drug Policy focusing on the United Nations Conventions on illicit drugs. For TNI he wrote [Habits of a Hegemon – The United States and the Future of the Global Drug Prohibition Regime](#), in TNI's *Drugs & Conflict* nr. 5, May 2002. His book *The United States and International Drug Control 1909-1997* (London: Pinter 1999) is "an authoritative work" according to the Law and Government Division of the Canadian Parliament.

Tony Bunyan is the Director of Statewatch, a civil liberties group in the UK. He is an investigative journalist specialising in justice and home affairs, civil liberties and freedom of information in the EU. Director of Statewatch since 1990, he edits Statewatch bulletin and Statewatch News online. Tony is the author of "The Political Police in Britain" (1977) and "Secrecy and openness in the EU" (1999). On behalf of Statewatch he has taken eight successful cases on access to documents to the European Ombudsman against the Council of the European Union (the 25 governments). In 2001 the "European Voice" newspaper (owned by the Economist) selected him as one of the "EV50" - one of the fifty most influential people in the European Union over the year for his work on openness and access to documents in the EU. He was selected again in 2004 one of the "EV50" - for working "to protect civil liberties, put at risk by the package of anti-terrorism measures".

David Cortright is the president of the Fourth Freedom Forum and a research fellow at the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame. He has served as consultant or adviser to various agencies of the United Nations, the Carnegie Commission on Preventing Deadly Conflict, the International Peace Academy, and the John D. and Catherine T. MacArthur Foundation. He has written widely on nuclear disarmament, non-violent social change, and the use of incentives and sanctions as tools of international peacemaking. He is the author or editor of twelve books, including *A Peaceful*

Superpower: The Movement Against War in Iraq (2004), and two volumes released in 2002: *Smart Sanctions: Targeting Economic Statecraft*, and *Sanctions and the Search for Security: Challenges to UN Action*, both with George A. Lopez. Currently he is involved in the Counter-Terrorism Evaluation Project, which develops policy recommendations for enhancing the work of the United Nations Security Council Counter-Terrorism Committee (CTC) and the recently created Counter-Terrorism Executive Directorate (CTED).

Nicholas Dorn studies the flexibility and evolution of economic crime in response to controls, with a focus on EU policies. He currently works for Cardiff University as a Research Fellow. Previously he has led research projects for the European Commission, the EMCDDA (an EU body), Her Majesty's Customs & Excise, DrugScope (UK NGO) and private sponsors. He has published on Proteiform criminalities (in *Transnational Organised Crime*, edited by A Edwards and P Gill, 2003, Routledge); *Memorandum on strengthening OLAF, the European Anti-Fraud Office* (with M Levi, in House of Lords, 2004, <http://www.publications.parliament.uk/pa/ld200304/ldselect/ldeucom/139/139we04.htm>); and *Upper Level Drug Trafficking*, with M Levi, L King *et al*, 2005, <http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr2205.pdf>).

Petrus van Duyne is a psychologist, criminologist and lawyer. His long career in both academia and the Netherlands Justice Department has involved him in empirical psychological research on decision-making by public prosecutors and judges, investigation into fraud and money laundering, and evaluation of anti-fraud and anti-money laundering policies. He has written numerous books, reports and articles on organised crime, fraud, corruption and money laundering. Currently he is senior advisor to the Dutch Criminal Intelligence Service, advisor to the European Union on corruption and organised crime in Eastern Europe, and professor of Penal Science at the Catholic University of Tilburg. His latest major publication is: *Drugs and Money. Managing the drug trade and crime-money in Europe* (London: Routledge, 2005).

Bernard Fanaroff is a South African astronomer and a long time organiser in the trade union movement of African workers in South Africa. He is a former Deputy Director General and the head of the Reconstruction and Development Programme in the Office of President Mandela and subsequently in 1996 he was appointed to the Department of Safety and Security in South Africa as co-ordinator of the National Crime Prevention Strategy (NCPS).

Jan Glimmerveen is a policy official at the Dutch Ministry of Finance and represents the ministry at international for a such as the Commission on Narcotic Drugs (CND) and the International Narcotics Control Board (INCB) in Vienna on issues of precursor control.

Alison Jamieson is an independent consultant and author on issues of political violence, organised crime and drugs. In 1995–1996 she was consultant to the UN International Drug Control Programme and was project manager/principal author of UNDCP's 1997 World Drug Report. Jointly with Nicholas Dorn, she edited *European Drug Laws: the Room for Manoeuvre* (London: Drugscope, 2001). Her other publications include: *Terrorism and Drug Trafficking in Europe in the 1990s* (Dartmouth, 1994); *The Antimafia. Italy's Fight against Organised Crime* (New York: St. Martin's Press, 2000).

Martin Jelsma is a political scientist. He is a fellow of the Transnational Institute (TNI) at which he is the co-ordinator of the Drugs & Democracy programme that works on drugs and conflict issues, alternative development and international drug control policies, specifically at the UN level. His latest work is mainly on the functioning of the UN system of drug control and possibilities for reform. Currently he is organising policy dialogues to build a like-minded coalition for drug control reform. Latest publications: *Drugs in the UN System: the Unwritten History of the 1998 United Nations General Assembly Special Session on Drugs*, *International Journal of Drug Policy*, April 2003; *Cracks in the Vienna Consen-*

sus: The UN Drug Control Debate, in *Drug War Monitor*, Washington Office on Latin America (WOLA): January 2004.

Michael Levi is a sociologist and criminologist and is currently Professor of Criminology at Cardiff University. His specialist interests include cross-border policing, violent crime, and drugs and alcohol abuse, white-collar and organised crime. In 1997, he was appointed as Scientific Expert on organised crime to the Council of Europe. He has been consultant to the UNDCP and the EC. He served as a member of the UK Treasury's group of money-laundering experts and of the Cabinet Office Performance and Innovation Unit's Steering Committee on the Pursuit and Confiscation of the Proceeds of Crime. His major publications deal with fraud, corruption, money laundering and organised crime. He co-authored the report *Financial Havens, Banking Secrecy and Money Laundering*, for the UNODCCP. He is currently working a new book *White Collar Crime and Its Victims: The Social and Media Construction of Business Fraud*, with Andrew Pithouse. His latest major publication is: *Drugs and Money. Managing the drug trade and crime-money in Europe* (London: Routledge, 2005).

Francisco Thoumi is an economist with a remarkably diverse career as an academic in both the US and Colombia and as an analyst for various international financial agencies including the Inter-American Development Bank and the World Bank. He has been a consultant and advisor to UN agencies and US government departments. He was the Research Coordinator of the Global Programme Against Money-Laundering of the United Nations Office on Drug Control and Crime Prevention. His publications deal with international finance and macro economic stabilization policy in the context of the threat posed by large-scale international financial crime and drug trafficking. He currently is directing the Research and Monitoring Center on Drugs and Crime at the Universidad del Rosario in Bogotá (Colombia). Latest major publication: *Illegal Drugs, Economy and Society in the Andes* (Johns Hopkins University Press, 2003).

Michael Woodiwiss is a Senior Lecturer in History at the Faculty of Humanities Languages and Social Sciences of the University of the West of England, Bristol (UK). His research focuses on organized, corporate, white supremacist and transnational crime from the time of the American Civil War. Latest major publication: *Organized Crime and American Power: A History* (Toronto: University of Toronto Press, 2001)

TNI Crime & Globalisation Project

The Crime and Globalisation project examines the synergy between globalisation and crime. It looks at the criminogenic effects of globalisation, on the one hand, and new discourses about an underground “axis of evil” of drug trafficking, transnational organised crime and international terrorism, on the other. The project aims to stimulate critical thinking about mainstream discourses, which turn a blind eye to the criminogenic effects of globalisation, while seeking to make links between the ‘criminal underworld’ and political terrorism.

As regards the criminogenic effects of globalisation, the project is concerned with the number of people being forced to “migrate into illegality” due to impoverishment and marginalisation. It is also concerned with the rise in corporate or white-collar crime as economies become more and more deregulated.

As regards the ‘axis of evil’ of drug trafficking, trans-national organized crime and international terrorism, currently being constructed as the new major global security threat, the project is concerned with the body of multilateral agreements put in place ‘to fight the scourge’. These are being adopted on the basis of vague definitions, scant information and tenuous links, and have serious consequences for civil liberties, human rights and national sovereignty.

In order to do this, the TNI Crime & Globalisation project intends to organise seminars around the issues:

- **The Economic Impact of the Illicit Drug Industry.** Goal of the seminar was to assess the global business volume of the illegal drug industry and to look where the illegal proceeds of the industry are going. Issues discussed included: the size of the illicit drug economy and the flows, investments and collusion of drugs money in the legal economy, the façade of money laundering control and the alleged funding of international terrorism through drug trafficking. It also discussed deficiencies in current research; and proposes new areas and lines of research. The seminar illustrated the widespread recourse to inflated figures, doubtful evaluation processes and the institutional need for numbers. See the final report at <http://www.tni.org/acts/impact.pdf>
- **Global Enforcement Regimes: Transnational Organised Crime, International Terrorism and Money Laundering.** See this report.
- **The Criminogenic Aspects of Globalisation: Migration Into Illegality.** The seminar will deal with the effects of marginalization that drive people into informal or shadow economies and its relation with criminal networks who profit from this development and the role of some transnational corporations condoning or actively engaging in illegal activities.

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