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Terrorism and Organized Crime

Reflections on an Illusive Link and its Implication for Criminal Law Reform

D.C. Préfontaine, QC
and
Yvon Dandurand

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**International Centre for Criminal Law Reform
and Criminal Justice Policy
1822 East Mall, Vancouver
British Columbia, Canada V6T 1Z1
icclr@law.ubc.ca**



Soon after the tragic events of September 11, the United National Security Council adopted resolution 1373 (2000) which noted with concern the “(...) close connection between international terrorism and transnational organized crime, illicit drugs, money laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials (...)”.¹ Not long thereafter, the *G8 Recommendations on Transnational Crime*, for instance, drew attention to the problem of terrorist organizations supporting their activities through the commission of other crimes and recommended that States strengthen their response to the interaction between international terrorism and organized criminal activities, in particular money laundering, illegal drug trafficking, use of illegal migration networks and illegal trafficking in firearms².

There were many, under the chock of the tragic events, would brandished the spectre of various forms of complicity and alliances between terrorist groups and regular criminal organizations. Was the fear exaggerated, as some have claimed, exaggerated (Naylor, 2002: 10)? Is it real, as others have argued based on a few known instances of temporary yet very dangerous alliances between drug traffickers and armed terrorists groups (Napoleoni, 2003: 40; Shelley, 2002, 2002a)? Is there a real link? If so, what is it?

Those of us who have tried to assess the nature of that illusive link have been left feeling much like Hans Blinx, the UN inspector, must have felt looking for weapons of mass destruction in Iraq. Everyone seems to be convinced that there is a link, but you just can find it.

¹ United Nations Security Council resolution 1373 (2001), par. 4.

² G8 Ministers of Justice and Interior, *G8 Recommendations on Transnational Crime*, Mont Tremblant, 2002

The evidence of linkages between organized crime and terrorism is very scarce. Nevertheless, the apprehended convergence between the major threats to both state and human security, if confirmed, is certainly not something that can be taken lightly. Whether the danger of the converging threats is real or partly imagined, there are undoubtedly numerous potential points of intersection between these two worlds centred on any number of activities in which both types of groups must be involved. There are also some troubling similarities in the use of certain methods, something which suggests that the possibility that new forms of collaboration between the two types of groups may yet emerge is far from excluded. At the very least, it is known that there are instances of sporadic, punctual collaboration between these groups which can theoretically degenerate into very dangerous alliances.

These are some of the reasons why it is increasingly important to try to better understand the manner in which terrorist organizations support their activities through the commission of other crimes. Ultimately, the objective is to develop strategies to prevent and disrupt these criminal activities in order to prevent terrorism.

The following comments are based on work that members of the ICCLR have been conducted over the last year or so, most of it in collaboration with our colleagues from the United Nations Office on Drugs and Crime (UNODC).

The Centre was involved in:

- A study³ of the link between terrorism and other forms of crime
- The development of guidelines for technical assistance to promote the implementation of the universal conventions and protocols related to terrorism and other forms of related crime; and,

³ The study was made possible by the support of the Foreign Affairs Canada and the Terrorism Prevention Branch, United Nations Office on Drugs and Crime.

- The development of a compendium of legal instruments and useful technical assistance tools to prevent terrorism and other related forms of crime.

The study was based on three main sources of information: (1) a review of the literature available in English; (2) an analysis of the reports submitted by Member States of the United Nations, as of February 2004, to the UN Security Council's Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001), and, (3) the results of a questionnaire that was sent through official channels to Member States of the United Nations, through the UN Office on Drugs and Crime.

The findings of the study were reviewed by an Expert Group which met in Cape Town at the Institute for Security Studies in South Africa (February 24-25, 2004) and it led the experts to conclude that some links between terrorists and organized criminal groups may exist but that concrete evidence of that link is scarce. The Group acknowledged the inherent difficulty in attempting to document and describe linkages between criminal and terrorists groups or between terrorist and other criminal activities. Reliable data on the nature of these links is difficult to capture by Member States and the task is further complicated in many cases by the absence of criminalization, definitional issues, and the frequent lack of a data collection capacity at the domestic level.

The Centre's study indicated that terrorist groups are frequently involved in other crimes, particularly illegal drug trafficking, smuggling of migrants, falsification of travel and identity documents, trafficking in firearms and other exploitation of illegal markets, *inter alia*, to support their activities. However, the study did not provide strong evidence of organizational links between terrorist groups and organized criminal groups.

Furthermore, no state reported evidence that organized criminal groups were becoming involved in terrorist activities. It became clear to the group of experts that Member States can strengthen their actions against terrorism by focusing their attention on other forms of criminal activity which both precede and accompany terrorist crimes. In this

context, the Expert Group pointed out that full use should be made of other appropriate international instruments to pursue crimes related to terrorism. In particular, it encouraged Member States to utilize the mutual legal assistance and extradition provisions of those instruments.

In view of the existing or even potential connections between terrorism and organized crime, the Expert Group produced some Guidelines on Technical Assistance (see *Appendix 1*). The Group argued that law reform efforts, capacity building and technical assistance tools, and training efforts should be integrated, where feasible, so that they address jurisdictional, procedural, and international cooperation issues which are common to the fight against terrorism, drug trafficking, transnational organized crime, money laundering, corruption, and other forms of criminal activity.

All of this recent work, which by the way is going to be reviewed and discussed again at the next UN Congress on the Preventions of Crime (in Thailand, Spring 2005), is quite helpful in helping us all delineate the specific role of the criminal law in the fights against terrorism and it helping us focus on the criminal law reforms that are necessary for an effective response to the threat of terrorism. In that respect, the Centre has produced a list of the law reform and related technical assistance activities that are required to implement the global conventions against terrorism and related crime. It is presented in Annex 2 of this paper⁴.

We can all understand why it is sometimes tempting for politicians and others to exaggerate the threat of a link between organized crime and terrorism. Such exaggerations, however, are counter-productive. I think that you will agree that it is far more productive to focus on how the criminal law, and the emerging regime of international cooperation in the field of criminal justice, can be mobilized into action against terrorism.

⁴ See also the excellent manual and toolkit developed by the Commonwealth Secretariat

Some of you may be somewhat surprised by what I have said so far about the absence of evidence to confirm the link between organized crime and terrorist groups. Let us therefore have a look at some of the conclusions of the Centre's study:

What is the nature and extent of the involvement of terrorist groups in other forms of crime, including transnational crime?

The list of behaviours related to terrorism that are criminalized is constantly being extended. Most of the activities in which terrorist groups must get involved to pursue their goals are being criminalized. By the time a group has decided to resort to terror to achieve its ends, there probably is very little that it is involved in, as a group, which is not illegal, if not criminal. In recent years, there has been a major effort made to criminalize most of the organizational activities of these groups, including the recruitment of members, fund raising, concealment of their sources of funding, various forms of incitation to violence, and the planning and execution of terrorist acts. Even the more indirect activities of individuals who somehow support these groups and their political objectives are quickly being criminalized everywhere (e.g., harbouring members of such organizations, gathering of information on their behalf, laundering of funds, providing means of communication and other logistical support, etc.). The impact of that increased criminalization cannot yet be assessed, but it is likely to push a larger number of individuals closer to engaging with the criminal world.

Looking at terrorist groups' involvement in various conventional types of crime, it is quite clear that terrorist groups frequently get involved in crime for instrumental purposes, whether it is to acquire equipment, access information, to move people around illegally, or in order to finance their activities. They also are involved in common crimes as part of planning or executing various acts of terrorism, such as stealing a vehicle, procuring explosive, or taking hostages. Finally, they may be involved in common

crimes for expressive purposes, to publicize their existence or influence public opinion, or as part of some “psychological warfare” to undermine the resistance of the government or undermine its public legitimacy (Amir, 1988: 107). Williams and Savona (1995) suggested that there is a possibly irreversible trend towards a convergence of these activities.

Just as there are various degrees in the ideological positioning that define the goals and means of terrorist organizations, there are various degrees of criminal involvement in different kinds of terrorist endeavour (Amir, 1988: 105). For some terrorist organizations, a reliance on crime to achieve their objectives is more pronounced than for others. Several analysts believe that there is a sort of typical evolution of terrorist groups which tends to lead them progressively towards a greater involvement in conventional crime, an evolution which may even lead an organization to be transformed into little more than just one more criminal organization (e.g., Dishman, 2001, 2002). Such a straying from their political agenda and the progression towards greater involvement in conventional crime were observed in a number of organizations, particularly those which became involved in the lucrative drug trade. However, in our view, given the paucity of available data, it is premature to claim that such is the normal or even the most frequent criminal evolution pattern for terrorist groups.

It is of course very difficult to get hard data on the extent of the involvement in various other forms of crime. Even when individuals are arrested and convicted for various crimes, it is not always possible to establish their link with terrorist groups. With the exception of some major cases, available data is often confined to news media reports, which are sometimes contradictory, and unconfirmed and speculative intelligence reports which, in the absence of other sources and when repeated often enough, have a tendency to progressively become accepted as a substitute for more credible evidence.

The potential involvement of terrorist groups in various forms of cyber-crime is frequently noted in the literature on terrorism and the danger of cyber attacks extends to matters of intense public concern. Some analysts note that cyber crime may not have yet resulted in any public disaster, but attacks on the websites and cyber systems of public agencies are common (Sofaer and Goodman, 2001). However, that issue was not specifically mentioned by Member States in their comments on terrorism and crime.

From these and other similar reports, it would appear that some types of crime are more clearly associated than others with the criminal activities of terrorists groups, as we know them. Among them, the most important ones are the various offences relating to the drug trade and firearms smuggling. Other types of offences include smuggling of migrants, falsification of documents, kidnapping and extortion, frauds and economic crimes, various illicit smuggling of various commodities, and money laundering

Transnational forms of crime: As some forms of terrorism become more transnational in nature, it may not come as a complete surprise that some terrorist groups are becoming more involved in various forms of transnational crime.

Drug trade: The literature on the involvement of terrorists in other forms of crime is completely dominated by references to their involvement in various aspects of the drug trade. Drugs are linked with insurgent groups and contribute to financing various arm conflicts (Geopolitical Drug Watch, 1999; Berry *et al.*, 2002, Inciardi, 1991).

There is no doubt that several terrorist groups (or associated individuals) participate directly or indirectly in the cultivation, manufacture, distribution, and sale of controlled substances and that they attempt through various means to access some of the funds derived from these activities. Taxation of drug trade, a

form of dangerous protection racket, is also one of the ways that they use to get a share of the illicit funds. One finds frequent references in the literature to the term “narcoterrorism”. It sometimes refers and probably originally did to organized criminals and drug smugglers using terrorist tactics. It also can refer to any link that there may exist between insurgent groups and the drug trade.

Several reports prepared in the last two years by researchers of the U.S. Library of Congress have focussed on narcotics-funded terrorist groups and on so-called “nations hospitable to organized and terrorism” (Berry *et al*, 2002; Berry *et al*, 2003; Miró, 2003). These reports seem to confirm that quite a few indigenous guerrilla groups operating in drug producing regions, and sometimes also terrorist groups, are heavily involved in drugs. According to these reviews, the relationship between these insurgent groups and drug trafficking organizations is a mutually beneficial one that allows for some exchanges between them.

However, because of their different goals, they tend to have a “pragmatic, arm’s length relationship” (Berry *et al.*, 2002). In some cases, the resulting *modus vivendi* between the two groups is one which amounts to a form of extortion or protection racket whereby insurgents will offer protection for various aspects of the drug production and trade operations within the territories they control (Berry *et al.*, 2002). The arrangement is usually an unstable one and the stakes are often very high. That can frequently lead to various forms of violence and confrontation. There are of course also instances where criminal and insurgent groups fight over control of the drug trade, as was the case in Georgia between conventional crime organizations and Chechen guerrilla forces (Curtis, 2002).

McCarthy (2003) observed that drug trafficking sometimes has a twofold purpose for terrorists. It is lucrative and it can weaken their enemies by flooding their society with addictive drugs. Some terrorists use that argument to justify their involvement in illicit activities to their membership and supporters.

It is nearly impossible to estimate how widespread the involvement of terrorist groups in the drug trade really is. Casteel (2003), the Assistant Administrator for Intelligence, U.S. Drug Enforcement Agency, reported that 14 of the 36 groups designated as foreign terrorist organizations on the U.S. State Department's list are involved in drug trafficking. He used these facts to argue that the war on drugs and the war on terrorism are and should continue to be linked. However, as Schmid (2004) accurately noted, there are hundreds of terrorist organizations and hundreds of drug trafficking groups, but it is usually the same dozen or so groups that get identified as being involved in both types of activities.

Many militant and terrorist organizations are apparently linked to one another in an international network of logistical, financial, and sometimes operational cooperation (Levitt, 2004). One of the ways which they sometimes find to cooperate is around various forms of transnational smuggling, including drug trafficking and the associated money laundering schemes. Some observers refer to a "growing involvement of Islamic terrorist and extremists groups in drug trafficking" (Berry *et al.*, 2002). According to the research conducted by the US Library Congress, there is also some limited but troubling evidence of cooperation between terrorist groups involves both drug trafficking and drugs for arms trafficking (Berry *et al.*, 2002).

The UN Link questionnaire asked respondents whether they had observed any links within their country between terrorism and illicit drugs. A little fewer than half of the respondents, 19 out of 38 had observed a link between illicit drug activities and terrorism.

Kidnapping and robberies: Kidnapping, robberies and various forms of extortion are other frequent sources of funds for terrorists (Napoleoni, 2003; Schmid, 2002; Thompson and Turlej, 2003). Bank robberies are an important source of income for many groups. It is a form of crime that can be committed by isolated cells of the group.

Corruption of public officials: The involvement of terrorist groups in corruption of public officials is often stated as a given (Shelley, 2001: 84; and 2002), but there does not seem to be a lot of evidence to support that assertion. Some analysts (Berry *et al.*, 2002) claims that terrorists who are linked with drug traffickers tend to use the same corrupt contacts within government. Corruption is sometimes also involved in relation to illegal immigration and smuggling schemes (Maclaren, 2000). Shelley (2001) and others sometimes refer to the possibility that governments may be weakened by terrorists and criminals using corruption to penetrate the government and neutralize it. However, excluding cases of terrorist groups involved directly in various forms of illegal trafficking, there are very few reported examples of terrorist groups systematically using corruption to achieve their goals. Twelve of the 40 respondents to the UN Links Questionnaire reported observing a link between terrorism and incidents of corruption of public officials or attempts to corrupt public officials

Involvement in the smuggling of migrants: Nineteen of the 40 respondents to the UN Links questionnaire (Algeria, Colombia, Comoros, Denmark, Ecuador, El Salvador, Germany, India, Italy, Japan, Kenya, Kyrgyzstan, Mauritius, Saudi Arabia, Sweden, Switzerland, Turkey, Ukraine, and the United Kingdom) reported observing a link between international terrorism and cases of falsification of travel and other official documents. Among them, eleven also reported links between international terrorism and the smuggling of illegal

migrants (Algeria, Ecuador, Germany, India, Kenya, Kyrgyzstan, Saudi Arabia, Sweden, Turkey, Ukraine, and the United Kingdom).

Involvement in money laundering and economic crime: Observers are often quick to assume that terrorists are involved in money laundering. Indeed, when terrorist groups are involved in crime to finance their activities, they no doubt wish to conceal the source of their illicit gains. However, generating revenues from criminal activities may prove easier than laundering these funds and investing them to generate regular revenue (Napoleoni, 2003).

Bantekas (2003:321), referring to a US Department of Treasury Analysis, explains that the movement of terrorist-related funds and transactions does not generally resemble normal transaction, but does not either display the complex patterns that are seen in money laundering. For instance, a recent study of money laundering activities in the countries which comprise the East and Southern African Anti-Money Laundering Group (ESAAMLG) was unable to find links between money laundering activities and terrorist groups, nor to trace terrorist groups to particular sources or methods of funding. It nevertheless concluded that their sources of funding were more likely to be illegal than legal ones (Goredema, 2003).

There are many sources of terrorism financing (Bantekas, 2003, Gunaratna, 2001) and the proceeds of crime, even when we include the profits generated by the drug trade, may not even be the most important source. Terrorist groups often receive funds from non-criminal sources and, even if they have good reasons to want to conceal the sources of these funds as well, it does not follow that they engage in money laundering (Pieth, 2000: 123). The methods used by terrorists and drug traffickers to “transfer funds” are similar, but they do not necessarily involved “laundering” in the normal sense of the word (McCarthy,

2003, Berry *et al.*, 2002). As Kersten (2002) observed, money laundering and financing of terrorism are completely different concepts. Terrorists may well resort to the same methods used by criminals to conceal the source of the funds they wish to use. However, where financing of terrorism occurs there often is no criminal offence that precedes the attempts to hide the movement of funds from official scrutiny (Kersten, 2002). The financing of terrorism often does not involve the washing of the proceeds of crime and, as Lilley noted “in fact the funds may be completely clean and the laundering is to conceal their ultimate source rather than initial origins” (Lilley, 2003:188).

Terrorists are reportedly also involved in various kinds of fraud, including credit card frauds and various forms of illegal trade. Examples that are often quoted involved the theft of diamonds and the illegal diamond trade involving networks covering Namibia, Angola, Belgium, South Africa and Israel, provide a source of funds for insurgent groups (Goba, 2003), or the illegal trade in tanzanite serving to finance terrorist attacks in Kenya and Tanzania in 1998 (Baganda, 2003: 70).

Involvement in illegal trafficking in nuclear, chemical, biological, or other potentially deadly materials

You are no doubt familiar with the oft repeated warning of the last decade that nuclear or biological terrorism (“mass destruction terrorism” as it is sometimes called) is a growing threat and may become one of the most important political and social problems of the future (Rosenbaum, 1997, Robinson, 2002, Ward and Ezeldin, 1990). That perceived threat is often based also on an assumption that criminal organizations, particularly those with extensive international connections, are potential sources of nuclear material for terrorists (Rosenbaum, 1997). Some have postulated the existence of a nuclear black market controlled

by organized criminal groups that could, for a profit, put these weapons in the hands of terrorists. Many “doomsday scenarios” can be imagined where criminal organizations could use their usual methods or their corrupted sources within government to acquire the material and make it available to terrorists. Some of the current security planning is even based on simulations using such scenarios⁵.

There are signs that organized crime groups have become involved in nuclear material smuggling and various analysts believe that the risk of organized criminal involvement in this kind of smuggling is higher than ever. In 1998, there were reports of a thwarted attempt by the Italian mafia to sell uranium that could be used to manufacture nuclear weapons. Other reports have followed to the effect that organized criminal groups had acquired nuclear material that they were willing to sell to the highest bidder (Lilley, 2003:153). Some Turkish gangs are suspected of smuggling of nuclear material, as just another illegal commodity. There are also repeated warnings about the potential involvement of Russian criminal organizations in that kind of contraband (William and Woessner, 1999). However, few actual cases of sale of nuclear contraband have been recorded in the former Soviet Union or in the West (Lee, 1999), and even fewer of them involved the confiscation of material that could actually be used to make nuclear weapons. As recently as 1999, William and Woessner (1999) affirmed that “none” of the radioactive contraband confiscated by Western authorities could be traced to weapons stockpiles. Nevertheless, there is the possibility that finished nuclear material might actually exist on the black market or that non-weapon grade material might still be used destructively by terrorists (Lee, 1999).

⁵ See: Centre for Strategic and International Studies (1998). *Wild Atom – Nuclear Terrorism*. Washington: CSIS.

The use of biological and chemical weapons by terrorists is often also presented as the “new face” of terrorism (Laqueur, 1998). However, in practice, as was concluded by Tucker (2000), these weapons are difficult to build and to use and only a small subset of terrorist groups is likely to possess the technological sophistication to effectively carry out chemical and biological attacks. Again, there are suggestions that criminal organizations could play a role in helping terrorist groups acquire the weapons or the technology. Such suggestions are not based on any hard evidence, nor do they seem to be based on an appreciation of the many reasons why a criminal organization would normally be quite reluctant to take the kind of risk involved in such transactions.

None of the 40 respondents to the UN Links Questionnaire reported that it had observed a link between terrorism and incidents of trafficking in nuclear material or trafficking in illicit biological substances. Only three (Colombia, Kyrgyzstan, and Turkey) reported observing a link between incidents of illegal trafficking in chemicals and terrorism, and only two reported a link between terrorism and trafficking in other potentially deadly materials (Saudi Arabia and the United Kingdom).

The involvement of terrorist groups in crime is usually presented as being on the increase. McCarthy (2003), of the U.S. Department of State, claims that there is an increasing link between terrorists, drugs, and other criminals. He suggests that terrorists are increasingly involved in various aspects of the drug trade as well as in organized rackets in kidnapping, extortion, piracy, arms trafficking, people smuggling, financial fraud, cigarette smuggling and other forms of contraband (McCarthy, 2003).

It is often suggested that an increased involvement of terrorists in various criminal activities is partly the result of a decline in state financing of terrorism (McCarthy, 2003,

Makarenko, 2003; Sanderson, 2004). That decline, according to that interpretation, would have driven terrorists to resort to crime to finance themselves. That view is a difficult one to verify, but it is commonly held in the intelligence community. The same can be said about the idea that the success of global efforts to suppress the financing of terrorism may have driven terrorist organizations to circumvent these measures by getting more involved in criminal activity (McCarthy, 2003). That view is not particularly convincing either, because the impact of anti-money laundering initiatives and other attempts to confiscate the proceeds of crime in other areas such as the drug trade has remained very limited. Pieth (2002), who is familiar with the question, reminds us that the effect of international anti-money laundering policies probably amount to little more than a “low tax” on illegal trade (Pieth, 2003: 120). If that is true, how would we explain an unprecedented impact as a result of recently adopted measures against the financing of terrorism?

A related aspect of that question often tends to be ignored in recent discussions of the extent of the involvement of terrorist groups in conventional crime. It is the distinction that one might usefully make between the criminality of the group as a whole and that of its members. It is not particularly uncommon for terrorist groups to recruit some of their members among criminal elements, particularly among individuals who may have special skills or special access to networks or criminal opportunities. A terrorist organization can include common criminals who contribute to its goals in instrumental, training, and other manners (Amir, 1988). In such a group, part of the membership can actually be specializing in committing crime and there may be obvious reasons for these sub-groups to be kept quite isolated from the rest of the organization.

Finally, a factor which may explain the increased criminal activity of some terrorist groups is the progressive replacement of ideology by profit and greed as the main motivation for operations (Curtis and Karacan, 2002). Instances of the so-called “fighters turned felons” are frequently quoted, but it is not clear how frequently that pattern really

occurs. When such cases are reported, the whole of the terrorist group tends to be painted with the same brush. In reality, it is seldom the whole group that adopts that new direction and we seldom know what part of it exactly has been transformed in that manner. In some instances, obviously, the so-called new “felons” will be those who were recruited from the criminal underworld in the first place, or those who will have been part of that smaller contingent within the organization which was mostly responsible for conducting the general criminal activities of the group.

What is the extent of the participation of criminal organizations in terrorist activities?

There are relatively few documented examples of the direct involvement of criminal organizations in terrorism. When they perpetrate acts of terrorism, it is usually as a tactic. Makarenko (2003) suggests that criminal groups are increasingly engaged in political terrorist acts to destabilize local institutions. Organized crime will use terrorist attacks against the State to disrupt investigations, intimidate and disrupt law enforcement, coerce judges, or create an environment more conducive to criminal activity (Williams and Savona, 1995). Nevertheless, as far as the few groups involved in both organized crime and terrorism are concerned, it is the terror groups who are more likely to evolve into hybrid groups, not conventional criminal groups, even if the latter will sometimes tactically resort to terrorist acts (Sanderson, 2004).

To further complicate things, there are known cases of organized criminal groups, narcotic traffickers mostly, using the existence of revolutionary insurgency to cover their own activity and to misdirect the police and the media (Lupsha, 1988: 183). There are also some cases, for instance in Colombia, where organized crime opportunistically supports terrorists because their activities destabilize the political process, fractionalize groups that compete for power (Bibes, 2001), and undermine the legitimacy of

governance mechanisms and the ability of the State to intervene effectively against crime (Manwaring, 1996).

Respondents to the UN Links Questionnaire were asked to indicate whether organized criminal groups were involved in terrorist acts in the country and, if so, to describe the criminal organizations and their *modus operandi*. Most States did not reply to this question or indicated either that there had not been any terrorist acts in the country or that they had not observed any instance of organized criminal groups involved in terrorist acts. Japan reported that the involvement of criminal groups in terrorism seem to be limited to providing some financing. Algeria and Turkey also noted that criminal organizations involved in illicit drug trafficking are funding terrorist organizations in the country as opposed to being involved directly in conducting terrorist activities. With the exception of Colombia and India, none of the respondents referred to any situation in which an organized criminal group was directly involved in terrorist acts.

Colombia explained that financial gain is the motivation of criminal organizations involved in terrorist activities. It is clear that common criminals acting in organized groups are committing a number of murders, kidnapping, extortions, and other crimes in the service of larger insurgent and terrorist groups. The smaller criminal organizations tend to act under the direction of these larger groups, for a profit. They are hierarchically and vertically organized. Their *modus operandi* is characterized by specific attempts or homicides against public figures and public servants and involves kidnapping and extortion.

India reported that there had been cooperation between organized crime groups and terrorists for a long time, but that a significant new development on this front was the fact that organized crime gangs and terrorists outfits had begun to work “in consonance”. There are numerous instances of the involvement of organized crime gangs in terrorism.

The attack on the US Information Centre, Kolkata (January 2002) is the most recent example of such collaboration.

What evidence is there of any cooperation between criminal organizations and terrorist groups at either the national or international levels?

Various authors (Helfand, 2003; Dishman, 2001; Sanderson, 2004) refer to a convergence between organized crime and terrorism. They point at some terrorist organizations which mimic or ally themselves with transnational crime groups in order to successfully exploit illicit markets and various other criminal enterprises.

Williams and Savona (1995) suggest that there is a possibly irreversible trend towards convergence between terrorists and organized crime groups. Thompson and Turlej (2003:87) claim that there is a “natural partnership” between organized crime and terrorists. Curtis and Karacan (2002) argue that similarities in their operations led to “marriages of convenience” and increased cooperation between terrorist groups and organized crime, particularly around drugs and arms smuggling operations. Shelley (2002) argues that the observed convergence between the two threats makes it impossible to address one without the other. She suggests that the merger between transnational organized crime, terrorism, and corruption is “profound” and seen on a regular basis (Shelley, 2002a)⁶. Others have referred to a “blurring of boundaries between terrorism and organized crime” (Jamieson, 2001: 379; Cillufo, 2000; Curtis and Karacan, 2002: 4) and there is most certainly another form of “blurring” occurring at the social representations level: that which occurs when very similar images of organized crime and terrorism as threats to society and the state are encouraged (Finley, 1986)⁷.

⁶ She uses that argument to support the idea that “the war against terrorism cannot be separated from the fight against transnational crime” (2002: 91).

⁷ Finley (1986) argues, that by universalizing the “social threat” and objectifying the “rule of law response”, the state can portray itself as the impartial protector of civil peace irrespective of the form the challenge to its authority may take.

The description offered by Sanderson (2004) of a new convergence between organized crime and terrorism is indeed quite alarming. Referring to what he characterizes as the “general perception among leading American intelligence and national security minds”, he asserts that the merging of transnational organized crime and international terrorism is on the rise. That growing nexus between the two, he argues, is enabled by globalization and leads to further disruption and threats to global security.

There are, as can be seen, numerous claims that there already is a trend towards greater cooperation between organized crime and terrorists. However, with the possible exception of cooperation between terrorists and common criminals around the drug trade, finding hard evidence that such a trend exists is very difficult.

Greater international mobility is triggering international joint ventures between a range of actors, legitimate and illegitimate (Ruggiero, 2002), and often independently of the goals these actors pursue or the ideology they subscribe to. Cooperation exists between terrorist groups (Schmid, 2002) and there is cooperation between organized criminal groups. The results of the *UNODC Pilot Survey of Forty Selected Organized Criminal Groups* (UNODC, 2002) show that there is cooperation among the latter across borders, particularly in relation to various forms of trafficking. Nevertheless, even among criminal groups, collaboration may not be as widespread as one may be prepared to assume. It will tend to be sporadic, punctual, or limited to certain types of operations and, as Schmid observed, “(...) trust is indeed a rare commodity in the underworld of crime” (2002, p. 13).

In effect, there is nothing particularly strange about terrorist groups maintaining some kind of business relations with individual criminals or with criminal organizations, usually through contacts limited to some key individuals on both sides. This is not

unique. States themselves are also known to use criminals and criminal/ organizations as part of their own counter-terrorism measures (Amir, 1988; Lee, 2003; and, Lupsha, 1988) or as intermediaries in cases of state sponsored terrorism (Ehrenfeld, 2000)⁸.

In reality, however, cooperation is inherently risky and, for that reason, cooperation between the two types of groups or even among terrorist groups themselves is more the exception than the rule (Schmid, 2002, p. 16). Whether long-term alliance can really be forged within that context between any of them is still an open question (Naylor, 2002).

It would seem that very few criminal organizations are indeed willing to get involved with terrorist groups. When they do, it is usually in the relatively rare situations where the latter controls a black market or a territory where some drug operations can be conducted relatively safely, under the protection provided by insurgent/terrorist groups. The criminal organizations' lack of interest in forming alliances with terrorists is documented by Dishman (2001). He concludes that there is little evidence to suggest that the two types of groups are prepared to form alliances or other types of collaborative arrangements with each other. Terrorist groups seem to prefer to use their own "in-house capabilities to undertake criminal or political acts" (Dishman, 2001).

He also noted that, with the possible exception of the cooperation observed between the Moscow-Based Chechen Mafia and the Grozny-based Chechen guerrillas or between the KLA in Kosovo and the Albanian criminal syndicates, punctual collaboration between two groups only very rarely gives rise to longer term cooperative arrangements. Cooperation is generally episodic and impermanent (Dishman, 2001) and can be characterized as a "one-spot" linkage (Williams, 1995). These analyses reveal a general

⁸ In some cases, a State willingness to collaborate with criminals in order to fight terrorists or insurgent groups may even lead to tensions between its counter-narcotics and counter-terrorism policies. Efforts to apply these policies may even work across purposes (Lee, 2003). Lee (2003) refers, for example, to the role of the USA in Afghanistan where alliances have been formed and compromises struck with forces which opposed the Taliban but had a history of facilitating and benefiting from the drug trade.

pattern on non-cooperation between the two types of groups which is unlikely to change in the future.

Terrorist and organized criminal groups share some attributes, in particular some organizational attributes (Shelley and Picarelli, 2002). Terrorist groups and criminal organizations often have similar requirements for moving people, money, material, and weapons across borders. They often operate under a similar set of contingencies. Both types of groups use similar kinds of methods (Berry *et al.*, 2002; McCarthy, 2003; Sanderson, 2004; Schmid, 2002; Shelley and Picarelli, 2002). These similarities, however, do not automatically lead them to cooperation. In fact, there generally seems to be only minimal cooperation between them, if any (Helfand, 2003: 35). Even Sanderson (2004:49), who foresees a potential for a growing convergence between the two types of groups, acknowledges that there are impediments to wholesale cooperation between terrorists and conventional criminals. As it is often emphasized (Helfand, 2003), terrorists must maintain their own clandestine networks and aim to control all aspects of their operations to minimize the risk of infiltration. Criminal organizations have a similar need to protect their networks and minimize the risk of infiltration (Lotspeich, 2000). There are therefore formidable obstacles to ongoing collaboration between the two types of groups. Not only does neither one of them want to risk compromising the group's secrets, but they also have very different objectives and define success very differently.

Cooperation between terrorists and common criminals appears more likely to occur under certain circumstances than under others. For instance, post conflict societies and failed states provide ideal conditions for the blending of criminal and terrorist activities (Jamieson, 2001; Sanderson, 2004). When the authority of a State has been eroded, the resulting vacuum can be exploited by both organized crime and political groups. The potential for collaboration between the two is increased⁹.

⁹ This is why at least one author points to the entire Balkan region as a danger zone as far as political-criminal linkages are concerned (Shelley, 2002a).

It can be said that the main concern for the future may not come so much from the cooperation between terrorists and common criminals, but from the transformation of terrorist groups into predominantly criminal ones, that is into groups for which financial benefits and successful criminal enterprises assume a greater priority than ideological goals (Berry *et al.*, 2002; Dishman 2001, Makarenko, 2003). At present, the “hybrid threat” resulting from the transformation of terror groups into hybrid criminal/terror entities is the most common one (Curtis and Karacan, 2002, Makarenko, 2003; Sanderson, 2004). Such alarming transformations have been observed from time to time, but they are not very well understood.

Conclusions

The results of the study conducted by the Centre, and in particular the responses to the questionnaire administered by the United Nations Terrorism Prevention Branch (UNODC), indicate that terrorist groups are frequently involved in other crimes, particularly illegal drug trafficking, smuggling of migrants, falsification of travel and identity documents, trafficking in firearms and other exploitation of illicit markets. However, the responses did not provide strong evidence of organizational links between terrorist groups and organized criminal groups. There was no indication either that criminal groups were becoming more involved in terrorist acts. From these findings, it is clear that States could enhance the effectiveness of their actions against terrorist groups by focusing on some of the other forms of crime they commit.

The knowledge of the various ways in which terrorism and common crime are often linked has brought governments to focus on the implication of that nexus for the development of more effective strategies to prevent both crime and terrorism, particularly when they occur at the transnational level. Clearly, some of the most effective

instruments governments have at their disposal to combat terrorism are their respective law enforcement and criminal justice systems. A new focus has emerged, internationally, on building the capacity of these systems to work collaboratively and on efforts to mobilize them to contribute to the fight against international terrorism. As it becomes clear that many of the methods used by terrorists do not differ very significantly from those used by other criminals, even if their basic motivation differs greatly, criminal justice systems' strategies, methods, and processes are revealed as very much relevant to the fight against terrorism.

At the international level, the efforts of the last decade to facilitate cooperation between national systems in their fight against transnational organized crime and drug trafficking have in effect created a rudimentary platform which can now be used in the fight against transnational terrorism. That international criminal justice cooperation regime is still at its very early stages of development. It is still confronted with persistent difficulties resulting from inconsistencies among the international agreements that have evolved to support it as well as from the lack of harmony and compatibility between national justice systems. However, the threats arising out of the links between terrorism and crime have provided a new impetus for the international community to perfect that regime and to provide assistance to countries which are not quite able yet to participate fully in it.

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Appendix 1

**DRAFT GUIDELINES ON TECHNICAL ASSISTANCE TO SUPPORT
THE IMPLEMENTATION OF THE UNIVERSAL CONVENTIONS AND
PROTOCOLS RELATED TO TERRORISM AND OTHER RELATED
FORMS OF CRIME**

In light of the urgent need for international cooperation to prevent and combat terrorism and in view of the importance and complexity of the adoption and implementation of the relevant conventions and other standards, the UNODC has been requested, subject to availability of regular or extra-budgetary funds, to intensify its efforts to provide technical assistance. The Expert Group recommends that the UNODC, in promoting the implementation of the universal conventions and protocols related to terrorism and other related forms of crime and acting in areas within its competence and in coordination with the Counter-Terrorism Committee, should provide technical assistance in accordance with the following ten guidelines:

1. The technical assistance provided to the Member States, at their request, should be based on an integrated approach addressing the requirements and other provisions of Security Council resolution 1373 (2001) and all the conventions and protocols relevant to preventing and combating international terrorism, drug trafficking, transnational organized crime and other related forms of criminal activity, and should incorporate recognized human rights protections as also expressed by Security Council resolution 1456 (2003).
2. The technical assistance should be provided in a comprehensive manner so as to increase synergies in the delivery of technical assistance reflecting both the links between terrorism and organized crime and the responsibility of the UNODC for programmes to combat terrorism, drug trafficking, transnational organized crime, money laundering, corruption and other related forms of criminal activity.
3. To avoid duplication, the technical assistance activities should be provided in close coordination with the activities of the Member States, Counter-Terrorism Committee, and other international, regional and sub-regional organizations.
4. Regional and bilateral obligations and other applicable standards should also be considered in the provision of technical assistance.
5. The technical assistance provided should be responsive to the requests, assessed needs, circumstances and priorities of the requesting states.
6. Technical assistance to Member States to become parties to, and implement the relevant conventions and protocols should include activities to build the capacity of the criminal justice system, with regard to investigation, prosecution, and international cooperation, to combat

and prevent terrorism and related forms of crime.

7. Tools should be developed to help requesting Member States assess their needs for technical assistance and evaluate the effectiveness and impact of the assistance provided.
8. The technical assistance should be provided in a manner which recognizes diverse legal systems and traditions while promoting the highest degree of international cooperation.
9. The technical assistance should be provided in a timely and cost-effective manner.
10. New initiatives in and methods of delivering technical assistance need to be explored, such as:
 - a. modern online delivery of technical assistance;
 - b. encouraging governments to include legislative representatives in technical assistance activities;
 - c. increased use of partnerships with the UN Crime Prevention and Criminal Justice Programme Network of Institutes; and,
 - d. mentoring for criminal justice officials.

Appendix 2

ELEMENTS OF TECHNICAL ASSISTANCE IN SUPPORT OF THE IMPLEMENTATION OF THE CONVENTION AND PROTOCOLS RELATING TO TERRORISM AND OTHER RELATED CRIME

Member States may find it useful to review the following list of implementation activities in assessing their needs for technical assistance to support the implementation of the Convention and Protocols relating to terrorism and other forms of crime. Implementation activities, including both those which are mandated and those which are recommended in the various international instruments, are grouped under eleven general categories: (i) general; (ii) Legislative (general); (iii) Criminalization/ Penalization; (iv) Measures related to cybercrime; (v) Measures to combat money laundering and the financing of terrorism; (vi) Measures relating to asset freezing, seizure and confiscation; (vii) Measures to promote international cooperation; (viii) Measures to protect witnesses and other participants in criminal proceedings; (ix) Measures protect and assist victims; (x) Institutional capacity building activities; and, (xi) Prevention Measures.

I. General

1. Review and assess current implementation of conventions
2. Assess and identify technical assistance needs
3. Assess resource requirements
4. Report clear and accessible information on progress of implementation

II. Legislative (General)

1. Address issues of jurisdictions and exercise of jurisdiction
2. Review definitions of serious offences
3. Address criminalization of preparatory acts, ancillary offences and conspiracy
4. Address issues of law enforcement powers
5. Apply “Aut dedere aut judicare” principle

III. Criminalization / Penalization

Member States may require technical assistance in adopting measures to establish under their domestic law a number of offences called for by the conventions and protocols relating to terrorism and other related forms of crime, and to ensure that these offences are punishable by appropriate penalties which take into account the grave nature of the offences. Tools would be provided to help States define the material and mental elements of the offences in accordance with the general criminal law of each State Party. The assistance provided will further assist requesting States to ensure that these new criminal law provisions comply with their obligations under international law in particular international human rights, refugee, and humanitarian law.

A. Establishing Offences under National Law

- **Offences relating to civil aviation**
- **Offences based on status of victims (protected persons) and the Convention on the Safety of United Nations and Associated Personnel (1994)**
- **Offences related to dangerous materials**
- **Offences related to vessels, fixed platforms and harbour installations**
- **Offences under the International Convention for the Suppression of the Financing of Terrorism**
 1. Criminalize the financing of terrorism
 2. Establish liability of legal entities for financing terrorism
- **Offences mandated by SC resolution 1373**
 1. Criminalize the financing of terrorism
 2. Define and penalize terrorist acts
- **Offences recommended in the Commonwealth Model Legislative Provisions**
 1. Criminalize the provision or collection of property to commit terrorist acts
 2. Criminalize the provision of services for commission of terrorist acts
 3. Criminalize the use of property for commission of terrorist acts
 4. Criminalize the making of arrangements for the retention or control of terrorist property
 5. Criminalize various forms of dealing with terrorist property
 6. Criminalize the soliciting and giving of support to terrorist groups or for the commission of terrorist acts
 7. Criminalize the harbouring of persons committing terrorist acts
 8. Criminalize the provision of weapons to terrorist groups
 9. Criminalize the recruitment of persons to be members of terrorist groups or to participate in terrorist acts
 10. Criminalize the provision of training and instruction to terrorist groups and persons committing terrorist acts
 11. Criminalize the incitement, promotion or solicitation of property for the commission of terrorist acts
 12. Criminalize the provision of facilities in support of terrorist acts
 13. Criminalize conspiracy to commit offences
 14. Criminalize membership of terrorist groups
 15. Criminalize the arrangement of meetings in support of terrorist groups
 16. Criminalize participation in the commission of offence
- **Offences related to organized crime**

1. Criminalize the participation in an organized criminal group
 2. Establish the liability of legal persons
- **Offences relating to money laundering**
 1. Criminalize the conversion, concealment or disguise of the proceeds of crime
 2. Criminalize acquisition, possession or use of proceeds of crime
 3. Criminalize the participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counselling the commission of money laundering offences
 4. Define predicate offences
 - **Offences of obstruction of justice**
 1. Criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the production of evidence in relation
 2. Criminalize the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official
 - **Offences relating to corruption**
 1. Criminalize active bribery
 2. Criminalize passive bribery
 3. Criminalize complicity in bribery offences
 4. Criminalize other forms of corruption
 5. Criminalize embezzlement, misappropriation or other diversion of property by a public official
 6. Criminalize bribery of foreign public officials and officials of public international organizations
 7. Criminalize trading in influence
 8. Criminalize abuse of functions
 9. Criminalize illicit enrichment
 10. Criminalize bribery in the private sector
 11. Establish the liability of legal persons involved in acts of corruption
 - **Offences relating to smuggling of migrants**
 1. Criminalize the smuggling of migrants (including attempts, participation as an accomplice, organizing and directing others)
 2. Criminalize the enabling of illegal residence
 3. Criminalize the production and the procuring, providing, or possession of fraudulent travel and identity documents

- **Offences relating to trafficking in human beings**
 1. Criminalize trafficking in persons

- **Offences relating to trafficking in firearms**
 1. Criminalize the illicit manufacturing of firearms
 2. Criminalize the illicit trafficking in firearms
 3. Criminalize the tampering with markings on firearms

- **Offences relating to illicit drugs**
 1. Criminalize the production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery, transport, importation or exportation of illicit narcotic drugs or psychotropic substances
 2. Criminalize the illicit cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs
 3. Criminalize the illegal possession or purchase of narcotic drugs or psychotropic substances
 4. Criminalize the manufacture, transport or distribution of equipment, materials or substances knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;
 5. Criminalize the organization, management or financing of drug offences

B. Measures relating to jurisdiction

1. Measures to establish and exercise jurisdiction over offences
2. Application of “aut dedere aut judicare” principle

IV. Measures relating to cybercrime

1. Criminalize illegal access to computer data and systems, illegal interception, data interference, and system interference
2. Criminalize computer related forgery, frauds, etc.
3. Ensure that adequate substantive and procedural laws to prevent and punish terrorist and other criminal activities perpetuated with the aid of computers and computer networks

V. Measures to combat money laundering and the financing of terrorism

1. Examine legislation in relation to the international standards set by the FATF, in particular Special Recommendations 6, 7 and 8.

2. Establish regulatory regime to require banks and financial institutions to ensure: customer identification, record keeping, and mechanisms to report suspicious transactions
3. Establish measures to monitor cross-border movement of cash and other monetary instruments
4. Establish financial intelligence units (FIUs)
5. Ensure that specific assistance required is provided in relation to financing of terrorism offences

VI. Measures relating to asset freezing, seizure, and confiscation

1. Establish authority and mechanisms to seize property used in the commission of acts of terrorism and organized crime
2. Establish authority and mechanisms for seizure of assets used in the commission of acts of terrorism and organized crime
3. Establish authority and mechanisms to forfeit assets used in the commission of acts of terrorism and organized crime
4. Establish authority and develop mechanisms to identify, trace, freeze or seize property/assets, including bank, financial or commercial records, as well as equipment and other instrumentalities used in, or destined to be used in the commission of acts of terrorism and organized crime
5. Establish authority and develop mechanisms for the confiscation, including forfeiture where applicable, of property/assets, equipment or other instrumentalities used in or destined to be used in the commission of acts of terrorism and organized crime

VII. International cooperation

A. Mutual assistance (national, regional, and international capacity building)

1. Adopt measures to facilitate execution of request for confiscation from other countries
2. Mechanism for exchange of information between law enforcement agencies and other competent authorities (e.g. regional task forces and information sharing and analysis mechanisms, Interpol Fusion Project)
3. Establish and maintain central authority (including training) for speeding coordination of and responses to requests
4. Promote training and technical assistance that will facilitate extradition and mutual legal assistance.
5. Facilitate meeting between central authorities for analysis of patterns and obstacles, and identification of best practices.
6. Secondments and exchanges of personnel between Central Authorities
7. Secondments and exchanges of prosecutors and law enforcement officials involved in mutual assistance

8. Use liaison magistrates or law officers to facilitate mutual assistance
9. Produce handbook and other materials to describe, for the benefit of other countries, the channels of communication, applicable rules and legislation, and the process for obtaining legal or law enforcement assistance (and extradition).
10. Encourage the development of networks of prosecutors
11. Encourage law enforcement communication and training in relation to mutual assistance mechanisms in place

B. Mutual Legal Assistance (treaties)

1. Adopt and implement relevant new instruments
2. Develop, when necessary and appropriate, new mutual assistance arrangements or treaties
 - Define the scope of basic parameters of new treaties that are required
 - Ensure comprehensiveness of new treaties (ensuring that they meet the various requirements of existing conventions and international commitments)
 - Define assistance that will be made available (as broadly as possible)
3. Develop policies concerning the provision of assistance even in the absence of a treaty
4. Systematically review and revise existing treaties to which they are party and assess any implementation issues
5. Training of and communication with the judiciary in relation to national obligations under the treaties and the operation of the mutual legal assistance scheme
6. Extend to the greatest extent possible, mutual legal assistance notwithstanding the absence of dual criminality
7. Extend mutual assistance even in cases where the incrimination reflects the fact that the same conduct is criminalized somewhat differently

C. Extradition

1. Make offences extraditable offences
2. Identify and eliminate obstacles to extradition
3. Produce handbook and other materials to describe, for the benefit of other countries, the channels of communication, applicable rules and legislation, and the process for seeking and obtaining an extradition

D. Law enforcement cooperation

1. Adopt measures to enhance cooperation with law enforcement authorities
2. Adopt measures that would facilitate the establishment of joint investigation teams
3. Develop bilateral and multilateral agreements on law enforcement cooperation
4. Use of law enforcement liaison officers
5. Cooperate in the collection, exchange and analysis of information on the nature of terrorist and organized crime activities

6. Share analytical expertise
7. Adopt measures to fully protect sensitive information received from other states
8. Develop bilateral and multilateral agreements or arrangements for the use of special investigative techniques in the context of international cooperation

VIII. Protection of witnesses and other participants in criminal proceedings

1. Adopt measures for the protection of witnesses
2. Adopt measures for the protection of judges, jury members, and prosecutors
3. Adopt measures for the protection of persons reporting corruption
4. Adopt measures for the protection of informants and mitigate punishment for accused persons providing substantial cooperation in the investigation and prosecution of crimes

IX. Protection and assistance to victims

1. Adopt measures for the protection of victims
2. Adopt measures for providing assistance to victims

X. Institutional capacity building

1. Develop institutional expertise (human resources) to deal with transnational organized crime, corruption and terrorism
2. Strengthen investigative capacity through exchanges of law enforcement expertise regarding scientific and technological development (e.g. development of DNA databases)
3. Develop law enforcement ability to use special investigative techniques (electronic surveillance, undercover operations and controlled delivery)
4. Train, exchange information, participate in and organized joint training seminars (also language training)
5. Initiate, develop and improve specific training programmes for its law enforcement personnel including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of offences related to organized crime
6. Take effective measure to improve border control

XI. Prevention

1. Adopt preventive measures, including measures to prevent corruption, measures to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, measures to promote and develop standards and procedures to safeguard the integrity of public and relevant private entities, measures to prevent the misuse by organized criminal groups of tender procedures conducted by public authorities and of

subsidies and licences granted by public authorities for commercial activity; and, measures to prevent the misuse of legal persons by organized criminal groups.

2. Identify and share best practices
3. Exchange information about prevention

