

TERROR FINANCING: BACK IN BUSINESS. A CASE STUDY OF THE DEMOCRATIC REPUBLIC OF CONGO (EX-ZAIRE)

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Introduction

Since the tragic event of the destruction of the World Trade buildings in New York on September 11, 2001, there have been tremendous efforts to fight terrorism on all fronts. However, the extent of alternative financing mechanisms used by terror organizations is not fully known. The lack of systematic data collection and analysis of case information in alternative financing mechanisms have allowed terror financing to flourish with very few interruptions from the world law enforcement agencies.¹ The main question of this paper is to see if the current “war” against terror financing from the U.S government perspective, methods and applicability relevant to other parts of the world especially in the Democratic Republic of Congo (DRC)? The analysis of this paper will try to show the evasiveness of terror financing in the diamond and the informal banking system sector from the United States government point of view and its implication in the DRC.

But before going to answer the main question, this paper will address the current “war” on terror financing and its significant problem. An analysis of current techniques to combat terror financing will show that the international community is focused solely on the formal banking or mainstream financial sector leaving unscathed the use of alternative financing mechanisms by criminal and terror organizations. A comprehensive series of studies have been accumulated, written by various organizations such as the

United Nations and government agencies from Europe to the United States, which map and monitor terror money and money laundering in the mainstream financial sector.

To begin, a series of questions will be posed:

- What are some of the alternative financing mechanisms used by terror organizations to finance their terror activities?

An understanding of the methods used by terror organizations is required to apprehend and stop the financing of terror activities. The United States General Accounting Office (GAO) notes that terrorists are using methods that make it hard to detect the movement and laundering of money. In one example, when investigators looked into suspected terrorists who were earning raising money by selling counterfeit household appliances, the suspects began marketing their own brand.²

- What has been done to combat these mechanisms?

An elaborate extensive literature review and strategies from government agencies around the world and primarily the United States will show what methods are used to fight the aforementioned example.

After an extensive exploration of these questions, the fundamentals of terror financing will be presented, which will then be projected on the DRC and see if there are parallels.

Terror Financing: Back in Business

1 U.S General Accounting Office (GAO), Terrorist Financing, (Washington, DC.: 2003)

2 GAO, Terrorist Financing, (Washington, DC.: 2003), p. 30

What are some of the alternative-financing mechanisms used by terror organizations to finance their terror activities?

The global fight against terror financing has led countries to conclude that terror organizations use a complex and sophisticated scheme of money laundering that share most of the fundamental attributes of criminal groups' money laundering typology, but it differs in a way. Most crime is committed for financial gain. While criminal groups and terror groups primarily seek monetary gain, terror will usually seek non-financial goals such as the publicity for their cause and political influence. The difference between those two money-laundering typologies rests within the transfer of funds. Terror organizations need to place substantially fewer funds in to the hands of terror cells and their operatives, while criminal groups seek to disguise the large amounts of proceeds generated by criminal activities.³

International recognition of, and action against, the "war" on terror financing has uncovered common traits that are fluid across the borders of Europe, Asian, Africa, South America and North America for terror organizations to earn, move and store assets. The terror financing essentials will focus on diamonds for cash; terror organizations may also earn money by misusing charitable organizations.⁴ To move funds and assets, they may use charitable organizations, informal banking system and commodities such as diamonds.⁵ To store funds and assets, they may use commodities such as diamonds, the most precious stone sought out in the world, because they retain their values over time and are easy to buy and sell outside the formal banking system.⁶

To Earn Assets

Charitable Organizations

³ U.S. Department of State (DOS), International Narcotics Control Strategy Report , (Washington, D.C.: March 2003)

⁴ Ibid., p. 9.

⁵ Ibid.

⁶ Ibid., p. 10.

Charitable organizations are established to provide funds or promote the public good, but this outcome is not always the case. Terror groups are able to establish a charity for humanitarian purposes or any legitimate purposes than divert the funds to their operations due to the lack of oversight and financial controls from the establishment. In the United States, the Holy Land Foundation for relief and development in Texas claimed to have raised \$13 millions to care for needy Palestinians⁷ but the U.S Department of Justice (DOJ) produced evidence that HAMAS has used the foundation money to raise and support suicide bombers and their families.⁸

Diamonds

Terror organizations like al Qaeda used diamonds to earn funds in other parts of the world where regulatory regimes are less stringent or nonexistent.⁹ They then export the diamonds to the United States and Europe for currency exchange. The nature of the operations of the international diamond industry makes it a high value commodity that is easily concealed and transported.¹⁰ In the United States, the diamond industry is self-regulated and falls short of providing adequate safeguard for terror organizations to infiltrate the industry.¹¹ The GAO report, entitled: "Significant Challenges Remain in Deterring Trade in Conflicts", notes that the lack of transparency and relatively limited

7 U.S. Department of Treasury (DOT), Shutting Down the Terrorist Financial Network, at internet : <http://www.treas.gov/press/releases/po841.htm?IMAGE.X=0&IMAGE.Y=0>, 4 December, 2001.

8 U.S Department of Justice (DOJ), Holy Land Foundation v. Ashcroft, At internet: <http://www.usdoj.gov/osg/briefs/2003/0responses/2003-0775.resp.html>, 06 April 2004 (last visited).

9 U.S General Accounting Office (GAO), Significant Challenges Remain in Deterring Trade in Conflicts, (Washington D.C.: February 2002).

10 Ibid.

11 Ibid.

documentation in the diamond industry operations facilitate illegal activities.¹² Major US and international retailers selling diamond jewellery are falling short on their promises to combat the trade in conflict diamonds.¹³

Global Witness, a London England-based organization with expertise in accountability and corporate transparency in natural resource management, has presented evidence that al Qaeda has been showing interest in conflict diamonds since 1998.¹⁴ After the US embassy bombing in Kenya and Tanzania, the US started to quash al Qaeda financial activities. al Qaeda, thus, has adapted by using diamonds or conflict diamonds from Africa to elude the freeze on its bank accounts. They also use diamonds as a means to raise funds, hide money targeted by the US, and covert cash into commodity that holds its value and can be easily transported.¹⁵

To Move Assets

Informal Banking or Money Remittance System

An informal banking system is one where the money received in one geographic location is payable, whether or not in the same form, to a third party in another geographic location, for the purpose of making it, or an equivalent value.¹⁶ Because of the global crackdown on terror financing, terror organizations have moved outside the conventional banking system through a nonbank money service businesses often unregulated and undocumented.¹⁷ Traditionally, the informal banking system is used and set up by expatriates that want to send or receive money from their homeland or to

12 Ibid.

13 Global Witness, Broken Vows, (London: Global Witness, March 2004).

14 Global Witness, Terrorists discover diamonds are forever, at internet:<http://www.globalwitness.org/>, 29 April 2002.

15 Ibid.

16 GAO, Terrorist Financing, p. 16.

17 Ibid.

countries lacking formal and secure banking systems.¹⁸ The GAO report on “Terror Financing” notes that in the United States, immigrant ethnic populations use the informal banking systems.¹⁹ In New York, the Federal Bureau of Investigation (FBI) has indicted a diamond jeweler for conspiring to operate an unlicensed money remittance system involving the purchase of a shoulder-fired missile.²⁰ The Financial Crimes Enforcement Network (FinCEN), a U.S Treasury bureau that combat money laundering by supporting and strengthening domestic and international anti-money laundering efforts, has found that terrorist financing activities takes place in the informal banking systems, particularly since September 11. According to FinCEN investigation, some of the September 11 hijackers used informal banking (also known as *hawala*) to transfers money in and out of the United States prior to the attacks.²¹

The International Criminal Police Organization (INTERPOL) defines *hawala* “as an alternative or parallel remittance system that exists and operates outside of, or parallel to traditional banking or financial channels”²². Developed in India, before the introduction of western banking practices, the *hawala* is currently a major remittance system used around the world.²³ The INTERPOL researches “The *hawala* alternative remittance system and its role in money laundering” identify three components of the *hawala* “network.”

18 Ibid.

19 Ibid., p. 17

20 Federal Bureau of Investigation (FBI), Press Release, at internet: <http://www.fbi.gov/pressrel/pressrel03/igla081303.htm>, 13 August 2003.

21 GAO, Terrorist Financing, p. 19.

22 International Criminal Police Organization (INTERPOL), The *hawala* alternative remittance system and its role in money laundering , (Lyon: Interpol General Secretariat , January 2000).

23 Ibid.

First, the *hawala* works with an ethnically based group with geographic ties between people with similar interests.²⁴ Second, the *hawala* works through connections, which are of equal status. These connections allow for the establishment of a network for conducting the transactions. Third, *hawala* works on trust - the most important component of the network. *Hawala* dealers are generally honest in their dealings with customers and fellow *hawaladars*. *Hawala* often operates in the open with complete legitimacy, and the service is often heavily and effectively advertised.²⁵ INTERPOL investigations find the components of *hawala* that distinguish it from other remittance systems are trust and the extensive use of connections such as family relationships or regional affiliations.²⁶ "A money transfer without money movement is a definition of *hawala*."²⁷ Figure 1 illustrates an overview of a *hawala*- type transaction.

Figure 1. An overview of Hawala-type Transaction

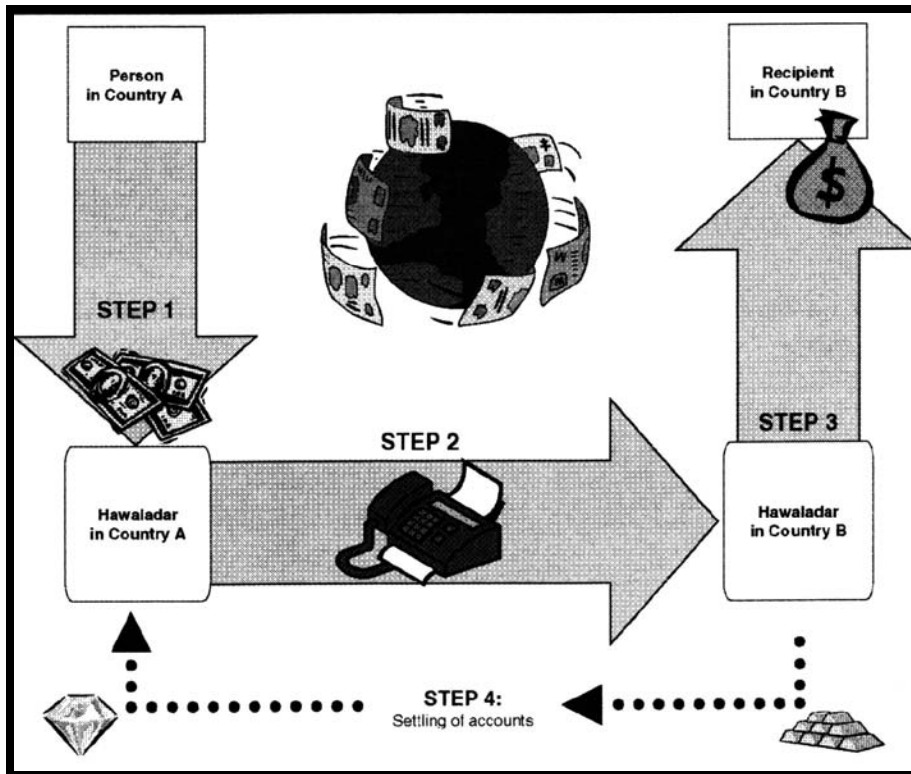
24 'Dr. Beate Reszat, Head of Research on International Finance and Monetary Relations, HWWA - Hamburg Institute for Economic Research, has found that the *Hawala* has been a traditional method of moving money in south Asia long before Western banking became established in the region. The *Hawala* was primarily established to protect early merchants along the Silk Road against robbery. His researches have also found that in ancient China *Hawala* was known as "fei qian" or "flying coins". The system spread throughout the world – to other Asian regions, the Middle East, eastern and southern Africa, Europe and North and South America – following immigration patterns. Based on a man's word there is a strong market segmentation in that, for example, a Pashtun is trusting only a Pashtun *hawaladar*, a Sikh only a Sikh one, and so on.' Beate Reszat, "HAWALA". HWWA - Hamburg Institute for Economic, at internet:

http://www.hwwa.de/Projekte/luD_Schwerpunkte/IDSPs/Asia_Gateway/Hawala.htm, 12 April 2002.

25 INTERPOL, The *hawala* alternative remittance system and its role in money laundering, p. 7.

26 INTERPOL, The *hawala* alternative remittance system and its role in money laundering, p. 10.

27 INTERPOL, The *hawala* alternative remittance system and its role in money laundering, p. 5.



Source: GAO, Terrorist Financing 2004

The above illustration shows a basic *hawala* which can occur anywhere in the world. Figure 2 from the GAO report on “terrorist financing,” explains the steps of the transaction. The result of the transaction is for a person in Country A to send money to a recipient in Country B

Step 1: The person in Country A contacts the *hawaladar* - a hawala operator - in Country A. They give the operator money and instructions (such as: name, address, telephone number, etc.) for the delivery of the equivalent value to the recipient in Country B.²⁸

²⁸ GAO, Terrorist Financing, p. 18.

Step 2: The *hawaladar* in Country A will use any method of communication such as email, fax, or telephone to contact his counterpart in Country B for the delivery and instructions.²⁹

Step 3: The *hawaladar* in Country B contacts the recipients in Country B to deliver the equivalent value in foreign currency or a popular commodity.³⁰

Step 4: Over time, the two *hawaladars* must settle their accounts since they have become unbalanced. They may use a variety of methods to do this.³¹

During one of the US Department of Justice (DOJ) investigations on terror financing, they uncovered how the accounts are balanced. The settlement includes “reciprocal payments to customers, physical movement of money, wire transfer or check, payment for the good to be traded, trade or smuggling of precious stones or metals such as gold and diamonds, and invoice manipulation.”³² Although most *hawala* is completely legitimate, the fact that no paperwork is needed and no money physically crosses borders makes it a potential financial channel for terrorist organizations.³³ Therefore, it will be more likely and logical for terror organizations to take advantage of the *hawala* system to funnel terror money from one part of the world to another part of the world to spread terror.

A joint FinCEN and INTERPOL investigation has shown that *hawala* is used extensively in North America, principally in the United States and also in South Asia

29 GAO, Terrorist Financing, p. 18.

30 GAO, Terrorist Financing, p. 18.

31 GAO, Terrorist Financing, p. 18.

32 GAO, Terrorist Financing, p. 18.

33 GAO, Terrorist Financing, p. 18.

(mainly in India and Pakistan), Africa, and the United Arab Emirates.³⁴ FinCEN officials have reported that billions of dollars flow through informal banking and speculate that al-Qaeda is using the system to move money to its operatives around the world.³⁵ Juan Zarate, the deputy Assistant Secretary for Terrorism and Violent Crime Enforcement for the U.S Treasury Department, testified before the House Committee on Financial Services (Subcommittee on Oversight and Investigations in February 12 2002). He noted that there are many indications that al-Qaeda and other terror organizations are exploiting this otherwise legitimate system in which the “Al-Barakaat,” a Somali-based *hawala* with connections in over 40 countries, was a money-remitting company used by Osama bin Laden to finance and support terrorists attack on September 11.³⁶

It is important to know that an attempt to shut down the system may cause hardship for migrants, who have relied upon it as a safe, cheap and quick form of sending money home.³⁷ *Hawala* is quick, competitive and cheap; millions of foreign workers across the world use it to send money to their families.³⁸ When compared to a traditional means of remitting money, such as obtaining a check or ordering a wire transfer, *hawala* appears cumbersome and risky. Because of its cost effectiveness, *hawala* is the preferred choice of money transfer by customers.³⁹

U.S. and international law enforcement officials, as well as academic researchers, have identified the very features that make *hawala* attractive:

34 INTERPOL, The hawala alternative remittance system and its role in money laundering, p. 9 .

35 U.S Department of Treasury (DOT), Hawala, at internet: <http://www.treas.gov/offices/eotffc/programs/FinCEN-Hawala-rpt.pdf>, 19 April 2004 (last visited).

36 U.S Department of Treasury (DOT), Press Release, at internet: <http://www.ustreas.gov/press/releases/po1009.htm>, 12 February 2002.

37 Testimony of Juan C. Zarate, Deputy Assistant Secretary for Terrorism and Violent Crime, U.S. Department of the Treasury, House Financial Subcommittee, Oversight and Investigations, 2:00 p.m. February 12, 2002, The United States House of Representatives, 2167 Rayburn House Office Building".

38 INTERPOL, The hawala alternative remittance system and its role in money laundering.

The primary feature is cost effectiveness, which is significant savings when using the *hawala* system. Some of the reasons for this cost effectiveness are the integration *hawala* with an existing business activity.⁴⁰

The second feature is efficiency. A *hawala* remittance takes place at most in one or two days. This can be compared with a week or so required for an international wire transfer involving at least one correspondent bank (as well as delays due to holidays, weekends and time differences), or about the same amount of time required to send a bank draft from North America to South Asia via a courier service. But even with courier service, surface mail is not a reliable option where the contents are valuable, and it can also take several weeks to arrive.⁴¹

The third feature is reliability. Because of the complex international transactions, which might involve the client's local bank, its correspondent bank, the main office of a foreign bank and a branch office of the recipient's foreign bank, there are the potential problems. In at least once instance, reported to an INTERPOL field investigator, "money for a large commercial transaction (being sent from the United States to South Asia) was lost in transit for several weeks...When the bank located the money, it was returned to the customer. He enlisted the services of a local *hawaladar*, who was able to complete the transaction in less than a day."⁴²

The fourth feature is the lack of bureaucracy. It would be difficult, if not impossible for an illegal immigrant, living and working in the United States on an expired visa (and who does not have a social security number), to open a bank account

39 Testimony of Juan C. Zarate, Deputy Assistant Secretary for Terrorism and Violent Crime, U.S. Department of the Treasury, House Financial Subcommittee, Oversight and Investigations, 2:00 p.m. February 12, 2002, The United States House of Representatives, 2167 Rayburn House Office Building".

40 The author's personal experience in the DRC.

41 DOT, *Hawala*, p. 9.

42 INTERPOL, *The hawala alternative remittance system and its role in money laundering*.

because the illegal immigrant does not have adequate identification. The *hawaladars* do not operate in a bureaucratic framework, making them a preferable alternative to the bank.⁴³

The fifth feature is the lack of a paper trail. This is a much more important consideration in illicit *hawala* transactions. Since it is rare for *hawaladars* to keep records of individual transactions, it is unlikely that any remittance will ever be identified as part of the business dealings between *hawaladar* from Country A and Country B and their associates.

The sixth feature is tax evasion. Money remitted through official channels might invite scrutiny from tax authorities - *hawala* provides a scrutiny-free remittance channel. INTERPOL has reported that in South Asia, the 'black' or parallel economy is 30%-50% of the 'white' or documented economy.⁴⁴

Although little evidence shows that terror organizations used the *hawala* to transfer money, it is the isolated cases such as the September 11 hijackers using the *hawala* to transfer money in and out of the United States prior to the attack, that strengthen the argument that terror organizations may be involved in the use of the *hawala* network to move money worldwide.

Diamonds

Global Witness has reported that terror organizations trade in precious stone such as diamonds to launder money or transfer wealth, because of the ease of concealment and transfer.⁴⁵ Because of the diamonds high value and low weight, organized crime groups and terror organizations can easily smuggle and convert them

43 Ibid.

44 Ibid.

45 Global Witness, For a Few Dollars More: How al Qaeda Moved into the Diamond Trade, (London: Global Witness, April 2003).

into money without been detected.⁴⁶ The GAO previously reported that diamonds could be used as a replacement for currency in arms deals, money laundering, and other crimes.⁴⁷ Some U.S law enforcement and international experts like Global Witness, other media and the U.N have agreed that al Qaeda allegedly bought diamonds from rebel groups in West Africa in the months leading up to September 11.⁴⁸

Douglas Farah, foreign correspondent for the Washington post, has done an extensive investigation on al Qaeda and blood diamonds. His book, *Blood from Stones*, published in 2004 confirms the terror financing link between al Qaeda and blood diamonds. But for some officials in the US government, that argument is still open for debate; the GAO has noted that some “U.S government officials both within and among agencies remain divided over whether there is sufficient evidence to establish a current link between al Qaeda and the diamond trade”.⁴⁹

Charitable organizations

According to the Financial Action Task Force (FATF), an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing, some charities may have served as a cover for moving funds to support terror activities. The industry’s nontransparent nature allows it to be manipulated for the raising and moving of funds worldwide. Court documents have shown that the Global Relief Foundation, an Illinois-based charity, has provided support and assistance to individuals associated with

46 GAO, Terrorist Financing, p. 20.

47 U.S General Accounting Office (GAO), International Trade: Critical Issues Remain in Deterring Conflict Diamond Trade, (Washington, D.C.: 14 June 2002).

48 GAO, Terrorist Financing, 21.

49 Ibid.

Osama bin Laden, the al Qaeda network, by sending more than 90 percent of its donations abroad.⁵⁰

To Store Assets

Diamonds

Diamond is a high value commodity in the open market economy and the black market economy. The conversion of cash into diamond is a lucrative business because profit can be made instantly. According to the Congressional Research Service, a pound of diamonds in 2002 was worth around \$225,000 compared with a pound of cash that was worth \$45,000 and a pound of gold, which was worth \$4,800.⁵¹ Because the diamonds are likely to maintain value that remains relatively consistent over time and are easy to buy and sell outside the formal banking systems, it has become the preferred choice for terror organizations to store assets.⁵² Various GAO reports suggested that al Qaeda was shifting assets into diamonds in the fall of 2001, therefore diamonds should be considered a high price commodity that can further make the “war” on terror financing harder to detect, easy to smuggle and with no trouble to store.

The elaboration and illustration of some of the alternative-financing mechanisms used by terror organizations especially al Qaeda and others, to finance their terror activities was a comprehensive series of investigations, research and analysis by various U.S government law enforcement agencies and various non governmental organizations, mainly the U.N. and Global Witness. They revealed that the “war” on terror financing focused solely on the formal banking or mainstream financial sector,

50 Global Relief Foundation vs. Paul H. O'Neil, et al., 207 F, Supp. 2d 779, U.S. District Court, Northern District of Illinois, Eastern Division, 11 June 2002.

51 GAO, International Trade: Critical Issues Remain in Deterring Conflict Diamond Trade.

52 Global Witness, For a Few Dollars More: How al Qaeda Moved into the Diamond Trade.

leaving unscathed the informal banking system and the flourishing black market. GAO has noted that U.S government law enforcement agencies face a multitude of challenges that range from accessibility, adaptability and the collection of data to focus on alternative financing mechanisms.⁵³ First, the informal banking system is a close-knit network, it is difficult to access or infiltrate, being an ethnically or criminally based networks that operates outside the mainstream financial sector or the precious stones and other commodities.⁵⁴ Second, the ability of terror organizations to adapt their schemes hinders law enforcement communities' efforts to target high-risk industries for the implementation of an effective monitoring usage of industry trade and financial flows.⁵⁵ It is well know in law enforcement circles that when a criminal establishment is being watched, it switches to an alternative sector.⁵⁶ Finally, because of the close-knit networks, law enforcement communities lack the systematic data collection and analysis of case information on alternative financing mechanisms.⁵⁷ The next subsection will examine on how the United States and other countries deal with that new reality of combating alternative financing mechanisms.

What has been done to combat these mechanisms?

A number of strategies and laws guide the U.S governments in deterring terror organizations with respect to the use of alternative financing mechanisms. For example, among the strategies, the DOJ and DOT published the *National Money Laundering Strategy*, which has increasingly focused on terror financing, including alternative

53 GAO, Terrorist Financing, p. 4.

54 Ibid.

55 Ibid.

56 The author's interview with a sheriff in San Diego California.

57 GAO, Terrorist Financing, p. 4.

financing mechanisms.⁵⁸ The Department of State (DOS) has published the *International Narcotics Control Strategy Report*, which in its features section describes schemes, cases, and efforts to deter terror financing.⁵⁹ The *President's National Security Strategy of the United States of America* summon the United States to work with its allies to disrupt the financing of terrorism by blocking terrorist assets,⁶⁰ alongside the *National Strategy for Combating Terrorism*, which includes an objective to interdict and disrupt material support for terrorists.⁶¹ Regarding laws, the authority of the USA PATRIOT Act of 2001 gives significant power to U.S law enforcement including the ability to deter, investigate, and prosecute cases of terror financing. *What has been done to combat these mechanisms* is divided on two fronts: the U.S. domestic arena and the international arena, with an emphasis on two alternative terror financing mechanisms; the diamonds and the informal banking system known as *hawala*. These two alternative terror financing mechanisms are very critical for answering the question of this paper.

The U.S. domestic arena

The USA PATRIOT Act provided authority to law enforcement agencies to enhance the flow of financial information (and intelligence) relevant to money laundering and terrorist financing (1) within the Federal government; (2) between the government and financial institutions -the promotion of closer cooperation between the public and private sector required financial institutions to concentrate enhanced due diligence and suspicious activity by monitoring terror financing and money laundering schemes;

58 U.S. Department of Treasury (DOT), 2003 National Money Laundering Strategy , (Washington, D.C.: 2003)

59 DOS, International Narcotics Control Strategy Report.

60 U.S Department of Homeland Security (DHS), President's National Security Strategy of the United States of America, (Washington D.C.: July 2002).

61 The White House, National Strategy for Combating Terrorism, (Washington D.C.: February 2003).

including (3) among financial institutions themselves.⁶² The act closes the circle of vulnerability between ordinary criminal money laundering and terror financing and gives law enforcement the ability to aggressively deter, investigate, and prosecute cases of terror financing.

A brief outline will show the performance of what the USA PATRIOT Act has done with charitable organizations.

Charitable Organizations

With the USA PATRIOT Act enabling greater information sharing with the states, the Internal Revenue Service (IRS), is the U.S tax collection agency, has begun to develop a system to share data with the states for the oversight of charities. In the U.S, the states have overall oversight responsibility for charities, thus the information-sharing could be valuable for the states in identifying and shutting down suspect charities, including charities involved in terror financing by cross referencing IRS computers with states computers such as tax-exempt status, and notices of a tax deficiency.⁶³

Informal Banking or Money Remittance System

The USA PATRIOT Act strengthen existing anti-money laundering laws by requiring operators of informal banking systems to obtain a state license and register with FinCEN. The act also required that informal banking systems report suspicious transactions to FinCEN.⁶⁴ However, the GAO notes that “officials and researchers report that these requirements are difficult to enforce, and it is likely that numerous

62 DOT, 2003 National Money Laundering Strategy , p. 5.

63 GAO, Terrorist Financing, p. 32.

64 Ibid.

small hawala operations remain unregistered and noncompliant with one or more of these requirements”.⁶⁵

Diamonds

As of March 2004, the diamond industry still lacks transparency, leading to limited information about diamond transactions, which may facilitates illegal activities.⁶⁶ GAO notes that “The lack of industry information is exacerbated by poor data reporting at the country level, where import, export, and production statistics often contain glaring inconsistencies.⁶⁷ These factors, according to GAO investigation, make diamonds continuously attractive to criminal elements, which may use them to pay for arms, support insurgencies, and plausibly engage in terrorism.⁶⁸ Under its current import control system, the United States has difficulties in the area of verification of diamond’s origins.⁶⁹ Political unwillingness as well as the resistance by the diamond industry, makes regulation in that sector impossible-considering that it generates billions of dollars a year.⁷⁰

The international arena

Through bilateral and multilateral structures, the United States plays a primary role in setting international standards to address money laundering and terror financing, primarily by working with the FATF. Created by the G-7 in 1989, the FATF is the premier standard setting body in the international campaign against money laundering and terror financing. FATF Recommendations sets out the basic framework for anti-money laundering and terror financing efforts that are intended to be of universal

65 GAO, Terrorist Financing, p. 31.

66 GAO, International Trade: Critical Issues Remain in Deterring Conflict Diamond.

67 Ibid., p. 3.

68 Ibid., p. 8.

69 Ibid., p.13 .

application. The FATF has issued international standards to combat terror financing: *the Eight Special Recommendations*, which call on all countries to adopt and implement these measures as international standards:

- I. Ratify the UN International Convention for the Suppression of the Financing of Terrorism and implement UN Resolutions relating to terrorist financing.⁷¹
- II. Criminalize terror financing.⁷²
- III. Freeze and confiscate terror organisations and individual assets.⁷³
- IV. Financial institutions should report suspicious transactions connected to terrorism.⁷⁴
- V. International co-operation with other countries law enforcement in terror financing investigations.⁷⁵
- VI. Money laundering requirements should be extended to informal banking system.⁷⁶
- VII. Financial institutions should include accurate and meaningful information for wire transfers.⁷⁷
- VIII. Guarantee that non-profit organization cannot be tainted and abused by terror organizations.⁷⁸

There are, of courses, consequences for countries that refuse to cooperate. Preferably, these consequences will arise from a multilateral process. However, the United States reserves the right to protect its interest by using section 311 of the USA PATRIOT Act, which gives authority to the Secretary of the Treasury- in consultation with the Attorney General and the Secretary of State to designate a “foreign jurisdiction, institution, class of transaction, or type of account” as a primary money laundering

70 GAO, Significant Challenges Remain in Deterring Trade in Conflicts.

71 Financial Action Task Force (FATF), Special Recommendations on Terror Financing, at internet: http://www1.oecd.org/fatf/pdf/SRecTF_en.pdf, 31 October 2001.

72 Ibid.

73 Ibid.

74 Ibid.

75 Ibid.

76 Ibid.

77 Ibid.

78 Ibid.

concern. This authority allows the Secretary to require U.S financial institutions to take one or more special measures with respect to such designations, such as the closing of all correspondences by U.S financial institutions to that designation⁷⁹ thus limiting or restricting the suspected foreign jurisdiction or institution to access US financial market.

Informal Banking or Money Remittance System

Due to the nature of informal banking systems like *hawala*, the system in question has largely escape financial regulatory assessment. It is difficult to measure accurately the total volume of financial activity associated with such systems.⁸⁰ All the same, efforts have been made under FATF Special Recommendations VI, to combat informal banking system with the goal to regulate the industry. During May 2002, a conference on *hawala* in the United Arab Emirates (UAE), 40 countries has enlisted to draft and agree upon *hawala* regulations, including Special Recommendations VI. As a result, the UAE government has now imposed licensing for its *hawala* operators.⁸¹ Other Countries responded by developing appropriate regulatory requirements.

Diamonds

Under the umbrella of the UN, the international community has responded by creating a process to render more transparent the origins of any diamond that is bought or sold in the legitimate diamond industry. The Kimberly Process Certification Scheme (KPCS) is the international response to dismember the link and the destabilizing effect of “blood” or conflict diamonds. Implemented to reach sustainable peace and development in Sierra Leone, Angola, Democratic Republic of Congo (DRC), and other parts of Africa, it is intended to eliminate trade in illegal diamonds with a view of cutting

79 DOT, 2003 National Money Laundering Strategy , p.13.

80 Ibid., p. 14.

off the flow of much needed diamonds used by rebels to purchase arms and munitions, theoretically eliminating or reducing armed conflicts in the affected states. Since the KPCS implementation in 2000, its initiative has expanded to involve 60 countries- 45 +15 European Union members involved in the production, export and import as well as the extraction of rough diamonds.⁸² The Certification Scheme requires that diamond exporting countries package rough diamonds in well-sealed crates marked with a genuine Kimberley certificate. It is the hope of the international community that the KPCS will establish a monitoring process that targets exports. Successful frauds of import/export of diamonds have been reported and dismantled. For example, on February 4, 2002, an arriving passenger at Baltimore-Washington International Airport declared \$12,350 in diamonds to U.S. Customs. The U.S Customs inspectors noticed that there were several inconsistencies with the certificate of origin, which led them to conclude the certificate was fraudulent.⁸³ A fraudulent certificate can only mean that a country is distributing certificate without proper control and that was the case with Liberia as outline in Douglas Farah's book *Blood from Stones*.

This section concludes a variety of research done by law enforcement agencies and international organizations to combat these alternative terror-financing mechanisms. It is not yet over. Domestically and internationally, they are two sticky issues remaining: the *hawala* and the illegitimate diamonds. Let us not forget the challenge that law enforcement agencies face with the *hawala*. Firstly, it is a network that works with an ethnically based group. Secondly, it functions through connections, which are of equal importance, allowing for the establishment of a network to conduct

81 Ibid., p. 15.

82 Kimberly process, promoting prosperity diamonds, at internet: <http://www.kimberleyprocess.com/public.asp>, 20 April 2004 (last visited).

hawala transactions successfully. Thirdly, it is based on trust- the most vital component of the network. Although now regulated, the diamond import/export remain an issue, due to the lack of enforcement in KPCS, which “primarily relies on voluntary participation and adherence,” making support and implementation of the scheme highly dependent on varying levels of political will and industry commitment.⁸⁴ Moreover, a robust regulatory system is essential for the success of anti-money laundering and counter terror financing.

The main question

Is the current “war” on terror financing from a U.S government perspective, methods and applicability, relevant to other parts of the world especially in the Democratic Republic of Congo (DRC)?

A brief history of the DRC is needed to provide an understanding of the current situation of the country and strengthen the relevance of this paper.

Figure 2. Map of the DRC



Source: CIA world Factbook 2001

83 GAO, International Trade: Critical Issues Remain in Deterring Conflict Diamond Trade, p.15.

84 Ibid., p. 17.

Since its independence from Belgium in June 30, 1965, the DRC has been plagued by a series of military unrests and civil wars. Most current events relevant to this paper begin in 1994 when a massive inflow of refugees from Rwanda and Burundi brought some unexpected strain in to government of former president Mobutu Sese Seko. He ruled the republic of Zaire (now the DRC) with an iron fist for 33 years. His dictatorship abruptly ended in May 1997. It was toppled by a rebellion led by Laurent Kabila, whose own regime was subsequently challenged by a Rwanda and Uganda backed rebellion in August 1998. Troops from Zimbabwe, Angola, Namibia, Chad, and Sudan intervened to support the Kinshasa regime. A cease-fire was signed on 10 July 1999 between the DRC and all the belligerents' factions, but sporadic fighting continued. Mr. Kabila was assassinated on 16 January 2001 and his son Joseph Kabila was designated president ten days later. In October 2002, a cease-fire brokered by the United Nations succeeded in withdrawing all foreign armed forces from the Congolese soil. Two months later, a peace accord was signed by all Congolese warring parties to end the fighting and create up a government of national unity. President Joseph Kabila has made significant progress in establishing a transitional government headed by him as the president with the inclusion of four vice-presidents from warring parties. That transitional government structure is known as the 1+4 formula. The transitional government has undertaken drastic economic reforms in cooperation with the World Bank and International Monetary Fund (IMF). However, serious human rights problems remain in the security services and justice system.

With an area the size of Western Europe covered by dense tropical forest, the DRC poses a great challenge to the UN. Rich resources also fuel the conflict. In April 2001, a UN panel of experts investigated the illegal exploitation of diamonds, cobalt,

coltan, gold and other lucrative resources in the DRC. The report accused Rwanda, Uganda and Zimbabwe of systematically exploiting Congolese resources.⁸⁵

The DRC's strategic location in the middle of Africa and its fabulous natural endowment of minerals and other resources have since 1884 ensured that it would serve as a theatre to further the economic and strategic interests of outsiders: the colonial powers during the scramble for Africa; the superpowers during the Cold War; and neighbouring African states in the post Cold war era. With an interrelated war that has drawn together nine African countries on its soil and a cease-fire with all the belligerents' factions that integrated in a national unity government, The DRC has given rise to an highly unstable situation. A dangerous chaos in which criminal organization partners with rogue leaders (Mobutu in Zaire, Charles Taylor in Liberia and etc...) and al-Qaeda as documented by the UN and Global Witness in its publication *For a Few Dollars More*. Also, Global Witness has reported that al-Qaeda has taken advantage of the civil war and chaos in the DRC to start marketing diamonds through its East Africa networks from the mineral rich country.⁸⁶

With this current chaos, vacuum and instability, there is an argument to be made that the terror threat emanating from the DRC as a weak state comes less from religion than from the lack of sovereign control, political will and general debility. The United States 2002 National Security Strategy (2002 NSS) acknowledged the terror threat in weak states by stating "poverty, weak institution, and corruption can make weak states vulnerable to terrorist networks and drug cartels within their borders."⁸⁷ Loretta Napoleni, a leading researcher in the field of terror, reaffirms the 2002 NSS in her book

85 United Nations (U.N), Report of the UN Panel on the Illegal Exploitation of Natural Resources in the Democratic Republic of the Congo, (New York: United Nations, 13 November 2001).

86 Global Witness, *For a Few Dollars More: How al Qaeda Moved into the Diamond Trade*, p. 8.

87 The White House, 2002 National Security Strategy, (Washington D.C.: September 2003), Preamble.

Modern Jihad that terror flourishes in countries where there are pouches of political instability from regions where the Central authority has failed.⁸⁸ The DRC belongs to a group of countries where law and order have ceased to exist in some of its territory and is at the mercy of warlords, politicians and organized terror and crime groups. According to research done by Guillermo O'Donnell, director of the Helen Kellogg Institute for International Studies in Paris, the DRC can be placed in the category of failing state. The central government still maintains a certain degree of control over the territory. With failed areas, where terror can bloom in potential turf, and brown areas, where there is minimal or zero presence in potential turf of the state both functionally and territorially.⁸⁹ Along with the U.S 2002 NSS, Canada's National Security Policy has also identified failed and failing states as major contributors of spreading global instability and a haven for both terror and organized crime organizations. With an overall understanding of the DRC's political and anarchic climax, it is easily easy to conclude that the DRC can be an exceptionally hot zone of terror financing for terror organizations to flourish unpunished in its territory. With an overall understanding of the DRC, the next paragraph will address the issues of terror financing brought by this paper.

Informal Banking or Money Remittance System

The war on terror financing will not work in this sector in the DRC. Most economic activity in the DRC takes place in the informal sector although not name *hawala* but a similar remittance system called *liboke*. In 2000, the informal sector of the

88 Loretta Napoleoni,, *Modern Jihad: tracing the dollars behind the terror networks*, (Sterling, Va.; London : Pluto Press, 2003), p. 139.

89 Guillermo O'Donnell, *On the State, Democratization and some Conceptual Problems*, working paper No. 192 (University of Notre Dame, the Helen Kellogg Institute for international studies, April 1993).

DRC was estimated to be at least four times the size of the formal sector.⁹⁰ Most transactions, even those of legitimate businesses, are carried out in cash.⁹¹ The FATF *Eight Special Recommendations*, which are the universal standard to combat terror financing, are not applicable in the DRC for the following reasons: first, the DRC lack financially sound and well regulated banking sector.⁹² Second, inadequate enforcement resources make the system very susceptible to money laundering.⁹³ Third, the DRC has no law criminalizing money laundering.⁹⁴ Fourth, the DRC has no law criminalizing terror financing.⁹⁵ Finally, the DRC has signed but not ratified, both UN International Convention for the Suppression of the Financing of Terrorism and the 1988 UN Drug Convention. So what would happen if the DRC does not follow FATF recommendations? As previously mentioned, countries that do not follow FATF recommendations will be sanctions appropriately from a multilateral process. Although FATF sanctions are not know, there is nothing to be gain on sanctioning the DRC because it has nothing to tender, the DRC's economy functions at a symbolic level and import/export are barely enough to meet the population's demands.

People living in the DRC have money that they would like to move to another country due to concerns about stability- to pay for education or medical treatment. The money remittance provides a ready means of doing this, and it is use as a facilitator of capital flight on both large and small scales, which is very common in the DRC.⁹⁶

90 DOS, International Narcotics Control Strategy Report.

91 Ibid.

92 The author personal experience in the DRC.

93 Ibid.

94 Ibid.

95 DOS, International Narcotics Control Strategy Report.

96 The author personal experience in the DRC.

Diamonds- the most emotional of commodities

The money laundering in the Congo involves proceeds from smuggling, mostly from the illicit diamond sales.⁹⁷ In addition, the Banque Central du Congo (DRC central bank) and its associated houses are involved in money laundering.⁹⁸ These facts strengthen the 2000 estimate that the informal sector is at least four times the size of the formal sector.⁹⁹ The DRC informal sector is very lucrative from the diamond sectors and the smuggling of diamonds, which are impeding on the international fight to curtail diamond smuggling through the Kimberly Process Certification Scheme. As previously mentioned, KPCS primarily relies on voluntary participation and adherence making support and implementation of the scheme highly dependent on varying levels of political will and industry. Aided by widespread corruption and greed in all level of the state apparatus, there is, however, no political will in the DRC.¹⁰⁰ With its characteristic of a failing state and its porous border, it is very plausible that the smuggling of diamonds will continue in the DRC. Before July 10, 2004 KPCS was failing in the issues of diamonds smuggling between the Republic of Congo and the DRC.

The Republic of Congo (RC), has a two percent tax on the import/export of diamonds, is a KPCS participant, and is exporting an estimated \$200 million of rough diamonds^{101 102} every year with no geological capacity to justify that number.¹⁰³ The DRC has a four percent tax on the import/export of diamonds, is a KPCS participant,

97 A combination of research studies and personal experiences.

98 DOS, International Narcotics Control Strategy Report.

99 Ibid.

100 The author has draw this conclusion based on spending 12 years in the DRC.

101 GAO, International Trade: Critical Issues Remain in Deterring Conflict Diamond Trade, Appendix IV.

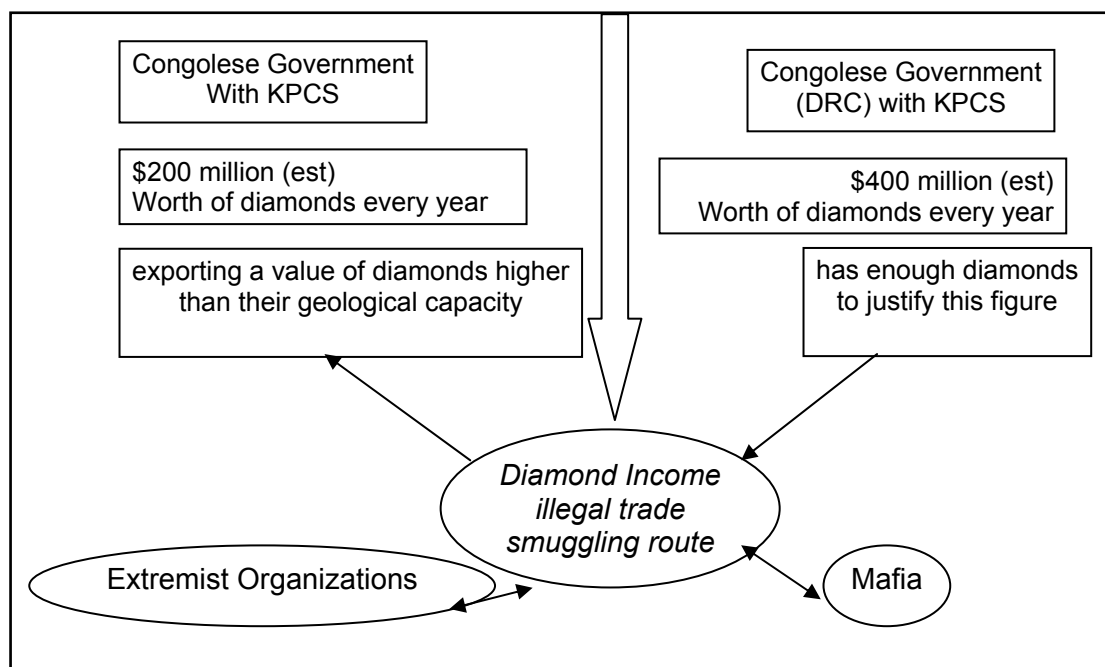
102 Ben Harding, "Congo signs diamond pact to halt illegal trade", CongoKin Forum, at internet:

<http://www.congokin.com/news/categories/economy/eco1722.shtml>, 31 October 2003.

103 Ben Harding.

and is exporting an estimated \$400 million of diamonds^{104 105} every year with the geological capacity to justify that number. Global Witness has identified tax evasion as a major reason for the smuggling of diamonds from the DRC to the RC.¹⁰⁶ Which ultimately, that smuggling route creates a loophole in the KPCS process. But after July 10 2004, the KPCS barred the RC from the legitimate world diamond trade, accusing it of blatantly sending millions of dollars in smuggled gems onto the global market. Figure 3 compiles copious research from the author to best explain the war on terror financing and the loophole in the KPCS involving the diamond sector.

Figure 3. Causal Diagram of Diamonds smuggling and Terror Financing



As reported by Global Witness in *For a Few Dollars More* and Douglas Farah in *Blood from Stone*, extremist organizations such as al-Qaeda and criminal organizations have moved to the diamond smuggling route for the income produced by that lucrative

104 GAO, International Trade: Critical Issues Remain in Deterring Conflict Diamond Trade, Appendix IV.

105 Ben Harding.

106 Global Witness, *For a Few Dollars More: How al Qaeda Moved into the Diamond Trade*.

route. To put it bluntly, the terror organizations are presently enjoying continuous income to use for the purposes of spreading terror while the criminal organizations are enjoying the income for pure profit.¹⁰⁷

In relation to the “war” on terror financing, the informal banking system and the diamond trade will be hard to deter or enforce in the DRC. Those two alternative financing mechanisms of terror financing are a way of life for the majority of the people in the DRC that can barely scrape together a living. The two alternative financing mechanisms are part of the informal economy, which is merged with the formal economy of the DRC. Disrupting the system, however, might mean the collapse of the state. As a failing state, the DRC needs any alternative mechanisms available to earn legitimate profits, as well as move and store assets for its function as a state by providing for its people. Unless the international community places a greater emphasis on sustainable peace and security on Africa, specifically the DRC, the dark spot of terror will remain to haunt the world.

Conclusion

The war on terror financing involving two alternative terror financing mechanisms (the informal banking system and the diamond), may not be successful in other parts of the world, particularly in the DRC. This paper has moved to analyze how the U.S government dealt with those terror issues in the domestic arena and extended them to the international arena. Previous subsections also identified some features of the informal banking system know as *hawala* and its subsequent aspects, leading to difficulty for law enforcement agencies to monitor the system. Finally, an analysis of the intricate connection between crime and terror in the DRC resulted in showing that a

failing state is unable to contribute to the global war on terror financing, which does not distinguish it from other countries with the same characteristics.

With that kind of crisis in its hand, the DRC is simply unable to fight terror financing in a meaningful way even in the short-term and long-term counter-terror financing objectives. It cannot police its borders, provide viable political or economic alternatives to sway criminal groups, or even gather meaningful intelligence. If left in such a miserable condition, the DRC will at least offer shelter to extremist elements that can operate unchallenged and undetected. Action and political will to reconstruct the state is needed now, or the DRC will remain a danger for many years to come.

In order for the DRC to achieve both its short-term and long-term counter-terror financing objectives, it is imperative that the international community firmly reengage itself politically in the complex and difficult process of state reconstitution in the DRC. A functioning state capable of cooperating in counter-terror financing efforts and able to support political and economic development would be the most effective firewall against terror financing and diamonds smuggling.

Sadly, no emphasis has been made toward that region for sustainable peace and security, which is further strengthened by the failure of the international community to stop the 1994 Rwanda genocide or the recent Darfour genocide. Without people on the ground providing human intelligence (HUMINT) capability, the international community are not going to find out what's going on in the Africa style of *hawala* and the diamonds smuggling. By seizing the opportunity, terror organizations may have found a loophole in the global "war" on terror financing by shifting their operations into Africa, where the

107 The author has taken this position after talking to some members of Mobutu's regime.

international community has no immediate interests or considerable resources to act. In essence, terror financing is back in business.

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