

Switzerland and Efforts to Combat the Financing of Terrorism

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Combating international terrorism has long been one of Switzerland's main concerns. Furthermore Switzerland has worked closely with other nations in combating terrorism and will continue to do so in future, both in the context of international treaties and on the basis of the law on mutual assistance in criminal matters. International co-operation to combat the financing of terrorism is taking place at several levels. The instruments for combating money laundering are also important for combating the financing of terrorism. Considering the various challenges, which have their origin in international terrorism, as well as the phenomenon of globalisation and certain technological developments, the strengthening of multilateral co-operation is indispensable.

Key words: financing of terrorism, multilateral cooperation, combating money laundering, Switzerland

1. Introduction

The entire Swiss nation was deeply shocked by the attacks on the United States, which took place on the 11th of September last year. To bring those responsible for the attacks to justice, to put an end to the activities of the groups that organised them, and to prevent any further occurrence of such attacks, it is indispensable that the nations of the world work actively together.

It is equally essential however that the international community, in its legitimate response to such acts, does not undermine the fundamental principles that are the bulwark of our civilisation, among which first and foremost is respect for the liberty of the individual. Indeed we need to do more to combat the root causes of terrorism. We also need to make greater efforts to prevent the outbreak of conflicts - particularly in the Middle East - and to combat poverty,

areas in which the United Nations plays an important role.

Combating international terrorism has long been one of Switzerland's main concerns, and we have used every means at our disposal to prevent terrorist groups from receiving support, whether financial or logistical. Furthermore Switzerland has worked closely with other nations in combating terrorism and will continue to do so in future, both in the context of international treaties and on the basis of the law on mutual assistance in criminal matters.

Ever since the tragic terrorist attacks of September 11th the world's financial centres have found themselves at the very heart of efforts to combat terrorism. Indeed efforts to prevent the financing of terrorism, often viewed as the nerve centre of the matter, have mobilised and brought together the Western nations, the major financial centres, the intelligence services, and various experts and focused their attention on the prevention of crime and money laundering. Despite the considerable funds already com-

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mitted, the investigations conducted on terrorist networks and the freezing of assets on an ever-greater scale — including in Switzerland — the challenges ahead promise to be extremely difficult and will require a long-term commitment.

What is Switzerland doing to meet these challenges? In what ways does it co-operate with the United Nations and the United States? What measures have been taken to combat the financing of terrorism? Is banking secrecy an obstacle to efforts to combat such crimes? What initiatives has Switzerland taken? These are some of the questions I shall attempt to answer today. And I feel certain that at the end of my introductory remarks, there will be plenty of opportunity for a lively and stimulating debate.

At this point in time there is not a single important financial centre that can rule out the possibility that terrorists or criminals are illegally taking advantage of its infrastructures. It is of the greatest importance that the authorities responsible for financial services collaborate, with a minimum of red tape, in the thoroughgoing investigation of financial operations linked to terrorism currently taking place on a worldwide scale. It is equally essential for financial intermediaries, in both the banking and non-banking sectors, to scrutinise their business relations in an effort to identify any suspicious elements. They also need to co-operate fully with the responsible authorities to identify and freeze assets linked to terrorist activities.

International co-operation to combat the financing of terrorism is taking place at several levels.

2. Co-operation with the United Nations

Switzerland has systematically applied the decisions that the Security Council's Sanctions Committee has taken in this context. This includes application of resolutions 1267 (1999) and 1333 (2000) imposing financial sanctions against the Taliban regime, and in particular ordering that accounts belonging to the Al Qaeda organisation and to Osama Bin Laden be frozen. Following the 11th of September 2001, the Security Council has on several occasions added to the list of physical persons and legal entities subject to these financial sanctions. In doing so it has made use of certain lists drawn up by the US authorities naming persons who for serious reasons are suspected of involvement in terrorists activities. Not all the American lists were adopted however. A certain amount of filtering had to be done by

the UN. Currently, 69 accounts have been frozen in Switzerland as a result of the information provided, involving a total sum of CHF 34 million.

Switzerland also welcomed the adoption by the United Nations Security Council of resolution 1373, of 28 September 2001, requesting all States (both members of the United Nations and non-members) to co-operate actively in efforts to combat terrorism, and in particular the financing of terrorism. The resolution also asked the States to submit to the Counter-Terrorism Committee of the Security Council by 27 December 2001 a report on the measures taken for the resolution's implementation. Switzerland submitted its report on 19 December 2001.

Furthermore, on 13 June 2001 Switzerland signed the UN Convention of 1999 for the Suppression of the Financing of Terrorism, which we should soon be in a position to ratify. We should also soon be able to ratify the 1997 International Convention for the Suppression of Terrorist Bombings. Moreover, Switzerland is also participating in the drafting of a UN general convention on international terrorism.

Finally one should not omit a mention of UN efforts to take action against the causes of terrorism, with particular emphasis on areas favourable to the growth and development of certain kinds of fanaticism. This calls for action at the political level aimed at the prevention of conflicts, as well as action to combat poverty and extreme need, the provision of development aid and humanitarian aid, and finally efforts to institute "good governance" and to win greater respect for human rights. Switzerland supports all such efforts and participates financially in many programmes of the UN specialised agencies such as the High Commissioner for Refugees, UNICEF, WFP, the World Health Organisation, and so on.

3. Co-operation with the United States

Following the attacks of the 11th of September 2001 the Office of the Federal Prosecutor of the Confederation launched a criminal investigation in an effort to discover any possible links between events in Switzerland and the terrorist acts carried out in the United States. Switzerland was quick to supply all information required in the context of the request for assistance received from the United States, and at the same time provided other information on a spontaneous basis. Switzerland also made requests to the US authorities for judicial assistance. Furthermore, the Swiss government placed a ban on

all activities of the Al Qaeda organisation on Swiss territory.

The United States has declared a "war on terrorism" and is taking measures that have an impact well beyond its own borders. To date the US authorities have established twelve lists of persons and organisations categorised as "terrorist" in nature. These they have been sent to many other countries with requests to freeze any funds belonging to such persons and organisations. As already mentioned, these lists have been partially accepted by the UN Sanctions Committee and integrated into the sanctions, which the United Nations adopted against the Taliban. Furthermore with the adoption of the "Patriot Act", the United States has improved its own regulations to combat money laundering and strengthened the due diligence and "know your customer" rules as applied to financial intermediaries along the lines of the rules that already apply in Switzerland. However the US also adopted certain directives of an extraterritorial nature, for example concerning relations with correspondent banks. It is too early to assess the impact of these measures, which will require close monitoring. Our concern is that these provisions might be used to circumvent bilateral agreements on judicial assistance.

Switzerland, which has an important international financial sector, is directly concerned by all efforts to combat the financing of terrorism. Our solidarity with the United States in these efforts is total. Switzerland does not tolerate the use of its financial system by terrorists for the perpetration of criminal acts. Switzerland has taken whatever measures were necessary to prevent the use of its system to finance terrorist attacks, and this was done at an early stage. We co-operate fully in all international criminal proceedings. Swiss banking secrecy does not provide cover for terrorists, or indeed for criminal activities of any kind. In all such cases Switzerland acts quickly to provide legal assistance and to freeze incriminated funds.

For example the competent Swiss authorities forwarded the lists with names of physical persons and legal entities received from the US authorities to all financial intermediaries in Switzerland, reminding them of their obligation to exercise due diligence, particularly in relation to money laundering. The law on money laundering requires financial intermediaries to alert the competent authorities and to freeze any assets that they have reason to suspect are linked with criminal activities. This aspect of Swiss law has made it much easier to co-operate effectively with the United States on the basis of the various lists provided. A number of accounts have indeed been frozen, either on the basis of these lists or as a result

of investigations carried out by the Swiss authorities.

Finally, a special unit has been created within the Department of Justice and Police ("Task Force Terror USA") both for the purpose of co-ordinating criminal investigations that are under way in Switzerland, and to connect with the authorities of other countries in a spirit of cooperation. In parallel, an interdepartmental terrorism group uniting all concerned offices in the various federal departments has been given the task of co-ordinating the available resources for combating terrorism.

At this time and on the basis of the information available to us, there is nothing to support the idea that persons or companies located in Switzerland played any role in preparing logistical aspects of the terrorist attacks carried out on the 11th of September in the United States.

During a visit to Switzerland, Mrs Elizabeth Jones, US Assistant Secretary of State for European Affairs, meeting with the press on March 25, praised Switzerland's financial intelligence system, naming it as one of the best in the world. She said that Switzerland's banking system had been highly effective in targeting the financial assets of terrorists, and she also praised the 'know your customer' and disclosure provisions in place in Switzerland. Indeed she went on to say: 'We think it's quite a model for how other countries might conduct their banking procedures'.¹

4. Strengthening efforts to combat money laundering

The instruments for combating money laundering are also important for combating the financing of terrorism. This is true despite the different contexts. Indeed, when it comes to the financing of terrorist acts the origin of the funds is often lawful, whereas in the context of money laundering the origin of the funds is by definition unlawful. The fact is that it is far more difficult for the authorities to detect financial operations using "clean" money, because it is simply not possible to know in advance that the funds in question will be used for criminal purposes. This is particularly true when small sums are involved. It is for this reason that the role played by the intelligence services and the various police forces is an essential one.

Switzerland has also played a leading role right from the start in efforts to combat the laundering of

¹ Source: Top US Official Praises Swiss Finance Sector, by Ulrika Lomas, Tax-News.com, Brussels, 25.03.2002

money of criminal origin, beginning with the due diligence convention which Swiss banks adopted in 1977, and followed by the FATF i.e. the Financial Action Task Force on Money-laundering, of which Switzerland is a founder member. Our country made the laundering of money of unlawful origin a criminal offence in 1990 (Art. 305 of the penal code) adopting a special law on money laundering which took effect in April 1998. This law makes it obligatory for all financial intermediaries (not just in the banking sector) to report any suspicious transactions. The Swiss norms include the Directives of the Federal Banking Commission. Co-operation has also been made easier by the revision of the law on international co-operation in criminal matters that came into force in February 1997. This considerably shortens the time involved in application procedures, limiting the scope for appeals and restricting the number of persons who can legitimately make such appeals. The FATF assessment of Switzerland in 1998 concluded that this country has one of the most advanced bodies of legislation in the world for combating the laundering of money of criminal origin.

The implementation of this ambitious legislation has not been entirely painless however, particularly in the non-banking sector. Switzerland took a pioneering stance by making money laundering legislation applicable to all financial intermediaries, and even today this legislation is stricter than that found in most other countries. In doing so however Switzerland encountered certain obstacles to implementation that were of a purely practical nature such as staffing levels and the recruitment of qualified individuals in a market that had virtually dried up. These obstacles have now been overcome however.

In 1999 the Swiss parliament adopted a number of measures designed to make efforts to combat organised crime even more effectively. These notably gave the federal government new powers in areas that include combating organised crime and corruption, and this at the expense of the cantons, at the same time increasing the resources available. Last October Switzerland co-operated with the International Monetary Fund in an evaluation of its financial sector (Financial Sector Assessment Program/FSAP). Ours is the first country to have extended the scope of this assessment to include the efforts made to combat money laundering, a fact which underlines Switzerland's active commitment to international efforts to combat criminal use of the global financial system.

You will no doubt be interested to know how the American authorities view Switzerland's performance in terms of co-operation. In the course of a hearing on money laundering in the context of ef-

orts to combat the financing of terrorism, Mr. Jimmy Gurule (Undersecretary of the Treasury for Enforcement), appearing before the Banking Commission of the United States Senate on 26 September last year declared that Switzerland respected all 40 FATF recommendations. Mr. Michael Chertoff (Assistant Attorney General, Criminal Division) added the following remark "Over recent years, Switzerland has become one of our most *significant partners in pursuing asset forfeiture and sharing for criminal activities*". Finally, Mr. Stuart Eisenstat (former Treasury Deputy Secretary of the US Treasury) stated the following: "They're (i.e. the Swiss) members of *FATF*. They have *tough rules*. They are *complying*. They are *sharing information*. So we can't *point the finger* at a lot of countries. They can almost *point the finger* at us".

Since then the echoes we have been receiving from the United States have confirmed this positive assessment. In a public statement made on 9 January 2002, Treasury Secretary Paul O'Neil spoke highly of the efforts Switzerland has made to identify and freeze accounts suspected of being linked with terrorist activities.

In other words Switzerland has not only demonstrated that its banking secrecy is not an obstacle, but indeed this issue has not even been on the agenda in discussions concerning efforts to combat the financing of terrorism and financial crime.

During an extraordinary plenary session of the FATF held on 30 October 2001 in Washington, Switzerland also supported the adoption of eight special recommendations on the financing of terrorism, as well as an action plan to ensure the rapid and effective implementation of the new norms.

5. Swiss initiatives

But Switzerland is not content merely to apply the international standards. We have also taken initiatives to strengthen and improve international co-operation.

a. Strengthening the rules for the identification of fund holders

It was in the framework of the current revision of the FATF recommendations that Switzerland submitted and supported a number of concrete proposals designed to improve the actual observance of "know your customer" rules. In particular we feel that the procedures for identifying bank clients should concern the economic beneficiaries of funds just as much as the clients with whom the banks deal

directly. Banks around the world should not content themselves with formal documents, such as entries in the commercial register for legal entities and fiduciary companies. They should seek hard information on whoever has the real control of the capital in question. This is particularly important in the case of bank clients who make use of professional intermediaries (lawyers or fiduciary agents) as well as legal entities, letterhead companies and trusts. Moreover it is very important that these rules be applied in both the banking and non-banking sectors. This is all the more important in the present circumstances in which international terrorist organisations are believed to be able to make use of sophisticated financial networks that include fiduciary companies, letterhead companies and even charitable foundations.

b. Improving the efficiency of UN sanctions

I should like to mention in this context another initiative that Switzerland launched in the past few years, and which is especially important today in the context of efforts to combat terrorism. As a nation with a long humanitarian tradition as well as considerable expertise in the area of financial transactions, Switzerland worked jointly with the UN Secretariat to organise two conferences in Interlaken in 1998 and 1999. These brought together experts from different countries in an informal framework to discuss the possibility of applying targeted sanctions, particularly in the area of finance.

Given the considerable harm that global sanctions can have on civilian populations and on countries sharing borders with the country that is the target of the sanctions, and bearing in mind the fact that the results are often less than conclusive, the aim of these efforts was to reduce the perverse effects that sanctions can have, and at the same time to increase their efficiency. These discussions helped to refine the concept of targeted sanctions ("smart sanctions") and in particular targeted financial sanctions, i.e. for example sanctions targeting persons in power in the target countries.

In an effort to further develop the considerable body of work accomplished by the "Interlaken process" (<http://www.smartsanctions.ch>) and to render it operational, the Swiss government mandated an American university institute (the *Watson Institute for International Studies* of Brown University) to carry out more in-depth research. This resulted in the creation of a handbook for the preparation and implementation of targeted financial sanctions, which was submitted to the UN Security Council in New York last October. In this way Switzerland made

concrete proposals designed to strengthen international co-operation, to improve the application of sanctions and to ensure better control of their implementation. The UN resolutions imposed on the Taliban regime were one result. Following the events of 11th of September, and the renewed efforts to combat terrorism, the timeliness and relevance of these proposals have become increasingly evident.

c. Improvements in the context of efforts to combat the misappropriation of funds by politically exposed persons

Finally, it is also worth mentioning that Switzerland was the prime mover of an international initiative designed to combat the depositing of funds of unlawful origin on behalf of politically exposed persons (e.g. the funds of Abacha, Mobutu and Marcos). This issue has a direct link with financial crime rather than with terrorism. It has an impact on a great many financial centres as well as on banks in many countries. Switzerland organised two seminars in Lausanne, in January and November 2001, to which notably representatives of the G7 countries were invited for a debate on the prevention and suppression of such deposits, and other problems related to the immunity of heads of state and the restitution of the funds involved. The result has been a strengthening of the desire to co-operate on an international scale in order to combat such deposits. These issues will be the focus of negotiations, which have just begun within the United Nations for the drafting of an international convention to suppress corruption.

6. Conclusion

In conclusion I would like to make it absolutely clear that Switzerland is fully aware of its responsibilities as an international financial centre. Considering the various challenges, which have their origin in international terrorism, as well as the phenomenon of globalisation and certain technological developments, the strengthening of multilateral co-operation is indispensable. Switzerland has thus been an active participant in efforts to combat terrorism, to create international rules designed to ensure the proper functioning of the financial markets, and above all in efforts to combat financial crime. We actively support the efforts of the United Nations, which plays an important role in these areas.

Moreover, Switzerland has launched a number of initiatives designed to make international efforts to combat the financing of terrorism more effective. And we have demonstrated clearly that Swiss bank-

ing secrecy is in no way an obstacle to these efforts to combat terrorism.

The Swiss authorities, while defending with firmness and determination our country's legitimate interests in the area of financial services in the international negotiations now taking place, nonetheless intend to do even more to combat the potential abuses of Switzerland as a financial centre. The behaviour

of financial operators must be irreproachable. It is only by defending a reputation that is second to none in such matters, and by further improving its competitiveness that Switzerland can expect to ride out the turbulence that now buffets us and to deal successfully with the challenges of the 21st century. ■



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