Swiss bank account secrecy teeters on the brink

or years, Swiss bankers have marketed themselves to the world's super-rich as information black holes. Put your money in a Swiss bank account, they whisper, and you can hide it from your government's tax collectors, say nothing to a prying spouse, or ex-spouse, or inconvenient creditors.

It's a brilliant marketing tactic. Swiss banks don't necessarily get better investment returns than banks in other countries, but they do offer one huge competitive advantage: the possibility of secret manipulation of

A settlement was announced Wednesday between the Swiss bank JBS, the Swiss government and the United States in the Internal Revenue Service's lawsuit to learn the names of thousands of American tax cheats with secret accounts at UBS. But public, we can't know whether a real dent has been made in Swiss bank

Selling bank secrecy has enabled

Will these havens still remain an information black hole, BURT NEUBORNE asks

Switzerland to move from an impoverished agricultural nation in the 19th century to a rich financial fortress in the 21st. But the world has paid – and is paying – an immense price for Switzerland's success.

Why is it that so many countries, including the US, can't collect taxes from large numbers of cheats? Why is it that petty tyrants can plunder their nations' treasuries with impunity? Or that drug lords can launder their funds without fear of discovery? Or that terrorists can move funds around the world so easily?

It's because Swiss bankers - and their clones in Lichtenstein and other banking black holes – refuse to make information about secret accounts available to government investigators

Of course, the Swiss deny it. They claim to be willing – even eager – to turn information over to foreign law enforcement officials as long as

evidence of wrongdoing by a particular client is presented. But that's the rub. Without access to the information in the bank's records, it is usually impossible to find out whether wrongdoing is taking place. That's the Catch-22 of Swiss bank

That's why Congress finally required American banks and brokerage houses to report clients' earnings to the IRS. Without such a system, we learned that huge numbers of taxpayers will ignore their legal duty to report the income. Even after the IRS caught UBS red-

handed selling secret Swiss accounts in the US to hundreds of American tax cheats, UBS refused to provide the names of 52,000 other American depositors so that the IRS could ensure that they are reporting their

earnings.
The Swiss Government came to the bank's defense. Switzerland told a

federal judge in Miami, where the US lawsuit was filed, that it would seize the information rather than allow UBS to comply with an IRS subpoena.

The shabby drama that played out in a Miami federal courtroom made one thing clear: Swiss bankers cannot manufacture bank secrecy on their own. They need active cooperation from the Swiss Government designed to stymie legitimate efforts by other governments to obtain information needed to enforce their laws. Some rogue states export terrorism or drugs; Switzerland exports a virus – bank secrecy – that eats away at the fabric of law in the rest of the world.

Bank secrecy is Switzerland's most valuable national asset. Without it, Swiss banks would be forced to compete on a level playing field. Whenever Swiss bank secrecy is threatened, Switzerland buys off the challenger. When the European

Union complained that tax evaders were using Swiss accounts to make a mockery of the income tax, the Swiss Government agreed to have the banks make minimal lump-sum payments to European tax authorities rather than disclose the names of the depositors.

It's a bargain-basement way to buy your way out of real tax compliance. When Holocaust survivors complained that Swiss bank secrecy made it impossible to find thousands of bank accounts of deceased victims. Swiss banks settled the case in 1998 for \$1.25 billion rather than allow the victims to inspect their

The same scenario appears to be unfolding in Miami. The Swiss Government has offered to have UBS maybe turn over a few thousand names when the known facts point to tax fraud, but it insists on preserving the general principle that Swiss

banks are not obliged to turn over financial information to foreign government investigators in the absence of specific proof of wrongdoing. So far, the US has talked tough, but the proof will be in the details of the settlement.

A huge amount is at stake. If Swiss bank secrecy can survive this debacle, the message to the tax cheats of the world will be clear: Swiss banks are open for business as usual. If, however, the IRS hangs tough, an equally important message will go out: Opening a Swiss bank account will no longer shield you from legitimate efforts by your government to obtain financial information needed to enforce the tax laws. It just might mean one less rogue state.

Los Angeles Times

Bart Neuborne, a professor at New York University School of Law and legal director of the Brennan Center for Justice, was the court-appointed lead counsel for Holocaust survivors in their claims against Swiss

Stepping into another's skin

The unfortunate incident between a professor and a policeman may prove to be a "teachable moment", RAMESH THAKUR writes

Obama years might well turn out to be "a` teachable moment". His arrested Professor Henry Louis Gates. If that was a teachable moment, then here are seven lessons that this particular professor draws

First and most obviously, it is possible for intelligent and

we view events through the prism of our respective collective and individual historical narratives and life experiences. American police officers operate in a more hostile and counterparts in other Western countries. They are correspondingly more heavily armed and operate with a different mindset that prioritises securing compliance from a suspect over other considerations of politeness and nicety. Called to investigate a house break-in in progress, they are not going to doff their caps in greeting and hand out chocolates to the assumed offender when they arrive on the scene

For their part, blacks, Hispanics and other ''visible minorities'' have deeply ingrained memories and experiences of racial profiling. The racially differentiated statistics of convicted for all manner of offences, for example "driving while black", are deeply disturbing with respect to separate and unequal status of whites and others. No amount of sophistry and verbiage will wash away my direct experiences of skincolour-based profiling at most European (more so than United States) airports.

Third, it is possible for both sides in a disputed sequence of events to be right. Crowley was responding to a concerned citizen calling the police about a suspected break-in. (The woman caller has since received a lovely bouquet of roses as a thankyou gesture from Gates.) Crowley was doing his duty protecting the property of a resident while being concerned about his own personal

Having established that the person effecting forcible entry was indeed the legal owner and resident, he was preparing to leave. There is no evidence to suggest he said anything even remotely racist or was discourteous towards the professor. Instead of being thanked by a grateful resident that the police were on the job and alert to burglary, he

was shouted at and unjustly abused. Gates had just returned home from a long overseas trip, only to find his front door jammed. Annoyed and irritable, he entered through a back



COMING UP ROSES: President Barack Obama, right, has a beer with, from left, Vice-President Joe Biden, Henry Louis Gates and James Crowley last month.

door and asked the driver to help him force the front door open. Presumably, all he wanted to do was rest and recuperate. Instead, he was accosted by a police officer demanding proof of identity. He was entitled to feel aggrieved at having to bow to white authority in his own

Fourth, it is possible for both parties, good and honourable people, to be wrong. Gates was wrong to hurl charges of racial bias at the police officer in the absence of any evidence to that effect, seeing racial slights where none exist. It turns out that the sergeant teaches

courses against racial profiling and is well known for having performed first aid on a black athlete on a previous occasion.

Crowley was wrong to arrest Gates. Hurling verbal abuse at a police officer, so long as it does not trip over into action, is constitutionally protected freedom of speech. Courtesy is a civic virtue, not a legal duty. Disrespecting the police is not "disorderly conduct" and does not warrant handcuffing and arresting a citizen, complete with mug shots. There is no such crime as contempt

Gates, a senior and respected

professor at the world's most prestigious university, has clout. Many victims of this particular police excess don't. This is why some are still urging Gates to sue, not as an act of personal greed or vengeance but of civic virtue, to highlight, through a high-profile case that will garner national and worldwide publicity, the daily misuse of police powers against vulnerable individuals.

Fifth, combining the last two, it is possible for any one party to be both right and wrong at the same time. This is why it is often said that the colour of truth is grey, not black and

Sixth, it is dangerous to ascribe patterns of behaviour to groups based on assumptions of monolithic identity. Many whites have been critical of Crowley's behaviour and acknowledge the reality of racially segregated justice in the US legal system and law enforcement practices. Several blacks have criticised Gates for having overreacted against an officer doing his duty and also faulted President Barack Obama for rushing into judgment prematurely.

Seventh, despite these individual variations, it is still possible to generalise at the group level.

Proportionately, far more blacks and Hispanics than whites will have readily empathised and sympathised with Gates, for they come out of the same historical narrative and collective consciousness.

Similarly, in world politics, at a certain level of analysis, it is possible to argue that in general, developing countries are more suspicious of claims to a right of humanitarian intervention, more interested in justice among rather than within nations, more concerned about the root causes of terrorism such as poverty, illiteracy and territorial grievances, more interested in economic development than worried about nuclear proliferation, and more committed to the defence of national sovereignty than the promotion of human rights, than the industrialised Western countries.

The fact that there are individual differences within developing countries and among Westerners neither negates nor invalidates the generalisation.

To the extent that developing country viewpoints rarely get an airing, let alone a respectful hearing, in Western mainstream media, Western publics and governments typically have a seriously distorted understanding of many international

The other lessons are relevant to international politics too. It is possible to outline two different models of conflict resolution. One model assumes that in a conflict between two parties, one side is completely right and the other totally wrong, the proper course of action is accordingly, and there can be no compromise of principles as it amounts to a refusal to stand up for the courage of one's convictions and impose an artificial moral equivalence between the two sides.

The alternative model acknowledges elements of right and wrong on both sides, recognises that both sides have to live with each other even after the dispute is resolved, sees mutual accommodation as a virtue and the only way forward, acknowledges the importance of saving face and achieving reconciliation, and therefore looks for creative solutions that do not necessarily establish guilt of one party and offer concessions and partial solutions to both sides.

We instinctively tend towards the second model of conflict resolution with respect to disputes among others, while falling into the trap of the first, conflict perpetuation model when our own country is involved.

Alas, inviting the two sides to share a beer of a lazy afternoon on the lawns of the White House is not a realistic option for resolving international disputes.

Ramesh Thakur is director of the Balsillie School of International Affairs and a distinguished fellow at the Centre for **International Governance Innovation in** Waterloo, Ontario.

Face the flaws - don't choose the scaremonger path

The Government's security paper is insufficient, **CHRISTOPHER MICHAELSEN** writes

n Wednesday, Federal Attorney-General Robert 452-page "discussion paper'' detailing the Government's proposed reforms to Australia's national security and anti-terrorism

The proposals represent the biggest changes since the Howard government's legislative amendments in the wake of the 2005 London underground bombings and, in part, implement the Rudd Government's response to a number of critical reviews of Australia's counter-terrorism arrangements including the Clark inquiry into the mishandled Haneef affair.

According to McClelland, the proposed reforms are designed to be valid, credible but effective and balanced for the long term". It is questionable whether the proposals neet any of these objectives

Australia has some of the most draconian anti-terrorism laws in the Western world. Although there has not been any terrorist attack here,

Parliament has enacted more than 40 pieces of "security legislation" since

In contrast to the United States, Britain and Canada, Australia's domestic intelligence agency, ASIO, was given unprecedented powers to detain persons not suspected of any offence for up to seven days without charge or trial. The Australian Federal Police was given new stop and search powers and may apply for control and preventative detention orders. Australia's criminal law and procedure has seen the introduction of an overly broad definition of "terrorist act", the reversal of the

presumption in favour of bail in terrorism-related cases, and executive powers to proscribe (and criminalise) organisations considered to be "terrorist"

Many of these amendments have attracted severe criticism by senior legal practitioners, Supreme Court

judges and professional organisations like the Law Council of Australia. They have also raised concern internationally.

The United Nations Special Rapporteur on Human Rights and Counter-Terrorism, for instance, took the view that the Australian definition of "terrorist act" overstepped the UN Security Council's broad characterisation of

What most of the criticisms have in common is a concern that fundamental features of Australia's criminal justice system are being dismantled in the name of fighting

And further, that these extraordinary laws, rather than being effective, have in fact negative longterm consequences: they become normalised through application in other contexts such as in the case of criminalising membership in bikie

gangs. The Government's discussion paper contains little to address these concerns and criticisms. Instead, it proposes to expand the already overly broad definition of a terrorist act to include psychological as well as physical harm.

Even more alarming, the paper provides for new emergency powers that would allow the AFP to enter and search premises without a warrant where it is suspected that there is material relevant to a terrorism offence. Such powers are highly problematic.

They would fundamentally undermine existing safeguards that require a judicial officer issuing a warrant. And it is questionable whether there is actually a need for enhanced powers.

There is no evidence to suggest, for example, that police are unduly limited by the requirement to apply for a warrant before entering

suspicious premises. In addition, the discussion paper introduces a maximum eight-day limit on the amount of time a terrorism suspect can be held by police without being

Under existing laws, police have 20 hours to interview a suspect but can apply for so-called downtime to pursue their investigations, potentially allowing for an openended period of detention.

In 2007, these arrangements saw Gold Coast doctor Dr Mohamed Haneef detained without charge for 13 days following his arrest for allegedly supporting a terror organisation.

It is commendable that the government has recognised the need

The proposed cap on detention, however, is clearly inappropriate. In particular, it is difficult to see why the police would need to hold someone

for more than 48 hours without charge. McClelland deserves credit for issuing a discussion paper which will be open for public scrutiny and comment until September 25, 2009.

Nevertheless, eight years after 9/11 - and with no terrorism attack having occurred on Australian soil – it is time for a comprehensive overhaul of the legislative arrangements introduced during the Howard years.

The Government's discussion paper is comprehensive in size. Its content is insufficient.

In particular, the paper fails to address a number of fundamental flaws in existing anti-terrorism laws.

In light of the recent Jakarta bombings and last week's raids in Melbourne, wide-ranging reform proposals would have required

political courage.
It is regrettable that the Rudd Government has chosen the path of the scaredy cat instead.

■ Christopher Michaelsen is the codirector of the International Law and Policy Group at the Faculty of Law, UNSW.

Paying back our war debt to PNG **GRANT WALTON**

ooking down, I understood the dangers of flying in Papua New Guinea. The twin-engined plane turned towards the rough landing strip and I gulped.

The narrow grass landing strip was hewn out of a high cliff top. Both sides of the runway ran steeply down to the valley below One false move and we would be tumbling down the mountain to our doom. There was little chance for error. As we got closer I saw the remnants of a plane which didn't make it. Its twisted remains lay on the mountainside, another casualty of PNG's treacherous

Flying in PNG is not for the faint-hearted.

The recent tragic plane crash near the Kokoda Track, which killed 13 people, highlights the failure of development, not only in the Kokoda region, but in the entire nation.

Charlie Lynn, a Kokoda tour operator and NSW Liberal MP, has suggested that more deaths will occur if roads, communication around Kokoda.

Lynn suggests that the Australian Government is not doing enough to improve conditions for Australians wishing to pay homage to the diggers of that bloody engagement of World War II. But in the aftermath of this

consider the importance of Australia's adopting a holistic approach to PNG. Most of PNG is only accessible by air. Air strips are often just bush

tragedy, we should pause to

tracks little better than the one I have described. More money and effort is needed to support airports and other infrastructure, not only because Australian tourists die in planes in Papua New Guinea, but also because locals take their lives into their own hands every day

towns, cities and remote rural While this tragedy highlights the perils of air travel in the country, i is also worth keeping in mind that there are much larger challenges

when flying between the major

facing PNG. PNG was, until recently, given more Australian aid money than any other country in the world. Each year Australian taxpayers contribute over \$300 million dollars towards developing this nation. That figure is set to increase under the Rudd

Government. In addition, the country has enough resources to become a prosperous nation. Its mineral and prominent PNG politician once quipped that the country was a mountain of gold floating on a sea of oil. Those resources are being tapped at the moment, as the

country enjoys a resources boom. All over the capital, Port Moresby, buildings are going up, cranes shadow office blocks and there appear to be more brandnew four-wheel-drives than in many of Australia's leafy suburbs Last year PNG's economy grew by an astounding 6 per cent, around three times Australia's rate of growth.

But the billions of Australian aid dollars which have flooded the country since its independence in 1975, and recent economic growth, don't seem to be improving the lives of the majority of its people. PNG is ranked a poor 145 out of 177 countries in the world on the human development index – a composite ranking of the educational, life expectancy and economic opportunities of people around the world. Around 43 per cent of the population still cannot read or write.

So, with hundreds of millions of dollars of aid pouring into the country and one of the fastestgrowing economies in the world, why are most people in the country still poor?

There are a number of reasons. These include corruption and poor governance, misdirected aid, the lack of infrastructure and 'boomerang aid" (Australian aid money which returns to Australia) – just to name a few. A key concern is the lack of "pro-poor" initiatives in the country. PNG relies on large

development projects, such as oil and gas projects or mines, hoping this will bring prosperity to its citizens. But this type of development

generally only benefits a few local landowners and business operators. It fails to reach the neediest. Focusing too much upon developing the Kokoda Track runs the risk of repeating this outcome. Australian aid efforts should not

developing the Kokoda Track simply because we value the history of Kokoda and fear for the safety of Australians. Our debt of gratitude to the "fuzzy wuzzy angels", who cared for Australian soldiers during

become so caught up in

World War II, is not confined to a small sliver of track in the middle of the country. It is to all Papua New Guineans faced with the injustice of poverty.

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