



DIPARTIMENTO DI GIURISPRUDENZA
Cattedra di Diritto Internazionale

**THE INTERNATIONAL REGULATION OF
COUNTERING THE THREE PHASES OF
TERRORISM FINANCING**

RELATORE
Prof. Michaelsen Christopher

CORRELATORE
Prof. Pustorino Pietro

<p>CANDIDATO Arianna Boccialone Matr. 138933</p>

ANNO ACCADEMICO 2019-2020

TABLE OF CONTENTS

Introduction.....	4
Chapter 1 How terrorism is financed? The three phases of terrorism financing	7
1. Background.....	7
2. Collecting.....	12
2.1 Legitimate Sources.....	12
NPOs and Charities.....	12
2.2 Illegal Sources.....	16
Drug Trafficking.....	16
Human Trafficking.....	20
Fraud.....	24
3. Moving.....	25
Cash Couriers.....	26
Hawala.....	27
Cryptocurrencies.....	29
Money Laundering.....	32
4. Using.....	40
Chapter 2 UN International Conventions on Counter-Terrorism Financing.....	44
1. Overview.....	44
2. Collecting.....	48
3. Moving.....	49
4. Using.....	54
Chapter 3 UN Security Council Resolutions.....	59
1. Overview.....	59
2. Collecting.....	62
3. Moving.....	64
4. Using.....	66

Chapter 4 The Financial Action Task Force.....	70
1. Overview.....	70
2. Collecting.....	74
3. Moving.....	80
4. Using.....	84
Chapter 5 Counter-Terrorism financing initiatives in the public- private sector.....	89
Conclusions.....	101
Bibliography.....	107

Introduction.

Terrorism financing consists in the financial support, in any form, of terrorism.

Since the 9/11 terrorist attacks in the United States, counter-terrorist financing has been considered a potentially effective tool to undermine terrorism.

Indeed, money constitute the life blood of terrorism.

Terrorism organizations necessitate funds not only to support and finance their operations and activities but also to develop and maintain the running of the organization per se.

The offense of terrorism financing implies a three-stage process which includes the collection of funds, their movement and their use to achieve the organization's goals.

The aim of the thesis is to analyse how the three different phases of terrorism financing are addressed by the international regulatory framework. Through this survey the thesis will demonstrate that the international community is well organized to counter the movement of money, especially through anti-money laundering measures, but are less capable of going after the sources of funds, which is the foundation of the terrorism financing.

There is very little literature that have addressed the terrorism financing problem through the examination of each phase. Indeed, from my point of view, conducting this study through the different stages of terrorism financing will help to better understand what is missing and to emphasise what are the areas that need to be improved and enhanced.

The first chapter will present in general term the three phases of terrorism financing.

Terrorism organizations may raise funds through legitimate activities such as charities and non-profit organizations (NPO) or through illegal activities like drug trafficking, human trafficking, cybercrime and fraud.

Once the funds are collected, terrorism organizations employ different mechanism to move them within and between organizations like cash couriers, informal value transfer systems such as hawala, and cryptocurrencies. In this context I will pose special attention on money laundering, which is the process through which criminals conceal the illegal origins of their wealth and protect their asset bases, in order to elude the suspicion of law enforcement agencies and avoid leaving a trail of incriminating evidence.

The final step of this three-stage process consists in the use of funds collected and received through transfer.

Funds are needed to cover the direct costs for carrying out a terrorist attacks, but also are employed to maintain the functioning of the terrorism organization and to foster its ideology. Therefore, funds

are also required for training new terrorists, forging documents, purchasing materials and weapons as well as seeking public support through propaganda.

In the fight against the financing of terrorism, the three leading sources of international obligations are represented by the 1999 International Convention for the Suppression of the Financing of Terrorism, the Resolutions of the United Nations Security Council, and in particular, Resolution No. 1373/2001, and the Special Recommendations on Terrorism Financing issued by the Financial Action Tasks Force (FATF).

The second chapter will focus on how the International Conventions for the Suppression of the Financing of Terrorism cover the collecting, moving and using phases, through the scrutiny of its provisions.

In analysing the moving phase, recalling the vast use of money laundering techniques by terrorists I will examine two other UN Conventions especially dealing with money laundering, namely the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the United Nations Convention against Transnational Organized Crime (the Palermo Convention).

In the third chapter I will discuss the approach adopted by the UN Security Council Resolutions. As for the collecting and moving phase, I will particularly analyse the provisions of the UN Resolution 1373/2001.

Provisions addressing the collection of funds can be also found in UN Security Council Resolutions No. 2331/2016 and 2388/2017, which deal with human trafficking for terrorism financing purposes, pointing out that girls and women are continuously exploited and forced into marriage as a reward to fighters and terrorist associates.

Moreover, measures dealing with the collection of funds are present in Resolution 2462/2019, in which the Security Council reiterated the concern that terrorists can benefit from organized crime as a source of financing and support, and from offences such as trafficking in persons and arms, drugs, kidnapping for ransom, extortion.

As for the using phase, The UN first established the sanction regime with Resolution 1267 (1999), imposing several measures against individuals and entities associated with Al-Qaida. The sanctions regime has been enhanced by Resolution 1373 (2001), which requires countries to establish mechanisms for the designation of terrorists and persons associated with terrorism at national level and the consequent application of freezing measures.

The fourth chapter will consider the efforts taken by the FATF to address those three stages.

As for the collecting phase, Recommendation No 5 on the criminalization of terrorism financing and Recommendation No 8 on the exploitation of charities and NPOs will be analyzed.

Going to the moving phase, the FATF was established for the purpose of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering. Therefore, I will analyze various relevant Recommendations such as those on Cash Couriers, Financial Intelligence Units and Reporting of Suspicious Transaction, Money or Value Transfer Services, New Technologies and Wire Transfers.

Finally, for the using phase I will consider Recommendations on assets freezing and confiscation, mutual legal assistance and extradition.

The last chapter is dedicated to a little analysis of other counter-terrorism financing initiatives in the public-private sectors such as the work of the Egmont Group and financial institutions.

Indeed, as part of the Counter-Terrorism Financing regime, an effective collaboration with the financial sector is crucial.

Financial institutions, through customer identification checks and reporting of suspicious transactions, are able to provide critical financial intelligence in preventing terrorism financing and money laundering. However, this strict regulation can lead to financial exclusion, undermine countries' capacity to track money laundering and terrorism financing and, in particular, compromises the legitimacy and effectiveness of Counter-Terrorism Financing regulations.

In this context I will address the improvements that can be made to enhance the effectiveness of these institution to fight terrorism financing, in particular through the employment of new technologies.

CHAPTER 1:

How terrorism is financed? The three phases of terrorism financing.

1. *Background.*

Since the September 11, 2001 terrorist attack on the World Trade Centre in New York and the Pentagon in Washington D.C, the fight against the financing of terrorism and money laundering has been a central point in the international community agenda. ¹

These attacks were executed in a way that showed serious weakness in legal and financial systems worldwide so that the international community has focused its efforts to strengthen legal and financial enforcement measures to react against terrorism and terrorism financing².

There isn't an agreement on a universal legal definition of the term terrorism.

According to etymological studies of the origin of this phenomenon, the word "terrorism" was first diffused during the French Revolution.³

Between 1792 and 1794, "the regime of terror", from which the word "terrorism" derives, was an "instrument of governance" used by the new established revolutionary state aimed at maintaining an order during the anarchical period of disorder and unrest and consolidating the powers obtained by the new government.⁴

The notion of terrorism continued to be linked to violence against governments and revolutionary movements until 1930's when it began to refer to abuse of powers perpetrated by governments, in particular through the acts of mass repression employed by totalitarian states against their own citizens.⁵

It is in the aftermath of the Second World War that the concept of terrorism was associated again with revolutionary and violent revolts such as those accomplished between 1940s and 1950s by indigenous anti-colonialist groups in Asia, Africa, and the Middle East who wanted to oppose to European control.⁶

¹Surya P Subedi, "The UN Response to International Terrorism in the Aftermath of The Terrorist Attacks in America and the Problem of the Definition of Terrorism in International Law", McGill Guide 9th ed, 2002

²Herbert V., "The War against Money Laundering, Terrorism, and the Financing of Terrorism", Lawasia Journal, p. 1-30, MLA 8th ed., Morais, 2002

³International and Comparative Law Quarterly, Volume 66, Issue 2, "Defining terrorism: one size fits all? ", pp. 411-440, 2017

⁴Hoffman, Bruce, "Inside Terrorism" REV - Revised, 2 ed., Columbia University Press, 2006
www.jstor.org/stable/10.7312/hoff12698. Accessed 21 Oct. 2020.

⁵ Ibid.

⁶ Ibid.

What happened on September 11, 2001 led to a redefinition of the notion once again. President George W. Bush, few days later at the special session of the U.S. Congress, declared a “war on terror”⁷, a new kind of war against a new kind of evil.⁸

While the term terrorism initially referred to the exercise of punitive public violence by the state, its usage has changed, associating terrorism mainly, even though not exclusively, with acts of non-state actors.⁹

To face with this phenomenon, since 1963 decisions and conventions have been adopted by the United Nations as well as regional organizations and specialized agencies.

However, these instruments don’t include a definition of the term “terrorism” but rather they focus on the prosecution of the authors of certain acts such as attacks on diplomats and hostage taking or acts of violence against oil platforms, airports etc.¹⁰

It was only with the UN International Convention for the Suppression of the Financing of Terrorism, adopted in 1999 that drafters tried to come up with a definition which, however, resulted inconclusive since the definition included in this convention is not comprehensive but conceived only for the purpose of defining the offense of the financing of terrorism.¹¹

As far as the academic consensus definition, terrorism is considered as an “anxiety-inspiring method” of violent actions, employed by individual, group or state actors for criminal or political reasons, whereby, in contrast to assassination, the direct targets of violence are not the main targets. Usually, the victims of violence are chosen randomly (the so-called targets of opportunity) or selectively (the so-called symbolic targets) from a target population and carry out the function of message generators.

“Threat – and violence-based communication processes between terrorist organization, victims and main targets are used to “manipulate the main target (audience(s)), turning it into a target of terror, a

⁷ Here terror is intended as “state of great fear” according to Oxford English Dictionary, second edition (1989).

⁸ Kuniharu Kakihara, “The Post 9/11 Paradigm Shift and Its Effect on East Asia”, IIPS Policy Paper 292E

⁹ Commission's Expert Group on European Violent Radicalization, “Radicalization Processes Leading to Acts of Terrorism”, Report Submitted to the European Commission, 2008

¹⁰ Examples are Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 1973; Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf

¹¹ Anthony Aust, “Counter Terrorism- A New Approach: The International Convention for the Suppression of the Financing of Terrorism”, J. A. Frowein and R. Wolfrum (eds.), Max Planck Yearbook of United Nations Law, Volume 5, pp 285-306, 2001

target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought (Schmid, 1988)”¹²

Despite the failure of the international community in achieving a universal definition of terrorism it appears, from the multiple conventions and decisions in this respect, that the term “terrorism” is applied when three conditions are met:

- a) the perpetration of certain acts of violence capable of causing death, or at the very least severe physical injury;
- b) an individual or collective undertaking which is not improvised but results in an organized operation or arranged plan reflected in coordinated efforts to achieve a specific goal and;
- c) the pursuit of an objective: usually the aim is to create terror among certain predetermined groups or, the public more in general.¹³

Going back to the US 9/11 terrorist attacks, nineteen militants associated with the Islamic extremist group called al-Qaeda hijacked four domestic aircraft taking off from airports in Boston, Newark, New Jersey, and Washington, D.C.

The first plane, American Airlines flight 11, was directed into the north tower of the World Trade Center in New York city at 8:47 AM.

The second plane, United Airlines flight 175, impacted the south tower 17 minutes later after the first one.

About half an hour later, the third plane, American Airlines flight 77, collided with the southwest side of the Pentagon¹⁴, igniting a fire in the west side of the structure.

Finally, few minutes after 10 AM, the fourth plane, United Airlines Flight 93, initially directed toward Washington, D.C., crashed into a field in Stonycreek Township, Pennsylvania, after passengers attempted to overcome the hijackers.¹⁵

Those attacks caused death and destruction with a total of circa 3000 victims.¹⁶

Investigations carried out in the US as well as in Europe, Middle East and Asia, disclosed an extensive network of underground banking and financing channels used to finance terrorist undertakings.¹⁷

¹²Chapter 2: “Review of Literature1: Money laundering and financing of terrorism”

https://www.unodc.org/documents/southeastasiaandpacific/2009/02/TOCAMLO/07-CHAPTER_II.pdf

¹³Guillaume, Gilbert, “Terrorism and International Law”, *The International and Comparative Law Quarterly* 53, no. 3, pp 537-48, 2004, Accessed October 20, 2020. <http://www.jstor.org/stable/3663289>.

¹⁴The headquarters of the U.S. Department of Defense in Arlington County, Virginia

¹⁵Encyclopedia Britannica, “September 11 attacks” by Bergen, September 10, 2020, <https://www.britannica.com/event/September-11-attacks>

¹⁶Hoffman, Bruce, “Inside Terrorism”, REV - Revised, 2 ed., Columbia University Press, 2006
JSTOR, www.jstor.org/stable/10.7312/hoff12698. Accessed 21 Oct. 2020.

¹⁷Herbert V. "The War against Money Laundering, Terrorism, and the Financing of Terrorism." *Lawasia Journal*, p. 1-30, MLA 8th ed. Morais, 2002

The perpetrators of the September 11 attacks used United States and foreign financial institutions in order to hold, move and retrieve their money. “They deposited money into United States accounts via wire transfer and deposits of travelers checks and cash that was brought from overseas. They kept funds in foreign accounts, which they accessed through ATMs and credit card transactions here in the homeland.”¹⁸

According to the September 11 Commission, the attacks cost al-Qaeda about \$400,000 to \$500,000, of which circa \$300,000 passed through the hijacker's bank accounts in the United States.

After the attacks, the United States publicly declared that the fight against al-Qaeda financing was as critical as the fight against al-Qaeda itself.¹⁹

Hence the fight against terrorism financing has been recognized as crucial for the success of the fight against terrorism: tracking down and blocking terrorist money may be a successful way to detect terrorist organizations and supporters and blow-up terrorist activities.²⁰

In other words, terrorism needs money.

Money constitutes the lifeblood of terrorism organization.²¹

Money are required not only to finance specific terrorism operations but also to develop and maintain the functioning of the organization per se and to cover the costs liked with the spreading of their ideology. In fact, while the effective cost of a single terrorist operation can be rather low, the organization per se require a large amount of funds. These resources are usually dispatched to recruit new members, to set up training camps, to pay bribes and political support, to publish terrorist propaganda, to procure the necessary means to conduct the operations such as weapons, vehicles, fake passports and ID, communication devices.²²

As well as with the term “terrorism” there isn't an internationally recognized definition of “terrorism financing”.

The supra-mentioned UN “International Convention for the Suppression of the Financing of Terrorism”, adopted in 1999 with the aim of enhancing international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, in its Art 2 paragraph 1 defines the crime of terrorism financing as a crime committed by “any person” who

¹⁸[House Hearing, 112 Congress] [From the U.S. Government Publishing Office], “Terrorist Financing Since 9/11: Assessing an Evolving Al-Qaeda and State Sponsors of Terrorism”, hearing before the Subcommittee on Counterterrorism and Intelligence of the Committee on Homeland Security House of Representatives, One Hundred Twelfth Congress, Second Session, May 18, 2012

¹⁹ Ibid

²⁰John Roth, Douglas Greenburg, Serena Wille, “Monograph on Terrorist Financing”, National Commission on Terrorist Attacks Upon the United States, Staff Report to the Commission

²¹Office of the Coordinator for Counterterrorism, U.S. Department of State, “President Freezes Terrorists Assets”, September 2001, <https://2001-2009.state.gov/s/ct/rls/rm/2001/5041.htm>

²²Financial Action Task Force Operational Report on Fighting Terrorist Financing, www.fatf-gafi.org

“by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out an act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”²³

The third paragraph of art 2 also makes clear that for an act to constitute the offense of “financing of terrorism” it is not necessary that the funds are actually used to carry out an offense referred to in paragraph 1 but that their intended use for terrorist purposes is sufficient to incriminate the behavior.²⁴

Therefore, a causal link between a terrorist act and the provision or collection of funds is not demanded and the demarcation between what is a legal or illegal conduct is left to a subjective criterion.²⁵

The Financial Action Task Force, an intergovernmental body established in 1989 whose mandate is to establish international standards for combating money laundering and terrorist financing²⁶, doesn’t define terrorism financing in its Special Recommendations on Terrorism Financing, developed as a response to the 9/11 terrorist attack.

FATF encourages Countries to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

In its Recommendation No 5 it urges countries to criminalize terrorist financing on the basis of the UN Terrorist Financing Convention and, in particular, to criminalize not only the financing of terrorist acts but also the financing of terrorist organizations and individual terrorists even in the absence of a link to a specific terrorist act or acts.²⁷

At this point the question is: “How terrorist organizations acquire these funds?”

The terrorism financing process involves three distinct phases that can be drawn from the already cited Art 2 of the 1999 International Convention for the Suppression of the Financing of Terrorism.

²³International Convention for the Suppression of the Financing of Terrorism, Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999

²⁴ See note 11

²⁵Journal of International Criminal Justice, vol. 4, no. 5, “Criminalizing the Financing of Terrorism”, p. 1074-1086, MLA 8th ed. Pieth, Mark, 2006

²⁶<https://www.fatf-gafi.org/about/>

²⁷FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html

Indeed, as expressed in this article, the offense of terrorism financing involves the provision, collection or receipt of funds with the intent or knowledge that the funds will be used to carry out an act of terrorism or for the benefit of a terrorist organization.²⁸

Therefore terrorism financing involves:

- Collecting the funds intended to support the organization and to finance the attacks
- Moving the funds when they are needed
- Using the funds to achieve the organization's goals

2. *Collecting.*

In their whole history terrorists have used a wide range of techniques to procure funding and cover up their activities.

Terrorism organizations may raise funds from legitimate sources such as charities and non-profit organizations (NPO) and through illegal activities like drug trafficking, human trafficking, cybercrime and fraud.²⁹

2.1 *Legitimate sources.*

NPOs and Charities.

Anti-terrorist policies, in the effort to disclose the nature of terrorist financial resources, have revealed that NPOs, including charities, are one of the most common channels used by terrorism organizations to gain financial support for their causes.³⁰

NPO are legal entity or organizations born to provide practical help collecting funds and resources from voluntary donors and distributing them for charitable purposes.

FATF has defined NPO as a legal person or organization that is responsible for raising or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or for realization of other types of good works.³¹

Notwithstanding charities diverse themselves for types, goals, activities and size, they are united by the desire to build a better society and improving the quality of life.

Recommendation n.8 of the Financial Action Task Force (FATF) on the abuse of NPO for terrorism financing purposes, revised in 2016, considers NPO as vulnerable to terrorist financing abuse and it

²⁸ Financial Action Task Force Operational Report on Fighting Terrorist Financing, www.fatf-gafi.org

²⁹ Anna Gardella, "The Fight against the Financing of Terrorism between Judicial and Regulatory Cooperation", *Studies in Intl Financial, Economic, & Technology L* 109, McGill Guide 9th ed, 2003-2004

³⁰ Ly, Pierre-Emmanuel, "The Charitable Activities of Terrorist Organizations", *Public Choice* 131, no. 1/2 (2007): 177-95, Accessed October 23, 2020, <http://www.jstor.org/stable/27698091>.

³¹ FATF Best Practices Combating the Abuse of Non-Profit Organizations (Recommendation No.8), June 2015

urges countries to apply focused and proportionate measures to such non-profit organizations to protect them from terrorist financing abuse, including:

- a) by terrorist organizations posing as legitimate entities;
- b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organizations”³²

In 2007, The US Department of the Treasury, Office of Terrorism and Financial Intelligence website recognized how the protection of charities from terrorist abuse plays a key role in the global fight against terrorism. Charities have proven to offer essential services, comfort, and hope for the population in need all around the world. However, terrorist organizations have manipulated the charitable sector “to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support terrorist organizations and operations.”

For this reason, the donors confidence may be undermined other than that the integrity of the charitable sector, whose works and support are essential to the community, may be endangered.³³

The rights of freedom of association and of freedom of religion, internationally and constitutionally recognized, help terrorist organizations to exploit these entities using them to cover and shield their illegal activities from administrative control.³⁴

NPOs are considered vulnerable to possible abuse by terrorism for different reasons.

First of all, charities have a global presence, even in conflict zones or where infrastructure are rare, and recurrently move money, people and goods to and from those areas.³⁵

As reported in the Interpretative Note issued by the FATF in its revised version of 2012, first of all charities “enjoy the trust of the general public” therefore are considered influential vehicles for bringing people together for a common purpose and collective action and may inadvertently provide a ready-made social network and platform of legitimacy for terrorists or terrorist sentiments.³⁶

³²FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html

³³U.S. Dept. of Treasury, Office of Terrorism and Financial Intelligence, Protecting Charitable Organizations (Mar. 9, 2007)

³⁴Anna Gardella, "The Fight against the Financing of Terrorism between Judicial and Regulatory Cooperation", Studies in Intl Financial, Economic, & Technology L 109, McGill Guide 9th ed, 2003-2004

³⁵Charity Commission for England and Wales: “Charities and terrorism: Compliance toolkit: protecting charities from harm”; “Chapter 1: Charities and terrorism Module 3: How might a charity be abused for terrorist purposes?”, published in 2012

³⁶FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html

Also, they often have complex financial operations including multiple donors, investments and currencies, often receiving and using cash, having to account for high volumes of small-scale transactions and using informal money transfers.

Moreover, according to the FATF Interpretative Note to Recommendations they have access to a considerable source of funds, and they are cash-intensive meaning that when they move large sum of money, dealing in cash, they don't leave trace.³⁷

Another aspect that could expose these organizations to abuse is the fact that “depending on the legal form and the country, they may be subject to little or no governmental oversight”³⁸

Charities could be exploited by terrorism both in a direct and indirect way.³⁹

Direct abuse means that charities conduct fundraising activities with the deliberate intention to divert those funds in financing terrorism activities.⁴⁰

On the other hand, indirect abuse of charities come about when the organization erroneously direct funds to terrorist activities being the donors and the staff unaware of it.

As a matter of fact, it may happen that while charity's funds are moved from one place to another, they are rerouted by terrorist groups before they reach the intended destination.⁴¹

In this context a brief but recent example of charities exploitation by terrorist organization comes from the Syrian crisis.

The beginning of the civil conflict in Syria and Iraq in 2012 generated thousands of victims as well as millions of refugees causing atrocious humanitarian suffering.

In the analysis “Charities and Terrorism: Lessons from the Syrian Crisis,” (2018) the researcher Rodger Shanahan noted how the suffering of people in Syria and Iraq has given rise to feelings of compassion and empathy among the communities of those countries and the Muslim community more generally.

Thus, those feelings have led these communities to donate to charity drives, including some run by new established NPO.

³⁷Ibid.

³⁸ Ibid.

³⁹Jennifer Lynn Bell, “Terrorist Abuse of Non-Profit and Charities: A Proactive Approach to Preventing Terrorist Financing”, 17 Kan. J.L. & Pub. Pol'y 450, 2008

⁴⁰FATF Terrorist Financing Typologies Report,2008

⁴¹ Ibid

According to the author a large part of this activity has been proven to be legitimate and the money donated has genuinely contributed to alleviate humanitarian needs. However, jihadist groups have also exploited this desire to help by manipulating or pretending to be genuine charities.⁴²

Supporter of terrorist organizations have been using humanitarian cover, professing to be part and work for a charity organization and trade on its legitimacy in order accede to a different region or a community or to send money to terrorist groups.⁴³

In 2012/2013 two British men, Syed Hoque and Mashoud Miah have been sentenced of using Syria aid convoy to finance Hoque's nephew who was a member of the al-Qaeda affiliated Jabhat al-Nusra, at the Old Bailey in London.⁴⁴

Mr. Hoque had exploited humanitarian aid convoys on various occasions as a cover for his support to extremists in Syria, including the convoy where Mr. Alan Henning, a taxi driver British aid worker, was killed by the Islamic State group in 2014.

Syed Hoque, 37, was found guilty of two charges of providing 4,500 pounds to terrorists, while his accomplice Mashoud Miah, 28, was convicted for helping Hoque get 1,500 pounds to Syria.

3,000 pounds was delivered via a “Children in Need convoy” in July 2013 and the other 1,500 pounds was sent through the same convoy that Mr. Henning, cited before, travelled with.

The Prosecutor Annabel Darlow QC informed jurors the aid convoys were used "as a means of moving money and other property out of the UK to Syria”.

Also, she added that: "Normal routes are not much use when you look at Syria. So, if you do want to get property or money out to Syria, the convoys would have provided a useful conduit. And you may think that an abuse of the spirit of the convoys to convey the money and property to terrorists”

The Court read the WhatsApp exchanges between Hoque and Mohammed Choudhury, Hoque’s 26-year-old nephew who was fighting with a group affiliated to al-Qaeda, asking for money to buy a “Dragunov sniper rifle”. Hoque, then was put in touch with Miah, a gas engineer who had travelled to and from Syria with aid convoys in 2012 and 2013.

⁴²Rodger Shanahan, “Charities and Terrorism: Lessons from the Syrian Crisis”, Lowly Institute, March 2018

⁴³ Ibid.

⁴⁴BBC News: “Syria aid convoys: Two jailed for funding terror”, 13 January 2017

The Guardian: “Men 'used Syria aid convoys to transport items for terrorists’”, Published 14 November 2016

The Sun: “Brits Funded Jihadis: Two Brits guilty of using Syria aid convoys to funnel cash and supplies to extremists”, Published 23 December 2016

In front of evidence Mr. Hoque confessed sending money to his nephew through Miah because “he was fighting in defense of those who cannot defend themselves” but then he denied knowing his nephew affiliation with al-Qaida.

Hoque’s defendant, Lawrence McNulty QC, stressed his client concern for “for the weak and the underprivileged” and added how “the British Government has supported rebel groups by funding ... and the supply of arms to the rebel groups.” In the same way, David Gottlieb, representing Miah, posted out that his client “crossed the line and broke the law” because he had “seen the effects of the Assad regime”.

In its sentence, Judge John Bevan QC said: “Both of you sought to abuse the legitimate aid convoys which depend on integrity if they are to function properly” and that “There is no such thing as noble-cause terrorism.”

Therefore, Mr. Hoque and Mr. Miah were convicted of offences under section 17 of the Terrorism Act 2000 (‘TACT 2000’)⁴⁵ on 23 December 2016.

Hoque was given a five-and-a-half-year sentence at the Old Bailey, while Miah was jailed for two and a half years.⁴⁶

2.2 Illegal sources.

Drug Trafficking.

Among illegal activities generating income, drug trafficking constitutes one of the biggest sources of profit for terrorism so much that over the decades the term “narco-terrorism⁴⁷” has been coined.

48

The existence of a link between the drugs trade and terrorism organizations is not new for the international community but ever since the 11/9 attack and the focus on terrorism, the attention over this phenomenon has relatively increased.

⁴⁵Section 17: Funding arrangements:

A person commits an offence if:(a) he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and (b) he knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

⁴⁶ Charity Commission for England and Wales: “Risks to charities from an individual associated with terrorism”, Syed Hoque, Published 16 October 2017

⁴⁷ The term “narco-terrorism” was coined by Peruvian President Belaunde Terry in 1983 to describe violent attacks on anti-narcotics police by the Sendero Luminoso insurgents in Peru.

⁴⁸Emma Bjo’rnehed, “Narco-Terrorism: The Merger of the War on Drugs and the War on Terror”, Global Crime Vol. 6, No. 3&4, pp. 305–324, 2004

After the end of the Cold War, we assist at a growing number of weak states, at the development of communication, information, technology, transportation that facilitated the connection between these two phenomena. The link between terrorism and organized crime groups became far-reaching, both at the national and international level.⁴⁹

In the 1980s, terrorist organizations in Latin America relied on drug trafficking to fund their activities. One of the most famous examples is the “Revolutionary Armed Forces of Columbia” (FARC), a militant group that since 1964 has collected taxes from traffickers, committed political kidnappings and attacks on security forces in its fight against the Colombian government.⁵⁰

But it is in the 1990’s terrorist organizations and drug traffickers consolidated their relationships. In areas such as Afghanistan, as stated by the Committee on the Judiciary United States Senate in 2003, “Taliban fundamentalist regime became dependent on opium production at the time it became the host of Osama bin Laden and Al-Qaeda”.⁵¹

The Taliban are a militant group in Afghanistan whose aim is to take over ethnically Pashtun areas in Afghanistan and Pakistan, restore peace and security and enforce their own austere version of Sharia. Notwithstanding the ban on opium cultivation issued in 2001, the Taliban maintained close relationship with drug traffickers.⁵²

A report by the UN Committee of Experts on Resolution 1333 (2001) points out that the funds collected thanks to the production and trade of opium and other drugs are used by the Taliban to purchase war materials such as arms, to fund the training of terrorist and to support the actions of extremists in neighboring countries and beyond.⁵³

The events of the US terrorist attack and the subsequent declaration of “the war on terror” which caused the decline of States sponsorship of terrorism, lead to a situation in which terrorist groups

⁴⁹Christina Schori Liang, Shadow Networks: “The Growing Nexus of Terrorism and Organized Crime”, GCSP Policy Paper n°20 September 2011

⁵⁰Post J.M., Revolutionary Armed Forces of Colombia (FARC) “The World’s Most Threatening Terrorist Networks and Criminal Gangs”, Palgrave Macmillan, New York, 2004, https://doi.org/10.1057/9780230623293_11

⁵¹Hearing before the Committee on The Judiciary United States Senate, One Hundred Eight Congress, First Session, “Narco-Terrorism: International Drug Trafficking and Terrorism- a Dangerous Mix”, May 20, 2003

⁵²Reem Rana & Kleopatra Moditsi, Issue Brief First Committee: Disarmament and International Security, “The Linkage Between Illicit Drug Trafficking and Terrorist Groups”, Old Dominion University Model United Nations, 2017

⁵³ US Department of State, “The Taliban, Terrorism, and Drug Trade”, William Bach, Director, Office of Asia, Africa, Europe, NIS Programs, Bureau of International Narcotics and Law Enforcement Affairs, Testimony Before the Committee on Government Reform U.S. House of Representatives Subcommittee on Criminal Justice, Drug Policy and Human Resources, Washington, DC, October 3, 2001

troubled to find sufficient assets for their activities. Accordingly, the cooperation between organized crime groups and terrorist organizations has become stronger.⁵⁴

The UN Security Council Resolution 1373, adopted in 2001 with the aim to prevent and suppress the financing of terrorist acts, notes with concern “the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking and illegal movement of nuclear, chemical, biological and other potentially deadly materials.”⁵⁵

The United States Drug Enforcement Agency (DEA) has provided a definition of narco-terrorism which call attention to terrorist organization using drug trafficking for profit purposes.

According to this definition “narco-terrorism” denotes the participation of groups or associated individuals in activities such as taxing, providing security for or aiding or abetting drug trafficking endeavors with the aim to fund terrorist activities.⁵⁶

Both drug trafficking groups and terrorism organization are considered criminals by international law. Being criminals, they share the same need of secrecy, to keep a low profile and to remain undiscovered by the authorities.⁵⁷

They have similar vertical structure with widespread cells composed by few individuals who usually run day-to- day operations.⁵⁸ The choice of a cell structure favors independence and operational security: it consents those entities to protect the survival of their organizations because in the case of a cell being exposed, the other can still operates. This kind of structure helps hindering the information available to officials in case of arrest since often cell operatives do not know the identity of the organizations’ leaders and do not have any information or knowledge about the activities of other cells.⁵⁹

Both organizations use violence, brutality and intimidation against civilian.

The cooperation between those two organizations can also be centered on the principals of mutual gain namely because there are profits accessible for both parties that are considered profitable

⁵⁴ Christina Schori Liang, Shadow Networks: “The Growing Nexus of Terrorism and Organized Crime”, GCSP Policy Paper n°20 September 2011

⁵⁵ United Nation Security Council, Resolution 1373 (2001) Adopted by the Security Council at its 4385th meeting, on 28 September 2001

⁵⁶ Emma Bjornehed, “Narco-Terrorism: The Merger of the War on Drugs and the War on Terror”, Global Crime Vol. 6, No. 3&4, pp. 305–324, 2004

⁵⁷ Ibid.

⁵⁸ Engin Duragol, "The Role of Drugs in Terrorism and Organized Crime", 2:2 Ankara B Rev 46, McGill Guide 9th ed, 2009

⁵⁹ Yvonnemarie Antonoglou, Vocal Europe: “Organized Crime Vs. Terrorism: Are They Converging?”, published 12.02.2018

enough to justify this collaboration. These organizations need different types of goods and services for their operations such as weapons, fake passports or ways of laundering money, that can be obtained by sharing resources between the two organizations.

For example, criminal organizations may possess drugs that can provide great amounts of proceeds for a terrorist organization, whereas a terrorist groups may have access to explosives that can be useful for drug trafficking organization.⁶⁰

Essentially there are two main ways through which terrorism organizations can earn money from drug trafficking.

First, it may be that a terrorist organization is directly involved in both activities dealing with drug trafficking itself.⁶¹

Mexican drug trafficking organizations or “drug cartel”⁶² has been labeled and compared to terrorist organizations for their engagement in activities similar or identical to those of foreign terrorist organizations such as assassinations of Mexican law enforcement or members of the local government, executions to intimidate the government and the public, kidnapping, acts of violence and spread of terror.⁶³

Second, it may happen through the so-called marriage of convenience⁶⁴, term used to indicate the relationship between terrorist organizations and the drug traffickers. They work together benefiting from one another.

Some terrorist groups believe that funding societies with drugs may weaken their enemies.

Terrorist groups may control district where drugs are produced taxing drug traffickers and benefiting by collecting money and funding their societies. On the other hand, drug traffickers benefit from terrorism weapon’s provisions, military skills and freedom of movement and protection.⁶⁵

Al-Qaeda terrorist organization has relied heavily on drug trafficking, receiving about millions of dollars annually through the production and distribution of the opium grown in Afghanistan, which

⁶⁰ Christina Schori Liang, Shadow Networks: “The Growing Nexus of Terrorism and Organized Crime”, GCSP Policy Paper n°20 September 2011

⁶¹ Prof. Peter Neumann and Prof. Ana Salinas De Frias, Committee of experts on Terrorism (CODEXTER), Report on the links between terrorism and transnational organized crime, 2017

⁶² The six predominant drug trafficking organizations operating in Mexico are: the Arellano Félix Organization, the Beltrán Leyva Organization, the Gulf Cartel, La Familia Michoacana/Knights Templar, Los Zetas, and the Sinaloa Cartel

⁶³ Sylvia M. Longmire, Lt. John P. Longmire, “Redefining Terrorism: Why Mexican Drug Trafficking is More than Just Organized Crime”, Journal of Strategic Security, Number 1 Volume 1, 2008;

See also: Shawn Teresa Flanigan, “Terrorists Next Door? A Comparison of Mexican Drug Cartels and Middle Eastern Terrorist Organizations”, Terrorism and Political Violence, 24:2, 279-294, 2012

⁶⁴ Pamela Falk, Afghanistan now has Drug Cartels, CBS News (2009)

⁶⁵ United Nations Office on Drugs and Crime, World Drug Report 2017 (ISBN: 978-92-1-148291-1, eISBN: 978-92-1-060623-3, United Nations publication, Sales No. E.17.XI.6).

was then smuggled through neighboring countries in Central Asia with the aim of reaching the international market.⁶⁶

Referring to a very recent case, on July 1, 2020 the Naples' finance police seized 14 tones of amphetamine in the port of Salerno. This amounted to about 84 million pills of the value of one billion, marked with the "captagon" logo, a type of drug produced in Syria by ISIS, a Sunni jihadist group emerged in 2014 as an offshoot of Al-Qaeda group, in order to finance terrorism. It is known, in fact, that ISIS / DAESH finance its own terrorist activities especially by means of drug trafficking. Usually, ISIS engaged in the trafficking of the synthetic drug, massively produced in Syria, which has become for this reason in recent years the first world producer of amphetamines. The finance police have explained that "captagon", a compound of amphetamines and other stimulants, has been smuggled all throughout the Middle East and it is popular among fighters to inhibits fear and pain and popular among civilians as a fatigue relief.

Initially produced in Lebanon and then widespread in Arabia Saudita in the '90, this chemical is then re-emerged in the safe houses of terrorists, especially among ISIS, taking the name of "Isis drugs" or "Jihad drugs".

According to DEA (American Drug Enforcement Administration), ISIS makes extensive use of this drug in every territory under its influence and it runs its distribution, producing high quantity of it for the global market of synthetic drugs.⁶⁷

Therefore, drug trafficking and criminal activities more in general, are today an increasingly important part of terrorist organizations economy.

Human Trafficking.

Over recent years, besides drug trafficking, human trafficking has played an important role in the terrorist strategy to gain financial support as well.⁶⁸

The practice of human trafficking for terrorism financing purposes was addressed by the UN Security Council with the Resolutions No. 2331/2016 and 2388/2017 where it was pointed out that girls and women are continuously exploited and forced into marriage as a reward to fighters and terrorist associates.⁶⁹

⁶⁶ Yvonnemarie Antonoglou, Vocal Europe: "Organized Crime Vs. Terrorism: Are They Converging?", published 12.02.2018

⁶⁷ Guardia di Finanza, insieme per la legalità. Ufficio stampa, Sequestro record di 14 tonnellate di anfetamine: 84 milioni di pasticche col logo "captagon" prodotte in Siria da ISIS/DAESH, 1° luglio 2020

⁶⁸CTED UN Security Council Counter-Terrorism Committee Executive Directorate, "Identifying and exploring the nexus between human trafficking, terrorism and terrorism financing"

⁶⁹ United Nations Security Council, Resolution 2331(2016), Adopted by the Security Council at its 7847th meeting, on 20 December 2016

Specifically, Resolution 2331/2016 recognizes that this practice may be aimed at terrorism purposes and identifies that terrorism can benefit from assets gained through human trafficking.⁷⁰

Accordingly, it encourages the FATF to include an analysis of financial flows associated with trafficking of persons and financing terrorism in its reports.⁷¹

The Resolution then calls upon Member States to improve their FIU (Financial Intelligence Units) to evaluate cases of human trafficking related to terrorism financing and to reinforce legal and regulatory measures to help identify and detect suspicious financial activity related to such abuse.⁷²

Resolution 2388/2017, first of all, reiterates the importance of all Member States to implement relevant Security Council Resolutions⁷³ expressing concern that acts of sexual violence and gender-based violence are known to be part of the strategic objectives and ideology of certain terrorist groups used as a tactic of terrorism and an instrument to increase their finances and their power through recruitment and the destruction of communities.⁷⁴

Then, it urges Members States to ratify or accede to, and for States Parties to effectively implement, the United Nations Convention against Transnational Organized Crime, adopted by the Un General Assembly in 2000, and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁷⁵, as well as all relevant international instruments⁷⁶ and

⁷⁰United Nations Security Council, Resolution 2331(2016), paragraph 5, p 2/8

⁷¹United Nations Security Council, Resolution 2331(2016), point 4, p. 4/8

⁷²United Nations Security Council, Resolution 2331(2016), point 5, p. 4/8

⁷³Resolution 2195/2014
Resolution 2242/2015
Resolution 2253/2015
Resolution 2368/2017
Resolution 2379/2017
Resolution 2427/2018

⁷⁴ United Nations Security Council, Resolution 2388 (2017), p.2/8

⁷⁵ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Protocol) was adopted in November 2000. It establishes the first common international definition of "trafficking in persons". It is intended to prevent and combat such crime and facilitate international cooperation against it. The Protocol also highlights the problems associated with trafficking in persons that often leads to inhuman, degrading and dangerous exploitation of trafficked persons. As is the case with the parent United Nations Convention against Transnational Organized Crime, 2000 (the Convention), the Protocol is expected to standardize terminology, laws and practices of countries in this area of the law. [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (New York, 15 November 2000)]

⁷⁶ United Nations Security Council, Resolution 2388 (2017), point 2, p. 4/8

to strengthen compliance with international Anti-Money Laundering/Combating the Financing of Terrorism standards.⁷⁷

It also calls upon Member States to review, amend and implement anti-trafficking and related legislation to ensure that all forms of trafficking in persons are addressed and to investigate and annihilate organizations engaging in trafficking of persons in areas affected by armed conflict and to take all appropriate measures to collect, preserve and store evidence of human trafficking.⁷⁸

Human trafficking assists terrorism organization for three purposes: “for terrorist groups: providing fighting power, vanquishing the enemy and generating revenue”.⁷⁹

It not only provides assets for terrorism but also intimidates population, reduces resistance and decimates communities.⁸⁰

Rape, sexual slavery, abduction, enslavement are used by terrorist organizations as means to coerce population and force their ideologies. For instance, in 2018, South Sudanese government forces and allied militias allied militias raped women and girls as part of a campaign to expel opponents out of southern Unity State.⁸¹

Again, sexual violence was used as a terrorism tactic in Nigeria. Since 2013, Boko Haram militants, a terrorist group that has established in Nigeria since 2009, have used sexual terrorism against the Nigerian state and its people, especially women and girls, in the north-eastern part of the country as part of its financial calculus and self-perpetuation.⁸²

The expedient of sexual violence and human trafficking humiliates the Nigerian state and “destroys the social fabric of society, where a high premium is placed on the chastity of its women, [and] has [*sic*] a devastating impact on the victims – physically as well as psychologically.”⁸³

Human trafficking has also been used as a mean to attract new fighters and individuals who are willing to give their life serving the “cause” or to be directly utilized in military operations as human shield o suicide bombers and as a means to secure ransom payment or as merchandise to be sold and re-sold.

This practice has been used by ISIS against the Yazid community.

Yazidi, a religious minority in Iraq, has been persecuted by ISIS, starting on 3 August 2014 with the intent of destroy the community and forced them to convert and to abandon their custom and

⁷⁷ United Nations Security Council, Resolution 2388 (2017), point 7, p. 5/8

⁷⁸ United Nations Security Council, Resolution 2388 (2017), point 4-5, p. 4/8

⁷⁹ Moses Atogo Unongu, Wes Africa Regional Training Center: “Terrorism and Human Trafficking”, 2015

⁸⁰ Ibid.

⁸¹ United Nations Security Council, Conflict-related sexual violence: Report of the Secretary-General, 29 March 2019

⁸² Ibid.

⁸³ C.E. Attah, “Boko Haram and Sexual Terrorism: The Conspiracy of Silence of the Nigerian Antiterrorism Laws”, African Human Rights Law Journal, pp 385–406, 2016

traditions. The terrorist group invaded thousands of villages, killing and captivating thousands of people and also forcing thousands of Yazidis to flee to Kurdistan, other areas of Iraq as well as to Mount Sinjar. After the attack, ISIS militants forcibly separated Yazidi boys older than seven years from their families and transferred them to training centers in Mosul, Tel Afar, and Baaj, in Iraq, and in Raqqah City, Tabqa, Tel Abyad, and Suluk, in the Syrian Arab Republic where they were registered and treated as recruits. During the training sessions, Yazidi boys were coerced to watch propaganda videos of armed battles, suicide missions, acts of violence in general, and memorize Quranic verses. The intent was to destroy the cultural and religious identity of the young boys in order to forcibly turn them into ISIS fighters.⁸⁴

Besides that, human trafficking-related activities represent an important source of revenue. Most captives, especially women, are sold in open slave markets and made available to the fighters for individual purchase whereas the rest constitute part of the collective property of the organizations and distributed in groups to military bases.

Fighters can also benefit from captives employing them in their home as domestic servants treating them as “reusable commodities”.⁸⁵

Going back to the previous example of the ISIS crimes against Yazid communities, it also constitutes an example of terrorist organizations using slavery and sexual violence to fund their activities.

A report from the Office of the High Commissioner for Human Rights (OHCHR) indicates that 5,000 Yazid women have been sold into slavery.⁸⁶

Following their enslavement, ISIS has been reported as having created a market in which women are sold generating profit for the group.⁸⁷

Moreover, as ISIS acknowledged in its most famous read online publication *Dabiq (Issue 4)*, one fifth of the captured Yazid women and girls are to be given to ISIS fighters to be divided as “spoils of war.”⁸⁸ The text uses religious references to justify sexual abusing and trafficking, concluding that the taking of woman is part of “Sharia⁸⁹”.

⁸⁴CTED, United Nations Security Council Counter Terrorism Committee Executive Directorate “Identifying and Exploring the Nexus Between Human Trafficking, Terrorism, and Terrorism Financing”

⁸⁵Nikita Malik, The Centre for the Response to Radicalization and Terrorism (CRT), “Trafficking Terror: How Modern Slavery and Sexual Violence Fund Terrorism”, The Henry Jackson Society, 2017

⁸⁶Palai, M., “Report of the Human Rights Council on its twenty-eighth session”, ONCHR, 2015

⁸⁷United Nations Office on Drugs and Crime, Organized Crime Counter-Terrorism, “Module 16: Linkages between Organized Crime and Terrorism”, Vienna 2019

⁸⁸Dabiq 4’, Clarion Project (2014), p. 15

⁸⁹Sharia law acts as a code for living that all Muslims should adhere to

Fraud.

Among the means employed by terrorist organizations to collect funds to finance their activities, the recent global pandemic caused by the COVID-19 virus may look like a perfect opportunity for criminals and terrorists to gain and launder money through fraud.⁹⁰

Generally speaking, COVID-19 and the resulting lockdown led to circumstances where governments, individuals and businesses are working from home opting for online systems and where non-essential businesses have physically closed and turned to online sales.

These restrictions caused severe unemployment, loss of government profit and general economic recession with a huge impact on the economic stability of both individuals, businesses and governments.

The global pandemic has also made the need for medical supplies arise such as medicines or personal protective equipment (like masks or sanitizers) because of the global scarcity due to its high demand.

The United Nations has warned that terrorist groups may see opportunities to use COVID-19 crisis to raise and move funds and increase illicit activity to finance their operations.⁹¹

On that note, reports from FATF reveal that terrorist organizations and criminals have sought to take advantage of the global pandemic through fraudulent activities.

For instances, in some cases criminals use telephone deception (phone scam) to carry out financial frauds. They usually contact their targets pretending to work for a hospital or medical clinic, claiming that a relative of the victim has fallen sick with the virus and request payments for medical treatment. In many cases, the fraudsters impersonate legitimate companies or government officials in the attempt to trick members of the public and obtain personal banking information or physical cash.⁹²

Due to their high demand, there is also a significant increase of online fraud involving medical supplies and pharmaceutical products. In this case the fraudsters pretend to be employees of charities, businesses or international organizations offering masks, tests kit or other products and ask for payment or shipping fees but never deliver the goods.⁹³

⁹⁰FATF (2020), COVID-19-related Money Laundering and Terrorist Financing – Risks and Policy Responses, FATF, Paris, France, www.fatf-gafi.org/publications/methodandtrends/documents/covid-19-ML-TF.html

⁹¹UN (2020), Secretary-General's Remarks to the Security Council on the COVID_19 Pandemic, <https://www.un.org/sg/en/content/sg/statement/2020-04-09/secretary-generals-remarks-theseconomy-council-the-covid-19-pandemic-delivered>.

⁹²Interpol (2020), INTERPOL Warns of Financial Fraud Linked to COVID-19, <http://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-warns-of-financial-fraudlinked-to-COVID-19>.

⁹³Committee of Experts on the Evaluation of Anti Money Laundering Measure and the Financing of Terrorism, "Money laundering and terrorism financing trends in MONEYVAL jurisdictions during the COVID-19 crisis", Strasbourg, 2 September 2020

Finally, FATF reports have identified an increase of fundraising frauds where criminals pretending to be international organizations or charities circulate emails seeking donations for COVID-19 related fundraising campaign such as collecting money for research or products. Those who receive these emails are then requested to provide credit card information or make payments through the fraudster's secure digital wallet.⁹⁴

The FATF encourages the effective implementation of its Recommendations which stimulates greater transparency in financial transactions and give donors assurance that their support effectively reaches their intended destination.⁹⁵

That said, governments should implement and reinforce the risk-based approach when mitigating the risk of funds being diverted to support terrorists and terrorist groups.⁹⁶

By adopting a risk-based approach, competent authorities and financial institutions are able to ensure that measures to prevent terrorist financing are consistent and appropriate to the risks identified. The performance of a risk analysis is necessary to determine where the terrorist financing risks are the greatest. In this way countries are able to identify the main vulnerabilities and address them accordingly.⁹⁷

Summing up, terrorist organizations require funds to support their activities and also to maintain the functioning of the organization itself.

In raising funds, they may rely on legitimate or illicit generated sources of income. Once collected, terrorist activities usually require funds to be moved within or across jurisdictions.

3. *Moving.*

Once they have acquired the needed funds, terrorism organizations use different mechanism to move them within and between organizations like cash couriers, informal value transfer systems such as hawala and cryptocurrencies⁹⁸, whose use I'll explain later in the paragraph and money laundering.

Terrorist organizations usually raise funds in places different from where their cells are located and again from where they intended to launch the attack. Thus, the phase of transferring money

⁹⁴FATF (2020), COVID-19-related Money Laundering and Terrorist Financing – Risks and Policy Responses, FATF, Paris, France, www.fatf-gafi.org/publications/methodandtrends/documents/covid-19-ML-TF.html

⁹⁵ Ibid.

⁹⁶US Treasury (2020), Treasury Underscores Commitment to Global Flow of Humanitarian Aid in Face of COVID-19 Pandemic, <https://home.treasury.gov/news/press-releases/sm969>

⁹⁷ FATF Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorism Financing, High Level Principles and Procedures, June 2007

⁹⁸OECD (2019), Money Laundering and Terrorist Financing Awareness Handbook for Tax Examiners and Tax Auditors, OECD, Paris. www.oecd.org/tax/crime/money-laundering-and-terrorist-financing-awareness-handbook-for-tax-examiners-and-tax-auditors.pdf.

constitutes a critical intermediary step which may represent a potential weak spot since authorities can detect it and undermine terrorist organizations and their operations.⁹⁹

Cash Couriers.

The oldest and simplest way of moving funds is represented by physical movement of money through cash couriers.

This method is common in those countries where the electronic banking system is undeveloped and rudimentary or is not widely used by the population.

Since legitimate financial institutions reinforce their due diligence practices, cash couriers have become an effective way of moving money without leaving an audit trail.

On this topic FATF Recommendation No 32 was issued with the aim of ensuring that terrorists and other criminals cannot elude financial market controls through the physical cross-border transportation of funds.¹⁰⁰

It aims to ensure that countries have the necessary measures to first of all detect the physical cross-border transportation of currency and bearer negotiable instruments¹⁰¹ and then to stop or restrain currency and bearer negotiable instruments that are falsely declared or disclosed and suspected to be related to terrorist financing.

The “physical cross -border transportation” refers to “any in-bound or out-bound physical transportation of currency or BNIs from one country to another country including (1) physical transportation by a natural person, or in that person’s accompanying luggage or vehicle; (2) shipment of currency or BNIs through containerized cargo or (3) the mailing of currency or BNIs by a natural or legal person”. (FATF)

The FATF has developed different types of systems that Countries should implement to meet their obligations under Recommendation No 32.

The physical cross-border transportation of currency or bearer negotiable instruments (BNIs), which are of a value exceeding a maximum of USD/EUR 15,000, are subjected to the submission a truthful declaration to the competent authorities.

Countries may opt for three different type of declaration systems:

⁹⁹ Michael Freeman and Moyara Ruehsen, “Terrorism Financing Methods: An Overview”, *Perspectives on Terrorism*, Vol 7, No 4, 2012

¹⁰⁰ Interpretative Note to Recommendation 32, FATF (2012-2019), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France, www.fatf-gafi.org/recommendations.html

¹⁰¹ According to the FATF Bearer negotiable instruments (BNIs) includes monetary instruments in bearer form such as: traveler’s cheques; negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee’s name omitted.

- a) a written declaration for all travelers. According to this system, travelers have to complete a written declaration, whether or not they are carrying currency or BNI, before entering in the country;
- b) a written declaration system for travelers carrying an amount of currency or BNI that exceeds the pre-set amount of USD/EUR 15,000 and finally;
- c) an oral declaration system to custom officials for all travelers carrying an amount of currency or BNIs above the pre-set amount.

Besides this declaration system, countries may opt for the so-called disclosure system according to which travelers are required to provide the authorities with appropriate information upon request. Persons who are making a false declaration or disclosure or are carrying out a physical cross-border transportation of currency or BNIs that is related to terrorist financing, money laundering or predicate offences should “be subject to effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, and should be subject to measures, consistent with Recommendation 4, which would enable the confiscation of such currency or BNIs”.¹⁰²

Hawala.

Besides the physical cross-border transportation of cash, in the aftermath of the September 2001 attack in the United States, Informal Funds Transfer System (IFT) have received particular attentions as they are used to transfer money both domestically and internationally.¹⁰³

These systems are used in countries where formal banking systems are poorly widespread. Informal systems provide community-based, extremely cost-effective financial services based primarily on cooperation rather than competition and profit.¹⁰⁴

Among those systems “hawala” has assumed major importance.

“Hawala” can be described as an informal method of transferring funds from one part of the world to another without following the normal banking channels.¹⁰⁵

The FATF has defined the word “hawala”, which means “trust” or “exchange”, as a money transmitter, with ties to certain regions or ethnic communities, which provides for transfer and receipt of funds or equivalent value and settle through trade, cash, and net settlement over a long period of time. The difference with other money transmitters is its use of non-bank settlement

¹⁰² Interpretative Note to Recommendation 32, FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatfgafi.org/recommendations.html

¹⁰³ Mohammed El Qorchi, Samuel Munzele Maimbo and John F. Wilson, “Informal Funds Transfer Systems: An Analysis of the Informal Hawala System”, Joint IMF–World Bank Paper, International Monetary Fund, 2003

¹⁰⁴ Orlin Grabbe, “In Praise of Hawala”, J. The Laissez Faire Electronic Times, Vol 1, No 13, May 13, 2002

¹⁰⁵ Mohammed El Qorchi, Samuel Munzele Maimbo and John F. Wilson, “Informal Funds Transfer Systems: An Analysis of the Informal Hawala System”, Joint IMF–World Bank Paper, International Monetary Fund, 2003

methods. Indeed, transferring funds through the conventional banking system usually is not an option for terrorist organizations whose object is to avoid attention of authorities.

What makes hawala attractive to terrorist organization is its reliability, efficiency, speed, low cost and its secretive nature, providing a scrutiny-free remittance channel, that make the system difficult to track consenting criminals to transfer money within country safely.¹⁰⁶

While international transactions, usually involving the client's local bank, its correspondent bank, the main office of a foreign bank and a sub-office of the recipient's foreign bank, may be problematic with money lost "in transfer" and returned to the customers, a local hawaladar is able to conclude the transaction in few days. Indeed, an hawala remittance takes place in few days, one or two at most on, in contrast with the week required for an international wire transfer involving at least one correspondent bank.¹⁰⁷

The author Mohammed El-Qorchi in its work "Finance and Development" (2002) has provided a clear example of how this system works:

"An initial transaction can be a remittance from a customer (CA) from country A, or a payment arising from some prior obligation, to another customer (CB) in country B. A hawaladar from country A (HA) receives funds in one currency from CA and, in return, gives CA a code for authentication purposes. He then instructs his country B correspondent (HB) to deliver an equivalent amount in the local currency to a designated beneficiary (CB), who needs to disclose the code to receive the funds. HA can be remunerated by charging a fee or through an exchange rate spread. After the remittance, HA has a liability to HB, and the settlement of their positions is made by various means, either financial or goods and services. Their positions can also be transferred to other intermediaries, who can assume and consolidate the initial positions and settle at wholesale or multilateral levels."¹⁰⁸

In this light it is important to point out that hawala system is considered legal in some jurisdictions by legitimate customers for reasons of geography, culture, and lack of banking access such as Arab Emirates, Pakistan, Afghanistan, India whereas is illegal in most of the Western countries.¹⁰⁹

In particular, the 2012 FATF 14 Recommendation recommended States to take the necessary measures to ensure that persons or legal persons that provide money or value transfer services are

¹⁰⁶N.S. Jamwal (2002), "Hawala-the invisible financing system of terrorism", Journal Strategic Analysis Volume 26, 2002 - Issue 2

¹⁰⁷Financial Crimes Enforcement Network in cooperation with INTERPOL/FOPAC: "The Hawala Alternative Remittance System and its Role in Money Laundering", Patrick M. Jost United States Department of the Treasury Financial Crimes Enforcement Network (FinCEN), Harjit Singh Sandhu INTERPOL/FOPAC

¹⁰⁸El-Qorchi Mohammad, "Hawala", Finance and Development, Vol. 39, No. 4, 2002

¹⁰⁹FATF Report: The Role of Hawala and Other Similar Service Providers in Money Laundering and Terrorist Financing, October 2013

licensed or registered and subject to effective monitoring and compliance with all the relevant measures included in the FATF Recommendations. Countries should apply appropriate sanctions in cases of identified natural or legal persons carrying out money or value transfer services without a license or registration.¹¹⁰

What makes those systems vulnerable to terrorist abuse is lack of supervisory resources and commitment to effective regulation.¹¹¹

Inadequate efforts to pull hawala and the other similar service providers into the regulated sphere in some countries and the lack of enforcement actions against unregistered entities reduce the motivations of unregulated entities to subjugate to supervision and regulation and make them vulnerable to terrorist abuse. In fact, unregulated operators enable funds to be sent with no Customer Due Diligence (CDD) requirements, allowing terrorists to easily send funds with narrow risk to be identified.¹¹²

Cryptocurrencies.

The evolution of technology and in particular the diffusion of internet and internet capable devices has had a strong impact on the financial sector and lead to the emergence of new phenomena like the use of cryptocurrencies as new method of payment which criminals and terrorist organizations have found ways to exploit to raise and move money.¹¹³

Cryptocurrencies can be described as: “any form of currency that only exists digitally, that usually has no central issuing or regulating authority but instead uses a decentralized system to record transactions and manage the issuance of new units, and that relies on cryptography to prevent counterfeiting and fraudulent transactions.”¹¹⁴

The most well-known cryptocurrency is Bitcoin, a decentralized system which records transactions in a distributed ledger called a blockchain, created in 2009 by a pseudonymous Satoshi Nakamoto offering the promise of lower transaction fees than traditional online payment mechanisms and operating by a decentralized authority, unlike government-issued traditional currencies.¹¹⁵

¹¹⁰FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html

¹¹¹FATF Report: The Role of Hawala and Other Similar Service Providers in Money Laundering and Terrorist Financing, October 2013

¹¹² Ibid.

¹¹³David Toth, "Crimes in Connection with Cryptocurrencies", J of Eastern-European Crim L 193, McGill Guide 9th ed, 2019

¹¹⁴Merriam webster dictionary <https://www.merriam-webster.com/dictionary/cryptocurrency>

¹¹⁵ Lam Pak Nian, David Lee Kuo Chuen, Handbook of Digital Currency, “Introduction to Bitcoin”, pp.5-30, December 2015

Nowadays many different types of cryptocurrencies have emerged like MasterCoin, BlackCoin, Monero or Zcash which share the common feature of offering the possibility to store or transfer money in a cyber-space characterized by lack of traceability or control.¹¹⁶

The absence of a shared international legal framework to expose and supervise the identity of the people involved in the transactions, has increased the use cryptocurrencies in financial operations aimed at financing terrorist organizations.¹¹⁷

The reason why cryptocurrencies constitute a potential risk for criminal and terrorist organization's misuse is the anonymity and security that it could provide to users.

As far as anonymity is concerned, there are no account numbers, names or any other identifying elements that connect the e-value to their owner. The public can see that a certain amount of money is sent by someone to someone else, but no information is shared permitting to link the transaction to anyone.¹¹⁸

Furthermore, cryptocurrencies minimize the role of customary financial intermediaries such as banks, who follow customer-related due diligence obligations. Since cryptocurrencies are decentralized, they are not subject to the same regulations and monitoring as banks or other financial institution and therefore illegal transaction processed in cryptocurrencies detour regulatory controls that those institutions are legally asked to conduct.¹¹⁹

The use of cryptocurrencies differs in respect of the type of terrorist organization at stake.

At the basic level there are the so called "lone wolf attackers" which have few connections, mostly online, with terrorist groups and the small, decentralized cells which share services and can be linked to large terrorist organizations.

Those types of terrorism usually don't need large amount of money to finance themselves and their operation, thus the use of cryptocurrencies is limited.¹²⁰

Even if cryptocurrencies may not give more advantages that conventional methods, such as cash, credit cards or self-funding may provide to lone actors, there are several examples of their use.¹²¹

In 2015, Ali Shukri Amin, 17, of Manassas, Virginia, has been found guilty of conspiring to provide material support to the Islamic State in Iraq (ISIS) over social media.

¹¹⁶M.Jain, "How to Use Everyday Accounting Tools to Understand Cryptocurrency", HBX Business Blog – Harvard Business School, 2017

¹¹⁷Daniele Maria Barone, "Jihadists 'use of cryptocurrencies: undetectable ways to finance terrorism", *Sicurezza, Terrorismo e Società*, International Journal – Italian Team for Security, Terroristic Issues & Managing Emergencies, ISSUE 2 – 8/2018

¹¹⁸B. Marr, "A Complete Guide to Bitcoin", *Forbes*, 2018

¹¹⁹IMF Staff Discussion Note, "Virtual Currencies and Beyond: Initial Considerations", January 2016

¹²⁰ Simone D. Casadei Bernardi, "Terrorist Use of Cryptocurrencies. A blockchain Compliance White Paper", 2019 <https://www.blockchainconsultus.io/wp-content/uploads/2019/08/3191-BCU-Crypto-Terrorist.pdf>

¹²¹Keatinge T., Carlisle D., Keen F., "Virtual currencies and terrorist financing: assessing the risks and evaluating responses", European Parliament, 2018

Amin admitted using the social media Twitter to provide instructions on how to use the virtual currency Bitcoin to disguise the provision of funds to ISIS, as well as facilitation to ISIL supporters seeking to travel to Syria to fight with ISIL. Amin also admitted that he facilitated travel for a Prince William County resident who traveled to Syria to join ISIS in January 2015.

Even if the plan of Amin to raise Bitcoin for ISIS hasn't proven to be successful, this case constitutes a wake-up call to increase community awareness and action to confront and prevent ISIS recruitment and propaganda's threat.¹²²

Then there are large terrorist groups. They possess and control large amount of territory and funds so that cryptocurrencies could be a facile way for them to do so.¹²³

Among large terrorist groups exploiting cryptocurrencies transaction ISIS constitute a significant example. The use of cryptocurrencies and Bitcoin in particular has been recommended to assist ISIS and its supporter for the provision of funds and as a means to reduce the monetary support coming from the West. Among ISIS supporters bitcoin digital currency is suggested for ideological reasons and for its characteristics, insisting on the advantages of this system which includes prevention of counterfeiting, anonymity and untraceability, global distribution and no subjection to legislation.¹²⁴

“This system has the potential to revive the lost sunnah of donating to the mujahideen, it is simple, easy, and we ask Allah to hasten it's (*sic*) usage for us.”¹²⁵

Recently, in 2017, Zoobia Shahnaz, a 27 years old US citizen lab technician who was born in Pakistan was arrested and pleaded guilty to furnishing material support to the Islamic State of Iraq and ISIS.

Shahnaz obtained a bank loan for around \$22,500 providing false information and also applied for and then obtained several credit cards which she used in order to transfer online around \$62,000 in Bitcoin another cryptocurrency to ISIS.

As part of her plea agreement with the government, Shahnaz admitted to having defrauded numerous financial institutions and laundered the stolen proceeds out of the country with the intent to support a specified unlawful activity, namely the provision of material support to ISIS, after which she attempted to leave the United States and travel to Syria.¹²⁶

¹²²The United States Department of Justice, Office of Public Affairs, “Virginia Teen Pleads Guilty to Providing Material Support to ISIL”, 11 June 2015

¹²³ Simone D. Casadei Bernardi, “Terrorist Use of Cryptocurrencies. A blockchain Compliance White Paper”, 2019 <https://www.blockchainconsultus.io/wp-content/uploads/2019/08/3191-BCU-Crypto-Terrorist.pdf>

¹²⁴ International Institute for Counter Terrorism, Jihadists 'Use of Virtual Currency, 17 January 2018

¹²⁵ Bitcoin wa Sadaqat al-Jihad — Ali Shukri Amin (Bitcoin and the Charity of Violent Physical Struggle), Taqi'ul ul-Deen al-Munthir

¹²⁶ The United States Department of Justice. New York Woman Pleads Guilty to Providing Material Support to ISIS (November 2018)

To sum up, terrorist organizations employ different methods to move funds within and between organizations, adapting them to their different organizational structures and to the continuous evolution and development of sophisticated technologies.

Money laundering.

A particular way to move money is the practice of money laundering.

Money laundering is the process through which criminals conceal the illegal origins of their wealth and protect their asset bases, in order to elude the suspicion of law enforcement agencies and avoid leaving a trail of incriminating evidence.¹²⁷

As in the case of terrorism, there is no universal definition of money laundering.

Nearly all definitions of money laundering take into account hiding or moving or investing in incriminated money.¹²⁸

One of the most comprehensive description of this phenomenon can be found in article 305bis of the Swiss Criminal Code, which is an implementation of article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988.

Here money laundering is portrayed as act whose purpose is to frustrate the detection of the origin, the tracing or the forfeiture of assets which one knows or assume derive from a criminal offense or aggravated tax misdemeanor.¹²⁹

This definition includes all the main elements of such crimes, underlining money laundering's goal to hinder the origin identification, tracing or forfeiture of all proceeds of predicate offenses.

When an individual or criminal organization generate significant assets through an illegal activity, they must find a way to disguise the origin of those funds, changing the form or moving them, so not to attract the attention of the authorities to the primary activity and the individuals involved in it.¹³⁰

So, it can be said that money laundering takes place when the criminal activity has been already committed, making money laundering a derivate crime.

Professedly, criminal organization's motive is linked to the financial gain, pure and simple.

Contrary to money laundering, according to Art 2 of the International Convention for the Suppression of the Financing of Terrorism, terrorism organizations usually pursue non-financial goals:

¹²⁷ United Nations Office of Drugs and Crimes, Introduction to money-laundering

¹²⁸ Morris - Cotterill, N., "Money laundering", Foreign Policy, No. 124, pp. 16-22, 2001

¹²⁹ Swiss Criminal Code of 21 December 1937 (Status as of 1 July 2020), art 305bis

¹³⁰ Angela Samantha Maitland Irwin and Kim-Kwang Raymond Choo (Information Assurance Group and Forensic Computing Lab, University of South Australia, Adelaide, Australia) and Lin Liu (School of Computer and Information Science, University of South Australia, Adelaide, Australia), "Modelling of money laundering and terrorism financing typologies", Journal of Money Laundering Control Vol. 15 No. 3, 2012

“Any other act intended to cause death or serious bodily injury to a civilian, or to any other person... to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”.¹³¹

Raising funds is not the primary purpose for terrorism, but nevertheless money is necessary to pursue their ideological goals.

Here money is prepared for the engagement of other crimes, giving to terrorism financing a preparatory nature.

Terrorism organizations rely on money, raising and processing funds, to maintain an effective financial infrastructure so as to support the organization itself and achieve their aims.¹³²

Terrorism may raise funds from a legitimate activity. As explained above in the chapter, terrorist groups can, for example, use charities and non-profit organizations as a facade, with or without the knowledge of the donor, raising funds for alleged humanitarian purposes and then diverting those funds to support their activities.

However, as in the case of money laundering, where the individual or the criminal organization always gains profits through an illegal activity, terrorism’s funds may have a non-legitimate origin.¹³³

I have already analyzed some of the illicit activity through which terrorism organizations derive their “life blood” to pursue their activities: drug trafficking, human trafficking but also kidnapping, fraud.

In those cases, terrorism organizations employ money laundering activities to finance their schemes and conceal the illicit origin of the funds, seeking to avoid leaving a trail that can conduct authorities to the predicate offense¹³⁴, and that’s why “the international legal framework for fighting money laundering was extended to incorporate terrorism financing since the late 1990s.”¹³⁵

Anti-Money Laundering and Counter-Terrorism strategies converge. They both pursue the same objective of attacking the criminal or terrorism organization through its financial activities and then use the financial trail to detect the different components of the terrorism organizations or criminal network. In order to do this, mechanisms to read all financial transactions and to detect suspicious financial transfers, need to be put in place.

¹³¹UN International Convention for the Suppression of the Financing of Terrorism, 1999

¹³² Mojca Ivezic, “Combatting Money Laundering and Terrorist Financing: Does One Size Fit All?”, AML and KYC professional (CAMS CFCS CFCI), 2017

¹³³Vijay Kumar Singh Deputy Director (Law), “Terrorist Financing through Money Laundering – A Threat to National Security”, Competition Commission of India, 2011

¹³⁴ UNODC: Training Manual for LEAs, Counter Terrorism Financing

¹³⁵Tim Krieger and Daniel Meierrieks, “Terrorist Financing and Money Laundering”, Center For International Economics: Working Paper No. 2011-07, June 2011

Both criminals and terrorism assets constitute a threat to financial systems and public institutions and therefore, the same strategies employed to deal with criminals when they transmit their funds through financial systems can be applied in fighting terrorism financing cases.¹³⁶

Money laundering is certainly not a new phenomenon, but rather its roots have old origins.

The historian Sterling Seagrave in his books “Lord of the Rims” dates back the practice of money laundering to 3.000 years ago in the ancient China, where merchants used to hide their profits, earned from trade, to prevent rulers from taking them away and then move and invest them in distant provinces or outside China.¹³⁷

In the Middle Age merchants and usurers, in order to hide the interests for the loans they have been granting, in a period where the Catholic Church had condemned the usury, used a variety of financial tricks that coincide to the current funds recycling techniques.¹³⁸

It is said that the term money laundering has been coined in the 1920’s in the United States during the period of prohibition.¹³⁹

Criminal organizations were collecting large amount of money from prostitution, gambling, extortion and they needed to prove their legitimacy.¹⁴⁰

They usually did so by acquiring legitimate businesses, such as slot and laundries, and then mixing the illicit earning with the legitimate sources of the business itself.

This practice has been used by the famous mob gang-star Al Capone who grossed an estimated \$100,000,000 of illegally gained proceeds annually and the laundered by setting up laundromats throughout the city in order to conceal the illicit origin of the earned money.¹⁴¹

So, the illicit earnings would be added to the profits produced by the laundromats and re-introduced into the financial system.

It was only in the 1980’s that money laundering attracted interest and was recognized as a threat, basically within the drug trafficking scene.

It became obvious that this criminal activity generated huge profits, and this led governments to act against the drug dealers through legislations that would abate them of their illicit profits.¹⁴²

¹³⁶International Monetary Fund, Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT)

¹³⁷Florida Journal of International Law, Vol. 22, Issue 1, “The art of money laundering”, pp. 111-144, 2010

¹³⁸Candidate to Ph. D Lecturer Ramona -Mihaela Urziceanu, “Money Laundering”, AGORA University, Oradea

¹³⁹KYC-CHAIN Industries, “The History of Money Laundering”

¹⁴⁰Sinisa Frantic, “Legal Challenges of Modern World: Money laundering phenomenology”, Economic and Social Development ,31International Scientific Conference on Economic and Social Development

¹⁴¹Unger B., “Money Laundering”, Encyclopedia of Criminology and Criminal, In: Bruinsma G., Weisburd D. (eds) Justice. Springer, New York, NY, 2014, https://doi.org/10.1007/978-1-4614-5690-2_439

¹⁴²Christine Jojarth, “Transnational Organized Crime: Analyses of a Global Challenge to Democracy” in Chapter: “Money Laundering: Motives, Methods, Impact and Countermeasures”

The Money Laundering Control Act of 1986 was the first in history to acknowledge the problem by making money laundering a federal crime and it was later followed by many other statutes.¹⁴³

Over the decades, important newcomers to money laundering fields were corrupt government officials, sanction busters, and terrorists.

The terrorist attacks of September 11, 2001 have led international organizations and several countries to optimize their resolution to interfere with the flow of money to terrorist organization. One of the first initiative was taken by the Security Council with the adoption of Resolution 1373 which requires all member states to freeze funds and assets controlled by people or entities with links to terrorism.¹⁴⁴

The Resolution, which will be further analyzed in the next chapters, encourages States to prevent and suppress the financing of terrorism and criminalize the willful provision or collection of funds for such acts. It also calls upon States to prohibit their nationals or persons or entities in their territories from providing funds, financial assets, economic resources, financial or other related services to persons who engage or attempt to engage, facilitate or participate in the commission of terrorist act.¹⁴⁵

After this, other initiatives were taken in order to target terrorist financial operation making money laundering essential for terrorist groups to carry on with their operations.

Money laundering is not a single act but a process that usually involves three distinct phases¹⁴⁶:

Placement, which is the initial stage of entry into legal financial systems;

Layering which concerns the creation of networks and transactions aimed at fading the link between the initial phase and the end of the laundering cycle and;

Integration which consists in the final stage of the process where the funds are returned to the legitimate economy for later usage.¹⁴⁷

The placement phase includes the physical transfer of money, gained through the illicit activity, from the location of the acquisition into the legitimate financial system unnoticed.

This is the most problematic phase because placing large amount of money may raise suspicious to financial officials.

There are different ways in which “dirty money” are inserted into the financial system:

¹⁴³George A. Lyden, “The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001: Congress Wears a Blindfold While Giving Money Laundering Legislation a Facelift”, *Fordham Journal of Corporate & Financial Law* Volume 8, Number 1 2003 Article 7

¹⁴⁴United Nations Security Council Resolution 1373 of September 28, 2001, Paragraph 1(c)

¹⁴⁵United Nations Security Council Resolution 1373 of September 28, 2001, Paragraph 1 (a, b)

¹⁴⁶Paul Allan Schott, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*, Second Edition and Supplement on Special Recommendation IX

¹⁴⁷Jean B, “Current International Money Laundering Trends and Anti-Money Laundering Cooperation Measures”, *Weld Resource Material Series No.83*

- The most common placement techniques are called “Smurfing” and “Structuring”.¹⁴⁸

Structuring can be done by breaking up funds into smaller sums that are then placed directly into a bank account or by acquiring a series of monetary instruments, in order to remain below the designated threshold level of the bank and avoid inspection by regulators.

However, the risk is that depositing more sums at close temporal distance may raise suspects and the operations could be reported as suspicious.

To avoid this the cash gained with the illegal activity is partitioned between many individuals called “smurf” who make different deposits in multiple accounts at different financial institutions.

Hence the money enters into the financial system and is accessible for the next phase, the layering.¹⁴⁹

- As smurfing, gambling constitutes an attractive placement technique for criminals.

Money is deposited into the casino or gaming machines and then taken out and treated as winnings from bettings. In this way “clean” money can be legally transferred in any bank and then used for legitimate transactions.¹⁵⁰

Casinos are particularly exposed to money laundering and they were first non-bank financial institutions required to develop AML compliance programs.

The scheme followed by money launderers in the context of casino includes first of all the purchase of chips using “dirty money”. Then those chips can be used or for gambling hoping to generate certifiable winnings or collected for a casino check or wire transfer for deposit into a bank account.¹⁵¹

Over the years, online gambling, which is legal in various countries, has become one of the most safest and popular methods of laundering money through the internet.

Online gambling presents all the standard characteristics of a business suitable for laundering, including the entirely virtual nature of transactions, the internationality of financial flow, lack of international coordination, regulatory deficiencies and the reduced cost of transactions.

Moreover, its cross-border nature, makes it difficult for countries to trace and manage.¹⁵²

- Money launderers can also use their illicit funds to purchase high value assets, such as real estate, precious metals, vehicles or antiques, that then are sold and converted into bank transfers

¹⁴⁸McGill Guide 9th ed. "An Updated Look at Money Laundering", Commercial L World 22, 2015

¹⁴⁹ George Papanicolaou, One Stop Brokers, “The first stage in the washing cycle – Placement”, 2015

¹⁵⁰Truman E, Reuter P, “Chasing dirty money: the fight against money laundering” in “Chapter 3: Money Laundering: Methods and Markets”, Institute for International Economics, Washington, DC, 2004

¹⁵¹ United States Attorneys' Bulletin, Vol. 55, Issue 5, “Money Laundering Trends”, pp. 14-20, 2007

¹⁵² Vibhore Yadav, “Online Gambling and the Regulation of Money Laundering”, The Criminal Law Blog, National Law University, Jodhpur, 2020

for the value and so brought into the financial system. Generally, assets are purchased or registered in the name of someone else, a friend, in order to avoid suspects.¹⁵³

- One of the oldest and riskier technique is the Bulk movement.

It involves the physical transportation of cash from the place of origin of the dirty money to another place that doesn't have currency regulations.

Bulk cash smuggling usually involve a significant amount of cash.¹⁵⁴

The illegally made funds are smuggled across borders and covered in vehicles, coffins, maritime freight, commercial trucks but also carried by couriers travelling in trains, buses or planes.¹⁵⁵

The layering phase consist in trying to disguise the source of the illegal funds by creating complex layer of financial transactions aimed at concealing any audit trail as well as the source and ownership of funds.¹⁵⁶

It includes different techniques:

- Shell companies.¹⁵⁷

Shell companies can be described as companies that are formally founded under corporate law but has no active business operations and no assets.¹⁵⁸

They are usually established to conceal the true identity of the owners and the sources of the funds. When the intent is to use them to launder "dirty" money, several shell companies within a composite system of relationships may be established to accomplish the scheme.

They are usually established in different countries where record-keeping conditions for companies are minimal, making it easy to camouflage the real ownership of the companies.

As such they also can evade heavy tax and strict registration regulations on domestic company and consequently, channel capitals to and from these countries and not declaring the transaction to the fiscal authorities of the domestic country.

¹⁵³Hanger, S.D., Schneider, F. and Wakolbinger, F., "Combating money laundering and the financing of terrorism: A survey", Economics of Security Working Paper 65, Berlin: Economics of Security, 2012

¹⁵⁴FATF and MENAFATF (2015), "Money Laundering through the Physical Transportation of Cash", FATF, Paris, France and MENAFATF, Manama, Bahrain, www.fatf-gafi.org/publications/methodsandtrends/documents/ml-through-physical-transportation-of-cash.html

¹⁵⁵Ibid.

¹⁵⁶George A. Lyden, "International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001: Congress Wears a Blindfold While Giving Money Laundering Legislation a Facelift", *Fordham Journal of Corporate & Financial Law* Volume 8, Number 1 2003 Article 7

¹⁵⁷ Dragos-Andrei, "Money Laundering by Means of Offshore Companies", *Law Annals from Titu Maiorescu University*, Vol. 2019, pp. 173-185, NEDELUCU

¹⁵⁸Will Kenton, Investopedia: "Shell Corporation" Updated Mar 21, 2019]

- Offshore Banks.¹⁵⁹

An Offshore bank can be described as a bank that authorize the establishment of accounts of non resident corporations and individuals.

The reason why offshore banks are quite popular for money launders is that they usually merge loose anti-money laundering procedures with severe bank secrecy rules.

In this way criminals can maintain and move funds effortlessly because details of client activities are not accessible to third parties and particularly to law enforcement agencies.¹⁶⁰

So, the process works as followed:

Bank X, situated in country X, allows the non-resident Mrs. J. to establish numerous accounts in the names of different companies. Then illegally- made funds coming from Mrs. J's country of residence is placed in her Bank X account through one of the different placement techniques.

After this, Mrs. J ask Bank X to make different payments and different transaction in order to disguise the illicit origin of the funds.¹⁶¹

- Wire Transfer.

Once illegal funds are obtained and placed in the financial system, they are usually moved, through electronic funds transfer, between domestic or off - shore banks accounts of shell companies or fictional individual.¹⁶²

Electronic money transfer can be executed rapidly and over great distances, involving different offshore jurisdictions.

It represents an excellent method to money launderer to move the money because every day there is a huge number of wire transfers and the limited information divulged for every single transfer, make it difficult for the authorities to distinguish between “clean” and “dirty” money.¹⁶³

- Intermediaries.

Not only banks and companies can be used as a legitimate facade to launder money but also lawyers, accountants and financial advisor are used as intermediaries to perform transaction in place of criminal clients who stay anonymous.¹⁶⁴

¹⁵⁹Deborah Srouf Politis, "Money Laundering, Terrorism Financing and Financial Networks", Israel Defense Forces L Rev 211, McGill Guide 9th ed., 2003

¹⁶⁰Dragos-Andrei Nedelcu, "Money Laundering by Means of Offshore Companies", L Annals from Titu Maiorescu U 173, McGill Guide 9th ed., 2019

¹⁶¹ George Papanicolaou, One Stop Brokers, "The second stage in the washing cycle – Layering"

¹⁶² UNODC: "Risk of Money Laundering through Financial Instruments, Users and Employees of Financial Institutions" (PART I: Known Financial Instruments)

¹⁶³Hanger, S.D., Schneider, F. and Wakolbinger, F., "Combating money laundering and the financing of terrorism: A survey", Economics of Security Working Paper 65, Berlin: Economics of Security, 2012

¹⁶⁴ Nicholas Clark, "The Impact of Recent Money Laundering Legislation on Financial Intermediaries", Thirteenth International Symposium on Economic Crime: Bank Secrecy and Confidentiality Laws - Their Impact on the Control of

“Solicitors probably contributed the greatest degree of professional support and facilitation to the activities of the launderers ... such professionals would create offshore companies; arrange for the handling of large sums of money; sign cheques with a power of attorney; and give Instructions to third parties ; all the while protected behind the cloak of legal privilege.”¹⁶⁵

The benefit of using professionals as intermediaries is, first of all, their credibility which helps to lessen eventual suspects.

Also, the confidentiality obligations that professional have in respect of their client play a key role since it's not easy to break the relationship between professional-client.

In the final phase, the integration phase, the laundered money are cleansed and integrated back into the legitimate economic and financial system, available to be used by criminals or re-invested into their criminal activities.

Normally, at this stage, funds are secured from a potential inquiry by the authorities because they have been moved through the international financial system enough to make the origin of the funds almost impossible to be traced.¹⁶⁶

The main integration techniques are:

- Use of credit and debit cards.

Funds can be reintegrated into the financial system through credit and debit cards released by an offshore bank. Making payments through the offshores bank accounts help criminals to constrict the financial trail that conducts to their country of residence. Also, those banks guarantee clients the protection and non-diffusion of cards information in the same way as the other accounts information are protected.¹⁶⁷

- Consulting.

Consulting firms, as legal and recognized entities, have proven to be very useful for money laundering, for both layering and integration phases.

Their use can, first make the tracking of the assets very difficult and then direct to clean earnings resulting from a legitimate business activity.

In the first-place launderers deposit money into a banking system in jurisdictions where the

Economic Crime in the Modern World, Dickinson Journal of International Law, Vol. 14, Issue 3 (Spring 1996), pp. 467-504

¹⁶⁵U.S. Senate Committee on Government Affairs, “Money Laundering: A Practical Guide to the New Legislation”, reprinted in ROWAN, Bosworth-Davies & Graham Saltmarsh Chapman & Hall, 1994

¹⁶⁶Paul Allan Schott, “World Bank Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism Second Edition and Supplement on Special Recommendation IX”, 2004

¹⁶⁷Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U. S. Senate, “Money Laundering: Extent of Money Laundering through Credit Cards Is Unknown”, 2002

placement of large amount of money is not subject to an intensive survey and then transfer it to one or more consulting firms.

At this point the firm simply asserts part of their income as profits and then reinvest them in a legitimate business activity.¹⁶⁸

- Import/export transaction.

Criminals may decide to bring the “legal money” back in their country of residence as business income.

The key point in this method is the distortion of the price of the goods or services so to add supplementary value between the exporter and the importer.

The domestic trading company, by overvaluing goods and services with respect to the fair market price, receive value from the foreign trading company since the payment is higher than the amount that the importer will collect when it is traded in the market.¹⁶⁹

It's necessary to point that that this transaction can be undertake only when the exporter and the importer have agreed to collude

4.Using.

The final step consists in the use of funds collected and received through transfer.

Terrorist organizations need funds to support and finance operations and also to manage the costs of developing and maintaining the organization per se.¹⁷⁰

Financing a terrorist operation includes travel costs to and from the target area of the attack as well as the costs for purchasing the material necessary to carry out a specific attack such as vehicles, maps, false identity documents, surveillance material let alone the acquisition of a wide range of weapons, from small arms and light weapons to improvised explosive devices.

In this context, funds are also used to cover terrorist organizations day-to-day expenses other than the payment for personnel engaged such as cash couriers that transport cash and messages from one country to another. These financial activities are exiguous in respect of monetary value and consequently very difficult to detect in the absence of other indicators regarding the identity of the persons involved.¹⁷¹

¹⁶⁸Teichmann, F.M.J., "Money laundering and terrorism financing through consulting companies", Journal of Money Laundering Control, Vol. 22 No. 1, pp. 32-37, 2019
<https://doi.org/10.1108/JMLC-10-2017-0056>

¹⁶⁹ Mr. Amar Margin, Asst. professor, G.D. Memorial College, Jodhpur- Rajasthan, “Trade Based Money Laundering, A New Way for Economic Crimes”

¹⁷⁰ FATF Report, Terrorist Financing, 29 February 2008

¹⁷¹Clunan, A., “The Fight against Terrorist Financing”, Political Science Quarterly, 121(4), 569-596, 2006
Retrieved October 27, 2020, from <http://www.jstor.org/stable/20202763>

Funds then are allocated for the salaries of members of the organization and their leaders. Terrorist organizations may also need the proficiency of specialist such as engineers, financiers, doctors or IT specialist whose costs are higher than the costs for the services of ordinary members.¹⁷²

Terrorist organizations may need doctors to staff hospitals and engineers to make bombs, Improvised Explosive Devices (IED), build roads or run oil refineries.¹⁷³

Engineers have proven to be very useful for terrorist using technology and project management. In particular they” use risk management tools, such as consequence analysis to select targets, plan their projects and maximize the physical and psychological harm of their actions.”¹⁷⁴

Besides that, terrorist groups usually provide additional benefits for their members including support for the families of the jailed or the deceased.

The US Department of Defense's Harmony Database, a comprehensive collection of electronic and paper documents collected during operations in Afghanistan and Iraq, contains documents showing information about membership lists, expense reports, and financial spreads.

Analysis carried out on Al-Qaeda in Iraq (AQI), a Sunni group declaring itself the Islamic State of Iraq in October 2006) demonstrate that wages payments continued to arrive to the families of those fighter killed or captured, providing life insurance so long as the organization stands.¹⁷⁵

In this way they increase their reputation and acclamation, cementing the commitment of their members and promoting the activities and ideologies of the organization.

Terrorist organizations usually employs the raised funds for training the operatives which activity involves both ideological indoctrination and practical skills such as bomb making or weapons training. In this circumstance terrorist organizations acquire lands to build training camps, safe havens for trainers and trainee and to supply training facilities. ¹⁷⁶

Since 1989 and until ejected by US armed force, Al-Qaeda Islamic terrorist group financially sponsored and supported highly organized training camps in Afghanistan, used to instruct affiliates in the use of arms, explosives, chemical and other mass destruction weapons. The organization provided for trainee expenses, including travel, medical expenses and nominal salaries.

¹⁷²FATF (2018), Financing of Recruitment for Terrorist Purposes, FATF, Paris www.fatf-gafi.org/publications/methodsandtrends/documents/financing-recruitment-terrorist-purposes.html

¹⁷³British Council: “Immunizing the Mind: how can education reform contribute to neutralizing violent extremism?”, Martin Rose, www.britishcouncil.org ,November 2015

¹⁷⁴M.E.T.T.S. - Consulting Engineers, “Engineering and Terrorism: Their Interrelationships”, Dr. Michael C. Clarke, CPEng, FIEAust. MAusIMM, RPEQ CEO, M.E.T.T.S. Pty. Ltd., Consulting Engineers, Resource Management and Infrastructure Development, Gold Coast, QLD, Australia

¹⁷⁵Bahney, Benjamin W., et al., “Insurgent Compensation: Evidence from Iraq”, *The American Economic Review*, vol. 103, no. 3, 2013, pp. 518–522., JSTOR, www.jstor.org/stable/23469786. Accessed 28 Oct. 2020.

¹⁷⁶ FATF Report, Terrorism Financing, 29 February 2008

For training purposes, Al-Qaeda distributed prime quality materials such as military training manuals and audio-visual documents.

In addition, those camps were used as chemical laboratory, bringing together specialists and scientists to implement the organization's chemical weapons program.¹⁷⁷

Moreover, funds are especially needed for recruitment and propaganda purposes.

Specifically, the recruitment process can be particularly expensive depending on the means used.

By now, the use of Internet has become one of the less expensive ways to expedite the primary step of recruitment and mobilize supporters.

Terrorist organizations have increased their use of propaganda through platforms such as password-protected websites and restricted access Internet chat groups as a means of clandestine recruitment.

The use of barriers to accede to recruitment platforms also reduce the risks to be tracked by intelligence and law enforcement personnel.¹⁷⁸

Most of the time recruitment is accompanied by the promise of a reward which can take the form of a higher status, respect or authority. For instance, suicide bombers believe that they will die martyrs and begin their real life in the afterlife.¹⁷⁹

The Koran claims that a *shaheed* (martyr) will be forgiven for all his sins, he will even be married to seventy-two beautiful virgins in paradise and also will be able to admit seventy of their relatives to paradise, this increasing the motivation for families to support the faith.¹⁸⁰

Terrorist groups also use as an incentive the familial monetary upgrade, promising the suicide bombers that their families will be better taken care of in their absence.

Suicide bombers' families may receive financial reward in the form of a sum of money or other form of material support such as clothing, schooling, healthcare or better jobs.¹⁸¹

Terrorist propaganda is usually customized to lure the neglected and vulnerable part of the society.

The intent of terrorist groups is to exploit and maximize feelings of injustice, shame dissatisfaction and rejection especially among minors which are particularly exposed.¹⁸²

¹⁷⁷Arabinda Acharya S. Rajaratnam, "Small amounts for big bangs? Rethinking responses to "low cost" terrorism", *Journal of Money Laundering Control* Vol. 12 No. 3, pp. 285-298, School of International Studies, Nanyang Technological University, Singapore, 2009

¹⁷⁸Daly, Sara A. and Scott Gerwehr, "Al-Qaida: Terrorist Selection and Recruitment", McGraw-Hill Companies, Inc., 2006, <https://www.rand.org/pubs/reprints/RP1214.html>.

¹⁷⁹Mohammed M. Hafez, "Rationality, Culture, and Structure in the Making of Suicide Bombers: A Preliminary Theoretical Synthesis and Illustrative Case Study", *Studies in Conflict & Terrorism*, Volume 29, 2006

¹⁸⁰P. W. Singer, "The Making of a Terrorist: Ch.8: The New Children of Terror", James Forest ed., 2005

¹⁸¹Simon Perry & Badi Hasisi, "Rational Choice Rewards and the Jihadist Suicide Bomber, *Terrorism and Political Violence*", 27:1, 53-80, 2015, DOI: 10.1080/09546553.2014.962991

¹⁸²Commission's Expert Group on European Violent Radicalization, 2008, "Radicalization Processes Leading to Acts of Terrorism", Report Submitted to the European Commission

Terrorism and propaganda are closely related. Terrorist organizations use media as a “powerful tool in their psychological warfare”.

Terrorist attacks are used by terrorist groups to promote their cause on the media public agenda, to turn to their own people seeking legitimacy, support, funding and even recruit new members.¹⁸³

Terrorist propaganda takes form of newspapers or articles, the acquisition of radio and television outlet to share the message worldwide, the purchase of internet domain names and the administration of website.¹⁸⁴

For example, Al-Qaeda recruitment campaign includes audio and video streams, cassettes, CDs, DVDs, and many other means of persuasion. Video of suicide attacks are often diffused and uploaded to the Internet in order to show the commitment of Al Qaeda’s terrorists and their ability of annihilating their enemies.¹⁸⁵

ISIS propaganda, in particular, is one of the most advanced yet. It relies on sophisticated digital means such as films using Hollywood-style production tricks and special effects, portraying ISIS militant as heroes and representing fighting for ISIS similar as playing in a real-life video game.¹⁸⁶ ISIS portray violence and force, recordings beheadings or footages of innocent victims killed by enemies of ISIL in order to attract aggrieved or marginalized individuals. In propaganda designed for other market sectors, ISIS depict images of food, kittens and babies seeking to portray itself in a bright and reassuring light and describe the normality of life in its controlled territories.¹⁸⁷

Summarizing, terrorism financing embraces three different activities of fund-raising, moving and concealing funds and using funds to support terrorist organizations to carry out specific terrorist attacks.

Funds may be raised through legal or illegal means, and legitimate humanitarian or other organizations may be exploited intentionally or unknowingly as a channel for financial or logistical support to terrorism.

For this reason, preventing terrorist organizations from accessing financial resources is essential to counter the threat of terrorism.

¹⁸³ Gabriel Weimann, “How Modern Terrorism Uses the Internet”, United States Institute of Peace, Special Report 116, March 2004

¹⁸⁴ FATF Report (2015) Emerging Terrorist Financing Risks
<https://www.fatf-gafi.org/media/fatf/documents/reports/Emerging-Terrorist-Financing-Risks.pdf>

¹⁸⁵ Guadagno, Rosanna E, “Social Influence in the online Recruitment of terrorists and terrorist Sympathizers: Implications for Social Psychology Research”, *Revue internationale de psychologie sociale*, vol. tome 23, no. 1, pp. 25-56, 2010

¹⁸⁶ Lieberman, Ariel Victoria, “Terrorism, the Internet, and Propaganda: A Deadly Combination”, 2017

¹⁸⁷ Counter-Terrorism Committee Printed at United Nations, Geneva – 1615962 (E) – October 2016 – 300 – S/2016/49 Executive Directorate (CTED) in 2016, Global survey of the implementation of Security Council resolution 1373 (2001) by Member States

The fight against terrorism financing is extremely complex, requiring collective actions internationally among states as well as domestically among private actors and government agencies.

CHAPTER 2:

UN International Conventions on Counter-Terrorism Financing

I. Overview

In the fight against terrorism financing, the three leading sources of international obligations are represented by the 1999 International Convention for the Suppression of the Financing of Terrorism, the Resolutions of the United Nations Security Council, and in particular, Resolution No. 1373/2001 and the Special Recommendations on Terrorism Financing issued by the Financial Action Tasks Force (FATF) on October 30, 2001.¹⁸⁸

It is essential to emphasize that it is responsibility of sovereign States to enforce measures against terrorism financing and, more in general, terrorism. No international tribunal has been established with competence to prosecute an offender for aircraft hijacking, bombings or terrorism financing. So, those legal instruments developed over the decades to address the problem of terrorism financing can only be implemented under national legislation which criminalizes the terrorism financing offenses, creates proper jurisdiction in domestic courts and authorizes the cooperation mechanisms essential to their effectiveness.

The efforts taken by the international community to prevent and suppress the financing of terrorism constitute a fraction of the bigger effort to fight all aspects of terrorism, both globally and at regional level.

The lack of consensus on what constitute terrorism and the absence of an internationally recognized definition, has led to the production of treaties dealing with particular aspects of terrorism rather than terrorism in general.

Since 1963, the international community, under the auspices of the United Nations, has adopted nineteen international conventions criminalizing terrorism and in particular specific acts such as hostage taking, acts against certain means of transport or categories of persons, or use of bombs or other explosive devices for terrorist purposes.¹⁸⁹

Several conventions have also been adopted at the regional level such as, among others, the European Convention on the Suppression of Terrorism (1977), Organization of American States (OAS) Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against

¹⁸⁸Legal Department International Monetary Fund 2003, "Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting"

¹⁸⁹ United Nations Office of Counter Terrorism, Resources: International Legal Instruments.

Persons and Related Extortion that are of International Significance (1971) or the Convention of the Organization of the Islamic Conference on Combating International Terrorism (1999).¹⁹⁰

These instruments have helped establish global anti-terrorism norms and provide a framework for international counter-terrorism cooperation.

Until the 1998 terrorist attack towards US embassies in Kenya and Tanzania, the financing of terrorism was seen merely as a problem of States sponsor of terrorism, sponsorship including diplomatic encouragement and material assistance such as weapons, training, funds and sanctuary. Indeed, State sponsorship has played an important role in fueling terrorism.

Most of terrorism organizations of the 1970s and 1980s were significantly dependent upon state sponsors, and state sponsorship also helped the rise of jihadist international terrorism in the 1990s. In the late 1990, many states resorted to terrorism sponsorship as it was considered a practice capable of providing great benefits while bearing modest costs.¹⁹¹

In the view of State sponsors terrorist clients could be used to destabilize neighboring states, to overthrow rival regimes, and also used as a cost-effective tool for undertaking warfare against enemies. State sponsors were also motivated by ideology or by domestic political reason such as currying favor with key domestic constituencies and the mass public by assisting “kin” in states abroad.¹⁹²

The benefits of state sponsorship are even more significant for terrorism organizations, taking the form of numerous tangible assets available to terrorist groups such as weapons, diplomatic pouches for transport of weapons and explosives, false identification in the form of genuine passports, training in the use of arms and explosives, and funding.¹⁹³

The UN Security Council (UNSC) adopted several resolutions and treaties authorizing economic sanctions to force state sponsors to stop their support for terrorism, including sanctions against Libya in 1992 over Tripoli’s noncooperation with the investigation of two airline bombing incidents or against Sudan in 1996 for the involvement in an assassination attempt on Egyptian president Mubarak.

In the cases of Sudan and Libya, sanctions have proven to be effective tools against state support of terrorism since both states stopped their sponsorship following the application of the sanctions.¹⁹⁴

¹⁹⁰ United Nations, New York, International Instruments related to the Prevention and Suppression of International Terrorism, 2008

¹⁹¹ Stephen D. Collins, “State-Sponsored Terrorism: In Decline, Yet Still a Potent Threat”, *Politics & Policy*, Volume 42, No. 1, Kennesaw State University, 2014

¹⁹² Byman Daniel, “Deadly Connections: States that Sponsor Terrorism”, Cambridge: Cambridge University Press, 2007

¹⁹³ Hoffman Bruce, “Inside Terrorism”, New York: Columbia University Press, 1998

¹⁹⁴ Sebastian von Ensled Director, “Assessing the UN’s Efforts to Counter Terrorism”, United Nations University Centre for Policy Research Occasional Paper, United Nations University, Tokyo, Japan, 2016

On 7 August 1998, US Embassies in Nairobi, Kenya and Dar es Saalam, Tanzania became the targets of two simultaneous bombing attacks masterminded by Al-Qaeda terrorist group, resulting in the killing 224 people and wounding over 5,000.

Al-Qaeda's means of financing the bombings were practical, effective and substantially untraceable. The organization moved money using legitimate bank-to-bank transfers in a financial system whose security measures allow for the liquidity of money but demand legal intervention for governmental access and through the "hawala" system, in which transactions are performed entirely in cash, leaving no paper trail.¹⁹⁵

The attacks on US embassies underscored the global reach of terrorist organizations, operating worldwide as a part of global network.¹⁹⁶

After the 1998 bombings of the U.S. embassies in Kenya and Tanzania, the United States and other Western states began to recognize the role of non-state actors in supporting terrorism and lead the United Nation Security Council to focus on transnational non-state terrorism.¹⁹⁷

For this purpose, the UN Security Council adopted the Resolution 1267/1999 requiring States to enforce sanctions and freeze funds and other financial resources of the Taliban for hosting Al-Qaeda, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban.¹⁹⁸

Although this resolution expressed the traditional efforts on targeting state sponsors, the Taliban in the case at stake, it was the first time that the UN Security Council had acknowledge that a transnational terrorist organization constitute a threat to international peace and security.¹⁹⁹

During the same year, in 1999, the International Convention for the Suppression of the Financing of Terrorism was negotiated and then opened for signature on 10 January 2000.²⁰⁰

The International Convention for the Suppression of the Financing of Terrorism has been signed by 132 States and as from 2020 it is in force among 189 States.²⁰¹

¹⁹⁵ Kevin Bernarding and Matthew Schuster, "Anatomy of a Terrorist Attack an In-Depth Investigation into the 1998 Bombings of the U.S. Embassies in Kenya and Tanzania", 2005-17

¹⁹⁶ Chantal De Jonge Oudraat, "Disarmament Forum, The United Nations and the campaign against terrorism", 2004

¹⁹⁷ Anne L. Clung, "The Fight against Terrorist Financing", *Political Science Quarterly*, Vol. 121, No. 4, pp. 569-596, Winter, 2006/2007

¹⁹⁸ United Nation Security Council, Resolution 1267/1999, Adopted by the Security Council at its 4051st meeting on 15 October 1999, point 4(b)

¹⁹⁹ United Nations Security Council, first report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities, 2004

²⁰⁰ See note 194

²⁰¹ United Nations Treaty Collection, International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999, Status as at: 05-11-2020

At first it had only modest success. Prior to the September 11 terrorist attacks, only four States had adhered to the Convention. Then, following those tragic events, States began to see the fight against the financing of terrorism as a priority.²⁰²

Unlike the previous nine conventions²⁰³ dealing with different aspects of terrorist crimes, this convention doesn't address acts of terrorism, but rather deals with the financing of such crimes, seeking to put an end to the provision of material and financial resources to terrorist organizations.²⁰⁴

The International Convention for the Suppression of the Financing of Terrorism was a French initiative, strongly supported by the Foreign Ministers of the Group of eight (G-8)²⁰⁵ whom identified the prevention of terrorist fund-raising as a "priority area for further action".²⁰⁶

It is possible to analyze the provisions of the Convention according to the three different phases of terrorism financing: collecting, moving and using.

2. Collecting.

As far as the collection of funds is concerned, the Convention calls upon States to criminalize the offense of financing of terrorism.

The Convention doesn't apply where the offense is carried out in a single state, the claimed offender is a national of that state and is present in its territory, and no other state has a basis under the Convention to exercise jurisdiction over the accused offender.²⁰⁷

Each State party shall adopt measures: a) to establish the offense of terrorism financing, as set forth in art 2 of the Convention, as criminal offenses under its domestic law and b) to make those offenses punishable with adequate sanctions, taking into account the grave nature of the offenses.²⁰⁸

²⁰²United Nations Audiovisual Library of International Law, International Convention for the Suppression of the Financing of Terrorism by Pierre Klein, Professor, Director of the Centre for international law Université Libre de Bruxelles

²⁰³ 1970 Convention for the Suppression of Unlawful Seizure of Aircraft; 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomats; 1979 International Convention against the Taking of Hostages; 1980 Convention on the Physical Protection of Nuclear Material; 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; 1997 International Convention for the Suppression of Terrorist Bombings.

²⁰⁴Roberto Lavalle, "The International Convention for the Suppression of the Financing of Terrorism", Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2000

²⁰⁵France, Germany, Italy, the United Kingdom, Japan, the United States, Canada, and Russia

²⁰⁶Conclusions of G8 Foreign Ministers, 9 May 1998, Global Issues, paragraph 28

²⁰⁷International Convention for the Suppression of the Financing of Terrorism, Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999, art 3

²⁰⁸Ibid, art.4

Art 2 provide for a definition of terrorism financing as an offense committed by any person who “by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they will be used in full or in part, in order to carry out [a terrorist act as defined in the Convention].”²⁰⁹

The third paragraph of art 2 specifies that for an act to constitute an offense under the Convention, it is not necessary that the funds are actually used to perform one of the defined offenses.²¹⁰

Thus, it avoids the need to demonstrate that the person accused knew the destination of the funds or that the funds would be used to finance a terrorist act.

The Convention leaves to each Party to define the form of intent or knowledge necessary to constitute the offense and the means to prove those elements. The minimum requirement consists of actual knowledge of the accused that the funds will be used for a terrorist act, together with the intention to accomplish this result.

However, different legal systems apply less direct forms of intent, such as the cases where the accused foresaw, or could have foreseen, or should have foreseen, that the terrorist act would take place as a consequence of the provision of the funds, and he/she provided them all the same.

Then, paragraph 4 and 5 of art 2, contain provisions regarding attempts (p.4) and accomplices, organizing and directing others to commit the offenses and conspiracies (p.5)

Attempts to undertake the acts are criminalized in the same way as the offenses themselves.²¹¹

Contributing to the perpetration of the offense by a group of persons acting with a common purpose is considered as committing an offense under the Convention, once proved that the contribution is intentional and that, either (a) it is made with the purpose of promoting the criminal activity or criminal purpose of the group, where such activity or purpose includes the commission of an offense under the Convention; or (b) it is made in the awareness of the intention of the group to carry out an offense under the Convention.²¹²

3.Moving.

Moving to the second phase, the Convention set forth a general obligation on States Parties to require financial institutions and other intermediaries to adopt measures necessary to identify their customers, to be especially cautious and to report unusual or suspicious transactions, suspected of stemming from a criminal activity.

For this purposes Member States should consider:

²⁰⁹ Ibid, art 2 paragraph 1

²¹⁰ Ibid, art 2 paragraph 3

²¹¹ Ibid, art 2 paragraph 4

²¹² Ibid, art 2 paragraph 5

- a) adopting regulations forbidding the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and to adopt measures to secure that such institutions authenticate the identity of the real owners of such transactions;
- b) with respect to legal entities, to require financial institutions to validate the legal existence and the structure of the customer;
- c) requiring financial institutions to notify without delay to the competent authorities all complex, suspicious large transactions and unusual patterns of transactions without an apparent economic or lawful purpose, without the risk of assuming criminal or civil liability for breach of any restriction on disclosure of information if they notify their suspicions in good faith and;
- d) requiring financial institutions to maintain, for a minimum of five years, all records on transactions, both domestic and international.²¹³

States parties are also required to cooperate in the prevention of the offenses established in the Convention by considering:

- a) Measures for the supervision of all money-transmission agencies;
- b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments without impeding in any way the freedom of capital movements.

States shall also cooperate by exchanging accurate and verified information, in accordance with their domestic law, to prevent the commission of offences set forth in the Convention in particular by:

- a) Setting and maintaining channels of communication between their competent agencies and services to assist the secure and prompt exchange of information concerning all aspects of terrorism financing offences;
- b) Cooperating with each another in conducting inquiries, with respect to the offences set forth in Convention, concerning: the identity, location and activities of suspected persons involved in such offences and the movement of funds relating to the commission of such offences.²¹⁴

Apart for the UN International Convention for the Suppression of the Financing of Terrorism, there are several UN Conventions specifically dealing with money laundering.

As already seen in the previous chapter, criminal organizations usually transfer illicit funds through financial institution or different accounts in different parts of the globe and jurisdictions, giving rise

²¹³ Ibid, paragraph 18 (2)

²¹⁴ Ibid, paragraph 18 (3)

to transnational threats and problems that require cooperation between States in carrying out investigations, judicial proceedings and in setting norms and international standards.²¹⁵

Therefore, money laundering is an international problem, which can't be faced by one country or agency alone but rather, carry out by international cooperation.

Attention to Money Laundering at international level began in 1988 when the United Nations decided to strengthen the international cooperation by the adoption of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) in 1990, with bounding authority.

As of today, the number of the parties is 191.²¹⁶

It was the first international instrument to recognize the problem of money laundering even if its scope is limited to drug related primary offense.²¹⁷

According to art 2 the purpose of this Convention is to promote cooperation among the Parties in order to address more effectively the different aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension²¹⁸ and then Article 3(1) (b) requires each party to enact domestic legislation criminalizing the laundering of drugs proceeds.

For the purpose of the Convention, money laundering is defined as the conversion or transfer of property [derived from any offense or offenses listed under the Convention] with the aim of concealing the illicit origin of the property or of facilitating any person involved in the commission of such offenses to avoid the legal consequences of his actions.²¹⁹

Article 5 is also particularly important, imposing to parties of the Convention to adopt different measures as may be necessary to enable confiscation of drug trafficking and money laundering proceeds, as well as the instrumentalities used to commit such offenses.

Each party is required to enact domestic laws to restrain or freeze forfeitable assets, property and instrumentalities, for the purpose of eventual confiscation.

²¹⁵Amrani, H., "The Development of Anti-Money Laundering Regime: Challenging issues to sovereignty, jurisdiction, law enforcement, and their implications on the effectiveness in countering money laundering", Erasmus University Rotterdam, 2012

²¹⁶ United Nation Treaty Collection: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988
[Status as at:16-10-2020 07:22:39 EDT]

²¹⁷Jimmy Gurulè, "The 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances-A Ten Year Perspective: is International Cooperation Merely Illusory?", Fordham International Law Journal, Volume 22, Issue 1, Article 2

²¹⁸Final Act of the United Nations Conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; Art 2: Scope of the Convention

²¹⁹ Ibid, art 3 (b) (i)

Courts or other competent authorities of each parties shall order that bank, financial or commercial records be made available or be seized. Parties can't refuse to act under the provisions of this paragraph on the ground of bank secrecy.²²⁰

Parties to the Convention are also required to identify, trace, and freeze or seize proceeds, property, instrumentalities [for the purpose of eventual confiscation], for the benefit of the requesting party having jurisdiction over an offense established in accordance with the Convention.

If forfeitable property is situated in its territory, the requested party shall, upon request, obtain an order of confiscation. If the order is accorded, the requested party shall give it effect.

Alternatively, the requested party, upon request, shall enforce other countries' order of forfeiture submitted with respect to property located in its territory.²²¹

Following the international character of drugs-trafficking and money laundering, the 1988 Convention also requires that each participating State is entitled to mutual legal assistance in the investigation, prosecution, and judicial proceedings²²² including the gathering of evidence, testimony, searches, and seizures.

The Convention introduced procedures for direct transmission of requests for mutual judicial assistance in order to eliminate the slowness of the procedures and it made the cooperation compulsory so to control and restrict bad faith denial to cooperate.²²³

However, the Vienna Convention is limited by state sovereignty.

Its art 2 paragraph 2 provides that the Parties to the Convention shall perform the obligation say out in the Convention "in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States".²²⁴

This means that the Convention doesn't allow the United Nations to interpose in the affairs of sovereign countries without their consent.

No action is authorized if states don't comply, since acting would suggest that international remedies prevail over national sovereignty.

However, soft law still entails unpleasant consequences for non-compliant States in form of diplomacy, economic sanctions, and other forms of international pressure.

²²⁰ UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, art 5 (1-3)

²²¹ Ibid, art 5 (4) (a-i/ii)

²²² Ibid, art 7

²²³ Jean-François Thony, "Current Developments in Monetary and Financial Law, Volume 3, International Monetary Fund" in "Cap 5 : Money Laundering and Terrorism Financing : An Overview"

²²⁴ UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, art 2 (2)

Later, in 2000, money laundering was addressed in the United Nations Convention against Transnational Organized Crime (the Palermo Convention) aimed at preventing and combating transnational organized crimes.

It came into force in 2002 and at date the number of the parties is 190.²²⁵

For the first time the term “laundering of proceeds of crime (money laundering)” is mentioned and it is asked to countries to criminalize money laundering as a primary offense.²²⁶

The Convention stands as a tool for combating four forms of conduct as criminal offenses, when committed intentionally: participation in an organized criminal group (article 5); laundering of proceeds of crime (article 6); corruption (article 8); and obstruction of justice (article 23).²²⁷

The criminalization of laundering criminal proceeds is formulated identically as in the Vienna Convention but there is a difference between the two instruments.

The Vienna Convention deals with predicate drugs-related crimes whereas this Convention inspires State Parties to take into consideration all the great variety of predicate crimes including, as already mentioned, serious crimes, participation in organized criminal groups, corruption, and the obstruction of justice.²²⁸

Among the measure to combat money laundering, the Convention calls upon States to set up a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and other agencies particularly exposed to money-laundering, in order to identify and prevent all forms of money-laundering. Such a regime shall particularly focus on requirements for customer identification, record-keeping and the reporting of suspicious transactions.²²⁹

Moreover, States Parties shall ensure that all the relevant competent authorities, including administrative, regulatory, law enforcement, cooperate and share information at the national and international levels. For this purpose, Parties shall consider establishing Financial Intelligence Unit to serve as a national center for the gathering, analysis and circulation of information regarding potential money laundering.²³⁰

²²⁵ United Nations Treaty Collection: United Nations Convention against Transnational Organized Crime, New York, 15 November 2000, [Status as at:16-10-2020 07:22:39 EDT]

²²⁶ Chapter 2: “Review of Literature: Money laundering and financing of terrorism”

https://www.unodc.org/documents/southeastasiaandpacific/2009/02/TOCAMLO/07-CHAPTER_II.pdf

²²⁷ General Assembly resolution 55/25 of 15 November 2000, United Nations Convention against Transnational Organized Crime

²²⁸ Ahmad Equal Mohamad Al- Zaqibh, “International Laws on Money Laundering”, International Journal of Social Science and Humanity, Vol. 3, No. 1, 2013

²²⁹ UN Convention against Transnational Organized Crimes, Art 7(1)(a)

²³⁰ Ibid, Art 7 (1) (b)

Parties to the Convention shall also adopt feasible measures to identify and monitor the movement of cash and appropriate negotiable instruments across their borders, without prejudicing the movement of legitimate capital.²³¹

Finally, in order to combat money laundering, Parties should encourage international cooperation among judicial, law enforcement, and financial regulatory authorities.²³²

While the earlier 1988 UN Drug Trafficking Convention focused on international legal cooperation rather than on police cooperation, Article 27(1) of the Palermo Convention cover all forms of cooperation. It provides a general obligation on Parties to strengthen the effectiveness of law enforcement action against the offenses set out in the Convention, adopting effective measures such as enhancing means of communication between law enforcement agencies.

It was generally agreed that international cooperation in law enforcement was essential in order to enhance the effectiveness of the international response to transnational organized crime.

However, if on the one hand, effective international cooperation in the area of law enforcement has improved, on the other hand it is largely restricted to bilateral arrangements between more developed countries.²³³

But the real reason why the Palermo Convention has not become the real revolutionary leading international legal instrument against transnational organized crimes and money laundering is the indifference towards it shown by many signatory States.

4. Using.

As for the using phase, the International Convention for the Suppression of the Financing of Terrorism provides that each State Party should take the necessary measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing terrorism financing as well as the proceeds derived from such offences, for purposes of possible forfeiture.

Moreover, States Parties are asked to adopt appropriate measures for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in Convention and the proceeds derived from such offences. States Parties may also consider establishing mechanisms whereby the funds derived from the forfeitures are utilized to compensate the victims of terrorism financing offences or their families.²³⁴

²³¹ Ibid, Art 7 (2)

²³² UN Convention against Transnational Organized Crimes, Art 7 (4)

²³³ Peter Gastrow, "Global Initiative Against Transnational Organized Crime: Adopted 18 years ago, why has the UNTOC still not achieved its aim?", 2018

²³⁴ UN International Convention for the Suppression of the Financing of Terrorism, paragraph 8

To secure the establishment of a comprehensive and uniform framework for international cooperation in the field of terrorism financing, the Convention comprises exhaustive provisions on mutual legal assistance and extradition.

States parties should provide one another the highest degree of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offenses established pursuant to the Convention.²³⁵

Moreover, given the increase of criminals' abuse of bank secrecy, including all aspect of the confidentiality of customer's bank accounts, States are forbidden to refuse a request for mutual legal assistance on the ground of bank secrecy.²³⁶

Then the Convention applies the principle of *aut dedere aut judicare* (either prosecute or extradite) with regard to the offenses established in its text.²³⁷

When a State party obtains information that an offender or assumed offender is present in its territory, it has to take all the measures to appropriate investigate those facts.

Upon being satisfied that the conditions so warrant, the State must take the person into custody and notify the other parties its jurisdiction over the offense and inform whether it plans to exercise its jurisdiction and prosecute the person. If the State party, in whose territory the alleged offender is present, does not extradite the offender, it is obliged, without exception, to submit the case to prosecution authorities.²³⁸

The Convention asks States to cooperate with each other and offers them legal assistance in the matters covered by the Convention.

Case study.

It is interesting to mention a recent case of application of the International Convention for the Suppression of the Financing of Terrorism: Application of The International Convention for The Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine V Russia).

In 1991, Ukraine proclaimed its independence from the Soviet Union. Consequently, the Russian Federation commits itself to respect Ukraine's sovereignty and independence.

²³⁵ International Convention for the Suppression of the Financing of Terrorism, Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999, art 12 paragraph 1

²³⁶ Ibid, art 12 paragraph 2

²³⁷ The Obligation to Extradite or Prosecute (*Aut Deere Aut Judicare*), [Agenda item 10], Document A/CN.4/571, Preliminary report by Mr. Zdzislaw Galicki, Special Rapporteur, 2006

²³⁸ International Convention for the Suppression of the Financing of Terrorism, Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999, art 9 and 10

However, over the last decade, Russian leaders has sought to restore Russian dominance through political, economic, and military power over its neighbors. Since then, Ukraine has been subjected to Russian campaigns of intimidation and aggression.

In eastern Ukraine, the Russian Federation has launched and nourished an armed insurgence against the authority of the Ukrainian State. The insurrection also includes the systematical provision of heavy weapon, money, personnel, training and any other kind of support to illegal armed groups. The aim was not only to support the fight against the Ukrainian authorities, but also to carry out terrorist attacks, such as the shooting down of Malaysia Airlines Flight MH17 in 2014, resulting in the killing of 298 civilians.

The UN Security Council condemned in the strongest terms this incident, demanding those responsible to be held to account. However, the Russian Federation didn't make any move to bring the perpetrators to justice or to find a justification to why weapons from its territory were used to perpetrate the terrorist attack.

The Russian support of this and other vicious campaigns of terrorism in Ukraine constitute a violation of fundamental principles of international law, including those included in the International Convention for the Suppression of the Financing of Terrorism.

In 2017, Ukraine submitted to the International Court of Justice its lawsuit against Russia, reporting different violations of the International Convention for the Suppression of the Financing of Terrorism and the International Convention on the Elimination of All Forms of Racial Discrimination.

Ukraine claimed that Russia violated its obligations under the Convention by

- financing terrorist acts;

- failing to cooperate in the prevention of terrorism financing offenses. Indeed, under Article 18, States Parties are required to cooperate in the prevention of terrorism financing offenses as defined by Article 2 including “taking all practical measures . . . to prevent and counter preparations in [its] territories for the commission of those offenses”;

- failing to take appropriate measures to detect, freeze, and seize funds used to support illegal armed groups that engage in terrorism acts in Ukraine in violation of Articles 8 and 18

- failing to investigate, prosecute, or extradite perpetrators of terrorism financing within its territory, in violation of Articles 9, 10, 11, and 18;

- failing to assist Ukraine with criminal investigations of the terrorism financing, in violation of Articles 12 and 18.

To sustain its allegations Ukraine presented three cases of terrorism that allegedly originated from Russia's support and failure to prevent: the shooting down of the passenger plane MH17, the

shelling on civilians in Volnovakha, Mariupol and Volnovakha and bombing of civilians in Ukrainian cities.²³⁹

On 8 November 2019, the International Court of Justice delivered its judgment on the preliminary objections raised by the Russian Federation with respect to the Court's jurisdiction and the admissibility of Ukraine's claims under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Convention for the Suppression of the Financing of Terrorism (ICSFT).

As for the International Convention for the Suppression of the Financing of Terrorism, one divisive issue between the two Parties regarded the scope of obligations imposed on States Parties under the Convention.

Ukraine advanced a broad interpretation of obligations under the Convention, including the prohibition for States to finance terrorism into the duty to prevent terrorism financing offenses set out in the Convention.

On the other hand, Russia claimed that the States Parties obligations under the Convention couldn't be invoked by Ukraine, since the obligations identified by Ukraine do not constitute offenses within under Article 2 of the Convention.

On this matter, the International Court of Justice clarified that although the prohibition of state sponsorship of terrorism is well established in customary international law, the International Convention for the Suppression of Terrorism financing does not explicitly oblige States Parties to refrain from providing support to terrorism. Indeed, it only refers to the obligation in the prevention of the terrorism financing offenses and the obligation to cooperate in the investigation and prosecution of those offenses.

Therefore, the Court concluded that States sponsorship of acts of terrorism lies outside the scope of the Convention, but this does not mean that it is lawful under international law.

Indeed, the Court called to mind that, according to Resolution 1373/2001, adopted by the United Nations Security Council acting under Chapter VII of the Charter, all States shall "refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts".

The major divisive issue between the two States was whether the necessary *mens rea* element was satisfied with respect to alleged terrorism financing offenses and underlying terrorist acts presented by Ukraine.

²³⁹INTERNATIONAL COURT OF JUSTICE APPLICATION INSTITUTING PROCEEDINGS filed in the Registry of the Court on 16 January 2017 APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (UKRAINE v. RUSSIAN FEDERATION)

In particular, Russia pointed out that Ukraine didn't provide any material evidence demonstrating that the Russian Federation supplied weapons to any entity "with the requisite specific intent or knowledge" (under Article 2, paragraph 1 of the Convention) that such weapons would be used to shoot down flight MH17. Moreover, with respect to the alleged four specific incidents of indiscriminate shelling, the Russian Federation claimed that Ukraine failed to present reasonable evidence that the perpetrators of those acts performed them with "the requisite specific intent to kill or seriously harm civilians" and that the locations were shelled "for the requisite specific purpose of intimidating the population or to compel a government to do or to abstain from doing any act". Moreover, The Russian Federation claimed that in order to determine the scope of the Convention, the mental elements of terrorism financing offense must be defined, meaning that the terms "intention" and "knowledge" in Article 2, paragraph 1 of the Convention must be interpreted. The Russian Federation view is that "intention" must be considered as "a specific intent requirement" while "knowledge" implies the actual knowledge that the funds will be used to perpetrate a terrorism acts, and not barely that the funds "may be used" to do so.²⁴⁰

At the provisional measures stage, the Court recognized that evidence presented by Ukraine "did not afford a sufficient basis to find it plausible that the required *mens rea* elements with respect to the terrorism financing offenses, as well as underlying offenses, were present".

In its ruling on jurisdiction, the Court concluded that the issue about the existence of the required *mens rea* did not affect the scope of the Convention and it was not relevant to the Court's jurisdiction *ratione materiae*. The Court then reserved the question of *mens rea* for the merits stage.²⁴¹

For the first time in the history the International Court of Justice will adjudge claims under the International Convention for the Suppression of the Financing of Terrorism.

Moreover, this case may help to better clarify the scope of States Parties' obligations under the Convention and to answer important questions such as the relationship between international humanitarian law and the suppression of the terrorism framework.

²⁴⁰International Legal Materials , Volume 59 , Issue 3 , June 2020 , pp. 339 - 416, Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination (Ukraine v. Russian Federation) (Preliminary Objections) (I.C.J.)

²⁴¹ International Court of Justice, Public sitting held on Thursday 6 June 2019, at 10 a.m., at the Peace Palace, President Yusuf presiding, in the case concerning Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections

CHAPTER 3: UN Security Council Resolutions

I. Overview

The tragic events of 11 September 2001 changed drastically the international approach in fighting global terrorism financing.

The day after the United Nations Security Council adopted Resolution 1368 which, invoking art 51 of the UN Charter²⁴², recognized the inherent right of self-defense with the consequent legitimation of US military response in Afghanistan against the Taliban.²⁴³

Then, on 28 September 2001, the UN Security Council unanimously adopted Resolution 1373/2001 specifically addressing the problem of financing of terrorism.

The International Convention for the Suppression of the Financing of Terrorism represents only one side of a greater international effort to prevent, detect and suppress terrorism financing.

Indeed, Resolution 1373/2000 calls upon Member States to take measures not only against terrorism financing, but also against other forms of support, including recruitment and the provision of weapons.

When the UN Security Council adopted Resolution 1373, only two States (Botswana and the United Kingdom) were party to all the twelve already existing international conventions related to terrorism negotiated under the auspices of UN.

Among those international convention, the International Convention for the Suppression of the Financing of Terrorism didn't have enough parties to enter into force. Indeed, as of September 28, 2001, only 5 countries of the required 22 were parties to the Convention.

Therefore, there was the need to establish a new instrument to address the problem of terrorism.

The UN Security Council took provisions from different international legal instruments not yet having universal support, such as the International Convention for the Suppression of the Financing of Terrorism, incorporating them into Resolution 1373/2001 which is binding on all UN Members.

For the first time, the UN Security Council, in order to address the tragic terrorist attacks, adopted a clear legislative role by setting up general obligations unrelated to any particular conflict for all

²⁴²Charter of the United Nations, Chapter VII: Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression

Art 51: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

²⁴³Thomas J. Biersteker and Sue E. Eckert, *Countering the financing of terrorism*, 2017

States, hence not directly related to disciplining an individual country or a certain non-state actor. UN Resolution 1373 declares international terrorism a threat to "international peace and security" and imposes upon all 193 Member States obligations to prevent and suppress the financing of terrorist acts, to deny safe haven to terrorists, to install effective border controls, to enact domestic counterterrorism legislation, and to bring to justice those who commit terrorist acts, along with other requirements.²⁴⁴

The Resolution also established a Counter-terrorism Committee (CTC), comprising all the members of the Security Council, to monitor the implementation of the Resolution.²⁴⁵

It comprises three subcommittees, which are responsible for the review of the reports presented by States on the steps they were taking to implement their obligations and work together with a group of ten experts hired by the UN Secretariat, eight of whom are entrusted with the revision of the reports submitted by Member States and two with the coordination of the Committee's technical assistance program.²⁴⁶

Ambassador Greenstock²⁴⁷ underlined that the Counter-Terrorism Committee has been developed not to judge or prosecute and condemn Member States but rather to work cooperatively and help them to meet their obligations under Resolution 1373.²⁴⁸

In particular, the Counter-Terrorism Committee engages in:

- Country visits (at the country's request), to monitor progress and to evaluate the level of technical assistance the country may need in order to implement the Resolution.
- Country reports, meaning states are required to report to the Committee on the various steps they have taken in order to implement the Resolution.
- Technical assistance
- Promotion of best practices
- Special meetings with relevant international, regional and subregional organisations in order to achieve better coordination and avoid duplication of efforts and consequent waste of resources.

With the adoption of a further Resolution 1535/2004, the Security Council constituted the Counter-Terrorism Committee Executive Directorate (CTED) to assist the Counter-terrorism Committee and coordinate the process of monitoring the implementation of resolution 1373/2001.

²⁴⁴ United Nations Security Council, Resolution 1373 (2001) Adopted by the Security Council at its 4385th meeting, on 28 September 2001, paragraph 1 and 2

²⁴⁵ Ibid, paragraph 6

²⁴⁶ Eric Rosand, "Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight against Terrorism", 97:2 AJIL / Am J Intl L 333, McGill Guide 9th ed., 2003

²⁴⁷ From October 2001 to April 2003, he was Chairman of the Security Council's Counter-Terrorism Committee

²⁴⁸ Press Release, United Nations Security Council, Security Council Considers Terrorists Threats to International Peace, Security-Statement by Chairman of Counter-Terrorism Committee (Oct. 4, 2002)

The Counter-terrorism Committee Executive Directorate is constituted of 40 staff members, including legal experts who analyze the reports submitted by States on matters of the financing of terrorism, police and law enforcement, refugee and migration law, arms trafficking and maritime and transportation security.²⁴⁹

The aim of the Resolution 1373 and the Counter-terrorism Committee is to increase the level of governments performance in the fight against terrorism across the world by improving the capacity of each State's legislation and executive machinery to combat terrorism.²⁵⁰

Recently, on March 28, 2019, the United Nations Security Council unanimously adopted Resolution 2462, binding on all Member States, to “Combat, Criminalize Financing of Terrorists, Their Activities”, standing as a reminder of the critical importance of the financing in the fight against terrorism.²⁵¹

Launched by France, Resolution 2462/2019 is aimed at updating the existing Resolutions, adapting them to the evolving forms and challenges of terrorism financing.

In particular, in developing this Resolution, the Security Council recognized that there was the need to revisit, reaffirm, and supplement Resolution 1373/2001.

Moreover, the FATF was taken as a model in the drafting of the document, which comprises several references to the FATF and its Recommendations.

Indeed, the FATF’s efforts to understand the evolving trends and methods used to raise, use and move funds is crucial to develop effective strategies to combat terrorism financing at national and international level.

For example, the Resolution’s preamble stresses “the essential role of the Financial Action Task Force (FATF) in setting global standards” and “encourage[es] Member States to actively cooperate with the FATF... to improve anti-money laundering and counter terrorist financing frameworks worldwide, particularly their implementation.”²⁵²

At the same time, it demands States to ensure that, in implementing counter terrorism measures, they still comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law.²⁵³

²⁴⁹ United Nations, About the Counter-Terrorism Committee

²⁵⁰ Ibid note 40

²⁵¹ The American Society of International Law, Introductory Note to United Nations Security Council, Resolution 2462, William Casey, King and Richard Gordon, 2019

²⁵² Ibid, Preamble

²⁵³ Ibid, paragraph 6

2. Collecting.

With a language that resembles the UN International Convention for the Suppression of the Financing of Terrorism, the Resolution 1373/2001 requires States to prevent and suppress the financing of terrorist acts and to criminalize the “wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.”²⁵⁴

According to the Resolution, as far as the financing of terrorists is concerned, States shall “prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts.”²⁵⁵

This part of the Resolution establishes an autonomous obligation, not contained in the Convention which does not cover the problem of financial support to terrorists or terrorist entities.

Resolution 1373/ 2001 then requires States to refrain from providing any form of support, both active and passive, to entities or persons involved in terrorist acts, including by eradicating the provision of weapons to terrorists. Indeed, the diversion of weaponry is a significant problem in different parts of the world which allow terrorism organizations to greatly increase their military powers.

In line with Resolution 1373/2001, in its preamble, the Resolution 2462/2019 reaffirms that terrorists and terrorist organizations raise funds through various means, including exploitation of natural resources, abuse of non-profit organizations, donations, proceeds of criminal activity such as the illicit trade and trafficking in cultural property, trafficking in persons, drug trafficking and the illicit trade in small arms and light weapons.

Indeed, even if the Security Council has addressed terrorism financing in Resolutions since the 11 September terrorist attacks, this is the first Resolution focusing on the new methods extremist groups and their affiliates have adopted to raise money.

In particular it reaffirms the decisions set in Resolution 1373/2001 that all States shall prevent and suppress the financing of terrorist acts and inhibit the provision of any kind of support, active or passive, to persons or entities involved in terrorist acts, including suppressing the recruitment of members of terrorist organizations and eradicating the supply of weapons to terrorist.²⁵⁶

²⁵⁴ United Nations Security Council, Resolution 1373 (2001) Adopted by the Security Council at its 4385th meeting, on 28 September 2001, paragraph 1 (a) and (b)

²⁵⁵ Ibid, paragraph 1(d)

²⁵⁶ UN Security Council Resolution 2462/2019, paragraph 1

It also emphasizes, in accordance with Resolution 1373/2001 that all Member States shall criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories for the purpose of using those funds, or in the knowledge that they are to be used, to carry out terrorist acts.²⁵⁷

Moreover, recognizing the crucial role played by Non-Profit Organizations in raising funds for terrorist purposes, it calls upon Member States to periodically conduct a risk assessment of its non-profit sector or update existing ones in order to identify the organizations vulnerable to terrorism financing. It also encourages Member States to work cooperatively with the non-profit sector to prevent the exploitation of such organizations by and for terrorists, while recalling the relevant Recommendations and the guidance documents of the FATF in that regard, in particular its Recommendation No 8.²⁵⁸

Going forward, besides Resolution 1373/2001 and Resolution 2462/2019, the UN Security Council adopted several other Resolutions addressing the collecting phase, such as, for example, UN Security Council Resolutions No. 2331/2016 and 2388/2017, which deal with human trafficking for terrorism financing purposes, pointing out that girls and women are continuously exploited and forced into marriage as a reward to fighters and terrorist associates.

Indeed, Resolution 2331/2016 stresses that acts of human trafficking can be used as a tactic and can be part of the strategic objectives and ideology of terrorism organizations to incentivize recruitment; to support financing through the sale, trade and trafficking of women, girls and boys; to destroy punish or controll communities or to displace populations from strategically important zones. Therefore, it expressly condemns all acts of trafficking, particularly the sale or trade in persons undertaken by ISIL, including, as already mentioned, of Yazidis and other persons belonging to religious and ethnic minorities, and condemns also any trafficking in persons and violations and abuses committed by any other terrorist or armed groups for the purpose of sexual slavery, sexual exploitation and forced labour.

For this purpose, the Resolution calls upon States to take immediate action to prevent, criminalize, investigate, prosecute and ensure accountability of those who engage in trafficking in persons; to investigate, disrupt and dismantle networks involved in trafficking in persons in accordance with national legislation, including anti-money-laundering, anti-corruption and anti-bribery laws and, where appropriate, counter-terrorism laws and to implement strong victim, and possible victim, identification mechanisms, providing access to protection and assistance for identified victims without delay.²⁵⁹

²⁵⁷ UN Security Council Resolution 2462/2019, paragraph 2

²⁵⁸ UN Security Council Resolution 2462/2019, paragraph 23

²⁵⁹ UN Security Council Resolution 2331 (2016), paragraph 2 (b, c, d)

Moreover, the Resolution asks Member to develop the expertise of their Financial Intelligence Units (FIUs) to analyse cases of human trafficking financing terrorism, encouraging them to work together to develop that capacity. It also encourages Member States and relevant UN entities, international and regional organizations to assist other States with the financial, material and technical assistance that they may require to build the already mentioned capacity.²⁶⁰

In the same way, Resolution 2388/2017 reaffirms its condemnation in the strongest terms of human trafficking, especially of women and children, stressing that human trafficking undermines the rule of law and contributes to other forms of transnational organized crime, which can exasperate conflicts and cultivate insecurity and instability.

Therefore, it calls upon Member States to reinforce their political commitment to and improve their implementation of legal obligations to criminalize, prevent, and combat human trafficking, to strengthen their efforts to detect and disrupt human trafficking and to review, amend and implement anti-trafficking and related legislation to ensure that all forms of human trafficking are addressed. It further encourages Member States to enhance their efforts to collect, analyse and share data relating to financial flows associated with human trafficking and the extent and nature of financing of terrorism activities through human trafficking activities.²⁶¹

3. Moving.

With regard to the moving phase, Resolution 1373/2001 doesn't contain specific provisions expressly addressing the issue.

On the other hand, Resolution 2462/2019 notes with concern that terrorists and terrorism organizations may move and transfer funds through financial institutions, misuse of legitimate businesses and Non-Profit Organizations, cash-couriers, as well as through the use of new payment methods, such as mobile -payments or virtual-assets.

During the meeting for the adoption of the Resolution, France's Foreign Minister Jean-Yves Le Drian affirmed that notwithstanding the fact that terrorist organizations such as the Islamic State have been hunted from their territory, "they have learned to inhabit new virtual financial spaces where they exploit new technologies. They know how to amass funds by opening online pools. They transform their resources into cryptocurrency in order to acquire drones in cyberspace. They also pervert informal hawala money transfer networks which are especially popular in the Middle East, parts of Africa and the Indian subcontinent to transfer funds to the other end of the world for terrorist activities."²⁶²

²⁶⁰ Ibid, paragraph 5

²⁶¹ Ibid, paragraph 3, 4, 7, 9

²⁶² 8496th Security Council meeting for the adoption of UNSC Resolution 2462/2019

Therefore, it calls upon Member States to enhance the traceability and transparency of financial transactions, including through:

- assessing the risks associated with the use of cash and bearer negotiable instruments, including the risk of illicit cross-border transportation of cash, as well as other financial products, such as informal value transfer system providers, including hawalas, and taking the necessary measures to address those risks and;

- assessing and addressing potential risks associated with virtual assets and new financial instruments, taking steps to ensure that providers of such assets are subject to Counter-Terrorism Financing and Anti-Money Laundering obligations.²⁶³

The Resolution 2462 then recognizes the role Financial Intelligence Units play in the global effort to impede terrorism to exploit, raise and move funds, emphasizing its work and promoting greater access to information and terrorism financing analytical capacity of their financial intelligence units, both through effective cooperation with the private sector and enhanced inter-agency coordination.

Therefore, it calls upon State to ensure the effective exchange of relevant financial intelligence by means of bilateral and multilateral mechanisms and ensure that competent authorities exercise their powers to answer to international cooperation requests effectively.

Moreover, it asks States to ensure that their FIUs operate as the central agency for the acquisition of suspicious transaction reports and other information relevant to terrorism financing presented by reporting entities and ensure that they use secure and protected channels to promulgate information and the results of its analysis to competent authorities.

Relying more on financial intelligence sharing between states and enhance the coordination between the public and private sector are considered tools to render more effective the efforts to counter the financing of terrorism.²⁶⁴

²⁶³ UN Security Council Resolution 2462/2019, paragraph 20 (c, d)

²⁶⁴ UN Security Council Resolution 2462/2019, paragraph 28

4. Using.

Having recognized that most of the collected funds are used by terrorism organizations for recruitment and propaganda purposes, paragraph 2 (a) of resolution 1373/2001 calls upon Member States to suppress the recruitment of members of terrorism groups.

The Security Council then expanded this requirement Resolution 2178/2014, deciding that Member States shall, in accordance with international human rights law, international refugee law and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of foreign terrorist fighters and the financing of their travel and of their activities.

Foreign terrorist fighters are individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.²⁶⁵

Pursuant to Resolution 2178/2014, criminalization is key to the suppression of terrorism recruitment. Therefore, States shall ensure that their domestic laws and regulations establish serious criminal offences sufficient in order to prosecute and penalize the wilful organization of, and acts of recruitment of, foreign terrorist fighters as acts to be suppressed under legislation.

In addition, the Resolution calls on States to prevent the recruitment of terrorists by developing and implementing a broader recruitment-prevention strategy and other counter-recruitment tools, including awareness-raising strategies and outreach to various communities.²⁶⁶

Going further, Resolution 1373/2001 prescribes States to freeze promptly funds and other economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts. This obligation is provided also for entities owned or controlled, directly or indirectly, by such persons.²⁶⁷

The term freeze means “to prohibit the transfer, conversion, disposition or movement of funds or other assets”.²⁶⁸

It is important to stress that asset freezing does not apply to funds, financial assets or economic resources that have been recognized as necessary to cover essential human needs. Indeed, according to the United Nations, as pointed out in further Resolutions, this restriction represents a humanitarian exemption that applies with regard to “payment for foodstuffs, rent or mortgages, medicine and medical treatment, insurance premium, public utility charges”.²⁶⁹

²⁶⁵ UN Security Council Resolution 2178/2014, paragraph 5

²⁶⁶ Ibid, paragraph 6, 7, 8

²⁶⁷ Ibid, paragraph 1(c)

²⁶⁸ UN Security Council Resolution 1267/1999

²⁶⁹ UN Security Council, Security Council resolution 1452 (2002) on the threats to international peace and security caused by terrorist acts, 20 December 2002, S/RES/1452 (2002) amended by UN Security Council, Resolution 1735 (2006) Threats to International Peace and Security Caused by Terrorist Acts, 22 December 2006, S/RES/1735 (2006)

Moreover, in applying asset freezing mechanism particular attention must be paid to the effect on the human rights of the suspected persons, including potential infringement on their rights to privacy, property, and a fair trial.

It is also worth to point out the difference between asset freezing and confiscation even tho a strong system of asset freezing, and confiscation is a crucial part of an effective anti-money laundering and counter-terrorism financing regime.

While confiscation assumes that a sentence has been adopted by a court, asset freezing represents a preventive measure.

So, confiscation constitute the final measure adopted to hinder criminals the access of property obtained by violating the law. In this case the property is permanently subtracted from the criminal. On the other hand, asset freezing means that the owner of property can't dispose of its assets until a final decision close the case.²⁷⁰

Each jurisdiction has the authority to designate the persons or entities whose assets shall be frozen, and each jurisdiction should give effect to other jurisdictions freezing actions. When a jurisdiction receives a request for an asset freeze it has to ascertain that, in line with applicable legal principles, a request for designation is sustained by reasonable grounds, or a reasonable basis, for asset freezing.

For this purpose, States should develop legal provision providing for the freezing of terrorist funds and assets pursuant to Resolution 1373/2001. They should also establish a designating mechanism with adequate due process consideration and a particular mechanism to deal with foreign asset-freezing requests.²⁷¹

With a view to facilitate the processing of third-party requests for asset freezing, the Counter Terrorism Committee Executive Directorate established an asset-freezing contact database, providing a series of information: name of authority designated to receive terrorist asset-freezing requests from foreign jurisdictions; e-mail address; telephone number; fax number; acceptable languages; website address, where available; and request form.²⁷²

While preventing terrorist and terrorism organization from accessing the funds necessary for recruitment, training, planning and commission of terrorist acts constitute one of the most effective way to address the problem of terrorism financing, in practice the requirements set out in paragraph 1(c) and 1(d) of the Resolution have proven to be inadequate.

²⁷⁰ European Commission Website, Confiscation and freezing of assets

²⁷¹ FATF International Best Practices on Targeted Financial Sanctions Related to Terrorism and Terrorism Financing 2013, Recommendation 6

²⁷² Counter-Terrorism Committee Executive Directorate (CTED) in 2017, Technical guide to the implementation of Security Council resolution 1373 (2001) and other relevant resolutions

Indeed, the initial success of the assets freezing requirements has decreased significantly. Right after the adoption of the Resolution, 166 countries and jurisdictions issued orders freezing around \$112 million in terrorist assets in just three months.

The assessments conducted by the Counter-Terrorism Committee Executive Directorate, acting on behalf of the Counter-Terrorism Financing Committee, have shown that Member States have encountered some difficulties in establishing and implementing an effective freezing mechanism consistent with the relevant international standard and human rights obligations.²⁷³

Indeed, notwithstanding many Member States have established domestic asset-freezing mechanisms, their use remains limited.

For this reason, the solution would be to invest in further capacity development to enhance the capacity of States to effectively be able to “freeze without delay” and to improve the number and diversity of States that are contributing to designations while providing proper human rights protections.

The general obligation to freeze the assets of terrorist, provided for in the Resolution, reflects the obligation set out in the International Convention for the Suppression of the Financing of Terrorism to take measures for the identification, detection and freezing or seizure of any funds used or allocated to commit terrorist acts. Compared to the Resolution 1373, the Convention is more extensive on this point since the Resolution requires only the freezing of assets of terrorist and their supporters.²⁷⁴

The requirement of freezing funds and assets is also provided in the UN Security Council Resolution 1267/1999.

The Resolution condemns the use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and planning of terrorist acts and deplores the fact that the Taliban continues to provide safe haven to Usama bin Laden, allowing him and his associates to establish terrorist training camps in Taliban-controlled territory and to use Afghanistan as a base from which to sponsor terrorism operations.²⁷⁵

Moreover, the Resolution reiterates the accusations against that Usama bin Laden and his associates for the 1998 bombings of U.S. embassies in Kenya and Tanzania and demand that the Taliban, as the de facto government of Afghanistan, hand over bin Laden.

²⁷³ United Nations Security Council, Global Survey of the Implementation by Member States of Security Council Resolution 1373(2001), 2016

²⁷⁴ International Convention for the Suppression of the Financing of Terrorism, Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999, art 8 paragraph 1 and 2

²⁷⁵ UN Security Council Resolution 1267/1999, Preamble

Therefore, it requires all States to freeze funds and financial assets controlled, directly or indirectly, by the Taliban, Osama bin Laden, or al-Qaida and ensure that neither they nor any other funds so designated are made available to or for the benefit of the Taliban or any undertaking owned or controlled by the Taliban, except as if authorized by the Committee on a case-by-case basis for humanitarian need.²⁷⁶

Resolution 1267 follow a different pattern with respect of Resolution 1373 and the UN Convention, requiring Member States to seize, but not to confiscate, assets of persons and organizations that have been designated in lists issued under the authority of the Security Council.

Therefore, it is possible to distinguish two different international requirements concerning the freezing, seizure, and confiscation of terrorist assets

On the one hand, there is the requirement to establish a comprehensive mechanism to freeze, seize, and confiscate assets of terrorists, set out in Article 8 of the Convention and, with respect to seizure, Article 1(c) of the Resolution 1373.

On the other hand, there is the requirement to seize assets of persons and entities included on lists issued under the authority of the Security Council or designated as such by other states.

The Resolution also established the 1267 Sanctions Committee (the "Committee"), compose of representatives of the Member States of the Security Council, charged with gathering and reporting on information concerning the implementation of the Resolution by Member States and designating the resources of the Taliban that would be subject to sanctions.

²⁷⁶ UN Security Council Resolution 1267/1999, paragraph 4 (d)

CHAPTER 4: The Financial Action Task Force

1. Overview

To date, the Financial Action Task Force is the most important international standard-setting body for Anti-Money Laundering and Counter Terrorism Financing.

The FATF was established in 1989 as a reaction to the G-7's recognition of the threat of money laundering in the international banking system.²⁷⁷

It was established with the purpose of “examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering.”²⁷⁸

In 1990, just a year after the institution of this intergovernmental organization, Forty Recommendations were issued with the purpose of strengthening measures to fight the recycling of capital derived from drug trafficking.²⁷⁹

Those Recommendations were then revised for the first time in 1996 to mirror the evolution of the methods and trends of money laundering and again in 2003 and 2012.²⁸⁰

Indeed, in October 2004, the FATF issued a Ninth Special Recommendations, strengthening the agreed international standards for combating money laundering and terrorist financing.²⁸¹

In February 2012, the FATF published the revised version of the FATF Recommendations which were intended to “strengthen global safeguards and further protect the integrity of the financial system by providing governments with stronger tools to take action against financial crime.”

In line with this revision, the nine Special Recommendations on terrorism financing have been merged with the measures against money laundering resulting in an enhanced and clearer set of standards, in acknowledgment of the related nature of the risk caused by money laundering and terrorist financing and complementary instruments needed to deal with these threats.²⁸²

²⁷⁷ Amy Walters, “The Financial Action Task Force on Money Laundering: The World Strikes Back on Terrorist Financing”, *Law and Business Review of the Americas* 9, no. 1, Chicago 7th ed., 2003

²⁷⁸ FATF website: “History of the FATF”, <https://www.fatf-gafi.org/about/historyofthefatf/>

²⁷⁹ The Financial Action Task Force [FATF], *The Forty Recommendations*, <http://www.fatf-gafi.org/dataoecd/7/40/34849567>

²⁸⁰ *Ibid*

²⁸¹ Michael Levi, “Combating the Financing of Terrorism: A History and Assessment of the Control of Threat Finance”, *The British Journal of Criminology*, Volume 50, Issue 4, July 2010, Pages 650–669

²⁸² Chohan, Usman W., “The FATF in the Global Financial Architecture: Challenges and Implications”, *CASS Working Papers on Economics & National Affairs*, EC001UC, 2019

Since States have different financial systems and different legal, administrative and operational order, their measures to combat money laundering can't be uniform.

So, the Forty Recommendations were issued in order to establish an international standard that States should implement in accordance with their national legislative and institutional systems.²⁸³

FATF Recommendations provides for all the essential measure that States should take within their criminal justice and regulatory systems; the preventive measures to be taken by the financial sector and other designated sectors and those to facilitate international cooperation.

Countries compliance to Recommendations is monitored and evaluated through a two stage-process: self-assessments and mutual evaluations.

In the first stage, every year, each Country answers to a standard questionnaire about its compliance and implementation of the Forty Recommendations.²⁸⁴

The annual self-assessment provides for "inventory record" of countries 'counter-measures in the pertinent area and also for necessary preparatory information for a forthcoming round of mutual evaluations.²⁸⁵

In the mutual evaluation stage, countries compliance is assessed on a country-by-country basis through a one-year long process.²⁸⁶

The Secretariat appoints a team of five to six experts, assessors coming from other countries jurisdictions, to conducts the evaluation which implies an on-site visit by this team. Each assessment team should necessarily include a legal expert, financial expert and a law enforcement expert.

Then in 2013, the FATF adopted a revised common Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of Anti-Money Laundering and Counter-Terrorism Financing systems.

This Methodology is intended to assist assessors when they are conducting an assessment of a country's compliance with the international Anti-Money Laundering and Counter-Terrorism Financing standards. It takes into account the requirements displayed in the FATF Recommendations and Interpretive Notes, without amending or overriding them.

²⁸³FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html

²⁸⁴ Paul Allan Schott, "World Bank Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism Second Edition and Supplement on Special Recommendation IX"

²⁸⁵"Suppressing Terrorist Financing and Money Laundering: Monitoring and Enforcing Standards by Specialist Bodies", Springer, Berlin, Heidelberg, 2006, http://doi-org-443.webvpn.fjmu.edu.cn/10.1007/3-540-32519-0_5

²⁸⁶CHR Michelsen Institute, "The Financial Action Task Force: An introduction", U4 BRIEF January 2015 No 2

It helps assessors in identifying the systems and mechanisms established by countries with diverse legal, regulatory and financial frameworks in order to implement effective Anti-Money Laundering and Counter-Terrorism Financing systems.

Moreover, the Methodology is also helpful for countries that are revisiting their own systems, offering technical assistance needs.²⁸⁷

Then after the visit, on the basis of the Methodology, the team of assessors and the FATF Secretariat meet and discuss about issues and recommendations and agree on the ratings. There are four possible ratings of compliance with each Recommendation: Fully Compliant, Largely Compliant, Party Compliant and Non-Compliant.²⁸⁸

They then produce a draft report about the country's compliance, in terms of both technical compliance and effectiveness, which is sent to all members, associate members and observers prior to Plenary.²⁸⁹

The draft report is discussed by the Plenary and then submitted for the adoption.

The resulting final report is not solely a report by the team of assessors, but it is a report of the FATF. Accordingly, the Plenary has the final say on the decision on the wording of any report, accordant with FATF Recommendation and Methodology.²⁹⁰

In order to ensure a continuous and successful system of monitoring, regular follow up applies. The Countries that are subject to regular follow up has to report back to the Plenary, three years after the adoption of the mutual evaluation report. After this, the Country is subject to a follow up assessment of five years, intended to supply a more exhaustive update on the country's Anti-Money laundering regime.

In cases of significant deficiencies in term of compliance or effectiveness, the Plenary may decide that the Country should be put in enhanced follow up, meaning that the Country has to report back more frequently than in the case of regular follow up. In addition, the Plenary may also forecast enhanced measures if progress is not achieved.²⁹¹

Countering terrorism financing is one of the FATF's main objectives.

To prevent and combat terrorism financing, international cooperation and regular assessment of counter-terrorism initiatives are crucial. For this reason, the FATF constantly updates assessment of

²⁸⁷FATF (2013-2019), Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated October 2019, FATF, Paris, France, <http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html>

²⁸⁸Petrus C. van Duyne, Jackie Harvey, and Liliya Gelemerova, "The Palgrave Handbook of Criminal and Terrorism Financing Law; Ch 15: A 'Risky' Risk Approach: Proportionality in ML/TF Regulation" (345)

²⁸⁹ The FATF Plenary is the organisation's decision-making body

²⁹⁰FATF (2019), Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations, updated October 2019, FATF, Paris, France

²⁹¹ Ibid.

anti-money laundering and counter financing measures in Member States, identifying the potential weaknesses and areas of development and improvement.

All members the FATF, over 200 countries and jurisdictions, committed themselves to implement the FATF Recommendations.²⁹²

By the end of the 2019-2020 Plenary year, the FATF has evaluated more than 70% of member countries (27 of its 37) and the published reports show that more than the 75% of the assessed countries resulted compliant or largely compliant FATF Recommendations

As for effectiveness, mutual evaluation reports showed only 45% of countries succeeded a high or substantial level of effectiveness.

Besides the mutual evaluations process, the FATF has employed the practice of blacklisting jurisdictions that fail to address terrorism financing and money laundering. Listing this jurisdiction and made them public has worked as a mean to pressure and urge those jurisdictions to take the necessary measures and reforms and resolve their Anti-Money Laundering and Counter-Terrorism Financing weaknesses.²⁹³

Further, FATF took many more actions to promote and improve the legitimacy of its processes to provide better compliance by focusing more to expertise and participation. These actions brought highly satisfactory compliance of many jurisdictions, as demonstrated by the assessment ratings in the mutual evaluation.²⁹⁴

Besides the 39 Members of the FATF, nine Financial Action Task Force style regional bodies (FSRBs)²⁹⁵ have been established to promote and implement the Forty Recommendation worldwide.

FSRBs contribute significantly to identify and address Anti-Money Laundering and Counter Terrorism Financing technical assistance needs for their members.

²⁹²FATF (2020), Financial Action Task Force - Annual Report 2019-2020, FATF/OECD, Paris, www.fatf-gafi.org/publications/fatfgeneral/documents/annual-report-2019-2020.html

²⁹³Pavlidis, G., "Financial action task force and the fight against money laundering and the financing of terrorism: Quo Vida's?", *Journal of Financial Crime*, 2020, <https://doi.org/10.1108/JFC-09-2019-0124>

²⁹⁴Nanyun, N.M. and Nasiri, A., "Role of FATF on financial systems of countries: successes and challenges", *Journal of Money Laundering Control*, 2020
<https://doi.org/10.1108/JMLC-06-2020-0070>

²⁹⁵ -Asia/Pacific Group on Money Laundering (APG)

-Caribbean Financial Action Task Force (CFATF)

-Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

-Eurasian Group (EG)

-Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)

-Financial Action Task Force of Latin America (GAFILAT)

-Inter Governmental Action Group against Money Laundering in West Africa (GIABA)

-Middle East and North Africa Financial Action Task Force (MENAFATF)

-Task Force on Money Laundering in Central Africa (GABAC)

Even though they are autonomous, FSRBs work together with the FATF members with the scope of supporting Anti-Money Laundering and Counter Terrorism Financing compliance in every region of the world.

They periodically monitor and evaluate the Anti-Money laundering system of their respective countries, identifying deficiencies and providing recommendation in those cases where an improvement is needed.

They also conduct regional-level research and study the diverse trend and techniques of money laundering in order to conceive counter measures and impede the proliferation.

FSRB then collect best practice guidelines and diffuses them to parties (private sectors, regulators, law enforcements).²⁹⁶

Having introduced the FATF, the next step is to analyze how it has addressed the three phases of terrorism financing: collecting, moving and using.

2. Collecting.

As for the collecting phase, Recommendation No 5, providing for the criminalization of terrorism financing and Recommendation No 8 dealing with measures to prevent the misuse of nonprofit organizations, shall be considered.

Recommendation No 5 of the 2012 FATF Recommendations requires States to criminalize terrorism financing on the basis of the UN International Convention for the Suppression of the Financing of Terrorism.²⁹⁷

The aspects of the offense of terrorism financing covered in the Recommendations are principally based on art 2 of the International Convention for the Suppression of Terrorism Financing.

According to Recommendation No 5 Interpretative Note “terrorist financing offenses should extend to any person who wilfully provides or collects funds or other assets by any means, directly or indirectly, with the unlawful intention that they should be used, or in the knowledge that they are to be used, in full or in part...”²⁹⁸

Specifically, countries should criminalize not only the financing of terrorist acts but also the financing of terrorist organizations and individual terrorists even if there is no link with specific terrorist acts.²⁹⁹

²⁹⁶FATF (2012), High-Level Principles for the relationship between the FATF and the FATF-style regional bodies, updated February 2019, FATF, Paris, France

²⁹⁷ Ibid, Recommendation No 5

²⁹⁸ Ibid, Interpretative Note to Recommendation No 5

²⁹⁹ Ibid, Recommendation No 5

The term “terrorist acts” is defined in the FATF glossary and it is based on the text of art 2(1)(a) and 2(1)(b) of the International Convention for the Suppression of Terrorism Financing.

It follows that a terrorist act includes:

a) an act which constitutes an offense within the scope of, and as defined in one of the nine Conventions listed in Annex 1 of the Terrorist Financing Convention, in line with Article 2(1)(a) and ³⁰⁰

b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act, in line with Article 2(1)(b).³⁰¹

As for the criminalization of the financing of terrorism organizations and individual terrorists without a link to specific terrorist acts, the Recommendation wilfully transcend the obligations contained in the Terrorist Financing Convention, broadening them.

This modus operandi is in line with the obligations outlined in various UN Security Council Resolutions for countries to prohibit their nationals, persons and entities within their territories from providing funds or economic resources to terrorists or terrorism organizations.

The offense of terrorism financing must cover also the financing of the travel of foreign terrorist fighters, individuals who travel from their States of residence or nationality to another State with the goal of perpetrating, planning or participating in, terrorist acts or with the purpose of providing or receiving of terrorist training.

This requirement was introduced for the first time in October 2015 in consideration of the serious threat that foreign terrorist fighters posed for terrorism financing. In order to incorporate this requirement countries may decide to criminalize this activity by including it within a single terrorism financing offense, or as an individual offense.

For example, in Italy the Legislative Decree No. 7 dated 18 February 2015 modified the Italian Penal Code by introducing, in addition to the existing terrorism financing offenses, a specific offense to criminalize the financing, organization, and promotion of foreign terrorist fighters.³⁰²

³⁰⁰Convention for the Suppression of Unlawful Seizure of Aircraft (1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); International Convention against the Taking of Hostages (1979); Convention on the Physical Protection of Nuclear Material (1980); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005); International Convention for the Suppression of Terrorist Bombings (1997); and International Convention for the Suppression of the Financing of Terrorism (1999)

³⁰¹Glossary of the FATF Recommendations

³⁰²FATF (2016), Guidance on the criminalization of terrorist financing (Recommendation 5), FATF, Paris www.fatf-gafi.org/publications/fatfrecommendations/documents/criminalising-terrorist-financing.html

Art 270 quater.1 provides that “In cases other than those laid down under Articles 270-bis and 270-quarter, any person who organizes, finances or promotes journeys to foreign countries for accomplishment of conducts having terrorist purposes as per Article 270-sexiest shall be punished with five to eight years imprisonment”³⁰³

Moving forward in the analysis, the criminalization of terrorism financing exclusively on the basis of aiding and abetting, attempt, or conspiracy will not comply with Recommendation No 5.³⁰⁴

In practice, this means that terrorism financing needs to be criminalized as a stand-alone offense instead of as an ancillary offense related to a primary offense likewise the commission of a terrorist act. The reason is that ancillary offenses alone are not able to cover the broad set of terrorism financing activity. For example, ancillary offenses are not able to cover cases where a terrorist financier, acting alone with no intention of taking part in the commission of a terrorist act, is making arrangements to finance a terrorist act but has not completed the actual collection or provision of funds yet.

In criminalizing terrorism financing as a stand-alone offense, countries may decide to criminalize all terrorism financing activities within a single offense or within multiple distinct offenses or again they may choose to criminalize specific aspects of terrorism financing across different offenses. Then, on the basis of Art. 4 of the International Convention for the Suppression of the Financing of Terrorism³⁰⁵, effective, proportionate, and dissuasive criminal sanctions should apply to natural persons accused of terrorist financing.³⁰⁶

There isn't a recognized standard according to which a sanction can be considered effective, dissuasive and proportional, therefore the level differs between countries, in accordance with the legal tradition and the normal penalty range for criminal offenses.³⁰⁷

Finally, Recommendation No 5 requires countries to ensure that terrorism financing offenses are designated as money laundering predicate³⁰⁸ offenses.³⁰⁹

This requirement is linked to Recommendation No 3 which requires all serious offenses to be predicate offenses for money laundering.

³⁰³ brocardi.it, Article 270 quater 1 Codice Penale 2020 (R.D. 19 otter 1930, n. 1398) [Aggiornato al 30/06/2020]

³⁰⁴ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Interpretative Note to Recommendation No 5

³⁰⁵ Art. 4 of the Terrorist Financing Convention:

Each State Party shall adopt such measures as may be necessary: ... (b) To make those offenses punishable by appropriate penalties which take into account the grave nature of the offenses

³⁰⁶ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Interpretative Note to Recommendation No 5

³⁰⁷ See note 62

³⁰⁸ A predicate offense is a crime that is a component of a more serious crime.

³⁰⁹ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Recommendation No 5

In the first chapter of this thesis, it is pointed out that one of the methods used by terrorism organizations to raise and transfer funds is by exploiting the fundraising power of non-profit organizations (NPOs).

In Recommendation No 8 and its interpretive note, the FATF has defined non-profit organizations, taking into account that the heterogeneity of the international community means that each country may provide for its own domestic definition.³¹⁰

Therefore, FATF provides a functional definition³¹¹ of NPO as “A legal person or arrangement or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works” and specifies that Recommendation No 8 applies only to non-profit organizations that do fall under this definition.³¹²

Not all NPOs represent a high risk of terrorism abuse, thereby Recommendation 8 applies only to those NPOs that present the greatest risk of abuse such as those NPOs that manage a relevant portion of the financial resources of the sector or NPOs that have a significant share of the sector’s international activities.

Countries, when implementing measures to relieve the risks detected in their domestic NPO sector, need to consider the objective of Recommendation No 8, as described in its Interpretative Note.

In particular the purpose of the Recommendation "is to ensure that NPOs are not misused by terrorist organizations: (i) to pose as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes.”³¹³

In order to achieve this objective, as explained in Recommendation No 1, countries should apply a risk-based approach (RBA) to ensure that measures to discourage or reduce money laundering and terrorism financing are consistent with the risks identified.³¹⁴

Recommendation 8 requires countries to conduct a domestic review of their entire NPO sector, or to acquire punctual information on its activities, size and other important features and evaluate the adequacy of laws and regulations that pertain to the part of the NPO sector that can be misused for

³¹⁰ Terrance S. Carter, Nancy E. Claridge and Sean S. Carter, “Significant Changes to FATF Recommendation 8 and Interpretative Notes”, Anti-Terrorism and Charity Law Alert No. 46, Editor: Terrance S. Carter, 2016

³¹¹ It defines NPOs by their activities

³¹² FATF, Best Practices Paper on Combating the Abuse of Non-Profit Organizations (Recommendation No 8), June 2015, FATF, Paris, France

³¹³ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Interpretative Note to Recommendation No 8

³¹⁴ Ibid

the financing of terrorism, in order to identify features and types of NPOs which run the highest risk of being exploited by terrorism financing.³¹⁵

Moreover, Recommendation 8 explicitly recognized that there are a variety of approaches in identifying, preventing and combating terrorism exploitation of NPOs.

Nonetheless, the Recommendation pointed out that while protecting NPOs from terrorist abuse, it is essential that the chosen measures do not sabotage or prevent legitimate charitable activities, and not unduly or unintentionally restrict NPO's capacity to obtain resources to perform their legitimate activities. Instead, those measure should promote transparency and incite trust and assurance among the general public and donors that the charitable services are achieving their legitimate purposes.³¹⁶

In order to protect NPO sector from misuse by terrorism, Recommendation 8 provides for an effective approach involving four elements, implemented employing a proportionate risk-based approach:

1) Ongoing outreach to the NPO sector concerning terrorist financing issues.³¹⁷

Outreach should entail an ongoing dialogue between governments and NPOs. It can comprise guidance to NPOs and consultation with NPOs to request their evaluation or feedback.

Thanks to this approach countries may gather practical information from NPOs about their needs, issues, vulnerabilities, risks and concerns that can be used to develop more effective policies, guidance and risk mitigation measures for NPOs.

Moreover, since NPOs have a better understanding of their terrorism financing risks and how to limit the, risk mitigation measures may be implemented more effectively.³¹⁸

2) Targeted risk-based supervision or monitoring.

As already explained, in accordance with Recommendation No 1, countries should implement measures that are consistent with the risks identified through their domestic review of the NPO sector and apply reinforced measures where the threat of terrorism financing abuse is higher.

In practice, countries should apply specific measures including requirements for NPOs to:

- be licensed or registered;
- maintain information on the purpose of their activities and the identity of who own, control or direct their activities;
- issue annual financial statements that provide an analysis of income and expenses;

³¹⁵ FATF Best Practices Paper on Combating the Abuse of Non-Profit Organizations (Recommendation No 8), June 2015, FATF, Paris, France

³¹⁶ Paragraph 3 of the Interpretive Note to Recommendation 8 (FATF, 2012)

³¹⁷ Paragraph 5 of the Interpretive Note to Recommendation 8 (FATF, 2012)

³¹⁸ FATF Best Practices Paper on Combating the Abuse of Non-Profit Organizations (Recommendation No 8), June 2015, FATF, Paris, France

-have controls in force to make sure that funds are fully accounted for and employed in accordance with the NPO's declared activities;

-follow a "know your beneficiaries and associate NPOs" rule meaning that NPOs could be required to take measures to confirm the identity, credentials and good standing of their beneficiaries and associates and that they are not exploiting the charitable services for terrorism financing purposes and;

-keep, for a period of at least five years, records of domestic and international transaction and make them available to competent authorities if requested.³¹⁹

By implementing these aspects of the supervision and monitoring requirements, measures consistent with the risks identified are applied, avoiding over-regulation of the sector which may cause a disproportionate burden on NPOs that not result to be at risk.

3) Effective investigation and information gathering.³²⁰

Countries should ensure effective cooperation, coordination and information sharing among competent authorities, including law enforcement, intelligence and regulatory agencies, accrediting institutions and self-regulatory organizations, or organizations that retain important information on NPOs.

Countries should also have investigative expertise and capability to inspect NPOs which are suspected of being misused by terrorism organizations and should also ensure that full access to information on the administration and management of a particular NPO is obtained during the investigation.

Again, countries should set up appropriate mechanisms to ensure that information about a particular NPO abused by terrorism and other relevant information are promptly shared with competent authorities in order to take preventive or investigative action.³²¹

4) Effective mechanisms for international cooperation.³²²

International cooperation is essential for the protection of NPOs from terrorist abuse since their work is often global in nature and may reach several jurisdictions.

Countries should establish appropriate points of contact and procedures to address international requests for information regarding NPOs suspected of terrorist financing.³²³

³¹⁹ Paragraph 6 (b) of the Interpretative Note to Recommendation 8 (FATF, 2012)

³²⁰ Paragraph 5 of the Interpretive Note to Recommendation 8 (FATF, 2012)

³²¹ Paragraph 6 (c) of the Interpretive Note to Recommendation 8 (FATF, 2012)

³²² Paragraph 5 of the Interpretive Note to Recommendation 8 (FATF, 2012)

³²³ Paragraph 5(d) of the Interpretive Note to Recommendation 8 (FATF, 2012).

3. Moving.

Compared to the other two phases of terrorism financing, the moving stage is particularly addressed and analyzed, with several Recommendations covering different aspects of the transfer of money. Recommendation No 20 requires financial institutions to report to the Financial Intelligence Unit (FIU) suspicious transactions if it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity or are related to terrorist financing.³²⁴

Reporting suspicious transactions should be a direct mandatory obligation. Also, suspicious transactions should be reported regardless of the amount of money involved, even if they do not complete successfully.³²⁵

In the context of terrorism financing, promptly sharing relevant information within a financial group is crucial, especially when customers identified as being at higher risk are involved. The original suspicion by a financial institution that a transaction may implicate terrorism financing can be confirmed if information on transactions concerning the same customer or beneficiary of funds across the financial group is accessible. This chain of transactions would be detected only if the original suspicion was shared across the financial group and the customer or beneficiary was identified for further attention.³²⁶

Linked to Recommendation No 20 is Recommendation No 10 on Customer Due Diligence (CDD). Although Customer Due Diligence is going to be further analysed in the chapter dedicated to financial institutions, it is needful to provide a brief anticipation.

Recommendation No 10 requires financial institutions to conduct CDD measures when:

- establishing business relations;
- performing occasional transactions: above the applicable designated threshold of USD/EUR 15 000 or that are wire transfers;
- there is a suspicion of money laundering or terrorist financing;
- the financial institution questions the reliability or adequacy of previously obtained customer identification data.

Indeed, if in the course of the customer relationship, or when conducting occasional transactions, a financial institution suspects that transactions relate to terrorism financing, then it should:

- seek to identify and verify the identity of the customer and the beneficial owner, whether permanent or occasional and;

³²⁴FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Recommendation No 20

³²⁵ Ibid, Interpretative Note to Recommendation No 20

³²⁶FATF (2017), Guidance on private sector information sharing, FATF, Paris www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-information-sharing.html

-make a suspicious transaction report (STR) to the FIU, in accordance with Recommendation 20.³²⁷ Another important Recommendation, namely Recommendation No 13 deals with Correspondent Banking.

First of all, Correspondent Banking is “the provision of a current or other liability account, and related services, to another financial institution, used for the execution of third-party payments and trade finance, as well as its own cash clearing, liquidity management and short-term borrowing or investment needs in a particular currency.”³²⁸

A Correspondent Bank acts as its Correspondent's agent or conduit, performing or processing transactions for the Correspondent's customers.

The relationships developed between institutions within Correspondent Banking networks have produced an efficient mechanism of vital importance to the global economy, facilitating the transfer of money from one person or entity to another, from one country to another, including currency conversion.

The efficiency mechanism has unintentionally assisted the activities of money launderers and of terrorism financing. Indeed, Correspondent Bank accounts have been used to transfer the proceeds of drug trafficking, gambings and other crimes, as well as to finance terrorism.

Having said that, Recommendation No 13 provides that financial institutions should be required, in relation to cross-border correspondent banking, in addition to conducting normal Customer Due Diligence measures, to:

- collect sufficient information about a respondent institution in order to fully understand the nature of the respondent's business and to assess the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action;
- assess the respondent institution's Anti-Money Laundering and Counter-Terrorism Financing controls;
- get the approval from senior management before building new correspondent relationships;
- understand the respective responsibilities of each institution and

³²⁷ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Recommendation No 10

³²⁸ The Wolfsberg Group, “The Wolfsberg Anti-Money Laundering Principles for Correspondent Banking”, Preamble, 2014

-with respect to “payable-through accounts”³²⁹, be satisfied that the respondent bank has conducted CDD on the customers having direct access to accounts of the correspondent bank, and that it is able to provide relevant CDD information upon request to the correspondent bank.³³⁰

Among the different methods used by terrorism organizations to move money, in the first chapter I have analysed Hawala, described by the FATF as a money transmitter, with ties to certain regions or ethnic communities, which provides for transfer and receipt of funds or equivalent value and settle through trade, cash, and net settlement over a long period of time.

Hawala and other similar service providers are therefore referred to as entities that provide money or value transfer services (MVTs).

According to the FATF, “money or value transfer services (MVTs) refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the MVTs provider belongs. Transactions performed by such services can involve one or more intermediaries and a final payment to a third party and may include any new payment methods. Sometimes these services have ties to particular geographic regions and are described using a variety of specific terms, including hawala, hundi, and fei-chen.”³³¹

The FATF Recommendation No 14 relating to MVTs and its Interpretive Note provide specific requirements for countries with respect to MVTs.

Indeed, countries are asked to take measures to ensure that natural or legal persons providing money or value transfer services (MVTs) are licensed or registered and put through effective systems for monitoring and ensuring compliance with the relevant measures indicated in the FATF

Recommendations. Moreover, countries should identify natural or legal persons carrying out MVTs without a license or registration and apply appropriate sanctions.³³²

Besides, MVTs providers are also considered to be financial institutions under FATF Recommendations 20 and therefore are subject to a wide range of Anti-Money Laundering and Counter-Terrorism Financing preventive measures, including, for example, Customer Due Diligence (CDD), record keeping and reporting of suspicious transactions.

³²⁹ The term payable-through accounts refers to correspondent accounts used directly by third parties to transact business on their own behalf

³³⁰ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Interpretive Note Recommendation No 13

³³¹ Glossary to the FATF Recommendations

³³² FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Recommendation No 14

Going further, in the first chapter I have pointed out that the evolution of technology and in particular the diffusion of internet and internet capable devices has had a strong impact on the financial sector leading to the emergence of new phenomena such as cryptocurrencies, also known as virtual assets.

According to the FATF, “a virtual asset is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes.”³³³

Virtual assets have many potential benefits, making payments easier, faster, and cheaper.

However, if not properly regulated, they risk becoming a virtual safe haven for the financial transactions of terrorists and criminals.

To manage the risks emerging from new technologies and virtual assets, the FATF appointed Recommendation No 15.

For the purpose of this Recommendation, countries and financial institutions should detect and assess terrorism financing and money laundering risks that may originate in relation to (a) the development of new products and new business practices (b) the use of new or developing technologies for both new and pre-existing products.

Virtual assets service providers (VASPs) should be, at minimum, licensed or registered in the jurisdiction(s) where they are created. If the VASP is a natural person, they should be required to be licensed or registered in the jurisdiction where their place of business is located.

Countries should identify natural or legal persons carrying out VASP activities without the requisite license or registration and apply appropriate sanctions.

Moreover, VASPs should be monitored by a competent authority, which should conduct risk-based supervision.

In order to do so, supervisors should have adequate powers to monitor and ensure with requirements to address money laundering and terrorism financing, including the power to carry out inspections, compel the production of information, and impose disciplinary and financial sanctions.³³⁴

Knowing who is sending and receiving money is crucial in order to tackle terrorism financing and money laundering. Towards this end, Recommendation 16 is aimed at enhancing the traceability of transactions, with the intention of preventing terrorists and other criminals from having free access to wire transfers for moving their funds and detecting such misuse when it occurs.

Therefore, basic information on the originator and beneficiary of wire transfers should be made immediately available:

³³³ Glossary to the FATF Recommendations

³³⁴ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Recommendation No 15

- to relevant law enforcement or prosecutorial authorities to help them in detecting, investigating, and prosecuting terrorists or other criminals, and tracing their assets;
- to FIU for analysing suspicious activity, and disseminating it as necessary, and
- to ordering financial institutions to facilitate the identification and reporting of suspicious transactions and ensure that they take freezing action and prohibit conducting transactions with designated persons and entities, as set out in the relevant United Nations Security Council resolutions, such as Resolution 1267 (1999) and Resolution 1373 (2001) relating to the prevention and suppression of terrorism financing.

Recommendation 16 applies both to cross-border wire transfers and domestic wire transfers.

For cross-border wire transfers, Countries may adopt a threshold not higher than USD/EUR 1,000.

Below that amount countries should apply the following requirements:

-Countries should guarantee that financial institutions include with such transfers: the name of the originator and of the beneficiary and an account number for each, or a unique transaction reference number. That information need not be verified for veracity. However, if there is a suspicion of money laundering or terrorist financing the financial institution should verify the information pertaining to its customer.

-In any case, Countries may require that incoming cross-border wire transfers below the designated threshold include required and accurate originator information.

It is, then, provided that Money or value transfer service (MVTS) providers should comply with all of the relevant requirements of Recommendation 16 in the countries in which they operate.³³⁵

4. Using.

The final step of terrorism financing consists in the use of funds collected and received through transfer.

Therefore, a strong system of provisional measures and confiscation is a crucial part of an effective counter-terrorist financing regime since it prevents terrorism funds to be invested for their purposes and criminal property from being laundered or to conceal illicit proceeds.

This can considerably suffocate organised criminal operations, frustrating the movement of proceeds realised from crime.

For this reason, Recommendations No 4 and 38 provide that countries should adopt measures to identify, trace and evaluate property subject to confiscation and that authority should take quick

³³⁵ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Interpretative Note Recommendation No 16

action in response to requests by foreign countries to identify property which may be subject to confiscation.

More precisely, countries should develop mechanisms enabling their competent authorities to effectively freeze or seize and confiscate “property laundered, proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences, property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or property of corresponding value.”

For this purpose, the authority should have the power to identify, trace and evaluate property that is subject to confiscation and implement provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property and take the necessary investigative measures.³³⁶

In the context of Recommendations intended to prevent the use of funds and assets by terrorists and criminals, Recommendation No 6, requires Countries to implement the targeted financial sanction regimes to comply with the United Nation Security Council Resolutions relating to the prevention and suppression of terrorism and terrorism financing.³³⁷

UN sanctions targeting specific individuals or entities have become one of the main responses to international terrorism and also a useful instrument to address other issues, such as proliferation of weapons of mass destruction, drug trafficking, and related money laundering.

The attention of Recommendation No 6 is focused on the necessary preventive measures in the context of stopping the flow of funds or other assets to terrorist groups and the use of those profits by terrorist groups.

Efforts to fight against terrorism financing are jeopardized if countries do not freeze the funds and other assets of designated persons and entities, promptly and effectively.

However, in the establishment of an effective counter-terrorism financing regime, countries must also consider and respect human rights, the rule of law and identify the rights of innocent third parties.

The UN Resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds or other assets are provided, directly or indirectly, to or for the benefit of any natural or legal person or entity designated by the United Nation Security Council, in line with

³³⁶ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Recommendation No 4 and 38

³³⁷ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Interpretative Note to Recommendation No 6

Resolution 1267/1999, Resolution 1373/2001 and other future Resolutions imposing targeted financial sanctions in the terrorism financing context.³³⁸

Countries need the authority and effective procedures or mechanisms to identify and institute proposal for the designations of persons and entities targeted by Resolution 1267/1999 and its successor resolutions, and of persons and entities pursuant to Resolution 1373/2001, consistent with the obligations set out in this instrument. Indeed, authority and procedures or mechanisms are crucial in order to propose persons and entities to the Security Council for designation.

When proposing designation, countries need to apply an evidentiary standard of proof of “reasonable grounds” or “reasonable basis”. As for the designations under resolutions 1373 (2001), each countries’ competent authority will apply the legal standard of its own legal system to prove that “reasonable grounds” or “reasonable basis” occur for a decision to designate a person or entity, and thus apply the freezing mechanism. Moreover, in order to strengthen cooperation between countries and to facilitate and accelerate the processing of foreign designation requests, competent authorities of each country should share with other countries information about the legal standard applied for designation in their respective countries.³³⁹

The targeting process for designation should focus on those persons and entities that support terrorist networks in order to effectively prevent and suppress acts of terrorism.

For this purpose, intelligence play a crucial role since the majority of important information supporting the designation of a person or entity under terrorism asset freezing measures are intelligence sourced. Therefore, Countries should enhance legal authorities and mechanisms to empower the use and sharing of intelligence in building each case for designation, considering the necessity to implement or maintain the designation, or present evidence before an administrative body or court in order to challenge a designation.³⁴⁰

The obligation expressed in resolution 1373/200 and Resolution 1267/1999 and the requirements of Recommendation 6 to freeze funds or other assets cover “any assets, including, but not limited to, financial assets, economic resources, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares,

³³⁸ FATF, International Best Practices, Targeted Financial Sanctions Related to Terrorism and Terrorist Financing (Recommendation 6), 2013

³³⁹FATF, International Best Practices, Targeted Financial Sanctions Related to Terrorism and Terrorist Financing (Recommendation 6), 2013

³⁴⁰ Ibid

securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets”.³⁴¹

According to the Recommendation, freezing should take place without delay.

To effectively implement the assets freezing obligations, Countries should put in place an effective communication strategy, incorporating efficient methods for informing the private sector, designated non-financial businesses and professions, high risks sectors such as NPO and general public of their obligations under the asset freezing mechanism, and incorporating clear guidance to all persons and entities likely to hold targeted assets, including financial institutions.

Countries, then, should periodically review and update lists of persons and entities subject to asset freeze measures in order to present the most current and accurate identifiers on listed persons under the two Resolution 1373/2001 and 1267/1999.³⁴²

In the first chapter I have pointed out that funds are especially needed for recruitment and propaganda purposes.

Financial Intelligence Units (FIUs) and Law Enforcement Agencies (LEAs) play an important part in counter-terrorism activity and, in particular, in targeting the financing of recruitment activities of terrorism organisations.

In order to identify and disrupt terrorist recruitment at an early-stage authority should be communicating with reporting entities to increase their awareness of these issues, improving mechanisms to share information on recruitment financing.

A large part of recruitment financing occurs before the targeted individual is joining a terrorism organization or performing a terrorist act and that’s why proactive work by FIUs is especially needed.

Financial analysis of suspected recruiters could assist FIUs to determine if external funding is supporting the terrorist cause and if there is a broader facilitation network involved.

Apart from the targeting of recruitment funding, the FIU is an important part of a country’s Counter- Terrorism Financing operational network, supporting the work of other competent authorities.

Recommendation No 29 requires countries to establish a Financial Intelligence Unit (FIU) serving as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering and terrorist financing, and for the dissemination of the results of that analysis.

FIUs conduct two types of analysis:

³⁴¹ Ibid

³⁴² Ibid

-Operational analysis, using available and obtainable information to identify specific targets, such as persons, assets, criminal networks and associations, in order to follow the path of particular activities or transactions, and to determine links between those targets and money laundering or terrorism financing and;

-Strategic analysis, using available and obtainable information to identify money laundering and terrorist financing related trends and patterns.³⁴³

As for the Law Enforcement Authorities, Recommendation No 30 requires countries to ensure that designated law enforcement authorities have responsibility for ensuring that money laundering and terrorism financing are properly investigated through financial investigations.

A “financial investigation” means a scrutiny of the financial affairs related to a criminal activity for the purpose of identifying the extent of criminal networks, identifying and tracing terrorist funds or other assets that are, or may become, subject to confiscation and developing evidence which can be used in criminal proceedings.

Moreover, countries are expected to designate one or more competent authorities to identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation.³⁴⁴

³⁴³ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Interpretative Note to Recommendation No 29

³⁴⁴ FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Interpretative Note to Recommendation No 30

CHAPTER 5:

Counter-terrorism financing initiatives in the public-private sectors.

Once having understood how the three main international sources have addressed the phases of terrorism financing, in order to exhaustively complete and conclude the analysis of Counter-Terrorism Financing measures, it is worthy to introduce other important initiatives taken in the public-private sectors.

Good cooperation and coordination between countries is crucial for the investigation and disruption of terrorist networks, including also between law enforcement authorities, financial intelligence units and private sector partners.³⁴⁵

Financial intelligence plays a vital role in the detection and disruption of terrorist networks and foreign terrorist fighters support in North America, Europe and Southeast Asia, and helps governments to map out the financial flow of terrorists.

Moreover, the use of financial and law enforcement tools to deprive terrorists from their sources of profit undermines the networks and infrastructure that the organizations need to carry out their activities.

Therefore, Financial Intelligence Units play a fundamental role in the domestic and international efforts to combat money laundering and terrorism financing.

FIU are agencies, composed of investigators, banking experts and financial analysts³⁴⁶, that allow the exchange of information between financial institutions and law enforcement on a cross-border basis, observing global Anti Money Laundering and Counter Financing of Terrorism standards.³⁴⁷

At the meeting of the Egmont Group in Rome, in 1996, Financial Intelligence Units were defined as:

“A central, national agency responsible for receiving, analyzing and disseminating to the competent authorities, disclosure for financial information -concerning suspected proceeds of crime, or -required by national legislation ore regulation, in order to counter money laundering.”³⁴⁸

Therefore, Financial Intelligence Units have three main functions: the collection (receive and request), analysis, and dissemination of information relevant to money laundering, associated predicate offenses and the financing of terrorism.³⁴⁹

³⁴⁵FATF Consolidated FATF Strategy on Combatting Terrorist Financing

³⁴⁶William R Schroeder, "Money Laundering: A Global Threat and the International Community's Response", 70:5 FBI L Enforcement Bull 1, McGill Guide 9th ed., 2001

³⁴⁷Paul Allan Schott, "World Bank Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism Second Edition and Supplement on Special Recommendation IX"

³⁴⁸ The Hague, "Statement of Purpose of the Egmont Group of Financial Intelligence Units", 2001

³⁴⁹ Abigail J. Marcus, "Transparency International the Global Coalition against Corruption, Financial intelligence units (FIUs): Effective institutional design, mandate and powers", 2019

Internal expertise, supplemental data inputs originating from other domestic databases and foreign FIUs help the domestic FIU to assess suspicious transaction report and produce financial intelligence, which can then be released to the relevant domestic authorities such as a prosecutor or law enforcement agency or be shared with a foreign FIU. For this reason, it is crucial for FIUs to be able to accede to a large number of sources of information to accurately perform Adele analyses. The information relevant for FIU includes not only financial information but can comprise both private sector and government data sources. Moreover, FIUs are supposed to require additional information from reporting entities and non-reporting private entities, when it is appropriate.³⁵⁰ The Egmont Group, formed in 1995 when a number of governmental units known as Financial Intelligence Units (FIU) began to work together, is the international body responsible for the sharing of financial intelligence, working on enhancing the operational capabilities of the anti-money laundering and counterterrorism financing system.

It helps to support its international partners and other stakeholders to implement the resolutions and statements by the United Nations Security Council, the G20 Finance Ministers, and the Financial Action Task Force.

Recognizing the importance of sharing financial intelligence, the Egmont Group has become the nucleus of the international anti-money laundering and counter terrorism financing efforts, obliging Financial Intelligence Units (FIUs) around the world to exchange information and engage in international cooperation.³⁵¹

Particularly, Suspicious Activity Reports (SAR), Know your Customer/Customer Due Diligence (KYC/CDD) and record-keeping of all client's transactions are crucial for the prevention of financial crimes and counter-terrorism financing measures. Financial institutions and businesses are required to implement Anti-Money Laundering and Counter-Terrorism Financing measures in compliance with the FATF Recommendations, including "the requirement for an independent, valid means identification of customers, disclosure of beneficial owners, purpose and nature of business and conducting a continuous scrutiny of customer business transactions" in order to obtain relevant information on every client which could help to prevent terrorist organizations or criminals from accessing to international payment system and international money transfer.³⁵²

³⁵⁰ Criterion 29.3 of FATFs Methodology for Assessing Compliance 2013-2019 and Principle C.13 of the Egmont Group, Principles of Information Exchange 2013

³⁵¹ Egmont Group of Financial Intelligence Units, Annual Report 2015-2016, Global Organization of 151 Financial Intelligence Units, "Combating Money Laundering and Terrorism Financing by Exchanging Operational Financial Intelligence"

³⁵² Johnson Adele Adetunji Independent Legal Research, "Rethinking the internal mechanism of the EGMONT group in financial crime control", Emerald, Kagawa-ken, Japan

The Egmont Group creates a new Strategic Plan every three years. In the 2018-2021 Strategic Plan are highlighted the goals of the Egmont Group for the upcoming years and, in particular, its aim is to increase the members' area of expertise on current financial change; develop new partnerships, especially in Asian and African regions; enhance members' proficiencies by promoting leadership through The Egmont Centre of FIU Excellence and Leadership (ECOFEL).³⁵³

Since 2018, the Egmont Centre of FIU Excellence and Leadership (ECOFEL) has been established within the Egmont Secretariat with the intent to further assist, protect and promote FIUs within their national systems as well as internationally.³⁵⁴

The objectives of ECOFEL are to: “share competence and best practice amongst FIUs; develop networks within the AML/CEF community of professionals; introduce new and innovative tools for FIU operations and development; strengthen cooperation with international partner organizations; and empower FIUs to position themselves domestically, regionally, and internationally as leaders”.³⁵⁵

Serious commitment to contribute to ECOFEL will lead to enhancement in the performance of FIUs and to the achievement of the Egmont Group objectives.

In order to fight terrorism financing and money laundering it is fundamental to improve the effectiveness of FIU through advanced and sophisticated approaches to information exchange and enhanced practices through better data and the sharing of expertise and competence.

Fundamental is to study the changing environment taking into account the advancements in technology, the significant reduction of cash transaction and the emergence of new monetary instruments such as crypto-currencies and the use of blockchain technology, the increased speed of communications, transport and travel, in order for FIUs to be more responsive and overcoming terrorism financing and money laundering risks.

According to FATF report on emerging terrorism financing risks, the banking sector is particularly at-risk abuse by terrorism financing, being the most efficient way to transfer funds across borders. In 2000, among the existing and already analyzed international initiatives, a new action to combat money laundering was taken by the bank sector.

Eleven banks came together to form the Wolfsberg Group to manage money laundering in private banking.³⁵⁶

³⁵³The Egmont Group: The Biggest Organization Combating Terrorist Financing, sumsub.com

³⁵⁴The Egmont Group, The Egmont Centre of FLU Excellence and Leadership (ECOFEL)
<https://egmontgroup.org/en/content/ecofel-brief-introduction>.

³⁵⁵Ibid.

³⁵⁶ Gemma Aioli and Hans-Peter Bauer, “The Wolfsberg Group” Published in “Collective Action: Innovative Strategies to Prevent Corruption”, Mark Pieth (ed.), Dike Zurich/St. Gallen, 2012

The formed group signed a set of non-binding principles, known as “Anti-Money Laundering Principles for Private Banking”, revised in 2002 and again in 2012.

The “Wolfsberg Principles” consists in best practice guidelines aimed at dealing with the maintenance of the relationship between clients and private bankers.³⁵⁷

The first version of this Principles elaborated a well consolidated concept of customer identification and extra diligence in suspicious cases.

It deals with the identification of beneficial ownership for all accounts.³⁵⁸

Particularly those Principles includes practices when identifying unusual or suspicious activities, monitoring and reporting activities.³⁵⁹

According to the Principles bank have a written policy on the identification and follow-up of suspicious activities, which include account transactions not consistent with the due diligence file, cash transactions over a certain amount and pass-through transactions. Those suspicious activities can be identified through monitoring of transactions, client contacts such as meetings or in-country visits or through private banker’s internal knowledge of the client’s environment.³⁶⁰

Private bankers are responsible for the review of accounts activities, monitoring significant transactions, increased activity in the account or unusual or suspicious activities. In addition, a sufficient monitoring program must be set up.³⁶¹

Finally, there will be regular management reporting established on money laundering issues.

After the first set of Anti-Money Laundering Principles, the Wolfsberg Group then released various documents in the form of Principles, Guidance, Frequently Asked Questions or Statements.³⁶²

Then, on 12 August 2020, the Wolfsberg Group published its statement on “Developing an effective anti-money laundering / counter-terrorism financing program.”

This document provides for the measures that Financial Institutions should take to improve their Anti-Money Laundering regime in order to satisfy the requirements for an effective program.

Those requirements include:

- Complying with AML/CTF laws and regulations
- Providing highly useful information to relevant government agencies in defined priority areas

³⁵⁷Hinterseer, K., “The Wolfsberg Anti-Money Laundering Principles”, *Journal of Money Laundering Control*, Vol. 5 No. 1, pp. 25-41, 2001, <https://doi.org/10.1108/eb027291>

³⁵⁸ *Journal of Financial Crime*, Vol.10 No. 4, “The Private Sector Becomes Active: The Wolfsberg Process” by Mark Pieth and Gemma Aioli

³⁵⁹Wolfsberg AML Principles for Private Banking, <http://www.wolfsberg-principles.com/privat-banking.html>.

³⁶⁰ Ibid, art 4

³⁶¹ Ibid, art 5

³⁶²Global Banks: Global Standards, <https://www.wolfsberg-principles.com/about/mission>

-Establishing a reasonable and risk-based set of controls to mitigate the risks of a Financial Institutions being used to facilitate illicit activity.³⁶³

In general terms, beyond the initiatives took by the Wolfsberg Group, banking sector has broadened their Anti-Money Laundering policy by requiring banks to implement those measures as a condition to remain in the market.

Non-compliance is an indicator of bad reputation for banks, which is an important factor in this field.

Having recognized the destructive effects that money laundering may cause to the social and economic stability countries, there are high expectation for banks to follow these rules.³⁶⁴

Banks are, therefore, asked to act like policeman, meaning that in cases of suspicious customer's activities, they should apprehend or report him/ her to the authorities. Indeed, banks are required to report suspicious transactions, to monitor clients' accounts and to perform other due diligence requirements.

However, a strict regulatory regime threatens banks business, scaring off potential or existing customers and also inflicts great expenses on banks. For example, banks with poor resources may be forced to accept bribes from criminals in order to meet the high costs needed for implementing regulatory requirements.³⁶⁵

The high costs have led banks to depart from regions considered at highest risks, to close relationships with and accounts of "high risk" clients, with the consequence of reducing the transparency of financial activities and making the entities more vulnerable to criminal actions. For this reason, banks should be remunerated, in form of tax rebates, for acting as on behalf of regulatory authorities, encouraging, in this way, all financial institutions to implement the same regulatory standards.

Besides these Wolfsber's initiatives specifically dealing with money laundering, in the context of terrorism financing, the banking sector is attractive for terrorism organizations because of the speed and ease at which they can transfer funds within the international financial system. The vast size and scope of the international financial sector offers terrorism organizations and financiers the chance to blend in with regular financial activity to prevent attracting attention.³⁶⁶

³⁶³The Wolfsberg Group statement on Developing an Effective AML/CTF Programme.pdf

³⁶⁴Verhage, A., "Between the hammer and the anvil? The anti-money laundering-complex and its interactions with the compliance industry", *Crime Law Soc Change* 52, 9–32, 2009, <https://doi.org/10.1007/s10611-008-9174-9>

³⁶⁵ Norman Mugarura, "The jeopardy of the bank in enforcement of normative anti-money laundering and countering financing of terrorism regimes", *Journal of Money Laundering Control*, vol. 18 no. 3, Global Action Research and Development Initiative Limited, London, UK

³⁶⁶FATF (2015), *Emerging Terrorist Financing Risks*, FATF, Paris www.fatf-gafi.org/publications/methodsandtrends/documents/emerging-terrorist-financing-risks.html

Moreover, terrorist's transactions are often difficult to distinguish from customer's transaction. The amount of transactions that banks effect daily make it difficult to detect suspicious transactions, particularly the ones that involve small amount of money.

Therefore, all banks should “have adequate policies and processes, including strict customer due diligence (CDD) rules to promote high ethical and professional standards in the banking sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities”³⁶⁷

Despite the fact that banks have implemented severe control mechanisms, they often do not give the same attention to terrorism financing as they do to money laundering. Furthermore, terrorism financing is more difficult to detect than money laundering because beside funds originating from illicit activities, terrorism organizations largely use money whose origin is legitimate making difficult to anticipate their final use.³⁶⁸

Banks have started to appoint former intelligence and law enforcement officers into their staff, have invested in watch lists and software-based profiling tools and established practical guidelines to manage their use and they have introduced links and connections with state sector agencies in order to improve their Anti-Money Laundering and Counter-Terrorism Financing.³⁶⁹

Investigator's expertise is then employed to analyze internal suspicious warns and this approach is being supported through software development, continuously improved and adapted as soon as new information are obtained.³⁷⁰

We have seen that Counter-Terrorism financing, at the international and national level, implies: the criminalization of terrorism financing, sanctions imposed on individuals and entities who support terrorism, financial regulations as preventive measures and, in particular, for the purpose of my analysis, those imposed to the banking system.

The preventive measures applied to formal financial institutions are fully described by the FATF Recommendations, but also discussed in UNSC Resolutions, relevant conventions, World Bank, International Monetary Fund (IMF) and Egmont documents.

In accordance with those instruments, the preventive measures in financial institutions can be adopted through three main mechanisms: customer due diligence (CDD), monitoring system and suspicious transaction reports (STRs).

³⁶⁷Core principles for effective banking supervision, BCP 29, September 2012

³⁶⁸Fabian Maximilian Johannes Teichmann, Teichmann International AG “Financing of terrorism through the banking system”, Journal of Money Laundering Control Vol. 22 No. 2, 2019 pp. 188-194, St. Gallen, Switzerland

³⁶⁹Favarel- Garrigues G, Godefroy T, Lascoumes P., “Reluctant partners? Banks in the fight against money laundering and terrorism financing in France”, Security Dialogue, 42(2):179-196, 2011

³⁷⁰Mohammed Ahmad Naheem, Mayfair Compliance, “Local Intelligence- the Missing Link in CTF Regulation in the Banking Sector”, Journal of Money Laundering Control, Vol.22 No.1, pp 132-144, Frankfurt, Germany, 2019

The principal preventive method, consisting in ensuring that banks do not open accounts for unidentified or unidentifiable holders or beneficiaries, is to Know Your Customer (KYC) through an effective Customer Due Diligence system.

The CDD system consists in the identification and verification of customer's identity and the beneficial owner, understanding and obtaining information on the purpose and nature of the business relationship and conducting constant due diligence on the business relationship and scrutiny of transactions carried out for the entire course of that relationship.³⁷¹

The Know Your Customer mechanism consists in the identification of the natural person or a legal entity conducted by banks before engaging into financial businesses. The objective is to identify and monitor customers and beneficial owner's behavior and financial transactions in order to mitigate the risks.³⁷²

After that, in the monitoring phase, banks should develop a risk profile for each customer according to the customer's risk level or characteristics and then adopt, on the basis of this, enhanced due diligence (EDD) or simplified due diligence (SDD).

EDD is undertaken when the customer is considered at high risk such as in the case of customers connected to higher-risk countries or business sectors or customers who have unduly complex beneficial ownership structures or again, in cases of unusual transactions lacking an obvious economic purpose.³⁷³

On the contrary, when the assessed risk of terrorism financing and money laundering is lower, banks are allowed to undertake SDD.³⁷⁴

The monitoring systems constitute a useful tool to help banks to detect and report suspicious transaction to the competent authorities.

The importance of Suspicious Transaction Reports as an effective tool for the investigation and collection of financial information, has been underlined by both the FATF (supra–Recommendation No 20) and by the 1999 UN Financing Convention, according to which financial institutions must report all complex and unusual transactions or patterns of transactions having no evident economic or lawful purpose.³⁷⁵

³⁷¹FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Recommendation No 10 (a-d)

³⁷²Biali, G., "Know your customer or not", University of Toledo Law Review, Vol. 43, pp. 319-366, 2012

³⁷³FCA (2018), "High-risk customers, including PEPs"

www.fca.org.uk/firms/money-laundering/terrorist-financing/high-risk-customers-politically-exposed-persons

³⁷⁴FATF (2012-2020), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, Interpretative Note to Recommendation No 10

³⁷⁵UN International Convention for the Suppression of the Financing of Terrorism, Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999, art 18 (iii)

However, there is no clear definition of what constitute suspicion neither in the Convention nor in the FATF Recommendation. Rather the standard is “reasonable suspicion”, based on the personal perspective of the employee conducting the transaction.³⁷⁶

However, this vagueness amplifies the risks of individual criminal liability in cases of failure to report or it causes the production of an unnecessary high number of SARs.³⁷⁷

The risk-based approach and this consequent strict regulation may have negative consequences, leading to financial exclusion which has been formally recognized by the FATF as a serious money laundering and terrorist financing risk.³⁷⁸

Indeed, the implementation of strict Counter-Terrorism Financing regulations on banks may hinder the access of poor households and businesses to formal financial services, leading them to unmonitored and less regulated informal financial services.

This financial exclusion can undermine countries’ capacity to track money laundering and terrorism financing and, in particular, compromises the legitimacy and effectiveness of Counter-Terrorism Financing regulations. As for legitimacy, financial exclusion violates human rights, preventing the economic growth, development and the reduction of poverty.³⁷⁹ As for effectiveness, financial exclusion hinders improvements in terms of implementation of Counter-Terrorism Financing regulations while a broad access to a regulated and supervised financial system helps to detect and prevent terrorism financing and, consequently, an effective Counter-Terrorism Financing framework. For example, in the CDD stage and, in particular, in the process of obtaining customers information, the customer’s name may result as non-existent on a comprehensive national identity base or he may not have reliable documents that can verify his identity, leading to financial exclusion since financial inclusion relies on detailed and precise identification of customers.³⁸⁰

Among the possible solutions in order to maintain a balance between financial inclusion and Counter-Terrorism Financing regulations there is the widening of the list of reliable documents for identification purposes or the “tiered CDD” according to which clients have access to a range of

³⁷⁶Vanessa Loophole, “The Production of Suspicion in Retail Banking: An Examination of Unusual Transaction Reporting”, *The Palgrave Handbook of Criminal and Terrorism Financing Law*, C. King et al. (eds.)

³⁷⁷ Law Commission Reforming the Law, “Anti-Money Laundering: the SARs Regime”, Consultation paper No 236, 2018

³⁷⁸ OECD.org, Windsor III Leadership Seminar on Financial Inclusion, 8 March 2010, Keynote speech by the FATF President

³⁷⁹ FCA (2016), “Access to Financial Services in the UK (occasional paper 17)”

³⁸⁰Zeynab Malakoutikhah, “Financial exclusion as a consequence of counter-terrorism financing”, *Journal of Financial Crimes*, Volume 27 Issue 2, School of Law, University of Leeds, Leeds, UK

different services based on findings in the national risk assessment, which countries should disclose to financial institutions.³⁸¹

However, current Anti-Money-Laundering and Counter-Terrorism Financing mechanisms have proven that can be easily circumvented by terrorism organizations and launderers.

Criminals do not use their own name but instead employ straw men whose curriculum vitae fits the transactions. In this way, even by satisfying all “Know Your Customer” requirements, it is difficult to detect the final beneficial owner of suspected money since financial institutions do not have the requisite to carry out deep background checks which are usually reserved to law enforcement and intelligence agencies.³⁸²

Moreover, both money launderers and terrorism organizations recur to non-regulated sectors, for example setting up consulting firms to justify money transfers. Consulting firms render real services but also issue fake invoices for services through which money launderers and terrorism financiers can move incriminated resources to the consulting firm. Through this method, terrorism organizations can also gather gifts from supporters. Consulting firms then recruit real consultants and have esteemed business addresses, making extremely difficult for compliance officers to identify money launderers or terrorism organizations who engage consulting firm strategy.³⁸³

Therefore, financial institutions are not fully competent to address the problem of terrorism financing and money laundering. Instead, what should be done to effectively fight both terrorism financing and money laundering, is transfer more responsibility to law enforcement authorities which have the task of ensuring that money laundering and terrorism financing are properly investigated through financial investigation.

Member States need to ensure that law enforcement authorities, responsible for Anti-Money Laundering and Counter-Terrorism Financing, have the power carry out financial investigation in Counter-Terrorism matters, since terrorism financing investigations form a fundamental part of counter terrorism strategies.

In accordance with FATF Recommendations, competent authorities are responsible for identification, tracing and initiating actions to freeze and seize property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime.³⁸⁴ Law Enforcement and

³⁸¹FATF (2013-2017), Anti-money laundering and terrorist financing measures and financial inclusion - With a supplement on customer due diligence, FATF, Paris www.fatf-gafi.org/publications/financialinclusion/documents/financial-inclusion-cdd-2017.html

³⁸²Fabian Maximilian Johannes Teichmann Teichmann International AG, “Money-laundering and terrorism-financing compliance – unsolved issues”, *Journal of Money Laundering Control* Vol. 23 No. 1, pp. 90-95, St. Gallen, Switzerland, 2020

³⁸³ Ibid

³⁸⁴FATF (2012-2020), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France, Recommendation No 30

Investigative Authorities should be able to conduct investigations using different investigative techniques such as undercover operations, intercepting communications, accessing computer systems and controlled delivery and, when conducting investigations, ask for all relevant information retained by the FIU.³⁸⁵

Promoting collaboration between the public and private sectors can result in increasing terrorism financing awareness, understanding and improved suspicious transaction reporting to law enforcement.

As Counter- Terrorism Financing initiatives have been adopted in the formal financial sector, terrorists have had to look for alternative methods of raising funds.

An important aspect to consider is how technology has influenced terrorism financing.

Financial and communication technologies have grown rapidly in past years with the consequence that that Member States need to constantly revise the suitability and effectiveness of existing tools to counter terrorism financing.

There is the need to enhance the ability of financial institutions to identify and analyze suspicious financial activities, share information concerning Anti-Money Laundering and Counter-terrorism Financing enforcement with relevant actors and simplified associated operations for rapid and efficient compliance and reporting.

Financial Technology, commonly referred as Fin-Tech, is used to enhance and automate the use of financial services through new technologies such as mobile banking, mobile payment, cryptocurrency, and bitcoin.³⁸⁶

Fin-tech can be both used to promote and fund terrorism, for example by exploiting the anonymity of virtual currencies, but also can be used as an effective tool to strengthen protections against terrorism financing.

With the help of Fin-tech, in particular machine learning³⁸⁷ and other artificial intelligence tools, is it possible to detect terrorist financial flows, including small transactions that would otherwise be extremely hard to identify.³⁸⁸

Fin-Tech innovation also provides for enhanced transparency and security in cross-border payments, offering considerable benefits in this field. Indeed, greater automation can facilitate the payments path, avoiding the existing correspondent banking system. In this way the numerous

³⁸⁵Ibid, Recommendation No 31

³⁸⁶ Tom Keatinge and Florence Keen, "A Sharper Image Advancing a Risk- Based Response to Terrorist Financing", Royal United Service Institute for Defense and Security Studies, Occasional Paper, March 2020

³⁸⁷Machine learning is the subfield of computer science that gives computers the capacity to learn without being explicitly programmed. It can be employed to analyze data sets of all sorts and is able to improve its accuracy as more data is analyzed.

³⁸⁸Christine Lagarde, IMF Managing Director, International Monetary Fund, "Working Together to Fight Money Laundering & Terrorist Financing", FATF Plenary Meeting, Valencia, 2017

manual steps required to execute a cross-border payment are reduced and, as a consequence, the chances for error or illegality to happen, can diminish too.³⁸⁹

Fin-Tech also helps to strengthen the cooperation between financial institutions and law enforcement agencies, essential for effective Counter-Terrorism Financing and Anti-Money Laundering. The accurate detection, assessment and management of money laundering and terrorism financing risks largely depend on sensitive intelligence that governments usually don't share with financial institutions, making difficult for them to fight money laundering and terrorism financing efficiently. However, thanks to new technology and, in particular new data technology, platforms for secure public-private cooperation are created, while maintaining privacy and commercial confidentiality.³⁹⁰

Fin-tech also includes Reg-tech, Regulatory Technology, which is a business model created to use new technology to facilitate compliance with regulation, providing new approaches to old systems.³⁹¹

Reg-tech can enhance the ability, speed and proficiency of financial institutions in the analysis and sharing of data in view of identifying and reporting financial crime.³⁹²

Reg-Tech provides for different fraud detection technologies that enables companies to detect and assess relationships between huge datafiles and datasets.

For this purpose, "big data" technologies, such as clouds or data processing engines, can provide for an effective storing, sharing, accessing, processing, structuring and mining of large amount of data and information. In contrast with traditional systems, big data technologies are able to collect and store both structured and unstructured data, without applying severe rules as those needed for data accessing an enterprise data warehouse.³⁹³

Among these new technologies, for instance, biometrics and cybersecurity can enhance the ability of financial institutions to clearly assess a customers or counterpart's identity, automatize on-boarding and remote access to their services and strengthen the safety of interactions with customers. Again, different financial institutions are testing robotics, meaning the use of artificial intelligence automatizing manual tasks, which can conduct operations related to Anti-Money Laundering and Know Your Costumer investigations.³⁹⁴

³⁸⁹The Brookings Institution, "Enhancing anti-money laundering and financial access: Can new technology achieve both?", Michael Barr University of Michigan, Karen Gifford Special Advisor, Ripple Labs, Aaron Klein Brookings Institution, 2018

³⁹⁰ Ibid

³⁹¹Institute of International Finance, "Reg-tech: exploring solutions for regulatory challenges," Washington DC, October 2015

³⁹²A report of the Institute of International Finance, "Deploying Reg-tech Against Financial Crime", March 2017

³⁹³ Ibid

³⁹⁴ Ibid

Since 2016, the FATF has established an encouraging dialogue with Fin-Tech and Reg-Tech sectors, in order to promote innovation in financial services, while dealing with the regulatory and supervisory challenges resulting from new technologies. The aim is to increase the knowledge of how already existing obligations can be applied to new technologies and services in order to strengthen cooperation between governments and the private sector and to provide for further progresses of financial innovation without disregarding potential risks and challenges.³⁹⁵

However, what is missing and what FATF should do in the future, as an international standard setting body, is to develop a comprehensive guidance on Fin-Tech and Reg-Tech, providing for concrete definitions of the various new technologies and describing how national regulators should address regulation, in order to ensure global harmonization.

³⁹⁵Deloitte, FinTech Regulatory Challenges and Financial Crime Exposure

Conclusions.

The continuous growth of terrorism world-wide has been deepened by the crucial role played by finance.

Terrorism organizations need money to survive because terrorism is an expensive project which requires constant supply of money for its nourishment. Indeed, terrorism organizations require money not only to finance terrorism attacks but also to run their training camps, feed their members, pay salaries and to spread propaganda.

For this reason, disrupting their funding flow may impede or prevent the ability of terrorism organizations and individual terrorist to carry out terrorist activities.

The terrorism financing cycle consists in raising, moving and spending money.

The source of funds can either be legitimate or illicit. Legitimate funds can be raised through the exploitation of charities and Non-Profit Organizations whereas illicit funding sources include various criminal activities such as drug trafficking, human trafficking, fraud and state sponsors.

Once raised, funds can be moved through both the informal and formal financial systems, including bulk cash, hawala and illegal money remitters, money exchangers, use of wire transfers, use of the internet mobile and virtual currencies and other mechanisms, all serving as facilitation tools.

The final step consists in the use of funds collected and received through transfer to support and finance operations and also to manage the costs of developing and maintaining the organization per se.

Through the chapters of the thesis, I analysed how the three different phases of terrorism financing have been addressed by the international regulatory framework and, in particular, by three main sources of international obligations: the UN International Convention for the Suppression of the Financing of Terrorism, UN Security Council Resolutions and the FATF's 40 Recommendations. In all of these three sources it is possible to note that the collecting phase is the least regulated, notwithstanding that fact that it is the most important one, initiating the cycle that will lead to the commission of terrorist acts.

In the UN Convention there is no reference to specific provisions dealing with the different ways through which terrorists may raise funds. It includes only a general obligation to criminalize terrorism financing as an offense committed by any person who "by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they will be used in full or in part, in order to carry out a terrorist act".

In the same way, for the moving stage, the Convention set forth a general obligation on States Parties to require financial institutions and other intermediaries to adopt the necessary measures to identify their customers and to monitor and report unusual or suspicious transactions, suspected of stemming from a criminal activity.

For provisions concerning the transfer of money, we have to resort to two different UN Conventions, namely the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Convention against Transnational Organized Crime, specifically dealing with money laundering, which is, as already pointed out, a technique to transfer funds.

Again, for the using phase, the Convention provides for a general obligation to adopt necessary measures for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing terrorism financing as well as the proceeds derived from such offences, as well as provisions on mutual legal assistance.

Measures general in character are also included in the UN Resolution 1373/2011, adopted in reaction to the terrorist attacks of September 11, 2001 in the United States.

With a language similar to the one of the UN Convention, this Resolution contains a general obligation to criminalize the “wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts” and the prohibition for Members States’ nationals and entities from making any funds, financial assets or economic resources or financial or other related services available for the commission, participation or facilitation of terrorist acts.

However, subsequent UN Resolutions have widened their scope, having in mind that terrorism financing is an evolving threat, with terrorist and terrorism organizations adapting their methods and trends and engaging into other aspects of transnational crime to collect funds, such as human trafficking or abuse of NPOs.

Indeed, Resolutions 2331/2016 and 2388/2017 calls upon States to take immediate action to prevent, criminalize, investigate, prosecute and ensure accountability of those who engage in trafficking in persons whereas Resolution 2462/2019 calls upon Member States to periodically conduct a risk assessment of its non-profit sector and work cooperatively with it to prevent the exploitation of such organizations by terrorism.

In the same way, while in Resolution 1373 there is no specific provision relating to the transfer of funds, the following Resolution 2462/2019, noting how terrorists may move and transfer funds through financial institutions, misuse of legitimate businesses and Non-Profit Organizations, cash-

couriers, as well as through the use of new payment methods, provides measures for enhancing the traceability and transparency of financial transactions.

As for the using phase, Resolution 1373/2001 requires Member States to establish a comprehensive mechanism to freeze, seize, and confiscate assets of terrorists in order to prevent terrorist and terrorism organization from accessing the funds necessary for recruitment, training, planning and commission of terrorist acts.

Within the same scope, Resolution 1267/1999, following a different pattern with respect of Resolution 1373 and the UN Convention, requires Member States to seize, but not to confiscate, assets of persons and organizations that have been designated in lists issued under the authority of the Security Council.

Among the three main sources of obligation to face terrorism financing, the FATF with its 40 Recommendation is the most comprehensive one.

The FATF is an international standard-setting body charged with the task of protecting the international financial system by directing a global fight against terrorist financing, money laundering and other financial crimes.

The FATF complement the UN's efforts of fighting terrorism financing through its Recommendations which assist countries in the implementation of the relevant UN instruments, including United Nations Security Council Resolution 1373 and 1267, and its successor resolutions, and the International Convention for the Suppression of the Financing of Terrorism.^{[1][SEP]} Its Recommendations constitute soft law standards, meaning that they do not generate legally sanctioned obligations with an obligatory value under international law. However, surprisingly this argument does not match with the FATF members' high level of compliance. Indeed, they strongly committed themselves to transpose the Recommendations into their domestic laws and have put them into action with remarkable consistency. It is true that in cases of conflict of norms, international obligations set up by a convention do prevail over the FATF Recommendations, offering a more uniform and consistent application. However, at the same time, FATF soft law standards offer lesser intrusion into State sovereignty when dealing with sensitive matters, greater flexibility for States to deal with uncertainty and an enhanced ability to cope with diversity. The non-binding nature of the Recommendations allows the FATF to be extremely influential because the Recommendations are dynamic, constituting a convenient way to address the continuous changes in financial practices and conditions. Moreover, taking into account that States have diverse legal frameworks and financial systems, the Recommendations allow countries to implement measures according to their peculiar circumstances, as opposed to the mandatory exhaustive obligations included in binding documents.

Again, the FATF is able to provide technical assistance to low-capacity countries having difficulties in implementing Recommendations, offering support and guidance.^[1] The reason for this high compliance with the FATF Recommendations is linked with the self-interest of each State.^[2] States are essentially concerned about their reputations and about the possibility of facing repercussion for their conduct. Indeed, the employment of the practice of blacklisting jurisdictions that fail to address terrorism financing and money laundering has worked as a mean to pressure and urge those jurisdictions to take the necessary measures and reforms and resolve their Anti-Money Laundering and Counter-Terrorism Financing weaknesses.

As in the case of the other instruments analysed, the collecting phase is barely covered.

Here as well, Recommendation No 5 requires States to criminalize terrorism financing on the basis of the UN International Convention for the Suppression of the Financing of Terrorism, prohibiting nationals, persons and entities within States territories from providing funds or economic resources to terrorists or terrorism organizations.

The only Recommendation specifically addressing a channel through which terrorists may acquire funds, is the one dedicated to NPOs and charities, providing measures to be taken to prevent the risk of their exploitation for terrorists' purposes.

In particular it requires countries to conduct a domestic review of their NPO sector, or to acquire information on its activities, size and other important features, evaluating the adequacy of laws and regulations that pertain to the part of the NPO sector that can be misused for the financing of terrorism, in order to identify features and types of NPOs which are subject to the highest risk of being exploited by terrorism financing.

Among the three phases of terrorism financing, the moving stage is particularly covered, with several Recommendations addressing the problem of the movement of funds and resources in the light of different aspects.

Moreover, taking into consideration the impact of the evolution of technology on the financial sector, the FATF elaborated Recommendations concerning the use of new or developing technologies such as virtual assets, wire transfers and money or value transfer services such as hawala, offering States a guidance on how to face these new threats.

Those Recommendations prove the effort taken by the FATF to provide a general framework, as comprehensive as possible, which follow the evolution of terrorism financing methods and trends adopted over the decades by terrorists and terrorism organizations.

Conducting the analysis of these three main instruments of Counter-Terrorism financing from the point of its three phases have shown that the collection of funds by terrorists is not sufficiently discussed. Being able to stop the flow of funds directed to terrorists and terrorism organizations

from the very beginning, before they are moved, constitutes an important step to face and reduce the threat of terrorism financing.

Other than general obligations providing for the criminalization of the wilful provision of funds and economic resources to terrorists, there is the need to deepen the analysis of the sources of terrorism financing and to regulate them accordingly.

Notwithstanding the fact that in the last few years different UN Security Council Resolutions began to consider the link between terrorism financing and organized crimes such as human trafficking or the exploitation of charities and NPOs, there are still too many uncovered areas that need to be properly addressed with specific obligations, in order to orientate States towards the steps that need to be taken.

Therefore, international instruments should be implemented and enhanced in order to properly consider the different ways through which terrorists may acquire funds.

To complete the picture of the current Counter-Terrorism Financing regime is important to consider also other initiatives taken by the public-private sector.

Terrorism organizations and criminal networks engage in cross-border operations, relying on financial assets transferred from one country to another.

That is why Financial Intelligence Units (FIUs) play a vital role in analyzing and exchanging information concerning suspicious transactions, functioning as intermediaries between the private sector and Law Enforcement Authorities. Financial information represents an important tool for the detection of criminal networks and for the prevention, identification, investigation and prosecution of terrorism and other serious crimes.

Counter-Terrorism Financing and Anti-Money laundering strategies should focus attention and work on the exploitation of financial intelligence to follow the money and facilitate investigations and charges.

Financial intelligence is usually perceived as something that banks and financial institutions produce through mandatory or suspicion-based reporting. However, financial intelligence can also arise from signals and human intelligence and therefore should be considered as anything that present financial insight.

Financial intelligence is promising. It has already helped to expose the capabilities and preparatory steps of those engaging in terrorist activity and has helped to reveal terrorist networks.

It can help detecting sources of funds and connections between individuals. And, when terrorist activity is in progress, it can clarify the levels of planning, preparation and capability.

Having in mind the prominent role of FIUs in the fight against money laundering and terrorism financing, there is the need to increase even more the effectiveness of FIUs by providing training

and promoting personnel exchanges to maximize the competence and abilities of personnel employed by FIUs.

Again, another appropriate step to take is to enhance and strengthen the coordination and support among the operational divisions of member FIUs, securing communication between them through the application of technology.

Talking about technologies, States need to invest all their resources in developing and enhancing new technologies and enrich current Anti-Money Laundering and Counter Terrorism Financing regimes with them.

Financial technology (Fin-tech) can be described as the emerging industry that uses new technology, such as mobile payment, cryptocurrencies and bitcoin, to improve financial activities. It also includes Regulation Technology (Reg-tech).

Indeed, Reg-tech can help government bodies to implement, monitor or enforce regulation in a more effective, efficient or user-friendly way.

Advancements in data analytics and technologies such as artificial intelligence (AI), machine learning (ML), robotics automation and blockchain have proven to be an effective tool in the fight against financial crimes such as money laundering and terrorism financing.

These instruments can improve the detection of suspicious activities, potential illegal activity and criminal networks.

Moreover, greater automation, simplified operational processes and less costly analytics have the effect to enhance transparency and, at the same time, improving personal privacy and the safety of financial activity.

It is important to prioritise international cooperation. Collaboration between financial institutions, regulators, enforcement agencies, using new technologies and sharing intelligence and information, can only benefit the global fight against terrorism financing.

However, even if the role of technology in fighting terrorism financing is constantly growing, it is only the beginning of what is known as “the next wave of technology” whose accurate regulation need to be better addressed.

BIBLIOGRAPHY

Arabinda Acharya S. Rajaratnam, “*Small amounts for big bangs? Rethinking responses to “low cost” terrorism*”, *Journal of Money Laundering Control* Vol. 12 No. 3, pp. 285-298, School of International Studies, Nanyang Technological University, Singapore, 2009

Anthony Aust, *Max Planck Yearbook of United Nations Law*, Volume 5, 285-306, “*Counter Terrorism- A New Approach: The International Convention for the Suppression of the Financing of Terrorism*”, J. A Frown and R. Wolfrum (eds.), 2001

Ahmad Equal Mohamad Al-Zaqibh, “*International Laws on Money Laundering*”, *International Journal of Social Science and Humanity*, Vol. 3, No. 1, January 2013

Anna Gardella, “*The Fight against the Financing of Terrorism between Judicial and Regulatory Cooperation*”, *Studies in Intl Financial, Economic, & Technology L* 109, *McGill Guide* 9th ed, 2003-2004

Amrani, H., “*The Development of Anti-Money Laundering Regime: Challenging issues to sovereignty, jurisdiction, law enforcement, and their implications on the effectiveness in countering money laundering*”, Erasmus University Rotterdam, 2012

Anne L. Clung, “*The Fight against Terrorist Financing*”, *Political Science Quarterly*, Vol. 121, No. 4, pp. 569-596, Winter, 2006-2007

Abigail J. Marcus, “*Transparency International the Global Coalition against Corruption, Financial intelligence units (FIUs): Effective institutional design, mandate and powers*”, 2019

Angela Samantha Maitland Irwin and Kim-Kwang Raymond Choo (Information Assurance Group and Forensic Computing Lab, University of South Australia, Adelaide, Australia) and Lin Liu (School of Computer and Information Science, University of South Australia, Adelaide, Australia), “*Modelling of money laundering and terrorism financing typologies*”, *Journal of Money Laundering Control* Vol. 15 No. 3, 2012

Amy Walters, *"The Financial Action Task Force on Money Laundering: The World Strikes Back on Terrorist Financing"*, *Law and Business Review of the Americas* 9, no. 1, pp 167-180, Winter 2003

Barney, Benjamin W., et al. *"Insurgent Compensation: Evidence from Iraq"*, *The American Economic Review*, vol. 103, no. 3, pp. 518–522, 2013

Basel Committee on Banking Supervision, Consultative Document, *Core Principles for Effective Banking Supervision*, 2012

Basel Committee on Banking Supervision, *Guidelines Sound management of risks related to money laundering and financing of terrorism*, January 2014 (rev. July 2020)

Bosworth-Davies & Graham Saltmarsh, *"Money Laundering: A Practical Guide to the New Legislation"*

Byman Daniel, *"Deadly Connections: States that Sponsor Terrorism"*, Cambridge: Cambridge University Press, 2007

Biali, G., *"Know your customer or not"*, *University of Toledo Law Review*, Vol. 43, pp. 319-366, 2012

B. Marr, *A Complete Guide to Bitcoin*, Forbes, 2018

BBC News: *"Syria aid convoys: Two jailed for funding terror"*, 2017

CBS News, Pamela Falk, *"Afghanistan now has Drug Cartels"*, 2009

C.E. Attah, *"Boko Haram and Sexual Terrorism: The Conspiracy of Silence of the Nigerian Antiterrorism Laws"*, *African Human Rights Law Journal*, pp 385–406, 2016

Charity Commission for England and Wales: *"Charities and terrorism: "Compliance toolkit: protecting charities from harm"*; *"Chapter 1: Charities and terrorism Module 3: How might a charity be abused for terrorist purposes?"*

Chantal De Jonge Oudraat, *“Disarmament Forum, The United Nations and the campaign against terrorism”*, 2004

Counter-Terrorism Committee Printed at United Nations, Geneva – 1615962 (E) – October 2016 – 300 – S/2016/49 Executive Directorate (CTED), *“Global survey of the implementation of Security Council resolution 1373 (2001) by Member States”*, 2016

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

Craig Forces and Kent Roach, *“Limping into The Future: The U.N. 1267 Terrorism Listing Process at the Crossroad”*, The Geo. Wash. Int’l L. Rev., Vol. 42

Christine Jojarth, *“Transnational Organized Crime: Analyses of a Global Challenge to Democracy; Chapter: “Money Laundering: Motives, Methods, Impact and Countermeasures”*

Christine Lagarde, IMF Managing Director, *“Working Together to Fight Money Laundering & Terrorist Financing”*, FATF Plenary Meeting, Valencia, 2017

Christina Schori Liang, Shadow Networks: *“The Growing Nexus of Terrorism and Organized Crime”*, GCSP Policy Paper n°20, September 2011

Clung, A., *“The Fight against Terrorist Financing”*, Political Science Quarterly, 121(4), 2006

Commission's Expert Group on European Violent Radicalization, *“Radicalization Processes Leading to Acts of Terrorism”*, Report Submitted to the European Commission, 2008

Committee of Experts on the Evaluation of Anti Money Laundering Measure and the Financing of Terrorism, *“Money laundering and terrorism financing trends in MONEYVAL jurisdictions during the COVID-19 crisis”*, Strasbourg, 2020

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
Strasbourg, 8.XI.1990

Chohan, Usman W., *“The FATF in the Global Financial Architecture: Challenges and Implications”*, CASS Working Papers on Economics & National Affairs, EC001UC, 2019

CTED, UN Security Council Counter-Terrorism Committee Executive Directorate, *“Identifying and exploring the nexus between human trafficking, terrorism and terrorism financing”*

Dabiq 4’, Clarion Project (2014), p. 15

Dragos-Andrei, *“Money Laundering by Means of Offshore Companies”*, Law Annals from Titu Maiorescu University, pp. 173-185, 2019

Daniele Maria Barone, Secures, Terrorisms e Society International Journal – Italian Team for Security, Terroristic Issues & Managing Emergencies Issue, *“Jihadists ’use of cryptocurrencies: undetectable ways to finance terrorism”*, 2018

Dr. Michael C. Clarke, M.E.T.T.S. - Consulting Engineers, *“Engineering and Terrorism: Their Interrelationships”*, Consulting Engineers, Resource Management and Infrastructure Development, Gold Coast, QLD, Australia

Daly, Sara A. and Scott Gearwheel, *“Al-Qaida: Terrorist Selection and Recruitment”*, McGraw-Hill Companies, Inc., 2006

Deborah Srouf Politis, *“Money Laundering, Terrorism Financing and Financial Networks”*, Israel Defence Forces L Rev 211, McGill Guide 9th ed, 2003

David Toth, *“Crimes in Connection with Cryptocurrencies”* J of Eastern-European Crim L 193, McGill Guide 9th ed, 2019

Emma Björnehed, “*Narco-Terrorism: The Merger of the War on Drugs and the War on Terror*”, *Global Crime* Vol. 6, No. 3&4, pp. 305–324, 2004

Engin Drugola, “*The Role of Drugs in Terrorism and Organized Crime*”, 2:2 *Ankara B Rev* 46, *McGill Guide* 9th ed., 2009

Egmont Group of Financial Intelligence Units, Global Organization of 151 Financial Intelligence Units, “*Combating Money Laundering and Terrorism Financing by Exchanging Operational Financial Intelligence*”, Annual Report 2015-2016

Eric Rosand, “*Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight against Terrorism*”, *McGill Guide* 9th ed, 2003

Emmanuel Sienna Meeker and Anthony Aboagye Department of Finance, University of Ghana Business School, Accra, Ghana, and Jonathan Welbeck Bank of Ghana, Accra, Ghana, “*The determinants of Anti-Money Laundering compliance among the Financial Action Task Force (FATF) Member States*”, *Journal of Financial Regulation and Compliance*, vol. 26 no. 3

Financial Crimes Enforcement Network in cooperation with INTERPOL/FOPAC, “*The Hawala Alternative Remittance System and its Role in Money Laundering*”, Patrick M. Jost United States Department of the Treasury Financial Crimes Enforcement Network (FinCEN), Harjit Singh Sandhu INTERPOL/FOPAC

Florida Journal of International Law, Vol. 22, Issue 1, pp. 111-144, “*The art of money laundering*”, 2010

FATF (2013-2017), *Anti-Money Laundering and Terrorist Financing measures and financial inclusion - With a supplement on customer due diligence*, FATF, Paris

FATF, *Best Practices Combating the Abuse of Non-Profit Organizations (Recommendation No.8)*, June 2015

FATF (2020), *COVID-19-related Money Laundering and Terrorist Financing – Risks and Policy Responses*, FATF, Paris, France

FATF (2015), *Emerging Terrorist Financing Risks*, FATF, Paris

FATF (2020), *Financial Action Task Force - Annual Report 2019-2020*, FATF/OECD, Paris

FATF (2018), *Financing of Recruitment for Terrorist Purposes*, FATF, Paris

FATF (2016), *Guidance on the criminalization of terrorist financing (Recommendation 5)*, FATF, Paris

FATF, *Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorism Financing, High Level Principles and Procedures*, June 2007

FATF (2017), *Guidance on private sector information sharing*, FATF, Paris

FATF (2012-2019), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FATF, Paris, France

FATF, *International Best Practices on Targeted Financial Sanctions Related to Terrorism and Terrorism Financing*, 2013

FATF, (2013-2019), *Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems*

FATF and MENAFATF (2015), *Money Laundering through the Physical Transportation of Cash*, FATF, Paris, France and MENAFATF, Manama, Bahrain

FATF (2012), *High-Level Principles for the relationship between the FATF and the FATF-style regional bodies*, updated February 2019, FATF, Paris, France

FATF (2019), *Procedures for the FATF Fourth Round of AML/CFT Mutual Evaluations*, updated October 2019, FATF, Paris, France

FATF, *Report: The Role of Hawala and Other Similar Service Providers in Money Laundering and Terrorist Financing*, October 2013

Favarel-Garrigues G, Godefroy T, Lascoumes P., “*Reluctant partners?: Banks in the fight against money laundering and terrorism financing in France*”, Security Dialogue, 2011

Fabian Maximilian Johannes Teichmann, “*Financing of terrorism through the banking system*”, Journal of Money Laundering Control Vol. 22 No. 2, pp. 188-194, 2019

Freeman, M.D.A., “*Lloyd’s Introduction to Jurisprudence*”, 8th edn., Sweet and Maxwell Limited, London, p. 324, 2008

Gemma Aiolfi and Hans-Peter Bauer, “*The Wolfsberg Group*” in *Collective Action: Innovative Strategies to Prevent Corruption*, Mark Pieth (ed.), Dike Zurich/St. Gallen George, 2012

G. A. Lyden, “*The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001: Congress Wears a Blindfold While Giving Money Laundering Legislation a Facelift*”, Fordham Journal of Corporate & Financial Law Volume 8, Number 1 2003 Article 7

Guardia di Finanza, insieme per la legalità. Ufficio stampa, Sequestro record di 14 tonnellate di anfetamine: 84 milioni di pasticche col logo “captagon” prodotte in Siria da ISIS/DAESH, 1° luglio 2020

Guillaume, Gilbert. “*Terrorism and International Law*”, The International and Comparative Law Quarterly 53, no. 3, 2004

Guadagno, Rosanna E, et al., “*Social Influence in the online Recruitment of terrorists and terrorist Sympathizers: Implications for Social Psychology Research*”, *Revue internationale de psychologie sociale*, vol. tome 23, no. 1, pp. 25-56, 2010

Heidelberg, “*Suppressing Terrorist Financing and Money Laundering: Monitoring and Enforcing Standards by Specialist Bodies*”, Springer, Berlin, 2006

Hearing before the Committee on The Judiciary United States Senate, One Hundred Eight Congress, First Session, “*Narco-Terrorism: International Drug Trafficking and Terrorism- a Dangerous Mix*”, 2003

Hoffman, Bruce, “*Inside Terrorism*”, REV - Revised, 2 ed., Columbia University Press, 2006

House of Lords, European Union Committee 19th Report of Session 2008–09: “*Money laundering and the financing of terrorism*”, Volume I: Report, 2008-2009

Hinterseer, K., “*The Wolfsberg Anti-Money Laundering Principles*”, *Journal of Money Laundering Control*, Vol. 5 No. 1, pp. 25-41, 2001

Horst Köhler and James Wolfensohn, “*The IMF and the World Bank Group: an Enhanced Partnership for Sustainable Growth and Poverty Reduction*”, Joint Statement

Haigner, S.D., Schneider, F. and Wakolbinger, F., “*Combating money laundering and the financing of terrorism: A survey*”, *Economics of Security Working Paper 65*, Berlin: Economics of Security, 2012

International Court of Justice, Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination (Ukraine v Russian Federation), 16 January 2017

Institute of International Finance, “*Deploying Reg-tech Against Financial Crime*”, March 2017

Institute of International Finance, *“Reg-tech: exploring solutions for regulatory challenges”*, Washington DC, October 2015

International Institute for Counter Terrorism, *“Jihadists ’Use of Virtual Currency”*, 2018

International Convention for the Suppression of the Financing of Terrorism

Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999

International and Comparative Law Quarterly, *“Defining terrorism: one size fits all?”*, Volume 66, Issue 2, pp. 411-440, 2017

International Monetary Fund, Current Developments in Monetary and Financial Law, Vol. 3, Chapter 16: *“The Methodology for Assessing Compliance with Anti-Money Laundering and Combating the Financing of Terrorism Standards”*, 2005

International Monetary Fund and the World Bank, Enhancing Contributions to Combating Money Laundering, Policy Paper Prepared by: The Staffs of the IMF and the World Bank April 26, 2001

International Monetary Fund and The World Bank: Twelve-Month Pilot Program of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Assessments Joint Report on the Review of the Pilot Program, Prepared by IMF: Monetary and Financial Systems and Legal Departments World Bank: Financial Sector Vice-Presidency and in consultation with other Fund and Bank Departments, 2004

International Monetary Fund Policy Paper Review of The Fund’s Strategy on Anti-Money Laundering and Combating the Financing of Terrorism, February 20, 2014

IMF Staff Discussion Note, *“Virtual Currencies and Beyond: Initial Considerations”*, January 2016

Interpol (2020), *INTERPOL Warns of Financial Fraud Linked to COVID-19*

International Monetary Fund: Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT), Min Zhu, Deputy Managing Director of the IMF (2011-2016)

Johnson Adeoye Adetunji Independent Legal Researcher, “*Rethinking the internal mechanism of the EGMONT group in financial crime control*”, Kagawa-ken, Japan

Jean B. Weld, “*Current International Money Laundering Trends and Anti-Money Laundering Cooperation Measures*”, Resource Material Series No.83

James Forest, “*The Making of a Terrorist: Ch.8: The New Children of Terror*”, P. W. Singer, ed., Praeger, 2005

Jean-François Thony, “*Current Developments in Monetary and Financial Law, Volume 3, International Monetary Fund, Cap 5: Money Laundering and Terrorism Financing: An Overview*”

Jimmy Gurule, “*The Money Laundering Control Act of 1986: Creating a New Federal Offense or Merely Affording Federal Prosecutors an Alternative Means of Punishing Specified Unlawful Activity?*”, 32 Am. Crim. L. Rev. 823, 1994-1995

Jimmy Gurulé, “*The 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances-A Ten Year Perspective: is International Cooperation Merely Illusory?*”, Fordham International Law Journal, Volume 22, Issue 1, 1998

Jennifer Lynn Bell, “*Terrorist Abuse of Non-Profit and Charities: A Proactive Approach to Preventing Terrorist Financing*”, 17 Kan. J.L. & Pub. Pol'y 450, 2008

John McDowell, Senior Policy Adviser, and Gary Novis, Program Analyst, “*The Consequences of Money Laundering and Financial Crime*”, Economic Perspectives, An Electronic Journal of the U.S. Department of State, Vol. 6, No. 2, Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State, 2001

J. Orlin Grabbe, “*In Praise of Hawala*”, The Laissez Faire Electronic Times, Vol 1, No 13, 2002

John Roth, Douglas Greenburg, Serena Wille, National Commission on Terrorist Attacks Upon the United States, *“Monograph on Terrorist Financing”*, Staff Report to the Commission

Journal of International Criminal Justice, vol. 4, no. 5, *“Criminalizing the Financing of Terrorism.”*, MLA 8th ed. Pieth Mark, November 2006

Kevin Bernarding Matthew Schuster, *“Anatomy of a Terrorist Attack an In-Depth Investigation into the 1998 Bombings of the U.S. Embassies in Kenya and Tanzania”*, 2005-17

Kuniharu Kakihara, *“The Post 9/11 Paradigm Shift and Its Effect on East Asia”*, IIPS Policy Paper 292E

Keatinge T., Carlisle D., Keen F., *“Virtual currencies and terrorist financing: assessing the risks and evaluating responses”*, European Parliament, 2018

Lieberman, Ariel Victoria. *“Terrorism, the Internet, and Propaganda: A Deadly Combination”*, 2017

Law Commission Reforming the Law, *“Anti-Money Laundering: the SARs Regime”*, Consultation paper No 236, July 2018

Legal Department International Monetary Fund, *“Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting”*, 2003

Lam Pak Nian, David Lee Kuo Chuen, Handbook of Digital Currency (pp.5-30), *“Introduction to Bitcoin”*, December 2015

Ly, Pierre-Emmanuel, *“The Charitable Activities of Terrorist Organizations”*, Public Choice 131, no. 1/2, 2007

Michael Barr University of Michigan, Karen Gifford Special Advisor, Ripple Labs, Aaron Klein Brookings Institution, “*Enhancing anti-money laundering and financial access: Can new technology achieve both?*”, The Brookings Institution, April 201

Martin Rose, British Council: “*Immunizing the Mind: how can education reform contribute to neutralizing violent extremism?*”

Michael Freeman and Moyara Ruehsen, Perspectives on Terrorism, Vol 7, No 4, “*Terrorism Financing Methods: An Overview*”, 2013

Mohammed El Qorchi, Samuel Munzele Maimbo, and John F. Wilson, “*Informal Funds Transfer Systems: An Analysis of the Informal Hawala System*”, Joint IMF–World Bank Paper, International Monetary Fund, 2003

Mohammed M. Hafez, Studies in Conflict & Terrorism, Volume 29, “*Rationality, Culture, and Structure in the Making of Suicide Bombers: A Preliminary Theoretical Synthesis and Illustrative Case Study*”, 2006

Morais Herbert V., “*The War against Money Laundering, Terrorism, and the Financing of Terrorism*”, Lawasia Journal, p. 1-30, MLA 8th ed., 2002

Moses Atogo Unongu, Wes Africa Regional Training Center: “*Terrorism and Human Trafficking*”, 2015

Morris-Cotterill, N., “*Money laundering*”, Foreign Policy, No. 124, pp. 16-22, 2001

Mohammed Ahmad Naheem Mayfair Compliance, “*Anti-money laundering/trade-based money laundering risk assessment strategies – action or re-action focused?*”, Journal of Money Laundering Control, vol. 22 no. 4, Frankfurt, Germany

Mojca Ivezic, “*Combatting Money Laundering and Terrorist Financing: Does One Size Fit All?*”, AML and KYC professional (CAMS CFCS CFCI), 2017

M.Jain, “*How To Use Everyday Accounting Tools to Understand Cryptocurrency*”, HBX Business Blog – Harvard Business School, 2017

Michael Levi, “*Combating the Financing of Terrorism: A History and Assessment of the Control of Threat Finance*”, The British Journal of Criminology, Volume 50, Issue 4, Pages 650–669, 2010

Mark Pieth and Gemma Aiolfi, “*The Private Sector Becomes Active: The Wolfsberg Process*”, Journal of Financial Crime, Vol.10 No. 4

Nicholas Clark, “*The Impact of Recent Money Laundering Legislation on Financial Intermediaries*”, Thirteenth International Symposium on Economic Crime: Bank Secrecy and Confidentiality Laws - Their Impact on the Control of Economic Crime in the Modern World, Dickinson Journal of International Law, Vol. 14, Issue 3, pp. 467-504, Spring 1996

Norman Mugarura Global Action Research and Development Initiative Limited, London, UK, “*The jeopardy of the bank in enforcement of normative anti-money laundering and countering financing of terrorism regimes*”, Journal of Money Laundering Control, vol. 18 no. 3

Nikita Malik, “*Trafficking Terror: How Modern Slavery and Sexual Violence Fund Terrorism*”, The Centre for the Response to Radicalization and Terrorism (CRT), The Henry Jackson Society, 2017

Nanyun, N.M. and Nasiri, A., “*Role of FATF on financial systems of countries: successes and challenges*”, Journal of Money Laundering Control, 2020

N.S. Jamwal, “*Hawala-the invisible financing system of terrorism*”, Journal Strategic Analysis Volume 26, 2002 - Issue 2, 2002

Nicholas W Turner, “*The Financial Action Task Force: International Regulatory Convergence through Soft Law*”, McGill Guide 9th ed., 2014

OECD, *Money Laundering and Terrorist Financing Awareness Handbook for Tax Examiners and Tax Auditors*, OECD, Paris, 2019

Organization of American States, “*CICAD: Anti-Money Laundering*”

Office of the Coordinator for Counterterrorism, U.S. Department of State, “*President Freezes Terrorists 'Assets'*”, September 2001

Paul Allan Schott, World Bank Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism Second Edition and Supplement on Special Recommendation IX

Petrus C. van Duyne, Jackie Harvey, and Liliya Gelemerova, “*The Palgrave Handbook of Criminal and Terrorism Financing Law; Ch 15: A 'Risky' Risk Approach: Proportionality in ML/TF Regulation*”, 2018

Peter Gastrow, “*Adopted 18 years ago, why has the UNTOC still not achieved its aim?*”, Global Initiative Against Transnational Organized Crime, 2018

Pavlidis, G., “*Financial action task force and the fight against money laundering and the financing of terrorism: Quo vadimus?*”, Journal of Financial Crime, 2020

Palai, M., “*Report of the Human Rights Council on its twenty-eighth session*”, ONCHR, 2015

Post J.M., Revolutionary Armed Forces of Colombia (FARC). In: Kindt M.T., Post J.M., Schneider B.R. (eds), “*The World's Most Threatening Terrorist Networks and Criminal Gangs*”, Palgrave Macmillan, New York, 2009

Prof. Peter Neumann and Prof. Ana Salinas De Frias, Committee of experts on Terrorism (CODEXTER), “*Report on the links between terrorism and transnational organized crime*”

Roberto Lavalle, “*The International Convention for the Suppression of the Financing of Terrorism*”, 2000

Reem Rana & Kleopatra Moditsi, Issue Brief First Committee: Disarmament and International Security, “*The Linkage Between Illicit Drug Trafficking and Terrorist Groups*”, Old Dominion University Model United Nations, ODUMUNC, 2017

Rodger Shanahan, Lowly Institute, “*Charities and Terrorism: Lessons from the Syrian Crisis*”, March 2018

Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U. S. Senate, “*Money Laundering: Extent of Money Laundering through Credit Cards Is Unknown*”, July 2002

Stephen D. Collins, Kennesaw State University, “*State-Sponsored Terrorism: In Decline, Yet Still a Potent Threat*”, *Politics & Policy*, Volume 42, No. 1, pp 131-159, 2014

Simone D. Casadei Bernardi, “*Terrorist Use of Cryptocurrencies. A blockchain Compliance*”, White Paper, 2019

Sinisa Franjic, “*Legal Challenges of Modern World*”: *Money laundering phenomenology*”, Economic and Social Development, 31 International Scientific Conference on Economic and Social Development

Sylvia M. Longmire, Lt. John P. Longmire, “*Redefining Terrorism: Why Mexican Drug Trafficking is More than Just Organized Crime*”, *Journal of Strategic Security*, Number 1 Volume 1, November 2008

Simon Perry & Badi Hasisi, “*Rational Choice Rewards and the Jihadist Suicide Bomber, Terrorism and Political Violence*”, 2015

Surya P Subedi, *"The UN Response to International Terrorism in the Aftermath of the Terrorist Attacks in America and the Problem of the Definition of Terrorism in International Law"*, McGill Guide 9th ed, 2002

Shawn Teresa Flanigan, *"Terrorists Next Door? A Comparison of Mexican Drug Cartels and Middle Eastern Terrorist Organizations, Terrorism and Political Violence"*, 2012

Sebastian von Einsiedel Director, United Nations University, Tokyo, Japan, *"Assessing the UN's Efforts to Counter Terrorism"*, United Nations University Centre for Policy Research Occasional Paper 8, October 2016

The Chittagong University Journal of Law, Vol. XI, *"Measures against Money Laundering and Terrorist Financing: An analytical Overview of Legal Aspects"*, (p. 98-130), 2006

Truman E, Reuter P, *"Chasing dirty money: the fight against money laundering; Chapter 3: Money Laundering: Methods and Markets"*, Institute for International Economics, Washington, DC, 2004

Tim Krieger and Daniel Meierrieks, *"Terrorist Financing and Money Laundering"*, Center for International Economics: Working Paper No. 2011-07, 2001

The Guardian: *"Men 'used Syria aid convoys to transport items for terrorists'"*, Published 14 November 2016

The Hague, *"Statement of Purpose of the Egmont Group of Financial Intelligence Units"*, 2001

Terrance S. Carter, Nancy E. Claridge and Sean S. Carter, *"Significant Changes to FATF Recommendation 8 and Interpretative Notes"*, Anti-Terrorism and Charity Law Alert No. 46, 2016

The Sun: *"Brits Funded Jihadis: Two Brits guilty of using Syria aid convoys to funnel cash and supplies to extremists"*, Published 23 December 2016

Teichmann, F.M.J., *"Money laundering and terrorism financing through consulting companies"*, Journal of Money Laundering Control, Vol. 22 No. 1, pp. 32-37, 2019

Tom Keatinge and Florence Keen, “*A Sharper Image Advancing a Risk- Based Response to Terrorist Financing*”, Royal United Service Institute for Defence and Security Studies, Occasional Paper, 2020

The United States Department of Justice, Office of Public Affairs, “*Virginia Teen Pleads Guilty to Providing Material Support to ISIL*”, June 2015

The United States Department of Justice, New York Woman Pleads Guilty to Providing Material Support to ISIS, November 2018

The Wolfsberg Group, “*The Wolfsberg Anti-Money Laundering Principles for Correspondent Banking*”, 2014

Unger B., “*Money Laundering, Encyclopedia of Criminology and Criminal Justice*”, Bruinsma G., Weisburd D. (eds), Springer, New York, 2014

United Nations Office on Drugs and Crime, Organized Crime Counter-Terrorism, “*Module 16: Linkages between Organized Crime and Terrorism*”, Vienna 2019

United Nations Office on Drugs and Crime, World Drug Report, 2017

United Nations Security Council, Conflict-related sexual violence: Report of the Secretary-General, 29 March 2019

United Nations Security Council, first report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities, 25 August 2004

United Nations Security Council, Global Survey of the Implementation by Member States of Security Council Resolution 1373(2001), 2016

United Nation Security Council, Resolution 1267/1999

United Nations Convention against Transnational Organized Crime, New York, 15 November 2000

United Nations Security Council Resolution 1373 of September 28, 2001

United Nations Security Council, Resolution 2331(2016)

United Nations Security Council, Resolution 2388 (2017)

United Nations Security Council, Resolution 2462 (2019) Adopted by the Security Council at its 8496th meeting, on 28 March 2019

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988

United Nations Office of Counter- Terrorism, United Nations Counter-Terrorism Centre, UNCCT Annual Report 2019, Fourth Year of the UNCCT Five-Years Programme, January-December 2019

UN (2020), Secretary-General's Remarks to the Security Council on the COVID_19 Pandemic

U.S. Dept. of Treasury, Office of Terrorism and Financial Intelligence, Protecting Charitable Organizations, 2007)

US Department of State, "*The Taliban, Terrorism, and Drug Trade*", William Bach, Director, Office of Asia, Africa, Europe, NIS Programs, Bureau of International Narcotics and Law Enforcement Affairs, Testimony Before the Committee on Government Reform U.S. House of Representatives Subcommittee on Criminal Justice, Drug Policy and Human Resources, Washington, DC, 2001

United States Attorneys' Bulletin, Vol. 55, Issue 5, pp. 14-20, "*Money Laundering Trends*", September 2007

United States Institute of Peace, Special Report 116, *“How Modern Terrorism Uses the Internet”*, Gabriel Weimann, March 2004

US Treasury, Treasury Underscores Commitment to Global Flow of Humanitarian Aid in Face of COVID-19 Pandemic, 2020

Verhage, A., *“Between the hammer and the anvil? The anti-money laundering-complex and its interactions with the compliance industry”*, *Crime Law Soc Change* 52, 9–32, 2009

Vijay Kumar Singh Deputy Director (Law), *“Terrorist Financing through Money Laundering – A Threat to National Security”*, Competition Commission of India, 2011

Vanessa Lafolla, *“The Production of Suspicion in Retail Banking: An Examination of Unusual Transaction Reporting”*, *The Palgrave Handbook of Criminal and Terrorism Financing Law*, C. King et al. (eds.)

Vibhore Yadav, *“Online Gambling and the Regulation of Money Laundering”*, *The Criminal Law Blog*, National Law University, Jodhpur, 2020

World Bank and IMF Global Dialogue Series: Anti-Money Laundering and Combating the Financing of Terrorism Regional Videoconference: Central and West Africa Region— BCEAO (Banque Centrale des Etats de l’Afrique de l’Ouest), BEAC (Banque des Etats de l’Afrique Centrale), Angola, Cape Verde, Democratic Republic of Congo, and Rwanda

William R Schroeder, *“Money Laundering: A Global Threat and the International Community's Response”*, *FBI L Enforcement Bull* 1, *McGill Guide* 9th ed, 2001

Yvonnemarie Antonoglou, *“Organized Crime Vs. Terrorism: Are They Converging?”*, *Vocal Europe*

