
The Security Council's Role in Combating Money Laundering to Finance Terrorism

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International terrorism has been a topical issue that caught the UN's attention since the last quarter of the twentieth century. However, the UN initially dealt with it as an internal matter. In this regard, terrorism has become a global threat with the emergence of terrorist organizations. These organizations are not limited to a specific geographical scope; some of them are linked to countries, while others seek to occupy territories in order to control the oil wells and even create armies. They cannot continuously conduct their activities without financial support that provides it with the means to implement its plans and the resources to finance its field and logistical operations in all forms. One of the most important sources of financing terrorist and their organizations is money laundering operations. This research is to analyze the UN's role in combating money laundering to prevent terrorist acts around the globe.

Keywords

Money Laundering, Finance Terrorism, International Organizations, Security Council, International Responsibility

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I. Background

The term “international terrorism” was first acknowledged by the UN Security Council Resolution 579 (1985).¹ This was adopted due to the attack that killed nearly 20 Americans and Israelis at checkpoints of the Rome and Vienna airports in 1985. As a result, the Security Council condemned all cases of hostage taking and kidnapping as a form of terrorism.² However, term “terrorism” was first used in French Revolution 1794, where acts against security were marked as terrorist acts.³ Terrorism as an act, started long ago with the concept of rebellion army members or armed groups using military codes to carry out operations against States, forcing the state to comply with their demands, committing operations such as assassination, kidnaping, and threatening civilians.⁴ The idea of revolutionary violence of terrorism was presented by David Rapoport as the “four waves of terrorism theory.”⁵ The so-called “anarchist wave” started in the mid of the 19th century when the industrialized weaponry increased the possibility of creating new action methods by the terrorists where they became bigger gangs expanding under the shadow of wars that increased tremendously until World War I (WWI).

When this war started, another wave started with it which is the “anti-colonial wave” focusing on self-determination principle that continued until the end of WWII.⁶ The purpose of distinguishing those waves is to focus on the changes of terrorists’ groups, their work and demands throughout the years motivated by different global goals such as socialism, nationalism, religious extremism or exclusionism.⁷

Many attempts were occurred throughout the years to define and fight terrorism, and their source of funding. The Covenant of the League of Nations was designed originally to fight terrorism even when it did not state that implicitly. The mutual defense system of the Covenant focused on protecting international security rather than international law and order.⁸

¹ S.C. Res. 579, U.N. Doc. S/RES/579 (Dec. 18, 1985), paras. 1&5.

² E.g. S.C. Res. 618, U.N. Doc. S/RES/618 (July 29, 1988); S.C. Res. 638, U.N. Doc. S/RES/638 (July 31, 1989); S.C. Res. 635, U.N. Doc. S/RES/635 (June 14, 1989).

³ UNITED NATIONS, INTRODUCTION TO INTERNATIONAL TERRORISM 14 (2018).

⁴ *Id.* at 3-4.

⁵ DAVID RAPOPORT, WAVES OF GLOBAL TERRORISM: FROM 1879 TO THE PRESENT ch. 2 (2022).

⁶ *Id.* ch. 3.

⁷ Tom Parker & Nick Sitter, *The Four Horsemen of Terrorism: It's Not Waves, It's Strains*, 28 TERRORISM & POL. VIOLENCE 197 (2016).

⁸ Edward Morgan, *The Imagery and Meaning of Self-Determination*, 20 N.Y.U. J. INT'L L. & POL. 355 (1987-88).

Today, the increasing violence and force by terrorists as their tactics and strategies, including traditional assassination, bombings, arson, hostage-taking, hijacking, kidnapping, sabotage, the perpetration of hoaxes and suicide bombings, led to the importance of combating these groups by criminalizing these actions and prosecuting the perpetrators. Thus, the UN General Assembly Resolution 49/60⁹ titled, “Measures to Eliminate International Terrorism,” contains a provision describing terrorism:

“Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.”

The reach of an acceptable definition of ‘terrorism’ was difficult due to the differences and gaps between countries on this matter. This fact has been a major obstacle to meaningful international countermeasures. Terminology consensus would be necessary for a single comprehensive convention on terrorism, which some countries favor in place of the present 12 piecemeal conventions and protocols. Some have often commented that one state’s “terrorist” is another state’s “freedom fighter,” where it causes a dilemma in defining the perpetrators.¹⁰

The absence of a specific definition of terrorism has been reflected to the human rights system in the contemporary international community. In his report to the Commission for Human Rights of the Economic and Social Council (before its abolition), the Special Rapporteur on Human Rights, Martin Scheinin, raised concerns about the lack of a specific definition of terrorism. Actually, each state used to define the terrorism from its own perspective. Such national definition could lead to intended or even unintended human rights abuses in national security matters that may taint such behaviour with illegitimacy.¹¹

The UN has actively coped with terrorism and adopted the resolutions at the General Assembly and the Security Council. In the past decade, the UN has built a guideline to help states fight terrorism nationally, regionally and internationally. Some countries spent billions of dollars to counter terrorism, while others struggle to fight it. Each state was dealing with terrorism based on their recourses.¹²

⁹ G.A. Res 49/60, UN. DOC. RES/49/60 (Dec. 9, 1994).

¹⁰ G.A. Doc. A/HRC/AC/24/CRP.1, Human Rights Council 24th Sess. (Jan. 22, 2020).

¹¹ Report of the Special Rapporteur on the Promotion of Human Rights and Fundamental Freedoms While Countering Terrorism, U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005), at 9.

¹² M. Smith, *Securing our Future: A Decade of Counter-terrorism Strategies*, 48 UN CHRONICLE 14-7 (Apr. 2012).

After the September 11 attacks, the Security Council took implicit actions realizing that terrorism is not just growing globally, but also posing serious threats to international peace and security.¹³ These attacks shocked the US as well as the world. As Bush administration launched the “war on terror,” the global society put the struggle against terrorism first among the issues.¹⁴

In 2004, the UN General Assembly adopted Resolution 59/46 on measures to eliminate terrorism, based on the report of the Sixth Committee which released:

The General Assembly affirms that States must ensure that any measure taken to combat terrorism complies with all their obligations under international law and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law. ... Reaffirms that international cooperation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter, international law and relevant international conventions.¹⁵

Meanwhile, the UN Security Council had not dealt with terrorism as a threat to international peace and security until Iraq’s occupation of Kuwait on August 2, 1990. By the Iraq’s attack of Kuwait which led to the first Gulf War, the Security Council finally began considering the acts of terrorism as a type of aggression and a threat to international peace and security. In this course, the Security Council adopted Resolution 678 (1990) asking Iraq to pledge that it would not commit or support any act of terrorism as a condition for accepting a ceasefire.¹⁶ Saddam Hussain was warned not to use terrorist organizations against Kuwait in his invasion, especially with multiple operations occurred in Kuwait by those groups.¹⁷ The Security Council regarded terrorism as a form of threat to international peace and security.

The primary purpose of this research is to analyze the roles of the UN in combating money laundering in order to prevent terrorist acts around the globe. This paper is composed of four parts including background information and conclusion. Part two will overview the relationship between money laundering and terrorism. Part III will highlight the Security Council’s attempts to fight money laundering and terrorism.

¹³ *Id.*

¹⁴ DEYMAH ALWEQYAN, WAR ON TERRORISM AND FROM INTERNATIONAL LAW PERSPECTIVE AND ITS RELATION WITH SEPTEMBER 11TH ATTACKS 120 (2018).

¹⁵ U.N. Doc. A/59/514 (Nov. 18, 2004), Measures to Eliminate International Terrorism Report of the Sixth Committee, at 4 & 7.

¹⁶ S.C. Res. 678, U.N. Doc. S/RES/678 (Nov. 29, 1990).

¹⁷ The White House, Saddam Hussein’s Support for International Terrorism (Sept. 12, 2002), <https://georgewbush-whitehouse.archives.gov/infocus/iraq/decade/sect5.html>.

II. The Relationship between Money Laundering and Terrorism

A. The Definition of Terrorism

Despite the general consensus that terrorism is frightening people for unlawful purposes, there is no formal definition on it due to different standards from one country to another. One may see this action as terrorism, while another sees it as a fight for freedom. For example, the Palestine Liberation Organization (PLO) is considered a terrorist organization by Israel, while it is considered a liberation movement against occupation by Arab States. In addition, the Kashmiri resistance groups are considered terrorist in India, while they are freedom fighters in Pakistan. Moreover, the Contra in Nicaragua were freedom fighters in the eyes of the Americans, but were considered terrorists in the eyes of the socialist government. Afghani soldiers were considered freedom fighters from the American perspective, while they were regarded as a terrorist group from the perspective of the former Soviet Union. After the fall of the Soviet Union and their joining the Taliban, they became terrorists in the eyes of the US, but freedom fighters in the eyes of many Arabs. This list can be expanded without reaching a consensus.

In other words, each group or action can be defined differently based on each perspective, so that we can observe dissimilarity due to the conflict of interests between states. The occupied state sees armed resistance against it as terrorism, while the colonial people see their actions as armed resistance. For instance, the US defines the opposing regimes to be enemies and terrorists, while considering their allies' actions to be movements for freedom, and vice versa. Therefore, the UN has failed to reach a comprehensive definition of terrorism. This problem has worsened due to the solo actions of the US as the only superpower since the September 11 attacks and the Security Council's following decision to start the war on terror.

Many scholars have tried to define terrorism from a legal perspective. For instance, Bell Bowyer defines it as an attribute of unlawful acts that affect society and terrify its members.¹⁸ Eric David believes that terrorism is every act of armed violence committed to achieve political, philosophical, ideological or religious goals.¹⁹ Paul

¹⁸ Bell Bowyer, *Terrorism on Overview of International Terrorism*, in *THE CONTEMPORARY WORLD* 36 (Marius Livingston, et al. eds., 1978).

¹⁹ Eric David, *Le Terrorisme en Droit International*, in *REFLEXIONS SUR LA DEFINITION ET LA REPRESSION DU TERRORISME*, EDITIONS DE L'UNIVERSITE DE BRUXELLE, BRUXELLE 73 (1974).

Wilkinson observes terrorism as a product of extremist violence that is committed in order to reach certain political goals for which all human and moral beliefs are sacrificed.²⁰ This idea was supported by Saldana who thinks that terrorism is based on intimidating people through acts of violence.²¹

Notably, the first attempts to define terrorism were made in 1927 during the first conference on the Unification of the Criminal Law held in Warsaw, Poland as a way of developing international law.²² At a regional level, many attempts from different regions and international organizations have been made to define and highlight terrorism and its effects. Those governments and institutions were working for concluding international conventions on a global and regional level to prevent and suppress terrorism. For instance, the League of Nations recognized the necessity to conclude an international convention under its supervision to prevent and suppress terrorism, thereby adopting two international conventions in Geneva on November 16, 1937.²³ The first was on the suppression of terrorism, while the second was on the establishment of an International Criminal Court. The first convention urged that effective measures be taken to prevent and punish terrorist crimes, in order to refrain from encouraging terrorist activities and, more importantly, to punish the perpetrators.²⁴ The first convention also contains some provisions and conditions regarding the terrorist act in order to call it terrorism, most important one of which is that the act should be falling within the criminal acts of the domestic laws and national penal legislation.²⁵

Terrorism has been on the UN agenda for decades. So far, the UN adopted 12 conventions related to specific terrorist activities, and member states, through the General Assembly, have made more efforts for counter-terrorism to match legal consensus. Table 1 shows the 12 conventions constituting the legal framework for combating terrorism.²⁶

²⁰ Paul Wilkinson, *Three Questions on Terrorism: Government and Opposition*, 8 GOVERNMENT & OPPOSITION: AN INT'L J. COMP. POL. 292 (1973).

²¹ SALDANA, LE TERRORISME, REVUE INTERNATIONALE DE DROIT PENAL 26 (1963).

²² PATRYCJA GRZEBYK, CRIMINAL RESPONSIBILITY FOR THE CRIME OF AGGRESSION, 204, para. 229 (2013).

²³ Countries that signed this Convention were: Albania, Argentina, Belgium, Bulgaria, Cuba, Czechoslovakia, Dominican Republic, Ecuador, Egypt, Estonia, France, Greece, Haiti, India, Monaco, Netherlands, Norway, Peru, Spain, Turkey, Venezuela, Yugoslavia and the Soviet Union. See Report of the ad hoc Committee on International Terrorism, U.N. GAOR, 28th Sess., Supp. No. 28, U.N. Doc. A/C.6/418.

²⁴ Roberto Lavalle, *A Politicized and Poorly Conceived Notion Crying Out for Clarification: The Alleged Need for a Universally Agreed Definition of Terrorism*, 67 ZAÖRV 107-8 (2007).

²⁵ Martin Dubin, *Great Britain and the Anti-Terrorist Conventions of 1937*, 5 TERRORISM & POL. VIOLENCE 1 (2007).

²⁶ UN Office of Counter-terrorism, *Going to Extremes* (2020), <https://www.un.org/counterterrorism>. See also UNITED NATIONS OFFICE ON DRUGS AND CRIME, LEGISLATIVE GUIDE TO THE UNIVERSAL ANTI-TERRORISM CONVENTIONS AND PROTOCOLS 7-8 (2003), https://www.unodc.org/documents/terrorism/Publications/Legislative_Guide_Universal_Legal_Regime/English.pdf.

Table 1: 12 Conventions Constituting the Legal Framework for Combating Terrorism

No.	Title	Year	Purpose
1	Tokyo convention	1963	Offences and Certain Other Acts Committed on Board Aircraft
2	The Hague convention	1970	the Suppression of Unlawful Seizure of Aircraft
3	Montreal convention	1971	the Suppression of Unlawful Acts against the Safety of Civil Aviation
4	New York Convention	1973	prevention of crimes against protected persons, including kidnapping diplomats
5	New York Convention	1979	opposition of taking hostages
6	Geneva Convention	1980	Nuclear Materials
7	Rome Convention	1988	the Suppression of Unlawful Acts against the Safety of Maritime Navigation
8	Montreal Protocol	1988	the Suppression of Unlawful Violence at Airports Serving Civil Aviation
9	Montreal Convention	1991	the marking and detection of plastic explosives
10	the Convention against Terrorist Operations by Explosives	1997	Terrorist Operations by Explosives
11	the International Convention for the Suppression of the Financing of Terrorism	1999	the Suppression of the Financing of Terrorism
12	Model Legislative Provisions on Measures to Combat Terrorism	2001	anti-terrorism statute intended to achieve compliance with the mandatory requirements of Security Council resolution 1373

To consolidate these activities, member states started a new phase in the fight against terrorism by agreeing on a global strategy adopted in September 2006. This strategy was a unified approach to counter-terrorism in order to build the state capacity to combat it and strengthen the role of the UN in this field by activating international cooperation in investigations and information exchange to prevent these operations before terrorism occurred as an attempt to reduce losses.²⁷

²⁷ G.A. Res. 60/288, U.N. Doc A/RES/60/288.

As for the European Union (EU), the European Council have been always trying to preserve human rights and fundamental freedoms that may have involved counter-terrorism. In this regard, the Strasbourg Convention was adopted on January 27, 1977, to prevent all acts of terrorism that attack fundamental rights and freedoms, and to take effective measures to ensure punishing the perpetrators who commit terrorist acts.²⁸

Moreover, the Arab Convention for the Suppression of Terrorism, signed in Cairo on April 22, 1998, defines “terrorism” in Article 1 as:

any act of violence or threat of using it, regardless of its causes or purposes, which falls upon an individual or collective criminal project, and aims to inflict terror among people, intimidate them by harming them, endangering their lives, freedom, or security, or harming the environment or any of the public or private facilities, properties, by occupying or seizing them, or endangering one of the national resources.²⁹

Article 2 further states:

Cases of struggle by various means, including armed struggle against foreign occupation and aggression for liberation movements and self-determination in accordance with the principles of international law, are not considered a crime, and any action that affects the territorial integrity of any of the member states is not considered terrorism.³⁰

It is believed that such an article was indicated because Arabs had a long history of colonial resistance in their path of fighting for freedom. This is why they assured that movements of self-determination would not be considered terrorism.

B. The Definition of Money Laundering

Money laundering is considered operations that aim to transfer money from an illicit source to a legitimate one, sometimes through complicated money transfer operations, establishing companies and buying/selling financial assets, so that the money is removed from its illicit source and ultimately cleaned or ‘laundered.’ There is no specific convention to combat money laundering, but the UN Convention

²⁸ European Convention on the Suppression of Terrorism (Jan. 27, 1977) E.T.S. No. 90.

²⁹ Arab Convention for the Suppression of Terrorism art. 1 para. 2 (Apr. 22, 1998), https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf.

³⁰ *Id.* art. 2, ¶ 1.

against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) which has attempted to cover this issue. Article 3 of the Convention calls on member states to criminalize:

- (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences.³¹

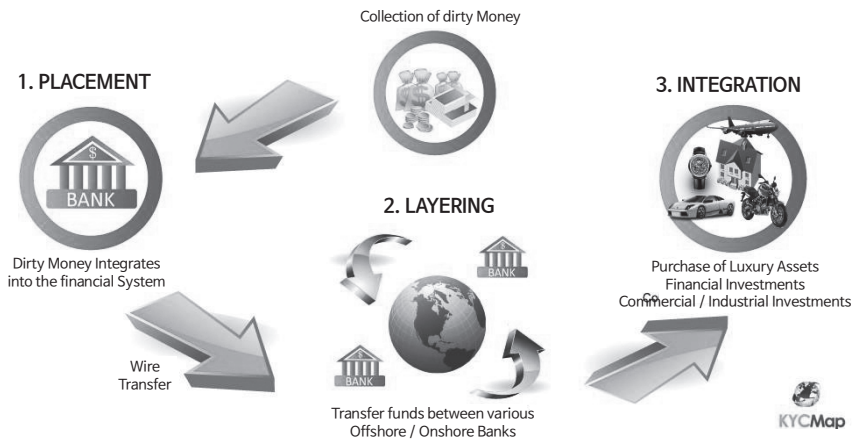
The rationale for combating money laundering is to attack transnational criminal organizations by focusing on its weak point. That is why the UN aimed to define the process of laundering money. The money generated by criminal activities is difficult to hide. It sometimes constitutes the first evidence of the crime. The transfer of criminal funds through financial systems can be identified, if appropriate alert mechanisms are found. Since the end of the 1980s, states have sought to establish these alert mechanisms, in order to ensure that criminal funds can be identified, seizing and confiscating them wherever they are found.

The United Nations Convention Against Transnational Organized Crime (2000) urges the Member States to cooperate with each other in the detection and investigation of money laundering and the prosecution of its perpetrators. States have to tighten their requirements in regard to identifying terrorists, keeping records and reporting suspicious transactions. The States are also recommended to establish Financial Intelligence Units to collect, analyze and disseminate information. A scheme whose process is shown at Figure 1 below.³²

³¹ Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), art. 3(B-1), at 62-71, https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Commentaries-OfficialRecords/1988Convention/1988_COMMENTARY_en.pdf.

³² Paul Renner, *What is Money Laundering? Three Stages in Money Laundering*, KYC MAP (2012), <https://paulrenner.com/C6-Intelligence/paul-renner-c6-kycmap-what-is-money-laundering.html>.

Figure 1: A Typical Money Laundering Scheme



Many scholars tried to define money laundering. Guy Stessens describes money laundering as a new criminal act threatening both national and international societies, which should be addressed multilaterally through banking practices, international conventions and human rights. Stessens defines it as illegal money transfer that should be combat through international legislations. He thinks that it must be fought and prevented by international legal norms, enforcing states to implement it in its domestic laws.³³ Other scholars, such as Roberto Durrieu, Heba Shams, and James Richards indicate that people legitimize the appearance of laundered assets derived from criminal activities. They declare the profits to be from legal activities and then recycle or launder them.³⁴

Meanwhile, Article 1 of the UN Convention for the Suppression of the Financing of Terrorism (1999) defines “financing terrorism and the funds for such purpose” as:

assets 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 assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.³⁵

³³ GUY SSESSENS, MONEY LAUNDERING: A NEW INTERNATIONAL LAW ENFORCEMENT MODEL 82 (2000).

³⁴ ROBERTO DURRIEU, RETHINKING MONEY LAUNDERING & FINANCING OF TERRORISM IN INTERNATIONAL LAW 13-4 (2013). See also HEBA SHAMS, LEGAL GLOBALIZATION: MONEY LAUNDERING LAW AND OTHER CASES 2-3 (2004); JAMES RICHARDS, TRANSNATIONAL CRIMINAL ORGANIZATIONS, CYBERCRIME AND MONEY LAUNDERING 43 (1998).

³⁵ International Convention for the Suppression of the Financing of Terrorism, art. 1, ¶ 1 (Dec. 9, 1999), 2178 U.N.T.S 197.

The proceeds include, according to Article 1, paragraph 3, “any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in Article 2.” Therefore, financing terrorism is a crime when:

any person commits an offence within the meaning of this Convention if that person 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: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (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, 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.³⁶

Moreover, Article 1, paragraph 3 considers that in order “for an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).”

States have attempted to prevent money laundering that finances terrorism. For instance, the US’s efforts gained the acceptance among American lawmakers to combat money laundering for the past ten years. They rebuilt money transfer system and securities transfer systems in order not to be utilized by anonymous persons seeking to move value without declaring it.³⁷ Those ideas were shaped into law after the September 11 attacks when the Patriot Act was adopted by Congress. Thus, many rules and laws were applied in the US to fight money laundering such as:³⁸

- Financial institutions should be known for their customers, including their identities, business, and source of their funds;
- Filing of reports if a transaction or a structured set of transaction involves \$10,000 or more in currency or monetary instruments, or if it is suspicious;
- Forbidding American financial institutions from handling the proceeds of crime, including tax crimes, whether they were committed in the US or elsewhere; and
- Financial institutions must utilize computerized systems with effective filters to prevent prescribed transactions.

³⁶ *Id.* art. 2, ¶ 1.

³⁷ JOHN MOSCOW, *ANTI-MONEY LAUNDERING: INTERNATIONAL LAW AND PRACTICE* 111-2 (Wouter Muller et al., eds. 2007).

³⁸ Appendix A to the Bank Secrecy Act Anti-Money Laundering, Examination Manual of the Federal Financial Institutions Examination Council, made up of the Board of Governance of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Controller of the Currency (2006), https://www.ffiec.gov/pdf/bsa_aml_examination_manual2006.pdf.

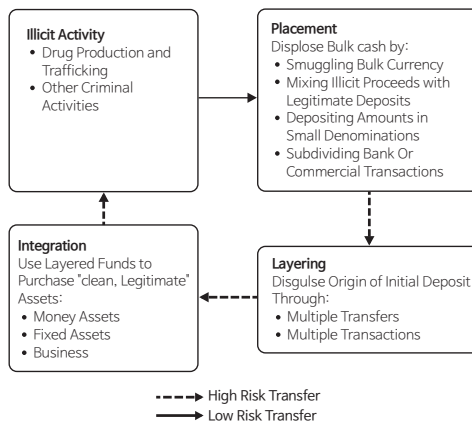
Canada has also implemented a comprehensive national initiative to combat money laundering and terrorist financing by adopting the Proceeds of Crime (Money-Laundering) and Terrorist Financing Act. The Act establishes reporting and record-keeping requirements for suspicious transactions, whether in cash, electronic funds transfers or terrorist property. It further sets requirements for client identification, retention of records, and forceful implementation on financial entities.³⁹

Kuwait adopted legislation to combat money laundering under Law 35 of 2002. In this law, money laundering is defined:

a process or group of financial or non-financial operations aimed at hiding or disguising the illicit source of funds or proceeds of any crime and showing them in the form of funds or proceeds obtained from a legitimate source from such operations; every act that contributes to the process of employing or transferring money or proceeds resulting directly or indirectly from a crime, concealment or disguise of its source.⁴⁰

Still, the meaning of money laundering is more ambiguous and complicated. The difficulty lies in framing the act of laundering itself due to the various activities it involves. Figure 2 below shows a simplified table of an attempt to convert illicit money into legitimate funds.

Figure 2: Process of Money Laundering⁴¹



³⁹ NANCY CARROLL & BARBARA McISAAC, ANTI-MONEY LAUNDERING: INTERNATIONAL LAW AND PRACTICE 129 (Wouter Muller et al. eds., 2007).

⁴⁰ Law No. 35 of 2002 in the Matter of Combating Money Laundering Operations of Kuwait (35/2002), art. 1.

⁴¹ Singapore Money Policy, Singapore Exchange Co Ltd. (2021), <http://www.singaporeexchange.com.hk/wp-content/uploads/2012/01/Amlpolicy.pdf>.

C. The Relationship between Finance and Terrorism

Terrorists need money to finance their activities. Without money, they cannot obtain weapons, equipment, supplies, services or recruit people by paying all necessary expenses. Hence, obtaining financial support for these activities is no less important than the terrorist acts themselves. Some of these groups may appear equal to international entities, such as Al Qaeda in Afghanistan and the Islamic State (ISIS) in Iraq and Syria.⁴² The source of terrorists' funds may be legal or illegal, which sometimes takes the shape of multiple small donations, instead of large amounts of cash. Also, terrorist groups may have direct or indirect links with other organized criminal groups, where they may engage in criminal activities, including drugs and arms trafficking, extortion and kidnapping, especially in regions like Africa or Asia⁴³ such as Sri Lanka, Thailand and Indonesia.⁴⁴ Financing terrorism is a global dilemma that not only threatens the security of the international community, but also undermines economic development and the stability of financial markets; therefore, it is important to stem the flow of money to terrorists.

Freezing terrorist assets is an effective way for states to stop the flow of money in order to deter participation in terrorist activities. However, the Counter-Terrorism Committee (CTC)'s Executive Directorate, when conducting assessments on behalf of the Terrorism Rewards Committee, has become aware of the many challenges that member states face in implementing effective fund freezing mechanisms.⁴⁵ As a means of technical assistance, the Committee organizes workshops of experts around the world who have not been assisted by States in establishing and implementing mechanisms to prevent activities, which should be consistent with international standards and obligations, including human rights norms. The Committee also assists states in combating the abuse of non-profit organizations, which collect indirect profits, and prevent alternative transfers to finance terrorism, and combat illegal cross-border currency transfers (a major problem in cash-based economies).⁴⁶

In order to address the financing terrorism, it is necessary for member states to cooperate at regional and international levels by exchanging operational information

⁴² ALWEQYAN, *supra* note 14.

⁴³ RADHIKA COOMARASWAY & AMBIKA SATKUNANTHAN, *ANTI-CHILD TRAFFICKING IN ASIA; A SIX COUNTRY REVIEW (BANGLADESH, NEPAL, PAKISTAN, SRI LANKA, THAILAND & INDONESIA)* (2006).

⁴⁴ Alys McAlpine, Mazeda Hossain, & Cathy Zimmerman, *Sex trafficking and sexual exploitation in settings affected by armed conflicts in Africa, Asia and the Middle East: systematic review*. 16 BMC INT'L HEALTH & HUM. RTS. 34 (2016).

⁴⁵ The Counter-Terrorism Committee Executive Directorate, S.C. Res. 1535, UN Doc. S/RES/1535 (Mar. 26, 2004), <http://unsct.com/en/resolutions/doc/1535>; <https://www.un.org/securitycouncil/ctc/content/our-mandate-0>.

⁴⁶ *Id.*

of relevant entities, in particular national financial intelligence units. It is also necessary to include investigating the financing of terrorist acts in national cases. In carrying out its functions, the Committee should work closely with relevant UN entities to coordinate its decisions with those of external partners, including relevant regional organization such as the EU and the African Union.⁴⁷

Terrorist financing operations can be seen in what ISIS has done in Syria and Iraq in controlling oil fields and selling oil to the black market. This could not occur without the assistance of some formal authorities in Iraq, Syria and Turkey, which may reveal the real concept of ISIS.⁴⁸ In fact, ISIS is considered the richest among the terrorist organizations. It managed to build a huge economy and form an enormous cash reserve within a few years through its battles against the Syrian regime as well as looting and kidnappings operations. They dominated Syrian oil fields and are selling oil by smuggling it into the black market through war merchants who are thriving in the Middle East today.⁴⁹

ISIS managed to plunder USD 425 million from the branch of the Central Bank of Iraq in the city of Mosul, where fierce battles took place between them and the Iraqi army. This amount of money alone is enough to make ISIS the richest terrorist organization in the world. Moreover, a British report exposed a “business deal” in Raqqa, Iraq, where militants extracted oil from the Syrian oil fields they seized, and then sold it through intermediaries and “war traders” in the black market. They sold it at low prices of only USD 30 P/B, at a time when a barrel of oil was sold on the world market for more than USD 100 P/B, less than one-third of its original price. It is noteworthy that the entry of ISIS into Iraq led to a major shock in the global oil markets, causing prices to rise by more than 5% within a few days of the incursion. Fear prevailed that the conflict in Iraq would cause a shortage in Iraqi oil exports, which are about 2.5 million B/D.⁵⁰

A UNESCO report described illicit antiquities trade after ISIS seized artefacts from Iraq and Syria, in addition to the taxes imposed to finance its terrorist operations.⁵¹

⁴⁷ Navin Beekarry, *International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law*, 31 NW. J. INT'L L. & BUS. 143-8 (2011).

⁴⁸ Zana Khasraw Gulmohamad, *The Rise and Fall of the Islamic State of Iraq and Al-Sham (Levant) ISIS*, 5 GLOBAL SEC. STUD. 6 (2014).

⁴⁹ Mark Corcoran & Freya Petersen, *Islamic State explained: Jihadist group fighting in Iraq, Syria*, ABC NEWS (June 12, 2014), <https://www.abc.net.au/news/2014-06-12/explainer-islamic-state-of-iraq-and-syria-the-levant/5519404>.

⁵⁰ Ruth Sherlock, *'Syria's Assad accused of boosting al-Qaeda with secret oil deals*, TELEGRAPH (Jan. 20, 2014), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10585391/Syrias-Assad-accused-of-boosting-al-Qaeda-with-secret-oil-deals.html>.

⁵¹ Samuel Hardy, *Curbing the Spoils of War*, UNESCO Rep. (Oct. 2017), <https://en.unesco.org/courier/october-december->

The report also stated that the US, charged with investigating terrorism financing, raided the home of Abu Sayyaf on May 15, 2015 who was officially responsible for smuggling operations (oil, gas, minerals and antiquities) and seized many documents. This indicates that ISIS imposed taxes equal to one-fifth of the value of the sales of those artifacts in the city of Deir Ezzor in Syria district within four months, resulting in USD 265,000 on sales with total of USD 1.32 million. This shows that the value of the taxes that ISIS collected in one year exceeded USD4 million in income.⁵²

III. The Security Council's Attempts to Fight Money Laundering and Terrorism

The Security Council is considered to be the most important organ of the UN due to its ability to take forceful measures and its voting system. Thus, the Security Council took unprecedented step into fighting terrorism by adopting Resolution 1368,⁵³ condemning September 11 attacks and calling on all states to work together to bring justice to those who perpetrated the attacks, and to take all necessary steps to prevent terrorism against member states. The Security Council also called on all states to prosecute those “responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts [and they] will be held accountable.”⁵⁴

This resolution encouraged the international community to increase their efforts and work together “to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular resolution 1269 (1999) of 19 October 1999.”⁵⁵ In Resolution 1269,⁵⁶ meanwhile, the Council stressed the need to intensify international efforts to combat terrorism at international and domestic levels, and requested all states to take necessary steps mentioned in the decision to combat terrorism. However, Resolution 1269 neither stated any forceful measures countries should follow to implement the decision, nor was there a monitoring mechanism to assure its implementation. As a result, most of the countries actually

2017/curbing-spoils-war. See also Mariam Karouny, *Insight-After Syria, al-Qaeda expanding in Lebanon*, YAHOO NEWS (Jan. 30, 2014), <http://uk.news.yahoo.com/insight-syria-al-qaeda-expanding-lebanon-152718734.html?#mkmghyR>.

⁵² *Id.*

⁵³ S.C. Res. 1368, U.N. Doc. S/RES/1368 (Sept. 12, 2001).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ S.C. Res. 1269, U.N. Doc. S/RES/1269 (Oct. 19, 1999).

ignored these decisions for various reasons, some of which were due to their lack of necessary experience, cooperation with other international organizations, or political will to do so.

Finally, Resolution 1368 was the basis for adopting Resolution 1373,⁵⁷ whereby the Security Council announced the ability to take “all necessary steps to respond to attacks of 11 September 2001, and to combat all forms of terrorism.”⁵⁸

A. The Security Council Resolution 1373 (2001)

The Security Council interacts directly with the issues that threaten international peace and security, either by preventing them before they occur or by restoring international peace and security when they occur. However, the Security Council did not remain at this level, but dealt with the consequences of the armed conflict as part of a threat to international peace and security, including the decisions it adopted in various conflicts regarding prisoners of war and other cases related to International Humanitarian Law (IHL). The main ground for this competence comes directly from Chapter VII of the UN Charter, which gives the Security Council the authority to decide whether there is a threat to international peace and security, or if there is a breach to any international norms or any act of aggression, which then gives it the ability to authorize the use of armed force.

In October 1999, the Security Council began to practice a new role. It imposed economic sanctions on Afghanistan for its failure to extradite Osama bin Laden for his terrorist acts including September 11 attacks. Although Resolution 748⁵⁹ was the first step for the Security Council to use its powers to compel a state to extradite its citizens, Resolution 1373 constituted a new qualitative shift in the fight against terrorism.⁶⁰ The Security Council tried to establish legitimacy in this decision, which was adopted unanimously. Resolution 1373 called on all member states to:

1. prevent and suppress the financing of terrorism;
2. freeze without delay the resources of terrorists and terror organizations;
3. prohibit anyone from making funds available to terrorist organizations;
4. suppress the recruitment of new members by terrorism organizations and eliminate their weapon supplies;
5. deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe haven to terrorists;

⁵⁷ S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

⁵⁸ U.N. Doc. S/RES/1368, *supra* note 53.

⁵⁹ S.C. Res. 748, U.N. Doc. S/RES/748 (Mar. 21, 1992).

⁶⁰ John Grant, *Beyond the Montreal Convention*, 36 CASE W. RES. J. INT'L L. 468 (2004).

6. afford one another the greatest measure of assistance in criminal investigations involving terrorism;
7. prevent the movement of terrorists or terrorist groups by effective border controls and control over travel documentation; and
8. cooperate in any campaign against terrorists, including ones involving the use of force.⁶¹

Resolution 1373 was approved by the Council to confront terrorism in relation to September 11 attacks. It reflected the urgent desire to fight terrorism in a wide variety of ways. Jose Alvarez commented on this decision, saying that it is a “legally binding regulation, backed by the possibility of real enforcement action, imposed on all States by a global international organ engaged in a continuous legislative enterprise by virtue of delegated power and subject to no geographic or temporal limitation.”⁶²

On April 22, 2004, the representative of Angola stated in the Council: “By adopting resolution 1373 (2001), the Security Council took the unprecedented step of bringing into force legislation binding all States on the issue of combating terrorism.”⁶³ The adoption of this resolution was widely welcomed as a “landmark decision”⁶⁴ which is one of the most important decisions the Council has adopted in its history.⁶⁵

Resolution 1373 was based upon the International Convention for the Suppression of the Financing of Terrorism⁶⁶ which seeks to criminalize the collective funds by its citizens or in its territory in any manner, whether directly or indirectly in a way that may be used in terrorist operations. While this Convention was applicable only to member states who signed and ratified, it did not include an international monitoring body. To the contrary, Resolution 1373 is forced upon all member states of the UN. Finally, the Security Council resolutions establish an international monitoring body consisting of all Security Council members. Accordingly, Resolution 1373 was replaced with the International Convention for the Suppression of the Financing of Terrorism and bound all UN member states. In this course, a question may arise: “Is this a new approach of dealing with terrorism where replacing binding decisions is more useful other than adopting international conventions for dealing with terrorism, especially on a consensual level?”

⁶¹ U.N. Doc. S/RES/1373, *supra* note 57. See also Bruce Zagaris, *The Merging of the Anti-Money Laundering and Counter-Terrorism Financial Enforcement Regimes after September 11, 2001*, 22 BERKELEY J. INT'L L. 140 (2004).

⁶² Jose Alvarez, *Hegemonic International Law Revisited*, 95 AM. J. INT'L L. 874 (2001).

⁶³ U.N. SCOR, 59th SESS., 4950th mtg. at 9-10, U.N. Doc. S/PV.4950 (Apr. 22, 2004).

⁶⁴ U.N. GAOR, 56th SESS., 25th PLEN. MTG. at 10 (Singapore), U.N. Doc. A/56/PV.25 (note 2) (Oct. 15, 2001).

⁶⁵ U.N. SCOR, 57th SESS., 4453rd MTG. at 7 (France), U.N. Doc. S/PV.4453 (Jan. 18, 2002).

⁶⁶ Financing Terrorism Convention, *supra* note 35.

In recent, the Security Council is trying to implement the provisions of the conventions relating to terrorism through binding decisions in order to overcome the relative issue of the treaty effect. For example, Resolution 1540 was adopted to force some articles relating to the Nuclear Non-proliferation Treaty (NPT) to guarantee its implementation because the decisions in this resolution are binding all member State to prevent the spread of nuclear weapons.⁶⁷ Likewise, Resolution 1566⁶⁸ requires all member states to prohibit various acts previously referred to in the International Convention on the Suppression of Terrorist Bombings,⁶⁹ and in case this occurred, perpetrators should be punished. Moreover, Resolution 1373 marked a new phase of the Security Council exerting its competence, as it classified terrorist attacks in the US as an aggression that states could deter under Article 51 of the UN Charter. It set restrictions regarding the movements and fund transfers to control terrorist financing operations, and provided the Counter-Terrorism Committee with privileges in contrast with state sovereignty.

Although most member states showed their support for this decision and enforced it in their domestic laws, some faced accusations of a lack of legitimacy by enforcing it. Canada, for example, violated its domestic laws in trying to enforce this resolution on how to balance the secrecy of information and the required transparency before the international community, especially when another state asks for information regarding a matter of terrorism.⁷⁰ Moreover, Canada faced a problem in enforcing the Security Council's resolution which requires Parliament's approval under its domestic legal procedures. The Canadian government needed to ask its Parliament to adopt a statute in order to act on this decision.⁷¹

In recent, the Security Council appeared to give itself powers that were not stated explicitly in the Charter. The first incident was the *Lockerbie* case. The Security Council considered this case to be a threat to international peace and security and forced Libya to extradite suspected criminals who committed crime in violation of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (hereinafter

⁶⁷ S.C. Res. 1540, U.N. Doc. S/RES/1540 (Apr. 28, 2004). Article 3 stated: “[a]ll States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials.” See also Grant, *supra* note 60, at 469.

⁶⁸ S.C. Res. 1566, U.N. Doc. S/RES/1566 (Oct. 8, 2004).

⁶⁹ International Convention on the Suppression of Terrorist Bombings (Dec. 15, 1997), 2149 U.N.T.S. 256.

⁷⁰ Robert Diab, *Canada: Country Report on Counter-Terrorism Law*, in *COMPARATIVE COUNTER-TERRORISM LAW* 78-112 (K. Roach ed., 2014).

⁷¹ Craig Forcese, *Hegemonic Federalism: The Democratic Implications of the UN Security Council's 'Legislative' Phase*, 38 VICTORIA U. WELLINGTON L. REV. 190-1 (2007).

Montreal Convention 1971),⁷² which gives the state the right to extradite or prosecute persons accused of crimes against civil aviation.⁷³ Libya went to the International Court of Justice (ICJ) to prevent the US and the UK from urging the Security Council to impose sanctions against Libya for refusing to extradite two Libyan suspects. Libya argued that Resolution 731⁷⁴ conflicted with the Montreal Convention 1971, in dealing with the extradition of national citizens, and asked the ICJ to recall Resolution 731 because it was in violation of an international treaty.⁷⁵ Libya insisted that the US and UK had breached the Montreal Convention 1971, so that the ICJ should prevent the breach of the convention through the Security Council decision.⁷⁶ Before the ICJ adopted a decision in the matter, the Security Council adopted Resolution 748⁷⁷ demanding that Libya should deliver the suspects to the US. The ICJ immediately denied Libya's request due to the lack of authority over the Council's work, especially in matters under Chapter VII.⁷⁸ Lockerbie case was followed by other cases, such as the Council resolutions in intervening to protect threatened minorities in conflict situations.⁷⁹ The point here is that the Security Council directly interfered to pressure Libya to extradite its terrorists without waiting for the ICJ decision. Moreover, the Council took implicit actions to prevent Libya from more terrorist acts, as Libya was not just funding those terrorists but also help and trained them.

B. Two Points at Issue

A question may arise regarding what is the stance of the international community toward the Security Council exceeding its role under the Charter. The answer is illustrated in the following two points:

⁷² Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sept. 23, 1971), arts. 5, ¶ 2-3, 7-8 & 11, 974 U.N.T.S. 178.

⁷³ Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. U.S.), Order, Provisional Measures, 1992 I.C.J. Rep. 1140 (Apr. 14); Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. U.K.), Order, Provisional Measures, 1992 I.C.J. Rep. 1140 (Apr. 14).

⁷⁴ S.C. Res. 731, U.N. Doc. S/RES/731 (Dec. 23, 1992).

⁷⁵ On March 3, 1992, the Libyan Arab Jamahiriya filed in the Registry of the Court two separate Applications instituting proceedings against the Government of the United States of America and the Government of the United Kingdom, in respect of a dispute over the interpretation and application of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed in Montreal on 23 September 1971. See Lockerbie Case, *supra* note 73.

⁷⁶ *Id.*

⁷⁷ U.N. Doc. S/RES/748, *supra* note 43.

⁷⁸ Michael Platchta, *The Lockerbie Case: The Role of the Security Council in Enforcing the Principle Aut Dedere Aut Judicare*, 12 EUR. J. INT'L L. 126-8 (2001).

⁷⁹ On the protection of the Kurds in northern Iraq and Shiites in the south after the war to liberate Kuwait (Apr. 5, 1991), S.C. Res. 688, U.N. Doc. S/RES/688.

1. The first point: The Security Council does not have unlimited powers under international law, but its competences come directly from the Charter.

The Security Council is not, as many may think, an organization with unlimited powers,⁸⁰ but one of the UN's principal organs whose powers and roles are subject to the Charter. The Council is not thus allowed to bypass these roles, even though it has wide discretion for maintaining international peace and security, including the use of force in international dispute settlement. In the case of *Reparation for Injuries Suffered in the Service of the United Nations*,⁸¹ for example, the General Assembly requested an advisory opinion from the ICJ regarding the rights of the UN staff members who were injured while performing their duties, and whether it should be subjected to the level that raises international responsibility.⁸² It means whether the UN, as an international organization, has the ability and legal capacity to file a lawsuit against the responsible state before the ICJ, and whether it has the right to request compensation due to the damage occurred and caused to the UN itself, and to the victim/s or to the person/s who are entitled to seek compensation for the reason of the injury that they had suffered.⁸³ The Court stated in its advisory opinion that as the UN is considered an international entity, it has the right to function in its role under international law where it enjoys full international capacity to work in the international environment. The ICJ opined:

“(i) in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a Member State, the United Nations as an Organization has the capacity to bring an international claim against the responsible *de jure* or *de facto* government with a view to obtaining the reparation due in respect of the damage Cause to the United Nations.
(ii) in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State which is not a member, the United Nations as an Organization has the capacity to bring an international claim against the responsible *de jure* or *de facto* government with a view to obtaining the reparation due in respect of the damage caused to the United Nations.”⁸⁴

⁸⁰ Michael Reisman, *Peacemaking*, 18 YALE J. INT'L L. 415 (1993).

⁸¹ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion. 1949 I.C.J. Rep. 174 (Apr. 11).

⁸² *Id.*

⁸³ On September 17, 1948, Count Bernadotte, a Swedish national, was murdered in Jerusalem by Zionist gangs. Count Bernadotte was the UN envoy selected to discuss the cease-fire between Arabs and Jews. The General Assembly of the UN submitted the matter to the ICJ requesting an advisory opinion to the extent of the UN requesting compensation for the death of its official employee, Count Bernadotte. *See id.* at 147.

⁸⁴ *Id.* at 187.

However, the ICJ made an important observation in this regard that the UN's legal personality is not equal to the one subjected to states. Thus, the personality that the UN enjoys does not make it a state-like person and their rights and duties under international law are not the same as those of member states.⁸⁵ In addition, the UN is not considered superior over the member states because an international legal personality is given to the UN to allow it to practice its rights and obligations in terms of international law through the ICJ.⁸⁶

It should be noted that the ICJ previously decided that the UN organs are competent within the limits of the Charter,⁸⁷ but should not exceed it.⁸⁸ Judge Gerald Fitzmaurice illustrated in his dissenting opinion in the case of *Namibia*, that the restrictions imposed on the powers of the Security Council are necessary because of the great ease with which any controversial situation can be presented sharply as a potential threat to international peace and security.⁸⁹ Without these restrictions, the functions of the Security Council can be used for the purposes that were not originally intended. In regard to the Security Council's powers, Fitzmaurice stated:

It does not limit the occasions on which the Security Council can act in the preservation of peace and security, provided the threat said to be involved is not a mere figment or pretext. What it does is to limit the type of action the Council can take in the discharge of its peace-keeping responsibilities, for the second paragraph of Article 24 states in terms that the specific powers granted to the Security Council for these purposes are laid down in the indicated Chapters (VI, VII, VII1 and XII).⁹⁰

⁸⁵ That is why the court rejected the idea that UN personnel are its citizens or that the protection exercised by the international organization against these persons is the same as the one exercised by a state for its citizens. The basis for international protection in both cases is different.

⁸⁶ Based on the decision of the ICJ in the case of Count Bernadotte, the UN General Assembly authorized the Secretary-General to demand the Zionist entity to compensate for the damage caused to the UN as a result of killing one of its employees at the hands of the Zionist gangs. In 1950, Israel paid the UN an amount of compensation for the damage caused to the UN. See DAVID HARRIS, *CASES AND MATERIALS ON INTERNATIONAL LAW* 120 (3d ed. 1983).

⁸⁷ Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, 1962 I.C.J. Rep. 168 (July 20).

⁸⁸ Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter) Advisory Opinion, 1948 I.C.J. Rep. 64 (May 28).

⁸⁹ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Order No. 1 of 26 January 1971, 1971 I.C.J. Rep. 3 (Jan. 26); Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Dissenting Opinion of Gerald Fitzmaurice, 1971 I.C.J. Rep. 293 ¶ 112 (Jan. 26).

⁹⁰ *Id.*

2. The second point: The Security Council finds its competence by the wide interpretation of the Charter in order to gain more powers.

The International Criminal Tribunal for Rwanda (ICTR) faced this issue in the case of the *Prosecutor v. Joseph Kanyabashi*,⁹¹ in which the defendant argued that the Security Council was not authorized to establish this special tribunal by violating the sovereignty of the state. Furthermore, it was not established by an international convention, but based on a Council decision.

The ICTR rejected this defense based on the wide competences the Security Council has under the Charter, which allows it [Security Council] to be the only one that decides what is considered to be a breach of international peace and security. The Court further stated that this privilege can be seen in Article 41 of the UN Charter where the general interpretation does not state the ability to establish a special tribunal; however, it falls within the general jurisdiction of Article 41 because the cases mentioned in it are not exclusive.⁹²

The ICTR concluded that nothing in the Charter that prevents the Security Council from establishing such tribunals when there is a threat to international peace and security.⁹³ It should be noted that the Charter does not explicitly provide jurisdiction for the Security Council to establish international criminal tribunals, whatever their form or scope. However, it was important to indicate the concept of establishing international criminal courts explicitly in the Charter rather than give the Council ambiguous power to do so under wide interpretation of the Charter. The role of the Security Council does not diminish the failure to explicitly stipulate in the Charter a jurisdiction to establish international criminal courts and deter crimes against humanity. This jurisdiction is important given its general powers to maintain international peace and security whenever those crimes may cause threat to the peace and security.⁹⁴

According to the advisory opinion of the ICJ in the *Namibia* case,⁹⁵ the Security Council could adopt decisions that do not necessarily fall within the scope of Chapter VII of the Charter, but those decisions should be rather grounded on its primary responsibility to maintain international peace and security.⁹⁶ It is important to

⁹¹ *Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-98-42, Appeals Chamber Judgement on Nyiramasuhuko, et al. (Butare) (Int'l Crim. Trib. for Rwanda Dec. 14, 2015).

⁹² *Id.*

⁹³ Jamie Williamson, *An Overview of the International Criminal Jurisdictions Operating in Africa*, 88 INT'L REV. RED CROSS 118-9 (2006).

⁹⁴ Rashid Al-Anazi, *Defining Land Borders between Kuwait and Iraq in Accordance with the Rule of Law*, 3-4 J. L. KUWAIT U. 363 (1993).

⁹⁵ Legal Consequences for States of the Continued Presence of South Africa in Namibia, *supra* note 89.

⁹⁶ *Id.*

allow the Security Council to have wide authority through which it can confront all situations and disputes that are considered a threat to international peace and security. Furthermore, when establishing international organizations, the Charter could be rather broadly interpreted in order to achieve the UN's purposes and roles. For example, the Uniting for Peace Resolution adopted by the General Assembly in 1950 is a similar case where the UN Charter was broadly interpreted to assist the UN in achieving its goals to the fullest.⁹⁷

C. The Counter-Terrorism Committee

Resolution 1373 took an important step in fighting terrorism by establishing the CTC under the Security Council. The CTC, consisting of each member of the Council, monitors member states' implementation of the resolution.⁹⁸ All member states must report to the CTC within 90 days from adopting a decision. The member states should report on the steps they have taken toward implementation, all the information they have gathered and all necessary procedures taken to combat terrorism. This is done in accordance with a timetable proposed by the CTC in consultation with the Secretary-General to define its tasks and provide a work program within 30 days of making this decision. Then, all necessary measures are taken to ensure that this decision is fully implemented in accordance with its responsibilities under the Charter.

It is the CTC's job to review these reports; advise on other procedures to be taken; provide any assistance for a member state to assure a full implementation for the decision;⁹⁹ and fulfil its obligation accordingly. The CTC sets a strict system of transparency, including informing member states and the press periodically of its work for the purpose of creating an atmosphere of trust and cooperation with the international community by urging states to submit their reports to the Committee in accordance with paragraph 6 of Resolution 1373.¹⁰⁰ In addition, the CTC has developed a guide for states to follow when submitting their reports.¹⁰¹ This guide

⁹⁷ Uniting for Peace, G.A. Res. 377A(V), UN Doc. A/RES/377 (Nov. 3, 1950).

⁹⁸ Eric Rosand, *Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight Against Terrorism*, 97 AM. J. INT'L L. 333 (2003).

⁹⁹ CTC, How Does the CTC Work with States? <https://www.un.org/sc/ctc/wp-content/uploads/2016/09/guidelines-for-conduct-ctc.pdf>.

¹⁰⁰ UN. Doc. S/RES/1373, *supra* note 57, ¶ 6. It states: "All the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution."

¹⁰¹ Established Pursuant to 16 October 2001 Resolution 1373 (2001), UN Doc. S/AC.40/2001/CRP, Security Council Committee S/AC.40/2001/CRP.

contains instructions for states when preparing their reports. In this course, the member States should clearly and specifically define the legislative and executive measures that they adopted or are expected to adopt for implementing Resolution 1373. Those states are then required to indicate the process of implementing each paragraph and subparagraph of the decision, including the steps they have taken to develop international cooperation in the issues mentioned in the decision.¹⁰²

More specifically, it is necessary for member States to report all the measures they have taken concerning the sources of funding, illicit arms trafficking, and any other related issues to support funding terrorism.¹⁰³ This places a heavy burden on states, yet they reacted positively to these requirements. On October 4, 2002, the Chairman of the CTC, Jeremy Greenestok, presented in his report to the Security Council that there was great cooperation and support from countries at the end of the first 18 months of the Committee's life.¹⁰⁴ Actually, by April 4, 2003, 189 member states submitted their first reports,¹⁰⁵ while 131 countries submitted their second supplementary reports and 28 countries submitted their third supplementary reports in response to the CTS's observations on those reports, all by the end of March 2003.¹⁰⁶

Two observations have been noted by reviewing the reports. One is that states have difficulties in submitting their first report due to the lack of necessary resources and information regarding terrorists. The lack of experience in this field is also problematic.¹⁰⁷ The other is that states are required to draft special laws to incorporate the UN's 12 terrorism-related conventions into their domestic laws in order to fully implement the resolution within 90 days.¹⁰⁸

Member States need help in training specialists to assure the implementation of the newly adopted laws related to combating international terrorism. Most of them, however, would face a lack of necessary experience especially in combating the financing of terrorism and its related issues. Therefore, they were required to set up a special unit for financial investigation, immigration, customs and border control in the judiciary with the necessary equipment to achieve their goals with high efficiency.

¹⁰² *Id.*

¹⁰³ Curtis Ward, *Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council*, 8 J. CONF. & SEC. L. 299 (2003).

¹⁰⁴ The Verbatim Record of the Security Council, 4618th Mtg of 4 October 2002, at 4-5 UN Doc. S/PV.4618.

¹⁰⁵ Niue, Cook Islands, UNMIK, the EU, and OSCE also provided reports to the CTC. See Ward, *supra* note 103, at 299.

¹⁰⁶ *Id.*

¹⁰⁷ Office of the United Nations High Commissioner for Human Rights, *Human Rights, Terrorism and Counterterrorism* 19 (2007).

¹⁰⁸ Dinah Shelton, *Introduction: Law, Non-Law and the Problem of 'Soft Law,'* in COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM 8 (D. Shelton ed., 2003).

In its paper titled, *Assistance, Next Step*,¹⁰⁹ the CTC presented effective methods to combat terrorism including practical measures to enhance the implementation of Resolution 1373. For example, the adoption of model legislation should lead to enforcing new laws, and training sessions should lead to adopting new procedures. Donors must ensure that the assisting programs that they provide should support member states with all tools they need to take the necessary actions. In this regard, the legal model may be accompanied with the guidance on implementation, training roles and practical studies.¹¹⁰ Also, it is necessary to provide advice about institutions, mechanisms and procedures to enable states to enact the new laws. Accordingly, the CTC encourages states and organizations to design their programs and monitors the achievements through its ongoing correspondence with member states.¹¹¹

The assistance provided to member states to combat terrorism is believed to have positive effects other than fighting terrorism, such as developing solid legal financial system, an effective immigration control, border security and customs, and internal security system. Moreover, member states could improve their capabilities to obtain financial resources, prevent criminals from entering across borders, and combating illicit trafficking in drugs, weapons and smuggling, which helps creating a stable internal environment for economic activities.¹¹²

In order to combat the terrorism of ISIS and other groups linked to Al-Qaeda, the Security Council adopted Resolution 2199¹¹³ to impose financial sanctions on these groups to disrupt their violent attacks by freezing their funding and spending sources from looting, smuggling and illicit trafficking in cultural and historical properties.

The Security Council's Resolution 1483¹¹⁴ also required all states to prevent the trafficking or safely transfer of cultural property illegally taken from Iraq (as of August 6, 1990) to its home. Resolution 2199¹¹⁵ was adopted to assure binding measures to return cultural property suspected to had been illegally transferred from Syria after March 2011. In addition, Resolution 2178 urges member states to disrupt terrorist financing activities associated with private trust funds and criminalize financing travel.¹¹⁶ Resolution 2253¹¹⁷ obliged member states to report any cultural materials

¹⁰⁹ CTC Doc. Assistance: Next Steps, agreed following meeting on 21 October 2002.

¹¹⁰ *Id.*

¹¹¹ Rosand, *supra* note 98, at 336.

¹¹² *Id.* at 337-8; Ward, *supra* note 103, at 302.

¹¹³ S.C. Res. 2199, U.N. Doc. S/RES/2199 (Feb. 12, 2015).

¹¹⁴ S.C. Res. 1483, U.N. Doc. S/RES/1483 (May 22, 2003).

¹¹⁵ U.N. Doc. S/RES/1566, *supra* note 68.

¹¹⁶ S.C. Res. 2178, U.N. Doc. S/RES/2178 (Sept. 24, 2014).

¹¹⁷ S.C. Res. 2253, U.N. Doc. S/RES/2253 (Dec. 17, 2015).

coming from Iraq and Syria in order to confiscate them and take all necessary measures against antique smugglers who finance ISIS, Al Qaeda and their partners. The Security Council has also strengthened these measures with Resolution 2347 (2017)¹¹⁸ calling on member states to prohibit trafficking in or transporting cultural properties from all conflict areas.¹¹⁹

Resolution 1373 requires member states to take firm measures against those who finance or carry out terrorist acts. In the course of implementing this obligation, however, an obstacle is that Resolution 1373 did not define what terrorism means. Instead, the definition was left to each state in accordance with its domestic laws, which may violate general principles of international law.¹²⁰

D. The Financial Action Task Force on Money Laundering

In 1989, the Financial Action Task Force on Money Laundering (FATF) was organized by the G7¹²¹ in order to combat money laundering. FATF adopted legal rules in this regard and described it as: “the processing of [...] criminal proceeds to disguise their illegal origin.”¹²² After September 11 attacks, FATF extended its work to fight terrorism and addressed many procedures to prevent any kind of money laundering operations financing terrorists in cooperation with the UN for exchanging information about their activities. FATF focused on money laundering trends and techniques, by building and reforming financial and legislative enforcement programs throughout domestic and international levels.

FATF relies on national and regional bodies¹²³ for creating a wide network that pursues terrorism. As an inter-governmental decision-making body, FATF consists of 35 member states, 2 regional organizations, 9 associate members, and

¹¹⁸ S.C. Res. 2347, U.N. Doc. S/RES/2347 (Mar. 24, 2017).

¹¹⁹ Samuel Hardy, *Curbing the Spoils of War*, UNESCO Courier (Dec. 2017), at 12-5.

¹²⁰ Rosand, *supra* note 98, at 334.

¹²¹ The G7, now the G8 with the addition of Russia, was comprised of heads of state of the United States, Canada, Japan, France, Germany, Italy, Britain, and the European Community. See G8 Information Center, What Is The G8?, http://www.g7.utoronto.ca/what_is_g8.html.

¹²² A special intergovernmental body set up by the G-7 Summit in 1989 to combat money laundering. See FATF (1989), <https://www.fatf-gafi.org/faq/moneylaundering>.

¹²³ These include the Caribbean FATF, the FATF in South America, the Asia/Pacific Group on Money Laundering, the Eastern and Southern Africa Anti-Money Laundering Group, and the MONEYVAL Committee. In addition to the organizations discussed herein, the G8, the G20, the International Monetary Fund, the World Bank, the World Customs Organization, the Commonwealth Secretariat, Europol, Interpol, the International Organization of Securities Commissions, the Financial Stability Forum, the Egmont Group of Financial Intelligence Units, the Basel Committee on Banking Supervision, the Offshore Group of Banking Supervisors, the European Central Bank, and various development banks play important roles in developing the international AML/CTFE regime through raising awareness, developing methodologies, building institutional capacity, and research and development. See Zagaris, *supra* note 61, at 141.

several observer organizations (e.g. World Bank, International Monetary Fund, INTERPOL, UN, etc.). Known as the FATF-Style Regional Bodies (FSRBs),¹²⁴ they have passed 40 recommendations¹²⁵ in order to combine with another eight special recommendations¹²⁶ on terrorist financing. FSRBs have created a comprehensive list of money laundering activities and the people/organizations behind the activities. Such list was distributed to states and institutions combating those crimes. FATF also adopted procedures that should be taken by countries and financial institutions, and implemented sanctions and punishments on terrorists.¹²⁷

After September 11 attacks, eight special recommendations were flexibly integrated into the existing Anti-Money Laundering (AML) normative structure, providing greater privileges to the FATF compliance framework. Notably, September 11 attacks had a major impact on the money laundering for terrorist groups around the world. These attacks showed the significance of money laundering on international law. As Navin Beekarry observed, the normative and institutional linkage between money laundering and financing terrorism is based on the positive achievements and experiences of the FATF system, and the need to bring the two forms of transferring illicit money together,¹²⁸ as both crimes come from the same sources and methodologies. Both rely on illicit assets to carry out their activities and cause huge harm to security and financial stability in any state. However, combating any financial transfer may bring legitimacy issues, especially when it comes to human rights laws. Thus, the following three perspectives have been presented in this matter.¹²⁹

First, Terrorists may rely on many other financial sources for their activities to link both operations together, i.e., money laundering and financing activities.

Second, relying on the FATF experience in combating the illegal transfer of money and using it as a way to capture any unusual activity in a state may lead to a terrorist act, as the terrorists will always be a step ahead to avoid exposing their financial activities. Thus, FATF should always look for new unpredicted methods to follow those suspicious transfers. This experience may help in modifying money laundering through any banking system that may accumulate some criminal assets, by following

¹²⁴ Mekpor, *supra* note 32, at 23.

¹²⁵ Financial Action Task Force, FATF 40 Recommendations (2003), <https://www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf>.

¹²⁶ Financial Action Task Force, FATF IX Special Recommendations on Terrorist Financing (2001), <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20-%2020IX%20Special%20Recommendations%20and%20IN%20rc.pdf>.

¹²⁷ *Id.*

¹²⁸ Beekarry, *supra* note 47, at 162.

¹²⁹ Barry Rider, *Recovering the Proceeds of Corruption*, 10 J. MONEY LAUNDERING CONTROL 6-7 (2007).

the guided plans of FATF.

Third, FATF's strategy has been less successfully enforced than money laundering and terrorist activities, especially since September 11 attacks. In spite of increasing efforts of FATE, it did not even reach a suitable level to combat free unmonitored money transfer, which raise an alert to change the FATF methods to guarantee confining terrorist illegal money transfer.

In recent, however, FATF has shifted its approach from a traditional system to a more risk-based one, which is beneficial in combating the money laundering. It should be noted that some terrorist funds may be cleaned in the beginning before entered or transferred, but still be used for criminal acts.¹³⁰

IV. Conclusion

International terrorism is a highly topical issue that the UN has paid attention since the last quarter of the twentieth century. Initially, terrorism was regarded as an internal matter. The UN tried to create a legal system governing terrorism either by adopting resolutions in this regard, or through studies of the Sixth (Legal) Committee to prepare draft conventions on terrorism. The Legal Committee then avoided referring to the term 'terrorism' when adopting several conventions relating to nuclear materials, plastic explosives, aviation, maritime navigation, protected persons and taking hostages. It was even unable to establish a clear definition of terrorism due to the different views of States on such issues.

Since September 11 attacks, the global community has put the war on terror a top priority and most frequently discussed this topic at the international level. As the US urged the Security Council to pass Resolution 1368 right after the attacks, the Council condemned and considered them armed aggression allowing the US to exercise the right of self-defense. In sixteen days after 9/11 incidents, the Security Council adopted Resolution 1373 unanimously considering the acts of terrorism as a grave threat to international peace and security. This decision aimed to raise the level of responding to terrorism around the world. Furthermore, the Council requested all member states to take measures to prevent financing terrorism and criminalize all types of money laundering within its regional competence; to control money and arms transfers; and to improve the efficiency of border control. This resolution established the CTC,

¹³⁰ Stefan Cassella, *Reverse Money Laundering*, 7 J. MONEY LAUNDERING CONTROL 92 (2004).

which is mainly obliged to monitor its implementation. States should report to the CTC on the procedures that they have taken to implement the decisions.¹³¹

Today's terrorism has become a serious global threat. It is no longer confined to a specific country or region, but has been attracting many attentions at a global level with the emergence of terrorist organizations. Some terrorist organizations are linked to governments, while others seek to occupy territories, oil industry, or even armies. These organizations cannot keep operating without financial support to realize their plans in all forms including logistics. One of the most important sources for financing terrorist organizations is money laundering.

In summary, international terrorism started as an internal problem, and expanded into the international arena. Today, it has become a grave threat to international peace and security. The UN initially worked to combat terrorism and money laundering through several international conventions and resolutions. In the beginning, it was difficult to adopt a comprehensive convention on terrorism due to the big gap between states on its definition and perspectives. After September 11 attacks which brought massive devastation and fundamental turning point, the Security Council finally began to set up a new legal framework combating terrorism in a global level through preventing money laundering and transfer. It will be a door to launching international counter-terrorism operations from an international legal perspective.

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¹³¹ Paul Szasz, *Security Council Starts Legislating*, 96 AM. J. INT'L L. 901 (2002); Nicholas Rostow, *Before and After: The Changed UN Response to Terrorism since September 11th*, 35 CORNELL INT'L. L. J. 475 (2002).

