

**25-26 SEPTEMBER 2014**

**INTERNATIONAL CONFERENCE**

**ON TERRORISM AND ORGANISED CRIME**

SESSION II: FINANCING OF TERRORISM AND ANCILLARY CRIMES

CHALLENGES AND PERSPECTIVES IN THE PROSECUTION OF CASES ON FINANCING  
TERRORIST ACTS AND TERRORIST GROUPS

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**INTRODUCTION**

*“.....We need long term projects to be implemented also in foreign Countries.  
A group of three-four people with a regular residential status (In one of E.U. Countries) should  
be created. This group should deal with the sale of second hand cars and of clothes, take on  
managing butchers’ shops, call centres. We need long term and profitable projects, since “they”  
fear people who can make money more than fighters and soldiers. I cannot use weapons if you  
do not give me money, if you do not financially support me”*

This statement was given in a wired tapped apartment of an alleged member of a terrorist organization. The allegations demonstrate how important the members of terrorist organizations believe that financing of terrorism is.

The statement gives relevant indications on the potential sources of terrorist organizations: proceeds of crimes as well as of illicit activities.

Even though we often talk about financing of terrorism, we need to consider that there are relevant differences between the financing a terrorist organization and the financing an act of terrorism.

A single terrorist act does not require relevant financial supports.

According to the 9/11 Commission Terrorism, Financing Monograph, the 1998 Africa Embassy bombings cost approximately \$10,000; the 2002 Bali nightclub bombings cost roughly \$20,000. A UN Monitoring Team reported that the 2003 Jakarta JW Marriot Hotel bombing cost \$30,000, while the 2004 Madrid train bombings cost \$10,000.

The financing of terrorism is the financial support, in any form, of terrorist acts or of those who encourage, plan, or engage in terrorism and involves the process by which the final destination of the assets is to be disguised. Those who finance terrorism transfer funds that may be legal or illicit in origin in such a way as to conceal their source and ultimate use, which is the support of terrorism.

Those who finance terrorism are rewarded by concealing the final destination of their funding and disguising the financial support to carry out their terrorist stratagems and attacks.

Financing of terrorism, under the point of view of national prosecutors, is focused – on one side - on the relation between the funders and the terrorist groups and on the other side on the transfer of money to the places where terrorist attacks are carried out and where terrorist organizations are operational.

### **TERRORISM FINANCING: NEXUS WITH OTHER CRIMINAL ACTIVITIES**

Since G-8 Summit in L'Aquila, Italy, world leaders reaffirmed their commitment to combat the “converging threats of terrorism, drugs, and organized crime [and] provide capacity-building and other forms of technical assistance to disrupt all possible links between terrorism and organized crime

In many investigations that have been run in Italy, it was found out that terrorist groups in the country and abroad are financed by the proceeds of crimes (such as drug/weapons trafficking, piracy, kidnapping, robbery, extortion, thefts, cigarettes smuggling, smuggling of immigrants, forgery of documents, counterfeit goods trade, credit cards fraud) perpetrated either by the their own members or by members of structured criminal groups (having close connections with terrorist groups). Some these actions are not defined as part of a terrorism agenda but as ordinary crimes. Some of the above listed felonies are not deemed as serious crimes in many countries. For example counterfeiting is appealing because it is “a low-risk, high-profit crime area that for most governments and most police forces is not a high priority.”

In the field of financial support, organized crime has thus significant, opportunistic ties with terrorism. Organized crime groups have been associated with a range of security threats, including kidnapping, piracy, human trafficking, and outright violence. By facilitating the circulation of weapons, drugs, migrants, counterfeit and smuggled goods and other crimes, organized crime also poses indirect but more widespread threats to security.

In some cases, organized crime can also undermine states themselves.

Some Countries might perceive organized crime dynamics and strategies as a major threat if compared to terrorist individuals/groups.

For example, terror tactics were utilized by the Italian Mafia in early 1990s (killing two preeminent prosecutors and their body guards and blasting artistic/historical sites) in response to relatively successful law enforcement agencies investigations against the Mafia organizations in the country. Comparable with any traditional terrorist group, the Mafia engaged in terrorism as a tactical tool to try to force the government into negotiation and compromise and to adopt a less severe approach against mafia organizations.

This example leads to consider that terrorism and organized crime are distinct criminal activities. Although their motives and practices may be divergent, both criminal and terrorist groups are capable of committing acts of terrorism, joining into cooperative relationships, and sharing one another's practices. For both political activists and criminals, terrorism is not only a tactical but a utilitarian tool since it is used as a means to advance their respective objectives.

Criminal groups using terror tactics pose a direct threat mainly to less resilient, fragile or post-conflict states. Criminal organizations can erode state structures, undermine the rule of law, reduce the legitimacy of governments and gain the empathy of a relevant number of citizens.

Some main categories of intersection between terrorism and Organized crime have been identified: co-existence, cooperation and convergence.

### Coexistence

Coexistence refers to situations where organized criminals and terrorist groups operate in the same theatre but explicitly remain separate entities. In this case their combined presence can generate cumulative effects. Both criminal and terrorist groups benefit from weak state structures, such as border control and law enforcement and have a specific interest in maintaining such institutional weakness

### Cooperation

There are not many cases of detected cooperation between organized crime and terrorist groups.

Terrorist groups pursue political agendas whereas organized criminals tend to seek changes to the political status quo of Countries where they operate only when it threatens their activities. The profits to be made from illicit activities are the primary motivation for organized criminals. Terrorists regard profit making ventures as a means rather than an end.

Strong and lasting cooperation between criminal and terrorist groups may often alert law enforcement agencies. Consequently, as both groups seek to protect their operations, collaboration with outside actors – with different motives, ideologies or cultural dispositions – is inherently risky. Cooperation may occur where certain goods or services - or specific types of operational support – can be acquired in a cost-effective manner from the other type of group (false papers, IT and communications specialists, and counter-surveillance technology).

A different type of cooperation can occur where one group controls territory which is of strategic value for the operational goals of the other. Quite often, cooperation between criminal and terrorist groups is ad-hoc, short-term and focused upon specific operational requirements.

One of the most recognizable alliances was the relationship that developed between the Albanian mafia and the KLA during the Kosovo conflict. These two groups successfully established a heroin smuggling operation, the profits of which simultaneously fed into the criminal and political aims of each entity at the time.

After the fall of the Albanian government in 1997, the Albanian mafia secured its authority over heroin-trafficking routes through the Balkans. At approximately the same time, the KLA was established to seek an independent state from Serbia. The profits from the Pristina cartel, estimated to be in the ‘high tens of millions’, were funneled to the KLA, where they were used primarily to buy weapons, often in ‘drugs-for-arms’ arrangements’.

Indications have been collected about contacts between two major Italian criminal groups and Al Qaeda on Drug Trafficking, extortion, arms trafficking.

In a large number of cases, in exchange for services such as the supply of false documentation, terrorist cells/groups support the narcotics and arms trafficking networks of the OCG, in Countries such as Italy.

In case of cooperation, it is crucial to detect the flow of money between the criminal group and the terrorist organization concerned

### Convergence

Criminal and terrorist organizations may also merge within one entity. Organized criminal networks have long used terror tactics to safeguard business interests and protect their working environments. The term “narco-terrorism” recalls this phenomenon (for example in South America countries).

In this case there is no need to transfer money between two different groups, since the terrorist organization finances the own aims with the illicit proceeds of the crimes that the own members have committed.

Extremely significant have been the attempts of terrorist groups to recruit and where necessary indoctrinate (even within detention facilities) criminals having specific expertise in using weapons and making illicit profits. For terrorist groups, the incentive to recruit and exploit such capabilities is obvious as proceeds from illicit streams can provide a sizeable and reliable source of funding.

It is difficult to determine precisely which aspects of the nexus are the most significant. Terrorist groups engage in organized crime for fundraising purposes. Rebels, guerillas and insurgents have long used organized crime and illicit revenue streams to finance their political agendas.

Indeed, for some time these illegal activities have been entwined and group collaboration provides ample evidence of a terrorism-organized crime nexus. As one U.S. government report noted "Whether it is the FARC's involvement in the cocaine trade in Colombia, al-Qaida's profiting from the poppy fields in Afghanistan, or Abu Sayyaf's kidnapping for profit in the Philippines, terrorists are increasingly using criminal activities to support and fund their terror: piracy, kidnappings, drug trafficking, trafficking of human beings might be the main financial sources for terrorist organizations.

Al Qaeda in Islamic Maghreb is known not only to operate several illicit smuggling operations, but also to control networks that operate across the region. Kidnap for ransom and armored car robbery appear to be common, in addition to other types of smuggling.

In some investigations led by the Prosecution Office of Milano individuals tied to terrorist groups were involved in criminal groups dealing with drug trafficking.

In one of these cases, the Police seized 117.000 euros to a Moroccan citizen, who at the same time used to smuggle cocaine and plan a terrorist attack to the underground of Milano together with other members of an Al Qaeda inspired terrorist group.

An individual planning to carry on a terrorist attack against a supermarket and a disco in the nearby of Milano used to lend out money at a certain interest rate.

The proceeds of drugs smuggling are a relevant financial source for terrorist organizations and at the same time match specific aims. For Al Qaeda – inspired terrorist organizations, the distribution of drugs in western Countries contributes to weaken the bodies and souls of the nationals of those countries.

Smuggling of migrants is to be considered a financial source for terrorist organizations and at the same time a specific strategy, thorough which terrorist organizations facilitate the illegal entrance of migrants in E.U and recruit some of them.

Al Qaeda allies, the Salafist Group for Call and Combat and Ansar al-Islam are highly active in smuggling both migrant and terrorists operatives into Europe.

Exploiting those smuggling pipelines, Ansar has been able to move operatives from Europe into Afghanistan and Iraq to launch terrorist attacks.

Since 2007 the strategies of one of these terrorist groups being operational in Italy and involved in smuggling of migrants and counterfeiting documents were aimed at recruiting individuals (also in detention facilities) and send them to Somalia to carry out terrorist attacks.

The dynamics of terrorism financing areas such as Maghreb and the Horn of Africa do not differentiate themselves from the dynamics in other areas.

Porous borders in some areas of the Northern Africa and migrant groups make it extremely difficult to keep track of people and the flows of people and goods across borders, which can facilitate the transport of goods and commodities such as weapons and people that can be traded for revenue. Along some coastal areas of Northern Africa, small trading boat traffic is virtually impossible to monitor, adding a maritime dimension to the difficulties in tracking terrorist activities and financial patterns. Conditions of poverty and scarcity make individuals vulnerable, and they will turn to any source of support, which provides opportunities for militant operatives to infiltrate charitable organizations and manipulate their programs.

These crimes may be deemed as ancillary to the crimes of terrorism. (even though they cannot be included among the “ancillary offences” pursuant to articles 5, 6, 7, 9 of CoE Convention 196 CETS, but some of them are listed in article 3 of the EU Framework decision 2008/919 among the offences linked to terrorist activities). The perpetration of these ancillary crimes facilitates the recruitment and indoctrination (which is sometimes carried on in western Countries) of those who would later on commit terrorist attacks, either in the concerned Country or in other areas.

## **INVESTIGATIONS ON TERRORISM FINANCING**

Financing a terrorist act is deemed as a trans-national crime even though terrorism crimes are not included in the 2000 UN Convention against organized transnational crime. In fact, sums of money and other resources are often collected in one country in order to commit a terrorist attack in another country.

This implies that the preparation, financing and perpetration of a terrorist act are often segmented in different countries and this makes extremely difficult to trace the money bound to finance a terrorist act and identify the relevant terrorist act that has been perpetrated with those relevant financial sources.

This leads also to the issue of cooperation between countries. Usually judicial cooperation works within EU area, where countries may trigger a big number of relevant international instruments to get cooperation from other EU member States. Quite often, judicial cooperation with non-European Countries is time consuming. If spontaneous information coming from F.I.U. (also from non-European Countries) is fast and effective, the judicial cooperation which is later on triggered by the relevant National Law enforcement Agencies that have been addressed the spontaneous information is often lengthy and has to deal with many bureaucratic issues.

Indeed, an immediate cooperation in uncovering the sources of financing and material support provided to terrorists is both essential in identifying these aiders and abettors, but also the networks which support those committing the crimes and by extension the crimes themselves. In terrorism cases, the sources of financing and support constitute an international network of support between ideological allies, located in different parts of the world.

When judicial cooperation is lengthy, it should be taken into account that the international instruments (such as the European Convention on the Transfer of Proceedings in Criminal Matters) contemplating the transfer of cases from one Country to another (for instance from the Country where the terrorist act has been financed to the Country where the terrorist act has been perpetrated) should be triggered

As mentioned before, terrorism financing covers two distinct aspects: on the one hand the financing of terrorist acts and on the other the financing of terrorist networks, including recruitment and promotion of terrorist causes.

The two aspects of terrorism financing have been dealt with by the domestic and International legislation.

Both legislation criminalize

- 1) the financing of terrorist acts;
- 2) the financing of terrorist networks.

In some domestic legislation (such as in Italy) the financing of criminal organizations (including terrorist organizations) is contemplated as a specific misconduct, no matter whether the funds were derived illegally or legally.

In case of conviction for membership of financing a terrorist organizations, the proceeds of that crime or the tools that were instrumental to the perpetration of that crime must be confiscated.

The Italian legislation makes punishable any person who collects or provides with funds with the intention that the funds should be used for terrorism. It is not necessary to establish or prove that the funds were actually used to perpetrate terrorist acts.

Pursuant to domestic Supreme Court case law, the crime of financing criminal organizations implies

- supplying the organization with material resources, or funding its activities in any way, with knowledge of the fact that such participation will facilitate the criminal activities of the other co perpetrators, aiding the other members of the criminal group in the perpetration of each relevant misconduct which has been conspired and planned, or
- lending money to a member of the criminal group and assisting the members of the group in recovering their credits.

Pursuant to the Italian law and the Italian case law, financing criminal organizations is not restricted to financing criminal acts.

The same principles might thus be applied to the crime of financing terrorist organizations.

Financing a criminal and/or terrorist organization is thus a wider misconduct than financing a terrorist act.

Looking at the International Instruments, both misconduct (financing terrorist acts and financing terrorist organizations) are criminalized.

Pursuant to Article 2 of the 1999 UN Convention for the suppression of financing of terrorism, it can be easily found out that the Convention calls on States to criminalize financing of terrorist acts

Pursuant to E.U. 2002 Framework Decision on Combating Terrorism (art. 2 b), the financing of terrorist groups is criminalized.

Pursuant to the Council of Europe new Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198), art. 1- h, "financing of terrorism" means the acts set out in Article 2 of the International Convention for the Suppression of the Financing of Terrorism, cited above.

The Italian 109/2007 Act deems financing of terrorism

*Any act intended to collect, store, supply, funds and material resources aimed at committing a terrorist act or any crime with terrorist purposes.*

The different provisions in the national and international instruments have significant implications in the investigation and prosecution of the two misconduct: financing terrorist groups and financing terrorist acts.

Looking at immediate impact of the legislation on the professional experience, the crime of financing of a terrorist organization seems easier to be investigated and prosecuted

Pursuant to the case law mentioned above, the Prosecution is required to prove that the accused supplied a terrorist organization with material resources or consciously financially supported the criminal activities of the other co perpetrators, aiding the other members of the criminal group in the perpetration of each relevant misconduct (which is not confined to the perpetration of a terrorist act) falling within the criminal plan of the organization. Financing a terrorist group does not imply to provide with financial support those who would perpetrate a terrorist act, but give a criminal group the financial support enabling its members to carry on the crimes falling within the criminal plan and achieve the criminal aims of the group. Making systematically available apartments where the members of a terrorist group would secretly meet and/or store the explosives and weapons to be used in a terrorist attack is a mode of liability for financing terrorist organizations.

In the crime of financing a terrorist organization, the immediate beneficiary is a group that would benefit the financial support in order to implement the criminal plan.

In case of financing a terrorist act, the prosecution is required to prove that

- a specific terrorist act was planned and/or perpetrated,
- the planning, preparation and perpetration of that crime were financially supported,
- the support was consciously provided with the aim to finance that terrorist act, no matter whether the act was committed or not,
- the link between the provision with financial sources and the perpetration of a terrorist act.

The burden of proof for the prosecution office is in this case quite hard.

Moreover, quite often the financing activity and the terrorist attacks are perpetrated in different places.

The task of the Prosecution would be more easily fulfilled if the terrorist act were perpetrated and the financial support (to the terrorist act or to the terrorist group) were provided with in the same country and within one only jurisdiction. Quite often financing and perpetration of terrorist acts and of terrorist groups are carried on in different countries and must be investigated under different jurisdictions (article 7 of the 1999 UN Convention for the Suppression of the Financing of Terrorism sets up specific rules to establish the relevant member State jurisdiction over the acts of financing terrorist attacks).

## **THE SOURCES OF THE INVESTIGATIONS ON TERRORISM FINANCING**

Quite often, sources of an investigation on financing of terrorism and money laundering come from information on suspicious banking transactions provided with by FIU's, spontaneous information coming from a foreign Country, information (being delivered to police forces) coming from intelligence agencies. Of course, all these pieces of information need to be corroborated and

developed before they can be deemed as evidence, since the relevant sources of this information are often granted anonymity.

Corroboration may be successfully achieved through all the investigation techniques available: financial investigations aimed at analysing the suspicious transaction, electronic surveillance and/or monitoring of bank accounts and/or undercover operations and/or searches (that quite often need the cooperation of other Countries in order to be carried out) aimed at

identifying all the individuals/corporations involved in the suspicious transaction, the source and the aims of the transactions,

detecting other similar transactions;

seizing and confiscating the assets involved in these transactions (a number of these techniques are contemplated in article 7 of the Council of European Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism<sup>1</sup>;

successfully prosecuting a terrorism financing case. These techniques are triggered also in the financial investigations against criminal organized groups.

The investigation following a suspicious financial transactions is costly and complicated and needs to be focused on the effective final beneficiaries of the transferred money (for instance individuals and/or legal persons located in so called higher risk-locations). This investigation can be triggered only through properly trained law enforcement staff and through proper procedural rules enabling, on one side, law enforcement agencies to carry on such complex and sophisticated investigations; safeguarding, on the other side, human rights and rights of defence.

Currently, the huge number of information on suspicious financial transactions leads to a very difficult selection of the most significant ones, despite the guidelines that all the individuals/corporations/institutions being obliged to deliver such information need to follow in order to identify the suspicious transactions.

The assessment of the relevance of the information on suspicious transactions needs a joint cooperation among several agencies: intelligence; law enforcement, banks.

It should be recommended that the information is delivered as timely as possible and that bank and financial institutions make themselves available to continue their cooperation with law enforcement agencies after the delivery of the information on the suspicious transactions, by for instance collecting and delivering further information on the suspicious transaction coming from their branches operating in other areas, so that the investigations of the law enforcement agencies are better channelled.

Quite often the acquisition from the available databases of previous suspicious financial transactions by law enforcement agencies, when investigating on individuals and/or legal persons, is useful and corroborates the evidence that has been collected on a terrorism financing case.

Another source enabling the beginning of an investigation is the formal notice of the inclusion of an individual or a company in the UN and EU lists of individuals and companies under suspicion of being involved in terrorism financing and to be subject to the freezing of their own assets, pursuant to several UN Resolutions such as 1267/1999; 1333/2000; 1373/2001, 1390/2001 (so called black lists) and some other EU Regulations (such as 881/2002 of the Commission of the EU). The

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<sup>1</sup> “Seizure” means that the competent government authority has the authorization to take control of the specified funds or assets. Under seizing, the assets or funds remain the property of the original owner, but possession, administration and management of the assets is taken over by the relevant competent authority. “Confiscation” or “forfeiture” means that the competent authority has authorization to transfer ownership of the specified funds or assets to the country itself. Confiscation usually occurs when there is a criminal conviction or judicial decision that determined that the assets or funds were derived from criminal activity, or were intended to be used in violation of law.



inclusion provokes the freezing of the assets of these individuals and companies, in order to prevent them from using their assets to finance terrorist organizations. The freezing of the assets is carried by the Authorities (mostly Ministry of Interior) of the country where individuals reside and companies are located.

It has to be pointed out that the above mentioned sources (information of suspicious banking transactions, spontaneous information, inclusion in the black lists) are not deemed as “evidence”. In a recent case the Prosecution Office of Milano dismissed a case against prominent non-national entrepreneurs residing in Italy who had been included in the UN black lists as terrorism funders (having their assets frozen). That inclusion had not been further corroborated.

The Italian S.C. case law states that the spontaneous information on a financing of terrorism case or on money laundering, or any piece of evidence spontaneously delivered from a Country to Italy can be used as a starting point for an investigation (or as an indicia corroborating other indicia) and as ground (together with other evidence) to issue an arrest or seizure warrant, unless the information or the evidence delivered was collected infringing the fundamental rights of individuals, no matter whether it was collected in a foreign country.

Looking at the figures, there are not many cases that have been successful after being initiated with the above mentioned sources. Sometimes, the information on a suspicious financial transaction has been used to corroborate other indicia already available against alleged terrorism financiers or money launderers.

Sometimes, in fact, the inclusion of individuals and companies in the so called black lists is made on the basis of information collected by security services and quite often it is not possible to identify the source of security services and test his/her credibility.

Quite recently, the EU Courts condemned States and EU institutions for including some individuals and companies in the black lists and for freezing their assets, stating that those initiatives had violated the fundamental rights.

IN fact, the earliest UN procedures lacked transparency. Under UNSC Resolution 1267, it was unclear who was able to submit listing requests and what type of information needed to be provided with such requests. No notification was provided to individuals or entities upon listing and little guidance was provided on what constituted acceptable humanitarian exemptions. Listed parties were not allowed to directly communicate with the committees; a state intermediary was required.

Recent improvements in these procedures include stricter requirements for the amount and type of information needed for listing. For example, UNSC Resolution 1526 called upon states to include identifying and background information to the “greatest extent possible” when submitting new names for inclusion on the list. UNSC Resolution 1617 clarified this instruction further, mandating that states should provide the Committee with a “statement of case” describing the basis for the proposal. Resolution 1617 also further improved the listing procedures by mandating the submission of a specific form and by further clarifying the definition of what constituted “associated with” Al-Qaeda, Osama bin Laden, or the Taliban. Resolution 1735 provided for a cover sheet for the listing of submissions and further clarified the required content of the “statement of case” . This Resolution also necessitated the “obligatory” notification of individuals or entities that have been listed .

## THE NEED OF A MORE PRAGMATIC APPROACH

The difficulty to investigate transnational, segmented activities of financing terrorist acts should lead the law enforcement agencies to focus the investigations on the crimes whose proceeds allegedly financially support terrorist organizations and terrorist acts and take proper actions to confiscate the proceeds of those crimes. Quite often the investigations on terrorist organizations collect evidence on other crimes that are instrumental to the achievements of the aims of those organization being committed by alleged members of terrorist organizations or by people close to them (smuggling of migrants and stolen cars, drug trafficking, thefts, extortions, kidnappings, forgery of documents).

They are criminal offences of a serious nature related to terrorist offences as they have the potential to finance and lead to the commission of terrorist acts. However, they do not require that a terrorist offence be committed.

Some of the above listed crimes such as theft, extortion and drawing up false administrative documents with a view to committing terrorist acts are included among the punishable terrorism related offences by a relevant international instrument such as the Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (see article 3) In these cases the investigation techniques to be triggered need to prove also “the view to committing terrorist acts”.

There are national and international instruments (such as the 2000 United Nations Convention against Transnational Organized Crime and its Protocols (art. 12), the 1998 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, (article 5) enabling law enforcement agencies to confiscate the proceeds of those “instrumental crimes”. Article 3 of Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism provides the confiscation of instrumentalities and proceeds or property the value of which corresponds to such proceeds and laundered property. Instead of dealing with lengthy, time consuming investigations on the financing of terrorism, law enforcement agencies should focus on more viable investigations on the these offences and trigger the relevant national and international instruments to prosecute individuals/legal persons and confiscate the proceeds of those offences.

Criminal assets are a growing concern for many countries. They not only feed corruption and organised crime but also constitute a reliable source for the financing of terrorism. The proceeds of crime in substantial amounts provide not only economic power but also prestige and political influence to criminal organisations thereby increasing the severity of the threat imposed on society by such organisations.

Law enforcement experience shows that arresting criminals is not enough to eradicate criminal organisations unless you recover the assets derived from their criminal activities.

Another suggestion: when dealing with alleged terrorists who decide to collaborate with justice, they should be questioned about the financial resources of the groups they used to members of. Delivering this information and allowing the confiscation of the proceeds and assets of criminal and/or terrorist organizations should in any case be one of the preconditions for terrorists who aim at collaborating with justice to be eligible for protective measures.

Terrorist organisations would thus be effectively deprived of relevant sources and their terrorist plans disrupted.

CoE and Domestic law enforcement agencies should also take political action to ensure that the freezing and confiscation of the proceeds of crime owned by criminal organisations is placed at the top of agenda on the counter activities against organised crime and terrorism.

This leads in any case to the conclusion that a more integrated approach is needed in order to fight terrorism financing and the predicate offenses of terrorism financing.

This conclusion might have an organizational impact on law enforcement agencies. Terrorism and organized crime should not be dealt with by separated units. Such separation might jeopardize an effective exchange of information

Unfortunately this approach might be unsuccessful to deprive terrorist organizations such as ISIS of the own assets. ISIS has been able to occupy strategic territories and has taken control of oil fields, water supply infrastructures, confiscated assets to non-Sunni population,

### **DONATIONS AND BANKING OPERATIONS FINANCING TERRORIST GROUPS**

Quite often donors obeying religious pillars such as zakat (the amount of money that every adult, mentally stable, free, and financially able has to pay to support specific categories people), or illicit banking systems (such as hawala, basically a parallel or alternative remittance system that exists or operates outside of, or parallel to traditional banking or financial channels) might be the financial sources of terrorist organizations. Nonprofit organizations and cash couriers might be abused by terrorism financiers.

Hawala banking system is one of the main financial sources for terrorists groups. Huge communities of Somali citizens live in Europe. Many undetected sums of money are transferred from Europe to Somalia, their final destination being the Al Shabaab and other terrorist groups. Although Al Shabaab's operations are concentrated in Somalia, it is speculated that they have connections to some Somali *hawalanders* based in the E.U. who have a reputation for money laundering. In these cases judicial cooperation with Somali Authorities should be triggered. Somali Authorities should be enabled to conduct the own enquiries with proper investigation techniques

In these cases hawala and other transfer operations managed by individuals and/or money transfer agencies involving higher-risk locations need to be systematically monitored, in order to ascertain whether these operations infringe the anti-money laundering provisions

The investigations on terrorism financing are even more difficult when the financial support for a terrorist act does not derive from proceeds of crimes but from donations of donors who are not aware of the final destination of the own donations.

Terrorist organizations and terrorist acts may in fact also financed by legal financial supports coming from civilians that most of times would never know that part of their contribution is bound to finance terrorist acts. In this case the donors cannot be prosecuted and it is hard to seize and confiscate their donations.

ZAKATS sometimes funded organizations that have been included by UN and by European Union in the list of terrorist organizations.

Investigations on terrorist groups being financed with donations and contributions that have been diverted from their humanitarian destinations have been sometimes unsuccessful in some European Countries

Financial aids bound for Palestine are managed by many AL AQSA foundations, that are operational in several EU Countries such as Germany, Belgium, Denmark, Sweden, ,the Netherlands and by other humanitarian organizations that are operational in U.K., Austria, France, Switzerland and Italy.

Often, especially in the past, these humanitarian organizations were collected money through the ZAKAT and transferred it to other humanitarian organizations in middle east that would often use part (or the biggest part) of that money to implement humanitarian projects (schools, hospitals) and a small part of those financial supplies for the preparation and perpetration of terrorist attacks or to financially support the families of those who would perpetrate terrorist or suicide attacks.

In largely similar cases, EU members (such as Germany) have taken a wide variety of administrative actions against organizations carrying the al-Aqsa name. In Sweden<sup>2</sup> and Denmark<sup>3</sup>,

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The head of al-Aqsa Spannmål Stiftelse (al-Aqsa Grain Foundation) in Malmö, Sweden, was brought to court on charges of terrorist financing and breaking EU sanctions prohibiting support to Hamas. He admitted that he had collected money and transferred it to charities in Palestine including the Jenin Charity Committee, the Islamic Society, WYMA, and Human Appeal, but he denied that the recipient organizations were part of Hamas or that the purpose was to finance terrorism.]

The prosecution’s argument was that money sent from al-Aqsa Spannmål Stiftelse to charities in Gaza may have been used to support the families of deceased terrorists, thus encouraging terrorism. The court dismissed the charge, however, because Swedish law does not explicitly prohibit such support. On the charge of breaking EU sanctions, the court found that the total evidence put forth “to some extent indicates that one or more of the organizations to which the accused has sent money may be a part of Hamas, and the transaction thus prohibited. The evidence presented, however, is not sufficient for a conviction.”]

The court’s verdict followed a tough evaluation of the evidence presented. The court said that because Israel and Hamas are engaged in a “war-like situation,” the Israeli view of Hamas as a terrorist organization and the outlawing of the charities in question “should be regarded as entirely irrelevant.” [3] The court also rejected documents seized by Israeli authorities in Hebron in June 2002 that allegedly show that Hamas’ social, political, and military activities are all related. Because the documents’ authenticity could not be verified, they had “very little or no value” as evidence. Lastly, the court said that evidence from two trials by an Israeli court in Samaria “cannot be given any decisive importance” because of the “war-like situation” in Israel and Palestine, as the trials were conducted on occupied territory and the original documents were not presented.

Citing various concerns, the Swedish court largely discarded as evidence an FBI wiretap of a 1993 meeting of Hamas operatives in Philadelphia, a statement from the PLO, and a letter from the late Shaykh Ahmad Yassin (the spiritual leader of Hamas) that had been used in a German trial. The evidence the court found to be most credible was wiretaps indicating that al-Aqsa supported the families of martyrs and Hamas activists, and that money sent to Human Appeal may have been forwarded to other charities

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The case against al-Aqsa in Copenhagen, settled by Denmark’s highest court in February 2008, mirrors the Swedish case in many aspects. Local al-Aqsa directors stood accused of financing Hamas through three of the same charities as the Malmö-based organization. The accused said they had collected and transferred money to the charities, but denied that the purpose was to support Hamas or the families of suicide bombers. Much of the evidence in the trial was identical to the Swedish case, and the issue of how to evaluate evidence provided by Israel proved central to the outcome of both trials. The Danish court also largely dismissed the charge that funding the families of “martyrs” should be viewed as terrorist financing (Politiken, February 6, 2008).

The court split evenly, with three judges in favor of a conviction and three against. Those judges in favor of a conviction found the 1993 FBI wiretap relevant, emphasizing that ICS leaders had been members of Hamas and that ICS had given more support to the families of dead or incarcerated members of Hamas than to other needy individuals.

On the question of whether financing the families of “martyrs” or incarcerated Hamas members facilitates terrorism, the judges agreed that in order to prove such a charge, the prosecutor needed to show that such support in isolation

criminal investigations followed by criminal prosecutions have both ended in acquittals. Another similar case in Italy was dismissed by the Court. This is in part because of the high evidentiary standards applied by the courts, but mainly because much of the evidence provided by Prosecution Offices (and acquired through judicial cooperation) was discarded. Currently there are new threats such as crypto currency <sup>4</sup>

### **THE CORPORATE LIABILITY**

According to the above listed circumstances, terrorism financing needs to be tackled also by triggering the existing rules on corporate liability for acts of terrorism, if these acts are committed for the benefit of legal persons by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person

Legal persons are often involved in acts of terrorism and in financing of terrorism. It is virtually impossible that a legal person is totally devoted to financing of acts of terrorism. It is therefore extremely difficult to separate among all the financial operations and transactions those aimed at financing terrorist actions.

The most relevant International legal instruments (1999 UN Convention for the Suppression of Financing of Terrorism) currently provide that legal persons can be held liable for the criminal offences of financing as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

The recently enacted possibility of holding enterprises liable for acts committed by individuals provides several advantages over holding individuals liable. Pursuant to many domestic legislation, the enterprise can be held liable also when no offender can be identified. After the opening of criminal investigations, potentially liable employees may use the opportunity to shift their responsibility to the enterprise by blaming a deficient organisation, which may trigger the liability of enterprises.

### **CONCLUSIONS**

The war against terrorism financing relies on domestic and international cooperation among states and various entities and institutions and on focusing on a plurality of targets: individuals, entities, assets.

It also relies on a common and balanced consideration of the nature of the threat and of the necessity to run successful cases safeguarding the fundamental rights of the individuals and associations. Since its early stages, the implications of this commitments came out and since then it is clear that the investigative approach needs to be flexible and trigger all the instruments available, including those allowing the seizure and confiscation of the proceeds of the crimes deemed as to be instrumental to the achievements of the criminal goals of criminal organizations.

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facilitates the criminal activity. None of the judges found that connection have been proven.

<sup>4</sup> Bitcoins are a decentralized electronic currency that is free from government control or interference. This “crypto-currency” has already been the inspiration for several online robberies where cyber-thieves hack into a computer to steal the vital electronic information at the heart of Bitcoins. Beyond cyber-larceny, the secrecy of Bitcoin poses unique, and even frightening security challenges for a world that has yet to fully understand the problems posed by the internet age.

Intelligence sharing between state agencies is a key component in combating the linkages between OC and terrorism. At an operational level states must ensure that anti-crime and counter-terrorism units engage one another in order to identify and monitor linkages between OC and terrorism.

It is paramount to understand that the effective fight against OC and terrorism depends on an integrated approach involving all stakeholders on a national and E.U. level. The private sector, particularly the financial industry, plays a crucial role in combating OC and terrorist financing by identifying and reporting cases of fraud, money laundering, and other suspicious transactions. The financial sector must work more closely with government agencies to identify gaps in current regulations and implement innovative techniques to address these issues.

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