Combatting Terrorism Financing at International and EU level

Evangelia Kokkinou

SCHOOL OF ECONOMICS, BUSINESS ADMINISTRATION & LEGAL STUDIES

A thesis submitted for the degree of

LLM in Transnational and European Commercial Law, Mediation, Arbitration and Energy Law

February 2018

Thessaloniki – Greece

Student Name: Evangelia Kokkinou

SID: 1104150020

Supervisor: Prof. Thomas Papadopoulos

I hereby declare that the work submitted is mine and that where I have made use of another's work, I have attributed the source(s) according to the Regulations set in the Student's Handbook.

February 2018
Thessaloniki - Greece

Abstract

This dissertation was written as part of the LLM in Transnational and European Commercial Law, Mediation, Arbitration and Energy Law at the International Hellenic University.

International problems call for international solutions and terrorism nowadays is far from an abstract phenomenon and a theoretical discussion. Since 9/11, when terrorists invaded into the heart of the United Nations, there is no debate on the fact that terrorism constitutes an emergent hazard in the 21st century. The repeated recent terrorist attacks in plenty of European capitals now raise scepticism on the role of the international community and the participation of Europe to the *"war against terror".*

Taking for granted that "*endless money forms the sinews of war"* as Cicero said in his fifth Philippic, this dissertation aims to explore the ways by which the International Community, as well as the European Union, confronts the phenomenon of terrorism financing.

At this point, I would like to thank my supervisor, Professor Thomas Papadopoulos, for his willingness to assist me academically, during my researching and writing efforts and guide me with valuable advice. Finally, a special thanks to my family for the motivation, understanding and emotional support during this highly demanding for me period.

Keywords: Terrorism Financing, UNSC, Sanctions Committee, Asset Freezing, EU, FATF

Evangelia Kokkinou

16 February 2018

Preface

Most important of all, success in war depends on having enough money to provide whatever the enterprise needs.

(Robert De Balsac, 1502)

Nervos belli: pecuniam infinitam
(CICERO)

Contents

Introduction

The phenomenon of terrorism cannot be considered as a product of the 21st century. The imminence of its thread became early perceptible by the international legislators in a scheme however not really mature to deal with its combating. The very first attempt to confront it was made by the League of Nations back in the 1930s when it was drafted a Convention regarding this area, which though was never adopted as such. Despite this fact, this Convention formed the basis for the generation of the international counter-terrorism law. Alongside, the General Assembly and the Security Council of the United Nations adopted a series of resolutions in their effort to act proactively against possible terrorist assaults, obliging Member-States to adopt any measure and apply any process that would effectively prevent terrorism. The first resolution to stand out has been resolution 2625 of October 24th, 1970 which declares among others that:

> *"Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force."*[1]

According to this resolution, every Member-State of the UN is burdened with the *duty* abstain from incentivizing terrorist acts, condemn them and resist against activities that may fall under the scope of terrorist attempts. This provision that simultaneously confers to any state the *right* to withstand activities that threaten its status of peace and security, has a more passive than active content, namely, it does not provide for specific measures that states should adopt neither suggests mechanisms that should be activated. Adversely it establishes a line upon which each state can designate its defence against the threat it confronts.

[1] UNGA, 'Resolution 2625 (1970) A/RES/25/2625', para 1
Available at http://www.un-documents.net/a25r2625.htm (last accessed 10/02/2018)

Thereafter, a lot of resolutions and conventions[2] were adopted setting standards for the protection against terrorism, that unfortunately were accompanied, though, by very little effort of the States to apply them. It was the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, *adopted on 19 December 1988*, that set the legal foundation for the international effort to confront "crime from a financial perspective by establishing new offences (i.e. money-laundering) and new means of detecting them and seizing their proceeds, and by developing new procedures for international cooperation."[3] Its importance is concluded by the mere fact that it contributed significantly to the creation of specialists' bodies, competent to designate a suitable international framework for the combatting of terrorism and its financing, such as the Financial Action Task Force (FATF).

Notwithstanding the awareness on the expansion of terrorism and in spite of the effort made to the direction of its suppression, it was only the attacks in the United States, on September 11th, 2001, that forced the international community to take serious command and urgent measures against the terrorist menace. The famous expression of Brian Jenkins in 1975 "*Terrorists want a lot of people watching and a lot of people listening and not a lot of people dead*"[4] which was thought for decades as crystallizing the true essence of terrorism, was doubted for the first time in history. As a matter of fact, the 9/11 terrorist attacks proved that the main objective of terrorists is to manifest loudly their existence and spread terror to all parts of the globe. It has now become obvious that terrorism is completely unpredictable and willing to take advantage of every single opportunity to spread fear and insecurity on the basis of an

[2] "The UN drafted International Convention for the Suppression of the Financing of Terrorism (ICFST) was the first legal instrument to specifically address the problem of terrorist financing on a global level. The ICSFT was drawn up in 1999 by the UN General Assembly. […] It is, at most, a framework convention. Its classical approach has made it vulnerable to the traditional problems that confront all international conventions: selective ratification, differences in interpretation and varied application. […] The major achievement of the ICFST is that it, aided by the ferocity of the attacks on New York and Washington, has raised awareness of the problem of terrorist financing" Alexander Conrad Culley, 'The International Convention for the Suppression of the Financing of Terrorism: A Legal Tour de Force?' (2007) 29 Dublin University Law Journal 397.

[3] Joel Sollier, 'International Organizations and Initiatives' in Wouter H Muller, Christian H Kälin and John G Goldsworth (eds), *Anti-Money Laundering: International Law and Practice* (Jonh Wiley & Sons, Ltd 2007) 41.

[4] Jae-myong Koh, *Suppressing Terrorist Financing and Money Laundering* (Springer 2006) 1.

ideology. This unexpected attack that cost the lives of thousands of people, inaugured a totally new era and founded a huge campaign to combat the threat. An international cooperation period was initiated and was supported by States and organizations such as the Security Council of the UN, the FATF, the IMF and World Bank, that had a key role to the financing of terrorists' groups.

Given the heightened current condition in Syria and in the region of Middle East, the expansion of ISIL and the recent terrorist attacks that ended up with thousands of victims, terrorism is now more present than ever before and this time is closer than anyone could imagine. "ISIL, which is the successor to Al-Qaida in Iraq (AQI), has undermined stability in Iraq, Syria and the broader Middle East through its terrorist acts and crimes against humanity, and poses an immediate threat to international peace and security."[5] Apart from the constant terrorist assaults that take place in the "home country" of the organization, numerous attacks have lately converted terrorism into a particle of the everyday life in a lot of countries worldwide including European ones and the USA, all of them supposed to have constructed a strong protective fortress. According to the Report of the Monitoring Team on ISIL *"the threat emanating from ISIL is evolving, while at the same time Al-Qaida has demonstrated that it remains a significant threat in several regions around the globe […] such as West Africa, East Africa and the Arabian Peninsula, and retains stronger networks in their respective regions compared with ISIL affiliates operating in those areas*"[6]. This is to say that while Al-Qaida is far from being vanished, especially in Asian and African territories, ISIL targets more the western hemisphere, i.e. Europeans and USA enclaves.

Consequently, it is high time the international community took command to suppress terrorism attempts cumulatively, respecting the international legal framework and protecting simultaneously the fundamental human rights that form the core that

[5] FATF, 'Financing of the Terrorist Organisation Islamic State in Iraq and the Levant (ISIL)'[2015] Fatf 1, 10 Available at <www.fatf-gafi.org/topics/methodsandtrends/documents/financing-of-terrorist-organisation-isil.htm> (last accessed 10/12/2017)

[6] UN Security Council, 'Security Council 20th Report of the Analytical Support and Sanctions Monitoring Teamsubmitted pursuant to Resolution 2253 (2015) Concerning ISIL (Da'esh), Al-Qaida and Associated Individuals and Entities (2017) S/2017/573', vol 573 (2017) 4.

terrorism intents to infringe. The ultimate prerequisite for combating terrorism is international cooperation, capable to guarantee rigorous and effective solutions in both the short and the long term.

1. Terrorism Financing

Before examining the ways by which the International Community deals with the financing of terror, it is critical to get to the bottom of what is referred as Terrorism Financing, distinguish it from similar crimes and examine the ways through which it is achieved in practice. The United Nations endeavoured to define TF in the *International Convention for the Suppression of the Financing of Terrorism (1999)* that states:

> *"1. Any person commits an offense within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willingly, 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 any 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 an act.*
>
> *3. 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)"* [7]

[7] 'International Convention for the Suppression of the Financing of Terrorism' no 2 Available at <http://www.un.org/law/cod/finterr.htm> (last accessed 01/02/2018)

Accordingly, the term Terrorism Financing shall be discerned in two parts, namely in what constitutes *financing* on the one hand and which *activities* can be characterized as terrorist attempts on the other hand.

Commencing by defining the *financing* of terrorism, it shall be noted that this is quite a generic term and includes any activity that may provide terrorist groups with funds so as to fulfil their strategic plans. The term "incorporates the distinct activities of fund-raising, storing and concealing funds, using funds to sustain terrorist organizations and infrastructure, and transferring funds to support or carry out specific terrorist attacks"[8]. Expressly, Terrorism Financing incorporates activities that take places in distant time points. These refer to money-making and its circulation or allocation throughout the organization and its affiliated terrorist groups.

Having sorted out what constitutes financing of terrorist acts, it remains to agree on a solid definition of what terrorism is. This part, though, has provoked extended dubiousness and remains until today one of the most controversial issues. A common definition that is often used to describe terrorism makes reference to all actions that may disrupt peace, security and welfare of humanity (or part of it). Yet, this description is proved to be very confusing considering that any crime (especially if it takes place on a large scale) can result in the same situation commented above. The ambiguation grows even further due to the absence of a solid definition even from the modern legal instruments and resolutions adopted by the UN, that have been specially designated to serve the suppression of the phenomenon. It literally constitutes an oxymoron endeavouring to combat a crime without having clarified its limits, framework and special characteristics, because under such conditions the effectiveness of the adopted policy would be highly questioned.

In an attempt to define terrorism, it is necessary to observe its causes and typology. Three are the most common types of terrorism according to the motives that hide beneath the phenomenon: *ethno-nationalist/separatist terrorism*, *ideological terrorism* and *religious terrorism*. In the first category, what is sought is political self-

[8] The World Bank, International Monetary Fund and United Nations Office on Drugs and Crime, 'Tackling the Financing of Terrorism' (2009) 3 Available at <http://www.un.org/en/terrorism/ctitf/pdfs/ctitf_financing_eng_final.pdf> (last accessed 01/02/2018)

determination with characteristic examples the case of *IRA* and the *PLO*[9]. In the rear, ideological terrorist groups struggle to reverse the entire political, social and economic system to extreme so-called "*conservative right"* or "*liberal left"* (FARC). Finally, religious terrorist groups conduct terrorist activities in the name of their religious beliefs in order to declare their faith condemning *disloyalty.* Al-Qaida's attacks on the US, just as the recent numerous ISIL terrorist attacks, seem to have a merged background that aggregates religious and nationalistic characteristics. Therefore, the classification of terrorist organizations is not a simple task to cope with, given that the vast majority of the cases encompass diverse elements, that complicate the distinction, such as the case of the *Islamic Hamas,* that is another example of agglomeration of both religious and political characteristics.

Despite the numerous approaches made by the UN as well as by competent organizations, terrorism is far from a crystal-clear term. Political, religious, nationalistic and economic reasons hinder the acceptance of a *universal common definition*, as for many states the characterisation of concrete activities as terrorist activities, may create the need for groundbreaking changes in their *status-quo,* a fact probably out of their interests. As a consequence, the meaning of terrorism differs from country to county, while the UN themselves have not been capable of compromising the terminology gap. In any case, the afore-cited, International Convention for the Suppression of the Financing of Terrorism, has been a useful tool guide for the organizations as well the UN themselves.

1.1 The call for funds

The particularity of terrorism is that it does not need a great amount of money to succeed its goals. Examining the financial data of a terrorist attack, they reveal that its costs are so trivial that may not even raise suspicion. As successfully said, terrorism can- and does- operate on a shoestring: "The 9/11 terrorists made use of between $400,000 and $500,000, but the Madrid bombings on 11 March 2004 probably cost in

[9] It is reminded that the PLO although it began as a terrorist group, was later recognised as a legitimate political party

the region of $10,000."[10] What has interestingly been noted about terrorism is that the only cost that a terrorist group must be able to bear, is the *cost of a computer*. Actually, this argument seems far from absurd on the assumption that nowadays the huge progress of the technology and the informatics, have made a terrorist attack extremely easy to be orchestrated and even easier to be contemplated. However, under the present analysis, terrorism will not be conceived as a single action, that anybody with basic knowledge on explosives or with an ordinary driving licence[11], can execute.

Terrorist attacks themselves are only the tip of the iceberg and the final acts of a play previously extensively orchestrated to its most paltry detail. This is the case of complex structures and organizations with presence worldwide, such as Al Qaida, whose economics have been under thorough analysis, or ISIL, that lately has demonstrated a great potential to evolve into a global threat to peace and security[12]. A glimpse into the financial structure of Al-Qaida, the most successful terrorist organisation with the broadest cell network yet known, confirms the old premise that "there is no successful organisation without successful financing"[13]. Hence, an absolute prerequisite for the suppression of terrorism is the exploration of the flow of the money, namely its recipients and the particular objectives that is supposed to serve. Undeniably, terrorist groups, acting for their own benefit, resemble private companies that invest for their establishment initially and their expansion afterwards.

Taking for granted that the objective of terrorists' groups is the *augmentation,* the majority of the available funds are consumed in this direction. Firstly, funds are indispensable for *recruiting* new members and *training* the predisposed ones. Thus,

---

[10] Peter Lilley, *Dirty Dealing: The Untold Truth about Global Money Laundering, International Crime and Terrorism* (2006) 129 Available at <http://books.google.ie/books/about/Dirty_Dealing.html?id=Zb7t6gw2NoIC&pgis=1> (last accessed 01/12/2017)

[11] See the recent terrorist attack in Barcelona (Aug.2017). In this unit it will be discussed the importance of financing for terrorist organizations rather than the funding of terrorist attacks as such, which can be trivial.

[12] *The best success story of an old-style terrorist group is the case of the PLO. Its survival and transition to mainstream politics were primarily due to its skilful handling of finances. Initially, the PLO depended on donations from other Arab countries but a prudent and clever handling of long-term investment transformed it into a financial colossus in the Middle East that cannot be ignored any more*. See Koh 11.

[13] ibid.

through this capital not only are covered the expenses for the fundamental facilities but are also enticed young -mostly- unemployed people of a certain profile[14] to sacrifice themselves in a terrorist organization as a collateral for financial support to their families. This tactic has been vital for terrorist organizations. Impressive has been the case of FARC and M19 in Columbia, that even though until 1980 were striving to survive, after being involved in drug dealing and other similar activities and spending a significant percentage of the profits for recruitment of militia, in 1984 they managed to multiply the number of their followers from 200 to 10.000 people and finally constitute a real threat to the Colombian Government. Additionally, the terrorists need money in order to get *access to the weaponry* and armaments form the black market. Without solid and continuous financing, this intention is undoubtedly impossible to be fulfilled.

Thirdly, most terrorist groups are keen on *strengthening their roots* in their home country or region. In order to secure a friendly approach by their own community, they need to pour money into social services, charities and donations. Moreover, the *financing of small, immature or underdeveloped groups of terrorists*, active in the same geographical area and sharing a similar background and the same vision with them, is critical to their expansion. This scheme adopted by powerful organizations resembles a holding company with several subsidiaries. This pattern has been used to describe the structure of Al-Qaida and the way it used its capital so as to immerse and influence other Islamists groups. The need for funds derives logically from the protectionism blueprint adopted by the controlling and most powerful organization. Another fundamental need to be financed by terrorist organizations is the establishment of concrete *alliances* with people of a potent status that through their social and economic position, as well as through their affinities, are capable to *change the flow of the river*. A distinctive example is a *friendship* created between Usama Bin-Laden and Mullah Mohamad Omar, the most influential man in Afghanistan in the late 1990s, based on generous offerings. Last but not least, funding is crucial for *subsidising the network* and the several foundations of the branch-organizations that act worldwide.

[14] According to sociology studies keener to be involved in terrorist activities are young unemployed people, more often of low income and education level facing economic difficulties or not fully integrated to the society they live in.

Summarising, it remains no doubt that for an organisation to be successful and able to attract new members, it has to make no discounts on the capital spent for training and maintenance of training centres, incorporation of members and establishment of "friendships" and "associations" with corrupted entrepreneurs, politicians, governments and affiliated organizations willing to offer their assistance in exchange for money or other assets.

1.2 The sources of funds

The only admittedly effective way to combat the financing of terrorism is sorting out its sources, a task which is quite complex and demands strong efforts and cooperation at a national and international level. According to the US Treasury Department, "Terrorist Groups in *Europe, East Asia and Latin America* rely on *common criminal activities* such as extortion, kidnapping, the narcotics trade, counterfeiting and fraud. *Middle Eastern groups* rely on *commercial enterprises*, donations and funds skimmed from charities".[15]

In this subsection are going to be presented the main paths through which terrorist groups worldwide receive capital to finance their previously mentioned needs.

As the US Treasury pointed out, the funds derive partially from criminal activities such as drug trafficking, smuggling, extortion and kidnapping, credit card frauds, gambling, money laundering techniques and other activities prohibited by penal law. The trade of narcotics in the case of FARC, that was previously presented, serves as a good example of how money can flow into a terrorist organization. Also in the case of Al-Qaida, there have been accusations of drug trafficking although, with reserved ones as Al-Qaida is known for having financed its activities through other channels, that will be subsequently examined. In general, it can be said that terrorist organisations do not hesitate to take advantage of whichever means can guarantee them sufficient and solid capital flow without raising an overwhelming risk of detention.

[15] Lilley 138.

Besides, we can distinguish between sources with of a more legitimate profile. As such, are described firstly the donations and charities clinched to terrorist groups by third parties and secondly, funds acquired through legal business activities.

Charities and *donations* are quite a common practice in Arab countries and are often related to religious obligations As a distinctive paradigm of donation, it is worth mentioning *zakat*, which corresponds to a special religious donation applied by Islamic banks to all concluded contracts or transactions. Zakat is supposed to serve charitable purposes and equals a minimum of 2.5 percent of one's total savings held in the banking system for a full year. The respective banks withdraw from the client's account amounts corresponding to a 2.5 percentage and transfer them to Islamic charitable organisations. Nevertheless, z*akat* transfers "are generally off the balance sheets and therefore hardly traceable; all records are destroyed as soon as transactions are complete"[16]. Consequently, having lost access to all records and files, the is no warranty that the recipient and the purpose that the donation was supposed to serve are out of suspicion for involvement in terroristic activities. The risk is evident; this method is able to breach the money chain and thus cover up a potential criminal use.

Another interesting way through which terrorist organizations nowadays manage to receive funds are the *modern communication networks*, such as '*Twitter'*. It is a fact that ISIL (or its individual proponents) has repeatedly attempted to approach potential allies through twitter posts and personalized *skype* conferences. Akin is the concept of *crowdfunding*, which lately has been spreading in more and more countries, attracting increased public interest and being transformed into an effective tool for gathering financial resources. In fact, its success is similarly owed to the internet and the *social media* that can swiftly "spread the news" and reach even the most isolated regions of the globe. In essence, crowdfunding combines technology with marketing and is actually one of the most modern and outstanding techniques applied by the ISIL. Large crowdfunding platforms incorporate statistical analysis as a tool that permits them to outline the profile of their donators and consequently target them with specialized projects. A common ploy is the campaigning for '*perks*' or '*donation tiers*'. "Through

[16] Koh 21–22.

'donation tiers', a prospective donor is better able to connect with the cause and feel the immediacy of donations, thereby increasing and incentivizing larger contributions."[17] Donation tiers, in reality, offer the donors the opportunity to know their donation's impact and how this contributed to the achievement of the goal. This knowledge performs as a corroboration that their offering made a difference in practice and can affect their future decision to fund again.

As far as it may concern *legitimate business* run by terrorist groups, it is characteristically pointed out the case of Al-Qaida and the entrepreneur Usama bin-Laden, who maintained and ran successfully a wide network of businesses worldwide, comprised mainly of shell companies. Indeed, bin-Laden had established undertakings in several countries in Europe, Asia and North Africa, that allowed Al-Qaida to be present in any country with a potentially favourable commercial and legal setting while simultaneously receiving funds from totally distinct entities with variated activities spread worldwide (paper or hospital equipment industries, real estate investments etc). In other words, Al Qaida used for its financing donations from *supporters of its ideology,* front and shell companies, real business activities and *friendships* in the banking and government sector that allowed bin-Laden split and conceal movements of capital readily.

1.3 Methods used for the Financing of Terrorism

The financing of terrorist organizations may use various channels in order for the funds to reach their recipients and accomplish their mission. Traditional *money laundering techniques* apart from a source may also constitute a method of distribution. Additionally, *online payment* transfers, *wire transfers*, *diamond or artwork trading* and *informal exchange mechanisms* are all employed to guarantee secrecy and discretion regarding the nature of the funds, their origin and destination as well as the parties that are involved in the whole procedure.

[17] FATF (2015), 'Financing of the Terrorist Organisation Islamic State in Iraq and the Levant (ISIL)' 25. Available at www.fatf-gafi.org/topics/methodsandtrends/documents/financing-of-terrorist-organisation-isil.html (last accessed 10/12/2017)

The most prevalent method for financing terrorist activities, especially when it comes to foreign terrorist fighters, namely extremists that live outside the basis of the organization, is clandestine *cash smuggling* or *smuggling of its equivalents*, i.e. bearer negotiable instruments (checks, money orders etc), that takes place with the help of individuals that cross national borders transmitting smaller or larger cash amounts. Indeed, in the case of ISIL, have been reported various episodes of suspicious or falsely declared/disclosed movement of cash.

Apart from the traditional method of cash payments, that in case of colossal amounts is barely effective, the most common technique to launder money and consequently disrupt the illicit chain as well as to fund terrorist activities, are the informal *Money and Value Transfer Systems (MVTS)* alternatively referred as *alternative remittance systems.* These systems that may be legal or illegal (*black-market exchange peso systems, hundi* and *hawala*) operate outside ordinary regulatory banking systems and may refer to the virtual (not physical) movement of money worldwide through unsupervised networks. According to Interpol *"*Hawala is an alternative or parallel remittance system. It exists and operates outside of, or parallel to, 'traditional' banking or financial channels. It was developed in India, before the introduction of Western banking practices, and is currently a major remittance system used around the world. It is but one of several such systems;*"*[18] The words hawala and hundi are both used interchangeably, to describe the alternative remittance system.

The operation is quite simple as a construction. Let us use as an example the case of the *hawala*, which was created and maintained until today based on cultural traditions of immigrants who preferred to support financially their families by transmitting money through this unorthodox way, that however is cheaper and globally accessible. Allegedly, a party wants to transmit an amount of money to somebody in another country. Instead of using the banking system with all its formalities, the transfer can be achieved by payment of the sum to an agency operating in both sender's and receiver's countries. The correspondent of the agency operating abroad is bounded to provide the sum of cash to the nominated receiver. The difference with a banking

[18] Lilley 146.

payment is that the MVTS company will not make a wire transfer but will inform its correspondent by e-mail, fax or a simple phone call and ask to dispatch the respective amount to the nominated recipient. At a later date, the two companies will settle their business through cash payment or banking transfer.

Of course, not every transaction through this remittance system is unlawful on the forehand but there are countries, such as India, that consider this kind of remittance systems illegal. Yet, these payment methods raise global suspicion nowadays because, although "typically developed as mechanisms by which immigrant workers sent money to their families, […] are now frequently used in respect of drug money"[19].

Nevertheless, the formal financial system has also been converted into a tool in the hands of terrorists. According to the Interpretative Note to FATF Special Recommendation VII, the "*terms wire transfer and funds transfer refer to any transaction carried out on behalf of an originator person (both natural and legal) through a financial institution by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution. The originator and the beneficiary may be the same person*." As noticed, it is the objective that may turn a normal business into a suspicious one.

The tendency to take advantage of lawful operations that due to the progress of the technology are freely available and easily accessible to the public exists in the case of ISIL too. For the financing of its activities, ISIL makes "use of both Electronic Funds Transfers (EFTs) via banking channels and other transfers via MVTS to areas located near territories where ISIL operates or designated individuals."[20]The receiver of these transfers was often located in areas known to be a funding, logistical and smuggling focal point for foreign terrorist fighters and terrorist organisations

Another method employed by terrorist organizations and used to give them access to the regulated financial system is *registering payment instruments* (especially online

[19] Peter Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (HART PUBLISHING 2003) 3.

[20] FATF (2015), 'Financing of the Terrorist Organisation Islamic State in Iraq and the Levant (ISIL)' 27. Available at www.fatf-gafi.org/topics/methodsandtrends/documents/financing-of-terrorist-organisation-isil.html (last accessed 10/12/2017)

ones that guarantee relatively high anonymity) in the name of third parties. "To avoid detection, the organisers and facilitators of the scheme ensure '*rotation*' of payment requisites (e-wallets, credit cards, mobile phone numbers, etc.), posting the relevant changes in information on the Internet."[21] By rotating, namely changing periodically, the details of the beneficiary, the account numbers and the payment methods, they cause perturbances to the money chain, achieving further anonymity.

Last but not least, the progress of the technology during the last few decades, has generated *new means and systems of payments*. Consequently, new payment products and services have emerged. *Digital virtual currencies* such as bitcoin, although innovative, are still a not totally regulated and supervised system, particularly in less progressive jurisdictions. This is exactly the vulnerability that terrorist groups, just like ordinary criminals, try to take advantage of. According to the FATF "*the US Secret Service has observed that criminals are looking for and finding virtual currencies that offer: anonymity for both users and transactions; the ability to move illicit proceeds from one country to another quickly; low volatility, which results in lower exchange risk; widespread adoption in the criminal underground; and reliability."*[22] This is a common objective of all criminal organizations, as concealing, astounding and securing are the most fundamental components of any illegal activity. Lately, noteworthy is also the use of cards. While generally cards allow worldwide withdrawal and transfer of money (*Visa, MasterCard*) through Automatic Teller Machines (ATM) of particular interest are the *prepaid ones,* as well as the *PayPal* system, primarily because they have replaced travellers' checks as an alternative method to cross-border transfers of money and cannot be directly linked to an individual.

The list of the applicable methods, however, is definitely a non-exhaustive one. They steadily emerge new and unforeseeable financing instruments by which terrorists can fund their activities.

[21] FATF (2015), 'Emerging Terrorist Financing Risks' [2015] FATF, Paris 47, 33 <www.fatf-gafi.org/publications/methodsandtrends/documents/emerging-terrorist-financing-risks.html>.
[22] ibid 35.

1.4 Disentangling Money Laundering and Terrorism Financing

"The term 'Money Laundering' seems to have been coined in the U.S. in the 1920s when street gangs would seek a seemingly legitimate explanation for the origins of the money their rackets were generating"[23] To perform their business, street gangs were undertaking retail service businesses operating basically with cash. The most common choices were clothes-laundries and car-washes – an incident that indicates the origin of the term. Having already identified money laundering among those illegal activities that might consist the source of the terrorist funds and also as one of the distribution methods, it is necessary to examine its particular characteristics and find out the clues that either connect or differentiate it from Terrorism Financing.

Although since then, business has been profoundly altered, the nucleus of the crime remains the same. The origin of the term proves a lot about its objective and the methods set forth to achieve it. There is no doubt that "*dirty money"* is less profitable for its owner as it is hard to spend or invest it, if not previously "*laundered"*.

Money laundering is the process through which money originating in illegal activities, usually criminalized under penal law, turns into legal capital. According to the definition of ML given by the United States Office of the Comptroller of Currency: 'Money is laundered to conceal criminal activity associated with it, including crimes that generate it…. Money laundering is driven by criminal activities. It conceals the true source of funds so that they can be used freely'.

In other words, ML can be cut up into two main elements: it deals, if not with large, then at least with *significant sums of money*, extracting them from the official banking system and intending subsequently to *re-insert* them *as legitimate* amounts after having previously laundered them through various techniques so as to avoid raising suspicion on their origin.

Regarding the relationship between ML and TF, it has to be clarified that none of these depends on the other. This is to say that although ML may consist a particle of fundamental importance to TF as a source of funds, the latter in many cases does not

[23] Jack A Blum and others, 'Financial Havens, Banking Secrecy and Money-Laundering', vol 36 (1999) 12.

make any use of *dirty money* to fund its operations. Both crimes may exist simultaneously and independently from each other but may also be correlated.By way of explanation, TF is distinguished, as previously stated, to profitmaking and apportionment to its various activities. ML on the adverse is not interested in exploring new channels for money making. Those, as well as the *dirty capital*, already exist. ML techniques endeavour to disguise the origin of the funds and in the rear, give them a legitimate appearance.

The principal difference between the two concepts is that while ML's purpose is to legitimise illegal funds so as to make them freely usable in the regulated system, TF does not aim to change the unlawful nature of its capital but rather to conceal its origin and disrupt the link between the nature of the money and its final destination or recipient, so as for the sum to be used for achieving the organization's goals. After all, in TF the criminal action takes place after the collection of the funds and does not make a distinction between the legitimate or not origins of them.

As far as it concerns the resemblance of the two concepts, the first common element to stand out is the intention of both ML and TF to disguise the origin of their sources for achieving each one its peculiar goals. Certainly, breaking the paths by obscuring the connecting lines is of utmost importance for terrorists as well as for launderers. Another similarity between ML and TF is noted in the way that they are confronted. In the case of ML, it is attempted to follow the money through "*money trails"* a method that "refers to the different routes used to conceal the criminal origin of assets earned in various illegal ways and to invest those assets in the legitimate economy and also to the investigative paths which authorities follow to track criminals and to seize their assets."[24] In reality, money trails are like financial fingerprints. This in practice means that the competent authorities endeavour to connect the dots so as to draw the line that leads to the source of the allegedly "dirty capital". Similarly, in the case of TF, the combat includes tackling both the generation and the distribution process. However, due to the fact that the origin of the funds may be perfectly lawful and the sum may be

[24] Ernesto U Savona and Michael A De Feo, 'International Money Laundering Trends and Prevention/Control Policies' in Ernesto U Savona (ed), *Responding to money laundering: International perspectives* (hardwood academic publishers 2005) 9.

agglomerated under any activity (sponsorships, donations etc) the attempt to strike the roots of the funds can hardly be efficient and if so, it would entail immense investment in inspection and control mechanisms. Alike in the fight against ML, the most effective policy against TF is to apply the *"money trails"* method and monitor the channels used for the allocation of suspicious funds. This tactic "could generate the positive cycle of pursuing the money, catching 'big fish', eliminating the funding channels and shifting the investigation to others who are exposed through the links with those originally apprehended"[25] This assumption has already been verified by the researchers in identifying the accomplices and supporters of the 9/11 attack by employing relevant wire transfer data. Finally, in the fight against both crimes, the followed tactic is the same even if the target may differ.

Summing up the analysis, examining in the parallel ML and TF we can sort out differences in their objectives and similarities on the methods they apply so as to achieve their goals in the backstage without raising suspicion. Undeniably there are affinities in the tactics used in the combat against them but certainly, each one has its own special characteristics that require a specialized approach.

2. The role of the United Nations Security Council

Prior to 9/11 terrorism financing was faced with hesitation and was not regarded as a separate offence at all. Nowadays the combat against it has been converted to one of the principal priorities not only for individual states but also for the international community.

In general terms, there are two main strategies to suppress terrorism financing. The first one refers to suppressing the money-making activities analysed previously and the second one targets the circulation of the funds until their final allocation. As far as it concerns the first strategy, its effectiveness is doubted and appears to be an even less attractive policy taking into consideration, as earlier stated, the enormous costs that

[25] Koh 25.

accompany it. Taking this for granted, the second strategy seems to be a more credible solution because the stage of the distribution is more easily traceable. Follow the flow of the money backwards may lead to the *brains* of the terrorist group or at least to terrorists that are capable to share valuable information indicating crucial links.

2.1 Critical UNSC Resolutions

International problems need international solutions and this is exactly the reason why UNSC played such a fundamental role in the combat against terrorism and its financing. During the period 1990-2000, with the end of the Cold War that had frustrated all attempts by the Security Council, "it finally became possible to develop *an active policy of economic and financial sanctions* against States, entities and even individuals".[26]

During this period, the UNSC established several sanctions regimes through resolutions that incorporated embargoes orders on oil and diamonds as well as financial sanctions. The most influential between them has been the resolution *1373 (2001)* which is of a general character and sets forth the two basic obligations that bind UN's member-states: criminalize the financing of terrorism on the one hand and freeze the procedures of the crime by applying suitable freezing and confiscation mechanisms along with the resolution 1*267 (1999*) which established the Sanctions Committee and introduced the obligation for the States to impose certain measures against people and entities indicated by the aforementioned authority.

In other words, UNSC employed two action plans expressed through different resolutions. It attempted a structural approach of the offence in the resolution 1373/2001 and an operational one under resolution 1267/1999 (later amended several times). [27]

[26] Sollier 42.

[27] "The key differences between 1373 and 1267 is the option given to UN Member States to establish autonomous lists of suspects, subject only to scrutiny by the Security Council Counter-Terrorism Committee. Secondly, 1373 extended its scope beyond individuals and organisations affiliated to the Taliban and Al-Qaida to encompass all terrorist suspects. The EU promptly established an autonomous system without precedent by adopting measures5 providing the legal ground for listing terrorist suspects, freezing their assets and enabling police and judicial cooperation to prevent and combat terrorist acts. The EU has also tried to use its weight to include a counter-terrorism clause in existing and new development assistance instruments with third countries. The clause provides for cooperation in

2.1.1 Resolution 1373 (2001)

Resolution 1373 (2001) has been very compelling from a political and legal aspect as it represents a "synthesis of many normative provisions and provides a new, unified and current expression of a body of rules which had been laid down in the past but whose implementation had been wholly unsatisfactory." [28] The truth is that for the first time there has been a resolution aggregating the essence of the fight against terrorism financing. The reasons that this resolution stands out compared to the previously concluded are related to its provisions that are examined below.

The *1373(2001)* resolution introduced measures to construct a counter-terrorism infrastructure at international and national level. This resolution was adopted under the powers conferred to the UNSC by *Chapter VII* of the UN Charter that indicates that the UNSC is competent to make either a simple recommendation or a conclusive decision in order to maintain international peace and security. The UNSC binding decisions can be either *non-forcible* under Chapter VII article 41 or *forcible, as military measures*, under article 42. As specified in the *Prosecutor v. Tadic case* non-forcible measures, namely the ones that do not involve military actions, based on conclusive decisions made by the UNSC can variate and their catalogue is non-exhaustive. Most often the UNSC resorts to *economic sanctions*.

The particularity of the resolution 1373 lies within the fact that it was the first one to recognise terrorism as a universal problem and to impose a global obligation binding all states to resist terrorism, condemn it and apply strategies to confront it effectively. Pointing out its basic characteristics, first of all it is *binding* as it was adopted under Chapter VII of the UNSC Charter that confers to the UNSC powers to mandate, secondly it is *permanent* because it sets provisions to combat terrorism in a period unlimited chronically and lastly is *universal* as it makes no distinction regarding addressees or the geographic regions. Indeed, this resolution does not only stick to countries but also to organizations, institutions and individuals each one of whom is burdened with the duty to confront terrorism.

---

the prevention and suppression of terrorist acts in the framework of Resolution 1373/2001 by exchanging information, know-how and experiences." See Miriam Allam and Damian Gadzinowski, 'Combating the Financing of Terrorism: EU Policies, Polity and Politics' (2009) 2 Eipascope 37, 39.

[28] Sollier 43.

The general framework of this resolution is segregated into *four sections* on the criterion of the proposed tactics. The objective of the first section is the suppression of terrorism financing, while in the second and the third section are included generic counter-terrorism measures at a national and international level respectively. Lastly, in the fourth section, the counter-terrorism campaign is spread to cover a broader area. All measures require *structural reforms* targeting to enhance the legal and institutional ability of the member states to adapt their administrative systems to the standards set by the resolution.

Another novelty inserted by resolution 1373 is the establishment of the *Counter-Terrorism Committee (CTC)* as a *special permanent body* operating under the UN relevant resolutions with the mandate to "*suppress the provision of safe haven, sustenance or support for terrorists, share information with other governments on any groups practicing or planning terrorist acts, cooperate with other governments in the investigation, detection, arrest, extradition and prosecution of those involved in such acts*"[29]. Nowadays, it has been evolved into the leading body, competent to promote collective action against terrorism and achieve the compliance of member states to the anti-terrorism UN resolutions and protocols. The CTC comprises all members of the Security Council and meets normally in *closed sessions*. Experts and third non-member countries can be invited by the Committee to take part in the discussion especially if those states' interests are affected. The decision-making process requires *consensus,* which if it is not met, the controversy is submitted to the Security Council. The Committee renews its programme every 90 days while between its tasks is to facilitate dialogue with the UN member states, cooperate with experts through the lists that are submitted to it by the member states, review the member states reports and maintain transparency in its activities and close collaboration with other UN institutions and organs.

Regardless its innovative nature, resolution 1373 (2001) has not escaped *criticism* principally based on the fact that the resolution does not clearly *define terrorism*. Indeed, a solid terrorism definition is considered as an absolute prerequisite so as to

[29] United Nations Security Council, Counter-Terrorism Committee https://www.un.org/sc/ctc/about-us/

delineate between other crimes and adopt an adequate policy against it. Secondly, given that the measures proposed by the resolution impose certain restrictions on civil rights, there should have been applied *counterbalances* for the protection of sensitive human rights that could easily be violated. However, the resolution does not make any reference to this issue neither incorporates a protective framework. Lastly, although the resolution sets the objective and the suitable measures to achieve it, it does not designate the *path* to reach it. By way of explanation, its provisions *lack completeness.* For instance, it does not give any instructions to states of how to apply the freezing orders, how to manage the frozen assets or for how long they should maintain them.

Broadly speaking, despite its ground-breaking character, resolution 1373 was adopted under the light of the terrorist attack 9/11 that shocked the international community in a sense that emergency measures were adopted readily with a wide consensus without maybe satisfy all criteria set by international law. Solidarity and fear of terrorism that at that time intruded into the heart of the UN, made states oversight some details and procedural matters.

2.1.2 Resolution 1267 (1999)

The operational approach in the context of combating terrorism financing had been adopted for the first time in 1999 after the Taliban bombing attacks in the US embassies in Kenya and Tanzania.

It was the first time that the Security Council imposed among other measures, financial sanctions in the form of freezing orders on the Taliban regime. The innovative nature of this resolution lies within the fact that for the first time it was established the *'Sanctions Committee'* and the states were obliged to enforce freezing orders against entities and individuals without previous criminal procedures on the base of a list published by it. The initial list that was published and was targeting Taliban organizations was later modified several times and it is periodically being amended till today. Consequent resolutions framed Al-Qaida (1333/2000), established a monitoring group (1363/2001, 1526 (2004), 2253/2015 & 2368/2017) or plainly merged and revised old entries (1989/2011 & 2253/2015). One of the most critical resolutions in the combat against terrorism financing has been resolution 1390 (2002) which

practically extended the mandate of the previous 1267 resolution to apply not only to the Taliban but mostly to Usama bin Laden and the Al Qaida network that in that period had been expanding dramatically. Although by nature and by content the mandate of the resolution was specific and that for, temporary, namely its should expire as soon as the threat seized to exist, in practice it has been coverted to a permanent one, given that the fight against Al Qaida has not been won yet. The resolution amended also the provisions on the Sanctions Committee and its role.

The Sanctions Committee[30], a Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities (hereafter "the Committee"), inspects the sanctions measures imposed by the Security Council. The Committee was initially established to impose financial sanctions on Taliban but its mandate was expanded (by resolution 1390) so as to include other terrorist groups and individuals that threaten international peace and security or terrorist organizations such as Al Qaida and ISIL. Particularly, the 1989 (2011) resolution of the Security Council conferred the competency to monitor the implementation of the sanctions on Al Qaida and its associated members (entities or individuals), while the 1988 (2011) resolution allocated responsibilities related to the implementation measures regarding the region of Afghanistan. More recently the 2253 (2015)[31] resolution amplified the mandate of the Committee and the listing criteria[32] framing ISIL. Lately the Security Council refurbished the measures applying already to individuals and entities included in the ISIL and Al Qaida sanctions list by adopting resolution 2368 (2017)[33].

The operating procedure applied by the Committee is very similar to the one of the CTC. It meets in closed sessions, where all Member-States participate and third states may be invited *ad hoc*, it also takes decisions by consensus and is obliged to submit

[30] Alternatively referred as Committee 1267

[31] UN Security Council, 'Security Council Resolution 2253 (2015) S/RES/2253', vol 2253 (2015) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2253%282015%29>.

[32] The criteria for adding a name to the ISIL (Da'esh) & Al-Qaida Sanctions List are also outlined in paragraphs 2 to 4 of resolution 2368 (2017).

[33] UN Security Council, 'Security Council Resolution 2368 (2017) S/RES/2368' <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2368(2017)>.

periodical reports to the Security Council referring to the implementation of the measures.

The role of the Committee is among others to "oversee the implementation of the sanctions measures, designate individuals and entities who meet the listing criteria set out in the relevant resolutions, consider and decide upon notifications and requests for exemptions from the sanctions measures or requests to remove"[34]. Summing all these competencies up, the Sanctions Committee is mandated to act as a UNSC body bound to carry out the inspection process and the application of the resolution in practice.

The sanctions which the Committee may impose are divided into three categories: asset freezing orders, travel bans and arms embargoes. These measures apply to the individuals and entities whose names are referred to in the List of the Committee. States are required to apply automatically the respective measures without any delay, immediately after the *listing* of the individual or the entity. This listing follows the request submitted by a Member State and takes place on the basis of certain criteria that are examined by the Committee.

In reality, after listing has occurred, states are supposed to comply without revising the reasons upon which the listing was decided. States do not enjoy any discretion on the implementation of the measures adopted by the Security Council, an issue that has caused vast discussions and extended debate. The reason is that the listing procedure has some drawbacks upon which has been heavily criticized for lacking effective human rights' protection warranties and for conflicting with EU law, an issue that is going to be discussed further below.

In an effort to satisfy uniformity, the Committee approved an explanation of each measure on 24th of February 2015. The explanatory note includes the definition of the terms, their objective and scope, describes the proceeds of the crime and establishes exemptions to the applicability of the proposed measures (regarding the first two categories).

[34] Security Council Subsidiary Organs. Available at <www.un.org/sc/suborg/en/sanctions/1267/monitoring-team/work-and-mandate>

2.2 Measures imposed by the Sanctions' Committee

2.2.1 Freezing of Funds

According to the paragraph 1 of the resolution 2161 (2014) that applies to individuals, groups, undertakings and entities whose names are referred to in the Al-Qaida Sanctions List of the Al-Qaida Sanctions Committee and in conjunction with resolution 2253 (2015) that expands the provisions to ISIL organization:

> "*Member States are obliged to freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons' benefit, or by their nationals or by persons within their territory*"[35].

In other words, as soon as, on the Committee´s decision, the name of a person or an entity is linked to the existence or the activity of the said organizations fulfilling the certain listing criteria, the Member States as recipient of the Committee´s decisions, are compelled to suspend their financing by any means available to them. It is the aftereffect, namely the exclusion from available funds, that concerns the Security Council and not how this will be succeeded. It is pursued a complete derivation of financial resources no matter if the frozen funds come from a legal or an illegal activity.

Freezing, however, should be distinguished from confiscation. Thus, while "*seizure* means that the competent government authority has the authorization to take control of the specified funds or assets and '*confiscation*' or '*forfeiture*' means that the competent authority has the authorization to transfer ownership of the specified funds or assets to the country itself"[36], freezing must be conceived under a distinct context.

---

[35] UN Security Council Sanctions Committee, 'Asset Freeze: Explanation of Terms Approved on 24 February 2015' 1 <https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/eot_assets_freeze_-_english.pdf>.

[36] Paul Allan Schott, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* (2006) ch IX 5 <http://site.ebrary.com/lib/swansea/Doc?id=10106737>

Indeed, the frozen property neither becomes part of the public property nor an actual seizure takes place. The element that discerns freezing is that it does not crop up any transfer of the property, which remains under the name of the listed person or entity but it is as if it had never existed given that it can be controlled neither by them nor by anyone else.

Of course, the Sanctions Committee provides for certain exemptions to the freezing of assets under strict criteria that refer to the real financial situation of the recipients and their concrete *basic expenses* (alimentation, medical insurance expenses, taxes, mortgage etc) that are absolutely necessary for their living and the fulfilment of legal financial obligations. The exemption corresponds to a pre-fixed amount approved by the Committee after a relevant request submitted to it by the state that is competent to give access to the frozen capital. The basic expenses exemption is set under the resolution 1452 (2002) as amended by paragraph 15 of resolution 1735 (2006) and Section 11 (d) of the Committee's guidelines[37].

Another category of exemptions that may be furnished to the listed person or entity is in case of *extraordinary expenses* that may occur and is examined ad hoc by the Committee. The procedure followed is the same as in the case of basic expenses and is regulated by resolution 1452(2002) and paragraph 11 (d) of the Committee's guidelines[38].

Regarding the unfreezing of the frozen assets as a whole, this is only possible after the delisting of the listed person or entity. Although this can be achieved through a formal request either by a Designating State or by another Member-State[39], critical is the role of the *Ombudsperson office*, that is competent to receive and review the requests for removal from the Sanctions' Committee list by individual persons or entities without the interference of a state.

[37] UN Security Council Sanctions Committee, 'Guidelines of the Committee for the Conduct of Its Work' (2016) <https://www.un.org/sc/suborg/en/sanctions/1267/committee-guidelines>.
[38] ibid.
[39] ibid 7.

2.2.2 Travel bans

Travel bans are the second measure that the Committee imposes as result of the listing of an individual as a person related to ISIL or Al Qaida. This measure designates a restriction of *entry* or *transition* through the national territory of a Member State. By nature, this measure refers to natural persons that attempt to travel crossing national borders by any means. It is an absolute prohibition and does not distinguish duration of the passage nor valid visa permission.

According to paragraph 1 (b) of resolution 2161 (2014)[40], the travel ban is bounding for the Member States unless it affects the state's own nationals, who cannot be deprived of their right to enter and transit through their national frontiers, or unless the entrance/transition is considered to be indispensable for fulfilment of judicial proceedings. In addition to those two exceptions, there is an option for exemption guaranteed by the Committee itself subject to an *ad hoc evaluation* of the case. For instance, as indicated by paragraph 9 of resolution 2161 (2014) in conjunction with section 12 paragraph (o) of the Guidelines of the Committee, *"it is possible for listed individuals to apply for a travel ban exemption for necessary travel such as medical or humanitarian need, or the performance of religious obligations*"[41]. However, in such a case the Committee can decide under its absolute discretion and either satisfy the request or deny the exemption on the set basis.

2.2.3 Arms Embargoes

Arms embargoes are the last measure designated by the Sanctions' Committee employed against listed entities and individuals. It was introduced for the first time by paragraph 2 of resolution 1390 (2002) and reiterated in subsequent resolutions until 2161 (2014), that refers to this measure in paragraph 1 (c). As a term, it must be conceived broadly so as to include not only supply of *arms and military equipment* but also all those *services* that could give to the listed person or undertaking access to technical assistance or even advice related to military activities. The objective of the

[40] UN Security Council, 'Security Council Resolution 2161 (2014) S/RES/2161' <http://unscr.com/en/resolutions/doc/2161>.
[41] UN Security Council Sanctions Committee, 'Travel Ban: Explanation of Terms Approved on 24 February 2015' 1 para 24.

provision is to cause "starvation" to terrorist organizations by depriving them of access to weaponry of all kinds and services that could facilitate their activities. In addition, it is proposed by paragraph 14 of resolution 2161 (2014), the exercise of special vigilance on nationals that are involved in the construction and trade of products that may be used for the manufacturing of Improvised Explosive Devices (IED) and unconventional weapons.

Interestingly, in the case of arms embargoes, there is no provision for exceptions. "When the arms embargo was first imposed under resolution 1333 (2000), it applied only to transfers to the territory of Afghanistan under Taliban control, and included an exemption for humanitarian or protective use."[42] Though, in resolution 1390 (2002) and in the subsequent resolutions until today this exception has been removed. As a result, the arms embargo affects all entities and individuals listed by the Sanctions' Committee. This choice reaffirms the eminently obligatory character of this measure and imposes to the States a high priority obligation of fundamental importance, i.e. to monitor this field closely and employ any adequate method in order to satisfy the objective of the measure.

2.3 The Office of the Ombudsperson

The Office of the Ombudsperson is an independent and impartial body created to satisfy the need for effective protection of the right for access to justice. Through the competencies of the Ombudsperson, the listed individuals and the entities have the opportunity to challenge their listing.

The Office was created by Security Council resolution 1904 (2009) and its mandate was subsequently extended by resolution 1989 (2011), resolution 2083 (2012), resolution 2161 (2014), resolution 2253 (2015) and resolution 2368 (2017). Under its current status, it is charged with the accumulation of information and interaction with the petitioner in order to gather all essential material and issue its report to the Committee. Although in its report may be encompassed a recommendation for delisting, it has no binding effect as eventually, the Committee

[42] UN Security Council Sanctions Committee, 'Arms Embargo: Explanation of Terms Approved oUnited Nations Al-Qaida Sanctions Committee' 1 para 9 <https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/eot_arms_embargo_english.pdf>.

decides upon discretion, having though taken into consideration the Ombudsperson's report and recommendation.

2.4 Monitoring Team

The Sanctions' Committee is supported by the Analytical Support and Sanctions Monitoring Team pursuant to resolutions 1526 (2004) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and the Taliban and associated individuals and entities.

The role of the Monitoring Team is described in resolution 2255 (2015)[43] and its mandate was extended by resolution 2368 (2017) until December 2021[44]. Among others the Monitoring Team is supposed to submit reports to the Committee on the implementation of the measures, assist Ombudsperson, consult with Member States and United Nations agencies and provide with recommendations following case studies pursued by it.

3. Financial Action Task Force

The Financial Action Task Force was established in 1989 by the G7 Summit as an intergovernmental body with the mandate to combat Money Laundering. Its mandate was "to assess the results of cooperation already undertaken, in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventive efforts in this field, including the adaptation of the legal and regulatory systems so as to enhance the multilateral judicial assistance."[45] Among its duties has been the preparation of annual reports on the efforts made by countries worldwide in the field of AML adopted policies. Of great importance has been the report, published on June 22, 2000, that named fifteen countries and territories with indicators of lack of a serious commitment to

[43] UN Security Council, 'Resolution 2255 (2015)' paras 51–52 and Annex <http://www.un.org/en/sc/ctc/docs/2015/N1544502_EN.pdf>.
[44] UN Security Council, 'Security Council Resolution 2368 (2017) S/RES/2368' para 94.
[45] Eduardo Aninat, Daniel Hardy and R Barry Johnston, *Combating Money Laundering and the Financing of Terrorism*, vol 39 (World Bank and International Monertary Fund 2002) 23.

confronting effectively money laundering[46]. According to this report "the jurisdictions (non-cooperating countries) either failed to adopt meaningful legislation criminalizing laundering or have serious deficiencies in their banking laws and implementing regulations"[47]. Although in the 1990s the FATF had already begun its work in the field of Money Laundering publishing Forty Recommendations, it was only in 2001 when was involved in the fight against Terrorism Financing addressing Eight Special Recommendations and a Ninth in 2004 regarding cash couriers[48].

Today FATF has thirty-five member states, its Plenary meets three times per year and its core functions are the following: "setting standards and ensuring their implementation in its member countries, studying the techniques and typologies of money laundering and terrorist financing and conducting outreach activities that aim to spread the standards globally"[49]. In other words, its task is to study the evolution of Money Laundering and Terrorism Financing, subsequently to endeavour new techniques in the fight for their suppression and finally monitor the implementation of the measures by the states.

The FATF Recommendations are *soft-law* and include minimum CTF and AML measures that the countries must incorporate in their legal system. It is worth mentioning that the Recommendations have as a reference point the Terrorist Financing Convention, but they put emphasis on the resolutions of the UNSC, the context of which consider as the core legislative measure that all states must adopt. As stated in the recently published FATF report "countries should implement targeted financial sanctions

[46] "States that are found to be seriously failing to adhere to the standards in the original 40 Recommendations and nine Special Recommendations are liable to be placed on a list of Non-Cooperative Countries and Territories (NCCT). Whilst not a sanction, this has proved to be a powerful tool to ensure compliance as it can be a major deterrent for investment by foreign businesses, banks and financial services." Culley 8–9.

[47] William R Schroeder, 'MONEY LAUNDERING: A Global Threat and the International Community's Response' FBI Law Enforcement Bulletin 1, 6.

[48] (9) Special Recommendations: *I. Ratification and implementation of UN instruments related to financing of terrorism II. Criminalizing the financing of terrorism and associated money laundering III. Freezing and confiscating terrorist assets IV. Reporting suspicious transactions related to terrorism V. International cooperation relating to the financing of terrorism, terrorist acts, and terrorist organizations VI. Requirements for alternative remittance transfers VII. Requirements for wire transfers VIII. Requirements for non-profit organizations IX. Requirements for cash couriers.*

[49] Aninat, Hardy and Johnston 24.

regimes to comply with United Nations Security Council resolutions relating to the prevention and suppression of terrorism and terrorist financing"[50].

4. The European approach towards the "war on terror"

At a European level, terrorist financing currently constitutes one the principal priorities[51] taking into consideration the conditions after the numerous terrorist attacks that took place in the European territory during the last few years[52].

On 20 May 2015 were adopted by the Commission both the Fourth Anti-Money Laundering Directive (2015/849)[53] and the Fund Transfers Regulation (2015/847)[54]. This two-tier framework is employed to suppress terrorist financing and money laundering by facilitating cooperation and information exchange up to full traceability between national Financial Intelligence Units (FIUs) aiming to track down suspicious money transfers and designate a common European policy adopted toward third countries, not members of the EU, that are recognised as of high risk territories due to their deficient anti-money laundering and counter-terrorism financing scheme. In addition, it obliges the states to facilitate the identification of beneficial owners and provide for enhanced customer due diligence measures to be applied by competent

[50] FATF (2012-2017), 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation' FATF, Paris, France 11 <www.fatf-gafi.org/recommendations.html>.

[51] One reason why it has been so difficult for the EU to cooperate on CFT is because security policy belongs to hard politics. At the heart of the matter are therefore issues of state sovereignty. The term "war on terror", first coined by President George W. Bush shortly after the 9/11 attacks, illustrates well that the discourse around the politics of CFT has quickly concentrated on survival. See Allam and Gadzinowski 38.

[52] "A range of associated initiatives have been taken in order to ensure the appropriate satisfaction of international standards The catalyst for such measures has been the FATF Special Recommendations on Terrorist Financing.[…] Apart from the important issues that the adoption of international standards by the Community raises regarding the protection of fundamental rights, the willingness of the Community institutions and Member States to keep up with, but also to go beyond, international initiatives by Community law, has resulted in a series of constitutional dilemmas for the European Community."Valsamis Mitsilegas and Bill Gilmore, 'The EU Legislative Framework against Money Laundering and Terrorist Finance: A Critical Analysis in the Light of Evolving Global Standards' (2007) 56(1) International & Comparative Law Quarterly 119, 139.

[53] European Parliament and of the Council, 'Directive (EU) 2015/849 on the Prevention of the Use of Financial System for the Purposes of Money Laundering or Terrorist Financing' (2015) L141 Official Journal of the European Union 73.

[54] European Parliament and Council of the European Union, 'Regulation 2015/847of 20 May 2015 on on Information Accompanying Transfers of Funds and Repealing Regulation (EC) No 1781/2006' (2015) L 141 Official Journal of the European Union.

entities especially under circumstances that due to their nature present a greater risk or lastly to maintain a record basis of minimum duration of five years containing all crucial information gathered and related to the payer and the payee.

Following the "Panama Papers" revelation, in July 2016, the Commission decided to strengthen even more its framework so as to ensure heightened transparency of payments and money transfers that could lead to the identification of terrorist threats. According to the Commission's press release on the proposed modification of the Directive, all amendments aim at "ensuring a high level of safeguards for financial flows from high-risk third countries, enhancing the access of Financial Intelligence Units to information, including centralised bank account registers, and tackling terrorist financing risks linked to virtual currencies and pre-paid cards"[55]. Consequently, the proposed amendments do not constitute a novelty at all[56]. On the contrary, it is attempted to apply measures and techniques such as risk assessment obligations for certain professional categories, already common in the field of money laundering, against terrorist financing. All amendments are aiming to strengthen the already strict framework and establish unity, close cooperation and mutual recognition throughout the European Union.

5. The conflict between the International and the EU legal order

There is a vast discussion on the role of the United Nations regarding the fight against the financing of terrorism and its relationship with the EU legal order[57]. The reason

[55] European Commission, 'Commission Press Release IP/17/1732 on "Strengthened EU Rules to Tackle Money Laundering, Tax Avoidance and Terrorism Financing Enter into Force"' (*European Commission Press Release Database*, 2017) <http://europa.eu/rapid/press-release_IP-17-1732_en.htm>.

[56] Nevertheless, the proposed amendments are expected to increase cooperation in the field of asset freezing or confiscating. The new framework of mutual recognitions of freezing orders between the member states will prevent terrorists from using their funds to commit further attacks. "A proposed Regulation on mutual recognition of criminal asset freezing and confiscation orders will offer one single legal instrument for the recognition of both freezing and confiscation orders in other EU countries, simplifying the current legal framework; moreover, the Regulation would apply immediately in all Member States" See EU Focus, 'Commission Adopts Stronger Rules to Fight Terrorism Financing' [2017] EU Focus 29, 30

[57] The ECJ adopted a sharply dualist tone in its approach to the international legal order and to the relationship between EC law and international law, identifying with the reasoning and approach of the US Supreme Court in case Medellin v Texas 552 U.S. (2008). This case of course dealt not with Security Council resolutions but with a judgment of the International Court of Justice, which the Supreme Court

behind the supposed conflict refers to the violation of fundamental human rights secured and protected by the primary law of the European Union that are considered to constitute its legal nucleus.

It is a fact that the Security Council, when deciding on imposing restrictive measures and smart sanctions to individuals or entities allegedly being connected with terrorist organizations, acts as an ultimate power mandating the necessary measures that the Member-States are obliged to apply immediately. The SC enjoys wide discretion in identifying situations that fall within the scope of Chapter VII of the UN Charter and further on designating its own action. It is commonly admitted that the function of the SC and its limits of discretion compose a problematic reality where no effective *check and balances system* applies. The argument that the SC acts as a '*legibus solutus'* fell in vain because of *jus cogens*, i.e. peremptory norms of international law that must be respected by all states and organizations. Accepting that international law principles do not bind international organization creates an oxymoron as if we admitted that international affairs are outside the scope of the law.

The SC background indicates that in the late '40s, when the body was created in order to act as a dispute settler in the aftermath of the Second World War, nobody imagined the way these powers would emerge to encompass law-making and quasi-judicial activities to the body that was initially designated to safeguard international peace and security and prevent another war. It is clear that, as a matter of international law, the UN Charter takes precedence over the domestic law of its Member-States and such primacy extends to UNSC resolutions. Thus, the issue of how EU law complies with the international law supremacy was discussed extensively by the European Courts.

---

found not to be enforceable in the US without prior congressional action. The *Kadi* ruling goes further than *Medellin* in certain respects in that while the Supreme Court in *Medellin* made clear that Congressional action could be taken to enforce the international obligation in question, the nature of the ECJ ruling in *Kadi* means that the EU Council. See Gráinne Búrca, 'The European Court of Justice and the International Legal Order After Kadi (2010)' (2011) 262 Harvard International Law Journal 243, 2 <http://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:The+European+Court+of+Justice+and+the+International+Legal+Order+after+Kadi#0>. See also the earlier Supreme Court ruling on a closely related set of issues in Sanchez Llamas v Oregon 548 U.S. 331 (2006),. And see S. Koh "Respectful Consideration" After Sanchez-Llamas V. Oregon: Why the Supreme Court Owes More to the International Court of Justice" Cornell LR Vol 93 243-273 (2007). Also A. Aleinikoff "Transnational Spaces: Norms and Legitimacy" (2008) 33 Yale J. Int'l L 479

The conflict between the role acquired by the SC in the fight against terrorism financing and the constitutional principles of the EU was inaugurated in 2001 by an individual whose assets were frozen, as a result of the *smart sanctions* regime and the inclusion in the Sanctions Committee consolidated list of persons and entities associated with terrorism. The applied legislative practice found judicial endorsement *Kadi* case, which ended up before the CFI and at a second stage before ECJ[58].

Practically, the ECJ annulled the decision of the CFI tumbling the essence of its whole judgement on the relationship between international and European legal order on the one hand and on the breach of fundamental human rights committed by the ruling of the SC on the other hand. Thus, the CFI held that Article 308 in conjunction with Articles 301 and 60 gave power to the Council to adopt the contested regulation[59] and additionally perceived that due to the fact that the EU is, in a derivative way, bound by the UN Charter, there is no limitation to the Court's competency to check *indirectly* the internal lawfulness of the UN adopted resolutions on the basis of *jus cogens,* which are conceived as "mandatory provisions concerning the universal protection of human rights, from which neither the Member States nor the bodies of the United Nations

[58] "It will be recalled that the contested by Mr Kadi regulations were adopted on the combined basis of Articles 301, 60 and 308 EC. Article 301 EC fulfils a distinct function in the EU architecture. It empowers the Community to take action to serve CFSP objectives, thus enabling a transition (*passarelle*) from the second to the first pillar and providing a bridge between inter-governmentalism and Community methodology. Since 2000, the Council has adopted a liberal interpretation of Article 301 relying on it to adopt smart sanctions, i.e. sanctions targeting individuals and non-state actors. An example is provided by the sanctions regime against Mr Milosevic, the former President of Yugoslavia" See Takis Tridimas and Jose A Guitierrez-Fons, 'EU Law, International Law, and Economic Sanctions Against Terrorism: The Judiciary in Distress?' (2008) 32 Fordham International Law Journal 660, 5.

[59] "The issue of Community competence is highly problematic and Kadi can justly be seen as a borderline case. There are, in fact, powerful arguments against Community competence. Granting to the Community a broad power to impose such sanctions means, inevitably, less democracy since sanctions can find their way to the national statute book directly from the UN Sanctions Committee without going through any kind of parliamentary control at national or EU level. Under Articles 301 and 60 EC, economic sanctions are adopted by the Council on a proposal from the Commission without any involvement on the part of the European Parliament. Article 308 provides for the consultation of the Parliament but this is a benign input since the Council is not required to follow Parliament's opinion. By virtue of Article 249 EC, the contested regulation became part of the law of the land in each of the Member States from the time of its entry into force without the need for any implementing measures. Indeed, English courts have refused to question its validity in the light of the CFI's ruling in *Kadi*: see *M v HM Treasury* [2006] EWCH 2328." See ibid 11.

may derogate because they constitute 'intransgressible principles of international customary law'"[60]. Indeed, the latter comprise the limit to the resolutions of the UN.

In the light of these considerations, the CFI overruled the allegations of the applicant, Mr Kadi, regarding the impact of the freezing order to his property right. The CFI found that it was only a temporary precautionary measure necessary under certain circumstances, that would be reviewed periodically and consequently, there was not any arbitrary deprivation that would equal violation of the substance of the right given the existence of circumstances that may justify exceptions from the measure. Secondly, the claim referring to the right to be heard, was also turned down by the CFI on the basis that this right is correlated to the exercise of *discretion* by the authority. However, the Commission itself was not acting as such. Also held that even though the right to be heard by the Sanctions' Committee, is not provided, the re-examination procedure establishes an effective protective framework. Lastly, the CFI examining the alleged violation of the right to effective judicial review, found that this has not the character of an absolute right and thus, can be restricted on public emergency reasons or limitations within the scope of *state immunity*[61] doctrine.

The ECJ adopted a totally divergent approach towards the same pleas[62]. It took the view that the contested sanctions could be adopted on the combined legal basis of Articles 60, 301 and 308 EC but for reasons different from those accepted by the CFI[63]. Even though the two Courts agreed on the fact that they are competent to judge on the conflict between the UN resolutions and the international law principle of *jus cogens* and recognised that the EU must respect the international law and exercise its powers in its light conforming with the SC resolutions when it comes for the

[60] *Case T-315/01Yassin Abdullah Kadi v Council of the European Union and Commission of the European Communities* (2005) T-315/01 3659 [231]. See also Advisory Opinion of the International Court of Justice of 8 July 1996, The Legality of the Threat or Use of Nuclear Weapons, Reports 1996, p. 226, paragraph 79; see also, to that effect, Advocate General Jacobs's Opinion in *Bosphorus,* paragraph 189 above, paragraph 65.

[61] ibid 288.

[62] For an extensive commentary on the judgment and on other related European Court of Justice rulings on anti-terrorist sanctions see P.T.Tridimas and J.A. Gutierrez-Fons "EU Law, International Law and Economic Sanctions Against Terrorism: The Judiciary in Distress?" Fordham International Law Journal, Forthcoming. Available at SSRN: http://ssrn.com/abstract=1271302

[63] It reasoned that, although Articles 60 and 301 authorised only sanctions against states, recourse to Article 308 could be made to extend their limited ambit *ratione materiae,* provided that the other conditions for its applicability were satisfied. See Tridimas and Guitierrez-Fons 10.

maintenance of international peace and security, the ECJ noted that the Charter of the UN does not impose a particular model of implementation of the respective resolutions. Consequently, held that the European Committee regulations cannot be exempted from an internal judicial review of their lawfulness by virtue that they have intended to give effect to an SC resolution. Moreover, it observed that according to paragraph 7 of article 300 of the UN Charter, the primacy of the UN law provisions does not extend to *primary EU law*.

With regard to the breach of the rights of defence, the ECJ distinguished between the right to be heard and the right to access to effective judicial review. Apropos of the first, the ECJ admitted that the Community authorities cannot be required to communicate the grounds upon which the SC decided the inclusion of the person or the entity into the consolidated list because otherwise, any publicity of critical information would jeopardise the effectiveness of the method removing its *surprise effect.* Though, according to its judgement it is "*task of the Community judicature to apply, in the course of the judicial review it carries out, techniques which accommodate, on the one hand, legitimate security concerns about the nature and sources of information taken into account in the adoption of the act concerned and, on the other, the need to accord the individual a sufficient measure of procedural justice*"[64]. Since the Community authorities did not take any action against safety considerations and given that the SC never informed the appellants about the evidence used against them, they were not in a position to defend themselves pointing out their version. As a result, the infringement of their right to be heard was not further contested.

With respect to the second aspect of the right to defence, namely the right to effective judicial review, the ECJ pinpointed that the appellants ignored the grounds on which their listing was decided. Besides, the re-examination procedure before Sanctions Committee did not judicial protection guarantees nor the available diplomatic protection ensured maintenance of the rights. Therefore, according to the judgement

[64] *Joined Cases C-402/05 P and C-415/05 P YassinYassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities* (2008) C-402/05 P [344].

of the ECJ, the crucial "*regulation was adopted according to a procedure in which the appellants' rights of defence were not observed, which has had the further consequence that the principle of effective judicial protection has been infringed*"[65].

Additionally, the ECJ reaffirmed the finding of the CFI that the right to the property is not an absolute one and may be restricted under conditions or in situations that threaten public safety and peace. However, it emphasized on the *proportionality principle*, perceiving that it is prerequisite that there will be maintained a balance between public interest and interest of individuals. In the case of *Kadi* this criterion was in principle fulfilled (objective of the measure, temporary nature, periodical re-examination, derogation and exceptions) but since there still was no chance for the appellant to bring his case to the competent authorities, it was assessed that the restriction of his right was *disproportionate* and *unjustified*.

From all the facts taken into consideration by the ECJ in the light of *Kadi* case, it is deducted the puzzling connection between indispensable human rights[66] that are located in the core of the European legal protection regime and overriding concerns on terrorism intimidating international safety, peace and security[67].

---

[65] ibid 352.

[66] In its decision *Al-Dulimi and Montana Management inc.* v. *Switzerland,* the European Court of Human Rights (ECtHR) stated, for the first time, that the level of protection of human rights within the United Nations 'smart sanctions' system was insufficient. It attempted the application of the 'equivalent protection test' that it first developed regarding the European Union, notably in the famous *Bosphorus* judgment. [This test may be defined as the legal reasoning which allows a court to review the level of protection of certain fundamental principles (which it has a duty to uphold), and especially human rights, in another legal system and which can result in judicial immunity for measures adopted by this other legal system, in varying degrees and under a variety of different circumstances, if the court considers that the said principles are protected in an equivalent manner in the other system.] Though the Court concluded that there is no significant convergence of courts applying the equivalent protection test to the United Nations, and the ECtHR itself has in fact been very reluctant to apply this test to the United Nations. For more details see Sebastien Platon, 'The "equivalent Protection Test": From European Union to United Nations, from Solange II to Solange I (with Reference to the Al-Dulimi and Montana Management Inc v Switzerland Judgment of the European Court of Human Rights)' (2014) 10(2) European Constitutional Law Review 226.

[67] Still the relationship between the EU and the UN legal orders remains highly problematical. On this matter it is worth seeing the CFI's judgment in T-228/02, *PMOI v Council* judgment of 12 December 2006, where the Council refused to de-list the People's Mojahedin of Iran Organization despite the Court's ruling that the listing was not justified. A legal opinion was consequently (September 18, 2008) signed by five senior international lawyers challenging the Council's non-compliance with the CFI ruling as a serious misuse of powers and a breach of the EC Treaty. See 'Summary of Legal Opinions about the Maintaining of the PMOI on the EU Asset Freeze'

Critical Appraisal

Since their creation, United Nations have been charged with the maintenance of the international peace and security and the suppression of events that threaten them, with the purpose of preventing armed conflicts and settling disputes. They have played a cardinal role in handling the complicated issues that burst forth. Beyond the shadow of a doubt, the UN, through their various specialists' Committees, as well as through the Security Council, hold the necessary mechanisms to address an effective strategy in a field where it is difficult to achieve a consensus.

Nevertheless, the evolution of the Security Council to a body competent to deal with terrorism is indeed raising issues regarding the real nature of the resolutions. The *unequal states' representation* as well as *the lack of transparency* in the way by which SC imposes its measures and the *absence of legal culture* in it have provoked intense disambiguation on whether the SC is the suitable international body to decide upon such complex issues.

Practically the UNSC takes on in cases where an impending threat to safety is detected. However, *the notion of what in reality may threaten international security,* remains doubtful, especially if we take into consideration the humanitarian crisis, the current conditions in the Middle East, the political instability in a big number of countries worldwide and imminent refugees flows. Interestingly, the role of the SC in the combat against terrorism financing is dual: firstly, it is competent to decide upon what actually constitutes a threat and subsequently claim its competency to impose measures against it.

Decisive has been the impact of the 9/11 terrorist attacks that in fact, agglomerated and intensified the competencies and the powers of the SC that recognised terrorism as a *continuous* menace to the humanity. Still, there is a contradiction at this point. Since under Chapter VII the threats are conceived to be time-limited, there is no path to justify the indefinite action of the SC in the field of terrorism financing, without specifying and particularizing the emerging hazard. Even if we accept the theory of *emergency analogy* in the case the SC, it can still be argued that Chapter VII is already an emergency exception to the general rules of procedure of the UN. Additionally,

although the adopted measures themselves must be temporary so as not to breach fundamental human rights, the anti-terrorist mechanisms applied by the SC, no matter if they are periodically revised, they are initially adopted for an infinite period, and cumbersomely being removed or reviewed judicially.

Following all these considerations we can hardly regard the action of the SC as the best possible way to dominate the fight for the suppression of the financing of terrorism and terrorism itself. The lack of *checks and balances* in the system that the SC commands combined with the defects mentioned previously, justifiably have provoked scepticism. As characteristically Judge Fitzmaurice stated in his dissident opinion attached to the ICJ's Advisory Opinion on Namibia: "It was to keep the peace and not to change the world order that the Security Council was set up"[68]. In the light of the previous thoughts, it has been an admissible judgement for the ECJ to acquiesce a violation of the rights in the case of *Kadi*.

Yet, on the other side, it could not be oversight the fact that the choice of the SC as the body empowered to take the leading role in the fight against terrorism and its financing, is not absurd. The SC is the only promising body with guarantees of effectiveness in an ambit where *traditional law-making mechanisms* are proved to be impotent due to their time-consuming processes. Neither, the alternative of a *multilateral treaty* can satisfy the urgent need of immediate decisive action, given the prerequisite of burdensome negotiations, the risk of lack of unanimity and the likelihood to fall into vain in case of shortfall of signatories. Lastly, invoking *customary rules* in this particular field is of contingent practicality because of the involvement of criminal conduct and also due to the absence of the two fundamental elements that comprise customary law, i.e. generality of practice and *opinio juris* action.

In order to justify SC's practice are employed doctrines such as of *implied powers* and *subsequent practices.* In fact, the theoretical discussions regarding the limits of powers of the SC in this field remain fruitless since there is no suggestion on a pertinent

[68] Andrea Bianchi, 'Assessing the Effectiveness of the UN Security Council's Anti-Terrorism Measures: The Quest for Legitimacy and Cohesion' (2006) 17(5) European Journal of International Law 881, 887 <https://legalresearch.westlaw.co.uk/>. Also see *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 Judge Sir Gerald Fitzmaurice, [1971] ICJ Rep 291, at 294, para. 115.

alternative plan that would allow an equally compelling strategy respecting humanitarian provisions of international law. As it has been successfully noticed, after all "the ultimate test of the legitimacy of the SC's action remains the level of acceptance of its practice by the UN Member-States"[69] and until today the SC resolutions enjoy sufficient approbation within the international community.

In my point of view, having overcome the academic debate, the international community as a whole, as well as the states independently should focus on solving the technical defects of the already existing system. This means, deepen the knowledge regarding new financial instruments and explore new methods of how those could be used in the battle against terrorism. The challenge is the development of new methodological tools and the acquisition of a level of uniformity in their application by states with varying levels of maturity in their financial systems.

Epilogue

In the present thesis, it was attempted the presentation of the International and the European scheme employed in the battle against terrorism and its financing. There have been introduced the methods by which the SC struggles to handle the constantly new challenges in the field of terrorism financing. Additionally, it was brought up the debate on the lawfulness of its action taking into consideration human rights' protective framework and the position of the EU, as deducted by the judgement of its Courts in the influential case of *Kadi.*

As concluded by the previous analysis, the role of the United Nations and, in particular, of their Security Council, has been vital for the suppression of the phenomenon especially after 2001, when its mandate was expanded. Nowadays, the existence of specialists' bodies such as the FATF as well as the cooperation of national FIUs is regarded as a crucial element in the counter-terrorism efforts. The evolution of adequate policies and the modernization of the existing financial systems and instruments comprise indispensable part of the proposed policy.

[69] ibid.

Despite the debate related to the lack of sufficient guarantees offered by the SC for the protection of human rights during its action in the field of suppressing terrorism financing, the truth is that until this moment, the SC owns by far the most effective techniques and the necessary know-how. Undeniably there are key improvements that could be introduced in the current decision and "law-making" process that, though, require collaborative efforts by the international community and active participation in good faith of states, with the purpose of moving beyond arbitrary self-seeking policies and altogether confront this menace that should be every state's concern.

Bibliography

Books

Alldridge P, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (HART PUBLISHING 2003)

Aninat E, Hardy D and Johnston RB, *Combating Money Laundering and the Financing of Terrorism*, vol 39 (World Bank and International Monetary Fund 2002)

Blum JA and others, 'Financial Havens, Banking Secrecy and Money-Laundering', vol 36 (1999)

Koh J, *Suppressing Terrorist Financing and Money Laundering* (Springer 2006)

Lilley P, *Dirty Dealing: The Untold Truth about Global Money Laundering, International Crime and Terrorism* (2006)

Savona EU and De Feo MA, 'International Money Laundering Trends and Prevention/Control Policies' in Ernesto U Savona (ed), *Responding to money laundering: International perspectives* (hardwood academic publishers 2005)

Schott PA, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* (2006)

Sollier J, 'International Organizations and Initiatives' in Wouter H Muller, Christian H Kälin and John G Goldsworth (eds), *Anti-Money Laundering: International Law and Practice* (Jonh Wiley & Sons, Ltd 2007)

Journals

Allam M and Gadzinowski D, 'Combating the Financing of Terrorism: EU Policies, Polity and Politics' (2009) 2 Eipascope 37

Bianchi A, 'Assessing the Effectiveness of the UN Security Council's Anti-Terrorism Measures: The Quest for Legitimacy and Cohesion' (2006) 17(5) European Journal of International Law 881

Búrca G, 'The European Court of Justice and the International Legal Order After Kadi (2010)' (2011) 262 Harvard International Law Journal 243

Culley AC, 'The International Convention for the Suppression of the Financing of Terrorism: A Legal Tour de Force?' (2007) 29 Dublin University Law Journal 397

EU Focus, 'Commission Adopts Stronger Rules to Fight Terrorism Financing' [2017] EU Focus 29

Mitsilegas V and Gilmore B, 'The EU Legislative Framework against Money Laundering and Terrorist Finance: A Critical Analysis in the Light of Evolving Global Standards' (2007) 56(1) International & Comparative Law Quarterly 119

Platon S, 'The "equivalent Protection Test": From European Union to United Nations, from Solange II to Solange I (with Reference to the Al-Dulimi and Montana Management Inc v Switzerland Judgment of the European Court of Human Rights)' (2014) 10(2) European Constitutional Law Review 226

Schroeder WR, 'MONEY LAUNDERING: A Global Threat and the International Community's Response' FBI Law Enforcement Bulletin 1

The World Bank, International Monetary Fund and United Nations Office on Drugs and Crime, 'Tackling the Financing of Terrorism' (2009)

Tridimas T and Guitierrez-Fons JA, 'EU Law, International Law, and Economic Sanctions Against Terrorism: The Judiciary in Distress?' (2008) 32 Fordham International Law Journal 660

Websites

European Commission, 'Commission Press Release IP/17/1732 on "Strengthened EU Rules to Tackle Money Laundering, Tax Avoidance and Terrorism Financing Enter into Force"' (*European Commission Press Release Database*, 2017) <http://europa.eu/rapid/press-release_IP-17-1732_en.htm>

Legal instruments

European Union legal sources

European Parliament and Council of the European Union, 'Regulation 2015/847 of 20 May 2015 on Information Accompanying Transfers of Funds and Repealing Regulation (EC) No 1781/2006' (2015) OJL 141/1

European Parliament and of the Council, 'Directive (EU) 2015/849 of 20 May 2015 on the Prevention of the Use of Financial System for the Purposes of Money Laundering or Terrorist Financing' (2015) OJL141/73

Joined Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities* (2008) C-402/05 P

Case T-315/01 *Yassin Abdullah Kadi v Council of the European Union and Commission of the European Communities* (2005) T-315/01

International legal sources

FATF (2012-2017), 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation' FATF, Paris, France

FATF (2015), 'Financing of the Terrorist Organisation Islamic State in Iraq and the Levant (ISIL)' FATF

——, 'Emerging Terrorist Financing Risks' [2015] FATF, Paris 47

'International Convention for the Suppression of the Financing of Terrorism'

UNGA, 'Resolution 2625 (1970) A/RES/25/2625'

UN Security Council, 'Security Council Resolution 2161 (2014) S/RES/2161'

——, 'Security Council Resolution 2253 (2015) S/RES/2253', vol 2253 (2015)

——, ‘Security Council Resolution 2255 (2015) S/RES/2255’

——, ‘Security Council 20th Report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to Resolution 2253 (2015) Concerning ISIL (Da’esh), Al-Qaida and Associated Individuals and Entities (2017) S/2017/573’, vol 573 (2017)

——, ‘Security Council Resolution 2368 (2017) S/RES/2368’

UN Security Council Sanctions Committee, ‘Arms Embargo: Explanation of Terms Approved United Nations Al-Qaida Sanctions Committee’

——, ‘Asset Freeze: Explanation of Terms Approved on 24 February 2015’ 1

——, ‘Travel Ban: Explanation of Terms Approved on 24 February 2015’ 1

——, ‘Guidelines of the Committee for the Conduct of Its Work’ (2016)

Abbreviations

AML	Anti-Money Laundering
CFI	Court of First Instance
CTC	Counter-Terrorism Committee
CTF	Counter-Terrorism Financing
ECJ	European Court of Justice
FARC	Revolutionary Armed Forces of Columbia
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
IRA	Irish Republican Army
ISIL	Islamic State of Iraq and the Levant
M19	Movimiento 19 Abril
ML	Money Laundering
MVTS	Money and Value Transfer Systems
PLO	Palestinian Liberation Organisation
TF	Terrorism Financing
UNSC	United Nations Security Council