

The Effectiveness of the Global Combat against the Financing of Terrorism for Preventing Terrorist Activity

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Within the new battlefield of Terrorism and the global combat against its financing, every state tries to enact the necessary legislative tools in order to identify, detect, freeze, seize and forfeit money as well as assets of terrorist organizations. Keeping that in mind, this essay deals with the question, whether the worldwide combat against the financing of terrorism is an effective instrument for preventing terrorist activities, or not. This depends on several factors, i.e. the kind of terrorism, the amount of money needed, the way in which terrorism is financing itself and the possible negative side effects.

I. Introduction

The world has changed in the 21st century. Even though terrorism existed for a long time and endangered different countries beforehand, the attack on the World Trade Centre in September 2001 as well as the following wars in Afghanistan and Iraq brought terrorism to a whole new level. Instead of being a local problem, the new generation of terrorism operates on a global scale¹ and has become a war against stateless, networked individuals.² The goals of this new kind of global warfare are not economic advantages or territorial gains and also not the submission of another state.³ Additionally, terrorism is hard to fight, because terrorist activities can be conducted with a minimum of resources and a maximum of damage. Nevertheless, even if the potential need of financing could be low compared with ordinary military operations, terrorist cells still need financial reserves in order to fulfill their missions. For a long time this was left out of any consideration. Within this new battlefield, every state therefore needs legislative tools in order to effectively identify, detect, freeze, seize and forfeit the targeted money and assets.⁴ But the question remains, whether the combat against the financing of terrorism is an effective instrument for preventing terrorist activities, or not. This depends on several factors, i.e. the kind of terrorism, the amount of money needed, the way in which terrorism is financing itself and the possible negative side effects.

II. Types of Terrorism

Terrorism occurs due to indefinite causes and in different types. Three of them are of relevance and significance: the

nationalist/separatist terrorism (e.g. IRA⁵ and ETA⁶), which aims at political self-determination, the ideological terrorism (e.g. RAF⁷ and NSU⁸ in Germany, FARC⁹, as well as other right- or left wing terrorists¹⁰), which attempts to change the political, economical or social system¹¹ and the religious terrorism, which commits terrorist activities to conduct religious goals (e.g. Al-Qaida).¹² Nevertheless, some terrorist groups combine these different components (e.g. the Hamas)¹³ and form a terrorist organization sui generis. Terrorism over all and especially the religious one is motivated by the fact that the enemy cannot be overwhelmed by military force and especially not in an "open" combat. Therefore terrorist attacks shall "create so much pain on the states involved that it becomes impossible for their governments to tolerate the public outcry".¹⁴ In this respect, the attacks have to be fulfilled on a huge scale¹⁵ and terrorism needs continuity in order to create a constant fear.

III. Development of Terrorism in the Last Century

Over the last century terrorism has developed in different stages, each of them containing one significant type. In the late 1960s and the 1970s the ethno-nationalist/separatist background brought terrorism to the awareness of the global society and reached its climax with the hijacking of an airplane by the PFLP.¹⁶ Opposite to the former post-colonial terrorism, the globalization of the 20th century provided the opportunity for terrorists to travel from one country to another in a short period of time in order to launch their attacks and in order to retreat afterwards.¹⁷ Alongside the ethno-nationalist terrorism and revolutionary left wing-terrorism (ideological terrorism) grew especially in Germany with the RAF but also in Japan (Japanese Red Army).¹⁸ Besides the ongoing nationalist/separatist terrorism of the ETA and IRA, the religious motivated

⁵ Irish Republican Army.

⁶ Euskadi Ta Askatasuna (Basque Homeland and Liberty).

⁷ Rote Armee Fraktion (Red Army Fraction).

⁸ Nationalsozialistischer Untergrund (National Socialist Underground).

⁹ Las Fuerzas Armadas Revolucionarias de Columbia (Revolutionary Armed Forces of Columbia).

¹⁰ Baylis/Smith/Owens (fn. 1), p. 372.

¹¹ Wilkinson, Terrorism Versus Democracy, The Liberal State Response, 2001, p. 20.

¹² Koh, Suppressing Terrorist Financing and Money Laundering, 2006, p. 2.

¹³ Hoffman, Inside Terrorism, 1999, p. 87; Baylis/Smith/Owens (fn. 1), p. 372.

¹⁴ Bodansky, Bin Laden, The Man Who Declared War on America, 1999, p. 53.

¹⁵ Koh (fn. 12), p. 5.

¹⁶ Hoffman (fn. 13), p. 68.

¹⁷ Koh (fn. 12), p. 4.

¹⁸ Koh (fn. 12), p. 4.

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¹ Baylis/Smith/Owens, The Globalization of World Politics, 4th ed. 2008, p. 371.

² Slaughter/Burke-White, Harvard International Law Journal 43 (2002), 1 (4).

³ Slaughter/Burke-White, Harvard International Law Journal 43 (2002), 1 (4).

⁴ Davis, Journal of Financial Crime 2003, 269.

terrorism (especially with an Islamic background) emerged in the 1980s.¹⁹ It has grown over the past decades, driven by the constant US-military operations within the Middle East and reached its ultimate climax in the attacks on the World Trade Centre in September 2001 as well as the following wars in Afghanistan and Iraq. Keeping its current priority in mind, this article mainly refers to the combat against the financing of religious terrorism.

IV. The Needs of Terrorist Financing

Due to its decentralized cell structure, only small financial reserves are needed in order to launch severe terrorist bombings.²⁰ The 9/11 attacks for example, as the biggest terrorist attacks ever conducted, have cost less than 500.000 US-Dollars²¹ (including pilot-training, travel expenses etc.)²², the London bombings in 2005 are estimated to have cost not more than 15.000 US-Dollars, the Madrid bombing in 2004 roughly about 60.000 US-Dollars²³, the Istanbul bombings in 2003 not more than 40.000 US-Dollars, the Bali bombings in 2002 around 20.000 US-Dollars, the Nairobi bombings in 1998 not more than 50.000 US-Dollars and last but not least the New York bombings in 1993 about 18.000 US-Dollars.²⁴ The day-to-day warfare in countries like Afghanistan and Iraq involves even more modest costs.²⁵ A regular IED²⁶ cost approximately not more than 100 US-Dollars²⁷, a Kalashnikov 2.000 US-Dollars and an explosive belt for a suicide bomber less than 150 US-Dollars.²⁸

Nevertheless, every terrorist needs training, transport and weapons.²⁹ Also the necessary disappearance and reappearance of members of terrorist groups can be expensive.³⁰ Decentralized cells also need ideological guidance and someone who plans the global strategy as well as the local tactics. Therefore, even though the terrorist attack itself does not cost a lot of money, several needs of financing within the terrorist networks still exist. In this respect, a substantial financial background is vital for the purpose of recruiting and training

of potential terrorist fighters as well as for the maintenance of terrorist camps.³¹ Just as an example, Al-Qaida trained more than 70.000 people in their terror-camps before 9/11.³² Therefore, money is needed to provide food, housing and training facilities. In order to fulfill these tasks, Al-Qaida has built the most complex and robust terrorist financial network ever seen.³³

Furthermore, in many cases potential suicide bombers are convinced to commit the attack due to the fact that the terrorist organization is financing their families afterwards. The poorest people have discovered this as an opportunity of feeding their starving loved ones. It is reported that every family of a suicide bomber in Palestine was donated with 30.000 US-Dollars (an amount of money, which grants the survival of the family for years) by outside sponsors after the attack.³⁴ Therefore, welfare and support of families of terrorists involve far larger sums than the actual attack.³⁵ Besides that, terrorist fighters in the warzones of Afghanistan or Iraq have to get access to heavy weapons, like RPGs or surface-to-air-missiles as well as explosives. Additionally, financial support is needed in order to buy popular support at the Islamic home ground and to buy influence over the political and social elite in the Moslem world. As one of several examples the Hamas has enlarged their activities besides their guerrilla warfare to social and political activism, by supporting schools, mosques, healthcare in run-down areas.³⁶ Furthermore, the fundamental terrorist groups try to give poor social classes a new perspective as well as security in order to buy their support.³⁷ Due to the fact that recently established democratic governments rise out of civil wars (i.e. Arabic Spring) and have therefore regularly depleted financial reserves, they are not able to pay the same amount of money and are not able to provide the same support concerning healthcare, schools and security as well as social welfare as terrorist organizations do. But, in order to fulfill this propaganda, a huge and constant income is vital, because an interruption in the cash flow leads immediately to an interruption of public support.

Additionally, global terrorist groups, like Al-Qaida, provide a financial aid system for other local terrorist groups, which would otherwise not have the money to stay operational in every situation.³⁸ Some local and minor terrorist cells or groups heavily depend on a limited number of ways to finance their terrorist missions. Besides the financial aid system, enormous amounts of money are needed for the bribery of the police and the military in order to operate undisturbed and to set up training camps.

¹⁹ Wilkinson (fn. 11), p. 34.

²⁰ Wilkinson, in: O'Sullivan (ed.), *Terrorism, Ideology and Revolution*, 1986, p. 209 (210).

²¹ Bell, *Journal of Money Laundering Control* 2003, 105; Gunaratna, *Inside Al Qaeda, Global Network of Terror*, 2002, p. 64.

²² Pieth, *Journal of International Criminal Justice* 4 (2006), 1074 (1075).

²³ Barrett, *Case Western Reserve Journal of International Law* 2009, 7 (14).

²⁴ Levi, *British Journal of Criminology* 2010, 650; Biersteker/Eckert, in: Biersteker/Eckert (ed.), *Countering the Financing of Terrorism*, 2008, p. 1 (7).

²⁵ Pieth, *Journal of International Criminal Justice* 4 (2006), 1074 (1075).

²⁶ Improvised Explosive Device.

²⁷ Levi, *British Journal of Criminology* 2010, 650; Biersteker/Eckert (fn. 24), p. 7.

²⁸ Bell, *Journal of Money Laundering Control* 2003, 105 (106).

²⁹ Bell, *Journal of Money Laundering Control* 2003, 105.

³⁰ Levi, *British Journal of Criminology* 2010, 650 (663).

³¹ Koh (fn. 12), p. 12.

³² Koh (fn. 12), p. 12.

³³ Gunaratna (fn. 21), p. 86.

³⁴ Goldberg, *The Guardian* of 12.6.2002, p. 2.

³⁵ Levi, *British Journal of Criminology* 2010, 650.

³⁶ Esposito, *Unholy War, Terror in the name of Islam*, 2002, p. 99.

³⁷ Koh (fn. 12), p. 15.

³⁸ Gunaratna (fn. 21), p. 235.

V. The Financing of Terrorism

The combat against the financing of terrorism is not an easy task, due to the different patterns of funding, which are characterized by an across-boarder abuse of the financial system.³⁹ In this respect, organized criminal groups and terrorist cells have huge similarities in the way they are trying to erase their money trails and the link between the distinction of the funds and their nature.⁴⁰ The constant need for financial support in order to keep terrorist activities alive leads to the question how those organizations are generating their cash flow in a world full of institutions that are willing to fight terrorism. The globalised world of the 21st century provides nearly uncountable possibilities. According to the Financial Action Task Force of Money Laundering (FATF), terrorist organizations rely on legitimate and illegitimate resources at the same time.⁴¹

1. Illegitimate Financing

As most people expect, terrorism is financed to a huge part by illegitimate financing mechanisms. The specific characteristics depend on the regional possibilities. The major sources of income for several terrorist groups within the Middle East and within South America as well are the harvest and sale of drugs. Just to name a few, the FARC, the Kurdistan Workers' Party, the Sri Lanka's Liberation Tigers of Tamil Eelam and the Afghanistan Hizbi-Islami, mainly rely on drug trafficking as a method of fundraising. Terrorist groups in Columbia generate 60-90 % of their financial background from drugs alone.⁴² Peasants in Afghanistan are producing more than 70 % of the world's opium supply, which provides terrorist groups with millions and even billions of US-Dollars. Besides the possibility to generate money, drugs are also used as weapons against the Western World within special Islamist "fatwas".⁴³ Other methods of generating money are kidnapping and piracy, which have lately become lucrative businesses for terrorist groups. The ETA for example has generated approximately 15 million US-Dollars via kidnapping in 1997.⁴⁴ Besides the regularly occurring kidnapping of tourists, foreign workers or missionaries, modern piracy (especially at the coastlines of Somalia) has increased dramatically, which has enormous influence on the world trade. The impact is so huge that a naval military operation seemed to be the only option in order to stop piracy by escorting the targeted oil tankers and other cargo ships.

In other parts of the world, smuggling provides the possibility of generating terrorist money. Smuggling involves the

transport of contraband goods, which includes legitimate products (especially tobacco and liquor) that are restricted or taxed differently in the target market than in the home market.⁴⁵ Besides the smuggling, product counterfeiting provides another method of generating money. Additionally, the trade with gemstones helps terrorists to move their money outside of the formal sector.⁴⁶ This way of trading provides many advantages, like the hold in value, the easy convertibility in cash, the possibilities of transportation including the limited detection by metal detectors and the untraceable nature.⁴⁷

Therefore, the kind of illegitimate finance depends heavily on the region in which the terrorist group is located and operating. As shown above, piracy occurs mainly at the coast of Somalia and Indonesia and therefore in specific geographical areas with high sea-traffic, whereas kidnapping is only possible in countries, which are providing the possibility of withdrawing and hiding victims. These are mainly sparsely populated areas with a low security infrastructure, e.g. Iran, Yemen, Egypt or Indonesia. Al-Qaida's financial network in Europe on the other hand is based on credit-card fraud, which generates approximately up to one million US-Dollars per month.⁴⁸ Nevertheless, Islamic terrorist groups also raise money by street level drug dealing or other smaller criminal offences.⁴⁹

2. Legitimate Financing

Illegitimate financing via criminal activities is believed to be the most important financial source for terrorism.⁵⁰ Nevertheless, especially within the last decades the globalization opened several new legitimate methods of financing as well. Terrorist funds can derive from membership subscriptions, sales of publications, cultural and social events or donations⁵¹, which were merely introduced by the IRA in the 1960s.⁵² The so-called "Noraid" secured their funding out of the USA and raised more than 50 % of the IRA's cash.⁵³ The estimated fundraising capacity of the IRA was estimated to be somewhere between 5 and 8 million GBP per year, whereby the annual running costs were estimated at about 1,5 million GBP.⁵⁴

Islamic terrorist groups introduced a quite similar way to finance their activities. Al-Qaida for example has developed a huge financial network and donation system, which includes wealthy Muslims and the masses that make regular charitable donations as their religious obligation.⁵⁵ It is estimated that at least 6 million GBP are sent annually from contributors out of Great Britain to Al-Qaida.⁵⁶ These donations come from

³⁹ Gardella, in: Bianchi (ed.), *Enforcing International Law*, 2004, p. 415 (415).

⁴⁰ Gardella (fn. 39), p. 419.

⁴¹ FATF-XIII, *Report on Money Laundering Typologies 2002-2003* of 14.2.2003, p. 1.

⁴² See Berry/Curtis/Hudson/Kollars, *A Global Overview of Narcotics-Funded Terrorist and Other Extremist Groups*, 2002, p. 52.

⁴³ Bodansky (fn. 14), p. 322.

⁴⁴ Napoleoni, *Modern Jihad*, 2003, p. 36.

⁴⁵ DeKieffer, in: Biersteker/Eckert (fn. 24), p. 150 (156).

⁴⁶ Farah, in: Biersteker/Eckert (fn. 24), p. 193 (193).

⁴⁷ Farah (fn. 46), p. 193.

⁴⁸ Gunaratna (fn. 21), p. 65.

⁴⁹ Bell, *Journal of Money Laundering Control* 2003, 105 (106).

⁵⁰ Koh (fn. 12), p. 18.

⁵¹ Gardella (fn. 39), p. 420.

⁵² Levi, *British Journal of Criminology* 2010, 650 (652).

⁵³ Adams, *The Financing of Terror*, 1998, p. 172.

⁵⁴ Bell, *Journal of Money Laundering Control* 2003, 105 (107).

⁵⁵ Koh (fn. 12), p. 21.

⁵⁶ Bell, *Journal of Money Laundering Control* 2003, 105 (106).

wealthy contributors as well as from other Islamic militants.⁵⁷ Additionally, in the Islamic community every good Muslim has to pay the zakat, which is at least 2.5 % of the accumulated wealth held for one year.⁵⁸ Islamic banks take the same 2.5 % for every transaction or contract they handle.⁵⁹ Even though most of the time the zakat is used for legal and charitable purposes, it provides a very good possibility to collect money for terrorist organizations, especially because it is regularly off the balance sheet and records can easily be destroyed after the transaction is complete. Therefore they are nearly impossible to trace for western intelligence.⁶⁰ However, if the abuse of charities would be so widespread, the question arises why only a few charities have been found guilty of funding terrorism worldwide.⁶¹

Besides the donations, terrorist activities are also financed by ordinary legitimate business, which includes real estate investments, regular businesses and investments at the stock exchange. Bin Laden for example reportedly owned a substantial portion of legitimate manufacturing companies and a shipping fleet.⁶² Additionally, some countries in the Middle East are buying protection. It is reported that the Saudi royal family gave millions of US-Dollars to Al-Qaida in exchange for an agreement that there will be no attacks on the soil of Saudi Arabia whatsoever.⁶³ Diametrical to the illegitimate activities, legitimate businesses suffered serious losses in the recent years, due to the fact that counter-terrorism agencies around the world are trying to find those companies owned by terrorist supporters as well as due to the financial crisis. Nevertheless, the legitimate origin of the funds makes them even harder to detect.⁶⁴

VI. Tools in the Combat against the Financing of Terrorism

The backbone of the combat against the financing of terrorism is the identification, detection, freezing, seizure and forfeiture of terrorist funds.⁶⁵ Confiscation of property itself felt into disuse after the monarchies within the eighteenth century indiscriminately used asset forfeiture in order to finance their wars.⁶⁶ During these times it was seen as the "civil death

penalty".⁶⁷ Nowadays, this approach has been reintroduced in nearly every jurisdiction and as well within the International Convention for the Suppression of the Financing of Terrorism for example.⁶⁸

After the money is identified and detected, the only way to combat the financing of terrorism is the freezing and seizure of the funds, which means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.⁶⁹ An important element of the freezing of funds is the fact that the assets and funds remain in the property of the original owner, who stays in charge of the administration.⁷⁰ Within seizure on the other hand the assets and funds also remain in the property of the original owner, although the seizing state authority will take over the administration, possession and management.⁷¹ In this respect, it is essential to remember that freezing and seizure can only be temporarily measures and not for good. This fact often seems to be forgotten by some state authorities within the global war on terror. Forfeiture or confiscation on the other hand takes place when the state authorities order that the ownership of funds or assets is transferred to the state whereby the original owner loses all rights to the property.⁷² Therefore, forfeiture is the last and most effective part of the tools of the combat against the financing of terrorism.

VII. Effectiveness for Preventing Terrorist Activity

It is necessary to evaluate whether the general financial combat against the financing of terrorism by the freezing and forfeiture of funds can reach the goal of minimizing the financial infrastructure of terrorism or not as well as which negative side effects do exist and if they could outweigh the accomplished benefit.

1. Amount of Money Needed

One of the central roles in the evaluation of the effectiveness of the combat against the financial infrastructure of terrorism plays the actual amount of money needed by terrorist groups in order to stay operational. As we have seen above, besides the 9/11 attacks, severe bombings can be accomplished with only a limited amount of money, mostly under 50.000 US-Dollars. Within the warzones of Afghanistan and Iraq, IEDs are even less expensive and therefore constantly in use. Due to the fact that the financial background needed is so low, some state that every dollar counts and freezing as well as

⁵⁷ Bell, *Journal of Money Laundering Control* 2003, 105 (106).

⁵⁸ Lewis/Algaud, *Islamic Banking*, 2001, p. 27.

⁵⁹ Napoleoni (fn. 44), p. 33.

⁶⁰ Napoleoni (fn. 44), p. 33.

⁶¹ Gunning, in: Biersteker/Eckert (fn. 24), p. 93 (94).

⁶² Bell, *Journal of Money Laundering Control* 2003, 105 (106).

⁶³ Bell, *Journal of Money Laundering Control* 2003, 105 (107).

⁶⁴ Gardella (fn. 39), p. 419.

⁶⁵ According to Art. 1 para. 1 ICSFT funds are: "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit".

⁶⁶ Pieth, *Journal of International Criminal Justice* 4 (2006), 1074 (1075).

⁶⁷ Pieth, *Financing Terrorism*, 2002, p. 118.

⁶⁸ Pieth, *Journal of International Criminal Justice* 4 (2006), 1074 (1075).

⁶⁹ Art. 1 lit. g of "The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism" from 2005.

⁷⁰ International Monetary Fund, *Suppressing the Financing of Terrorism, A Handbook for legislative Drafting*, 2003, p. 28.

⁷¹ International Monetary Fund (fn. 70), p. 28.

⁷² International Monetary Fund (fn. 70), p. 28.

seizure of terrorist money is absolute critical. Others conclude that the inexpensiveness of terrorist acts makes the freezing and seizure of funds to an impossible task,⁷³ which leads to the assumption that the combat against the financing of terrorism might not be as effective in the war on terror as many people expected it to be.⁷⁴

But is it really true that terrorism does not need a major financial background? The essay has revealed that a terrorist attack itself is quite cheap and can probably not be fought directly with financial measures. But like all other organizations, terrorist groups require money to pay for their infrastructure.⁷⁵ The essay has shown that they need huge financial resources for training camps, donations to the families of the suicide bombers, welfare and several other investments. These costs are enormous compared to those of the attack itself. Al-Qaida for example is estimated to spend about 10 % of their money on actual terrorist attacks, while the rest is used to administrate and maintain the organization, recruitment, training, indoctrination, disseminating information, living expenses or to establish and maintain so-called "sleepers".⁷⁶

Nevertheless, the cost-benefit ratio is still against the Western World, due to the fact that billions are invested to secure the population and only thousands are needed to launch multiple attacks. Due to the fact that the combat against the financing of terrorism is not able to prevent terrorist attacks in the short-term or a specific bombing, even though several people conclude differently, it is more of a long-term strategy. Overall, the financial war on terror is only one brick in the wall of obtaining terrorism. It is reducing the amount of training facilities and indoctrination. Furthermore, terrorist groups are losing support on their home ground if their investment into welfare and security is depleting. Therefore, the combat against the financing of terrorism stays a necessary tool to prevent terrorist activities in a long term.

2. Amount of money frozen and forfeited

Another indicator for the effectiveness of the combat against terrorism is the actual amount of money, which has been frozen and forfeited. Due to the necessary relation between proportionate measures and their potential effectiveness⁷⁷, the frozen money should be quite high, because of the constant violations of human rights. Still some believe in the effectiveness of the combat against the financing of terrorism in the war on terror⁷⁸, by saying that over 147 million US-Dollars

have been frozen worldwide until the year 2005.⁷⁹ This figure seems to be very high in the first place. But if one compares it to the estimated money of the terrorist organizations, 147 million US-Dollars is not an overwhelming figure.⁸⁰

Furthermore, even those figures are arguable. Whereby, the US Assistant Treasury Secretary estimated the mentioned amount of money in 2005, the UN 1267 Committee estimated the frozen and forfeited money to be not more than 91,4 million US-Dollars in 2006.⁸¹ Still, some argue that this would still be an impressive achievement.⁸² But even if several hundred million US-Dollars would have been blocked, it is likely that at least several dozen million US-Dollars have not been detected and therefore not been frozen or confiscated. With this amount of money many massive attacks are still possible worldwide. Another often unmentioned fact is that several million US-Dollars have been unfrozen again, including the tens of millions returned to the Afghan Government after the official end of the war and the establishment of a new government.⁸³ Furthermore, the drug-industry in Afghanistan, which is financing all kinds of terrorist groups, makes approximately 6 billion US-Dollars every year. By comparing these figures one can easily see the gap between the frozen and confiscated amount of money and the amount involved in terrorist funding.

Additionally, the donations for charities, which are linked to Al-Qaida, are estimated to be between 6 and 9 million US-Dollars per year in the United States of America alone.⁸⁴ Even if only 10 % of this money is channeled to Al-Qaida directly, the organization earns up to 900.000 US-Dollars per year in the USA from donations. Needless to say the freezing of approximately a few hundred million US-Dollars since 9/11 is not the preached breakthrough in the combat against the financing of terrorism. The UK Foreign Office Minister suggested that Al-Qaida's income has fallen by over 90 % since the attacks on the World Trade Centre as a result of the international efforts, without referring to any figures.⁸⁵ Keeping the estimated annual income of terrorist organizations in mind, this assumption does not seem to be very convincing. Therefore, the actual amount of money, which has been frozen or forfeited, does not speak in favor of an effectiveness of the combat against the financial infrastructure of terrorism. But even if not all or only a small amount of terrorist money can be frozen, it is a success within the war on terror. It will never be possible to forfeit all funds, but it puts pressure on the terrorist organizations.

⁷³ Biersteker/Eckert (fn. 24), p. 7.

⁷⁴ Bowers, *Denver Journal of International Law and Policy* 2009, 379 (388); Gunaratna (fn. 21), p. 64; Biersteker/Eckert (fn. 24), p. 1.

⁷⁵ Bell, *Journal of Money Laundering Control* 2003, 105.

⁷⁶ Biersteker/Eckert (fn. 24), p. 7.

⁷⁷ Pieth, *Journal of International Criminal Justice* 4 (2006), 1074 (1075).

⁷⁸ Passas, *Case Western Reserve Journal of International Law* 2009, 243.

⁷⁹ Levi, *British Journal of Criminology* 2010, 650 (654); Biersteker/Eckert (fn. 24), p. 12.

⁸⁰ Crimm, *Wake Forest Law Review* 2008, 577 (616).

⁸¹ Biersteker/Eckert/Romaniuk, in: Biersteker/Eckert (fn. 24), p. 234 (245).

⁸² Biersteker/Eckert (fn. 24), p. 12; McCulloch/Pickering, *British Journal of Criminology* 2005, 470.

⁸³ Sproat, *Journal of Money Laundering Control* 2010, 315 (330).

⁸⁴ Gunning (fn. 61), p. 104.

⁸⁵ Bell, *Journal of Money Laundering Control* 2003, 105 (120).

3. Effects on the Legal Economy and Problems of Entrustment

One of the negative side effects of the combat against the financing of terrorism is the effect on the legal economy. The legislation imposes enormous costs for the regular legitimate economic activities⁸⁶, which includes a tremendous increase in paperwork and documentation, like the supervision of transactions. Additionally, the new procedures which are governing the opening of bank accounts have increased the costs for financial institutions and therefore also for their customers.⁸⁷ In this respect, the monitoring and documentation costs are higher than ever before, because within the war against the financing of terrorism states are not able to monitor and control the financial transfers directly and by themselves.⁸⁸ The process has to be entrusted to financial service firms (e.g. banks) in order to use their expertise and manpower. Keeping this in mind, the costs for the society could outweigh the benefit of the war against the financial infrastructure of terrorism. Furthermore, the increase of costs as well as the mandatory detailed documentation could lead to a decrease in the readiness to operate legal charity organizations, which are vital for many least developed countries. However, the side effects are only petit compared to the economical losses after terrorist attacks. 9/11 and every other bombing in the Western World has had enormous effects on the global stock exchanges, which led to tremendous financial losses for businesses and private investors. Therefore, the negative side effects of the financial infrastructure of terrorism on the legal economy do not outweigh the benefits and do not hinder the effectiveness of the combat against the financing of terrorism.

4. Problems with the Detection, Freezing and Seizure of Funds

Within the assessment of the effectiveness of financial war on terror one major problem is obvious. Within the financial combat against terrorism the detection of money as well as the blocking of transactions in order to forfeit the financial backbone of the terrorist groups sounds easier as it really is. State authorities do not have the required manpower to view all international transactions or even a small percentage of them. Therefore, within the globalized world with its billions of transactions per year on a global scale, money-tracking schemes have to be computer-based. Even though the capacity of computers has increased dramatically over the recent years, computer-based search engines still need specified search parameters in order to detect those transactions, which are for terrorist purposes from those, which have just a legal background. Parameters could be the exceeding of a specified amount of money, or every transaction that is donated to a specific person, group or company. Furthermore, the engine could search for constant transaction of small amounts of money to one person or a small group. The problem is obvi-

ous, the narrower the parameter the more terrorist transactions cannot be detected. On the other hand, the wider the parameter, the more transactions will be under suspicion and if the amount of transaction under suspicion is exceeding the work limit of the state authorities, the detection of the transactions will be too late to freeze and forfeit funds or assets. Therefore, law enforcement agencies are not able to monitor a significant proportion of the worldwide transactions or to use the monitored data efficiently.⁸⁹

Furthermore, terrorist groups are trying to counter the parameters of the search engines. They split up huge amounts of money into several transactions, each with a different sum. These transactions are regularly hidden within businesses, which have already a huge amount of constant incoming and outgoing transactions. Additionally, not all of them are addressed to the same consignee. Instead, they are split up and spread over several different companies and private persons. Due to this method, the tracing of terrorist transactions becomes nearly impossible, because every transaction looks like millions of other regular ones. Due to the fact that it is nearly impossible to detect terrorist money right away, the web of different people and organizations used to transfer money can only be unraveled, if some are already known by the intelligence or police. Nevertheless, this does not happen very often. Between 9/11 and the 31.12.2007 only 74 charges were laid in Great Britain concerning the financing of terrorism, which are just less than 12 per annum.⁹⁰

Besides the problem of detection within the regular financial system, the essay has revealed that terrorist organizations are using other transfer systems as well, like informal fund transfer systems (e.g. hawala, hundi, fei chien and other black market exchange networks)⁹¹. Hawala for example, is one of the only effective and cost efficient ways of transferring funds in many parts of the developing world.⁹² In this respect, IFTS are not an invention of terrorist groups, but a regular method of transferring money in some parts of the world. They have some common characteristics, which include a general absence of long-term record keeping and know your customer practices, collateral and unintended damages, the mixing of other activities and IFTS as well as the huge difficulties to establish countermeasures.⁹³ By using the IFTS terrorist organizations can evade the ordinary possibilities of being detected. However, law enforcement officers have not found a single case in the United States of America and no recent one within Europe where the hawala-system has been used by a terrorist group⁹⁴, either due to the fact that it is not so common as expected or to the fact that it is working so well that it does not provide a chance of detection. This con-

⁸⁶ Davis, in: Ramraj/Hor/Roach (ed.), *Global Anti-Terrorism Law and Policy*, 2005, p. 183 (197).

⁸⁷ Davis (fn. 86), p. 197.

⁸⁸ Levi, *British Journal of Criminology* 2010, 650 (651); Biersteker/Eckert (fn. 24), p. 1.

⁸⁹ Davis (fn. 86), p. 196.

⁹⁰ Sproat, *Journal of Money Laundering Control* 2010, 315 (318).

⁹¹ Passas, *Case Western Reserve Journal of International Law* 2009, 243 (252).

⁹² Biersteker/Eckert (fn. 24), p. 10.

⁹³ Passas/Maimbo, in: Biersteker/Eckert (fn. 24), p. 174 (177).

⁹⁴ Passas/Maimbo (fn. 93), p. 177.

clusion is backed up with the fact that the financing of terrorism is very hard to prove. Within Great Britain for example 1.286 people were arrested, for their relation to terrorist activities between 2001 and 2008, whereby only 442 have been charged, including only 47 charges for terrorist financing.⁹⁵ In the end only 189 people were convicted including 8 convictions related to terrorist financing.⁹⁶ These figures show that only every 23rd conviction is conducted due to the financing of terrorism.

One major problem within the detection of terrorist funds appears to be the danger of proscribing illegitimate as well as legitimate financings especially within the work of charitable organizations with mixed purposes and activities.⁹⁷ Most of the time, those organizations have officially the purpose of peaceful political engagement or the fight against poverty within least developed countries. Therefore, it is not very likely to find out, whether the organization supports terrorist activities or not, especially if the funding supports both⁹⁸, because many funds are invested off the balance sheet. Due to the problems of detecting, which money is supposed to be for terrorist activities and which is not, a combat against the financing of terrorism could lead to severe impacts upon the legitimate global humanitarian aid within least developed countries.

Furthermore, nearly 2,5 billion people and therefore more than one-third of the global population is “unbanked”. Without bank accounts monitoring becomes nearly impossible and search engines are useless. Besides that, new payment technologies have been developed, like digital currencies⁹⁹ and the mobile payment service via mobile phones, which allows value storage on the phone (widespread in Southeast Asia and upcoming in Africa). By using this new payment methods bank accounts can easily be bypassed.¹⁰⁰ Other upcoming payment services are centrally recorded value cards and those, which keep the value on the card itself and are therefore harder to trace and to record by counter terrorist units.¹⁰¹ Many of those new payment methods have anonymity risks by a lack of customer due diligence requirements.¹⁰²

VIII. Conclusion

Terrorism is one of the key threats to a stable, globalised financial system.¹⁰³ In this respect the financing of terrorism has attracted the attention of the international legal community as one way within the multifaceted war against terror.¹⁰⁴ The only legal tools within this new “battlefield” are the freezing,

seizure and forfeiture of terrorist funds. This essay has revealed several difficulties and negative side effects of a worldwide combat against the financing of terrorism and especially of the freezing, seizure and forfeiture of funds. In this respect, it is not clear whether the positive outcome is outweighing the negative side effects. Uncountable legitimate and illegitimate ways of terrorist financing do exist worldwide, which sometimes leads to the false assumption that a combat against the financing of terrorism is fully ineffective right away. But the essay has shown as well that some funds can be identified even though the detection techniques could be improved. Keeping this in mind, the ineffectiveness of the detection of terrorist funds at the moment should not lead to surrender but to a change of mind in respect to the cooperation of states and private businesses. In this respect the diversity of terrorist financing also reveals that a multi-disciplinary approach concentrated on criminal and financial law and regulations as well as coordinated multi-jurisdictional efforts are needed.¹⁰⁵

The main problem of the freezing, seizure and forfeiture of funds is the assumption that terrorist cells only need a limited amount of money in order to stay operational and to fulfill multiple attacks. The essay has revealed that the answer to this question is two-fold. It is true that the actual attack itself does not cost a lot of money. However, terrorism needs a constant and immense cash flow in order to stay operational on a long-term basis. Propaganda, the support of the families of suicide bombers, recruitment, guidance, the set-up and maintenance of terror camps as well as their relocation in a case of emergency are only some examples of the desperate need of financial support. In this respect, the combat against the financing of terrorism and the tools of freezing, seizure and forfeiture are useful and necessary in the war on terror, even though they can only be one little brick in the wall of the war on terror. Additionally, home grown terrorism should be prevented with a decent immigration-strategy, collateral damage within the warzones should be minimized and economic cooperation's are needed in order to increase the wealth in endangered countries with terroristic potential. If these strategies would be conducted and the financial combat would become more efficient, the suppression of terrorism may be achievable on a long term.

⁹⁵ *Sproat*, Journal of Money Laundering Control 2010, 315 (320).

⁹⁶ *Sproat*, Journal of Money Laundering Control 2010, 315 (320).

⁹⁷ *Davis* (fn. 86), p. 184.

⁹⁸ *Davis* (fn. 86), p. 184.

⁹⁹ *Hett*, Richmond Journal of Law and Technology 2008, 1.

¹⁰⁰ *Zerzan*, New Technologies, New Risks?, 2009, p. vii.

¹⁰¹ *Zerzan* (fn. 100), p. vii.

¹⁰² *De Koker*, Journal of Financial Crime 2006, 26 (28); *Zerzan* (fn. 100), p. 30.

¹⁰³ *Mills*, Journal of Financial Crime 2004, 380 (395).

¹⁰⁴ *Gardella* (fn. 39), p. 415.

¹⁰⁵ *Gardella* (fn. 39), p. 415.