



Final Degree Project (Thesis)

Terrorist Funding based on Non-Profit Organizations and the economic proceedings of the Terrorist Groups

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Summary

For terrorist organizations, money is a significant element as it is considered a pre-necessity for the regular process of their group tasks and functions and for carrying out those attacks. Their primary preventions and observations of terrorist funding flows can barge in the short-term operations of terrorist organizations and affect their long-term aspirations. However, it has been examined that terrorist organizations have exploited and used as a cover-up the Non-Profit Organizations sector to raise and move funds, supply logistical support, urge the recruited terrorist, or others supporting terrorist organizations and operations. Therefore, the battle to spring off the flow of terrorist financing is one of the most critical aspects of an effective strategy to battle against terrorism.

Key Word: terrorist, prevention, observations, operations, examine, supporting, critical, effective.

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I. Introduction

Since the 9/11 terrorist attack in 2001, countering financial terrorism has been one of the many major fronts in the war on terrorism. Through technological advancement, one of the most important tasks for intelligence-gathering organizations against terrorist groups is to learn how they fund their terrorist operations. Although there are many channels that terrorists can choose from when moving their money, one of these conduits is the use of Non-Profit Organizations. The NPO sector has faced ongoing pressure and risks over terrorist financing abuse. In the past twenty years, a number of Non-Profit Organizations have been incriminated or convicted of using their financial proceedings to finance terrorist activities. The issue has been persuaded international organizations such as the Financial Action Task Force (FATF)¹ to identify that Non-Profit Organizations are one element of the broader problem of financing terrorism. This thesis, therefore, explores the role of NPOs in terrorist financing with specific references to the Middle East and analyzes the existing policies and regulations associated with countering the financing of terrorism, in order to evaluate their strengths and weaknesses.

1.1. Research subject, justification, and delimitation

In accordance with the Financial Action Task Force (FATF), it is known that Non-Profit Organizations are any person or legal structure or organization that principally performs in the collection or exercise of funds for charitable, religious, cultural, educational, social, or brotherly. Non-Profit Organizations play a significant role in the world economy, in many national economies and social systems. Their efforts are to complement the activity of the government and business sectors in providing essential services, and support in need around the world. However, the ongoing international campaign against financing terrorism has unfortunately shown that terrorist and terrorist organizations exploit Non-Profit Organization sectors to raise and move funds, providing logistical support, urging the recruiting of terrorists, or otherwise supporting terrorist organizations and operations.

This exploitation not only facilitates terrorist activities but also breaks the trust of donors and jeopardizes the very integrity of the Non-Profit Organizations. Therefore, the protection of the sectors of Non-Profit Organizations against terrorist exploitation is a key part of the global fight against terrorism and a necessary step to preserve the integrity of Non-Profit Organizations. The Anti-Money Laundering and the Financial Action Task Force have proposed legal measures to point out, assess and take effective action to mitigate the risks of money laundering and terrorist financing.

¹ The Financial Action Task Force (FATF) is an international regulatory body in the fight against money laundering and financial terrorism. It is a leading agency that conducts Non-Profit Organizations and is supported by the Security and Exchange Commission (SEC).

Justification

Even if the number and type of terrorist groups and related threats have changed over time, the basic need of these groups to raise and use their funds has not changed (or remains the same). The size, scope, and structure of terrorist organizations have evolved, and so have the methods used to raise and manage their economy. It is important to take into account this topic because terrorist organizations are receiving their finances through the use of Non-Profit Organizations as a perfect cover-up since Non-Profit Organizations have ideal qualities such as their structures are easy to set up, and they also enjoy high levels of public trust and confidence making them an attractive and vulnerable vehicle for terrorist and other criminals to mask their activities.

I've been motivated by the fact that internationally there are several cases in which over-regulations are linked to anti-money laundering and financial terrorism which has negatively affected Non-Profit Organizations. From first-hand experience, it is possible that irregular financial operations and high volumes of small-scale transactions can occur within a Non-Profit Organization. This is a motivation to deepen into the origin of these transactions and depicts that money is a key facilitator of terrorist activities as it can fund their training, recruitment, weapons, materials, and support for terrorist organizations. This thesis proves how Non-Profit Organizations are a powerful vehicle for bringing society together for a common purpose and joint actions against terrorists.

Delimitation

- This study will focus solely on the **analysis of the measurements** of both the Financial Action Task Forces (FATF) and Anti-Money Laundering (AML) in order to help identify and prevent the use of Non-Profit Organizations as a type of cover-up for funding terrorist organizations.
- The research only considers the Non-Profit Organizations based in the Middle East since among other nations, has suffered terribly at the hands of terrorist organizations, and it has an underdeveloped Non-Profit Organization sector.
- The time period this research is based on is from the aftermath of the 9/11 attack till nowadays because terrorists are still exploiting Non-Profit Organizations to fund their terrorist activities and still remain a critical global threat.

1.2. Objectives

The fight against the financing of terrorism has continued to be an Anti-Money Laundering and Financial Action Task Force prime concern, given the threats posed by terrorist organizations. These threats include small terrorist cells or individual terrorists capable of committing attacks and significantly harming society. Therefore, it is crucial to identify and break up the financial networks of all types of terrorist groups.

Main Objective

- To analyze the existing regulations and measurements associated with anti-money laundering (Anti-Money Laundering and Financial Action Task Force) and countering the financing of terrorism.

To achieve this main objective, a number of secondary goals have been determined:

- To explore the extent to which legal norms play a role in reaching a risk-based approach to regulate financial terrorism and money laundering in a way that does not threaten Non-Profit Organization's economic and social benefits.
- To study the Anti-Money Laundering and the Financial Action Task Force and regulations with a focus on financing terrorism.
- To evaluate the strengths and weaknesses of these regulations and measurements applied by the Anti-Money Laundering and the Financial Action Task Force.
- To specify the role of Non-Profit Organizations in Terrorist Financing and Money-Laundering with specific references to the Middle East context.
- To determine which of the Forty Recommendations from the Financial Action Task Force are subject to ambiguity with specific references to the Middle East context.
- To evaluate the evolution of specific Recommendations from the Forty Recommendations.

1.3. Methodology

This thesis is carried out as an explanatory and analytical investigation, pointing out some specific provisions contemplated in the normative framework on regulations of Non-Profit Organizations and prevention of money laundering and terrorist financing crimes. Likewise, it has developed in a general way, the need to adapt according to the international regulatory framework in the Middle East in the prevention of these crimes whose characteristics have a scope of affection to the rights of free association. As mentioned before this study only focuses on Non-Profit Organizations found in Middle Eastern regions since terrorism is still a significant concern for countries in the Middle East because of their well-known terrorist groups still looking to conduct attacks inside their countries

In this thesis, different case studies have been displayed, and the use of various bibliographical sources such as academic articles, journals, interviews, and books. In addition, the research has included publicly available sources, such as reports from inter-governmental bodies, Financial Action Task Forces, and Anti-Money Laundering regulations in order to have a better description of terrorist financing methods using and hiding through Non-Profit Organizations as a tool of money laundering and how international efforts have identified the problem and what measures have been taken to stop these crimes.

II. Theoretical Framework

The history of humanity is overly complex and throughout that history, it has been shown that violence has been a fundamental instrument in the transformation of society. Among the different forms of violence that have been experienced, there is one that occurs around a confusing phenomenon that is difficult to delineate, to define, that cannot be measured by the scope of its actions; it is called "terrorism". The term terrorism has emerged since the French Revolution. However, Micheal Walzer states that "*since violence has always existed in all its magnitude, but a difference must be made, current terrorism encompasses extreme violence, in order to cause fear and insecurity in the population and achieve its objectives*" (Walzer, 2004).

Over time, terrorism has evolved, both locally and globally, and its today's challenge is facing the international community. Terrorism seeks through terror or fear to press, to achieve through its actions the proposed objectives, depending on whether they are of greater or lesser dimension for these organizations or terrorist groups. There was a before and after, with the attack on the Twin Towers in 2001, terrorism and its perception changed worldwide (Walzer, 2004). What terrorist groups seek through fear is to destabilize societies, that is what the terrorist group of Al-Qaeda wanted to achieve during the 9/11 attacks and what their franchise is currently pursuing. From this moment, terrorism acquired a global dimension like never before and fear seized citizens, thinking about the possibility that any place could be harmed by terrorist attacks.

Democratic societies have evolved at a rapid pace. This means this economic globalization, the creation of free trade zones, the free movement of people and money, the opening of borders, as well as the development of modern technologies (communication, weapons, and the internet) and the advances in science, among other factors, have played a preponderant role in this social evolution. In the same way as the progress of society, criminal organizations have been favored by said technologies, which ultimately make prevention and, in due course, the correct penalization or repression of criminal organizations among which there are of a terrorist nature since there is no ineffective and inefficient justice system. Hence, it is necessary to enter the study of the historical, social, economic, political, and cultural context that surrounds this specific criminal phenomenon. Terrorism arises from a new configuration of ideological, religious, political, cultural, and economic models different from the classic one that prevailed during the Cold War, the emergence that is caused by discontent in some nations like Europe, the Middle East, Asia, Africa which is generated as a result of submission to those political, economic and military strategies of the dominant powers; and, added to the above, of radical ideologies, both religious and moral. The differences between countries considered developed and undeveloped are the violation of human rights, a crisis such as economic inequalities, and lack of education, which may affect many of these countries, creating conditions that favor the promotion of terrorist activities which has become the starting point for concrete manifestations of the existence of terrorist organizations, such as the financing of terrorism and its internationalization, as a basis for the commission of crimes such as homicide, injuries, damages, extortion,

kidnapping, illegal arms trafficking, human and drug trafficking anywhere in the world (Makarenko, 2005).

However, according to Alberto Abbadie, terrorist financing is any form of economic action, aid, or mediation that provides financial support for the activities of terrorist elements or groups (Abbadie, 2004). Although the main objective of terrorist groups is not financial, they require funds to carry out their activities, the origin of which may come from legitimate sources, criminal activities, or both. The United Nations Office on Drugs and Crime defines money laundering as “*the process of making financial proceedings of criminal activities to have been legally obtained*”. On the other hand, terrorist financing is the funding for terrorist purposes but in the case of money laundering, the funds are always of unlawful origin. Whereas in the case of financial terrorism, funds can stem from both legal and illegal sources. However, in some cases, terrorists had laundered money in order to avoid authorities' attention and to protect the identity of their benefactor and the primary beneficiary of the funds (Thony, 2005). Some of the techniques used for money laundering are basically the same as those used to conceal the sources and purposes of terrorist financing. However, regardless of whether the origin of the resources is legitimate or not, it is important for terrorist groups to conceal the source and its use, so that the financing activity goes unnoticed. These criminals seek to hide their criminal activities, for which they exploit the complexity of the global financial system, the differences between national laws, and the speed at which money can cross borders (Thony, 2005).

Nevertheless, money is an incredibly significant element as it is considered a pre-necessity and terrorist organizations are not far from this logic. These organizations need money to perform their regular process of group tasks and functions, as also for carrying them out. Their primary prevention and observation of terrorist funding flows can barge into the short-term operations of a terrorist organization and affect its long-term aspirations. Therefore, the battle to spring off the flow of terrorist financing is one of the most critical aspects of an effective strategy to battle against terrorism.

This thesis is guided by a rational choice perspective which consists in applying a variety of areas including finances and terrorism. The rational choice theory has been developed to explain conventional terrorist behaviour, offering valuable insights when applied to acts of terrorist groups. This theory has explored and explained the rational decision-making process of terrorist groups when it comes to exploiting NPOs. To address the above-mentioned research question in order to assess relevant Anti-Money Laundering and Financial Action Task Force authorities and State government take proper quantification to dismantle financial flows, dispose of financial resources, and prevent terrorist groups from financing a certain percentage of their capital through Non-Profit Organizations and humanitarian aid. The study investigates Non-Profit Organizations' involvement in the financing and carrying out of terrorist activity in the selected regions.

2.1. United Nations Legislations and Directives

According to the arguments from the United Nations Security Council, terrorism is a type of activity and transnational criminal organizations are a crime that is feared because of the threat and its consequences are very immeasurable. For that reason, it is not surprising that the word terrorism is so interesting to discuss and debate, especially after the 9/11 terrorist attack in the United States. In many conferences and United Nations Resolutions on the financing of terrorist activities, basically, it is said that efforts to fight terrorism need to cut off the financial network used to commit crimes. Considering that the Financial Action Task Force, agreed to develop specific measurements for financial establishments in helping financial organizations identify the mechanisms used in the financing of terrorism. Such efforts are made because the dangers posed by terrorist groups are terrible, as on the 9/11 or the Paris attack in 2015. After the 9/11 devastation, an international campaign took the form of the United Nations Security Council Resolution 1373, in September of 2001. Calling for a fight against international terrorist activities, including the Middle East. Besides, the International Monetary Fund imposed on freezing assets related to international terrorism. As of this, the Special Recommendations on Terrorist Financing issued by the Financial Action Task Force has stated that countries should implement the United Nations resolutions concerning the prevention and eradication of the funding of terrorist activities, in particular, the UN Security Council Resolutions 1373. This resolution has demonstrated a link between the threat of terrorism to world peace and security by means and networks created by transnational organized crimes. The United Nations pay special attention to terrorist financial flows and also the United Nations Security Council Resolution 1373 requires all member states to take precautionary measures against terrorist financial flows and provide one of the other significant efforts in the form of assistance concerning terrorism investigations.

2.2. Non-profit organizations.

Non-Profit Organizations (NPO) are organizations that are not being run by profit but are committed to a given cause that is the target of all their incomes beyond what it takes to run their organizations (Schild, 2022). Non-Profit Organizations are often used for trusts, advocacy, charity cooperatives, and environmental and religious groups; they serve as a humanitarian function. Thus, they look to affect political and social changes at a national and international level. They are funded by a local or global community. Non-Profit Organizations receive tax-exempt from the federal government, which means that they do not have to pay income taxes. Many Non-Profit Organizations have paid staff management positions but most of their staff members are volunteers. In a general sense, these organizations fulfill their given mandate free from government pressure and influence. They are not associated for any reason with terrorist organizations as they stay under a non-violent agenda. They offer health, education, infrastructure, development, refugee services, basic needs, human rights, etc. They are considered important to local and global actors in multiple countries where they work (Shild, 2022).

According to John Casey, an associate professor, of the School of Public Affairs, states that Non-Profit Organizations can be considered a fundamental instrument for a country's economy and play a significant role in society (Casey, 2016). It sets off in governmental efforts and provides assistance and services to those in need. NPOs usually carry out in those areas where the government struggles to reach out. Non-Profit Organizations enjoy the confidence of the government and the public sector with both governmental and businesses channelling funds into NPOs for their "good work" and "program". However, Casey points out that in recent times the Non-Profit Organization sector has been exploited by criminal elements, especially by terrorist groups. This has been happening due to NPO operations which have given them access to a large volume of donations, various sources of funds, cash-intensive programs and services, global presence, and other operations in high-risk areas and conflict zones, making them attractive for money laundering and terrorist financing (Casey, 2016). After the 9/11 attacks in 2001 in the United States, it has been shown that Non-Profit Organizations have been a more vulnerable department to terrorism financing misuse. However, the continuing of international actions against terrorist financing have been found in many cases in which terrorist organizations have been exploiting many NPOs to raise, move funds and supply logistical support, encouraging terrorist recruitment, and supporting terrorist organizations and operations. This abuse not only has made it easier for terrorist activities, but it has also sabotaged donor confidence and jeopardized the very integrity of the NPO.

III. Analysis

Recent events have shown that Non-Profit Organisations in the Middle East, have been exploited as a channel for corruption or a conduit for laundering proceeds of illegally obtained government funds, that were not used for their intended purposes but were rather used by corrupt government officials. Apart from this, the continuing international operations against terrorist financing have unfortunately shown that terrorist and terrorist groups have exploited and abused the Non-Profit Organization department or other supports and operations. Considering that the Middle East encompasses a sizable number of NPOs that cover many donations in various areas of society, which exists a potential risk associated with Terrorist Financing and Money Laundering.

In consequence, there have been many cases in which Non-Profit Organizations and Terrorist Organizations have been linked. In one case, it has been proved that Hamas and Hezbollah are organizations that have developed a separate subdivision of activities, including militant and social-services charity branches. Both have engaged in philanthropic and assistance activities in addition to militant work serving several functions including advertising terrorist ideals, in which they gain sympathizers and allies amongst the constituents, moving social acceptance and political support. Both have engaged together to gain not only political and social acceptance but also have economic support.

According to Gabriella Pello (Pellon, 2021), an expert in AML issues certified by the Financial Action Task Force Member of the Core of Experts of the Global Non-Profit Organization Coalition on FATF (Financial Action Task Force), states that very often Non-Profit Organizations representatives need to deal with numerous obstacles that banks and government agencies put in their way as they try to raise or execute funds essential to carry out their charitable missions. These obstacles constantly jeopardize the implementation of programs or the relationship with the donor community. However, very few know what the reasons behind the paraphernalia are of obligations and bureaucracy that are required of Non-Profit Organizations.

For over thirty years, the G7 met in Paris and agreed to create the International Financial Action Task Force (FATF) to prevent the use of the banking system for the purpose of laundering money. The Financial Action Task Force was set up in 1989, originally including the G7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States, as well as the European Union). In 1990, the FATF started a set of recommendations called the Forty Recommendations, aiming to supply a complete plan of action to fight money laundering (Yuen, 2012). In 2001, the FATF started its statute to also combat terrorist financing issued by the Eight Special Recommendations and published a Ninth Special Recommendation on terrorist financing strengthening the FATF principles of the Forty Recommendations (Yuen, 2012).

To improve the understanding of the terrorist threat in the Non-Profit Organization environment, the FATF has collected evidence from 102 cases of misused charities

where fraudulent charities funnel money to terrorist organizations; this type of abuse of legitimate Non-Profit Organizations without the knowledge of their donors and or managers has been a major concern of the FATF. Since then, many authorities have taken the trouble-free path of adopting highly restrictive legislation for all Non-Profit Organizations without a risk-based approach under the pretext of following the FATF Recommendations. Nowadays, banks began to discriminate against NPOs from their client portfolios, refusing to open a new bank account, hindering transactions with very rigorous documentation requirements, and even closing their bank accounts abruptly and for no apparent reason. This phenomenon, known as bank re-risking, was justified in five continents and in many Middle Eastern countries such as South Arabia and Israel, seriously limiting their access to financial services. However, according to Laurel S., it was not until the Paris terrorist attack at the end of 2015 that the fight against financing terrorism became a priority for the FATF (Terry & Robells, 2018). From this point on, the FATF urged its Global Network made up of more than 200 authorities to give a concrete response to this terrorist threat. Given that framework, Non-Profit could no longer avoid failing under the radar.

3.1. Financial Administration of Terrorist Organizations

International Financial Action Task Force (FATF)

According to the International Standards, the Financial Action Task Force is the “watchdog” of global control whose purpose looks to promote policies and state goodwill for an effective fight against money laundering crimes and financing terrorism through the issuance of international standards, which have the aim of preventing these illegal activities and the consequences that in society (Terry & Robles, 2018). In this sense, the Financial Action Task Force works to generate the political will necessary to carry out national legislative and regulatory reforms in these areas. It was first written in 2002 when the Financial Action Task Force had just presented the standards addressing vulnerability and threats of financial terrorism following the terrorist attacks of 9/11 (Terry & Robles, 2018).

The Financial Action Task Force is made up of more than two hundred countries and authorities committed to implementing the referred standards; the Forty Recommendations as mentioned before have been created to ensure a coordinated global response to prevent organized crimes, corruption, and terrorism, to help authorities pursue the money that criminals generate through the commission of various crimes from (or generated by) money laundering such as drug trafficking, human trafficking, administration fraudulent, kidnapping, extortion, corruption, among others. The Financial Action Task Force also works to stop the financing of legal weapons of mass destruction. According to Jose Carlos Llerena Robles, since the 11 of September 2001, the FATF has deepened its focus on the regulation of financial services and charities. To do this, it created Recommendation 8, which warns countries about the vulnerability of Non-Profit Organizations to be misused to raise, move funds or provide support to terrorist organizations (Terry & Rubbles, 2018).

The Financial Action Task Force recognizes Non-Profit Organizations' importance for the community in supplying services to charities around the world, as well as the difficulty of aiding those in need. Their main objective is to protect the integrity of the Non-Profit Organization sectors from terrorist abuse; the Financial Action Task Force acknowledges the intent and efforts and promotes the Non-Profit Organization transparency within their operations and prevents the use of wrongdoing by those who wish to support terrorist financing and terrorist organizations. On the other hand, the 9/11 terrorist attack in the United States, led to a new significance of money laundering laws to combat financial terrorism. The Group 7 nations used the Financial Action Task Force on Money Laundering to pressure governments around the world to increase surveillance and monitor any financial transactions (Protasov, 2018). According to the Financial Action Task Force, Anti-Money laundering (AML) is a leading agency that conducts Non-Profit Organizations and is supported by the Securities and Exchange Commission (SEC). The AML refers to the collection of laws and regulations that has the authority and supervision of all corporations, partnerships, or associations with the FATF that guarantees licenses or permits; it is a secondary license agency for charitable and social welfare organizations and foundations. It is a sector that considers the risk assessment of developing NPO networks (Slovik, 2004). Nevertheless, money laundering and terrorist financing threats are evaluated separately in this "risk assessment" (Slovik, 2004); where risk is evaluated as a function of criminal threat and vulnerability following the FATF best practices on combating the abuse of Non-Profit Organizations.

What is financial terrorism?

The Financial Action Task Force does not provide a concrete definition of what is understood by the financing of terrorism, since it refers to the State defining the crime in accordance with the International Convention for the Suppression of the Financing of Terrorism, which is noting that "countries must criminalize the financing of terrorism based on the International Convention for the Suppression of the financing of terrorism, and should be criminalized not only the financing of terrorist activities but also the financing of terrorist organization and individual terrorist, even in the absence of a link with a specific terrorist act or acts".

The money laundering threat sector in the Middle East is assessed as high; this assessment has shown that Non-Profit Organizations are exploited for money laundering using (or through) Non-Profit Organizations who are involved particularly in charitable, agricultural, educational, and livelihood activities largely located in the Middle East countries where Non-Profit Organizations are linked to the predicate offenses graft and corrupt practices and fraud. There is a total of 138 Non-Profit Organizations that have been identified in the Anti-Money Laundering and Financial Action Task Force cases on Non-Profit Organizations. However, banks were controlled and used as channels for laundering money and financing terrorist groups; it was reported by the Anti-Money Laundering that the banking sector accounted an 81% of volume and 99.78% in the Middle East (Van Der Does De Willebois, 2010). According to Emilie Van Der Does de Willebois, Non-Profit Organizations are found

in graft and corruption cases where sham Non-Profit Organizations were set up specifically for the purpose of receiving government funding to fund agricultural “ghost projects”. Many Non-Profit Organizations were identified as a relation to fraud and other money laundering indicators which may have been abused since their involvement in receiving fraudulent banking instruments as donations that were either returned or shamed.

A total of thirty-two Non-Profit Organizations were identified in terrorism and terrorist financing by the Financial Action Task Force. These identified Non-Profit Organizations are dispersed across Middle Eastern countries like Afghanistan and Iraq. Their participation in terrorist financing activities is based on financial analysis linking Non-Profit Organizations to threat groups or terrorist organizations. This showed that while it is conceivable that Non-Profit Organizations may have been used for fear-mongering financing purposes, the same is not the favored mode for raising funds or supplying humanitarian aid. The majority are identified as a sub-set service type, specifically charitable, social development, humanitarian disasters, educational, etc. (Van Der Does Willebois, 2010).

For example, in one case study, where some Palestinians Non-Profit Organizations have been financially suspended due to individual links with a group considered a terrorist organization by the United Nations Security Council and the Financial Action Task Force. The entity affected by the suspension is the Union of Agricultural Work Committee which was accused of being linked to the Popular Front for the Liberation of Palestine (PFLP), a group linked to the 2019 attack in the West Bank that killed an Israeli. It is one of the six Palestinian Non-Profit Organizations classified in 2022, by Israel as a “terrorist organization” for alleged links to the Popular Front for the Liberation of Palestine (Tahhan, 2022). According to the Dutch government after investigating the NPO, the individual link between the UAWC is the reason for no longer funding their activities. According to Zena Al Tahhan, the United Nations and the Arabic Convention have acknowledged that these investigations did not make it possible to prove “organizational links” or “transfer of funds” between two groups. Following Tahhan, two of the men detained by Israeli authorities for the murder of a woman in a bomb attack in the West Bank in 2019 worked for this entity (Tahhan, 2022). The UAWC fired two men and reported the matter to the authorities; among the Non-Profit Organizations declared a “terrorist” by Israel’s government, there was also one led by the Spanish aid worker Juana Rishmawi, sentenced to 13 months in prison for having financed the PFLP through the Non-Profit Organization.

However, in another case, an effort to curb the spread of radical Islam led to the killing of 18 people most of them foreigners at a cafe in Baghdad city (Iraq) on a Monday morning by the jihadist group of Islamic State in 2016, where Iraqi authorities have placed a nine Non-Profitable Organization's under observation (Wing, 2016). They are suspected of having received funds from abroad to finance prohibited terrorist groups in the country. Sources to the government revealed that the Non-Profit Organization in question would have received. The money since 2014 and instead of spending it on development activities to combat poverty as stated in the official media (BBC News) it would have been delivered into the hands of the Islamic Militant. Among the supervised organizations, there are several well-known

names: Rabata Al-Alam Al-Islami, Qatar Charitable Society, Islamic Relief Agency, and Kuwait Joint Relief Committee, to name a few (Litner, 2002). Over the years, Non-Profit Organizations have received funding from various regions in the Middle East such as Kuwait, Qatar, and Saudi Arabia. In recent years, Middle Eastern countries have seen a dangerous Islamic drift, leading to the deaths of many people, including Christians, foreigners, bloggers, and LGBT activists, most of them were killed in broad daylight with machetes (Menelik, 2009). For instance, about 43 million people live in Iraq, who profess the Islamic faith; Islamic radical groups have funded colleges, schools, and madrasas (Islamic schools) and run hospitals and training centers. According to Professor Abul Barakat, at least 231 organizations received funds to finance terrorism, “*thanks to this money*” he states - 500,000 full-time workers have been hired but the Koran does not preach violent jihad (holy war). Vulnerability assessment of the Non-Profit Organization sectors both for money laundering and terrorist financing can be rated as high. In 2019, controls are in place, particularly for foundations and charitable institutions, which can be shown as a subset risk for money laundering and terrorism. For unregistered organizations, there are laws and regulations requiring permits to conduct public solicitations and fundraising activities (Menelik, 2019).

Antonis Papazoglou, Interpol Officer in Greece, believes that countries must ensure that such crimes are named as predicate offenses for money laundering. For its part, he mentions that financing terrorism is: “*a criminal act for political purposes planned to provoke a state of terror in the general population, in a group of people or in people decides that are unjustifiable in all circumstances, whatever political, philosophical, ideological, radical, ethnic, religious or of any other nature that is asserted to justify them*”². The Terrorist Financing Risk Assessment has recognized Non-Profit Organizations as a channel for terrorist financing; their intelligence information has pointed out that Non-Profit Organizations in the Middle East use these funds for recruiting members and earn goodwill for their surrounding communities. Non-Profit Organizations working in the Middle East are supporting the threat of terrorist organizations with a nationwide presence.

In short, the financing of terrorism seeks to hide the purposes for which these funds are used, instead of hiding their origin. Often, terrorists have used legal companies to perform legal activities that generate legal income, but these are destined to illegal organizations so that they, in turn, carry out illegal activities; that is acts of terrorism, which is why the Financial Action Task Force included in the Non-Profit Organizations in its *Forty Recommendations*.

The Financing of Terrorism, the Financial Action Task Force, and Non-Profit Organizations

The Statue for European Cross-border Association and Non-Profit Organizations has estimated that in the Middle East, there are registered a total of 101, 843 Non-Profit Organizations in active status by 2017, while 52,212 Non-Profit Organizations are inactive (Müller & Fernandes, 2021). This has been estimated a total of 33.58% of

² Personal Interview with Antonis Papazoglou (Interpol Officer in the area of Terrorism).

Non-Profit Organizations are in service while 2.93% are expressive Non-Profit Organizations and 51.977% are not clearly classified as whether they are expressive or service type which cannot be determined (Müller & Fernandes, 2021). Following the Financial Action Task Force, annually, Non-Profit Organizations are obliged to send a report with all the requirements stating their financial statements, schedules of incomes, contributions, and donations, among others.

Governmental agencies are responsible for fulfilling regulations and assure the role of the measures of Non-Profit Organizations that are engaged in social welfare and activities (programs, services for the poor, vulnerable sectors, etc). Non-Profit Organizations need to be registered and have licensed accredited and certified by government agencies or government units. In the case of the Middle East, Saudi Arabia has provided a Non-Profit Organization Code which is the biggest coalition dedicated to social development in the Middle East; it has been the first Non-Governmental Organization coalition to adopt a code of conduct in the Middle East and probably one of the biggest global Non-Governmental Organization communities. This is a coalition of more than twelve regional and national/international networks which represents more than 1.4000 Non-Governmental Organizations worldwide, it is known that countries such as Saudi Arabia, Iraq, Iran, Israel, Jordan, Afghanistan, Palestine, Syria, Yemen, and others have committed terrorist acts. As part of the investigation into such facts, cases have been shown in which the terrorist organizations abuse Non-Profit Organizations that are legitimately constituted to raise and transfer funds, this way providing them with logistical support, encouraging the recruitment or otherwise, support terrorist organizations and operations in any other matter. Also, there are cases where terrorists create front charities or conduct fraudulent fundraising for such purposes. This misuse not only eases terrorist activities but also breaks the trust of donors and jeopardizes the very integrity of Non-Profit Organizations overall. Money laundering and terrorist financing threats are evaluated based on investigations and cases involving Non-Profit Organizations, suspicious transactions report analysis, and inputs from sector representatives.

In one case, SAMIDOUN a Non-Profit Organization created in Canada in 2011, which develops its activity in Canada itself, as well as in some Middle Eastern regions. According to the Non-Profit Organization Monitor, they carry out public campaigns for the release of PFLP terrorists in prison (Non-Profit Organization Monitor, 2023). They have asked that the general be released from said terrorist organization, Ahdmad Sa'adat, for which he has even started a new campaign demanding his release in 2019. SAMIDOUN has links with other Non-Profit Organizations dedicated to BDS (Boycott, Divestment, Sanctions) and above all with terrorist organizations like the Popular Front of the Liberation of Palestine (Non-Profit Organization, 2023). Two activists who work for this Non-Profit Organization, Mustapha Awad and Mohammed Khatib are PFLP members. The Israeli Security Forces have verified that they have received training in Lebanon from Hezbollah. This Non-Profit Organization has been financing PFLP. However, the Director General of the Non-Profit Organization, Raji Sourani, and the director of its legal unit, Iyad al-Alami, have kept links and financed Hamas and have even collaborated with

these terrorist organizations providing legal aid and advice since 2017. In addition, it has become involved in violent terror marches that Hamas has organized on the Gaza-Israel border.

Another exemplification, the International Islamic Relief Organization is a charity based in Saudi Arabia counting the 9/11 attack, Mohammed Jamal Khalifa, who was Osama Bin Laden's brother-in-law, used this Non-Profit Organization to work with terrorist organizations worldwide (Menelik, 2009). He became the founding director and set up various charities and Islamic organizations in the Middle East in which all charities and religious work were channeled to Al-Qaeda funds for extremist groups including Moro Islamic Liberation (MILF), and Abu Sayyaf Group (ASG). They were behind the construction of mosques, schools, and other projects. Only 10 to 13% of their funding went to terrorist operations (Shelby, R.C, 2009).

In 2006, the United Nations 1276 Sanctions Committee listed this Non-Profit Organization associated with Bin Laden, the Taliban, and Al-Qaeda (Menelik, 2009). At the same time, the United States Treasury Department appointed this Non-Profit Organization in the Middle East as a fund-raiser for the Al-Qaeda terror network and moved to freeze their financial assets for helping with terrorist attacks; they also alleged that they raised money for Abu Sayyaf bandits. Following the United Nations designation, the Anti-Money Laundering locked some deposit accounts of the Non-Profit Organizations in many Middle Eastern banks, freezing their accounts.

Unfortunately, some of these Non-Profit Organizations linked to terrorist organizations have repeatedly received funds from Institutions of the European Union, European countries, and the Middle East like Saudi Arabia, including public money earmarked for humanitarian aid and private philanthropic foundations (Recommendation 8. *Non-Profit Organizations, n.d*). According to the Financial Actions Task Force, it is more than probable that a large part of these funds will eventually be diverted to terrorist organizations, both directly and indirectly. On the other hand, according to the European Union states that it has stopped supporting Non-Profit Organizations that have been involved in terrorist acts and have carried out international-funded activities. Joseph Borell has assured that the Union has taken serious decisions having reached consequences for the organizations in political, legal, and financial terms (High Conference on Counter Terrorism, 2021). According to the European Union, they have never financed or supported any terrorist organizations, they have exercised the utmost diligence to avoid such a situation. In any case, Joseph Borell made clear that if substantiated evidence is provided that any beneficiary has misused European Union funds, they will take steps to recover those funds (High Conference on Counter Terrorism, 2021). Therefore, the protection of Non-Profit Organizations against those who abuse them to finance terrorist groups is an essential part of the global fight against terrorism and a necessary step to preserve their integrity and the donor community.

Measures to protect them from the potential abuse for terrorist financing should be targeted in line with the risk-based approach; proportionality it is also important that such measures are established thusly that they respect the country's obligations based on the Charter of the United Nations and Anti-Money Laundering Law. For

reasons such as the above, the Financial Action Task Force takes Non-Profit Organizations into account among the funding of the 40 Recommendations because they have identified that some have been used for terrorist purposes; especially, 8 of the recommendations are directed towards these sectors so that States can apply them and use them to measure the prevention of these crimes in Non-Profit Organizations.

The fight against terrorism justifies the application of measures that restrict the Non-Profit Organization's activities

Referring to the *Special Recommendations*, issued by the Financial Action Task Force, especially related to the funding of terrorism has also been started in the ratification and implementation of United Nations mechanisms. The United Nations has asked every country to take steps toward the immediate implementation of the United Nations International Convention for the Suppression of the Financing of Terrorism. This is intended to prevent and cease terrorist financial flows, either directly or indirectly, to identify, block and stop all administrative funds for terrorist activities.

In 2001, after the 9/11 terrorist attack, the Security Council adopted Resolution 1373; urging member states to adopt a series of measures aiming at strengthening their legal and institutional capacity to fight against terrorist activities, mainly in the fight against the financing of terrorism and international cooperation in the fight against terrorism. The resolution also called on States to become parties to international legal instruments (Trinkunas, 2007). Relating to the fight against terrorism, as soon as possible. This broad language reflects the United Nations' determination to take advantage. Of the sympathetic post-9/11 attacks in passing much tougher measures. The resolution also created a Committee Against Terrorism, in charge of ensuring compliance with the obligations of resolution 12773 by States and helping develop national and international mechanisms for the prevention and suppression of acts of terrorism. This committee can rely on the Executive Directorate of the Counter-Terrorism Committee, a service of the Secretariat that helps the Committee by applying its decisions, evaluating the situation of each Member State with experts, and easing the provision of technical aid to countries to fight against terrorism.

The Financial Action Task Force also urged States to at once implement the United Nations resolutions related to the prevention and eradication of terrorist financing, particularly the United Nations Security Council Resolution 1373. Terrorist groups need Non-Profit Organizations to fund the formulation of the group which deliberates their activities either directly or indirectly into criminal law. Blocking these funds and blocking other sources of income and prohibiting every entity from all forms of provisions of funds, will end the participation in carrying out any terrorist activities, communities, or individuals who act on behalf of them.

After the Financial Action Task Force extended its mandate in 2001, covering the fight against financial terrorism and issued its Forty Recommendations on fighting this problem. These new measurements recommended the criminalization of the financing of terrorism following the United Nations Convention for the Suppression of the Financing of Terrorism, address the practices used by the terrorist to finance

their organizations, and call for the implementation of specific asset blocking, seizing, and confiscating (Trinkunas, 2007). There is a significant overlap in aspects between these different obligations and rules. For example, both the Resolution and the Special Recommendations invite countries to accede to the Convention and to apply its provisions internally. The Convention requires that States Parties consider adopting certain standards shined in the 40 Recommendations on Money Laundering issued by the Financial Action Task Force (Trinkunas, 2007).

According to Harold A. Trinkunas, there are over 100 countries that designed and passed laws addressing terrorist financing shortly after the 9/11 attacks. This was used to measure the success of international efforts to stop terrorist financing. Banks started to freeze assets from Non-Profit Organization's portfolios (Trinkunas, 2007). However, the international effort on terrorist financing, while impressive, has largely been shallow. The implementation of the principles required by the Resolution 1373 has been less forthcoming and the Financial Action Task Force Recommendations on terrorist financing were at their weakest in the lower- and middle-income countries and the Middle East has been listed in the category of concern countries for terrorist financing. Ongoing terrorist use of NPOs (Non-Profit Organizations) puts Non-Profit Organizations in danger of allowing any kind of financial system access (Trinkunas, 2007).

According to Colin Clarke, it appears that various Non-Profit Organizations are used and abused for terrorist financing purposes. Their tactic employed is a deviation of funds and exploitation of legitimate entities as a spillway for terrorist financing (Clarke, 2015). These Non-Profit Organizations are associated with or abused by terrorist organizations in the Middle East and by one with a nationwide presence. Validations of intelligence information are still going on by different law enforcement and intelligence agencies. However, there are regulations and reporting requirements imposed by different agencies, depending on the purpose and activity of the Non-Profit Organizations (Clarke, 2015)

Clarke states in his book, *The Financing of Terrorism, Insurgency, and Irregular Warfare*, that the right to freedom of peaceful assembly and association has referred to this issue and highlighted that *“while States have the responsibility to combat money laundering and terrorism, that obligation should never be invoked as a justification for undermining the credibility of an organization, nor to arbitrarily hinder its legitimate activities. All measures adopted in this context must promote transparency and greater trust in that sector among the community of donors and the general public so that the funds and services of charities reach their legitimate beneficiaries”* (Clarke, 2015).

It should not be forgotten that the right to exercise by organizations without profit-making is a human right, that is, the right to free association which is recognized in Article 20 of the Universal Declaration of Human Rights (United Nations, 2014), 16 of the American Convention on Human Rights and 22 of the International Covenant on Civil and Political Rights the latter being which in turn states: *“the exercise of such right may only be subject to the restriction provided by the law that is necessary in a*

democratic society, in the interest of security, public safety or public order, or to protect the health or public morals or the right and freedoms of others”.

However, Simon Goddard, a CEPOL expert, believes that the foreigners do not mean that, for the sole purpose of protecting a State from acts of terror carried out by terrorist organizations, by virtue of national security, public safety, or public order, restrictive measures will be implemented per se to Non-Profit Organizations, but must also take into account the principles of legality and proportionality (FATF, 2019). In accordance with the relationship to the latter, Simon Goddard believes that on the rights to freedom of association and peaceful assembly pointed out that: *“to meet the criteria of proportionality and necessity, the measures restrictive measures must be the least intrusive means of achieving the desired objective, and be limited to the associations that present the clearly identified aspects that characterize terrorism. The measures should not be directed at all civil society organizations, as unfortunately happens in a new law against organized crimes in Venezuela. Laws written in terms of rules, that limit, or even prohibits, financing used as a justification for the fight against terrorism do not meet the requirements of “proportionality” or “necessity”* (Goddard, 2007). This means that it urges States to avoid measurements that target or disproportionately tax civil society organizations, such as those that impose the same strict vetting standards, procedures, or other specific requirements that do not apply to the business sector overall.

In the Financial Action Task Force, the 8 Recommendations – formerly called Special Recommendations VIII-, on Non-Profit Organizations for profit countries are encouraged to review their laws, and regulations to ensure that entities are not used to finance terrorism. The Special Rapporteur underlines as does an interesting working document of the World Bank discussing the FATF response to terrorism financing that on every few occasions if ever have detected cases of financing of terrorism thanks to the supervisory measures specifically aimed at civil society organizations *“in fact, the fundamental thing is financial intelligence”* (International Monetary Fund, 2012). According to the United Nations Security Council, it is important to emphasize that the application of measures to combat the financing of terrorism must be fully in line with anti-money laundering laws – in particular, with the human rights law, international humanitarian law, and international refugee law and that they must mitigate measures that can be introduced, including where exceptions exist, humanitarian, to reduce the consequences for humanitarian actors (Messmer & Yordan, 2011). In addition, all States must ensure that the activities of organizations and non-profits, particularly those dealing with these issues related to gender and women’s rights, as well as the reconstruction and stabilization are not unduly limited. Nevertheless, considering the previous information, it is important to know what the 8 recommendations and its FATF Interpretive Note are.

3.2 Recommendation 8 and its evolution

Recommendation 8 was changed in 2016, given the affection generated to the Non-Profit Organizations for the development of their activities, since the States erroneously interpreted it and consequently, established disproportionated measures. In order to learn about this event, it is transferred below is the

aforementioned standard before its reform, which established: *“Countries should review the adequacy of laws and regulations relating to the entities that can be misused for the financing of terrorism. Non-profit organizations are particularly vulnerable, and countries must ensure that they are not misused: (a) by terrorist organizations presenting themselves as legitimate entities; (b) to exploit legitimate entities as conduits for the financing of terrorism, including for the purpose of escaping freezing measures assets; and (c) to conceal or conceal the clandestine diversion of funds, intended for purposes legitimate, from terrorist organizations”* (Omar, 2015).

It is important to understand that the Recommendation 8, as it is found composed as follows: “countries should review the adequacy of laws and regulations related to non-profit organizations that the country itself has identified as vulnerable to abuse for the financing of terrorist financing, in consequence, countries must apply targeted and proportionate measures protecting from abuse these non-profit organizations for the financing of terrorism in the light of the risk-based approach. This can only be done through the implementation of a National Risk Assessment following the FATF Recommendation 1, which will be elaborated on later.

Interpretive Note to Recommendation 8

As part of the efforts being made by the Financial Action Task Force, an explanation of Recommendation 8 to ease its understanding and application by States undertaking approval and enforcement efforts regulations and policies aimed at preventing and combating crimes to Money Laundering and Terrorism Financing (International Monetary Fund, 2012). The aforementioned interpretation states that: *“Non-Profit Organizations refers to a legal person or other legal structure organization primarily involved in raising or disbursing funds for fulfill charitable, religious, cultural, educational, social or fraternal or to carry out other types of “good works”*. Nevertheless, Recommendation 1 applies only to those Non-Profit Organizations that fall within the Financial Action Task Forces definition of a Non-Profit Organization. It does not apply to the entire universe of Non-Profit Organizations. To expand on what was previously said, Recommendation 1 states that: *“Countries should identify, assess and understand their money laundering/financing terrorism, and must act, including the designation of an authority or mechanism to coordinate actions to assess risk, and apply resources aimed at ensuring that risk is effectively mitigated. Based on that assessment, countries should apply a risk-based approach (EBR) to ensure that measures to prevent or mitigate money laundering and financing of terrorism (AML) and the implementation of measures based on risk in all FATF Recommendations. When the country's minor risk is identified, they may choose to allow simplified measures for some FATF Recommendations under certain conditions”* (International Monetary Fund, 2012).

In this regard, the FATF has stated the following regarding the regulations addressed to Non-Profit Organizations related to Recommendations 1, 8, and 20: *“Countries should establish an adequate mechanism to ensure that, when there are suspicions*

that a particular Non-Profit Organizations is being abused by terrorists, this information and other relevant information is shared quickly with the relevant competent authorities, to take action preventative or investigative; this does not mean that the Financial Action Task Force Recommendation requires countries to impose a reporting obligation suspicious operations to all NPOs” (Choo, 2013). Following the lines of Recommendation 20, Non-Profit Organizations are not considered activities or professions that are not Designated Financial Institutions (DNFBPs) and therefore should not be subject to the Financial Action Task Force requirement for DNFBPs (Choo, 2013).

The Financial Action Task Force through Recommendation 22 indicated that the requirement of due diligence of the client and the maintenance of records established in Recommendations 10, 11, 12, 15 and, 17, applies to Activities and Professions Designated Non-Financial Institutions (APNFD), these being the following: casinos, real estate agents, dealers in precious metals and dealers in stones, lawyers, notaries, other independent legal professionals, accountants, trust and company service providers (Choo, 2013). In short, Non-Profit Organizations are not DNFBPs, however, an ambiguity occurred in the Middle East in 2014, when the Financing Intelligence Unit (FIU) was preparing a new instruction in which it considered Non-Profit Associations and Foundations as DNFBPs. However, the aforementioned instructions did not enter into force. In this sense, in October 2021, the Financial Intelligence Unit issued new instructions that replaced the ones from 2013, this new instruction is partially adequate to what is required by the Standard of Recommendation 8, since what really should be reformed, to adapt the regulation to the Financial Action Task Force Recommendations is the Anti-Money Laundering Law, since it is of little benefit that the instructive command to implement prevention measurements with a risk-based approach for Non-Governmental Organizations, when the Law considered them, without distinction of nature, activity, capital purposes and other as obligated subjected in general way (Choo, 2013). This is because there is no up-to-date National Risk Assessment that may allow clarifying which sector or what type of Non-Governmental Organizations are vulnerable to being abused for terrorist financing.

On the other hand, the new instruction includes concepts that must be understood carefully, since a distinction must be made when referring to obligations addressed to “clients” of the obligated subject, since a Non-Governmental Organization does not have clients directly, they are mainly users or beneficiaries, also counterparts or suppliers. Though, it can be said that an organization has customers when it carries out an economic activity that allows you to generate income for self-sustainability that allows you to continue carrying out its duties to achieve its goal (Karolyi, 2006). In this sense, the different types of risk must be considered: legal, reputational, operational, and of contagion, but won't be expanded since these are not the object of study that concerns the present document; however, they must be identified under a risk-based approach to adequately address them to prevent the crimes under study (Karolyi, 2006).

Peculiarities of Non-Profit Organizations facing other reporting entities due to diligence.

The Financial Action Task Forces state in Recommendation 8 enforces that countries should give steps to promote effective supervision and monitoring since the approach “universal” would be inconsistent with the proper implementation of a risk-based approach as stipulated in Recommendation 1. Countries should be able to prove that risk-based measures apply to Non-Profit Organizations at risk of abuse for terrorist financing. It is also possible that regulatory or other measures may already address, so sufficiently, the current risk of terrorist financing to Non-Profit Organizations in a district, although terrorist financing risk in the sector should be reviewed periodically.

According to the Financial Action Task Force, there are some examples of measures that could be applied to Non-Profit Organizations are presented, in whole or in part, depending on the risks identified: Non-Profit Organizations may be required to maintain information on: (1) the purpose and objectives of its declared activities; and (2) the identity of the person(s) who owns, controls or directs its activities including senior officers, board members and the trustees (International Monetary Fund. Leg Dep, 2012). It is worth mentioning that in the Middle East, Non-Profit Organizations are starting to comply with this type of measures, for example, the provisions of Article 147 of the Tax Code, which must be related to the Interpretive Note of the Recommendation 8, since it states: *“without prejudice to the requirements of Recommendation 1, given that not all Non-Profit Organizations are inherently high risk (and some may pose little or no risk), countries should identify which subset of organizations falls under the definition of a Non-Profit Organizations of the Financial Action Task Force. When conducting this exercise, countries should use all the sources of information relevant to finding characteristics and types of Non-Profit Organizations, which due to their activities or characteristics, run the risk of being abused by terrorist financing”* (Mitsilegas & Gilmore, 2007). For example, this information may be supplied by regulators, tax authorities, Financial Intelligence Units, donor organizations, or law enforcement and intelligence authorities.

Following all the above, it is necessary to mention that each Middle Eastern countries have regulations in line with this consideration, for this reason, the Financial Action Task Force reminds these countries that must review the adequacy of the laws. Some mandate of Non-Profit Organizations that are already subjected to: The Organic Law of the Central Bank of Reserve (BCR), has the obligation to provide all the information that requires (Art.64), based on such provision, all donation received by the organizations must complete the “declaration of income in the currency for foreign operations” requested by the BCR (Choo, 2013). Tributary Code, Registry of taxpayers (Art.86), obligation to inform (Art. 120); obligation to report all donations for income tax purposes (Art. 146); obligation to keep information and evidence (Art. 147). General Municipal Tax Law, allows and eases inspections, examinations, verifications, or investigations ordered by the municipal tax administration (Art. 90):

- Provide the relevant data of the entity and communicate on time any modification.
- Report changes of residency and any other circumstances that change or may make tax obligations disappear.
- Allow and ease inspections, examinations, verifications, or investigations ordered by the municipal tax administration.
- Submit declarations for determination of the taxes, with the respective annexes.
- Go to the municipal offices when it is cited by tax authorities.
- Submit statements, balances sheets, inventories, physical, both the corresponding ones if any, reports, documents, assets, records, and other reports to generate events of taxes. Allow to examine the accounting records, and documents and settle the corresponding taxes.
- Provide any clarifications that may be requested and give to the administration the books or records accountants.

Other laws that applied are tax law on income, tax law to transfer goods and provision of Services (VAT), and insurance law on society and its regulations (Choo, 2013). All these laws are all applied, for example, in Saudi Arabia, the Regulation of the Charities and Associations follows all these regulations to be able to find which Non-Profit Organizations are vulnerable to terrorist financing abuse or money laundering as a predicate offense and they will be the ones who must follow the new prevention measurements. In this regard, the Financial Action Task Force has said that if a country implements measures for the prevention of money laundering and terrorist financing crimes in a manner overall for all Non-Profit Organizations this would be related to deficiencies based on the evaluation method used by the agencies (Choo, 2013).

Financial Action Task Force Methodology

If the criteria of a risk-based approach are not met for the implementation of measures to vulnerable NPOs, these will set up a burden disproportionate to the administrative and financial ability of Non-Profit Organizations not identified as vulnerable, regardless of their level of risk. Therefore, it would be difficult to show that the measures are proportional to the purpose looked for. For instance, in the Middle East all Associations and Foundations are required to follow the assignment of a Compliance Officer, this entails that small organizations would delay or limit the exercise of freedom of association as a universal recognition freedom (Choo, 2013). Through the instruction, Non-Profit Organizations are effectively obliged to appoint the Compliance Officer, but there is a flexibility in which you can choose personnel of the same entity, it is not an obligation, or rather, it is incompatible with the subcontracting of an external person to perform the said role. However, many organizations do not have personnel with the requirements that the referred instructive requires, among one of them: University degree, circumstances that may lead to some non-compliance, and the future sanction to avoid. In such a situation, the organization would have to include expenses or its closure before the inability to meet any requirement. Given this, the evaluators of the country, based on the Methodology of FATF evaluation, considering that the components are not met of

said method, since the said body has adopted two approaches complementary with the Financial Action Task Force's Recommendations, and on the other hand, determine the existence and forms of how the effectiveness of the Anti-Money Laundering system is evidenced. In short, the method includes two components: technical compliance and evaluation of effectiveness.

Need to incorporate Non-Profit Organizations in the NRA

As noted, Non-Profit Organizations are not particularly vulnerable, but the duty is that countries need to identify those Non-Profit Organizations that are in a situation of vulnerability, being abused by the financing of terrorism, by way of example, Saudi Arabia has carried out two Ending Net Receivable (ENR)³ which it included the Non-Profit Organizations sector; the first one was carried out in 2016 (Van Der Does De Willebois, 2010). However, only two Non-Profit Organizations from a universe of about 60,000 which resulted in completely uncertain data on the characteristics belonging to various organizations that did not allow the detection of vulnerabilities. Anyhow, in the second ENR carried out in 2020, more than 2,500 Non-Profit Organizations, which allowed to conclude the following: “The results indicated that the maximum level of risk in the Middle East is high, in which around 79% of the entities (Non-Profit Organizations) are found, while that remaining were identified as low risk (Van Der Does De Willebois, 2010). It is worth mentioning, that the highest risk rating identified corresponds to more than 10 religious Associations, deriving from the above, and given that in the Middle East, there are cases of terrorist fundings through Non-Profit Organizations and having a risk matrix, it is considered that the vulnerability represented by the possibility of NPOs to commit acts of Terrorist Financing has a high probability and a big impact (Van Der Does De Willebois, 2010).

1.3. Special Bill for the Prevention, Control, and Sanctions of Money Laundering of Assets.

It should be mentioned that some regulations that were contemplated in it could be attacks on Non-Profit Organizations, and therefore an attack on Financial Action Task Force Recommendation 8 and its interpretive note. Recommendation No. 8 sets up the need for countries especially in the Middle East to review the adequacy of laws and regulations related to Non-Profit Organizations that the country has identified as vulnerable to abuse for the financing of terrorism. This regulation set up in the second paragraph of said article states that: “*the controls adopted by the obligated subjected must respond to the level of risk of each obligated subject or sector of obligated subjects, therefore, the authorities' supervisory authorities should simplify risk management systems for subjects*” (Van Der Does De Willebois, 2010)

The earlier article is based on the presumption of the existence of an ENR, since it mentions that the controls must respond to the level of risk of each subject, in this

³ Net Receivables are the money owed to a company by its customer minus the money owed that will likely never be paid.

case, the Non-Profit Organizations, however, the article mentions that the supervisory authorities will have to simplify the systems. Based on the foregoing, it is worth mentioning that the last ENR carried out by Saudi Arabia has data from the years of 2013 to 2016, which did not include the Non-Profit Association and Foundation sector (Van Der Does De Willebois, 2010). Therefore, it can talk about the existence of a general regulation in the Draft Law towards this sector by appointing them as obligated subjects (Art. 22 No.14). Following that logically, the provisions set up in the articles could not be applied without being based on the results of a risk assessment of the Non-Profit Organization sector (Terry, 2009).

Article 24, final paragraph points out: *“The UAF instructions will define the obligations that each of the obligated subjects mentioned in Art. 22, the foregoing considering the criteria of amount, number of operations or transactions, the volume of assets, among others”* (Terry, 2009). Article 25, final paragraph: *“in the corresponding instructions, the UAF will define actions and due diligence activities that each of the subjects must apply obligated, considering for this, criteria of amount, number of operations or transactions, the volume of assets, among others”*. (Terry, 2009). It is considered that regulations cannot be promoted towards the sector of Non-Profit Organizations without having prior knowledge of the situation of the same regarding the risks to which it is vulnerable, because, furthermore, by not having an NRA that includes the sector, authorities such as the Financial Institution Unit will not have updated information on the size, legal forms, activities, donors, cross-border activities, movements of funds, way of making payments, etc. Although some of that information can be obtained based on the requirements requested by the laws; however, this does not meet the requirement of an NRA (Terry, 2018).

As a result of the lack of incorporation of the Non-Profit Organizations sector in the NRA, the last one has not been able, as it has been achieved in Saudi Arabia, where the adequacy of the laws, regulations, and existing measures to mitigate the risks of the Non-Profit Organizations sectors. In consequence, it is not known whether the measures set up by the banks in compliance with the guidelines of the Single Support Framework (SSF) limit the legitimate charitable work of Non-Profit Organizations, which if so, would be violating human rights (Van Der De Willebois, 2010). In the Middle East, the regulations of anti-money laundering start with Money Laundering and Terrorist Financing Crime: Federal Regulations since 2002 and it included all the obligated subjects, without indicating, from what base of assets will be considered as such, an aspect that it did contemplate the draft Special Laws for the Prevention, Control, and Punishment of Money Laundering of Assets (Van Der De Willebois, 2010). Though, it did not make this distinction for Associations and Non-Profit Foundations, an aspect logically understandable by the non-existence of the sector in the NRA. Recommendation 8 is directed so that States comply by implementing proper regulations for organizations without profit, being the result of a universally recognized human right recognized as the right to free association. According to Kathryn Gardner, the compatibility control of the law with an International Treaty can be done by direct action (Gardner, 2007). Exercising the control of the compatibility of internal regulations with the conventional ones is the duty of the national judge, and it can be done with the requirement of the party or

even ex officio. In this order of ideas, it has been said that the right of free association, is recognized by various international instruments, such as the United Nations Charter, The Islamic Cooperation, and the International Covenant on Civil and Political Rights, being so, it has to bring up the case of registered workers in Arab Congress on Human Rights which establishes: *“When a State has ratified an international treaty, like the Arab Convention, its judges are also subjected to it, with obliges to ensure that the useful effect of the Convention is not diminished or annulled by the application of laws contrary to its provisions, object and purpose”* (Gardner, 2007).

As a result, the European Union Agency for Law Enforcement Training (CEPOL) has insisted that: *“the measurements implemented by the Member States to protect the non-profit organizations from possible abuses should be conceived according to a risk-based approach”* (International Monetary Fund, 2012). Meaning, that the States need to apply these measurements expecting the obligations imposed by the Charter of the United Nations and International Human Rights Law. Subsequently, in the United Nations Security Council Charter in paragraph 7, *“urges all Member States to put into practice the standards comprehensive international recommendations incorporated into the forty recommendation on the money laundering from the Financial Action Task Force and its nine recommendations on the financing of terrorism”*, this also includes the Recommendations about Non-Profit Organizations (2022). More explicitly, in 2015, the United Nations Security Council adopted 2253 which recognizes the need for Member States to prevent terrorist abuse on non-governmental, non-profit organizations and charities (Li & Schaub, 2004). In short, the Law Against Money and Asset Laundering, its regulations, and instructions of the Financial Investigation Unit may become the object of conventionality control concerning the Association and Non-Profit Foundations for being the direct result of right universally recognized rights-the rights of free association.

IV. Conclusion

The world has changed in the 21st century. Even though terrorism has existed for a long time and jeopardized different countries around the world beforehand, the 9/11 attack in 2001 as well as the following wars in Iraq and Afghanistan has brought terrorism to a whole new dimension. Terrorism runs on a global scale and has become a war against stateless, and networked individuals. The aims of this new kind of global combat are not economic advantages or territorial gains and not the submission of another state. Furthermore, terrorism is hard to fight because terrorist activities can be performed with a minimum of resources and a maximum of damage. However, every state, therefore, needs legislative tools to effectively find, detect, freeze, and seize the targeted financial resources.

The combat against the financing of terrorism is not an easy task, due to the different systems of funding, which are presented by a cross-border abuse of the financial system. Terrorism is one of the fundamental threats to a perfectly balanced, globalized financial system. In this respect, terrorist financing has captivated the attention of the international legal community as a way within the multifaceted war against terror. The legal tool within this new kind of “battle zone” is the freezing confiscation and denial of terrorist funds. Throughout this study, it has displayed various difficulties and negative side effects of the worldwide fight against terrorist financing and especially of the freezing, confiscation, and forfeiture of financial resources.

Protecting Non-Profit Organizations from exploitation by terrorist organizations is a critical component of the global fight against terrorism. In the Middle East, the case studies involving the PLFP have brought to the forefront instances of NPOs being exploited by terrorists. The creation of the Financial Action Task Force on money laundering and financing terrorism marked the first in a series to set up informal inter and trans-governmental bodies to handle the issues of criminal finances. It has set and promoted the best practices in fighting transnational financial terrorism and checked the status of the Middle East legislative and regulatory conformity with these principles. Countries in the Middle East have applied the regulations and measurements which it has not been 100% effective because it has still posed a great challenge for Non-Profit Organizations. The progress made after the 9/11 attack till nowadays time in creating formal and informal international rules and measurements on financial terrorism resulted from a heightened awareness of the aftermath of major terrorist attacks in the Middle East. Not overarching transnational security frame unit, the issue of terrorism, and the issue of financial flows through the international economy to finance them.

On the other hand, governments do not see the institutional structure that eased terrorist financing as their problem, and they correspond to little enforcement of anti-money laundering and anti-terrorist financing measurements. However, the problem with such an approach is that terrorist finances will flow to whatever the regulatory environment is loosest, so a partial approach is likely to be ineffective. The prospect for a successful global development of the national institutional ability to combat the terrorist financing framework depends on the state's recognition that financial

terrorism is its problem. Developed countries with the most domestic ability to combat this issue recognize this threat even though they, however, being inconsistent in their willingness to enforce these legislations and engage in international cooperation. Less developed countries without this ability often do not see the threat. National interest includes countering terrorist financing unfortunately it appears to rise and fall with the state's experience of terrorist attacks. Without such attacks and without Western pressure and encouragement, it is unlikely that a permanent redefinition of national security to include terrorist financing will occur or that states will take the steps to build and enforce an effective global counter-terrorist financing regime.

In conclusion, in this respect, it is not clear whether the positive outcomes are outbalancing the negative side effects. Uncountable legitimate and illegitimate ways of financing terrorism do exist worldwide, which sometimes has led to the false assumption that a fight against terrorist financing is fully ineffective right away. This study has proved as well that some financial resources can be found even though the detection technique could be improved. Keeping this in mind, the ineffectiveness of the detection of terrorist financial flows at the moment should not lead to surrender but to a change of mind with respect to the cooperation of states. In this respect, the mixture of terrorist financing also shows that a multi-disciplinary approach concentrated on criminal and financial law and regulations as well as a coordinated multi-authorities effort is needed.

Finally, the combat against the financing of terrorism and the tools of seizure, forfeiture, and freezing, are necessary and useful in the war on terror, even though they can only be on little bricks in the wall of the war on terror. Additionally, home ground terrorism should be prevented with a suitable and decent immigration strategy, collateral damage within battlefields should be minimized, and economic cooperation is needed to increase the wealth in vulnerable regions of the Middle East with terroristic potential. If these plans of action would be conducted and the financial fight would become more efficient, the termination of terrorism may be achievable on a long-term basis.

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