

ISSUES OF REGULATION OF TERRORIST FINANCING

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ABSTRACT

This article is devoted to the issues of international regulation of terrorist financing. The article analyzes the main international documents on the financing of terrorism.

Keywords: terrorist financing, FATF, Basel Committee, FATF recommendations, UN resolution.

INTRODUCTION

Terrorism poses a serious threat to the international community for several reasons. One of them is a global threat. Terrorist groups often operate in different countries, cross borders, and can carry out attacks internationally. This poses a global security threat, as terrorists can direct their attacks against multiple targets in different parts of the world.

The financing of terrorism remains an urgent and important problem in the modern world. Despite the efforts of the international community to combat this phenomenon, terrorist groups continue to seek to provide financial resources for their activities. Terrorist financing remains relevant to this day for several reasons. Let's take a look at some of them.¹

Adapting to new technologies: Terrorist organizations are becoming more inventive and adapting to new technologies, including cryptocurrencies, digital payments, and online finance. This creates new challenges for systems for monitoring and preventing the financing of terrorism.

Cross-border nature of the threat: Terrorist groups operate in various countries and can use sophisticated financial schemes to evade detection. International cooperation and coordination are needed to combat cross-border financing flows.

Evolution of Funding Methods: Terrorists can use a variety of methods to fund their activities, including legal illicit sources, charities, extortion, and others. This requires a constant renewal of countermeasures.

Global Economy: Terrorist financing can be linked to the legal economy through a variety of channels. Countering the financing of terrorism also requires vigilance on the part of financial institutions.

Such a high degree of public danger of this threat, first of all, is due to the scale of the consequences of terrorist crimes and the significant number of victims as a result of their commission. The danger of terrorist activity to global security is caused by the observed trends in increasing the level of its organization, the creation of large terrorist formations with a developed infrastructure at home and abroad, the strengthening of the relationship between

¹ Ugli O. B. I. Risks of the use of financial technologies for money laundering and terrorism financing: typologies and forecast //European International Journal of Multidisciplinary Research and Management Studies. – 2022. – T. 2. – №. 08. – C. 15-19.

terrorist and organized crime, including transnational crime, as well as attempts to use terrorist activity as an instrument of interference in the internal affairs of the State.

The intensity of terrorist activity directly depends on the level of its financing and material and technical equipment. In this regard, the freezing of the assets of terrorist organizations and the closure of the channels for financing terrorist activities are recognized as one of the most important tools in the fight against international terrorism.

The experience of the international community in combating terrorist activities shows that it is the financial self-sufficiency of terrorism that is one of the most acute problems that arise when it is countered by the law enforcement system. The sponsors of the financing of terrorist activities are both illegal sources (illegal trafficking in drugs, weapons, other grave and especially grave crimes of a mercenary nature) and completely legal sources (charitable foundations and civil society organizations, and sometimes national Governments, that support terrorist activities for their own political ends)².

In order to prevent the further activities of terrorists and terrorist organizations, the countries of the international community decided to withdraw their financial basis. After that, the world community adopted a number of international documents in this direction.

International standards for regulating the financing of terrorism are largely based on a number of international agreements, resolutions and conventions³.

One of the most important documents in this direction is the 1999 International Convention for the Suppression of the Financing of Terrorism: This convention was proposed within the framework of the United Nations and is designed to ensure international cooperation in the prevention of the financing of terrorism. It includes measures to tighten control over financial transactions and freeze the assets of terrorist organizations.

The Convention was adopted on 9 December 1999 by the UN General Assembly. It is designed to establish effective measures to prevent, suppress and punish the financing of terrorism. The Convention contains a definition of the financing of terrorism, including the provision, collection and provision of funds with the intention of using them to commit terrorist acts.

According to this Convention, any person commits an offence (Financing of Terrorism) if he/she by any means, directly or indirectly, unlawfully and wilfully provides or collects funds with the intention that they should be used, or in the knowledge that they will be used, in whole or in part, to commit:

(a) An act that constitutes an offence within the scope of application of one of the treaties listed in the annex and as defined therein (offences referred to in the Convention, i.e. offences of a terrorist nature);

(b) Any other act designed to cause death or serious bodily injury to a civilian or any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose

² Vakhrushev G. E. INTERNATIONAL LEGAL REGULATION OF COUNTERACTION TO TERRORIST FINANCING. Business in law. 3'2013

³ Otaboev B., Kumar R. THE CONCEPT AND ESSENCE OF CRIMINAL PUNISHMENT AND SIGNS OF CRIMINAL PUNISHMENT IN THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN //World Bulletin of Management and Law. – 2022. – T. 6. – C. 29-33.

of such act, by its nature or context, is to intimidate a population or to compel a Government or an international organization to do or refrain from doing any act⁴.

The Convention also includes measures to combat the financing of terrorism. To this end, the Convention defines a number of measures aimed at tightening controls on financial transactions, freezing the assets of terrorist organizations and cooperating between countries in the exchange of information.

The Convention calls on States to tighten controls on financial transactions in order to detect and prevent transactions related to the financing of terrorism. This includes measures to identify customers, monitor banking transactions, and exchange information. The convention also provides mechanisms for freezing the financial assets of terrorist organizations. This may include freezing bank accounts, freezing other financial assets, and prohibiting their use.

An important feature of the Convention is that it stresses the need for international cooperation in combating the financing of terrorism. This includes the exchange of information between countries, joint investigations and coordination of actions to prevent terrorist acts.

In addition, the Convention obliges States to develop and implement measures to prevent their financial systems from being diverted for terrorist purposes. This may include tightening regulations regarding banks and other financial institutions.

These measures are aimed at ensuring an effective fight against the financing of terrorism at the global level and ensuring the security of States. States that have acceded to the Convention undertake to take these measures at the national level and to cooperate with other countries in this regard.

One of the most important directions of the Convention is the establishment of sanctions and criminal liability for individuals and organizations involved in the financing of terrorism. The Convention obliges States to impose sanctions against individuals and organizations that finance terrorism. These sanctions may include the freezing of bank accounts, the freezing of financial assets, an arms embargo and other restrictions.

States signatories to the Convention undertake to take measures to criminalize natural and legal persons involved in the financing of terrorism. This includes the possibility of criminalizing the provision, collection and provision of funds with the intention of using them for terrorist acts.

Article 3 of the Convention states that each State Party shall, in accordance with the principles of its domestic law, take the necessary measures to enable a legal person located in its territory or established under its laws to be held liable if a natural person responsible for the management or control of that legal person, acting in his or her official capacity, commits Crime. Such liability may be of a criminal, civil or administrative nature.

In addition, each State Party shall ensure, inter alia, that effective, proportionate and enforceable criminal, civil or administrative sanctions are applied to legal persons liable in law. Such sanctions may include financial sanctions.⁵

⁴ International Convention for the Suppression of the Financing of Terrorism Adopted by the United Nations General Assembly by resolution 54/109 of 9 December 1999. Source: https://www.un.org/ru/documents/decl_conv/conventions/terfin.shtml

⁵ International Convention for the Suppression of the Financing of Terrorism Adopted by the United Nations General Assembly by resolution 54/109 of 9 December 1999. Source: https://www.un.org/ru/documents/decl_conv/conventions/terfin.shtml

In addition, the Convention lays down rules for the freezing and confiscation of assets used for the financing of terrorism. This is an important practice to deny terrorist organizations access to financial resources.

The exchange of information is also an important measure in countering the financing of terrorism. The Convention facilitates the exchange of information between States on persons and entities linked to the financing of terrorism. This helps to establish an effective system of early warning and suppression of terrorist financial schemes.

The Convention obliges countries to cooperate in investigations related to the financing of terrorism. This includes the exchange of information on bank accounts, financial transactions and other aspects that can help in identifying and interdicting financial flows aimed at supporting terrorism.

In general, these measures are aimed at creating an effective system that ensures accountability for the financing of terrorism and prevents the misuse of financial resources for terrorist activities.

Also, countries that ratify the convention undertake to take the necessary legal and institutional measures to implement its provisions.

In general terms, the Convention aims to provide a unified and coherent international strategy for preventing and combating the financing of terrorism. Signatory and ratifying countries undertake to take effective measures at the national level and to cooperate at the international level to ensure security and prevent terrorist acts.

The next international document is the UN resolution. The United Nations Security Council may impose sanctions on States, organizations and individuals associated with terrorist activities. These sanctions may include the freezing of assets, an arms embargo and other measures.

One such important document is UN Security Council Resolution 1373, adopted on September 28, 2001, in response to the terrorist attacks of September 11, 2001 in the United States. This resolution establishes binding measures for all UN members in order to prevent the financing of terrorism and combat terrorist groups.⁶

Resolution 1373 provides the legal basis for the imposition of sanctions by the Security Council against those associated with terrorist activities. These sanctions may include the freezing of financial assets, an arms embargo, a ban on the transfer of funds and other measures to combat terrorism.⁷

In terms of measures to criminalize crimes, the TF of UNSCR 21781 provides for measures to counter TF by criminalizing acts related to foreign terrorist fighters (FTFs). In particular, operational paragraph 6 established that, subject to the provision of UNSCR 1373 that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, all States shall ensure that such acts are defined in their domestic laws and regulations as

⁶ Gulchekhra Tulaganova, Nargizakhon Rakhimjonova, & Saidmurod Nasrullaev. (2021). LIABILITY FOR MONEY LAUNDERING AND CLASSIFYING THESE TYPE OF CRIMES. *Galaxy International Interdisciplinary Research Journal*, 9(10), 676–684. Retrieved from <https://giirj.com/index.php/giirj/article/view/420>

⁷ Resolution 1373 (2001) Adopted by the Security Council at its 4385th meeting, on 28 September 2001 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/557/45/PDF/N0155745.pdf?OpenElement>

criminal offences sufficiently serious to allow prosecution and punishment to the extent that adequately reflects the seriousness of the offence.⁸

These and many other UN resolutions are an important instrument of international cooperation in the fight against terrorism and ensuring international security.

One of the most fundamental documents in the field of countering the financing of terrorism is the FATF Recommendations. The FATF develops and updates international standards to combat money laundering and terrorist financing. Its recommendations include provisions on how financial institutions and countries should counter the use of their systems for terrorist financing.

Recommendation 5 of the FATF, which is basic on a par with Recommendation 3, provides for requirements for countries to criminalize (establish criminal liability) the crime of financing terrorism on the basis of the International Convention for the Suppression of the Financing of Terrorism of 1999. Thus, not only the financing of terrorist acts, but also the financing of terrorist organizations and individual terrorists should be criminalized, even if there is no link to a specific terrorist act or acts. In addition, the Recommendation establishes the need to establish such an offence as a predicate to the laundering of the proceeds of crime in view of the close link between international terrorism and money-laundering.

The Explanatory Note to the Recommendation, which has equal binding force, sets out the characteristics of the offence of financing terrorism. Thus, the offence of financing terrorism should cover any person who knowingly provides or collects funds or other assets by any means, directly or indirectly, with the unlawful intention that they are to be used, or knowing that they are intended to be used, in whole or in part, for the commission of a terrorist act(s) by a terrorist organization or an individual terrorist, even if there is no link to a specific terrorist act.

In addition, the offence of financing terrorism includes the financing of the travel of individuals to a country other than the country of nationality or residence of the person for the purpose of committing, planning or preparing for or participating in terrorist acts, or for the provision or completion of terrorist training. At the same time, the criminalization of these acts should be carried out through the establishment of an independent *corpus delicti*, and not be a derivative of general ones. criminal law constructions, such as complicity, attempt or conspiracy in other compositions. In 2016, the FATF issued detailed guidance clarifying the requirements for the criminalization⁹ of TF. Thus, with regard to the subjective aspect of the TF crime, it is noted that an act should be recognized as a criminal offense in the presence of intent, i.e. the deliberate commission of actions with unlawful intent.¹⁰

These standards are aimed at ensuring cooperation between countries, exchanging information and tightening measures to prevent the financing of terrorism at the global level. They also stress the importance of the active involvement of financial institutions and States in this process.

⁸ International System AML/CFT/PTM: Textbook / Ed. by G.Y. Neglyad, Y.V. Lafitskaya — Moscow: ITMCFM, 2022. 515 p. (in Russian).

⁹ https://www.fatf-gafi.org/media/fatf/documents/reports/Guida_HCe-Criminalising-Terrorist-FinaHCing.pdf

¹⁰ International System AML/CFT/PTM: Textbook / Ed. by G.Y. Neglyad, Y.V. Lafitskaya — Moscow: ITMCFM, 2022. 515 p. (in Russian).

REFERENCES

1. Gulchekhra Tulaganova, Nargizakhon Rakhimjonova, & Saidmurod Nasrullaev. (2021). LIABILITY FOR MONEY LAUNDERING AND CLASSIFYING THESE TYPE OF CRIMES. *Galaxy International Interdisciplinary Research Journal*, 9(10), 676–684. Retrieved from <https://giirj.com/index.php/giirj/article/view/420>;
2. International Convention for the Suppression of the Financing of Terrorism Adopted by UN General Assembly resolution 54/109 of 9 December 1999. Source: https://www.un.org/ru/documents/decl_conv/conventions/terfin.shtml;
3. Ugli O. B. I. Risks of the use of financial technologies for money laundering and terrorism financing: typologies and forecast //European International Journal of Multidisciplinary Research and Management Studies. – 2022. – T. 2. – №. 08. – C. 15-19.;
4. International System AML/CFT/PTF: Textbook / Ed. by G.Y. Neglyad, Y.V. Lafitskaya — Moscow: ITMCFM, 2022. - 515 p.;
5. Otaboev B., Kumar R. THE CONCEPT AND ESSENCE OF CRIMINAL PUNISHMENT AND SIGNS OF CRIMINAL PUNISHMENT IN THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN //World Bulletin of Management and Law. – 2022. – T. 6. – C. 29-33.