Countering the Financing of Terrorism: A Critical Review

Two days after the 9/11 attacks, US President G.W. Bush delivered a now-famous speech to the American public that heralded a new era of warfare. *"Our response involves far more than instant retaliatory and isolated strikes. Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen […]. We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest"* (Bush, 2001). A little more than a week later, on September 24, those words were put to practice with the signing of an executive order soon to be known by its number. 'Executive Order (EO) 13224' was an emergency decree that heralded a *"new warfare [that is] defined by the use of financial tools, pressure, and market forces to isolate rogue actors from the international financial and commercial systems and gain leverage over our enemies"* (Zarate, 2013).

The notion of economic warfare is, of course, far from novel. Siege and economic deprivation were used far back in ancient Greece and by the Roman Empire to weaken their enemies. By the 20th century, isolating States from economic markets had become a key strategy for States with the economic and political clout to force favorable foreign policy outcomes by draining adversaries of their income – a tactic championed by consecutive US administrations vis-à-vis Cuba, Iraq, Iran and North Korea, albeit with ambiguous success: it increasingly was acknowledged that blanket sanctions failed to lead to yield results as *"repressive governments more often than not appeared to be perfectly willing to let their populations suffer, while using the sanctions as propaganda to condemn the international community for assaulting and impoverishing their nation"* (Zarate, 2013). Moreover, in a changing global conflict environment wherein wars between States had ceded space to wars between insurgents and States, the old paradigm of financial warfare waged by States against other States increasingly came to be perceived as insufficient to address contemporary threats.

While the paradigm shift that resulted in the contemporary countering of terrorism financing (CTF) framework predates 9/11 – targeted sanctions had already been lobbied for by a number of nations afflicted with terrorism, and measures to facilitate financial surveillance were being devised since the 1990s in order to fight crimes such as tax evasion and money laundering – it is true that it took a mass-casualty incident like the attacks on the World Trade Center and an enraged US administration to leverage the resources and commitment needed for the implementation of such framework on a near-global scale. The months following 9/11 saw an explosion of international and national CTF-legislation, a mushrooming of institutions and technology dedicated to the collection and systematization of financial intelligence, and an exponential proliferation of terrorist blacklists in what Juan Zarate, deputy national security advisor for combating terrorism during the George W. Bush administration, referred to as *"sanctions on steroids"* (Zarate, 2013).

Twenty years have since passed, and CTF is now firmly entrenched within national and international counter-terrorism policy frameworks. Yet, financial aspects of counterterrorism policy have been scrutinized to a much lesser extent than the much-criticized *kinetic* war on terror: the disruption of financial flows to and from terrorists is a plausible objective, and the technical language used in its pursuit conceals its highly contentious nature. Rather than within the academic literature, most information available on CTF can thus be found in technical reports and practitioner handbooks and not in academic journals – with notable exceptions, of course, although scholars have markedly disparaging views on the effectiveness and adequacy of the instruments of financial warfare.

The purpose of this Paper is not to draw definitive conclusions as to the quality or efficacy of the global CTF framework – an undertaking which, given the secrecy surrounding both counter-terrorism and financial intelligence, is vastly over-ambitious. Rather, it aims at providing the reader with an understanding of the theory and the reality of the CTF regime, which gives us a good starting point to developing more concrete criticism. Section I will deal with the *theory* of the CTF paradigm: how it has developed, what logic does it follow? Secondly, we will take a look at how theory translates into practice, that is, how practitioners implement and enforce their obligations under the CTF architecture. We will do so by means of three case studies each representing three different geographical realities and highlighting different aspects of CTF.

Terrorism financing 101

Terrorism is the business of violence and, like any business, requires money. The costs directly associated with terrorist attacks are surprisingly low: the 2002 Bali bombings are thought to have costed around $50,000, the 2005 London Bombings about $15,000 and the Madrid attacks of 2004 somewhere around $10,000 (FATF 2008). The 9/11 attacks were somewhat more expensive – estimates range between $350,000 to $500,000 – as they involved at least 19 hijackers who needed to be accommodated, flown out to America and given pilot training (Freeman, 2011). Still, in general, most of the resources a terrorist group will require are not directly related to attack funding but rather to sustaining its every-day operations: propaganda campaigns need to be conducted, training needs to be provided to recruits, equipment needs to be purchased and group members, and sometimes their families, need to be fed and accommodated, and so forth. Al-Qaeda's annual operating budget, for example, was estimated to stand at about $30 million annually before 9/11, and Hezbollah's budget may at some point have been as high as $400 million (ibid). Aspects relating to the sources and mechanisms by which terrorists procure and move funds are captured by the term 'terrorism financing', that is, *'the solicitation, collection or provision of funds with the intention that they may be used to support terrorist acts or organizations'* (International Monetary Fund, 2000).

The sources from which terrorist groups and individuals draw funds may be diverse and will depend on the structure of the group as well as contextual opportunities and limitations. Freeman (2011) distinguishes between four categories of funding sources: firstly, *State* *sponsorship* had been a key source of funding for insurgent groups during the Cold War: the US, for example, instrumentalized the *Mujahideen* in Afghanistan and the Contras in Nicaragua while the Soviet Union supported Marxist groups opposing US proxies, for example in Cuba and North Korea. Today, State sponsorship of terrorism is outlawed by the international community and has become more difficult, although it still hardly is a thing of the past. Secondly, terrorist groups may engage in illegal activities – for example extortion, kidnapping and ransom, theft, smuggling and, where the groups has some control over some population, the extortion of "revolutionary taxes" – in order to finance their operations. Third, certain legal activities, such as profits from legitimate businesses, provide relatively secure source of funding as States can do little to target such activities. Lastly, support from a sympathetic population may provide a reliable income to terrorist organizations. Donations may be received from diaspora communities living overseas in the form of remittances, from wealthy individuals or in the form of charitable donations (Freeman, 2011). In recent years, terrorist groups (notably the IS and al-Qaeda) have splintered into decentralized networks of branches, cells and/or home-radicalized individuals who use their private salaries or individual petty crime to finance attacks; decentralized self-funding has therefore emerged as a salient category of terrorism financing, giving much headache to CTF practitioners (Bauer & Levitt 2020).

That said, an extensive body of literature is concerned with the sources of terrorist funds although, in practical terms, policy that focusses on intercepting the *channels* through which funds are moved are more promising: The sources of terrorist funding may be diverse and dispersed and closing one source may simply result in terrorists moving to another one.

Before 9/11, arranging secure transfer channels was hardly a concern for terrorists. A CIA report documents that the plot financing for 9/11 relied predominantly on the anonymity provided by the huge international and domestic financial system to move and store money through a series of unremarkable transactions (Roth, 2001). Transfers between the Al-Qaeda plot facilitators through the UAE and the hijackers in order to cover the latter's travel and living expenses, equipment and pilot training in the US were made through ordinary bank-to-bank or wire transfers and stored in legitimate bank accounts opened under the hijackers' real names. In order to avoid arousing the suspicion of security agents, transfers were split into various small rather than one large transaction. Aside from a single incident (SunTrust issued an international alert when one of the hijackers-to-be attempted to cash a check, presenting identification documents with different addresses), none of the terrorists' financial transactions aroused suspicion with financial or security actors (ibid).

The architects of the 'war on terror' recognized that the ease by which terrorists could exploit the banking system as a consequence of a lack of transparency and regulation constituted a vulnerability. At the same time, terrorist use of the formal financial sector opened up an opportunity: through the logic of 'following the money trail', it was thought that security agents could extract useful information about terror groups' organizational structure and internal functioning. Tracing and recording financial transactions between terrorists may, for example, help to identify relationships within terrorist networks, to detect suspicious behavior that may indicate an intent to commit a terrorist act, or to support a terrorist investigation (Keatinge & Keen, 2020).

The formal banking sector, however, is only one of many ways by which terror funds may be moved: there are multiple methods for doing so through informal value transfer systems (IVTS), and when one method becomes riskier or costlier due to increased regulation, terrorists can move on to another method. One IVTS that has earned notoriety due to its proneness for exploitation is the Hawala network, a traditional banking system that has developed in South Asia but spread throughout the world and is today used mostly in Islamic countries (Zagris, 2007). Transfers through the Hawala system are quick, inexpensive and easy to use, and play an extremely important role for many underbanked communities in rural Afghanistan, Iraq or Pakistan where families depend on remittances sent to them by relatives working in, for example, Dubai or Qatar. In the Hawala system, money is transferred without physically crossing any border: a sender hands over the amount of money to be transferred to a nearby Hawaladar (Hawala trader) who then instructs a correspondent Hawaladar in the location of destination (usually a relative or another trusted person) to hand out the same amount, minus the fee, to the beneficiary (El-Qorchi, 2002). While Hawaladars usually do keep records of the transactions they settle, this is often done by their own shorthand and hence more difficult to verify than is the case in the digitalized formal financial system; this, in combination with the fact that the Hawala system is most prominent in developing countries with weak institutional capacities, makes Hawala a threat to the integrity of the financial system as a whole.

In practice, most groups use a combination of methods to move money, including through formal and informal transfer systems and the physical transportation of cash (Freeman & Ruehsen, 2013). The multiplicity of available channels makes terrorism financing hard to intercept, requiring multiple types of intervention and affording terrorists possibilities to evade detection. At the same time, policy-makers need to be careful to not over-regulate money transfer systems; the Hawala network, for example, is an essential provider of financial services to unbanked populations and is used not only for private transfers but also for humanitarian, emergency and relief aid (Zagaris, 2007). Furthermore, there is a consensus that over-regulation is undesirable because it may push many IVT businesses, including legitimate ones, underground (ibid). Regulating the IVT sector, therefore, means walking a thin line.

Section I: The CTF architecture

A first step towards understanding CTF is to understand its architecture, i.e., the network of international institutions, laws and practices governing this policy field. Although for the sake of simplicity, this section will refer to the CTF architecture in terms of a 'global regime', it is worth noting that neither the terms 'global' nor 'regime' are entirely accurate since they convey a sense of clearly structured sets of rules designed at some top institutional level which then in a linear, homogeneous fashion trickle down to lower-level actors such as State government, provincial governments, and then practitioners. Section II will show that this simply does not hold true for the CTF 'regime' which, according to De Goede, is characterized by *"numerous tensions, discussions and contradictions at work in ways in which international regulation and practices play out"* (De Goede, 2018). Rather than at an institutional level, rules and norms in practice originate from various nodes at different levels and through interactions, with highly heterogeneous outcomes in specific localities.

The present section, therefore, aims not so much at painting an accurate picture of how CTF works in practice, but rather at providing a model of how international governance of CTF functions on paper. That is, outlining how key international actors responsible for drafting and enforcing the CTF regime have developed new international norms, and what logic such interventions follow. These actors, in the present context, are the United Nations (UN) and the Financial Action Task Force (FATF). Again for purely epistemic purposes, we can distinguish between three policy 'branches' which each follow distinct rationales: firstly, *legislation* is a classic tool supranational organizations with the competence to issue legally binding rules can achieve transnational integration within a policy area. Secondly, another branch that has formed in the context of CTF is the *listing regime*, i.e., the practice of identifying individuals and entities through to be deserving of the 'terrorist' label, which in turn justifies the financial immobilization of those subject to it. The third branch concerns the complex set of regulatory tools that have been put to work in order to make financial markets, formal and informal, more transparent, with the aim of enabling the detection of 'unusual' or 'suspicious' financial activities that may indicate that terrorists have been at work. While the first two branches formally originate with the UN, the latter has predominantly been developed by FATF.

- **I) Criminalization of Terrorism Financing**

The legal basis for those measures that constitute the CTF regime is provided by the United Nations Convention on the Suppression of the Financing of Terrorism of 1999 (henceforth 1999 Convention) and its implementing resolution, Security Council Resolution 1373. Both documents oblige States, among other things, to prevent and suppress the financing of terrorist acts and to refrain from providing support to those involved in them (United Nations, 2019). While the Convention mostly establishes principles and creates a framework for operational cooperation, action comes more from its Resolution 1373 which specifies measures to impede and prosecute efforts by terrorists to finance their activities (McGee, 2020). The urgency that the UN Security Council assigned to disrupting terrorism financing is reflected in the fact that Resolution 1373 was adopted under Chapter VII dealing with breaches of peace; by thus declaring terrorism a threat to peace, the resolution had binding force for *all* UN Member States (Rosand, 2003).

At the time when the 1999 Convention was adopted, it only had 4 signatories (the United Kingdom, Uzbekistan, Botswana and Sri Lanka); it was only after 9/11 that membership skyrocketed: by the end of 2003 it already had 107 State Parties and today, membership stands at 188, making it one of the most universally applicable International counter-terrorism instruments. Somewhat simplified, it defines the physical elements of the offence of terrorism financing as the *provision or collection of funds* to the benefit of terrorist groups or individuals. It is further prescribed that *intent* make up the mental elements of the crime of terrorism funding - meaning that it must be proven that a terror financier knew or intended that such funds are to be used for terrorist purposes - as well as *willfulness*, i.e., the transaction must be shown not to have been made under duress (UN, 1999).

Resolution 1373, adopted a few weeks after 9/11, spells out those offences to be adopted and enforced domestically by all 193 UN Members (McGee, 2020). While it does not only deal with terrorism financing but encompasses various counter-terrorism measures (e.g., provisions about weapons transfers, enhanced border control and policies for inter-State cooperation), it also obliges States to *"prohibit their nationals or any persons and entities within their territories from making available any funds, financial assets or economic resources or financial or other related services, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts"* (…) (UN, 1999). The reference to 'financial or other related services' implies that this obligation extends not only to the formal banking sector, but also to IVTS.

Furthermore, Resolution 1373 establishes a committee, the 'Counter-Terrorism Committee' (CTC), tasked with monitoring member States' implementation of the Resolution and providing technical assistance where needed (Rosand, 2003).

It was quickly noted that Resolution 1373 had potential to run into conflict with various civil liberties and domestic criminal law because of its sweeping, vaguely defined contents and in particular its failure to provide a definition of terrorism (Oliver, 2004). The elusiveness of terrorism as a legal term is well-documented; it has been described, for example, as a *'term of convenience'* that has *'no specific legal meaning'* and as a *'seductive term that serves a popular expressive function'* (Van den Herik & Schrijver, 2013). The arbitrariness of the term is encapsulated in the much-repeated expression that *'one man's terrorist is another man's freedom fighter'*; this ambiguity offers itself for exploitation by repressive States wanting to rid themselves of political opposition. Resolution 1373 does define concrete offences to be adopted domestically but, by failing to provide a definition of 'terrorism', the UN may be accused of unwantedly becoming complicit to such State-sponsored repression of perhaps legitimate protest.

- **II) Targeted sanctions: Asset Freezing**

As opposed to the terrorism financing legislative measures – which pursue the goal of creating an integrated regime capable of enhancing the capacity of the international community to deter terror financiers – the UN's targeted sanction regime is designed to take immediate effect with the aim of immobilizing terrorists. Once a person or entity is listed by the specially created UN sanctions committee, States are expected to apply certain measures to that person/entity, including an immanent asset freeze.

The UN listing regime was conceived with Security Council Resolution 1267 of 1999 in response to the 1998 bombing of US embassies in Kenya and Tanzania by Al-Qaeda, and imposed upon States the obligation to freeze the funds and other financial resources belonging to or benefiting the Taliban (Probst, 2018). Key Al-Qaeda operatives, including Osama bin Laden, were sheltered by the Taliban, who were in control of much of Afghanistan at the time, and the birth of the listing regime may be attributed to a lack of available mechanisms to secure that those Al-Qaeda members associated with the bombings would be extradited: Imposing sanctions on Afghanistan as a State would have little practical effect as the Taliban were not formally in charge of the governance. 1267 was a landmark Resolution because it introduced a regime of *targeted* sanctions, i.e., sanctions applicable to a non-State entity (ibid). Because 1267 was issued by the Security Council the listing regime is, similar to the 1373, legally binding on all UN Members.

In order to manage the listing procedure, Resolution 1267 set up its own Committee (the '1267 Committee') in charge of drafting and administering the list of individuals and entities 'associated with' the Taliban, whose assets were to be targeted. A three-part formula to be applied to listed persons/entities – asset freezing, travel bans and an arms embargo – was stipulated, and enforcement thereof by UN Member States was to be monitored by the 1267 Committee (Powell, 2018). Initially, 162 individuals and 7 entities were designated; after 9/11, the list was expanded by more than 200 new entries (Walker, 2018). Over time, the listing regime branched further out with Resolution 1989 (2011), which established an own listing regime for Al-Qaeda and Resolution 2253 (2015), which included individuals and entities supporting the Islamic State in Iraq and Levant (ISIL) (UN 2021). Pursuant to Resolution 1267, States are expected to effectively and 'without delay' freeze 'funds and other financial assets or economic resources of individuals and entities' listed by the 1267 Committee (ibid).

The lists' exponential growth went hand in hand with mounting critique centering on questions related to executive power (who decides the listing?), due process (how does someone get off the list?) and individual rights (can the interference with property, reputation, association and movement etc. be legally justified?) (Boon-Kuo et al, 2015). As opposed to the legislative regime under the 1999 Convention, which outlines a number of criminal offences, States were expected to adopt and enforce domestically, the 1267 listing regime does not foresee domestic judicial processes. Instead, while the lists were based on information provided by States and regional organizations, decisions on persons or entities to be listed (or delisted) were ultimately taken by the 1267 Committee. There existed no obligation to notify affected persons of the Committee's decision, nor a mechanism by which listed persons could challenge the Committee's decision; in principle, persons could be listed indefinitely without access to any remedy (Powell, 2018). Because listing is ordinarily based on intelligence material, it was often impossible for affected individuals to even determine *why* they had been listed – a critical departure from conventional criminal law standards of evidence and adjudication (Boon-Kuo et al, 2018). What followed was that one might find oneself in the kafkaesque situation of one day walking to a bank just to find themselves deprived of money and property without notice or explanation.

As a result of mounting criticism regarding such blatant violation of the right to fair trial and a growing body of litigation before national and regional courts challenging the listing regime (Walker, 2018), the UN has made various strides to bring the listing process in line with human rights norms. This included the introduction of a focal point to receive de-listing requests which allowed listed individuals to challenge their listing directly with the UN, systematic review of lists in order to identify 'false positives', and the institution of an Ombudsperson for the 1267 Sanctions Committee to issue recommendations for de-listing (Boon-Kuo et al, 2015). Despite these amendments, the listing procedure is still accused of being in-transparent and in violation of a variety of fundamental rights (Jayakody, 2018).

In practical terms, the moral dilemma entailing the listing regime translates into a legal one for States bound by Resolution 1267 and its successors. Article 25 of the UN Charter prescribes that Security Council decisions are binding upon member States and Article 103 establishes that obligations mandated by the Security Council prevail over other international obligations in case of a conflict of norms; hence, the Security Council leaves little doubt regarding its own primacy over national and international law (Istrefi, 2012). On the other hand, those fundamental rights that the listing regime ostensibly violated – including the right to fair trial and free movement – are enshrined in various International Human Rights instruments as well as in many of the national Constitutions of many UN member States. Hence, in essence, the UN forces States to violate their national and international human rights obligations.

Before moving on to the third branch of the global CTF architecture, it is worth mentioning that the 1267 UN listing regime is by far not the only listing regime in existence. In fact, Resolution 1373 establishes an own listing mandate by calling upon States to maintain a procedure for asset freezing within their jurisdiction. This has led to the evolution of a plethora of national and regional terrorist lists that operate simultaneously (Boon-Kuo et al, 2015). Although national and regional lists established under Resolution 1373 are less controversial than the 1267 listing regime as it merely calls upon States to implement a domestic procedure for listing and de-listing – hence allowing States to incorporate domestic judicial review mechanisms in line with their constitutional and human rights obligations – the multiplicity of continuously updated lists and their interconnections makes it increasingly difficult for those concerned about their legal liability for association with listed entities to determine who has been listed by whom and to what effect (ibid).

- **III) Transparency of financial systems & financial intelligence**

The legislative and the listing regimes, as described above, both formally originate with the UN. The third branch of the CTF regime, however, is an extension of a different pre-existing policy field which, supervised predominantly by the FATF, aims at improving the transparency of increasingly globalized and opaque financial systems by enhancing States' capacity to monitor and police formal and informal banking channels. Measures towards strengthening financial surveillance are being devised since the 1990s in order to tackle money laundering, tax evasion and other financial crimes and, at their core, rely on cooperative partnerships between the finance industry and the public sector.

Although the legislative and listing regimes have evolved separately from the FATF's financial surveillance approach, interdependencies arise from the fact that financial intelligence often provides the basis for listing decisions and terrorism financing investigations and prosecutions.

The FATF, as opposed to the UN, cannot issue binding obligations to States. Instead, it pursues a soft law approach involving the publication of recommendations and best practice guides and the provision of tailor-made risk assessments and technical assistance to States implementing them. In 1990, FATF published its original '40 recommendations', many of which directly address the banking sector by, for example, setting standards for customer due diligence (commonly referred to as 'Know-Your-Customer' (KYC) rules, e.g., the obligation not to keep anonymous accounts and verify the identity of all customers). The original 40 Recommendations furthermore require financial services to keep records of all accounts and transactions for at least five years, to 'pay special attention to all complex, unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose', and to promptly issue reports – Suspicious Activity Reports (SAPs) – whenever there exists 'reasonable grounds to suspect that funds are the proceeds of criminal activity' (FATF 2020). States, on the other hand, are called upon to implement a system of sanctions for financial services not complying with above prescriptions, to create Financial Intelligence Units (FIUs) serving as a center for receipt, analysis and dissemination of SAPs, and to take measures to facilitate international cooperation on financial crime, to name a few examples of the contents of the FATF 40 Recommendations (ibid).

After 9/11, the mandate of these measures was extended in order to also apply to terrorism financing. Furthermore, the FATF added 9 'Special Recommendations' shortly after 9/11 to specifically address CTF. This additional set of recommendations called upon States, amongst other things, to ratify the 1999 Convention, to criminalize the financing of terrorism and to freeze and confiscate terrorist assets pursuant to UN law, to implement measures to facilitate the detection of cross-border transportation of currency and either license or register non-bank financial institutions (e.g., Hawaladar traders) (FATF 2012). The FATF furthermore specifically addresses non-profit organizations (NPOs), requiring States to adopt laws allowing them to supervise and monitor this sector as it was deemed particularly vulnerable to abuse by terrorists (ibid). In contrast to the other branches of CTF discussed previously, which have preventive as well as punitive functions, financial surveillance serves the purpose not only of cutting off terror groups' financial lifeline, but also to collect intelligence pursuant to the mantra 'follow the money trail'.

The FATF does not have 'hard' enforcement mechanisms; instead, it assesses compliance through periodic self-reporting and peer-review, whereby its 37 members assess each other's progress on compliance with the 40+9 FATF recommendations. Furthermore, FATF employs a 'naming and shaming' methodology, by which both member and non-member States deemed non-compliant with FATF standards can be listed as "Non-Cooperative Countries or Territories" (NCCTs) – colloquially referred to as the 'blacklist' – or as "Jurisdiction Under

Increased Monitoring" – known as the 'grey-list' (Sharma, 2020). Although FATF lacks the competence to issue legally binding obligations and hence does not specify any punitive measure to follow being black- or grey-listed, the reputational damage of being listed comes with economic consequences such as difficulties getting loans from international banks (Morse, 2019). The FATF governance method, sometimes termed 'experimental' due to its prioritization of dynamic problem-solving over rule enforcement, is generally deemed successful, and the validity of FATF standards is accepted in virtually any jurisdiction (Nance, 2015).

Private sector obligations

As opposed to UN governance, whereby obligations are imposed on State actors, many FATF recommendations are directly addressed to the (private) financial sector which, due to its privileged access to customer data and transactions, fights at the frontlines of financial surveillance. Banks everywhere, and informal transfer services in some places, are obliged to comply by KYC principles; their task within the CTF architecture is to identify all customers, track and record their transactions and report suspicious transactions to competent authorities.

By conferring surveillance competences to financial actors, governments outsource the perhaps most difficult questions concerning CTF to the former: what distinguishes an illegitimate from a legitimate account? What characteristics must a transaction have in order to qualify as 'suspicious'? For money laundering activities, the *size* of a transaction, in absence of a sound justification, is a typical indicator of foul play. With regard to terrorist activity, on the other hand, this criterion often does not apply because the funds involved tend to be much smaller, making terrorism-related activity more difficult to detect and requiring more subtle indicators. In order to arrive at conclusions, banks therefore draw up individual customer profiles and check them against 'red flags', that is, risk factors such as geographical location, patterns of transaction activity and usage of bank products and services (Basel Committee on Banking Supervision, 2017). Additionally, banks are required to assess the risk posed by new and existing customers against consolidated databases comprising national and international terrorism lists; private firms, such as Thompson Reuter's World-Check, offer such databases covering four leading sanctions (US, EU, UN, UK and HTM) with more than 70,000 entries (Boon-Kuo et al, 2015).

Since it would, of course, be counterproductive to publicize a concise and openly accessible set of 'rules' for the identification of terrorist accounts (and hence effectively provide terrorists with a guidebook on how not to conduct their finances), the FATF explicitly recommends that, at least in a national context where the financial sector is mature, banks should be given discretion to decide what qualifies as 'suspicious' or 'unusual' in line with their own risk assessment (FATF, 2014). The so-called' risk-based approach' (RBA) to banking allows financial institutions to remain as flexible, cunning and unpredictable as the terrorists themselves; on the other hand, it also leads to a situation where banks routinely take decisions with far-reaching impacts on their clients' lives on the basis of undisclosed rules (De

Goede, 2018). This is particularly apparent with respect to the practice of 'de-risking', i.e., the pre-emptive closing of accounts owned by clients whom bank employees consider high-risk. Such practices have evolved out of the requirement imposed on banks to comply with AML/CTF but tend to have the side effect of pushing certain, often already vulnerable, client communities considered to be 'high risk' out of the mainstream financial system into smaller financial institutions that lack adequate surveillance capacity (or out of the formal financial market altogether), hence promoting the marginalization of such communities and pushing them underground (Durner & Shetret, 2015).

Before moving on to Section II of this paper, another type of institution, whose role within the CTF architecture is increasingly becoming salient, deserves mention. A Financial Intelligence Unit (FIU) is a *"central, national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information"* (Masciandaro, 2005). Pursuant to FATF Recommendation 29, States are advised to create each their own FIU; the first FIUs thus became operational in the 1990s and today, nearly every country has its own FIU (Amicelle & Chaudieu, 2018). Although the design of financial supervisory regimes varies from country to country, in general, the task of FIUs consists of linking private institutions (banks, but also non-banking institutions such as money exchange services, remittance services, casinos or precious metal dealers) with public ones (law enforcement and legislator) by managing the information flows between them serving as knowledge centers that collect and disseminate information on financial crime (IMF, 2004). FIUs moreover serve as key contact points for transnational financial intelligence exchange (Amicelle & Chaudieu, 2018).

Section II: CTF in practice

Hence, in our watered-down model of the CTF regime, two international bodies – the UN and the FATF – are the architects of a three-pronged policy framework to address terrorism financing involving international integration of CTF through legal integration, the establishment of a listing regime, and the creation of standards enabling the effective policing of financial systems.

In order to give a demonstration of CTF in practice, three case studies have been selected on the basis of their relevance within the CTF architecture and their particularities, which may help us understand some of the limitations inherent in CTF. It is not within the scope of this paper to provide a detailed account of each case and therefore we will instead confine ourselves to highlighting its most interesting features and put them into their historical and political context.

United States (US)

The US serves as a first case study because it was the US which, by and large, made CTF work the way it does. Although in theory, the US does not have legislative powers outside of its own jurisdiction, it is tacitly acknowledged that much of the credit for the mobilization as well as the enforcement of the 'global' CTF framework hinge on US diplomatic and economic pressure.

Indeed, the first shot fired in the 'war on terror' was EO13224, which we have shortly mentioned in the introduction. The executive decree conferred competencies to the US government - more specifically Office of Foreign Assets Control (OFAC) within the Treasury Department - to *"block the assets of individuals and entities that provide support, services, or assistance to, or are otherwise associated with, terrorists and terrorist organizations designated under the Order, as well as their subsidiaries, front organizations, agents, and associates"* (US Department of State, 2021). In the spirit of the emergent UN listing regimes, EO13224 thus allowed the executive to take crippling measures against a broad, vaguely defined range of subjects who, knowingly or unknowingly, were suspected of being somehow involved in some type of terrorism sponsorship, without prescribing any judicial remedy for those affected (American Civil Liberties Union (ACLU), 2001). In relation to accusations of the lack of fair trial in designation processes, a top US government official confessed that *"we needed to make a splash. We needed to designate now and sort it out later"* (Warde, 2007).

But EO13224 was merely the beginning. In October 2001, the USA PATRIOT Act, adopted to 'deter and punish terrorist acts in in the United States and around the world' (Financial Crimes Enforcement Network, n.d.), was hastily pushed through the Senate, beefing up financial controls, widening prosecutorial powers and implementing a massive surveillance regime in the US and abroad. Domestically, the Act imposed stringent requirements on banks regarding customer identification and monitoring which also extended to informal banking systems (Habjouqa & Clendinning, 2020). Financial institutions, including US-based Hawala traders, were thus obliged to register with FinCEN (the US' FIU), monitor customer activity and submit Suspicious Activity Reports. Meanwhile, institutions tasked solely with the collection and management of financial intelligence on terrorism mushroomed: the FBI established a special branch dealing with terrorism financing at its headquarters (the 'Terrorist Financing Operations Section'); the Justice Department established an office within its counterterrorism section to handle financial intelligence issues; and the Treasury Department created the Office of Terrorism and Financial Intelligence (TFI) to function alongside FinCEN (Levitt, 2011). Abroad, US intelligence collaborated intensely with foreign counterparts, for example by establishing 'Threat Finance Cells' in Iraq and Afghanistan in order to facilitate financial intelligence exchanges between American and local secret services (US Department of the Treasury, 2011). On the more sinister side, in 2006, leaked information on a secret program by the US Central Intelligence Agency (CIA) caused outrage as it revealed that the US had secretly obtained access to the Belgian-based Society for Worldwide Interbank Financial Telecommunications (SWIFT), a private cooperative owned by more than 2000 organizations. The CIA had subjected SWIFT to subpoenas in order to obtain financial data and had stored all SWIFT data transfers in a "mirror" database of the EU database (Fahey, 2013).

The PATRIOT Act also introduced a terrorism financing offence framed as a criminal prohibition to 'provide material support' to terrorists and terrorist organizations, and covers a scope of activities much broader than that captured by terrorism financing offences of most other jurisdictions: it includes, for example, expert advice or assistance to designated terrorist actors (Boon-Kuo et al, 2015). An association of human rights lawyers that wanted to provide human rights and conflict resolution training to the Kurdistan Workers Party (PKK), for example, went through a prolonged court case that concluded that such assistance may qualify as a criminal offense in 2010 – a ruling with the potential to critically disrupt attempts at peacebuilding and support for non-violence (Charity and Security Network 2020).

Following Bush's mantra – *"either you are with us, or with the terrorists"* (Bush, 2001) – the newly emerging US CTF regime prescribed not only the asset seizure of (suspected) terrorist organizations and individuals and the criminalization of any type of support to them, but also sanctioned everyone outside of the US who continued doing business with US-designated persons or entities - foreign banks failing to close accounts pursuant to the US listing regime, for example, would be denied access to US markets, no matter if they had done so purposely or as a result of negligence (Warde, 2007). This proved a powerful tool in terms of the global reach of the US-led financial war on terror: financial services all around the world enormously ramped up their financial surveillance systems and risk assessment tools in order to avoid US sanctions (Zarate 2013). Hence, the US imminently cast its own sanctions regime onto the world using its economic hegemony. A mere few days after 9/11, the UN expanded its pre-existing 1267 list by uncritically accepting all of the US' designation proposals into its list – even in absence of access to classified intelligence which provided the base for the designation (Boon-Kuo et al, 2015). US listing initially only targeted Al-Qaeda but, in parallel with UN listing, was steadily extended – US terror lists, such as the Specially Designated Terrorist (SDT) and the Foreign Terrorist Organization (FTO) lists today incorporate a wide range of actors and organizations, some overlapping with UN lists and some not.

Leaving aside the wide range of international norms, the US' financial war on terror so blatantly violated both domestically and abroad, the measures are deemed to have yielded successes. Within the first 100 days of 9/11, the White House proudly announced that the assets of 150 terrorists had been frozen, that 142 countries had issued freezing orders and as a result, more than $33 million in terrorist assets were blocked inside the US (White House, 2001). Dr. Matthew Levitt from the Stein Program on Counterterrorism and Intelligence, in a report of 2011, writes that *"tremendous strides have been made to stop the flow of funds to illicit actors"*, that *"financial intelligence has been successfully leveraged to disrupt terrorist operations, target individuals, and even prevent attacks"* and, finally, that the *"United States' effort to combat terrorist financing has been particularly effective"* (Levitt, 2011). Indeed, in a comparative perspective, the US' efforts at CTF are probably unlikened – not surprisingly, given that the war on terror was at least to some extent fought at the behest of the US – although it must be added that 20 years in, the fact that terrorism is hardly defeated might make us want to ask some uncomfortable questions as to the measure of 'success'. We will get back to this in the discussion of this paper. For now, we will move on to a very different case study: Pakistan.

Pakistan

Pakistan is a particularly interesting case in relation to terrorism financing due to its well-known utilization of terrorists as tools of foreign policy, a practice that has at least partially developed out of Pakistan's paranoid fear of its arch enemy India. Islamist hardliner General Zia's policy of training, arming and deploying jihadis in Afghanistan against the Soviets starting in the late 1970s served the State's own geopolitical interests (extending Pakistan's sphere of influence by installing a friendly government in Kabul) but also those of the US and Saudi Arabia, which both used political and financial incentives to enable the deployment of Pakistan-trained jihadi fighters against the Soviet Union and Iran, respectively (Ahmed, 2019). After the Afghan jihad petered out, the Pakistani intelligence services, the Inter-Service Intelligence (ISI), redirected trained fighters to Indian Administered Jammu & Kashmir (J&K) in order to demoralize India and enforce Kashmir's *"liberation"* from the former. It is estimated that the State dished out over $50 million annually to support groups such as Lashkar-e-Taiba (LeT), Hizb-ul-Mujahedeen (HM) and Jaish-e-Mohammed (JeM) (Kambere et al 2011). Yet, even as the Cold War ended, the international community kept largely silent on Pakistan's terrorism sponsorship; according to some commentators, this was due to the fact that the US did not want to jeopardize its relationship with Pakistan, which it viewed as an ally in the region that had some leverage over the Taliban, who were now in control of much of Afghanistan (Ahmed, 2019).

Around the time as 9/11 wreaked havoc in the US, JeM and LeT started diverting their attention from J&K to India, and a number of suicide attacks, including on the Indian parliament, almost led to a conventional war between India and Pakistan (Kambere et al, 2011). These events resulted in intensifying pressure on then-President General Musharraf to take a clear stand against jihadism; in particular the US sharpened its tone. It was clear that, if Pakistan was to retain Washington's political support and the continuous flow of money that came with it, Islamabad had to change its strategy. Instead of sincerely cracking down on terrorists on its territories, Pakistan started playing a double game that involved making a very public show of alleged action against the Taliban, Al-Qaeda and their Pakistani affiliates while at the same time continuing to covertly support *"strategic assets"* in Afghanistan and J&K: highly publicized arrests and detentions of militants were followed by quiet releases; a selective focus on sectarian groups as opposed to jihadist groups was maintained; and well-publicized bans on terrorist groups were imposed, to which those groups responded by changing their names and continuing business as usual (Ahmed, 2019). All the while, the Al-Qaeda core resided in Pakistan from where it planned and conducted attacks like the Madrid train bombing in 2004 and a wave of attacks on targets in Saudi Arabia (Riedel, 2019). Yet, despite the fact that Pakistan's continued involvement with terrorists was well-documented (Haqqani 2013), still neither FATF nor the US made serious strides to bring her in line.

It was only in 2008 that FATF 'discovered' that Pakistan had strategic vulnerabilities in its CTF framework. This was in the context of souring US-Pakistan relations resulting from the US' frustration with Pakistan's seeming unwillingness to raid the Afghanistan-Pakistan border region serving as a retreat for Al-Qaeda and Taliban, and increasing US alignment with India, deemed a responsible nuclear power capable of creating a counterweight to Chinese influence in the region. In the years between 2008 and today, FATF and Pakistan hence engaged in a row of interactions (including Pakistan's grey-listing in 2012 and then again in 2018) which led to constructive results – at least on paper. In practice, it was simply a continuation of what has been termed a "chicken game": *"FATF maintained steady pressure with a series of progressive demands designed to inculcate greater complicity; Pakistan (…) responded with an equally steady stream of legislative and administrative dribs and drabs that never translated into anything meaningful"* (Ahmed, 2019). In 2010, thus, Pakistan adopted an Anti-Money Laundering Law (also covering aspects of CTF) that set up a Financial Monitoring Unit within the State Bank of Pakistan, which was to cooperate with a Terrorist Finance Investigation Unit (TFIU) (Pervez & Rani, 2015); it adopted a definition of terrorism financing that adhered to FATF standards; it issued an Anti-Terrorism Amendment Ordinance establishing procedures for identification and freezing of terrorist assets and set up a framework to regulate money service providers such as Hawaladars (including obligating them to obtain a license) (Raza, Fayyaz & Ijaz, 2017), to name a few examples. Yet, the TFIU lacks resources and trained personnel and, within the first five years of its operation, not a single TF case was transmitted to the TFIU (Parvez & Rani, 2015). Of 2,420 money-laundering investigations in 2019, only one led to a successful conviction (FATF 2019) and the network of unlicensed Hawaladars operating underground, although exact numbers are unavailable, is believed to be associated with many terror attacks in and around Pakistan still being planned and executed (Raza, Fayyaz & Ijaz, 2017). Pakistan's treatment of Hafiz Saeed, a designated terrorist, is paradigmatic of Pakistan's half-hearted CTF implementation: Saeed is the founder of the Pakistani terrorist outfit Lashkar-e-Taiba, and features on UN as well as US terror lists for his involvement in the Mumbai bombings of 2008 which resulted in 166 fatalities, among them six American citizens. Initially, in 2009, Saeed was placed under house arrest but soon thereafter cleared of all charges and released. It took until 2019 for Pakistan to finally indict Saeed on the basis of Pakistani CTF laws (Counter Extremism Project, 2020). Still, according to most commentators, Saeed's indictment is to be viewed as an attempt to escape the FATF grey-list rather than within the context of a systematic effort to curb terrorism financing (Khan, 2020).

In short, although Pakistan has endorsed the CTF architecture and integrated it into domestic legislation, enforcement thereof is inconsistent at best; while pressure from the international community results in ad hoc compliance with freezing orders and some arrests, the sustainability of Pakistan's CTF efforts is questionable. Criminal provisions, if not enforced consistently, do not effectively fulfil their intended function as deterrents; financial surveillance, if only conducted half-heartedly, gives terrorists opportunities to simply find a weak link to move monies; and the persistence of unregistered hawaladars virtually eradicates terrorists' need to use the formal banking sector altogether.

While the FATF speaks of 'vulnerabilities' and 'risks', it does not seem to understand that Pakistan's terrorism problem is systematic and cannot be resolved through technical tweaks. On one hand, a lack of institutional capacity certainly plays a role: Pakistan's State apparatus is riddled with corruption, clientelism, inter-institutional and inter-provincial competition and continues to be infested with Islamist elements, all of which prevent cooperation and adequate financing necessary for effective CTF enforcement. On the other hand, inefficient

CTF results from diverging threat perceptions: Western CTF approaches, including that of the FATF, are predominantly directed against pan-Islamic terrorist groups such as Al-Qaeda and Taliban while Pakistan still views India as its archenemy and tacitly endorses the anti-India rhetoric – and actions – of terrorist Islamist groups on its territories.

Turkey

Turkey is another case of interest for our present purposes because its strategic location at the intersection between Europe and the Middle East gives it a critical role in CTF as its territory may serve as a transit hub for funds from Europe to civil-war torn territories in Syria and Iraq (Yayla, 2019).

Turkey has been grappling with terrorism for decades and had led intense military-led counter-terrorism campaigns against different types of terrorist organizations, but predominantly against militant Kurdish ones, since the 1970s (Basaranel & Turksen, 2019). The Kurdish minority has been subjected to institutionalized marginalization and repression for decades, to the point that the word 'Kurdish' was banned in Turkey (Boon-Kuo et al, 2015). Militant Kurdish separatist groups that developed out of this context, particularly the Kurdistan Worker's Party (PKK) and its military wing, the People's Defense Force (HPG), have engaged in violent acts mainly against Turkish military targets but also against civilians since the 1980s (ibid).

Still, the State was slow to integrate into the emerging CTF architecture. MASAK – Turkey's FIU – had already been established in 1998 but only received the mandate to investigate terrorism-related financial activities with the introduction of the Law on Prevention of Laundering Proceeds of Crime in 2006 (Basaranel & Turksen, 2019). It took a blacklisting warning by FATF in 2013 in combination with a weakening Lira and deteriorating economy to nudge Turkey to overturn its lax policy on terrorism financing in order to avoid reputational (and the concomitant economic) damage: in order to preclude being listed as non-compliant alongside Iran and North Korea, Turkey hastily adopted a comprehensive Anti-Terror Law introducing provisions which criminalized financing of terrorism and froze the assets of 339 UN-designated individuals and 67 organizations all at once, thus narrowly escaping the blacklist (Schanzer, 2014). By 2014, Turkey had been removed from the list altogether and continued to amend its CTF provisions, to the effect that Turkish practitioners, EU experts on Turkey (Basaranel & Turksen, 2019) and the FATF (Unal, 2014) commended its progress.

In a spirit similar to that of Pakistan, however, if we turn our attention from what is happening on paper to what is happening on the ground, a very different picture emerges. On one hand, practitioners cite institutional deficiencies similar to those of Pakistan for weak and inconsistent CTF practice (Basaranel & Turksen, 2019). Aside from capacity issues, however, it appears that despite Turkey's membership of NATO and the Global Alliance against ISIS and Erdogan's outward commitment to CTF, Erdogan's AKP government has not only turned a blind eye to the flow of money to jihadi groups (including Al-Qaeda) in the Middle East but has also been directly implicated in funding some such groups in the context of the Syrian civil war (Schanzer, 2014).

Erdogan's border politics with Syria was always a sensitive topic due to the fact that territories along the border are home to a large number of Kurds. The Syrian civil war therefore was viewed as a threat (due to fears of Kurdish mobilization and consolidation) and opportunity (the chance to influence post-conflict political configurations) alike (Okyay, 2017). Hence, Turkey took an active role incubating the political and armed opposition against the regime, initially with the backing of Turkey's fellow NATO members (ibid).

A rift occurred between Turkey and her Western allies a few years into the civil war. From a Western perspective, Kurdish militants emerged as the most promising opposition force against a new power center that ascended from the rubble of yearlong warfare: the Islamic State. The problem was that although the PKK was not included in UN lists, both the EU and the US had designated the group, presumably due to pressure from Turkey who had been able to elevate her bargaining power due to her role as a key ally in the war against ISIS. Conveniently ignoring her own prohibition to provide material support to terror groups, in 2017, Washington much to Turkey's dismay directly delivered weaponry to the YPG, the PKK's daughter organization (Wimmen, 2017). The practice of ignoring terror lists whenever it serves some political purpose, it seems, far extends beyond 'rogue' States.

Be that as it may, Turkey felt increasingly threatened by an empowered Kurdish political and military movement and, in direct opposition to Western policy, supported a number of militant Islamist factions in Syria, allegedly assisting 40,000 foreign fighters who transited through Turkey to the front line in Syria, in what came to be known as the 'jihadi's highway' (Philips, 2020) – all in the pursuit of crushing the Assad regime and Kurdish militancy at the same time. Although the exact details about Turkey's relationship with jihadi groups remains nebulous, credible sources document Turkey's support to various organizations, including the Al-Qaeda affiliate Jabhat al-Nusra which is designated a terrorist entity pursuant to UNSC Res 1267 (Cockburn, 2014).

At the same time, Erdogan's Justice and Development Party (AKP) uses FATF recommendations in order to legitimize its crackdown on civil society and cement its authoritarian regime. While Turkey has progressively been moving towards authoritarianism since the AKP came to power in 2002, the 2016 coup attempt was a watershed moment: the state of exception became the primary governing technique of the Turkish State, mass surveillance came to be an aspect of every-day life of Turkish society, and terrorism charges were routinely used by Erdogan to rid himself of anyone who dared to challenge him to the point that one could land in jail for things as banal as the sharing of a pro-Kurdish post (Topac, 2017). The Transnational Institute, for instance, warns that *"the use of terrorist prosecution to repress and depoliticize Kurdish civil society has been a distinctive and systematic feature of the conflict in recent years"* (Boon-Kuo et al, 2015). CTF laws provided Erdogan with yet another tool to silence dissidents while such laws could conveniently be justified by reference to international CTF obligations. In the aftermath of the failed coup attempt on Erdogan of 2016, for example, there was a spike of prosecutions based on CTF laws, most or all of which were selectively targeting Kurds and individuals with presumed links to Fethullah Gulen, whom Erdogan accuses of masterminding the coup (United States Department of State, 2017).

Moreover, in December 2020 a law was adopted – Law No. 7262 on Preventing Financing of Proliferation of Weapons of Mass Destruction – which, according to official statements, was required in order to *“catch up with international standards in the fight against the financing of terrorism and laundering offenses in light of the 2019 report of the FATF and UN Security Council resolutions”* (Catekin, 2021). The law stipulates, among other things, that launching online aid campaigns must be licensed and that the AKP may appoint trustees to monitor NGO’s activities and suspend NGO’s activities where it is suspected that the organization is involved in terrorism funding (ibid). Various local and international civil society and human rights organizations are alarmed: the International Federation for Human Rights, for example, warns that the *“newly adopted Law no. 7262 […] provides additional tools to authorities to further oppress civil society and hinder their legitimate human rights work”* (International Federation for Human Rights, 2021), while Human Rights Watch asserts that *“the Turkish government’s new law on curbing financing of terrorism, with the new powers it grants the Interior Ministry, conceals within it another purpose: that is to curtail and restrict the legitimate activities of any nongovernmental groups it doesn’t like”* (Human Rights Watch, 2020). The FATF, hence, seems to have become unwittingly complicit to Turkey’s devolution into authoritarianism.

In other words, Turkey not only circumvents her own commitments to CTF whenever it suits her foreign policy imperatives but also purposely misinterprets FATF and UN obligations in order to legitimize repressive and otherwise hardly justifiable laws with the covert goal of availing herself from political opponents. This biased application of CTF-related obligations is highly visible in Erdogan’s approach towards the NGO sector as Law no. 7262 allows the regime to monitor and control NGOs perceived as dangerous to Erdogan’s rule while, at the same time, the AKP regime itself supplies funds to select terror organizations, including such ones designated as terrorist organizations by the UN and/or the US.

Discussion: Success, but at what price?

The ‘success’ of CTF is disputed, with different arguments being made on either side of the debate. International policy-makers often cite the universal participation in CTF, as for example reflected in near-universal membership to the 1999 Convention or the broad endorsement of FATF standards (Clunan, 2007). It goes undisputed that the financial war on terror has created a plethora of laws and regulations, institutions and collaboration models. Yet, does this in itself constitute a success or, in the words of Warde (2007), are we simply confusing ‘activity’ with ‘progress’? Another argument, often-heard from American policy-makers especially in the years following 9/11, centers around tactical achievements; in particular, the number of designations and amount of assets frozen came to be presented as markers of success (Zarate 2013). Here too, it may be questioned whether individual advances are enough to classify the entire undertaking as a ‘success’; after all, removing a metastasis from a cancer is a far cry from defeating it.

In 2001, bin Laden told a Pakistani newspaper that Al-Qaeda's financiers were *"as aware of the cracks inside the Western financial system as they are aware of the lines on their hands"* (Sahay & Pandya, 2017). Indeed, despite the massive efforts by the US to close the gaps in the financial system, the CTF 'regime' is far from seamless, allowing terrorists to continue exploiting weakly governed spaces and regulatory or enforcement gaps to fund their survival.

As the cases of Pakistan and Turkey demonstrate, a factor impeding the effectiveness of the CTF regime is a lack of genuine political will to enforce the CTF provisions in some parts of the world. For this to make sense, it helps to acknowledge that, hidden behind the technical language of 'risks' and 'vulnerabilities' employed by FATF in particular, the financial war on terror is inherently *political*. What is more, it at times appears that decisions by international bodies such as UN and FATF are made at the behest of the US rather than as a result of unbiased assessments. The perception that the financial 'war on terror' is orchestrated predominantly by Western powers – indeed, the FATF is routinely accused of being a 'white men's cub' – harms its legitimacy and credibility, especially where States are already weary of American hegemony. While, as the cases of Turkey and Pakistan demonstrate, the threat of economic and/or political penalties associated with non-compliance with CTF obligations appears to be a good enough incentive for non-Western States to act upon them, and this 'acting upon' resembles the ticking of a checklist rather than a sincere effort to curb terrorism financing. For Western policy-makers, terrorist organization *a la* Al-Qaeda, IS or Taliban are the incarnation of pure evil and their eradication a security imperative; there appears to be a lack of understanding that these perceptions are not necessarily shared everywhere else. Since overtly opposing US policy (as North Korea and Iran, both on the FATF blacklist, have done) is costly, most States will opt to pay lip service to dominant Western discourses while covertly continuing to pursue their own policy priorities.

Secondly, even if we disregard some States' reluctance to cooperate within CTF frameworks, it may be questioned whether such frameworks are capable of succeeding in effectively draining terrorist organizations of their income. It is obvious that less developed States with weak institutional capabilities – Iraq, Syria or Afghanistan, to name a few – simply do not have the capacity to enforce a seamless system of financial controls which, after all, requires funding, trained staff and inter-institutional trust. Weakly governed spaces, not coincidentally, are also those spaces from where terrorists are most likely to operate.

Even developed countries with mature banking systems, however, are not necessarily effective in CTF enforcement. Despite of billions of dollars spent on transaction monitoring and ever-increasing sophistication of mathematical models and artificial intelligence applications for risk assessments, it is believed that by employing some relatively straightforward strategies such as hiring 'straw men', devising plausible explanations for transactions, falsifying documents or splitting a transaction into various smaller ones, terrorists and their sponsors are still able to use the formal banking sector at relatively low risk of detection (Teichman, 2019). Hawaladars, on the other hand, may provide services to terrorists by masking their informal money transfer activities behind regular businesses as shown, for example, in the case of Abad Elfgeen, a Brooklyn-based Hawala dealer who funneled millions of dollars to Al-Qaeda through what was officially an ice cream store

(Habjouqa & Clendinning, 2020). Transnational information exchange too is regularly accused of being inadequate, with FIUs often reluctant to share highly sensitive information with foreign counterparts (Amicelle & Chaudieu, 2018).

Taking a step back and looking at the evolution of the terrorism landscape throughout the past 20 years, it is fair to assert that CTF is not the hoped-for 'silver bullet' against terrorists. In 2015, ISIS emerged as the wealthiest ever terrorist group by achieving financial self-sufficiency through territorial control, Al-Qaeda branches are today represented in more countries than before, and the Taliban have, despite initial defeat, regained strength. The failure of CTF to mitigate the terrorism threat may be attributed, as shown above, to a lack of capability and motivation (or, in more general terms, simply the impossibility of implementing *any* fully integrated, seamless global regime encompassing 194 States). On the other hand, terror groups' own ingenuity and will to survival stand in the way of CTF efficiency. Policy-makers in the aftermath of 9/11 were not yet fully aware of the versatility of terrorist groups and the resilience of destructive Islamist ideologies that would persist even as the core group itself disperses. Certainly, core Al-Qaeda is a shadow of its former self and the IS has lost its territories, conditions to which CTF may well have contributed: around 2010, for example, evidence surfaced that Al-Qaeda had fallen on hard times with a statement by one Al-Qaeda operative in 2009 reading that *"many of the Mujahideen have been inactive and failing to participate in jihad through lack of money"* (Gomez, 2010). Still, both Al-Qaeda and ISIS are today present in more countries than ever; although their central command may be weakened, both groups survive by breaking themselves up into relatively loose networks of affiliates operating in weakly governed spaces and 'lone wolves' with no physical connection to their core group, which are encouraged to organize their own funding through, for example, petty crime or use of private incomes (Bauer & Levitt, 2020). Because self-financed cells or individuals, especially when they are funded with licit incomes (such as salaries, loans or welfare payments) are highly unlikely to be detected in suspicious activity screenings, localized self-funding and financial self-sufficiency of a multiplicity of dispersed terrorist actors puts to question the efficiency of CTF.

Conclusion - Politics of pre-emption

Although it must be acknowledged that CTF cannot by and in itself *defeat* terrorism, there is no need to talk down the tactical achievements of CTF. The near-universal criminalization of terrorism financing provides States with tools to deter and prosecute terrorists and their associates, asset freezing orders, even if not always enforced consistently, may have helped immobilizing core terrorist figures and thus interfered with their operation, and financial intelligence material is said to have thwarted many plots, such as threats to the 2012 Summer Olympic Games in London and a 2011 assassination plot to kill the Saudi Arabian Ambassador to the United States (Bauer & Levitt, 2020). Although the splintering of terrorist groups may not be good news for counter-terror professionals, it may at least indicate that counter-terrorism measures have made survival more difficult for terrorist organizations. Yet, what remains to be asked is *at what price?*

9/11 fathered a security paradigm wherein the 'terrorist' label was to justify as good as any intervention, no matter how many rights were violated in the course and how debilitating the consequences for those unfortunate enough to be bestowed with it. Guantanamo Bay is often cited as the embodiment of this new paradigm that centers around a logic of pre-emption that clearly prioritizes the elimination of some elusive threat over individual rights; however, although the effects of the *financial* war on terror on individuals may not be as grueling as the unlawful detention and torture of those held in Guantanamo, it was the seemingly more banal and technical aspects of this new type of warfare that have quietly become embedder in international law and practice (Hayes 2012).

The side effects of the pre-emptive warfare against terrorists can be felt within every CTF branch discussed. Resolution 1373 willingly accepts its potential for abuse entailing a lacking terrorism definition - in fact, it purposely omitted doing so in order to make itself more palatable to a broader range of States - and Resolution 1267 foresees far-reaching punitive measures against individuals suspected (but never proven) to be somehow associated with a terror organization, thus implicitly expecting States to violate their international and national human rights obligations. Risk-based banking, as promoted by FATF, and the compliance-work banks are expected to observe to avoid sanctions, have resulted not only in exorbitant costs in monetary terms, but also in practices whereby 'risky' client groups are systematically excluded as a precautionary measure so as to avoid reputational risk and hefty fines. An example of a real-life manifestation of the effects of risk-based banking is the attempt by Barclays, a UK bank, to close down all accounts held by the Somali remittance company Dahabshiil Holdings Ltd, used by a majority of British Somalis to support their families at home, with the explanation that *"Barclays has an obligation to operate within the rules and regulations set by government and regulators in the countries in which we do business. Failure to do so would result in Barclays being prosecuted by regulators around the world and potentially fined many hundreds or potentially billions of pounds"* (Tran, 2013). The Islamic charitable sector too has fallen under a class-based suspicion of being an instrument of terrorism, with chilling effects on its ability to conduct its, for most part, legitimate operations as donor States or institutions cease engagement for fear of legal consequences – negative impacts range from halts and decreases in funding to the blocking of projects, suspension of programs, planning and program design not according to needs, as well as the slowing of project implementation (Mackintosh & Duplat, 2013). Apart from the obvious moral predicament the acceptance of these 'side effects' entails for States claiming to represent democratic values and the rule of law, it also stands in the way of counter-terrorism efforts as it is widely acknowledged that the resentment thus created may drive anti-Americanism and religious extremism (Thrall & Goepner, 2017).

The readiness, by which the collateral damage the financial war on terror created was accepted, may be understood in the context of the US' trauma of 9/11; after what we have learned in the past 20 years, however, it should be questioned whether externalities such as the ones described above are justifiable. It is not within the scope of this paper to draw conclusions about the ultimate proportionality and adequacy of CTF – a lack of available data makes an informed proportionality assessment impossible – however, it may well be argued that at least on an international level, organizations functioning as norm-setters such as the

UN or the FATF should work towards restoring the primacy of fundamental rights in counter-terrorism instruments and to mitigate the exclusionary effects of financial warfare against terrorism.

Bibliography

Ahmed, S., 2019. Regulatory Transgression? Drivers, aims and effects of money laundering and terrorism financing regulation in Pakistan (Doctoral Dissertation). Available at https://core.ac.uk/reader/322837860

American Civil Liberties Union (ACLU), 2001. The "Specially-Designated Global Terrorist" Designation Scheme and its Constitutional Flaws. Available at https://www.aclu.org/sites/default/files/field_document/sdgt_designation_briefer_final.pdf

Amicelle, A. and Chaudieu, K., 2018. In search of transnational financial intelligence: Questioning cooperation between Financial Intelligence Units. In The Palgrave Handbook of Criminal and Terrorism Financing Law (pp. 649-675). Palgrave Macmillan, Cham.

Basaranel, B.U. & Turksen, U., 2019. Counter-terrorist Financing Law and Policy: An Analysis of Turkey. Routledge: London.

Basel Committee on Banking Supervision, 2017. Sound management of risks related to money laundering and financing of terrorism. Available at https://www.bis.org/bcbs/publ/d353.pdf

Bauer, K. & Levitt, M., 2020. Funding in Place: Local Financing Behind Today's Global Terrorist Threat. The International Centre for Counter-Terrorism (ICCT) Evolutions in Counter-Terrorism, Vol 2, pp 47-76

Boon-Kuo, L., et al, 2015. Building Peace in Permanent War: Terrorist Listing and Conflict Transformation. International State Crime and Transnational Institute. Available at https://www.tni.org/files/download/building_peace_in_permanent_war_feb_2015_-_for_circ.pdf

Bush, G.W., 2001. President Bush's Speech on Terrorism of 21.09.2001.

Bush, G.W., 2001. President Bush's Speech on Terrorism. Available at https://www.theguardian.com/world/2001/sep/21/september11.usa13

Catekin, K., 2021. Turkey: Parliament Passes Lw to Suppress Financing of Weapons of Mass Destruction Proliferation. Law Library of Congress. Available at https://www.loc.gov/law/foreign-news/article/turkey-parliament-passes-law-to-suppress-financing-of-weapons-of-mass-destruction-proliferation/

Charity and Security Network (CSN), 2020. Holder v. Humanitarian Law Project. Available at https://charityandsecurity.org/litigation/hlp/

Clunan, A.L., 2007. The Fight against Terrorist Financing. Political Science Quarterly 121(4), pp 569-596

Cockburn, P., 2014. Whose Side is Turkey on? London Review of Books 36(21)

Counter Extremism Project, 2020. Hafiz Muhammad Saeed. Available at https://www.counterextremism.com/extremists/hafiz-muhammad-saeed

De Goede, M., 2018. Counter-Terrorism Financing Assemblages After 9/11. In King, C. et al (eds), The Palgrave Handbook of Criminal and Terrorism Financing Law, Cham: Palgrave Macmillan, pp 755-779.

Durner, T., & Shetret, L., 2015. Understanding Bank De-risking and its Effects on Financial Inclusion. Oxfam (Report). Available at https://oxfamilibrary.openrepository.com/bitstream/handle/10546/582310/rr-bank-de-risking-181115-en.pdf?sequence=4&isAllowed=y

El-Qorchi, M., 2002. The Hawala System. Finance & Development. Available at https://www.imf.org/external/pubs/ft/fandd/2002/12/elqorchi.htm

Fahey, E., 2013. Law and Governance as Checks and Balances in Transatlantic Security: Rights, Redress and Remedies in EU-US Passenger Name Records and the Terrorist Finance Tracking Program. Yearbook of European Law 32(1), pp 368-388

Financial Action Task Force (FATF), 2008. Terrorist Financing. Available at https://www.fatf-gafi.org/media/fatf/documents/reports/fatf%20terrorist%20financing%20typologies%20report.pdf

Financial Action Task Force (FATF), 2012. FATF IX Special Recommendations. Available at https://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf

Financial Action Task Force (FATF), 2014. The Banking Sector: Guidance for a Risk-Based Approach. Available at https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Banking-Sector.pdf

Financial Action Task Force (FATF), 2019. Anti-money laundering and counter-terrorist financing measures: Pakistan Mutual Evaluation Report of October 2019. Available at https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-Pakistan-October%202019.pdf

Financial Action Task Force (FATF), 2020. FATF Recommendations. Available at https://www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf

Financial Crimes Enforcement Network, n.d. USA PATRIOT Act. Available at https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act

Freeman, M., & Ruehsen, M., 2013. Terrorism Financing Methods: An Overview. Perspectives on Terrorism 7(4).

Freeman, M., 2011. The sources of terrorist financing: theory and typology. Studies in Conflict & Terrorism, 34(6), pp 461-475.

Habjouqa & Clendinning, 2020. Hawala: Ancient Money Transfer System Poses Very Modern Risks. Dowjones. Available at https://professional.dowjones.com/risk/resources/risk-blog/hawala-risks

Haqqani, H., 2013. Magnificent delusions: Pakistan, the United States and an Epic History of Misunderstanding. Public Affairs

Hayes, B., 2012. Legalising Surveillance, Regulating Civil Society. Transnational Institute/Statewatch. Available at https://www.tni.org/files/download/fatf_report-update_0.pdf

Human Rights Watch, 2020. Turkey: Draft Law Threatens Civil Society. Available at https://www.hrw.org/news/2020/12/24/turkey-draft-law-threatens-civil-society

International Federation for Human Rights, 2021. Turkey: New law seriously threatens freedom of association and must be repealed! Available at https://www.fidh.org/en/issues/human-rights-defenders/turkey-new-law-seriously-threatens-freedom-of-association-and-must-be

International Monetary Fund (IMF), 2000. Anti-Money Laundering/Combating the Financing of Terrorism. Available at https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm

International Monetary Fund (IMF), 2004. 3 Core Functions of an FIU. Available at https://www.elibrary.imf.org/view/books/069/02365-9781589063495-en/ch03.xml?tabs=Abstract

Istrefi, K., 2012. The Application of Article 103 of the United Nations Charter in the European Courts: the Quest for Regime Compatibility on Fundamental Rights. European Journal of Legal Studies 5(2), pp 81-93.

Jayakody, N., 2018. Refining United Nations Security Council Targeted Sanctions. Security and Human Rights.

Kambere, G., et al, 2011. The Financing of Lashkar-e-Taiba. Global Ecco. Available at https://globalecco.org/ctx-v1n1/lashkar-e-taiba

Keatinge, T. & Keen, F., 2020. A Sharper Image: Advancing a Risk-Based Response to Terrorist Financing. Royal United Services Institute (RUSI). Available at https://rusi.org/sites/default/files/20202001_ctf_final_web_copy_2.pdf

Khan, M.I., 2020. Hafiz Saeed: Will Pakistan's 'terror cleric' stay in jail? BBC. Available at https://www.bbc.com/news/world-asia-51486346

Levitt, M., 2011. Follow the Money: Leveraging Financial Intelligence to Combat Transnational Threats. Georgetown Journal of International Affairs Winter/Spring 2011, pp 34-43.

Mackintosh, K. & Duplat, P., 2013. Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action. Norwegian Refugee Council. Available at https://www.nrc.no/globalassets/pdf/reports/study-of-the-impact-of-donor-counterterrorism-measures-on-principled-humanitarian-action.pdf

Masciandaro, D., 2005. Financial supervisory unification and financial intelligence units. Journal of Money Laundering Control 8(4), pp 354-370

McGee, L., 2020. Preventing and Combating the Financing of Terrorism. Security Council Issue Brief. Available at https://odu.edu/content/dam/odu/offices/mun/docs/ib-sc-terror-financing.pdf

Morse, J.C., 2019. Blacklists, Market Enforcement, and the Global Regime to Combat Terrorist Financing. International Organization, 73(3), pp 511-545

Nance, M.T., 2015. Naming and Shaming in Financial Regulation: Explaining Variation in the Financial Action Task Force on Money Laundering (pp 123-142). In: Friman, H.N.(ed). Behind the Curtain: Naming and Shaming in International Drug Control. Palgrave Studies in International Relations Series.

Okyay, A.S., 2017. Turkey's post-2011 approach to its Syrian border and its implications for domestic politics. International Affairs 93(4), pp 829-846

Oliver, C., 2004. Human Rights Law and the International Fight Against Terrorism: How do Security Council Resolutions Impact on States' Obligations Under International Human Rgihts Law? (Revisiting Security Council Resolution 1373). Nordic Journal of International Law 73(4), 399-419

Parvez, T. & Mehwish, R., 2015. An Appraisal of Pakistan's Anti-Terrorism Act. United States Institute of Peace (Special Report 377). Available at https://www.usip.org/sites/default/files/SR377-An-Appraisal-of-Pakistan's-Anti-Terrorism-Act.pdf

Philips, D.L., 2020. The Truth about Turkey's Role in Syria. Institute for the Study of Human Rights. Available at http://www.humanrightscolumbia.org/news/truth-about-turkey's-role-syria

Powell, C.H., 2018. The United Nations Security Council Sanctions Regime Against the Financing of Terrorism (pp 883-907). In King, C., et al (eds), The Palgrave Handbook of Criminal and Terrorism Financing Law. Palgrave McMillan, Cham.

Prost, K., 2018. The Intersection of AML/SFT and Security Council Sanctions. In Palgrave Handbook of Criminal and Terrorism Financing Law (pp 907-926). Palgrave Macmillan, Cham.

Raza, M.S., Fayyaz, M. & Ijaz, H., 2017. The Hawala System in Pakistan: A Catalyst for Money Laundering & Terrorist Financing. Forensic Research & Criminology International Journal, 5(4).

Riedel, B., 2019. Al-Qaeda today, 18 years after 9/11. Brookings Institute. Available at https://www.brookings.edu/blog/order-from-chaos/2019/09/10/al-qaida-today-18-years-after-9-11/

Rosand, E., 2003. Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight Against Terrorism. American Journal of International Law 97(2), pp 333-341

Roth, J. et al, 2001, n.d. National Commission on Terrorist Attacks Upon the United States: Staff Repot to the Commission. Available at https://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf

Sahay, C.D. & Pandya, A., 2017. Terror Financing and The Global CTF Regime. Vivekananda International Foundation. Available at https://www.vifindia.org/sites/default/files/final-terror-financing-and-the-global-ctf-regime.pdf

Schanzer, J., 2014. Terrorism Finance in Turkey: A Growing Concern. Foundation for Defense of Democracies. Available at https://s3.us-east-2.amazonaws.com/defenddemocracy/uploads/documents/Schanzer_Turkey_Final_Report_3_smaller.pdf

Sharma, A., 2020. Understanding FATF Blacklists and Greylists and the Implications on the Financial Ecosystem. Accuity (blog). Available at https://accuity.com/accuity-insights-blog/understanding-fatf-blacklists-and-greylists-and-the-implications-on-the-financial-ecosystem/

Teichman, F.M.J., 2019. Financing of terrorism through the banking system. Ournal of Money Laundering Control 22(2), pp 188-194

Thrall, A.T. & Goepner, E., 2017. Step Back: Lessons for U.S. Foreign Policy from the Failed War on Terror. Cato Institute. Available at https://www.cato.org/policy-analysis/step-back-lessons-us-foreign-policy-failed-war-terror#_idTextAnchor067

Topac, O.E., 2017. The Making of a Totalitarian Surveillance Machine: surveillance in Turkey Under AKP Rule. Surveillance & Society 15(3), pp 535-542

Tran, M., 2013. Remittance company awaits court ruling on Barclays account closure. The Guardian. Available at https://www.theguardian.com/global-development/2013/oct/16/barclays-somalia-remittances-court-ruling

U.S. Department of the Treasury, 2011. Fact Sheet: Combating the Financing of Terrorism, Disrupting Terrorism at its Core. Available at https://www.treasury.gov/press-center/press-releases/Pages/tg1291.aspx

Unal, A., 2014. FATF praises Turkey's fight against finance of terrorism. Daily Sabah. Available at https://www.dailysabah.com/economy/2014/06/30/fatf-praises-turkeys-fight-against-finance-of-terorism

United Nations (UN), 1999. International Convention for the Suppression of the Financing of Terrorism.

United Nations (UN), 2019. Security Council Unanimously Adopts Resolution Calling Upon Member States to Combat, Criminalize Financing of Terrorists, their Activities. Available at https://www.un.org/press/en/2019/sc13754.doc.htm

United Nations (UN), 2021. Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities. Available at https://www.un.org/securitycouncil/sanctions/1267

United Nations Security Council, 2001. Resolution 1373. Available at https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf

United States Department of State, 2017. Country Reports on Terrorism 2016 – Turkey. Available at https://www.refworld.org/docid/5981e40c13.html

US Department of State, 2021. Executive Order 13224. Available at https://www.state.gov/executive-order-13224/

Van den Herik, L & Schrijver, N., 2013. The fragmented international response to terrorism (pp 1-25). In Van den Herik, L & Schrijver, N. (eds), Counter-Terrorism Strategies in a Fragmented International Legal Order. Cambridge University Press.

Walker, C., 2018. Counter-Terrorism Financing: An Overview. In King, C., et al (eds), The Palgrave Handbook of Criminal and Terrorism Financing Law. Palgrave McMillan, Cham.

Warde, I., 2007. The Price of Fear: The Truth Behind the Financial War on Terror. University of California Press.

White House, 2001. President Blocks More Assets in Financial War on Terrorism. Available at https://georgewbush-whitehouse.archives.gov/news/releases/2001/12/20011220-11.html

Wimmen, H., 2017. The U.S. joins the Turkey-PKK fight in northern Syria. Crisis Group. Available at https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/us-joins-turkey-pkk-fight-northern-syria

Yayla, A.S., 2019. Turkish ISIS and AQ Foreign Fighters: Reconciling the Numbers and Perception of the Terrorism Threat. Studies in Conflict & Terrorism.

Zagaris, B., 2007. Problems applying traditional anti-money laundering procedures to non-financial transactions, “parallel banking systems” and Islamic financial systems. Journal of Money Laundering Control 10(2), pp 157-169.

Zarate, J., 2013. Treasury’s War: The Unleashing of a New Era of Financial Warfare. Hatchette, UK

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