

GROUP 2

FINANCING OF TERRORISM

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I. INTRODUCTION

Group 2 began its discussions on the 18 January 2006. In its first meeting, by consensus the above mentioned board members were elected. The group then discussed the guidelines for the topics provided and decided on the agenda as follows:

1. Financing of Terrorism
 - (i) Definition
 - (ii) Distinguishing between money laundering and financing of terrorism
2. Country Experiences
 - (i) Legislation and legal regimes
 - (ii) Agencies involved in detection and investigation
 - (iii) Inter-agency administration and cooperation
3. Measures against Financing of Terrorism
 - (i) Generation of finance
 - (ii) Method of transfer
 - (iii) Obligation for reporting
4. International Cooperation for Investigation
 - (i) Generation of finance
 - (ii) Method of transfer
 - (iii) Obligation for reporting
5. Preventing and Detecting Measures
6. Recommendations

II. SUMMARY OF DISCUSSION

A. Introduction

Terrorism involves the participation of people and the use of logistical support to advance their beliefs, ideologies or dreams whether they are cultural, economic, philosophical or religious. Ostensibly, to maintain the subsistence of its members and acquisition of logistics necessary to enhance the perpetration of the terrorist's unlawful activities, terrorist organizations require financial resources.

At the international level, the United Nations has taken measures to coordinate, and as much as possible synchronize, the actions taken at the domestic level by propagating necessary international instruments. Without undertaking an elaborate discussion of the relevant respective instruments, it is considered important to mention them briefly.

- (i) *The thirteen universal legal instruments including the Convention for the Suppression of Terrorist Financing 1998*
- (ii) *The FATF Forty Recommendations on Money Laundering*
- (iii) *The FATF Nine Special Recommendations for Financing Terrorism*
- (iv) *The Security Council Resolution 1267*
- (v) *The Security Council Resolution 1373*

Especially, Security Council Resolution 1373 calls for all Member States to take drastic measures to curtail the sources of funding and any opportunities that may present itself as an avenue of abuse to generate funding for terrorist related activities. In respect of financing of terrorism the general framework entrenched in the Nine Special Recommendations of the FATF/GAFI provide the basic guidelines for all Member States to follow in their efforts to establish a vibrant domestic democratic legal regime against the financing of terrorism. The Nine Special recommendations call for:

- *Criminalization of acts of financing terrorism*
- *Effective sanctions for legal persons for the acts of financing terrorism*
- *Freezing and Confiscating terrorist assets*
- *Obligations of suspicious transactions reporting involving terrorist acts or organizations*
- *International cooperation for investigations, inquiries, and proceedings related to the financing of terrorism*
- *Other important preventive and detective measures*
 - *Control of alternative remittance*
 - *Control of wire transfers*
 - *Control of non-profit organizations*
 - *Control of cash couriers*
- *Inter-agency coordination among relevant agencies (e.g. FIU, Law Enforcement, Intelligence) in the investigation of terrorist financing offences.*

Governments, legislators and agencies tasked with the responsibility of establishing a legal regime against terrorism must be strongly urged to adhere to the Nine Special Recommendations of the FATF/GAFI.

III. FINANCING OF TERRORISM

A. Definition

Terrorism has not been accorded a specific definition under international law. In retrospect, the international community cannot stand aside and await such definition to be formulated first before taking measures to criminalize all the actions that constitute the crime of financing of terrorism. Essentially, because within the realm of criminal law, whether domestic or international, the various acts perceived to constitute an act of terrorism are commonly agreed upon even without a definition. This in our view provides the platform on which respective countries can proceed to establish a competent legal regime to deal with the menace in its entirety.

This is made possible by the notion that the thirteen United Nations instruments that relate to terrorism promulgate the various acts that constitute the offences of terrorism. More so, *the International Convention for Suppression of the Financing of Terrorism states that financing of terrorism refers to:*

1. Any conduct by any person that directly or indirectly, whether lawfully or unlawfully and wilfully provide or collect funds with the intention that they should be used, or in the knowledge that they should be used, to carry out an act that constitutes an offence under any one of the thirteen United Nations Conventions.
2. It also relates to any act intended to cause death or serious bodily injury to a civilian, or to any other person not actively involved in a situation of armed conflict, when the purpose of such act is to intimidate a population, or to compel a government or an international organization to either do or abstain from doing a specific act. Moreover it also includes the act of attempting to participate, organize, contribute or directing the provision or collections of such funds.
3. It is not necessary that the funds are actually used to commit an offence.

B. Distinguishing Money Laundering and Financing of Terrorism

The financing of terrorism takes many forms. It epitomizes an economic arrangement which reflects many, if not all, of the same traits of an international organized crime. It is undeniable that terrorist organizations to some extent do engage in money laundering and other general criminal activities to supplement their source of finance. The crucial distinction between financing of terrorism and organized crime, particularly money laundering, is that in contrast, organized crime syndicates launder proceeds of crime as a covert technique to legalize the proceeds and create a false impression of the legitimacy of its sources. More so for monetary profit, while terrorist organizations are more interested in the disbursement of the money and at the most, some if not all of the sources of these funds are legitimate.

US\$400 Billion is circulated worldwide annually in money laundering activities. However, money laundering is quite a different sphere of crime to that of financing of terrorism. It deals with revenue derived from an act of crime. In contrast, financing of terrorism relates to activities undertaken to facilitate funding of the commission of a crime of terrorism. In this regard, financing terrorism relates to actions undertaken prior to the commission of the principal offence of terrorism. They fall into the category of direct financing, conspiracy, perpetration, aiding, averting and/or incitement to contribute to the raising of funds to enable the commission of the principal offence of terrorism.

Irrespectively, analysis of the economics of terrorism demonstrates to a certain extent that international organized crime syndicates generally have a motive quite different from those of terrorist organizations. In this respect, terrorism related organized crime is believed to constitute a small and difficult to detect portion of millions of dollars in the global formal established financial systems.

Hence, it is necessary to make the distinction so that the legal regimes that are established are able to deal with both types of crimes adequately. That they are not confused into being the same or similar criminal acts which may result in the establishment of a domestic legal regime that is unable to deal with either offence or their associate offences comprehensively.

IV. COUNTRY EXPERIENCES

As the basis for further development of the legal regime against terrorism both at the domestic and international level a coordinated effort requires all countries to share their experience and learn from each other, identify issues and develop synthesized strategies to enhance the existing regime. Therefore, apart from country experiences shed during the group sessions, we also drew from the individual presentations by participants from the twenty countries represented at this seminar.

A. Legislation and Legal Regimes

Members of the group were accorded an opportunity to briefly provide an overview of their countries situation. Most countries if not all have ratified the UN Convention on Suppression of Financing of Terrorism and approved the (GAFI) FATF Forty Recommendations. Not only that but also enacted legislation to deal with money laundering and also approved the (GAFI) FATF Nine Special Recommendations on Terrorist Financing for which most countries have encoded the relevant offences under their money laundering laws.

Notwithstanding these measures, it is understood that some countries, to fully criminalize the financing of terrorism, need to enact specific legislation on the financing of terrorism as the current regime under their money laundering legislation does not fully embrace all possible avenues for the commission of offences relating to the financing of terrorism. Not the least, most countries have yet to enact laws on cyber space management to regulate the use of cyber space. Furthermore, it is also perceived that further legislative actions are required at the domestic level to amend existing legislation such as that dealing with evidence and searches so that they are compatible with the international standards required to effectively criminalize the financing of terrorism.

Another common feature we have observed is that most countries have various agencies assigned with the task of administration and enforcement of different aspects relating to terrorism specific to their sphere of responsibility. Hence, activities by these domestic agencies, departments and/or institutions is at most uncoordinated. As a consequence, the development of a coordinated domestic legal regime to combat terrorism is staggered and slow. Needless to say many Member States of the United Nations have been compelled to at least take these measures in a rush to avert sanctions that may be applied under Security Council Resolution 1276 for non-compliance.

B. Agencies Involved in Detection and Investigations

In line with Security Council Resolutions 1373 countries of most of the participants have established Financial Intelligence Units (FIU). However, it must also be acknowledged that FIUs are not investigative bodies. They are only administrative agencies which receive, analyze and disseminate information on suspicious transactions. Thus by themselves they are weak institutions in that their effectiveness and efficiency is widely dependent upon:

- (a) Goodwill of the relevant financial institutions providing suspicious transaction reports at the first instance.

- (b) Technical expertise of the employees of the bank in intercepting and identifying such suspicious transactions in the first instance; and
- (c) Technical expertise of the staff of the FIU to properly and prudently receive, analyze and disseminate the information to law enforcement agencies to investigate any purported commission of any offences in that respect.

Therefore, some of the participants felt that it is necessary to establish a framework to criminalize any failure to comply with the requirement to report suspicious transactions in the form of penalties against the financial institution per se and also the responsible staff, particularly where gross intentional negligence is established. However, some of the participants opposed the idea because of its vagueness and difficulty of defining suspicious transaction reports and therefore, we believe criminal punishment against non-compliance is not appropriate.

Currently there is already in existence a forum for the international association of FIUs under an informal organization known as the Egmont Group. The group has more than 100 members but does not have any formal structure wherein it operates in as much as on an ad hoc basis. Perhaps it is necessary for those Member States who have yet to affiliate to consider membership and also endeavour to promulgate efforts to formalize the constitution, administration and operational capacity of the organization to provide an effective forum at the international level for cooperation on FIU related matters.

C. Inter-agency Administrative Cooperation

It is also acknowledged that some countries have a multi-agency approach in dealing with various aspects of financing terrorism at the domestic level. In such situations information collated is shared between agencies at a common platform and taken up for execution of relevant measures by the respective agencies concerned so that financing of terrorist acts could be preferably prevented or minimized, and if not then the perpetrators detected after the commission of the terrorist act. For example Saudi Arabia established a permanent committee for anti-money laundering and terrorist financing represented by many agencies and security services with a vested interest in terms of their respective organizational responsibilities in related issues.

Similar cooperation must be encouraged between respective member countries of the United Nations and between international agencies that have different charters but are also striving to curb the menace of terrorism within their respective sphere of interest. Sharing of information, reciprocity in judicial and criminal investigation and mutual assistance in criminal matters are identified as some areas in which much cooperation is required. One must also recognize the diversity of cultural, political and legal regimes of each country. To this extent, possible solutions may lie in enacting or amending domestic laws with due observance of such diversity but in accordance with the requisite international standards so that the intended legal regime is functionally effective and efficient in terms of criminalizing all acts of financing of terrorism, detection, investigation and prosecution and also rendering such cooperative services between friendly nations lawfully and quickly.

V. MEASURES AGAINST FINANCING TERRORISM

In line with the Security Council Resolution 1373, domestic measures taken against the financing of terrorism must encompass actions to prevent and suppress the financing of terrorist acts by criminalization in domestic laws and regulations and with penal provisions that duly reflect the seriousness of terrorist acts such as the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. In addition be flexible enough to freeze, without delay, the funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities. Not least prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.

The legal regimes of all States shall legislate against providing any form of support, active or passive, to entities or persons involved in terrorist acts, including collaboration in the provision of early warnings to other States by the exchange of information, denial of safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens, prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens, ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or supports terrorist acts is brought to justice.

In addition, afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings, find ways of intensifying and accelerating the exchange of operational information. Enhance the possibility of such cooperation by becoming parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism (1999).

A. Generation of Finance

The inflow of financial resources of a terrorist organization more or less derives from legitimate sources, illegal revenue and criminal activities.

- (i) Legitimate sources include activities which are not considered illegal such as formal business enterprises and donations from charity and private individuals. Such businesses and charity organizations or individuals must be regulated by law. For instance, Saudi Arabia spares no effort in drafting regulations and taking measures that cope with changes to ensure the continuing monitoring of Saudi local and foreign charitable and relief organizations, while in Japan business operations of the Aum Shinrikyo organization are subjected to regular inspections.
- (ii) Illegal revenues originate from the diversion of legal funds and at times covert aid from foreign governments. On the other hand criminal sources, to name some, range from theft, fraud, money laundering and extortion. Hence, it is of paramount importance that within the framework of achieving the objectives of countering terrorism, as set forth in the international instruments, the efforts at both domestic and international fronts must be absolutely comprehensive by way of legislation and enforcement of law and order, and must be consistent and continuous. It is also important to note that any action to criminalize such actions must comprehend not only the means currently used or abused but any means that promote any possibility of being used or abused to further such criminal activities.

B. Method of Transfer

Wire transfers pose a major problem and therefore comprehensive action is necessary by way of new legislation or amendments to existing laws to regulate their use. In addition, informal money transfer systems known by different names around the world such as *hawala* in the Middle East, *hundi* in India, *phoei* in Thailand, *fei chien* in Hong Kong, *padala* in the Philippines, in common request very little information from users. Other possible mediums of money transfers include the gate keepers such as law firms, accounting firms, real estate agents, insurance brokers and doctors whose records are protected by stringent privacy laws. To comprehensively deal with all financial transfer actions, such institutions must also be regulated and required by law to also implement *know your customer* policies and report suspicious transactions to their FIU. Needless to say, domestic legal regimes must be implemented to regulate privacy policies in the interest of enhancing public safety standards.

Development of possible alternative methods of transfer by sale of individual bank accounts must be regulated. More so the use of mobile, email and other internet facilities to make such transfers must be regulated. For instance, companies involved in the sale and connection of mobile phones must be required to keep records of their customers, including maintaining a record of serial numbers of the mobile phones sold to ensure tracing by law enforcement agencies where such items are used or abused in relation to terrorism. Hence new legislation may be required to effectively manage cyber space.

C. Obligations for Reporting

It is common among many countries that respective money laundering laws obligate banks and other

financial institutions to report suspicious transactions. However, it is perceived that similar policies, including registration and licensing, must be applied to operators of alternative remittance systems, cash couriers, gate keepers and also businesses that deal with cyber space technology.

A common practice among countries is that respective domestic laws set transaction limitations on the amount to be transferred at any one time. Most jurisdictions have standardized limitations at US\$10,000. However, reporting of suspicious transactions must not only apply to transactions over such set thresholds but must include reporting of any transaction below the threshold which for one reason or other is suspicious.

VI. INTERNATIONAL COOPERATION FOR INVESTIGATION

United Nations Security Council Resolutions 1373 and 1267 establish the basis for interagency cooperation at national and international level. We identified four pillars of international cooperation

1. Legislation
2. Information gathering
3. Investigation
4. Extradition

Some Member States of the United Nations have laws on international cooperation such as *the Law for International Assistance in Investigation* and *The Law Relating to Reciprocal Judicial Aid to be Given at the Request of Foreign Courts* which allows for investigation upon request by the requesting country even though there is no treaty between the receiving state and the requesting country. Comprehensive international efforts must adopt similar practices to enhance international cooperation. Other measures outside of formal arrangements such as direct contact between agencies of countries must be facilitated bilaterally or at regional levels to advance expeditious actions in investigation, prosecution and seizure or confiscation of tainted or suspicious property and freezing of accounts whereby formal bureaucratic and political red tape do not become an impediment to prudent law enforcement.

Indeed major and sensitive matters may take time. The process is slow where it relates to formal legal procedures. While lengthy formal procedures pose a problem it is compounded by the attitude of the respective countries in providing such assistance and cooperation. Nearly all countries identify with the problem. Thus it is necessary that arrangements be implemented to allow, for example, for direct police to police contact for cooperation and networking.

Some things are for sure. Terrorist organisations use various numbers of systems. For example, Money brokers or financing in the form of commodities such as gold and donations. Hence, direct contact between the police/intelligence agencies is dependent on mutual arrangements at the international level through consultations at international forums, or direct bilateral liaison may be able to assist in removing divergent interests of each country for the common interest. Perhaps also the use of existing forums such as Interpol and the Egmont Group are also encouraged instead of establishing new forums and agencies with a view to improving efficiency at minimal cost.

Because of its international nature, training is an integral part of enhancing a vibrant, efficient and effective legal regime in all aspects within the four pillars of cooperation. Countries who possess methods, technology and the expertise that meet the set international standards need to cooperate by extending their hand in assistance towards states which need assistance to curb not only the existing avenues and means of financing terrorism but also avenues that pose the potential to be abused for such criminal purposes.

VII. PREVENTIVE AND DETECTING MEASURES

Japan has domestic legislation and an action plan put in place by the government for counterterrorism and in particular measures on border surveillance and control measures. The current legal regime also allows site inspection of such known groups in particular. Many jurisdictions, in their determination to combat terrorism, are improvising methods to improve their capacity.

There is no one way of preventing and detecting international criminals, and more so effectively stopping them, before they even attempt to commit such offences which have a wider global impact on society in

terms of related costs and incidental effects. For example, Saudi Arabia has been subjected to more than 23 acts of terrorism at the domestic level. Hence it has established agencies to implement counter measures against terrorism, regulated charity donations and legislated severe punishment for offenders including the death penalty and long term prison terms with stricter parole and probation procedures. Special mention was made that in Saudi Arabia terrorist funds worth US\$ 11 million were frozen in compliance with Security Council Resolution 1267. These examples demonstrate that measures must be taken at both the domestic and international level to educate and promote awareness among citizens of the menace of terrorism.

Terrorism is a global threat by its assumed nature. Combating it requires global cooperation in the establishment of a legal regime through, sharing of experience, intelligence and information, collaborative legislation of stronger laws and cooperation in the detection, investigation and prosecution of acts of financing terrorism both at the domestic and international level.

VIII. RECOMMENDATIONS

- A. To ratify and implement the International Convention for the Suppression of the Financing of Terrorism;
- B. To adopt and implement the FATF Forty Recommendations and Nine Special Recommendations;
- C. In particular, the following measures should be prioritized:
 1. To establish the necessary legal framework to detect and investigate terrorist financing including measures to freeze, seize, and confiscate terrorist assets.
 2. To criminalize all acts of terrorist financing and bring all perpetrators to justice.
 3. To ensure that legal persons are subjected to appropriate civil, criminal, or administrative sanctions for non-compliance.
 4. To ensure that all banks and financial institutions are properly licensed or registered including alternative remittance service providers.
 5. To issue regulations for financial institutions with respect to terrorist financing obligations under the international standards and relevant domestic laws.
 6. To ensure the compliance by financial institutions and others that are subject to financing of terrorism regulations such as the *know your customer rule and suspicious transaction reports*.
 7. To regulate 'gate keepers' properly with respect to the obligation of making suspicious transaction reports.
 8. To enhance information sharing at the regional and international levels, e.g., by becoming a Member State of the Egmont Group for financial intelligence units.
 9. To enhance inter-agency cooperation among relevant ministries and agencies.
 10. To augment intelligence agencies.
 11. To hold training programmes locally and internationally for the concerned government officials to increase their knowledge and skill and familiarize them with the latest methods in combating terrorist financing.
 12. To conduct awareness-raising programmes for the general public.