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The fight against the financing of terrorism after the rise of the Islamic State

Supervisor

Ch. Prof. Antonio Trampus

Assistant supervisor

Ch. Prof. Sara De Vido

Graduand

Arianna Dal Borgo
Matriculation Number 838056

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Il tema principale di questo elaborato si occupa di indagare il concetto del finanziamento del terrorismo e le misure intraprese a livello regionale ed internazionale per combattere questa nuova minaccia. L'elaborato si presenta suddiviso in tre capitoli ed analizza non solo le misure di contrasto al finanziamento, ma al contrario enfatizza i problemi riscontrati a livello internazionale e i dibattiti che hanno poi dato vita ad una più forte cooperazione internazionale in materia. Tuttavia, la prima parte della tesi si focalizza in particolare sugli aspetti storici della nascita di due importanti organizzazioni terroristiche oggetto di studio nel contesto del finanziamento, Al Qaeda e lo Stato Islamico. È quest'ultimo ad essere il soggetto principale dei capitoli successivi, tuttavia la sua nascita è legata allo sviluppo di Al Qaeda con la quale condivide alcuni aspetti, mentre differisce per altri. Si può quindi affermare che il primo capitolo sia suddiviso in due parti. Nella prima parte sono descritti gli aspetti chiave dell'ideologia di Al Qaeda. Il richiamo al jihad (erroneamente utilizzato in forma femminile in italiano) come lotta sia spirituale che militare e ampiamente reinterpretato dal suo originale significato, l'adesione al movimento Salafista volto ad una purificazione dell'Islam e alla lotta nei confronti di quei Governi identificati come apostati, che hanno quindi deviato dal vero sentiero dell'Islam ed infine il costante attrito tra i due principali gruppi, Sciiti e Sunniti, causa ancora oggi di attacchi. Tuttavia le ideologie se non inserite nella giusta interpretazione hanno poco potere, ecco perché la descrizione dei principali leader e delle figure influenti per la costituzione di Al Qaeda prende uno spazio consistente nella prima parte, vengono infatti analizzate le figure di Azzam anche conosciuto con lo pseudonimo di padre del jihad globale e Zawahiri che prenderà poi il posto di Bin Laden alla sua morte. Eppure, sono gli avvenimenti storici ad influire di più sullo sviluppo delle diverse organizzazioni terroristiche. Per quanto riguarda la nascita di Al Qaeda non si può prescindere dal menzionare l'invasione dell'Afghanistan da parte dell'Unione Sovietica all'interno dell'allora Guerra Fredda, la guerra tra Iran e Iraq e l'invasione del Kuwait da parte dell'Iraq. Eventi storici preceduti da altrettanti sviluppi interni quali la salita al potere di Saddam Hussein in Iraq e l'istituzione della Repubblica Islamica in Iran, nonché la crescente presenza Americana nella regione. Inizialmente infatti l'organizzazione di Bin Laden non era proiettata verso l'esterno nei confronti di un nemico lontano, ma piuttosto verso un nemico più vicino. Tuttavia, specialmente quando gli Stati Uniti cominciarono ad istituire una forte alleanza con l'Arabia Saudita e ad aumentare la loro presenza nel territorio

e Bin Laden venne esiliato dal suo Paese natale, cominciò a maturare il suo odio nei confronti del nemico lontano accusato di umiliare la popolazione e di saccheggiare le loro ricchezze, come affermato nella sua famosa fatwa. Da quel momento, grazie anche alla rete di numerosi altri gruppi jihadisti con i quali Bin Laden aveva intrecciato intense relazioni specialmente nel suo periodo in Sudan negli anni '90, cominciò a pianificare diversi attentati terroristici e a definire i veri obiettivi dell'organizzazione: eliminare la presenza americana nella regione, distruggere Israele, combattere i regimi considerati apostati e ricostituire il Califfato, un'istituzione già presente nel corso della storia, ma abolita da Atatürk nel 1924. Tuttavia quest'ultimo obiettivo fu raggiunto nel 2014 dall'organizzazione terroristica che occupa la seconda parte del primo capitolo, lo Stato Islamico. Il termine Stato Islamico emerge solamente negli ultimi anni, dal 2014 in poi, mentre precedentemente il gruppo assume diverse denominazioni a seconda del territorio in cui esso opera. Inoltre il cambiamento di nome coincide spesso con la modifica dei leader stessi. Il nodo cruciale per lo sviluppo e la nascita dell'IS come lo si conosce oggi è sicuramente il periodo svolto in Iraq con il nome di Al-Qaeda in Iraq. È in questo periodo infatti che il gruppo sperimenta una fase di declino determinato in particolar modo dalla perdita di supporto da parte della popolazione locale specialmente a causa di un utilizzo estremo della violenza. E' in questa fase infatti che la popolazione locale decide di allearsi con gli Stati Uniti per cacciare l'organizzazione dal Paese. Tuttavia questa alleanza è di breve durata ed è in particolare la presa del potere da parte di Maliki che causa il ritorno del gruppo in Iraq. Il suo governo era caratterizzato infatti da una forte repressione nei confronti dei Sunniti e dal tentativo di alimentare una lotta settaria nel Paese, ragioni che spinsero numerosi Sunniti a legarsi al gruppo terrorista e a favorirne il suo rientro. Nel frattempo, sotto un'altra guida, l'organizzazione era mutata, rinforzandosi nella struttura e ritornando al suo precedente vigore. Una fase importante però per la definizione di un'organizzazione diversa da Al Qaeda e specialmente indipendente da quest'ultima è lo scoppio della guerra in Siria. Il nuovo leader di Al Qaeda infatti non riconosce e non accetta le azioni intraprese da Baghdadi in Siria, e la sua fusione con il Fronte Al Nusra, mettendolo nero su bianco in una dichiarazione in cui sottrae la responsabilità di Al Qaeda dalle azioni intraprese dallo Stato Islamico e ne segna la totale rottura. Il 29 Giugno dello stesso anno viene dichiarato il Califfato. Le somiglianze tra le due organizzazioni sono molte, tuttavia lo sono anche le differenze, in

particolare, lo Stato Islamico inserisce dei nuovi elementi che lo distanziano dalle altre organizzazioni terroristiche. Prima di tutto l'uso indiscriminato della violenza, un fattore più volte condannato anche dalla stessa Al Qaeda. In secondo luogo, il miglior utilizzo delle nuove tecnologie per la propaganda e il reclutamento di combattenti. In particolare, lo Stato Islamico sfrutta a suo favore i benefici delle piattaforme dei social network come Twitter, Facebook, Youtube, per menzionarne alcuni. Grazie alla forte accelerazione data da Internet dagli inizi del secolo, lo Stato Islamico è riuscito ad attrarre combattenti non solo a livello locale ma anche e specialmente a livello globale. Secondo numerosi documenti infatti è emersa una nuova minaccia, caratterizzata dai cosiddetti foreign fighters. Coloro che abbandonano le proprie case e famiglie per unirsi alla causa dello Stato Islamico e che spesso permettono una più facile pianificazione di attacchi terroristici in diverse zone del mondo. Tuttavia, parlando di organizzazioni e attacchi terroristici è necessario anche indagare che cosa si intenda per terrorismo e in particolare se esista o meno una definizione accademica del fenomeno. Vengono quindi prese in considerazione diverse definizioni esistenti specialmente a livello regionale, ad esempio nell'Unione Europea, nella Lega degli Stati Arabi, nell'Organizzazione della Conferenza Islamica e nell'Organizzazione dell'Unità Africana. In particolare, nel secondo capitolo viene evidenziato il dibattito riguardante la ricerca di una definizione universale di terrorismo. Durante il XX secolo infatti l'approccio utilizzato per definire gli atti considerati di terrorismo era un approccio settoriale, ed ha portato all'adozione di diciannove strumenti in seno alle Nazioni Unite specifici per ogni diversa situazione. Inoltre già agli inizi del 1900 era nato un dibattito riguardante il concetto di terrorismo. Il principale problema alla costituzione di una definizione universale di terrorismo, come evidenziato nell'elaborato, è il disaccordo di alcuni Paesi Arabi che ritengono che gli atti perpetrati dai Movimenti di Liberazione Nazionale (MLN) non debbano essere considerati atti terroristici. Le varie dichiarazioni infatti sottolineano come agendo sulla base del principio di autodeterminazione, principio riconosciuto dalla Carta ONU e dai due Patti del 1966, i MLN non possano essere inseriti nella definizione di terrorismo. Distinguere tra i due ambiti è assolutamente essenziale. Permette infatti ai MLN di godere della protezione del Diritto Internazionale Umanitario ma li obbliga anche a rispettarne i principi. Inoltre impedisce che incorrano in problemi legati al rispetto di alcuni diritti umani fondamentali come accaduto nel Regno Unito con l'adozione di Atti contro il terrorismo agli

inizi del XXI secolo. Nonostante gli sforzi a livello di Nazioni Unite e l'adozione in seno all'Assemblea Generale di un Comitato Ad Hoc sul tema, ad oggi non si è ancora riusciti a trovare una definizione universale. Il pericolo legato alla mancanza di una definizione risiedeva nel timore che gli Stati non potessero essere in grado di accordarsi sull'adozione di misure specifiche volte a contrastare il terrorismo. Tuttavia la ricerca di una definizione non ha minato gli sforzi singoli e collettivi degli Stati nei confronti della minaccia del terrorismo. Sebbene infatti esistano numerose definizioni di terrorismo, se ne contano più di duecento, ci sono degli elementi che ritornano e si ripetono e permettono in qualche modo di estrapolare un minimo comun denominatore tra tutte. Come poi affermato da diversi autori, è emerso un dibattito circa la possibilità di cambiare approccio nei confronti dell'identificazione di una definizione di terrorismo. Dal momento che esistono disaccordi su cosa includere e cosa escludere, un approccio diverso potrebbe basarsi sul rispetto dei diritti umani fondamentali, che essendo universalmente riconosciuti, permettono di partire da una base comune. Inoltre, come anche nell'ambito del finanziamento del terrorismo la cooperazione è emersa come fattore chiave per contrastare il fenomeno, in particolare dopo gli eventi dell'11 Settembre 2001. È fin da subito emerso che per combattere la minaccia del terrorismo è essenziale tagliarne i fondi che non solo permettono di organizzare e mettere in pratica attacchi terroristici ma contribuiscono anche al mantenimento stesso dell'organizzazione. È all'inizio degli anni 2000 che il concetto del finanziamento viene definito da tre importanti strumenti che saranno poi oggetto di studio anche nel terzo capitolo. La Convenzione di New York, la Risoluzione del Consiglio di Sicurezza 1373 ed infine le raccomandazioni della Financial Action Task Force. Tuttavia l'approccio al finanziamento si sviluppa e cambia durante gli anni. Dapprima assimilato al concetto del riciclaggio di denaro con cui effettivamente condivide alcuni aspetti in particolare per i fondi provenienti da fonti illecite. Tuttavia il finanziamento del terrorismo si differenzia per quanto riguarda quei fondi provenienti da fonti lecite, elemento che obbliga gli Stati ad adottare misure specifiche per il contrasto al finanziamento e il possibile abuso del sistema finanziario. Importante è anche il lavoro svolto dall'Unione Europea nell'attuazione delle Risoluzioni ONU e nello sviluppo di Direttive e Regolamenti UE volti a contrastare il finanziamento del terrorismo internazionale e il riciclaggio di denaro. È interessante notare come numerosi siano stati gli sviluppi soprattutto degli ultimi due anni, elemento che attesta la veloce evoluzione del crimine di

finanziamento.

L'ultima parte del secondo capitolo è dedicata invece ad aspetti più pratici ed in particolare ai metodi di finanziamento legati allo Stato Islamico. Nonostante negli ultimi anni l'IS abbia subito diminuzioni del territorio grazie alle coalizioni anti terrorismo, è comunque stato in grado di adattarsi ai cambiamenti e sfruttare al meglio il territorio sottoposto al suo controllo. Le principali attività di finanziamento includono non solo donazioni da parte di privati ma anche il commercio di petrolio e di reperti storici e in particolare il riscatto ottenuto dal rapimento di individui. Elemento quest'ultimo fortemente condannato dalle Nazioni Unite in numerose Risoluzioni. Tuttavia, lo sfruttamento del territorio non è l'unico aspetto che permette all'IS di finanziarsi. L'abuso del sistema finanziario è infatti un'altra grave minaccia, in particolare il controllo esercitato sulle banche nazionali del territorio controllato e sulle transazioni finanziarie sulle quali l'IS pone delle tasse. Inoltre, l'IS sfrutta canali non regolati dal sistema finanziario convenzionale e che non richiedono elevati livelli di controllo sulla natura delle transazioni e sul cliente. A questo si aggiunge la capacità di sfruttamento delle Organizzazioni non profit e delle operazioni di crowdfunding, canali attraverso i quali l'IS riesce a spostare i fondi affinché non vengano congelati. Elemento quest'ultimo che lo avvicina alle modalità di finanziamento utilizzate anche da Al Qaeda molti anni prima. Tuttavia, questi fondi non vengono solamente utilizzati per aspetti tecnici o militari relativi alla commissione di atti terroristici ma anche per fornire molti altri servizi. In particolare, lo Stato Islamico prevede un salario adeguato al livello di addestramento per i propri combattenti, inoltre prevede una somma volta al mantenimento della loro famiglia. Fornisce anche dei servizi più a livello sociale all'interno del territorio che controlla utilizzando i fondi per finanziare ospedali e scuole, queste ultime riorganizzate secondo la Sharia.

Infine, dopo aver analizzato le principali fonti di introiti per lo Stato Islamico, nell'ultimo capitolo si analizzano le misure volte a combattere e fermare il fenomeno del finanziamento. Inizialmente le misure adottate erano caratterizzate da una natura più repressiva, giustificata in qualche modo dall'onda di paura e rabbia verificatasi successivamente agli attacchi dell'11 Settembre. Tuttavia, successivamente, si è cercato di espandere le misure e volgerle più ad uno scopo preventivo cercando di includere tutti i possibili elementi che nel corso del tempo si sono aggiunti. Così il crimine di finanziamento ha finito per espandersi ed

includere non solo il finanziamento in senso stretto di organizzazioni terroristiche o individui ma anche il finanziamento diretto od indiretto con la consapevolezza che venga utilizzato per perpetrare in parte o totalmente un atto terroristico. Inoltre negli ultimi anni il concetto si è notevolmente esteso fino a comprendere anche il finanziamento dei viaggi a scopi terroristici e l'addestramento di futuri terroristi. A livello di Nazioni Unite, in particolare il Consiglio di Sicurezza, c'è un continuo lavoro di modifica ed integrazione delle varie Risoluzioni per far in modo di includere tutti i possibili elementi. Un lavoro che va a pari passo con le modifiche apportate all'interno dell'Unione Europea e dalla Task Force, un organismo globale intergovernativo quest'ultimo, testimone della volontà degli Stati di cooperare anche sulla base di atti di soft-law e quindi non vincolanti. Importante è infatti il lavoro della Task Force che si costituisce anche di organismi regionali per estendere i suoi standard e permettere un'omogeneizzazione nelle misure di contrasto al finanziamento del terrorismo. Un'analisi più approfondita poi viene stilata su una delle misure di contrasto più applicate conseguentemente alla designazione di un terrorista o di un'organizzazione come terroristica, il congelamento dei capitali. Questa misura ha subito numerose modifiche nel corso del tempo specialmente perché come altre misure adottate inizialmente non prevedeva il rispetto di alcuni diritti umani fondamentali. In particolare, al soggetto i cui beni venivano congelati non veniva notificata l'azione intrapresa e non gli era nemmeno possibile visionare i documenti che lo incolpavano di essere un terrorista anche perché spesso questi documenti facevano parte di file classificati come confidenziali. In ambito di Nazioni Unite si sono venute a costituire due diverse liste sanzionatorie di sospetti terroristi, due regimi rappresentati dalle Risoluzioni ONU 1267 e 1373. Mentre la prima si riferiva ad individui o organizzazioni legate ad Al Qaeda e ai Talebani, quindi ad una specifica situazione, la seconda prevedeva invece il congelamento di beni di sospetti terroristi facenti parte di altre organizzazioni. Diverse modifiche sono poi avvenute nel corso del tempo in particolare per le sanzioni riguardanti Al Qaeda, che hanno finito per includere anche lo Stato Islamico, riconosciuto dalle Nazioni Unite come un gruppo emergente da Al Qaeda. Tuttavia nel corso degli anni il sistema delle liste implementato anche all'interno dell'Unione Europea ha prodotto numerosi problemi. Il principale riguardava il rispetto dei diritti umani fondamentali come il diritto ad un equo processo e il diritto ad essere ascoltato. In questa cornice si inserisce perfettamente il famoso caso Kadi, poi rimosso dalla lista di sospetto

terrorista, i cui beni però sono rimasti congelati per più di dieci anni. Il sistema di lista era stato concepito senza un meccanismo che prevedesse la possibilità per il sospetto terrorista di chiederne l'annullamento. Sono state così concepite ed inserite due figure per la verifica di inserimento o eliminazione dalla lista, il Focal Point e l'Ombudsperson, e si è inoltre reso obbligatorio un sistema di revisione periodico delle liste. Mentre l'Ombudsperson è responsabile della lista che riguarda Al Qaeda e l'ISIS, il Focal Point prende in considerazione tutti gli altri casi. Sebbene il loro obiettivo sia lo stesso, le due figure sono però caratterizzate da due meccanismi differenti. L'elemento che li contraddistingue maggiormente risiede nella possibilità per l'Ombudsperson di avere un incontro personale vis-à-vis con colui che ha fatto la richiesta di annullamento, procedura non prevista invece per il Focal Point.

Successivamente l'elaborato prende in considerazione le principali misure attuate per contrastare l'abuso del sistema finanziario, in particolare riguardante il controllo sul cliente responsabile delle transazioni, attraverso il principio del Know Your Customer (KYC). Un principio riscontrato sia nelle direttive dell'Unione Europea, sia nelle raccomandazioni della Task Force, sia di altri organismi coinvolti nella lotta al finanziamento del terrorismo nell'ambito del settore finanziario come ad esempio il Basel Committee. Tuttavia l'unico modo in cui queste misure possano essere davvero efficaci è attraverso una forte cooperazione internazionale. La cooperazione è infatti l'elemento chiave. È importante notare come sia nato nel corso del tempo una forma di natura consuetudinaria in questo ambito, in cui gli Stati decidono di adottare atti non vincolanti, specialmente le Raccomandazioni della Task Force. La cooperazione si intensifica attraverso lo scambio di informazioni tra Stati. Quest'ultimo aspetto viene regolato in particolar modo dall'azione delle Financial Intelligence Unit (FIU), il cui lavoro non solo è riconosciuto dalle Nazioni Unite ma anche dalla Task Force e dalle Direttive dell'Unione Europea. Le FIU nascono a livello nazionale ma si coordinano all'interno di un gruppo denominato Egmont Group. Il loro ruolo è quello di ricevere informazioni ad esempio di transazioni sospette, analizzarle e verificare il legame tra le operazioni finanziarie e una possibile attività illecita e poi inviare le informazioni ad altre FIU o alle autorità competenti. Tuttavia la cooperazione è regolata in particolar modo anche da accordi bilaterali, ed è in questo contesto che si inseriscono gli accordi SWIFT tra Unione Europea e Stati Uniti, accordi che sono stati caratterizzati da numerose modifiche nel corso del tempo in particolare per la volontà da parte dell'Unione

Europea di tutelare il diritto alla privacy dei cittadini europei precedentemente violati. Infine, ampio spazio viene lasciato all'analisi delle misure attuate nei Paesi Arabi con particolare riferimento ai Paesi del Golfo e a due casi particolari, l'Arabia Saudita e gli Emirati Arabi. A livello locale hanno implementato le misure contro il finanziamento del terrorismo, mentre a livello globale fanno entrambi parte di una coalizione anti ISIS gestita dagli Stati Uniti, dimostrando nel corso del tempo di voler combattere il terrorismo e il suo finanziamento. Il Consiglio di Cooperazione del Golfo ha istituito inoltre delle forze navali e una polizia simile all'Interpol e ha inoltre valutato la possibilità di adottare la lista di sospetti terroristi istituita dagli Emirati Arabi e dall'Arabia Saudita. Inoltre, nel 2015 l'Arabia Saudita ha istituito una coalizione composta da 34 Stati per combattere il terrorismo non solo legato allo Stato Islamico. Tuttavia, la coalizione ha escluso alcuni paesi chiave come l'Iran, l'Iraq e la Siria e non vede nemmeno la partecipazione dell'Algeria, considerato uno dei Paesi con più esperienza nella lotta al terrorismo.

L'ultima parte infine analizza la cooperazione esistente tra i Paesi Arabi e l'Unione Europea non solo nella lotta contro il terrorismo ma anche contro il suo finanziamento. Per questo motivo già nel 2006 era stato istituito un dialogo euro-arabo che inizialmente era volto al contrasto del riciclaggio di denaro ma che poi ha inserito anche il finanziamento del terrorismo tra i suoi obiettivi. In particolare l'Unione delle Banche Arabe ha evidenziato come sia l'esclusione di una grande porzione della popolazione dal sistema finanziario a facilitare l'utilizzo di canali non regolati e a impedire un'attuazione totale delle misure contro l'abuso del sistema finanziario. Solo attraverso una più ampia inclusione è possibile una maggiore regolazione e un maggior controllo delle attività finanziarie. Un concetto definito anche dalla Task Force. Tuttavia ci sono svariati motivi che impediscono l'inclusione finanziaria, dalla mancanza di fiducia nelle banche, alla mancanza di denaro, alla maggior fiducia riposta in attività finanziarie non regolate dal sistema convenzionale. Persone che hanno difficoltà ad ottenere un conto bancario preferiscono affidarsi a sistemi non regolati ma ampiamente diffusi nella zona. Questo è il principale motivo per cui si sta cercando di attuare delle misure volte a permettere alla maggioranza della popolazione di poter ottenere un conto bancario e di regolare quei sistemi fino ad ora esclusi dal controllo attraverso una semplice identificazione del cliente che può avvenire con la presentazione di un documento di identità o con metodi alternativi quali una lettera di presentazione da

parte di un datore di lavoro o di una persona che ricopre una carica riconosciuta all'interno della società. Infine, viene solamente accennata l'esistenza delle istituzioni finanziarie islamiche, fondate quindi sulla legge islamica, che permettono di condurre transazioni finanziarie rispettando la Sharia. Tuttavia, questo tipo di istituzioni finanziarie sono diverse dalle istituzioni finanziarie convenzionali e si basano su un rapporto diverso tra il cliente e l'istituzione, rapporto che manca di una specifica definizione anche all'interno della Task Force. Per permettere un controllo maggiore sul settore finanziario è quindi importante che vengano indagati anche questi aspetti più specifici così da permettere la completa attuazione degli standard internazionali ed evitare qualsiasi forma di abuso.

The aim of this paper is to investigate the problem of the financing of terrorism at an international level and on a regional one and in particular to emphasize the measures and solutions taken to combat this threat. The research focuses in particular on two main terrorist organization, Al Qaeda and the Islamic State. Aware of the existence of different ways to spell both name, I decided to adopt the most well-known and most common, found in the majority of the documents examined. A brief introduction on the birth of these two organizations precedes the core of the discussion, which is highlighted in the other two chapters. The choice of a historical introduction to the subject of the financing of terrorism is due to some questions. The aim of the paper is in fact built on some personal questions that drove me in the research. In particular, what are these terrorist organizations? When did they start to gain support and visibility? How can these organizations organize and finance so many terrorist attacks? Most importantly, what is terrorism? Is there a definition of the phenomenon? These questions pushed me to investigate all these aspects. I sought to reconstruct the development of the phenomenon of terrorism from the international law perspective with some hints to the European Union Law. In particular, I focused on the problems related to the definition of terrorism and on the existing definitions on a regional level. I highlighted the several elements in common while underlying the major disagreement especially expressed from the Arab Countries. Particular attention has been given to the main debates on the subject taking into consideration the role of the National Liberation Movements and the implications to define a particular act as an act of terrorism or not. The paper has not the aim of finding an answer to this difficult scenario, but, rather, to describe the context in which the phenomenon of terrorism has evolved and is evolving. In particular, I wanted to analyse the specific aspect of the financing and the approach taken to contrast this international threat. Moreover, even if acts of terrorism have always existed during the centuries, it is in the aftermath of the events of 11 September 2001 that the situation changed. The last fifteen years are in fact characterized by the adoption of several legal documents on the issue. However, three are the main documents analysed, the Convention for the Suppression of the financing of terrorism, the Security Council Resolutions 1373 and 1267 and the recommendations of the Financial Action Task Force (FATF). These are the key documents that shaped the framework in which adopting the different measures in order to combat the financing. In particular, the work of the FATF has

been regarded as decisive in the adoption of measures to combat the funding and to prevent the abuse of the financial system for terrorist purposes. Emphasis has been given on the different approach adopted to contrast the threat. Repressive at the beginning and linked to the crime of money-loundering due to the several elements in common, while evolving into a more preventive one and on the definition of the financing as a discrete crime. Wide-ranging space is dedicated to the explanation of the freezing of assets, the measure put in place to stop the funding of terrorism. In particular, the measure is analysed from the perspective of the International Law and of the EU law, with particular reference on its legal basis and on the problem related to it, namely the abuse of some fundamental human rights. Another aspect extensively investigated is the cooperation among States, key aspect on this context. In the last chapter is mentioned not only the cooperation between The United States and the European Union with the adoption of the SWIFT Agreement but also the cooperation among financial institutions and between the Arab Countries and the European Union. The last part is finally dedicated to the study of the situation concerning the financial system and its abuse. It will be analysed the efforts to protect the financial system and also the difficulties encountered in two different aspects, the protection of the right to privacy of the customers and their transactions and the existence of several unregulated financial methods still in use. As far as the last aspect is concerned, there have been several attempts to include as many people as possible in the regulated financial system, the financial inclusion together with the adoption of more strict measures are in fact the key aspect to protect the system. However, in the more involved regions, such as the one of the Middle East, States are moving their first steps towards a total inclusion, thanks especially to the adoption of the FATF recommendations. Finally, there is a reference to the particular case of the Islamic financial institutions, which are characterized by some specific and particular elements. In order to guarantee a total control of the financial system with the intention of disrupting the moving of funds for terrorist purposes, it is necessary to include also these specific cases in the legal documents adopted at the international level. Thus, it is possible to recognize three main parts in the paper. The first one is purely historical and it is necessary to understand the historical context in which these terrorist organizations have developed and to comprehend the ideologies behind them. The second one refers instead to the debate concerning the research for a definition of terrorism. Finally, the third

one aims at describing the framework in which the financing of terrorism has been defined and to provide an overview on the measures put in practice to combat the problem.

In the paper, there are no specific references to national laws regarding the contrast to the financing of terrorism. However, the situation of two Gulf States, Saudi Arabia and UAE, is taken into consideration in order to provide an example on the ways in which they are applying the measures put in place to be in compliance with the international standards.

CHAPTER 1

1. Linguistic clarifications of some Arab words and ideologies: *jihad, shia-sunni split and Salafist movement*

A linguistic clarification of the key words responsible for the redefinition of the geo-political situation nowadays is a pivotal aspect. There are in fact some misused terms, which do not help the real comprehension of the context. On the contrary, they contribute to increase a sense of ambiguity. That is why in order to understand the main content, an explanation on what these terms mean and how they developed is necessary. Words are undeniably important not only for their own meanings but for the meanings they have for the organizations I intend to discuss. The main terms taken into account for this research are **Jihad, the Shia-Sunni split and the Salafist movement.**

The concept of jihad has always led to a considerable amount of confusion, with some writers referring to its martial nature and others to its spiritual dimension. It is therefore essential to have an understanding of the origins of this terminology. The Arabic root of the term “jihad” generally generally to “struggle”, although it is necessary to make a distinction between the inner struggle, also known as greater jihad, and the lesser jihad which refers to the efforts of bringing the society into compliance with Islam.¹ Traditionally, the spiritual dimension was more important than the military one, it referred to the efforts necessary to achieve purification and it admitted the only verbal “struggle” against the ones who refused the word of God.² Moreover, the concept is regarded to be defensive in nature, which means that force has to be used only when Muslim countries are under external threat. In the last century the term has been more and more connected to the idea of armed conflict, a body of jurisprudence relating to armed conflict has developed. The so-called *kitab al-jihad*, which shares several elements with the concepts included in the International Humanitarian Law of *jus in bello* and *jus ad bellum*. Moreover, it makes an important distinction between combatants and non-combatants as underlined in the Qur’an. As Maher

¹ Peter Mandaville, *Islam and International relations in the Middle East: From Umma to Nation State*, in *International relations of the Middle East*, Louise Fawcett, Fourth Edition, Oxford University Press, p. 179

² Paolo Maggiolini, *Dal jihad al jihadismo: militanza e lotta armata tra XX e XXI secolo*, p. 7, in *Jihad e Terrorismo, Da al-Qa’ida all’ISIS: storia di un nemico che cambia*, Andrea Plebani

Hathout³ argued, “You don't harm civilians, children, or even infrastructure. And you don't exceed that, you don't transgress. That's the limit.”⁴ It is especially from the death of the Prophet in the VII Century that the concept started to develop embracing the military dimension, becoming not only a collective duty but also an individual one. The concept of jihadism changed during the century. At the beginning, it referred especially to a local dimension, notably towards the Arab regimes. During the '60s and '70s, jihadism was connected to the separatist movement, namely in Chechnia, and in the '80s to the movement of resistance in Afghanistan against the Soviet troops, while today it refers especially to a global dimension.⁵ However, it is especially during the 20th Century that the jihad acquired the status of autonomous concept.

Nowadays, the call to jihad is profoundly different from the traditional meaning. During the second half of the twentieth century, some relevant figures radically reinterpreted the concept arguing that even the main Muslim rulers had abandoned the true interpretation of Islam. Thus, the new interpretation underlined the possibility of declaring a war by the proper political authorities. The three main figures who lead to a radical interpretation were Sayyid Qutb, Muhammad Faraj and Abdullah Azzam. Sayyid Qutb was a member of the Muslim Brotherhood, executed in the 1966 after being imprisoned accused of conspiracy against Nasser. In prison, he wrote *Ma'alim fi'l-tariq* in which he gave the new interpretation of jihad; he legitimized the call to the jihad in order to overthrow the corrupted governments, a task for the so-called real Muslims⁶. Muhammad Faraj, another Egyptian ideologue who claimed that the Egyptian Government should have been overthrown because of its adherence with the Western ideologies. He justified the armed revolt in the name of the real Islam. Within his work “al-Jihad al-Farida al-Ghayba” he tried to establish the jihad as the sixth pillar of Islam, eliminating the distinction between a defensive jihad and an offensive one, underlying the only existence of the latter.⁷ Finally, Abdullah Azzam,

³ An influential American Muslim leader. He represented free and critical thinking in helping Muslims face contemporary challenges and bring congruence between living as a Muslim and as an American. Maher Hathout, *a Powerful Voice for American Muslims, Dies at 79*, *Ney York Times*, 10 January 2015, <http://www.nytimes.com/2015/01/11/us/maher-hathout-a-powerful-voice-for-american-muslims-dies-at-79.html? r=0>

⁴ Brian Handwerk, *What Does "Jihad" Really Mean to Muslims?*, *National Geographic News*, 24 October 2003, http://news.nationalgeographic.com/news/2003/10/1023_031023_jihad.html

⁵ P. Maggiolini, *Dal Jihad..*, op. cit., p. 5

⁶ P. Maggiolini, *Dal Jihad..*, op. cit., p. 27

⁷ P. Maggiolini, *Dal Jihad..*, op. cit., p. 33

known as the Father of Global Jihad, was a mentor and co-founder of Al Qaeda together with Osama Bin Laden. He redefined again the concept, introducing the necessity of the existence of an Islamic State in order to call for the jihad.

Another important historical event relevant for our research is the **Sunni-Shia split** that occurred in the year 632 over the question of succession after the death of the prophet Muhammad.⁸ Briefly, some believed that the leadership should stay within the family of the Prophet (the Shia), while others believed that the community had the right to choose the best successor (the Sunni). The Sunnis prevailed and chose the first caliph (*khalifa*, successor). The two groups shared some elements while differ in others, but the main relevant aspect is the number of those who decided to embrace the one or the other faction. While 80% of the Muslims are Sunnis, the 15% are Shia. The prevalent presence of Shia Muslims is found in Iran (90%), Iraq (55%), Pakistan (20%), Saudi Arabia (15%), Bahrein (70%), Lebanon (27%), Yemen (50%), and Syria (15%)⁹. Furthermore, Shiites predominate where oil reserves are available such as in Iraq, Iran and Saudi Arabia. This is an important factor to take into account, because as we have seen in 2014 when the IS entered Mosul in Iraq, they started to eliminate every Shiite presence in the area, destroying sacred places and mosques. These actions are part of the so-called ethnic cleansing imposed by Salafism, which adopted genocide as a war strategy to eliminate any possibility rebellion and opposition.¹⁰ Moreover, since the Shia-Sunni split, the two groups accused each other of apostasy (*Al takfir*) in the struggle for the political power. To be precise, the concept of Al takfir is difficult to explain because it has been used as a tool from different leaders to justify various wars of conquest against a different religious group. In the modern era, this term refers to those leaders of Islamic States who are accused of being less religious. However, it has been alternatively used as a religious and political instrument depending on circumstances, even if some Muslim groups reject the concept as a doctrinal deviation¹¹.

⁸ *Sunnis and Shia: Islam's ancient schism*, BBC News, 4 January 2016, <http://www.bbc.com/news/world-middle-east-16047709>

⁹ *La differenza tra Sciiti e Sunniti*, La Stampa, 26 Nov. 2015, <http://www.lastampa.it/2015/11/26/multimedia/esteri/la-differenza-tra-sunniti-e-sciiti-spiegata-in-con-unanimazione-ycZHGoQGC83cH5CMe2hugj/pagina.html> and in Guido De Franceschi e Davide Mottes, *Islamografia*, Il sole 24 ore, http://www.ilsole24ore.com/pdf2010/Editrice/ILSOLE24ORE/ILSOLE24ORE/Online/Oggetti_Correlati/Documenti/Cultura/2015/02/Storia-copertina-Islamografica.pdf

¹⁰ Loretta Napoleoni, *ISIS lo Stato del terrore*, Giangiaco Feltrinelli Editore Milano, 2014, p. 95

¹¹ Takfir, Oxford Islamic Studies, <http://www.oxfordislamicstudies.com/article/opr/t125/e2319>

The third and last important concept is the **Salafist Movement** and ideology, considered the common denominator between Taliban, Al Qaeda and IS. Salafism is an ideology stating that Islam diverted from its original path. The Arabic root *salaf* means “the pious predecessors”¹² and it refers to the companions of the prophet Mohammed. They call for a re-Islamization, a return to the authentic Islam, intended to refuse every religious innovation, rather replicating the original model of the Prophet¹³. However, traditionally they are non-violent, in fact they do not refer to the use of violence or war but to a re-Islamization on a daily-life level¹⁴. Nevertheless, through the years, the concept has changed, becoming the main ideology behind terrorism and acts of violence. Everything started during the Ottoman Empire when the Salafism looked at the European countries as a model of modernization. In order to gain independence from the Empire they needed to build an Arab identity under the umbrella of the real Islam. When they became independent from the Empire and they were colonized by the main European powers, that divided the land in small different countries without taking into consideration the culture, history and tribes, they felt betrayed. From that moment on, they started to look at the Western countries as an enemy and anti-Western feelings started to spread. While the main objective of the movement remained the same, the purification of Islam, the responsible changed. Not the Ottoman Empire but the Western countries were responsible for the deterioration of the Arab lands. During the ‘50s in Egypt, the figure of Qutb (mentioned above) started to embrace this ideology, stating that it was necessary to break the links with the pro-Western government such as the Egyptian one. Thus, he turned the concept of *takfir* into a political instrument, aimed at those Arabs (like Nasser) who polluted and betrayed the real Islam. The situation worsened especially after the recognition by the Arab leaders of the existence of Israel in a Muslim land, the ancient territory of the Caliphate. The first country to recognize Israel was Egypt in 1978 thanks to the Camp David accord¹⁵. This was perceived by the other Arab countries as a betrayal, triggering a series of different reactions. However, not all the

¹² Joas Wagemakers, *Salafism*, Religion Oxford research Encyclopedias, Aug. 2016, <http://religion.oxfordre.com/view/10.1093/acrefore/9780199340378.001.0001/acrefore-9780199340378-e-255> and in *Salafismo*, Treccani vocabolario online, <http://www.treccani.it/vocabolario/salafismo/>

¹³ Quintan Wiktorowicz, *Anatomy of the Salafi Movement*, 2006

¹⁴ Bruce Livesey, *The Salafist Movement*, Frontline, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/front/special/sala.html>

¹⁵ Charles Smith, *The Arab-Israeli Conflict* in Louise Fawcett, *International Relations of the Middle East*, Fourth Edition, 2016, Oxford University Press, p. 271

Salafists are radical and violent. The movement developed in three different factions in different areas. The traditionists, the wahabbists (especially in Saudi Arabia) and the modernists (especially in Iraq and Syria). While wahabbists wanted to return to the salaf, to “purify” Islam, the modernists stressed their focus on “the pious predecessors” and to the necessity of “modernize” Islam¹⁶. Despite the theological differences, Salafists are also divided in their method on how to apply their views in practice. It is in fact possible to identify three different branches of Salafists: the quietist, political and the jihadist. For the purpose of this research, we will focus mainly on the latest group mentioned. The Jihadi-Salafis, also known as “the violent rejectionists”¹⁷, are the ones who embrace the reinterpretation of Qutb. They believe that military jihad should not just intervene between Muslims and non-Muslims in order to defend the so-called *dār al-Islām* (home of Islam) but also to fight against what they perceive to be the apostate rulers in the Muslim world itself¹⁸. It is interesting, taking into consideration the main events related to the international terrorism nowadays, noting how these concepts have evolved during the centuries resulting in the fusion between the Salafist ideology and the call for the jihad in order to justify the use of violence in the name of a purification of the real Islam.

1.1 The genesis of Al Qaeda: historical content

The year 1979 marks the beginning of an era of change. This year is significant because of five main episodes: the peace treaty between Egypt and Israel, the takeover of the Grand Mosque in Mecca by some Islamist militants, the Islamist revolution in Iran, the Soviet invasion of Afghanistan and the beginning of the Saddam’s government¹⁹. In this context, the most relevant episode is the invasion of Afghanistan by USSR. It is important to mention that the Cold War was still ongoing, and such military action by the Soviet Union was considered by the US as a political strategy for the spread of the Soviet influence in the area, thus was perceived as a threat to the improvements in the bilateral relations between the

¹⁶ J. Wagemakers, *Salafism*, op. cit. p.6

¹⁷ Patrick French, *What do Islamist extremists believe? Salafi-Jihadism* by Shiraz Maher and *Crusade and Jihad* by Malcolm Lambert – review, *The Guardian*, 24 March 2016, <https://www.theguardian.com/books/2016/mar/24/salafi-jihadism-shiraz-maher-crusade-jihad-malcolm-lambert-review-patrick-french>

¹⁸ J. Wagemakers, *Salafism*, op. cit., p.17

¹⁹ Michael C. Hudson, *The United States in the Middle East* in L. Fawcett, *International Relations.. op., cit., p. 366* and in Massimo Campanini, *L'islamismo Jihadista Da Al-Qaeda All'IS*, Analysis No. 290, ISPI, Novembre 2015

two superpowers achieved through the *détente* period (a French word meaning release from tension) which started in 1971²⁰. Moreover, the Gulf was an area of high interests for the Carter administration and, with the support of many other Countries, he stopped the invasion and eventually the presence of the Soviet Union. Different were the factions in the territory. On one side the USSR supporting the Democratic Republic of Afghanistan, formed the year earlier with a socialist agenda, which was developing several reforms to modernize the country. On the other side there were the so-called *mujahideen* (literally “the one engaged in the jihad”) supported by an international coalition, US, UK, Pakistan, Saudi Arabia, China and Iran²¹. The discontent started to spread after the developing of the reforms, which were perceived in contradiction with the Islamic precepts²². Due to the negative feedback by the rural population, the Government responded with a brutal repression, provoking a deep reaction even in other countries. By the end of the 1979, 25 out of 28 Afghan provinces were against the government. Therefore, the Soviet Union decided to use military troops to force the deposition of Amin and to support the instalment of Babrack Karmal, a more moderate leader, in order to improve the image of the Soviet Union in Afghanistan. Meanwhile a series of alliances started to emerge. The US sent several economic and military aids to Pakistan to stop the Soviet advance. It is estimated that by the end of the 1987, the United States provided 65000 tons of weapons to the guerrilla and 470 million dollars contributing to the Soviet defeat and its ultimate withdrawal²³. It is in this scenario that the figure of Osama Bin Laden emerged. Son of a rich Saudi family, he left Saudi Arabia to join the mujahideen in the war against the Soviet Union especially giving financial support to Abdullah Azzam, one of the co-founder and leading figure of Al Qaeda. However, the different factions of mujahideen, linked by a weak alliance, split in two main groups after the Soviet dissolution: the Tagiki supported by Iran and the Afghan-Arab (foreign fighters) supported by Pakistan. That is why a civil war exploded until the arrival of the Taleban. Movement, which prevailed on both sides and took control of the major part of

²⁰ Ennio Di Nolfo, *Dagli Imperi militari agli Imperi Tecnologici, la politica internazionale dal XX secolo ad oggi*, 2007, Editori LaTerza, p. 343

²¹ Lester W. Grau and Ali Ahmad Jalali, *The Soviet-Afghan War: Breaking the Hammer & Sickle*, p. 2

²² Evan Kohlmann, *A Bitter Harvest: The Soviet Intervention in Afghanistan and its Effects on Afghan Political Movements*, 20 December 2009, p. 9

²³ *Afghanistan, la storia vera*, Centro Studi per la pace, 22 December 2001, http://www.studiperlapace.it/view_news.html?news_id=afghanistan

Afghanistan. However, Bin Laden did not always remain in Afghanistan. In fact, in 1991, the organization moved to Sudan where it remained for five years. During this time, he sent several donations to Turabi, a leading Islamic Scholar tied to Sudan's Muslim Brotherhood²⁴. It was Turabi who invited Bin Laden in Sudan in 1991, a time when in Afghanistan the Soviet Union had already withdrew and the Afghan jihad was turning into a civil rebellion, while Pakistan was exerting some pressure for Arab jihadist to leave the country. During that time Sudan became the base for many terrorist groups such as Hamas, Hizballah, and especially the EIJ. The reason is that Arabs were not required to have a visa to enter Sudan and this enabled radicals without their passports, because seized, to enter the country²⁵. Moreover, Sudan itself was one of the major sponsor of terrorism, involved in the planning of the 1993 attack on the World Trade Centre in New York City and providing weapons, training and travel documents. Moreover, in Sudan, Bin Laden established the Islamic Army Shura Council to coordinate different jihadist terrorists. However, the Sudanese support for terrorism changed dramatically in 1995. In that year, some Egyptian jihadist supported by the Sudanese government and based in Sudan, attempted to assassinate Mubarak, the Egyptian President, while he was visiting Addis Abeba²⁶. Some Arab countries pressured Sudan to deliver the assassins, but after its refusal, the United Nations decided to impose sanctions to the country in 1996²⁷. Since the heavy sanctions, Sudan started to expel many Egyptian fighters, and asking Bin Laden to leave. That is why in 1996 he and his organization returned to Afghanistan. Although he had to leave, the meeting and connections among jihadists from different groups proved relevant for the future of the organization, especially referring to its vision on global jihad. It is in fact in 1997, the year later, that Zawahiri, the leader of the EIJ, returned to Afghanistan after being imprisoned for several months in Russia and it is in this moment that the two leaders started their collaboration²⁸. The EIJ needed economic

²⁴ Daniel Byman, *Al Qaeda, The Islamic State and the global jihadist movement*, Oxford University Press, 2015, p. 10

²⁵ D. Byman, *Al Qaeda..*, op., cit., p. 11

²⁶ Youssef M. Ibrahim, *Egyptian Group Says It Tried to Kill Mubarak*, New York Times, 5 July 1995, <http://www.nytimes.com/1995/07/05/world/egyptian-group-says-it-tried-to-kill-mubarak.html>

²⁷ S/RES/1054 (1996) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N96/107/86/PDF/N9610786.pdf?OpenElement> and S/RES/1070 (1996) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N96/214/20/PDF/N9621420.pdf?OpenElement>

²⁸ Cameron Glenn, *Al Qaeda v. ISIS: leaders and structures*, 28 September 2015 <https://www.wilsoncenter.org/article/al-qaeda-v-isis-leaders-structure> and *Al-Qaeda's remaining leaders*, 16 June 2015, BBC, <http://www.bbc.com/news/world-south-asia-11489337>

support, the kind of support Bin Laden could give. Moreover, after the relocation of Bin Laden in Afghanistan, he started a closer cooperation even with the Taliban, a Pashtun movement who came to prominence in Afghanistan in the autumn of 1994.²⁹ The Taliban emerged from Deobandi groups³⁰ in Pakistan and idealized a rural way of life, emphasizing traditional values. The Deobandi school argues that the reason Islamic societies have fallen behind the West in all spheres is because they have been seduced by the amoral way of life of the West, and have deviated from the original teachings of the Prophet³¹. This movement, under the guidance of the mullah Omar³² was an organized armed movement initiated in refugee camps in Pakistan during the 80s and taught in the Saudi-backed Wahhabi madrassas³³.

Even though the two groups supported each other, they had different ideologies. While Osama Bin Laden considered Afghanistan as part of a bigger plan, the Taliban focused more on the country³⁴. Moreover, the Saudi Arabia (together with Pakistan and the UAE) recognized the Taliban³⁵ while considering Bin Laden as an enemy and asking for his expulsion from the country. On the contrary, the Taliban provided Al Qaeda of all the protection needed, especially after the cruise missiles launched against suspected Al Qaeda training camps in Afghanistan. Gradually the two organizations intersected. The Taliban imposed few restrictions on Al Qaeda. The protection provided enabled the organization to plan and organize different attacks, using the training camps in Afghanistan for new recruits and spreading its interpretation of the Jihad³⁶.

²⁹ *Who are the Taliban*, BBC news, 26 May 2016, <http://www.bbc.com/news/world-south-asia-11451718>

³⁰ *Deobandis*, Oxford Islamic Studies Online, <http://www.oxfordislamicstudies.com/article/opr/t125/e522>

³¹ *Deobandi Islam*, <http://www.globalsecurity.org/military/intro/islam-deobandi.htm>

³² Carlotta Gall, *Mullah Muhammad Omar, Enigmatic Leader of Afghan Taliban, Is Dead*, 30 July 2015, New York Times, <https://www.nytimes.com/2015/07/31/world/asia/mullah-muhammad-omar-taliban-leader-afghanistan-dies.html>

³³ Syed Hussain Shaheed Soherwordi, Syed Irfan Ashraf, Shahid Ali Khattak, *The Characteristic Traits of Terrorism and Interpretation of Jihad by Al-Qaeda and the Taliban in the Pak-Afghan Society*, A Research Journal of South Asian Studies Vol. 27, No. 2, July-December 2012, pp.345-358 , p. 347, http://pu.edu.pk/images/journal/csas/PDF/4%20Dr.%20S%20Hussain%20Shahid_V28_no2_12.pdf

³⁴ D. Byman, *Al Qaeda*., op., cit., p. 21

³⁵ *Who are the Taliban*, op., cit.

³⁶ *"The 9/11 Commission Report"*, p. 66-67, <https://www.9-11commission.gov/report/911Report.pdf>

1.2. The two most influential figures for the definition of Al Qaeda

Formally, Al Qaeda (whose name means “the base”) emerged as a group at a gathering held at Peshawar, in August 1988³⁷. A self proclaimed jihadist vanguard movement, that would support the struggle of Muslim across the globe. The two main personalities who influenced the development of the organization are Abdullah Azzam and Zawahiri.

Yassouf Mustafa Abdallaha Azzam (hereafter referred to as **Azzam**) known as “the father of the modern global jihad” and co-founder of Al Qaeda, was born near Jenin in 1941, in the Mandate Palestine³⁸. His origin are extremely important for the understanding of his life. He faced both the 1948 and the 1967 war in Palestine and he was particularly touched by the atrocities committed by Jewish militia against Palestinian farmers. It is after the 1967 war that he decided to leave the West Bank and move to Jordan. The six days war was a turning point in his life. Being a refugee, he started to consider taking up arms and fight against Israel. For a short period he joined a group called Fedayeen, supported by the Muslim Brotherhood, and took part in raids against Israel. However, he decided to leave when he was forced to join the PLO forces to continue the fight against Israel. He rejected the plan of PLO arguing that it was losing the focus from the true goal³⁹. A part from these events, he was well educated. In particular, he studied Islamic Law at the University in Damascus, then, he moved to Cairo where he met al-Zawahiri. Later, he moved to Saudi Arabia obtaining a position as lecturer at the University of Jeddah where he encountered a young Osama Bin Laden⁴⁰, just a student at the time. However, he was then expelled by Saudi Arabia after the seizure of the Grand Mosque in Mecca⁴¹ and moved to Pakistan. It is in those years that he started to develop an interest for the events in Afghanistan and its invasion by the Soviet Union. In 1984, Azzam moved to Peshawar where he established the Maktab al-Khadamat

³⁷ Peter Mandaville, Islam and International Relations in the Middle East: From Umma to Nation State, in L. Fawcett, International.., op., cit., p.188

³⁸ Thomas Hegghammer, Abdallāh ‘Azzām and Palestine, Norwegian Defence Research Establishment (FFI), Welt des Islams 53-3-4 (2013) 353-387, p. 359

³⁹ Chris Suellentrop, Abdullah Azzam, The godfather of jihad, 16 April 2002, http://www.slate.com/articles/news_and_politics/assessment/2002/04/abdullah_azzam.html

⁴⁰ T. Hegghammer, Abdallah Azzam., op., cit., p. 376 and in Abdullah Yusuf Azzam, http://www.newworldencyclopedia.org/entry/Abdullah_Yusuf_Azzam#cite_ref-7

⁴¹ M. C. Hudson, The United States in the Middle East in L. Fawcett, International Relations.. op., cit., p. 366

(services Office) and organized training camps in Afghanistan⁴². In the same years, Bin Laden moved to Peshawar and the two came into contact. Azzam's aim was to unify the different elements of the resistance resolving the main tactical and strategic problem among the mujahideen⁴³ (as said above, the rebels were not united among themselves). His main objective was the jihad against the foreign occupation. He had, in fact, a slogan "jihad and the rifle alone: no negotiations, no conferences, no dialogues."⁴⁴ He aimed at restoring the Muslim lands from foreign domination and upholding the Muslim faith. Moreover, he was strongly committed to the jihad in Palestine. He considered the jihad in Afghanistan as a means to the end for the jihad in Palestine. The Afghan situation was an opportunity; a victory in Afghanistan would have strengthened the umma militarily and give the opportunity to build a purely Islamic resistance movement⁴⁵. He encouraged particularly the global jihad against the far enemy (Soviet Union first and then United States) as a duty of all Muslims.⁴⁶

It is in these circumstances that he encountered another important figure: **Ayman al Zawahiri** (hereafter referred to as **Zawahiri**), leader of the Egyptian Islamic Jihad (EIJ)⁴⁷, a militant Islamist group established in the '70s. Briefly, EIJ was founded by the followers of Muhammad Abd al-Salam Faraj⁴⁸, whose organization was responsible for many attacks especially against the Egyptian Government and was involved in the assassination of Sadat, the Egyptian President, in 1981⁴⁹. Unlike Bin Laden, al-Zawahiri focused more on the Egyptian regime than in the US, and here it is possible to understand the difference between the two leaders. One targeted the far enemy, while the other the near enemy. He claimed

⁴² V. G. Julie Rajan, *Al Qaeda's Global Crisis: The Islamic State, Takfir and the Genocide of Muslims*, p. 79 and in Thomas Hegghammer, *The Rise of Muslim Foreign Fighters Islam and the Globalization of Jihad*, International Security, Vol. 35, No. 3 (Winter 2010/11), pp. 53–94, p. 56

⁴³ C. Suellentrop, *Abdullah Azzam*., op., cit.

⁴⁴ Andrew McGregor, *Jihad and the Rifle Alone*": 'Abdullah 'Azzam and the Islamist Revolution', Vol. XXIII, No. 2 Fall 2003, The Journal of Conflict Studies, <https://journals.lib.unb.ca/index.php/jcs/article/view/219/377> and in *Biography of Shaykh Abdullah Azzam* (rahimahullah), 27 January 2012, <https://minbaransardeen.wordpress.com/2012/01/27/biography-of-shaykh-abdullah-azzam-rahimahullah/>

⁴⁵ T. Hegghammer, *Abdallah Azzam*, op., cit., p. 385

⁴⁶ V. G. J. Rajan, *Al Qaeda's Global Crisis*., op., cit., p. 80

⁴⁷ *Egyptian Islamic Jihad*, Mapping Military Organizations, Stanford University <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/401>

⁴⁸ Ideologue of the Islamic Jihad in Egypt, a government that he considered corrupt and that he blamed for replacing the Islamic law with the Western principles, *Faraj, Muhammad Abd al-Salam*, Oxford Islamic Studies online, http://www.oxfordislamicstudies.com/article/opr/t125/e620?_hi=0&_pos=3

⁴⁹ Holly Fletcher, *Egyptian Islamic Jihad*, 30 May 2008, <http://www.cfr.org/egypt/egyptian-islamic-jihad/p16376>

that the government was corrupt because it worked with a number of infidel powers, US and Israel among the others (it is important to remember that Egypt was the first to recognize Israel as a State and to sign a peace treaty with it in 1978 in the Camp David Accord. An act condemned by the entire Arab world). After being imprisoned for three years, not for the assassination of Sadat of which he was guilty but for the illegal possession of arms⁵⁰, and released, the group started a series of attacks in Egypt, and it is especially during this time that its relationship with Bin Laden strengthened. Zawahiri's group was in need of funds to revive⁵¹, after a series of attacks by the Egyptian government, which weakened the movement. That is why, in 1998, Zawahiri signed on to the Al-Qaeda-backed declaration of the "World Islamic Front for Combat against Jews and Crusaders⁵²". The declaration states, "The ruling to kill the Americans and their allies, civilians and military, is an individual duty for every Muslim [...]. This is in accordance with the words of Almighty Allah, "and fight the pagans all together as they fight you all together, and fight them until there is no more tumult or oppression, and there prevail justice and faith in Allah." A cooperation highlighted by the two attacks occurred in 1998 to the US Embassies in Tanzania and Kenya⁵³. It is in 2001 that the two groups formally merged⁵⁴.

Although the three different leaders were involved in Jihad, they had different goals and targets. Relevant to the research is the path taken by Al-Qaeda, given the influence of the two main leaders and different groups.

1.3 Al-Qaeda's targets and objectives: the shift from a local targets to the US

Investigating the different strategies and targets of the organization allow us to understand the novelty introduced by IS, whose characteristics and genesis will be discussed later on. Al Qaeda's main targets are the Western countries, with particular focus against the United

⁵⁰ *Profile: Ayman al-Zawahiri*, 13 August 2015, BBC News, <http://www.bbc.com/news/world-middle-east-13789286> and *Ayman al-Zawahiri Fast Facts*, 7 June 2016, CNN, <http://edition.cnn.com/2012/12/14/world/ayman-al-zawahiri---fast-facts/>

⁵¹ H. Fletcher, *Egyptian Islamic Jihad...*, op., cit.

⁵² The Islamic Version is available at <https://www.library.cornell.edu/colldev/mideast/fatw2.htm> and its translation in <https://fas.org/irp/world/para/docs/980223-fatwa.htm> and in <http://www.investigativeproject.org/documents/misc/180.pdf>

⁵³ *1998 U.S. Embassies in Africa Bombings Fast Facts*, CNN, <http://edition.cnn.com/2013/10/06/world/africa/africa-embassy-bombings-fast-facts/> and H. Fletcher, *Egyptian Islamic Jihad...*, op., cit.

⁵⁴ D. Byman, *Al Qaeda...*, op., cit., p. 19 and in Fawaz A. Gerges, *The rise of transnationalist jihadis and the far enemy*, p. 139

States as underlined by its Declaration of 1998. It operates with large-scale, dramatic attacks in order to force US Government to retreat its troops from the Muslim world⁵⁵, by supporting insurgents in the Islamic world and directing their fight against regimes supported by the US. That is why after the end of the Afghan-Soviet war it supported the Taliban. Even if the two groups had different origins and beliefs.

Nevertheless, at the beginning, among its goals there were not a specific reference to the United States. In particular, Al Qaeda was committed to spread the jihad awareness and to prepare and coordinate recruits to create a unified international jihad movement. Different situations started to alter his focus towards the United States.

Local antagonism against the US initiated in correspondence to the growing presence of the United States in the Gulf at the end of the 80s and beginning of the 90s. In particular, the end of the Iraq-Iran represented a new level of cooperation between the US and the Gulf monarchies. Briefly, the Iran-Iraq war is a conflict that lasted for eight years, between 1980 and 1988. The two governments were never on particularly good terms, due to border crises (the Shatt al-Arab river)⁵⁶, and the change of government in Iraq when in 1979 Saddam Hussein took power⁵⁷. However, the major Iraqi Shi'i political groups declared the formation of the Islamic Liberation Movement and called for the use of violence to bring down the Baathist regime. After a series of different attacks by both sides, Saddam decided to go to war and attack Iran. However, the attack was incredibly unsuccessful and it resulted a massacre for Iraq. By the summer of 1982, the counter attacks by Iran started, resulting in the recall of Iraqi troops from Iran and subsequent invasion of Iraqi territory with the aim of bringing down the Baathist regime. By the end of the 1987, the US became involved in the conflict and started to intervene especially to protect the oil tankers from Kuwait and Saudi Arabia against Iranian attacks⁵⁸. It is well known, in fact, that since the Second World War, the strategic significance of the Gulf region has been a constant, due to its oil resources. Another relevant aspect to take into consideration is the Gulf War (1990-1991). Saddam had

⁵⁵ Daniel L. Byman, *Comparing Al Qaeda and ISIS: Different goals, different targets*, 29 April 2015, Brookings, <https://www.brookings.edu/testimonies/comparing-al-qaeda-and-isis-different-goals-different-targets/>

⁵⁶ Richard N. Schofield, *Evolution of the Shatt Al-'Arab Boundary Dispute*, Menas Studies in Continuity and Change in the Middle East and North Africa, <http://web.stanford.edu/group/tomzgroup/pmwiki/uploads/1136-1986-Schofield-a-IEM.pdf>

⁵⁷ M. C. Hudson, *The United States in the Middle East* in L. Fawcett, *International Relations.. op., cit., p. 368*

⁵⁸ Matteo Legrenzi and F. Gregory Gause III, *The International Politics on the Gulf* in L. Fawcett *International Relations.., op., cit., p. 309*

an impelling sense of crisis and he constantly believed that he was the target of a possible attack. Iraq had economic and internal problems especially after the end of the war with Iran and by the early 1990s he was convinced that his regime was being targeted. The economic problems were blamed on the low oil prices caused by the overproducing competitor Kuwait and UAE (United Arab Emirates), mainly US clients. Moreover, US adopted a hostile attitude towards Iraq blocking the export of dual-use technology to Iraq. For these reasons, in March 1990 Saddam argued that Americans were coordinating with Saudi Arabia, UAE and Kuwait in a conspiracy against Iraq⁵⁹. Due to his conclusion about an international effort to destabilize him, Saddam invaded Kuwait in 1990⁶⁰. A very short conflict, concluded with the Iraqi humiliating defeat on the battlefield by the US forces⁶¹.

Understanding the historical dynamics of the political events in the Gulf is important in order to frame the growing hatred of the Bin Laden's organization against US. In particular, how profound were the implications of the new US-Saudi collaboration period. During the Iran-Iraq war, the Saudis supported Iraq, allowing Iraq to use Saudi base and ports and providing financial and military support. On the contrary, in the time of the Gulf war, the Saudis perception changed completely, Iraq was seen as a military threat, no more as an ally. For this reason, when US helped Kuwait rejecting the Iraqi forces, a new alliance emerged between US and Saudi Arabia. The latter permitted US to use Saudi's bases to install an US presence on the Gulf⁶². This events marked the beginning of Bin Laden discontent and disagreement towards the Saudi rulers.

It is in 1988 that Bin Laden issued a *fatwa*⁶³ to call for a jihad against the US presence in the Gulf and in other Muslim lands. He argued "the United States is occupying the lands of Islam in the holiest of its territories, Arabia, plundering its riches, overwhelming its rulers, humiliating its people, threatening its neighbours⁶⁴" that is why it is necessary that every

⁵⁹ M. Legrenzi and F. G. Gause III, *The International...*, op., cit., p. 310

⁶⁰ E. Di Nolfo, *Dagli Imperi militari agli Imperi Tecnologici*, la politica internazionale..., op., cit., p. 394-395

⁶¹ *The First Gulf War*, US Department of State, <https://history.state.gov/departmenthistory/short-history/firstgulf>

⁶² M. Legrenzi and F.G. Gause III *International...*, op., cit., p. 316-317

⁶³ "a pronouncement or opinion on a question of Islamic law by a qualified religious Scholar" in *Beyond Al Qaeda, the Global Jihadist Movement*, RAND Corporation, 2006

⁶⁴ *Islamist Terrorism From 1945 to the Rise of ISIS*, Constitutional Rights Foundation, <http://www.crf-usa.org/america-responds-to-terrorism/islamist-terrorism-from-1945-to-the-death-of-osama-bin-laden.html>, the full text is available at <http://thesis.haverford.edu/dspace/bitstream/handle/10066/15237/OBL19980223.pdf?sequence=1>

Muslims “kill Americans”. It is during these years that Al Qaeda planned the attacks at the embassies and several others sites. He also called for a boycott against American products and the expulsion of American troops from the region⁶⁵. Among the attacks, the main ones include: the 1983 bombings of the Marine barracks in Beirut⁶⁶, the 1992 bombing of the hotel in Aden⁶⁷, the 1993 “Black Hawk Down” incident in Somalia⁶⁸ and various attacks during the years 1995 and 1996 directed to Americans and Westerners in Saudi Arabia, escalating to the most important of all attacks against the Western world, the 9/11 attack at the Twin Towers. It is during those years that the organization fixed a set of goals, under which it organized its subsequent actions: ending the US presence in the Middle East, destroying Israel, reorienting the jihadist movement, opposing “apostate” regimes in the Muslim world and Al Qaeda also tried to create a true Islamic state through the creation of a Caliphate⁶⁹. Despite these efforts, the Islamic State was declared in 2014 by another terrorist organization, not directly by Al –Qaeda.

1.4 The genesis of the Islamic State: chronology of a name

The first part of this research is dedicated to the analysis and description of Al-Qaeda’s origin. This is not merely for chronological purposes, but it was necessary as it sets the bases for the understanding of the emergence of another terrorist organization, the Islamic State (IS). IS, in fact, originally developed from Al Qaeda in Iraq, sharing similar ideology, targets, objectives and enemies with the jihadist movement, which Al Qaeda sought to unify during the years.

However, before adopting the most infamous name of Islamic State, this organization varied its denomination during the years, depending on its composition and alliances:

- 2000, *Jama’at al-Tawhid wa’al-Jihad* (JTJ)
- 2004, *Al Qaeda in Iraq* (AQI)
- 2013, *ISIS (Islamic State in Iraq and Syria)*

⁶⁵ D. Byman, *Al Qaeda..*, op., cit., p. 15-16

⁶⁶ *Beirut Marine Barracks Bombing Fast Facts*, CNN Library, <http://edition.cnn.com/2013/06/13/world/meast/beirut-marine-barracks-bombing-fast-facts/>

⁶⁷ Jonathan Schanzer, *Yemen’s War on Terror*, <https://www.washingtoninstitute.org/uploads/Documents/opeds/4224cd7e95ec5.pdf> p. 522

⁶⁸ *1993: US forces killed in Somali gun battle*, BBC, http://news.bbc.co.uk/onthisday/hi/dates/stories/october/4/newsid_2486000/2486909.stm

⁶⁹ Daniel Byman, *Comparing Al Qaeda and ISIS: Different Goals, Different Targets*, 29 April 2015, <https://www.brookings.edu/testimonies/comparing-al-qaeda-and-isis-different-goals-different-targets/>

- 29 June 2014, *IS (Islamic State)*

However, it is also known with other two names: *ISIL, Islamic State of Iraq and Levant* and *DAESH, al-Dawla al-Islamiya fil 'Iraq wal-Sham*. Although the members of the group call it simply *al-Dawla* which means “the State”.

Al- Tawhid was founded in 2000 by Abu Musab al-Zarqawi (hereafter referred to as Zarqawi)⁷⁰, a Jordanian criminal who started to radicalize while in prison, arrested for drug possession and sexual assault. His aim was to fight the Jordanian government but due to the lack of support, he then travelled to Afghanistan during the 80s and joined the fight of the mujahideen against the Soviet. He started to travel back and forth between Afghanistan and Jordan while managing a training camp in Herat⁷¹, financed by Bin Laden. At the beginning, he had little interactions with Bin Laden and more with Abdullah Azzam (mentioned above). During the 90s, he adopted the Salafi ideology⁷² and he was arrested because of criticisms and plots against the Hashemite dynasty. It is in those years that he gained more support. He then moved to Iraq after the US invasion in Afghanistan but, in 2003, the US invaded also Iraq. He was the leader of one of five different groups, which launched the insurgency against the coalition⁷³. This group, hereafter referred as to JTJ, developed a new network and organized its objectives and intents. The main ones included the withdrawal of the coalition forces, the overthrow of the Iraqi interim government, the assassination of the collaborators of the coalition regime, the targeting of the Shia population and more importantly the establishment of an Islamic State under the rule of the *Sharia*⁷⁴. The group differed considerably from the others; not only it used guerrilla tactics but it also introduced suicide bombers. Moreover, it targeted not only the Iraqi security forces and the Iraqi Shia, but also foreign civilians and UN and Humanitarian workers. Especially the Shia community

⁷⁰ *Jamaat al-Tawhid wa'l-Jihad*, global security, <http://www.globalsecurity.org/military/world/para/zarqawi.htm>, and in Ahmed S. Hashim, *The Islamic State: from Al Qaeda affiliate to Caliphate*, Winter 2014, Volume XXI, Number 4, Middle East Policy Council, <http://www.mepc.org/journal/middle-east-policy-archives/islamic-state-al-qaeda-affiliate-caliphate>

⁷¹ Carlo Bellinzona, *Al-Zarqāwi Tra Maschera E Volto*, Limes Rivista Italiana di Geopolitica, <http://www.limesonline.com/cartaceo/al-zarqawi-tra-maschera-e-volto?prv=true> and in Aaron Y. Zelin, *The War between ISIS and al-Qaeda for Supremacy of the Global Jihadist Movement*, The Washington Institute for Near East Policy, p. 2 http://www.washingtoninstitute.org/uploads/Documents/pubs/ResearchNote_20_Zelin.pdf

⁷² L. Napoleoni, *ISIS.*, op., cit., p. 26

⁷³ A. S. Hashim, *The Islamic State: from Al Qaeda affiliate to Caliphate.*, op., cit.

⁷⁴ A. S. Hashim, *The Islamic State: from Al Qaeda affiliate to Caliphate.*, op., cit.

was perceived as a real problem “the insurmountable obstacle, the lurking snake⁷⁵”. In addition, in order to gain support and spread propaganda he created a worldwide network enabling the posting of videos and news. One of the first brutal actions was the murder of the US diplomat Laurence Foley, in Jordan⁷⁶. Most importantly, the composition of the group is quite diverse, and it includes foreign fighters from Afghanistan, Pakistan, Jordan, Syria and the Kurdish regions⁷⁷.

In late 2004, Zarqawi’s group formally joined Bin Laden’s organization. The JTJ renamed *Tanzim Qaidat al-Jihad fi Bilad al-Rafidayn Zarqawi*, known as *Al Qaeda in Iraq* (hereafter referred as to AQI) in English⁷⁸. However, the two leaders disagreed on some issues. Bin Laden condemned the hatred shown by Zarqawi towards the Shiites, as he did not agree on fomenting the sectarian violence between the two communities. In addition, they differed in the targets. While Al Qaeda focused on the “far enemy”, the US, Zarqawi was more interested in the “near enemy”⁷⁹, such as Israel and the Jordanian government.

Furthermore, Bin Laden criticized the exaggerated use of violence by Zarqawi. These differences created tensions between the two parties, and this lasted until the end of their relations. Nevertheless, Zarqawi was not inclined to follow AQ’s orders and continued his trail of blood; an example is the bombing of a Hotel in Amman and the Golden Mosque in Samarra⁸⁰ leading to a series of retaliatory strikes against Sunni holy places. His tactics had a unique aim: to encourage the sectarian violence between Shiites and Sunnis. At the beginning, many Iraqi Sunnis were sympathetic to AQI, supporting its aim of driving the American presence out of the country and preventing the establishment of a Shiite

⁷⁵ Zarqawi Letter, US Department of State, English Translation, <https://2001-2009.state.gov/p/nea/rls/31694.htm>, and in Paul Reynolds, *Iraq attacks: Is this the mastermind?*, BBC News, http://news.bbc.co.uk/2/hi/middle_east/3525957.stm and in George Wright, *Suicidal, spectacular' attacks are his trademark*, 3 March 2004, <https://www.theguardian.com/world/2004/mar/03/iraq.georgewright>

⁷⁶ US diplomat shot dead in Jordan, 28 October 2002, BBC News, http://news.bbc.co.uk/2/hi/middle_east/2367311.stm

⁷⁷ *The Islamic State*, Mapping Military Organization, Stanford University, <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/1>

⁷⁸ Paolo Maggiolini, *Da al-Qaida in Iraq (Aqi) al Califfato: una storia di sangue*, ISPI, 10 Settembre, 2014, <http://www.ispionline.it/it/pubblicazione/da-al-qaida-iraq-aqi-al-califfato-una-storia-di-sangue-11103> and in Richard York, *Know Thy Enemy: Islamic State of Iraq and the Levant*, p. 3 and in D. Byman, *Al Qaeda..*, op., cit., p. 166 and in L. Napoleoni, *ISIS..*, op., cit., p. 28

⁷⁹ D. Byman, *Al Qaeda..*, op., cit., p. 166 and in *ISIS#1. Le origini: Gli anni di al Zarqawi*, 19 April 2015, Geopolitical Review, <http://geopoliticalreview.org/2015/04/isis-al-zarqawi/>

⁸⁰ Mark Ensalaco, *Middle Eastern Terrorism: From Black September to September 11*, p. 271 and in Michael Warner, *The Rise and Fall of Intelligence: An International Security History*, p. 297

government. However, they did not accept the violent attacks and the use of violence in general⁸¹, which subsequently led to a loss of interest and removal of the support by the Sunni.

In June 2006, Zarqawi was killed by an American airstrike and his death marked the beginning of the decline for the group⁸².

At the beginning of the same year, AQI joined a coalition of different jihadist groups called MSC (Majlis Shura al-Mujahidin⁸³) aimed at consolidating jihadist efforts against the US presence and the Iraqi security forces. The position of power was taken by Abu Ayub al-Masri⁸⁴ and soon after AQI announced the ISI (Islamic State of Iraq) under the leadership of the Iraqi Abu Omar al-Baghdadi⁸⁵. However, the AQI was losing ground and reliability on local Iraqis' eyes. The group was trying to gain support from the global jihadi community and it was preparing to rule and govern taking control of the country after the US withdrawal.

Nevertheless, the situation was worsening. The number of foreign fighters supporting the group was decreasing and the declaration of state (or Caliphate) was not enough to convince the local resistance to support the group. In this scenario, a new movement emerged, the Anbar Awakening (the Sahwa movement)⁸⁶, a Sunni movement in the Anbar province, one of the most tribal of the 18 Iraqi provinces⁸⁷, which collaborated with the US against insurgency. In particular, by the end of 2005 and the beginning of 2006, American troops worked closely with local tribal leaders in order to expel AQI from Iraq. It is in September

⁸¹ *ISIS#1. Le origini: Gli anni di al Zarqawi..*, op., cit.

⁸² A. Y. Zelin, *the war between Al Qaeda and ISIS..*, op., cit., p. 3 and in A. S. Hashim, *The Islamic State..*, op., cit. and in *Islamic State, Mapping Militant Organization..*, op., cit.

⁸³ P. Maggiolini, *Da al-Qaida in Iraq (Aqi) al Califfato..*, op., cit. and in Aaron Y. Zelin, *Terror from Sinai: Global Jihadist Groups on Israel's Doorstep*, 20 June 2012, The Washington Institute,

<http://www.washingtoninstitute.org/policy-analysis/view/terror-from-sinai-global-jihadist-groups-on-israels-doorstep>, the same name has been used several years later (2012) to identify a Jihadi organization located in Gaza aimed at contrasting Hamas, Aymenn Jawad Al-Tamimi, *Majlis Shura al-Mujahidin: Between Israel and Hamas*, 6 May 2013, Middle East Forum, <http://www.meforum.org/3500/majlis-shura-al-mujahidin-gaza>

⁸⁴ Eben Kaplan, *Abu Hamza al-Muhajir, Zarqawi's Mysterious Successor (aka Abu Ayub al-Masri)*, 13 June 2006, Council on Foreign Relations, <http://www.cfr.org/iraq/abu-hamza-al-muhajir-zarqawis-mysterious-successor-aka-abu-ayub-al-masri/p10894> and in *The Islamic State, mapping Militant Organization..*, op., cit.

⁸⁵ *Who was the Real Abu Omar al-Baghdadi?*, Asharq Al-Awsat, 20 April 2010, <http://english.aawsat.com/2010/04/article55251030/who-was-the-real-abu-omar-al-baghdadi> and in A. H. Ashim, *The Islamic State..*, op., cit.

⁸⁶ A. Y. Zelin, *The war between ISIS and Al-Qaeda..*, op., cit., p. 3 and in *The Status and Future of the Awakening Movements*, Arab Reform Bulletin, June 2009, The Washington Institute, <http://www.washingtoninstitute.org/policy-analysis/view/the-status-and-future-of-the-awakening-movements>

⁸⁷ *Al-Anbar Awakening Volume II Iraqi Perspectives From Insurgency to Counterinsurgency in Iraq, 2004-2009*, p. 3, <http://www.hqmc.marines.mil/Portals/61/Docs/Al-AnbarAwakeningVollI%5B1%5D.pdf>

2006 that a meeting formalized the process. The objective was to convince 4500 Sunni Arabs to join for the cause⁸⁸. The considerable amount of Iraqi and American operations diminished the AQI's capacity. By June 2010, AQI had lost communication with Al Qaeda and in the same year both Marsi and Baghdadi were killed⁸⁹.

Nevertheless, the group continued to survive thanks to the new leader, Abu Bakr al-Baghdadi⁹⁰ (not to be confused with the deceased Abu Omar), who struggled to maintaining the control of some territories. Moreover, the period of decline started to improve between 2010 and 2013 thanks to some key factors: the organizational restructuring of the group, the Iraqi internal sectarian conflict, the emergence of the Syrian civil war and the withdrawal of the Coalition forces⁹¹.

Between 2012 and 2013, Baghdadi led two terrorist campaigns, one towards the Maliki government, called the "the Breaking Walls⁹²" because it permitted the escape of organization's members from prison, and the other towards the Iraqi security forces, called "the Soldier's Harvest⁹³". The Maliki leadership emerged in 2005. He gained power exploiting the demographic advantage of the Shia population in the country to implement a sectarian policy. His government was characterized by corruption and abuse to the detriment of the Iraqi Sunni community and their exclusion from the Iraqi politics. The Government in fact falsely accused Sunni politicians of committing crimes and sent them to jail⁹⁴. Because of the tension between Sunni and Shia and the governmental attitude, several local uprising developed helping the expansion of AQI.

⁸⁸ *The Status and Future..*, op., cit.,

⁸⁹ *Senior Iraqi al-Qaeda leaders 'killed'*, 19 April 2010, BBC News,

http://news.bbc.co.uk/2/hi/middle_east/8630213.stm and in Tim Arango, *Top Qaeda Leaders in Iraq Reported Killed in Raid*, 19 April 2010, <http://www.nytimes.com/2010/04/20/world/middleeast/20baghdad.html>

⁹⁰ A. Y. Zelin, *The war between ISIS and Al-Qaeda..*, op., cit., p. 4 and in L. Napoleoni, *ISIS, Lo stato del terrore..*, op., cit., p. 28 and in D. Byman, *Al Qaeda..*, op., cit., p. 164

⁹¹ *The Islamic State*, Mapping Militant Organization.., op., cit. and in A. S. Hashim, *The Islamic State, from Al Qaeda..*, op., cit. and I L. Napoleoni, *ISIS..*, op., cit., p. 29

⁹² Tim Arango and Eric Schmitt, *Escaped Inmates From Iraq Fuel Syrian Insurgency*, New York Times, 12 February 2014, <https://www.nytimes.com/2014/02/13/world/middleeast/escaped-inmates-from-iraq-fuel-syria-insurgency.html> and in A. S. Hashim, *The Islamic State, from Al Qaeda..*, op., cit.

⁹³ Michael Knights, *Isil's Political-Military Power In Iraq*, Combating Terrorism Centre, 27 August 2014, <https://www.ctc.usma.edu/posts/isils-political-military-power-in-iraq>

⁹⁴ Bassem El-Emadi, *An analysis of the events in Iraq and their regional implications*, Middle East Pact, <http://www.mep-online.org/An-analysis-of-the-events-in-Iraq> and in Zaid Al-Ali, *How Maliki Ruined Iraq*, 19 June 2014, <http://foreignpolicy.com/2014/06/19/how-maliki-ruined-iraq/>

In 2013, the group changed its name into ISIS (Islamic State of Iraq and Syria)⁹⁵, after the declaration of the intervention of the operations in Syria. The situation in Syria changed in 2011 when a domestic revolution started. However, it soon worsened, turning into a regional and international (because of the countries involved) conflict. Al Baghdadi released the announcement of the intervention in Syria in an audio message in which he also confirmed that Al Nusra front, the Al Qaeda chief fighting force inside Syria, has always been a creation of the organization⁹⁶. Al Nusra (as it is known worldwide, although its real name is Jabhat al-Nusra li-Ahl al-Sham min Mujahidi al-Sham fi Sahat al-Jihad, which means The Support Front to the People of the Levant by the Mujahideen of the Levant on the Fields of Jihad) is a salafi-jihadi cell that infiltrated in Syria from Iraq in 2011⁹⁷. Its leader is a Baghdadi subordinate, the Syrian Abu Muhammad al Julani⁹⁸. At the same time, Baghdadi also announced the merger with the Al Nusra cell. However, Zawahiri, the new leader of Al Qaeda appointed after the death of Osama Bin Laden in 2011, in a letter sent to Baghdadi argued that the Baghdadi rules would be limited to Iraq, not accepting his actions in Syria. Besides, in the letter he specified, “The Islamic State in Iraq and the Levant is to be dissolved, while Islamic State in Iraq is to continue its work. [...] Jabhat al-Nusra is an independent entity for Qaedat al-Jihad group, under the (al-Qaeda) general command. [...] The seat of the Islamic State in Iraq is in Iraq. [...] The seat of Jabhat al-Nusra for the people of al-Sham is in Syria.⁹⁹” Because of this disagreement, and the fact that ISIS continued to operate in Syria without taking into consideration the statement, in February 2014 we see an official rupture with Al Qaeda. A statement was released at the time, “ISIS is not a branch of the al-Qaeda group [...] does not have an organizational relationship with it and [al-Qaeda] is not the

⁹⁵ A. Y. Zelin, *The war between ISIS and Al-Qaeda..*, op., cit., p. 4 and in A. S. Hashim, *The Islamic State, from Al Qaeda..*, op., cit. and in *The Islamic State, Mapping Militant Organization..*, op., cit.

⁹⁶ Shiv Malik, Mustafa Khalili, Spencer Ackerman and Ali Younis, *How Isis crippled al-Qaida*, 10 June 2015, The Guardian, <https://www.theguardian.com/world/2015/jun/10/how-isis-crippled-al-qaida> and in D. Byman, *Al Qaeda..*, op., cit., p. 168, and in A. Y. Zelin, *The war between ISIS and Al-Qaeda..*, op., cit., p. 4

⁹⁷ Charles Lister, *Profiling Jabhat al-Nusra*, The Brookings Project on U.S. Relations with the Islamic World Analysis Paper No. 24, July 2016, https://www.brookings.edu/wp-content/uploads/2016/07/Brookings-Analysis-Paper_Charles-Lister_Web.pdf

⁹⁸ A. S. Hashim, *The Islamic State, from Al Qaeda..*, op., cit., and in *The Islamic State, Mapping Militant Organization..*, op., cit. and in C. Lister, *Profiling Jabhat..*, op., cit.

⁹⁹ *Translation of al-Qaeda chief Ayman al-Zawahiri's letter to the leaders of the two Jihadi groups* available at <http://s3.documentcloud.org/documents/710588/translation-of-ayman-al-zawahiris-letter.pdf> through Basma Atassi, *Qaeda chief annuls Syrian-Iraqi jihad merger*, 9 June 2013, Aljazeera, <http://www.aljazeera.com/news/middleeast/2013/06/2013699425657882.html>

group responsible for their actions.¹⁰⁰”

On the 29th June 2014 ISIS announced the Caliphate¹⁰¹, changing its name into IS (Islamic State) and naming al-Baghdadi as Caliph Ibrahim. He called upon all Muslims (including Al Qaeda) to declare allegiance to the new Caliphate, an institution abolished by Ataturk in 1924. In doing so, IS posed a real leadership challenge to Al Qaeda, obtaining in a short time one of its biggest objectives. However, to be clear and precise, even if the IS declared itself as a State, no significant Muslim religious or political leaders have recognized IS. In addition, in late 2014 a group comprising more than one hundred of the most important Muslim religious scholars drafted an open letter to IS¹⁰², underlining that its activities have no legitimate basis in Islamic law. Not only did the declaration divide the Arab world and thinkers, but also created a rupture within the jihadist movements. Al Qaeda in fact stated that Baghdadi chose the wrong time to establish a Caliphate and that he had no right to do so. Both timing and manner were considered inappropriate. On the contrary, Baghdadi was tired of the lack of success and energy of AQ arguing that ISIS’s military success provided the legitimacy to declare a Caliphate¹⁰³.

1.5 Influential IS leaders, the articulate structure of the organization and the historical context

The group has been an affiliate and an ally of Al Qaeda until being disowned, and for this reason shared with Al Qaeda some important leaders. We can identify four main figures that contributed to the formation of the Caliphate.

Abu Mus’ab al-Zarqawi, who ruled the group from 2002 to 2006¹⁰⁴, year of his death, was

¹⁰⁰ Liz Sly, *Al-Qaeda disavows any ties with radical Islamist ISIS group in Syria, Iraq*, 3 February 2014, The Washington Post, https://www.washingtonpost.com/world/middle_east/al-qaeda-disavows-any-ties-with-radical-islamist-isis-group-in-syria-iraq/2014/02/03/2c9afc3a-8cef-11e3-98ab-fe5228217bd1_story.html?utm_term=.a47b0f7875f1 and in Cole Bunzel, *From Paper State to Caliphate: The Ideology of the Islamic State*, The Brookings Project on U.S. Relations with the Islamic World Analysis Paper No. 19, March 2015 p. 29 <https://www.brookings.edu/wp-content/uploads/2016/06/The-ideology-of-the-Islamic-State.pdf> and in A. Y. Zelin, *Al-Qaeda Disaffiliates with the Islamic State of Iraq and al-Sham*, The Washington Institute, 4 February 2014, <http://www.washingtoninstitute.org/policy-analysis/view/al-qaeda-disaffiliates-with-the-islamic-state-of-iraq-and-al-sham>

¹⁰¹ C. Bunzel, *From Paper State..*, op., cit., p. 31 and in A. S. Hashim, *The Islamic State, from Al Qaeda..*, op., cit. and in L. Napoleoni, *ISIS..*, op., cit., p. 54 “[Muslims] shake off the dust of humiliation and disgrace [...] a new caliphate rises out of the chaos, confusion and despair of the modern Middle East.

¹⁰² P. Mandaville, *Islam and International Relations in the Middle East..*, op., cit., p. 193

¹⁰³ A. S. Hashim, *The Islamic State, from Al Qaeda..*, op., cit.

¹⁰⁴ C. Bunzel, *From Paper State..*, op., cit., p. 14-15 and in M. J. Kirdar, *Al Qaeda in Iraq*, 15 June 2011, Centre For Strategic and International Studies, <https://www.csis.org/analysis/al-qaeda-iraq>

the AQI's founder and first leader. During this period, he organized the group, gaining support and defining targets and objectives. He is remembered because of his hatred his use of violence and extreme attacks even toward civilian people.

From his death to 2010, the group was ruled by Abu Umar al-Baghdadi. However, for many observers Baghdadi was a fictitious character¹⁰⁵. He was in fact not the true leader but a figurehead to give AQI an Iraqi face, since in that period the group was losing support in Iraq. The real leader was instead Abu Ayub al-Masri¹⁰⁶, a former member of the EIJ, who had close ties especially with Zawahiri, the EIJ leader. He was killed in 2010 together with Abu Umar. Finally, Abu Bakr al-Baghdadi took control of AQI in 2010 and is now the Caliph of the Islamic State. Little is known about him, however, when he took control of the organization, the situation was very difficult but he was able to strengthen it. In fact, he built a hierarchical and organized group. Firstly, he avoided massive attacks (at least at the beginning) responsible for the loss of support among the Iraqi Sunnis. Secondly, he minimized the role of the Arabs at the high ranks of the organization, organizing them into combat units and in supporting roles and replacing them by Iraqis to fill in the top positions. Third, he gave the organization a real structure. The Executive, composed of him and his top advisers, is the governing body of IS. The First Echelon is composed of three main entities: the Shura Council, Military Council, Security and Intelligence Council¹⁰⁷. The first one is a body composed by the leader himself and a "cabinet" with the power of dismissing the leader. The Military council is responsible for the control of military commanders in the different provinces controlled by IS. Finally, the Intelligence Council has multiple goals, such as providing protection and security to al-Baghdadi and his movements, maintaining the communication between the leader and the provincial governors and others. The Second Echelon is responsible for the administration of the finance of IS.

Another interesting aspect of the organization is the change in its composition. It is reported in fact that foreign fighters (hereafter referred as to *f.f.*) have always played a significant role from the beginning. They are described as "non-citizens of conflict states who join

¹⁰⁵ Michael R. Gordon, *Leader of Al Qaeda group in Iraq was fictional, U.S. military says*, 18 July 2007, The new York Times, <http://www.nytimes.com/2007/07/18/world/africa/18iht-iraq.4.6718200.html>

¹⁰⁶ E. Kaplan, *Abu Hamza al-Muhajir..*, op., cit.

¹⁰⁷ A. S. Hashim, *The Islamic State, from Al Qaeda..*, op., cit.

insurgencies during civil conflict.”¹⁰⁸ However, at the beginning, before the merge with Al Qaeda, the group had a different composition; in specific, it featured Afghans, Pakistanis, Syrians and Kurds. From 2006, the organization was composed of *f.f.* coming from Algeria, Syria, Yemen, Morocco, Tunisia, Jordan, and Egypt¹⁰⁹. They were the ones mostly responsible for the majority of suicide bombings in Iraq. When AQI was starting losing support the leader had to change the composition once again in order to gain reliability, and this also involved changing the top leading positions, replacing them with Iraqi individuals, giving foreign fighters other tasks. When ISIS went to Syria, then, the composition changed again. It is in fact in those years that many foreign fighters from the Western Countries, Europe and US in particular, joined the ranks of IS. A worrying fact resulted from the convincing propaganda spread by IS. It is estimated that more than 27 thousands foreign fighters left their home country to join the Islamic State since the breakout of the Syria war in 2011. France, Germany and the UK are the most involved, as approximately 6 thousand people have left their home countries to join the IS cause¹¹⁰. The Soufan Group, a company that provides strategic security intelligence services to governments and multinational organizations, released a report in 2015 the so-called Foreign Fighters, an update Assessment of the flow of foreign fighters into Syria and Iraq¹¹¹, analysing the numbers and data by regions and countries. However, as it underlined at the beginning, collecting information is not easy for multiple reasons. Governments often do not release numbers of their citizens leaving the country, and even when they do so, sometimes the numbers do not take into consideration many variables. Nevertheless, the countries more interested by the phenomenon are (in decreasing order) Tunisia, Saudi Arabia, Russia, Turkey and Jordan. As far as European Countries are concerned, despite the individual efforts to stop the flow, it seems that the number of foreign fighters coming from Russia and Western Europe is on the rise. Regionally speaking, when considering Western European countries, the number of *f.f.* joining the jihadist groups has doubled from 2500 by June 2014 to 5000 by December 2015.

¹⁰⁸ David Mallet in T. Hegghammer, *The rise of Muslims Foreign Fighters..*, op., cit., p. 57

¹⁰⁹ *The Islamic State*, Mapping Militant Organization.., op., cit.

¹¹⁰ Ashley Kirk, *Iraq and Syria: How many foreign fighters are fighting for Isil?*, 24 March 2016, The Telegraph, <http://www.telegraph.co.uk/news/2016/03/29/iraq-and-syria-how-many-foreign-fighters-are-fighting-for-isil/>

¹¹¹ *Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq*, The Soufan Group, December 2015, http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf

Marginalization and lack of sense of belongings are the two main aspects influencing this phenomenon, especially when looking at France and Belgium. Moreover, concerning the recruitment, it is interesting to notice that there is a sense of community, which means that a deep role in the radicalization process is played by the involvement of family and friends or a close acquaintance, as testified by the Molenbeek neighbourhood in Brussels¹¹². Besides, when speaking about numbers, even Russia has experienced this trend with an increase in numbers. From 800 by June 2014 to 2400 by September 2015. Worrying data if we consider that the majority of those come from the North Caucasus, Chechnya and Dagestan¹¹³. However, North Africa and Maghreb are the countries, which provide the highest number of *f.f.* especially Tunisia and Libya¹¹⁴. This region has always had a tradition in terms of jihadism even in the past with the participation of many individuals to the Soviet-Afghan war. There are in fact some specific areas responsible for the recruitment and, fact more important, it is largely encouraged. The instability emerged after the Arab Spring, which has contributed to the development of the phenomenon. The lawless Libyan territory, the fragile Tunisian stability, despite the governmental efforts, have revealed to be perfect incubator for the emergence of such a huge amount of *f.f.*. However, in conclusion, looking at the data in general, it is easy to notice a general growth in the *f.f.* participation from 86 countries of the world.

As it has been underlined in the paragraphs above, ISIS faced a period of decline in 2008 before turning into the powerful terrorist organization well known nowadays. The reasons that allowed its rebirth have been different. It has been able in fact to take advantage of the situation and gain more support from the population.

As far as the situation in Iraq is concerned, as mentioned above, AQI was losing support among the same Sunnis who at the beginning were sympathetic to the organization. What changed was the policy of marginalization instituted by Maliki. At the end of 2008 in fact, the Sunni Western provinces of Salahuddin, al-Anbar and Diyala (the ones involved in the so-called “awakening” against AQI) were characterized by several well-organized demonstrations calling for an improvement on the standard of living and better job

¹¹² *Foreign Fighters: An Update..*, op., cit., p. 13

¹¹³ Amanda Paul, *Foreign Fighters from the Caucasus*, 21 July 2015, <http://www.nrttv.com/en/birura-details.aspx?Jimare=1358>

¹¹⁴ *Foreign Fighters: An Update..*, op., cit., p. 15-16

opportunities. Moreover, Maliki tried to eliminate the Sunni politicians from the political process. The Maliki government unwillingness to meet Sunni demands for greater political inclusion and the allocation of more resources made ISIS's job of "seducing" the Sunni fighters an easy task¹¹⁵. It is especially the Sunni-Shia rift, the political clash between the two communities, that enabled IS to enter in Iraq once again and this time with greater power, after being ejected in 2008. The Islamic State took measures to improve political and military position in order to be ready to take advantage of the departure of the American troops from Iraq, a fact that enabled IS to encounter less resistance in the various attacks performed. In addition, what really interested IS was been able to take control of the oil-rich provinces of Iraq, using them to control the country and to finance itself (an issue discussed in the next chapter). When ISIS returned in Iraq in 2014, the group was well-organized, and the operations were conducted by the Shura Council through suicide bombers and assassination squads¹¹⁶. Most importantly, several Sunni officers decided to line up with ISIS because "They [the Shia] don't even consider us Sunnis to be human beings. Only Shiites got promoted to become officers, and it was only the Shiites who landed government contracts. We were second-class citizens¹¹⁷."

in 2011, a violent repression conducted by the Syrian government towards some peaceful civilian demonstrations lead to the explosion of a violent civil war. The historical context is the well-known Arab Spring, a revolutionary wave of both violent and non-violent protests, which began in 2010 in Tunisia and then spread throughout the Arab world. This activism, started from the bottom, from the people, aimed at putting an end to the intolerable disparities in political power and economic wealth between individuals. The Arab Spring emerged from the popular aspiration for dignity and freedom¹¹⁸. A revolutionary wave that the Syrian President was sure to avoid, underlying the stability of his country "[...] we have growth although we do not have many of the basic needs for people. Despite all that, the people do not go into an uprising¹¹⁹." What happened some months later was completely the contrary. This is not the right place to discuss in details the development of the civil war,

¹¹⁵ A. S. Hashim, *The Islamic State, from Al Qaeda..*, op., cit.

¹¹⁶ A. S. Hashim, *The Islamic State, from Al Qaeda..*, op., cit.

¹¹⁷ A. S. Hashim, *The Islamic State, from Al Qaeda..*, op., cit.

¹¹⁸ Larbi Sadiki, *The Arab Spring: The People in International Relations* in Louise Fawcett., op., cit., p. 327

¹¹⁹ Augustus Richard Norton, *The Puzzle of Political Reform in the Middle East*, in Louise Fawcett., op., cit., p. 149

thus I will focus on the main aspects relevant for my research. First of all, it is necessary to understand who the president of Syria is. Bashar al-Assad is the son of the previous president, Hafiz, and he always presented himself as a reformer¹²⁰. At the beginning of 2011, many peaceful demonstrations began in the Southern area of the Sunni district of Houran, challenging the Government, although the response of the government was far less peaceful¹²¹. Soon, the protests transformed into an armed insurrection, including not only civilians but also several soldiers, who deserted the war to join the opposition. In a short period of time, different factions started to delineate. On one side, the Syrian regime with its internal and external supporters, and on the other, a multitude of opponents including Sunni Muslims and jihadists. It is in this scenario that Baghdadi sent some members in Syria. They soon established a new group, Al-Nusra, in 2012, to fight against the Syrian regime forces¹²². The Syrian regime was considered by al-Baghdadi as an “apostate”. The al-Assad family, in fact, is part of the minority Alawi community, which account for the 11% of the population in Syria. Moreover, the Alawi community is an offshoot of the Shia Islam. Thus, the war in Syria situated perfectly within the ideological struggle pursued by IS, eliminate the “apostate” regime and spread the real Islam under the Sharia law. That is why the war soon transformed into a sectarian conflict.

1.6. Al Qaeda and IS: similarities and differences, the use of media

Certainly the way in which IS pursues its objectives greatly differs from the other terrorist organizations and especially from Al Qaeda. Even if both call for the jihad, they have different tactics and strategies. IS is more spectacular in his attacks, and more violent, it eliminates the enemies through mass execution, public beheadings, rapes and symbolic crucifixions¹²³ but at the same time providing basic services to the population who accepts to be ruled by the IS (an aspect I will focus on the next chapter). Moreover, even if both made a great use of the media and Internet, there has been a real acceleration during the

¹²⁰ A. R. Norton, *The Puzzle of Political Reform in the Middle East*, in Louise Fawcett., op., cit., p. 148 and in L. Napoleoni, *ISIS.*, op., cit., p. 106

¹²¹ Zachary Laub, *The Islamic State*, 10 August 2016, Council on Foreign Relations, <http://www.cfr.org/iraq/islamic-state/p14811>

¹²² Karen DeYoung, *Al-Qaeda leader Zawahiri seeks to end infighting among Syrian militants*, 23 January 2014, The Washington Post, https://www.washingtonpost.com/world/national-security/al-qaeda-leader-zawahiri-seeks-to-end-infighting-among-syrian-radicals/2014/01/23/05c80874-8451-11e3-8099-9181471f7aaf_story.html?utm_term=.b7a61ef0223b

¹²³ D. Byman, *Comparing Al Qaeda and ISIS.*, op., cit.

2000s with the IS's videos of executions and violence. Actually, the propaganda mechanism emerged during the 90s when Al Qaeda opened its first website "Al Neda"¹²⁴ in order to spread leader's speeches, messages and executions. While IS makes the use of social networks such as Twitter, Facebook and YouTube to display not only the leader's speeches but especially all the different war actions. As Bin Laden wrote in the 90s, "the 90% of the preparation for war is effective use of the media¹²⁵". That is why he also sponsored some magazines such as "Al Jihad"¹²⁶ in the 80s. The real new strategy is the use of logics of marketing in a new scenario: the war. This is the real novelty introduced by IS. Its slogan is relevant in this discourse "Baqiyah wa-Tatamaddad", which stands for "remaining and expanding", struggling locally, establishing a government and leading campaigns of propaganda and awareness¹²⁷. Thus, IS derives from Al Qaeda not only in military terms but also in the use of media as propaganda. However, alongside Internet, also magazine were used. Just to give some examples of the development of this aspect in the 2014 IS founded "Dabiq" which deals with politics and internal life in the Caliphate, aimed at explaining the ideology upon which the Islamic State is founded¹²⁸. Other examples are the "Inspire"¹²⁹ Al Qaeda's magazine and "Azan" the Taliban one. The two groups are then not too different, the only difference is that IS could take advantage of more developed technologies during the 2000s than the 90s and it was able to extend this mechanism to the maximum power. On the contrary, in what the two organizations differ is the use of violence. It is undeniable that both are guilty of unjustifiable and unforgivable atrocities, although also in this case IS exceeded Al Qaeda to such an extent that in two occasion it has been asked to IS to release two aid workers arguing that executing them was wrong under the Islamic Law. Moreover, Al Qaeda does not justify the extreme violence perpetrated by IS toward the Shia community¹³⁰.

In conclusion, the first chapter's aim was to give a short description of the two main terrorist

¹²⁴ Philip Seib, Dana M. Janbek, *Global Terrorism and New Media: The Post-Al Qaeda Generation*

¹²⁵ D. Byman, *Al Qaeda...*, op., cit., p. 102

¹²⁶ D. Byman, *Al Qaeda...*, op., cit., p. 102

¹²⁷ Bruno Ballardini, *Il Marketing dell'Apocalisse*, Baldini e Castoldi 2015, p. 29

¹²⁸ Harleen K. Gambhir, *Dabiq: The Strategic Messaging of the Islamic State*, 15 August 2014, http://www.understandingwar.org/sites/default/files/Dabiq%20Backgrounder_Harleen%20Final.pdf

¹²⁹ Naureen Chowdhury Fink and Benjamin Sugg, *A Tale of Two Jihads: Comparing the al-Qaeda and ISIS Narratives*, 9 February 2015, the Global Observatory, <https://theglobalobservatory.org/2015/02/jihad-al-qaeda-isis-counternarrative/> and in D. Byman, *Al Qaeda...*, op., cit., p. 108

¹³⁰ D. Byman, *Comparing Al Qaeda...*, op., cit.

organizations, especially underlying the aspects that link them and the ones that underline their differences. I focused my attention not only on the historical events, essentials to understand the reasons behind the emergence of these two groups, but also on their composition, with special attention to the leaders and influential figures that have appeared during the years. As it is emerged from the research, even if IS lies its roots in Al Qaeda and both rely on the same objectives and ideologies, calling for the jihad, they differ in several aspects, such as strategies, tactics and composition. What I was trying to explain was that too often there is a hasty inclination to label different groups under the name of terrorist organizations without taking a closer look on them. It is undeniable that both are consequences of two proxy wars, the one in Afghanistan against the USSR and the ongoing conflict in Syria and it is evident that these conflicts provided the finances necessary for their existence. Thus, the next chapter will focus on the financing of terrorism.

CHAPTER II

The financing of terrorism

Everybody's worried about stopping terrorism. Well there's a really easy way: stop participating in it.

*Noam Chomsky*¹³¹

It is undeniable that terrorist acts have always existed since ancient times, but it is after the 11th September 2001 that both the UN and the National legislations have started to implement legal instruments and mechanisms in order to frame the concept of terrorism and to fight it. It is clear that, in order to stop terrorist acts, it is necessary to stop the financing of the phenomenon. However, before looking deeply to the funding of terrorism, it is necessary to understand what "terrorism" is. Is there a definition of the concept? Is it essential? Overall, why is it so difficult to reach an agreement on the definition of the issue?

2. The definition of terrorism

The definition of terrorism is an extremely contested subject. At present, there is no approved universal legal definition by the UN and throughout the 20th Century attempts have been made to reach a unanimous consent among different regions and nations. The root word "terror" (from latin "terrere" which means "to frighten") was first used in English in 1528, even if terrorism gained political connotations during the French Revolution¹³². Terrorism was used for the first time as a legal term only on 1931 during the Third Conference for the Unification of Penal Law in Brussels¹³³, followed by the adoption of the term in the Sixth Conference in Copenhagen in 1935¹³⁴. However, a first real definition of the term can be found only in the Convention for the Prevention and Punishment of Terrorism concluded in Geneva in 1937, whose Art. 2 underlines that an act of terrorism is "any wilful

¹³¹ Noam Chomsky is an American linguist, philosopher, cognitive scientist, historian, social critic, and political activist

¹³² Reuven Young, *Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions in Domestic Legislation*, Boston College International and Comparative Law Review Volume 29, Issue 1, Article 3, p. 27

¹³³ R. Young, *Defining Terrorism..*, op., cit., p. 35 and in Raphael Lemkin, *A Report on Terrorism*, International Conference for the Unification of the Criminal Law, Madrid 1933, p. 3, <http://watchersofthesky.com/wp-content/uploads/2014/10/lemkins-madrid-report-in-1933.pdf>

¹³⁴ R. Young, *Defining Terrorism..*, op., cit., p. 35 and in Myra Williamson, *Terrorism, War and International Law, The legality of the Use of Force Against Afghanistan in 2001*, The University of Walkato, New Zealand, 2009, p. 49

act causing death or grievous bodily harm or loss of liberty” and “any wilful act calculated to endanger the lives of member of the publics”, among others⁽¹³⁵⁾. The League of Nations decided to establish a Committee, whose aim was to draft a Convention for the repression of terrorism and in 1937 two new Treaties emerged⁽¹³⁶⁾. Even if these two treaties never entered into force, they tried to frame for the first time the phenomenon of terrorism, forcing states to define terrorism as a crime and establishing the extradition of criminals who committed terrorist crimes. These two drafts started to pinpoint the necessity for a unanimous legal definition of the phenomenon at an international level. From 1937 up to present, different Conventions have been adopted in order to reach a consensus on this issue. During the 20th Century, terrorism changed deeply, starting to include a mix of religious, political ideology and geo-political goals. The term terrorism in fact has been applied to several situations and phenomenon. Historically speaking, it was first applied to the “regime de la terreur” of Robespierre in the French Revolution, then to the so-called “red terror” of Communism and the terror of Nazi and Fascism, then to the acts of struggle for the decolonisation and finally in the ‘90s it referred to the religious and fundamentalist violent acts unfortunately well-known¹³⁷. Among the International efforts, it is worth mentioning the Ad Hoc Committee established by Resolution 51/210 of 17 December 1996 on the Measures to Eliminate International Terrorism¹³⁸ with the aim to elaborate comprehensive legal framework of conventions dealing with international terrorism. Moreover, it recommended the Sixth Committee⁽¹³⁹⁾ to establish a Working Group to finalize the process on the Draft Comprehensive Convention on International Terrorism¹⁴⁰. The Comprehensive Convention is founded on the twelve sectorial Conventions mentioned in the preamble and even if this project was necessary, the Convention never entered into

⁽¹³⁵⁾ *Convention pour la prevention et la repression du terrorisme*, 16 November 1937, English and French Version available at http://legal.un.org/avl/pdf/ls/RM/LoN_Convention_on_Terrorism.pdf

⁽¹³⁶⁾ L. Hennebel and G. Lewkowicz, *Le problème de la définition du terrorisme*, 2009, in Hennebel, L., Vandermeersch, D., (ed.), *Juger le terrorisme dans l’Etat de droit*, Bruxelles, Bruylant, p.22

¹³⁷ Alex Schmid, *Terrorism, The definitional problem*, *Case Western Reserve Journal of International Law*, Volume 36, Issue 2, 2004, p. 399

¹³⁸ Art. 9 of the Resolution of the General Assembly 51/210 of 17 December 1996 available at <http://www.un.org/documents/ga/res/51/a51r210.htm>

⁽¹³⁹⁾ The Sixth Committee is one of the main Committees of the General Assembly concerning legal questions. Each Member State is part of it.

¹⁴⁰ *Measures to eliminate international terrorism (Agenda item 107)*, Sixty-Ninth Session, General Assembly Of The United Nations Legal - Sixth Committee, http://www.un.org/en/ga/sixth/69/int_terrorism.shtml

force, despite the low number of ratifications needed (twelve). This project was first presented by India in the Working Group at the 55th Session of the GA and became the basis for the discussion. However, there were some controversial points in which an agreement was difficult to reach, notably, the definitional problem of the phenomenon, the scope of the Convention and the relationship between the Convention and the “sectoral” treaties¹⁴¹. Many countries in fact did not ratify some of the sectorial treaties while taking part on the draft of the Comprehensive Convention¹⁴². In particular, one of the main issues, which will be discussed in the next paragraph, is the lack of an agreement on the inclusion or exclusion of the acts of the freedom fighters on the terrorism definition.

At an International level, two other main documents are important to mention, the two resolutions of the Security Council, 1373 and 1566. While the former (explained in detailed below), which is the main legal instruments for counter terrorism, does not contain a proper definition of terrorism, the latter not only contains a definition but overall it defines terrorism as a crime.

“Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, [...] with the purpose to provoke a state of terror [...] constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable [...]”⁽¹⁴³⁾

The resolutions are important documents and key legal instruments providing the main elements of the UN Global Counter Terrorism strategy.

Nineteen is the number of the legal instruments adopted since 1963 by the UN to prevent terrorist acts¹⁴⁴. The difference between these treaties and the more modern ones is that the first documents were more limited, or sector-based, which means that they referred

¹⁴¹ Mahmoud Hmoud, *Negotiating the Draft Comprehensive Convention on International Terrorism*, Journal of International Criminal Justice 4 (2006), 1031-1043, p. 1032

¹⁴² Mahmoud Hmoud, *Negotiating the Draft Comprehensive Convention..*, op., cit., p. 1034

⁽¹⁴³⁾ Resolution of the Security Council 1566 (2004), art. 3 available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1566\(2004\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1566(2004))

¹⁴⁴ *International Legal Instruments*, United Nations Action To Counter Terrorism, <http://www.un.org/en/counterterrorism/legal-instruments.shtml>

explicitly to specific situations using a so-called “piecemeal approach”¹⁴⁵, while nowadays the aim is to find a global definition of terrorism and to agree on a global approach. The Conventions adopted was modified following the changing of the terrorism itself. The main sectors included were: the civil aviation, the protection of international staff, the taking of hostages, the nuclear material, the maritime navigation, explosive materials, terrorist bombings, the financing of terrorism and the nuclear terrorism⁽¹⁴⁶⁾.

It is estimated that almost 212 definitions of terrorism exist in the world and that 90 are in use ⁽¹⁴⁷⁾. The difficulty lies on the approaches to the issue. Some argue that a sectorial and inductive approach is better to define the phenomenon, taking into consideration only the material aspects, thus underlining the criminal nature of some acts; while others argue that it is necessary to adopt a more general and deductive approach, underlying the intention’s nature, namely the moral aspect. However, regarding terrorism, it is necessary to take into consideration both aspects to be more precise and exhaustive, the so-called mixed approach¹⁴⁸. This is the main characteristic of the Ad Hoc Committee established by the General Assembly in 1996 mentioned above. The EU Framework Decision of 2002 adopted a similar approach, underlying not only the material aspects but also the specific intention. However, in order to understand the main positions about the definition of terrorism, it is worth analysing the differences and similarities among the definitions released by the main regional organizations, rather than focusing only on international ones. As far as the European Union is concerned, the Council Framework Decision of 13th June 2002 on combating terrorism underlies in the Article 1 the aim of the offence as “intimidation of a population, the coercion of a government and the destabilization of the institutional and political institutions”. In addition, it gives a list of the main material acts considered terrorism such as “kidnapping or taking hostages, release of dangerous substances, causing extensive destruction to a Government or public facility”. Moreover, it gives a definition of terrorist organization “a structured group of more than two persons, established over a

¹⁴⁵ Marcello Di Filippo, *Terrorist Crimes and International Co-operation: Critical Remarks on the Definition and Inclusion of Terrorism in the Category of International Crimes*, The European Journal of International Law Vol. 19 no. 3, EJIL, 2008, p. 536

⁽¹⁴⁶⁾ For the complete list, visit <http://www.unric.org/it/attualita/30444-strumenti-giuridici-internazionali-contro-il-terrorismo>

⁽¹⁴⁷⁾ Hennebel and Lewkowicz, *Le problème de la définition du terrorisme*, op. cit., pag. 28

¹⁴⁸ Hennebel and Lewkowicz, *Le problème de la définition du terrorisme*, op. cit., pag. 31-32

period of time and acting in concert to commit terrorist offences.”⁽¹⁴⁹⁾ As far as the Organization of African Unity (OAU) instead, the OAU Convention on the prevention and combating of terrorism defines the act of terrorism as “any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom [...]coerce or induce any government, body, institution [...]create general insurrection.” Adding that terrorist acts cannot be justified under political, philosophical, ideological, racial, ethnic, religious or other motives. ⁽¹⁵⁰⁾ Moreover, the Convention of the Organization of Islamic Conference on Combating International Terrorism defines the act of terrorism as “any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperilling their lives [...]or threatening the stability, territorial integrity, political unity or sovereignty of independent States.”⁽¹⁵¹⁾ Finally, the Arab Convention on the suppression of terrorism of the League of Arab States (LAS) defines terrorism “Any act or threat of violence, whatever its motives or purposes, that occurs for the advancement of an individual or collective criminal agenda, causing terror among people [...]aiming to cause damage to the environment or to public or private installations or property.”⁽¹⁵²⁾

Upon analysis of these definitions, even if they are different, they have important elements in common. First of all, the use of the mixed approach. All the definitions underline not only the material aspects of the act but also the moral one. Moreover, they all refer to some common denominators: the coercion towards the State, the intimidation of the population and the political or institutional destabilization. Thus, a partial agreement among countries, especially among the different regional areas, does exist. In addition, as Antonio Cassese underlines, the definition of terrorism in time of peace does exist and it evolved in the

⁽¹⁴⁹⁾ *Council Framework Decision of 13 June 2002 on combating terrorism*, 2002/475/JHA, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002F0475>

⁽¹⁵⁰⁾ *OAU Convention On The Prevention And Combating Of Terrorism* available at https://www.au.int/en/sites/default/files/treaties/7779-file-oau_convention_prevention_combating_terrorism.pdf

⁽¹⁵¹⁾ *Convention of the Organization of the Islamic Conference (OIC) on Combating International Terrorism* available at <http://www.cfr.org/terrorism-and-the-law/convention-organization-islamic-conference-oic-combating-international-terrorism/p24781>

⁽¹⁵²⁾ *The Arab Convention on the Suppression of Terrorism* available at https://www.unodc.org/tldb/pdf/conv_arab_terrorism.en.pdf

International Community at the level of customary law ⁽¹⁵³⁾, whose main elements are the *usus* and *opinion juris ac necessitatis*, which means that the phenomenon is characterized by an objective element and a subjective one. Respectively, the former is defined by its transnational character, its criminalized conduct and the involvement of the victims (private individuals, civilian population and state authorities); while the latter is defined by its purpose, that is to say spread terror among the population or destabilize the institutional structure and by the motive, summed up as political, religious and ideological. Looking carefully at the definitions mentioned above, it is easy to notice that all the Conventions agree on some general acknowledged elements.

A problem emerges when we shift from peacetime to time of armed conflict. In fact, the acts of terrorism in armed conflict can fall under the category of war crimes or crimes against humanity ⁽¹⁵⁴⁾. In both situations, both international humanitarian law and international criminal law rule them. The aspects that make the difference between the two situations are the specific intent first and the target. The statutes of International Criminal Tribunals argue that the victims must be civilians, while in customary law crimes against humanity can be perpetrated against military personnel. For these reasons, the crime of terrorism can fall under different categories: as a discrete crime, as a sub category of war crimes and as a sub category of crimes against humanity, as explained above. It is within this framework that the main disagreement on the definition of international terrorism emerges.

However, even if there is not a universal definition of terrorism, it can be declared the emergence of a so-called “core definition” of terrorism¹⁵⁵. Some authors underline in fact that neither the aim nor the method employed could be conclusive parameters to define a terrorist crime. Since there is a disagreement on what to include or exclude from the definition of the phenomenon, another approach is needed in order to override this obstacle, such as a victim-oriented one. This approach take into consideration that shifting the focus from political motivation or strategy towards the violation of human rights (universally recognized) could be the answer. As the UN Secretary General Kofi Annan

⁽¹⁵³⁾ Antonio Cassese, *The Multifaceted Criminal Notion of Terrorism in International Law*, *Journal of International Criminal Justice* 4 (2006), 933-958, pag. 933

⁽¹⁵⁴⁾ A. Cassese, *The Multifaceted Criminal Notion...*, op. cit., pag. 933

¹⁵⁵ M. Di Filippo, *Terrorist Crimes and International Cooperation...*, op., cit., p. 569 and in A. Schmid, *Terrorism and definitional problem...*, op., cit. and in R. Young, *Defining Terrorism...*, op., cit., p. 33

declared “there can be no acceptance of those who would seek to justify the deliberate taking of innocent civilian life, regardless of cause or grievance. If there is one universal principle that all peoples can agree on, surely it is this.”¹⁵⁶

2.1 The National Liberation Movements and the definition of terrorism

The national liberation movements (hereafter referred as NLM) are, in international law, a category of armed non-state actors who fight for their right to self-determination¹⁵⁷. As far as the definition of terrorism is concerned, both the OIC and the League of Arab States exclude them from the definition of terrorists in their Conventions. Their article 2 underlines “Peoples struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime”. A concept underlined also by the reservations on the International Convention for the suppression of the financing of terrorism (1999) by Syria and Jordan. They respectively argued, “The Syrian Arab Republic considers that acts of resistance to foreign occupation are not included under acts of terrorism”; Jordan instead argued that acts that fall under the people’s right to self-determination should not be considered as terrorist acts¹⁵⁸. They both underlined the focal point around which the problem to find a universal definition of terrorism lies. The right to self-determination emerges in several legal instruments such as, just to mention the main important, the UN Charter at the art. 1, par. 2 “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples¹⁵⁹” and in art. 55¹⁶⁰. It is also featured in the two Covenants of 1966, International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights

¹⁵⁶ Secretary-general, addressing assembly on terrorism, calls for ‘immediate, far-reaching changes’ in un response to terror, 1 October 2001, <https://www.un.org/press/en/2001/sgsm7977.doc.htm>

¹⁵⁷ Konstantinos Mastorodimos, *National Liberation Movements: Still a Valid Concept (with Special Reference to International Humanitarian Law)*, p. 72-73

<https://law.uoregon.edu/images/uploads/entries/Mastorodimos.pdf> and in Noelle Higgins, *International Law and Wars of National Liberation*, 29 May 2014, <http://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0072.xml>

¹⁵⁸ *International Convention for the Suppression of the Financing of Terrorism*, New York, 9 December 1999, p. 47 (Jordan Reservation) and p. 52 (Syrian Reservation)

<https://www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf>

¹⁵⁹ Charter Of The United Nations And Statute Of The International Court Of Justice, San Francisco 1945, p. 3 available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

¹⁶⁰ Charter of The UN., op., cit., Chapter IX, p. 11

“All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development¹⁶¹.” Moreover, the legitimacy of the NLM has been recognized since the half of the 20th Century in different moments, such as in the GA Resolution 3034 of 1972 ⁽¹⁶²⁾. Among States there is a long-standing debate on this issue, especially on what should be considered as an act of terrorism and how it can be defined as an act perpetrated under the right to self- determination. Some argue that this right cannot justify violent acts while others, mainly the Arab Countries, underline that it is necessary to distinguish the two aspects. The crucial issue is when acts that are normally considered as terrorism and perpetrated by people or organizations directed against foreign occupation, can be justified and defended by the international law in the framework of the right to self-determination. It is true that in order to be able to pursue their right to self-determination freedom fighters have to be distinguished from terrorists. The need for such a distinction lies on the necessity to ensure that freedom fighters are not subjected to unwarranted treatments, such as the deprivation of the freedom of movement. This blurry situation can cause in fact violation of the fundamental human rights. Notably, in the aftermath of 2001, this happened in the UK, where the implementation of laws against terrorism, in particular the Anti- terrorism, crime and security Act highlighted a problem with reference to the human rights. An issue deeply discussed at a regional and international level, explained with more details in the next chapter in the context of the counter-terrorism strategy.

Moreover, the distinction between the two entities is needed for purposes of International Humanitarian Law (IHL), the law that rules the conflicts. Even if this is not the place to discuss the development of the IHL, it is worth noticing that there has been a modification in the approach of classifying armed forces enjoying the protection of the IHL with the introduction of the Additional protocol to the Geneva Conventions 1949.

“The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an

¹⁶¹ Art. 1, par. 1 of International Covenant on Economic, Social and Cultural Rights available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> and International Covenant on Civil and Political Rights available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

⁽¹⁶²⁾ A/RES/3034 (1972), Art. 3, [http://www.un.org/documents/ga/docs/27/ares3034\(xxvii\).pdf](http://www.un.org/documents/ga/docs/27/ares3034(xxvii).pdf)

authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, 'inter alia', shall enforce compliance with the rules of international law applicable in armed conflict.⁽¹⁶³⁾”

Terrorist organizations cannot be a Party to an international conflict. Thus, they do not enjoy the protection accorded by IHL. The Art 1(4) of the Additional Protocol in fact underlines that “armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes are to be considered international conflicts¹⁶⁴.” Thus, in doing so the conflicts to self-determination enjoy the protection of the IHL, moreover, the freedom fighters are forced to respect the rules within the IHL, which means that terrorist acts cannot be justified¹⁶⁵. Thus, the IHL is applicable to non-international armed conflict when a party is not a state but an insurgent group aiming at overthrowing the legal government. As the ICTY (International Criminal Tribunal for the former Yugoslavia) concluded, the more egregious crimes committed in a non-international armed conflict are to be considered as international crimes which means that acts of terrorism committed in these conflicts may be equated with “grave breaches” as underlined by the Geneva Convention¹⁶⁶. The main difference is that although a terrorist organisation may fight as armed forces under the command of a state party involved in an international armed conflict (enjoying the protection of the IHL), a terrorist organisation itself cannot be a party at war in an international conflict. A clear example of the situation is the one that occurred in Afghanistan in the aftermath of the decision to launch the Operation Enduring Freedom¹⁶⁷. The Taliban at that time were the existing government while Al Qaeda was the organization allied with the government operating in the Afghan territory thus not enjoying the protection of the IHL. If the conflicts were against AL Qaeda itself, it would never have been considered as an International

⁽¹⁶³⁾Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/470-750053?OpenDocument>

¹⁶⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/470-750004?OpenDocument>

¹⁶⁵ Hans-Peter Gasser, *Acts of terror, “terrorism” and international humanitarian law*, IRRIC September 2002 Vol. 84 No 847, p. 562

¹⁶⁶ H. P. Gasser, *Acts of terror..*, op., cit., p. 562

¹⁶⁷ The Operation is a military operation aimed at damaging the Taliban in Afghanistan. For a detailed review *Operation Enduring Freedom, An Assessment*, RAND Corporation 2005, available at http://www.rand.org/pubs/research_briefs/RB9148/index1.html

Armed Conflict governed by IHL and the effects of this assumption would have involved several aspects, such as the management of prisoners.

Thus, the question is whether freedom fighters should be considered terrorists or not. It is true that the Conventions of OIC and League of Arab States, mentioned at the beginning of the paragraph, emphasize this aspect, but it is also undeniable that they are too general and not precise. The Conventions in fact refers generically to struggles for self-determination and against foreign occupation and aggression, not making any specific reference. It is not clear if the Conventions refer to the whole set of armed acts or if their aim is to remove the label of terrorism from those acts directed against civilians aiming at spreading terror⁽¹⁶⁸⁾. This controversy has been one of the major obstacles for the elaboration of a common definition of international terrorism; internationally, this had profound repercussions, and different views on the matter have arisen. As Antonio Cassese underlined, there are three main views. The first one held by Pakistan, Egypt, Jordan and Syria, expressed in the reservations to two important Conventions against terrorism⁽¹⁶⁹⁾, which emphasizes that any act perpetrated by peoples or organizations engaged in wars of self-determination should be excluded by the definition of terrorism, including in this case also the attacks against civilians. However, they do not clarify what law should govern such acts.

The second one held by the Secretary General of the Arab League and by the Member States of the OIC and followed by some Western countries and by the EU⁽¹⁷⁰⁾. It argues that the acts performed by freedom fighters in wars are not covered by the body of international law on terrorism, but rather by IHL, not justifying the attacks against civilians⁽¹⁷¹⁾. Labelling an act as “terrorism” or as “war crimes” entails the use of different legal instruments. In terrorist acts, a set of investigative powers normally not authorized for ordinary crimes are put in

⁽¹⁶⁸⁾ A. Cassese, *The multifaceted criminal notion...*, op. cit., p. 951

⁽¹⁶⁹⁾ Convention for the Suppression of Terrorist Bombing, in reference to Pakistan, and the Convention for the Suppression of the Financing of Terrorism, in reference to Syria, Egypt and Jordan. Interesting in this perspective is the reservation made by Pakistan “nothing in this Convention shall be applicable to struggles, including armed struggles, for the realization of the right to self-determination [...]the right to self-determination is universally recognized as a jus cogens.” A Treaty in conflict with a jus cogens is void. However, the treaty came into force among Pakistan and the contrary State Parties.

⁽¹⁷⁰⁾ *Council Framework Decision of 13 June 2002 on combating terrorism*: par. 11 available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002F0475> and the text for the *Comprehensive Convention of terrorism* and in the Annex IV, Art. 18, par. 2 of the Draft Comprehensive Convention available at Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, p. 17 <http://www.un.org/documents/ga/docs/57/a5737.pdf>

⁽¹⁷¹⁾ A. Cassese, *The Multifaceted criminal notion...*, op. cit., p. 954

practice. This means that in a time of armed conflict terrorism norms stop applying and humanitarian law takes over.

Finally, the third one presents a combination of IHL and others international legal instruments against terrorism, a sort of middle road. A position held by some national legislations, such as the Canadian and the Italian one. This last view implies that freedom fighters' attacks against civilians have to be considered as terrorist acts especially if their aim is to spread terror, while attacks against military personnel are lawful.⁽¹⁷²⁾

The second and the third remarks are probably the main shared among States even if there is no agreement at an International level. As far as the last position is concerned, there is an interesting development made by some Italian Courts.

2.2 The position of the Italian Supreme Court of Cassation in the debate concerning the NLM

On a National level, in the aftermath of the attacks of 2001, it has been introduced the article 270 bis(3) of the Italian Criminal Code with reference to the crime of international terrorism¹⁷³. Even if this is not the place to discuss deeply the nature of the article, it is worth noticing how for the first time the Italian Courts faced the problem of distinguishing and defining an act of terrorism from similar phenomena, namely the NLM struggles. In particular, I refer to the case Bouyahia Maher Ben Abdelaziz et al¹⁷⁴. The case included a number of foreign nationals charged with the offence of "association for the purpose of international terrorism in Italy and abroad". Briefly, the problem was to determine whether supporting paramilitary training organizations located in the Middle East, with the purpose of carrying out acts of violence in Iraq or in similar contexts, could be classed among crimes of a terrorist nature. The problem clearly emerged because of the lack of agreement on a definition of terrorism at an international level. The accusation included the participation not only to the recruitment but also to the dispatching of volunteers to be trained as Islamic

⁽¹⁷²⁾ A. Cassese, *The Multifaceted criminal notion..*, op. cit., p. 955

¹⁷³ *Annexes Of The Detailed Assessment Report Anti-Money Laundering And Combating The Financing Of Terrorism, Italy*, February 2006, FATF, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Italy%20annex%201.pdf>

¹⁷⁴ Antonio Cassese, Guido Acquaviva, Mary Fan, Alex Whiting, *International Criminal Law, Cases and Commentary*, Oxford University Press, 2011, p. 305

fighters¹⁷⁵. The result is two different conclusions from two different judges, each with different territorial jurisdiction over an accused belonging to one of the two cells operating in Italy, one in Milan and one in Cremona. In order to interpret the criminal law notion of international terrorism the courts used a systematic method, providing elements useful to reshape the notion at an international level and to give a case of reference for other national jurisdictions⁽¹⁷⁶⁾. At first instance, the two Courts reached different conclusions, by two different judges in two different districts. The first Court, namely the Preliminary Hearing Judge in Milan concluded that activities carried out by the cell could not be classed as terrorism because the aim of the accused was to support the freedom fighters activities in Iraq. The judge based his reasoning on the definition of international terrorism provided by international and regional documents: the International Humanitarian law, the definition of acts of terrorism included in the International Convention for the suppression of financing of terrorism of 1999 and the definition of terrorism included in the European Union Council Framework Decision of 13th June 2002.

He argued that the plans of violent actions were pointed against military occupation and not against civilians, thus the belonging to an Islamic combatant organization was not sufficient to establish their involvement in terrorist activities. Even if the Islamic Organization, namely Ansar-al-Islam, was included in the 1267 sanctions list¹⁷⁷.

The Preliminary Inquiry judge in Brescia instead, concluded that it is not possible to distinguish between acts of terrorism and foreign fighters activities on the basis of the aim and place where the activities took place.

The response of the Milan Appellate Court of Assize was different but not contrary. It underlined in fact another important factor: the necessity to distinguish between time of peace and war. In peacetime, an act can be defined as terrorism even if it causes *indirect* damage to civilians, while in war the act has to be *directed exclusively* against civilians. In conclusion, the Appellate Court dropped the charges against the accusation on the basis that the violent activities occurred just against military personnel. Thus, the three Courts

¹⁷⁵ *Italy v Abdelaziz and ors, Final Appeal Judgment*, No 1072, 17 January 2007, Oxford Reports in International Law, par. F1, p. 2

⁽¹⁷⁶⁾ Lucia Aleni, *Distinguishing Terrorism from Wars of National Liberation in the Light of International Law*, Journal of International Criminal Justice 6 (2008), 525-539, p. 529

¹⁷⁷ *Italy v Abdelaziz.., op., cit., par. H5, p. 4*

concluded the same, finding the accused not guilty of association for the purpose of international terrorism.

Finally, the Court of Cassation became involved. It highlighted that the crucial point is not the nature of the victim but the intention; otherwise, the mere co-existence of military personnel and civilians in the same place would be sufficient to exclude the terrorist nature of an act. Moreover, the timing is not important in this context.

In order to reach a conclusion, the Court used a systematic method taking into consideration both the definition of the EU Council Framework Decision, which is more precise and provides a list of acts defined a terrorism only in the peacetime, and the definition included in the Financing Convention, which refers both to peacetime and wartime. The latter was considered to be more functional because more adaptable to the developments that had occurred ⁽¹⁷⁸⁾.

In conclusion, the Cassation Court quashed the decision of the Appellate Court of Assize, taking into consideration the following important aspects on terrorism:

- Terrorist acts are defined as any acts carried out against civilians in peace time or against anyone not part of the hostilities
- The aim is to spread terror or to force a State to carry out an action
- Terrorists have a specific purpose identified as ideological, political or religious.

However, in the end, the 5th November 2007, one of the indicted has been sentenced to four years in prison¹⁷⁹. This example underlines which are the main problems of interpretations on the definition of terrorism, a definition that, in some cases can be irrelevant or not decisive, in others (as the case mentioned above) it is essential. However, an agreement on the distinction of activities carried out by freedom fighters or terrorists remains unresolved. This inability to define such actions clearly implies a different response and management of cases involving NLM or terrorism.

⁽¹⁷⁸⁾ L. Aleni, *Distinguishing Terrorism from...*, op. cit., p. 537

¹⁷⁹ Maria Chiara Noto, *Il Terrorismo Internazionale E Le Sanzioni Del Consiglio Di Sicurezza Nella Giurisprudenza Italiana: Il Caso Daki* in *Rivista di Diritto Internazionale Privato e Processuale*, Anno XLIV - N. 3, Luglio-Settembre 2008, p. 732-733

2.3 The financing of terrorism

Investigating and underlining the lack of a general definition of terrorism at an international level is important in order to frame the context in which this phenomenon is included and overall in order to better understand the main different opinions among countries. However, even if a universal definition does not exist, it is undeniable that several aspects are, nowadays, taken for granted as part of an act of terrorism, the so-called common denominator mentioned above. Moreover, the lack of agreement does not imply a weak cooperation among states. On the contrary, since 2001 the cooperation to fight the international terrorism has grown. It is undeniable that in order to stop the spread of this phenomenon it is necessary to cut its funding and financing. However, before explaining which are the main mechanisms against the financing, it is necessary to explain what is meant by “financing of terrorism” and which are the main ways to this purpose. In particular, I will refer first to the general concept of financing of terrorism at an international level and then on the ways in which Islamic State finances itself despite all the mechanisms of control.

The concept of financing of terrorism has emerged in the last decade of the 20th Century. Notably, with the adoption of three important legal instruments which will be described in details: the Convention of New York, the Resolution 1373 of Security Council and the Recommendations of the FATF. Within these documents, the concept evolved until the definition of a discrete crime. The first international legal use of “terrorist financing” can be traced within the UN GA Declaration on Measures to Eliminate International Terrorism of 1994.¹⁸⁰

In 2001, the Security Council, recalling the previous Resolutions, clarifies that terrorism financing as such is contrary to the purposes and principles of the UN Charter¹⁸¹. In doing so, the GA and the SC established the financing of terrorism as a general offence, while before 2001 any references to the financing referred explicitly to a precise situation or country (as

¹⁸⁰ A/RES/49/60 Par. 5 (a) annex II available at <http://www.un.org/documents/ga/res/49/a49r060.htm>

¹⁸¹ Recalling A/RES/ 51/210 Measures to eliminate international terrorism, 1996, Annex, art. 2 “knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations” <http://www.un.org/documents/ga/res/51/a51r210.htm>, the Declaration of 12 November 2001 clarifies that terrorism financing as such is “contrary to the purposes and principles of the Charter of the United Nations”, Resolution 1377 (2001), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/633/01/PDF/N0163301.pdf?OpenElement>

in the case mentioned below of the Taliban)¹⁸². However, at the beginning the concept of financing was linked to the sponsorship and financing given by the Governments. The development into a privatization of the crime emerged only at the end of the 20th Century, in particular thanks to the development of technology. It is true in fact that during the 70s and 80s many governments supported terrorist organizations, such as the Lebanese Hizballah backed by Iran, or the Tamil Tigers supported by India ⁽¹⁸³⁾. Even Al Qaeda found support first in the Sudan Government during the 90s and then in Afghanistan with the Taliban. In 1998 the Resolution 1214 of the Security Council ⁽¹⁸⁴⁾ “demands also that the Taliban stop providing sanctuary and training for international terrorists and their organizations”. States, in fact, can provide a wide range of aid, not only weapons and funds but also sanctuary⁽¹⁸⁵⁾ or even help terrorists by failing in preventing the use of its territory for the perpetration of terrorist acts¹⁸⁶. It is estimated that of the 36 terrorist groups designated in 2002 by the Secretary of States as foreign terrorist organizations, twenty had enjoyed state support ⁽¹⁸⁷⁾. Moreover, what is more important, state support can aid the transformation of a terrorist group: from a simple and disorganized group to a more powerful, organized and trained one. In this way, a link between the two entities emerges. However, supporting a group also means being able to control it. Therefore, even if initial support of the state can be positive, in the long term as the group grows and gains structure, it may consider to detach itself from that state and/or refuse to operate under its control. The link between the two is in fact very unstable, that is why terrorists prefer to privatize their financing and support. Moreover, some resolutions called for states to stop financing and supporting terrorists, notably the AG Res 49/60 (1995) in which the General Assembly declared that “any states should avoid organizing, financing [...]” and some SC Resolutions, which addressed the same concern towards specific situations¹⁸⁸.

It is until 2001 that the crime of financing terrorism has been linked to the support provided

¹⁸² Luca G. Radicati di Brozolo and Mauro Megliani, *Freezing the Assets of International Terrorist Organisations*, in Andrea Bianchi *Enforcing International Law Norms Against Terrorism*, Hart Publishing, 2004, p. 383

⁽¹⁸³⁾ Daniel Byman, *Deadly Connections States that sponsor terrorism*, 2005, Cambridge University Press, p. 1

⁽¹⁸⁴⁾ S/RES/1214 (1998) available at

<https://documentsddsny.un.org/doc/UNDOC/GEN/N98/387/81/PDF/N9838781.pdf?OpenElement>

⁽¹⁸⁵⁾ D. Byman, *Deadly Connections.*, op. cit., p. 3

¹⁸⁶ Yas Banifatemi, *La Lutte Contre Le Financement Du Terrorisme International*, Annuaire Français De Droit International XLVIII - 2002 - CNRS Éditions, Paris, p. 105

⁽¹⁸⁷⁾ D. Byman, *Deadly Connections.*, op. cit., p. 2

¹⁸⁸ Y. Banifatemi., op., cit., p. 106

by Governments to the various groups. During the last decade of the 20th Century the concept evolved until the adoption by the GA of the Global Counter-Terrorism Strategy in 2006, in which for the first time it is highlighted that the act of financing can be pursued by “any person”, not only States.

“To cooperate fully in the fight against terrorism [...], in order to [...] prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or perpetration of terrorist acts or provides safe havens.”⁽¹⁸⁹⁾

Before that, the definition of financing of terrorism emerged in various legal instruments adopted in particular by the UN. Notably, the Convention for the Suppression of the Financing of Terrorism, signed in New York in 1999 and entered into force on 10 April 2002. The Convention was a French initiative, in which three main countries played a major role given the issue, Luxembourg, Switzerland and Liechtenstein. Even if Switzerland was not a member of the UN, the Ad Hoc Committee and the Working Group allowed it to participate. It was adopted by 116 votes for, none against and three abstentions.¹⁹⁰ It defines the financing of terrorism at the Art. 2 as “Any person [...] that [...] by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out (b) any other act intended to cause death or serious bodily injury to a civilian [...] in a situation of armed conflict, when the purpose of such act [...] is to intimidate a population [...].” It is the first time that a Convention provides the elements to define the financing as a discrete crime. However, the Convention encountered the opposition of some Arab States, in particular Jordan, Egypt and Syria, which underlined in their reservations that financing a NLM cannot be considered a crime, since NLM are not defined as terrorists, according to them. Egypt for example declares that it “does not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view

⁽¹⁸⁹⁾ *Un Global Counter-Terrorism Strategy*, Counter-Terrorism Implementation Task Force, <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>

¹⁹⁰ Anthony Aust, *Counter-Terrorism, A new Approach, The International Convention for the Suppression of the Financing of terrorism*, Max Planck UNYB 5 (2001), p. 287

to liberation and self-determination as terrorist acts within the meaning of art. 2 [...] ⁽¹⁹¹⁾”The interesting aspect of the Convention is the language used in the definition, notably the word “any” which include everybody without any exclusion and “by any means” which underlines that it does not matter how funds get to a terrorist. Moreover, it introduces a new aspect, namely that the financing of terrorist is an act as serious as the terrorist act itself. ¹⁹²

Another legal document committed to define the financing and the counter strategy is the Resolution of the Security Council 1373 of 2001. This resolution has been defined as “a historic resolution” because it was adopted within just 48 hours ⁽¹⁹³⁾. However, even if the issue is the same, it presents some differences with the Convention mentioned above. First of all, for the first time acts of terrorism are defined as contrary to the principle of the UN Charter “such acts, like any act of international terrorism, constitute a threat to international peace and security”. Using the specific word “any”, the statement differentiates from the others included in other resolutions, which referred only to specific acts. Clearly, this has some legal consequences. The first one is that the Security Council is entitled to take collective measures as described in Chapter VII of the UN Charter and those measures are mandatory for all the member states according to article 25⁽¹⁹⁴⁾ and 48⁽¹⁹⁵⁾. Moreover, it requires states to take action against individuals, groups and their assets¹⁹⁶. The mentioned measures are general in character, and are directed at the prevention, prosecution, and punishment of all acts of financing of terrorism. The first part of the definition of financing of terrorism is identical to the one in the Convention, even if the Resolution does not mention any definition of terrorism. However, the second part is different. Paragraph 1, letter d), in fact, specifies “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

⁽¹⁹¹⁾ *Convention for the Suppression of the Financing of Terrorism* (with reservations)

<https://www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf>

¹⁹² A. Aust, *Counter-Terrorism...*, op., cit., p. 288

⁽¹⁹³⁾ Sara De Vido, *Il Contrasto del finanziamento al terrorismo internazionale*, 2012, CEDAM, p. 65

⁽¹⁹⁴⁾ “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

⁽¹⁹⁵⁾ “[...] the actions shall be taken by all the Members of the United Nations [...]Such decisions shall be carried out by the Members of the United Nations directly and through their action [...]”

¹⁹⁶ *The Sources Of International Norms And Standards On The Suppression Of The Financing Of Terrorism*, IMF, p. 15, <https://www.imf.org/external/pubs/nft/2003/SFTH/pdf/chp2.pdf>

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.”⁽¹⁹⁷⁾ This part underlines that the collection of funds with the purpose of committing an act and the provision of funds to terrorist groups or organizations (indicated in the Resolution as “entities”) fell within the definition of financing crime.

The third important legal instrument is the recommendations of the FATF. The Financial Action Task Force is an inter-governmental body established in 1989 in order to set standards and promote the implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other threats related to the financial system⁽¹⁹⁸⁾. It is composed of 35 member jurisdictions and 2 regional organisations, representing most major financial centres in all parts of the world. It is important to underline that this Body was established during a G7 Summit. It differs from an international organization because it did not emerge from an international agreement.¹⁹⁹ The FATF sets out international standards, which comprise Recommendations and their Interpretive Notes. The first Forty Recommendations were drawn up in 1990 and then revised first in 1996 and then in 2001, when it expanded its mandate to deal with the financing of terrorism creating the Eight (later expanded to Nine) Special Recommendations on Terrorist Financing²⁰⁰. The crime of financing of terrorism in fact has many similarities with the crime of money laundering (the main issue managed by the Body). The link between the criminal organization and the financing of terrorism was underlined also by the Resolution 1373 “the close connections between international terrorism and transnational organized crime [...] money-laundering [...]”²⁰¹ While both activities lie on the movement of money for illegal purposes, there is an important difference among them. Money laundering implies that money come from an illicit activity and it is defined as the “process used to disguise the

⁽¹⁹⁷⁾ S/RES/1373 (2001) https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf

⁽¹⁹⁸⁾ FATF official Website, <http://www.fatf-gafi.org/about/>

¹⁹⁹ Sara De Vido, *Il contrasto al finanziamento del terrorismo internazionale*, CEDAM 2012, p. 133

²⁰⁰ *International standards on combating money laundering and the financing of terrorism & proliferation*, FATF Recommendations, February 2012 p. 7 http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

²⁰¹ S/RES/1373, art. 4

source of money or assets derived from criminal activity.²⁰² However, there are several definitions for the same concept. Most of the definitions refer to the UN Convention against Illicit Traffic in Narcotic Drugs of 1988²⁰³ and to the so-called Palermo Convention of 2000²⁰⁴. However, even if there are different definitions, they share some common elements. While money defined as money-laundering originates exclusively from illicit activities, on the contrary, the funds used for financing terrorist groups can also come from lawful activities. Moreover, they have different purposes; terrorists are not interested in disguising the origin of money, but rather hiding its destination and the purpose for which it has been collected²⁰⁵. Terrorists and terrorist organizations therefore use different techniques similar to those used by money launderers to hide their money.²⁰⁶

Among the 40 recommendations, it is interesting to notice the interpretive note to recommendation n° 5 introduced in 2012 about the terrorist financing. “Terrorist financing offences should extend to any person who wilfully provides or collects funds or other assets by any means, directly or indirectly, with the unlawful intention that they should be used, or in the knowledge that they are to be used, in full or in part: to carry out a terrorist act(s); by a terrorist organisation; or by an individual terrorist.”²⁰⁷ It underlines that it is not necessary for those funds to be used for practical purposes, in this case for committing an act of terrorism. Moreover, the note gives a definition of terrorist organization, not given by either the Convention or the SC Resolution 1373. However, on a general perspective the definition of financing reflects the one included in the Convention.

Nevertheless, the Task Force has been forced to introduce some changes and improvements especially to the Interpretive note 5, mentioned above, regarding the definition of financing, in order to be in line with the novelty introduced by the new resolutions of the Security

²⁰² *What is money-laundering*, Financial Transactions and Reports Analysis Centre of Canada, <http://www.fintrac-canafe.gc.ca/fintrac-canafe/definitions/money-argent-eng.asp> and in *What is money-laundering*, FATF, <http://www.fatf-gafi.org/faq/moneylaundering/> “the processing of criminal proceeds to disguise their illegal origin”

²⁰³ See art. 3 (b), (c) https://www.unodc.org/pdf/convention_1988_en.pdf

²⁰⁴ See art. 6 (i) https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THEREON.pdf

²⁰⁵ *Introduction to money-laundering*, UNODC, <https://www.unodc.org/unodc/en/money-laundering/introduction.html>

²⁰⁶ Money Laundering and the Financing of Terrorism, Egmont Group, <https://www.egmontgroup.org/en/content/money-laundering-and-financing-terrorism>

²⁰⁷ International standards., op. cit., p. 37

Council. In particular, the resolutions 2178 (2014), 2199 (2015) and 2253(2015). All three added different elements to the concept of TF. The UNSCR 1278 included the financing of travel for purposes of terrorism and terrorist training in the concept of TF offence²⁰⁸, due to the great amount of foreign terrorist fighters moving to join terrorist organizations. As underlined by another FATF Report, foreign terrorist fighters need a huge amount of money for transportation, accommodation and other activities and often they use funds originated from salaries, social assistance, family support and bank loans, that is to say licit funds²⁰⁹. Moreover, the two more recent resolutions of 2015 introduced some new elements broadening the definition of funds and other assets including natural resources and the trade of oil as methods through which financing the organization. In particular, the resolution 2199 urges Member States to prevent terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages²¹⁰. Moreover, it encouraged Member States to cooperate with Interpol and UNESCO to stop the destruction and trade of cultural heritage²¹¹. The resolution has been welcomed as a great tool to cut the funding of Islamic State and to stop the threat of terrorism in the Middle East as declared by the Russian Representative Vitali I. Churkin and the representative of the US Samantha Power, among the others²¹². The resolution 2253 focused on the same issues, adding also grave concern on the abuse of HR especially of children and women. In order to comply with the changes, the FATF adopted the revision of the interpretive note 5 and provided a Guidance in order to help the different jurisdictions to comply with the requirements of the resolutions. In fact, following the results of a research on the level of implementation on the AML/CTF measures conducted by the Task Force on 194 jurisdictions²¹³, some deficiencies emerged. For

²⁰⁸ UNSCR 2178 (2014), par. 6 available at http://www.un.org/en/sc/ctc/docs/2015/SCR%202178_2014_EN.pdf

²⁰⁹ *Emerging Terrorist Financing Risks*, FATF Report, October 2015, p. 25

²¹⁰ UNSCR 2199 (2015), "Condemns any engagement in direct or indirect trade, in particular of oil and oil products, and modular refineries and related material, with ISIL, ANF.." par. 1, "all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological [...] importance" par. 17, "Reaffirms its condemnation of incidents of kidnapping and hostage-taking committed by ISIL, ANF [...] with the aim of raising funds" par. 18, available at <https://www.un.org/press/en/2015/sc11775.doc.htm>

²¹¹ UNSCR 2199, op., cit., par. 17

²¹² *Unanimously Adopting Resolution 2199 (2015)*, Security Council Condemns Trade with Al-Qaida Associated Groups, Threatens Further Targeted Sanctions, 12 February 2015, <https://www.un.org/press/en/2015/sc11775.doc.htm>

²¹³ The list of the 194 jurisdictions is available at *Terrorist Financing FATF Report To G20 Leaders - Actions Being Taken By The FATF*, November 2015, p. 11-12

instance, some jurisdictions with adequate legal powers never put into practice targeted financial sanctions. Moreover, few jurisdictions obtained convictions for terrorist financing. In addition, it has been highlighted a delay in the transposition of the UN measures into the national law. A delay that gives the opportunity to terrorists to move funds before being frozen²¹⁴. More positive the outcomes on the criminalisation of TF as a stand-alone offence adopted by the majority of the jurisdictions investigated²¹⁵. The research conducted by the FATF aims at dealing with these deficiencies and helping countries to implement these measures. In particular, it clarifies that countries are not forced to transpose the new requirements into their domestic law; in fact, they can incorporate the elements required respecting their national laws²¹⁶. Moreover, the revision of the interpretive note 5, included in the Guidance, takes into consideration the broaden definition of funds including economic resources such as oil and natural resources instead of referring merely to financial assets. Moreover, the term “funds” has been also amended to refer to “any other assets which potentially may be used to obtain funds, goods or services²¹⁷.”

As far as the structure of the FATF is concerned, the Task Force is composed by some Regional Bodies. These Regional Bodies administer mutual evaluation of their members in order to identify weaknesses and to take remedial actions²¹⁸. Interesting to the research is the constitution of the MENAFATF (the FATF of the Middle East and North Africa) in 2004 with a Meeting of the Governments of 14 Countries. The regional body headquartered in the Kingdom of Bahrain, includes, among others, the Syrian Arab Republic, the Libya, the UAE and the Kingdom of Saudi Arabia. MENAFATF is dealing with several problems related to the implementation of AML/CTF measures. The Saudi Arabia has been in fact accused of funding IS, both directly and by failing to prevent private donors from sending money to the group²¹⁹. Clearly, the Kingdom rejected the accusation declaring the creation of a new Islamic anti-terrorism coalition²²⁰. Moreover, even Syria is having some problems in

²¹⁴ *Terrorist Financing FATF Report..*, op., cit., p. 5

²¹⁵ *Terrorist financing FATF Report..*, op., cit., p. 3, the concept is also reiterated by the

²¹⁶ FATF Guidance, *Criminalising Terrorist Financing (Recommendation 5)*, October 2016, p. 1 par. 5

²¹⁷ UNSCR 2199 (2015), par. 6 and FATF Guidance.., op., cit., p. 30, par. 89

²¹⁸ Paul Allan Schott, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*, Second Edition and Supplement on Special Recommendation IX, World Bank, p. IV/3

²¹⁹ *Is Saudi Arabia to blame for Islamic State?*, 19 December 2015, BBC News, <http://www.bbc.com/news/world-middle-east-35101612>

²²⁰ *Saudi announce Islamic anti-terrorism coalition*, 15 December 2015, BBC News, <http://www.bbc.com/news/world-middle-east-35099318>

implementing the FATF recommendations. In November 2006, the MENAFATF concluded its evaluation on Syria²²¹ (the last available at the time of writing), observing gaps in its financial and banking regulations, which could have been exploited by terrorism financiers and money launderers. However, it did not mention the engagement of Syrian political and business elites in illicit financial activities²²². A second round of mutual evaluations should be conducted on its Member States basing on the 2013 AML/CFT Methodology for assessing technical compliance with FATF recommendations and the effectiveness of AML/CFT systems²²³. However, it has been estimated that Syria has made several progress in improving its deficiencies. In June 2014, FATF declared that Syria has respected the commitment taken with FATF to implement AML/CTF measures, namely establishing procedures to freeze terrorist assets²²⁴.

Moreover, as far as the situation in the MENA region is concerned, the Secretary-General of the UAB (Union Arab Banks) Wissam H. Fattouh is deeply concerned on IS funds entering Arab banks and its use to attract young people to carry out terrorist operations²²⁵.

Besides, on a regional level, it is important to notice the development within the EU legislation in the matter. The reference to the financing of terrorism can be found on several legal documents. First of all the Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism, which defines as an act of terrorism its financing “ [...] including by funding its activities or supplying material resources.”²²⁶ In addition, the year later, 13 June 2002, the Council adopted the Framework Decision 475 on combating terrorism, whose art. 2, par. 2 letter b) defined the financing as “[...] including by supplying information or material resources, or by funding its activities in

²²¹ *Mutual Evaluation Report Of The Syrian Arab Republic On Anti-Money Laundering and Combating Financing of Terrorism*, MENAFATF, 15 November 2006,

<http://www.menafatf.org/images/UploadFiles/MutualEvaluationReportofSyria.pdf>

²²² Michael Jacobson, *Arab States' Efforts to Combat Terrorism Financing*, The Washington Institute for Near East Policy, 16 April 2007, <http://www.washingtoninstitute.org/policy-analysis/view/arab-states-efforts-to-combat-terrorism-financing>

²²³ *Mutual Evaluation Round 2*, http://www.menafatf.org/TopicList.asp?cType=train_sub3

²²⁴ *Improving Global AML/CFT Compliance: on-going process – 24 June 2016*, <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-june-2016.html#Syria>

²²⁵ Hossam Mounir, *Concerns over 'Islamic State' funds entering Arab banks for terrorist operations: UAB Secretary-General*, 19 September 2015, <http://www.dailynewsegypt.com/2015/09/19/concerns-over-islamic-state-funds-entering-arab-banks-for-terrorist-operations-uab-secretary-general/>

²²⁶ Art. 1, par. K, Council Common Position (2001/931/CFSP), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001E0931&from=EN>

any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.²²⁷ This definition is important for two aspects. The first one is that it refers only to the financing of an organization, not taking into consideration the possibility of funding a single person. Secondly, it underlines the crime of financing a terrorist organization knowing that the funds will be used for criminal purposes and not for others activities (as I will explain in the next paragraph with a specific reference to IS, terrorist organizations provide also social services). Moreover, it is worth noticing the fact that the funds provided for financing a terrorist organization can be found in both lawfully and unlawfully ways. An aspect underlined in the Directive 60/2005/EC of the European Parliament and of the Council, also known as Third Anti-Money Laundering Directive, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing “[...] the misuse of the financial system to channel criminal or even clean money to terrorist purposes [...]”²²⁸. The concept of AML has been reiterated in fact by other Directives during the years, the content of which changed in order to comply with the new elements introduced especially by the FATF. The Council Directive 91/308/EEC defined ML as a threat, but only in terms of drug offence. Later, in 2001, the Directive 2001/97/EC of the European Parliament and of the Council extended the concept in terms of the crimes and of the activities covered. Finally, the introduction in its recommendations of the concept of TF by FATF reflected on the adoption of the Directive 2005/60/EC mentioned above and later reiterated in Directive 2006/70/EC. However, since the developments of the TF crime, in May 2015 a Fourth Anti-Money Laundering Directive has been adopted. In particular, its purpose was to provide preventive measures to prevent the abuse of the financial system for terrorist purposes, a subject deeply investigated in the next chapter.

2.4 The Islamic State’s sources of income and their employment

The Islamic State is defined as a new form of terrorist organization where funding plays a critical role for its activities and existence. While Al Qaeda relied on the generous amount of money provided by Bin Laden and also by the financing and support provided to his organization by the Governments, such as Saudi Arabia and Sudan, as mentioned above,

²²⁷ Council Framework Decision 2002/475/JHA, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002F0475&from=EN>

²²⁸ Art. 8, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF>

most of IS' income does not derive from external donors. Rather, its financing system is intricate and varied and it includes several activities carried out within the occupied territory. The territory is in fact the key factor enabling the group to organize a self-sustaining and diversified economy. Although during 2015 IS has suffered from the loss of 25% of its territory, its administrative structure has proved sufficiently flexible and diversified to enable it to adapt. It has been able to compensate the loss of revenue from its natural resources by increasing its revenue from criminal activities²²⁹, there was in fact no significant reduction in either IS revenue or its ability to conduct transactions. Some of these activities include bank looting and extortion, oil fields and refinery, donors who abuse of the Non Profit Organizations, kidnapping for ransom. Other activities involve also, the fundraising using modern communication networks and clearly the involvement of foreign terrorist fighters. However, the need for funds is clearly an element of vulnerability to the IS infrastructure, damaging the source of income represents an effective way to dismantle the group.

Different reports have been released on this issue, even though on an international level the different funding activities have been denounced by some SC resolutions (in particular sector limited), notably the 2170 (2014)²³⁰, 2199 (2015)²³¹ and the 2178 (2014)²³². The first one especially refers to the kidnapping for ransom, denouncing the achievement of funds through the release of hostages. The second one instead refers especially to the income generated by the exploitation of oil fields while the third one emphasizes the problem of foreign fighters (hereafter referred as to FTF) who travel to a State different to the one of residence in order to participate to the preparation or perpetration of terrorist acts. It is interesting noticing how these resolutions call upon the implementation of the UN Member States, even though some documents underline that there has been a violation of these resolutions. In particular regarding the commerce of oil and the prevention of the financing of FTF including their travel and subsequent activities. In August 2016 the Commission for

²²⁹ *ISIS financing in 2015*, Centre for the Analysis of Terrorism (CAT), May 2016, p. 4, <http://cat-int.org/wp-content/uploads/2016/06/ISIS-Financing-2015-Report.pdf>

²³⁰ S/RES/2170, 15 August 2014, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2170\(2014\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2170(2014))

²³¹ S/RES/2199, 12 February 2015,

[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2199%20\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2199%20(2015))

²³² S/RES/2178, 24 September 2014,

[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2178%20\(2014\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2178%20(2014))

the Foreign Relations of the Democratic Self-Administration of Rojava, a territory controlled by Kurds in the North of the Syria, released a well-detailed document²³³ in which it is underlined the alleged connection between Turkey and IS²³⁴. Turkey has been accused of permitting the passage of FTF through its territory to go to Syria. The accusation is extremely serious since it means that, if proved, there has been a grave violation of the resolutions. The passage of FTF through the border between Turkey and Syria has been communicated also by The Guardian²³⁵, however, the article mainly underlines the difficulty for the Turkish forces to control its borders rather than a close collaboration between the Turkish Government and IS. The sources are a few and not always official. However, it is interesting noting that a problem on the border does exist and this is why Turkey is under international pressure.

However, other activities allow IS to support and finance its terrorist acts. It is possible to identify two main financial resources exploited by: the activities present within the territory and the local financial system.

Within the first group, the oil smuggling is the main well-known method, especially, swapping crude oil for imported or exported petroleum products to and from Iraq and Syria. The oil is mainly sold through the local market in the Northern Syria and in the Eastern part dominated by the Syrian Kurdish militia. Moreover, it continued its businesses also with the regime. It has been proved that in Aleppo there is a powerful clan²³⁶ dealing in arms, drug smuggling and oil, historically linked to the Syrian regime. However, in order to avoid the risk of transportation IS decided to sell oil to independent traders at the oilfields. Since IS is paid in cash for oil transactions it is difficult to track. However, the international coalition against IS in the last two years targeted the oil refineries²³⁷ and transport convoys and for this

²³³ In order to read the original document, visit <https://www.docdroid.net/iNcGakq/isis-and-turkey-.pdf.html>

²³⁴ Marta Ottaviani, *Le sfide di Erdogan per il 2016: dall'Isis ai curdi, dal rapporto con Mosca all'Unione Europea*, La Stampa, 2 January 2016, <http://www.lastampa.it/2016/01/02/esteri/turchia-fra-riforme-e-tensioni-si-annuncia-difficile-il-per-il-presidente-erdogan-8S1YoaYuY9NbTXzr0HiZZM/pagina.html>

²³⁵ Shiv Malik, Alice Ross, Mona Mahmood and Ewen MacAskill, *Isis 'ran sophisticated immigration operation' on Turkey-Syria border*, The Guardian, 10 January 2016, <https://www.theguardian.com/world/2016/jan/10/isis-immigration-operation-turkey-syria-border-passenger-manifests-tel-abyad-islamic-state>

²³⁶ *Financing of the Terrorist Organisation Islamic State in Iraq and the Levant (ISIL)*, FATF Report, February 2015, p. 14, <http://www.fatf-gafi.org/media/fatf/documents/reports/Financing-of-the-terrorist-organisation-ISIL.pdf>

²³⁷ Mark Thompson, *U.S. Bombing of ISIS Oil Facilities Showing Progress*, 13 December 2015, <http://time.com/4145903/islamic-state-oil-syria/>

reason IS was forced to find other income activities. The RAND Corporation²³⁸ estimated that IS has been capable of selling up to 40,000 barrels a day, generating \$1 million or more every 24 hours. However, the income through the selling of oil has decreased, due to the loss of three oilfields in the governorate of Hasakah, one in the governorate of Raqqa and three in Iraq. The difference is particularly clear in number, it is estimated that IS oil revenue for 2015 is \$600 M, while at the end of 2014 was of over \$1bn.²³⁹

Besides, IS controls the distribution of crops, the storing wheat in silos, restricting the supplies for the ones who oppose to IS' campaign. In addition, it extorts money within the agricultural activities. This mechanism is called *Zakat*, an obligatory form of donation, part of the five Islamic pillars²⁴⁰. This taxation forces those with sufficient income to give 2.5% of their capital to the holy cause²⁴¹. It is interesting to notice that some IS officials require services over money. Doctors for example do not pay the zakat, but instead they volunteer once a week in the IS hospitals. Moreover, the payment of this tax not only allow the organization to raise money, but in exchange for the payment the IS members provide a sort of protection on the businesses activities in the controlled territory. Due to this protection, some farmers decided to move their activities within the IS territory because they feel more secure. Moreover, they sometimes take zakat from wheat harvest and they buy the rest of the crops to sell them later at better rates²⁴². They, basically, maintain a sort of commerce in the territory they control, as it would be counter-productive not defending one of its main sources of income.

Not only it extorts money from agriculture, but also by selling cultural artefacts in the territory it controls. It is estimated that IS controls over 4500 archaeological sites, among them some are UNESCO. It established also a bureau in charge for excavations, legalizing the looting of the archaeological sites, or giving licenses to traffickers to carry out excavations and sell any object found with a tax of 20 to 50%, or through the operations of IS itself²⁴³. It

²³⁸ The RAND Corporation is a research, non-profit, nonpartisan organization that develops solutions to public policy challenges. It is sponsored by U.S. government agencies; non-U.S. governments, agencies, and ministries; international organizations; U.S. state and local governments; colleges and universities; foundations; industry; professional associations; and other non-profit organizations. To learn more, visit <http://www.rand.org/>

²³⁹ *ISIS financing in 2015.*, op. cit., p.9

²⁴⁰ *Zakat*, Treccani enciclopedia online, <http://www.treccani.it/enciclopedia/zakat/>

²⁴¹ *How ISIS runs its economy*, World Economic Forum, 16 December 2015

<https://www.weforum.org/agenda/2015/12/how-isis-runs-its-economy/>

²⁴² *How ISIS runs.*, op. cit.

²⁴³ *ISIS financing 2015.*, op. cit., p. 19

imposes also taxes on all good transiting territories, on trucks entering Iraq from Syria and Jordanian borders (800 US\$) and on roads (200 US\$) in Northern Iraq.

However, one of the main concerns is the kidnapping for ransom. As I mentioned above some resolutions call on member states to prevent terrorists from benefiting from ransom. It is in fact estimated that the amount of money linked to this activity range from 20 US\$ to 45 million US\$. It is estimated that IS kidnapped over 200 Assyrian Christians in Syria's Hasakah province in early 2015 and exchanged them for a ransom of several million dollars²⁴⁴. They also kidnapped many Yezidis²⁴⁵, releasing them for 4,000 dollars. According to the UN Security Council, IS received 850.000 US\$ for the release of 200 Yezidis in 2015²⁴⁶. IS especially kidnaps women and children, selling them with different prices. Generally, the price of a female slave ranges from 40 to 165 dollars²⁴⁷. In 2015, kidnap and ransom provided the group with some 100M US\$. Therefore, the money provided by this activity is one of the main sources of income, which supports their recruitment efforts, strengthens their operational capability to organise and carry out terrorist attacks, and incentivises future incidents of kidnapping for ransom.²⁴⁸ The resolutions related to this issue are not only directed to the final payment but also to the intermediaries, such as insurance companies, consultancies, and any other financial facilitators. In particular, the UN Security Council Resolution 1904 (2009) requires that Member States prevent the payment of ransoms, directly or indirectly, to terrorists designated under the UN Al Qaeda sanctions, which includes IS.²⁴⁹

However, the sources of income are very different and they also involve licit activities for illicit purposes (in this case for the financing of IS). Just to give a couple of examples it is worth mentioning the donations through Non-Profit Organization and the crowdfunding

²⁴⁴ *ISIS financing 2015.*, op. cit., p. 19

²⁴⁵ The Yezidis are an Iraqi ethnic and religious minority. To learn more read the article, *Who are the Yazidis and why is Isis hunting them?*, Raya Jalabi, 11 August 2014

<https://www.theguardian.com/world/2014/aug/07/who-yazidi-isis-iraq-religion-ethnicity-mountains>

²⁴⁶ *Report on the Protection of Civilians in the Armed Conflict in Iraq: 11 December 2014 – 30 April 2015*, p.20, http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_4th_POReport-11Dec2014-30April2015.pdf

²⁴⁷ *ISIS financing 2015.*, op. cit., p. 19

²⁴⁸ *The threat posed by kidnapping for ransom by terrorists and the preventive steps the international community can take*,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207542/Kidnapping-for-ransom.pdf

²⁴⁹ S/RES/1904, 17 December 2009, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/656/62/PDF/N0965662.pdf?OpenElement>

through technology and marketing. As far as the first one is concerned, funds can be sent by wealthy private regional donors as in the case of an IS official who received 2 million US\$ from the Gulf or as in the case of charitable organizations on the surface which hide terrorist interests, such as the case of the Italian organization which dealt with distance adoptions. The Italian account of an organization based in Northern Italy promoting charitable activities, such as distance adoptions, notably in Syria, received small amount of money from individuals in Italy and Europe. However, the investigations showed that one of the donors was a member of an extremist organization located in the North of Italy aimed at recruiting people to take part in violent extremism. The analysis of the cash movements showed in the end that the charitable organization was used as conduit for fund transfers linked to his terrorist activities.²⁵⁰ Non-Profit organizations are in fact vulnerable to the abuse of terrorist financing, as it is underlined by the Recommendation n° 8 of the FATF. Sometimes these organizations can be a front for illegal trafficking such as, just to mention one of the most well-known, the Global Relief Foundation established in Illinois in 1992 that clearly supported jihad, notably the Al Qaeda organization²⁵¹. It is reported in fact that during the '80s charity networks were built to support the fight against the Soviet troops in Afghanistan and that at the time when Bin Laden lost access to his private funds, these networks became the main sources of income for AQ²⁵². Most of the times NPO are exploited without the knowledge or consent of employees or donors. They can continue operating in good faith while providing a financial support to terrorist activities.²⁵³

As far as the second aspect is concerned, IS has been able to take advantage of the development of technology in order to spread its ideology and clearly to obtain support from all over the world, attracting many foreign fighters for its cause, and funds. As the Secretary General of the UN declared "The Internet is a prime example of how terrorists can behave in a truly transnational way."²⁵⁴It distributed its propaganda through the social

²⁵⁰ *Financing of the terrorist..*, op. cit., p.19

²⁵¹ Tolga Koker and Carlos L. Yordán, *Microfinancing Terrorism: A Study in al Qaeda Financing Strategy*, Published in M. Cox (editor) *State of Corruption, State of Chaos: The Terror of Political Malfeasance* (Lexington Books, 2008), pp. 167-82, p. 6

²⁵² T. Koker and C. L. Yordán, *Microfinancing..*, op., cit., p. 5

²⁵³ *Protecting non-profit organizations from terrorist financiers*, Security Council Counter terrorism Committee, 2013, http://www.un.org/en/sc/ctc/news/2013-03-15_npos.html

²⁵⁴ Ban Ki-Moon declaration in *The Use Of The Internet For Terrorist Purposes*, United Nations Office On Drugs And Crime, September 2012, p. IV

media platforms in a sort of new marketing similar to the one used by the multinationals. It should be taken into account that the spread of propaganda is lawful thanks to the right to freedom of expression, everyone get the chance to give voice to his own opinion. However, there are some exceptions, such as the promotion of violence or the encouraging of violent acts.²⁵⁵ Because of the extent of the subject, we will not be able to look into it in depth, but it is worth underlining how IS has been able to exploit these channels for its financing. The manner in which terrorists use Internet to collect funds can be summarised in four categories, namely direct solicitations, e-commerce, exploitation of on-line payment tools and charitable organizations.²⁵⁶ The U.K.'s Director of the Government Communications Headquarters argued in fact that for almost a decade, American companies, such as Twitter, Facebook, Google, Apple, Microsoft, Yahoo and others like YouTube, WhatsApp, Skype, Tumblr and Instagram have helped Al-Qaeda, and are now helping ISIS to fundraise, recruit, indoctrinate, and train new terrorists.²⁵⁷ Through these platforms, IS has been able to collect donations from a large group of supporters via web. "The Islamic State is the first extremist group that has a credible offensive cyber capability"²⁵⁸, it is therefore capable of putting into practice the so-called cyber terrorism. Cyber-attacks are defined as the "deliberate exploitation of computer networks as a means to launch an attack in order to disrupt the functioning of targets". As any other attack, even the cyber one is characterized by the aim of instilling fear in the advancement of political or social objectives.²⁵⁹ As far as the Syrian situation is concerned, reports highlighted that the Syrian rebel have collected funds through social media and then wired between private bank accounts and transported across borders by cash couriers.²⁶⁰

However, one of the most lucrative resource of funds is the control exercised on the financial system and on the bank system of the territory IS controls. State- owned banks have become IS property while the private institutions have been subjected to taxes, 5%,

²⁵⁵ *The Use of Internet..*, op., cit., p. 4-5

²⁵⁶ *The Use of Internet..*, op., cit., p. 7

²⁵⁷ Yigal Carmon and Steven Stalinsky, *Terrorist Use Of U.S. Social Media Is A National Security Threat*, 30 January 2015, <http://www.forbes.com/sites/realspin/2015/01/30/terrorist-use-of-u-s-social-media-is-a-national-security-threat/#6f8faa3b12d0>

²⁵⁸ *The Role of Technology in Modern Terrorism*, INFOSEC Institute, 3 February 2016, <http://resources.infosecinstitute.com/the-role-of-technology-in-modern-terrorism/#gref>

²⁵⁹ *The Use of Internet..*, op., cit., p. 12 and in Kevin Coleman, *Cyber Terrorism*, <http://www.crime-research.org/library/Cyberterrorism.html>

²⁶⁰ *Financing of the terrorist..*, op. cit., p. 26

especially applied to customer's withdrawals. In particular, in Iraq, 90% of the bank branches are located in the IS-area, IS exploits especially the wire transfers through which terrorists are able to enter the international financial system. US estimates that IS has had access to the equivalent of half a billion US \$ in cash, however, cash are in the local Iraqi currency, the Dinar, thus they need to exchange into foreign currency. This is the reason why IS has installed managers at many bank branches located in Mosul, the major financial centre. In Syria instead, the financial institutions have some difficulties to access to the regulated international financial system due to the cut operated by the major international financial institutions towards the banks still operating in the territory. However, banks are not the only institutions through which IS collect funds. In fact, the main problem lies on those systems, which are unregulated and less controlled, the so-called HOSSPs (hawala and other similar service providers) such as MVTs, MSBs and hawala. MTVs are defined as Money Transfer Services, financial companies that do not conduct wire transfers as banks. They rather send a message via e-mail, phone, fax to a local or foreign associate to pay or receive payment from the counterparty to a transaction²⁶¹. This mechanism is often used by those who does not possess a bank account, and for this reason they are less traceable compared to those who use a wire transfer. The MTVs are unregulated companies and for this reason more vulnerable to the IS abuse.

A similar unregulated system is the Money Service Businesses (MSBs). These companies do not follow the same rules as banks in the "know your customer" (KYC), a pivotal aspect that will be discussed much in details in the next chapter in the context of the counter financing terrorism. It does not require an existing account; rather it is sufficient to provide a valid form of ID. As the case of an AQ financier, Ali Abdul Aziz Ali who deposited 120.000 US \$ at two different MSBs in Dubai, later transferred in Canada.²⁶² Even though the MSB in Dubai required identification, he used aliases.

Among the financial services exploited by terrorists, it is possible to find also the method of *hawala*. Hawala is a mechanism used in those areas where the bank system is less stable, and it is used for both legal and illegal purposes. Many countries in fact have legalized this

²⁶¹ *Financing of the terrorist.*, op. cit., p. 28

²⁶² Michael Freeman and Moyara Ruehsen, *Terrorism Financing Methods: An Overview, Perspectives on Terrorism*, 2013, <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/279/html>

service, which allows providing money without moving them practically, through licenses and registrations in order to make it traceable. This mechanism is well-known especially in South Asia, Middle East and part of East Africa, but while in some countries is still illegal, in others, it is referred only within the context of underground or criminal money transfer services²⁶³. This mechanism is composed by a network of four individuals (a money broker, a collector, a co-ordinator and a transmitter) based in different countries and by a sort of mechanism of compensations²⁶⁴. However, the majority of the hawala dealers decide to operate illegally. To be more precise, there are three different kind of hawala²⁶⁵: the pure traditional, the hybrid traditional and the criminal mechanism. The pure traditional is the legitimate system, often used for trade-finance and personal remittances. The Hybrid traditional is instead used both for transmission of illicit money across the borders and for legitimate purposes. These networks may be involved in order to avoid sanctions and to move illicit money coming from tax evasion. Lastly, the criminal mechanism, the one set up used by criminals. This system is driven by illegitimate money flows representing high criminal money-laundering and terrorist financing risk. This last mechanism is different from the first two because it does not necessarily share the same cultural background. It is, in fact, often used to send payments to countries with a well-structured banking system. The element in common among the three different kind of hawala is that the cash does not cross borders; the mechanism is fast, anonymous and cheap, since it implies just a 2% fee. The main reasons for its existence in fact lies on different characteristics: it is a mechanism for faster money transmission; it requires few hours rather than days, thanks to the different counterparty located in specific countries. The cultural aspect and the lack of confidence in the banking system is another pivotal aspect especially in those countries in which, due to bank failures, customers have lost their deposits. Moreover, it allows evasion of controls and taxations. However, it is important to bear in mind that this mechanism is not used only by terrorists for their financing interests, but also by many private individuals, because it is

²⁶³ FATF Report: *The role of hawala and other similar service providers in money laundering and terrorist financing*, October 2013, p. 12 <http://www.fatf-gafi.org/media/fatf/documents/reports/Role-of-hawala-and-similar-in-ml-tf.pdf>

²⁶⁴ *Il metodo Hawala e il denaro si sposta senza muoversi*, Repubblica, 28 December 2011, http://ricerca.repubblica.it/repubblica/archivio/repubblica/2011/12/28/il-metodo-hawala-il-denaro-si-sposta.html?refresh_ce

²⁶⁵ *The role of Hawala..*, op. cit., p. 14

considered as a social service, and because it is faster and easier than banks. For geography reasons, culture and lack of banking access this mechanism is used, in some jurisdictions, by legitimate customers²⁶⁶. Even if attempts have been made to regulate it, for instance in Afghanistan where this service has been used especially by the Taliban and Al Qaeda, the weakness of the institutions and the geography of the territory prevented from happening. In fact, reports provide examples of cases in which even in 2013 the hawala service is still used by terrorists²⁶⁷, especially for familiarity, culture, extensive international reach, speed of transfers, and often lax supervision or lack of political will, which make it more attractive.²⁶⁸

These unregulated methods, exploited by terrorists, have some common characteristics. HOSSPs in fact are generally: cash-in and cash-out businesses, abused for illegitimate purposes to move illicit money across the borders, part of a network, and to maintain a low profile they communicate only limited information on the customer and beneficiary.²⁶⁹

As it is possible to understand, the sources of financing are very different and encompass both legitimate and illegitimate means: sympathetic governments, (Saudi Arabia and Iran), charitable organizations, exploitation of financial markets, money laundering, international trade and criminal activities such as extortion, smuggling, kidnapping, people trafficking, credit card fraud, identity theft and counterfeiting, arms dealing and narco-terrorism.²⁷⁰ In 2015, the total revenue of Islamic State, however, fell from \$2,900M in 2014 to around \$2,400M.²⁷¹

After having investigated some of the main sources of income for the Islamic State, it is worth noticing that all those funds are not only used for financing terrorist attacks. In fact, IS needs economic resources to sustain different kind of expenses. First of all, they provide salaries for their fighters and for the military equipment. Even if IS uses propaganda to justify the need for such an amount of money in order to provide social services, the sum

²⁶⁶ *The role of Hawala..*, op. cit.

²⁶⁷ As in the case of the attempted car bombing in New York City Times Square by Faisal Shahzad in May 2010. *Suspect, Charged, Said to Admit to Role in Plot*, The New York Times, 4 May 2010, <http://www.nytimes.com/2010/05/05/nyregion/05bomb.html?pagewanted=all>

²⁶⁸ *The role of Hawala..*, op. cit.

²⁶⁹ *The role of Hawala..*, op. cit.

²⁷⁰ Steve Barber, *The "New Economy of Terror:" The Financing of Islamist Terrorism*, Winter 2011, <http://globalsecuritystudies.com/Barber.pdf>

²⁷¹ *Financing of terrorist..*, op. cit. p. 20

addressed to those services is limited. A fighter's salary includes a basic salary, between 350 and 500 US\$ per month. Considering that there are about 20.000- 30.000 fighters, IS needs at least 10 mIn US\$ per month. Moreover, the organization provides also bonuses and premiums depending on the number of dependants, nationality (for instance, the foreign fighters receive an amount that is twice the one of a local fighter), and geographical location, for example the fighters located in the Northern part of Syria are paid more than those on the South ²⁷². In addition, the fighter's family receives 50 US\$ for the wife and 25 US\$ for the children. In addition, in case of death of the fighter the salary continues to be paid to the family. In addition, income is used also for weapons and explosive components. It is estimated that military expenses account for several hundred million dollars. Since IS is well-organized, it addresses a huge amount of money to the security personnel, which include the religious²⁷³ and the secret police²⁷⁴ which operate also in other countries such as Turkey and Jordan. Moreover, in order to justify its activities and gain support all over the world, IS is deeply engaged in spreading propaganda, through videos, materials and magazines. It has been reported that in a single year, ISIS released almost 15,000 propaganda materials translated into 11 languages. Notably thanks to their organs (the al-Furqan, al-l'tisam and Ajnad Foundations and the al-Hayat Media Centre), the radio station (al-Bayan Radio) and publishing house (al-Himma Library). Moreover, it is worth noticing the written magazine released by the al-Hayat Media Centre.²⁷⁵

On the contrary, little amount of money are addressed to public services such as hospitals and schools. Under the sharia law, there is intent to reorganize the educational system, however the expenses are not consistent. Comparing the money spent for the other activities especially the military one, the 135.000 US\$ spent in a year does not compare²⁷⁶.

²⁷² *ISIS Financing 2015..*, op. cit., p. 21

²⁷³ The so-called hisbah: "At the institutional level, the concept of hisbah is intended as a mechanism to ensure the welfare of society and to combat harm, including crime", Human Rights Watch, <https://www.hrw.org/reports/2004/nigeria0904/8.htm>

²⁷⁴ The so-called Amniyat: "Amniyat combines a wide range of responsibilities, ranging from intelligence gathering and counter-intelligence to clandestine and special operations", the long war journal, http://www.longwarjournal.org/archives/2015/04/usaddsshabaab_leaders.php

²⁷⁵ Charlie Winter, *Documenting the Virtual Caliphate*, Quilliam Foundation, 2015 <http://www.quilliamfoundation.org/wp/wp-content/uploads/2015/10/FINAL-documenting-the-virtual-caliphate.pdf>. Quilliam Foundation is world's first counter-extremism think tank.

²⁷⁶ *ISIS Financing 2015..*, op. cit., p. 22

CHAPTER III

Countering the financing of terrorism

*Money-laundering and the financing of terrorism are financial crimes with economic effects. They can threaten the stability of a country's financial sector or external stability more generally. [...] Action to prevent and combat money-laundering and the financing of terrorism thus respond not only to a moral imperative, but also to an economic need.*²⁷⁷

In the aftermath of the 11 September 2001, the fight against ML and TF has become a priority. At the beginning, since the two crimes were similar, in order to combat the TF it was possible to take into consideration the norms against ML. However, since the two crimes are different, it has been necessary to provide specific norms against the TF, in particular for those licit activities, which originated funds for terrorists. The measures adopted at the beginning were primarily repressive, however, other measures were introduced, notably with a preventive nature.

3. The freezing of assets and its legal basis, from a repressive action to a preventive one

As far as the repressive measures are concerned, they included the well-known freezing of assets. The freezing of assets as defined in the New York Convention of 1999 "Each State Party shall take appropriate measures [...] for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 [...]"²⁷⁸ should be considered as a repressive measure. On the contrary, the FATF recommendations n° 4 and 6 underline the preventive aspect. In particular, the Recommendation 4²⁷⁹ refers to the confiscation of proceeds, while the six one²⁸⁰ refers to the freezing of assets. Moreover, the FATF Special Recommendations III on freezing and confiscating terrorist assets consist of two obligations. The first one requires jurisdictions to implement measures to freeze terrorist assets implementing obligations in accordance with UN Resolutions, in particular SC 1267 (1999) and SC 1373 (2001). Notably, its objective is to

²⁷⁷ Min Zhu, Deputy Managing Director of IMF, *The IMF and the Fight Against Money Laundering and the Financing of Terrorism*, factsheet, 6 October 2016, <http://www.imf.org/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism?pdf=1>

²⁷⁸ *The Convention for the Suppression...*, op. cit. art. 8, par. 1

²⁷⁹ *International standard on combating money-loundering...*, op. cit., p. 12

²⁸⁰ *International standard on combating money-loundering...*, op. cit., p. 13

freeze assets on reasonable basis and ground to believe that such assets could be used to finance terrorist activities, thus the intent is preventive. The second one, instead, requires jurisdictions to have measures in place that allow the freezing or confiscating of terrorist funds according to mechanism issued by a competent authority. In particular, the objective is to deprive terrorists of their assets when links between funds and terrorist activities have been established, thus the intent is both preventive and punitive²⁸¹. Moreover, the term “freeze” refers to the prohibition to transfer, conversion, disposition and movement of funds²⁸². Two are the key-resolutions in this perspective: the SC resolution 1267 (1999) and the 1373 (2001). In particular, they both refer to the freezing of funds but they are different in their context. The resolution 1267 on the situation in Afghanistan imposes economic sanctions on the Taliban regime, including the freezing of assets directly or indirectly referable to Taliban²⁸³. It established also a Sanction Committee (also known as Al Qaida and Taliban Sanction Committee or the Taliban Committee) whose main role is the insertion or the removal from the list of persons whose assets have to be frozen²⁸⁴. The insertion is decided by the Committee at the request of a Government or International Organization, while the removal is requested by the Government of citizenship or residence of the person concerned²⁸⁵. After the attacks of 2001, the SC adopted a new resolution, the 1373, which is not restricted to a particular area or territory but calls for the member states to freeze the assets of any persons involved in the commission of terrorist acts. Moreover, the resolution established a Counter-Terrorist Committee (CTC), composed by the 15 members of the SC, whose aim is to control the implementation of the resolution through the so-called PIA (Preliminary Implementation Assessment)²⁸⁶. In addition, to assist the work of the Committee, in 2004 under resolution 1535, the Counter-Terrorism Committee Executive Directorate (CTED) was established. The level of control provided by the CTC is limited to the

²⁸¹ FATF IX *Special Recommendations*, October 2001, p. 8

²⁸² FATF IX *Special Recommendations*., op. cit., p. 8

²⁸³ Luca G. Radicati and Mauro Megliani, *Freezing the assets of international Terrorist organizations* in A. Bianchi, *Enforcing International Law Norms Against Terrorism*, Hart Publishing, Oxford and Portland Oregon, 2004, p. 381

²⁸⁴ Security Council Committee established pursuant to resolution 1988 (2011), United Nations Security Council Subsidiary Organs, <https://www.un.org/sc/suborg/en/sanctions/1988>

²⁸⁵ L. G. Radicati and M. Megliani, *Freezing the assets*, op. cit., p. 382

²⁸⁶ S. De Vido, *Il contrasto*., op. cit., p. 159 and in *The Role of the Counter-Terrorism Committee and its Executive Directorate in the International Counter-Terrorism Effort*, <http://www.un.org/en/sc/ctc/docs/presskit/2011-01-presskit-en.pdf>

release of recommendations to Member States, however, the CTC can refer to the other Members of the SC the situation of the State that has failed to fulfil its obligations. However, there is a sever difference between the two resolutions. While the resolution 1267 established the Sanction Committee, the resolution 1373 does not provide a mechanism of list within the UN, on the contrary, the member states have to establish domestic procedures related to this aim²⁸⁷ and, in addition, the resolution calls on States to share the name of suspected terrorists. The two different method of listing, although, can lead to confusion. The 1267 Regime, the one that includes the Resolution 1267 and the following resolutions 1333²⁸⁸ and 1390²⁸⁹ updating and enlarging the sanctions respectively to entities believed to be associated with Bin Laden and to persons on the list not specifically linked to a specific territory, is characterized by some problems. Not only member states are forced to freeze assets of all individuals included in the list, but also the criteria for being listed are vague, referring only to “being associated with” principle. Moreover, the nomination for being listed are based both on publicly available information and on intelligence information, the latter not allowed to public consultation and the resolution does not provide sanctioned individuals with notice of their listing. In addition, at the beginning there was not a mechanism of removal from the list and a mechanism of unfreezing of funds, thus the problem emerged when a wrong person was designated to be on the list. Fortunately, some improvements took place during the years, especially regarding some procedural reforms.

Following the developments occurred especially in Afghanistan after 1999, year of adoption of the resolution 1267, which imposed targeted sanctions such as freezing of assets, arms embargo and travel ban to Taliban and Al-Qaeda, the UN Security Council adopted several resolutions amending the previous one. In particular, in the aftermath of 2001, thanks to the joint effort of the UN and of the Afghan population, a recognized Afghan Interim Authority was established²⁹⁰, aimed at replacing the non-recognized Taliban Authority. Moreover, in

²⁸⁷ S. De Vido, *Il contrasto..*, op. cit., p. 149

²⁸⁸ SC Resolution 1333, 19 December 2000 available at http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1333%282000%29

²⁸⁹ SC Resolution 1390, 28 January 2002 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/216/02/PDF/N0221602.pdf?OpenElement>

²⁹⁰ *Afghanistan & the United Nations* available at <http://www.un.org/News/dh/latest/afghan/un-afghan-history.shtml>

2010 the High Peace Council was established²⁹¹, whose purpose was to reintegrate those who accepted the Afghan Constitution and decided to refuse violence and ties with terrorist groups²⁹². Consequently, the UN Security Council adopted in 2011 the Resolution 1988, in which it split in two the Sanction List²⁹³ earlier established in Resolution 1267. In particular, one list was directed to Al-Qaeda, while the other to Taliban. The Committee changed its name in Al-Qaida Sanctions Committee, while a separate Committee was established to verify the implementation of the measures against entities and individuals associated with Taliban²⁹⁴. Therefore, 14 Taliban members who took part to the peace process have been de-listed²⁹⁵. However, on December 2015, the UN Security Council adopted a new Resolution, the 2253, which modified again the name of the list. Recognizing the Islamic State of Iraq and Levant (ISIL) as a “splinter group”²⁹⁶ of Al-Qaida, the name changed in ISIL (Daesh) and Al Qaida Sanctions list²⁹⁷.

3.1 The institution of two important figures: the Special rapporteur and the Ombudsperson

It is Kofi Annan, the UN Secretary General, who at the end of 2004 declared the possible violation of Human Rights (HR) linked to the procedures of listing and de-listing. In particular he argued that “the Security Council must proceed with caution [...] should institute a process for reviewing the cases of individuals and institutions claiming to have been wrongly placed or retained on its watch lists.”²⁹⁸ Some reforms took place in the following years through the

²⁹¹ Ambassador Zahir Tanin, *Ten Years of the United Nations in Afghanistan: A closer look at recent history, and a glimpse into what lies ahead*, Permanent Mission of Afghanistan to the United Nations in New York,

²⁹² UNSCR 1988 (2011) p. 2, “Recalling that the conditions for reconciliation..” available at http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1988%20%282011%29

²⁹³ UNSCR 1988 (2011) p. 3 “Member States treat listed Taliban and listed individuals and entities of Al-Qaida and its affiliates differently..” and par. 1 and 2

²⁹⁴ Security Council Committee Pursuant To Resolutions 1267 (1999) 1989 (2011) And 2253 (2015) Concerning Isil (Da'esh) Al-Qaida And Associated Individuals Groups Undertakings And Entities, UN Security Council Subsidiary Organs, <https://www.un.org/sc/suborg/en/sanctions/1267>

²⁹⁵ Ambassador Z. Tanin, *Ten Years..*, op., cit.

²⁹⁶ UNSCR 2253 (2015), p. 2 “Recalling that ISIL is a splinter group of Al-Qaida”, available at https://www.un.org/en/sc/ctc/docs/2015/N1543745_EN.pdf

²⁹⁷ The Sanctions List, updated 3 February 2017, contains the name of 255 individuals and 75 entities, Security Council Committee Pursuant To Resolutions 1267 (1999) 1989 (2011) And 2253 (2015) Concerning Isil (Da'esh) Al-Qaida And Associated Individuals Groups Undertakings And Entities, https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list

²⁹⁸ *A more secure world: our shared responsibility, Report of the High-level Panel on Threats, Challenges and Change*, p. 50, http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf

adoption of different Resolutions²⁹⁹, but even if some were not effective, the most important introduction was the establishment of an Ombudsperson's office, with the aim of analysing the de-listing requests. However, long before the introduction of an Ombudsperson's office, in 2005 the Human Right Commission adopted the resolution 80, establishing a Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism (here after referred to as Special Rapporteur). Its mandate was assumed by the HR Council and extended several times during the years³⁰⁰. Different are the tasks of the Special Rapporteur, including making concrete recommendations on the promotion of HR in countering terrorism, receiving and exchanging information and communications on alleged violations of HR and freedoms, identifying and promoting best practices on measures that respect HR. The current Special Rapporteur is Mr. Ben Emmerson. In the different reports issued by the Special Rapporteurs, emphasis was given to the main obstacles and problems linked with the respect of HR. In particular, the Rapporteur underlined³⁰¹ the necessity to review the list every 6-12 months in order to ensure its temporary character and not turning it into a permanent measures, where the freezing of funds would turn it into a confiscation. Moreover, it pinpointed the importance to allow the listed person a fair trial and the right to be informed, about being included in the list, the reasons behind the inclusion and what are the protocols for requesting the de-listing. In addition, the evidence used should be accessible and not classified as secret or confidential. Despite the non-binding character of the Reports, these documents are important guidelines for the UN bodies and Member States³⁰². In the report of 2010, the Special Rapporteur argued that even if some reforms have been introduced, some judicial

²⁹⁹ In particular, from 2005 to 2009, the main important Resolutions on the subject are the following:
SC Resolution 1617 (29 July 2005) on the introduction of a statement of case and, even if non mandatory, a written notice to entities on the measures adopted and on the possible procedure for de-listing.
SC Resolution 1730 (19 December 2006) on the establishment of a "focal point" aimed at receiving requests of de-listing, with no authority to review the request.
SC Resolution 1735 (22 December 2006) on the introduction of formal de-listing criteria and increasing individual participation on the de-listing procedure
SC Resolution 1822 (30 June 2008) on the introduction of a narrative summary of reasons for listing and the review of the list under 1267 regime within 2010 and an annual review

³⁰⁰ The Commission on HR established in 2005 the Special Rapporteur for a period of three years. The mandate was later extended twice, respectively for a period of three years, by the HR Council, the 30 September 2010 and the 21 March 2013. Available at <http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx>

³⁰¹ *Special Rapporteur Mr. Martin Scheinin in Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, A/61/267, par. 34*

³⁰² S. De Vido, *Il contrasto al finanziamento...*, op. cit., p. 285

inadequacies remain³⁰³. For this reason, the Special Rapporteur suggested to replace the current terrorist listing regime under resolution 1267 with a new system, where the SC, instead of playing a central role, plays a role of assistance and advice, while the main activity of listing is managed by Member States³⁰⁴. As mentioned above, some resolutions tried to improve the system of listing under the 1267 regime. It is worth noticing the Resolution 1904 of 2009 which introduced some interesting elements. First of all, the member state, proposing a name to be added to the list, has to provide detailed statement of the case³⁰⁵, including sufficient identity information in order to positively identifying an individual or an entity³⁰⁶. Moreover, member states should provide a narrative summary of the reasons for listing³⁰⁷ and most importantly, it should notify or inform in a timely manner the listed individuals or entity of the designation. Finally yet importantly, art. 20 delineates the figure of the Ombudsperson, whose tasks are deeply investigated in the Annex II of the resolution. The first person to be designated for this task was Kimberly Prost in 2010, a former judge at the International Criminal Tribunal for the former Yugoslavia. The task includes the examination of the requests of individuals or entities to be deleted from the list. However, the Ombudsperson did not have a decision-making authority. It was limited to the collection of data, the communication with petitioners, and the drafting of reports to the Sanction Committee. If the request is refused, the Ombudsperson informs the petitioners of the reasons of refusals³⁰⁸. More recently, several changes occurred on the figure of the Ombudsperson. Two are the main resolutions responsible for the improvement and empowerment of the figure. The SC Resolution 1989 (2011)³⁰⁹ and the SC Resolution 2083 (2012)³¹⁰. The former, a part from extending the period of the mandate consisting of 18

³⁰³ “Even with the enhanced procedures for listing at the level of the United Nations, and the appointment of an Ombudsperson, the Special Rapporteur remains concerned about procedural inadequacies[...]” Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, A/HRC/16/51, par. 33

³⁰⁴ *Report of the Special Rapporteur A/HRC/16/51..*, op. cit., par. 33

³⁰⁵ SC Resolution 1904 (2009), par. 11, available at

http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1904%20%282009%29

³⁰⁶ SC Resolution 1904 (2009), par. 13

³⁰⁷ SC Resolution 1904 (2009), par. 14

³⁰⁸ Juliane Kokott and Christoph Sobotta, *The Kadi Case – Constitutional Core Values and International Law – Finding the Balance?*, *The European Journal of International Law* Vol. 23 no. 4, 2012, p. 1020

³⁰⁹ Security Council Resolution 1989 adopted 17th June 2011 available at

http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1989%20%282011%29

³¹⁰ Security Council resolution 2083 adopted 17th December 2012 available at

http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2083%282012%29

more months³¹¹, gave the power of making de-listing recommendations to the Committee³¹². Moreover, it allows the Ombudsperson to decide the de-listing, notably when there is not a reverse consensus within the Committee, in a period of 60 days. Most importantly, it allows the Ombudsperson to meet and interview the petitioner face-to-face³¹³. The latter instead authorizes exemptions on travel ban and asset freeze for a short period of time when the Ombudsperson cannot interview face-to-face the petitioner in his/her state of residence, notably with the agreement of the States of transit and destination³¹⁴. Briefly, the task of the Ombudsperson is composed by three phases. The first one consists of a four month period for information gathering. The second one consists of two months period of engagement with the petitioner which includes the interview. The last one deals with the preparation of a Report for the Committee, including information gathered, analysis and recommendations³¹⁵. In March 2015, this procedure resulted with the de-listing of 37 persons and 28 entities³¹⁶. However, several problems and deficiencies remain, underlined and highlighted not only by Kimberly Prost but also by the new Ombudsperson, Catherine Marchi-Uhel³¹⁷, appointed by the then Secretary General Ban Ki-Moon the 13th July 2015³¹⁸. In the last available report of the Ombudsperson at the time of writing, the twelfth, she highlights the same concern expressed by her predecessor. In particular, the lack of institutionalization of the figure of the Ombudsperson and the lack of protection for the independence of the Office³¹⁹. In fact, it has not yet been established an

³¹¹ UNSCR 1989, par. 21, p. 6

³¹² “decides that the Ombudsperson shall present to the Committee observations and a recommendation on the delisting [...] either a recommendation to retain the listing or a recommendation that the Committee consider delisting”, par. 21, p. 6, Resolution SC 1989 (2011) available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Terrorism%20SRES%201989.pdf>

³¹³ UNSCR 1989, Annex II, par. 6 (c), p. 16

³¹⁴ UNSCR 2083, Par. 36, p. 8

³¹⁵ *Remarks by Kimberly Prost, Ombudsperson, Security Council Al-Qaida Sanctions Committee, to the 49th meeting of the Committee of Legal Advisors on Public International Law (CAHDI) of the Council of Europe, Strasbourg, 20 March 2015, p. 1*

³¹⁶ *Remarks by K. Prost., op., cit., p. 2*

³¹⁷ For a detailed biography visit <https://www.un.org/sc/suborg/en/sc/ombudsperson/ombudsperson-biography>

³¹⁸ Letter dated 13 July 2015 from the Secretary-General addressed to the President of the Security Council, S/2015/534, http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/534

³¹⁹ *Twelfth report of the Ombudsperson, 1 August 2016, par. 36, p. 9* available at https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/20160801_-_s_2016_xx_-_twelfth_report_of_the_ombudsperson_advance_unedited_version.pdf and in *Remarks by K. Prost., op., cit., p. 6*

independent Office. The figure of the Ombudsperson is a mere consultant, not even a staff member of the UN. Its task should be conducted in total independence and impartiality, far from suggestion by Governments or other entities. However, her performance is subjected to an evaluation by unidentified officials within the Division of the UN providing support and assistance to SC and the Committee, bodies which preclude her independence. Moreover, the lack of access to classified or confidential information is another restriction³²⁰. One formal agreement has been established with Austria, and several other states are considering the possibility to share information with the Ombudsperson's Office. In addition, the Ombudsperson has jurisdiction only on those individuals listed in the ISIL (Daesh) and Al-Qaida sanction list. It means that those individuals listed in the other 15 sanction lists, may not request the review from the Ombudsperson's Office³²¹, but rather from the Focal Point. The Focal Point has been established by the resolution 1730 (2006)³²² and even if the tasks are similar to those of the Ombudsperson, the structure is less developed and there are some differences. In particular, there is no personal contact with the Petitioner, but rather with his/her State of residence or citizenship. Moreover, the request of de-listing is first reviewed by Governments. After a period of three months, if Governments have not commented the request, the Focal Point notify all members of the Committee providing copied of the de-listing request. If, after a period on one month, no Committee member recommends the de-listing, it should be considered as rejected³²³.

3.2 The European Union commitment on the protection of Human Rights: the case of the United Kingdom and the controversial Kadi case

Another important actor in the fight against the abuse of HR while counter terrorism is the European Union (EU). Two are the positions of the EU concerning the method of listing implementing the two different UN regimes. The 1267 regime is implemented by the

³²⁰ *Remarks by K. Prost.*, op., cit., p. 5 and in Twelfth report., op., cit., p. 4

³²¹ Kimberly Prost, *The Office of the Ombudsperson; a Case for Fair Process*, p. 5 and in Kristen Boon, *UN Ombudsperson Kimberly Prost to Leave Post in July*, 1st July 2015, <http://opiniojuris.org/2015/07/01/un-ombudsperson-kimberly-prost-to-leave-post-in-july/>

³²² SC Resolution 1730 adopted 19 December 2006 available at http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1730%282006%29 "requests the Secretary-General to establish within the Secretariat [...], a focal point to receive de-listing requests", par. 1

³²³ The tasks of the Focal Point are described in the UNSCR 1730 (2006) p. 2-3, in UNSCR 2253 (2015) par. 76-77 available at <https://www.un.org/press/en/2015/sc12168.doc.htm> and in UNSCR 2255 (2015) par. 22 available at https://www.un.org/en/sc/ctc/docs/2015/N1544502_EN.pdf

Common Position 2002/402/CFSP³²⁴ and EC Regulation 881/2002³²⁵. Whereas the 1373 regime is implemented by the Common Position 2001/931/CFSP³²⁶, which forms the basis for EU autonomous restrictive measures, and by the EC Regulation 2580/2001³²⁷, which implements the Common Position and is directly applicable in the Member States. The decision to insert an individual or group to the list is made by the EU Council. However, under both regimes, individuals and groups always have the right to challenge the legality of the Community Sanction before the ECJ³²⁸. Even the EU system encountered a period of procedural reforms, with the introduction of a Working Party (a formal EU Sanction Committee), whose duties are the notification and statement of reasons to include in the listing procedure, and the introduction of a review procedure every six months, all of which are fulfilled by the Council³²⁹. In particular, after the entering into force of the Lisbon Treaty (2009), that changed the composition of the EU, other reforms were put in practice and in particular, the expressed emergence of the ECJ jurisdiction to review the legality of decisions providing for restrictive measures against natural or legal person³³⁰. However, other changes occurred in the last years in order to comply with the novelties introduced by the UN. When in 2011 the UNSCR split the list in two, Common Position 2002/302/CFSP was amended accordingly to apply only to Al-Qaeda and entities associated with the group, adopting Council Decision 2011/487/CFSP³³¹ (Art. 1). Moreover, in 2015, the list changed its name again thanks to the adoption of the UNSCR 2253 (mentioned above), thus the Council

³²⁴ Council Common Position of 27 May 2002 concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:139:0004:0005:EN:PDF>

³²⁵ Council Regulation (EC) of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:139:0009:0022:EN:PDF>

³²⁶ Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0093:0096:EN:PDF>

³²⁷ Council Regulation (EC) of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0070:0075:EN:PDF>

³²⁸ Gavin Sullivan and Ben Hayes, *Blacklisted: targeted sanctions, pre-emptive security and fundamental Rights*, European Centre for Constitutional and Human Rights (ECCHR), p. 17

³²⁹ G. Sullivan and B. Hayes, *Blacklisted.*, op. cit., p. 18

³³⁰ G. Sullivan and B. Hayes, *Blacklisted.*, op. cit., p. 20

³³¹ Council Decision 2011/487/CFSP of 1 August 2011 amending Common Position 2002/402/CFSP concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1406806620923&uri=CELEX:32011D0487>

adopted a new Decision 2016/368/CFSP³³² on 14 March, amending the previous Common Position, to extend restricted measures to entities and groups related with ISIL/Daesh (Art. 1, par. 1). Accordingly, EC Regulation 881/2002 was amended by Council Regulation EU 2016/363³³³. Moreover, on 20th September 2016, the Council adopted a new Decision, establishing additional restrictive measures against ISIL/Daesh and Al Qaeda, 2016/1693/CFSP³³⁴. Accordingly, a new Council Regulation was adopted, 2016/1686, to establish the freezing of assets to persons listed in its Annex I. The adoption of this new Decision has two main purposes. The first is to continue to implement the sanctions against ISIS/Daesh and Al Qaeda as designated by the UNSCR Sanctions List. The second one is more important, in particular, it allows EU to institute autonomous restrictive measures in addition to those listed in the UNSCR Sanctions List³³⁵. In doing so, the Council will decide unanimously on the composition of the list. Moreover, some differences can be highlighted between the new Common Position 2016/1693 and the previous one 2001/931, in particular on the definition of persons and groups involved in terrorist acts. The art. 2, responsible for the definition, in the new Decision is much more extended and it includes those who recruited, incited or publicly provoked acts or activities in support of ISIL/Daesh and Al-Qaeda and especially those who have been involved or committed serious abuses of HR outside the territory of the EU³³⁶. As far as the listing procedure is concern, it is the Working Party who is responsible for the maintaining of the list of individuals or entities, basing on decisions of competent authority. However, in order to insert a name in the list, the WP has to analyse the information or the material of the request of listing. Finally, the Council takes the final decision³³⁷. However, since the problems between the listing procedures and the

³³² *Council Decision (CFSP) 2016/368* of 14 March 2016 amending Common Position 2002/402/CFSP concerning restrictive measures against members of the Al-Qaida organisation and other individuals, groups, undertakings and entities associated with them, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016D0368>

³³³ *Council Regulation (EU) 2016/363* of 14 March 2016 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0363>

³³⁴ *Council Decision (CFSP) 2016/1693* of 20 September 2016 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1474460706106&uri=CELEX:32016D1693>

³³⁵ 2016/1693/CFSP par. 15

³³⁶ 2016/1693/CFSP art. 2 (f)

³³⁷ *Counter-terrorist sanctions regimes Legal framework and challenges at UN and EU levels*, European Parliament, October 2016, available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/589864/EPRS_BRI\(2016\)589864_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/589864/EPRS_BRI(2016)589864_EN.pdf)

respect of HR, during the years several implementations have been adopted. In particular, Guidelines on implementation and evaluation of restrictive measures in the framework of the EU Common Foreign and Security Policy of 15 June 2012³³⁸. In particular, they underlined the respect for fundamental HR, such as the right to due process and to an effective remedy³³⁹. Later, the guidelines have been modified with the insertion of new elements in 2013. The new elements concern the prohibition of making available funds “indirectly to listed persons or entities funds or economic resources through persons or entities owned or controlled by the listed persons or entities”³⁴⁰. Moreover, in June 2015, a series of Best Practices have been adopted for the implementation of restrictive measures. In particular, the Best Practices emphasize the possible problems and respective solutions, such as in the case of a mistaken identity or in the case of the de-listing procedure³⁴¹. However, a question arises, which are the main rights violated by the counter-terrorism measures? First of all, it is important to underline that HR are universal, interdependent and indivisible values that protect individuals and groups. There is a body of subject-specific treaties as well as various regional treaties on the protection of HR and fundamental freedoms. Many of the HR listed in the various Declarations and treaties are today regarded as part of customary international law, binding all States even if not party to a specific treaty and some of them are recognized as *jus cogens* which means that no derogation is possible. In this regard, since “effective counter-terrorism measures and the promotion of HR are not conflicting goals but complementary and mutually reinforcing³⁴²”, it is important that counter-terrorism measures comply with HR standards. A concept reiterated also by some SC’s Statements is that “any measure taken to combat terrorism comply with [...] and should adopt such measures in accordance with international law, in particular international human

³³⁸ Council of the European Union, 15 June 2012,

<http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2011205%202012%20INIT>

³³⁹ Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, p. 7 par. 9,

<http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2011205%202012%20INIT>

³⁴⁰ Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy - new elements, 1 February 2013, p. 2 par. 4,

<http://www.statewatch.org/news/2013/feb/eu-council-eeas-guidelines-sanctions-cfsp-5993-13.pdf>

³⁴¹ Restrictive measures (Sanctions) - Update of the EU Best Practices for the effective implementation of restrictive measures, 24 June 2015, <http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/en/pdf>

³⁴² Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights, Terrorism and Counter-terrorism*, Fact Sheet No. 32, p. 21

rights [...].³⁴³ In particular, related to the measures to fight terrorism, the main abused rights refer to the right to recognition before the law, the right to due process in the light of detention for being accused of alleged terrorism, the right to be heard and the right for a fair trial. Some States have in fact adopted measures responsible for the deprivation of liberty. This is the case, for instance, of the situation in the United Kingdom at the beginning of the XXI Century. Many actors, Amnesty International, the UN Committee against Torture, UN Committee on the Elimination of Racial Discrimination, the UN High Commissioner for HR and others, have expressed serious concern on abuse of HR. The Commissioner for HR of the Council of Europe in 2005 described the measures taken by the UK in the countering terrorism as “among the toughest and most comprehensive anti-terror legislation in Europe”³⁴⁴. From 1998 to 2005 four are the Acts established in UK in CT responsible for several HR violations. In particular, the Criminal Justice Act 1998, the Terrorism Act 2000, The Anti- Terrorism Crime and Security Act 2001 (ACTSA) and the Prevention of Terrorism Act in 2005. The first one provides a permanent distinct system of arrest, detention and prosecution for “terrorist offences” that violates the right of all people to equality before the law without discrimination. In particular, the principle of “every man is innocent until is proven guilty” has been violated. The Lofti Raissi case in fact underlines the problem of discrimination in the aftermath of the attacks in US of 2001. An Arab and Muslim pilot was arrested on the 21st September 2001 together with his wife and brother, released respectively after five and two days³⁴⁵. His identity and job fitted a specific profile: Algerian, Muslim, who worked as a pilot and as a flight instructor in the USA. His detention was justified by the initial allegations by the US authority, which then asked for his extradition. However, the judge argued that he did not receive any evidence to support the contention. Nevertheless, he continued to be the subject of an on-going investigation as a suspected terrorist. This case highlights the problem and the danger, faced in the first years after the attacks in US, of the discrimination under profiling. It is in particular the so-called ACTSA that

³⁴³ SC Resolution 1456 (2003), par. 6, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/216/05/PDF/N0321605.pdf?OpenElement>

³⁴⁴ *Report by Mr Alvaro Gil-Robles, Commissioner For Human Rights, On His Visit To The United Kingdom 4th – 12th November 2004* for the attention of the Committee of Ministers and the Parliamentary Assembly, par. 6 https://wcd.coe.int/ViewDoc.jsp?p=&id=865235&direct=true#P164_11048

³⁴⁵ *United Kingdom Human rights: a broken promise*, Amnesty International, February 2006, available at http://www.amnesty.eu/static/documents/2006/Human_rights_broken_promise_230206_report.pdf p. 12

revealed to be the main threat to HR. It extended the powers of the State, it put into practice effectively the freezing orders for terrorist assets and it introduced vague offence. The fourth part of the Act is probably the most dangerous. The foreigners, who could not be deported from the UK because of the principle of non-refoulement³⁴⁶, were labelled as “suspected international terrorists” and “a national security risk”³⁴⁷. This allows the detention of people without apparent charge or trial on the basis of secret intelligence information and for an indefinite time. As a result, UK was forced to derogate from art. 5 (1) of the European Convention of Human Rights (ECHR)³⁴⁸ and from the art. 9 of the International Covenant on Civil and Political Rights³⁴⁹. The UK remained the only Country in the Council of Europe that derogated from these standards³⁵⁰. On December 200, 16 foreign nationals were interned and detained for more than three years. The European Committee for the Prevention of Torture (CPT) expressed concerns especially on the situation of detention and on the lack of access to legal counsel. The situation could amount to inhuman and degrading treatment. Moreover, in March 2005 the PTA entered into force. It allows the exclusion of a person’s right to a fair trial, the right to be informed and the right to defend oneself. In particular, the control orders imposed by the PTA are subject to great concern as expressed by the Commissioner for Human Rights “Control orders raise not only general points of constitutional principle concerning the rule of law and the separation of powers, but also a number of specific concerns regarding their compatibility with the rights guaranteed by the ECHR. [...] It is difficult to assess their compatibility with the ECHR with certainty.³⁵¹” It is evident that in the case with control orders the proceedings affect the

³⁴⁶ Generally, the principle on non-refoulement refers to asylum-seekers or refugees; however, the same principle can be more extensively applied in the context of HR. The essential element of the principle in a HR context is a risk of torture or cruel, inhuman or degrading treatment or punishment. A country cannot expose individuals to these dangers upon return to another country by way of extradition, expulsion or refoulement. Sir Elihu Lauterpacht and Daniel Bethlehem, *The scope and content of the principle of non-refoulement: Opinion*, UNHCR, p. 159-160, <http://www.unhcr.org/419c75ce4.pdf>

³⁴⁷ *United Kingdom Human Rights..*, op. cit., p. 14

³⁴⁸ “Everyone has the right to liberty and security of person”. ECHR, art. 5 (1), available at http://www.echr.coe.int/Documents/Convention_ENG.pdf

³⁴⁹ “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention” (1) and “Anyone who is arrested shall be informed” (2) and “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release” (3), ICCPR, art. 9, available at <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

³⁵⁰ *United Kingdom Human Rights..*, op., cit., p. 15

³⁵¹ *Report By Mr Alvaro Gil-Robles*, op. cit., par. 16

liberty of the individuals. Moreover, the Commissioner argued that the use of torture to obtain evidence is contrary to the ECHR art. 6 and that is not admissible “To use evidence obtained under torture to secure criminal convictions is to condone an entirely indefensible practise³⁵²” and “torture is torture whoever does it, judicial proceedings are judicial proceedings, whatever their purpose – the former can never be admissible in the latter.³⁵³” These are only some examples on the abuse of HR in tackling terrorism especially regarding the measures in the fight against the financing, at the beginning of the century. Repressive and punitive measures in the wave of fear and anger prevailed over the protection of HR. However, other problems emerged with the system proposed by the Security Council especially regarding the listing and de-listing procedures. The main well-known case in this regard is the so-called Kadi case (Yassin Abdullah Kadi and Al Barakaat International Foundation). In particular, the case highlighted the lack of judicial remedy for the suspected terrorists included in the UN list. The most important part of the case however is the response given by the European Court of Justice related not only to HR, but also to the implementation of the SC resolutions at the EU level and the alleged primacy of the former over the latter.

The facts are the following: Yassin Abdullah Kadi (hereafter referred as to Kadi), a Saudi resident, was identified as a possible supporter of Al-Qaida and included, together with the Al Barakaat International Foundation established in Sweden, in the SC 1267 Regime³⁵⁴. He was then singled out for sanctions, notably the freezing of assets, and for the implementation of the Resolution 1267 the EU transposed the order to freeze the funds as underlined in the 881/2002 Regulation (mentioned above). Mr. Kadi attacked the Regulation before the EU Court. Different were the sentences and the responses. In 2005, the General Court refused Kadi’s plea, arguing that since he had been included in the list, the freezing of assets was lawful pursuant to Regulation. Member States in fact were required to comply with the SC resolutions, thus there had been no infringement of his rights. Consequently, the European Commission provided the summary of reasons to Kadi and gave him the opportunity to comment. In 2008, the ECJ rejected the General Court sentence, arguing that

³⁵² *Report by Mr. Alvaro Gil-Robles.*, op., cit., par. 26

³⁵³ *Report by Mr. Alvaro Gil-Robles.*, op., cit., par. 27

³⁵⁴ S. De Vido, *Il contrasto.*, op., cit., p. 297

“The obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights, that respect constituting a condition of their lawfulness which it is for the Court to review in the framework of the complete system of legal remedies established by the Treaty.³⁵⁵” In fact, the ECJ declared that the right of defence, of effective judicial protection and property³⁵⁶ had been infringed. In particular, the ECJ confirmed the validity of Art. 60, 301 and 308 of the EC Treaty as legal basis for the regulation contested by Kadi, however it also stated that the effectiveness of judicial review means that Community authority has to inform the person concerned of the measures taken in his regard, especially to allow him to bring action. Even if the element of surprise is necessary for the effectiveness of the measures, his right to be heard and to defence were not respected³⁵⁷. As far as the freezing of assets is concerned and his right to property, the ECJ accepted in principle the measures³⁵⁸, however it underlined that the contested regulation did not provide Mr. Kadi any guarantee to put his case to the competent authorities³⁵⁹. In conclusion, the ECJ annulled the Regulation, nevertheless, it did not annul immediately the effects, which were maintained for a period of three months to allow the Council to amend the infringements found³⁶⁰. However, the Council and the Commission

³⁵⁵ *Joined Cases C-402/05 P and C-415/05 P, Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, par. 5, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005CJ0402:EN:HTML>

³⁵⁶ *Case T-85/09 Yassin Abdullah Kadi v. European Commission*, “the imposition of those measures in his regard constituted an unjustified restriction of his right to property.” par. 47, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009TJ0085:EN:HTML>

³⁵⁷ *Case T-85/09* “the applicant’s rights of defence, in particular the right to be heard, had been infringed.” *Op.*, cit., par. 44

³⁵⁸ *Joined Cases C-399/06 P and C-403/06 P, Faraj Hassan v. Council of the European Union and European Commission*, and *Chafiq Ayadi v. Council of the European Union* “the restrictive measures imposed by that regulation constituted restrictions of the right to property which might, in principle, be justified.” par. 91 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0399> and in *Kadi case T-85/09 op.*, cit., par. 46

³⁵⁹ *Case T-85/09 op.*, cit., par. 47

³⁶⁰ *Joined Cases C-402/05 P and C-415/05 P* “In those circumstances, Article 231 EC will be correctly applied in maintaining the effects of the contested regulation, so far as concerns the appellants, for a period that may not exceed three months running from the date of delivery of this judgment.” *Op.*, cit., par 376

maintained Mr. Kadi in the list³⁶¹, in doing so they adopted a new regulation 1190/2008³⁶². Consequently, Mr. Kadi brought an action for annulment and in 2010 the GC expressed the sentence *Yassin Abdullah Kadi v. European Commission* in the so-called *Kadi II*³⁶³. Interesting in this regard is the response of the GC. In particular, the GC focused on the length of the measure taken against Mr. Kadi, namely the freezing of his assets. Since the measure is supposedly temporary and not definitive, the Court underlined that “In the scale of a human life, 10 years in fact represent a substantial period of time and the question of the classification of the measures in question as preventative or punitive, protective or confiscatory, civil or criminal seems now to be an open one”³⁶⁴. A concept reiterated also by the United Nations High Commissioner for Human Rights, which expressed grave concern on the fact that “[it] may result in a temporary freeze of assets becoming permanent which, in turn, may amount to criminal punishment due to the severity of the sanction [...] This poses serious human rights issues, as all punitive decisions should be either judicial or subject to judicial review.”³⁶⁵ Moreover, gradually, the GC concluded annulling the Regulation contested and ordering the EC to pay the costs incurred by Mr. Kadi. Some of the elements contested were, for example, that the summary of reasons given to the applicant was not detailed. It was in fact vague and contained a number of generalisations, non particularised and unsubstantiated allegations against him³⁶⁶. The Community Institutions should rely on a summary of allegations composed by “serious and credible evidence”³⁶⁷. In particular, “[...]the contested regulation was adopted without any real guarantee being given as to the disclosure of the evidence used against the applicant or as to his actually being properly

³⁶¹ *Case T-85/09* “After having carefully considered the comments received from Mr Kadi in a letter dated 10 November 2008, and given the preventive nature of the freezing of funds and economic resources, the Commission considers that the listing of Mr Kadi is justified for reasons of his association with the Al-Qaeda network.” Op., cit., par. 57

³⁶² *Commission Regulation (EC) No 1190/2008* of 28 November 2008 amending for the 101st time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:322:0025:0026:EN:PDF>

³⁶³ *Case T-85/09 Yassin Abdullah Kadi v. European Commission*, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009TJ0085:EN:HTML>

³⁶⁴ *Case T-85/09* op., cit., par. 150

³⁶⁵ *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, 2 September 2009, A/HRC/12/22, par. 42, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/152/14/PDF/G0915214.pdf?OpenElement>

³⁶⁶ *Case T-85/09* op., cit., par. 157

³⁶⁷ *Case T-85/09* op., cit., par. 162

heard in that regard [...] the regulation was adopted according to a procedure in which the rights of the defence were not observed [...]”³⁶⁸. In conclusion, the GC found that the principle of proportionality, the right of property, the right of defence and to effective judicial protection had been infringed. Consequently, the 5 October 2012 Mr. Kadi was deleted from the UN Sanction list³⁶⁹. Even if this is not the place to investigate further into the case, after the de-listing the Kadi case was open again by the European Commission, the Council of the European Union and the United Kingdom of Great Britain and Northern Ireland, seeking to have set aside the judgment of the General Court of the European Union of 30 September 2010. However, on July 2013, the GC concluded with the dismissal of the appeal and ordered the European Commission, the Council of the European Union and the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Moreover, HR problems related to the freezing of funds started to emerge even in non-EU and non-UN Countries, namely Switzerland. Before entering the UN in 2002, Switzerland allowed payment from frozen accounts and the transit or the entry in its territory of individuals whose accounts were frozen. It informed the SC through a “note verbale” dated 21 June 2002 of its violation of the sanctions imposed by the SC 1267 regime³⁷⁰. Switzerland justified this decision “to protect Swiss interests and to prevent hardship cases.”³⁷¹

3.3 The threat of the financing of terrorism to the financial system and the measures implemented to protect it: the KYC principle

The freezing of assets is not the only measure to take into consideration. In fact, since the financing of terrorism is a threat especially for the financial system, there are some measures provided for the protection of the banking and financial system. These preventive measures adopted by the FATF, such as the KYC (know your customer) principle, one of the

³⁶⁸ *Case T-85/09* op., cit., par. 184

³⁶⁹ Security Council Al-Qaida Sanctions Committee Deletes Entry of Yasin Abdullah Ezzedine Qadi from Its List, 5 October 2012, <http://www.un.org/press/en/2012/sc10785.doc.htm>

³⁷⁰ *Note verbale dated 21 June 2002 from the Permanent Observer Mission of Switzerland to the United Nations addressed to the Chairman of the Committee*, available at http://repository.un.org/bitstream/handle/11176/28567/S_AC.37_2002_66-EN.pdf?sequence=3&isAllowed=y, in particular, see p. 2 on freezing of assets and p. 3 on ban on entry and transit.

³⁷¹ *Note Verbale..*, op., cit. p. 2 par. 2

pivotal aspect in this context³⁷², the CDD (Customer Due Diligence), the Record Keeping, the Politically Exposed Persons, the Reporting of Suspicious transactions have the aim to stop the abuse of the financial system for criminal purposes. It is well known in fact that “Banks and other financial institutions may be unwittingly used as intermediaries for the transfer or deposit of funds derived from criminal activity.³⁷³” In particular, it is worth pausing on the concept of KYC. According to the Recommendation 10 of the Task Force “Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names.³⁷⁴” Notably, this principle had already been introduced since 1977 by Switzerland, the so-called Bank’s Code of Conduct, whose aim was to introduce the due diligence rules in the fight against ML and TF.³⁷⁵ Moreover, the Basel Committee in 1988 published a document whose aim was to provide guidelines to financial institutions and banks in order to encourage them to identify their customers and refuse suspicious transactions³⁷⁶. Effective CDD is the key to combat TF. In particular, CDD requires the identification of the customer and/or the beneficial owner and the verification of their identity. Moreover, it requires an understanding and collection of information on the purpose of the business and the source of funds, and finally, the ongoing monitoring of the business relationship³⁷⁷. These requirements are necessary to ensure that the financial institutions know the persons on whose behalf they are conducting the transactions and it permits to identify possible suspicious transactions. The concern for the preservation of the integrity of the financial system can be seen in several documents issued on the subject, even if all in the format of soft-law (as the FATF recommendations). The 1992 resolution on Money Laundering issued by the International Organisation of Security Commissions

³⁷² A. Gardella, *the fight against the financing..*, op. cit., p. 447

³⁷³ *Prevention Of Criminal Use Of The Banking System For The Purpose Of Money-Laundering*, December 1988, <http://www.bis.org/publ/bcbasc137.pdf>

³⁷⁴ *FATF Recommendations..*, op. cit., p. 14

³⁷⁵ *Swiss Banks’ Code of Conduct*, 1 July 2008, *International Financial Law Review*, <http://www.iflr.com/Article/1976399/Swiss-banks-code-of-conduct.html>

³⁷⁶ *The Prevention of Criminal Use of the Banking System for the Purpose of Money-Laundering in Customer due diligence for banks*, Basel Committee on Banking Supervision, p. 5 <http://www.bis.org/publ/bcbas85.pdf>

³⁷⁷ IMF Working Paper, *Islamic Finance and Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)*, February 2016, p. 6-7, <https://www.imf.org/external/pubs/ft/wp/2016/wp1642.pdf>

(IOSCO)³⁷⁸, the Wolfsberg Statement on the Suppression of the financing of terrorism³⁷⁹ in the same year, the Customer Due Diligence for banks of the Basel Committee mentioned above in 2001 and the Anti-money laundering guidance notes for insurance supervisors and insurance entities³⁸⁰ published by the International Association of Insurance Supervisors (IAIS) in 2002. Moreover, a similar approach can be found in the amendments to the Fourth AMLD of the EU³⁸¹, especially aimed at implementing measures against the abuse of the financial system. The Commission Proposal of the 5th July 2016, based on the Action Plan proposed the 2nd February to strengthening the fight against terrorist financing³⁸², intended to improve some measures against TF and ML, such as the CDD measures towards high-risk third countries. Moreover, since new threats emerged due to the development of technologies, in particular with the establishment of new financial tools such as virtual currency, the amendment to the Fourth AMLD aims at designating virtual currency exchange platform³⁸³ as entities regulated by the Directive. Moreover, the amendments include the definition of limits to transactions for pre-paid instruments and the improvement of access to beneficial ownership information.

3.4 The forms of cooperation on an international and regional level in the combat to ML and TF, notably regarding the abuse of financial system

It is undeniable that in order to combat the ML and the TF is necessary to reinforce international cooperation especially regarding the intensification of information-sharing mechanism. Cooperation is a key aspect highlighted by many legal documents. However, it is

³⁷⁸ Available at <https://www.iosco.org/library/resolutions/pdf/IOSCORE55.pdf>

³⁷⁹ Available at [http://www.wolfsberg-principles.com/pdf/standards/Wolfsberg_Statement_on_the_Suppression_of_the_Financing_of_Terrorism_\(2002\).pdf](http://www.wolfsberg-principles.com/pdf/standards/Wolfsberg_Statement_on_the_Suppression_of_the_Financing_of_Terrorism_(2002).pdf)

³⁸⁰ Available at http://www.iaisweb.org/modules/cciais/assets/files/pdf/061002_ICP_28_Anti-Money_Laundering_and_Combating_the_Financing_of_Terrorism.pdf

³⁸¹ *Proposal for a Directive Of The European Parliament And Of The Council*, 5 July 2016, http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf

³⁸² *Communication From The Commission To The European Parliament And The Council on an Action Plan for strengthening the fight against terrorist financing*, 2 February 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1455113825366&uri=CELEX:52016DC0050>

³⁸³ *Proposal for a Directive*, 5 July 2016, p. 12, http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf

interesting to notice the emergence of customary nature³⁸⁴ related to cooperation. Since the aspects that regulate the international cooperation in the fight against TF within the legal documents are in many cases general, many countries decided to adopt non-binding standards such as the FATF Recommendations. Moreover, on an international level, many countries showed the will to cooperate sending many reports to the CTC. Even countries non-members of the UN have underlined the necessity to cooperate, such as the Switzerland (before entering the UN) and the UE (before the Lisbon treaty). In addition, the involvement of different several actors, such as financial and banking institutions, banking groups, countries and organizations reveal the need and the willingness to cooperate. It is clear that the content of the customary law is included in the Resolution 1373 and in the FATF Standards.

The improvement and intensification of the cooperation especially at the information sharing level is the strategic tool for the prevention of terrorist financing. In particular, the New York Convention (1999) underlines the necessity to reinforce inter-state cooperation in the confiscation of assets but also in the waiver of banking secrecy and in the implementation of the KYC principle³⁸⁵. Moreover, the resolution 1373 played a major role. It calls upon states to “Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters [...]”, “Cooperate, particularly through bilateral and multilateral arrangements and agreements [...]” and “Increase cooperation and fully implement the relevant international conventions and protocols [...]” In addition, the same concept has been reiterated by the Special Recommendation V of the Task Force that calls for each country to “afford another country [...] the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.”³⁸⁶ International cooperation has been reiterated on an

³⁸⁴ “Custom as source of law is usually defined as a consistent pattern of state behaviour (practice) accompanied by an elusive psychological element (opinio juris sive necessitatis). States, as the principal subjects of international law, have not only acted uniformly in certain situations, but their actions have been accompanied by the conviction that they as subjects of international law were bound by law to act that way and that such conduct was believed to be good and necessary.” In Vojin Dimitrijevic, *Customary Law as an Instrument for the Protection of Human Rights*, ISPI Working Papers, 2006, p. 4

³⁸⁵ *Convention for the Suppression..*, op. cit., art. 12 and 18

³⁸⁶ *FATF IX Special Recommendation*, <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/ixspecialrecommendations.html#V>

international level even by the G-20. The Finance Ministers and Central Bank Governors adopted in November 2001 a Comprehensive Action Plan of Multilateral Cooperation on Terrorist Financing³⁸⁷ in order to encourage the international cooperation and denying terrorists the access to banking networks and financial system. In particular, the document highlights the necessity to implement international instruments and the FATF Recommendations, to provide technical assistance and to promote compliance and reporting in order to share information and address terrorist financing. Another important response to the financing of terrorism is the adoption of the United Nations Global Counter-Terrorism Strategy under resolution 60/288 of the General Assembly in September 2006. The AG Strategy endorsed the Counter-Terrorism implementation Task Force (CTITF) established in 2005. This Task force plays a major role in coordinating the counter-terrorism efforts of the UN System. It consists of 38 international entities whose aim is to maximize the implementation of the four pillars of the Global Strategy.³⁸⁸ Its work is organized through Working Groups and related projects. Among the eleven thematic working groups, one deals with the financing of terrorism. In particular, its activities include technical assistance and capacity building, sharing of relevant information, organization of conferences and development of guidelines. It is worth noticing that one of the forum engaged in the support and implementation of the Global Strategy is the Global Counter-Terrorism Forum established at a Ministerial Plenary Meeting in New York on 22 September 2011 by the then US Secretary of State Hilary Clinton. It is composed by 29 countries and the European Union. It provides a platform for expertise and senior counter-terrorism policymakers in order to identify needs and solutions on terrorism challenges³⁸⁹.

Moreover, in addition to all of these initiatives, others were taken on a bilateral and national level. Some bilateral agreements have been signed in order to improve information sharing among countries, just to mention one the two SWIFT agreements between EU and USA. Other methods involved instead cooperation among national institutions, namely the FIU.

³⁸⁷ *G-20 Action Plan on Terrorist Financing*, US Department of the Treasury, 11/17/2001, <https://www.treasury.gov/press-center/press-releases/Pages/po807.aspx>

³⁸⁸ The four pillars are the following: addressing the conditions conducive to the spread of terrorism, preventing and combating terrorism, building state's capacity and strengthening the role of the UN, ensuring HR and the rule of law. UN Global Counter-Terrorism Strategy, available at <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>

³⁸⁹ *Global Counterterrorism Forum*, US Department of State, <https://www.state.gov/j/ct/gctf/> and available at the global counter-terrorism forum <https://www.thegctf.org/About-us/Background-and-Mission>

However, it is interesting to notice also the efforts of cooperation between the EU and the Arab Countries and the counter financing terrorism measures adopted in the Gulf.

3.5 The SWIFT Agreement and the violation of the right to privacy. The bilateral agreement between the EU and US

The events of 2001 encouraged a closer cooperation especially between US and EU, even if the positions concerning the way to stop terrorism were really different. However, in the aftermath of 2001, they concluded two important Treaty on extradition and mutual legal assistance³⁹⁰. More recently, another agreement has been concluded, in particular on the exchange of personal data regarding wire transfers. The two agreements are better known as SWIFT I and SWIFT II.

With the executive order 13224³⁹¹, the then US President George W. Bush introduced the so-called Terrorist Financing Tracking Program (TFTP), aimed at collecting data on financial flows. SWIFT is instead an acronym that stands for Society for Worldwide Interbank Financial Telecommunication, a Belgium-based banking cooperative, a network to carry messages containing instructions for international financial transactions³⁹². SWIFT links more than 9000 financial institutions; it is in charge of their telecommunications and allows for the standardized execution of financial transactions³⁹³. US Treasury used administrative subpoenas to access the database of financial information of the Swift Program. However, the method of gathering information through this program violated the Belgian and the EU law. Nevertheless, since the program was based in Europe but active in the US, it is just in 2006 that the European and American public opinion and the EU officials became aware of

³⁹⁰ S. De Vido, *Il contrasto..op.*, cit., p. 254 and in *U.S. Measures Implementing the 2004 U.S.-EU Declaration on Combating Terrorism*, Bureau of European and Eurasian Affairs, 20 June 2005, <https://2001-2009.state.gov/p/eur/rls/or/48318.htm>, par. 3 “In the past year, the U.S. has completed negotiations on bilateral instruments to implement the U.S.-EU Agreements on extradition and Mutual Legal Assistance (MLA)”

³⁹¹ The executive Order 13224 signed by G. W. Bush is a powerful tool to combat terrorist financing. “In general terms, the Order provides a means by which to disrupt the financial support network for terrorists and terrorist organizations by authorizing the U.S. government to designate and block the assets of foreign individuals and entities that commit [...] acts of terrorism”, Executive Order 13224, 23 September 2001, Office Of The Coordinator For Counterterrorism, <https://www.state.gov/j/ct/rls/other/des/122570.htm>

³⁹² Patrick M. Connorton, *Tracking Terrorist Financing Through SWIFT: When U.S. Subpoenas and Foreign Privacy Law Collide*, *Fordham Law Review*, Volume 76, Issue 1, article 7, 2007, p. 287

³⁹³ Valentin Pfisterer, *The Second SWIFT Agreement Between the European Union and the United States of America – An Overview*, p. 1175

the ongoing violations, thanks to some articles³⁹⁴. In particular, the violations concerned the protection of the EU citizen's privacy, regulated in Europe by EC Directive 95/46³⁹⁵ and EC Directive 2002/58³⁹⁶. Nevertheless, even though several problems emerged, it was undeniable that even EU Member States benefited from the TFTP's investigation results³⁹⁷, thus a continuation in the cooperation was required. Guy Verhofstadt, the then Belgian Prime Minister, declared the Program as "an absolute necessity", even if he suggested US to bring it into line with EU Law³⁹⁸. In June 2007, in fact, EU and US reached an Agreement, known as the EU-US compromise, which allowed Swift Program to operate but in a modified form. The changes introduced concerned in particular the use of collected data. Data should be used only for counter-terrorism purposes, and the one not necessary for the purpose should be deleted. Moreover, it imposed a five-year period after which the dormant data cannot be kept. In addition, it permitted an EU official to monitor the program and introduced the duty to inform bank customers on the transfer of their data³⁹⁹. In 2009, the company moved a central server concerned with wire transfers from US to Europe, thus it was necessary to define new methods for the US Treasury to access the database⁴⁰⁰. The Council authorized the Presidency on 27 July 2009 to engage in negotiations on an "Agreement on the processing and messaging of financial data from the EU to US for purposes of the Terrorist Finance Tracking Programme"⁴⁰¹. The Agreement was completed one day before the entry into force of the Lisbon Treaty that is why the European Parliament

³⁹⁴ Josh Meyer and Greg Miller, *U.S. Secretly Tracks Global Bank Data*, 23 June 2006, <http://articles.latimes.com/2006/jun/23/nation/na-swift23> and Glenn R. Simpson, *Treasury Tracks Financial Data in Secret Program*, *Wall Street Journal*, 23 June 2006, <http://www.wsj.com/articles/SB115101988281688182>

³⁹⁵ *Directive 95/46/EC* of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>

³⁹⁶ *Directive 2002/58/EC* of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0058:en:HTML>

³⁹⁷ V. Pfisterer, *The Second SWIFT agreement.*, op., cit., p. 1177

³⁹⁸ P. M. Connorton, *Tracking Terrorist.*, op., cit., p. 292

³⁹⁹ *USA to take account of EU data protection principles to process data received from Swift*, European Commission, 28 June 2007, http://europa.eu/rapid/press-release_IP-07-968_en.htm

⁴⁰⁰ S. De Vido, *Il contrasto.*, op., cit., p. 349

⁴⁰¹ With resolution of 5 May 2010 on the Recommendation from the Commission to the Council to authorise the opening of negotiations of the agreement above mentioned. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0143+0+DOC+XML+V0//EN>

(EP) was not involved. The Treaty of Nice in fact required the only approval of the Council⁴⁰², while the legislative procedure, as defined by art. 218 TFUE⁴⁰³, in the Lisbon Treaty requires the joint work of the Council and Parliament in which the latter plays a major role. However, on February 2010, EP was called to vote, and since it had always been critical about the agreement, it rejected it. Some days later, the Council authorized the Commission to open new negotiations for a new agreement on the matter but in different terms. The 8th July, the revised SWIFT II agreement was approved by the Parliament and entered into force on the 1st of August 2010. Some changes were introduced. In particular, the elimination of bulk data transfers, a new role for EUROPOL⁴⁰⁴, namely to check that data transfer requests are justified by counter-terrorism purposes. Moreover, the new agreement established an EU representative in the US to monitor the data processing. In addition, data may be retained only for the duration of the specific procedures and the US Treasury is required to delete data that are no longer be of use for counter-terrorism purposes⁴⁰⁵. There are, however, other changes concerning the legal basis and the outlined of the context. As far as the former is concerned, both are international agreement, however, SWIFT I was based on art. 24 and 38 of TUE, while the SWIFT II is based on art. 87 and 88 of TFUE. The latter instead refers to the organization of the context. The first agreement is composed of one preamble and 15 articles, while the second one is composed of one preamble and 23 articles. In particular, the latter does not apply to Ireland and Denmark⁴⁰⁶. However, even if the first agreement had different problems, about the data protection for example, the second agreement, even if more well-developed than the previous one, presents other problems. According to the agreement, US law governs the legal effects of the requests in the US and in the EU. The corresponding administrative and legal redress depend on US law. The predominance of the US law could be seen as dissatisfactory in the EU perspective.

⁴⁰² V. Pfisterer, *The Second SWIFT agreement..*, op., cit., p. 1177

⁴⁰³ *Consolidated Version Of The Treaty On The Functioning Of The European Union (TFUE)*, p. 145, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=IT>

⁴⁰⁴ An EU law enforcement agency Headquartered in The Hague (Netherlands). It produces regular assessments such as TE-SAT (on terrorism), however it deals also with people smuggling, ML, organised fraud and the counterfeiting of euros. The control and guidance of Europol is a Council's responsibility. On 1 January 2010 the EUROPOL became a full EU agency. <https://www.europol.europa.eu/about-europol>

⁴⁰⁵ *EU Parliament Approves Revised United States-European Union SWIFT Agreement*, *The American Journal of International Law*, Vol. 104, No. 4 (October 2010), pp. 659-661, published by the American Society of International Law

⁴⁰⁶ V. Pfisterer, *The Second SWIFT agreement..*, op., cit., p. 1180 and 1183-1184

Moreover, some doubts emerge on the equal-treatment clause, regulated by art. 18. The prerequisite for a request for information is: being US citizen or permanent residence in the US. In addition, it is possible that the agreement does not meet the requirements of the basic rights included in the Charter of the Fundamental Rights of EU (CFREU), notably art. 7⁴⁰⁷ and 8⁴⁰⁸.

There are other two important bilateral Agreements between the US and EU. The one concluded between the United States of America and the European Police Office (EUROPOL) the 31 October 2001 whose aim is to “enhance the cooperation of the Member States of the European Union, acting through Europol, and the United States of America in preventing, detecting, suppressing, and investigating serious forms of international crime[...]” through the exchange of technical information⁴⁰⁹. However, this agreement does not allow the exchange of personal data. On the contrary, it allows the establishment of “points of contact”⁴¹⁰ in order to coordinate the exchange of strategic and technical information. In 2002, the Europol established a Liaison Office in Washington DC⁴¹¹. The second agreement, related to the exchange of personal data, was concluded the 20th December 2002. In particular, art. 5 underlines that the request of data should be based on the purpose of “prevention, detection, suppression, investigation and prosecution of any specific criminal offences”⁴¹². Finally yet importantly, the agreement⁴¹³ was concluded in 2007 between Eurojust⁴¹⁴ and the US on the same matter, in order to enhance cooperation among the Parties to combat the transnational crime through the exchange of information. On a more national level, however, the centres of international information sharing are the FIU (Financial Intelligence Unit). FIU are central repository and bilateral services provider,

⁴⁰⁷ Art. 7 CFREU Respect for private and family life, available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁴⁰⁸ Art. 8 CFREU Protection of personal data, http://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁴⁰⁹ *Agreement Between The United States Of America And The European Police Office*, 31 October 2001

⁴¹⁰ *Agreement Between..*, op., cit., art. 4

⁴¹¹ S. De Vido, *Il contrasto..*, op., cit., p. 256

⁴¹² *Supplemental Agreement Between the Europol Police Office and the United States of America on the Exchange of Personal Data and related information*, 20 December 2002, art. 5

⁴¹³ *Agreement between Eurojust and The United States of America*, 6 November 2006

⁴¹⁴ The European Union's Judicial Cooperation Unit (EUROJUST) is a unit set up by the European Council in 2002, composed of national prosecutors, magistrates, or police officers of equivalent competence. The unit deals with negotiations for cooperation agreements with third States and other EU agencies, allowing the exchange of judicial information and personal data and with the maintenance of a network of points of contact worldwide. <http://www.eurojust.europa.eu/about/background/Pages/History.aspx>

aimed at facilitating information flow and interaction between a state and an institution⁴¹⁵. However, there are different kinds of FIUs. The Administrative one, which are normally part of a structure and under the supervision of an agency, they operate as a “buffer” between the financial sector and the law-enforcement authorities for financial crimes. The law-enforcement ones, which are part of the respective agency and benefit from expertise and sources of other units. Finally, the judicial or prosecutorial one are required in those countries where banking secrecy laws are strong and they need a direct link with the judicial or prosecutorial authorities⁴¹⁶. They emerged on a national level and in 1995 coordinated their work in an informal organization, the Egmont Group. The aim of the group is to develop FIUs and to cooperate in the areas of information exchange, training and the sharing of expertise⁴¹⁷ due to the transnational character of the crime. In June 2001, the group agreed on a set of principles⁴¹⁸ to be taken as a reference point in the sharing information system. However, there are some limitations. The information acquired may not be transferred to third party or be abused without the prior consent of the FIU that originated the information. The method by which FIU operates is characterized by three main steps: receipt of data and information, in particular of suspicious transactions and wire transfer or cash transactions reports, analysis, that can be strategic or operational, in order to identify specific target or link between the proceeds and an illicit activity and the last step, the dissemination, which consists in the spread of information to the competent authorities or foreign FIUs⁴¹⁹. The dissemination can be spontaneous or upon request from competent authorities. Moreover, the Task Force, in the recommendation 29, recognizes the work of the FIU.⁴²⁰ It is worth noticing that even the EU Commission in the amendments to the Fourth AMLD highlights the importance of the FIUs. It emphasizes the need for a major cooperation among them, and it declares that their work can be improved through the

⁴¹⁵ Nina J. Crimm, *The Moral Hazard Of Anti-Terrorism Financing Measures: A Potential To Compromise Civil Societies And National Interests*, Wake Forest Law Review, Vol. 43, 10 June 2008, p. 577-626

⁴¹⁶ *Financial Intelligence Units: An Overview*, International Monetary Fund and World Bank, 2004, <https://www.imf.org/external/pubs/ft/FIU/fiu.pdf>

⁴¹⁷ Egmont Group, <http://www.egmontgroup.org/>

⁴¹⁸ *Egmont Group Of Financial Intelligence Units Principles For Information Exchange Between Financial Intelligence Units*, July 2013

⁴¹⁹ S. De Vido, *il contrasto..*, op. cit., p. 145 and in FATF, *International Standards..*, op. cit., *Interpretative note to Recommendation 29*, p. 97-98 and in *Egmont Group of Financial Intelligence..*, op. cit. p. 4

⁴²⁰ FATF, *International Standards..*, op. cit., p. 24

introduction of payment account registers, namely centralised register at a national level⁴²¹. Moreover, the proposal aims at enabling FIUs to request information on ML/TF from any obliged entities and to identify holders of bank and payment accounts⁴²².

3.6 Counter-terrorism in the Arab Countries. The measures implemented in the Gulf: the case of Saudi Arabia and United Arab Emirates

Arab countries reject the idea of utilizing military action as the only response to fight the threat of terrorism. They highlight the importance of investigating the causes of radicalization, notably historical injustices of colonialism and the denial of self-determination. Having investigated the causes, it is important to provide a concrete policy response, such as rigid security measures combined with improvement of institutional coordination and efforts to influence religious leaders. The Gulf countries, in particular Saudi Arabia and UAE are making greatest efforts to stop the flow of funds and undermine jihadist movements.

As far as UAE is concerned, they adopted measures to disrupt recruitment channels, combat the spread of violent propaganda and prevent the use of religious centre as places of recruitment and radicalisation⁴²³. On a local level, through the financial system, they have been able to disrupt the illicit financing of extremist group, thanks to the close monitoring and strict enforcement⁴²⁴. On a global level instead, they are in particular committed to collaborate together with the US and international coalition against IS⁴²⁵. Moreover, they are part of the joint US-UAE Financial counter-terrorism task force⁴²⁶ aiming at preventing the access to the international banking system and the exchange of information and data. In particular, the task force was established specifically to target terror finance in the region.

⁴²¹ *European Commission Fact-Sheet*, 5 July 2016, [http://europa.eu/rapid/press-release MEMO-16-2381_en.htm](http://europa.eu/rapid/press-release_MEMO-16-2381_en.htm)

⁴²² *Proposal for a Directive..*, op., cit., p. 13-14

⁴²³ *At a glance, Countering extremism in Arab Countries*, May 2016, European Parliament, [http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/582027/EPRS_ATA\(2016\)582027_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/582027/EPRS_ATA(2016)582027_EN.pdf)

⁴²⁴ *UAE Counterterrorism*, Embassy of the United Arab Emirates, <http://www.uae-embassy.org/about-uae/foreign-policy/uae-counterterrorism>

⁴²⁵ Michael S. Schmidt, *United Arab Emirates to Bolster Its Efforts Against ISIS, U.S. Says*, 12 February 2016, https://www.nytimes.com/2016/02/13/world/middleeast/uae-commandos-isis-syria.html?_r=0

⁴²⁶ Taimur Khan, *Joint US-UAE task force to choke off ISIL funding*, 27 October 2014, The National, <http://www.thenational.ae/world/middle-east/joint-us-uae-task-force-to-choke-off-isil-funding>

The aim is to identify the IS' network and develop financial intelligence. A similar task force was present even in Saudi Arabia. However, instead of developing the previous task force the US decided to establish a new one in the UAE, because UAE are considered the best partner since "[their] unequivocal position on Islamist groups and, unlike other Gulf countries in the anti-ISIL coalition, it does not have domestic political factors that could complicate its participation."⁴²⁷ Moreover, UAE are part of the MENAFATF⁴²⁸, the Special Regional Bodies of the FATF and the UAE's financial Unit is a member of the Egmont Group⁴²⁹. In addition, the United Arab Emirates have improved their financial monitoring. In particular, the charitable fundraisers are under constant monitoring and the Central Banks conduct AML training locally and regionally expanding cooperation with foreign FIUs⁴³⁰. The 30 November 2014 the Federal Nation Council passed a draft law to amend the one related to the ML⁴³¹, broadening the concept including "dealing in the proceeds of any felony or misdemeanour with no restrictions"⁴³², incorporating in this way the 40 Recommendations FATF 2012. The previous Federal Law in fact, limited the crime of ML to dealings with the proceeds of specific crimes specified in the Law. In particular, the new AML Law expands the regulatory role of the UAE Central Bank in monitoring the work of the FIU. Moreover, the punishments are harsher than the previous law. In addition, UAE worked closely with the GCC in order to set up a regional police force in Abu Dhabi⁴³³, to be known as GCC-Pol. Its aim would be to improve regional cooperation against terrorism, enhancing Gulf cooperation between the GCC services and sharing information, "it will be an Interpol-like

⁴²⁷ T. Khan, *Joint US-UAE task force..*, op., cit.

⁴²⁸ MENAFATF, list of the Members and Observers available at <http://www.menafatf.org/topiclist.asp?ctype=about&id=430>

⁴²⁹ *Anti Money Laundering and Suspicious Cases Unit (AMLSCU)*, <http://www.egmontgroup.org/about/list-of-members>

⁴³⁰ *UAE counterterrorism..*, op., cit.

⁴³¹ Federal Law No. 4 of 2002 on Confrontation of Money Laundering Offences and Combating the Financing of Terrorism available at

<https://www.dfsa.ae/Documents/Legal%20framework/Federal%20Law%20No%204%202002%20English.pdf> and in Chapter 2. *Country Reports: Middle East and North Africa Overview, Country Report on Terrorism 2014*, US Department of States, <https://www.state.gov/j/ct/rls/crt/2014/239407.htm>

⁴³² Khalid Al Hamrani & Omar Khattab, *UAE Enhances Battle Against Money Laundering and the Financing of Terrorism*, <http://www.tamimi.com/en/magazine/law-update/section-8/may-7/uae-enhances-battle-against-money-laundering-and-the-financing-of-terrorism.html>

⁴³³ Justin Vela, *GCC to set up regional police force based in Abu Dhabi*, 9 December 2014, <http://www.thenational.ae/world/gcc/gcc-to-set-up-regional-police-force-based-in-abu-dhabi>

force but inside GCC countries.⁴³⁴ The Deputy prime Minister and Minister of Interior, Lieutenant General Shaikh Saif Bin Zayed Al Nahyan, signed the agreement for the establishment of this new police force at the end of 2014⁴³⁵. Moreover, during the GCC 35th Summit in Doha on December 2014, the GCC declared the establishment of a unified naval force based out of Bahrain⁴³⁶, expressing the intention to establish a joint military leadership structure similar to NATO's⁴³⁷. Moreover, they reiterated their commitment in countering the financing of terrorism, in particular, they underlined their commitment to combat the ideology upon which terrorist groups are founded, affirming that Islam as a religion is "innocent of such ideology⁴³⁸".

As far as Saudi Arabia is concerned, in 2015 it established an anti-terrorism coalition composed of 34 Muslim States⁴³⁹, aimed at coordinating the fight against terrorism and stopping the flow of funds. However, the coalition highlighted some problems. It excluded Iran, Iraq and Syria, and this exclusion has been seen negatively. In particular, it has been seen as a mere pretext to form a Sunni coalition against Iran⁴⁴⁰, since they are not in good terms. Moreover, there are some ambiguous aspects related to this initiative. For instance the fact that in order to intervene within a country in need, it is the country that has to ask for help. However, some countries could be reluctant to ask for help, for domestic political reasons or other concerns. In addition, the activities of the alliance are vague. The assistance will be in fact provided on a case-by-case basis⁴⁴¹. Moreover, an element that stands out is the great absence of Algeria, who declined participation, considered as the most

⁴³⁴ Declared by the Qatari Foreign Minister Khalid bin Mohammed Al-Attiyah in *Gulf Arab States close ranks with navy, police*, 10 December 2014, <http://www.dailymail.co.uk/wires/ap/article-2866725/Senior-Gulf-officials-gather-Qatar-rift.html>

⁴³⁵ *Saif signs agreement to set up GCC police force*, 25 November 2015,

<http://gulfnnews.com/news/uae/government/saif-signs-agreement-to-set-up-gcc-police-force-1.1626543>

⁴³⁶ Dr. Jamal Abdullah, *Report: GCC Summit: Reviewing Policies, Addressing Challenges*, 29 December 2014, p. 4, <http://studies.aljazeera.net/mritems/Documents/2014/12/30/201412307383418734GCC%20Summit.pdf>

⁴³⁷ Dr. J. Abdullah, *Report: GCC Summit..*, op., cit., p. 3

⁴³⁸ Fahd Al-Zayabi, *GCC to study adopting Saudi, UAE terror lists*, *English Edition Of Asharq Al-Awsat*, 11 December 2014, <http://english.aawsat.com/2014/12/article55339400/gcc-to-study-adopting-saudi-uae-terror-lists>

⁴³⁹ *Saudi Arabia forms Muslim 'anti-terrorism' coalition*, 15 December 2015, Aljazeera, <http://www.aljazeera.com/news/2015/12/saudi-arabia-forms-muslim-anti-terrorism-coalition-151215035914865.html>, and in Florence Gaub, *Saudi Arabia and the Islamic alliance*, February 2016, http://www.iss.europa.eu/uploads/media/Brief_1_Saudi_Islamic_alliance.pdf

⁴⁴⁰ Hussein Ibish, *What to Expect from Riyadh's New Islamic Counterterrorism Alliance*, 17 December 2015, The Arab Gulf States Institute in Washington, <http://www.agsiw.org/what-to-expect-from-riyadh-s-new-islamic-counterterrorism-alliance/>

⁴⁴¹ H. Ibish, *What to Expect..*, op., cit.

experienced in combating terrorism. However, positive elements are also present. The coalition target not only IS but also the other terrorist organizations. Moreover, the participation of Turkey (already Member of the NATO) is considered as positive and as a strong signal for real efforts. “Turkey is ready to contribute by all its means [...] to fight terrorism, no matter where or by whom they are organized⁴⁴²” declared Prime Minister Davutoglu.

In addition, the two Gulf Countries, UAE and Saudi Arabia, adopted a list of terrorist groups. Notably, the UAE cabinet, in implementing the Federal Law n°7 of 2014 on combating terrorist crimes, approved a list of designate terrorist groups and organisations⁴⁴³ in order to provide the list for the media, aimed at providing transparency and to raise awareness in society. Moreover, the GCC are considering adopting the same list issued by UAE and Saudi Arabia, as declared by the Kuwait’s Interior Minister Sheikh Mohamed Al-Khalid Al-Sabah⁴⁴⁴. Arab countries, however, cooperated also with the European Union on counter-terrorism, especially related to the TF. The 24-25 November 2015, the EU and League of Arab States (LAS) representatives met in Brussels. They launched a so-called Strategic Dialogue between both organizations on common challenges (especially terrorism)⁴⁴⁵. On a bilateral level instead, EU invested in bilateral cooperation with priority countries, such as Jordan, Tunisia and Morocco, in terms of countering-terrorism and its financing, among others⁴⁴⁶. Moreover, on the 27th of September 2015, the Secretary General of the Organization of Islamic Cooperation (OIC), Iyad Ameen Madani, held a bilateral meeting with the European Union High Representative for Foreign and Security Policy, Federica Mogherini, in order to discuss issues of mutual concern⁴⁴⁷. They signed a Memorandum of Understanding (MOU) to enhance their dialogue and mutual support. However, the European Parliament, in its

⁴⁴² *Saudi Arabia forms Muslim..*, op., cit.

⁴⁴³ *UAE Cabinet approves list of designated terrorist organisations, groups*, WAM Emirates New Agencies, 15/11/2014, the complete list is available at <http://www.wam.ae/en/news/emirates-international/1395272478814.html> and at *List of groups designated terrorist organisations by the UAE*, 16 November 2014, The National UAE, <http://www.thenational.ae/uae/government/list-of-groups-designated-terrorist-organisations-by-the-uae>

⁴⁴⁴ F. Al-Zayabi, *GCC to study adopting Saudi, UAE terror lists..*, op., cit.

⁴⁴⁵ *European Union and League of Arab States representatives met on 24-25 November 2015 in Brussels*, 25 November 2015, https://eeas.europa.eu/headquarters/headquarters-homepage/5540_en

⁴⁴⁶ *At a glance, countering..*, op., cit.

⁴⁴⁷ *OIC Secretary General meets EU High Representative for Foreign and Security Policy, Signs MOU between OIC and EU*, Organisation of Islamic Cooperation, 27 September 2015, http://www.oic-oci.org//topic/?t_id=10484&t_ref=4137&lan=en

resolution of 12 March 2015⁴⁴⁸, underlined the importance of the respect of HR in the relations between the EU and LAS in countering terrorism. “Recalls that counter-terrorism measures may never be abused to repress legitimate dissent, or to violate people’s universal human rights.⁴⁴⁹” and it reiterates the respect of HR reminding the bound of the EU and Member States with the CFREU⁴⁵⁰.

As far as the measures adopted in order to stop the abuse of the financial system, it is worth mentioning the Euro-Arab Dialogue organized by the Union of Arab Banks (UAB). UAB established this dialogue in 2006 with the support of the Treasury Department and the Federal Bank. At the beginning the aim was to combat ML, however, it later extended to include TF⁴⁵¹. In particular, UAB is deeply worried for the relationships of those banks located in the territory controlled by IS. UAB is currently working in three main areas: combating the financing of terrorism, focusing on the financing of small and medium sized enterprises (SMEs) and financial inclusion. Since according to the World Bank, 37% of the population is outside the financial system⁴⁵², the financial inclusion is key to monitor and stop the financing of terrorism, and this can be achieved through the financing of SMEs. Not only is a concern for the financial system, but it has also social implications. 50 millions people in Arab World are illiterate, among these, 8 million drop out from education. This means that IS targets about 7 million people in the Arab World between 14 and 25 years old. The Euro-Arab dialogue has been perceived as another effort to cooperate and unify the commitments to combat the financing of terrorism through Europe and Middle East. The conference was opened by the Chairman of the Union of Arab Banks, the President of the

⁴⁴⁸ *European Parliament resolution of 12 March 2015 on relations between the EU and the League of Arab States and cooperation in countering terrorism (2015/2573(RSP))*, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0077&language=EN&ring=P8-RC-2015-0215>

⁴⁴⁹ Art. 11 of the European Parliament Resolution 12 March 2015., op., cit.

⁴⁵⁰ In particular, on HR see Art. 18-20

⁴⁵¹ *Concerns over ‘Islamic State’ funds entering Arab banks for terrorist operations: UAB Secretary-General*, Union of Arab Banks, <http://www.uabonline.org/en/home/articlesissuedbybodandsgofuab/concernsoverislamicstatefundsenteringara/17001/0>

⁴⁵² *Concerns over ‘Islamic State’ funds.*, op. cit.

European Banking Federation (EBF) Mohamed Barakat, and the Vice President of the Financial Action Task Force (FATF)⁴⁵³.

3.7 The financial inclusion and the Islamic Finance in the specific context of AML/CTF measures

As mentioned above, the financial inclusion is a key aspect in combating ML/TF. Firstly, it is important to understand what it means. The concept of financial inclusion is defined by the FATF Guidance on AML and CTF as: “providing access to an adequate range of safe, convenient and affordable financial services to disadvantaged groups and vulnerable groups”⁴⁵⁴. It is estimated that 2 billion adults worldwide lack access to a bank account especially in developing economies (but not only) with wide disparities among the regions (MENA region accounts for 14%⁴⁵⁵). The causes which originate the financial exclusion are different and they include, the lack of money, the fact that bank accounts are often expensive, the lack of trust in banks, the distance of banks and also for religious reasons. However, there are also other obstacles to financial inclusion. In particular, the finance illiteracy, the lack of experience, the complexity of financial products and the lack of confidence in financial institutions⁴⁵⁶. The consequences of the financial exclusion are both financial and social. In particular, people are not able to access affordable account, they have difficulty obtaining a bank account and for these reasons, they rely on unregulated financial system. Moreover, sometimes the AML/CTF measures implemented in the different regions are not tailored on a case-by-case situation. It is necessary to avoid a “one-size-fits-all” approach. If a potential customer is at a higher risk enhanced measures are needed, while when risks are lower simplified measures should be permitted. Financial institutions applying

⁴⁵³ Hossam Mounir, *UAB launches Euro-Arab dialogue to combat financing terrorism, money laundering*, 8 September 2015, <http://www.dailynewsegypt.com/2015/09/08/uab-launches-euro-arab-dialogue-to-combat-financing-terrorism-money-laundering/>

⁴⁵⁴ FATF Guidance on Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion, February 2013, p. 12 http://www.fatf-gafi.org/media/fatf/documents/reports/AML_CFT_Measures_and_Financial_Inclusion_2013.pdf

⁴⁵⁵ Asli Demirguc-Kunt, Leora Klapper, Dorothe Singer and Peter Van Oudheusden, *The Global Findex Database 2014, Measuring Financial Inclusion around the World*, World Bank Development Research Group Finance and Private Sector Development Team April 2015, p. 12-13, <http://documents.worldbank.org/curated/en/187761468179367706/pdf/WPS7255.pdf#page=3>

⁴⁵⁶ FATF Guidance., op., cit., p. 13 and in *Strengthening Financial Integrity Through Financial Inclusion, The Situation Of The Moneyval Jurisdictions*, Moneyval, p.11 http://www.coe.int/t/dghl/monitoring/moneyval/Publications/Financial%20Inclusion%20Report_EN.pdf

a risk-based approach, as underlined in the FATF recommendations, and prefer to refuse customers who could potentially bear a higher risk, applying in this case a de-risking approach⁴⁵⁷. In this way, customers, not welcomed by the financial system, are forced to address to ungoverned financial services. However, the CDD measures should not act as an obstacle, but rather a certain flexibility is needed, in order to include the vast majority, if not all, of the customers. Since CDD measures have been introduced as a method to combat TF, FATF allows countries to use simplified measures and to use diversified and reliable independent source documents for customers' identification and verification. For example, some countries introduced the use of alternative identification means or documents⁴⁵⁸, instead of using passports as generally done. Fiji introduced the figure of a "suitable referee", village headmen, religious leaders and so on, briefly, a person who knows the customer and whom bank can rely on. The referee is required to provide a signed declaration including information about the customer. In Lesotho instead, low risk customers can open a bank account providing a valid ID. Moreover, in Malawi, Banks accept as valid documents letters from Traditional Authority or from Employers with photograph and biometric identification upon verification of the documents. Even Switzerland accepts a valid and official document of any kind. Another important initiative is the one introduced by the State Bank of Pakistan, that established the so-called 0 (zero) level branchless bank accounts to bring the low income earning part of society into the formal financial sector while respecting the KYC requirements⁴⁵⁹. The financial inclusion has the aim to provide access at a reasonable cost for a household to a full range of financial services and to enhance financial and institutional sustainability⁴⁶⁰. In 2010, the G20 Summit in South Korea launched the Financial Inclusion Action Plan⁴⁶¹ and the Global Partnership for Financial

⁴⁵⁷ Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), http://www.coe.int/t/dghl/monitoring/moneyval/Implementation/Financial_inclusion_en.asp

⁴⁵⁸ FATF Guidance., op., cit., p. 75-76

⁴⁵⁹ Chris Bold, *State Bank of Pakistan Removes Barriers to Branchless Banking*, 25 July 2011, <http://www.cgap.org/blog/state-bank-pakistan-removes-barriers-branchless-banking>

⁴⁶⁰ *Strengthening Financial..*, op., cit., p. 7

⁴⁶¹ *G20 Financial Inclusion Action Plan*, aimed at "improving financial inclusion, providing a set of six concrete and pragmatic action areas to advance financial inclusion for individuals, households and MSMEs and promote the application of the G20 Principles", <http://www.gpfi.org/sites/default/files/documents/G20%20Financial%20Inclusion%20Action%20Plan.docx.pdf>

Inclusion (GPFI)⁴⁶², an inclusive platform for G20 and non-G20 countries. In particular, the GPFI is a consultative mechanism aimed at developing strategies for improving financial inclusion through the G20 Principles. Moreover, in order to implement the Action Plan, it provides the mobilization of fundings for financial inclusion especially related to the financing of MSMEs (Micro-, Small-, Medium-sized enterprises)⁴⁶³.

Another important aspect, of which little is known, relates to the MENA Region, in particular the difference between Islamic and Conventional finance. The difference between the two institutions can create some problems in the implementation of the AML/CTF measures and the FATF Recommendations. The term Islamic Finance refers to finance consistent with the principle of Shari'a, adding a religious element to conventional financial services. The principles of Islamic banking and finance are different. In particular, Shari'a prohibits investing in business that provide goods or services considered forbidden, such as tobacco, alcohol, pornography and so on. Islamic financial products are designed to facilitate financing according to Islamic principles. Moreover, Islam prohibits interest-based lending and financing of gambling forms of transactions and unethical goods. On the contrary, Shari'a allows equity participation, credit sale and leasing. In addition, it does not allow the creation of debts through the direct lending or borrowing of money, but through the sale or lease of real assets, such as building or propriety among others⁴⁶⁴. In the world, there are more than 70 jurisdictions that provide Islamic financial services and it has been estimated that the growth of the Islamic Finance Industry has been remarkable in the last three decades. Its growth is due to the demand to do business and to manage money in compliance with Shari'a⁴⁶⁵. There are almost 400 Islamic financial institutions, most of which in the Middle East (especially in Iran and members of the GCC) and in Southeast Asia. Except

⁴⁶² An inclusive platform for G20 countries, non-G20 countries and relevant stakeholders to carry forward work on financial inclusion, including implementation of the G20 Financial Inclusion Action Plan.

<http://www.gpfi.org/about-gpfi>

⁴⁶³ *G20 Financial Inclusion..*, op., cit., p. 5

⁴⁶⁴ Normah Binti Omar Rashidah Abdul Rahman Masetah Tarmizi, *Islamic Financial Institutions and Terrorism Financing : A Perceptual Study*, Accounting Research Institute, Universiti Teknologi MARA, March 2013, p. 15 https://www.researchgate.net/publication/255704162_Islamic_Financial_Institutions_and_Terrorism_Financing_A_Perceptual_Study

⁴⁶⁵ Ahmad Mohamed Ali, *The emerging Islamic Financial Architecture: The Way Ahead*, Proceedings of the Fifth Harvard University Forum on Islamic Finance: Islamic Finance: Dynamics and Development Cambridge, Massachusetts. Center for Middle Eastern Studies, Harvard University. 2000. pp. 147-159, p. 147, http://ifpprogram.com/login/view_pdf/?file=The%20Emerging%20Islamic%20Financial%20Architecture.pdf&type=Project_Publication

for Iran and Sudan, Islamic banks and conventional banks operate closely side by side. There are two main organizations responsible for the management of Islamic finance practices. AAOIFI, Accounting and Auditing Organization for Islamic Financial Institutions⁴⁶⁶, and IFSB, Islamic Financial Services Board⁴⁶⁷. However, they did not develop any comprehensive standards or best practices related to AML/CTF in the Islamic finance context. However, there are some elements to take into account. Little study has been done on the Islamic finance; most of the publications prepared by Regional Bodies and the FATF were on conventional financial sector. Moreover, there are no special provisions in the International standards for Islamic finance. Countries with Islamic financial institutions have adopted the International measures without conducting assessment of the ML/TF risks posed by those institutions. In addition, countries with a strong presence of Islamic institutions and under the AML/CTF regimes are relatively weak. These institutions are different from the conventional ones. In particular, they adopted a different relationship with the customer, namely a “partner” relationship. It means that for a conflict of interests, suspicious transactions could not be reported and the effectiveness of the preventive measures is compromised. Moreover, because of such “partnership” approach, if a customer is a M-lauderer or a T-financier, the institution could be considered jointly liable. Moreover, there are two specific standards of the FATF not entirely applicable to Islamic finance, namely the definition of customer and the definition of financial institution⁴⁶⁸. As far as the first one is concerned, the definition provided by FATF is not clear if it applies to partner-based relationship or “institution to customer” relationship. A clarification is needed and, moreover, it is needed to make it explicitly. As far as the second one is concerned, financial institutions are defined in the FATF Glossary as “natural or legal persons conducting one or

⁴⁶⁶ The AAOIFI Organization is responsible for adopting international standards to suit Islamic financial institutions, A. M. Ali, *The emerging..*, op., cit., p. 152, its mission is to standardize and harmonize the practices of International Islamic Finance, <http://aaoifi.com/our-mission/?lang=en#>

⁴⁶⁷ The aim of this organization is to issue special guidelines for the regulation and supervision of Islamic banks that face unique risks. It has been established with the support of International Monetary Fund (IMF), the IDB, the Bahrain Monetary Agency (BMA), Bank Negara Malaysia (BNM) and other central banks. *The emerging..*, op., cit., p. 153. In April 2015, IFSB established its standard-17 (CPIFR) which addresses under the CPIFR 33 (which retains the Provisions of Basel Core Principle 29) the abuse of financial services for criminal activities such as ML/TF. IMF Working Paper, *Islamic Finance and Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)*, February 2016, p.6 <https://www.imf.org/external/pubs/ft/wp/2016/wp1642.pdf>

⁴⁶⁸ IMF Working Paper.., op., cit., p. 10

more financial activities for or on behalf of a customer⁴⁶⁹". However, Islamic financial institutions act for or on behalf of a partner.

In order to provide a safe financial environment, especially in the combat to money laundering and terrorist financing, it is necessary to develop specific and suitable international standards and guidelines meant for Islamic financial institutions especially respecting the principles they rely on. International standards are extremely important to this aim, in fact, noncompliance to best practice standards in financial reporting, accounting, auditing, transparency and disclosures can cause financial systems to be vulnerable to instabilities⁴⁷⁰.

⁴⁶⁹ Definition available at <http://www.fatf-gafi.org/glossary/d-i/>

⁴⁷⁰ *The Emerging Islamic..*, op., cit., p. 149

In conclusion, the questions that encouraged me to examine in depth the situation concerning the financing of terrorism found answers, both positive and negative. As far as the definition of terrorism is concerned, there is not an answer yet. The Ad Hoc Committee responsible for the elaboration of a Draft Comprehensive Convention on International Terrorism and the respective Working Group, established with the aim of finalizing the process, are still working on the issue. Moreover, as declared in the official website, there has not been sessions, nor even Meetings held in the last three years, despite the several soliciting. As mentioned in the paper, the definition of terrorism is important for several aspect. One of the main important is the implication with the IHL especially in the distinction between the acts of terrorism from the acts perpetrated by NLM. An issue remained open. However, even if there is not an agreement on a universal definition of terrorism, this did not prevent the emergence of a strong cooperation among states, it has been observed in fact a growing cooperation especially in the implementation of measures aimed at contrasting the financing of terrorism. In particular, the freezing of assets experienced some improvements, from a repressive approach at the beginning to a preventive one. Moreover, also the process of listing and de-listing experienced several changes. At the beginning, the procedures were characterized by the violation of some fundamental human rights. A situation that changed through the introduction of the figure of the Ombudsperson. Thanks to different Security Council resolutions, this figure improved the situation allowing petitioners to be heard and to ask for a de-listing procedure. However several deficiencies and problems remain, in particular regarding the level of independency of the Ombudsperson and the lack of access to confidential documents. A problem highlighted from both the Ombudspersons of the last years.

As far as the financing of terrorism is concerned, the main measures adopted involved the financial system. The main two principle measures are the Know Your Customer principle that allows a greater control in the identification of the customers and on their transactions. The results of the different mutual evaluations conducted in different States showed that the international standards have been implemented in the majority of them and that in those States characterized by a weaker regulation, several efforts have been made to strengthening control. This shows the willing of the States to cooperate to eradicate the threat of the financing. The places with a weaker regulation are characterized by the

presence of several unregulated financial system, that is why the financial inclusion is one of the main investigated aspect and it is one of the key element to undermine the possibility to exploit the financial system for terrorism funding.

The second aspect focuses instead on the cooperation among some national institutions, namely the Financial Intelligence Units (FIUs). Their importance has been highlighted not only by several Security Council resolutions but also by the different EU Directives on the financing of terrorism. Their work in fact allows to control and analyse those suspected transactions and to share the information with the other FIUs.

Besides, it is worth noticing that the international cooperation emerged from the adoption of non-binding standards, namely the FATF recommendations. Moreover, these international standards are constantly evolving in order to be in line with the changes that occur year after year. What I noticed is in fact a huge amount of documents released especially in the last ten years aimed at involving all the new elements related to the financing of terrorism.

One last consideration can be made on one aspect little investigated but certainly very important which will be probably one of the key elements in the next years, namely the Islamic financial Institutions. I highlighted in fact the differences with the conventional financial institutions and in particular the lack of a proper definition contained in the FATF Standards. In order to avoid the abuse of the financial system is important to include every aspect and to adapt the international standards to the peculiarities of certain areas.

In conclusion, positive outcomes emerged from the research. The majority of States investigated and observed are improving their national system adapting to the international standards. It is important that they continue in this direction, overcoming the difficulties that certainly will emerge.

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<http://www.un.org/en/sc/ctc/docs/presskit/2011-01-presskit-en.pdf>

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