

## **SUPPRESSION OF THE FINANCING OF TERRORISM**

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### **Abstract**

Terrorism is a global problem of today. Suppression of the financing of terrorism is a core strategy to combat the terrorists and terrorist organizations. This dissertation analyzes the cases to point out that money is the oxygen of terrorism or terrorist organizations and combating the flow of even small amount of money may save lives. In this regard, the International Convention for the Suppression of the Financing of Terrorism (1999) is the most important element in the international legal norms to combat the financing of terrorism. Myanmar has signed this convention on 16, October, 2006. Besides, as a party to twelve international counter-terrorism instruments, Myanmar enacted the Counter Terrorism Law, 2014 and the Anti Money Laundering Law, 2014. The Counter Terrorism Law includes the offences provided by twelve international terrorism treaties including the offences of the financing of terrorism as one of these offences. But it has no detailed provisions relating to the procedure of identifying and freezing the terrorist assets, institutional measures such as customer due diligence, record keeping and suspicious transaction of the financial sector to enhance financial transparency, and functions and power of Financial Intelligence Unit (FIU) to operate effectively. The Anti-Money Laundering Law, 2014 provides laundering of money and properties derived from commission of any of offences relating to the terrorism. It does not indicate the financing of terrorism as a separate crime. It cannot cover the financing of terrorism as the nature of money laundering and terrorist financing are slightly different. Therefore, these two Laws are not comprehensive laws to suppress the financing of terrorism. Myanmar should extend the Anti-Money Laundering Law by including the specific terrorist financing offence or adopt the specific Anti-Terrorist Financing Law in line with the international norms and standards to prevent and protect terrorist attacks and the financial system in Myanmar effectively.

**Key words:** terrorism, terrorist financing, money laundering

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**Research Questions**

- (1) What are the differences between the nature of terrorist financing and money laundering?
- (2) What are the international norms and standard to combat the financing of terrorism?
- (3) How to protect the financial system against the terrorist financing as the preventive measure of financial institutions?
- (4) What are the legal frameworks to suppress the financing of terrorism in Myanmar?

**Research objective**

The objective of research paper is to point out that money is the oxygen of terrorism or terrorist organization, and combating the flow of even small amount may save lives, and to analyze the current legal framework to suppress the terrorist financing in Myanmar.

**Research Methodology**

This research paper analyzed the international legal norms and national laws in Myanmar. It also cited the text books and other materials published by scholars.

**Introduction**

Terrorism is a threat to world peace affecting the whole of humanity. It has a long history, but targets, victims, perpetrators, causes and justifications for the use of terror have changed. International community attempts to combat the terrorism, terrorist acts, and terrorist organizations in various ways. There are many international instruments to expand financing of terrorism (FT), and also to focus its energy and expertise on the worldwide effort to combat it.

## **Nature of Terrorism**

Terrorism should not be confused with traditional warfare. Whether treated as crimes or acts of warfare, terrorist conduct is distinguishable by reason of its focus, participants, and victims.<sup>1</sup>

Approaching terrorism as warfare, a target is selected because it has military value and will achieve a specific military objective. In modern warfare, a specific target is attacked or destroyed because the action serves a specific military necessity, achieves a specific result (utility) and leads to a specific goal (objective) while limiting collateral damage (proportional use of force) to the civilian population.<sup>2</sup> Besides, one can be less concerned with the aspect of individual guilt, and an approximate assessment of guilt and intelligence are sufficient. The focus is not on a single perpetrator, but rather on proper identification of the enemy.<sup>3</sup>

When terrorism treated as the crime, criminal acts are normally focused upon a particular goal with a final end. Terrorist acts have, in contrast, shown themselves to be generally continuous, given the much longer-term motivations of terrorist organizations. While criminal acts are targeted, terrorist ones are often indiscriminate.<sup>4</sup>

There is also a difference between terrorism and war crimes. An example of a war crime is an army invading a town to purge it of enemy forces, and while doing so intentionally killing unarmed civilians and non-combatants. Although this action is both immoral and criminal, it is not terrorism. In this example, people were killed because members of the army lost control of themselves, not to intimidate other towns or the society as a whole to achieve a political objective.<sup>5</sup>

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<sup>1</sup> <http://www.springer.com>.

<sup>2</sup> Arthur H. Garrison, *Criminal Justice Studies*, 2003, Vol.16(1), p-42.

<sup>3</sup> A. Conte, *Human Rights in the Prevention and Punishment of Terrorism*, DOI 10.1007/978-3-642-11608-7\_2, # Springer-Verlag Berlin Heidelberg 2010, p-9.

<sup>4</sup> A. Conte, *Human Rights in the Prevention and Punishment of Terrorism*, DOI 10.1007/978-3-642-11608-7\_2, # Springer-Verlag Berlin Heidelberg 2010, p-10.

<sup>5</sup> <http://cjc.delaware.gov/terrorism/history.shtml>.

## **Definition of Terrorism**

According to UN Security Council Resolution 1566 (2004), terrorism is the criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.<sup>6</sup>

The United States has defined terrorism under the Federal Criminal Code. In Section 2331 of Chapter 113(B), defines terrorism as: "...activities that involve violent... or life-threatening acts... that are a violation of the criminal laws of the United States or of any State and... appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and...(C) occur primarily within the territorial jurisdiction of the United States..."<sup>7</sup>

And, according to James Adams' definition, a terrorist is an individual or member of a group that wishes to achieve political ends using violent means, often at the cost of casualties to innocent civilians and with the support of only a minority of the people they claim to represent.<sup>8</sup>

## **Type of Terrorism**

Terrorism occurs due to indefinite causes and in different types. Three of them are of relevance and significant: the nationalist/ separatist terrorism (e.g. Palestinian Liberation Organization (PLO), Provisional Irish Republican Army (IRA) and Tamil Tigers (LTTE)), which aims at political self-determination. The ideological terrorism (e.g. The Revolutionary Armed Forces of Columbia and Red Army Fraction (RAF), as well as other right- or left wing terrorist), which attempts to change the political, economical or social system.<sup>9</sup> The religious terrorism commits terrorist activities to conduct

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<sup>6</sup> UN Security Council Resolution No.1566 (2004).

<sup>7</sup> Section 2331, the Federal Criminal Code, the United States

<sup>8</sup> James Adams, *The Financing of Terror*, 1988, p-10.

<sup>9</sup> Wilkinson, *Terrorism Versus Democracy, The Liberal State Response*, 2001, p- 20.

religious goals (e.g. Al. Quida).<sup>10</sup> Nevertheless, some terrorist groups combine these different components (e.g. hamas).<sup>11</sup>

### **Financing of Terrorism**

The term “financing of terrorism” is defined broadly by the World Bank and International Monetary Fund (IMF) as “the financial support, in any form, of terrorism or of those who encourage, plan or engage in it.”<sup>12</sup>

Money is important for a terrorist organization to survive and especially to operate. It can be found the various forms of terrorist financing. Terrorist groups gain financial resources primarily from (i) state-financing (i.e., state sponsorship of terrorism), (ii) financing by legitimate means(e.g., from legitimate business, charities), and (iii) financing by unlawful means(e.g. drug trafficking, kidnapping extortion). Therefore, to understand and enable to successfully disrupt the funding of terrorist and terrorist organizations, their source of funding must also be traced.

Money is important for a terrorist organization to survive and especially to operate.<sup>13</sup> After the unsuccessful World Trade Center attack of 1993, one of the conspirators, Ramzi Yousef, claimed that if he had had more money, he would have been able to purchase more explosives. With a bigger bomb, he might have been successful in toppling the tower into other buildings. But because of cash-problems, the attack failed, killing six people and injuring over 1,000. This anecdote highlights the importance of money for terrorism.<sup>14</sup>

Similarly, the terrorists who used two pressure cooker bombs during the Boston Marathon on April 15, 2013, also planned to travel to New York City to bomb Times Square. Running out of funds, the two brothers turned to other crime—they carjacked a Mercedes-Benz SUV and stole \$800 in cash

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<sup>10</sup> Jae-myong Koh, *Suppressing Terrorist Financing and Money Laundering*, 2006, p-2.

<sup>11</sup> Hoffman, *Inside Terrorism*, 1999, p-87.

<sup>12</sup> Paul Allan Shoot, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*, 2<sup>nd</sup> edition, The International Bank for Reconstruction and Development/The World Bank/ The International Monetary Fund, 2006, p- I-2.

<sup>13</sup> Steve Kiser, *Financing Terror An Analysis and Simulation for Affecting Al Qaeda's Financial Infrastructure*, the Rand Corporation, 2005, p-4, <http://www.rand.org/>.

<sup>14</sup> Michael Freeman, *Financing terrorism: case studies*, Ashgate Pub Co, 2012, p-3

from the carjacking victim, which eventually led to their demise. These are examples of money's importance in perpetrating terrorist attacks that injure or kill massive amounts of people.<sup>15</sup>

### **The Differences between Terrorist Financing and Money Laundering**

There are different stages involved in money laundering and terrorist financing. Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of criminal activities.<sup>16</sup> The typical money laundering stages are (1) place money in the financial system, without arousing suspicion; (2) move the money around, often in a series of complex transactions crossing multiple jurisdictions, so it becomes difficult to identify its original source; and (3) then move the money back into the financial and business system, so that it appears as legitimate funds or assets.<sup>17</sup> The purpose of money laundering is to accumulate wealth in such a manner that it appears legitimate.

The typical stages involved in terrorist financing are the collection of funds, the dissemination of funds to the terrorist cells and the use of funds. The purpose of terrorist financing is not to accumulate wealth, but to fund actions designed to make a statement of importance, such as drawing attention to a political viewpoint.

The laundering of criminal funds aims at giving a legal appearance to dirty money, whereas funds used to support terrorism may originate from legitimate sources, criminal activities, or both. Such legitimate sources may include donations or gifts of cash or other assets to organizations such as foundations or charities that in turn are utilized to support terrorist activities or terrorist organizations.<sup>18</sup>

However, criminal assets and terrorist assets represent the same threats to financial systems and public institutions, and it is clear that the strategies designed to fight criminals when they channel their funds through

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<sup>15</sup> Karolina Lula, *Terrorized Into compliance: Why Countries submit To financial Counterterrorism*, 2013, p-3.

<sup>16</sup> [http://en.wikipedia.org/wiki/Terrorism\\_financing](http://en.wikipedia.org/wiki/Terrorism_financing).

<sup>17</sup> <http://www.fsc.gov.im/aml>.

<sup>18</sup> [http://en.wikipedia.org/wiki/Terrorism\\_financing](http://en.wikipedia.org/wiki/Terrorism_financing).

financial systems may apply with the same success in combating terrorist financing cases.<sup>19</sup>

### **International legal framework to suppress the financing of terrorism**

On October 1989, as the new strategies of international efforts, the United Nations Security Council Resolution-1267 call on all member states to freeze funds and other financial resources of the Taliban and Al-Qaeda, and associated entities and individuals. Since then, international community targeted the assets of terrorism as the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain. They need funds for "planning, recruitment, procurement and preparation, delivery of materials, communications, persuasion, propaganda, incitement, and infrastructure of safe houses/sleeper cells". Terrorists fund themselves from great varieties of sources. By limiting the resources available to terrorist groups by effective financial control may prevent some attack from taking place; stopping the transfer of even small amount of money may save lives, or at least can reduce the possible impact of attacks what cannot be prevent.

On December 1999, the International Convention for the Suppression of the Financing of Terrorism was adopted by the General Assembly. It is the most important element in the international arsenal of legal norms to combat the financing of terrorism. It recognizes that financing is the heart of terrorist activity, and it paves the way for concerted action and close cooperation among law enforcement agencies, financial authorities and States.

Under this Convention, Member States requires taking measures to protect their financial systems from being misused by persons planning or engaged in terrorist activities. All financial institutions must be committed to combat financing of terrorism. The international financial institutions and inter-governmental organizations issued and declared the effective recommendations and standards to be compliant by the Financial Institutions, Non-Financial business and Professions, and Non-Profit Organizations to prevent terrorist organizations from accessing their financial services, and assist governmental enquiries.

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<sup>19</sup> Jean-François Thony, Money Laundering And Terrorism Financing: An Overview, 2000, p-4.

To reinforce the 1999 convention, United Nations adopted UNSC Resolutions 1373 and 1390 directing member states to criminalize financing of terrorism and adopt regulatory measures to detect, deter and freeze terrorist assets.

After 9/11 attack in US, a variety of other international efforts aimed at terrorist financing. In addition to the international conventions, regional conventions are established to combat the financing of terrorism. The Financial Action Task Force (FATF), an inter-governmental body, expand its mandate beyond money laundering to include the financing of terrorism (FT), and also to focus its energy and expertise on the worldwide effort to combat it.

According to Article 2(1) of the International Convention for the Suppression of the Financing of Terrorism (TF Convention), any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, 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:

- a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

The Annex to the Convention sets out the list of the nine international treaties as follows;

- (1) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
- (2) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
- (3) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
- (4) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
- (5) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.



- (6) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
- (7) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
- (8) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
- (9) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

According to Article 2 (1) (b), any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

On 13 January 2007, Association of Southeast Asian Nations (ASEAN) Convention on Counter Terrorism (2007) was signed by all ASEAN countries in Cebu.<sup>20</sup> The objective of this Convention is to provide the framework for regional cooperation to counter, prevent and suppress terrorism in all its forms and manifestations and to deepen cooperation among law enforcement agencies and relevant authorities of the Parties in countering terrorism.<sup>21</sup>

The FATF' eight Special Recommendations (SR) on Terrorist Financing can be found as follow,

**SR I. Ratification and implementation of UN instruments** - Each country should take immediate steps to ratify and to implement fully the 1999 United

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<sup>20</sup> International Instruments related to the Prevention and Suppression of International Terrorism, United Nations, New York, 2008.

<sup>21</sup> Article 1, ASEAN Convention on Counter Terrorism (2007).

Nations International Convention for the Suppression of the Financing of Terrorism. Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

**SR II. Criminalizing the financing of terrorism and associated money laundering** -each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

**SR III. Freezing and confiscating terrorist assets** - Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

**SR IV. Reporting suspicious transactions related to terrorism** - If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities.

**SR V. International cooperation** - Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, 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.

**SR VI. Alternative remittance** - Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or

registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions.

**SR VII. Wire transfers** - Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

**SR VIII. Non-profit organizations** - Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- i. by terrorist organisations posing as legitimate entities;
- ii. to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and

to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations

### **Case study**

With regard to the liability of financial institution relating to terrorist financing, the case, **Linde v Arab Bank**<sup>22</sup>, focuses on the 39 deaths and 102 injuries of US citizens in 24 attacks during a period of escalated violence in Israel and Palestine, mostly during the early 2000s. the plaintiff argue that the bank is responsible for allegedly transferring funds linked to Hamas, a Palestinian militant group, effectively aiding and abetting acts of terrorism. This case is a unique civil suit with implications for both financial institutions and diplomatic ties in the region, said Loretta Napoleoni, an Italian journalist who has spent decades tracking the funds of terrorist organizations.

With regards to the requirement of records of transactions, **Rachid Ramda**, editor of the Al-Ansar journal in London, was convicted for

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<sup>22</sup> Linde v. Arab Bank, 2004.

association with subway bombing in Paris in 1995. Part of the evidence of a Western Union money order receipt for a transfer of \$5,000 to one of the bomber, which was found in Ramda' lodging and bore his fingerprint.<sup>23</sup>

In **US Vs Holy Land Foundation for Relief and Development (HLF)**<sup>24</sup>, the organizers of the Holy Land foundation were convicted in a federal court in Texas for the offence defined in American law as material support for terrorism.

In Australian case, **Transcript of proceeding, R v Vinyagamoothy & Ors, Supreme Court of Victoria, Coglean J, 31 March 2010**,<sup>25</sup> in December 2009, Aruran Vinyagamoothy, Sivarah Yathavan and Armugan Rajeevan pleaded guilty to offences under the Charter of the United Nations Act 1945 for making assets available (directly or indirectly) to the Liberation Tigers of Tamil Eelam (LTTE), an entity proscribed for the purposes of that Act. It was alleged that the defendants had played a role in the collection and transfer of \$1,030,259 in donations to the LTTE between 13 December 2002 and 12 October 2004. Mr Vinyagamoothy had also been indicted for making an estimated \$97,000 worth of electronic components available to the LTTE was a proscribed entity in other countries and the 'complex structuring used to transmit funds suggested as much'. Yathavan and Rajeevan were sentenced to a term of imprisonment of one year, but released in three year good behaviour bonds. Vinyagamoothy was sentenced to a term of three years, but released on a four year good behavior bond.

In January 2016, Indonesian state prosecutors told a Jakarta court that they were seeking a life sentence for the 72-year-old cleric Abu Bakar Bashir, the spiritual leader of Islamist militants in South East Asia, for helping finance a "terrorist training camp".

The Indonesian Muslim cleric Abu Bakar Bashir, known as the spiritual leader of radical Islamists who carried out the 2002 Bali bombings, has been sentenced to 15 years in prison for supporting a jihadi training camp

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<sup>23</sup> United Nations Office on Drugs and Crimes, Digest of Terrorist Cases, United Nations, 2010.

<sup>24</sup> US Vs Holy Land Foundation for Relief and Development (HLF), November, 2008

<sup>25</sup> Transcript of proceeding, R v Vinyagamoothy & Ors, Supreme Court of Victoria, Coglean J, 31 March 2010.

uncovered last year. Abu Bakar Bashir's conviction for incitement of terrorism followed two unsuccessful attempts over the past eight years to link him to terror activities, including a conviction that was later overturned in the Bali attacks that left 202 people dead.<sup>26</sup>

The 9/11 event in the US warned all states that terrorism with international network become a major non- traditional security threat in the 21 century. In the aftermath of the September 11, 2001 terrorist attacks against American targets, the question of the financing of terrorism took on a new dimension.<sup>27</sup> U.S. government is organized to fight terrorist financing include intelligence, law enforcement, designation and asset freeze, and various diplomatic initiatives. One of the most important aspects of the U.S. effort is the public designation of terrorists and their supporters and the freezing of their assets. So far, the United States has designated some 384 individuals and entities.<sup>28</sup>

Regarding the enforcement, as it is declared by Wayne<sup>29</sup>, approximately \$147.4 million had been frozen internationally and \$65 million seized in assets internationally as of 13 July 2005. Most of this money belonged to the Taliban regime and some \$59 million seemed to be associated directly with Al-Qaeda. While in the three months after 11 September 2001 \$112 million in alleged terrorist funds were frozen, only \$4 million were frozen in the two years that followed. Seized funds represent only a small fraction of the total funds available to terrorist organizations.<sup>30</sup>

### **Countering the Financing of Terrorism in Myanmar**

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<sup>26</sup> The National World, Sunday January 24, 2016.

<sup>27</sup> Louis Forget, *Combating the Financing of Terrorism, Money Laundering and Terrorism Financing*, May 10, 2002, p-1

<sup>28</sup> E. Anthony Wayne, *Internationalization The Fight*, USA Journal, pp-6-7

<sup>29</sup> Testimony by Assistance Secretary of State for Economic and Business Affairs E. Anthony Wayne Before the Senate Committee on Banking, Housing, and Urban Affairs, "Money Laundering and Terrorist Financing in the Middle East and South Asia", 13 July 2005. This is the only available data concerning the amount of money, because while states have been reporting to CTC, as they are not obliged to do, they have not specified the amounts. (Third Report of the Monitoring Team, 14)

<sup>30</sup> Şener Dalyan, *Combating the Financing of Terrorism: Rethinking Strategies for Success*, *Defence Against Terrorism Review*, Vol. 1, No. 1, Spring 2008, p-144.

As a party to twelve international counter-terrorism instruments, Myanmar promulgated the Counter Terrorism Law 2014 and criminalizes within the scope of twelve international terrorism conventions including the offences of the financing of terrorism as one of the offences. Besides, terrorist financing are also criminalized as the predicate offence to money laundering in the Anti-Money Laundering law 2014.

Under Section 41 of the Counter Terrorism Law, 2014, whoever, in committing or to commit an act of terrorism, acts any of the followings to support or to facilitate such offence, amounts to an offence of financing to terrorism;

- a) collecting or receiving or supporting or sending or transferring unlawfully the funds by any means with the intention that they should be used or in the knowledge that they are to be used, in full or in part, directly or indirectly which is gained lawfully or unlawfully or both, by any terrorist or any terrorist group.
- b) using or possessing unlawfully of money, assets or service by any means with the intention that they should be used or in the knowledge that they are to be used, in full or in part, directly or indirectly, by any terrorist or terrorist group.
- c) concealing, moving abroad or transferring to other's name the asset knowingly or with reasons to know that it is stored or maintained or controlled by a terrorist group or a terrorist or any other person on behalf of them.
- d) attempt, abetment, instigation, organizing, providing, directing others to commit any offence or participation as an accomplice in committing any such offence contained in sub-sections (a), (b) and (c).<sup>31</sup>

Under Section 42 of this law, whoever acts, knowingly or with reasons to know, any of the followings, amounts to an offence of financing of terrorism:

- a) transaction or transfer in any means, directly or indirectly, of an asset owned by any terrorist group or any terrorist;

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<sup>31</sup> Section 41, The Counter Terrorism Law, 2014.

- b) involving in or facilitating, directly or indirectly, any transaction of an asset owned by a terrorist group or a terrorist;
- c) providing financial service or other related services involving an asset of a terrorist group or a terrorist, for the benefit of or under the direction of a terrorist group;
- d) possessing or keeping knowingly an asset which is owned by a terrorist group or a terrorist under his control;
- e) failing to reveal the information without proper reasons to the Central Committee and relevant working committee, or any member of force in respect of transaction and transfer in any other mean of an asset owned by a terrorist group and a terrorist;
- f) failing to report the existence of a terrorist and, money and assets owned by a terrorist group, communication or it is believed to be communicated with them;<sup>32</sup>

Under Section 43(a) of this law, whoever transacts or transfers by any means or attempts to transfer an asset owned by a terrorist group or a terrorist or fails to reveal the information in respect of such act without proper reasons to the Central Committee and relevant working committee or any member of the force, amounts to an offence of financing of terrorism.<sup>33</sup>

Under Section 44 of this law, notwithstanding any act of terrorism occurs or is attempted to commit or collected fund is actually used in committing an act of terrorism or collected or provided fund is connected with any act of terrorism in respect of any offence contained this chapter, it shall be deemed an offence is committed.<sup>34</sup>

Whoever commits an offence of financing of terrorism contained in sections 41 and subsection (a) to (d) of section 42 shall, on conviction, be punished with imprisonment for a term from a minimum of 10 years to a maximum of imprisonment for life and shall also be liable to fine.<sup>35</sup>

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<sup>32</sup> Section 42, Ibid

<sup>33</sup> Section 43(a), The Counter Terrorism Law, 2014.

<sup>34</sup> Section 44, The Counter Terrorism Law, 2014

<sup>35</sup> Section 50(j), The Counter Terrorism Law, 2014.

Whoever commits an offence financing of terrorism of contained in sub-sections (e) and (f) of section 42 shall, on conviction, be punished with imprisonment for a term from a minimum of 3 years to a maximum of 7 years and shall also be liable to fine.<sup>36</sup>

Whoever commits failure to reveal the information contained in sub-section (a) of section 43 without proper reasons shall, on conviction, be punished with imprisonment for a term from a minimum of 3 years to a maximum of 7 years and shall also be liable to fine.<sup>37</sup>

Section 5(d) of the Anti-Money Laundering Law 2014, provides that laundering of money and properties derived from commission of any of offences relating to the terrorism shall be applicable to this law.<sup>38</sup>

Concerning with the criminalization of the financing of terrorism, the Anti-Money Laundering law does not indicate the financing of terrorism as a separate crime. It designated as the predicate offences of the money laundering. The nature of money laundering and terrorist financing is different. The sources of terrorist financing can be legally such as from foundation, charities. It does not need to commit the criminal activities and need to be laundered. To take action the terrorist financing effectively according to the objectives of this law, it is needed to expand to criminalize the financing of terrorism separately.

Under Section 69(c) of the Anti-Money Laundering Law, the Central Bank of Myanmar may issue the necessary directives, procedures and by-laws related to the Anti-money Laundering and Counter Financing of Terrorism in line with the Anti-money Laundering Law (2014) from time to time.<sup>39</sup>

Financial Institutions must disclose the information in accord with the provisions provided by the Anti-Money Laundering Law and Counter Terrorism Law.<sup>40</sup>

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<sup>36</sup> Section 52(b), Ibid.

<sup>37</sup> Section 52(c), The Counter Terrorism Law, 2014.

<sup>38</sup> Section 5(d), Ibid.

<sup>39</sup> Section 69(c), Ibid.

<sup>40</sup> Section 81(a)(xiii), the Financial Institution Law, 2016



### **Discussion**

As a party to twelve international counter-terrorism instruments, Myanmar promulgated the Counter Terrorism Law 2014 and the Anti-Money Laundering Law 2014. However, according to FATF' Improving Global AML/CFT Compliance; on-going process 2016, Myanmar is still listed in jurisdictions with strategic deficiencies. Therefore, Myanmar should review the adequacy of legal resources to determine whether it is sufficient to prevent and suppress the financing of terrorism.

### **Conclusion**

Combating the financing of terrorism under the Anti-money Laundering law, it criminalizes the financing of terrorism as the predicate offences of money laundering. Besides the preventive measures of the financial sector that covers customer due diligence, record keeping, suspicious transaction requirements, and wire transfer of the reporting organizations, banks and financial institutions. But it cannot work well to combat the financing of terrorism so as the terrorist financing does not need actually to commit the criminal activities and need to be laundered.

The Counter Terrorism law criminalized the offences provided in twelve international terrorism treaties including the offences of the financing of terrorism as one of these offences. But, the counter terrorism law does not design the reporting organizations and does not include the regulatory measures of the financial sector to prevent the scope for using financial system to collect and transfer funds for terrorism purpose. Moreover, this law should make ensure that the competent authority would enable to identify, detect, freeze, seize and forfeit the proceeds of terrorism or terrorist acts, the property used in terrorism, in terrorist acts or by terrorist organizations, and property intended or allocated for use in terrorism, in terrorist acts or by terrorist organizations described in Article-8 of TF convention, Special recommendation-III of the FATF and para-1(c) of United Nations Security Council Resolution 1373 as it is the backbone of the combat against the financing of terrorism.

As the institutional measures, the role of financial intelligence unit is very important in combating the financing of terrorism. The capacity of the financial intelligence unit should be improved by giving training to ensure a fully operational and effectively functioning on suspected terrorist financing cases because the strategy of combating the financing of terrorism was introduced very recently.

The Central Bank and financial institutions should comply with the Anti-Money Laundering law to enhance financial transparency and to prevent terrorist organizations from accessing their financial services and assist government and their agencies in their enquiries. On the other hand, it can contribute to the protection of the reputation of both banks and financial institutions by preventing and deterring the misuse of their financial system so as to raise or flow of fund to the terrorists or terrorist organizations.

Nowadays, combating terrorism and terrorist financing are addressed as a collective effort on the part of all members of the international community. Therefore, Myanmar should consider its soundness of legal resources, and prevent and suppress the terrorist acts and financial system by extending the Anti-Money Laundering Law to include the specific terrorist financing offence or by enacting the specific Anti-Terrorist Financing Law in compliance with the international norms and standards.

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