



## Case Western Reserve Journal of International Law

---

Volume 41 | Issue 1

---

2009

# Combating Terrorist Financing: Draft Resolution

Draft Resolution

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>



Part of the [International Law Commons](#)

---

### Recommended Citation

Draft Resolution, *Combating Terrorist Financing: Draft Resolution*, 41 Case W. Res. J. Int'l L. 263 (2009)

Available at: <https://scholarlycommons.law.case.edu/jil/vol41/iss1/10>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

**COMBATING TERRORIST FINANCING:  
DRAFT RESOLUTION \***

*The Case Western Reserve University School of Law's Institute for Global Security Law & Policy and the International Association of Penal Law sponsored the "World Conference on Combating Terrorist Financing" from April 9-12, 2008. The symposium, held at the Case Western Reserve University School of Law in Cleveland, Ohio, was part of the Preparatory Colloquium for the Eighteenth International Congress of Penal Law. The Participants in the Preparatory Colloquium prepared this Draft Resolution, which outlines recommendation for how best to combat terrorist financing.*

**The participants in the Preparatory Colloquium of the II Section of the XVIII International Congress of Penal Law, held in Cleveland, Ohio (April 9–12, 2008), propose the following resolution:**

*Considering* that the controls against the financing of terrorism are useful and necessary for the purposes of prevention, monitoring, investigation and reduction of harm by terrorist operations

*Underlining* the importance of the UN General Assembly resolution 51/210 of 17 December 1996 (paragraph 3, subparagraph (f)) and the UN International Convention for the Suppression of the Financing of Terrorism of 1999

*Welcoming* the widespread ratification of the UN Convention for the Suppression of the Financing of Terrorism of 1999 by Member States

*Recalling* the Council of Europe Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies

*Taking note* of the lack of a universal definition of terrorism and the diversity of national definitions and approaches to terrorism finance

*Reiterating* the importance of both risk- and principle-based financial controls

*Reaffirming* the wisdom of founding CFT and counter-terrorism policies more generally on reliable evidence and analysis

---

\* This Draft Resolution was originally published by the International Association of Penal Law. *Draft Resolution: Cleveland Preparatory Colloquium*, 79 INT'L REV. OF PENAL L. 371 (2008), available at <http://www.penal.org> (subscription only).

*Emphasizing* that the financing of terrorism and money laundering practices are often dissimilar in nature and may require different counter-measures

*Noting* the absence of systematic and thorough data collection and analysis regarding the financing of terrorism at national and international levels

*Expressing* concern at the application of certain preventive measures and designation practices without criminal prosecution or effective application of human rights safeguards and guarantees under international law

*Propose* to the XVIIIth International Congress of Penal Law the adoption of the following Resolution.<sup>1</sup>

### **The need of an adequate system of targeting terrorism finance**

1. The establishment of an adequate system of targeting terrorist finance (CFT) is essential in order to fight terrorism. Reducing the possible harm of terrorist operations and attacks, an adequate system of control of terrorist finance can equally serve to monitor militant activities so that preventive actions can be taken. It also enables the reconstruction of events and the detection of coconspirators who can then be pursued; and moreover, the public announcement that financial activities are under scrutiny forces extremist groups to make frequent tactical changes and communications, which generates valuable opportunities for intelligence gathering.

### **Empirical aspects**

2. In the last decade, and particularly after September 11, CFT measures have grown in number, scope and geographic application due to FATF, UN, EU and other initiatives, including many undertaken at national levels. Lists of designated suspected terrorists have been created and circulated; assets of those named in such lists have been frozen, including those of nonprofit organizations. Laws have been introduced regarding terrorist finance and material support for terrorism.

3. Nevertheless, after 7 years of applying CTF measures, the system and its cost-effectiveness should be thoroughly evaluated and its priorities should be adjusted accordingly.

4. Empirical studies on the dimensions and the ways and means of TF should be encouraged in order to obtain a realistic overview of the actual situation worldwide. As far as possible a global database should be developed/supported.

### **Legal definitions**

5. A comparative analysis of the definitions of terrorism and terrorism financing and other national regulations needs to be undertaken for the pur-

---

<sup>1</sup> Questionnaire: I. Empirical Aspects. II. Ratification of universal and regional instruments; legal and institutional national framework. III. Prevention of terrorist finance. IV. Freezing of assets. VI. Other considerations.

pose of identifying problems and gaps in the implementation of international commitments.

6. Terrorist financing should be adequately criminalised, irrespective of the commission of an actual terrorist act, and incrimination should not be dependent solely on participation in or assistance to a terrorist group.

#### **Evidence-based approaches**

7. On the basis of such legal and factual information, studies and analyses, improved evidence based, targeted and risk-based approaches should be pursued, taking into account existing resources and in order to explore and develop the prospects for a trade-based approach based on transparent and comparative import-export statistics.

8. The similarities and differences between financing of terrorism and money laundering activities need to be clearly identified. More specifically, attention should focus inter alia on the following issues that may require more specific or diverse legal and regulatory frameworks:

(a) Informal fund and value transfer systems (hawala, hundi, fei 'chien etc.) should be better understood and regulated in pragmatic ways that address the crime risks they represent and preserve the legitimate functions they perform.

(b) The role of charitable organisations and political organisations with social and charitable activities as to the financing of activities of a terrorist nature should be analysed in the context of a comprehensive evaluation of national, economic and social conditions, aiming at a balanced and consistent approach

(c) Given identified vulnerabilities in the commercial sector, trade-based financing of terrorism should be examined and trade transparency should be enhanced to supplement existing financial regulations

(d) Analyses should provide either concrete guidelines on what constitutes possible suspicious terrorist financial transactions or re-define the extent to which financial controls enable private sector or regulatory bodies to identify such transactions

9. Guidance for the private sector (in particular financial institutions, lawyers, accountants, auditors etc.) needs to be further developed with the aims to harmonise divergent regional and national practices and to strengthen accountability.

#### **Designations and asset-related measures**

10.

(a) The processes of designating suspected individuals and organisations [for the purpose of identifying, freezing and seizing assets intended to be used for terrorist activities or under the control of terrorist groups] needs a thorough and comprehensive revision. In some instances, the process of removal is unclear, while no judicial or other legal process addresses the status of a suspect on such list – that is,

there is frequently no criminal or other charge, no court proceeding and, in essence, no means for the determination of guilt or innocence of named suspects. On the other hand, the effects of executive decisions made on the basis of not fully known or transparent criteria and evidence are devastating for those affected.

(b) In this context, the procedural rights of targeted individuals and organisations subjected to "listing" and "delisting" proceedings must be guaranteed according to due process and fair trial requirements and opened to effective judicial review.<sup>2</sup>

11.

(a) Judicial and administrative procedures for freezing and seizing assets of individuals and groups are to be properly coordinated.

(b) During such procedures the rights of the natural and legal persons concerned to legal consultation and representation and to adequate information on charges and evidentiary material shall be safeguarded without delay.

---

<sup>2</sup> This paragraph may become more important once the awaited judgement of the European Court of Justice on this matter is delivered; since the Cleveland meeting. 24, 2008 the High Court of Justice, Queen's Bench Divison, Administrative Court in A,K, M Q & G and H.M. Treasury, [2008] EWHC 869 has ruled and quashed orders enforcing UN Counter-terrorism measures 1373 and 1267, so the point of this paragraph seems increasingly appropriate.