

Terrorism Financing within a Multicultural Europe

*Laureano Martin Velasco
Department of Constitutional Law
Political Science and Administration,
University of Valencia (Spain)*

Abstract

The 11-S was a key milestone in the perception of the terrorist phenomenon by the World's population. Since then, the states have changed their policies, have redefined their values and have spent hundreds of millions of euros in the fight against this criminality. Terrorist financing is the key to understand this phenomenon adequately. Terrorists use financial facilities offered by the First World and European aids to finance themselves. The free flow of money in Europe and the facility to change the residence within European Union suppose an added difficulty to the law enforcement agencies in the detection and detention of international terrorist.

Key words

Terrorism Financing, 11-S, money laundering, law enforcement agencies, police.

Multiculturalism in Europe, the absence of internal borders, free movement of persons, labor and money, mean new possibilities for terrorist groups when introduced and blend into European society and to get funding for their terrorist purposes. But it was not until this decade when the European and Mundial citizenship has realized the importance and terrible closeness of this terrorist phenomenon.

Indeed, the attacks of September 11, 2001 in the United States were an important milestone in the global fight against the phenomenon of terrorism in all its manifestations. Since then, the governments face the terrorist problem with a global vision, focusing on the fight against the different aspects from an integrative perspective. Until that fateful morning, the international efforts regarding the crime financing focused, in a preliminary way, the problems of money laundering that were introduced by organized crime in the economy of the countries as a result of the illegal activities carried out. 11 - S discovered to the World this phenomenon and, since then, we have no doubt how far the Islamic fundamentalist terrorism is able to go.

Just two years later, at 7.37 PM on March 11, 2004, exploded in Madrid, the capital of Spain, ten bombs on four trains during rush hour. 191 people were killed and 1.500 wounded in the largest terrorist attack in recent European history.

For the first time since the attempted coup d'état in Spain on February 23, 1981, the King of Spain addressed the Nation on television to show solidarity with the victims and ask for "*unity, firmness and serenity*" in the fight against terrorism.

Mass demonstrations against terrorism happened in every corner of Spain, immediately followed by protest rallies at different locations of the European Institutions. The rejection of terrorism was unequivocal and unanimous.

On July 7, 2005, in London, three bombs went off within an hour at underground trains and a fourth one destroyed a bus full of passengers. A group linked to Al Qaeda blamed the attack in retaliation for their alignment with the U.S. and its participation in the occupation of Iraq.

These brutal attacks, which left thousands of dead and panic in Europe and the World, served as a wake-up call to start a crusade against Usama Bin Laden and terrorism of Islamic fundamentalist roots on all the fields, also the economic and financial.

The World of Law did not remain oblivious to these facts, and from terrorist attacks mentioned, we are attending a flood of international legal provisions, which, beginning within United Nations Organization, has been extended later to other international bodies or territorial sector as the European Union or the Organization of American States. Since the Resolution 1373 (2001) of the Security Council within United Nations, a month after the attack on the Twin Towers and the Pentagon, ordering the freezing of terrorist assets beyond where they were, through the International Convention for the Suppression of Terrorism Financing in 1999, and the 9 Special Recommendations of the Financial Action Task Force (FATF) -the leading international authority on money laundering-, we have come a long way, and more is still to go.

We must take into account that many funds are not required to commit these tremendous attacks, it has been estimated that 11-S attacks cost less than 500.000 \$, and three years later, the slaughter in Madrid did not reach 10.000 euros. The speed and anonymity offered by the modern ways of communication, coupled with the potential to send money by alternative methods such as "hawala", apart from traditional financial channels in the West, and the free movement of persons and money in Europe, make more difficult to detect the movements of money related to terrorism financing.

Indeed, terrorists sometimes use to finance their attacks alternative delivery systems of funds based on relations of "correspondent" and trust. It means that money often moves from one place to another regardless of their physical movement. *Hawaladars* agents operate on a net-shaped structure, so debits and credits are used in a large scale compensatory system involving several parties.

Hawaladars agents receive a commission or fee for their services, or get their benefit through the exchange rate differences, to settle balances between all parties scrupulously. Transactions rarely are frustrated due to the crucial factor to survive in this network is the trust, and payment is virtually guaranteed, reaching the most remote corners of World geography. Often hawadalar agent himself is an active member of the terrorist cell and he works channeling cash contributions of hundreds of people into terrorist activity. Examples of this way of collaboration with terrorism are repeated around the world.

Citing a police case close to the author of this document, in March 2005 occurred in two Spanish cities, Valencia and Logroño, several arrests in connection with the financing of a truck-bomb attack occurred on the Tunisian island of Djerba on 11 April 2002 that killed 21 people. In 2009 the Criminal Section of the Spanish Supreme Court confirmed the sentence of the National Court condemning the Spanish E.C. and the Pakistan A.R. to five years in prison and a fine of 1.100 euros for collaboration with a terrorist group.

The Pakistani arrested was devoted to this kind of activity: being A.R. the owner of a grocery store in Logroño, functioning as call center business, sent money to some members of the Al Qaida Net. It is calculated that the economic movements made by A.R. were 2.677.097 euros over a period of few months, money that was trusted by many of nearly a thousand Pakistanis living in Logroño. Thus, this hawaladar agent of Logroño transferred 9.500 euros to a bank account in Valencia on behalf of Mohamed Ismail Essa, Isa of Karachi. He is now with a search warrant accused of financing the purchase of the vehicle used in the attack. Also, following instructions from his contact in Pakistan, he sent money to various bank accounts belonging to individuals or companies in several European countries and the United States.

Europe certainly was not accustomed to this way of obtaining financing for terrorist groups. We knew extortions, threats, or even the existence of companies or publishers who served as a cover for the financing of terrorist groups like Spanish ETA or Irish IRA, but we did not know so deeply these fundraising methods, that leave no paper trail, and in which small contributions from thousands of immigrants get large sums of money.

On the other hand, combating the financing of organized criminal groups from a legal point of view is a recent fight. The Financial Action Group, the leading authority on the subject, began as an initiative of G-8 in 1989, establishing the following year its 40 Recommendations on Money Laundering, in which the international community has been based on when drafting its rules on this subject.

As the experience gained since then has been especially in the laundering linked to drug trafficking is now logical to apply all the baggage to the financing of terrorism.

It is interesting to observe, from a criminological perspective, how the activities of drug trafficking, terrorism, corruption and money laundering are commonly associated, especially in cases of Islamic terrorism, due to the necessity to be financed by drug trafficking as evidenced in some of the sessions of the trial in Spain over the brutal attack on the Atocha Train Station in Madrid.

The Financial Action Task started in 1990 to manage with the issue of money laundering by criminal organizations operated and introduced, once laundered, into the economies of different countries. The FATF is now comprised of more than 30 countries and 2 international organizations, among them Romania, Spain and the European Commission, and it is the main international body for developing standards to combat money laundering, including its "40 Recommendations".

The events of 11-S, made its powers were extended to the fight against terrorist financing, introducing the Nine Special Recommendations and renewing its mandate, which expired in August 2004, to December 2012. These special recommendations urge the states, inter alia, to ratify the International Convention for the Suppression of Terrorism Financing (1999) and the Resolution 1373 (Security Council United Nations), and to criminalize the financing of terrorism, confiscate terrorist assets and report suspicious transactions, including by dealing with the alternative delivery systems of funds and use of non-profit organizations to give the appearance of formality to the movements of money to cover terrorist activity.

With regard to the European fight against terrorism we can say that it is based on the principle of cooperation, both extra and intra- European Community.

This model balances police efficiency and simplification of detainees' delivery procedures with a solid guarantee of protection of fundamental rights. This is the distinctive feature of EU model in its response to terrorism, as opposed to the USA model.

However, despite the growth of EU competences, the bases of public safety remain inside the field of each State. Because of that, the harmonization of some minimum criminal law criteria is necessary to achieve greater efficiency in the European Action Plan Against Terrorism and the European Security Strategy.

In this field, several European Directives and regulations have been dealing with the terrorism financing. The first approach was to consider it as a form of organized crime but, later on, it was contemplated as an important “foundation” that supports terrorism in Europe and around the World.

One of the most important documents is the European Council Common Position on 27 December 2001 for the Application of Specific Measures to Combat Terrorism, adopted immediately after the attacks of September 11 in North America. This document contains a European definition of “terrorist crime” and creates the European List of Terrorist Organizations and Persons, which includes both people and groups with respect to which there is an obligation to freeze funds and other financial assets belonging to them. It also provides some standard measures of police and judicial cooperation as well as others aimed at freezing the funds which are intended to finance terrorist activities.

In the process of the European construction, the text of the Treaty establishing a Constitution for Europe on October 29, 2004 contained a series of figures that could well enhance these measures against terrorism and its financing.

Up to 6 items includes the word “terrorism” or “terrorist” in its text, which means a sign of the growing concern of the European Union over the issue, considering that this is a standard that defines the framework masterpieces of the European legislation.

The text of the Treaty, which was never approved, however, was picked up by the subsequent Treaty of Lisbon. Now we can say that the approved text involves the systematization, simplification and updating of the main provisions of the Treaty of European Union, and it is a fundamental step in building a more united Europe and, thus, more effective in fighting against terrorist organizations.

Police and Judicial cooperation in criminal matters have now important benefits from a more homogenous treatment within Community Organizations that support the operations.

The new judicial cooperation is based on the principle of mutual recognition of judicial decisions, and the current European Arrest Warrant is getting a wider dimension and giving really good results. The European model of the Lisbon Treaty aims to speed up the transfer of detainees among the Member States, as far

as is compatible with respect for fundamental rights. So the extradition procedure is now replaced for a simpler and more efficient European Arrest Warrant and Detainees Delivery.

The text of the Lisbon Treaty focuses the police cooperation on three pillars: analysis & information exchange, training of police officers and investigation in the adoption of common police techniques in case of organized crime. In this regard, a European Framework Law may dictate minimum standards governing those matters.

EUROPOL and EUROJUST, respectively the European Offices of police and judges, are also somehow reinforced. On one hand EUROJUST can now initiate criminal investigations and propose to national authorities the initiation of criminal files. They can also coordinate the investigations undertaken by the competent authorities. On the other hand, EUROPOL is strengthening terrorism prevention and other serious crimes and will be able to use more effective tools to fight against them, especially for its leadership within Joint Investigation Teams, composed by police officers of different countries who are managing investigations of cross-border crimes which take place in different European Countries.

These joint investigation teams have been created several times and are led by the country where police investigations were initiated. The role of EUROPOL in the new framework could exceed the simple cooperation or databases exchanges to lead these teams through, why not, the new European Prosecutor.

It is also important the harmonization of the Criminal Laws which is included in the Lisbon Treaty. On one hand, the European Union is empowered to establish minimum standards for the definition of offenses and penalties regarding, inter alia, terrorism and money laundering. On the other hand, a European Framework Law may also content minimum standards for criminal-procedural aspects such as admissibility of evidences or the rights of individuals and victims in the process.

However, police and judicial cooperation, and even the approximation of criminal laws, should be done without detriment to *"responsibilities incumbent upon Member States in the maintenance of public order and safeguard of internal security"*. Therefore, on one hand the Union must provide common framework legislation as well as to promote cooperation among States within the organizations and institutions. But on the other hand, the States themselves are still those which retain the core competencies in the field. It allows us to assert that States are still governing their own public security.

The new European Public Prosecutor's Office can also reinforce the fight against terrorism. According to the Treaty the creation of this Office from EUROJUST is only to combat crimes affecting the financial interests of the European Union, but later on the text envisages the possibility that the European Council extends the powers of the prosecutor in the fight against serious crimes with cross-border dimension as in case of terrorism and its financing.

All these instruments may lead to more effective measures against terrorist financing, although it is still detected a significant lack of confidence in EU Institutions and a strong fear to lose lots of sovereignty by the Member States.

It is also possible to find some “faults” into the Treaty regarding measures to prevent terrorist financing. Although it is expected that a European Law defines some administrative measures on control of money movements and payments, is missing an antiterrorism clause that would suspend financial assistance to the government or a state that supports or serves as a refuge, even in case of financial support to terrorist organizations.

The strategy, both preventive and repressive, in the fight against terrorism, should be essentially the same taken against its funding, so the police should carry out a financial investigation while the main investigation is taken. From the legal point of view, the Member States of the European Union should establish a uniform legal framework on terrorism, which serves to coordinate and complement the existing instruments in the fight against terrorism and its financing.

European Union should ensure a space of freedom, security and justice, in which the citizens can enjoy their fundamental rights, which has been won with everyone's efforts over the centuries, in harmony with the rest of the World community.

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