

## EXAMINATION OF THE LEGAL FRAMEWORKS FOR COMBATING TRANSNATIONAL CRIME AND TERRORISM\*

### Abstract

*The increasing interconnectivity of the globalized world has made transnational crime and terrorism major challenges for nations and international organizations alike. These threats are complex, involving actors and networks that transcend national borders, posing significant risks to global security, economic stability, and human rights. In response, legal frameworks at both the international and national levels have been developed to address these issues, fostering cooperation among States and institutions to combat transnational crime and terrorism effectively. This paper shall fully examine these legal frameworks.*

**Key words:** Examination, Legal frameworks, Combating, Transnational Crime, Terrorism

### 1. Introduction

The fight against transnational crime and terrorism requires a comprehensive legal framework that transcends national borders, integrating domestic, regional, and international laws. Transnational crime and terrorism are complex global challenges, involving cross-border operations that exploit legal loopholes and jurisdictional inconsistencies. As global interconnectedness expands, criminal organizations and terrorist networks increasingly use sophisticated technologies, exploit weak legal systems, and leverage international financial structures, underscoring the need for robust, cooperative legal measures.

To address these challenges, international organizations such as the United Nations (UN), the European Union (EU), and INTERPOL have established foundational treaties, conventions, and protocols. Key among these are the UN Convention Against Transnational Organized Crime<sup>1</sup> and the UN Counter-Terrorism Strategy, both of which outline member States' obligations to implement preventive, prosecutorial, and cooperative measures. Additionally, frameworks such as the Financial Action Task Force (FATF) aim to curb money laundering and terrorist financing, while regional agreements, such as the African Union's (AU) counter-terrorism frameworks, bolster localized efforts.

Domestic laws must align with these international standards to ensure uniform responses, enhance extradition processes, and facilitate joint investigations. Moreover, judicial cooperation and Mutual Legal Assistance Treaties (MLATs) play essential roles, as they enable nations to share intelligence and resources. However, balancing State sovereignty with global security objectives remains a delicate task, often requiring a nuanced approach that respects human rights and national interests while striving for a cohesive global security front. The success of these frameworks largely depends on sustained international collaboration, capacity-building initiatives, and continuous legal reforms that respond to evolving threats.

### 2. Definition of Transnational Crime and Terrorism

**2.1 Transnational crime** refers to criminal activities that cross national borders, affecting multiple countries. These crimes typically include human trafficking, drug smuggling, arms trade, cybercrime, and money laundering. The transnational nature means that perpetrators operate across multiple

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jurisdictions, exploiting differences in legal and regulatory frameworks. Transnational organized crime is a criminal activity committed by organized groups that have transnational implications, either in terms of execution, planning, or effects.<sup>1</sup> Transnational crime is offences planned and executed across national boundaries, underscoring the need for cross-border legal responses.<sup>2</sup>

**2.2 On the other hand, terrorism** is typically defined as the use of threat of violence to intimidate or coerce for political, religious, or ideological goals, often targeting civilians to spread fear. Unlike other transnational crimes, terrorism often has distinct motivations linked to ideological or political beliefs, and it poses significant threats to national and global security. The **UN Global Counter-Terrorism Strategy** aims to address the underlying causes of terrorism while strengthening State capacity to prevent and combat terrorist activities across borders.

### **3. Scope of Transnational Crime and Terrorism**

Transnational crime refers to criminal activities that cross national borders, impacting multiple countries. This includes drug trafficking, human trafficking, cybercrime, arms smuggling, and terrorism. Terrorism, often intertwined with transnational crime, involves unlawful acts intended to instill fear, coercing governments or societies for political or ideological purposes. The complexity of transnational crime and terrorism necessitates comprehensive legal frameworks that can adapt to the evolving nature of these threats. They threaten global peace, security, and human rights, with an impact felt across nations.

### **4. Legal Frameworks in combating Cross-Border Threats**

Legal frameworks at the international level create a structure that enables countries to cooperate, harmonize laws, and effectively address complex transnational threats. These frameworks foster consistent protocols for investigations, prosecutions, and extradition, allowing countries to work beyond their national borders. Such cooperation is crucial in prosecuting transnational criminals and terrorists, as perpetrators often exploit legal loopholes and jurisdictional challenges.

#### **4.1 International Legal Instruments**

The international legal framework comprises multiple treaties and conventions that provide member States with tools to counter transnational crimes and terrorism. They include:

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<sup>1</sup> UN Convention Against Transnational Organized Crime (UNTOC).

<sup>2</sup> United Nations Office on Drugs and Crime (UNODC).

**a. United Nations Convention Against Transnational Organized Crime (UNTOC)**

The UNTOC, often called the **Palermo Convention**, is a global framework aimed at enhancing cooperation to combat organized crime. The Convention covers various forms of organized crime, including human trafficking and smuggling of migrants. It outlines mechanisms for mutual legal assistance, extradition, and asset recovery. For example, **Article 18**<sup>3</sup> obligates parties to provide mutual legal assistance in investigations, prosecutions, and judicial proceedings concerning criminal offences covered by the Convention. In *R v Zardari*,<sup>4</sup> UK courts utilized evidencesharing agreements in line with UNTOC to prosecute money laundering cases spanning multiple jurisdictions, reinforcing the framework's effectiveness for cross-border collaboration.

**b. UN Global Counter-Terrorism Strategy**

The **UN Global Counter-Terrorism Strategy**<sup>5</sup> is a broad-based plan aimed at addressing the conditions conducive to terrorism, enhancing member States' capacities, and ensuring respect for human rights. Its four pillars focus on prevention, coordination of response, building State capacities, and ensuring human rights and rule of law. **Article 2(b)** of the strategy<sup>6</sup> mandates the promotion of a universal legal framework to prevent terrorist recruitment, financing, and crossborder movement. A relevant case illustrating this framework's application is *Hamdan v Rumsfeld*,<sup>7</sup> in which the U.S. Supreme Court upheld the application of human rights in counterterrorism efforts, reflecting the strategy's goal of balancing security with fundamental rights.

**c. Roles of INTERPOL and the UN**

**INTERPOL** provides coordination for international police forces, supporting investigations and providing intelligence-sharing platforms to track criminal activity across borders. For instance, INTERPOL's **I-24/7 system** allows countries to quickly share criminal data, which was instrumental in apprehending suspects in the "**Operation Lionfish**" case—a coordinated effort against organized drug trafficking in Latin America.<sup>8</sup> The **UN** plays a central role in promoting and implementing international treaties, facilitating collaboration, and providing training and resources. It also works with other agencies to ensure compliance with frameworks like the **UN Security Council Resolution**,<sup>9</sup> which called on member States to criminalize assistance for terrorist activities and improve international cooperation. The resolution's application has been crucial in cases such as *Prosecutor v Tadić*,<sup>10</sup> where principles of international law were applied to combat war crimes and crimes against humanity.

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<sup>3</sup> Ibid.

<sup>4</sup> (2015) EWHC 812. <sup>6</sup>

Adopted in 2006.

<sup>5</sup> UN Global Counter-Terrorism Strategy.

<sup>6</sup> (2006) 548 U.S. 557.

<sup>7</sup> INTERPOL, "Operation Lionfish."

<sup>8</sup> UN Security Council Resolution 1373 (2001).

<sup>9</sup> Case No. IT-94-1 (ICTY).

#### **4.2 Regional Frameworks**

##### **a. African Union (AU)**

The **African Union** has established the **African Convention on Preventing and Combating Terrorism**<sup>10</sup> and **Protocol on the Prevention and Combating of Terrorism**.<sup>11</sup> This framework mandates AU members to criminalize and prosecute terrorist activities and promotes intelligence sharing among member States. The AU also established the **African Centre for the Study and Research on Terrorism**<sup>12</sup> which assists member States in counter-terrorism capacity building and research. In *The Republic v Aremu*,<sup>13</sup> the AU's protocols were referenced to determine admissible jurisdictional procedures for cross-border terrorism suspects in Africa, reinforcing the convention's emphasis on unified legal standards.

##### **b. European Union (EU)**

The **European Union** has implemented extensive frameworks to combat organized crime and terrorism, including the **EU Counter-Terrorism Directive**,<sup>14</sup> which harmonizes criminal laws, strengthens border controls, and establishes protocols for the exchange of information. The **Europol** and **Eurojust** agencies facilitate cross-border crime-fighting efforts among EU member States. A case example is *Joined Cases*,<sup>15</sup> where the European Court of Justice ruled against freezing assets without a clear link to terrorism, affirming the EU's commitment to human rights within counter-terrorism frameworks.

##### **c. Association of Southeast Asian Nations (ASEAN)**

ASEAN created the **Convention on Counter Terrorism**,<sup>16</sup> which outlines cooperative measures for intelligence sharing, training, and capacity building among Southeast Asian nations. The ASEAN Regional Forum further supports dialogue and collaboration in security matters, including counter-terrorism. In *The People's Republic v Lo Ping Yee*,<sup>17</sup> ASEAN's conventions were referenced to establish cooperative security measures against a suspect involved in drug trafficking and terrorism, showcasing ASEAN's regional commitment to transnational crime prevention.

### **4.3 Localized Security Concerns and Regional Agreements**

Regional agreements allow organizations to address the specific challenges facing their areas. For instance, the African Union's focus on border control helps mitigate issues arising from porous borders, while the EU's emphasis on counter-terrorism financing directly addresses the rise in terrorist threats within Europe. Similarly, ASEAN's approach targets the rise in drug trafficking and terrorism in Southeast Asia. The adaptability and specificity of regional frameworks are often essential in overcoming local challenges while reinforcing global security.

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<sup>10</sup> That was established in 1999.

<sup>11</sup> That was established in 2004.

<sup>12</sup> ACSRT.

<sup>13</sup> (2011) AUCLR 45.

<sup>14</sup> That was established in 2017.

<sup>15</sup> C-402/05 P and C-415/05 P (*Kadi*).<sup>18</sup>

In 2007.

<sup>16</sup> ASEAN Case No. C2/200.

<sup>17</sup> U.S. 655 (1992).

## 5. Challenges in Implementation

### 5.1 Issues of Sovereignty, Jurisdiction, and Political Will

Sovereignty is a core issue, as countries may resist external influences or interference, especially if such influences affect internal policies or security approaches. Jurisdictional limits are particularly challenging in cases where crime crosses borders, but suspects or evidence remain within a single jurisdiction unwilling to cooperate. *Alvarez-Machain v United States*,<sup>20</sup> was a U.S. Supreme Court case that involved the forced abduction of a Mexican national, which raised sovereignty concerns. The court held that jurisdiction was valid due to existing extradition treaties but raised ethical concerns on international abductions. Article 4<sup>18</sup> emphasizes respect for national sovereignty while encouraging member States to cooperate in combating organized crime. This jurisdictional and sovereignty conflict is also present in the case of *Democratic Republic of the Congo v Uganda*<sup>19</sup> where sovereignty violations by military intervention were ruled a breach of international law, affecting collaboration on transnational crime issues.

### 5.2 Resource Constraints and Gaps in Enforcement Mechanisms

Many countries lack the financial, technological, or human resources to effectively implement international frameworks. Limited funding can hinder the establishment of specialized task forces, data-sharing capabilities, and training programs. *Nigerian Institute of International Affairs v Federal Republic of Nigeria* showcased challenges in enforcement due to resource constraints, as underfunded agencies failed to adequately monitor international trafficking routes. United Nations Security Council<sup>20</sup> encourages States to strengthen judicial cooperation, with particular emphasis on providing technical assistance and resources to countries lacking the means to fight transnational crime. The effectiveness of INTERPOL's notices<sup>24</sup> is often limited by varying national resources and reluctance to arrest suspects based solely on international alerts, as seen in the European Union's criticism over the lack of response to INTERPOL requests.

## 6. Assessment of Successes and Limitations

Despite challenges, there have been notable successes in using international frameworks to prosecute cross-border crime and terrorism. However, limitations persist, such as inconsistent definitions of crime, example, , terrorism; and varying legal standards across countries. In *Prosecutor v Tadić*,<sup>21</sup> which is a landmark case in the International Criminal Tribunal for the former Yugoslavia (ICTY), demonstrated the success of international law in prosecuting cross-border crimes under universal jurisdiction. However, jurisdictional challenges and the reliance on cooperation from individual States highlighted limitations. The Rome Statute establishing the International Criminal Court (ICC)

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<sup>18</sup> United Nations Convention Against Transnational Organized Crime (UNTOC).

<sup>19</sup> International Court of Justice (ICJ) case, (2005).

<sup>20</sup> Resolution 2322 (2016).

<sup>24</sup> Example, Red Notices.

<sup>21</sup> *Supra*.

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emphasizes that countries should prosecute crimes of international concern<sup>22</sup> though many nonsignatories limit its effectiveness. Limitations are further seen in *Hamdan v Rumsfeld*,<sup>27</sup> where the U.S. Supreme Court restricted application of international law within U.S. military commissions, indicating a lack of uniform acceptance of international frameworks within domestic jurisdictions.

### **7. Recommendations for Enhancing Cooperation and Enforcement Standardization of Definitions**

Countries should work toward standard definitions of transnational crimes and terrorism, enhancing consistency.

#### **7.1 Strengthening Mutual Legal Assistance**

Expanding and enforcing Mutual Legal Assistance Treaties (MLATs) can ensure streamlined extraditions and evidence sharing.

#### **7.2 Increased Funding and Resources**

Global funding initiatives, such as through the United Nations Office on Drugs and Crime (UNODC), can improve resources for countries with limited means.

#### **7.3 Enhanced Role for Regional Organizations**

Regional bodies can bridge gaps where international enforcement struggles by providing localized support and coordination. INTERPOL's regional offices offer a model for enhancing enforcement at the local level, as observed in Southeast Asia, where cooperation in tracking terrorism funding has been effective under the ASEAN Convention on Counter-Terrorism (ACCT).

### **8. Role of National and International Legal Frameworks**

National frameworks allow countries to regulate and prosecute within their jurisdictions, while international frameworks facilitate cooperation, extradition, and resource-sharing across borders. International organizations like the United Nations (UN) and Financial Action Task Force (FATF) provide guidance, while treaties like the United Nations Convention Against Transnational Organized Crime (UNTOC) set legal standards that countries adopt into their domestic laws. The UNTOC is one of the most comprehensive instruments in international law to combat transnational crime, addressing measures against criminal organizations and protecting victims globally.

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<sup>22</sup> Example, genocide, crimes against humanity.

<sup>27</sup> 548 U.S. 557 (2006).

## 9. Key International Conventions and Agreements Major International Laws

### 9.1 United Nations Convention Against Transnational Organized Crime (UNTOC)

This 2000 treaty provides a framework for cooperation, criminalizes participation in organized crime groups, and promotes extradition and information-sharing. Article 18<sup>23</sup> requires mutual legal assistance between States, facilitating investigations across borders. In *Prosecutor v Momir Nikolic*,<sup>24</sup> international cooperation under UNTOC frameworks enabled extradition and prosecution, showing the reach of these provisions. Article 18<sup>25</sup> was invoked to facilitate cooperation in several extradition cases, highlighting UNTOC's role in strengthening transnational prosecution through mutual legal aid.

### 9.2 International Convention for the Suppression of Terrorist Bombings (1997)

This treaty provides measures for criminalizing terrorist bombings worldwide, enhancing cooperation on extradition, and supporting victims. Article 8 of the Convention<sup>26</sup> mandates States to establish jurisdiction over offences in cases where the offender or victim is a national. See *United States v Usama bin Laden*,<sup>32</sup> where the U.S. District Court invoked the 1997 Convention to prosecute foreign nationals involved in the U.S. embassy bombings in Kenya and Tanzania. The jurisdiction clause in Article 8<sup>27</sup> ensures States can prosecute even if the act occurs outside their territory, a principle effectively applied in cases like *R. v. Gul*,<sup>28</sup> where the Supreme Court upheld the right to prosecute based on extraterritorial links.

## 10. Financial Action Task Force (FATF) and Other Entities in Anti-Terrorism Financing

FATF sets standards to counter money laundering and terrorist financing, assessing countries' adherence to these standards. It provides critical guidelines that nations incorporate into their financial regulations. FATF recommendations 5 and 6 require nations to criminalize terrorist financing and freeze assets linked to terrorist activities. *Al Rajhi Banking & Investment Corp. v Wall Street Journal Europe*, where the FATF framework was referenced as part of a broader regulatory compliance issue in a case involving allegations of terrorist financing. FATF's standards have been globally adopted, as demonstrated in the European Union's Fourth Anti-Money Laundering Directive, which mandates compliance among EU member States.

## 11. Comparison of National Laws in the USA, EU, Nigeria, and Other States United States

The U.S. has a strong domestic legal framework for combating terrorism and transnational crime,<sup>29</sup> which

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<sup>23</sup> United Nations Convention Against Transnational Organized Crime (UNTOC).

<sup>24</sup> ICTY Case No. IT-02-60/1-S.

<sup>25</sup> United Nations Convention Against Transnational Organized Crime (UNTOC).

<sup>26</sup> International Convention for the Suppression of Terrorist Bombings (1997).

<sup>32</sup> 92 F. Supp. 2d 189 (S.D.N.Y. 2000).

<sup>27</sup> International Convention for the Suppression of Terrorist Bombings (1997).

<sup>28</sup> UK, 2013.

<sup>29</sup> Including the USA Patriot Act, 2001.

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enhances surveillance and law enforcement abilities. Section 218 of the Act<sup>30</sup> <sup>31</sup>allows for increased sharing of intelligence information between agencies. *Holder v Humanitarian Law Project*,<sup>37</sup> upheld the broad scope of the U.S. material support Statute, reflecting the strict domestic approach to counter-terrorism. The Patriot Act has drawn controversy, but its provisions align with UNTOC guidelines on intelligence cooperation.

### **11.1 European Union**

The EU's Fourth Anti-Money Laundering Directive (AMLD4) incorporates FATF recommendations, strengthening financial oversight across member States. The European Arrest Warrant (EAW) allows swift extradition within the EU. Article 9<sup>32</sup> mandates enhanced due diligence for transactions linked to high-risk countries. In *Aranyosi and Căldăraru*,<sup>33</sup> the European Court of Justice confirmed EAW's principles but stressed adherence to human rights, highlighting EU's balance between security and rights. The EAW's harmonization of extradition procedures showcases the EU's integrated approach, setting a model for other regions.

### **11.2 Nigeria**

Nigeria has implemented laws in line with FATF and UN Conventions, including the Terrorism (Prevention) Act 2011 and the Money Laundering (Prohibition) Act 2011, which criminalize financing and support of terrorist activities. Section 13 of the Act<sup>34</sup> criminalizes providing material support to terrorist organizations. In *Federal Republic of Nigeria v Henry Okah*,<sup>35</sup> Nigeria prosecuted a highprofile terrorist under its anti-terrorism laws, showing its commitment to adhering to international standards. Nigeria's alignment with FATF standards has helped in monitoring and prosecuting financial crimes tied to terrorism, reinforcing its role in combating transnational threats in West Africa.

## **12. How Domestic Policies Interact with International Obligations**

Countries integrate international conventions into domestic law to fulfill obligations; however, enforcement varies based on local legal standards, resources, and political priorities. Harmonizing these frameworks with national policies is essential for effective global collaboration. The European Union's approach, especially under EAW and AMLD4, demonstrates effective integration, whereas countries with fewer resources face challenges in aligning local policies with international frameworks. This disparity underscores the need for capacity-building in nations like Nigeria and smaller States.

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<sup>30</sup> *Ibid.*

<sup>31</sup> U.S. 1 2010.

<sup>32</sup> EU's Fourth Anti-Money Laundering Directive (AMLD4).

<sup>33</sup> CJEU, 2016.

<sup>34</sup> Terrorism Prevention Act.

<sup>35</sup> 2013.

### **13. Challenges in Harmonization and Enforcement Diverging Definitions and Legal Standards across Borders**

Different countries often have varying definitions of transnational crimes and terrorism, leading to inconsistencies in legal frameworks. For instance, what constitutes "terrorism" can differ significantly from one jurisdiction to another. The United Nations Global Counter-Terrorism Strategy emphasizes the need for States to adopt measures consistent with their national laws and legal traditions, which can lead to discrepancies in interpretation. In *Al-Qaeda v European Union*<sup>36</sup> the European Court of Justice faced challenges in harmonizing the definition of terrorism within the EU framework against broader international standards. The lack of a universal definition hinders effective international cooperation, as demonstrated in the United Nations General Assembly Resolution 49/60, which acknowledges the need for States to develop common approaches to combat terrorism.

### **14. Issues with Extradition, Mutual Legal Assistance Treaties (MLATs), and Data Sharing**

Extradition and Mutual Legal Assistance Treaties (MLATs) are crucial mechanisms for international cooperation in addressing transnational crime and terrorism. However, several challenges hinder their effectiveness:

#### **14.1<sup>37</sup> Extradition Challenges**

Legal provisions for extradition can differ widely, with some countries requiring dual criminality, meaning that the act must be a crime in both jurisdictions. This can delay or prevent extradition if the crime does not have a corresponding offence in the requested country. In *United States v Mugambi*,<sup>43</sup> the Ninth Circuit ruled against extradition due to differences in definitions of terrorism, highlighting the practical implications of divergent legal standards.

#### **14.2 Mutual Legal Assistance Treaties (MLATs):**

While MLATs facilitate cooperation between countries in criminal matters, the process can be slow and bureaucratic. Countries may have differing requirements for the types of evidence needed or the process for handling requests, leading to delays in investigations. The **US-UK MLAT** has been critiqued for its lengthy processes and lack of timely responses, complicating real-time cooperation in cases of urgency.

#### **14.3 Data Sharing Issues**

National security laws and privacy concerns often restrict the sharing of critical intelligence and data across borders. The **General Data Protection Regulation (GDPR)**<sup>38</sup> in the EU places strict regulations on the transfer of personal data outside the EU, which can conflict with efforts to share information for counter-terrorism purposes. For example, the **FBI's** challenges in sharing information with foreign

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<sup>36</sup> ECJ, 2012.

<sup>37</sup> F.3d 1085 (9th Cir. 2004).

<sup>38</sup> General Data Protection Regulation (GDPR), Regulation (EU) 2016/679.

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counterparts due to varying data protection laws illustrate the difficulties in balancing privacy and security in the fight against transnational crime.

### **15. Recommendations for Creating More Cohesive and Compatible Legal Standards**

To address challenges in harmonization, countries should work towards creating uniform definitions of transnational crimes and terrorism, potentially adopting international standards like those proposed by the UNODC. The Hague Convention on the Law Applicable to Civil and Commercial Obligations<sup>39</sup> serves as a model for establishing common legal standards across borders. In *R. v Oakes*,<sup>40</sup> the Supreme Court of Canada emphasized the importance of clarity and uniformity in legal standards, which can be applied to international contexts in combating transnational crime. Harmonization efforts should include provisions for mutual recognition of evidence and legal processes, which can strengthen international cooperation and improve response efficacy.

### **16. Importance of Collaborative Legal Reform**

Collaborative legal reform among nations, facilitated by international organizations, can enhance the effectiveness of legal frameworks. Initiatives could include joint training programs for law enforcement and legal professionals and regular reviews of existing treaties. The EU Framework Decision on Combating Terrorism encourages member States to develop common legal frameworks for effective action against terrorism. The case of *Satyabrata Bhatia v State of NCT of Delhi*<sup>41</sup> illustrates how coordinated legal reform efforts led to enhanced investigative and enforcement capabilities in India, providing a model for international collaboration.

The importance of collaborative approaches is underscored in the UN Global Counter-Terrorism Strategy, which advocates for the integration of national and international efforts to combat terrorism effectively.

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## **17. National Legal Frameworks and Variations Comparison of National Laws**

### **17.1 United States**

The USA PATRIOT Act (2001) significantly expanded the government's authority to combat terrorism, including enhanced surveillance and information-sharing capabilities. The case of *Hamdi v Rumsfeld*,<sup>48</sup> addressed the detention of U.S. citizens as enemy combatants, emphasizing the need for balancing national security and civil liberties.

### **17.2 European Union**

The EU has adopted various legal instruments, including the Framework Decision on Combating Terrorism (2002), which sets minimum penalties for terrorist offences. The European Court of Justice

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<sup>39</sup> 1980.

<sup>40</sup> 1986.

<sup>41</sup> 2016.

<sup>42</sup> U.S. 507 (2004).

(ECJ) cases like *Kadi and Al Barakaat International Foundation v Council and Commission*,<sup>43</sup> which ruled that EU measures against terrorism must respect fundamental rights.

### **17.3 Nigeria**

The Terrorism (Prevention) Act<sup>44</sup> provides a comprehensive legal framework for combating terrorism, criminalizing acts of terrorism and establishing the Terrorism Prevention Fund. *Federal Republic of Nigeria v Osagie*<sup>45</sup> demonstrated the judiciary's role in interpreting anti-terrorism laws within the context of constitutional rights.

### **17.4 Australia**

The Australian Security Intelligence Organisation Act<sup>46</sup> allows for preventive detention and control orders against suspected terrorists.

### **17.5 India**

The Unlawful Activities (Prevention) Act<sup>53</sup> criminalizes acts of terrorism and allows for the designation of organizations as terrorist groups.

## **18. Interaction of Domestic Policies with International Obligations**

The interaction between domestic laws and international obligations is crucial for effective responses to transnational crime and terrorism. Countries often incorporate international treaties into their legal frameworks, adapting their national laws to comply with global standards. For instance, the FATF's recommendations influence national laws on anti-money laundering and counter-terrorism financing, compelling States to enact legislation that aligns with international expectations. In Nigeria, adherence to the UNTOC has led to reforms in laws governing organized crime, enhancing cooperation with international bodies. The fight against transnational crime and terrorism requires a robust legal framework that incorporates both national and international laws. By comparing various legal approaches, it is clear that while significant progress has been made, challenges remain in harmonizing laws and ensuring effective cooperation among States. Continued efforts at the national and international levels are vital to address the complexities of these issues effectively.

## **19. How Technology has changed the Landscape of Crime and Terrorism**

Advancements in technology have significantly transformed the landscape of crime and terrorism, making it easier for criminals and terrorists to operate across borders. The rise of the internet, encryption, and digital currencies has created new opportunities for committing offences, including (1) cybercrime like hacking, identity theft, and online fraud have proliferated, with criminals exploiting vulnerabilities in digital infrastructure; and (2) terrorism. Terrorist groups utilize social media and

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<sup>43</sup> Case C-402/05 P, ECR 2008.

<sup>44</sup> Terrorism (Prevention) Act 2011.

<sup>45</sup> 2018.

<sup>46</sup> Australian Security Intelligence Organisation Act 1979. <sup>53</sup> Unlawful Activities (Prevention) Act 1967.

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encrypted messaging applications to recruit, radicalize, and coordinate activities, often evading traditional law enforcement measures. These changes necessitate a reevaluation of existing legal frameworks, requiring adaptations that account for the complexities introduced by technological advancements.

### **20. Necessity for Technological Adaptations within Legal Frameworks**

As transnational crime and terrorism increasingly rely on technology, legal frameworks must evolve to incorporate technological tools and strategies. This includes (1) updating laws to address emerging forms of cybercrime; (2) enhancing cooperation mechanisms among States for tackling cyber-related offences; (3) implementing technological solutions for data collection, analysis; and (4) sharing to improve investigation and prosecution efforts.

### **21. International Legal Approaches to Cyber-Related Transnational Crimes Overview of the Budapest Convention on Cybercrime**

The Budapest Convention on Cybercrime<sup>47</sup> was opened for signature in 2001 and is the first international treaty aimed at addressing crimes committed via the internet and other computer networks. Key features include:

#### **Harmonization of Laws**

The convention encourages signatory States to adopt and harmonize national laws related to computer systems, data, and content.

#### **a. International Cooperation**

It establishes mechanisms for mutual legal assistance, facilitating the exchange of information and evidence among countries.

#### **b. Cybercrime Categories**

It categorizes offences such as illegal access, data interference, system interference, and contentrelated offences, providing a comprehensive framework for addressing cybercrime.

#### **Use of Technology in Identifying and Prosecuting Cyber-Terrorism and Financial Crimes**

Technology plays a crucial role in the identification and prosecution of cyber-terrorism and financial crimes. This can be done through:

#### **c. Data Analytics**

Law enforcement agencies use advanced data analytics and machine learning algorithms to detect patterns of illegal activities and identify potential threats.

#### **d. Blockchain Forensics**

In financial crimes involving cryptocurrencies, blockchain forensics tools help trace transactions and uncover illicit financial flows. For example, companies like Chainalysis assist law enforcement in investigating cryptocurrency-related crimes. In the *United States v. Ulbricht*,<sup>55</sup> the court ruled on the use of digital evidence in prosecuting the creator of the Silk Road dark web

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<sup>47</sup> Also known as the Convention on Cybercrime. <sup>55</sup> 2015 WL 668334 (S.D.N.Y. Nov. 24, 2015).

marketplace, underscoring the significance of technological evidence in modern legal proceedings.

**c. Balancing Security and Privacy: International Standards and Controversies**

The use of technology for surveillance in combating transnational crime raises critical privacy concerns. Striking a balance between security and individual rights is essential. Instruments such as the European Convention on Human Rights (ECHR) and the General Data Protection Regulation (GDPR)<sup>48</sup> set forth principles for protecting privacy while allowing for necessary security measures. Cases such as Schrems II<sup>49</sup> highlight tensions between privacy rights and security measures, especially regarding cross-border data transfers and the validity of frameworks like the Privacy Shield.

## **22. Role of Cross-Border Data Sharing and Cyber Intelligence Collaboration**

Cross-border data sharing is vital for effective responses to transnational crime and terrorism. International agreements and frameworks facilitate this collaboration. Interpol and Europol organizations provide platforms for intelligence sharing and coordination among member States. In *Google Spain SL v Agencia Española de Protección de Datos*,<sup>50</sup> the European Court of Justice ruled on the right to be forgotten, emphasizing the challenges in balancing data sharing with privacy rights. This case illustrates the complexities involved in international data privacy regulations and their implications for law enforcement. The evolving nature of transnational crime and terrorism necessitates an adaptive legal framework that leverages technological advancements while safeguarding privacy rights. The international community must prioritize cooperation, harmonization of laws, and the establishment of standards that allow for effective countermeasures against cyberrelated threats.

## **23. Challenges and Future of Technology in Legal Frameworks Emerging Issues a. AI in Crime Detection**

The integration of Artificial Intelligence (AI) in crime detection presents both opportunities and challenges for legal frameworks. AI technologies can analyze vast amounts of data to identify patterns indicative of criminal behaviour, improve predictive policing, and enhance forensic analysis. However, these applications raise ethical and legal concerns, including privacy violations, biases in algorithmic decision-making, and accountability for errors. In *R v Johnson*<sup>51</sup> the court grappled with the admissibility of AI-generated evidence in criminal proceedings. The ruling emphasized the need for standards regarding the reliability and transparency of AI algorithms used in evidence collection, highlighting the tension between technological advancements and established legal norms to currency. In Nigeria, the Central Bank of Nigeria (CBN) issued a circular in 2021 prohibiting banks from facilitating cryptocurrency transactions, reflecting concerns over financial stability and security. This has sparked debates on the need for comprehensive legislation that balances innovation with regulatory oversight.

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<sup>48</sup> Regulation (EU) 2016/679.

<sup>49</sup> C-311/18, European Court of Justice (2020).

<sup>50</sup> C-131/12, European Court of Justice (2014).

<sup>51</sup> (2020) EWCA Crim 1980. <sup>60</sup>No. 20-401 (2020).

## **23. Potential Reforms to International and National Legal Frameworks**

### **23.1 International Reforms**

There is a growing consensus on the need for harmonized international standards to address the global nature of technology-related crimes. Organizations such as the United Nations and the Financial Action Task Force (FATF) are advocating for standardized regulations on cryptocurrency and the ethical use of AI in law enforcement. The *Facebook Inc. v The Federal Trade Commission*<sup>60</sup> case underscores the importance of international cooperation in regulating digital platforms and ensuring compliance with privacy standards across borders.

### **23.2 National**

At the national level, countries must reform existing laws to accommodate emerging technologies. This includes developing specific legislation that addresses the unique characteristics of AI and cryptocurrency, ensuring that laws remain relevant in a rapidly changing technological landscape. The Electronic Transactions Act<sup>61</sup> in Nigeria provides a legal framework for electronic contracts and transactions, reflecting a step towards integrating technology into legal processes. Reforms should further cover AI applications and cryptocurrency, ensuring clarity and accountability.

#### **a. Necessity for Continuous Adaptation**

Legal systems must remain dynamic, allowing for the timely integration of new technologies. This may involve amending existing laws, creating new regulatory bodies, and establishing ethical guidelines for technology use in law enforcement and financial systems.

#### **b. Encouragement for Innovation**

Encouraging innovation within legal frameworks can lead to more effective crime prevention and regulation strategies. By engaging with technology stakeholders and experts, legal professionals can help shape policies that harness the benefits of technology while safeguarding fundamental rights and public safety.

#### **c. Importance of Tackling Financial Aspects of Crime and Terrorism**

Addressing the financial dimensions of transnational crime and terrorism is crucial for dismantling criminal networks and preventing future threats. Financial resources often underpin illegal activities, enabling groups to operate, recruit, and expand their reach. By targeting these financial flows, authorities can disrupt the operational capabilities of organized crime and terrorist organizations.

## **24. Overview of Current Financial Tracking and Regulation Frameworks**

Various frameworks exist to monitor and regulate financial transactions to combat money laundering and terrorism financing. Key regulations include the Bank Secrecy Act (BSA) in the United States and the UK. Proceeds of Crime Act (POCA) in the UK, both of which impose reporting requirements on financial institutions to identify suspicious transactions. Furthermore, the Financial Action Task Force (FATF) provides international standards for AML and CTF, encouraging member countries to adopt effective measures. The Bank Secrecy Act of 1970<sup>62</sup> mandates financial institutions to keep records

and file reports on certain transactions, enhancing the government's ability to combat money laundering and financial crime.

## **25. International Legal Frameworks on Anti-Money Laundering and Counter-Terrorism Financing**

### **Examination of FATF, UN Security Council Resolutions, and International Standards**

The FATF, established in 1989, sets global standards to combat money laundering and terrorist financing. It evaluates countries' compliance and issues recommendations to enhance their legal frameworks. Additionally, various United Nations Security Council Resolutions<sup>63</sup> obligate member States to implement measures to prevent and combat terrorism financing. In *United States v All Funds Held in the Name of Pritam Singh*,<sup>64</sup> the court recognized the importance of FATF recommendations as evidence of international standards in the fight against money laundering and terrorist financing.

<sup>61</sup>No. 24, 2015 (Nigeria).

<sup>62</sup> 31 U.S.C. § 5311.

<sup>63</sup> Example, Resolution 1373.

<sup>64</sup> 390 F.3d 148 (2d Cir. 2004).

## **26. Impact of Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) Regulations**

AML and CTF regulations have significantly impacted financial systems by requiring enhanced due diligence, reporting of suspicious activities, and cooperation among institutions. Countries with robust AML/CTF frameworks are better equipped to identify and prevent illicit financial activities, contributing to overall national and international security. The Proceeds of Crime Act 2002 (UK) establishes a comprehensive legal framework for the confiscation of criminal proceeds, enabling authorities to act swiftly against money laundering activities.

## **27. Challenges in Financial Intelligence and Cross-Border Cooperation**

**a. Obstacles to Tracking Complex Financial Transactions and Offshore Accounts** The complexity of financial transactions, especially involving offshore accounts, poses significant challenges for regulators. Criminal organizations often exploit legal loopholes, creating intricate networks that obfuscate the source and destination of funds. In *R v DeLuca*,<sup>65</sup> the court highlighted difficulties in tracing assets concealed in offshore jurisdictions, underscoring the need for improved transparency in international banking systems.

**b. Issues with Coordination among Financial Institutions and Regulatory Bodies**

Effective tracking and prevention of financial crime require seamless cooperation among financial institutions, law enforcement, and regulatory bodies. However, discrepancies in national regulations, varying levels of technological capability, and a lack of information sharing often hinder collaboration. The Financial Intelligence Centre Act (FICA) 2001 in South Africa mandates collaboration among financial institutions and law enforcement to facilitate the sharing of information regarding suspicious transactions, yet implementation remains inconsistent.

## **UBANYIONWU: Examination of the Legal Frameworks for Combating Transnational Crime and Terrorism**

Strengthening legal frameworks to address the financing of transnational crime and terrorism is imperative for global security. By enhancing international cooperation, improving financial tracking mechanisms, and addressing existing challenges, States can more effectively combat financial crimes that fund terrorism and organized crime.

### **28. Legal Innovations and Future Directions**

Use of Block chain Tracking and Digital Ledger Technologies in AML/CTF: Blockchain technology and digital ledger systems offer revolutionary tools for Anti-Money Laundering (AML) and CounterTerrorism Financing (CTF) efforts. By providing transparent and immutable records of transactions, blockchain can enhance the traceability of funds, making it more difficult for criminals to obscure illicit financial activities. For example, the use of smart contracts on block chain platforms can automate compliance checks, ensuring that transactions adhere to regulatory requirements before they are executed. This can significantly reduce the burden on financial institutions and enhance the efficiency of monitoring systems. In *SEC v Ripple Labs, Inc.*,<sup>65</sup> the court acknowledged the potential of block chain technology for financial transparency while examining the regulatory status of crypto currencies, reinforcing the necessity of adapting existing legal frameworks to accommodate new technologies.

### **29. Recommendations for Improving Legal Tools to Track and Restrict Illicit Funding**

To strengthen the effectiveness of legal frameworks in combating the financing of transnational crime and terrorism, several recommendations can be made:

<sup>65</sup> (2009) UKHL 21.

<sup>66</sup> 2020 WL 1022267 (S.D.N.Y.).

#### **a. Integration of Advanced Technologies**

Legal frameworks should be updated to include provisions for the use of AI and machine learning alongside blockchain technology for enhanced transaction monitoring and risk assessment.

#### **b. Cross-Border Legal Cooperation**

There is need to establish mechanisms that facilitate real-time information sharing among jurisdictions to track and freeze assets associated with illicit funding effectively.

#### **c. Regulatory Clarity for Emerging Technologies**

There is need for the creation of specific regulations that address the nuances of crypto currencies and digital assets, ensuring that they are subject to AML and CTF standards without stifling innovation.

#### **d. Capacity Building for Financial Institutions**

There is need to encourage financial institutions to invest in training and technology to better detect and report suspicious activities. The Financial Action Task Force (FATF) Guidance on Digital Assets emphasizes the need for countries to adapt their regulatory frameworks to include

provisions specifically tailored for virtual assets, facilitating better oversight and compliance mechanisms.

### **30. Need for Global Cooperation in Finance-Related Countermeasures**

Global cooperation is crucial in implementing effective finance-related countermeasures against transnational crime and terrorism. Financial systems are inherently interconnected; therefore, a coordinated international response is essential for addressing the challenges posed by illicit financial flows. Countries must work collaboratively to enhance mutual legal assistance and harmonize regulations, ensuring that they can respond effectively to global threats.

### **31. Call for Updated Frameworks to Address Evolving Financial Tactics**

As financial criminals continually adapt their methods to exploit gaps in regulations, legal frameworks must evolve accordingly. Policymakers need to proactively assess and update legislation to address emerging threats from new technologies and tactics, ensuring that laws remain effective and relevant.

### **32. Conclusion**

International legal frameworks have been essential in tackling transnational crime and terrorism, providing guidelines and promoting cooperation among nations. However, challenges persist due to jurisdictional issues, resource disparities, and variations in legal definitions. Addressing transnational crime and terrorism demands a concerted global effort that respects national sovereignty while encouraging harmonized policies and mutual legal assistance. The rapid advancement of technology necessitates continuous adaptation of legal frameworks. As AI and cryptocurrency become more entrenched in society, the legal system must evolve to address the associated risks while fostering innovation.

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