

The Israeli Legislation against Terrorist Financing

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INTRODUCTION

States throughout the world have become pre-occupied with terrorism on a daily basis. The image of terrorism, enormous in its scope, organisation and financial resources, has meant that we can no longer turn a blind eye to it. International terrorism endangers human life and the lives of nations themselves, threatening global peace and security.

The state of Israel has been on the front line of terrorism since its founding. The only democracy in the Middle East has for many years faced deadly terrorist attacks and has conducted a special campaign against terror through extensive legislation and uncompromising enforcement. This is not a simple campaign. It is being undertaken out of a desire to safeguard human rights and respect for individual freedoms. Alongside considerations of security and the maintenance of public safety and public order are additional values which every modern society must respect. Finding the balance between them is not easy and it is becoming increasingly difficult the more menacing the terror.¹

The escalation in terrorist attacks around the world in recent years has placed the need for more effective methods of combating terrorist organisations on the international agenda. Special emphasis has been placed on dealing with the economic aspect of this issue: the financing of terrorism and the transfer of funds for terrorist activities.² In this context it also seems appropriate to follow in the track of the money. Efforts are being made throughout the world to expose funds and assets connected with terrorism,³ and this is also the situation in Israel.

ISRAELI LAW

Israel has a number of laws dealing with terrorism.⁴ Nonetheless, there was recently a desire to elaborate on the legislation in this area. The existing provisions were not originally designed to deal with terrorism unrelated to the state of Israel, and are thus incompatible with the international approach.⁵ Furthermore, the subject of financing terrorism *per se* had not been broadly referred to in the legislation. Israel signed the UN International Convention for the Suppression of the Financing of Terrorism⁶ and later ratified it.⁷

Israel is clearly subject to the Resolutions of the UN Security Council on terrorist financing, including Resolution 1373 of 28th September, 2001,⁸ and acts in accordance with the Rules determined by the Financial Action Task Force (FATF)⁹ in this area. These international steps obligated Israel to enact special legislation on terrorist financing.

The object of this paper is to review the principal Israeli legislation regulating terrorist financing.

THE DEFENCE (EMERGENCY) REGULATIONS 1945

The Defence Regulations are an inheritance from the pre-state days of British rule in this region and were intended to apply in a state of emergency.¹⁰ They have the normative status of primary legislation and remain in effect to the present day.¹¹

Regulation 84(1) defines a 'prohibited association' as a body of persons, incorporated or unincorporated, which encourages or incites the commission of any of the following prohibited acts, or which has committed, been involved in or responsible for prohibited acts: the overthrow of the constitution of Israel or the government of Israel by violence; causing hatred, contempt or the incitement of hostility against the government or any of its ministers;¹² the destruction of or damage to property of the state; acts of terrorism against the government or its employees; and any body of persons declared by the Minister of Defence to be a prohibited association, including any branch, centre, committee, group, party faction or institution of any such body.

The trend in the case law, and in particular the rulings of the military courts, indicates a tough line in implementation of the Regulations.¹³ It has been held that an entity shall even be regarded as a prohibited association where it has no formal effects or organisational or physical infrastructure. It is sufficient for its members to execute their terrorist thoughts by words or deeds. The intent is to any body of persons, even where it is not incorporated, has no name, constitution or rules of association, and even where its views are disseminated in any manner whatsoever and not specifically in any formal written

manner. There is no requirement for any firm ideology, rigid hierarchy, large membership or any ability to act even if its members are caught. There does not have to be any connection with other organisations. However, there does need to be a minimum number of two members, the knowledge that each person is also acting on behalf of the others, and a common goal serving for propaganda and for acts of terror.¹⁴ This is so even where the organisation has not commenced actual operations and all its activities are only in the early planning stage.¹⁵

The courts have ruled that the Defence Regulations should be interpreted according to their legislative intent, which is to protect state security and public safety. However, the present interpretation of the Regulations is not the interpretation they would have had at the time of their enactment. The Regulations are currently part of the laws of a democratic state and should be interpreted against the background of the basic principles of the Israeli legal system. Thus, when interpreting the expression 'prohibited association', the balance needs to be found between the need to prevent attacks on state security and the outlawing of associations designated for the perpetration of terrorist attacks, and protecting freedom of association. However, where an association endangers the very essence of public safety, turning the inherent danger into an alarming reality, these are serious considerations which should prevail over freedom of association. Furthermore, it may be argued that an association such as this will not be covered by freedom of association, thus there is no need to examine the scope of the interpretative protection of the term 'association'.¹⁶

Regulation 84(2) provides the consequences of a declaration by the Minister of Defence of a prohibited association: any person in possession of any property of an association or *owing it money* shall notify the Minister of Finance thereof within 24 hours and shall not transfer possession of the property *or the monies* and shall not perform any act with respect thereto except at the instruction of the Minister of Finance. The Minister of Finance may *confiscate any property or monies* of an association and order that they be transferred to the Minister of Defence. The Minister of Finance may authorise any person to enter any place and search and seize any property. Any person is obligated to hand over any information to the Minister of Finance or any person acting on his behalf. Any person in breach of this Regulation commits an offence under the Regulations.

Regulation 84(2) is pertinent to the issue of terrorist financing because it applies to a person in possession of property and monies owed to a terrorist organisation, and even enables the confiscation thereof. However, it seems that it is aimed only at terrorism against the government of Israel. In any event, it only applies to a terrorist organisation which has been declared by the Minister of Defence to be a prohibited association.

Regulation 85 provides a series of offences relating to a prohibited association, with the penalty for such offences being imprisonment for up to ten years and/or a fine. They include: *possession of property, including any account belonging to the association* or issued by it or relating to it; *collection or demand for a donation or support for the association*.

Regulation 85 expressly refers to financing the organisation and therefore will also apply to the financing of organisations engaged in terrorism. However, it prescribes only the commission of an offence, without providing the administrative tools to handle the monies or property. The option of confiscating property by virtue of Regulation 84(2) applies only to an association declared by the Minister of Defence to be a prohibited association.

PREVENTION OF TERRORISM ORDINANCE, 5708–1948

The Prevention of Terrorism Ordinance was enacted upon the formation of the state and as primary legislation still serves when dealing with terrorism. Under section 24, the Ordinance is to remain in force only while a state of emergency continues to exist in the state.

'Terrorist organisation' is defined in section 1 of the Ordinance as 'a body of persons resorting in its activities to acts of violence calculated to cause death or injury to a person or to threats of such acts of violence'. This definition shows that a terrorist organisation is an active group that has already begun to use terrorist measures to attain its objectives.¹⁷

Section 7 of the Ordinance provides that in order to prove that a particular body of persons is a terrorist organisation, it shall be sufficient to prove one of the following: (1) one or more of its members, on behalf of or by order of that body of persons, committed acts of violence calculated to cause death or injury to a person or made threats of such acts of violence; or (2) the body of persons, or one or more of its members on its behalf or by its order, has or have declared that the body of persons is responsible for acts of violence calculated to cause death or injury to

a person or for threats of such acts of violence, or has or have declared that the body of persons has been involved in such acts of violence or threats.

The courts have interpreted the term 'terrorist organisation' in a similar manner to the interpretation adopted with respect to the Defence Regulations. It has been held that the intent is not specifically to a formal organisation founded on democratic principles. It is sufficient for those persons organised among themselves as collaborators, where each knows that he or she is carrying out his or her function not only on his or her own behalf but also on behalf of the others, with a common purpose, and he or she knows or ought to know that by doing so he or she becomes a member of the organisation and a participant in its activities.¹⁸

Furthermore, under s. 8 of the Ordinance, the government may declare that a particular body of persons is a terrorist organisation, which may serve as proof in any legal proceeding, unless the contrary is proved. In other words, despite the existence of such a declaration, the court has authority, after hearing the evidence, to determine otherwise. The burden of proof to rebut the presumption is on the organisation. However, in practice these declarations are not rebutted¹⁹ and the executive has been given complete autonomy. The section does not obligate the government to state any reasons whatsoever at the time of the declaration²⁰ or at the legal hearings, and also does not restrict the declaration to a specific time or demand its re-evaluation every few years. In view of the fact that this is a constitutive declaration resulting in a severe criminal penalty, the broad discretion given to the government, and through it to the entire political and defence establishment, is remarkable.²¹ Courts are reluctant to intervene in governmental discretion.²² Over the years various organisations, both Palestinian and extreme right-wing Jewish organisations, have been declared as terrorist organisations pursuant to s. 8.²³

In the *Federman* case, the petitioner contended that the declaration was a serious infringement of his and the movement's freedom of expression, as well as of freedom of association. The High Court of Justice responded that the desirable formula for balance with respect to the Prevention of Terrorism Ordinance is a perpendicular balance, *viz.*, the interest in preventing terrorism will prevail over these freedoms, provided however that the requirements with respect to the probability and intensity of the infringement have been satisfied.²⁴

The Prevention of Terrorism Ordinance prescribes the offence of membership in a terrorist organisation, with a penalty of up to five years' imprisonment (s. 3). The term 'member of a terrorist organisation' is defined in s. 1 of the Ordinance and also includes a person who *collects monies or articles for the benefit of an organisation*. Also in this context the courts have waived formal requirements. It has been held that an organisation does not need to have acknowledged acceptance procedures. It is sufficient if a person knows that he or she is performing his or her functions not only on his or her own behalf but also on behalf of others, with a common purpose, in order to be considered a member of an organisation.²⁵

A different offence is supporting a terrorist organisation (s. 4), which includes: *the provision of money or money's worth for the benefit of a terrorist organisation, and putting an article at the disposal of anyone in order that it may serve a terrorist organisation or a member of a terrorist organisation in carrying out an act on behalf of the terrorist organisation*. The penalty for such an offence is imprisonment for a term of up to three years and/or a fine.

The Ordinance is not satisfied with dealing with the direct perpetrators of violent acts operating on behalf of terrorist organisations. It also encompasses members of organisations which are not direct partners to the violent acts, as well as external supporters and backers. The Ordinance is aimed at preventing any activity of a terrorist organisation, including activity which may be normal and legitimate with respect to any other organisation, because the actual existence of a terrorist organisation constitutes a real danger to public safety. Any assistance to such an organisation allowing it to exist and operate constitutes a danger. It is clear that the prohibitions determined in the Ordinance severely infringe basic rights. In this regard they strike at the very essence of democracy. They therefore have no place in a democracy, unless the democracy is endangered and while it is endangered. Since terrorism is perceived as being an extreme expression of an ideological transgression, terrorism should not be permitted to hold a bomb in one hand, while waving the flag of human rights in its other hand.²⁶

Terrorist financing falls within ss. 3 and 4 of the Ordinance. A person collecting money for the benefit of an organisation commits the offence of membership in an organisation, even if he or she is not an official member of the organisation, while a person who 'only' donates money to the organisation

commits the less grave offence of supporting an organisation.

Section 5 of the Ordinance permits the District Court to *confiscate property and monies* of a terrorist organisation. In this context the section provides a rebuttable presumption that any property found in a place serving a terrorist organisation or its members as a place of action, meeting, propaganda or storage, regularly or on a particular occasion, and any property found in the possession or under the control of a member of a terrorist organisation, shall be considered the property of the organisation unless the contrary is proved. This presumption does not prevent the confiscation of other property of the organisation, such as monies of the organisation found in bank accounts in the name of the organisation or in the name of any other entity, provided however that it is proved that they are the property of the organisation.

PENAL LAW, 5737–1977

Section 145 of the Penal Law defines an ‘unlawful association’ in the following manner:

- (1) Any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates any of the following acts: the subversion of the political order of Israel by revolution or sabotage; the overthrow by force or violence of the lawful government of Israel or of any other state, or of organised government; the destruction or injury of property of the state or of property used in commerce within the state or with other countries.
- (2) Any body of persons, incorporated or unincorporated, which advocates or encourages the doing of any act having sedition as its declared or implied object.
- (3) A branch, centre, committee, group or faction of an unlawful association and any institution or school managed or controlled by it.
- (4) Any body of persons, incorporated or unincorporated, which is or appears to be affiliated with an organisation which advocates or encourages any of the doctrines or practices specified in this section.²⁷

The definitions in the first two alternatives are very similar to the definition of the term ‘prohibited association’ in the Defence Regulations; thus the interpretation given to that term may be used. ‘Unlawful

association’ is any association whose intent is to harm the legal regime of the state or its political order, in the broad meaning of those terms. The intent is to a group of more than one person, with the word ‘member’ indicating the existence of a tie of membership in connection with the unlawful purpose defined in the body of the section.²⁸ In contrast to the definition in the Prevention of Terrorism Ordinance, an association that has not yet begun to operate is also included within the ambit of the section.²⁹

The last two alternatives expand the application of the definition and clarify that also ‘branches’ of the association are included within its definition. The last alternative is particularly restrictive and provides an absolute offence that appearance is sufficient for it to be deemed an unlawful association.³⁰

Section 148 is particularly pertinent in the case of terrorist financing, by prescribing the offence of *contributions to unlawful associations*: a person who pays or solicits a membership fee or *contributes for or on account of an unlawful association* is liable to imprisonment for six months.

A membership fee is a fixed payment to an association, even if the person making such a payment is not a member of the association. On the other hand, a contribution is the random giving of money. The payment or contribution need not be made directly to representatives of the association, but may be made indirectly by depositing into its account. The offence also applies to a person soliciting payment or a contribution, even if the solicitation act did not succeed.³¹ In the absence of any requirement for the existence of a specific intent, the offence should be regarded as one of regular intent, and therefore ‘recklessness’ is sufficient basis for a conviction. However, with respect to solicitation, a specific intent to solicit is required, although with respect to the knowledge that an unlawful association is involved, it seems that recklessness is sufficient.³²

Under s. 150, an indictment on the above offences should not be filed, except by or with the consent of the Attorney General.³³ The policy of the High Court of Justice is not to intervene in the decisions of the Attorney General, except in exceptional cases.³⁴

PROHIBITION ON MONEY LAUNDERING LAW, 5760–2000

The Prohibition on Money Laundering Law is a recent law, comprehensively regulating the struggle against

money laundering in Israel,³⁵ including the laundering of terrorism funds. The Law came fully into force in March 2002. By virtue of the Law, a whole series of secondary legislation has also been enacted.

The Law prescribes three completely new offences in the Israeli statute book.

Section 3(a) of the Law provides the offence of money laundering, which is performing a property transaction on prohibited property with the object of concealing or disguising its source, the identity of the owners of the rights therein, its location, its movements or the performance of a transaction with respect to such property. The penalty for such an offence is ten years' imprisonment or a fine of NIS4m. 'Prohibited property' is defined in the section as property originating directly or indirectly in an offence, property used to commit an offence and property enabling the commission of an offence.³⁶ An 'offence' is one of the offences specified in the Schedule to the Law. Among these offences are also offences referred to above under the Defence Regulations and the Prevention of Terrorism Ordinance.³⁷ A 'property transaction' is defined more broadly as vesting or receipt of ownership of any right in property, whether or not for consideration, as well as a transaction with property amounting to delivery, receipt, holding, conversion, a banking transaction, brokerage, mixing the prohibited property with other property etc. For the purposes of the criminal intent for the offence, s. 5 of the Law provides that it is sufficient if the person performing the transaction knew the property was prohibited property, even if he did not know to which specific offence the property is connected. The laundering of monies originating in terrorism is thus an offence, as is the concealment of monies designated for terrorism. However, it is desirable to emphasise that the actual financing of terrorism is not an offence under the above Law.

Section 3(b) of the Law prescribes an additional offence of money laundering: a person performing a property transaction or delivering false information with the object of preventing any reporting as required under the Law, or to cause incorrect reporting shall be liable to ten years' imprisonment or a fine of NIS4m.

Section 4 of the Law provides an offence of 'performing a transaction with prohibited property': a person performing any property transaction knowing that it is prohibited property, and that such property falls within the property specified in the Schedule to the Law (such as *objets d'art*, precious stones, real

estate, antiquities etc and including monies and financial assets in an amount exceeding NIS4,000) shall be liable to seven years' imprisonment or a fine of NIS2m. The section goes on to state that the knowledge required is real knowledge, as opposed to wilful blindness.³⁸ It was also determined with respect to this offence that it is sufficient if the person performing the transaction knew that the property was prohibited property, even if he did not know to which specific offence the property is connected.

Section 6 exempts a person performing a transaction from criminal liability under the section if he has reported to the police about the transaction prior to performance and has acted in accordance with police instructions, or if he has reported to the police as soon as possible after performance of the transaction. With respect to a provider of financial services, the exemption from liability will apply to him if he complied with the obligation of reporting imposed on him in Chapter Three of the Law, as explained below.

Thus, a transaction in monies originating in terrorism or designated for terrorism is an offence if the person performing the transaction knew of their origin or their improper purpose and failed to report the transaction, on condition that the amount of such monies exceeds the above amount.

Chapter Three of the Law relates to 'providers of financial services': banks, insurance companies and insurance brokers, portfolio managers, provident funds, the Post Office Bank and providers of currency services.³⁹ The Law and the various Orders issued by virtue of the Law impose four obligations on providers of financial services:

- (1) An obligation of identification of customers and additional persons.
- (2) An obligation of reporting of two kinds. Objective reporting of a number of transactions exceeding a specific pecuniary amount, and subjective reporting of 'unusual' transactions.⁴⁰
- (3) Obligation to keep and maintain records.
- (4) In the case of a corporation — an obligation to appoint a person responsible for the prohibition of money laundering on behalf of the corporation.

Chapter Four of the Prohibition on Money Laundering Law prescribes an obligation to report on the entry into Israel and the departure from Israel of monies and cheques exceeding a sum of NIS80,000, whether they are carried, sent by mail or by any other method,

except by means of bank transfer, over which an obligation of reporting applies by virtue of Chapter Three of the Law. A breach of the obligation of reporting is an offence punishable by six months' imprisonment or a fine. A police officer or customs official has authority, without a judicial order, to seize the monies with respect to which the reporting was not performed.

By virtue of Chapter Eight of the Law, the Israel Money Laundering Prohibition Authority was set up at the Ministry of Justice, and a database was established to receive reports under the Law. Section 30 guarantees the right to privacy of any person with respect to whom information is found in the base and prohibits the transmission of information from the base, except in several exceptional cases. The section enables the transmission of information to the Israel Police and the Money Laundering Prohibition Authority in another country — for the purpose of combating money laundering — and to the General Security Service — *for the purpose of preventing and investigating the activities of terrorist organisations* or of harm to state security. It is therefore seen that the information in the database serves not only to combat money laundering but also in the war against terrorism.

In order to encourage the transmission of reports to the database, s. 24 of the Law provides that where a report is made under the provisions of the Law in good faith, it shall not be regarded as a breach of the duty of confidentiality and trust or of any other duty under the provisions of any law or agreement and there shall be no criminal, civil or disciplinary liability. Furthermore, a provision was enacted restricting the disclosure of the identity of the reporting entity.

Chapter Six of the Law deals with forfeiture of property and creates an innovative arrangement with the object of expanding the use of this effective mechanism. Where a person has been convicted of an offence under ss. 3 and 4 of the Law, the court shall order, unless it decides not to do so on special grounds to be recorded, in addition to any penalty, the forfeiture of any property of the convicted person amounting to the value of the property on which the offence was committed, property used in the commission of the offence or property which enabled the commission of the offence, or property obtained directly or indirectly from the commission of the offence. Under certain conditions property of any other person may also be forfeited (s. 21). Furthermore, the Law enables performance of forfeiture in civil proceedings under an order of the District

Court. This will be in a situation where a person suspected of committing an offence is not present permanently in Israel or cannot be found, and thus an indictment cannot be filed against him, or in the case where property is discovered after the conviction (s. 22). Terrorism monies may also be forfeited within the framework of the sections on forfeiture, upon the fulfilment of the necessary provisions.

The Prohibition on Money Laundering Law entered into force in March 2002, and has already been used in the war against terrorism. In May 2003, 15 prominent leaders of the Islamic Movement in Israel were arrested for transfers of monies from the Islamic Movement to Hamas. In addition to the arrests, an attachment was also imposed on the bank account of the Islamic Movement. The case involved the tremendous support given to families of Hamas activists who perpetrated or planned the perpetration of serious terrorist attacks in Israel, who were incarcerated or deported for the commission of acts of terrorism, or those who killed themselves in suicide bombings. The main source of financing for these funds was from donations coming from abroad. These funds were *prima facie* designated for civil humanitarian purposes, but it was suspected that the funds were also being indirectly transferred to the military branch of Hamas.⁴¹ The indictments also included offences against the Defence Regulations, the Prevention of Terrorism Ordinance and the Prohibition of Money Laundering Law. The Supreme Court held that even if the funds that were transferred were not directly designated for military terrorist activity, the aforesaid transfers of funds were encouragement or an incentive for terrorist activities exceeding general compliance with religious duties to support the needy.⁴²

The importance of the Prohibition of Money Laundering Law in the context of the war against terrorism is that even if the commission of the terrorist offences themselves cannot be proved, the suspects may be brought to trial for economic offences — laundering of terrorism funds. The receipt of money from terrorist organisations, the use and the transfer of such money to terror groups are all offences, if the requisite intent in ss. 3 or 4 of the Law has been satisfied.

COMBATING CRIMINAL ORGANISATIONS LAW, 5763–2003

The Combating Criminal Organisations Law is the most recent Law, which entered into force

immediately upon its enactment (June 2003). The object of the Law, as its name shows, is to combat the increasing phenomenon of criminal organisations.

A 'criminal organisation' is defined in section 1 of the Law as follows:

'An incorporated or unincorporated body of persons acting in an organised and continuous format for the commission of offences which, under the laws of Israel, fall within the category of a felony or the offences enumerated within the First Schedule which are not a felony (including an offence under section 4 of the Prevention of Terrorism Ordinance), except offences falling within the category of a felony enumerated within the Second Schedule; for this purpose, it is irrelevant —

- (1) whether or not the members of the organisation know the identity of the other members;
- (2) whether the composition of the members of the group is fixed or changing;
- (3) whether the aforesaid offences in the opening passage are committed or intended to be committed in Israel or abroad, provided however that they constitute offences both under the laws of Israel and under the laws of the place in which they were committed, or that under Israeli law, the Israeli laws apply to them, even if they are not offences under the laws of that place;
- (4) whether the organisation also commits lawful acts and whether it also acts for lawful purposes.'

Section 31 of the Law provides that for the purpose of proving a continuous and systematic format in which an organisation operates, evidence may be brought as to offences committed and acts perpetrated prior to the commencement of the Law, provided that evidence is brought as to the continuation of the activity of the organisation even after the commencement of this Law.

The Law is not restricted to combating organised crime.⁴³ According to the explanatory note to the Bill,⁴⁴ the Law would not be limited to organisations whose object was for economic profit, but would also apply to organisations acting on ideological grounds, such as *terrorist organisations*, provided that they satisfy the characteristics of an organised, systematic and continuous format. Evidence of this is, as stated, the inclusion of s. 4 of the Prevention of Terrorism Ordinance in the First Schedule to the Law.

The Law deals with two issues. First (Chapter Two) is the determination of offences and second (Chapters Three to Seven) is the forfeiture of property.

Section 2 of the Law determines the offence of 'activism in a criminal organisation', which also includes the person directly or indirectly *financing* activities of a criminal organisation, or *receives financing* for the purposes of operating the organisation, or decides with respect to the distribution of monies in a criminal organisation. The penalty for such an offence is ten years' imprisonment. In the case of a criminal organisation whose activities also include an offence for which the penalty prescribed exceeds 20 years' imprisonment, the penalty shall be 20 years' imprisonment.

Most of the sections of the Law are devoted to the issue of forfeiture and determine an arrangement which is even more progressive than the arrangement in the Prohibition on Money Laundering Law. The Law allows for forfeiture by the court in criminal proceedings after conviction (ss. 5–13, 18–20, 28–30 and 32), forfeiture by the court in civil proceedings not preceded by criminal proceedings (ss. 14–17, 18–20, 28–30 and 32), and the provision of temporary remedies prior to the performance of forfeiture, such as an attachment order, injunction, obligation to provide a surety on behalf of the accused person or any other person in possession of property or the provision of instructions on the interim administration of the property (ss. 21–27). It should be emphasised with respect to forfeiture in criminal proceedings that if the convicted person is convicted of an offence of heading a criminal organisation, his property in connection with another offence committed within the framework of the criminal organisation, as well as any property of the organisation itself, may also be forfeited (s. 8). Proof of the facts and conditions for the purpose of forfeiture shall be performed to the level required in a civil case (s. 12). It should be noted with respect to civil forfeiture that not only property in connection with the offence may be forfeited but also any other property of the organisation (s. 14).

THE PROHIBITION OF FINANCING TERRORISM BILL, 5763–2003⁴⁵

The various Laws presented above deal in one way or another with terrorism monies or the financing of terrorism, but the escalation in terrorism has called for the determination of even more effective methods of combating terrorism, and thus additional legislation is required. The original plan was to amend the

Prohibition on Money Laundering Law, to insert a chapter on the financing of terrorism and to implement several other necessary adaptations.⁴⁶ However, eventually it was decided to enact a separate Law. As of writing this article, the Prohibition of Financing Terrorism Bill has already passed the First Reading in the Knesset, and it can be assumed that it will shortly become binding law.

Section 49 of the Bill expressly clarifies that the provisions of the proposed Law are in addition to and shall not derogate from the provisions of any other Law.

Government declaration of an organisation or person engaging in terrorism

Chapter Three of the Law deals with the declaration of a person or organisation as engaging in terrorism. The declaration has implications with respect to the other provisions of the Bill, such as with respect to the new offences prescribed in the Bill and regarding the seizure of property. The object is to publish the declaration and bring it to the attention of the public, with the object of seizing the assets of the person or organisation mentioned in the declaration, and prevent citizens from creating any economic ties with the person or organisation.⁴⁷

As stated, Israel already has statutory provisions enabling a body of persons to be declared an unlawful organisation or terrorist organisation. The new proposal determines a new track for a declaration, in addition to the existing tracks. Under s. 8 of the Bill, the government may declare a body of persons to be 'an organisation engaged in terrorism' in two instances. The first instance is where the government has received information according to which the body of persons was declared in a foreign state to be an organisation engaged in terrorism, following proceedings taken in that state under its own laws.⁴⁸ The second instance is where the Security Council of the United Nations or any entity authorised by it, has determined that a specific body of persons is an organisation engaged in terrorism.⁴⁹ These instances are based on international cooperation.

An 'organisation engaged in terrorism' is defined in s. 1 of the Bill as 'a body of persons, incorporated or unincorporated, operating in order to commit a terrorist attack or to enable or promote the commission of a terrorist attack; for this matter it is irrelevant whether or not the members of the organisation know the identity of the other members, whether

the composition of the members of the organisation is fixed or varies, and whether the organisation also conducts legal activities and if it also operates for lawful purposes'. This definition is similar in essence to the definition of 'criminal organisation' in the Combating Criminal Organisations Law, *mutatis mutandis*.

An important innovation in the Bill is the possibility of declaring an individual to be a person engaged in terrorism. In various other countries the law recognised this possibility of also declaring individuals to be persons engaged in terrorism, *inter alia*, to prevent them from performing economic transactions with the object of committing acts of terrorism. Article 1(c) of the Security Council Resolution 1373 of 2001 provides that states are to also immediately freeze the assets and resources of individuals committing or attempting to commit acts of terrorism, or participating or assisting in the commission of acts of terrorism.⁵⁰ Accordingly, s. 8 of the Bill authorises the government to declare a person to be a 'person engaged in terrorism' in both instances in which a declaration may be made on an 'organisation engaged in terrorism', as well as in the case where the government has reasonable grounds to believe that a person is engaged in terrorism. Section 1 of the Law defines a 'person engaged in terrorism' as a person who engages in the commission of an act of terrorism or in the assistance or soliciting for the commission of an act of terrorism or a member of a terrorist organisation which is declared to be a declared terrorist organisation under the Defence (Emergency) Regulations or the Prevention of Terrorism Ordinance, or under this Law.

The Bill conforms to rules on natural justice. Under s. 9 of the Bill any entity which has been declared under the Bill to be engaged in terrorism may make an application to the special Advisory Committee to revoke the declaration. The Committee shall hear the application and shall bring its recommendation before the government. Under s. 10, the government may revoke the declaration made pursuant to the provisions of the Law in three cases. The first case is at the recommendation of the Advisory Committee. The second case is at the initiative of the government. The third case relates to a declaration made on the basis of a determination of a foreign state or the Security Council. Where the aforesaid entities have revoked their determination, the government shall also revoke its determination, unless there are other grounds for the declaration.

Offences under the Law

Section 2 of the Bill determines the offence of 'prohibition of financing terrorism' with a penalty of 10 years' imprisonment or a fine of NIS4m. The offence includes three alternatives.

The first alternative is the 'transfer of property to a person, placing property at the disposal of any person or raising property for any person, directly or indirectly, with the object that the property in question shall serve in the commission of an act of terrorism or shall enable the commission of an act of terrorism, or with the object of financing an act of terrorism, to encourage the commission of an act of terrorism or to remunerate a person for an act of terrorism, even if the person receiving the remuneration is not the person who committed the act of terrorism or intended its commission'.

With respect to intent, the section determines the following presumption: should property be transferred to any person in respect of whom a declaration was made pursuant to s. 8 that he is a person who engages in terrorism, there is a presumption that the offence was committed for one of the above objects, unless proved otherwise.

The term 'property' has been given a broad interpretation in s. 1 of the Bill, to include real property, personal property, monies and rights, including property which is the proceeds of such property, and any property deriving from or originating in the profits of such property.

The Bill does not define terrorism,⁵¹ but defines an 'act of terrorism' in the following manner:

'an act which constitutes an offence, or a threat of the commission of such an act, committed or planned to be committed in order to promote a political, ideological or religious interest, and satisfying one of the following:

- (1) according to its nature and the circumstances in which it was committed or planned to be committed, it is likely to spread public fear and panic, including in the non-Israeli public, or any part thereof;
- (2) it was committed or planned to be committed in one of the ways specified below, with the object of coercing the government, including the government of a foreign state, to commit or refrain from committing an act:
 - (a) bodily injury to a person or an infringement of his freedom, or placing a person in danger of death or of serious injury;

- (b) creating a real danger to the health and safety of the public, or any part thereof;
- (c) serious damage to property;
- (d) serious disruption of essential infrastructures.'

The definition of the term 'act of terrorism' was made against a background of the definitions in the Convention for the Suppression of the Financing of Terrorism and the legislation in various countries around the world, such as in Great Britain and Canada.⁵² The definition emphasises the special object of the act, which is to promote a political, ideological or religious interest, and in addition, the nature of the act — an act which by its nature and the circumstances is likely to spread public fear and panic, or was committed as a means of pressure on the government through various injuries and the creation of dangers.

Israeli penal law also applies to certain offences committed outside of Israel. The intent is also to offences against state security, its foreign relations or secrets; legal arrangements of the state; the proper functioning of the state authorities; state property and the economy; offences against an association or entity representing the state, Israeli citizens wherever they may be, or Jews wherever they may be etc.⁵³ The Prohibition of Financing Terrorism Bill was not satisfied with these rules and determined a particularly broad extra-territorial application, by defining the expression 'act which constitutes an offence' in the following manner: 'including an act committed or planned to be committed outside of Israel, in respect of which the penal laws of the state of Israel do not apply, provided that the act constitutes an offence both under the laws of the state of Israel and under the local law in which it was committed or in the state against whose residents or citizens the act was aimed.'

The second alternative offence of prohibition of financing terrorism is 'the transfer of property to an organisation which engages in terrorism, places property at the disposal of such an organisation or raises property for such an organisation, directly or indirectly'.

The third alternative offence of prohibition of financing terrorism is the transfer of property to a declared terrorist organisation under the Defence (Emergency) Regulations, the Prevention of Terrorism Ordinance or under this Law, the placing of property at the disposal of such an organisation or the raising of property for such organisation, directly or indirectly.

With respect to the third alternative, s. 7 of the Bill determines that it is sufficient if it is proved that the perpetrator of the offence knew that the transfer of the property, placing the property or raising the property were committed for one of the purposes specified in the section or for an organisation engaged in terrorism or for a declared terrorist organisation, even if he did not know for which specific purpose or to which exact organisation the property was transferred.

Section 3 of the Bill determines an additional offence of 'prohibiting an act in relation to terrorist property'. 'Terrorist property' is defined in the section in three alternatives, similar to the definition of 'prohibited property' in the Prohibition on Money Laundering Law:

- (1) property originating directly or indirectly in an offence under section 2, which was used to or enabled the commission of such an offence, in which such an offence was committed or which was designated for the commission of such an offence;
- (2) property originating directly or indirectly in an act of terrorism, which was used or enabled the commission of such an offence, or was designated for the commission of such an offence;
- (3) property of a declared terrorist organisation, property which is used or is designated for use, or enables the operations of the organisation.'

A 'property transaction' is defined in section 1 of the Bill as the 'vesting or receipt of ownership or of any other right in property, whether or not for consideration, as well as a transaction with property amounting to delivery, receipt, holding, conversion, a banking transaction, investment, a securities transaction or possession thereof, brokerage, extension or taking of credit, import, export, the creation of a trust, as well as the mixing of terrorist property with any other property, even if it is not terrorist property'. This definition matches the definition in the Prohibition on Money Laundering Law.

Section 3(b) determines a legal presumption: it may be presumed that property of a person declared under s. 8 of the Bill to be a person engaged in terrorism, is terrorist property, unless proven otherwise. A 'person engaged in terrorism' is defined in s. 1 of the Bill as 'a person who engages in the commission of an act of terrorism or in the assistance or soliciting

for the commission of an act of terrorism or a member of a terrorist organisation, or a member of a declared terrorist organisation'.

Section 7 of the Bill determines that it is sufficient if the person committing the offence knew that the property was terrorist property, even if he did not know to which exact act of terrorism the property is connected or to which entity or particular organisation.

The penalty for the offence of a terrorist property transaction is seven years' imprisonment or a fine of NIS2m.

Section 5 of the Bill determines that a person shall not bear criminal liability for the offence of a terrorist property transaction if he reported the transaction as stated in s. 4 of the Bill, or as stated in Regulation 84(2)(a) of the Defence (Emergency) Regulations and acted in accordance with the police instructions in this regard. A similar provision is determined in s. 6 of the Prohibition on Money Laundering Law. However, the Bill goes one step further, beyond the approach in the Prohibition on Money Laundering Law, and provides that a failure to report a terrorist property transaction is deemed to be an offence in its own right. The reason for this determination was the great importance attributed to information in connection with terrorist activities reaching law enforcement agencies.

Section 4 of the Bill determines an obligation to report on terrorist property transactions in two instances. First, advance reporting, where a person is about to perform a property transaction (as defined in detail above), and he has reasonable grounds to presume that the property is terrorist property. Secondly, retroactive reporting, where a person has already performed a property transaction and at the time of performing the transaction, or within six months of that date, he had reasonable grounds to presume that the property was terrorist property. The penalty for such an offence is significantly lower than the penalty for the previous offences: two years' imprisonment or a fine of NIS200,000.

Reporting should be done to the police. However, providers of financial services who are obligated to report to the Israel Money Laundering Prohibition Authority under the Prohibition on Money Laundering Law may also report on terrorist property transactions to the same authority. In any event, the report shall be transmitted as close in time as possible to the time in which the reporting entity had reasonable grounds to presume that the property is terrorist

property. The report shall include any information known to the person making the report and relating to the matter at hand. The Minister of Internal Security, in consultation with the Minister of Justice, shall determine modes of reporting.

The obligation to report under the Bill shall not apply to a person who delivered a notice under Regulation 84(2)(a) of the Defence (Emergency) Regulations. As may be recalled, this Regulation provides a duty to report to the Minister of Finance on any property transaction of an organisation declared under the Regulations to be an 'unlawful association'. Failure to report under this Regulation constitutes an offence in its own right. The exemption from reporting is determined in order to prevent a double reporting obligation.

Section 7 of the Bill determines that it is sufficient if it is proved that the person committing the offence had reasonable grounds to presume that the property is terrorist property, even if he did not have reasonable grounds to presume that the property is connected to a particular act of terrorism or a particular entity or organisation.

As appears in the Prohibition on Money Laundering Law, it is also proposed to determine in the present Law that reporting done pursuant to the provisions of the Law in good faith, shall not be deemed a breach of the duty of confidentiality and trust or any other duty under the provisions of any law or agreement, and there shall be no criminal, civil or disciplinary liability. In order to encourage people to report, a provision was also determined restricting the disclosure of the identity of the reporting entity.

Administrative seizure

Administrative seizure proceedings originate in the international requirement to freeze or block terrorist assets.⁵⁴ The objective of the proceedings is the removal of assets and monies from the turnover of assets designated for financing terrorism.⁵⁵

It has already been seen that under the Defence Regulations the Minister of Finance may confiscate the property of an organisation declared to be a prohibited association. Under the Prevention of Terrorism Ordinance, an application may be made to the District Court to confiscate the property of an organisation declared to be a terrorist organisation. It is presently proposed, in addition to the aforesaid measures, to vest authority in the Minister of Defence to order the seizure of 'terrorist property' as defined in s. 3 of

the Law, on condition that one of the following conditions has been satisfied:

- (1) it is the property of a body of persons declared to be an organisation engaged in terrorism, as well as property serving or designated to serve the activities of any such organisation, or property enabling its activities;
- (2) it is the property of a person declared to be a person engaged in terrorism;
- (3) it is property designated for the commission of an 'act of terrorism' as defined in s. 1;
- (4) it is property in which an offence under s. 2 of the Bill has been committed or designated for the commission of such an offence.

Furthermore, if such property has mixed with other property and may not be identified or separated, the Minister may also order the seizure of the additional property. An example of this is money belonging to a declared terrorist organisation located together with money not belonging to the organisation.

Under s. 13 of the Bill, a temporary seizure order may be made for a period not exceeding seven days. The purpose of this section is to enable the issue of an order in situations where there is a suspicion of an immediate property transaction which will obstruct the seizure of such property.⁵⁶ Under s. 15, if after the granting of a seizure order further terrorist property is discovered of the same class of property with respect to which the order was granted, the original seizure order shall also apply to such property.

The enforcement of a seizure order shall be performed by a police officer, customs official or any other public employee authorised for this purpose. For this purpose, they shall be granted all the powers necessary, including entry into any place and use of force (s. 17). If the property with respect to which the order was given is mixed with additional property in such manner that it is impossible to identify or separate such property, the person implementing the order may also seize the additional property (s. 18). The property seized shall be managed by the Administrator General (s. 19).

Any person claiming a right in seized property, except for a declared terrorist organisation, may apply to a special objections committee for revocation of its declaration that it is such an organisation, as stated above.

In view of the effectiveness of the administrative seizure process, the Bill has not determined a mechanism for forfeiture in civil proceedings, as currently

appears in the Prohibition on Money Laundering Law and the Combating Criminal Organisations Law.⁵⁷

Forfeiture of property in criminal proceedings

Sections 25–45 of the Bill deal with forfeiture after a conviction in criminal proceedings. It is a long and detailed chapter which attempts on the one hand to protect the property right of the individual, while on the other hand serving as a useful tool to combat terrorist financing. As in the case of the provisions in the Prohibition on Money Laundering Law and the Combating Criminal Organisations Law on forfeiture, forfeiture in this case is also a mandatory provision in any case where a person has been convicted of an offence of terrorist financing or performing a terrorist property transaction. Forfeiture may also be carried out if the property is not found in the possession or under the control or in the account of the convicted person (s. 27), and other property may be forfeited, if financed by the convicted person (s. 26). However, no authority was determined to forfeit the property of the organisation itself, which was permitted in the Prohibition on Money Laundering Law and the Combating Criminal Organisations Law. Section 46 of the Bill determines a presumption, according to which any property of a declared terrorist organisation or of a person declared to be a person engaged in terrorism found in the possession, under the control or in the account of a convicted person, shall be his property, unless proved otherwise. This presumption is similar to the presumption determined in s. 9 of the Combating Criminal Organisations Law, although in that Law it applies solely to forfeiture, whereas in the present instance it applies with respect to forfeiture and the offences.

As in the arrangement in the Combating Criminal Organisations Law, the Bill also proposes (ss. 37–41) to vest authority in the court to order temporary remedies the object of which is to prevent the obstruction of the possibility of forfeiting the property after the sentence, such as an order for the provision of sureties on behalf of the accused person or the person in possession of the property, an injunction, attachment order, instructions to the Custodian General on administration of the property and other instructions. The court is competent to order interim relief after the submission of an indictment (s. 21) and also, in exceptional cases, before the submission of an indictment (s. 37).

Amendments to the Prohibition on Money Laundering Law

In order to adapt the Prohibition on Money Laundering Law to the Bill on Financing Terrorism, it is proposed to make the following amendments to the first Law:

- The offences under the Prohibition of Financing Terrorism Law should be added to the list of original offences in the Prohibition on Money Laundering Law.
- The duties imposed on providers of financial services for the purpose of combating money laundering should also serve to combat terrorist financing.
- The Israel Money Laundering Prohibition Authority should be called the ‘Israel Money Laundering and Financing of Terrorism Prohibition Authority’, indicating the nature of its function.
- The transmission of information from the database to the police, the General Security Service or any similar authority in another state, should also be permitted for the purposes of preventing offences under the Prohibition of Financing Terrorism Law.

CONCLUSION

The Prohibition of Financing Terrorism Bill, when it becomes binding law, together with the Combating Criminal Organisations Law, and the Prohibition on Money Laundering Law, create a secure normative framework for the global war against terrorist financing and the laundering of terrorism monies. The Combating Criminal Organisations Law deals with the actual activities within or in connection with a terrorist organisation, and within this framework it also deals with the financing of the organisation. The Prohibition on Financing Terror Law deals with the financing of all forms of terrorism and any activities performed with property connected with terrorism. The Prohibition on Money Laundering Law combats any attempt to conceal monies and property in connection with terrorism. The combination of legislation creates a new spectrum of offences compatible with the new international approach, and a series of other administrative measures for the purpose of effective enforcement of the legislative provisions.

By the enactment of this legislation Israel has joined

the family of developed nations which consider terrorism to be a real danger to global peace and security and have adopted effective methods to combat it.

REFERENCES

- (1) For an exposition of the position that Israel has failed to maintain the balance, thereby creating fertile ground for the growth of terrorism, see Narkis, P. (2003) *Terror Twins*, Strategy and Tactics Ltd, Ness Ziona 5763, p. 603.
- (2) Prohibition of Financing Terrorism Bill, 5763–2003, *Hatza'ot Chok* 552, at 552.
- (3) Cohen, A. (2003) 'Banks are as Dangerous as Engineers', *Maariv*, 21st February.
- (4) A list of the laws appears in Narkis, ref. 1 above, p. 413.
- (5) Prohibition of Financing Terrorism Bill, ref. 2 above.
- (6) UN General Assembly, General A/RES/54/109, 25th February, 2000 (hereinafter the 'Convention for the Suppression of the Financing of Terrorism'). The text of the Convention may be found on the UN website.
- (7) *Kitvei Amana*, 19th December, 2002.
- (8) See also, Resolution 1269 of 19th October, 1999, Resolution 1377 of 12th November, 2001 and Resolution 1456 of 20th January, 2003.
- (9) These Rules appear on the organisation's website: www.oecd.org/fatf
- (10) Their validity was not dependent on a formal declaration of a state of emergency in the state, although such a declaration was made on the formation of the state and has not yet been revoked. Rubinstein, A. (1996) *The Constitutional Law of the State of Israel*, Shoken, Vol. 1, p. 810.
- (11) Apart from two regulations that were repealed and are irrelevant to the issue in this article. Rubinstein, *ibid.*, p. 262.
- (12) This section has been criticised because it appears that *prima facie* any political group which vociferously criticises the government is an unlawful association. Rubinstein, *ibid.*, Vol. 2, p. 1127.
- (13) Narkis, ref. 1 above, p. 551 and the case law mentioned.
- (14) Military Court Appeal 1/98 *Chief Military Prosecutor v Hanjar*, Takdin Tzvai 98(3) 1.
- (15) Criminal Appeal 307/73 *Sultan v State of Israel*, 28(2) PD 794.
- (16) Military Court Appeal 1/98, ref. 14 above.
- (17) Narkis, ref. 1 above, p. 642.
- (18) Criminal Appeal 11/58 *Mankes et al. v Attorney General*, 12(iii) PD 1905. However, compare this to the case in which the term was interpreted restrictively, as a body of persons having an anti-establishment political object, as compared with a purely criminal object, and which intends to achieve this object by means of imposing fear and terror. Criminal Case (Jerusalem) 203/84 *State of Israel v Livni*, Psakim Mechoziim (III) 330.
- (19) Narkis, ref. 1 above, p. 691.
- (20) HCJ 16/48 *Baron v Prime Minister et al.*, 1 PD 109, at 112 and 114.
- (21) Barzily, G. (1999) 'Center against Periphery: The Prevention of Terrorism Laws in Politics', *Plilim*, Vol. 8, pp. 229–249, who adopts the position that this is excessive power in the hands of the government. On the other hand, Narkis, ref. 1 above, at p. 685, supports this law, against the background of the escalation in terrorism.
- (22) HCJ 16/48, ref. 20 above, p. 113.
- (23) Rubinstein, ref. 10 above, Vol. 2, p. 1129.
- (24) HCJ 547/98 *Federman v Government of Israel*, Takdin Elyon 99(4) 314. See also HCJ 16/48, ref. 20 above, p. 112, and Criminal Appeal 49/58 *Heruti v Attorney General*, 12 PD 1541, at 1563.
- (25) Criminal Appeal 11/58, ref. 18 above.
- (26) Further Hearing (Criminal) 8613/96 *Jabrin v State of Israel*, 54(v) PD 193.
- (27) The section has an additional alternative which is *prima facie* unrelated to terrorism: a body of persons which does not notify its rules as required by law or continues to meet after being dissolved under law. In the opinion of Kedmi, Y. (1995) *Criminal Law*, Dionon, Vol. 3, p. 1168, this alternative is intended to assist the authorities in their campaign against the unlawful associations specified in the other alternatives in the section, which camouflage their unlawful character.
- (28) Kedmi, *ibid.*, p. 1167.
- (29) HCJ 292/86 *Haetzni v State of Israel*, 42(iv) PD 406; Kedmi, *ibid.*, p. 1168.
- (30) Criticism of this sweeping determination may be found in Rubinstein, ref. 10 above, Vol. 2, p. 1127.
- (31) Kedmi, ref. 27 above, p. 1174.
- (32) Kedmi, *ibid.*, p. 1175.
- (33) See in this regard, Kedmi, *ibid.*, p. 1167.
- (34) HCJ 292/86, ref. 29 above.
- (35) For a comprehensive analysis of the Law, see Plato-Shinar, R. (2003) 'Israel: Impact of the Anti-Money Laundering Legislation on the Banking System', *Journal of Money Laundering Control*, Vol. 7, No. 1, p. 18.
- (36) This is called 'reverse money laundering'. See on this topic the paper by Cassela, S. D. (2003) 'Reverse Money Laundering', *Journal of Money Laundering Control*, Vol. 7, No. 1, p. 92.
- (37) It is interesting that the offences relating to unlawful association under the Penal Law do not appear in the Schedule.
- (38) In the draft proposal to amend the Law it was also proposed to amend this issue, so that constructive knowledge would also be sufficient: Prohibition of Financing of Terrorism (Amendment — Prohibition of Financing of Terrorism and Other Amendments) Bill 5763–2002. The text may be found on the website of the Ministry of Justice — www.justice.gov.il/MOJHeb/TazkireiHok
- (39) A provider of currency services is a person engaged in the provision of currency exchange services, sale or redemption of travellers' cheques, the exchange of bank notes and financial assets etc which is not one of the regulated entities referred to above. See the definition in section 11C of the Law. Chapter Four D of the Law obligates providers of currency services to register in a special register for the purpose of regulating the control of them for the objects of the Law.
- (40) An Order was recently enacted which applies to banks, and the Schedule to the Order includes examples of unusual transactions which require subjective reporting. These include a 'transaction which appears to have been designated to replace a transaction of an organisation that has been declared a prohibited organisation under Regulation 84 of the Defence Regulations'. It is interesting that the amendment relates only to the Defence Regulations and not also to the Prevention of Terrorism Ordinance and the Penal Law.
- (41) Shaked, R. (2003) 'The Chase after Smuggled Money', *Yediot Acharonoth*, Saturday Supplement, 16th May, pp. 4–5; Barnea, N. (2003) ' Hamas Charity', *Yediot Acharonoth*, Saturday Supplement, 16th May, p. 2.
- (42) Miscellaneous Criminal Motions 7223/03 *Sheikh Mahajna v State of Israel*, www.court.gov.il
- (43) Although the Law was enacted after the United Nations Convention Against Transnational Organized Crime of December 2000 (Palermo Convention). The text of the Convention may be found on the website www.undep.org/palermo/convmain. The state of Israel signed the Convention but has yet to ratify it.

- (44) Combating Criminal Organisations Bill 5762–2002, *Hatz'a'ot Chok* 762, 762.
- (45) Prohibition of Financing Terrorism Bill, ref. 2 above, p. 552.
- (46) Prohibition on Money Laundering (Amendment — Prohibition on Financing of Terrorism and Other Amendments) Bill, ref. 38 above.
- (47) Prohibition of Financing Terrorism Bill, ref. 2 above, p. 557.
- (48) For example, Order No. 13224 of the President of the United States dated 24th September, 2001, in which a list was determined of terrorist organisations and persons engaged in terrorism. Prohibition of Financing Terrorism Bill, *ibid.*, p. 558.
- (49) For example, Resolution 1267 of 15th October, 1999, with respect to the Taliban, and Resolution 1333 of 19th December, 2000, with respect to Al Qaeda. Under these Resolutions committees were set up whose job was to determine lists of organisations and persons connected with these organisations. Prohibition of Financing Terrorism Bill, *ibid.*
- (50) Prohibition of Financing Terrorism Bill, *ibid.*, p. 557.
- (51) For an attempt at defining the term 'terrorism', see Narkis, ref. 1 above, pp. 33, 221, 222, 223 and 224.
- (52) Prohibition of Financing Terrorism Bill, ref. 2 above, p. 553.
- (53) See ss. 7, 31–17 of the Penal Law 5737–1977.
- (54) Such a requirement appears for example in Article 1(c) of Resolution 1373 of the Security Council, as well as in the Order of the President of the United States No. 13224 of 24th September, 2001.
- (55) Prohibition of Financing Terrorism Bill, ref. 2 above, p. 560.
- (56) *Ibid.*
- (57) *Ibid.*, p. 563.

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Commission tells six member states to implement the Second Anti-Money Laundering Directive

Italy, Portugal, Greece, Sweden, Luxembourg and France have received formal requests from the European Commission to implement the Second Anti-Money Laundering Directive. None of these member states has yet notified the Commission of their measures to write the Directive into national law.

The Second Directive was adopted on 4th December, 2001 with member states agreeing to implement it in national law by 15th June, 2003, but only Denmark, Germany, the Netherlands and Finland conformed to the deadline. Ireland and Spain did so shortly afterwards, Austria and the UK have notified the Commission of their implementation, and Belgium has published a new law to do so.

In the UK the provisions of the Directive have

been implemented from 1st March by the Money Laundering Regulations 2003, which replace the Money Laundering Regulations 1993 and 2001. Relevant businesses are required to keep records of business relationships and transactions, maintain identification procedures, train employees in the law relating to money laundering, and report suspicious transactions to the National Criminal Intelligence Service. New categories of business have been brought within the Regulations, including 'money service business' (concerns operating a bureau de change, transmitting money by any means or cashing cheques made payable to customers); auditors; external accountants and tax advisors; estate agents; notaries and other legal professionals acting on behalf of their client in any financial or real estate transaction; dealers in high value goods (eg precious stones, works of art) where a cash payment of €15,000 or more is made; and casinos.