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COMBATING THE FINANCING OF TERRORISM: A COMPARATIVE STUDY BETWEEN IRAQI LAW AND INTERNATIONAL LEGISLATION

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ABSTRACT

This study will examine the legal provisions on the attack of financing of terrorism within the Iraqi laws and compare them with the international laws and legal standards with respect to the compliance of the Iraq law with the international law and the appropriate manner in which the laws are enforced. The study has a comparative and descriptive-analytical tendency since the legal documents on combatting financing of the terrorism of Iraq are analyzed and compared with international laws and resolutions of the United Nations and the standards of the Financial Action Task Force (FATF). It also examines their applications in practice and supervisory procedures involved. The findings indicate a partial correspondence between the Iraqi laws and the international standards as well as exposing any gaps that are in the provisions of penalties and the mechanisms of implementation. The study also presents the necessity to reinforce financial control and synchronization of the corresponding authorities, create legal frameworks of providing international cooperation and tracking of suspicious financial operations, and the significance of integrating criminal penalties with prevention in order to deliver effective counter-terrorism financing.

KEYWORDS: Terrorism Financing, Iraqi Law, International Legislation.

1. INTRODUCTION

In light of the accelerating development of organized crime and the expansion of terrorist group activities across borders, the financing of terrorism has become the most serious challenge to state stability and its economic and social security. Recent experiences have proven that terrorist organizations no longer rely solely on traditional sources of financing, but have expanded to complex financial networks that intertwine electronic transfers with legitimate and illegitimate commercial activities, making its combating require a precise legal framework that is compatible with international standards.[1] Hence, the importance of studying the combating of terrorism financing in Iraqi legislation and comparing it with the international legal system emerges, to reveal the strengths and weaknesses in national efforts and the extent of their harmony with global commitments.

The study problem lies in the fact the Iraqi law, even though it is evident that it has improved the acts of curbing money laundering and financing terrorism activities, it continues to grapple with issues of validity of supervisory practices, lack of institutional coordination, and the complexity of the banking formalities. Besides, political and security factors continue to influence its practical application. Based on this, it can be identified that there is a core question of how far Iraqi laws can go in regard to fighting terrorism funding as per the international standards, and the level to which it has met the stipulations of the concerned UN agreements and resolutions.

The research departs from a main objective represented in analyzing the Iraqi legal framework related to combating terrorism financing compared with international legislation, and explaining the extent of its comprehensiveness and efficiency, with seeking to identify differences and similarities, and to extract gaps that may affect the effectiveness of combating. It also aims to shed light on mechanisms of prevention, detection, criminalization, and means of international cooperation, and to assess the extent of their consistency with best global practices. The importance of this research comes from the fact that it provides an in-depth vision that helps decision-makers in developing national policies, provides a knowledge addition to researchers in international criminal law, in addition to supporting supervisory and financial institutions in improving their tools to address financial crimes related to terrorism.

The research relies on a comparative method and the descriptive-analytical legal approach to Iraqi and

international legislative texts, presenting the theoretical and practical foundations of terrorism financing, to assess the effectiveness of law implementation, using international decisions and relevant agreements as standard models for comparison. Thus, the research seeks to provide a comprehensive analysis that links the theoretical and practical aspects of combating terrorism financing, and establishes a scientific framework that helps in developing Iraqi legislation to keep pace with accelerating international developments.[2]

2. FIRST SECTION: COMBATING TERRORISM FINANCING IN IRAQ

Combating terrorism financing in Iraq is considered one of the vital issues that occupies an advanced position in the state's security and economic policies, given the complex security challenges the country has witnessed, internal conflicts, and the rise of terrorist organizations that relied heavily on financial support to carry out their operations and destabilize the state.[3]

First Demand: Legal Sanctions for Combating Terrorist Financing in Iraq

Legal sanctions are among the most important tools that Iraqi legislation relies on to combat the crime of terrorism financing.[4] Iraqi law has been careful to criminalize all forms of direct and indirect financing, whether through the banking system or through non-traditional means, in harmony with its international obligations in this field.[5]

First Branch: Principal Penalties

The principal penalty is the punishment determined by the legislator for the crime as the basic punishment that the judge must impose upon proving the defendant's conviction, and it is not implemented unless expressly stated in the court judgment.[6]

First: Penalty for Natural Persons

A natural person is a human being.[7] The Iraqi legislator in the Penal Code punished the crime of terrorism financing in the Second Chapter thereof, regarding crimes affecting internal state security, as a secondary contribution. This is evident from Articles 198 and 199 which provided imprisonment for a period not exceeding ten years, and not exceeding seven years respectively, for anyone who incites or encourages the commission of crimes affecting state security.[8] Likewise, Article 203 punishes with imprisonment for a period not exceeding seven years or detention and a fine anyone who encouraged the commission of the crimes stipulated in this chapter.[9] This was confirmed by Article 208 of the same law. The legislator did not

criminalize terrorism financing as an independent crime, but rather criminalized it as one of the means of secondary participation in crimes affecting internal state security.[10]

Regarding the principal penalty for terrorism financing under Iraqi Law No. 13 of 2005 (Counter-Terrorism Law), it considered terrorist acts, including terrorism financing as one of these acts mentioned in Paragraph Four of Article Two of the law.[11] In determining penalties in Paragraph One of Article Four, which stated: "anyone who commits as a principal perpetrator or accomplice... is punished with death, and the instigator, planner, and financier, and anyone who enabled the terrorists to commit the crimes contained in this law shall be punished with the punishment of the principal perpetrator." [12] The legislator equated the death penalty for both the principal perpetrator and the participating accomplice, whether as an instigator, planner, or financier of the acts criminalized in Articles Two and Three of the law. However, it was not successful in criminalizing the acts in these two articles, as it faced them with only one punishment, which is death. The legislator should have remedied this by combining the two articles together. Furthermore, we note that the severity of the penalty and the disparity in imposing penalties on similar acts between the Terrorism Law and the Iraqi Penal Code creates some legal problems that cannot be resolved through the rule that the specific restricts the general.[13]

As for Law No. 39 of 2015 (Counter-Money Laundering and Terrorism Financing Law), Article 37 thereof provided that "anyone who commits the crime of terrorism financing shall be punished with life imprisonment." [14] It is clear that the legislator did not distinguish between whether the financing is for an individual terrorist or a terrorist organization, and equated them with the same penalty. Likewise, the legislator did not distinguish between whether the financing is for terrorist activities within Iraq's borders or outside its borders.[15] We believe that the legislator should have distinguished in the penalty between whether the financing is for an individual terrorist or a terrorist organization, or between whether the financing is for terrorist operations within Iraq or outside it. The text came with setting life imprisonment for all forms of terrorism financing crimes. The legislator determined in the current Iraqi Penal Code the duration of life imprisonment in Article (87) thereof, clarifying that life imprisonment is the detention of the sentenced person in one of the penal institutions designated by law for this purpose for a period of twenty years.[16] This is the only criminal penalty with which the legislator directly

confronts perpetrators of terrorism financing crimes.

Regarding violations of the obligations imposed by the Counter-Money Laundering and Terrorism Financing Law, it provided in Paragraph (Second) of Article (39) thereof a penalty of detention for a period not exceeding three years, and a fine of not less than fifteen million dinars and not exceeding fifty million dinars or one of these two penalties, for anyone who abstained from reporting suspicious transactions to the office, or intentionally provided false information, or disclosed to non-competent authorities the reporting procedures, investigation, or inspection procedures taken regarding financial transactions suspected of involving money laundering or terrorism financing, or related data.[17]

The law also provided in Article (40) thereof the penalty of detention and fine for anyone, from the heads of boards of directors of financial institutions or any of their members or managers, who deliberately or with gross negligence violated any of the obligations contained in this law.[18] Article (41) also punished anyone who abstained from providing information to the Anti-Money Laundering and Terrorism Financing Office, after being warned to provide it within seven days, with detention for a period not exceeding one year.[19] Article (42) of the same law punished anyone who established or attempted to establish a dummy bank in Iraq with detention for a period of no less than three years, and a fine of not less than ten million dinars and not exceeding one hundred million dinars, or one of these two penalties.[20] Article (43) provided the penalty of detention for a period not exceeding two years and a fine for anyone who did not declare to the representative of the General Authority for Customs what money, currencies, or financial instruments negotiable to bearer he was carrying upon entering or leaving Iraq.[21] In order to close the door to perpetrators of terrorism financing crimes, Article (44) provided that anyone who violated the provisions of this law, other than Articles (37), (38), (41), (42), and (43), shall be punished with detention and a fine of not less than one million dinars and not exceeding twenty-five million dinars, or one of these two penalties.[22]

3. SECOND: PENALTY FOR MORAL PERSONS

A moral person is a group of persons or funds aimed at achieving a certain purpose, and the law grants it the independent legal personality necessary to achieve this purpose.[23] The Iraqi legislator referred to imposing fines on moral persons

committing criminal crimes, pursuant to Article (80) of Iraqi Penal Code No. (111) of 1969, as amended, which provided that moral persons, except government offices and their official and semi-official departments, are criminally responsible for crimes committed by their representatives, managers, or agents on their behalf or in their name.[24] They may not be sentenced to anything other than fines, confiscation, and measures prescribed by law for the crime. If the law prescribes a principal punishment other than the fine for the crime, it is replaced by a fine, and this does not prevent the perpetrator of the crime from being personally punished with the penalties prescribed for the crime in the law.[25]

The Iraqi legislator punished the moral person in the Counter-Money Laundering and Terrorism Financing Law. Article (46) thereof provided that "First: Without prejudice to the criminal responsibility of the natural person provided for in this law, the moral person is liable for the crimes provided for in this law committed by its representatives, managers, or agents on its behalf and in its name, and is punished with the fine and confiscation prescribed for the crime according to the law. Second: The moral person is jointly liable for the payment of any financial penalties and compensation imposed if the crime was committed by one of its employees on its behalf and for its benefit." [26] The Iraqi legislator was not satisfied with indirect criminal responsibility. This position of the Iraqi legislator is good.[27]

Second Branch: Secondary Penalties

First: Accessory Penalties

Accessory penalties are those that follow the principal penalty of their own accord, without the need for the judge to state them in his judgment, that is, they attach to the sentenced person by force of law merely by imposing the principal penalty, producing their effect or being executed by the executive authority.[28] There are two types of accessory penalties mentioned in the Iraqi Penal Code in the Fifth Chapter of the First Book: deprivation of certain rights and privileges, and police surveillance.

The deprivation of certain rights and privileges penalty was organized by Article 96 of the Iraqi Penal Code, which provided that judgment of life or limited imprisonment entails, by operation of law, from the day of its issuance until the release of the sentenced person from prison, deprivation of the following rights and privileges: (positions and services that he held, being an elector or elected member of representative councils, being a member of administrative or municipal councils, or one of the

companies, or managing them, being a guardian or curator or agent, being an owner, publisher, or editor-in-chief of a newspaper).[29]

Pursuant to Article (97) of the Penal Code, the person sentenced to life or limited imprisonment cannot manage or dispose of their money except by being excluded and suspended, except with permission from the Personal Status Court or the Personal Matters Court, from the date of the judgment to the date of the end of the sentence or its expiration for any other reason.[30] The judgment of a felony entails, by force of law, the lack of competence of the sentenced person to litigate before the courts as a plaintiff or defendant, and the court is obligated to appoint a curator for him. The prosecution or litigation of the sentenced person by his person in the case during the period of execution of the sentence without the curator results in the nullity of the proceedings by force of law.[31]

Whereas Article (98) of the law provided that every judgment issued for the punishment of death entails, by force of law, from the date of its issuance until the time of execution of the judgment, the deprivation of the sentenced person of the rights and privileges mentioned in the two preceding articles, and the nullity of any act of disposition or administration issued by him during the aforementioned period except for a will and endowment, and the Personal Status Court or the Personal Matters Court—as appropriate—shall appoint, upon the request of the Public Prosecution or any interested party, a curator for the sentenced person.[32]

As for police surveillance penalty, it was organized by Article (99) of the Iraqi Penal Code, which provided that anyone sentenced to imprisonment for a felony affecting internal or external state security must, by force of law, be placed under police surveillance after the expiration of their sentence period, in accordance with Article (108) of this law, provided that it does not exceed five years.[33] It should be noted that this article on police surveillance has not been applied even to highly dangerous persons or those who might be dangerous, as this is considered a deficiency in the procedural provisions for combating and financing terrorism.[34]

The Law No. (39) of 2015 on Counter-Money Laundering and Terrorism Financing contained an accessory penalty as outlined in Article (45) of the Law, which stated the following: First: An order to cease the activity that leads to the violation in case of violation by a financial institution or other non-financial business and profession of the provisions of

this law, or the provisions of the regulations, instructions, data, safeguards, or orders provided in accordance with the law. Second: Revoke the work license in accordance with the law. Third: Warning that consists in informing the violating entity of the need to eliminate the violation within a suitable time that is established by the violating entity. Fourth: Prohibit the work of individuals in the corresponding industry within a certain time decided by the controlling body. Fifth: Limit the power of managers or ask them to be replaced. Sixth: Prepay an amount of at least 250,000 (two hundred and fifty thousand dinars) and at most 5,000,000 (five million dinars) per violation[35].

Second Demand: Preventive Measures for Combating Terrorist Financing in Iraq

Preventive measures are among the fundamental pillars of Iraq's strategy to combat terrorism financing, as they aim to prevent crime from occurring before it happens through monitoring suspicious financial activities and promoting transparency in the banking system.[36]

First Branch: Compensation

Compensation is a means to remedy harm and alleviate its severity if it cannot be eliminated.[37] In principle, only the injured party has the right to claim compensation, as the general principle is that there is no lawsuit without interest. For a compensation claim to be valid, there must be two parties (plaintiff and defendant); the first is the victim or anyone harmed by the crime, or the general successor of the injured party, while the defendant is the terrorist who caused the crime. Compensation is often a sum of money, and the judge has broad discretion in assessing compensation.[38]

Article 54 of Law No. 94 of 2015 regarding counter-terrorism provides that "the state is obligated to conclude a comprehensive mandatory insurance document with insurance companies to cover all risks arising from terrorist crimes that affect any individual from the armed forces or police forces assigned to combat terrorism when they confront these crimes, including cases of death, complete or partial disability, provided that the document includes the company's commitment to pay temporary compensation to the injured parties immediately upon the occurrence of the danger, deducted from the insurance amount."[39]

Regarding the study of compensation for victims of terrorism in Iraqi legislation, we find that terrorist crimes are crimes of a special nature; therefore, the general formal or substantive rules for compensating victims of crime cannot be applied to compensating victims of terrorist acts.[40] This, in turn, prompted

the Iraqi legislator to enact legislation in this regard, namely Law No. (20) of 2009 on Compensation for Those Harmed by War, Military Errors, and Terrorist Operations, based on what was enacted in the Constitution of the Republic of Iraq of 2005, which provided in Article (132/Second).[41] The reason that prompted the legislator to enact this legislation is the abundance of terrorist acts on the country's soil that necessitate adopting compensation for victims of these acts as a state response. The purpose that the Iraqi legislator sought through this law is to compensate the injured parties. Article One stated: "This law aims to compensate every natural person harmed as a result of military operations, military errors, and terrorist operations, to determine the harm and its severity, and the basis for compensation, and how to claim it."[42]

It is noteworthy that the legislator did not clarify how to finance the compensation despite the fact that financing is considered one of the fundamental matters to ensure a stable legislative plan in the field of compensation.[43] Law No. (39) of 2015 on Counter-Money Laundering and Terrorism Financing provided in Article (42) thereof: "First: Without prejudice to the criminal responsibility of the natural person provided for in this law, the moral person is liable for the crimes provided for in this law committed by its representatives, managers, or agents on its behalf and in its name, and is punished with fines and confiscation according to the law. Second: The moral person is jointly liable for paying any financial penalties and compensation imposed if the crime was committed by one of its employees on its behalf and for its benefit."[44]

Second Branch: Banking and Information Monitoring

Electronic surveillance measures were established in the law as a method of investigation and inquiry for specified types of serious crimes from criminal procedure laws, namely crimes related to automated data processing systems, terrorism crimes, drug trafficking, money laundering, corruption crimes, currency crimes, and non-national organized crime.[45] The circumstances for resorting to electronic communication surveillance are also determined pursuant to the law on the prevention of information technology and communication crimes in two sections: the first as administrative surveillance that falls within the scope of administrative control for the prevention of terrorism crimes, sabotage, and threats to state security, the public order, national defense, or state institutions or the national economy, and the second falls within the scope of criminal procedures for police or judicial

investigation and has two cases: cases of requirements of investigations and judicial inquiries when it is difficult to reach a result in ongoing research without resorting to electronic surveillance, and the case of executing requests for mutual international judicial assistance and in accordance with the law regulating the prevention of crimes related to information technology and communications.[46]

In Iraqi legislation, the general rule provides that preliminary investigation is conducted by (investigating judges, investigators, and police officers) working under their supervision.[47] Paragraph (1) of Article (51) of the Iraqi Code of Criminal Procedure provided that "preliminary investigation is conducted by investigating judges, as well as investigators under the supervision of investigating judges." [48] The legislator determined in this article the categories that practice investigation in a principal manner: investigating judges and investigators under the supervision of investigating judges. Investigators are employees entrusted with investigation by the Minister of Justice, provided they have a recognized degree in law.[49] The authorities that practice investigation on an exceptional basis were determined by the Iraqi Code of Criminal Procedure in Article (49), which provided: "Any responsible person at a police station, upon receiving news of the commission of a felony or misdemeanor, shall immediately record the informant's statement, take his signature on it, and send a report to the investigating judge or investigator. If the information is about a felony or witnessed; he must take the measures provided in Article (43)." [50]

The other authority that practices investigation incidentally is the investigating judge located in the jurisdiction of the absent investigating judge or any area close to it, because the Iraqi Code of Criminal Procedure took territorial jurisdiction, as Article (53) thereof provided that "the jurisdiction of investigation is determined by the place where all or part of the crime occurred, or any completing act, or any result arising from it, or an act that is part of a complex, continuous, consecutive, or habitual crime, and is also determined by the place where the victim was found, or where the money for which the crime was committed was found after being transferred there by its perpetrator or someone aware of it." [51]

Regarding the Public Prosecution's role in preliminary investigation, the Public Prosecution was not authorized to conduct investigation except exceptionally and under special circumstances.[52] Article Three of the Public Prosecution Law provided

that "a member of the Public Prosecution exercises the authority of the investigating judge at the scene of the incident when he is absent, and this authority ceases when the competent investigating judge arrives unless asked to continue the investigation, in whole or in part, which he conducted." [53] The Iraqi legislator regulated the rules of search in Chapter Four of Chapter Four of Articles (72 to 87) of Iraqi Code of Criminal Procedure No. (23) of 1971.[54] Paragraph (a) of Article (72) of the law affirmed a general principle to the effect that "no person may be searched or his home or any place under his possession entered except in the cases provided for in the law." [55] There must also be an order from a competent authority. Paragraph (a) of Article (73) of the law provided that "no person, home, or place under possession may be searched or entered except based on an order issued by a competent authority by law." [56] As for the exceptional authorities granted to the person conducting preliminary investigation in terrorism cases, including terrorism financing crimes, at the level of counter-terrorism law and its financing, it was devoid of any procedural rules.[57]

As for Iraqi counter-money laundering and terrorism financing law, it granted the Central Bank the authority to establish an anti-money laundering and terrorism financing office.[58] This office undertakes a set of tasks, among which are the tasks that concern us: the task provided for in the first paragraph (a) of the same article, which stated: "Receive reports or information or obtain them regarding operations suspected of involving proceeds of a primary crime, money laundering, or terrorism financing from reporting entities, and this article does not grant this office exceptional authority, but rather obliges it to report the crime, which is what Article (47) of the Code of Criminal Procedure provides." [59]

The Iraqi legislator stipulated in Law No. (39) of 2015 regarding counter-money laundering and terrorism financing in Article (5) thereof that "a council for countering money laundering and terrorism financing is established in the bank," and Article (8) also provides that "an office is established in the bank called (Money Laundering and Terrorism Financing Office) at the level of a public department, enjoying legal personality, financial and administrative independence, and is represented by the director general of the office or whoever is authorized, and the competent financial authorities take a series of measures and procedures necessary to combat the crime." [60] They do this by adopting a system that discloses the volume of cash money,

especially large amounts, transferred outside the territory of the state or those received from abroad, as well as the competent financial authorities assigning banking supervision committees the obligation to carry out periodic and exceptional inspection and examination visits to banking sector institutions to ensure the effectiveness of the anti-crime measures and procedures.[61]

The matter is not limited to obligating financial institutions with a set of duties in order to combat the crime of terrorism financing.[62] Rather, the legislator may establish a set of procedures and measures that the financial institution must carry out. At the head of financial institutions is the Central Bank. The legislator authorized the Central Bank to take necessary measures to combat the crimes of money laundering and terrorism financing. Paragraph (w) of Paragraph (1) of Article Seven obligated the Central Bank of Iraq to write and supply financial institutions with a list of individuals and institutions that financial institutions are required to inform the relevant government authority about their transactions when discovered.[63] This list includes, but is not limited to, the unified new list of individuals and entities belonging to or organized by the Taliban and Al-Qaeda as determined and maintained in Committee 1267.[64] Among the measures taken by financial institutions in Iraqi legislation for the purpose of combating terrorism financing, Law No. (39) of 2015 obligated the financial institution to verify the source of the funds, the purpose, and the intended nature of the worker or the relationship if it had reason to suspect that the assets are proceeds of a crime, and that the purpose is to finance a crime, and that the criminal organization has authority to dispose of them.[65] The measure taken by the financial institution is to notify the anti-money laundering reporting office and request guidance and direction from it. If the financial institution requests verification and investigation by the anti-money laundering reporting office, it will immediately freeze the relevant assets until the institution receives any necessary investigation or necessary guidance from the anti-money laundering reporting office.[66]

As this office, subject to the authority of the Central Bank, exercises what was provided in Paragraph Three of Article (12), which stated "the anti-money laundering reporting office verifies the report reported to it, and takes steps, and has the right to take these steps, including but not limited to, establishing regulations by the Central Bank of Iraq as necessary to implement its obligations under this law, and exercises this task in case a report is

submitted to it regarding a violation of the law or a money laundering crime and a crime of financing, but if the office suspected that certain funds are being used to finance a crime or are the proceeds of unlawful activities, it may take the measures outlined in Paragraph Four of Article (12), which stated "if the anti-money laundering reporting office reasonably suspected that the transaction had carried out or attempted to employ funds derived from illegal activities, or funds used to finance crime, or funds over which the criminal organization has authority to dispose of them, or that the transaction is to support an illegal purpose in some way, it will immediately inform the competent prosecuting authority and the investigating authority." [67]

Second Section: Combating Terrorism Financing in International Legislation

Terrorism financing is considered one of the most dangerous phenomena threatening international peace and security, as it represents the financial nerve that enables terrorist organizations to carry out their operations, spread their ideas, and expand the scope of their influence at both the regional and international levels.[68]

First Demand: International Efforts to Combat Terrorism Financing

The phenomenon of terrorism financing continues to raise widespread global debate regarding the danger it represents in sustaining and continuing terrorism.[69] Despite the growing international efforts made to combat it, the clear weakness in drying up the sources of its financing has significantly affected the extent of the effectiveness of combating it. From here, the United Nations and its specialized agencies have worked to address this phenomenon by issuing resolutions and concluding international agreements to eliminate it.[70]

First Branch: International Convention for the Suppression of the Financing of Terrorism, New York 1999[2]

This convention was signed at the United Nations headquarters in 1999.[71] It clarified in its preamble the danger of terrorism financing and that this constitutes grave concern for the entire international community. It also discussed the urgent need to promote international cooperation among states in taking effective measures to prevent and suppress terrorism financing through the prosecution and punishment of its perpetrators.[72] The most prominent features of this convention can be identified as follows:

The States Parties to this convention, taking into account the purposes and principles of the United Nations Charter relating to the maintenance of

international peace and security, and promoting neighborly relations, friendship, and cooperation among states, and expressing deep concern over the escalation of acts of terrorism in all its forms and manifestations throughout the world, referring to the Declaration on the occasion of the fiftieth anniversary of the establishment of the United Nations contained in General Assembly resolution (50/6) dated October 24, 1995.[73] It also refers to its annex declaration on measures aimed at eliminating international terrorism. Where in paragraph (3) (w) of General Assembly resolution (51/210) dated December 17, 1996, it requested all states to take steps, by appropriate internal means, to prevent financing of terrorists and terrorist organizations, and to prevent such financing, whether directly or indirectly through organizations claiming to have charitable, social, or cultural objectives, or which actually engage in unlawful activities such as illicit arms trafficking and drug trafficking, extortion of money, including the exploitation of persons for the purpose of financing terrorist activities.[74] It also calls on states to pay particular attention—where appropriate—to adopting regulatory measures to prevent movements of funds suspected for terrorist purposes, and addressing these movements without any obstacles in any way to the right to free movement of legitimate capital, and in expanding the scope of exchange of information related to the movements of international funds. It also refers to General Assembly resolution (52/165) dated December 1997, in which the General Assembly requested states to pay particular attention to implementing the measures contained in paragraphs (3) (a) through (w) of its resolution (51/210).[75]

Convinced of the urgent need to promote international cooperation among states in formulating and taking effective measures to prevent terrorism financing; as well as suppressing it through prosecution and punishment of its perpetrators. Article Two of the convention determined the acts it criminalizes.[76] In order for an act to constitute a crime from the crimes specified in Paragraph (1), it is not necessary that funds be actually used to carry out a crime from the crimes referred to in Paragraph (1), Subparagraph (a) or (b). Any person commits a crime who: participates as an accomplice in a crime provided for in Paragraph (1) or (4) of this article, or organizes the commission of a crime within the meaning of Paragraph (1) or (4) of this article or orders other persons to commit it, or participates in a group of persons acting with a common purpose in committing one or more of the crimes referred to in Paragraph (1) or (4) of this article.[77]

This convention came and changed the criminalization approach.[78] Financing had been viewed as merely assisting in committing terrorism, but the convention came and considered terrorism financing a crime in itself, independent of the terrorist act, for which financing is merely an act of secondary participation.[79]

The convention dealt with matters that are related to the jurisdiction of the courts concerning the terrorism funding crimes whereby it is the responsibility of each State Party to ensure that the jurisdiction is provided with respect to the crimes mentioned in Article (2) where the crime has been committed: either the territory of the state, onto a ship flying the flag of state or an aircraft registered under the laws of state at the time the crime was committed by one of the citizens of state. But each State Party can confer jurisdiction over such crimes as well [80].

The convention obligated States Parties to take appropriate measures in accordance with their current legal principles to identify, detect, freeze, seize, or confiscate any funds used or intended for carrying out the crimes set out in Article (2), as well as proceeds arising from these crimes.[81] Each State Party shall consider establishing mechanisms providing for the allocation of amounts obtained from confiscation operations referred to above to compensate victims of the crimes provided for in the first paragraph of Article (2) or compensation for their families.[82]

Regarding prosecution and investigation procedures, the convention obligated the State Party which did not extradite the accused person found on its territory to refer the case without delay, whether or not the crime was committed on its territory, to its competent authorities for the purpose of criminal prosecution in accordance with procedures consistent with that state's legislation.[83] These authorities must make their decision in the same manner as in the case of any other serious crime in accordance with that state's law.[84]

The convention considered the crimes referred to in Article (2) as crimes that warrant extradition of criminals provided for in any treaty concluded between States Parties before the entry into force of this convention, and States Parties undertake to consider such crimes as crimes warranting extradition in any treaty. It also called on States Parties to exchange the maximum possible legal assistance concerning any investigations or extradition proceedings related to the crimes set out in Article (2), including assistance related to obtaining necessary evidence in their possession for

these proceedings. This convention required all states to obligate all financial institutions to take available measures and procedures to verify the identities of their regular or transit clients, as well as the identities of clients for whose benefit accounts are opened, and to pay special attention to unusual or suspicious transactions, and to report transactions suspected of being criminal activity. The convention urged states to apply measures that allow detection or monitoring of the physical movement of cash or bearer securities across borders for the purpose of ensuring proper use of information without affecting freedom of movement of capital.[84]

Second Branch: Important Resolutions on Combating Terrorism Financing

The first resolution on combating terrorism financing was issued by the Security Council about two years before the September 11, 2001 attacks, namely Resolution 1267[3] issued on October 15, 1999, which demands that the Taliban hand over Osama bin Laden due to his accusation by the United States for the Kenya and Tanzania bombings in 1998. It calls on UN member states to freeze the Taliban and Al-Qaeda's assets and financial resources. Resolution 1333 was issued in 2000, and Resolution 1390 in 2002 to strengthen Resolution 1267. Within approximately two weeks after the New York attacks, the Security Council moved with the intent to stop financial support to terrorists, unanimously adopting Resolution 1373,[4] which obligates states to prevent financing of terrorists, criminalize direct or indirect support for them, freeze funds, financial assets, and economic resources of entities or persons that participate in, facilitate, or commit terrorist acts, and not provide safe haven for these persons or entities, and promote international cooperation with additional technical measures to prevent financing of terrorist acts and their preparation. Resolution 1373 also urged states to join the International Convention for the Suppression of the Financing of Terrorism.[84]

First: Security Council Resolution No. (1373) of 2001

Issued in Session No. (4358) on December 28, 2001: Prevention and cessation of financing of terrorist acts. Criminalization of nationals of these states intentionally providing or collecting funds by any means, directly or indirectly, or on their territory to be used in terrorist acts, or in the event of knowledge that they will be used in terrorist acts. And – without delay – freezing of funds, any financial assets, or economic resources of persons committing terrorist acts, or attempting to commit them, or participating in their commission, or facilitating their commission,

or entities owned or controlled directly or indirectly by these persons, or persons and entities acting on behalf of these persons and entities, or under their direction, including funds derived from property owned by these terrorists, and persons and entities associated with them, or funds generated by this property.[84]

Second: Security Council Resolution No. (1377) of 2001

Issued in Session (4413) on November 12, 2001. The Security Council in this context calls on the Counter-Terrorism Committee to discover the ways through which it can assist states, and to explore in particular with international, regional, and sub-regional organizations and promote best practices in the areas covered by Resolution (1373) of 2001, including: drafting model laws as appropriate. The extent of availability of technical, financial, regulatory, legislative, and other assistance programs available that would facilitate implementation of Resolution (1373) of 2001. Promoting possible forms of interaction between assistance programs. It appeals to all states to intensify their efforts to eliminate the scourge of international terrorism.[84].

4. THIRD: SECURITY COUNCIL RESOLUTION NO. (1456) OF 2003

Issued in Session (4688) on January 20, 2003, which provided: "All states must take urgent action to prevent and suppress all forms of positive and negative support for terrorism, and they must in particular fully comply with all relevant Security Council resolutions, particularly Resolution (1373) of 2001, Resolution (1390) of 2004, and Resolution (1455) of 2003." [84]

Fourth: Security Council Resolution No. (2253)

Issued on December 17, 2015 on counter-terrorism. This resolution was submitted by the United States of America and the Russian Federation calling for the freezing of financial assets and economic resources belonging to the organizations (ISIS) and (Al-Qaeda organization), and persons, groups, institutions, and entities associated with them. This resolution also calls on states to criminalize financial transactions related to terrorism, including all transactions with terrorists (individuals and groups) terrorist, and not just those transactions associated with terrorist acts; in order to better disrupt the activities of terrorist fighters and stop oil smuggling and human trafficking. This resolution may be one of the clearest international resolutions in combating terrorism, but it lacks mechanisms for implementation and binding

application for states in implementing it. This resolution also lacks clarity on the organizations, individuals, institutions, and entities associated with (ISIS) and (Al-Qaeda) activities.[84]

Fifth: Security Council Draft Resolution No. (2354)

Issued on May 25, 2017 entitled "Comprehensive International Framework for Combating Terrorist Discourse." This resolution is considered the first Egyptian draft prepared to combat international terrorism adopted by the Security Council unanimously on May 25, 2017. Approximately 60 other countries participated in its submission.[84]

The state of collapse in some Arab countries – after what is called the Arab Spring revolutions – led to creating a favorable environment for the growth of terrorist organizations and their carrying out numerous operations within and outside the countries; which led to the focus of the international agenda and Security Council reactions on confronting that phenomenon. The Security Council issued numerous resolutions addressing the terrorism phenomenon, addressing deteriorating situations in (Syria, Iraq, Libya, and Yemen), condemning terrorist acts therein, or taking collective international action on the terrorism phenomenon, including: the international coalition to confront ISIS in (Syria) and (Iraq), and among the most prominent Security Council resolutions on the terrorism phenomenon after 2011: Resolution (2017) of 2013, which considered the Islamic State organization a terrorist group, and called for its combating and stressed that the Islamic State in (Iraq) and (the Levant) is subject to the weapons embargo and asset freezing imposed under Security Council Resolution (1267) of 1999, and Resolution (2083) of 2012, and emphasized the importance of immediate and effective implementation of these measures. The Security Council passed its Resolution (2170) on August 15, 2014, regarding sanctions on (ISIS), and the Security Council listed on November 19, 2014, the organization Ansar al-Sharia Libya on the blacklist of terrorist organizations.

The Security Council condemned on February 28, 2015, what it described as the barbaric terrorist acts committed by fighters of the Islamic State organization in Iraq, including: destruction of precious historical and cultural monuments. Paris then suffered terrorist attacks. The Security Council issued Resolution (2249) on November 20, 2015, which called on states to do everything in their power to double and coordinate their efforts to prevent and thwart terrorist acts committed specifically by the "ISIS" organization and the Al-Nusra Front, and

urged the international resolution to intensify efforts to stop the flow of foreign terrorist fighters to Iraq and Syria, and prevent and thwart terrorism financing.[84]

Second Demand: Regional Efforts in Combating Terrorism Financing Means

Given states' awareness of the danger of financing reaching terrorist organizations, and that this financing can effectively contribute to helping these organizations complete their destructive operations, states have collectively worked at the regional level to unify their security efforts to combat terrorism financing. This matter has been applied throughout the world.[84]

First Branch: Regional Efforts to Assist Security Agencies at the Arab Level

Arab security cooperation in the field of combating terrorism financing came within the framework of many Arab states' understanding of the importance of facing this phenomenon collectively, and that individual confrontation would not have an effective impact. The features of this cooperation began to appear during 1993, then this trend was strengthened during the following year 1994, and deepened and took on new, more effective dimensions during 1995 and 1996. Throughout the 1990s, Arab cooperation in the field of combating terrorism took more than one level.[84]

The Arab League issued the Arab Convention for the Suppression of Terrorism in 1998, which came as a practical manifestation of the importance of having a unified strategy agreed upon among Arab states in the field of combating terrorism. Article (Three) provided for security measures to prevent and combat the terrorism phenomenon, and stipulated the following: "The Contracting States undertake not to organize, finance, or commit terrorist acts, or participate in them in any form, and in fulfillment of their commitment to prevent and combat terrorist crimes in accordance with the laws and procedures of each of them." The provisions of the convention show that it has a preventive role aimed at reducing terrorist operations and tightening the grip on unlawful terrorist organizations.[84].

Second Branch: Convention of the Gulf Cooperation Council States for Countering Terrorism

Article One of the Convention of the Gulf Cooperation Council States for Countering Terrorism defined and expanded on the definition of terrorism in general to such an extent that it included environmental damage from pollution among terrorist crimes, though the damage to the environment from pollution may be attributable to

the development of factories that emit their fumes and smoke into the materials, or discharge their waste into water.[84]

The convention stipulated measures to prevent terrorist activities, as well as security measures to combat terrorism, as well as the extradition of suspects or convicts in terrorist crimes. This convention addressed judicial jurisdiction in terrorist crimes, as well as requests for extradition of criminals in terrorist crimes. Article (23) thereof provided that "the Contracting States undertake to provide the maximum legal and judicial assistance possible necessary for investigations, inquiries, or legal proceedings related to terrorist crimes." [84]

Also, the Convention of the Organization of African Unity for the Prevention and Suppression of Terrorism. The Arab Republic of Egypt signed on July 14, 1999, the Convention of the Organization of African Unity for the Prevention and Suppression of Terrorism, which entered into force on March 19, 2001. The convention addressed the following prevention measures: Abstention from any act aimed at organizing, supporting, financing, or inciting the commission of terrorist acts, or harboring terrorists whether directly or indirectly. Abstention from providing terrorists with arms or assisting them in testing them on the territories of member states as a base for planning or implementing any terrorist act, or participating or cooperating in these acts in any form.[84]

5. CONCLUSION

It is clear from the study that Iraqi legislation has taken important steps in criminalizing terrorism financing and prosecuting its perpetrators, but its effectiveness is not complete except by strengthening institutional coordination and adapting its implementation with international standards. The comparison shows that filling legislative gaps and developing surveillance and international cooperation mechanisms represent a necessity to ensure the protection of the financial system and prevent its exploitation in serving terrorist activities.

5.1. First: Findings

1. It is clear that the Iraqi legislator did not establish a unified regulation for the crime of terrorism financing, but rather distributed its provisions among the Penal Code, the Counter-Terrorism Law, and the Counter-Money Laundering Law, which led to variation in penalties and repetition and sometimes contradiction of them, which

created a problem in judicial application and difficulty in unifying jurisprudence.

2. The 2005 Counter-Terrorism Law equated the principal perpetrator, financier, instigator, and planner and made the punishment for all of them death, which is an excessive severity that conflicts with the principle of proportionality between crime and punishment, unlike the money laundering law which was satisfied with life imprisonment and did not tend toward capital punishment.
3. The Penal Code did not address terrorism financing independently, but rather considered it a form of secondary participation in crimes affecting state security, unlike modern legislation that gives financing the status of an independent crime as the most prominent danger in terrorist performance.
4. The 2015 Counter-Money Laundering and Terrorism Financing Law equated all forms of financing without taking into account the degree of danger of the financing entity, contrary to international standards that intensify the penalty for financing organizations rather than individuals, and for cross-border financing rather than domestic only.
5. The legislator did not distinguish between financing within Iraq and outside it, and did not expand in criminalizing non-financial financing such as logistical support, unlike some international laws that expand the scope of criminalization to include any support that facilitates terrorist activity.
6. An evident emphasis on imprisonment, death and a high fine was observed and there were no modern precautionary methods to deal with cross-border transactions, freezing of assets and closing of accounts, thus characterizing the more advanced European and Gulf systems in the area.
7. Additional severity, which involves secondary penalties associated with the crime of financing terrorism, including the deprivation of political and administrative rights, but may also contradict the provisions of social reintegration, are the use of many of them by default without judicial discretion.
8. Despite reference to communication surveillance and suspicious operations, Iraqi legislation did not allocate modern technical tools or clear rules to regulate digital surveillance or financial investigations, unlike countries that rely on automatic systems for detecting suspicious activities.

5.2. Second: Recommendations

1. Issue a single law or special chapter, which unites the provisions of criminalization and punishment and eliminates the conflict between the Terrorism Law, the Money Laundering Law, and the Penal Code.

2. Not to confuse the punishment of individuals and institutions, internal and external funds, but to distinguish the financier and the main culprit.

3. Establish electronic monitoring over suspicious financial accounts, connecting the banks and financial institutions with the centralized database and engaging the automatic analysis.

4. Overcome the existing gap in the legislation by identifying financing sources (fines, fees, governmental assistance), and make sure that the compensation is provided in a systematic and equitable process.

REFERENCES

- Abd Al-Ghani, D. M. (2018). Previously cited, p. 359.
 Abd Al-Ghani, D. M. (2018). Previously cited, p. 485.
 Abd Al-Ghani, D. M. (2018). Previously cited, p. 619.
 Abd Al-Ghani, D. M. (2018). *The Ideology of Terrorism and Mechanisms to Combat It*. Cairo: Dar Al-Nahda Al-Arabia.
 Aboud, S. M. (2013). *The Phenomenon of Money Laundering: Problems and Effects with Reference to Iraq* (2nd ed.). Baghdad: Dar Al-Doctor.
 Abu Joudeh, E. (2015). *Terrorism and the International and Regional Efforts to Combat It*. Lebanese Army Magazine, Issue No. 91, January, Lebanon.
 Al-Ali, K. K. N. H. (2024). Penalties and precautionary measures in negative crimes: A comparative study between Iraqi law and Islamic Sharia. *Al-Iraqiya University Journal*, Vol. 72, Issue 4.
 Al-Asadi, H. I. (2015). *Terrorism and Money Laundering as a Source of Its Financing*. Beirut: Zain Legal Publications.
 Al-Hadidi, M. A. I. (2017). *Criminal Protection of the Rights of Victims of Terrorist Crimes*. Master's Thesis, Alexandria University, Egypt.
 Al-Hadidi, M. A. I. (2017). *Criminal Protection of the Rights of Victims of Terrorist Crimes*. Master's Thesis, Alexandria University, Egypt.
 Al-Hadithi, F. A. (n.d.). Previously cited, pp. 192-193.
 Al-Hammadi, I. M. A. (2018). *Suppressing the Financing of Terrorism in International Law: A Comparative Study*. Master's Thesis, College of Law, United Arab Emirates University.
 Al-Hassan, A. (n.d.). *Explanation of the New Criminal Procedure Law*. Baghdad: Al-Irshad Printing Press.
 Al-Hassan, A. (n.d.). *Explanation of the New Criminal Procedure Law*. Baghdad: Al-Irshad Printing Press.
 Al-Saadawi, M. (2017). *Substantive Rules and Procedural Framework for Combating Terrorism: A Comparative Study*. Cairo: Dar Al-Kitab Al-Hadith.
 Al-Shafi'i, H. O. A. (2016). International cooperation to prevent terrorist financing. *Al-Fikr Al-Shurti Journal*, Vol. 25, Issue 97, April.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 37.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 39 (Second).
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 40.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 41.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 42.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 43.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 44.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 46.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 45.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 42.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 42.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 8.
 Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015, Art. 18.
 Anti-Money Laundering Law, Art. 12(1)(a).
 Anti-Money Laundering Law, Art. 12(1)(b).
 Anti-Money Laundering Law, Art. 12(1).
 Anti-Money Laundering Law, Art. 12(2).

- Anti-Money Laundering Law, Art. 12(3).
 Anti-Money Laundering Law, Art. 12(4).
 Anti-Money Laundering Law, Art. 18(1).
 Anti-Money Laundering Law, Art. 18(2).
 Anti-Money Laundering Law, Art. 18(4).
 Anti-Money Laundering Law, Art. 5 and Art. 8.
 Anti-Money Laundering Law, Art. 8.
 Bajbouh, I. T. (2011). *International Cooperation in Combating Terrorism Crimes*. PhD Dissertation, Faculty of Law, Cairo University, Egypt. Al-Hadithi, F. A. (n.d.). *Explanation of the Penal Code: General Part*. Baghdad: Legal Library.
- Central Bank of Iraq Law No. 56 of 2004, Annex (1), Art. 4.
 Central Bank of Iraq Law No. 56 of 2004, Art. 7(w).
 Code of Criminal Procedure No. 23 of 1971, Art. 49.
 Code of Criminal Procedure No. 23 of 1971, Art. 51.
 Code of Criminal Procedure No. 23 of 1971, Art. 51.
 Code of Criminal Procedure No. 23 of 1971, Art. 53.
 Counter-Terrorism Law No. 13 of 2005, Art. 2.
 Counter-Terrorism Law No. 13 of 2005, Art. 4.
 Counter-Terrorism Law No. 13 of 2005, Art. 54.
- Hamada, N. (2014, October 7). *The OAU Convention on the Prevention and Combating of Terrorism*. *Dunia Al-Watan Newspaper*.
- Helmy, N. (1988). *International Terrorism under the Rules of Public International Law*. Cairo: Dar Al-Nahda Al-Arabia.
- International Convention for the Suppression of the Financing of Terrorism, Art. 12.
 International Convention for the Suppression of the Financing of Terrorism, Art. 7(2).
 International Convention, Art. 10(1).
 International Convention, Art. 18(2)(b).
 International Convention, Art. 8(4).
 Iraqi Penal Code No. 111 of 1969, Art. 203.
 Iraqi Penal Code No. 111 of 1969, Art. 87.
 Iraqi Penal Code No. 111 of 1969, Art. 96.
 Iraqi Penal Code No. 111 of 1969, Art. 97.
 Iraqi Penal Code No. 111 of 1969, Art. 97.
 Iraqi Penal Code No. 111 of 1969, Art. 98.
 Iraqi Penal Code No. 111 of 1969, Art. 99.
 Iraqi Penal Code No. 111 of 1969, Arts. 198–199.
- Khalaf, J. K. (2017). *Explanation of the Penal Code: General Part (1st ed.)*. Beirut: Zain Legal Publications.
- Khalaf, J. K. (2017). Previously cited, p. 109.
- Owein, Z. A. (2016). *The crime of financing terrorism through money laundering: A comparative study*. *Journal of Law, Al-Nahrain University*, Vol. 18, Baghdad.
- Republic of Iraq. (1969). *Penal Code No. 111 of 1969 (as amended)*.
- Republic of Iraq. (1971). *Code of Criminal Procedure No. 23 of 1971*.
- Republic of Iraq. (1971). *Code of Criminal Procedure No. 23 of 1971*.
- Republic of Iraq. (2009). *Law No. 20 of 2009 on Compensation of Victims of War Operations, Military Errors, and Terrorist Acts*. *Official Gazette of Iraq*, Issue No. 4195.
- Republic of Iraq. (2009). *Law No. 20 of 2009 on Compensation of Victims of War Operations, Military Errors, and Terrorist Acts*. *Official Gazette of Iraq*, Issue No. 4195.
- Republic of Iraq. (2015). *Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015*. *Official Gazette of Iraq*, Issue No. 4387.
- Safar, A. (2006). *Money Laundering and Terrorist Financing Crimes in Arab Legislation*. Tripoli: Modern Book Institution.
- Shinaw, T. S. (2019). *Money Laundering and Terrorist Financing Crime and Its Impact on Asset Freezing*. Master's Thesis, Teachers Institute, Iraq.
- Shinaw, T. S. (2019). Previously cited, p. 73.

- Suwaidan, A. H. (2005). *International Terrorism in Light of International Changes* (1st ed.). Beirut: Al-Halabi Legal Publications.
- Talha, M. H. (2014). Previously cited, p. 213.
- Talha, M. H. (2014). Previously cited, p. 215.
- Talha, M. H. (2014). Previously cited, p. 400.
- Talha, M. H. (2014). *Strategy for Confronting Terrorist Financing Crimes*. Cairo: Dar Al-Nahda Al-Arabia.
- United Nations. (1999). *International Convention for the Suppression of the Financing of Terrorism*. New York: United Nations.