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Criminalisation of Terrorism Financing in Iranian Law

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Purpose:
The purpose of this paper is to demonstrate that to what extent the Iranian criminalisation of terrorism financing meets the international standards of counter-terrorism financing regime, in particular the Financing Convention and the Financial Action Task Force (FATF) Recommendations, and what is the main impediment for Iran to integrate at the international level to combat terrorism financing. Also, it tries to rate the Iranian criminalisation of terrorism financing in accordance with the FATF technical compliance rating.

Design/Methodology/Approach:
This subject is analysed from an Iranian perspective by undertaking fieldwork through collecting documents in Iran and using the official documents, statements, and laws, in particular the Iranian Law of Combating Financing of Terrorism (2018), both Persian and English sources.

Findings:
Iran's terrorism financing offence is not completely in line with international counter-terrorism financing regime because of an exemption for the struggle of individuals, nations, and national liberation movements with the aim of countering domination, foreign occupation, colonisation, and racism. The Iranian Supports for national liberation movements derive from the Constitutional Law that requires Iran's supports the struggles of the oppressed for their rights against the oppressors anywhere in the world. As a result, the FATF Recommendation 5 (criminalisation of terrorism financing) would be rated Partially Compliant.

Originality/Value:
No article exists specifically on this research field. To the best of the author knowledge, this paper, for the first time, examines the Iranian criminalisation of terrorism financing. It rates the criminalisation (Recommendation 5) based on the FATF technical compliance rating as no mutual evaluation has been conducted so far. The paper is useful for academicians, law enforcement, policymakers, legislators, and researchers.

Keywords:
Iran, Criminalisation, Terrorism financing, National liberation movements.

Introduction

Before the 9/11 attacks, counter-terrorism financing (CTF) regime was poorly enforced and only four countries, Botswana, Sri Lanka, United Kingdom, and Uzbekistan had ratified the International Convention for the Suppression of Financing of Terrorism (1999) ('the Financing Convention'). This trend changed after the 9/11 attacks, mostly through the

interference of the United Nations Security Council Resolution (UNSCR) 1373, a large number of states joined the Financing Convention (188), and the Financial Action Task Force (FATF) Recommendations (FATF, 2012). However, Iran is a particular case because it has been accused of the financial and military support for some non-state militant actors such as Hezbollah, Hamas and the Palestinian Islamic Jihad (PIJ), all of which are internationally designated as terrorist groups (Levitt, 2007, 2006; Byman, 2008). Iran considered its implementation of the UNSCR 1373 as a national responsibility (UNSC, 2001b), but it has not ratified the Financing Convention although the government presented the Bill to Join the Financing Convention in 2017. Iran has been recognised as a high-risk and non-cooperative jurisdiction by the FATF. From 2009 to 2016, the FATF urged all jurisdictions to apply effective counter-measures with regard to Iran (FATF, 2009) due to the deficiencies in Iran's AML/CTF regime and transactions associated to Iran's nuclear proliferation (FATF, 2010; UNSC, 2006, 2007, 2008) and these counter-measures remained in place until 2016 following Iran's high political commitment of the agreed Action Plan to address its deficiencies and to seek technical assistant (FATF, 2018a).

Although the Action Plan is secret, it is understood to require that Iran should amend the Anti-Money Laundering Law 2008 (AML), the Law of Combating Terrorism Financing 2016 (LCTF); and should join the Financing Convention and the Palermo Convention if it wishes to be removed from the blacklist. One important reason that Iran cannot integrate at the international level to counter financing of terrorism and leading to consequent economic sanctions being imposed on Iran (Katzman, 2018; Happold and Eden, 2016), is its adoption of a different definition of terrorism, which exempts the National Liberation Movements (NLMs), on the part of other countries and the reflection of the adopted definition in its law and policy. The criminalisation of terrorism financing through the Financing Convention was proposed and developed by Western countries (Tofangsaz, 2018), which has contradictions,

under very different normative beliefs and structure, with the non-Western states, such as Iran.

The CTF regime can be analysed according to three categories, including criminalisation of terrorism financing, financial regulations as preventive measures, and sanctions imposed on individuals and entities who support terrorist acts, terrorists and terrorist organisations (King *et al*, 2018; Gurule, 2009; Biersteker and Eckert, 2007). This paper only examines the criminalisation of terrorism financing in Iranian law in order to demonstrate to what extent the Iranian criminalisation of terrorism financing meets the international standards of CTF regime and what is the main impediment for Iran to integrate at the international level to combat terrorism financing. In addition to the compliance of the Iranian law with the international law, the issue of human rights and the rule of law regarding the criminalisation of terrorism financing is examined, to show the interaction between human rights and the rule of law; and the criminalisation of terrorism financing.

Due to international pressures, Iran strikes some efforts to concentrate on counter-terrorism by the criminalisation of terrorism financing as a stand-alone offence. On the one hand, Iran has been accused of being a state-sponsor of terrorism (Clarke and Smyth, 2017; Wigginton *et al*, 2015; Byman, 2005). On the other hand, Iran has a common goal in combating some terrorist groups, such as Islamic State in Iraq and Syria (ISIS), Al-Qaeda, and the Taliban (Esfandiary and Tabatabai, 2017; Malakoutikhah, 2018). Iran also is a victim of terrorist attacks from three dimensions. First, after the 1979 Islamic Revolution, various groups were militarily opposed to the Supreme Leader of the Revolution, Ayatollah Khomeini. The leading opposition group was the Mojahedin-e-Khalq (MEK).[1] The MEK survived the test of time and developed into the most disciplined armed organisation opposing the Islamic Republic (Abrahamian, 1989). Second, prominent domestic separatists, such as the Kurds, Baluch, and Arabs sought to acquire greater autonomy at the cost of potential fragmentation

of Iran. Finally, Iran is located in the geopolitical region of a seemingly continuous war zone which attracts terrorist groups, in particular around Iraq, Syria, and Afghanistan. Terrorist groups such as the Taliban, Al-Qaeda, and ISIS are thus the primary foreign threats for security and stability in Iran (Malakoutikhah, 2018).

This article's unique contribution to the debate is to explain and analyse from an Iranian perspective the attempt of Iran to criminalise terrorism financing and why it still encounters barriers. To this end, this article is divided into four sections. First, the Iranian legal and policy framework of terrorism financing is discussed in order to reveal the process of, and the requirement for, criminalisation of terrorism financing. The second section pertains to criminal elements of the offences of terrorism financing to illustrate to what extent mental and material elements of terrorism financing in Iranian law meet the international CTF. The third section elaborates on the main barrier to the international integration, which is the exemption of the NLMs, and its reflection in the Iranian laws and regulations. The fourth and final section is to assess Iranian criminalisation of terrorism financing based on the FATF technical compliance rating. As Iran has not sufficiently cooperated with the FATF, the normal mutual evaluation has not been carried out, so this section attempts to rate the Iranian criminalisation process.

Iranian Legal and Policy Framework of Terrorism Financing

The progress of legal and policy framework of CTF in Iran can be divided into three periods. The first deals with 2001 to 2008 when Iran relied on the existing laws to prevent terrorism and terrorism financing through the Islamic Penal Code (IPC). The second period considers 2008 to 2016 during which time Iran made an effort to remedy the absence of CTF regulations through AML Law (2008). Third, from 2016 to the present day, Iran has enacted specific laws and regulations to combat terrorism financing, including the LCTF (2016), and the Amendment of the LCTF (2018). Each of the three periods is examined as follows.

In the first phase, the IPC forms the significant legal source for terrorism and terrorist-related activities in Iran. Since the IPC has been extracted from *Shari'ah*, the penal system has been affected by Islamic values and concepts (Qasemi, 2016). As a result, under the IPC, articles 279 and 286, terrorists were charged with the criminal title *moharebeh* (Enmity against God) and *fesad fel-arze* (Spreading corruption on the earth), interchangeably.

Moharebeh is defined as 'drawing a weapon on the life, property or honor [referring to female members of one's family] of people or threating them, in such manner that results in insecurity in the environment' (IPC, art 280). The punishment for *moharebeh* is one of the following penalties; the death penalty (hanging), crucifixion, amputation of right hand and left foot, or banishment (IPC, art 282). Choosing one of these punishments is under the jurisdiction of the judge. *Fesad fel-arze* refers to a person who 'widely commits crimes against physical integrity and crimes against internal or external security of the country, criminal libel, a disorder in the state economic system, arson and annihilation, dissemination of toxic, microbial, and hazardous matters…that cause severe disorder in the public order of the country, create insecurity or inflict substantial damage upon the physical integrity or persons or public and private properties…' (IPC, art 286). The punishment for *fesad fel-arze* is solely the death penalty.

There is no article in the IPC which refers to the offence of terrorism financing, so it may be considered as the aiding or abetting of an offence. Art 126 states three categories which are regarded as aider and abettor to an offence; every person who encourages, threatens, induces or provokes the other to commit an offence, or who causes preparation of offenses by conspiracy, deceit, or misuses of power; every person who makes or procures instruments of offence or provides means for committing the offence; and every person who facilitates preparation of an offence. In June 2017, five members of ISIS attacked the Iranian Parliament and the mausoleum of Ayatollah Khomeini, killing 17 people and wounding 42 (Spencer,

2017). Following the attacks, eight members of ISIS, who had a direct connection with the attackers, were arrested and convicted of the crime of abetting *fesad-fel-arze*. The main conviction was for being a member of ISIS, weapon smuggling and providing financial and military support for the attackers (Mashregh News, 2018).

In the second phase, Iran criminalised money laundering offences in 2008 through the AML Law (2008) and an executive bylaw (2009).[2] These regulations include the criminalisation of money laundering, the establishment of the Anti-Money Laundering High Council, the establishment of the Financial Intelligence Unit, the identification and verification of customers, and the Suspicious Transaction Reports. However, this 2008 Law was not regarded by the FATF as sufficient to prevent terrorism financing (FATF, 2018) because of differences between money laundering and terrorism financing including the vector of criminality, the scale of operation, the variant response to identified risk, and the methods of illicit funding (King and Walker, 2015). Further, based on the technical compliance rating of the FATF, criminalisation of money laundering would be regarded as partially compliant with the FATF recommendations, such as with Saudi Arabia prior to its adoption of a stand-alone statutory law of terrorism financing (FATF, 2018c).

In the third phase, after 15 years of binding obligation on states imposed by the UNSCR 1373, to '…prevent and suppress the financing of terrorist acts', Iran recently enacted the LCTF (2016). The main feature of this Law is the criminalisation of terrorism financing as a stand-alone offence. The LCTF (2016) was regarded as insufficient by the FATF (FATF, 2018a). The major inconsistency of the LCTF (2016) with the international law framework is the issue of criminalisation of terrorism financing, which exempts actions done by NLMs. Iran is not the only country which exempts NLMs from being subject to terrorism financing offences. Jordan, Namibia, Syria, Egypt, Yemen, and Kuwait also made a reservation to the Financing Convention for the exemption of the NLMs. Bahrain is another example which

considered an exemption for NLMs, and consequently was rated as partially compliant by the FATF (FATF, 2018d). Yet international pressures through imposing unfair sanctions have targeted only Iran due to political issues. Following ongoing criticism by the FATF, the LCTF (2016) was reformed in 2018 in order to be consistent with the FATF Action Plan. The details of, and similarities and differences between, the LCTF (2016) and the LCTF (2018), regarding the criminalisation, is discussed in the following sections.

Mental Elements of the Offences of Terrorism Financing (*Mens Rea*)

The cornerstone of criminal law is the principle of culpability which requires a guilty state of mind (Marchuk, 2014). The existence of the mental elements (*mens rea)* for the offences of terrorism financing can be justified on several grounds. If the aim of the criminal law is deterrence, it is necessary to punish people who deliberately break the law (Marchuk, 2014), not based on negligence or recklessness. Based on the Financing Convention, the *mens rea* of the offence of terrorism financing has two aspects. The first is that the act of financing must be done 'wilfully' (as a criminal intent), which means that the conduct is deliberately committed, not accidentally or negligently. The second mental aspect of the *mens rea* of the offences of terrorism financing is whether the perpetrator must have had either the intention that the funds be used to finance terrorist acts, or the knowledge that the funds would be used for such purposes. The Financing Convention leaves the specification of intention and knowledge to each state party and does not mention what degree of intention and knowledge is needed.

The LCTF (2018) removes the mental elements of the offences of TF from the previous LCTF (2016). The earlier Law referred to the words 'intentionally' and 'knowingly' to demonstrate the mental elements of the offences of terrorism financing, but the amendment version removes these two words. There is a presumption which might explain this omission. The legislator considered that the LCTF (2018) must be accompanied by the IPC, due to the

importance of the IPC in the Iranian criminal law system and the principle that all crimes happen deliberately and with intention and knowledge (Shahcheragh, 2012).

In conclusion, in legislating against and criminalising terrorist financing, one crucial safeguard is the principle of legality, *nullum crimen, nulla poena sine lege*, which requires precision and clarity in laws and prohibits the *ex post facto* adoption of a law (Masferrer and Walker, 2013; UNODC, 2009). The certainty comprises two distinct factors: it guides people in complying with the law, and it imposes a limitation on governmental authority (Maxeiner, 2008). Both the Financing Convention and the LCTF (2018) fall short in being certain and respect the rule of law regarding the *mens rea* of offences of terrorism financing. The main question here is whether a lower degree of culpability should give rise to criminal responsibility? In other words, to what extent is the full or limited *mens rea* important in the criminalisation of terrorism financing to be both legitimate and effective? The Financing Convention is not clear about whether full or limited *mens rea* is preferred; it refers to 'wilfully' for the act itself, while it does not determine the required degree for intention or knowledge of outcomes. Regarding the Iranian law, the LCTF (2018) did not mention to the *mens rea*, while it is likely that the offence requires the *mens rea*.

Material Elements of the Offences of Terrorism Financing (*Actus Reus*)

Financing

The material elements (*actus reus*) of the offences of terrorism financing are, first, 'financing' and, second, 'terrorist acts' or 'non-attacks purposes' in both international law and Iranian law. The financing element is defined as providing or collecting funds or other assets. Regarding the Iranian law, one of the objections raised by the FATF over the LCTF (2016) was in association with the financing element (Mahjourian, 2018). The LCTF (2018) has been reformed and instead of 'providing *and* collecting funds', it refers to 'providing *or* collecting funds'. The word of and/or can change the limitation and broadness of the offences

of terrorism financing. By changing the word 'and' to 'or', the material element, financing, only one aspect, providing or collecting funds, is enough to meet the requirement for the offences of terrorism financing.

The LCTF (2016-2018) refers to funds, assets and financial sources. The executive bylaw of the LCTF (2016-2018) explains funds, article 1(d), and assets, article 1(e), in details and differentiates between funds and assets. 'Funds' include any kind of coins, notes, cheques {example of different type of cheques}, anonymous payment cards, either in Rial or foreign currency. 'Asset' can mean tangible or intangible, movable or immovable however acquired or assets of official or ordinary documents in electronic or digital format. The LCTF (2016-2018) did not explain about 'financial sources' but gives some examples as the proceeds of currency smuggling, donations, money transfer, buying and selling financial and credit instruments, opening an account directly or indirectly, and credit financing.

It seems that the LCTF (2016-2018) tends to criminalise the broad range of financing, as a material element of the offences of terrorism financing. The LCTF (2016-2018) in respect to broadness is close to the UNSCR 1373, which refers to 'funds, financial assets or economic resources or financial or other related services', rather than the Financing Convention. When it refers to any economic activity, it means production, distribution, exchange and consumption of goods and services. The broadness in forms of funds is not without challenges, in particular regarding services. Providing services for terrorists or terrorist organisations, such as transportation, insurance, defence and administration of justice, medicine, and consumer service, might be regarded as terrorism financing and even might undermine the legitimacy of humanitarian aid.

However, here some of these mentioned services affect human rights; as an example, can providing medicine or defence and administrative justice be regarded as terrorism financing? In accordance with the provided definition of the UNSCR 1373, all services which sustain the

capability of the terrorists or terrorist organisations, even without any link to attacks, are criminalised. While, providing medical services to terrorists, on the one hand, can be considered as terrorism financing, on the other hand if the medicine is not provided, it might be considered as a violation of human rights, in particular, the right to life, the right to health, the right to protection from inhuman and degrading treatment. Further, there is a contradiction between international humanitarian law (IHL) and CTF; under IHL, medical professionals cannot be prosecuted for fulfilling their medical duties, regardless of who is benefiting from them (Additional Protocol, 1977, art 16), including terrorists, but under CTF, there is a prohibition against providing all services to terrorists or terrorist organisations. The contradiction presents difficulties regarding both the lack of certainty that the consequences of acts are not predictable and in reference to violating human rights for not providing medical assistance to terrorists, if it is accepted under IHL. The point can be further illustrated in relation to Iran. Although Iran is alleged to be financing terrorist organisations, in terms of the re-imposition of the US sanctions by the withdrawal from the Joint Comprehensive Plan of Action (JCPOA), the International Court of Justice (ICJ) required that the US must remove any impediments arising from the re-imposition of sanctions affecting the free exportation to Iran of medicines and medical devices; foodstuffs and agricultural commodities, and parts, equipment and associated services necessary for the safety of civil aviation (ICJ, 2018). However, the language of the UNSCR, the Financing Convention and the LCTF (2018) is too general and can cover all services at the expense of violation of human rights. It would be preferable if anti-terrorism law were to be confined to those funds which do not have any links with human rights.

Terrorist Attacks or Non-Attack Purposes

The second material element of the offences of terrorism financing is related to terrorist acts and non-attack purposes. The terrorist attacks, according to the Financing Convention, are

derived from two sources: treaty offences and a 'catch-all' provision (FATF, 2016). The treaty offences cover 30 terrorist acts set out through nine treaties which state that the provision or collection of funds to commit these acts are criminalised as the offence of terrorism financing. However, not all states have ratified these nine treaties; one example is Iran. The LCTF (2016-2018) also mentions the terrorist acts covered by the treaty offences if Iran joins the treaties.

The catch-all special supplemental definition in the Financing Convention refers to two factors: first, 'any other acts intended to cause death or serious bodily injury to a civilian'; and, second, where the purpose of the acts is 'to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act'. This definition is not comprehensive and it is vague because it is not apparent what types of conduct, under what circumstances and against whom are criminalised (Tofangsaz, 2018).

The Iranian criminal law has not defined terrorism or terrorist acts to date, while the LCTF (2016-2018), for the first time defines a terrorist act. This exact situation is similar to the international community in which no definition of terrorism has been agreed unless through the Financing Convention. The catch-all definition of terrorist acts in the LCTF (2018) refers to two factors.

The first is 'any violent act cause serious injury…against a population'. This definition is similar to the Financing Convention with some differences. Unlike the Financing Convention, it only refers to 'violent act' rather than 'any other act' which confines the acts to being violent. Also in terms of causing serious and bodily injury in which the term 'serious' is not precise, the LCTF (2018) determines what it means by seriousness which depends on the *diyyah* (blood money) extracted from the *Shari'ah* (Kar, 2005). The considerable issue here is that the LCTF (2016) only criminalised the act of terrorism against 'persons with legal immunity' not the general population. However this issue has now been

amended and consequently the LCTF (2018) criminalises the terrorist activities against the population.

The second factor is 'to influence the policies, decisions and measures of Iran, other countries and international organisations'. One of the main issues which distinguishes terrorism from other crimes is that the intent of acts of terrorism is to terrorise and intimidate the population (Schmid, 2011), while the current definition does not mention this issue. It seems that this definition has been inspired by the amount and target of terrorist attacks which happened inside of Iran. Most of the attacks carried out against the Islamic Revolutionary Guard Corps (IRGC) members were near to borders, officials and officials' departments, rather than civilians in shopping centres or streets (Goulka *et al*, 2009). As a result of these targets, and the importance of high security for Iran from dissident nationalists, separatists and foreign terrorists, the focus of the definition is on the state rather than the intimidation of civilians.

In addition to terrorist attacks, providing or collecting funds for non-attack purposes is regarded as material element of the offences of terrorism financing (UNSC, 2015; Keatinge, 2015; Sageman, 2008). Terrorist organisations need funds for five broad categories of activities, including operation, propaganda and recruitment, training, salaries and member compensation, and social services (FATF, 2015). Both the Financing Convention (art 2(3)) and the LCTF (2018) (art 1) criminalise financing terrorist and terrorist organisations for the purpose of non-attacks activities. The LCTF (2016) only criminalised the financing of terrorist acts, the amendment version criminalised the financing of non-attack purposes.

In conclusion, the criminalisation of terrorism financing in the Iranian law covers the expectation of the counter-terrorism financing regime although the international and domestic CTF regime are not comprehensive and sometimes both are against the rule of law and human rights by being very broad or being uncertain. However, if Iran had maintained this definition without any exemptions, some non-state militant actors would have fallen down in

the category of catch-all definition of terrorism, so that, supporting and financing them would be regarded as offences of terrorism financing. To prevent this issue, Iran exempts the NLMs from being the subject of the LCTF (2016-2018) subsequently this exemption causing an obstacle for Iran in order not to integrate at the international level to counter terrorism financing. Next section addresses the exemption of NLMs in detail.

Exemption for National Liberation Movements

One of the critical problems in the criminalisation of terrorism and terrorism financing is the distinction between terrorist organisations and NLMs; articulating this distinction remains a significant concern for the international community (Carlile, 2007). The lack of agreement on the definition of terrorism which separates terrorists from NLMs undermines the legitimacy of the criminalisation of terrorism financing. Because of the uncertainty, one might argue that financing a specific group is legitimate because it is a NLM; this argument has been adopted by Iran in response to some non-state militant actors, such as the Hezbollah and Hamas.

This problem goes back to the complex interaction between anti-terrorism law and IHL because no general international law determines whether anti-terrorism law or IHL is *lex specialis derogat legi generali* (the more special law) (Saul, 2016; Lindroos, 2005); the main difficulty is that NLMs should be governed by anti-terrorism law or IHL, because under IHL, terrorism is prohibited both in international and non-international armed conflict as well (Geneva Convention, 1949, art 33). Unlike the Western countries, the Organisation of Islamic Cooperation's countries (OIC) believe that the activities of the NLMs must be governed under IHL. The OIC's proposal to the UN Draft Comprehensive Terrorism Convention states that 'the activities of the parties during an armed conflict, including in situations of foreign occupation, as those terms are understood under international humanitarian law, which is governed by that law, are not governed by this Convention' (UNGA, 1996).

However, this problem is not limited to the non-Western countries. It also is a challenging issue in the UK. Although there is not any exemption for NLMs in the UK Terrorism Act (2000), because there is an inconsistency in regard to the existence and scope of exclusionary provisions in international and national law (*R v. Gul*, 2013). In the case of *T v. SSHD*, the Secretary of State refused T's application for political asylum, because of his involvement in airport bombings which were carried out on behalf of a political organisation to overthrow the Algerian government. The Judicial Committee concluded that 'it would be inappropriate to characterise indiscriminate bombings which led to the deaths of innocent people as political crimes'. In the case of *R v. Gul*, the appellant defended his uploaded videos in which members of Al-Qaeda and the Taliban attacked the military targets of the coalition forces in Iraq and Afghanistan. His principal defence was that the targeted attack is justified as self-defence, resisting the invasion of their country. The court concluded that because of no agreement on whether attacks by freedom fighters can be exempted from the terrorism label and no agreed definition of terrorism in international law, the mentioned attack can be regarded as terrorism in domestic law. So that, under domestic law of some countries, such as the UK, certain acts might be regarded as terrorism even if it is considered lawful under IHL. Thus, lack of agreed definition of terrorism at the international level reflects on a broad or narrow definition in domestic law of countries.

At the international level, the Financing Convention and also the FATF Recommendations both reject any exemption of NLMs. The Financing Convention, art 6 declares that '…criminal acts are under no circumstances justifiable…'. This article demonstrates that the definition of terrorism must cover even the NLMs if they carry out criminal acts, such as terrorist activities. Although the exemptions for the NLMs were rejected in the Financing Convention, in the *travaux preparatoires*, some countries[3] sought to differentiate between the struggle of peoples for independence and self-determination and acts of violence for

objectives which had nothing to do with the ideals of the people's struggles since this right is legitimate under the UN Charter. They believed that the draft of the Financing Convention is weak and left the door open for impunity and abuse (UNGA, 1999a, 1999b, 2000a, 2000b).

The exemption of NLMs from being the subject of terrorism or terrorism-related offences, such as financing, is considered by some countries in their national law, such as Bahrain (FATF, 2018d). As for Iran, Art 154 of the Iranian Constitution declares that '…it supports the struggles of the oppressed for their rights against the oppressors anywhere in the world' and turns this into one of the main pillars of Iranian foreign policy, which insists on maintaining it by supporting NLMs both financially and militarily. For instance, the Israeli-Palestinian conflict remains unsolved which Iran supports the right of the Palestinian people to self-determination, in pursuit of an end to the Israeli's illegal occupation. Iranian officials believe that peace in the Middle East cannot be achieved unless through solving the Israeli-Palestinian conflict (Mamdouhi, 2018). Further, the UN also fails to solve the conflict although Israel was condemned by the UN for violating human rights of the Palestinian people, in particular the right to self-determination (ICJ, 2004).

However, according to the LCTF (2016), art 1, actions done by people to encounter some affairs such as occupation are not subjected to terrorist actions. This article was criticised by the FATF, and it requested the legislature to adequately criminalise terrorism financing by removing the exemption (FATF, 2018a). The amendment version of 2018 focuses on the introducing of the terrorist group (Mahjourian, 2018), and states that:

> …determination of criteria for activities, individuals, terrorist organisations and groups subjected to this law, by considering art 154 of the Constitution, and by emphasising the right of individuals, nations, NLMs with the aim of countering domination, foreign occupation, colonisation, and racism, is the duty of the supreme national security (SNS).

In practice, this amendment will probably not satisfy the FATF because only the word order has been changed, which does not lead the NMLs to be subject to this Law. Due to the

importance of the Constitution, the Parliament members emphasised this article during the debates on the amended version of the LCTF (2018).[4]

Furthermore, the government presented the Bill to Join the Financing Convention in 2017. The important aspect of the Bill is two declarations made by which, first, the legitimate struggle of people against colonial domination and foreign occupation for the right of self-determination, which is recognised under international law, does not include terrorist acts under article 2 (1) (b) of the Financing Convention. Second, the provisions of the Financing Convention that are in conflict with the Constitution are not binding on the government. Although the Bill to Join the Financing Convention has not been accepted by the Parliament, these two declarations are very crucial for both Iran and some other member parties to the Financing Convention.

By looking at the reservations/declarations made by countries to the Financing Convention, all have a declaration/reservation similar to Iran's declaration regarding the exemption for NLMs. These declarations/reservations were opposed by some member parties, such as Belgium and the United Kingdom, because the declarations/reservations limit the scope of the Convention on a unilateral basis and in a way, which is contrary to its object and purpose (UNTC). If Iran joined the Financing Convention with a reservation on the exemption for NLMs, it would also be opposed by other countries. The exemption undermines the legitimacy and effectiveness of the criminalisation of terrorism financing offences. If the NLMs carried out terrorist attacks, no matter the justification, they should not be exempted from punishment under the terrorism financing.

Conclusion: FATF Technical Compliance Rating on Recommendation 5

Iran has not cooperated with the FATF to publish mutual evaluation. Based on this research, Iran's technical compliance with Recommendation 5 (criminalisation of terrorism financing) is assessed. The rating below is based on the LCTF (2018) as a final version of the Law. The

United Kingdom (FATF, 2018b), Bahrain (FATF, 2018d), Saudi Arabia (FATF, 2018c) and Kuwait (FATF, 2011) technical compliance ratings are considered to assess Iran's compliance rating.

Criterion 5.1: Iran's terrorism financing offence states that providing or collecting funds or assets, by any means, whether from a legitimate or illegitimate source and or using financial resources derived from [some examples are mentioned here: author] in full or in part, for carrying out any economic activity by oneself or another to carry out the following activities or to provide them to terrorist individuals or terrorist organisations is considered financing of terrorism. (LCTF, art 1)

However, Iran exempts the NLMs as subjects of this Law (LCTF, art 1(4)). Through the inclusion of this exemption, the terrorism financing offence is narrow in scope and inconsistent with the Financing Convention.

Criterion 5.2: Iran's terrorism financing offence does not refer to the *mens rea* of the offence. It is highly likely that the legislator considered the principle of culpability for all crimes and the accompanying the LCTF with IPC. (IPC, arts 144 and 145) However, the LCTF did not mention that the IPC may or may not be applied to the terrorism financing offence.

Criterion 5.3: The LCTF refers to funds, assets and financial sources whether from a legitimate or illegitimate source which cover all range of activities. (LCTF Executive bylaw, art 1(e) & (d)).

Criterion 5.4: The Iranian definition of terrorist acts is broad which covers any violent act causing serious bodily injury to influence the policies, decisions and measures of the Islamic Republic of Iran, other countries and or international organisations. However, the exemption for NLMs in LCTF, art 1(4) potentially limits the scope of the terrorist acts.

Criterion 5.5: The Iranian terrorism financing criminalisation covers the funds without any link to specific terrorist acts; if the funds provided for terrorist or terrorist organisations are regarded as terrorism financing offence. (LCTF, art 1)

Criterion 5.6: The penalties available for terrorism financing are not proportionate and dissuasive. If the terrorism financing is regarded as *moharebe* or *fesad-fel-arze*, a financier charged with the penalties of the mentioned crimes. For *moharebeh*, the punishment is one of the four: the death penalty (hanging), crucifixion, amputation of right hand and left foot, or banishment. The punishment for *fesad fel-arze* is solely the death penalty. (IPC, arts 282 & 287). Otherwise the criminals will be sentenced to 2 to 5 years in prison and cash penalty equivalent of 2 or 5 fold of financed funds. (LCTF, art 2)

Criterion 5.7: In addition to the natural person, the Iranian law includes criminal liability for legal person. (LCTF, art 4) for more information it refers to the IPC which states that the legal person may incur criminal liability where a legal representative of the legal person commits an offence in the name or for the benefit of the legal person. (IPC, art 143)

Criterion 5.8: The LCTF addresses the heading, organising, directing and attempting to commit terrorism financing and for punishment of the mentioned ancillary offences refer to the IPC. However, other ancillary offences such as complicity in an offence (IPC, art 125) and aiding and abetting in an offence (IPC, arts 126 to129) did not mention in the LCTF and also it is unclear that the IPC should be applied or not.

Criterion 5.9: Terrorism financing offences are designated as money laundering predicate offences as Iran adopts an all-crime approach to the offences underpinning money-laundering. (AML, art 2 & 3 and LCTF, art 15)

Criterion 5.10: The Iran's terrorism financing offences apply regardless of the place where the crime committed, the nationality and the residency of an offender. (LCTF, art 1(4))

Iran's terrorism financing offence is not in line with the Financing Convention. Specially, due to two reasons, first an exemption for the struggle of 'individuals, nations, NLMs with the aim of countering domination, foreign occupation, colonisation, and racism', and the second is that whether and to what extent the IPC may be applied to the terrorism financing offence. Thus, Recommendation 5 would be rated Partially Compliant. It must be said that the international pressures on Iran for exemption NLMs from being regarded as terrorists are not fair because this issue is not limited to Iran, other countries also exempt NLMs from the criminalisation of terrorism or terrorism-related offences. But, due to political issues, the international sanctions have imposed only on Iran because of supporting NLMs. Supporting NLMs by Iran stems from the Constitutional Law which has a primacy; the Constitution is a declaration of the social, cultural, political, and economic foundations of the Iranian society based on Islamic principles and norms. So that, Iran's foreign policy is to support the struggle of the oppressed, such as the Palestinians for their self-determination right as confirmed through the UN Resolutions (UNGA, 1974). In a broad context, the UN falls short in undertaking its responsibility to maintain international peace, to achieve international cooperation in solving international problems, and to develop friendly relations among nations (UN Charter, 1945). One is related to the failure of the UN to reach an agreed definition of terrorism and the other is in association with the Israeli-Palestinian conflict which remains unsolved since the question was brought to the General Assembly for the first time in 1947 (UNSC, 1967, 1973).

Notes

[1] In 2012, the MEK was delisted from the US terrorist list due to the confirmed absence of terrorist activities by the group. US Department of State, 'Delisting of the Mujahedin-e Khalq', Department of State, September 28, 2012, www.state.gov/j/ct/ris/other/des/266607.htm accessed 9 July 2017. Britain's Court of Appeal ordered the government to revoke the terrorist designation, because from 2001 no military activity had been carried out by the MEK. (*Britain's Court of Appeal Orders People's Mojahedin Organization of Iran Removed from Terror List, 7 May 2008).* Home Office, Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2008, NO. 1645. In 2009, the EU revoked the MEK from the terror list because of the lack of two conditions for being a terrorist group, including 'serious and reliable evidence or clue', Article 1(4) of the Common Position 2001/931/CFSP, and 'committing, or attempting to commit, practicing in or facilitating the commission of any act of terrorism', Article 2(3) of the Regulation 2580/2001.

[2] These executive-bylaws are authorised by the Council of Ministers to frame procedures for the implementation of the laws. The ratification and the regulations of the government and the decisions of the commissions mentioned under this Article shall also be brought to the notice of the Speaker of the Parliament while being communicated for implementation so that in the event he finds them contrary to law, he may send the same stating the reason for reconsideration by the Council of Ministers.

[3] Oman, Qatar, Cuba, Iraq, Kuwait, Lebanon, Syria, Bahrain, Libya, and Pakistan.

[4] Source: fieldwork conducted in Tehran, Iran in June/July 2018.

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