

Crowdfunding Conflict: An analysis of the current regulatory framework governing crowdfunding and its application to armed conflict



ABSTRACT

Amongst the backdrop of growing instability in the east of Ukraine, and looming fears of a civil war, an underfunded and exhausted army battled a rebellion. Volunteers sewed new uniforms to replace tattered and worn out fatigues, and villagers cooked to feed the young soldiers there to protect them. Then, in the week of June 21, 2014, crowdfunding site, *The Peoples Project*, announced the success of the first of a series of proposed crowd funded projects. Sufficient funds had been donated to construct what was dubbed ‘The People’s Drone.’ For a mere \$35,000¹, an unmanned reconnaissance plane was built, and soon after began its surveillance flights over the increasingly porous border with Russia.

Clearly, a single drone did not drastically alter the balance of power in the region, nor did it prevent weapons and soldiers from infiltrating the east. However, what did occur was unprecedented in the history of armed conflict. It was not the first time foreign citizens had provided financial support to a military; however, it was one of the first known attempts at harnessing the power of crowdfunding to fund a military campaign. Using the crowdfunding platform, a small group of Ukrainians were able to collect funds from any pro-government individual on the internet willing to donate. Any global citizen with a few dollars could contribute, achieving a uniquely democratic result. However, as much as those who are pro-government could contribute to support the government, so could those who are anti-government contribute to a fund to fight the government. Any attempts at regulation could face several obstacles, such as the onset of online currencies including Bitcoins, and the anonymity provided by the deep web. Given the current technology, citizens can provide support without the fear of prosecution, or social and political ramifications.

This dissertation will analyse the currently regulatory framework in light of its sufficiency for regulating the crowdfunding of conflict. Part One consists of a brief overview of the industry as a whole, including the success of similar campaigns. Part Two discusses current legislation, both in national jurisdictions as well as international law. The analysis is based on the separation of armed groups into four categories: state entities, non-state entities, terrorist organisations, and international intergovernmental organisations. Part Three will attempt to apply the current regulatory framework to the current civil war in Syria and assess the legality of crowdfunding for the war’s various actors. Part Four concludes the dissertation with recommendations for future legislative efforts.

¹The Guardian, ‘Ukrainians crowdfund to raise cash for ‘people’s drone’ to help outgunned army’
< <http://www.theguardian.com/world/2014/jun/29/outgunned-ukrainian-army-crowdfunding-people-drone>> accessed 15 November 2014

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PART ONE

Crowdfunding, a relatively recent phenomenon, finds its roots in the well-established practice of crowdsourcing, or the practice of obtaining input, ideas, or support from a group of people. While there are various ways to define crowdfunding, for our purposes it will refer to the practice of raising funds for a project or cause from a large group of people, rather than an individual or small group of investors. There is also a strong link between crowdfunding and the use of social media, the mechanics of which will be discussed later.

Before turning to the potential market for military projects, a brief discussion on the crowdfunding industry as a whole is warranted. Massolution LLC,² a crowdfunding market research firm, estimates industry revenue in 2013 at 5.18 billion United States dollar (USD). Kickstarter, the largest and most well-known crowdfunding platform, reported \$138,917,566 USD³ in the third quarter of 2014. Currently, the majority of projects are based in North America and Europe, with 59% and 35% of the market respectively.⁴

There are various models for crowdfunding; the most common is the rewards/donations model. This model involves individual backers receiving a reward ranging from a simple thank you to a finished product or good in exchange for their pledge. A study by Daily Crowdsourc found that in 2011 no less than 93% of campaigns launched globally were rewards based.⁵ The same study concluded that 83% of funds raised in 2011 came via the rewards/donation method. However, only 33% of global reward/donation model campaigns have raised more than \$5,000 USD, while only 10% have raised more than \$10,000.

A second format is the lending model. This format has much in common with the microfinance business model that has been widely implemented in the developing world. Backers provide funds in the form of a loan, with the expectation of reimbursement with interest. In some cases, repayment can be delayed until conditions are met, such as the business becoming profitable. A further modification to this model involves backers paying for the finished product upfront to help fund development. The lending model is believed to be the second largest in terms of market share accounting for \$522m USD in 2011.⁶ Interestingly, projects implementing the lending model reach completion goals on average twice as fast as other formats.

The third largest in terms of market share is the investment (equity-based) model based on total funds raised (average) and the likelihood of a successful campaign.⁷ Accurate statistics on this format are not readily available; however, predictions from 2011 saw it as the model with the

² Massolution, 'Industry Report' <<http://research.crowdsourcing.org/2013cf-crowdfunding-industry-report>> accessed 7 March 2015

³ Kickstarter, '2014: The Third Quarter in Numbers' <<https://www.kickstarter.com/blog/2014-the-third-quarter-in-numbers>> 7 March 2015

⁴ WSBI-ESBG, 'The Crowdfunding Phenomenon and Opportunities for Banks' <<http://www.savings-banks.com/experience/Pages/Crowd-funding.aspx>> accessed 7 March 2015

⁵ National Crowdfunding Association of Canada, 'Crowdfunding' <<http://ncfacanada.org/crowdfunding/>> accessed 7 March 2015

⁶ IBID 4

⁷ IBID 4

greatest potential for future growth.⁸ For this to be fully realised, key legal and regulatory issues with respect to taxation and Internet Protocol address (IP) ownership need to be addressed. Many investment-based campaigns also take on a hybrid model, combining aspects of other crowdfunding models. It should be noted that this practise has not seen widespread adoption to date.

In all models, the offeree must pre-select a funding target based on their needs. If the campaign fails to reach the target, funds will be returned to the donors and the project will go unfunded. The logic behind this requirement is largely based on consumer protection; underfunded projects will produce lower quality goods, or no goods at all, more often than fully funded projects.

This analysis will focus exclusively on the donation-based model. It is difficult to imagine a scenario in which a military-focused crowdfunding campaign could be presented as an investment or offer a substantial reward beyond emotional sentiment.

How Much Could Crowdfunding Raise For A Military Project

As the use of crowdfunding for military purposes has not been initiated on a large scale, it is difficult to predict its full potential. Official numbers for the Ukrainian People's Drone are not available; however, as previously mentioned, media reports speculate that it raised approximately \$35,000 USD.⁹ While it did not make a significant contribution to the military effort, it was able to provide proof of concept. The diaspora, if not the global community, may be prepared to donate to a military campaign they support.

In order to compile a rough estimate of future potential, this analysis will discuss the recent proliferation of internet-based fundraising campaigns for charitable purposes

Proliferation of Internet Campaigns

Internet-based crowdfunding campaigns have produced impressive results for a few select charitable causes. The ALS Ice Bucket Challenge of 2014, which involved people dumping water on themselves before uploading a video to the internet, raised upwards of \$100 million USD in a few short months.¹⁰ The Invisible Children campaign raised \$13,765,177 USD in 2011 through promotional videos which were widely shared on social media sites.¹¹ It is notoriously difficult to replicate the success of these campaigns on a consistent basis as, in addition to social media prowess, they often require a substantial amount of luck and good timing.

The Invisible Children campaign, which advocated for military intervention in Uganda, is the most similar in nature to the issue at hand. It did not provide any funds to any party to an armed conflict;

⁸ IBID 5

⁹ IBID 1

¹⁰ Forbes, 'The ALS Ice Bucket Challenge Has Raised \$100m – and Counting'
<<http://www.forbes.com/sites/dandiamond/2014/08/29/the-als-ice-bucket-challenge-has-raised-100m-but-its-finally-cooling-off/>>

¹¹ Invisible Children, '2011 Annual Report'
<http://c2052482.r82.cf0.rackcdn.com/images/830/original/AR11_small_final.pdf?1323127778>

however, it did solicit donations with the aim of altering the military balance of power in Uganda.¹² Another distinguishing characteristic is that that campaign was not largely advertised through traditional crowdfunding websites, but the groups own website.

Kimbia, a consultancy firm that specializes in charitable crowdfunding campaigns, recently released results from their Give Local America (GLA) campaign. The 2014 campaign funded more than \$53.7 million for 7700 non-profits in a single day.¹³

Demographic and Social Changes

Crowdfunding campaigns, by definition, require the support of members of the public. The success of the campaign is not just determined by awareness, but also the public's opinion and emotional connection to a given issue. Therefore, any estimate of the potential for a campaign must be considered in light of public opinion. For example, recent studies have demonstrated that the public is more willing to donate money to natural disasters than they are to conflict relief.¹⁴ However, the study supporting these findings did not consider demographic differences or forms of fundraising. Perhaps the great success the Invisible Children campaign achieved through social media could be viewed as an indicator of philanthropic interest in armed conflict. Even though the public may be willing to give more to natural disasters than conflict relief, given the substantial amount of money that is donated to causes world-wide, there is still potential to raise significant amounts of funds should one be able to make their cause relevant to donors.

Not much information has been provided about the recipients of the funds from the GLA campaign; however, detailed demographic information is available for the 306,098 individual donors.¹⁵ The gender balance was roughly split as 51% of donors were female. 42% were between the ages of 55 and 74, and 62% had a net worth of \$250,000 or more.¹⁶ Donors were also generally well-educated as 79% attended college.¹⁷ Studies show that the volume of charitable donations made by younger generations is steadily decreasing, while the opposite is true of the over 60 age group.¹⁸ Sufficient statistical data is not available to determine the effects the demographic composition of crowdfunders has on the potential support for crowdfunded campaigns. Different age groups may view the role of armed intervention and self-defence from different angles, thus affecting their willingness to support.

¹² IBID 11

¹³ Kimbia, 'Who Gives to Crowdfunding Events?' <<http://www.kimbia.com/gives-crowdfunding-events/>> accessed 28 March 2015

¹⁴ Zagefka, Hanna & James, Trevor 'The Psychology of Charitable Donations to Disaster Victims and beyond' [2015] SIPR, <http://pure.rhul.ac.uk/portal/files/23159565/Zagefka_and_James_2015_The_psychology_of_donations_to_disaster_victims_and_beyond.pdf> accessed 29 March 2015.

¹⁵ IBID 13

¹⁶ IBID 13

¹⁷ IBID 14

¹⁸ Charities Aid Foundation, 'Mind The Gap' https://www.cafonline.org/PDF/1190H_PartyConf_MindTheGap.pdf accessed 24 March 2015

The rise of radical Islam will also play a role in the success of crowdfunding military conflict. Sharia law places many restrictions on financial transactions. However, there appears to be consensus within the community that crowdfunding does not in itself violate these prohibitions.¹⁹ Still, there are some restrictions that must be considered. For example, a basic pillar of Islamic finance is that no profits can be raised through interest on capital, although concepts such as Hibah (gifts) have been designed to side-track such restrictions.²⁰ In order to provide economic opportunity in Muslim communities without contravening Sharia law, Islamic crowdfunding websites have been established and are gaining notoriety.ⁱ Islamic Rules on finance are known as *Fiqh al-Muamalat*, and generally aim to promote risk sharing rather than risk transfer.²¹ One of the more surprising phenomena of radical Islam has been the background of some of its supporters. Many well-educated individuals from privileged backgrounds have travelled and risked their lives to fight in the name of jihad.²² Therefore, the rate of growth and radicalization in Muslim populations could affect the success of a terrorist crowdfunding campaign.

It is difficult to ascertain the full potential of crowdfunding given its current state. However, it is not unrealistic to assume that at some point in the future, a major campaign will exceed all expectations. It is conceivable that one could perhaps raise upwards of \$100 million in a matter of weeks, leaving little time for legislators and regulators to react. A thorough analysis of the current framework is very much necessary.

Why Might Crowdfunding Be Attractive To Armed Groups

It should be noted that terrorist entities have been known to use charitable causes to raise funds from unwitting philanthropists.²³ The lack of accountability in the field of online fundraising, and the ability for groups to represent themselves as a charitable entity without first registering with a national government, give rise to ideal conditions for abuse. Additionally, ease of access and low transaction costs provided by the internet could make crowdfunding very efficient, in particular when advertising costs for alternative collection methods are considered. Another benefit includes the potential speed at which funds are dispatched. This usually occurs shortly after the passing of a campaign completion date which is set by the fundraiser themselves. As of July 2013, only 36% of pledged financial assistance had been received by the two main United Nations (UN) appeals.²⁴ Clearly, this is less preferable than the collection method established via crowdfunding websites which include credit card and PayPal transactions. This forces all donors to follow through with

¹⁹ The Global Islamic Economy Summit recently awarded Egyptian based Shekra for the best SME development provider. See. <<http://www.shekra.com/en/>>

²⁰ Saeed, A. 'Islamic Banking and Interest: A Study of the Prohibition of Riba and its Contemporary Interpretation' [1996] E.J.Brill

²¹ **IBID 20**

²² Note, these trends have not been universally observed, in a [recent testimony before](#) the Senate, Michael Peirce, the Assistant Director of Intelligence of the Canadian Security Intelligence Service noted his analysis concludes that many Canadian extremists have come from under privileged backgrounds and were not well educated. See Standing Senate Community on National Security and Defence and Evidence, 'Proceedings on Monday, October 27, 2014' <<http://www.parl.gc.ca/content/sen/committee/412/SECD/51670-E.HTM>> accessed 27 March 2015

²³ Baradaran, S and Others, 'Funding Terror' [2014] UPLR 477, p. 48

²⁴ The Guardian, 'Aid funding for Syria's humanitarian crisis – get the data' <<http://www.theguardian.com/global-development/datablog/2013/jul/25/aid-funding-syria-humanitarian-crisis-data>> accessed 25 March 2015

pledges regardless of any change in circumstance. Such predictability would be welcomed by any military commander.

Particularly for rebel and terrorist groups, the rise of the dark web has become essential to operations.²⁵ As will be discussed, Western surveillance budgets have skyrocketed in recent years. The resulting technological arms races have forced underground groups to hide on the dark web, which uses the TOR network to make tracking internet users very difficult. The rise of online currencies, such as Bitcoin, make money laundering much easier. With this in mind, it is easy to see why poorly regulated crowdfunding platforms may be exploited by groups who cannot fundraise openly.

Industry Specific Regulations

Kickstarter, the most established of the crowdfunding websites, does not allow charitable causes to raise money via their site.²⁶ However, as there is no screening process, it is possible that a Trojan horse could exist in the form of an artistic project or new technology. More likely is that a specialist or charity-oriented crowdfunding site would be used. There are dozens of active sites available, including Razoo, which has facilitated the donation of more than \$270,000,000.²⁷ Similar to Kickstarter, Razoo has no verification process for new campaigns, and in some cases is even able to provide tax receipts for donations.²⁸ Most sites operate on a commission basis and have negligible costs associated with adding new projects. Therefore, the incentive to thoroughly vet projects is absent.

Over-regulation of the crowdfunding industry could make the model unworkable. To date, the only Western nation to establish industry specific guidelines placing a positive duty on crowdfunding websites to tackle issues such as financial crime, money laundering, terrorist financing and sanctions is the United States.²⁹ As of March 2015, these guidelines had not made their way through the legislative process, though they are currently the most authoritative guidelines available. Aspects relating to ownership and finance models make the industry unique. Commentators are divided about the applicability of securities law, in particular registration, on the industry in its various forms.³⁰ Comparisons have been made between crowdfunding and low value securities which see higher levels of fraud than the rest of the industry.³¹ Avoiding registration under securities laws allows crowdfunding to operate without the burdensome paper work and financial costs they would inherit without an exemption. As crowdfunded projects are a key source of innovation within Western economies, without legislating an exemption, Western nations risk economic damage.

²⁵ Parl.gc.ca, 'Defence, Evidence, October 27, 2014' <<http://www.parl.gc.ca/content/sen/committee/412/SECD/51670-E.HTM>> accessed 2 Apr. 2015

²⁶ Kickstarter, 'Our Rules' <<https://www.kickstarter.com/rules>> accessed 25 March 2015

²⁷ Razoo, 'Homepage' <<http://www.razoo.com/>> accessed 25 March 2015

²⁸ IBID 26

²⁹ Duhaime, Christine 'Duhaime Law Notes' <http://www.duhaime.com/2013/11/08/sec-equity-crowdfunding-rules-first-to-include-anti-money-laundering-and-financial-crime-protections/> accessed 5 March 2015

³⁰ Burkett, E. 'A Crowdfunding Exemption? Online Investment Crowdfunding and US Securities Regulation' [2011] TJBL 63

³¹ IBID 30

The Securities Act of 1933 governs registration of securities in the United States (US). In 2012, President Obama signed into law the Jumpstart Our Business Startup Act (JOBS), which included the subsection referred to as the Crowdfund Act. Title 3 of the Act has yet to enter into force, as Section 304(a) requires the SEC to implement rules and guidelines relating to enforcement. A proposal for new guidelines has been released and is currently open for public comment.³² Section 302 of the Act provides for an exemption from registration for crowdfunding provided certain criteria are met. Key requirements include limitations on aggregate sales with additional restrictions on individual investors and exclusion of private and hedge funds. Under the Act, transactions will still have to go through a registered intermediary.³³ Fundraisers will also be required to raise the entire capital amount requested or they will receive none of the funds, yet this is already industry standard.³⁴ Even with the exemption, some lawyers contend that the financial costs under the reporting requirement may still make crowdfunding a comparatively expensive form of fundraising.³⁵

Similar guidelines are likely to be produced by the Canadian and Australian³⁶ governments in the near future. Canada has been uniquely introduced to crowdfunded crime. In a scandal which also produced the term ‘crackstarter’, Toronto Mayor Rob Ford was accused, amongst other things, of the use of the illegal drug crack cocaine. Crowdfunding became involved when the alleged drug dealers who recorded the mayor’s actions received a \$200,000 payment in exchange for releasing the video.³⁷ The payment was financed through crowdfunding. However, despite the renewed political will to address crowdfunding regulation, no national guidelines have been seriously presented.

Much of the discussion on regulation is focused on amending current securities law in order to reduce red tape and encourage economic growth. Yet, amending these laws would mostly affect equity and loan based campaigns, or the lending and investment models. Not only is it the most frequently initiated form of campaign,³⁸ but it is also the most applicable to the notion of crowdfunding conflict as previously discussed. However, while not directly effective, some ideas presented to regulate securities based crowdfunding may provide a good starting point for discussion.

PART TWO

Sources of General Application

Mercenaries

³² Sec.gov, ‘Comments on SEC Regulatory Initiatives Under the JOBS Act: Title III’ <https://www.sec.gov/comments/jobs-title-iii/jobs-title-iii.shtml> accessed 3 April 2015].

³³ IBID 32

³⁴ IBID 32

³⁵ Inc. ‘Should You Crowdfund Your Next Business?’ <http://www.inc.com/magazine/201405/robb-mandelbaum/jobs-act-crowdfunding-problems.html> accessed 5 March 2015

³⁶ Corporations and Markets Advisory Committee, ‘Crowd Sourced Equity Funding: Discussion Paper. Sydney’ 2013. Print.

³⁷ Anon, ‘Gawker to Donate Funds From Rob Ford ‘Crackstarter’ to Toronto Charities’ <http://www.theguardian.com/media/us-news-blog/2013/jul/18/gawker-donates-rob-ford-video-toronto> accessed 2 April 2015

³⁸ IBID 5

The use of mercenaries in conflicts poses many questions for crowdfunding regulators. Mercenaries have been employed in conflicts involving all four elements that have been discussed above. The 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries is the primary international legal document governing mercenaries, and places an absolute prohibition on their use. Article 2 of the convention makes it an offence for individuals to finance mercenaries, and Article 9 requires states to prevent and prosecute breaches. No stipulations for the mens rea requirement of Article 2 are in the text of the treaty; however, a subjective test seems rational to prevent fraud from placing criminal liability on well intentioned donors.

Mercenaries are defined in Article 1 of the convention:

1. A mercenary is any person who: (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
- (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
- (d) Is not a member of the armed forces of a party to the conflict; and
- (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

Article 1 (2) adds if an individual was not sent by their government on official duty, and their goal is to overthrow the government or cause instability motivated only by financial gain, then they are mercenaries for the purposes of the convention. Muammar Gadhafi's use of foreign Tuareg rebels in the final days of his rule is a good example of the employment of mercenaries in the modern context.³⁹ South Africa, long known as a source of mercenaries, also recently expressed alarm at pictures of their citizens fighting alongside Nigerian forces in their battle against Boko Haram.⁴⁰

A second convention, the Organization of African Unity Convention for the 1972 Elimination of Mercenarism in Africa, carries similar guidelines. Conversely, international humanitarian law, does not in itself prohibit the use of mercenaries.⁴¹ The main effect of mercenary status under the Geneva Conventions Additional Protocol 1 is that captured mercenaries are denied POW status and, therefore, are subject to the laws of the jurisdiction who has them in custody. In effect, financing the use of mercenaries is only prohibited if a state who exercises jurisdiction has implementing legislation for either of the mercenary treaties.

³⁹ BBC News, 'Tuaregs join Gaddafi's mercenaries' <http://www.bbc.co.uk/news/world-12647115> accessed 3 April 2015

⁴⁰ Washington Post, 'South African mercenaries join Nigeria's fight against Boko Haram' <http://www.washingtonpost.com/blogs/worldviews/wp/2015/03/12/south-african-mercenaries-join-nigerias-fight-against-boko-haram/> accessed 3 April 2015].

⁴¹ Fallah, K. 'Corporate actors: the legal status of mercenaries in armed conflict' IRRC 88(863), p.599.

The US made use of many private contractors during its war on terror, with more than 20,000 employed in Iraq at the height of the conflict there.⁴² The legal justification supplied for their use is questionable, but depends on the interpretation of the phrase ‘to fight’ as found in the conventions. Most of the contractors are employed to guard targets and it is contended, therefore, that they are not recruited for combat purposes.⁴³ However, this is dubious as many of the contractors have been engaged in intensive combat at various points. As Cameron points out, ‘to fight’ cannot be interpreted synonymously with offensive attack. Merely guarding a military installation could be viewed as the work of a mercenary under the convention.⁴⁴

National Sanctions

The use of sanctions is often used by states as it provides a form of coercion without the use of military force. President Obama has opted for this method as a key foreign policy tool, most notably with Syria, Russia, DPRK, Venezuela and Iran. The authority to impose sanctions in the US generally lies with the President through various statutory authorities, though Congress often wields substantial influence. Historically, Congress has not frequently attempted to obstruct a President’s intended use of sanctions.⁴⁵

The International Emergency Economic Powers Act (1977), gives the President wide ranging powers including the ability to impose sanctions due to threats ‘to the national security, foreign policy, or economy of the United States.’⁴⁶ The act has been used by President Obama to impose sanctions on the Syrian regime. Penalties for violating sanctions in the US vary greatly depending on the circumstances. Cautionary letters and civil fines can quickly be replaced by criminal sanctions of up to \$1million in fines and 20 years imprisonment if the offence is committed wilfully.⁴⁷ British businessman Christopher Tappin was recently sentenced to 33 months imprisonment by an El Paso court for violating sanctions imposed on Iran. This followed lengthy extradition proceedings from the UK.⁴⁸

The sanctions regime in the United Kingdom (UK) derives its authority from two main sources. European Union (EU) legislation imposes sanctions that are directly effective, and Section 2(2) of the European Communities Act 1972 makes it an offence to breach EU regulations. The second source comes from The Terrorist Asset-Freezing etc. Act 2010, allows the HM Treasury to unilaterally impose sanctions based on a connection to terrorism. Breaching sanctions can lead to a term of imprisonment of 2 years under the EU Act and 7 years under the Terrorist Act.

⁴² Cameron, L. ‘Private military companies: their status under international humanitarian law and its impact on their regulation’ IRRC, [2006] p.574.

⁴³ IBID 42

⁴⁴ IBID 42

⁴⁵ Congressional Research Service, ‘Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions’ [2015]

⁴⁶ Human Rights First, ‘Syria Sanctions Fact Sheet. Fact Sheet’ [2012] <https://www.humanrightsfirst.org/wp-content/uploads/pdf/Syria_Sanctions_Fact_Sheet.pdf> accessed 2 April 2015

⁴⁷ Clyde and Co LLP, ‘Breaching Sanctions: The Consequences, Sanctions’ [2012]

<<http://hb.betterregulation.com/external/Breaching%20sanctions%20The%20consequences.pdf>> accessed 2 April 2015

⁴⁸ Bowcott, O. ‘Christopher Tappin pleads guilty to selling batteries for Iranian missiles’ [2012]

<<http://www.theguardian.com/law/2012/nov/01/christopher-tappin-pleads-guilty-extradited>> accessed 2 April 2015

Canada's sanctions regime is based on three legislative documents.⁴⁹ The United Nations Act 1995 provides the government to implement sanctions in line with UN Regulations. Alternatively, the Special Economic Measures Act 1992 and the Export and Import Permits Act 1995 allow parliament to impose sanctions while leaving the Minister of Foreign Affairs to implement and enforce provisions.

Terrorist Financing

To date, there has been no publically acknowledged attempt by a terrorist entity to raise funds via a crowdfunding website. Any successful attempt would likely result in major public anxiety and would cause potentially irreparable damage to an otherwise socially conscious industry. It is, therefore, in the interests of both government and the crowdfunding sector to coordinate efforts to prevent abuse by terrorist organisations.

The issue of radicalisation has proliferated since the age of social media began. As a Canadian Security Intelligence Service (CSIS) official recently noted, 'in the late 1990s, early 2000s, individuals who went to Afghanistan or Pakistan to train had to come back to Canada to radicalize individuals.'⁵⁰ Terrorists are now able to use social media to gain 'street cred.' A single picture of a young foreign jihadi waving the Islamic State (IS) flag can have a powerful impact on vulnerable youth who can access such material with the click of a button. Crowdfunding is beginning to struggle with the issue of terrorist funding. The same CSIS official also stated that foreign fighters attempting to travel to Iraq and Syria have raised as much as \$10,000 through crowdfunding, and it is becoming an increasingly common tactic.⁵¹

Defining Terrorism

Space precludes a more intensive analysis of the suitability of the definition of terrorism and its sufficiency in the modern context. Due to the nature of financial regulation, a terrorist designation has a substantial impact on a group's ability to operate as well as on enforcement efforts. A brief discussion of various national and international attempts at a definition will help identify the types of organisations in which legislators are attempting to exclude from the global financial system.

Canada

The definition of terrorism is found in S.2 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2001 (PCMLTFA). It refers specifically to offences under the Criminal Code of Canada (s.83.02, 83.03 or 83.04 and 83.12), including collection of property for the benefit of 'terrorist groups' or for the purposes of 'terrorism.' A terrorist group is a 'listed entity', or an

⁴⁹ International.gc.ca, 'Canadian Sanctions Legislation' <<http://www.international.gc.ca/sanctions/legislation-lois.aspx?lang=eng#UNA>> accessed 2 April 2015

⁵⁰ Parl.gc.ca, 'Defence, Evidence, October 27, 2014' <<http://www.parl.gc.ca/content/sen/committee/412/SECD/51670-E.HTM>> accessed 2 Apr. 2015

⁵¹ IBID 50

entity which purposes include committing terrorist offences. The definition includes the association with such groups. It is important to note that only one or more of the organisations purposes must be associated with terrorism. What is deemed sufficient to amount to a group purpose is not clear. This is tricky as the ‘franchise model’ that appears to be dominating the jihadi world is often murky. For example, is simple interaction sufficient, or must there be structured cooperation between groups to amount to an association?

The notion of a ‘listed entity’ provides a bit more clarity, but is still open to interpretation. A ‘listed entity’ is a person, group, trust, partnership or fund, or an unincorporated association or organization whom, on the reasonable belief of the Governor in Council, meets one of two requirements:⁵²

The entity has knowingly carried out, attempted to carry out, participated in, or facilitated a ‘terrorist activity’ or

The entity is knowingly acting on behalf of, at the direction of, or in association with an entity that has knowingly carried out, attempted to carry out, participated in, or facilitated a ‘terrorist activity.’

‘Terrorist activity’ can occur both within and outside Canada, and is an offense under one of the UN anti-terrorism conventions and protocols, or ‘is taken for political, religious or ideological purposes and intimidates the public concerning its security, or compels a government to do something, by intentionally killing, seriously harming or endangering a person, causing substantial property damage that is likely to seriously harm people, or by seriously interfering with or disrupting an essential service, facility or system.’⁵³

USA

Section 802 of The Patriot Act 2001 (TPA) redefined the prior definition to include ‘domestic terrorism’ which must be ‘dangerous to human life’ and use violence or coercion to attempt to influence government decisions or actions of private citizens. It also clarified that if a crime occurs outside the jurisdiction of the USA, it will be treated as ‘international terrorism’, which had previously been restricted to incidents involving two or more countries.⁵⁴ Terrorism itself is defined ‘premeditated, politically motivated violence perpetrated against non-combatant targets by sub national groups or clandestine agents’.

International Definition

International law has long struggled to attach a precise definition to terrorism, largely because of differences in opinions regarding the use of self-defence in self-determination cases. It appears that a sectoral approach has dominated, in which individual treaties allocate their own definition

⁵² Fin.gc.ca, ‘Strengthening Canada’s Anti Money Laundering and Anti-Terrorist Financing Regime’ <http://www.fin.gc.ca/activity/consult/pcmltfa-lrpcfata-eng.asp> accessed 3 Apr. 2015

⁵³ IBID 52

⁵⁴ U.S. Code Title 22, Ch.38, Para. 2656(f)(d)

as it relates to the specific subject matter of the treaty.ⁱⁱ One clear unifying characteristic of these definitions is that they all focus on actions by non-state entities. Further definitions have surfaced in United Nations General Assembly (UNGA) Resolutions (51/210) and United Nations Security Council (UNSC) Resolution (1566), but remain similar for the sake of this argument.

UN efforts to consolidate international terrorism treaties into one comprehensive treaty have largely failed. The task was originally authorised pursuant to General Assembly Resolutions 51/210 and 67/99, but as of yet the ad hoc committee envisaged has yet to materialise. Therefore, it is appropriate to proceed under the assumption that a concise and unified international definition will not affect national legislative efforts.

How Much Does a Terrorist Need

The question is largely dependent on the type of organisation and its objectives. For example, it is far more costly for IS to hold ground in Syria than it was for Al Qaeda to attack New York on 9/11. The unique aspects of each style of organisation will be discussed below.

Al Qaeda Financing

As previously discussed, terrorist financing rarely seized global headlines until the horrendous events of 9/11 rocked the international community. The world quickly realised the rules of the game had changed. Small cells of determined individuals had managed to attack the heart of the western world on a seemingly small budget. While the direct costs of operating individual cells can be relatively cheap, the cost of running a global operation are far from negligible. It is estimated that at its peak, Al Qaeda needed 30-50 million USD per year to finance its operations. In December 2004, Osama Bin Laden stated that operations in Iraq alone were costing \$200000 per week.⁵⁵ Where exactly this money came from is subject to much debate. Roth argues that Bin Laden did not personally finance the organisation, pointing to efforts by the Saudi authorities to freeze his accounts, failed business deals in the Sudan, and little financial support from family members as evidence that he did not have the capability to do so.⁵⁶ Others, such as Tupman, recognize that while there is the possibility some funding was procured via business ventures in the Arab world, Al Qaeda was forced to turn to a franchise-like operation.⁵⁷ There simply weren't enough funds to mount the large scale attacks that were the hallmark of Al Qaeda. This posed a problem for counter-terrorism officials as they now needed to halt the funding of various individual organisations, each with their own donors and fundraising techniques.

Islamic State Financing

The rapid expansion of influence of the group now referred to as IS is unprecedented in modern history. Rather than launching an insurgency and attempting to gain influence through attrition as

⁵⁵ Tupman, W. 'Ten myths about terrorist financing' [2009] JMLC

⁵⁶ Roth, J. et al, 'Monograph on terrorist financing' [2006] p. 21

⁵⁷ IBID 56

Commented [Sh1]: Y GURULÉ, UNFUNDING TERROR: THE LEGAL RESPONSE TO THE FINANCING OF GLOBAL TERRORISM 3 (2008); NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT 169-72 (2004) [hereinafter 9/11 COMMISSION REPORT], available at <http://www.9-11commission.gov/report/911Report.pdf>; see also NICK RIDLEY, TERRORIST FINANCING: THE FAILURE OF COUNTER MEASURES 1-2 (2012) ("[E]fforts against terrorist financing tend to be focused on assessing and calculating individual operational costs, and the significance of auxiliary support or infrastructure is not yet fully apparent to organizations and agencies engaged in counter terrorism."). 3

Commented [Sh2]:

Al Qaeda has, IS has attempted to control its own territory, or Caliphate. Early reports of mass looting and illegal oils sales struck fear in many observers. If Al Qaeda could finance its operations on 30 – 50 million USD through oil revenue and population taxation, it was argued the organisation’s potential was limitless. What these analysts, and possibly IS leader Abu Bakr al-Baghdadi, underestimated was the vast cost of holding territory. Eventually, government services would need to be provided. IS must find funds to provide for policing, infrastructure repairs, courts, education and much more in addition to their aggressive military campaign. Reports indicate that IS is starting to crack under the pressure. Through smuggling routes to Turkey, as well as sales through brokers to the Syrian Regime, IS currently earns between \$846,000 and \$1.645m daily from oil revenue according to some estimates.⁵⁸ Kidnapping has generated an additional \$20 million for the group in 2014.⁵⁹ Once all revenue streams are considered, including taxes and donors, IS earns approximately \$3 million per day and has assets between \$1.2 and 2 billion.⁶⁰ There is much debate over the sustainability and possibility of replication of the IS model. For this paper, it is sufficient to note that even a large scale crowdfunding campaign would be insufficient to sustainably finance such an organisation. Rather, it may act as a secondary revenue stream when funds are short. Crowdfunding is therefore more likely to make a serious impact through more traditional terrorist entities.

As discussed, a more pressing concern of crowdfunding regulators would be the use of crowdfunding to raise money to support individual jihadi ambitions. A few thousand dollars could be raised in a matter of hours using crowdfunding, and funds can be withdrawn within a few days. Both ‘lone wolf’ attackers pledging allegiance to IS as well as fighters intending to fight directly with the group are currently able to take advantage of the poorly regulated crowdfunding industry.

International

Early efforts on the international stage to deal with the growing threat of terrorism largely failed, in part due to the lack of international consensus on a definition of the offence.⁶¹ The League of Nations Convention on the Prevention and Punishment of Terrorism 1937 was only ratified by one country. It would not be until the 1950’s that the issue would resurface following a high prevalence of airplane hijackings.⁶² Over the next few decades, three treaties would be adopted which concerned terrorism: the Tokyo Convention on Offences and Certain Other Acts Committed Onboard Aircraft 1963, the Hague Convention on the Suppression of Unlawful Seizure of Aircraft 1970, and the Montreal Convention on the Suppression of Unlawful Acts Against the Safety of Civilian Aircraft 1971. Due to the nature of the threat, the financing of such crimes was not of paramount importance, and therefore did not receive much attention until new forms of terrorism began to make headlines in the 1990’s. Events, such as the Lockerbie Affair, initiated discussions on terrorism in the United Nations General Assembly (UNGA), which in 1996 established the Ad Hoc Committee on Terrorism (AHCT). Amongst other documents, the Committee was

⁵⁸ BBC News, ‘How is Islamic State funded?’ <<http://www.bbc.co.uk/news/world-middle-east-30315092>> accessed 2 April 2015

⁵⁹ IBID 58

⁶⁰ IBID 58

⁶¹ COOPER, H. (2001). Terrorism: The Problem of Definition Revisited. *American Behavioral Scientist*, 44(6), pp.881-893.

⁶² IBID 56

fundamental to the production and adoption of the International Convention for the Suppression of the Financing of Terrorism (ICFST). The AHCT would be the first major international agreement designed to disrupt the financing of terrorist entities, and currently has 132 signatories and 186 parties, most of whom made reservations.⁶³ However, many of the provisions now have become part of customary international law, notwithstanding any persistent objectors.

The Group of 7 (G-7) similarly established the Financial Action Task Force (FATF) in 1989 with the aim of combating money laundering. However, it wasn't until October 2001 that the intergovernmental institution added terrorist financing to its mission, a decision that was heavily influenced by the events in New York a month prior.⁶⁴

Since then, organisations have struggled to maintain a balance between preventing money laundering and creating an inclusive banking environment for the world's marginalised populations.⁶⁵ Recent tension in the USA between regulators and the Somali diaspora⁶⁶ highlight the need to balance security and economic policies in a pragmatic manner. In the coming decades, governments in emerging markets will be inevitably tempted to regulate the informal economy that is so prevalent in much of the developing world.⁶⁷ Additionally, as global businesses increasingly turn to the developing world for growth, it is unlikely that a hard-line approach can be maintained without skilled drafting of legislation to ensure market access is not drastically hampered.

Remittances are not the only collateral damage arising from the crackdown on terrorist finances. International non-governmental agencies (INGOs) and non-governmental agencies (NGOs) are finding it increasingly difficult to work with the banking sector. This comes at a time when many such groups are operating on an unprecedented scale resulting from a tumultuous year in 2014. Ebola, civil wars in Ukraine, Syria and Libya, and other events all contributed to the demand for such services. Organizations increasingly relied on the global movement of capital to fulfill their mandates. In the last few years, UK financial service providers NatWest, UBS, HSBC, and others have all closed accounts, blocked, or delayed funds or transfers to UK registered charities.⁶⁸ Clearly, future efforts must be both proportional to the aim to be achieved as well as targeted to minimize any collateral damage.

National

USA

Western governments have embraced the tactic of using waves of popular support arising from headline-grabbing events to push through sweeping counter-terrorism related reforms. Counter-terrorism operations largely rely on the effectiveness of data collection and analysis. The downfall of these techniques is that they often take very invasive forms. For that reason, politicians and

⁶³ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&lang=en

⁶⁴ <http://www.fatf-gafi.org/pages/aboutus/historyofthefatf/>

⁶⁵ De Koker, aligning anti money laundering

⁶⁶ <http://www.oxfamamerica.org/static/media/files/somalia-remittance-report-web.pdf>

⁶⁷ IBID 65

⁶⁸ Pantuliano, S. 'UK humanitarian aid in the age of counterterrorism: perceptions and reality. HPG Working Paper'. [2015] HPG

leaders alike have had to time the introduction of such measures with the utmost precision. In the US, the 9/11 Commission Report provided one such opportunity. Amongst other recommendations, the report highlighted the need for ‘vigorous efforts to track terrorist financing.’

The Bush administration would in part come to rely on past legislation to prosecute ‘material support’ cases. Two provisions in particular, originally introduced in 1996, were used to prosecute the new wave of terrorist offenders.⁶⁹ Prior to 9/11, the provisions had been applied a combined handful of times, some of which involved domestic militias rather than international terrorist organisations.⁷⁰ With relation to enforcement, the administration would rely on the Money Laundering Control Act (MLCA) of 1996 to enforce reporting requirements and regulate currency exchange through US Banks. Congress would assist agencies by enacting two major legislative acts which built on the success of prior legislation, each of which will be discussed in turn.

On October 26, 2001, George W. Bush signed into law the TPA, which functioned as an amendment to the Foreign Intelligence Surveillance Act (FISA) of 1978. It is perhaps one of the more controversial legislative pieces of this generation. The TPA covered a range of issues, of which finance related provisions will be discussed foremost. Symbolic of the shift of focus on anti-money laundering efforts from organised crime to terrorism, the TPA updated the MLCA to tighten control on non-nationals and foreign institutions. Section 373 extended previous legislation to place penalties on unlicensed money transmitting businesses (previously only licensed businesses were covered).⁷¹ However, Subsection (a) places a subjective test of knowledge, which provided reasonable measures were taken, terrorist financing through crowdfunding would not be satisfied. Section 374 extended the definition of counterfeiting to include digital media. Other provisions extended jurisdiction overseas⁷², and increased both civil and criminal penalties for all related offences. British arms dealer Hemant Lakhani was prosecuted, relying in part on these provisions.⁷³ While not directly applicable, the prosecution is an example of a willingness to use creative legal interpretations to obtain convictions in cases related to conflict funding.

The TPA also acted to increase the burden of responsibility on the private sector to monitor cash flows. Section 356(c) requires financial institutions to report suspicious transactions. Failure to do so may result in criminal sanctions.

The second major relevant act passed by Congress was the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). Similar to the TPA, IRTPA consolidated laws on a range of fronts including immigration, intelligence collection, and border control. The definition of ‘provides material support’ in Section 6603 includes the provision of currency. At first glance, this may appear to cover crowdfunding for terrorism; however, Subsection (h) explicitly excludes prosecution if the necessary mens rea is absent. As noted, many terrorist groups have used charity as a front for their military conflicts. In such cases, it appears prosecuting organisers may be possible while well-intentioned donors are protected.

⁶⁹ 18 U.S.C. §§ 2339A–2339B (2006 & Supp. V 2012)

⁷⁰ Baradaran, S and Others, ‘Funding Terror’ [2014] UPLR 477

⁷¹ Section 1960 of title 18 of the United States Code

⁷² Section 377 of US Code

⁷³ *United States of America v. Hemant Lakhani*, Appellant, 480 F.3d 171 (3d Cir. 2007)

IS has brought terrorist financing to the attention of Congress once again, and discussion seems to be about limiting the introduction of new powers rather than the curtailment of existing executive and judicial authority. Mathew Levitt, recently testifying before the House Financial Services Committee, urged the government to be more proactive in its legislative efforts.⁷⁴ He noted that the strategy of David S. Cohen,⁷⁵ which involved disrupting terrorist financing through all available means, was ‘wise’ but insufficient on its own. Amongst Levitt’s recommendations was that the US should work with the international community to arrive at a common policy for ransom situations, which Cohen calculates have added \$20 million to IS coffers in 2014.⁷⁶ Additionally, Levitt stressed the importance of working with international bodies like the FATF to build the domestic counter-terrorist financing (CTF) capacity, specifically in Qatar. He argues that efforts to disrupt the flow of foreign fighters have been extensive; however, only two individuals have been designated for financial efforts in recent months.

In his speech at the Carnegie Endowment for International Peace, David S. Cohen, provided an indication of future policy on the area of terrorist financing. The central point was that ‘ISIL does not currently rely heavily on the traditional donor model for terrorist financing’ and that their revenue streams are well diversified.⁷⁷ Clearly, viewed as the most substantial terror threat to US interests today, IS style organisations will form the basis for legislative reform in the near future. It was recommended that new efforts focus on restricting smuggling activities mainly to prevent oil sales. References to successful recent international meetings organised by the US State Department indicate that the Obama administration intends to increasingly engage with the international community to achieve American interests. Therefore, the US will likely push for an updated or expanded global regulatory regime. While acknowledging a need to tackle donor funding, Cohen advocated the use of targeted sanctions.

These two opinions can be reconciled to conclude that future policy will likely focus on intelligence collection, international cooperation, strengthening punishments, and disrupting the flow of funds to such groups through sector regulation and targeted sanctions. Targeted sanctions are unlikely to be effective in a crowdfunding campaign as the population size required for success of a campaign would render efforts administratively unworkable. Merely identifying the majority of donors may prove difficult for law enforcement.

Canada

9/11 wasn’t the first time terrorism gained national headlines in Canada. The Lockerbie Affair of 1988 is one notable example. Like many Western nations prior to 9/11, counter-terrorism financing efforts in Canada had relied on an assortment of statutes, such as the 1975 Criminal Code which outlawed the possession of criminal proceeds. Preparations for a new legislative framework began

⁷⁴ Levitt, M. ‘Terrorist Financing and the Islamic State: *Testimony submitted to the House Committee on Financial Services* [2014].

⁷⁵ Undersecretary for Terrorism and Financial Intelligence

⁷⁶ US Department of Treasury, ‘*Attacking ISIL’s Financial Foundation*’ [2015] <<http://www.treasury.gov/press-center/press-releases/Pages/jl2672.aspx>> accessed 2 April 2015

⁷⁷ US Department of the Treasury, ‘*Remarks of Under Secretary for Terrorism and Financial Intelligence David S. Cohen at The Carnegie Endowment For International Peace, “Attacking ISIL’s Financial Foundation”*’ <<http://www.treasury.gov/press-center/press-releases/Pages/jl2672.aspx>> accessed 3 April 2015

in September 2001 with the introduction of Bill C-36, which in December of that year received the royal assent necessary to become the Anti-Terrorism Act. The bill enacted several other pieces of legislation, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCTFA)*, which provided a definition of terrorism for the purpose of criminal prosecution, and consolidated several statutes into one comprehensive act.⁷⁸ Additionally, it enacted the *Charities Registration (Security Information) Act* which overhauled the existing registration framework for charities with the aim of preventing the diversion of funds to terrorist groups. Other provisions were aimed at bringing Canada in line with FATF recommendations. The most central provision, in relation to this discussion, placed a responsibility on financial providers to report information regarding potential terrorist financing. This stemmed from agreements made at the 1995 Halifax Conference of the Group of 8 (G-8) entity.

There were signs that Canada was beginning to ramp up its enforcement efforts prior to 9/11. In 2000, the Financial Transactions and Reports Analysis Centre (FINTRAC) was established to monitor potentially illicit transactions. The monitoring of charitable funding had long been the responsibility of the investigative arm of the Canada Revenue Agency. As of 2003, FINTRAC had already uncovered more than \$500 million in suspicious criminal or terrorist transactions.⁷⁹ Part of the reason for such focus can be traced to a series of reports issued by the Canadian Security Intelligence Service (CSIS) in 1999 and 2001,⁸⁰ which reported that many international terrorist groups already had a presence in the country. Large minority communities from countries who were currently in conflict were seen as the likely source.

More recent efforts have been met with fierce criticism, and the Canadian population has become increasingly sceptic of government's arguments advocating for increased powers. Bill C-51 is the latest such attempt, and has recently been labelled as 'a dangerous piece of legislation in terms of its potential impact on the rule of law, on constitutionally and internationally protected rights, and on the health of Canada's democracy' in an open letter to parliament by a coalition of legal professors. With elections nearing, it is difficult to determine with certainty the likelihood of this bill being repealed if it is signed into law before. What is clear is that current priorities focus on intelligence collection and adds little to current legislation affecting funding. The current proposal contains a provision criminalising any act that advocates or promotes a terrorist offence. It is likely that organising a crowdfunding campaign would fall into any accepted definition of the offence. If trends continue, future legislative efforts in Canada will likely aim to give government and security agencies wider powers and will include stiffer sentencing.

Foreign State Entity

Introduction

⁷⁸ *Criminal Code*, the *Official Secrets Act*, the *Canada Evidence Act*, the *Proceeds of Crime (Money Laundering) Act* and a number of other Acts.

⁷⁹ Howlett, Karen (2003). 'Agency Finds Dirty Money: Says Funds Finance Terrorism, Crime.' *The Globe and Mail*. September 12.

⁸⁰ CSIS (2001). *CSIS Report 2000/01*. (Ottawa: Canadian Security Intelligence Service). December 18. CSIS (1999). 'Trends in Terrorism.' *Perspectives (Report # 2000/01)*. December 18.

State concerns about citizens financially supporting hostile governments is not a recent phenomenon. Indeed, the concern became prominent as citizens increased their portfolios of foreign assets, a trend whose roots can be traced to the beginning of colonial expansion.⁸¹ Generals have long been aware of the devastating financial costs of warfare. During the American Civil War, both sides began printing money to finance the war, initiating a wave of inflation.⁸² To reduce reliance on printed money, the confederate states began to sell cotton backed bonds to European markets to sustain their campaign. The collapse of the bonds is often cited as a key contributing factor to the outcome of the conflict.⁸³ Previously, in the War of Independence, both sides made use of economic warfare to place pressure on the rivals' economy. The weapon of choice of the British was naval blockades, while the rebellion preferred to restrict exports to other British colonies in the hopes of diverting British resources.ⁱⁱⁱ National enforcement measures were implemented on both sides to prevent their citizens from ignoring prohibited financial transactions. As will be discussed, the World Wars saw the introduction of blanket bans in the form of 'trading with the enemy' legislations. The advancement of the financial sector and monitoring capabilities in modern times has seen more industry and personnel specific restrictions.

International

For various reasons, there is no single treaty that deals directly with controlling the flow of funds between citizens and foreign governments. Therefore, to review the current state of the law, other treaties, documents, and legal possibilities must be analysed.

Arms Trade

Perhaps the most relevant document is the Arms Trade Treaty (ATT), which entered into force in December 2014. Arms control has recently become a major international concern. In 2000, the UNGA adopted Resolution 55/2 which established the Millennium Development Goals. Since then, great results have been achieved in many states; however, other states have struggled. Fragile states failed to reach a single goal in the first ten years.⁸⁴ Arms control has largely been blamed for the failure to alleviate poverty in unstable countries.⁸⁵ Increased pressure to restrict the arms trade came from the notion of a 'Responsibility to Protect' (R2P) vulnerable population stemming from the Outcome Document of the UNWS in 2005. As John Duncan⁸⁶ stated prior to the UK's ratification to the ATT, 'the arms trade is one of the very few areas of economic activity today where there is no international regulation.'

⁸¹ Ferguson, N. (2008). *The ascent of money*.

⁸² IBID 81

⁸³ IBID 81

⁸⁴ World Banl. (2011). *Stop Conflict, Reduce Fragility and End Poverty: Doing Things Differently in Fragile and Conflict-affected Situations*. [online] Available at: http://www.worldbank.org/content/dam/Worldbank/Feature%20Story/Stop_Conflict_Reduce_Fragility_End_Poverty.pdf [Accessed 3 Apr. 2015].

⁸⁵ Elli Kytömäki, E. (2014). How Joining the Arms Trade Treaty Can Help Advance Development Goals - See more at: <http://www.chathamhouse.org/publication/how-joining-arms-trade-treaty-can-help-advance-development-goals#sthash.VzSxPvcf.dpuf>. *Chatham House*.

⁸⁶ United Kingdom Ambassador for Multilateral Arms Control and Disarmament

Another argument for arms control is more humanitarian in nature. The complexities of the international financial system make restricting income flows to the government a meticulous task. Even hostile and repressive regimes are key contributors to the standard of living for their citizens. Simply starving the hostile economy places great hardship on vulnerable populations, and could have the unwanted effect of strengthening popular support for increased military expenditure.⁸⁷ Measures intending to place pressure on hostile regimes must therefore, to the extent possible, leave minimal impact on the non-military private economy. Arms control is a complex yet effective avenue to pursue.

The ATT was the result of painstaking efforts to reach compromise, which included the United Nations as well as an unprecedented level of support from NGOs, including Human Rights Watch.⁸⁸ As an arms-centric document, it does not attempt to directly restrict the provision of funds. Prior to ratification, the ATT must be incorporated into the domestic laws of member states. The implication is that national jurisdictions must be capable of preventing illegal ‘brokers’ from operating within their territory. This includes the use of criminal sanctions.⁸⁹ As of March 2015, there were 130 signatories to the ATT, yet only 65 have ratified it. A contributing factor to the low rate of ratification is the classification of parts. The treaty clearly identifies the types of weapons that are prohibited, and includes parts required for assembly. However, it falls short on identifying the point at which a product becomes a potential weapon. For example, A Global Positioning System (GPS) could be used for a tank as well as a civilian car. As the ATT has been in force for less than a year, it may be some time before the issues are clarified. The use of the term ‘overriding risk’ implies a balance of probabilities and consequences.⁹⁰ During negotiations it was suggested that the term be replaced by ‘substantial’ to draw a clearer red line.⁹¹ However, this was not adopted.

The effects of the ATT on crowdfunding depends largely on how the term ‘broker’ is interpreted by the courts. Providing funds to a foreign state is not directly prohibited; however, if organisers of a crowdfunding campaign were viewed as facilitating the weapons transfer, state liability could arise if action wasn’t taken. Articles 5 and 14 require states to provide authorities with the resources and competence to enforce provisions within their jurisdiction. There is no widely adopted format for national integration; however, the governments of Australia and New Zealand recently issued a set of recommendations which are useful to consider. Recommendations include both corporate fines and criminal measures, including individual criminal sanctions for all ‘directors, managers or other similar officers’ of a firm convicted under the legislation.⁹² Therefore, if an arms transfer to a state could potentially breach one of the three prohibitions listed in Article 7, it is possible that the facilitating website would be liable even if the campaign were conducted by individuals who were otherwise unrelated. Using the example of ‘The Peoples

⁸⁷ Take the DPRK as an example, regime propaganda consistently uses what it views as imperialist aggression, including sanctions. The result is the public increasingly sees hard power as necessary.

⁸⁸ United Nations Coordinating Action on Small Arms, (2015). *The Impact of Poorly Regulated Arms Transfers on the Work of The UN*. Working Paper.

⁸⁹ Oxfam, (2015). *National Implementation of the proposed Arms Trade Treaty: A Practical Guide*. [online] Available at: https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/English_PATT_summary_web_11.pdf [Accessed 3 Apr. 2015].

⁹⁰ The Arms Trade Treaty (2013). (2013). *Geneva Academy of International Humanitarian Law and Human Rights*, 3.

⁹¹ IBID 90

⁹² Mfat.govt.nz, (2015). *Arms Trade Treaty model law booklet available*. [online] Available at: <http://mfat.govt.nz/Media-and-publications/Features/799-Arms-Trade-Treaty-model-law-booklet-available.php> [Accessed 3 Apr. 2015].

Drone’, if there had been UNSC Chapter 7 actions, or if government actions were in breach of international humanitarian law (IHL), the purchase of the drone would have been considered prohibited. Site administrators would be wise to request judicial interpretation prior to accepting the submission of a similar project.

Chapter 7 Actions

Article 40 of the UN Charter stipulates that the Security Council may ‘call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable.’ It follows that a resolution requiring action may give rise to state responsibility if not implemented. In the case of crowdfunding, sanctions under Chapter 7 would likely cover donations being sent directly to military sources. To avoid penalties resulting from a breach of sanctions, crowdfunding organisations should consider the current geopolitical climate and sanctions in place before attempting to collect donations. The UNSC has implemented Chapter 7 to counter various forms of threats. Sanctions in particular are the responsibility of the Security Council Sanctions Committee, which is the result of United Nations Security Council Resolution (UNSCR) 1730.

The issue of state-sponsored terrorism is not as common as it once was; however it remains a threat. Historically, the issue has been tackled mostly unilaterally by the US through the use of sanctions. More recently, the use of UNSC resolutions to impose sanctions has become a preferred tactic as the results are more extensive. If such a resolution were to occur under Chapter 7 of the UN Charter, the stipulations would be binding on all states. Therefore, depending on the specific provisions of the resolution, states may have a responsibility to prevent a crowdfunding campaign that purports to raise money for a state sponsor of terrorism. For example, UNSCR 1192 imposed economic sanctions against Libya for the government’s involvement in the Lockerbie Affair.

A second situation in which the Security Council has used Chapter 7 is in response to threats from non-state actors in a weak state. UNSC Resolution 1267 is one example in which sanctions were applied to associates of Al Qaeda. One of the stipulations was that all states must freeze all financial assets of Al Qaeda funds.

A further example is UNSCR 1718 which was issued in response to the North Korean attempts to obtain a nuclear weapon. Likely due to the unique level of state control over industry in the Democratic People’s Republic of Korea (DPRK), sanctions have been extensive and remained in force as of March 2015.

The above examples are intended to demonstrate the existence of a vast range of situations which could result in a Chapter 7 action. When assessing the likelihood of sanctions under Chapter 7, it is important to understand the structure of the Security Council. Article 27 of the UN Charter gives a veto power to the council’s five permanent members. Unfortunately, geopolitics often influence the decision to exercise this power. Following the regime crackdown on peaceful protests in Syria, Western nations tried tirelessly to pass a resolution imposing sanctions on the Assad government.⁹³

⁹³ Gabbatt, A. ‘Russia and China veto of Syria sanctions condemned as ‘indefensible’ <http://www.theguardian.com/world/2012/jul/19/russia-china-syria-sanction-veto> [Accessed 3 Apr. 2015].

However, Russia and China made it clear that they were willing to assert their veto powers to prevent action.⁹⁴ Countless reports have documented mass atrocities committed by forces loyal to Assad, including the use of chemical weapons.⁹⁵ Clearly, politics play a major role in what action, if any, will be taken. The success of any concerted effort to regulate crowdfunding of military or terrorist activity may well be impacted by the geopolitical positions in play.

National

Trading With the Enemy Acts

The consequences of providing funds to foreign states for military purposes depends largely on the receiver's relationship with the government of the state in which the donor is a citizen. An interesting similarity with anti-terrorist legislation is that both are often implemented immediately preceding or during an armed conflict. The UK introduced such acts in both 1914 and 1939, as did the USA in 1917. Historically, governments would exercise such powers through the issue of edicts or proclamations which would generally expire upon cessation of hostilities.⁹⁶ In the 20th century, more permanent forms of legislation were introduced. Freezing order capabilities granted by such orders were seen as crucial to Allied efforts during WW2 as they drastically restricted the Axis' abilities to loot conquered nations.⁹⁷ Additionally, more recent legislation has expanded the powers to include times of national emergencies.⁹⁸

UK Acts

Initial UK efforts generally arose from violent rebellions within the UK itself.⁹⁹ For example, the Act of Proscription 1746, responding to the Jacobite rebellion in the Scottish Highlands, forbade individuals in Scotland from owning weapons, and introduced a legal duty on 'masters or teachers' to pledge allegiance to the monarchy.¹⁰⁰ Similar legislation was introduced in the 1920's to deal with rising violence in Northern Ireland.¹⁰¹ However, these Acts were primarily concerned with proscription powers and are not directly relevant to this discussion.

Viscount Esher once quipped that 'the English people have to be merchants while they are soldiers, and that trade and maritime force are dependent on each other.'¹⁰² In other words, not all trade will produce a direct military result, in which case it may be mutually beneficial to warring parties. The Declaration of London, to which the British adhered, distinguished between three distinct types of wartime trade, largely determined by government benefit. Future Acts should therefore

⁹⁴ IBID 92

⁹⁵ Hrw.org, 'Syria: Strong Evidence Government Used Chemicals as a Weapon | Human Rights Watch' <http://www.hrw.org/news/2014/05/13/syria-strong-evidence-government-used-chemicals-weapon> [Accessed 3 Apr. 2015].

⁹⁶ Bentwich, N. 'International Law as Applied by England in the War' *AJIL* 9(3), p.642.

⁹⁷ IBID 96

⁹⁸ For example, the 1933 Emergency Banking Relief Act (USA)

⁹⁹ Legrand, T. and Jarvis, L. 'Enemies of the state: Proscription powers and their use in the United Kingdom' BP, pp.450-471.

¹⁰⁰ IBID 96

¹⁰¹ The 1992 Civil Authorities (Special Powers) Act (Northern Ireland)

¹⁰² McDermott, J. 'Trading with the Enemy: British Business and the Law during the First World War' [1997] *CJH*.

be analysed as emanating from these core beliefs.¹⁰³ The complexities of international trade were quickly realised, as by 1916, individuals could be charged if trade flowed via a third state. Fundamental flaws in the approach were quickly realised.¹⁰⁴ This would be reflected in future legislation which would be narrow in comparison but carried heavy punishments.

As the most recent and prevailing authority, The Trading with the Enemy Act (TWEA) of 1939 must be considered within its historical context. In 1939, the outbreak of World War II (WW II) spread panic across allied governments. Additionally, the global financial system was not as developed as it is currently. The resulting environment rendered targeted sanctions less effective as ruthless capitalists could transfer wealth and hide business dealings easier than possible within a paperless society. Many previously well-regarded elites were accused of and prosecuted for such offences.¹⁰⁵ Similar public outrage stemming from the perception that British elites were working around the naval blockade to increase profits can be seen as a major contributing factor to the call for a new bill in 1939.¹⁰⁶

Secondly, Allied forces were keen to disrupt all forms of revenue from reaching Axis powers in order to cripple the economy. What was lacking in enforcement capabilities was substituted with far reaching definitions and stiff penalties.¹⁰⁷ Additional exceptions were made for the fulfillment of contracts entered into prior to the outbreak of war. However, provided a foreign state was an 'enemy of His Majesty', trade with any business, government agent, or individual could be prohibited if deemed necessary by the Board of Trade and trade must be approved by the Director of Public Prosecutions. Banned transactions included simply purchasing the currency of the enemy state as well as the provision any other form of financial support. Section 2(1) also clearly states that there must be a sufficient link between any individual and the enemy state. One cannot be sanctioned simply for being a subject. Several subsequent acts made minor additions and substitutions to the original text,¹⁰⁸ yet the 1939 act remains the primary piece of legislation dealing with the issue.

USA

Similar to the British TWEA, the 1917 Act gave authority to restrict trade at times of war. This was amended by the Emergency Banking Relief Act to authorize such powers at times of national emergency. The ultimate authority and designation lies with the President as opposed to the Board of Trade. Unlike the UK, no further major legislation was introduced prior to the outbreak of WW II, perhaps due to an initial American policy of non-intervention. As a result, the 1917 Act remains the leading authority.

¹⁰³ IBID 102

¹⁰⁴ IBID 102

¹⁰⁵ Ushmm.org, 'John Demjanjuk: Prosecution of A Nazi Collaborator' <http://www.ushmm.org/wlc/en/article.php?ModuleId=10007956> [Accessed 3 Apr. 2015].

¹⁰⁶ IBID 102

¹⁰⁷ Up to 7 years incarceration for some offences.

¹⁰⁸ Emergency Laws (Miscellaneous Provisions) Act 1953 (c. 47), **Sch. 2 para. 3(a)**

Neither country has made much use of respective TWEAs in recent years. On the US list, Cuba remained the only country after the DPRK was removed from the list in 2008. If recent secret discussions between the US and Cuba are an indicator of the future, the list may soon be void of names. Academic discourse on TWEA legislation largely ceased soon after the end of WW II. Prosecution of individuals for trading with the enemy is equally infrequent. It is likely in the current climate that TWEA legislation will cease to be relevant as it is replaced by more current terrorism driven legislation. However, until UK and US bills are repealed, they remain valid law and could potentially form the basis for future prosecutions. This is further complicated by proscription requirements which may make their use timely but inefficient.

In addition to TWEA acts and legislation implementing existing international duties, states may issue sanctions against an armed group unilaterally or in conjunction with allies. Crowdfunding campaigns are therefore subject to any additional restrictions imposed through the use of sanctions through national legal systems.

Non-state Armed Forces

History

Financial support for non-state actors in civil wars has been a great source of controversy for generations. The issue lies at the center of the intersection between the notions of non-interference, self-defence, and the right to self-determination. Crowdfunding financial support for non-state armed organisations has already begun to occur. CSIS has recently expressed concern about crowdfunded support for Hezbollah emanating from Canada. Likely donors include the Lebanese diaspora. Clearly, at least some departing or previously departed citizens attempt to effect the balance of power in their home state, often through the provision of funds and logistical support to armed organisations.

Throughout much of its history, the US has generally supported the incumbent in civil conflicts. However, as it elevated to superpower status and began to clash with the Soviet Union, they increasingly supported non-state actors to achieve geopolitical ambitions.¹⁰⁹

Early legal justifications for supporting rebel movements relied on the classification of the specific conflict. Generally, incidents were placed into one of three groupings. A small scale uprising that could be solved using police was labelled a 'rebellion'. The second classification was 'insurgency', which occupied the middle of the spectrum between a 'rebellions' and a 'belligerency'.¹¹⁰ When a state of 'belligerency' occurred, foreign states were given the option of recognizing the rebel force as the legitimate government of the territory. This would have the effect of allowing the state, and its citizens, to provide assistance. However, the declaration of a 'belligerency' requires the conflict to satisfy four elements. Most importantly, the opposition must comply with international law as

¹⁰⁹ Gomulkiewicz, R, 'International Law Governing Funding to Rebel Groups in Civil Wars: Resurrecting the Belligerency Standard' WLR

¹¹⁰ IBID 102

well as control and administer substantial portions of territory.¹¹¹ While the distinction remains valid in international law, the terms have not been substantially applied. Gomulkiewicz argues that as many countries have recently ignored formal declaration requirements, they clearly don't reflect the modern context.¹¹²

History has shown that the prohibition on interference in domestic affairs has not been well observed by the international community. This has resulted in several proposed exceptions to the principle that states have used to justify their support for non-state actors. For example, the Soviet Union, and much of the developing world, relied on the right to self-determination to justify rebel support of colonial or racist regimes. More recently, the doctrine of R2P has been used to justify support for rebels fighting oppressive regimes. The Arab Spring recently saw the doctrine relied upon to justify financial and military assistance to popular uprisings. The US argued that its support for contra rebels in Nicaragua could be justified on grounds of self-defence as they contended the regime had attempted to destabilize other regimes. Perhaps the most controversial justification was 'the spread of democracy' as advocated by Ronald Reagan.

The International Court of Justice (ICJ) decision in the Paramilitary Activities Case declared that while arming and training rebels could amount to 'use of force', simply providing funds could not. However, both types of support amounted to interference in the internal affairs of a country and was prohibited as a matter of customary international law. The ruling in effect means that the laws of armed conflict including the Geneva Conventions do not apply to crowdfunding. Therefore, recognition of combatants as a matter of international law does not have an effect on the industry.

Two situations exist in which financial support for a non-state armed group may give rise to international legal consequences. The first situation involves pro-government militias operating under the direct control of the recognised government when that government is subject to UNSC Sanctions (or restrictions arising from liabilities from convention). In this case, consequences depend on the degree of control the government has over the group. If sufficient government control exists, the group would be treated as an entity of the state, and legal ramifications would reflect this. If sufficient control is present, crowdfunding efforts would need to comply with Chapter 7 resolutions, as well as any regulations present in their national jurisdiction.¹¹³

The second situation occurs as a result of sanctions placed on the armed opposition groups themselves. 'Failed states' are a frequent source of armed groups subject to UNSC sanctions. The term refers to a state in which the government fails meet the necessary requirements for independent statehood: most important is the lack of monopoly on the use of force in their jurisdiction.¹¹⁴ Somalia is often the textbook example; however, since the Arab Spring uprising of 2011, failed states formed in countries such as Syria, Libya, and Yemen, with others slipping into chaos. The disintegration of authority has an interesting effect on the classification of combatants and authoritative organisations within a given territory. The civil war in Syria has seen the rise of

¹¹¹ IBID 102

¹¹² IBID 102

¹¹³ Other jurisdictions may attempt claim jurisdiction under passive personality or universal jurisdiction depending on the specific offence and national legislation.

¹¹⁴ Foreign Policy, (2015). *Failed States 2013*. [online] Available at: <http://foreignpolicy.com/2013/06/24/failed-states-2013/> [Accessed 3 Apr. 2015].

many pro-regime militias that operate largely outside the government command structure, yet maintain allegiance to President Assad. Other militias have formed an opposition to the regime and have their own command structures. In Mexico, armed vigilante groups have proliferated to combat criminal organisations, some of which have recently been incorporated into formal command structures.¹¹⁵ A crowdfunding campaign that breached obligations under a Chapter 7 resolution may place an obligation to act on the state exercising jurisdiction over that campaign, even if the campaign was in support of the state.

International Coalitions and Organisations

Introduction

The idea of allowing international institutions the ability to use force largely arose out of the devastation caused by the First World War. The conflict had highlighted the inherent failures of the pre-war international political system, and the victorious powers were optimistic that international cooperation could usher in a new era of peace.¹¹⁶ US President Woodrow Wilson was at the forefront of the movement to establish an international organisation that could provide the venue for cooperation.¹¹⁷ Efforts initially succeeded in the realization of Woodrow's dream. In 1919, leaders met in Paris to sign the constituent document of the League of Nations.¹¹⁸ The organisation would collapse during the Second World War, only to be rived shortly after as the United Nations. The UN Department of Peace Keeping Operations (UN DPKO) began its first peacekeeping operation in Palestine in 1947, yet most analysts contend it was an utter failure as they achieved few objectives and failed to prevent the assassination of a special mediator.¹¹⁹ Since the end of the Cold War, the UN DPKO has seen increased responsibility, particularly in Sub-Saharan Africa where weapons surplus for the collapsing Soviet Union fuelled conflict and instability in the 1990s. Numerous factors have contributed to the rise of regional intergovernmental peacekeeping forces. Each entity has its own sources of funding, regulations, and authority.

As the majority of peacekeeping operations have occurred on the African continent, this analysis will pay particular attention to the current state of affairs in that region.

Peacekeeping in Africa

Recent trends, including what many African leaders interpret as the overreach and potential racial biases of the United Nations, particularly the International Criminal Court (ICC), has resulted in a

¹¹⁵ Tuckman, J. (2014). *Mexican vigilante leaders give themselves up after gun battle*. [online] the Guardian. Available at: <http://www.theguardian.com/world/2014/dec/31/mexico-vigilante-leaders-give-themselves-up-gun-battle> [Accessed 3 Apr. 2015].

¹¹⁶ Bbc.co.uk, 'World Wars: The League of Nations and the United Nations' [2015] <http://www.bbc.co.uk/history/worldwars/wwone/league_nations_01.shtml> Accessed 2 April. 2015].

¹¹⁷ IBID 119

¹¹⁸ IBID 119

¹¹⁹ IBID 119

strengthening of the African Union. President Uhuru Kenyatta of Kenya recently went on a diplomatic offensive with the aim of encouraging African Union members to renounce the Rome Statute. In some instances, personal motives and geopolitics may have played a role. Kenyatta, Kenya's Head of State, was under indictment at the time (charges since dropped) for alleged crimes during the 2007 electoral violence. China is keen to expand its influence on the continent, and African leaders are looking to decrease their dependence on Western nations, thus avoiding the scrutiny that accompanies it. China, who is not a party to the Rome Statute and who openly opposes its existence,¹²⁰ recently donated the African Union's headquarters in Addis Ababa. The price tag of \$200 million was fully funded by China, in addition to the multiple major infrastructure projects they are also funding.¹²¹

Kenyatta's efforts have largely succeeded. At a 2014 African Union Summit, The Union urged members to 'speak with one voice' regarding recognition of the ICC's jurisdiction.¹²² While it is unclear if many states will follow Kenya's lead, by strengthening the African Union's own capabilities, the international community may be forced to ease off. For example, Article 17(1)(a) of the Rome Statute allows for a member state to initiate its own proceedings provided they are genuinely capable of doing so. It is, therefore, in the interest of the aforementioned leaders to encourage the development of their regional and domestic institutions.

While the ICC is not central to this discussion, it is worth noting the source of tension between the UN and the African Union as this will potentially impact the structure of future missions. African courts have also increasingly attempted to retain jurisdiction to try the highest profile cases. Kenyan leaders attempted to have the trial of Kenyatta transferred to Arusha.¹²³ Similar attempts were made in Libya to try Saif al Islam, the son of former leader Muammar Ghaddafi.¹²⁴ Ivory Coast recently tried its former first lady, Simone Gbagbo; however, the deposed leader himself is still on trial at the ICC.¹²⁵

Historically, peacekeeping missions on the continent have been predominantly managed by the United Nations. Between 2000 and 2013, it is estimated¹²⁶ that the financial cost of conflict in Africa was \$900 billion USD. Between 2006 and 2013, the UN spent approximately \$36 billion on its operations.

Partnership Peacekeeping

¹²⁰ Though have been increasingly willing to abstain from measures which don't conflict with its interests, see .

¹²¹ BBC News, 'African Union opens Chinese-funded HQ in Ethiopia' <<http://www.bbc.co.uk/news/world-africa-16770932>> accessed 2 April 2015

¹²² African Union, '22nd Ordinary Session of the African Union Assembly concludes: A summary of key decisions' <<http://summits.au.int/en/22ndsummit/events/22nd-ordinary-session-african-union-assembly-concludes-summary-key-decisions-0>> accessed 2 April 2015

¹²³ Theeastafrican.co.ke, (2015). *Kenya's quest to end cases at the Hague enters crucial stage*. [online] Available at: <http://www.theeastafrican.co.ke/news/Kenya-pulls-out-all-the-stops-to-have-ICC-cases-dropped-/-/2558/1862746/-/ggfyq7z/-/index.html> [Accessed 3 Apr. 2015].

¹²⁴ Stephen, C. (2014). *Gaddafi sons' war crimes trial begins in Libya amid security fears*. [online] the Guardian. Available at: <http://www.theguardian.com/world/2014/apr/13/gaddafi-sons-war-crimes-trial-libya> [Accessed 3 Apr. 2015].

¹²⁵ BBC News, (2015). *Ivory Coast's former first lady Simone Gbagbo jailed*. [online] Available at: <http://www.bbc.co.uk/news/world-africa-31809073> [Accessed 3 Apr. 2015].

¹²⁶ See his, 'The benefits of reducing the incidence of civil war,' available at <<http://users.ox.ac.uk/~econpco/research/conflict.htm>>.

The rise of 'partnership peacekeeping,' which includes various multilateral and bilateral actors and institutions, has started to dominate operations on the continent. African Union forces in Somalia currently support the national government as they struggle to maintain control of Mogadishu.¹²⁷ The UN has set up its own support mission to assist. American drone strikes and commando raids have helped eliminate key leaders of the rival Al Shahaab militants.¹²⁸ Private security contractors provide protection to the aid workers struggling to reach the most effected populations. In Mali, French troops battle alongside UN and regional forces to disrupt Al Qaeda linked rebel groups.¹²⁹ The overarching tactic appears to be to encourage the development and competence of local and regional forces, and then to gradually transfer authority away from international and western forces.

The African Union is not the only regional intergovernmental organisation seeking to retain more control over peacekeeping operations within its territory. The Economic Community of West African States (ECOWAS) has sent military forces to stabilize both Cote D'ivoir, Togo and Mali since 2003.¹³⁰ In addition to peacekeeping, ECOWAS has also often responded rapidly and effectively to coups. More recently on March 29 2015, the Arab League announced its intention to create a permanent and unified military to respond to growing instability in the region. The ten strong coalition had already begun air strikes against Yemeni rebels at the time of the announcement.¹³¹

Potential Donors for Peacekeeping Missions

If the current financial damage from conflict is too high, there is clearly public incentive to support stabilization. Ageing Western philanthropists may be willing to share some of the bill. In the long term, this may leave funds unevenly distributed among worthy causes as success may depend heavily on the competence of fundraisers rather than merit of the cause. Perhaps a more appropriate target group would be citizens living abroad, who often retain immense personal interest in violence prevention in their homeland. Remittance flows to developing countries has more than quadrupled in recent years, from a global total of \$132 billion in 2000 to \$529 billion in 2012.¹³² Despite increasing difficulty resulting from anti-money laundering/combating the financing of terrorism (AML-CFT) regulations, remittances to Somalia amount to between \$1 and \$2 billion annually. India receives more than \$60 billion annually. This is a significant amount of money considering the total budget for UN peacekeeping operations is \$7.06 billion. If the diaspora were convinced that a better financed mission could improve local economic conditions for their relatives, it is conceivable that they would be willing to divert some of these remittances to support

¹²⁷ The Guardian, (2014). *Al-Shabaab in Somalia confirms leader was targeted in US drone strike*. [online] Available at: <http://www.theguardian.com/world/2014/sep/02/al-shabaab-confirms-leader-targeted-us-drone-strike-somalia> [Accessed 3 Apr. 2015].

¹²⁸ IBID 127

¹²⁹ Aljazeera.com, (2014). *Mali: The forgotten war*. [online] Available at: <http://www.aljazeera.com/indepth/opinion/2014/09/mali-forgotten-war-20149691511333443.html> [Accessed 3 Apr. 2015].

¹³⁰ Arthur, P 'ECOWAS and Regional Peacekeeping Integration in West Africa: Lessons for the Future' [2010] *AT*

¹³¹ BBC News, 'Arab League agrees to create joint military force' [2015] <http://www.bbc.co.uk/news/world-middle-east-32106939> accessed 2 April 2015

¹³² The World Bank, 'Migration and Development Brief' [2015] <<http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationandDevelopmentBrief20.pdf>> accessed 2 April 2015

those efforts. While possible, convincing them will not be an easy task, especially if allegations of troop misconduct continue to surface.

Regulations Governing UN Funding

Regulation 3.11 and Rule 103.4 of the Financial Rules and Regulations of the United Nations allows for private donations to be made provided they are in line with the aims and purposes of the organisation. There is one stipulation; if there is no prior consent by the General Assembly, donations must be approved by the Under-Secretary-General for Management before they are accepted. Due to the sizeable cost of UN DPKO operations, the prospect of a crowdfunding campaign initiating a new mission is negligible. More likely is that a campaign would be designed to support an existing mandate, perhaps through the provision of new equipment. In this light, it is difficult to imagine an underfunded mission turning down crowd-sourced funds as the aims of the campaign and the mission would inevitably coincide. It is also unlikely to gather much opposition from the international community who currently fund the majority of missions, 28.38% of funding comes from the United States alone.¹³³ Similar to the UN, African Union regulations provide no clear stipulation preventing the use of crowdsourced funds.

Preventing Fraud in Crowdfunding

In the UK, the body responsible for regulating the charitable sector is the Charity Commission. First established by The Charitable Trusts Act of 1853, it now finds its authority in The Charities Act of 2011. In 2007, the government issued the ‘Review of Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse.’¹³⁴ In this report, it was asserted that ‘while the scale of terrorist links to charitable activity is extremely small, in comparison to the size of the charitable sector, the scope for exploitation of charities by terrorists could become a significant aspect of the terrorist finance threat without appropriate and coordinated action now by the sector, regulator and government.’

In July 2012, Lord Hodgson argued in his article ‘Trusted and Independent: Giving Charity Back to Charities—Review of the Charities Act 2006’ that the primary focus of the commission should be ‘proactively identifying and tackling fraud.’¹³⁵ In line with these recommendations, the Public Administration Select Committee in its report ‘the role of the Charity Commission and ‘public

¹³³ Un.org, ‘*Financing peacekeeping. United Nations Peacekeeping*’ [2014] <<http://www.un.org/en/peacekeeping/operations/financing.shtml>> accessed 2 April 2015

¹³⁴ Webarchive.nationalarchives.gov.uk, (2015). *REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE SUMMARY OF RESPONSES AND NEXT STEPS*. [online] Available at: <http://webarchive.nationalarchives.gov.uk/http://www.homeoffice.gov.uk/documents/cons-2007-protecting-charities/cons-2007-charities-responses?view=Binary> [Accessed 3 Apr. 2015].

¹³⁵ Hodgson, L. (2006). *Trusted and Independent: Giving charity back to charities*. [online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79275/Charities-Act-Review-2006-report-Hodgson.pdf [Accessed 3 Apr. 2015].

benefit': Post-legislative scrutiny of the Charities Act 2006' advocated for statutory intervention to allow the commission to focus its limited resources on regulation.¹³⁶

In December 2013, the Cabinet Office published its 'Consultation on Extending the Charity Commission's Powers to Tackle Abuse in Charities.'¹³⁷ Many of the recommendations contained in these reports are also found in the Draft Protection of Charities Bill of 2015. The draft, which would amend the Charities Act of 2011, fails to appropriately identify a key avenue for fraud through crowdfunding. By not requiring campaigns purporting to support a given charity to verify their connection to the charity, any individual could raise in the name of a charity and pocket the money. The majority of provisions relate to fraud committed by trustees or other associated directly with the charity. Article 39 does require the disclosure of charitable registration on published documents for charity with revenue exceeding 10,000 GBP per annum. However, this does little to prevent terrorists or other prohibited actors from exploiting the sector.

Implementing legal reform in the non-profit sector does not appear to be a current priority in the US or Canada. Canada's Not-for-profit Corporations Act of 2011 has now entered into force, yet contains no provisions for verifying small scale online campaigns. While any potential regulation which increases the difficulty of campaign registration may reduce industry growth, it is the only reasonable method of preventing fraud.

PART THREE

Syria's Civil War

A common theme with international crime is that enforcement is often a difficult task. The chief of the UK's MI6 stated the international law enforcement organisations have found themselves in a 'technology arms race' with international criminal organisations, making enforcement both labour and capital intensive.¹³⁸ With this in mind, it is important to consider the real world applicability of the national and international regulatory framework governing crowdfunding and how this relates to armed conflict. The current conflict in Syria provides an ideal cross-section of actors for this analysis. As mentioned, individuals associated with some of the armed groups in Syria have used crowdfunding to fund their efforts. The legal consequences of campaigns supporting a selection of these armed groups will now be discussed.

Islamic State of Iraq and Syria (ISIS)

It is not difficult to determine that financing ISIS is prohibited as a matter of international law. In 2014, the UNSC used its Chapter 7 powers to adopt Resolution 2170 which designated the

¹³⁶ Public Administration Select Committee, (2006). *The role of the Charity Commission and "public benefit": Postlegislative scrutiny of the Charities Act 2006*. [online] Available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublicadm/76/76.pdf> [Accessed 3 Apr. 2015].

¹³⁷ Gov.uk, (2013). *Extending Charity Commission's powers to tackle abuse in charities - Consultations - GOV.UK*. [online] Available at: <https://www.gov.uk/government/consultations/extending-charity-commissions-powers-to-tackle-abuse-in-charities> [Accessed 3 Apr. 2015].

¹³⁸ The Guardian, 'MI6 chief says service is in 'technology arms race' with terrorists and criminals' <<http://www.theguardian.com/uk-news/2015/mar/31/mi6-technology-arms-race-terrorists-criminals>> accessed 2 April 2015].

organisation a terrorist entity and reiterated its prohibition on funding the group. Resolution 2199 of 2015 confirmed the restrictions, as well as imposed a total ban on oil sales from the group. Many states, in particular the US, have followed through and taken the necessary steps to incorporate the resolutions into domestic law.¹³⁹ The UN Mercenary Convention may place additional liability for some fighters; however, the majority of foreign fighters within ISIS-ranks are motivated by religious ideology and not by financial greed. In this case, the convention would not apply.

In addition to provisions implementing international law, many states have sufficient domestic legislation at their disposal. Section 6603 of IRTPA (US) is one option as it prohibits the transfer of currency to terrorist organisations. However, like most similar laws in other jurisdiction, they require the individual to know that their funds may be used for terrorist purposes. Similarly, if an individual uses a false pretence to solicit funds which they then plan to use for terrorism, they would face liability under fraud legislation in most countries. Yet, if a crowdfunding campaign were initiated and completed within a short time period, current standards would likely mean they could access the funds prior to detection.

Syrian Government Forces

At the beginning of the conflict, many analysts predicted President Assad would have lost power within a matter of months rather than years.¹⁴⁰ However, with financial and military support from Russia and Iran, and Russian and Chinese vetoes in the UNSC, Western officials are beginning to accept his likely place in any future Syrian government. Yet, his use of chemical weapons and willingness to commit human rights violations have cost him legitimacy in the eyes of much of the international community. Some states, including the US and France, have opted to recognize the Syrian National Council (SNC) as legitimate government, despite it being exiled. In these countries, national sanctions which would likely accompany the loss of recognition could be applied to a crowdfunding campaign in support of Assad.¹⁴¹ Through Executive Orders 13572, 13573, and 13582, President Obama imposed sanctions on any group that is contributing to human rights abuses in Syria, including the Assad government. In 2004, President Bush used his authority under the International Economic Emergency Powers Act to label the Syrian government as a state sponsor of terrorism and imposed sanctions which remain in place today.

In the UK, sanctions against the Syrian regime have been established by the European Union's Council Decision 2012/122/CFSP as well as other EU regulations. These regulations include a prohibition on financial assistance. Canadian sanctions under the Special Economic Measures Act place similar prohibitions.

Attempts within the UNSC to impose sanctions on the regimes have not been successful since the current conflict began, as Russia and China have consistently vetoed proposed regulations. There are some sanctions in place resulting from SC Resolutions 1595 and 1636 that stem from alleged

¹³⁹ Ackerman, S. (2014). *US places sanctions on senior Isis member as Iraq bombing campaign intensifies*. [online] the Guardian. Available at: <http://www.theguardian.com/world/2014/aug/18/us-sanctions-isis-members-mosul-dam-strikes> [Accessed 3 Apr. 2015].

¹⁴⁰ Mikail, B. (2014). Assad's fall: how likely, how desirable?. *Fride*, 127.

¹⁴¹ *IBID* 140

support for terrorist bombings in Beirut in 2005. The effects of the sanctions are minimal as they are restricted to individuals related to the bombing.

It appears that the effects of a crowdfunding campaign supporting the Syrian regime (excluding any funds devoted to mercenaries) will depend largely on the state exercising jurisdiction. Campaigns in the US, UK and Canada would likely run the risk of criminal prosecution. However, countries which have not imposed sanctions on the regime are under no international obligation to do so.

UN Forces

Though limited, the United Nations has at times had a presence in the Syrian conflict. UNSC Resolution 2042 established United Nations Supervision Mission in Syria (UNSMIS) for a 90 day peacekeeping plan to implement the Six-Point Proposal of the Joint Special Envoy of the United Nations and the League of Arab States. On June 15, 2012 UNSMIS was forced to cease operations in Syria and no UN peacekeeping force has since returned.¹⁴² A more successful UN effort in Syria was the OPCW-UN Joint Mission to destroy the chemical weapons arsenal of the Syrian regime.

As discussed, UN regulations do not prohibit donations to support UN DPKO missions. Acknowledging the crucial role of international organisations in humanitarian crisis, states often place provisions excluding the UN forces from sanctions. Article (3)(2) of EU Council Regulation 36/2012 which placed sanctions on Syria allows for the provision of non-lethal military equipment to the United Nations Disengagement Observer Force (UNDOF). Therefore, an EU citizen could raise money for UN DPKO mission provided it was spent on non-lethal equipment such as protective equipment. Attacks on peacekeepers are becoming more frequent, and current missions often fail to protect soldiers adequately.¹⁴³ The key obstruction to supporting UN DPKO missions through crowdfunding is the process of obtaining authorisation, which may be lengthy. However, should a crowdfunding effort be highly successful in raising funds for non-lethal equipment, it would be possible to re-allocate other funds from non-lethal equipment to purchase lethal equipment, thereby avoiding potential liability. To use Brian Liedl's analogy, budgets often operate much like water in a swimming pool; pouring water in one end will not keep it there.¹⁴⁴

Syrian Opposition Coalition (SOC)

The first opposition group to form following the initial uprising was the Free Syrian Army (FSA), a group of former regime soldiers led by Colonel Riad al-Assad.¹⁴⁵ Initially, the group received

¹⁴² Un.org, 'United Nations Supervision Mission in Syria (UNSMIS)' <<http://www.un.org/en/peacekeeping/missions/past/unsmis/>> accessed 2 April 2015

¹⁴³ Peace Operations Training Institute, 'Casualty Avoidance and Force Protection: The Need for Protective Equipment in Peacekeeping. A Peacekeeper Needs More Than a Blue Helmet' <<http://cdn.peaceopstraining.org/theses/carbone.pdf>> accessed 2 Apr. 2015

¹⁴⁴ Brian Riedl, 'Why Government Spending Does Not Stimulate Economic Growth: Answering the Critics' <<http://www.heritage.org/research/reports/2010/01/why-government-spending-does-not-stimulate-economic-growth-answering-the-critics>> accessed 1 April 2015

¹⁴⁵ Arimatsu, L. and Choudhury, M. 'The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya' *ILPP*, <http://www.chathamhouse.org/sites/files/chathamhouse/public_html/sites/default/files/20140300ClassificationConflictsArimatsuChoudhury1.pdf> accessed 2 April 2015

some support from the US, however their lack of ability to form a unified command structure would lead to the Americans looking elsewhere. In 2012, opposition groups met in Doha to form the Syrian Opposition Coalition.¹⁴⁶ The group has since made gains in the support of moderate opposition groups such as the FSA.¹⁴⁷ The European Union, The Arab League, as well as 20 states including the US have now recognised the SNC as the legitimate representative of the Syrian opposition.¹⁴⁸ In May 2014 US officials determined that the SOC's office in the United States would be considered a foreign mission pursuant to the Foreign Missions Act 1992.¹⁴⁹ Qatar and France have also allowed for the opening of an SOC embassy. The level of control the SOC has established over the various militias and rebel groups is yet to be determined, however for the purposes of this analysis sufficient control for legal responsibility will be assumed.

In most jurisdictions, domestic sanctions will not be relevant as they are not currently subject to Western sanctions. The same can be said about UN Resolutions. However, some opposition groups have been accused of committing war crimes and crimes against humanity. In many Western states this gives rise to liability, for example in the US Executive Orders 13572, 13573, and 13582 allow for criminal prosecution with those who knowingly supported the campaign. A crowdfunding campaign supporting the SOC would not violate international law as it stands; however, campaign organisers and hosts need to be aware of national regulations that may impose criminal liability.

PART FOUR

Global Cooperation

Expansion of Intelligence Collection and Inter-agency Cooperation

Some intelligence experts contend that new financial restrictions will not be sufficient to prevent terrorists from crowdfunding.¹⁵⁰ Prosecuting simply on the basis of the collection of funds can be difficult until the money is actually spent. Terrorists, not renowned for their honesty, could simply state that they are raising money 'to go and study at a madrassa in Yemen' as Michael Pierce recently observed.¹⁵¹ The real solution, they say comes through increased powers to collect intelligence and share their findings with allied agencies.

Since the Edward Snowden revelations, there has been growing public resentment towards current surveillance agencies and the extensive powers that have been granted to them since 9/11. As mentioned, some governments are still attempting to push through legislation authorizing further powers. In liberal democracies, voter discontent may provide substantial resistance to such efforts,

¹⁴⁶ IBID 145

¹⁴⁷ IBID 145

¹⁴⁸ IBID 145

¹⁴⁹ Mary Beth D. Nikitin, M., Humud, C. and Blanchard, C. 'Armed Conflict in Syria: Overview and U.S. Response' <<https://fas.org/sgp/crs/mideast/RL33487.pdf>> accessed 2 April 2015

¹⁵⁰ Parl.gc.ca, 'Defence, Evidence, October 27, 2014' <<http://www.parl.gc.ca/content/sen/committee/412/SECD/51670-E.HTM>> accessed 2 Apr. 2015

¹⁵¹ Parl.gc.ca, 'Defence, Evidence, October 27, 2014' <<http://www.parl.gc.ca/content/sen/committee/412/SECD/51670-E.HTM>> accessed 2 Apr. 2015

much like the backlash recently experienced by the Harper government in Canada following recent terrorism related proposals.

The path of least resistance to meaningful reform may therefore be through inter-agency cooperation and intelligence sharing between allies. Venues for cooperation already exist, including the International Criminal Police Organisation (INTERPOL). The INTERPOL General Assembly has passed a series of resolutions since 1986 that deal directly with combating international financial crime. Resolution 18 of 1986 called on the Secretariat to establish a working group to improve cooperation between 'banking and financial institutions and associations and law enforcement agencies' with the aim of combating financial crime. These institutions would benefit from the allocation of resources towards regulating the crowdfunding industry, in particular for donor-backed campaigns which are not subject to securities regulations.

Statutory Reform

After analysing the current trends and legislative framework for regulating the crowdfunding of armed conflict, it is clear that the primary issue is enforcement. Without requiring a verification process for both donors and fundraisers, it will be almost impossible for enforcement agencies to prevent funds from reaching prohibited recipients. It is recommended that regulations be implemented that require crowdfunding websites to verify the charitable cause that is being supported. This would include checking registration details for supported non-profits, as well as requiring fundraisers to show proof of authority to fundraise on behalf of the said group. Additionally, to prevent theft or misappropriation of funds, requiring funds to be dispersed into an account registered to the non-profit may be appropriate.

For campaigns not associated with a registered charity, for example, a campaign to raise money for a sick individual, regulation becomes more difficult. There is no doubt that worthy causes exist outside of structured charities. In this case, it is recommended that the campaign must state a named recipient, who would then be required to provide identity verification and consent. This may not prevent all forms of fraud; however, it would provide enforcement agencies with crucial information needed to trace funds once a breach has occurred.

Another option is to place a holding period on funds before they are eligible to be withdrawn. This would give enforcement agencies sufficient time to analyse campaign flows and allow for the disruption of illegal transactions once detected. However, without proper care and implementation, this may restrict the ability to crowdfund for disaster relief-related campaigns which may need funds immediately. With advanced awareness of the process and with proper notice, established emergency response organisations would be well positioned to make the appropriate adjustments and coordinate their efforts to prevent delays.

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