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The Unique Challenge of Dual-Purpose Organizations: Comparative Analysis of U.S. and Israel Approaches to Combating the Finance of Terrorism

AVIV (COHEN) DEKEL*

I. INTRODUCTION

Exploring the legal aspects of counter terrorism has for a long time now been the "new world" of scholarly writings. Much like the first expeditious ships of the fifteenth century, brave legal minds sailed away to this unknown legal turf more than a decade ago, paving the way for voluminous writing. Today, the legal writing dealing with counter terrorism is broad and diverse, covering international law, domestic law, criminal law, humanitarian law, and others legal fields. Of particular focus for many years in this legal discourse stands the issue of financing terrorism. This is due to the centrality attributed to financing in the initial stages of orchestrating a terrorist act, and its negative effects on the world economy.[1]

As terrorists grow more sophisticated,[2] the legal instruments required to counter them should exhibit at least the same level of cleverness. On the international level, various legal tools exist to counter different aspects of terrorism, from regional conventions and international conventions to Security Council Resolution. Of these

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1. For further reading on the economic ramifications of terrorism financing, see R. Barry Johnston & Oana M. Nedelescu, *The Impact of Terrorism on Financial Markets*, 13(1) J. OF FINANCIAL CRIME 7 (2006).

2. An interesting argument to the contrary was put forward by Professor Gal and Professor Taylor, who claim that terrorist acts themselves are not relatively expensive to execute, and so the current trend is privatization of terrorist financing. This means that terrorist organizations rely mostly on self-financing and not as much on external sources. *See* Istvan Laszlo Gal & James Park Taylor, *Financing Terrorism: Afghanistan and the Haqqani*, 28 (10) INT'L ENFORCEMENT L. REP. 346 (2012). While this argument may stand on solid data, it is also quite narrow in its scope of examination. Financing terrorism as a concept includes more than mere expenses of detonations, purchase of knowledge and other technical aspects. It also encompasses the money invested in recruiting members, propaganda, payment to suicide terrorists' families and so forth.

instruments, two are especially important in the context of counter financing of terrorism. These are the International Convention for the Suppression of the Financing of Terrorism,[3] which requires member states to create a domestic criminal offense of financing of terrorism; and Security Council Resolution 1373, which reinforced that requirement and enhanced it by calling on states to take further measures, such as freezing assets related to terrorist acts and so forth.[4]

On the domestic front, anti-terrorism financing legislation reached its most extensive scope yet. In fact, some statutes are so broad, that they sacrificed their ability to pay attention to nuances and special circumstances in the name of overreaching application. This article focuses on one such nuance, the phenomenon of dual-purpose organizations—organizations that marry together terrorist and non-terrorist activities, and compares the application of two anti-terrorism statutes to such cases. The two statutes analyzed here are those of the United States and of Israel, two nations that are no strangers to terrorist attacks and which have well developed anti-terrorism legal schemes.

Surprisingly enough, this issue has generated almost no scholarly writing, leaving a corner of the once "new legal world" still untouched. Most of the legal discourse to date deals with international and domestic regulation and the instruments used to counter the financing of terrorism,[5] or with the issue of terrorist organizations exploiting the vulnerabilities of charities and non-profit organizations in order to receive funding.[6] The importance of these issues notwithstanding, they

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3. International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 2178 U.N.T.S. 197.

4. S.C. Res. 1373, ¶ 1(c), U.N. DOC. S/RES/1325 (Sept. 28, 2001).

5. *See* Navin Beekarry, *The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law*, 31 NW. J. INT'L L. & BUS. 137 (2011), for a comprehensive analysis of the Financial Task Force's activity in the fight against financing of terrorism. *See also* Alison Elizabeth Chase, *Legal Mechanisms of the International Community and the United States Concerning State Sponsorship of Terrorism*, 45 VA. J. INT'L L. 41 (2004), for an interesting comparison between United States law and international law with regard to state responsibility for acts of terrorism; *see also* Laura K. Donohue, *Anti-Terrorist Finance in the United Kingdom and United States*, 27 MICH. J. INT'L L. 303 (2006) for background on the legislation and policy for countering the financing of terrorism.

6. See Jennifer Lyn Bell, *Terrorist Abuse of Non-Profit and Charities: A Proactive Approach to Preventing Terrorist Financing*, 17 KAN. J. L. & PUB. POL'Y 450 (2008), where she lists the reasons why charities and non-profit organizations are especially vulnerable to abuse for the financing of terrorism; Nina J. Crimm, *High Alert: The Government's War on the Financing of Terrorism and its Implications for Donors, Domestic Charitable Organizations, and Global Philanthropy*, 45 WM. & MARY L. REV. 1341 (2004). For insights on this topic with respect to Canadian law, see David G. Duff, *Charities and Terrorist Financing*, 61 UNIV. OF TORONTO L. J. 73 (2011). An especially instructive presentation on the work of charities in the Arab world is found in Mona Atia's piece on Egypt, where it is argued that "[b]ecause of [the] harsh environment [in Egypt], there is no need for anti-terrorism legislation to prevent anti-terrorism financing through Islamic charities. While in the international context, including in many Middle

lack a direct confrontation with the question: has anti-terrorism financing gone too far so as to preclude any funding for social or humanitarian projects solely because they are affiliated with a terrorist organization?

Unfortunately, as the argument presented here demonstrates, the answer to this question is no. In fact, domestic legislation, at least in the United States and Israel, has not gone far enough in preventing dual-purpose organizations from abusing their non-terrorist fraction for purposes of financing terrorism. Dual-purpose organizations do perform important social functions, and sometimes they do so in a political vacuum, which means that no other governmental entity will take upon itself to provide such services. However, in most cases, the main focus of dual-purpose organizations are to serve violent terrorist campaigns, and so long as it stays that way, regretfully, it is the innocent beneficiaries of the aforementioned welfare projects that will suffer the consequences.

The paper consists of five parts. Following this introduction, Part 2 provides a comparative overview of anti-terrorism financing legislation in the United States and Israel. It focuses on the criminal offense of supporting terrorist organizations, which in both cases, includes providing currency, and examines the elements of both offenses. Part 3 introduces the concept of dual-purpose organizations and the dilemmas they pose. To further crystallize the question at hand, Part 3 puts a spotlight on one project, the Islamist University of Gaza ("Islamist University" or "the University"), the most advanced educational institution available to Palestinians in the Gaza Strip, which at the same time operates under the auspices of Hamas, an organization widely recognized as a terrorist organization. Part 4 merges the previous two sections together, confronting the question of whether funding a new library at the University will be considered an offense of supporting terrorism under the two aforementioned statutes. Part 5 concludes the discussion, and suggests some lessons learned from the example presented earlier on.

II. COMBATING FINANCING OF TERRORISM: COMPARATIVE PRESENTATION OF UNITED STATES AND ISRAEL LEGISLATION

In order to evaluate the ability of anti-terrorism legislation to address dual-purpose organizations, this Part presents and analyzes the

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Eastern countries, the global war on terror profoundly affected charities on the ground, its impact has been much less direct on Islamic charities in Egypt"; *see* Mona Atia, *Innocent Victims: An Accounting of Anti-Terrorism in the Egyptian Legal Context*, 9 UCLA J. ISLAMIC & NEAR E. L. 1, 18 (2009−2010).

financing of terrorism offense in the United States and Israel. The language of the financing offense in both cases is quite similar in its scope of the *actus reus* it criminalizes and the definition of a terrorist organization as the beneficiary of that action, but they differ greatly with respect to the *mens rea* requirement, as will be illustrated ahead.

A. United States

The United States' efforts to combat terrorism manifests itself in many forms. The legal discourse offers extensive surveys of these efforts,[7] including vast amounts of writing criticizing those measures.[8] With no intention to reiterate those discussions, this part focuses on one piece of this complex puzzle, the Providing Material Support or Resources to Designated Foreign Terrorist Organizations Act, or 18 U.S.C. § 2339B.[9] This provision warrants special attention in the context of combating the financing of terrorism because it is this section of the United States criminal code that makes financing foreign terrorist organizations a criminal offense.

Section 2339B(a)(1) makes it an offense to knowingly provide material in support of or resources to a foreign terrorist organization, and makes it an offense punished by a fine and/or imprisonment. This section has been the star of much case law in United States courts; and

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7. For a survey of U.S. anti-terrorism provisions, see Michael W. Ryan, *Not All Practice Makes Perfect: How the Treasury's Revised Anti-Terrorist Financing Guidelines Still Fail to Adequately Address Charitable Concerns*, 43 WAKE FOREST L. REV. 739, 741−47 (2008). *See also* James P. McLoughlin, Jr., *Deconstructing United States Sentencing Guidelines Section 3A1.4: Sentencing Failure in Cases of Financial Support for Foreign Terrorist Organizations*, 28 L. & INEQUALITY 58, 68−71 (2010) (discussing the correlation between anti-terrorism statutes and the penalties prescribed to them).

8. *See, e.g.*, Bell, *supra* note 6, at 452, 463 (arguing that the U.S. government ought to take a more rigorous role in monitoring the use of non-profit organizations to finance terrorism and that current initiatives do not safeguard the non-profit sector from terrorist abuse); Kent Roach, *The Air India Report and the Regulation of Charities and Terrorism Financing*, 61 UNIV. OF TORONTO L. J. 45, 50 (2011) (claiming that current terrorism financing regime are not only ineffective, but also their direct and indirect costs far exceed their benefits); Ryan, *supra* note 7, at 751−58 (criticizing the U.S. Treasury's guidelines regarding charities); Crimm, *supra* note 6, at 1353 (criticizing the anti-terrorism legislation in the U.S. as having devastating effects on charities). On the contrary, there are also those who support this policy, such as Barkin, who argued that even buying air time for commercials on certain Arab radio stations by American corporations ought to be considered material support to terrorism. *See* Angela A. Barkin, C*orporate America – Making a Killing: An Analysis of Why it is Appropriate to Hold American Corporations Who Fund Terrorist Organizations Liable for Aiding and Abetting Terrorism*, 40 CAL. W. L. REV. 169, 188–89 (2003).

9. For further reading on § 2339B, see David Henrik Pendle, *Charity of the Heart and Sword: The Material Support Offense and Personal Guilt*, 30 SEATTLE U. L. REV. 777, 783−86 (2007); Stefanie Dresdner Lincoln, *Drawing the Line: Buckley's Impact on the Intersection of Contributions and the First Amendment*, 7 FIRST AMEND. L. REV. 445 (2009); Brian P. Comerford, *Preventing Terrorism by Prosecuting Material Support*, 80 NOTRE DAME L. REV. 723 (2005).

its constitutionality has been challenged dozens of times,[10] most notably in the prolonged litigation of the *Humanitarian Law Project* case,[11] where the plaintiffs claimed it violated both the First and Fifth Amendments of the Constitution. As in many cases before, § 2339B dodged the constitutional bullet when the Supreme Court limited its analysis to the application of § 2339B to the present case's circumstances, but did not address the principal question of whether this statute would be constitutional or not in more difficult cases.[12]

These concerns notwithstanding, in comparison to having softer legislation, let alone no legislation at all, § 2339B offers few advantages. At least one commentator noted that the strength and centrality of § 2339B in the American fight against terrorism is that it enables the U.S. legal system to prevent terrorist acts *ex ante* and not

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10. Charles Doyle, Senior Specialist in American Public Law, surveys a handful of such cases. *See* United States v. Taleb-Jedi, 566 F.Supp.2d 157, 181–82 (E.D.N.Y. 2008); *see also* United States v. Warsame, 537 F.Supp.2d 1005, 1018 (D. Minn. 2008); *see also* United States v. Shah, 474 F.Supp.2d 492, 497 (S.D.N.Y. 2007); *see also* United States v. Marzook, 383 F.Supp.2d 1056, 1066 (N.D. Ill. 2005); *see also* United States v. Assi, 414 F.Supp.2d 707, 718 (E.D. Mich. 2006); *see also* United States v. Hammoud, 381 F.3d 316, 331 (4th Cir. 2004); *see* CHARLES DOYLE, TERRORIST MATERIAL SUPPORT: AN OVERVIEW OF 18 U.S.C. 2339A AND 2339B, CONG. RESEARCH SERV., R41333 (2010).

11. Holder v. Humanitarian Law Project, 130 S. Ct. 2705 (2010). The plaintiffs in this litigation were two U.S. citizens, five nonprofit groups supporting the terrorist group LTTE, and the Humanitarian Law Project, a human rights organization with consultative status to the United Nations. *Id.* at 2713–14. In 1998, the plaintiffs challenged the constitutionality of the Section 2339B when they argued it prohibited them from supporting the LTTE and the PKK, both designated foreign terrorist organizations, through providing money, tangible aid, legal training, and political advocacy. *Id.* at 2714. The grounds for the statute's unconstitutionality were twofold: first, the statute's language was too vague so as to render it unconstitutional. *Id.* Second, the statute arguably violated the plaintiffs' rights of freedom of speech and freedom of association, because "it prohibited their provision of material support without requiring the Government to prove that plaintiffs had a specific intent to further the unlawful ends of those organizations." *Id*. This litigation went on for twelve long years, during which the case moved back and forth different instances, and was complicated further by Congress amending the statute twice during that time. The verdict drew much attention and subsequently much scholarly writing. For further reading on this topic, see Peter Margulies, *Advising Terrorism: Material Support, Safe Harbors, and Freedom of Speech*, 63 HASTINGS L. J. 455, 480 (2012). Margulies defends the Court's decision, claiming that the Court "fashioned a hybrid approach that blended intermediate and heightened scrutiny with the avoidance canon." *See also* Adam Tomkins, *Criminalizing Support for Terrorism: A Comparative Perspective*, 6 DUKE J. CONST. L. & PUB. POL'Y 81 (2010), examining the issues arising from the verdict viś-a-viś United Kingdom and European Union Law; Pendle *supra* note 9, at 786–93; John Cerone, *Caveat Doctor: International Law and the Criminalization of Teaching It*, 34 SUFFOLK TRANSNAT'L L. REV. 487, 488 (2011) (arguing that the Court's ruling is inconsistent with legal obligations of the United States under International Law).

12. This characterizes the approach the United States' courts took for the most part with respect to the constitutional difficulties that arise from anti-terrorism legislation. Without making general assertions on whether the relevant statute is constitutional in whole, and not merely as applied, the courts will usually rely on common notions rather than legal arguments, such as "the law is established that there is no constitutional right to fund terrorism". *See* Holy Land Foundation for Relief v. John D. Ashcroft et al., 333 F.3d 156, 165 (D.C. Cir. 2003).

settle for only responding to them *ex post*.[13] Additionally, the same broad language that is heavily criticized allows United States law enforcement authorities to prosecute many forms of terrorist support acts, thereby demonstrating a more constructive approach to combating terrorism.[14] If a terrorist cannot execute his plans without a wide net of support, then criminalizing those supporters might prevent the terrorist act from happening.[15]

This offense constitutes three terms which require further clarification. First, the *actus reus* of the offense—providing material support or resources.[16] Section 2339B(g)(4) defines "material support or resources" by referencing the definition of that term in the neighboring clause, § 2339A.[17] Section 2339A is the Providing Material Support to Terrorists Act, which in contrast to § 2339B, focuses on terrorist acts rather than terrorist organizations. Section 2339A(b)(1) defines "material support or resources" to include:

> any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include oneself), and transportation, except medicine or religious materials.[18]

This definition is by all accounts a broad one and encompasses many forms of support.[19] With due regard to the concerns that such

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13. Comerford, *supra* note 9, at 725−26.

14. In Professor Chesney's article he refers to this advantage as performing two important but distinct functions: the "unfocused preventive function" and the "focused preventive function." The former refers to inhibiting the flow of support thus limiting the ability of terrorists to execute their plans, and the latter refers to the labeling of supporters of terrorism as personally dangerous. *See* Robert Chesney, *The Supreme Court, Material Support, and the Lasting Impact of Holder v. Humanitarian Law Project*, 1 WAKE FOREST L. REV. F. 13, 14 (2010).

15. This is similar to a discussion from the laws of war paradigm, regarding civilians who are direct participants in hostilities. Under this premise, in certain circumstances, civilians lose their "civilian immunity" and even though they are not part of the armed forces of a party to a conflict, they may be lawfully targeted. The conditions that render a civilian as directly participating in the hostilities, or DPH, may vary, but they may include people who provide support such as drivers or cooks. Thus, as in the material support statute, the underlying assumption is that the commission of a wrongful act requires greater involvement than the one pushing the button. The entire support system of the executor must also be viewed as wrong doers, because to some degree they enabled the wrongful act to take place. For further reading on the subject, see Asa Kasher & Amos Yadlin, *Assassination and Preventive Killing*, 24 SAIS REV. 41 (2005).

16. 18 U.S.C. § 2339B(a)(1) (2009).

17. *Id*.

18. 18 U.S.C. § 2339A(b)(1) (2009).

19. See Ryan, *supra* note 7, at 743, arguing in the name of charity organization, that this "sweeping definition includes virtually any type of aid that a charity conceivably grant." *See also*

language might cause, this article focuses on financial support, probably the least controversial form of support; therefore, these concerns do not arise in the current context.

The second concept in the material support offense that generated heated discussion is the term "foreign terrorist organization," or FTO. "FTOs are organizations that were designated as such by the Secretary of State in accordance with Section 219 of the Immigration and Nationality Act."[20] Under this provision, three criteria must be met in order to make such a designation: 1) the entity must be a foreign organization; 2) that foreign organization must engage in terrorist activity or have the means and intent to do so; and 3) the terrorist activity must pose a threat to the national security of the United States or its nationals.[21] The current list of designated FTOs, as published by the Department of State, includes fifty-one organizations.[22]

Lastly, the third element of the offense is the *mens rea*, the knowledge requirement.[23] To violate § 2339B, a person must have knowledge that the organization he or she provided material support to was a designated FTO and that it engaged in terrorist activity.[24] It is interesting to note that the *mens rea* requirement in § 2339B is much broader than the one in §2339A. Section 2339B only requires knowledge that the organization is a designated FTO or that the organization engaged or engages in terrorist activity, whereas § 2339A

Alexander J. Urbelis, *Rethinking Extraterritorial Prosecution in the War on Terror: Examining the Unintentional Yet Foreseeable Consequences of Extraterritorially Criminalizing the Provisions of Material Support to Terrorists and Foreign Terrorist Organizations*, 22 CONN. J. INT'L L. 313, 332 (2007), asserting that "material support should not be defined so broadly as to encompass even mere acts of lodging terrorists." Professor Cerone also argued that it is a statute of "extraordinary breadth of scope, both in terms of the range of conduct it captures as well as its jurisdictional sweep." *See* Cerone, *supra* note 11, at 487. Another interesting criticism is made by Lombardo, Buwalda and Lyman, who argue that this definition is overly broad so as to render victims of totalitarian regimes, who seek refuge in the United States as terrorists or "material support[ers]," thus denying them their legitimate right of asylum. *See* Michele L. Lombardo et al., *Terrorism, M.aterial Support, The Inherent Right to Self Defense, and the United States Obligation to Protect Legitimate Asylum Seekers in a Post-9/11, Post-PATRIOT Act, Post-Real ID Act World*, 4 REGENT J. INT'L L. 237, 237 (2006).

20. Bureau of Counterterrorism, *Foreign Terrorist Org.*, U.S. DEPARTMENT OF STATE (Sept. 28, 2012), http://www.state.gov/j/ct/rls/other/des/123085.htm.

21. Immigration and Nationality Act, 8 U.S.C. 12 (2006).

22. Bureau of Counterterrorism, *supra* note 20. The listing process is heavily criticized in the legal literature. For example, see Roach, *supra* note 8, at 51, arguing that listing has always constituted a problematic exercise because it fuses judicial, executive, and legislative powers in proclaiming a person to be an international outlaw without advance notice or a hearing and often on the basis of secret intelligence that is never publicly disclosed. *See also* Donohue, *supra* note 5, at 425−28. The listing process in the United States is similar to the process in the United Nations under Security Council Resolution 1267. For further reading on this subject, see Craig Forcese and Kent Roach, *Limping Into the Future: The United Nations 1267 Terrorism Listing Process at the Crossroads*, 42 GEO. WASH. INT'L L. REV. 217, 258 (2010).

23. Ryan, *supra* note 7, at 743.

24. *Id*.

requires that the defendant have specific intent to further illegal activities.[25] One possible explanation is that § 2339B was intended to prevent terrorist organizations from deceivingly raising funds under the pretense of humanitarian aid.[26] Another is that § 2339B was designed to close a loophole in § 2339A which enabled donors to charity organizations to escape the application of the material support clause.[27]

Thus, the financing offense under United States law is satisfied with a very low *mens rea* requirement, therefore covering a wide range of activities and allowing the possibility to charge almost every activity associated with dual-purpose organization as an offense. The hypothetical scenario described in Part 3 demonstrates this point. As the next sections delve into the Israeli parallel of § 2339B, it is worth noting the major difference between these two statutes—the *mens rea* requirement and how that might come into play in the context of dual-purpose organizations.

B. Israel

The leading statute in Israel governing the field of financing terrorism is the Prohibition on Terrorist Financing Law ("the Law").[28] The basic notion underlying the Law is that the financing of a terrorist organization, despite it being an action from the private-business sphere, poses a real threat to the security of the Israeli public.[29]

Article 1 of the Law defines "Terrorist Organization" as an association of people, which acts to perpetrate an act of terrorism or has as its goal, enabling or promoting the perpetration of an act of terrorism.[30] The definition also states that it is immaterial "1) whether or

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25. *Id*. at 743−44. This requirement was subject to much criticism, including calls for requiring proof of specific intent rather than the general knowledge currently required, Jonathan D. Stewart, *Balancing the Scales of Due Process: Material Support of Terrorism and the Fifth Amendment*, 3 GEO. J. L. & PUB. POL'Y 311, 313 (2005). One commentator even went as far as suggesting to amend §2339B so as to require a *mens rea* of recklessness, see Pendle, *supra* note 9, at 778.

26. Ryan, *supra* note 7, at 744.

27. McLoughlin, *supra* note 7, at 65.

28. *Prohibition on Terrorist Financing Law, 5765-2003*, MINISTRY OF JUSTICE (ISR.), http://www.justice.gov.il/MOJEng/Halbanat+Hon/TerrorFinancingNew.htm (last visited July 25, 2013).

29. *Id*.

30. *Id*. at 2−3. "Act of Terrorism" is defined in Article 1 of the Law as:

> an act that constitutes an offence or a threat to commit an act that constitutes an offence that was committed or was planned to be committed in order to influence a matter of policy, ideology or religion if all of the following conditions are fulfilled: it was committed or was planned to be committed with the goal of causing fear or panic among the public or with the goal of coercing a government or another governing authority, including the government or governing authority of a foreign country to take action or to refrain from taking action; for the purposes of this paragraph – foreseeing, as a nearly certain

not the members of the organization know the identity of the other members; 2) if the composition of the members of the organization is fixed or changes; [or] 3) if the organization also carries out legal activities and if it also acts for legal purposes."[31]

Article 8(a) of the Law prohibits a "transaction in property for the purposes of terrorism."[32] It reads as follows:

> One who performs a transaction[33] in property[34] for the purpose of enabling, furthering or financing the perpetration of an act of terrorism, or to reward the perpetration of an act of terrorism, or for the purpose of enabling, furthering or financing the activity of a declared terrorist organization or of a terrorist organization shall be liable to imprisonment for ten years or a fine that is twenty times greater than the fine set in Article 61(a)(4) of the Penal Law.[35]

Article 8(b) gives three clarifications with respect to paragraph (a).[36] First, Article 8(b)(1) deals with the standard of proof that is required, and says that "proof that a transaction was performed for one of the purposes set forth in [paragraph (a)] is sufficient, even if it was

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> possibility, that the act or the threat will cause fear or panic among the public is equivalent to having a goal to cause fear or panic among the public; the act that was committed or that was planned or the threat included: actual injury to a person's body or his freedom, or placing a person in danger of death or danger of grievous bodily injury; the creation of actual danger to the health or security of the public; serious damage to property; serious disruption of vital infrastructures, systems or services; if the aforementioned act or threat was committed or was planned to be committed using weapons as defined in Section 144(c)(1) and (3) of the Penal Law, excluding a weapon part or accessory, it will be considered an act of terrorism even if the conditions of paragraph (1) of subsection (a) are not met, and if it was committed or planned to be committed using chemical, biological or radioactive weapons that are liable, due to their nature, to cause actual mass harm – even if the conditions set forth in paragraphs (1) and (2) of subsection (a) are not met.

31. *Id*. at 1.
32. *Id*. at 9.
33. *Id*. at 3. "Property transaction" is defined in Article 1 of the Law as:

> acquisition or receipt of ownership or other rights in property, regardless of whether any consideration is paid, including solicitation, transfer, receipt, possession, exchange, banking transactions, investment, any transaction involving securities or possession of securities, brokerage, granting or receipt of credit, import, export or creation of a trust or co-mingling of terrorist property with other property even if it is not terrorist property.

34. *Prohibition on Terrorist Financing Law, 5765-2004*, 9 MINISTRY OF JUSTICE (ISR.), http://www.justice.gov.il/MOJEng/Halbanat+Hon/TerrorFinancingNew.htm (last visited July 25, 2013). "Property" is defined in Article 1 of the Law as: "immovable and movable property, monies and rights, inclusive of property which is the proceeds of any such property, and any property accruing or originating from such property or its profit."
35. *Id*. at 10.
36. *Id*.

not proven for which of these purposes specifically."[37] Second, Article 8(b)(2) defines the term "for the purpose" to include "foreseeing that at least one of the possibilities set forth [in paragraph (a)] is a nearly certain possibility."[38] And third, Article 8(b)(3) broadens the meaning of "to reward the perpetration of an act of terrorism" by establishing that it applies "even if the recipient of the reward is not the one who perpetrated or planned to perpetrate the act of terrorism."[39] In plain language, in order to be charged with the crime of financing terrorism in Israel, the defendant needed to have performed a transaction in property, with a purpose that this transaction will in some form contribute to terrorist activity or of a terrorist organization, even if the direct beneficiary is not the terrorist itself.[40]

Compared to § 2339B, Article 8(a) seems to be narrower in the scope of the criminalized conducts, since on its face, it only covers a "transaction in property,"[41] while § 2339B deals with a long list of acts that constitute "material support."[42] Even though a closer look at the Law as a whole reveals that the definitions of "transaction" and "property" are quite broad, it is still narrower.[43] Because the Law is designed to deal specifically with the financing of terrorism, Article 8 does not cover conducts such as "training, expert advice or assistance, safehouses, false documentation or identification," like § 2339A does.[44]

In both statutes, the beneficiary of the act is a terrorist organization.[45] In § 2339B, it is a foreign organization, rendering the clause an extraterritorial application.[46] In the Israeli Law, there is no restriction on the geographical scope: neither the definition of a terrorist organization nor the definition of an act of terrorism addresses its geographical location.[47] Thus, it could also apply extraterritorially.

The primary difference between these two statutes is the *mens rea* requirement. Whereas § 2339B places the threshold at knowledge that the recipient is a designated FTO,[48] Article 8(a) sets the bar higher by requiring a nexus between the act of the defendant and an act of terrorism.[49] The purpose of the defendant's act, according to the Israeli

37. *Id*.
38. *Id*. at 9–10.
39. *Id*. at 10.
40. *Prohibition on Terrorist Financing Law, 5765-2004*, *supra* note 34, at 10.
41. *Id*. at 9.
42. 18 U.S.C. § 2339(b)(1) (2009).
43. *Prohibition on Terrorist Financing Law*, *5765-2003, supra* note 28, at 9.
44. 18 U.S.C. § 2339A(b)(1) (2009).
45. *Id*.; 18 U.S.C. § 2339B (2009).
46. *Id*.
47. *Prohibition on Terrorist Financing Law*, *5765-2003, supra* note 28, at 1.
48. 18 U.S.C. § 2339B (2009).
49. *Prohibition on Terrorist Financing Law*, *5765-2003, supra* note 28, at 1.

Law, must be an effort to contribute to the terrorist act before its commission or to reward the terrorist act after its commission.[50] Israeli Law also prescribes the general financing of a terrorist organization,[51] but in this context, it is an end in itself, not a conduct, and so distinct from the conduct of knowingly financing a designated FTO as described in § 2339B.[52]

While the Israeli Law does not require that the origin of the property be a terrorist activity, the Israel Supreme Court held that if the property in question was itself a product of terrorist activity, it might suggest its purpose was to further terrorism.[53] This flexes the *mens rea* requirement because it enables proof of knowledge of the origin of the property to imply knowledge about the future use of that property.

With this analysis in mind, the next Part turns to presenting the phenomenon of dual-purpose organizations, their characteristics and the challenges they pose. In order to better convey the moral and policy dilemmas such organizations carry, the next part will also examine an example of such duality that will be later examined through the lens of the two statutes presented in this part.

III. DUAL-PURPOSE ORGANIZATIONS

Dual-purpose organizations include at least two distinct wings that differ in their objectives and their actions to achieve those objectives, not all of which are necessarily criminal or violent.[54] Although this concept is not new,[55] it is not widely recognized. The definition of just how much social non-terrorist activity renders an organization a dual-purpose one is complex. An extreme approach is demonstrated by Professor Levanon who argues, "only an organization the entire concerted action of which is directed toward committing terrorist

50. *Id*. at 9.

51. *Id*.

52. 18 U.S.C. § 2339B (2009).

53. Crim.A. 6378/10 Isaweey v. State of Israel, [2010] not published, 12−13. In that case, the appellant's Arab-Israeli lawyer, was accused of financing terrorism because she transferred funds from bank accounts of Hamas in the Gaza Strip to bank accounts of security detainees in Israeli prisons. The appellate claimed to not know what the purpose of the funds. Nonetheless, the Court held that the appellant's knowledge of the origin of the funds from bank accounts of Hamas meant that she knew the funds were proceeds of terrorist activity. Thus she could have foreseen with almost complete certainty that these fund would sponsor future terrorist activities.

54. Liat Levanon, *Criminal Prohibitions on Membership in Terrorist Organizations*, 15 NEW CRIM. L. R. 224, 228 (2012).

55. See for example, Pendle, *supra* note 9, at 781, arguing already in 2007 that "some foreign terrorist organizations are categorized as 'dual method' organizations because they engage in both violent methods and legitimate political or humanitarian efforts," and that because of this characterization, members of such organizations could "conceivably support only peaceful projects and need not necessarily endorse their organization's use of violence." In a more recent writing, the concept of dual-purpose organizations stood as a central element in Levanon, *supra* note 54.

attacks should be defined as a terrorist organization."[56] Thus, any organization that performs activities other than terrorist ones falls outside this high threshold and is by default a dual-purpose organization.

Even if a terrorist organization engages in social or business activities to a large extent, it is questionable whether these activities are as a matter of fact, distinct from its violent activity. The Israeli High Court of Justice contended that "it is impossible to genuinely distinguish between the social function of a terrorist organization from its violent function, and any such distinction is inherently wrong."[57] When a contribution is made to the social, non-violent fraction of the terrorist organization, it is difficult to guarantee the final destination of the money.[58]

Among the voices of opposition to the concept of dual-purpose organizations is the Supreme Court of the United States which recently held, with respect to al-Qaeda lodging facilities, that al-Qaeda should be viewed as a single terrorist organization with no non-military wing.[59] The Israel Supreme Court has also recognized that:

> terrorist organizations spend many resources in advocacy and public relations, as in non-terrorist activity such as social and humanitarian activities, to expand their basis of support as widely as possible within the general population and to foster new recruits from that population. These activities are conditioned upon a strong financial foundation and a large use of financial systems to enable them.[60]

On the one hand, social institutions operating under the auspices and guidance of a terrorist organization can be used as a platform for terrorist purposes such as recruiting and propaganda.[61] In fact, the Organization for Economic Cooperation and Development (OECD) has listed terrorism financing schemes using charities to raise or transfer funds to support terrorist organizations as one of the most commonly

56. Isaweey v. State of Israel, *supra* note 53, at 229, but even Levanon admits that in the realm of financing of terrorism specific difficulties arise and the distinction between different branches of one organization is somewhat blurred. *Id*. at 254.

57. HCJ 1169/09 Legal Forum for the Land of Israel v. Prime Minister [2009] (Isr.). This case revolved around a petition to prohibit the execution of Israeli Government decision allowing the transfer of 175 million NIS (roughly 700 million USD) from banks in the West Bank to the Gaza Strip through Israel, funds that were designated as salaries of 78,000 employees of the Palestinian Authority that resides in the Gaza Strip. The Petitioners argued that such a transaction constitutes financing of terrorism.

58. Bell, *supra* note 6, at 456−57.

59. Brief for the Respondents in Opposition at 9, Awad Al-Bihani v. Obama, 590 F.3d 866 (2011) (No. 10-1383).

60. Crim.A. 3872/06 Ploni v. State of Israel [2007], not published, ¶ 9.

61. Margulies, *supra* note 11, at 484.

detected method involving the abuse of charities.[62]

On the other hand, many terrorist organizations operate in places that lack an organized central government that takes care of the social needs of the local population.[63] Sometimes, it is the organization itself that functions as the de facto government in a defined territory, as the population depends on it for welfare and social services.[64] Thus, building schools, water and sewage systems, establishing clinics and youth centers—acts that must be conducted, or at least approved by the local municipality—will go through the public officials of the governing organization.[65] This last argument carries a lot of weight. In the previously mentioned *Al-Bihani* case,[66] the Supreme Court of the United States declared that al-Qaeda does not have a "non-military" wing, but it did so through identifying al-Qaeda as a terrorist organization, as opposed to a sovereign state.[67] One consequence of refusing to recognize the unique form of dual-purpose organizations is that private individuals that do business with the non-violent wing of such organization will have zero incentive to make further contributions. For one thing, they themselves may be subject to designation as Specially Designated Global Terrorist (SDGT) by the Office of Foreign Assets Control (OFAC).[68] The best way to understand how dual-purpose organizations operate is by closely looking into one, as further explored in the next section.

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62. *OECD Report on Abuse of Charities for Money Laundering and Tax Evasion*, OECD 11–12 (2009), http://www.oecd.org/tax/exchangeofinformation/42232037.pdf [hereinafter OECD Report].

63. Margulies, *supra* note 11, at 484.

64. Pendle, *supra* note 9, at 782.

65. *Id*.

66. *See* Awad Al-Bihani v. Obama, *supra* note 59.

67. *Id.* at 5. On page 9 of the decision, the Court holds that "Unlike a sovereign nation with a civilian population, al-Qaeda is a terrorist organization engaged in an armed conflict with the United States, and it has no "non-military" wing. *Id*. at 9.

68. Similar to the sanctions imposed on legal persons, a designation as a SDGT enables the blocking of all the SDGT's property and interests in property subject to the jurisdiction of the United States. This was the case of Yassin Abdullah Kadi, whose financial support of terrorist activities through a charitable organization known as Muwafaq Foundation was one of the main reasons of his designation as SDGT. Kadi, a Saudi citizen, challenged his designation in United States court, but was denied. The Court acknowledged the fact that the Muwafaq Foundation was a charitable organization or performed charitable deeds, but held nonetheless that his fact "does not make it immune to designation by OFAC', thus, implementing the view which does not differentiate between branches of a terrorist organization, as will be elaborated ahead in Part 3. *See* Kadi v. Timothy Geithner, No.1:09-cv-00108-JDB, WL 898778, at *22 (D.D.C. Mar. 19, 2012). Another example is the case of the Holy Land Foundation, in which the Court noted that "OFAC needed only to determine that Hamas had an interest in [the Foundation's] property" in order to apply financial sanctions on the Foundation. *See* Holy Land Foundation, *supra* note 12, at 6–7.

Case Study: Hamas and the Islamic University in Gaza

Hamas, "Islamic Resistance Movement," is a Palestinian Sunni fundamentalist Islamic movement, whose goal is to establish an Islamic Palestinian state in the land of Israel.[69] It was established in 1987 by members of the Muslim Brotherhood in the Gaza Strip.[70] Currently, Hamas exhibits three main branches: the first is a political branch that has governed the Gaza strip since 2006;[71] second, a military branch known as the Izz ad-Din al-Qassam Brigades, which runs an ongoing terrorist campaign against Israel through terrorist acts;[72] and the third, a civilian-social branch known as the "Dawaa," which is responsible for promoting the welfare of the population in Gaza, by doing things such as opening clinics and hospitals, schools and various charities.[73]

Is Hamas a dual-purpose organization? Israel, the United States, Canada[74] and the European Union[75] do not recognize the internal division of Hamas, and consider the organization as a whole to be a single terrorist entity.[76] Australia, on the other hand, designated only the military wing, the Izz ad-Din al-Qassam Brigades, as a terrorist organization.[77] If we follow the Al-Bihani case, then Hamas should first

69. JIM ZANOTTI, HAMAS: BACKGROUND AND ISSUES FOR CONGRESS, CONG. RESEARCH SERV., R41514 (2010).

70. *Listing of Terrorism Organisations*, AUSTL. NAT'L SECURITY 1 (Aug. 17, 2012), *available at* http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurity.nsf/Page/What_Governments_are_doing_Listing_of_Terrorism_Organisations_Hamas&apos.

71. *See* Zanotti, *supra* note 69, at 49. On January 25, 2006 for the first time the Palestinian Authority held elections for its leadership and parliament. Hamas won the vast majority of the votes, and got seventy-five seats in the parliament, while its major opponent and the acting party, the Fatah, received only forty-three seats. Poles held after the elections revealed that the central reason among voters for supporting Hamas was their disappointment and distrust of the Fatah regime, and not so much their concurrence with Hamas's political and ideological platform. Hamas and Fatah established a combined government. This cooperation notwithstanding, the rivalry between Hamas and Fatah grew stronger and violent clashes became more frequent, until June 2007, when Hamas too over the Gaza strip and effectively pushing out Fatah influence. On June 14, 2006, the leader of the Palestinian Authority, Fatah leader Mahmud Abas, announced the cancellation of the unified government and outlawed Hamas. Hamas effectively is the governing power over the Gaza Strip, while Fatah remains the legitimate representation of the Palestinian Authority and seats in Judea and Samaria. For further reading on Hamas, see SHLOMI ELDAR, KNOWING THE HAMAS (2012).

72. Zanotti, *supra* note 69, at 3.

73. *Id*. at 23.

74. *See Currently Listed Entities*, PUB. SAFETY CAN. (Dec. 20, 2012), *available at* http://www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx.

75. 2012 O.J. (L 165) 72 (updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision 2011/872/CFSP, lists as a terrorist organization "Hamas," including "Hamas-Izz al-Din al-Qassem").

76. *Currently Listed Entities*, *supra* note 74.

77. According to the website of the Australian Government, the Izz ad-Din al-Qassam Brigades were reaffirmed as a terrorist organization as late as August 2012. *See Listing of*

be identified as either closer to an independent organization or to an independent state. At this point, there are no voices claiming that the Gaza strip is a sovereign nation led by Hamas,[78] although nobody contests that Hamas is responsible for operating the vast majority of every-day services in Gaza; thus it is somewhere in the middle of that spectrum.

A particularly interesting example of the social activity of Hamas and of the challenges posed by dual-purpose organizations is the Islamic University in Gaza.[79] Sheikh Ahmed Yassin, the founder of Hamas, established the University in 1978.[80] It is the leading academic institution in Gaza and has over 20,000 students.[81] It offers bachelor and master's degrees in various fields, including inter alia electronic engineering, education, physics, literature, history and economy.[82] The University also engages in academic activity and cooperation with leading institutions worldwide, such as with the London School of Economics.[83]

In a research paper published by the Meir Amit Intelligence and Terrorism Information Center,[84] the Islamic University is presented as an academic institution with high reputation, but is also controlled by Hamas, and has been used, since its establishment, as a center for political, social, cultural and military activity of Hamas.[85] Many of Hamas' leaders have either graduated from the Islamic University or were members of its faculty.[86] It has been claimed by Israel that Izz ad-Din al-Qassam Brigades use the University's facilities, such as chemistry labs, to develop and manufacture weapons and ammunition,

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Terrorism Organisations, *supra* note 70.

78. It is worth mentioning that in this context the attempts by the Palestinian Authority to get recognition as an independent state from the United Nation, either by admission to U.N. agencies and organizations such as UNESCO or by applying for a status of a member state in the U.N. as seen in its formal request to the Security Council in September 2011, and the more successful application of a non-member state status at the General Assembly in November 2012. In any matter, if and when such application will meet the approval of the U.N., the Palestinian state will include the Gaza strip. For further reading on this subject, see Ron Prosor, *What Kind of Palestinian State?*, THE WALL STREET JOURNAL (Nov. 28, 2012), *available at* http://online.wsj.com/article/SB10001424127887323751104578146773248664676.html.

79. *See* ISLAMIC UNIVERSITY - GAZA, http://www.iugaza.edu.ps/en/About/IntrducingIug.aspx.

80. *Id*.

81. *Id*.

82. *Id*.

83. *Id*.

84. Information Center for Intelligence and Terrorism, *Islamic University in Gaza: Academic Institution Dominated by Hamas, Assisted by External Factors, Including Western Countries* (Apr. 28, 2010), *available at* http://www.terrorism-info.org.il/data/pdf/PDF_10_090_1.pdf (Heb.).

85. Thanassis Cambanis, *Hamas U*, BOSTON.COM (Feb. 28, 2010), *available at* http://www.boston.com/bostonglobe/ideas/articles/2010/02/28/hamas_u/.

86. *Id*.

and that the University is also a major recruiting hub for Hamas.[87] It should also be mentioned that the University was targeted by the Israel Defense Force during operation Cast Lead on December 2008.[88]

A hypothetical yet realistic scenario deals with a United States-based foundation set out to help encourage young Palestinians in Gaza to pursue higher education, with the thought that it will enable them to find better jobs, expose them to different ideas and pose an alternative to becoming active supporters of the military fraction of Hamas. To further that end, the foundation donates a generous sum of money to build a new library of humanities in the Islamist University.[89] Would such a project constitute an offense of financing terrorism under United States or Israeli law? The following part answers "yes" to both cases.

IV. ANALYSIS

Legal analysis is much like mathematics—we take a certain set of facts, put them in a formula and calculate the result. Sometimes it is easy and other times the numbers just do not add up. Sometimes the result comes with almost no effort, which makes you think that either you did something wrong, or there is a problem with the formula. The hypothetical scenario described above belongs to the latter category, and as will be illustrated below, the current law and formula are far from satisfactory. Both United States and Israeli law will regard donating a new humanities library to the Islamic University as a criminal offense of financing terrorism.

As explained in Part 2.A. above, the scenario must meet three requirements in order for it to be a criminal offense under § 2339B. First, the provision of funds must be considered "material support." The definition in § 2339A(b)(1) clearly answers this question in the affirmative, when it includes in its definition "currency or monetary instruments." Second, the funds must be directed to a designated FTO. This is clear since Hamas is almost an honorary member of the Department of State's FTO list. And third, the generous donors must know Hamas is a designated FTO. Irrespective of the level of awareness of the average American donor, a person desiring to help the population

87. *Id.*

88. *Israel Strikes Key Hamas Offices*, BBC NEWS (Dec. 29, 2008), http://news.bbc.co/uk/go/pr/fr/-/2/hi/middle_east/7802515.stm.

89. To illustrate that such a scenario is not farfetched, it is interesting to read Donohue's criticism about the United State's campaign against Muslim charities, in which the following example is brought, "Al-Sanabil Association for Relief and Development, established in 1993 in response to UNRWA budget cuts, sponsored 1,200 Palestinian families, spending approximately $800,000 in 2003 on orphans and $55,000 on needy patients. The organization also distributed food and home appliances to displaced persons. Treasury [of the United States] froze the group's assets in August 2003, claiming that its funds went through Hamas. Those previously benefiting from the organization witnessed the devastating affect . . . ." *See* Donohue, *supra* note 5, at 423.

in Gaza likely has at least vague understanding of what Hamas are engaged in, even if they do not have a full account of its terrorist record. Since this *mens rea* requirement is very low, this criterion will probably be met in such circumstances.

A similar result was reached in the United States regarding the alleged funding of housing units for Al-Eman University in Sanaa, Yemen.[90] There, a Saudi citizen was designated a SDGT by OFAC on account of his financing support to terrorist organizations, *inter alia*, through allocating funds to the University's aforementioned housing project.[91] In reaching its conclusion, the Court noted that "even allowing for good-intentioned financial support to organizations and individuals involved in terrorism would be problematic, as organizations could free up other resources to be used towards violent terrorist objectives."[92]

As to Israeli law, the Law clearly covers the directing of funds as a primary prohibited conduct. The more difficult task is proving that the transfer of funds was done with the intent to further a terrorist act, to reward it, or to finance the actions of a terrorist organization. Since Hamas is the founder and owner of the University, a case could be made for at least two of these purposes. While it is unlikely to establish that such a contribution was made to reward a terrorist act, it may very well be established that the donation was made for the purpose of furthering a terrorist act or to finance the activities of Hamas, a terrorist organization by definition of the Law.

Any lack of clarity in Article 8(a) that may cast doubt on its relevance to the scenario at hand is made up for in the definitions clause that follows it. As mentioned above,[93] when Article 8(a) states "for the purpose" of any of those three results, it actually means foreseeing that at least one of those possibilities is a near certain possibility.[94] Hence, the generous donors need not intend for their money to assist in the commission of a terrorist act or to help balance the financial sheets of Hamas. They simply need to recognize that there is a good chance that it will happen. Hamas' notorious reputation, for example, for using civilian population contrary to the laws of war, holding an IDF soldier in captivity contrary to the third Geneva Conventions and engaging in other acts of terror, makes any other assumption a ridiculous one.

After applying two anti-terrorism statutes to a hypothetical case, the result is that what may have been a genuinely good deed "goes punished." This in turn will deter future well-intentioned donors and will pose serious questions about the purpose of it all—are those laws

90. Kadi v. Timothy Geithner, *supra* note 68.
91. *Id.*
92. *Id*. at 54.
93. *See* Part 2.B. above.
94. *Prohibition on Terrorist Financing Law, 5765-2003, supra* note 28, § 8(b)(2).

really suppressing terrorism? Or are they just enabling terrorist organizations to have their way with large numbers of civilians simply because nobody else will set an alternative?

Having Hamas as the controlling entity leaves no option for outside funding because of the prohibitions against financial support, and thereby forces the local population to rely on Hamas for providing basic services—and Hamas is willing to do so. The proposed funding might be misused and not allocated to building the library, or it will be used for that purpose but, as a result, will enhance Hamas' popularity within the local community and free up funds for terrorist use. Neither option is desired. The following conclusion will discuss the complex policy considerations involved in anti-terrorist financing laws.

V. CONCLUSIONS

As shown in the previous part, the applicability of anti-terrorism financing laws to dual-purpose organizations may bring about absurd results. This part will conclude the discussion, presenting both sides of the scale. This part argues that while this absurdity should not be overlooked, regarding the final balance between continuing to apply the statutes as they are and amending them so as to address such special cases, the stakes for abusing the latter option are grave enough to render the status quos the best course of action, at least for the time being.

In addition to the realistic fear of a misuse of contributions, another argument in favor of criminalizing support of the non-military wing of dual-purpose organizations is that such organizations hold even greater leverage over the population and thus possess various means to coerce a population to participate in its terrorist activity.[95] For instance, a resident of Gaza will have a much harder time refusing support to Hamas if the sanctions that he might suffer on account of his refusal include potential cut power lines to his home and loss of education rights to his children.

Some scholars criticize this line of thought. Professor Crimm, for example, aptly argues that anti-terrorism financing legislation may bring about the exact opposite result than intended, because legislation unintentionally forces the public further into the arms of terrorist organizations by banning legitimate sources of funding.[96] Thus, as long as we refuse to acknowledge the welfare projects run by these

95. Levanon, *supra* note 54, at 266.

96. Crimm, *supra* note 6, at 1450, where she challenges the core rationale of the anti-terrorism financing legislation, stating that "a wholesale blight on the provision of financial support for humanitarian aid, the promotion of health, the enhancement of education and other charitable causes, the facilitation of economic development, the building of social capital, and the strengthening of social stability could fuel the destabilization of struggling people abroad and enhance the appeal of terrorist groups to these people."

organizations and peg them as subject to outside influence, we leave the general population with no other choice but to turn to the terrorist organization to control their life. By this logic, prudent support directed to certain social projects may actually assist in diverting public opinion away from their former terrorist patron.[97]

These arguments come down to the following equilibrium. On one end of the scale is the desire to promote welfare and quality of life to populations controlled by terrorist organizations. A person that is securely employed, educated, able to feed his family, and who promises his children a solid future, is likely less eager to participate in terrorist activity. On the other end is the grim reality that at the end of the day, these dual-purpose organizations simply did not earn the right to enjoy the benefit of the doubt. The abuse of well-intended funds and projects speak for itself. It makes little difference that the money is intended to fund a valuable desired project if, de facto, it funds more violence and terrorism. The original intention of the donation does not make the result any less destructive.[98]

In sum, building a new library of the humanities at the Islamist University would probably go a long way. But there is a chance, and unfortunately not a small one, that some of the money donated to this project will end up funding terrorist acts. The critics should not be underestimated. More thorough research is needed to determine the legal, legitimate ways around the pockets of the terrorist organizations, because the fight against terrorism is not just in the battlefield and in the courtrooms. It is also in places such as the Library of the Humanities at a University in Gaza.

97. Pendle, *supra* note 9, at 87, making a similar distinction to the one made by Crimm, and even further, encouraging American donations that "may help ameliorate intolerable conditions in the most desperate corners of the world and could consequently be an invaluable tool in the War on Terrorism". *See generally* Levanon, *supra* note 53, at 229.

98. Barkin, *supra* note 8, at 193.