

THE COMMON MISTAKES IN COMBATING TERRORISM FINANCING¹

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ABSTRACT

The growing threat of terrorism has reached a serious level. During 2015, a series of terrorist attacks is recorded in France, Pakistan, Chad, Tunisia, Kuwait, Kenya, and Yemen. The danger of terrorism is amplified many times if state terrorism is also taken into account. Estimates of death in the Syrian Civil War vary between 301,781 and 470,000. According to the United Nations and Arab League Envoy to Syria, the estimates of death are more than 400,000. A significant number of these deaths refer to unarmed civilians caught in conflict. To stop terrorism, it is essential to combat the financing of terrorism. The bloodline of terrorist networks is said to be money. Although terrorism can inflict the largest amount of damage using minimum cost, it still needs money. While bribery, weapons and the maintenance of weapons are major expense, other security costs including operating costs, false identification and other concealment mechanisms also require money. In addition, networking, communications and the training of personnel and maintaining training camps are not cheap. However, addressing the symptoms alone is inadequate. It is important to effectively eradicate the root causes of terrorism, together with the sources of financing to ensure global peace. This article highlights the common mistakes in combating terrorism financing by focusing on Islamophobia, Islamic finance and Islamic charities. The common methods of terrorism financing will be discussed together with the flaws and the way forward.

Keyword(s): Terrorism, Islamic finance, Islamophobia

Introduction

During 2015, series of attacks is recorded in France, Pakistan, Chad, Tunisia, Kuwait, Kenya, and Yemen. In France, during the first month of 2015, the attack on Charlie Hebdo magazine official kills 12. This is followed by another attack on a deli in Paris two days later in which four were killed. The attack on a US-owned factory near Lyon, France kills one and wounds two in June 2015. During the same month, the bombing of Shia mosque in Kuwait City kills 27, wounds more than 220. In Tunisia, gunman kills 38 tourists at a beach resort in Sousse.

During the next month (July 2015), the series of attacks continues worldwide. In Chad, Boko Haram suicide bombing in N'Djamena market resulted in the death of 15. At the end of 2015, on November, a series of terrorist attacks in and around Paris results in the death of 129, with more than 400 injured.

The casualties of terrorism are amplified many times if state terrorism is taken into account. World War II resulted in the total dead of between 50 million to 80 million. Estimates of deaths in the Syrian Civil War (since March 2011) vary between 301,781 and 470,000. According to the United Nations and Arab League Envoy to Syria, the estimate of death is more than 400,000. The casualties from the Libyan Civil War is estimated to be up to 25,000. During the first four years of Iraq war (beginning with the 2003 US invasion), over one million Iraqis died. A significant number of these deaths refer to unarmed civilians caught in conflict. Strangely, state terrorism, state violence or threat of violence is usually considered to fall outside the common definition of terrorism despite causing the highest number of death and injuries.

This devastating loss should have been avoided. The inability of the United Nations to prevent or manage global humanitarian crisis should be analyzed properly and lessons must be learnt to prevent repetition and future occurrence.

There are many questions remain unanswered. One important issue that is often neglected is whether the current trend in combating terrorism and terrorism financing is effective or not. It is proposed that the current trend of targeting Islamic charities by closing their bank accounts, and Islamic financial institutions by imposing unnecessary limitations and obstacles is counter-productive and discriminatory in nature. Systematic media bias against Islam and Muslim is also detrimental to counter terrorism efforts since Islamophobia generated by this systematic bias will accelerate the circle of hatred and violence.

This paper will look at terrorism from the financial aspect. In order to eliminate terrorism, the root causes for terrorism must be honestly addressed. At the same time, the important role of financing should never be underestimated. Success in combating the sources of terrorism financing will hamper terrorism efforts to certain extent. However, success in eliminating the root causes of terrorism will be of greater significant. This paper argues that the current trend of targeting Islamic finance and Islamic charities by implying and alleging that these financial institutions and humanitarian groups are involved in terrorism financing is actually

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based on bias, and will be counter-productive as it diverts the attention from the real challenges. This paper also argues that Islamic financial institutions and Islamic charities are actually important friends and partners in combating terrorism financing.

Literature Review

A huge research gap exists on the actual and theoretical application of anti-terrorism financing legislation. Contrary to 20 years ago, there are now abundant materials on anti-terrorism financing, ranging from its common methods to challenges and obstacles. A simple search using 'anti-terrorism financing' as keywords in Amazon.com will generate around 180 books. Anti-terrorism financing is traditionally linked together with anti-money laundering. Legislation on anti-money laundering usually covers anti-terrorism financing as well. A simple search on 'anti-money laundering' will generate almost 5,000 books.

The International Monetary Fund in 2003 published 'Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting'. This handbook provides technical assistance by compiling a compendium of essential materials for officials drafting anti-terrorism financing. Since then, many works on anti-terrorism financing are available.

There are many books on anti-terrorism financing. For example, Freeman (2012) shifted the focus from policy issues, strategies, and countermeasures to terrorism financing, the budgets and portfolio, the diversification of sources and more. Odeh (2010) introduces an innovative and efficient approach, which discusses the processes in which financial institutions have become channels used for money laundering and financing terrorism. Parkman (2012) provides assessment of the terrorist financing challenges faced by the financial services industry and offers 'step by step' suggestion on how to deal with those challenges.

The most important materials are those provided by the Financial Action Task Force. Mutual Evolutions Reports by the Financial Action Task Force are fundamental in understanding the current trend of terrorism financing. Series of reports including FATF Report: Emerging Terrorist Financing Risks (October 2015), FATF Report: Financing of the Terrorist Organisation Islamic State in Iraq and the Levant (ISIL) (February 2015) and FATF Report to G20 Leaders: Terrorist Financing (November 2015) must be referred to appreciate the matter in a more holistic way.

Definition AND THE USAGE OF THE TERM 'TERRORIST'

Before proceeding further, proper discussion of the definition of terrorism and the usage of this word is necessary. Logically, terrorism should refer to all terror activities or actions that resulted in the death or injury of the innocents and the non-combatants public, regardless of justification. If this logic is used, then by extension, the dropping of atomic bombs in Hiroshima and Nagasaki, Japan during World War II that resulted in the death of at least 105,000 to 120,000 civilians must definitely be considered as an act of terrorism as well.

Selective use of the word 'terrorism', especially by the media, resulted in common misperception and misunderstanding by the public at large, and fuels bias. The bias, which is subconsciously implanted by the media, has more to do with myths than facts (Durani 2014). There are numerous researches that revealed media bias against Islam and Muslims including Suleiman (1999), Poynting and Perry (2007) Ogan et al (2013) and Yusof et al (2013).

The work of Ahmed and Matthes (2016) reports a meta-analysis of 345 published studies to examine the media's role in construction of a Muslim and Islamic identity. The quantitative analysis highlights the geographical focus, methods, theories, authorship, media types, and time frames of published studies while a qualitative analysis investigated the most prominent researched themes. The findings suggest that a large majority of studies covered Western countries, while Muslim countries and Muslim media have been neglected. Moreover, the meta-study shows that Muslims tend to be negatively framed, while Islam is dominantly described as a violent religion.

Nowadays, a surprising number of public at large believe that the word 'terrorism' can only be used when the terrorist is of the Muslim faith. For example, when the Rohingya minority in Myanmar were prosecuted and murdered by the Buddhist monks, the media did not refer to the perpetrators of this genocide as Buddhist terrorists. The same thing happens when Anders Behring Breivik committed the 2011 Norway attack that resulted in the death of 77 innocent civilians, mostly teenagers, due to his hatred against Islam and immigrants. He was not identified as Christian radical or Christian terrorist by the media.

The systematic bias and discriminatory use of the word 'terrorist' by the media can fuel more tension and bred hatred and prejudice. This selective use has no legal or juridical basis.

Stereotyping and associating Islam to terrorism by misquoting several verses out of context is incorrect since the Holy Book for the Muslims actually orders the Muslim to be peaceful:

- "There is no compulsion where the religion is concerned." (Quran, 2:256)
- '...And you will find the nearest of them in affection to the believers those who say, "We are Christians." That is because among them are priests and monks and because they are not arrogant.' (Quran 5:2)
- 'Fight in the way of Allah against those who fight against you, but begin not hostilities. Lo! Allah loveth not aggressors.' (Quran 2:190)
- "But if the enemy incline towards peace, do thou also incline towards peace, and trust in Allah; for He is One that hears and knows all things". (Qur'an 8.61)

The Holy book for the Muslims, Qur'an makes it clear that Muslims may fight in self-defense but should not initiate or start a fight or war. Other justifications for military approach are to protect the freedom of Muslims to practice their faith, to protect the innocents against attack and to ensure justice for all.

Currently, there is no universal definition of terrorism. The term "terrorism" comes from Latin: 'terror', "great fear", "dread", related to the Latin verb *terere*, "to frighten". At international level, there has been a series of conventions on terrorism:

- The 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft
- The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft
- The 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
- The 1979 Convention on the Physical Protection of Nuclear Material
- The 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation
- The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
- The 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf
- The 1991 Convention on the Marking of Plastic Explosives for the Purpose of Identification
- The 1997 International Convention for the Suppression of Terrorist Bombings.
- The 1999 International Convention for the Suppression of the Financing of Terrorism
- The 2005 International Convention for the Suppression of Acts of Nuclear Terrorism

These conventions only focus on actions by non-state actors while the possibility that the State itself can be a terrorist actor was not addressed. The United Nations fails to arrive at a satisfactory definition of terrorism partly due to the alleged difficulty in differentiating a terrorist from liberation movement or armed forces. During the 1970s and 1980s, the United Nations attempts to develop a definition but failed due to differences of view of Member States over this matter. This is allegedly because the boundary between the terrorism and the right to self-determination (right to form a State) and national liberalization is vague and is not always clear.

The international community has worked on two comprehensive counter-terrorism treaties:

- The League of Nations' 1937 Convention for the prevention and punishment of Terrorism
- Comprehensive Convention on International Terrorism

The first one never comes into force while the second one has not yet been finalized.

Article 2.1 of the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) defines the crime of terrorist financing as the offence committed by "any person" who "by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out" an act "intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."

A 1996 non-binding United Nations Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed to the UN General Assembly Resolution 51/210, described terrorist activities in the following terms:

‘Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.’

In Malaysia, the National Security Council, Malaysia's top policy-making body with regard to national security, defined terrorism as:

“Unlawful use of threat or the use of force or terror or any other attack by person, group or state regardless of objective or justification aim at other state, its citizens or their properties and its vital services with the intention of creating fear, intimidation and thus forcing government or organisation to follow their impressed will including those act in support directly or indirectly”. (Directive No. 18, issued by the National Security Council).

According to Section 66A of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLATFPUA), “terrorist act” has the same meaning as in section 130B of the Penal Code. Section 130B (2) of the Penal Code defines a “terrorist act” to mean “an act or threat of action within or beyond Malaysia” where

- act done or threat made with the intention of advancing a political, religious or ideological cause; and
- act or threat is intended or may reasonably be regarded as being intended to intimidate the public or a section of it; or influence or compel any government, whether in Malaysia or elsewhere, or any international organization to do or refrain from doing any act.

Under Section 130B (3) an act or threat of action includes causing death, serious bodily injury, serious damage to property, use of firearms, interference with any computer or communication systems, interference with police, or actions which prejudice national security or public safety.

On the other hand, Section 3 of Security Offences (Special Measures) Act 2012 (SOSMA) defines “security offences” to mean the offences specified in the First Schedule. Two categories of security offences are listed in the First Schedule. Both categories are already found in the Penal Code. The first category is “Offences against the State” which appears in Chapter VI of the Penal

Code, that is, from Sections 121 to 130A. The second category is “Offences relating to Terrorism” which can be found in Chapter VI A of the Penal Code, that is, from Sections 130B to 130T (Yasin 2007).

For the purpose of this study, the scope of terrorism financing is limited to the definition provided by the law of Malaysia.

The Reasons Behind Terrorism

To effectively solve the threat of terrorism, it is necessary to understand the root cause of terrorism and the reality surrounding it. Terrorism is not limited to any specific religion or ideology. However, the reality is that the word ‘terrorism’ is often used in discriminatory way, especially by mainstream media. The aggressive connotation by mainstream media to portray Islam as an aggressive and violent religion is very counter-productive. Selective and discriminatory use of word and label will only worsen the situation.

To effectively reduce and solve the threat of terrorism, it is necessary to go beyond simplistic good-bad classification. While it is easy to label someone or some group, or even a country as evil, it is counter-productive. The circle of hatred will go on as the discriminated group will feel oppressed and seek retaliation. A deeper level of understanding is essential.

In most cases, the underlying factors for the increase of terrorism activity is widespread dissatisfaction at global level due to economic inequality and clashes of values. It is possible to have constructive dialogue provided that environment is conducive. This is because the similarities between those from different religions and backgrounds are more than the perceived differences. The root cause for terrorism includes fanaticism, dissatisfaction over what is perceived as Western hegemony, intolerance, clashes of values and culture, economic instability, inequality and unemployment, oppression and unfairness, unfair media coverage and labelling, discrimination and degrading campaign, racial and religion profiling, state-sponsor terrorism due to political agenda, campaign by interested parties and failure to find legal and constructive channel to express dissatisfaction.

The Importance Of Combating Terrorism Financing

To stop terrorism, it is essential to combat the financing of terrorism. Terrorism needs money. Weapons and the maintenance of weapons are major expense (Madinger 2012). Security costs including false identification and other concealment mechanisms require money. Communications and the grooming of personnel’s can be costly. The same can be said to setting up and maintaining training camp. The threat of terrorism can be surprising as it can inflict the largest amount of damage using minimum cost.

While there are many terrorist-financing methods, Madinger (2012) noted that there are four main sources; (1) criminal activity, (2) charitable contributions and donations, (3) legitimate or semi legitimate business and (4) government or state sponsorship. Stereotyping and generalization is a common mistake in combating terrorism. For example, if a terrorist is exposed to use a conventional banking system, should the entire conventional banking system be implicated with terrorism financing? The logical answer will be no. Unfortunately, when it comes to terrorism and the financing of terrorism, it is common for Islamic charities and Islamic financial institutions to be suspected and discriminated based on bias.

This is a serious mistake since Islamic charities and Islamic financial institutions are friends and partners in combating terrorism. Islamic charities focus on humanitarian issues while Islamic financial institutions are operated and led by friendly moderates on professional basis. Islamic finance encourages ethical financing and the eradication of unfair practices. This is beneficial to all. Alternative remittance systems are the norm in countries where formal banking is poorly established as it provides community-based and cost-effective financial services based on trust and cooperation, rather than profit and competition. The targeting of informal remittance systems as a whole under the disguise of combating the financing of terrorism measures will leave poor people with no means to send money to families in serious financial need. There is no clear evident to prove that prohibiting informal remittance system will prevent terrorism financing.

Below are some of the possible red flag as stated in one of the guidelines issued by the Central Bank of Malaysia:

- Unusual account transactions that are inconsistent with past deposits or withdrawals style such as cash, cheques, wire transfers, etc.
- Transactions involving a high volume of incoming or outgoing wire transfers, with no logical or apparent purpose that come from, go to, or transit through locations of concern, that is sanctioned countries, non-cooperative nations and sympathizer nations.
- Unexplainable clearing or negotiation of third party cheques and their deposits in foreign bank accounts.
- Wire transfers by charitable organisations to companies located in countries known to be bank or tax havens.
- Structuring at multiple branches or the same branch with multiple activities.
- Corporate layering, transfers between bank accounts of related entities or charities for no apparent reasons.
- Lack of apparent fund raising activity, for example a lack of small cheques or typical donations associated with charitable bank deposits.
- Using multiple accounts to collect funds that are then transferred to the same foreign beneficiaries

- Transactions with no logical economic purpose, that is, no link between the activity of the organization and other parties involved in the transaction.
- Overlapping corporate officers, bank signatories, or other identifiable similarities associated with addresses, references and financial activities.
- Issuing cheques, money orders or other financial instruments, often numbered sequentially, to the same person or business, or to a person or business whose name is spelled similarly.

The Common Mistakes

Despite some similarities, anti-terrorism financing is actually very different from anti-money laundering from various perspectives. It would be a mistake to approach anti-terrorism financing with same mentality used to approach anti-money laundering efforts.

First of all, money laundering refer to situations whereby a criminal wanted to 'clean' illegal money, hoping that the illegal origin of the money can be concealed somewhere along the complicated layers of transaction.

On the other hand, terrorism financing is of different species altogether. The origin of the money can be perfectly legitimate. The illegal element is the end game of it; to sponsor terrorism. Therefore, it need to be dealt properly.

One of the first formal definitions of money laundering is found in the 1988 Vienna Convention. Article 3(1) (b) of the Convention states that money laundering refers to:

- (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with sub-paragraph (a) of this paragraph, or from an act of participation in such offence or offences for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such offence or offences to evade the legal consequences of his actions.
- (ii) (The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property knowing that such property is derived from an offence or offences established in accordance with sub-paragraph (a)...or from an act of participation in such offence or offences.

It is important to note that Article 3 (1) (b) specifically deals with establishing drug related money laundering as a criminal offence. Another formal definition of money laundering is found in Article I of the 1990 Council of Europe Convention:

'[T]he conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity; the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; participation in the association to commit, attempts to commit and aiding, abetting, facilitating and counseling in commission of any of the actions mentioned in the foregoing paragraphs.'

The Commonwealth Model Law which defines money laundering as:

- (a) (i) engaging, directly or indirectly, in a transaction that involves property that is proceeds of crime; or
(ii) receiving, possessing, concealing, disguising, transferring, converting, disposing of, removing from or bringing into the (territory) any property that is proceeds of crime; and
- (b) (i) knowing, or having reasonable grounds for suspecting that the property is derived or realized, directly or indirectly, from some form of unlawful activity; or
(ii) where the conduct is conduct of a natural person, without reasonable excuse failing to take reasonable steps to ascertain whether or not the property is derived or realized, directly or indirectly, from some form of unlawful activity;] or
(iii) where the conduct is conduct of a financial institution, failing to implement or apply procedures and control to combat money laundering.

It is important to note that a number of countries including Malaysia have used the definition of money laundering found in the Commonwealth Model Law as the basis for formulating their legal definition of money laundering.

What is clear from the many definitions is that money laundering encompasses a wide range of activities that aim to hide or disguise the proceeds of crime. Terrorism financing, on the other hand, encompasses a wide range of activities that aim to assist the commission of terror activities from the financial aspect.

Islamophobia

Another common mistake in anti-terrorism effort is to target everything associated with Islam, including Islamic finance. This is counter-productive, as this approach will generate hatred and discrimination.

In 2014, the Pew Research Center asked Americans to rate their feelings toward various religious groups on a 0 to 100 scale, with 0 representing the most negative feelings while 100 the most positive. Americans placed Islam at the bottom of the scale, with a mean rating of 40 out of 100. The most positive feeling went to Jews (63%), Catholic (62%) and Evangelical Christians (61%) (Washington Post 1 August 2016).

Blaming Islam for the actions of terrorist is like blaming Christianity for the actions of Ku Klux Klan or Hitler. Islamophobia has become a serious threat that will increase the isolation and discrimination faced by the Muslims, and is being used by militants as effective tool for recruitment. However, the blame on the rise of Islamophobia should not fall on media alone. The Muslims

community must take a more proactive effort to portray the correct and positive image of Islam at individual and institutional level. It is noted that despite the massive success of Islamic finance that benefitted Islamic financial institutions hugely, little is done by Islamic financial institutions to promote better understanding of Islam and in expelling myths and misunderstandings faced by Muslims. There is no blueprint or systematic plan to counter Islamophobia. There is also no convention or treaty to such effect as well.

The discrimination against Muslim is extended to Islamic finance. The rapid growth of Islamic finance has been remarkable. The total Islamic finance assets is estimated to be around \$2.1 trillion by the end of 2014, and the total asset of Islamic banking sector stands at around \$1.6 trillion. Islamic finance is no longer something that should be ignored by players in the industry. At the very least, basic understanding of Islamic finance would be necessary.

Before proceeding, it is essential to understand Islam and Islamic finance. Islamic finance is a financial system that operates according to Islam. Islamic finance is open to all and is not limited to Muslims.

Islam is a religion based on the belief that there is only one God and this God has been sending Messengers including Prophet Adam, Prophet Aaron, Prophet Moses, Prophet Isa (also known as Jesus) and Prophet Muhammad to invite mankind to worship Him and do kindness in this world. The essence of Islam is the belief in the oneness of God and in the teaching of the Messengers. Thus, there are many similarities between the teaching in Islam and Christianity and Judaism.

The main sources of the religion are the Holy Book and the practice of the Messengers. Various guiding principles, some specific but most general and flexible, can be found in these sources.

The Qur'an, also known as the Koran, is the holy book of Islam. The Qur'an is considered by Muslims to be "The Word of Allah (God)". Some Muslims call it the Final Testament. Islam teaches its followers that the religion is one and the message is the same. All Messengers were sent to invite people to worship Allah alone without associating Him with anyone or anything. The Prophet Muhammad SAW is the final messenger of God and he acknowledged the truthfulness of the messages revealed to earlier Prophets. Islam is not a new religion separated from earlier messages, but instead Islam perfected and completed the religion.

The Qur'an has been written and read for more than 1,400 years. Since many Muslims around the world do not understand Arabic, the meaning of the Qur'an is also translated to other languages, in order for its readers can understand better what the Arabic words in the Qur'an mean. These books are treated as the dictionaries to the Qur'an, as they are not read as part of the religion of Islam or to replace the Arabic Qur'an. These translations are only considered as a means to study the Qur'an. Only the Arabic copy is the true Qur'an. The Quran is used with the hadith (the action, saying or tacit approval of the Prophet) to interpret Shariah law.

Similar to conventional finance, Islamic finance features banks, capital markets, fund managers, investment firms, and insurance companies. However, these entities are governed both by Islamic law and the finance industry rules and regulations that apply to their conventional counterparts.

In comparison to conventional finance, Islamic finance industry itself is quite young. However, Islamic theories of economics have existed for more than a millennium. By the middle of the 12th century, in fact, many Muslims scholars had presented key concepts of Islamic economics that are still relevant today.

Such development, however, was stopped due to political and social turmoil. Such study was put to rest for a very long time and it only until the 20th century did Muslim scholars and academics seriously begin to revisit these topics, and in doing so, set the stage for the modern Islamic finance industry to emerge in the 1970s.

Islamic finance is more than a financial system that operates according to Islamic law or Shariah. It aspires to incorporate the moral and ethical elements into business and financing.

Malaysia is a good example of modern country with developed Islamic financial market. Malaysia is also a commonwealth country using English common law in a dual system that recognised the application of Islamic law. In Malaysia, both Islamic law and civil law are being applied within their own scope and limitation.

Similar to other commonwealth countries, legislation plays an important role in the legal system. In Malaysia, the main legislation governing contract law is the Contracts Act 1950. The Contract Acts 1950 is unique in drawing a distinction between an agreement and a contract. The Contracts Act contains provisions on offer, acceptance, consideration and capacity necessary for the formation of valid contract. The other element of intention to create legal relation is not provided in the Contracts Act 1950. The court has applied the common law on this subject. The Malaysian Contract Act is modeled after the Indian Contract Act 1872, which in turn is largely a codification of the then existing English common law and rules of equity.

Islamic finance is testament that Muslims and non-Muslims can live peacefully and tolerate each other. Malaysia offers some of the most advanced Islamic financial products. This is partly due its comprehensive legal and regulatory framework. The Islamic Financial Services Act 2013 provides the legal foundation for a comprehensive regulatory framework for the Islamic financial industry in Malaysia. An important focus under this framework is the development of Shariah and operational standards for key Shariah contracts and arrangements. These standards are intended to foster transparency and consistency of Shariah contract

application to enhance certainty and strengthen Shariah compliance by Islamic financial institutions, as well as to serve as a key reference to catalyse greater mutual respect of Shariah opinions across jurisdictions. Eventually, these standards are envisioned to promote the offering of an extensive range of Islamic finance products that can cater to more diverse customer needs.

In Malaysia, Islamic banking institutions offer various financial products for consumers who are looking for financial product based on the Shariah principles. Whether the consumers are looking for an alternative to finance the purchase of property, deposits or any other types of investments, Islamic finance has a lot to offer. Islamic finance is strongly supported by the non-Muslims as well, due to its competitiveness.

Unfortunately, Islamic finance, and even Islamic charities, are facing unnecessary discrimination elsewhere. For example, two former international development secretaries have called for an inquiry into the way in which UK counter-terrorism laws are hampering the humanitarian work of Islamic charities, including some of the few British charities capable of operating inside Syria (The Guardian 12 February 2016).

The charities, including Islamic Relief, one of the largest Muslim charities, which was praised by former U.K Prime Minister David Cameron during the 2010 election campaign, say their urgent humanitarian work is being disrupted either by banks nervous of falling foul of counter-terror legislation or by civil servants anxious that some of the funding may fall into the wrong hands.

Another example is Interpal (The Palestinian Relief and Development Fund) which was blacklisted as a terrorist organization by the United States despite the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRAW) publicly recognizes Interpal as an indispensable partner (The Telegraph 26 November 2014).

The growing reports that the accounts of Islamic charities are being unfairly closed are alarming. The main argument put forward by some of the Western countries is that this is the personal decision of the financial institutions and the government will not interfere. It is doubted that the same government will not interfere if the same financial institutions decided to close account on the ground of color or different sexual preference.

Omar (2010) highlighted that most writings implicating Islamic financial institutions with terrorist financing are either written by bias Western authors or the articles are perceptual in nature. The conceptual paper by Omar reviews previous studies on this topic, examines related legislations, progresses to propose research strategies on how to counter these perceptual biases and highlights preventive mechanisms adopted by the Malaysian Islamic financial institutions in mitigating and detecting terrorists financing. Omar concluded that existing legislations governing financial institutions in Malaysia, especially those related to terrorist financing are in place and are in support of the country and other global initiatives. Other researches including Yasin (2008) also reaches the same conclusion.

In light of the growing threat of terrorist groups, the FATF conducted an urgent review of 194 jurisdictions, and in November 2015, published its key findings. Islamic finance and Islamic charities in general were not implicated.

Conclusion

This research intentionally uses the common definition of terrorism which exclude state terrorism to ensure uniformity and consistency. However, because of such exclusion, many significant and highly relevant issues are omitted. Future research on anti-terrorism financing efforts might need to address this fundamental issue.

To combat terrorism, it is essential to identify and eradicate the root causes for it. Selective and discriminatory approach by the media on the topic of terrorism is not only counter-productive, it is also fueling more tension and conflict. In addition, such approach indirectly misled the effort to combat terrorism financing by generalizing that Islamic charities and Islamic finance are supporting terrorism activities. Islamic charities and Islamic financial institutions are actually important partners in combating terrorism and promoting moderation. To effectively combat terrorism and terrorism financing, a collective and inclusive approach by all parties are essential.

There are many lessons that can be observed. For policymaker, it is essential to ensure that the approach undertaken by the government is based on fact and vision, and must not be clouded by bias, sentiments or prejudice. The long-term benefit must prevail over any short-term political gain. It would be best to appoint independent and neutral experts consisting of specialist from diverse field to ensure fairness and objectivity. Blanket discrimination on Islamic finance and Islamic charities based on prejudice and suspicion will not assist in anti-terrorism effort. In addition, this approach will also be detrimental to the economy.

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