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have profound implications for the broader framework of the international anti-terrorism legal framework, notably on state responsibility, and the evolution of financial regulations and compliance measures.

C- In their approach, the Court's majority relied on textualism to decide on the definition, considering the ICSFT's *travaux préparatoires* and its negotiations, which reveal a careful balance between breadth and specificity across several drafts of the convention. Dissenters on the other hand argued that strict textualism in the context of such a convention and the crime it addresses is an approach that hinders the impact of the convention and is not well suited to face the emerging and growing threat of such a crime.

D- A narrow interpretation may also incentivize perpetrators to devise innovative methods for supporting terrorism, ones that might fall out from the narrowed approach of the term "funds".

E- It remains to be foreseen what potential legislative reforms may ripple as a response to this decision—a reaction that underscores the importance of a dynamic legal international framework. In fact, new challenges will emerge; thus, legal instruments must be revisited and perhaps amended to remain effective.

Recommendations

A- Courts and treaty bodies should focus on interpreting the term "funds" in light of the true objective and purpose of the ICSFT i.e. to prevent and suppress all forms of support for terrorism. Limiting the interpretation of "funds" to strictly monetary or financial instruments undermines the Convention's effectiveness, particularly when non-monetary support (e.g., weapons, logistics, training) serves the same ultimate purpose.

B- Considering the narrow approach, there is a strong need for supplementary guidance to effectively guide the ripple reaction that may result from this ICJ decision. Such guidance may be issued from effective bodies such as the Unted Nations General Assembly -through its declarations- or by the Financial Action Task Force's interpretive notes.

C- While acknowledging the difficulties of the adoption of the ICSFT, there also remains a possibility that an amendment to the convention or an annex is needed to expand the definition of "funds" and include, clearly, any asset or service of value knowingly provided to facilitate terrorism, an approach that is in line with modern financial and material support practices.

D- The dissenting views expressed by the Judges, Bhandari and Charlesworth, offer a valuable blueprint for future legal and policy reform. Their emphasis on substance over form, and function over strict categorization should be referenced by states and scholars in advocating for a more flexible, reality-based legal framework.

Conclusion

The ICJ’s decision in “*Ukraine v. Russian Federation”* undoubtedly marks a significant development of jurisprudence in international anti-terrorism law, particularly regarding the -controversial- definition of the term “funds” under the ICSFT. The Court, as demonstrated, adopted a narrow textual reading, one that has confined the scope of prosecutable activities under the ICSFT to those involving conventional monetary instruments. This decision has elicited strong dissent, most notably from Judges Bhandari and Charlesworth, whose opinions call for a broader, goal-directed interpretation that would capture the full spectrum of support for terrorism and serve the need for adaptable and modernized ways of combating terrorism.

Such a decision also has broad implications that may extend beyond the immediate case it dealt with. By narrowing the definition of the term “funds”, the ICJ has potentially limited the efficacy of the ICSFT and left a new gap in international efforts to combat terrorism financing. Moreover, the decision influences state responsibility and sets a precedent for future cases, which may further shape the future for the international legal practice in this domain.

Clearly, the majority’s opinion, i.e. the Court’s opinion, provides a defensible reading of the ICSFT’s text.However, a more expansive interpretation might better serve the ICSFT’s underlying objectives(72). As global challenges in combating terrorism and its financing evolve, it seems imperative for both judicial bodies and legislative institutions to reconsider the frameworks that underpin the fight against this evolving crime. This could be done only through a combination of judicial insight, legislative reform, and international cooperation.

In the Following sections, I will demonstrate the most noteworthy findings and recommendations of this study:

Findings

A- The ICJ’s final judgment, issued in January 2024, did not entirely/positively contribute to the development of the common understanding that the international legal system needs. On the contrary, it sparked new debates that exceeded the definition of terrorism, leading to a new debate -even amongst its judges- on the definition of “funds”.

B- The ICJ’s definition of “funds” narrowed the scope of what may be considered prosecutable under the ICSFT as funding of terrorism by setting an understanding that “funds” were limited to tangible financial assets and instruments explicitly listed in the Convention’s definition which are of <u>monetary value/nature</u>. The ICJ’s approach thereby excluded non-monetary forms of support. Additionally, the Majority’s narrow interpretation of the term “funds” also limits the actions that are subject to the scope of the ICSFT’s jurisdiction. Such limitations would

(72) As dissenting opinions of Judges Bhandari and Charlesworth have stressed, Ibid.

were -to some extent- contrasting opinions and illustrated an enduring debate in international jurisprudence regarding the appropriate methodology of judicial interpretation of a convention's text. Thus, in future cases, influenced by such strong legal debates, the Court might find itself forced to revisit this matter, and look into the balance between textual-precision and goal-directed interpretation, particularly as terrorism financing will continue to evolve even more over time.

H. Precedential Effects on Future Cases: As we have stressed, this ruling serves as a novelty in terms of jurisprudence in the field of terrorism financing. Thus, it will likely serve as a precedent in future disputes involving terrorism financing. In which, a restrictive reading of "funds" may be invoked in the context of those future cases and thereby shaping the disputes of international anti-terrorism law for years to come.

It remains to be foreseen, the potential legislative reforms that may ripple as a reaction of this decision a reaction that underscores the importance of a dynamic legal international framework. In fact, new challenges will emerge; thus, legal instruments must be revisited and perhaps amended to remain effective. The *Ukraine v. Russian Federation* decision thus serves not only as novelty ruling, but also as a catalyst for broader multi-layered reflection on the adequacy of the measures put in place to fight the war against terrorism.

terrorism, ones that might fall out from the narrowed approach of the term "funds". For instance, if non-monetary assistance is deemed outside the ICSFT scope, terrorists might increasingly rely on in-kind contributions(67) that evade traditional financial tracking systems, which in turn poses another challenge to an already challenging field(68).

D. **Influence on National Legislations:** Many countries have based their anti-terrorism laws on international agreements like the ICSFT. As a result, the way the ICJ interprets these agreements can shape local laws, which may lead to differences in how terrorism financing is prosecuted from one country to another.

E. For instance, The State of Qatar's law Combatting Money Laundering and Terrorism Financing(69) has defined funds to include a number of resources that are non-monetary by nature but are considered economical, these are natural resources such as oil and other natural resources(70). Additionally, the definition of this law also includes other assets which "*can potentially be used to obtain funds, goods or* ***services*** (added emphasis)"(71). We note here that Qatar's law has considered in-kind services as a potential source of finance, but which are not *per se* considered as such if applying the ICSFT's definition of the term "funds".

F. **Narrowing State Liability:** as we have stressed upon previously, and as did the dissenting opinions. States, now and in future cases, may claim that the type of support provided to a terrorist group was in non-monetary forms e.g. logistical assistance or military training, as such they fall outside the scope of their obligations under the ICSFT. While it is undoubted that other forms of non-monetary assistance may be constituting other separate criminal acts or may fall under the general rules of conspiracy,they, however, remain a reason for a reduced level of accountability -under the ICSFT- for actions that, while not strictly monetary, nonetheless contribute to terrorism.

G. **Debates Over Judicial Activism vs. Restraint:** We have extensively analysed the dissenting opinions of Judges Charlesworth and Bhandari. Both of which

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(67) In-kind donations are gifts of goods or services instead of money. These could be things like clothes, food, or medical supplies, or even professional services like legal advice or consulting.

(68) For more details see: Financial Action Task Force, Risk of Terrorist Abuse in Non-Profit Organisations (Paris, FATF 2014) https://www.fatf-gafi.org/en/publications/Methodsandtrends/Risk-terrorist-abuse-non-profits.html accessed 10 March 2025.

(69) Law No 20 of 2019 on Combatting Money Laundering and Terrorism Financing (Qatar, 25 September 2019).

(70) Ibid, Article 1 defined Funds as: "Assets or property of every kind, whether physical or non-physical, tangible or intangible or movable or immovable, including financial assets and economic resources such as oil and other natural resources, and all related rights, of any value, however acquired, and all legal documents or instruments in any form, including electronic or digital copies, evidencing title to, or share in, such assets and any interest, dividends or other income on or value accruing from or generated by such funds or other assets, which can potentially be used to obtain funds, goods or services."

(71) Ibid.

by-case approach on non-monetary funds is important to illustrate the purpose of its provision for the terrorists. Such a view is thus focusing on the *mens rea*.

Ultimately, the dissenting opinions converge on the principle that a restrictive interpretation of "funds" will render the ICSFT ill-suited to face the contemporary challenges of terrorism and its financing. Both of their arguments highlight that the ICJ—and by extension, the international community—shall adopt intuitive interpretative methods that are flexible and mindful of the goals of the ICSFT and ultimately international security.

3. Why Bother?: The Impact on the Scope of the ICSFT

It is noted that the Court's decision has its novelty in terms of jurisprudence in the field of terrorism financing. Hence, there is no doubt that it would have implications on international law and anti-terrorism measures world-wide. Thus, ramifications of the Court's interpretation of "funds" may -in our view- extend far beyond the immediate parties in *Ukraine v. Russian Federation*. The Majority's narrow interpretation of the term "funds" effectively limits the actions that are subject to the scope of the ICSFT's jurisdiction. Such limitations would have profound implications for the broader framework of the international anti-terrorism legal framework, notably on state responsibility and the evolution of financial regulations and compliance measures. In this section we will illustrate and analyse several of the expected implications of this jurisprudence:

A. **Legal Gaps in Counter-Terrorism Measures:** Seeking to prosecute acts of terrorism financing would now become more challenging based on this statutory language adopted by the ICSFT. As Judge Bhandari has stressed the courts conclusion would lead to situations where the offence is precluded when there is some evidence that a non-financial asset is used for its financial value, even if this evidence is later-on rebutted. Meanwhile, and by contrast, if preliminary evidence shows that a non-financial asset is used as a means for commission of terrorism, then the obligation under the ICSTF does not arise even if the evidence turns out to prove that this same asset was used for its financial value[(66)].

B. **In fact**, this exclusion of non-monetary support opens the possibility that terrorist organizations can receive critical assistance without triggering legal sanctions under the ICSFT, which creates a loophole, one that poses a great challenge for legal enforcement efforts to effectively prosecute an already challenging crime by its nature.

C. **Encouragement of Alternative Funding Mechanisms:** A narrow interpretation may incentivize perpetrators to devise innovative methods for supporting

(66) Judge Bhandari's dissenting opinion, Ibid, Paragraph 11.

be intuitive in countering such a crime. He strongly advocated for an interpretative strategy dependent mainly on those three components. In doing so, he believes that the ICSFT would remain robust and adaptable in addressing the evolving/variable methods of financing terrorism.

2. Evaluation and Points of Convergence

While both Judges Bhandari and Charlesworth arrive at broadly similar conclusion regarding the interpretation of "funds"—supportive of a wider interpretation—their approaches also exhibit certain differences. In this section, we will focus on evaluating both opinions and highlighting where they align and/or diverge. As such, this comparative analysis will underscore the inherent challenges of treaty interpretation i.e. the balance between the textual fidelity and the goal-directed adaptation in the face of evolving global terrorism threats.

Both Judges agreed that:

A. The non-exhaustive list of funds in the ICSFT's text on the definition should be read as illustrative rather than exhaustive.

B. A restrictive reading of the term "funds" would weaken the ICSFT's effectiveness in the modern era in which methods of financing terrorism are constantly evolving.

C. Since the principal objective of the ICSFT is to prevent the financing of terrorism, it necessitates an adaptable and flexible interpretation that encompasses all forms of support for terrorists, including non-financial provisions..

However, their divergence is also noteworthy:

A. Judge Bhandari is more critical in what he views as judicial overreach when expanding statutory definitions, stressing that a shift toward a purposive approach is a necessity-for facing the evolving crime- rather than a discretionary expansion. On the other hand, Judge Charlesworth places significant weight on historical documents, jurisprudence[65], and legislative history, arguing that the original intent of the drafters unequivocally supports a broader interpretation.

B. Judge Bhandari leans toward advocating for an expansive definition of "funds" that allows the inclusion of almost any form of asset that could be indirectly converted into financial support. Meanwhile, Judge Charlesworth, though supportive of expansion, suggests that such an interpretation must be calibrated carefully to avoid mixing unrelated forms of assistance. He explained that a case-

(65) He recalled the case of Oil Platforms, in which the court similarly had to define the term "commerce". See Judge Charlesworth's dissenting opinion, Ibid, paragraph 7.

ICSFT, which implied that the term “property” was used by the negotiating states interchangeably with the term “funds”[58], and this is suggestive of the ultimate objective of the negotiating states, which was the need to have a term that captures a wide selection of resources that could be used to finance terrorism[59].

B. **Inclusion of Non-Monetary Support:** He also refuses to support the notion that non-monetary support—such as the provision of weapons, training, or logistical support—should not be excluded from the scope of the ICSFT only because they do not fall neatly within a traditional financial framework[60]. Judge Charlesworth argues that the financial transformation of such “non-financial” assets, whether direct or indirect, is what truly matters and constitutes a critical component of modern terrorism financing. This is because a non-financial asset may, on occasion and based on evidence, prove to have been provided for its financial value;[61] conversely, non-financial assets may also be given for the purpose of committing a terrorist act.. Nevertheless, in both cases such assets will have ultimately aided the financial status/equity of the terrorist group[62].

C. **Balancing Judicial Restraint and Efficacy:** Judge Charlesworth contends that while judicial restraint is important, it should not come at the expense of rendering international legal instruments ineffective. This is because the adopted definition of “funds” will lead to difficulties proving the financial usage of the asset[63]. Thus, he views the Court’s conclusion as “counter-intuitive”, and he is of a view that a broader interpretation of “funds” would thereby be reinforcing the aims of the ICSFT[64].

Reflecting on Judge Charlesworth’s dissenting opinion, it is best distinguished by his careful balance of the three components: Firstly, the textual analysis of the ICSFT, secondly the examination of the legislative history, and thirdly the need to

(58) Ibid, Paragraph 4.

(59) Ibid.

(60) Judge Charlesworth explains: “An asset does not lose its financial value when it serves as the means for the commission of an act of terrorism. Following the Court’s reasoning, provision by a sponsor of a building will be considered provision of “funds” where the sponsored entity (the “terrorist group”, for lack of a better term) rents out the building and uses the proceeds to rent a hideout for its activities. However, the provision of the same building will not be considered provision of “funds” where the terrorist group uses that building as its hideout. In both cases the building has improved the financial situation, or the equity, of the terrorist group; whether it has done so directly or indirectly is not legally relevant.”

(61) Judge Charlesworth’s dissenting opinion, Ibid, paragraphs 9&10.

(62) Ibid. Judge Charlesworth also emphasized that: “Following the logic of the Judgment, a party’s obligations under the ICSFT may arise in the former situation, where there is some evidence that a non-financial asset is used for its financial value, even if this evidence is eventually rebutted, thereby precluding the commission of the offence. By contrast, in the latter situation, where preliminary evidence indicates that a non-financial asset is used as a means for the commission of an act of terrorism, the obligations under the ICSFT do not arise, even if it eventually turns out that this asset is used for its financial value (and perhaps even if it turns out that the offence of terrorism financing was actually committed).”

(63) Ibid, paragraph 11.

(64) Ibid, paragraph 12.

C. Risk of Undermining the Convention's Objectives: Judge Bhandari reiterates that such an exclusion and narrow interpretation would undermine the ICSFT's objective of being a comprehensive tool for fighting terrorism financing(54). Thus, leaving a significant gap in international legal framework(55).

Reflecting on Judge Bhandari's dissenting opinion, it is best distinguished by its adaptability on judicial application of law. He stressed and called on several instances for a more holistic reading of the ICSFT. In our view, this reading should -in fact - be aware of the ICSFT context and the crimes it faces, and a holistic view that should be realistic in the sense of being aware of contemporary challenges that surround combating such a crime, a crime that is undoubtedly capable of encompassing the full range of assets that may facilitate terrorism(56).

1.2. Judge Charlesworth's Perspective: Emphasis on Legislative Intent

Judge Charlesworth's dissent(57), while he shares a common ground with Judge Bhandari in some of the criticism to the Courts ruling, mainly on the need for a broader interpretation of "funds", he also introduces additional nuances to the debate. He strongly emphasized the legislative history and the original intent of the drafters of the ICSFT. He asserted that the Court's conclusion is a:

"counter-intuitive conclusion complicates the application of the ICSFT in practice, because it creates confusion as to the situations in which the parties are to take action under the Convention. I think that this fact alone undermines the object and purpose of suppressing terrorism financing."

After a careful reading of Judge Charlesworth's dissenting opinion on "funds", it is safe to say that it stands on the following factors:

A. Historical and Contextual Analysis: Judge Charlesworth highlights that the drafting history of the ICSFT reveals an intention to address not only conventional monetary assets but also any form of property that could contribute to terrorist activities. He also pointed to the *travaux préparatoires* and earlier drafts of the

as paragraph 48 suggests when referring specifically to oil, but that a transfer of crates of ammunition cannot."

(54) Judge Bhandari States: "The more defensible understanding of the ICSFT's object and purpose -again, this is a treaty concerned with preventing the funding of terrorists- is that the Convention covers not only financial instruments or certain categories of assets but also weapons that a terrorist group would otherwise have to purchase and that might even be of greater value to terrorists than their cash equivalent."

(55) One could argue -due to this definition- that the provision of money for terrorists to buy logistical needs such as fuel would mean terrorist financing. However, the direct provision of fuel wouldn't be considered as such, for those do not "evidence title or interest".

(56) See for example FATF's report on the use of "Art" to finance terrorism: Financial Action Task Force (FATF). (2023). Money laundering and terrorist financing in the art and antiquities market. Retrieved from https://www.fatf-gafi.org/en/publications/Methodsandtrends/Money-Laundering-Terrorist-Financing-Art-Antiquities-Market.html

(57) L Charlesworth, 'A Historical and Contextual Analysis of "Funds" in International Terrorism Financing Law' (2024) 22(1) J Intl Crim Just 112 https://icj-cij.org/case/166 accessed 1 March 2025.

in approval to the Financial Action Task Force ("FATF") in several paragraphs (for example para 93). While FATF stated in its report on terrorist financing risk assessment guidance that *"While assessments may take different forms, a [terrorist financing] risk assessment should generally cover all aspects of raising, moving, storing and using funds or other assets (including goods, vehicles, **weapons** etc.) to meet the needs of a terrorist or terrorist organisation."* (47) The Court, according to Bhandari, overlooked that, and followed a very basic and incomplete understanding of economic value in assets that are excluded as per this new approach i.e. weapons. Bhandari stressed that:

"To suggest, therefore, that oil, diamonds, and artwork have a well-defined value that can easily be converted into money at a well-defined price, whereas weapons do not and cannot, reflects a very basic and incomplete understanding of economic value in particular and of the concept of an asset in general."(48)

Thus, it is now clear that Judge Bhandari's dissenting opinion regarding "funds" stands on the following factors:

A. **Emphasis on Legislative Intent:** Judge Bhandari argues that the drafters, through reviewing the *travaux préparatoires*, were primarily concerned with the effective suppression of terrorism financing(49). On the contrary to the Court's findings, the legislative history and negotiations, in his view, supports an interpretation of "funds" that is broad enough to include any asset whether it was monetary, or otherwise, all of which that could possibly be converted or utilized to support terrorist activities(50).

B. **Critique of Over-Textualism:** The dissent not only criticized the Court for adhering strictly to a literal reading of the text, but also for falsely interpreting the text(51). Judge Bhandari asserts that the Courts approach neglects a very important factor of terrorism, which is its dangerous implications and atrocities, all of which called for the negotiating states to bring up an international tool that would counteract such a crime(52), all of which necessitates having broad and wide tools of combating such a crime. Additionally, he also cautioned that the strict textualism would inadvertently create loopholes that terrorists could exploit(53).

(47) Financial Action Task Force, Terrorist Financing Risk Assessment Guidance (2019) https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Terrorist-Financing-Risk-Assessment-Guidance.pdf accessed 4 March 2025.

(48) Bhandari's dissenting opinion, ibid, para 14.

(49) Bhandari's dissenting opinion, ibid, para 21.

(50) Ibid.

(51) Ibid, Paragraphs: 8, 9, 10, 11, 13, 15, 17, 19, 20,21

(52) It was pointed out by some of the States that the new convention -the ICSFT at the time- was needed not to "internationalize" crimes that are committed with terrorism intention, instead it was the need to fight the financing of those crimes. For more discussion on this See: A Aust, 'Counter-Terrorism - A New Approach: The International Convention for the Suppression of the Financing of Terrorism' (2001) 5 Max Planck YB UN L 285 https://www.mpil.de/files/pdf1/mpunyb_aust_5.pdf accessed 4 March 2025.

(53) Judge Bandari explains: "It seems arbitrary that a transfer of barrels of oil could amount to terrorist financing,

a more expansive understanding of "funds" in order to fully capture the range of activities that facilitate terrorism financing, an approach that is completely opposite to what the Court decided. In this section, we will analyse these dissenting views, highlighting both their convergences and divergences(43).

1.1. Judge Bhandari's Dissent: A Broad Construction

In the dissenting opinion of Judge Bhandari, he disagreed with the court saying the following:

"I disagree with the Court's interpretation of Article 1 (1) of the International Convention for the Suppression of the Financing of Terrorism ("ICSFT"). In my opinion, the term "funds", as defined in that provision, includes weapons, and the Court errs in finding that the definition does not include them. As the Judgment makes clear, the interpretation of this term is determinative of parts of Ukraine's claims under Articles 9 (1), 12 (1), and 18 (1) of the ICSFT."

Judge Bhandari's dissent is rooted in a commitment to properly apply treaty interpretation. As the convention in Article 1 (1) uses several terms that conclude that there was a special meaning intended for the term "funds"; these terms were "for the purposes of this convention", "means" and "shall be given". Thus, the focus of the interpretation was supposed to be on the special meaning rather than following the narrow approach that the Court's majority decided on(44). Judge Bhandari added, the phrase "assets of every kind" in the ICSFT should be understood in its broadest sense, reflecting the ICSFT's overarching goal of cutting financial support for terrorism(45). He contends that the inclusion of a non-exhaustive list was meant to provide examples, not to restrict the definition(46). Judge Bhandari emphasizes on another contradiction of such an approach, as he quotes that the Court refers

(43) While focusing on the two main dissenting opinions of Judges Bhandari and Charlesworth, it is also imperative to summarize another dissenting opinion of judge ad hoc Pocar, he states that "the previous stipulation of the judgment introduces an unwritten element of intent that the convention has not stipulated. Indeed, Article 2 (1) prescribes that the perpetrator intends or knows that the "funds" are to be used to "carry out" the acts defined in subparagraphs (a) or (b). Nowhere does it say that the "funds" must first be used to purchase or acquire equipment or used as a reward for those carrying out such acts. This leads to an absurd incentive for terrorism supporters to directly acquire and transfer weapons and other goods used operatively for terrorist acts rather than to "only" provide "monetary" assistance. Therefore, the Court's conclusion squarely contravenes the object and purpose of the Convention." Pocar observed that the Judgment's interpretation leads to transforming the phrase "assets of every kind" to "assets of some kind"".

(44) International Court of Justice, 'Separate Opinion of Judge Bhandari: Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation)' (2024) https://www.icj-cij.org/sites/default/files/case-related/166/166-20240131-jud-01-07-en.pdf accessed 1 March 2025.

(45) Ibid.

(46) Ibid, paragraph 8.

The Court relied on the principles of treaty interpretation, mainly the VCLT, which reinforces its position[40]. In Part III of this convention, the principles of interpretation of treaties were stipulated[41]. According to those principles, any interpretation of an international convention or treaty shall be done in "good faith", and "in light of its object and purpose"[42]. Ultimately, the Court concluded that the ICSFT's object and purpose were best served by confining the term "funds" to monetary and equivalent financial instruments as it did in its interpretation mentioned above.

Chapter 2 : Divergent Perspectives: Analysis of the Decision, Dissenting Opinions, and Implications in the "*Ukraine v. Russian Federation*" Case

Introduction

While the majority supported the above-mentioned conclusion, it is important to shed light on some of the dissenting opinions in the case. An analysis of the dissenting opinions offers a deeper dive to the complexities of this case by focusing on the dynamics of the dissent and the broader implications of the majority opinion on the international legal framework on countering terrorism financing, especially, the ICSFT.

In this second chapter, the paper will begin by an examination of the dissenting opinions -mainly of Judge Bhandari and Charlesworth- and their arguments presented in response to the Court's decision. By doing so, such an analysis will reveal significant factual and legal reasoning that define the opposing viewpoints and may sound more suitable for combating an evolving crime. The paper also seeks to analyse points of convergence and divergence amongst those dissents. Such an approach will highlight intricate legal debates that shaped the outcome of this case. Finally, the chapter then explores several potential implications of the ICJ's ruling, that may extend beyond the context of the Ukraine v. Russia dispute, effecting, possibly, the international legal framework for combating terrorism and its financing.

1. Comparative Analysis of the Dissenting Opinions

The Courts conclusion was based on the majority's opinion. However, it is noted that the dissenting opinions in *Ukraine v. Russian Federation* also provide a compelling counterpoint to the Court's majority narrow approach of interpretation. These dissenting opinions primarily are from Judge Bhandari and Judge Charlesworth, both of whom offer alternative readings that emphasize the need for

(40) See Paragraph 47 of the Judgment.

(41) United Nations, Vienna Convention on the Law of Treaties. (1969). Retrieved March 4, 2025, from https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

(42) Ibid, Article 31.

these instruments were usually used for reasons "evidencing title or interest"[(36)]. Additionally, the Court refers to the title of the Convention "the Suppression of the financing of terrorism", suggesting that the main object is not to prevent general forms of support, but rather to suppress a specific form of support, albeit financing.

B. Contextual Consistency: The Court also considered the ICSFT's broader context, including its legislative history and the prevalent financial practices of the time. It then concluded that the drafter's primary focus *"was that international law did not provide means for tracing and effectively punishing those who contribute finances to terrorist organizations, arguing that terrorist acts could be prevented by depriving criminal groups of their financial resources."* , a gap that the ICSFT came to fill[(37)].

C. Legal Precedents and Doctrinal Support: The decision was supported by reference to earlier cases of the ICJ[(38)] and international legal literature of the UN, all of which supported the narrow approach of interpretation of similar terms.

3.2. The Application of the Approach to Interpret "funds":

It is now clear that the Majority's approach relied heavily on a close reading of the statutory text, in light of the legislative history and drafting process. By applying the Abovementioned key points, the Court concluded that only those assets that function as financial instruments, such as bank credits, money orders, and similar items, fall within the scope of "funds" under the ICSFT. Hence, *"the alleged supply of weapons to various armed groups operating in Ukraine, and the alleged organization of training for members of those groups, fall outside the material scope of the ICSFT"*. Obviously, this interpretation would limit the range of acts that could be prosecuted under the ICSFT, thereby narrowing the convention's practical impact on counter-terrorism measures.

This impact will be further studied in the final part of this paper, focusing on the implications of this ruling on international law. However, since most of Ukraine's claims through its submissions relied heavily on a broad interpretation of the term[(39)], this will ultimately mean that the narrow approach would affect its case and the outcome (the rejection of most of Ukraine's claims under the ICSFT).

(36) See Paragraph 47 of the Judgment.

(37) See paragraph 51 of the Judgment.

(38) International Court of Justice. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation). (2019). Retrieved March 4, 2025, from https://www.icj-cij.org/case/166

(39) Ibid, n11.

3. The ICJ's Interpretation in "*Ukraine v. Russian Federation*"

3.1. Majority Opinion: Rationale and Methodology

In its judgment, the ICJ's majority opinion followed an approach that was highly textual to interpret the term "funds." The Court underlined that the ICSFT's definition of the term is to be read in light of its specific wording and the context in which it was enacted(31). In Paragraph 52, the Court explained that:

"A good-faith interpretation of the ICSFT must take into account the fact that the concern of States parties when drafting that Convention was not the means or military resources that terrorist groups might use to commit acts of terrorism, but rather the acquisition of financial resources that would enable them, inter alia, to acquire such means, including weaponry and training. In this regard, the travaux préparatoires reveal that one of the key problems identified by the States negotiating the ICSFT was the use by terrorist groups of real or spurious charitable institutions to collect funds for seemingly legitimate purposes."

The majority's opinion argued that although the opening clause "assets of every kind" appears broad at first sight, the subsequent list of examples in the definition serves as a description of the types of financial instruments the drafters intended the term to capture(32).

The Court's analysis(33) emphasized, all together, several key points(34):

A. **Textual Primacy:** The Court emphasized that the literal wording of the Convention must be given significant weight, in accordance with the "Vienna Convention on the Law of Treaties" ("VCLT"). This approach led to the conclusion that the non-exhaustive list of instruments(35) that follows the general "assets of every kind" was not intended to allow for a wholesale expansion of the term "funds" beyond financial instruments, this is due to the fact that

(31) International Court of Justice. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation) (2024). P34-36. Retrieved from https://icj-cij.org/case/166

(32) See Paragraph 47 of the Judgment, Ibid.

(33) Ibid, Paragraphs 46 to 53.

(34) In its judgement, the Court announced that, when interpreting the terms "funds" and "assets of every kind", the guidelines outlined in Articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties will be followed, a convention to which both Ukraine and Russia are signatories. These rules require that treaties be interpreted in good faith, considering the ordinary meaning of their terms, their context, and their overarching purpose. Additionally, Article 31, paragraph 4, stipulates that a term may carry a special meaning if it is proven that the involved parties intended it as such.

(35) Which includes bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit.

examples rather than a definitive listing of the possible forms of assets. An asset is "a resource with economic value that an individual, a company, or a country owns or controls with the expectation that it will provide a future benefit."[٢٥] This allows for the sources of financing to be in any form of resource that is of potential benefit. The definition continues to include all forms of assets whether "tangible or intangible", and "movable or immovable", both of which may include stocks or cryptocurrencies (intangible) and/or real estate or oil (tangible).

The Court argued that while "assets of every kind" might theoretically encompass a wide variety of resources, the contextual framework of the ICSFT directs the interpretation toward those assets that serve a financial function[26]. Thus, the majority's opinion in *Ukraine v. Russian Federation* decided to adopt an interpretation of such a combination, one that primarily focuses on financial instruments that have an inherent monetary value[27].

Obviously, this approach was criticized, such criticism centers on the interplay between the text's literal language and the ICSFT's purpose. Should the term be read considering its literal construction, which appears to prioritize financial instruments, or should it be interpreted in a manner that captures the full spectrum of resources that could be diverted to terrorist ends? This question is not merely academic; it has profound practical implications for the enforcement of the ICSFT and the capacity of States to effectively prosecute terrorist financing acts[28].

The majority's reliance on their approach on textualism[29] is supported by the principle of legality in international law[30], which application in the context of criminal law matters, requires a clear and precise definition of a criminalized behaviour. However, dissenters argue that strict textualism in the context of such a convention and the crime it addresses is an approach that hinders the impact of the convention, and is not well suited to face the emerging and growing threat of such a crime, as we will demonstrate later in this paper.

(25) Investopedia, What is an asset? Definition, types, and examples. (2024) Retrieved from https://www.investopedia.com/terms/a/asset.asp

(26) See Para 48 of the judgment.

(27) See Para 48 of the judgment.

(28) See dissenting opinions. Also see: Marusiak, O. Narrow Interpretation of the Term "Funds" by the Judgement of 31 January 2024: Is ICJ the One to Blame?. (2024). Academia. Retrieved from https://www.academia.edu/121552592/Narrow_Interpretation_of_the_Term_Funds_by_the_Judgement_

(29) This term refers to a judicial interpretative method that relies primarily on the plain, ordinary meaning of a text.

(30) The principle of legality is a fundamental element of domestic and international criminal law systems, requiring crimes and punishments to be established by law at the time of commission to provide protection and legal certainty to individuals. Within the framework of the rule of law, criminal prosecutions aim to render justice and punish those responsible, but also to rigorously respect the rights of the defendants. See: Lerena García, Alejandro. (2023). The principle of legality in international law: A study towards the reconciliation of justice and legality. 10.13140/RG.2.2.25283.99369.

sufficiently broad to capture the diverse financial mechanisms employed by terrorist organizations was needed. This *ad hoc* committee was established to finalize drafts of the convention, considering the submissions made by the delegations[18].

The ICSFT's definition of "funds" reads as follows:

"*means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit*." [19]

At first sight, the phrases "of every kind" and "not limited to" are both indications that the definition was intended to provide non-exhaustive examples rather than a definitive listing of the possible forms of assets. However, as we will demonstrate later in this paper, this very feature has given rise to divergent interpretations of the term "funds" in the deliberations of the case[20].

2.2 The debate Over Defining "Funds"

It is important, to textually analyse how the ICSFT have defined the term "funds", to obtain the full depth of this definition and its extent. To undertake such an analysis, we are required to perform a close reading of its language.

The operative phrase "assets of every kind"[21] suggests that the definition includes a general and widely inclusive category of "assets", then this phrase is followed by an illustration of the physical being of such assets "tangible or intangible" and "movable or immovable". However, this opening of demonstration of the state of assets is immediately followed by a specification of certain types of "financial instruments"[22]. This list of "illustrative"[23] financial instruments are, in fact, what sparked the debate of the interpretation of the term "Funds"[24].

As previously mentioned, at first sight, the phrases "of every kind" and "not limited to" are both indications that the definition was intended to provide non-exhaustive

(18) United Nations, 'International Convention for the Suppression of the Financing of Terrorism' (2023) https://legal.un.org/avl/ha/icsft/icsft.html?utm

(19) United Nations, International Convention for the Suppression of the Financing of Terrorism. United Nations Treaty Series, 2178, 197. (1999). Retrieved from https://www.un.org/law/cod/finterr.htm

(20) See Section 4 of this paper.

(21) Ibid.

(22) This is how the Court in its judgment described the listed examples.

(23) A Aust, 'Counter-Terrorism - A New Approach: The International Convention for the Suppression of the Financing of Terrorism' (2001) 5 Max Planck Yearbook of United Nations Law 288 https://www.mpil.de/files/pdf1/mpunyb_aust_5.pdf accessed 18 February, 2025.

(24) This will be demonstrated in the following section.

cornerstone in the "war against terrorism", providing a thorough framework that is aimed and designed to, inter alia, criminalize the providing funds to terrorists or for terrorist purposes.

Generally, the ICSFT aims to criminalize terrorism financing, calling for effective cooperation "to prevent, investigate, and punish terrorism financing". In doing so, the convention required States to indicate measures that aim to suppress and prevent financing of terrorism. Moreover, the convention also required States to criminalize "the willful collection of funds" for such terrorism acts. It also called for the freezing of assets of individuals and entities who are linked to terrorism financing and further called for States to deny "safe-haven" to those who finance or support terrorist acts, and to cooperate in bringing them to justice(15). Scholars noted that the ICSFT's drafting had considered expanding its scope to capture as much criminalization against terrorism financing, based on the fact that the convention not only criminalizes the provision of funds to terrorists, but also the basic act of collection of funds with intent to provide it to terrorists(16).

To that regard, it is also important to note that the ICSFT's *travaux préparatoires* and its negotiations reveal a careful balance between breadth and specificity during several drafts of the convention. Negotiators in the "*Ad Hoc* Committee" which was established by General Assembly resolution "51/210" of 17 December 1996 and the "Working Group on Measures to Eliminate International Terrorism" sought to fill in a "gap in international law by adopting an international legal instrument specifically addressing the issue"(17). Thus, a definition of "funds" that would be

financing measures, since the efforts at that time concentrated on countering drug trafficking and its proceeds. For example, in 1912, the international community adopted the 1912 Hague International Opium Convention. During that time, the convention contained a series of elements that helped control drugs and, most importantly, served as an official declaration of the danger of non-medical opium trade. It was noted that after the First World War, there was an increase of drug abuse levels, and when the League of Nations was established in early 1920, it adopted the Opium Convention and amended it by 1925. Following that, a series of conventions were declared, including The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs (1931), The Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (1936) (the "CSITDD"), the Synthetic Narcotics Protocol (1948), the Opium Protocol (1953), the Single Convention on Narcotic Drugs (1961) and its protocol (1971), the Convention on Psychotropic Substances (1971), and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). Then on February 17th, 1995, the United Nations laid the very first foundation for its counter-terrorism regime. The adoption of Resolution 49/60 (1994) which urges States to take the appropriate measures to eliminate terrorism on a national and international level. Yet again, this approach also suffers from limitations as it only focuses on fighting the crime of terrorism but didn't pursue the elimination of the sources of financing terrorists, which forms another deficiency of the international framework as it failed to address the serious threats of the financing of terrorism.

(15) United Nations Audiovisual Library of International Law. (2009). International Convention for the Suppression of the Financing of Terrorism. Retrieved from https://legal.un.org/avl/pdf/ha/icsft/icsft_e.pdf

(16) A Fat'hy Suroor, Money Laundering and Terrorism Financing (1st ed., Magmoa Elmeya Publishing 2021). 195.

(17) United Nations. (1999). Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996. Retrieved from https://documents.un.org/doc/undoc/gen/n99/127/34/pdf/n9912734.pdf

acts undertaken and their value in money. This decision was met with considerable criticism from several judges and legal scholars(11) who argued that such a narrow interpretation could severely limit the effectiveness of international anti-terrorism measures.In fact, there are several studies that have stressed that "funds" in the scope of the ICSFT include physical and financial forms of aid to terrorists and/or terrorist organizations(12).

For all the above, the background of this particular case gives away a radiant collision between the new evolving patterns of terrorism financing and the characterized static state of legal frameworks, in this case, definitions that are embedded in decades old international treaties. As such, the ICJ's decision, while having resolved a dispute between both states, whom are at war today, it also set a precedent for all future cases, with potential of influencing the interpretation of similar terms in a similar approach, albeit, narrow. The complexity of this case underscores the underlying challenges that the application of international law is facing, particularly in the field of peaceful dispute settlement.

The deliberations, as this paper will demonstrate later, showed how the Court not only was compelled to look into the textual language of the ICSFT, but also the legislative history of its drafting and adoption. This dual approach symbolizes the true challenges that the Court faced to reach such an interpretation and showcases how the decision in such a case would serve as a touchstone for further discussions on international law, in an era of emerging threats.

2. Legal Framework: The ICSFT and the Definition of "Funds"

2.1 The Historical Context and Drafting History, why was it Important?

The ICSFT was adopted in December 1999 without a vote by the UN General Assembly, designed as a critical step towards the "War Against Terrorism". It's worth noting that when the 9/11 attacks occurred, only 4 States have acceded convention(13), a fact that displays how the international community was in approaching terrorism and its financing during the period prior to the attacks. Additionally, before the adoption of the ICSFT, the international focus on restraining the funding of terrorism was fragmented and only confined to bilateral agreements and/or domestic laws, as international instruments focused elsewhere(14). The ICSFT represented decisive

(11)'From Financing to Frontlines: Interpreting Funds in the International Convention for the Suppression of the Financing of Terrorism' (2025) Princeton Legal Journal.

(12) Rashid Albulushi, (2020). Crimes of Money Laundering and Terrorist Financing: In light of AML/CTF Law of Oman, Alhalabi, Beirut, p158.

(13) Pierre Klein, "International Convention for the Suppression of the Financing of Terrorism", Université Libre de Bruxelles, retrieved12/11/2022, from International Convention for the Suppression of the Financing of Terrorism - introductory note - English (un.org).

(14) Prior to 9/11, the international community was thought to not be equipped with proper counter terrorism

Third, so far as concerns the multiple allegations against Russia itself, that the ICSFT is concerned with alleged financing of terrorism by a State."

Clearly this was a case of large magnitude when it came to the legal deliberations to be held. In fact, the inherent evolving[6] and controversial nature of terrorism and its financing made this legal dispute even more complicated. Over the past two decades, terrorist organizations have increasingly diversified their sources of funding, employing innovative financial mechanisms and online platforms that blend monetary transactions with in-kind support[7]. The Financial Action Task Force[8] (FATF) has highlighted the growing abuse of crowdfunding platforms, virtual assets, and social media by terrorist groups[9]. This evolution of technology we see nowadays has challenged traditional legal authorities and necessitated a re-examination of the counter actions against financial crimes including terrorism financing[10]. This necessity also includes the importance of developing a strong, and robust legal framework to address the threats of such a crime and for sure a strong legal framework needs a strong common legal understanding.

The ICJ's final judgment, issued in January 2024, did not entirely/positively contribute to the development of the common understanding. On the other hand, it sparked the everlasting debates on terrorism's definition, this time in a more technical and precise analogy which is the "funding" of terrorism. In its definition the ICJ narrowed the scope of what may be considered prosecutable under the ICSFT as funding of terrorism. While the majority opinion held that "funds" were limited to tangible financial assets and instruments explicitly listed in the Convention's definition which are of monetary value/nature. It thereby excluded non-monetary forms of support, but which hold significant value, in terms of its importance to the

(6) Paul Allan Schott, Reference Guide to AntiMoney Laundering and Combating the Financing of Terrorism (World Bank, 2nd ed, 2006) 1–6.)

(7) Administrator. (2024, September 8). Terrorist organizations exploit financial systems for funding. Info Security Watch. https://www.infosecuritywatch.com/2024/09/08/terrorist-organizations-exploit-financial-systems-for-funding/

(8) FATF is known as the Anti-money laundering and terrorist financing global "Watchdog", that sets the international standards for combating these crimes. These FATF standards are set in the FATF Recommendations. The compliance to these standards/recommendations is measures by a process called the Mutual Evaluation, which is an extensive process of analysing a country's system taking into careful consideration the implementation of the measures technically and effectively. The mutual evaluation results in a specific rating, which supported by the assessed country's MER. The MERs are considered peer reviews, in which members from some countries assess another country, by which a thorough analysis of the assessed country's AML/CTF system is checked for compliance with the FATF Recommendations both technically and effectively. Both the ICSFT and the UN Security Council Resolutions serve an important role as hard law tools that drive domestic legislation and legal frameworks to combat terrorism. However, the international standards in CTF are set today via FATF, which formulates soft law norms. In fact, soft law does not have the binding element, it rather influences. This is the case with FATF, while its Recommendations are not binding per se, they are recognized by the UN as requiring political commitment.

(9) Financial Action Task Force. (2024, October 31). Crowdfunding for terrorism financing. FATF. https://www.fatf-gafi.org/en/publications/Methodsandtrends/crowdfunding-for-terrorism-financing.html

(10) Financial Action Task Force. (2021). Opportunities and challenges of new technologies for AML/CFT. FATF. https://www.fatf-gafi.org/en/publications/Digitaltransformation/Opportunities-challenges-new-technologies-for-aml-cft.html

In its case before the ICJ, brought in 2017, Ukraine specifically challenged the actions of the Russian Federation, which have allegedly acted through its agencies, organs, persons, and entities, pursued a campaign to finance terrorist groups and terrorist violence in Ukraine. This was done by the provision of "funds" and training to "illegal" armed groups acts which fell within the ambit of the ICSFT's prohibition(4). Clearly in such claims that Ukraine has brought, the fundamental legal question was: Whether or not, the term "funds," as defined by the ICSFT, was sufficiently expansive to include non-monetary support such as arms, training, and other forms of material assistance that indirectly facilitate terrorist activities?

Russia on the other hand have not only refused such allegation, but also refused the jurisdiction of the ICJ over the case, as it says in the preliminary objections:

"The invocation of the ICSFT and CERD is, however, artificial. Ukraine has made plain its wish to bring its misplaced allegations of annexation and aggression before the Court or other tribunals, and the current claims merely constitute one of Ukraine's attempts inappropriately to shoehorn those allegations into one or more treaties that provide for compulsory dispute settlement. (…) the ICSFT and CERD concern respectively terrorism financing and racial discrimination and cannot somehow become a home for misplaced *allegations of aggression." (5)*.

The preliminary objection continued to contend the jurisdiction of the court"

"For the Court to have jurisdiction ratione materiae under Article 24(1), Ukraine must establish that the allegations that it makes fall within the provisions of the ICSFT that it seeks to invoke, namely Articles 8-10, 12 and 18. Each of those provisions only applies in respect of an offence or alleged offence under Article 2. Thus, Ukraine must establish:

First, that the allegations made concern acts of terrorism within the meaning of Article 2(1)(a) or (b), including with respect to the requisite specific intent and purpose;

Second, that the allegations made concern the financing with the requisite specific knowledge or intent, as required by the chapeau of Article 2(1), of acts of terrorism. The case put before this Court by Ukraine is that "Russian officials and other Russian nationals knowingly financed terrorism in Ukraine"; and

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(Ukraine v. Russian Federation) [Application instituting proceedings] P. 8-10. Retrieved from https://icj-cij.org/sites/default/files/case-related/166/166-20170116-APP-01-00-EN.pdf

(4) Ibid, p26.

(5) Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation) [Preliminary Objections] P. 2-4. Retrieved from https://icj-cij.org/case/166

To enrich this discussion, this chapter will aim to trace the drafting history of the ICSFT, offering a deeper understanding of the preparation of several drafts of the convention, which addressed the issue at hand. Then the paper will highlight the majority opinion, making up the decision in this case. By doing so, the paper aims to shed light on the majority's rationale and bases for the conclusion the Court have reached.

1. Why and What Happened?

The case of Ukraine v. Russian Federation originates from a dispute that can be traced to the conflict in eastern Ukraine and the Crimean Peninsula, where the Ukrainian government has long alleged that the Russian Federation support separatist groups, specifically the Donetsk People's Republic (DPR) and the Luhansk People's Republic (LPR). Ukraine alleged that Russia "failed to take measures to prevent and suppress armed activities" that were perpetrated by the armed groups. The alleged support constituted the provision of conventional military equipment and financial resources intended to facilitate acts of "terrorism"(2). Ukraine argued that such support formed a violation of the ICSFT. In its application Ukraine claimed that:

"…the Russian Federation has instigated and sustained an armed insurrection against the authority of the Ukrainian State, including by systematically supplying illegal armed groups with heavy weaponry, money, personnel, training, and other support. That assistance has been used not only to support combat against the Ukrainian authorities, but to conduct devastating terrorist attacks, including the shooting down of Malaysia Airlines Flight MH17, with 298 innocent civilians on board. A densely populated residential area in the port city of Mariupol was targeted for bombardment. A passenger bus carrying civilians was shelled near Volnovakha. A peaceful and patriotic rally in Kharkiv was bombed. Throughout Ukraine, civilians have suffered as the Russian Federation and its proxies have attempted to extract concessions. The Russian Federation's sponsorship of this brutal campaign of terrorism in Ukraine deliberately flouts fundamental principles of international law, including those enshrined in the International Convention for the Suppression of the Financing of Terrorism..." (3).

(2) International Court of Justice. (2024). Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation). Retrieved from https://icj-cij.org/case/166

(3) International Court of Justice. (2017). Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination

yet they predate the recent jurisprudential developments i.e. the ICJ's ruling in Ukraine v. Russian Federation.

Despite the landmark nature of the ICJ's decision, there remains a marked scarcity of academic commentary or in-depth legal analysis directly addressing the judgment's treatment of the term "funds" under the ICSFT. Preliminary reactions have appeared in a few practitioner blogs and short-form commentaries, some highlighting the restrictive approach adopted by the Court in light of the different opinions of the Court. However, comprehensive doctrinal engagement with the legal reasoning of the majority, the dissent, and the broader implications of the judgment for the interpretation of the ICSFT remains absent in the scholarly record -to date.

Therefore, this study aims to fill a critical void in current international legal literature, by providing a thorough legal and contextual analysis of the Court's interpretation. In doing so, this study will also contribute to a much needed academic understanding of ICSFT-related jurisprudence that will support future studies and applications.

Chapter 1: Unveiling Justice: The Ukraine v. Russia Case – Context, Contention, and Verdict

Introduction

A proper understanding of any judicial sentence needs full awareness of the dispositive part along with the merits of the case. As such, in this chapter of the paper, we will shed light on the factual background of the Ukraine v. Russia case, focusing on the facts each of the party have presented to the International Court of Justice (ICJ). Not only that but also focusing on the claims and counterclaims each of the parties has made. All of which could be materialized through the submissions made throughout the process of these proceedings. By doing so, the paper will set the proper stage for the historical and geopolitical backdrop against which the dispute is unfolded.

However, while the sentence renders claim further that terrorism financing, and the application of the International Convention for the Suppression of the Financing of Terrorism (ICSFT), this paper will only focus on the latter, as it serves as a novelty decision in the field of accountability for acts of terrorism and its financing on an international level. Such a field, terrorism and its financing, is one that is recognized by scholars and lawyers as a field that strives for uniformity and effectiveness.

Then, to supplement the doctrinal analysis, the paper also aims to incorporate elements of contextual and comparative interpretation, examining how similar terms have been treated in related international instruments, and other secondary sources such as academic articles, UN reports, and FATF documents, which will all be used to enrich the legal discussion and provide insight into the broader policy implications of the Court's interpretation.

The final step in this paper constitutes an engagement in normative analysis, assessing the real-world consequences of the ICJ's decision on the future effectiveness of counter-terrorism financing regimes. This leads to the formulation of possible legal and policy reforms aimed at bridging the gap between international law's static definitions and the dynamic methods by which terrorist entities operate today.

This layered methodology ensures that the paper remains both legally rigorous and practically relevant, grounding its conclusions in authoritative sources while remaining responsive to contemporary challenges in the context of terrorism financing.

Literature review

It is also imperative to discuss and solidify the position of such a study, enabling the demonstration of the contribution of its originality in this specific field of literature. In fact, the legal studies surrounding the interpretation of key terms under ICSFT has been robust over the past two decades, particularly in the context of FATF guidance and state practice evaluations/analysis. Some foundational academic literature such as "Biersteker and Eckert's Countering the Financing of Terrorism" and "Paul Allan Schott's Reference Guide to AntiMoney Laundering and Combating the Financing of Terrorism" offer valuable insights into definitional challenges, enforcement mechanisms, and international cooperation frameworks. Authors Biersteker and Eckert examined policies and legal tools adopted by states post 9/11 attacks on the World Trade Center in the US, their approach to discuss the definitional gaps was related to the lack of a universally accepted definition of terrorism. However, this study predates that ICJ decision and therefore did not specifically tackle the debate over the definition of funds, nevertheless it echoes this debate but through the focus on terrorism. Meanwhile, author Paul Allan Schott offers an in-depth overview of how states implemented the Financial Action Task Force's relevant recommendations; in fact, the author has broader opinions on the interpretation of funds, contesting the narrow application the ICJ has applied. While both studies do contribute significantly to the understanding of the evolution of legal norms in the field of terrorism financing,

2. To analyse the ICJ's interpretation of the term "funds" in Ukraine v. Russian Federation, with specific focus on the Court's reasoning adopted by the majority and contrasting it with the dissenting opinions.

3. To assess the implications of the ICJ's restrictive/narrow interpretation on the broader international legal framework for countering terrorism financing.

4. To contribute to filling the scholar gap in this context of studies, and to shed light on legal/policy debates by critically evaluating whether the current interpretation of "funds" remains fit for purpose in addressing modern threats and financing techniques.

5. To propose potential legal and policy reforms aimed at clarifying and strengthening the scope of the ICSFT, ensuring it remains responsive to evolving security realities.

These goals enable this study to not only to deepen academic understanding of a key legal term but also to offer practical insights for enhancing the effectiveness of international counter-terrorism instruments.

Research Methodology

This research adopts a doctrinal/multi-layered legal research methodology, which is primarily concerned with the critical examination of legal texts, treaties, judicial decisions, and scholarly commentary. The doctrinal approach is particularly well-suited for this research, given its focus on interpreting the term "funds" under the ICSFT and analysing how this term has been construed by the ICJ in Ukraine v. Russian Federation.

The research will first begin by undertaking a historical and legal overview of the ICSFT, focusing on tracing its drafting history, object and purpose, and its definitional scope. This step is essential to understand the intention of the drafters of the Convention when defining "funds", and by doing so, the paper can reflect that with recent judgment deciding how it aligns with or departs from that intention.

Following the first step, the paper undertakes a close reading of the ICJ's decision, highlighting the employed judicial reasoning by both the majority and dissenting judges. In order to do so, an analysis of the Judges' interpretative techniques will be performed, such as textualism, and/or reference to travaux préparatoires. Special focus is also given to the dissenting opinions of Judges Bhandari and Charlesworth, as they offer compelling counter-narratives to the majority's restrictive reading of the term "funds."

Significance of the Research

The significance of this research lies in its critical engagement with the evolving jurisprudence on the financing of terrorism under international law, particularly through the lens of the ICSFT. The most recent judgment in Ukraine v. Russian Federation marks a breakpoint in the interpretative trajectory of this convention, while significant as a pioneering jurisprudence in the context of terrorism and its financing, this decision has simultaneously revealed and deepened the ambiguities surrounding fundamental, seemingly simple terms such i.e. "funds". This paper addresses these interpretive tensions at a time when the nature and mechanics of terrorist financing are undergoing rapid transformation, particularly with the emergence of new financial technologies and non-traditional value transfers. By offering a nuanced doctrinal and contextual analysis of the ICSFT and engaging with the judicial reasoning of both the majority and dissenting opinions, this research strives to deliver a more coherent understanding of the scope and applicability of the term "funds." As such, the analysis performed in this study, does not merely serve an academic purpose; it fills in a gap of literature that was noticed even before the drafting of this study, additionally it responds to a pressing legal and policy challenge: how to reconcile rigid treaty language with the dynamic realities of terrorism financing. Accordingly, the study is significant for international legal scholars, practitioners, and policymakers alike, as it provides a foundation for interpreting the ICSFT in a manner that is both doctrinally sound and pragmatically responsive to contemporary threats, in light of a decision of the ICJ that is to be considered -to date- one of a kind.

Research Problem

The main issue this research addresses is the lack of clarity and agreement on what constitutes "funds" under ICSFT. This ambiguity was brought to the forefront by the ICJ's recent decision in Ukraine v. Russian Federation, where the majority adopted a narrow interpretation that excludes non-monetary support such as weapons and training. This restrictive reading may limit the effectiveness of international efforts to combat terrorism financing, especially in an era where support for terrorism often comes in non-financial or unconventional forms. The research therefore seeks to explore this interpretation and study its alignment with the objectives and purposes of the ICSFT.

Research Goals

This paper aims to achieve the following goals:

1. To examine the legal basis and historical context of the term "funds" as used and intended in the ICSFT, including its drafting history, object, and purpose.

Introduction

For long, the ambiguity of the legal terminologies on international law was criticized, particularly in the field of terrorism[1], where there remains a lack of a single definition of terrorism. Notwithstanding the latest decision of the case of Ukraine v. Russian Federation rendered by the ICJ, which represents a cornerstone in international legal discourse regarding the interpretation of key terms within anti-terrorism statutes namely the ICSFT. At the heart of the debate that this decision has caused comes the Court's construal of the term "funds" as an application of the ICSFT. While the majority's opinion adopted a seemingly narrow approach for the definition of "funds", limiting the term to encompass only monetary and/or similar financial instruments, the dissenting opinions obviously disagree. The dissenting opinions argued for a broader interpretation of the term "funds" one that includes non-monetary assets i.e.: weapons and military training, when such are given to support terrorist activities.

This paper is structured to provide a historical and legal background of the case to establish sufficient bases of facts and the relevant international instrument. Then the paper switches its focus to performing a detailed doctrinal analysis of the term "funds" under the ICSFT, taking into consideration contextual and drafting history. The paper then turns to discuss the opinions of the judges, including most significantly that of Judges Bhandari and Charlesworth, which both are of the dissenting opinions that challenged the restrictive interpretation that the majority have adopted. In doing so, the paper will result in important outcomes and implications of the decision, including the constraints it may cause to the efficacy of international measures against terrorism and its financing. The discussions of the implications of the decision culminate in a critical evaluation of several potential reforms in policy and legislation, to address the limitations imposed by this important jurisprudence.

The analysis gains significance in its potential to inform ongoing debates regarding the scope of ICSFT. In an era marked by its emerging sophisticated and continuously evolving financial technologies. Technologies that are at the risk of being abused to undertake illicit financing. These characteristics of the days we have seen, and those yet to come, are all urging for a comprehensive understanding of key legal concepts that includes, inter-alia, the term "funds". Thus, this paper contributes to both academic and practical debates, by offering insights into a process that is/may shape the future of the international legal framework on terrorism and its financing.

(1) Thomas J Biersteker and Sue E Eckert, Countering the Financing of Terrorism (Routledge 2008).

المُلخَّص

تداعيات قرار محكمة العدل الدولية بشأن تفسير مصطلح "الأموال" وفقًا لاتفاقية الأمم المتحدة لقمع تمويل الإرهاب: تطبيق على قضية أوكرانيا ضد الاتحاد الروسي

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تتناول هذه الدراسة تعريف مصطلح "الأموال" في سياق اتفاقية الأمم المتحدة لقمع تمويل الإرهاب لعام 1999، من خلال تطبيق أحكامها في الحكم الصادر من محكمة العدل الدولية في 31 يناير 2024، حيث أصدرت المحكمة حكمها في قضية أوكرانيا ضد الإتحاد الروسي، وهو -بحق- يعد حكم مستحدث ومحطة بارزة في الفقه الدولي المتعلق بتمويل الإرهاب، كما له -الحكم- أهمية بالغة للقضاة وأعضاء النيابة العامة والباحثين القانونيين على حد سواء، لما له من وزن وحداثة وأصالة في سياق الأحكام الدولية في تمويل الإرهاب، وتستمد هذه الأهمية من أوجه عدة تناولتها المحكمة ضمن حكمها في القضية المذكورة، والجدير بالذكر أن هذه الورقة ستركز على كيفية تطبيق وتفسير مصطلح "الأموال" ومناقشة التفسير الضيق الذي تبنته المحكمة لهذا المصطلح.

وثم تستعرض الدراسة أسانيد المحكمة وأعضائها، من خلال آراء الأغلبية والأقلية المخالفة، مع التركيز على تحديد أوجه الالتقاء والاختلاف مع المقارنة والتحليل لتلك الآراء وبهدف المحاولة للوقوف على الآثار القانونية التي قد تترتب على هذا الحكم، والتي قد تمتد ليس فقط على تطبيقات القانون الدولي أو مسؤولية الدول، بل تصل في تأثيرها على الحرب العالمية في مكافحة الإرهاب، لذا فإن الورقة تسعى في نهايتها إلى إبراز كافة الآثار المحتملة لهذا الحكم على مستقبل إجراءات مكافحة الإرهاب وتمويله، والإصلاحات التشريعية التي قد تترتب عليه، وذلك من خلال التحليل النقدي المعمق للأسس القانونية والتاريخية التي بني عليها هذا الحكم القضائي الحديث.

الكلمات المفتاحية: أموال، الإرهاب، تمويل الإرهاب، مكافحة الإرهاب، تفسير النص القانوني، روسيا، أوكرانيا، محكمة العدل الدولية

The Implications of the International Court of Justice's Decision on the Interpretation of "Funds" under the United Nations Convention for the Suppression of Financing of Terrorism: An Application in the Case of *Ukraine v. Russian Federation*

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ABSTRACT

This paper analyses the interpretation of the term "funds" in the application of the United Nations Convention for the Suppression of Financing of Terrorism (ICSFT) by the International Court of Justice (ICJ). On the 31st of January 2024, the ICJ issued its decision in "Ukraine v. Russian Federation", a novelty ruling that forms an important landmark in the field of jurisprudence on terrorism financing and is equally important for judges, prosecutors, and scholars. This importance of the ruling is gained through several aspects which the case and its context were deliberated on. However, in this paper we will focus on the application of the term "funds" and discuss the narrow reading -the Court adopts- for the term. The paper will continue to examine the details supporting the majority and dissenting opinions. In doing so, we have focused on comparing those opinions, to explore the broad implications emerging from such a decision on international law, state responsibility, and , ultimately, the global war against terrorism. The paper seeks to finally expose the potential impact of the decision on future anti-terrorism procedures and reforms. This will be done through extensive analysis and critical evaluation of the legal basis on which the decision was made.

Keywords: International Court of Justice, ICJ, Funds, Terrorism, Russia, Ukraine, Terrorism financing, Legal text interpretation, Anti-terrorism

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